

**RAIL PUBLIC REGISTER COPY**  
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**Dated 24 February**

**2022**

- (1) THE SECRETARY OF STATE FOR TRANSPORT
- (2) DFT OLR HOLDINGS LIMITED
- (3) NORTHERN TRAINS LIMITED

SERVICE CONTRACT - NORTHERN

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**THIS CONTRACT** is dated 24 February 2022

**BETWEEN:**

- (1) **THE SECRETARY OF STATE FOR TRANSPORT**, whose principal address is at 33 Horseferry Road, London SW1P 4DR (the "**Secretary of State**");
- (2) **DFT OLR HOLDINGS LIMITED** (Company Number: 07141122), whose registered office is at Great Minster House, 33 Horseferry Road, London SW1P 4DR ("**DOHL**"); and
- (3) **NORTHERN TRAINS LIMITED** (Company Number: 03076444), whose registered office is 8th Floor, Albany House, 94-98 Petty France, London, England, SW1H 9EA (the "**Operator**").

**BACKGROUND**

- (A) At 0159 on 1 March 2020 the franchise agreement (the "**ARN Franchise Agreement**") under which Arriva Rail North Limited (Company Number: 04337712) whose registered office is at 1 Admiral Way, Doxford International Business Park, Sunderland, Tyne & Wear, SR3 3XP ("**ARN**") had been providing certain services for the carriage of passengers by railway and operating certain stations and light maintenance depots terminated.
- (B) The Secretary of State has a duty under section 30 of the Act to secure the continuity of the provision of passenger rail services in circumstances where a franchise agreement terminates and no further franchise agreement has been entered into in respect of the passenger services formerly provided under that franchise agreement (the "**Section 30 Duty**").
- (C) DOHL is a wholly owned subsidiary of the Secretary of State which has been established for the purposes of undertaking, on behalf of the Secretary of State, the Section 30 Duty. The Operator is a wholly owned subsidiary of DOHL and on termination of the ARN Franchise Agreement was appointed to exercise the Section 30 Duty and operate the rail passenger services in respect of rail passenger services previously operated by ARN under the ARN Franchise Agreement.
- (D) On 1st March 2021 the Secretary of State issued a railway transport services prior information notice pursuant to Article 7(2) of Regulation 1370/2007, as amended by the Regulation (EC) No 1370/2007 (Public Service Obligations in Transport) (Amendment) (EU Exit) Regulations 2020 for a new contract to be directly awarded to the Operator to permit the continuation of the Rail Services for a further duration of up to five (5) years.
- (E) The Secretary of State, DOHL and the Operator have agreed that whilst this Contract does not constitute a franchise agreement (within the meaning of the Act) in order to ensure (so far as possible) that the Rail Services are operated and managed in a manner consistent with how railway passenger services are provided by franchisees under franchise agreements it is appropriate for DOHL and the Operator to provide the Rail Services in accordance with the terms of this Contract.
- (F) The Secretary of State, DOHL and the Operator have agreed that in the performance of obligations and exercise of rights under this Contract all Parties will take into account the following objectives for the delivery of rail services:
  - (i) to improve the passenger experience on the railway, by providing a modern and reliable means of transport accessible to all;
  - (ii) to meet the needs of the wider community through working collaboratively with stakeholders and all rail industry partners;
  - (iii) to meet the challenge of improving the railway's contribution to the Government's wider sustainability aims; and

- (iv) The Secretary of State also wishes to ensure that the railway is operated efficiently and is affordable for the taxpayer.

It is acknowledged that through these objectives, the Secretary of State aims to restore and improve the reputation of the railway, rebuilding trust in the way it operates for passengers, stakeholders and the wider community.

## 1. INTERPRETATION

1.1 For the purposes of this agreement, "**Service Contract**" means this Contract.

1.2 In the Service Contract, except to the extent the context otherwise requires:

- (a) words and expressions defined in Part I of the Act have the same meanings when used therein provided that, except to the extent expressly stated, "**railway**" shall not have the wider meaning attributed to it by section 81(2) of the Act;
- (b) words and expressions defined in the Interpretation Act 1978 have the same meanings when used in this Contract;
- (c) references to "Parties" shall mean the Secretary of State, DOHL and the Operator (and references to a "Party" shall mean the Secretary of State, DOHL or the Operator as the context requires);
- (d) the words "**include**", "**including**" and "**in particular**" are to be construed without limitation;
- (e) references to any "**person**" include its successors, transferees or assignees;
- (f) the words "**subsidiary**", "**subsidiary undertaking**" and "**parent undertaking**" each have the same meaning in this Contract as in section 1162 of the Companies Act 2006;
- (g) references in any of the agreements comprising this Contract to Recitals, clauses, Schedules, Parts of Schedules, paragraphs of Schedules and Appendices to Schedules are to Recitals, clauses, Schedules, Parts of Schedules, paragraphs of Schedules and Appendices to 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 this Contract to a Part, paragraph or Appendix are references to a Part, paragraph or Appendix of that Schedule (or the relevant Part of a Schedule), unless expressly specified to the contrary;
- (i) headings and references to headings shall be disregarded in construing this Contract;
- (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) 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;
  - (n) words importing the masculine gender include the feminine and vice-versa, and words in the singular include the plural and vice versa;
  - (o) 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;
  - (p) 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;
  - (q) references to the Operator bidding for Train Slots or a Timetable shall mean the final action incumbent on the Operator under the Network Code to confirm to Network Rail its interests in the Train Slots to which that confirmation relates, and **"bid"** shall be construed accordingly;
  - (r) 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;
  - (s) references to **"railway passenger services"** are to be construed subject to section 40 of the Railways Act 2005;
  - (t) references to the **"provision of railway passenger services"** include the organisation of the relevant train movements and making the necessary arrangements with Network Rail or any other relevant Facility Owner;
  - (u) references in lower case letters to terms defined in clause 3 (*Definitions*) shall be construed, where relevant, as being references to the terms defined as such in a 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) references to sums of money being expended by the Operator shall be to such sums exclusive of Value Added Tax;
  - (w) **NOT USED;**
  - (x) **NOT USED;**
  - (y) wherever provision is made for a Party to **"procure"** or **"ensure"** the delivery of an obligation under this Contract, unless otherwise specified, that provision shall be construed as a primary obligation on that Party to deliver that obligation;
  - (z) references to **"profit"** shall be construed as meaning profit before corporation tax, determined in accordance with GAAP; and
  - (aa) references to **"process"** or **"processing"** or **"processed"** are to be construed in accordance with the Data Protection Legislation for the purposes of Schedule 1.5 (Information about Passengers), paragraph 2 (Apprenticeships) of

Schedule 1.8 (Diversity and Inclusion and Training and Development) and paragraph 11 (Data Protection) and paragraph 12 (Data Protection – Apprenticeships) of Schedule 17 (Confidentiality and Data Protection).

1.2 Where there is a requirement on the Operator to **“fully and effectively co-operate”** with one (1) or more other third parties with regard to an objective, that requirement relates to the quality of co-operation to be provided by the Operator taking into account and subject to the response of the other third parties concerned. It does not indicate an obligation on the Operator beyond co-operation, relating to the funding of detailed design and development of an infrastructure project, actual delivery or subsequent operation (including in each case performance cost and revenue effects). It does indicate that the Operator shall participate actively in relation to the relevant objective including through the application of management time and internal resources, correspondence and attendance at meetings, in each case as the Operator reasonably considers in all of the circumstances to be an appropriate use of its resources and effective to achieve the relevant objective.

## 2. **AGREED DOCUMENTS**

2.1 References to documents **“in the agreed terms”** are references to documents initialled by or on behalf of the Secretary of State and the Operator.

2.2 As at the date of this Contract, the documents **“in the agreed terms”** are as follows:

<b>BP</b>	Business Plan
<b>BPC</b>	Business Plan Commitments
<b>CBS</b>	Co-Branded Stations;
<b>CPB</b>	CP Budget;
<b>CSES</b>	Customer & Stakeholder Engagement Strategy;
<b>DSMI</b>	Data Site Monitor and Index;
<b>DL</b>	Depot Lease;
<b>ERTMSP</b>	Proposed ERTMS Implementation Plan;
<b>PC</b>	Passenger’s Charter;
<b>PFD</b>	PTE/Protected Fares Document;
<b>PSM</b>	Passenger Survey Methodology;
<b>SL</b>	Station Lease;
<b>TFCP</b>	Train Formation Capacity Plan;
<b>TSR</b>	Train Service Requirement;
<b>TTSM</b>	Ticketless Travel Survey Methodology;
<b>TWFSA</b>	Tyne and Wear Fares Side Agreement.

## 3. **Definitions**

3.1 In this Contract, except to the extent the context otherwise requires, the following words and expressions have the following meanings:

<b>"2019 Nominal Ticket Sales"</b>	has the meaning given to it in paragraph 3 of Schedule 5.4 ( <i>Regulation of Fares Basket</i> );
<b>"2019 Ticket Revenue"</b>	has the meaning given to it in paragraph 4 of Schedule 5.4 ( <i>Regulation of Fares Basket</i> );
<b>"Access Agreement"</b>	has the meaning given to the term <b>"access agreement"</b> in section 83(1) of the Act;
<b>"Accessibility Panel"</b>	means the regular forum of disabled passengers, including users of assisted travel, which the Operator must operate and consult on accessibility issues by virtue of section B5 of the Accessible Travel Policy Guidance and which the Operator shall establish by no later than 1 October 2022;
<b>"Accessible Travel Policy"</b>	means the Operator's policy for accessible travel which the Operator 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;
<b>"Accessible Travel Policy Guidance"</b>	means the "Accessible Travel Policy: Guidance for Train and Station Operators", published by the ORR in July 2019 as amended and/or replaced from time to time;
<b>"Act"</b>	means the Railways Act 1993 (as modified, amended or replaced by the Transport Act 2000, the Railways Act 2005 and the Deregulation Act 2015) and any regulations or orders made thereunder;
<b>"Action Plan"</b>	has the meaning given to it in paragraph 9.1(e) of Schedule 7.1 ( <i>Operational Performance</i> );
<b>"Actual All Cancellations Performance Level"</b>	means, in respect of a Reporting Period, the All Cancellations Figures most recently published by Network Rail for that Reporting Period in relation to the Operator;
<b>"Actual Consist Data"</b>	means information as to the type of individual vehicles of rolling stock in the Train Fleet which are actually used to form a train on any particular Passenger Service and the manner in which they are configured, which may or may not be the same as the Scheduled Consist Data for the same service;
<b>"Actual Costs"</b>	<p>means costs, expenses (including payments) and liabilities reasonably and properly incurred by the Operator arising out of or in connection with the operation of the Rail Services in accordance with this Contract and:</p> <ul style="list-style-type: none"> <li>(a) on the accruals accounting basis;</li> <li>(b) net of any future likely discounts, rebates or price reductions; and</li> <li>(c) calculated on a gross, actual basis (whether or not the Operator accounts on the agency basis),</li> </ul> <p>but excluding:</p> <ul style="list-style-type: none"> <li>(i) Contract Payments;</li> </ul>

- (ii) not used;
- (iii) corporation tax, deferred tax and any other accounting adjustments relating to Taxation;
- (iv) not used;
- (v) not used;
- (vi) not used;
- (vii) not used;
- (viii) not used; and
- (ix) not used;

**"Actual Revenue"**

means the total revenue of the Operator received or receivable on the accruals accounting basis in relation to the Service Contract, being:

- (a) all revenue whatsoever from any source; and
- (b) calculated on a gross, actual basis (whether or not the Operator accounts on the agency basis),

and (for the avoidance of doubt) including:

- (i) any revenue received or receivable by the Operator under any Track Access Agreement (including under Schedules 4 or 8 to such Track Access Agreement) (and any amounts paid or payable under Schedules 4 or 8 to such Track Access Agreement, shall be treated as a negative revenue and shall not be Actual Costs);
- (ii) Not used;
- (iii) cash or other consideration received or receivable on disposal of any assets (including any cash or other consideration received or receivable from a Successor Operator) provided that the purchase of those assets was an Actual Cost;
- (iv) compensation (or equivalent) paid or payable by the Operator (whether pursuant to the Passenger's Charter (or otherwise)), and for the avoidance of doubt, such compensation shall not be Actual Costs; and
- (v) retail or other commission, allowances or similar payments, paid or payable by the Operator (and for the avoidance of doubt, such commission, allowances or similar payments paid or payable by the Operator shall not be Actual Costs);

but excluding:

- (A) Contract Payments;
- (B) not used;
- (C) not used;
- (D) not used;
- (E) not used; and
- (F) not used;

**“Actual Passenger Demand”** has the meaning given to it in paragraph 15.1 of Schedule 1.1 (*Service Development*);

**“Actual T-3 Performance Level”** means, in respect of a Reporting Period, the T-3 figures most recently published by Network Rail for that Reporting Period in relation to the Operator;

**“Actual T-15 Performance Level”** means, in respect of a Reporting Period, the T-15 figures most recently published by Network Rail for that Reporting Period in relation to the Operator;

**“Actual Train Mileage”** means the actual train mileage operated during each Reporting Period by each train used in the provision of the Passenger Services (excluding any actual train mileage operated as a result of positioning or other movements of rolling stock vehicles outside the Timetable) and **“Actual Train Miles”** shall be construed accordingly;

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

**“Additional Boxing Day Services”** has the meaning given to it in paragraph 14.1 (b) of Part 2 of Schedule 1.1 (*Service Development*);

**“Affected Train Fleet”** has the meaning given to it in paragraph 10.1 (a)(ii)(B) of Schedule 13.1 (Rail Industry Initiatives and Co-operation);

**“Affected Service Quality Area”** has the meaning given to such term in Part E, paragraph 4.1(b) of Schedule 7.3 (*Service Quality Regime*);

**“Affected Service Quality Indicator”** has the meaning given to such term in Part E, paragraph 4.1(a) of Schedule 7.3 (*Service Quality Regime*);

**“Affiliate”** 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,
- (b) NOT USED

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 or the Operator (as the case may be);

- “All Cancellations”** means the sum of Cancellations, Partial Cancellations, Network Rail Cancellations and Network Rail Partial Cancellations relating to the Rail Services as produced and/or published by Network Rail;
- “All Cancellations Figures”** means the moving annual average percentage published by Network Rail in respect of All Cancellations, rounded to two (2) decimal places;
- “All Cancellations Measure”** means, for each Reporting Period, each of the benchmarks specified in the All Cancellations Table for that Reporting Period;
- “All Cancellations Table”** means the table entitled “OP Targets - All Cancellations” as set out in the relevant Annual Performance Specifications;
- “Alternative Survey”** has the meaning given to it in paragraph 2.6 of Schedule 7.2 (Customer Experience and Engagement);
- “Amendment and Restatement Date”** means 22 June 2022;
- “Ancillary Service”** means:
- (a) the selling, lending or hiring of any goods or rights and the provision of any services (whether for a charge or not) on any train used in the provision of the Passenger Services where such goods or services are sold or provided principally for consumption or use on the relevant train, including the sale of any Fares, meals, light refreshments, newspapers, magazines, books, entertainment materials information or materials targeted at tourists and other leisure passengers (such as maps) or phone cards;
  - (b) the provision of any service at any station which, if provided on a train used in the provision of the Passenger Services, would fall within paragraph (a) or which, if provided at a Station, would fall within the meaning of the term Station Services 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) 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 Operator on or before the date of this Contract 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;

- (d) 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;
- (e) the lending, seconding, hiring or contracting out of Business 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;
- (f) the provision of information relating to railway passenger services within Great Britain to passengers through telephone, internet, mobile data services or other appropriate means;
- (g) 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 Operator;
- (h) the licensing or permitting of any other person (including an Affiliate of the Operator) to carry out any activity or business, in connection with the provision of the Rail Services, or otherwise, on any rolling stock vehicle operated by the Operator, 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);
- (i) such other activity or business as may be reasonably necessary for the purpose of providing any other Rail Services or complying with the Service Contract, provided that it could not reasonably be carried out by or through an Affiliate of the Operator;
- (j) not used;
- (k) the provision or operation of Charter Services, subject to the Planned Train Mileage of such Charter Services not exceeding in any Reporting Period two per cent (2%) of the Planned Train Mileage of Passenger Services provided by the Operator in such Reporting Period;

- (l) the provision of consultancy services reasonably ancillary to the provision of the other Rail Services; and
- (m) any services or activity not falling within the meaning of the term Light Maintenance Services, or (a) to (l) above, subject to the gross value of any such services or activity (excluding any attribution of costs) not exceeding twenty five thousand pounds (£25,000) per annum in each Contract Year, per item and in aggregate, two hundred and fifty thousand pounds (£250,000) per annum in each Contract Year provided that in the second and each subsequent Contract Year, these amounts will be increased by CPI;

**“Annual Audited Accounts”** means the accounts of the Operator which:

- (a) comply with the requirements of Schedule 8.3 (*Management Information*); and
- (b) are delivered to the Secretary of State by the Operator in accordance with paragraph 1.5(b) of Schedule 8.3 (*Management Information*) and certified by the Operator’s auditors as true and fair;

**“Annual Management Accounts”**

means the management accounts of the Operator which:

- (a) comply with the requirements of Schedule 8.3 (*Management Information*); and
- (b) are delivered to the Secretary of State by the Operator in accordance with paragraph 1.5(a) of Schedule 8.3 (*Management Information*);

**“Annual Performance Specifications”**

means, in respect of each Business Plan Period, a document setting out (as applicable):

- (a) the Operational Performance Component Tables;
- (b) the Enforcement TOC on Self Cancellations Benchmarks Table;
- (c) the Enforcement TOC Minutes Delay Benchmarks Table;
- (d) the Enforcement Short Formations Benchmarks Table;
- (e) the NRPS Benchmark Tables;
- (f) the SQR Benchmarks;
- (g) the Breach Ticketless Travel Benchmarks;
- (h) the Ticketless Travel Minimum Performance Level; and
- (i) other relevant targets and/or benchmarks,



as such document may be agreed or determined pursuant to paragraph 3 (*Annual Business Plan Process*) of Schedule 8.4 (*Business Plan*) and which (once agreed or determined) shall comprise part of the Business Plan applicable to the relevant Business Plan Period (it being acknowledged that the Annual Performance Specifications applicable to the first Contract Year comprise part of the initial Business Plan);

**"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 twelve (12) months after such day;

**"Apprenticeship"**

means (as the context requires) an individual apprenticeship pursuant to:

- (a) an apprenticeship programme operated by the Operator:
  - (i) in connection with an apprenticeships framework listed on the Federation for Industry Sector Skills & Standards' "Frameworks Library" (as located at the date of this Contract at: <http://www.afo.sscalliance.org/frameworkslibrary/>); and
  - (ii) in compliance with the "Specification of Apprenticeship Standards for England" pursuant to the Apprenticeships, Skills, Children and Learning Act 2009; and/or
- (b) an apprenticeship programme operated by the Operator pursuant to (and in accordance with applicable requirements of) such statutory apprenticeships system as may be introduced in replacement of, or in variation or addition to, the apprenticeships frameworks system described in paragraphs (a)(i) and (ii) above,

and references to "**Apprenticeships**" shall be construed accordingly;

**"Apprenticeships Data Collection Form"**

means the excel table provided by the Secretary of State and populated by the Operator specifying in relation to each Contract Year the number of Apprenticeships to be commenced in such Contract Year, the number of such Apprenticeships at each of level 1 – 8, the role and skills category within which each such Apprenticeship falls and other information as the table may be amended or replaced by the Secretary of State;

**"Apprenticeships Requirement"**

has the meaning given to it in paragraph 2.4 of Schedule 1.8 (*Diversity and Inclusion and Training and Development*);

**"Approval"**

means the approval of the Secretary of State pursuant to paragraph 2.3(a) of Schedule 11.3 (*Approval Process*) or deemed approval of the Secretary of State pursuant to paragraph 3 of Schedule 11.3 (*Approval Process*), and

	<b>"Approve"</b> and <b>"Approved"</b> shall be construed accordingly;
<b>"Audited Accounts Reconciliation"</b>	has the meaning given in paragraph 1.5(b)(ii)(A) of Schedule 8.3 ( <i>Management Information</i> );
<b>"Background IP"</b>	means all Intellectual Property Rights owned by or licensed to a Party that exist at the start of the Contract Period and/or which are created or developed during the Contract Period independently by a Party or its third party licensor separately from the performance or receipt of Rail Services or any obligations under this Contract;
<b>"Bank"</b>	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 acceptable to the Secretary of State;
<b>"Bank Holiday"</b>	means any day other than a Saturday or Sunday on which banks in the City of London are not open for business;
<b>"Boxing Day Services"</b>	has the meaning given to it in paragraph 14.1(a) of Schedule 1.1 ( <i>Service Development</i> );
<b>"BP Background"</b>	has the meaning given to it in paragraph 9.1 ( <i>Ownership of Business Plan IP</i> ) of Schedule 8.4 ( <i>Business Plan</i> );
<b>"BP Foreground"</b>	has the meaning given to it in paragraph 9.2A ( <i>Ownership of Business Plan IP</i> ) of Schedule 8.4 ( <i>Business Plan</i> );
<b>"Brand Licence"</b>	means any licence between the Secretary of State (or any company wholly owned by the Secretary of State) and the Operator in respect of any registered or unregistered trademarks which are listed in Appendix 1 ( <i>List of Trade Marks</i> ) of Schedule 14.2 ( <i>Maintenance of Operating Assets and Branding</i> );
<b>"Breach Notice"</b>	has the meaning given to it in clause 8.3 of this Contract;
<b>"Breach Performance Level"</b>	means, in relation the relevant Enforcement Benchmark for any Reporting Period, the number set out in the relevant column of the Enforcement TOC on Self Cancellations Benchmarks Table, the Enforcement Short Formations Benchmarks Table, the Enforcement TOC Minutes Delay Benchmarks Table and (as the case may be) in the row of the applicable table for that Contract Year;
<b>"Breach Remedial Notice"</b>	has the meaning given to it in clause 8.5 of this Contract;
<b>"Breach Ticketless Travel Benchmark"</b>	means the applicable value specified in the relevant Annual Performance Specifications as being the "Breach Ticketless Travel Benchmark" for the purposes of paragraph 2 (Ticketless Travel Performance) of Part A of Schedule 5.12 (Marketing and Revenue Growth);
<b>"British Transport Police"</b>	means the British Transport Police Authority and the British Transport Police Force created pursuant to section 18 and section 20 of the Railways and Transport Safety Act 2003 (or any successor or successors to its statutory policing functions);

<b>"Buildings Research Establishment Environmental Assessment Method" or "BREEAM"</b>	means the internationally recognised environmental assessment method and rating system for buildings developed by Building Research Establishment Limited or any other standard which is generally recognised as having replaced it;
<b>"Business Continuity Plan" or "BCP"</b>	means a business continuity and disaster recovery plan (including a Force Majeure Events recovery plan) required to be produced, maintained and implemented by the Operator in accordance with the requirements of paragraph 2 of Schedule 11.2 ( <i>Strategies and Plans</i> );
<b>"Business Employee"</b>	means: <ul style="list-style-type: none"> <li>(a) any employee of the Operator from time to time; and</li> <li>(b) any other person who is an employee of any Affiliate of the Operator or is an employee of any party to whom the Rail Services or services which are in support of or ancillary to the Rail Services have been subcontracted (at any tier) or delegated by the Operator; and</li> <li>(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 Contract 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;</li> </ul>
<b>"Business Employee Change"</b>	has the meaning given in paragraph 11.2 ( <i>Changes in Numbers and Total Cost of Employees</i> ) of Schedule 1.3 ( <i>Rail Workforce</i> );
<b>"Business Plan"</b>	means the business plan: <ul style="list-style-type: none"> <li>(a) in respect of the Initial Business Plan Year, as agreed between the Parties prior to the date of this Contract in accordance with paragraph 2 (<i>Initial Business Plan</i>) of Schedule 8.4 (<i>Business Plan</i>); or</li> <li>(b) as the same may be replaced from time to time in respect of each Subsequent Business Plan Year,</li> </ul> <p>and (in each case) in the agreed terms marked BP and as may otherwise only be revised in accordance with paragraph 6 (<i>Business Plan Revisions</i>) of Schedule 8.4 (<i>Business Plan</i>);</p>
<b>"Business Plan Approach"</b>	means any strategies, actions, and processes that the Operator intends to take or follow (as applicable), as described in any Business Plan, for the purposes of delivering:

- (a) the Operator's obligations under the Service Contract;
- (b) the Business Plan Commitments set out in such Business Plan; and
- (c) the Business Plan KPIs set out in such Business Plan,

in each case with respect to the relevant Business Plan Year;

**"Business Plan Commitments"**

means the contractual obligations which the Operator is required to deliver in relation to any Business Plan Year, which (in respect of each Business Plan Component in the Business Plan) are identified as 'Business Plan Commitments' in the Business Plan, and which shall include the achievement of milestones and other indicators of progress towards associated longer-term requirements as described in the Outline Business Plan;

**"Business Plan Components"**

has the meaning given in paragraph 1.1(a) of Schedule 8.4 (*Business Plan*);

**"Business Plan KPIs"**

means, in relation to a Business Plan, the key performance indicators, which shall be measurable expressions of specific outputs and/or outcomes, used to measure the Operator's performance against the Business Plan in relation to a Business Plan Year;

**"Business Plan KPI Improvement Plan"**

has the meaning given in paragraph 5.5 of Schedule 8.4 (*Business Plan*);

**"Business Plan Period"**

means, in respect of any Business Plan, the Business Plan Year to which such Business Plan relates;

**"Business Plan Revision"**

has the meaning given in paragraph 6.1 (*Business Plan Revisions*) of Schedule 8.4 (*Business Plan*);

**"Business Plan Year"**

means the Initial Business Plan Year and each Subsequent Business Plan Year;

**"Cancellation"**

means a Passenger Service:

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

**"Cancellations Figures"**

means the number of:

- (a) Cancellations and Partial Cancellations; and

- (b) Network Rail Cancellations and Network Rail Partial Cancellations,

in each case, relating to the Passenger Services operated in each Reporting Period;

**“Cascaded Rolling Stock”** means rolling stock proposed to be used by the Operator 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;

**“Cash Balance”** the Operator’s cash balance excluding:

- (a) the amount equivalent to:
- (i) any cash that is held pursuant to any restrictive terms under any agreement and that, consequently, cannot be used for general operating purposes;
  - (ii) any cash capable of being drawn down but not actually received,

including, in both cases, under any loan available to the Operator under the Funding Deed;

- (b) the amount of the season ticket liabilities which relate to Passenger Services yet to be delivered;

**“CCTV Guidance”** means the Rail Delivery Group’s “*National Rail & Underground Closed Circuit Television (CCTV)*” guidance, the British Transport Police’s “*Output Requirements from Video Systems*” guidance, Home Office’s “*Surveillance Camera Code of Practice June 2013*”, each as updated from time to time and any other guidance required by the Secretary of State;

**“Ceased Services”** has the meaning given to such term in paragraph 1.3(c) of Part A of Schedule 7.3 (*Service Quality Regime*);

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

- (a) Government Department;
- (b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);
- (c) Non-Ministerial Department;
- (d) Executive Agency; or
- (e) any other body that is a limited company and is controlled directly or indirectly by a Government Department;

<b>“Charter Service”</b>	<p>means a railway passenger service, whether operated on the same routes as the Passenger Services or not:</p> <ul style="list-style-type: none"> <li>(a) which is not reflected in the Timetable;</li> <li>(b) which does not conform to the pattern of railway passenger services normally provided by the Operator;</li> <li>(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;</li> <li>(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</li> <li>(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,</li> </ul> <p>and which, in the opinion of the Secretary of State, is not a railway passenger service provided by the Operator as part of the Passenger Services;</p>
<b>“Child Price”</b>	<p>means, in relation to any Fare, the amount charged or chargeable to a person under the age of sixteen (16) in respect of such Fare;</p>
<b>“City Line Station”</b>	<p>means any station on the lines from Liverpool Lime Street to Hough Green, Newton le Willows and Garswood, being as follows:</p> <p>Liverpool Lime Street, Edge Hill, Wavertree Technology Park, Broad Green, Roby, Huyton, Whiston, Rainhill, Lea Green, St Helens Junction, Earlestown, Newton-le-Willows, Mossley Hill, West Allerton, Allerton, Hunts Cross, Halewood, Hough Green, Prescot, Eccleston Park, Thatto Heath, St Helens Central and Garswood;</p>
<b>“Closed Scheme Employees”</b>	<p>has the meaning given to it in paragraph 3.2 of Schedule 16.1 (Railways Pension Schemes);</p>
<b>“Closure”</b>	<p>means a discontinuance or closure under Part 4 of the Railways Act 2005 of any of the Passenger Services or of any network on which the Passenger Services may be operated or of any of the Stations or of any part of such network or Station;</p>
<b>“Collateral Agreement”</b>	<p>means an agreement which is required to be entered into by the Operator with Network Rail or any other the Operator as a condition to any Access Agreement of which the Operator is the beneficiary;</p>
<b>“Collective Agreement”</b>	<p>has the meaning given to it in the Trade Union and Labour Relations (Consolidation) Act 1992;</p>

<b>"Combined Ticket"</b>	has the meaning given to it in paragraph 3.1 of Schedule 5.8 ( <i>Fares Regulation Information and Monitoring</i> );
<b>"Combined Ticket Notification"</b>	has the meaning given to it in paragraph 3.2 of Schedule 5.8 ( <i>Fares Regulation Information and Monitoring</i> );
<b>"Commercial Considerations"</b>	means considerations of price, quality, availability, marketability, transportation and other terms and conditions of purchase or sale, or other factors that would normally be taken into account in the commercial decisions of a privately owned enterprise operating according to market economy principles in the relevant business or industry;
<b>"Community Rail Network"</b>	means the grassroots community network whose purpose is to support Community Rail Partnerships (previously known as the Association of Community Rail Partnerships) or any successor body;
<b>"Community Rail Partnership"</b>	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;
<b>"Community Rail Report"</b>	has the meaning given to it in paragraph 2.6 of Schedule 13.1 ( <i>Rail Industry Initiatives and Co-operation</i> );
<b>"Community Rail Route"</b>	means any Route in respect of which the Secretary of State determines that any relevant Community Rail Partnership has an interest;
<b>"Community Rail Strategy"</b>	means the Community Rail Development Strategy (as may be updated from time to time) published in November 2018 and which provides a broad framework within local lines can support their communities;
<b>"Compensation Rights"</b>	has the meaning given to it in paragraph 1A.1 of Part 3 of Schedule 6.1 (Service Specific Obligations);
<b>"Compulsory Inter available Flow"</b>	has the meaning given to it in the Ticketing and Settlement Agreement;
<b>"Computer System"</b>	means computer hardware and computer software, including licensed third party software and data protocols;
<b>"Confidential Information"</b>	has the meaning given to it in paragraph 1 of Schedule 17 (Confidential Information and Data Protection);
<b>"Connection"</b>	means a connection (however described) between any of the Passenger Services provided by the Operator and any other railway passenger service provided by the Operator or any other Train Operator or any bus, ferry or shipping service and cognate phrases shall be construed accordingly;
<b>"Contingency Plan"</b>	has the meaning given to it in paragraph 1(a)(iv) of Schedule 10.3 ( <i>Force Majeure and Business Continuity</i> );

<b>“Contract”</b>	means clauses 1 to 20 and Schedules 1 to 17 including any appendices and annexes as varied from time to time;
<b>“Contract Documents”</b>	means: <ul style="list-style-type: none"> <li>(a) this Contract;</li> <li>(b) not used;</li> <li>(c) the Funding Deed;</li> <li>(d) the Train Service Requirement;</li> <li>(e) not used;</li> <li>(f) any Business Plan agreed or determined in accordance with Schedule 8.4 (<i>Business Plan</i>); and</li> <li>(g) any other agreement signed by the Operator at the time of the award of the Rail Services which is in the possession of the Secretary of State and which is notified by the Secretary of State to the Operator as being required for publication;</li> </ul>
<b>“Contract Payment”</b>	means, in relation to any Reporting Period, the amount determined as such in accordance with paragraph 2 of Schedule 8.1 (Contract Payments) of this Contract;
<b>“Contract Performance Meeting”</b>	means a meeting between the Secretary of State and the Operator to be held in accordance with paragraph 8 of Schedule 11.1 ( <i>Organisation and Management</i> );
<b>“Contract Period”</b>	means the period commencing on the Start Date and ending on the Expiry Date;
<b>“Contract Term”</b>	means the period commencing on the Start Date and expiring on the Expiry Date;
<b>“Contract Year”</b>	means any period of twelve (12) months during the Contract Period, beginning on 1 April and ending on 31 March, except that the first and last Contract Years may be for a period of less than twelve (12) months and the first Contract Year shall begin on the Start Date and the last Contract Year shall end on the last day of the Contract Period;
<b>“Control”</b>	means, in respect of a person (“A”), 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"> <li>(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: <ul style="list-style-type: none"> <li>(i) A;</li> <li>(ii) any person who has equivalent rights over A; or</li> <li>(iii) any person who A has equivalent rights over;</li> </ul> </li> </ul>



- (b) has the power to direct the affairs and policies of:
  - (i) A;
  - (ii) any person who has equivalent rights over A; or
  - (iii) any person who A has equivalent rights over;
- (c) is the parent undertaking of A or of any other person which is the parent undertaking of such person by virtue of section 1162(5) of the Companies Act 2006; or
- (d) possesses or is, or will be at a future date, entitled to acquire:
  - (i) twenty-five per cent (25%) or more of the share capital or issued share capital of, or of the voting power in;
    - (A) A;
    - (B) any person who has equivalent rights over A; or
    - (C) any person who A has equivalent rights over;
  - (ii) such part of the issued share capital of:
    - (A) A;
    - (B) any person who has equivalent rights over A; or
    - (C) any person who A has equivalent rights over,

as a result of which he would, if the whole of the income of such persons were distributed, be entitled to receive twenty-five per cent (25%) or more of the amount so distributed; or

- (iii) such rights as would, in the event of the winding-up or other analogous event in respect of:
  - (A) A;
  - (B) any person who has equivalent rights over A; or
  - (C) any person who A has equivalent rights over,

entitle him to receive twenty-five per cent (25%) or more of the assets of such person which would then be available for distribution,

and **"Controlled"** shall be construed accordingly;

**"Controller"**

has the meaning given to it in the Data Protection Legislation;

**"Cost Budget"**

means the costs budgeted to be incurred by the Operator in each Reporting Period falling within a Quarter and specified in the then current CP Budget;

<b>"Cost Efficiency Analysis"</b>	has the meaning given to it in paragraph 1.3(k) ( <i>Contents of the Business Plan</i> ) of Schedule 8.4 ( <i>Business Plan</i> );
<b>"Count Equipment"</b>	means any load weigh, infrared, CCTV or other type of equipment as may from time to time be installed on any train in the Train Fleet for the purposes of (amongst other things) passenger counting;
<b>"COVID-19"</b>	means the coronavirus disease 2019;
<b>"COVID-19 Guidance and Regulation"</b>	means guidance and/or regulation relating to COVID-19 as from time to time issued by the ORR, Public Health England or any other relevant government department, agencies or public bodies;
<b>"CP Budget"</b>	means the budget in the agreed terms marked <b>CPB</b> as agreed by the Secretary of State and the Operator in respect of the operation of the Rail Services (as such budget may be further amended pursuant to paragraph 5.2 of Schedule 8.1 ( <i>Contract Payment</i> ));
<b>"Creating"</b>	has the meaning given to it in the Ticketing and Settlement Agreement and cognate expressions and references to <b>"Create"</b> shall be construed accordingly;
<b>"CRM Data"</b>	means Personal Data (including any or all of name, address, e-mail address and ticket purchasing history, credit and debit card details) collected by or on behalf of the Operator relating to: <ul style="list-style-type: none"> <li>(a) persons travelling on or purchasing tickets for travel on the Passenger Services or other services for the carriage of passengers by railway; or</li> <li>(b) <b>NOT USED</b>;</li> </ul>
<b>"CRM Data Obligations"</b>	has the meaning given to it in paragraph 4.4 of Schedule 1.5 ( <i>Information about Passengers</i> );
<b>"CRM System"</b>	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;
<b>"CRP Amount"</b>	means the sum of £555,000 (pounds sterling five hundred and fifty-five thousand) save that for each Contract Year after the first Contract Year, the amount shall be subject to adjustments as follows: <p style="text-align: center;"><b>CRP Amount x RPI</b></p>
<b>"CRP Project Sum"</b>	<b>[REDACTED<sup>1</sup>]</b> save that for each Contract Year after the first Contract Year, the amount shall be subject to adjustments as follows: <p style="text-align: center;"><b>CRP Project Sum x RPI</b></p>

<sup>1</sup> **21 September 2022 (Date of Redactions Approval) CR03455 - 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>"Customer and Stakeholder Engagement Strategy" or "CSES"</b>	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 9 ( <i>Customer and Stakeholder Engagement Strategy</i> ) of Schedule 7.2 ( <i>Customer Experience and Engagement</i> );
<b>"Customer Report"</b>	means a report in the format and providing the information specified in the Customer and Stakeholder Engagement Strategy published in accordance with paragraph 10.1 ( <i>Customer Report</i> ) of Schedule 7.2 ( <i>Customer Experience and Engagement</i> );
<b>"Customer Service Quality Inspection"</b>	means an inspection (and provision of reports as specified) of the Operator's customer facing systems and procedures against the Service Quality Indicators in the manner specified in Part 3 of the Service Quality Schedules and in accordance with the requirements of Schedule 7.3 ( <i>Service Quality Regime</i> );
<b>"Data Protection Act"</b>	means the Data Protection Act 2018;
<b>"Data Protection Legislation"</b>	means all Laws relating to data protection, the Processing of Personal Data and privacy in force from time to time including the UK GDPR, Data Protection Act 2018, and, to extent that they are applicable, the Privacy and Electronic Communications (EC Directive) Regulations 2003 (as may be amended by the proposed Regulation on Privacy and Electronic Communications);
<b>"Data Subject"</b>	has the meaning given to it in the Data Protection Legislation;
<b>"Data Site Information"</b>	has the meaning given to it in paragraph 3.1 ( <i>Data Site Information</i> ) of Schedule 15.1 ( <i>Reletting Provisions</i> );
<b>"Data Site Monitor and Index" or "DSMI"</b>	has the meaning given to it in paragraph 3.1 ( <i>Data Site Information</i> ) of Schedule 15.1 ( <i>Reletting Provisions</i> );
<b>"Dataset"</b>	means the data specified in Appendix 1 (Environmental Information) to Schedule 6.2 (Environment and Sustainability) as the same may be amended from time to time by the Secretary of State;
<b>"Delay Attribution Principles and Rules"</b>	means the version of the document known as the Delay Attribution Principles and Rules referenced in the Network Code;
<b>"Delayed Cascade Mitigation Plan"</b>	has the meaning given to it in paragraph 3.9 of Schedule 2.2 ( <i>Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases</i> );
<b>"Delay Repay Compensation"</b>	means compensation payable to a holder of a valid ticket when such ticket holder's journey is delayed as more particularly described in the Passenger's Charter;
<b>"Departure Station"</b>	has the meaning given to it in paragraph 2.2 of Appendix 1 ( <i>Accessible Transport Arrangements</i> ) to Schedule 4 ( <i>Accessibility and Inclusivity</i> );

<b>"Depot"</b>	means a depot in respect of which the Operator has entered into a Depot Lease;
<b>"Depot Access Conditions"</b>	has the meaning given to it in the relevant Access Agreement to which it relates;
<b>"Depot Lease" or "DL"</b>	means: <ul style="list-style-type: none"> <li>(a) any lease of a depot to which the Operator is a party as at the Start Date; or</li> <li>(b) any other lease of a depot in relation to which the Operator becomes the Facility Owner at any time during the Contract Period;</li> </ul>
<b>"Derivative Output"</b>	means Intellectual Property Rights that are derived from or generated by the RPC Database or the Preliminary Database when querying such database (which includes, but is not limited to, the format of all reports and analysis);
<b>"Designated Employer"</b>	has the meaning given to it in the Pension Trust;
<b>"Destination Station"</b>	has the meaning given to it in paragraph 2.2 of Appendix 1 ( <i>Accessible Transport Arrangements</i> ) to Schedule 4 ( <i>Accessibility and Inclusivity</i> );
<b>"Devolved Transport Body"</b>	means, any public sector body which has been given responsibility for public passenger transport in the United Kingdom including Transport for London, Transport for Wales, Transport Scotland, Transport for the North, any Passenger Transport Executive or Combined Authority and any other public body with relevant public passenger transport responsibilities;
<b>"Direct Agreement"</b>	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 ( <i>Key Contracts</i> );
<b>"Direct Delay"</b>	means a delay that is attributed as "Direct Delay" in accordance with the Delay Attribution Principles and Rules;
<b>"Disabled Person"</b>	is a reference to a person who has a disability as defined in the EA;
<b>"Discount Card"</b>	has the meaning given to it in the Ticketing and Settlement Agreement;
<b>"Discount Fare Scheme"</b>	has the meaning given to it in paragraph 3 of Appendix 1 ( <i>List of Transport, Travel and Other Schemes</i> ) to Schedule 2.5 ( <i>Transport, Travel and Other Schemes</i> );
<b>"Dispute Handling Plan"</b>	has the meaning given to it in paragraph 5.2 ( <i>Industrial Action</i> ) of Schedule 1.3 ( <i>Rail Workforce</i> );
<b>"Dispute Handling Policy"</b>	means the policy issued by the Secretary of State with the same name on, on or about the Start Date, as may be amended, supplemented or replaced from time to time;

<b>“Dispute Resolution Rules”</b>	means the procedures for the resolution of disputes known as <b>“The Railway Industry Dispute Resolution Rules”</b> , as amended from time to time in accordance with the terms thereof. The rules are available at <a href="http://accessdisputesrail.org/RIDR/RIDR_Rules.pdf">http://accessdisputesrail.org/RIDR/RIDR_Rules.pdf</a> (or such other applicable web address that is adopted from time to time);
<b>“Disputed Cancellation”</b>	means a Passenger Service: <ul style="list-style-type: none"> <li>(a) which is included in the Enforcement Plan of the Day and which is cancelled; or</li> <li>(b) which is included in the Enforcement Plan of the Day and which operates less than fifty per cent (50%) of its scheduled mileage (as prescribed in the Enforcement Plan of the Day),</li> </ul> <p>in either case, in circumstances where attribution of responsibility for the same is, at the relevant time, in dispute between Network Rail and the Operator pursuant to the Track Access Agreement;</p>
<b>“Disputed Partial Cancellation”</b>	means a Passenger Service which is included in the Enforcement Plan of the Day and which: <ul style="list-style-type: none"> <li>(a) misses a stop; or</li> <li>(b) completes fifty per cent (50%) or more, but less than one hundred per cent (100%) of its scheduled mileage as prescribed in the Enforcement Plan of the Day,</li> </ul> <p>in either case, in circumstances where attribution of responsibility for the same is, at the relevant time, in dispute between Network Rail and the Operator pursuant to the Track Access Agreement;</p>
<b>“Diversity KPIs”</b>	means D&I Initiatives KPIs and D&I Characteristics KPIs;
<b>“Draft Action Plan”</b>	has the meaning given to it in paragraph 9.1(b)(i), of Schedule 7.1 ( <i>Operational Performance</i> );
<b>“D&amp;I Annual Report”</b>	means a report produced by the Operator developed in accordance with paragraph 1.3 of Schedule 1.8 ( <i>Diversity and Inclusion and Training and Development</i> ) in respect of the previous twelve (12) months or, if shorter, the period since the Start Date;
<b>“D&amp;I Annual Reporting Date”</b>	means the date on which the Operator must provide the D&I Annual Report to the Secretary of State as stated in the D&I Strategy, provided that if this date, in any Contract Year, occurs after the expiry of the term of this Contract then the D&I Annual Reporting Date shall be one (1) month before the expiry of the term of this Contract;
<b>“D&amp;I Champion”</b>	means the director or senior executive that is accountable and responsible for implementing the D&I Strategy and ensuring that the Operator complies with its obligations relating to diversity and inclusion (excluding the

obligations in paragraph 1.4 of Schedule 1.8 (*Diversity and Inclusion and Training and Development*));

- “D&I Characteristics KPIs”** means the KPIs set out in the Operator’s D&I Strategy used to assess the impact of the Operator’s initiatives on diversity at different levels of the workforce and in connection with different characteristics (including gender, age, ethnicity and disability) compared to the region and/or nationally;
- “D&I Improvement Plan”** has the meaning given to it in paragraph 1.7 of Schedule 1.8 (*Diversity and Inclusion and Training and Development*);
- “D&I Initiatives KPIs”** means the KPIs set out in the Operator’s D&I Strategy used to measure its performance against diversity initiatives and policies, which may include KPIs along the following lines:
- (a) the number of positive action initiatives implemented and maintained by the Operator;
  - (b) the number of adverts in targeted publications;
  - (c) membership of diversity and inclusion networks and forums;
  - (d) the percentage of staff trained annually in diversity and inclusion;
  - (e) the number of line managers completing diversity and inclusion training;
  - (f) the number of members of the board of directors completing diversity and inclusion training; and
  - (g) the number of diversity and inclusion training sessions;
- “D&I Strategy”** means the diversity and inclusion strategy to be developed by the Operator and approved by the Secretary of State and as may be updated from time to time in accordance with Schedule 8.4 (*Business Plan*), including by way of a Business Plan Revision;
- “EA”** means the Equality Act 2010;
- “EA Claim”** has the meaning given to it in paragraph 3.1 of Schedule 4 (*Accessibility and Inclusivity*);
- “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;
- “Efficiency Benefit Share Mechanism” or “EBS”** 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 whether or not at route level;

<b>"Embedded ICP Background"</b>	has the meaning given in paragraph 10.5 ( <i>Cross Licensing of Industry Change Project IP</i> ) of Schedule 8.4 ( <i>Business Plan</i> );
<b>"Emergency Events"</b>	has the meaning given to it in paragraph 1(e) of Schedule 10.3 ( <i>Force Majeure and Business Continuity</i> );
<b>"Employment Agreement"</b>	means the terms and conditions of employment of any Business Employee whether contained in or otherwise incorporated or implied, including by way of custom or practice, into any Collective Agreement, individual contract of employment, employee handbook or otherwise, in each case whether or not in writing;
<b>"Employment Policy Framework"</b>	has the meaning given to it in paragraph 2.1(a) of Schedule 1.3 ( <i>Rail Workforce</i> );
<b>"EMV"</b>	means contactless payment cards and any other devices that conform to the international standards issued by EMVCo (owned by American Express, Discover, JCB, MasterCard, UnionPay and Visa);
<b>"Enabling Works"</b>	has the meaning given to it in paragraph 5.2 of Part 4 ( <i>Bespoke Obligations</i> ) of Schedule 6.1 ( <i>Service Specific Provisions</i> );
<b>"Enforcement Benchmarks"</b>	means any of the Enforcement TOC on Self Cancellations Benchmarks, the Enforcement TOC Minutes Delay Benchmarks or the Enforcement Short Formations Benchmarks (as the context may require);
<b>"Enforcement Plan of the Day"</b>	<p>means the Plan of the Day except for any:</p> <ul style="list-style-type: none"> <li>(a) additions to such Plan of the Day of any railway passenger services which are not included in the Timetable;</li> <li>(b) omissions from such Plan of the Day of any Passenger Services included in the Timetable; and/or</li> <li>(c) rescheduling in such Plan of the Day of any Passenger Services from their scheduling in the Timetable,</li> </ul> <p>in each case:</p> <ul style="list-style-type: none"> <li>(i) as proposed by the Operator in breach of its obligations in paragraph 4 of Schedule 1.2 (<i>Operating Obligations</i>); or</li> <li>(ii) as agreed by the Operator in breach of its obligations in paragraph 3 of Schedule 1.2 (<i>Operating Obligations</i>);</li> </ul>
<b>"Enforcement Short Formations Benchmarks"</b>	<p>means for each Reporting Period within each Contract Year:</p> <ul style="list-style-type: none"> <li>(a) the Breach Performance Level;</li> </ul>

	(b) not used;
	each as applicable and as specified in the Enforcement Short Formations Benchmarks Table for that Contract Year;
<b>"Enforcement Short Formations Benchmarks Table"</b>	means the table entitled "Enforcement Short Formations Benchmarks" as set out in the relevant Annual Performance Specifications;
<b>"Enforcement TOC Minutes Delay Benchmarks"</b>	means for each Reporting Period within each Contract Year:
	(a) the Breach Performance Level;
	(b) not used;
	each as applicable and as specified in the Enforcement TOC Minutes Delay Benchmarks Table for that Contract Year;
<b>"Enforcement TOC Minutes Delay Benchmarks Table"</b>	means the table entitled "Enforcement TOC Minute Delay Benchmarks" as set out in the relevant Annual Performance Specifications;
<b>"Enforcement TOC on Self Cancellations Benchmarks"</b>	means for each Reporting Period within each Contract Year:
	(a) the Breach Performance Level;
	(b) not used;
	each as applicable and as specified in the Enforcement TOC on Self Cancellations Benchmarks Table for that Contract Year;
<b>"Enforcement TOC on Self Cancellations Benchmarks Table"</b>	means the table entitled "Enforcement TOC on Self Cancellations Benchmarks" as set out in the relevant Annual Performance Specifications;
<b>"Enhanced Disability Awareness Training"</b>	means training which is compliant with the requirements set out in section 4, paragraph B6 of the Accessible Travel Policy Guidance;
<b>"Environmental Impact Monitoring Audit"</b>	has the meaning given to it in paragraph 1.3 of Schedule 6.2 ( <i>Environment and Sustainability</i> );
<b>"Environmental Impact Targets"</b>	means the targets in relation to the Operator's environmental impact which are set out in the Operator's Business Plan;
<b>"Environmental Impact Targets Plan"</b>	means the Operator's plan in relation to the Environmental Impact Targets as set out in the Operator's Business Plan, as may be updated from time to time in accordance with Schedule 8.4 (Business Plan), including by way of a Business Plan Revision;
<b>"Environmental Information Regulations"</b>	means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or any relevant Central Government Body in relation to such Regulations;



<b>“Equivalent Fare”</b>	has the meaning given to it in paragraph 6.1 of Schedule 5.7 ( <i>Changes to Fares and Fares Regulation</i> );
<b>“Equivalent Flow”</b>	has the meaning given to it in paragraph 6.1(b) of Schedule 5.7 ( <i>Changes to Fares and Fares Regulation</i> );
<b>“ERTMS”</b>	means the European Rail Traffic Management System;
<b>“ERTMS Enabled Network”</b>	has the meaning given to it in paragraph 11.1(a)(iv) of Schedule 13.1 (Rail Industry Initiatives and Co-operation);
<b>“ERTMS Programme”</b>	means the Network Rail cross rail industry programme for delivering the national implementation of ERTMS;
<b>“Evening Peak”</b>	means, in relation to any Passenger Service, the period between 1600 and 1859 (inclusive) during a Weekday or such other continuous three hour period between 1200 and 2359 (inclusive) as the Secretary of State may specify from time to time;
<b>“Evening Peak Service”</b>	means a Passenger Service which departs from Manchester Piccadilly; Manchester Victoria; Manchester Oxford Road; Leeds; Sheffield; Newcastle; or Liverpool Lime Street in the Evening Peak;
<b>“Event Steering Groups”</b>	has the meaning given to it in the Network Code;
<b>“Executive Stations”</b>	means: <ul style="list-style-type: none"> <li>(a) any of the MPTE Stations, the TfGM Stations, the SYPTTE Stations, T&amp;WPTE Stations and WYPTE Stations in respect of which the Operator is and remains the Facility Owner during the Contract Term; or</li> <li>(b) any New Station designated by the Secretary of State as an Executive Station and in respect of which the Operator is the Facility Owner;</li> </ul>
<b>“Expiry Date”</b>	means: <ul style="list-style-type: none"> <li>(a) 01.59am on 1 March 2025; or</li> <li>(b) any such later date to which the Contract is continued in accordance with clause 5.2 (<i>Additional Reporting Periods</i>);</li> </ul>
<b>“Extended Final Year”</b>	means the period commencing at the start of the Final Full Year and ending on the Expiry Date;
<b>“Extended Term Contract”</b>	has the meaning given in paragraph 12.3(a) ( <i>Extended Term Contracts and Extended Term Designatable Contracts</i> ) of Schedule 8.4 ( <i>Business Plan</i> );
<b>“Extended Term Designatable Contract”</b>	has the meaning given in paragraph 12.4 ( <i>Extended Term Contracts and Extended Term Designatable Contracts</i> ) of Schedule 8.4 ( <i>Business Plan</i> );
<b>“Facility Owner”</b>	has the meaning given to the term facility owner in section 17(6) of the Act;

<b>"Fare"</b>	<p>means:</p> <p>(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</p> <p>(b) for the purposes only of Schedules 5.3 (Allocation of Fares to the PTE/Protected Fares Basket) to Schedule 5.8 (Fares Regulation Information and Monitoring) (inclusive) and the definitions of PTE 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:</p> <p style="padding-left: 40px;">(i) valid for a journey or journeys on the Passenger Services included in the Timetable or other railway passenger services which are required to be included in another relevant Train Operator's passenger timetable by the Secretary of State;</p> <p style="padding-left: 40px;">(ii) sold under the Travelcard Agreement;</p> <p style="padding-left: 40px;">(iii) a Cross London Ticket (as defined in the Through Ticketing (Non Travelcard) Agreement); or</p> <p style="padding-left: 40px;">(iv) not used;</p>
<b>"Fare Year"</b>	means the period from 1 January in any year to 31 December in the same year;
<b>"Fares Basket"</b>	means the Protected Fares Basket;
<b>"Fares Plan"</b>	means the Operator's plan in relation to Fares as set out in the Operator's Business Plan, as may be updated from time to time in accordance with Schedule 8.4 (Business Plan), including by way of a Business Plan Revision;
<b>"Fares Setting Round"</b>	has the meaning given to it in the Ticketing and Settlement Agreement;
<b>"Final Contract Year"</b>	means the Contract Year ending on the last day of the Contract Period;
<b>"Final Full Year"</b>	means the period of twelve (12) months ending on the 31 March immediately preceding the Expiry Date;
<b>"Financial Plan"</b>	means the financial plan forming part of each Business Plan as described in paragraph 1.3 of Schedule 8.4 ( <i>Business Plan</i> );

<b>"Financial Conduct Authority"</b>	means the UK Financial Conduct Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS and with company registered number 01920623 or such other regulatory body which may succeed or replace it from time to time;
<b>"First in Class Unit"</b>	has the meaning given to it in paragraph 10.1 (a)(i) of Schedule 13.1 (Rail Industry Initiatives and Co-operation);
<b>"First Reporting Period"</b>	means the first Reporting Period to occur during the Contract Term;
<b>"Flexible Ticket"</b>	has the meaning given in paragraph 3.1 ( <i>Flexible Ticket Product</i> ) of Schedule 5.2 ( <i>Operator's Obligation to Create Fares</i> ), subject to any variations that may be required by the Secretary of State pursuant to paragraph 3 ( <i>Flexible Ticket Product</i> ) of Schedule 5.2 ( <i>Operator's Obligation to Create Fares</i> );
<b>"Flexible Ticket Commencement Date"</b>	means the date on which the Operator was required to make available to passengers a flexible ticket product pursuant to the Previous Agreement;
<b>"Flexible Ticket Validity Period"</b>	has the meaning given in paragraph 3.2(a) ( <i>Flexible Ticket Product</i> ) of Schedule 5.2 ( <i>Operator's Obligation to Create Fares</i> );
<b>"Flow"</b>	has the meaning given to it in the Ticketing and Settlement Agreement;
<b>"Force Majeure Event"</b>	means any of the events described as such in paragraph 1 of Schedule 10.3 ( <i>Force Majeure and Business Continuity</i> ) where the conditions specified in paragraph 2 of Schedule 10.3 ( <i>Force Majeure and Business Continuity</i> ) are satisfied;
<b>"Forecast Passenger Demand"</b>	<p>means the forecast prepared by the Operator pursuant to paragraph 2.5 of Schedule 1.1 (<i>Service Development</i>) in respect of:</p> <ul style="list-style-type: none"> <li>(a) the number of passengers travelling in each class of accommodation: <ul style="list-style-type: none"> <li>(i) on each Passenger Service;</li> <li>(ii) on each Route; and/or</li> <li>(iii) at any station or between any stations; and</li> </ul> </li> <li>(b) the times of day, week or year at which passengers travel,</li> </ul> <p>for the period in respect of which the next Timetable is to apply;</p>
<b>"Forecast Revenue"</b>	means the revenue forecasted to be generated by the Operator in each Reporting Period and specified in the then current CP Budget;

<b>"Foreground IP"</b>	means Intellectual Property Rights created, devised by or on behalf of one of the Parties during the Contract Period: (i) in the performance of Rail Services; (ii) in carrying out any activities in relation to the network which are connected with, ancillary to, or intended to benefit from the Rail Services; and/or (iii) in the course of performing any obligations under this Contract;
<b>"Freedom of Information Act" or "FOIA"</b>	means the Freedom of Information Act 2000 together with any guidance and/or codes of practice issued by the Information Commissioner or any relevant Central Government Body in relation to the Freedom of Information Act 2000;
<b>"Free Trade Agreement"</b>	means an international free trade agreement (whether bilateral, plurilateral or multilateral) to which the United Kingdom is party, whether entered into before, on or after the date of this Contract;
<b>"Funding Deed"</b>	means the deed made between DOHL and the Operator dated on or about the date of the Service Contract specifying arrangements relating to the funding for the Operator by DOHL;
<b>"GAAP"</b>	means generally accepted accounting principles in the United Kingdom, as derived from and including the accounting requirements of the Companies Act 2006, 'Financial Reporting Standards 100, 101 and 102', abstracts issued by the Urgent Issues Task Force of the Accounting Standards Board and, where appropriate, International Financial Reporting Standards and the listing rules of the Financial Conduct Authority, in each case, as amended from time to time;
<b>"GBRTT Passenger Revenue and Marketing Team" or "GBRTT PR&amp;M"</b>	means the body known as the GBRTT Passenger Revenue and Marketing Team, established to advise on how best to drive the recovery and subsequent ongoing growth of rail revenues, including by developing proposals for a programme of cross-industry activities;
<b>"Geographical Area"</b>	means that area of Great Britain bounded by a reasonably drawn line running through the railway stations at the following places: <ul style="list-style-type: none"> <li>(a) Carlisle;</li> <li>(b) Chathill;</li> <li>(c) Scarborough;</li> <li>(d) Cleethorpes;</li> <li>(e) Lincoln Central;</li> <li>(f) Nottingham;</li> <li>(g) Derby;</li> <li>(h) Stoke-on-Trent;</li> <li>(i) Crewe;</li> </ul>

- (j) Chester;
- (k) Liverpool Lime Street;
- (l) Whitehaven;
- (m) Workington;
- (n) Carlisle; and
- (o) Maryport; or

as redefined from time to time by agreement with the Secretary of State, or in the absence of such as agreement, as determined by the Secretary of State;

**“Good and Efficient Operator”**

means in the context of all other relevant provisions of the Service Contract, a notional train operator:

- (a) having the same commercial, regulatory and operational arrangements as the Operator and being subject to the same operational circumstances;
- (b) which is a party to an agreement in equivalent terms to the Service Contract and which complies with its obligations under such agreement and the Licences in a timely, efficient and economical manner;
- (c) with the degree of skill, diligence, prudence and foresight which can be expected from a skilled and experienced train operator so that in this context costs and revenues are optimised in combination to the greatest extent practicable, adopting a reasonable balance in respect of short, medium and longer term consequences for the relevant rail services.

**“Gross Revenue”**

means, in relation to any period and any Fare, the gross revenue to the Operator (or any relevant predecessor of the Operator) 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;

**“Hot Standby”**

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

- (a) is operationally ready to provide the Passenger Services in the Timetable;
- (b) is not already assigned to the delivery of any Passenger Service in the Timetable; and
- (c) will only be used to deliver such Passenger Services if:
  - (i) a rolling stock vehicle scheduled to deliver such Passenger Services is unable to so deliver; and

- (ii) Actual Passenger Demand could only be met by the deployment in service of such rolling stock vehicle;
- "HS2 Limited"** means High Speed Two (HS2) Limited, a company registered in England with registered number 06791686 whose registered office is at 2 Snowhill, Queensway, Birmingham, B4 6GA or such other entity as may be appointed infrastructure manager in relation to the HS2 Network from time to time;
- "HS2 Network"** means the network in respect of which HS2 Limited is the Facility Owner;
- "HS2 Project"** means the project for the construction and development of a high speed railway from London to Birmingham, Manchester and Leeds known as "HS2" or "High Speed 2" and all related infrastructure works including the enabling works at London Euston Station;
- "HS2 Shadow Operator"** means the entity appointed by the Secretary of State to act as shadow operator for the development and delivery of High Speed Services, and the recast of conventional services associated with the introduction of the High Speed Services, being the West Coast Partnership franchise operator or any successor shadow operator appointed by the Secretary of State from time to time;
- "ICP Background"** has the meaning given to it in paragraph 10.1 (*Ownership of Industry Change Project IP*) of Schedule 8.4 (*Business Plan*);
- "ICP Foreground"** has the meaning given to it in paragraph 10.2 (*Ownership of Industry Change Project IP*) of Schedule 8.4 (*Business Plan*);
- "Improvement Initiatives"** means initiatives which are intended to:
- (a) improve outcomes for passengers on any or all parts of the railway network;
  - (b) improve cost-efficiency and/or reduce costs in relation to any or all parts of the railway network;
  - (c) generate additional revenue for all or part of the railway network;
  - (d) improve environmental outcomes for all or part of the railway network; or
  - (e) deliver any other benefits or support any government policy objective,
- and may include:
- (i) initiatives proposed by the Secretary of State or identified proactively by the Operator;

- (ii) initiatives arising in connection with the conclusions of the Williams-Shapps Plan for Rail; and/or
- (iii) initiatives which are capable of delivery by the Operator acting alone, and/or initiatives which would require collaboration between the Operator and other parties to deliver;
- “Incident Response Plan”** means the plan created by the Operator pursuant to paragraph 5 of Schedule 11.2 which contains (as a minimum) the information set out in paragraph 5.2 of Schedule 11.2 (Strategies and Plans);
- “Independent Service Quality Audits”** has the meaning given to such term in paragraph 4.1 of Part B of Schedule 7.3 (*Service Quality Regime*);
- “Industrial Action”** means any concerted action taken in connection with the employment of any employees of the Operator or of any of the employees of persons listed in paragraphs 1(f)(i) to 1(f)(iii) of Schedule 10.3 (*Force Majeure and Business Continuity*) (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 Operator being able to demonstrate the occurrence of such unofficial industrial action to the reasonable satisfaction of the Secretary of State;
- “Industry Change Project”** means any scheme or proposal to introduce changes to the operation or delivery of the Rail Services that is expected to deliver long term and industry wide efficiency savings, reduced cost and/or revenue growth, but which, in the opinion of the Secretary of State, a reasonable Train Operator would not be sufficiently incentivised to deliver in accordance with the terms of this Contract;
- “Industry Schemes”** has the meaning given to it in paragraph 4 of Schedule 13.1 (*Rail Industry Initiatives and Co-operation*);
- “Information Commissioner”** has the same meaning as “Commissioner” in section 3 of the Data Protection Act;
- “Initial Business Plan Year”** means the period beginning on the Start Date and ending on 31 March 2023;
- “Initial Dataset”** means the Dataset provided in accordance with paragraph 1.1 (Data Sharing) of Schedule 6.2 (Environment and Sustainability) (or the equivalent data provided under the Previous Agreement), excluding any measures which the Secretary of State agrees that the Operator was (under the Previous Agreement), or is (in accordance with the Service Contract) (as applicable), despite using all reasonable endeavours, unable to provide;

<b>“Initial Permanent Fare”</b>	has the meaning given to it in the Ticketing and Settlement Agreement;
<b>“Initial Short Formations Calculation”</b>	has the meaning given in paragraph 5.1(a) of Schedule 7.1 ( <i>Operational Performance</i> );
<b>“Initial TOC Minutes Delay Calculation”</b>	has the meaning given to it in paragraph 4.1(a) of Schedule 7.1 ( <i>Operational Performance</i> );
<b>“Initial TOC on Self Cancellations Calculation”</b>	has the meaning given to it in paragraph 3.1(a) of Schedule 7.1 ( <i>Operational Performance</i> );
<b>“Inspections”</b>	has the meaning given to it in paragraph 5.1 of Schedule 15.1 ( <i>Reletting Provisions</i> );
<b>“Intellectual Property Rights”</b>	means all intellectual and industrial property rights of any kind including (without limitation) patents, supplementary protection certificates, rights in Know-How, registered trademarks, registered designs, unregistered design rights, unregistered trademarks, rights to prevent passing off or unfair competition and copyright (whether in drawings, plans, specifications, designs and computer software or otherwise), database rights, topography rights, any rights in any invention, discovery or process, and applications for and rights to apply for any of the foregoing, in each case in the United Kingdom and all other countries in the world and together with all renewals, extensions, continuations, divisions, reissues, re-examinations and substitutions;
<b>“Interest Rate”</b>	means a rate equivalent to two per cent (2%) 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 Operator, determine from time to time) during any period in which an amount payable under this Contract remains unpaid;
<b>“Inter-Operator Schemes”</b>	means the list of schemes in paragraph 4 of Appendix 1 ( <i>List of Transport, Travel and Other Schemes</i> ) to Schedule 2.5 ( <i>Transport, Travel and Other Schemes</i> );
<b>“International Organisation for Standardisation”</b>	means the international standard setting body known as <b>“ISO”</b> or any such successor body;
<b>“Investigation”</b>	means any investigation, threatened use, or use of any statutory powers by the Pensions Regulator in relation to a section of the Railways Pension Scheme which has or had as its designated employer the Operator or another Train Operator (including a Successor Operator). For the avoidance of doubt, this includes any powers under section 231 of the Pensions Act 2004 or any other power which could affect the contributions payable by the employer or the liabilities of any other person in respect of that section;
<b>“In-Scope Matters”</b>	means any of the following matters in relation to any Business Employees: <ul style="list-style-type: none"> <li>(a) pay negotiation strategies;</li> <li>(b) changes to any remuneration strategy, pension arrangements or staff benefits;</li> </ul>



- (c) any proposed restructuring or redundancy plans;
- (d) any proposed changes affecting Business Employees (including proposed changes to the terms of any Employment Agreement, any proposed changes to working practices or procedures, howsoever these are recorded or have become established, and whether these apply nationally or locally) which either Party reasonably believes (a) is likely to give rise to material industrial relations risks (including a risk of Industrial Action); and/or (b) could have a material negative impact on productivity; and/or (c) would not be in train passengers' interests;
- (e) any proposed variations to the terms or conditions of employment of any Business Employee (in particular, any proposal 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:
  - (i) wholly or partly first takes effect after the end of the Contract Period;
  - (ii) results in any such employment not being terminable by the Operator or other relevant employer within six (6) months of the expiry of the Contract Period;
  - (iii) relates to a payment or the provision of a benefit triggered by termination of employment;
  - (iv) 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 Contract Period; or
  - (v) prevents, restricts or hinders any such employee from working for a Successor Operator or from performing the duties which such employee performed for the Operator;
- (f) any creation or grant of terms or conditions of employment for any Business Employee where the employment of such Business Employee by the Operator or such other relevant employer may commence on or after the Start Date if and to the extent that such terms or conditions are, in the reasonable opinion of the Operator, materially different from the terms or conditions of employment of equivalent or nearest equivalent Business Employees at the date on which such employment is scheduled to commence;

- (g) any other matter notified to the Operator by the Secretary of State from time to time; and/or
- (h) any negotiation or consultation strategies regarding any of the matters at (a) to (g) above;

<b>"ISO 50001:2011"</b>	means the standard that is set by the International Organisation for Standardisation which specifies requirements for establishing, implementing, maintaining and improving an energy management system, whose purpose is to enable an organization to follow a systematic approach in achieving continual improvement of energy performance, including energy efficiency, energy use and consumption or any equivalent standard which is generally recognised as having replaced it;
<b>"ISO 22301:2012"</b>	means the standard that is set by the International Organisation for Standardisation which specifies requirements for the development, implementation, operation, monitoring, review and maintenance of a business continuity planning process, or any equivalent standard which is generally recognised as having replaced it;
<b>"ISO 55001:2014"</b>	means the standard that is produced by the International Organisation for Standardisation which specifies requirements for an asset management system within the context of the organisation or any equivalent Standard which is generally recognised as having replaced it;
<b>"ISO 14001:2015"</b>	means the standard that is set by the International Organisation for Standardisation which specifies requirements for an environmental management system to enable an organization to develop and implement a policy and objectives which takes into account legal requirements and other requirements to which the organization subscribes, and information about significant environmental aspects or any equivalent standard which is generally recognised as having replaced it;
<b>"ISO 50001 Energy Review"</b>	means the Energy Review as defined in paragraph 4.4.3 of ISO50001:2011, or any same or similar review from an equivalent standard which is generally recognised as having replaced it;
<b>"ITSO Ltd"</b>	means the non-profit distributing organisation run by its members for the benefit of members and users of Smart Media;
<b>"ITSO Specification"</b>	means the common specification issued by ITSO Ltd and which enables the use of interoperable Smart Media in transport and other areas;
<b>"ITSO Certified Smart Media"</b>	means the contactless smartcards, devices or other media designed to hold fare and travel information with the monetary or other value encoded which have been certified by ITSO Ltd;
<b>"ITSO Operating Licence"</b>	means the licence granted to Train Operators by ITSO Ltd which, among other things, permits the Train Operators to

	issue ITSO Specification compliant cards and issue, sell and accept ITSO Specification compliant products;
<b>"ITSO Smart Media Ticketing Scheme"</b>	means a Smart Ticketing Scheme that utilises ITSO Certified Smart Media;
<b>"Joint Task"</b>	has the meaning given to it in the Alliance Agreement;
<b>"Joint Task Agreement"</b>	has the meaning given to it in the Alliance Agreement;
<b>"Key Contract"</b>	means: <ul style="list-style-type: none"> <li>(a) each agreement and contract listed in Appendix 1 (<i>List of Key Contracts</i>) to Schedule 14.3 (<i>Key Contracts</i>) as at the date of this Contract; and</li> <li>(b) any other agreement, contract, licence or other arrangement to which the Operator is a party or under which the Operator is the beneficiary from time to time which is designated as such pursuant to Schedule 14.3 (<i>Key Contracts</i>),</li> </ul> but excluding any such agreement, contract, licence or other arrangement which ceases, in accordance with the terms of this Contract, to be designated as a Key Contract;
<b>"Key Personnel"</b>	means those persons identified by the Operator in accordance with paragraph 7 of Schedule 11.1 ( <i>Organisation and Management</i> );
<b>"Know-How"</b>	means formulae, methods, plans, inventions, discoveries, improvements, processes, performance methodologies, techniques, specifications, technical information, tests, results, reports, component lists, manuals and instructions;
<b>"Law"</b>	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);
<b>"Lead Operator"</b>	has the meaning given to it in the Ticketing and Settlement Agreement;
<b>"Legislation"</b>	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;
<b>"Licences"</b>	means such licences and/or statements of national regulatory provisions granted or to be granted under applicable law as the Operator may be required from time to time to hold under the Act or under the Railway (Licensing of Railway Undertakings) Regulations 2005 (as amended) in order to provide or operate the Rail Services;

**“Licence Accessibility Obligations”**

has the meaning given to it in paragraph 1.3(a) of Schedule 4 (*Accessibility and Inclusivity*)

**“Light Maintenance Service”**

means:

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

**“Local Authority”**

means:

- (a) in England, a county council, a district council, a unitary authority, a passenger transport executive, a London borough council, the common council of the City of London, or a council which is established under the Local Government Act 1992 and which is either an authority responsible for expenditure on public passenger transport services within the meaning of section 88 of the Transport Act 1985 or a local authority for the purposes of section 93 of the Transport Act 1985;
- (b) in Wales, a county council, a district council or a council which is established under the Local

Government Act 1972 or the Local Government (Wales) Act 1994;

- (c) in Scotland, the Strathclyde Passenger Transport Executive, or a district council or a unitary authority which is established under the Local Government (Scotland) Act 1973 or the Local Government, etc. (Scotland) Act 1994;
- (d) in London, the Mayor of London and Transport for London established under the Greater London Authority Act 1999;
- (e) a combined authority created pursuant to the Local Democracy, Economic Development and Construction Act 2009;
- (f) any local enterprise partnership;
- (g) any other body or council replacing any of the above from time to time; and
- (h) any other body or instrument of local or regional government specified by the Secretary of State from time to time;

**“Local Authority Decrement Scheme”** means any scheme proposed by a Local Authority involving decremental de-specification to a part of the Passenger Services provided under contract with such Local Authority which does not conflict with the Train Service Requirement;

**“Local Authority Increment Scheme”** means any scheme proposed by a Local Authority involving incremental additions and improvements to a part of the Passenger Services which does not conflict with the Train Service Requirement pursuant to a contract with such Local Authority;

**“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 Transport Users’ Committee”** means the London Transport Users’ Committee established under the London Transport Users’ Committee (Transitional Provisions) Order 2000, generally known as “London TravelWatch”;

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

**“Maintainer”** has the meaning given to it in paragraph 5.1 of Part 4 (Bespoke Obligations) of Schedule 6.1 (Service Specific Provisions);

<b>“Major Flow Operator”</b>	has the meaning given to it in the Ticketing and Settlement Agreement;
<b>“Managed Station”</b>	means any station used in connection with the provision of the Rail Services where Network Rail is the Facility Owner or becomes the Facility Owner during the Contract Period;
<b>“Managed Station Area”</b>	means the premises comprising part or parts of a Managed Station to be occupied by the Operator on or after the Start Date and to be used for or in connection with the provision of the Rail Services;
<b>“Management Accounts”</b>	means, in relation to any Reporting Period, the Operator’s management accounts which: <ul style="list-style-type: none"> <li>(a) comply with the requirements of Schedule 8.3 (<i>Management Information</i>); and</li> <li>(b) are required to be delivered to the Secretary of State by the Operator in accordance with paragraphs 1.3(a) and 1.3(b) of Schedule 8.3 (<i>Management Information</i>);</li> </ul>
<b>“Mandate”</b>	means in relation to any In-Scope Matter any mandate formally agreed from time to time in writing (other than through email or other informal correspondence unless the email in question includes express confirmation from the Secretary of State that its content (or stipulated part of it) is to form a Mandate) between the Operator and the Secretary of State regarding: (i) the objective or objectives of negotiations or consultation; (ii) any parameters or constraints on such objective(s), or the substance of such negotiations or consultation; and/or (iii) how such negotiations or consultation are to be approached, structured or handled;
<b>“Mandatory Modification”</b>	means a modification or addition to any rolling stock vehicle which is required to be made under any applicable Law or any directive of the Rail Safety and Standards Board or any government authority;
<b>“Marks”</b>	means such trade marks as the Operator may apply to any Rail Asset or other asset used by it under a Key Contract, which are applied on the expiry of the Contract Period and are not the subject of a Brand Licence;
<b>“Material Discrepancies”</b>	has the meaning given to such term in paragraph 2.1 of Part E of Schedule 7.3 ( <i>Service Quality Regime</i> );
<b>“Minister of the Crown”</b>	has the meaning given to it in section 8(1) of the Minister of the Crown Act 1975;
<b>“Minor Works”</b>	means small scale physical alterations or additions to improve accessibility of Stations to Disabled Persons, not involving substantial works of construction or reconstruction;
<b>“Minutes Delay”</b>	means the minutes of delay to the Passenger Services that are attributed to the Operator or Network Rail (as the case may be) pursuant to the Track Access Agreement and

disregarding any minutes of delay that are imputed to Passenger Services that were cancelled;

<b>"Modern Slavery Helpline"</b>	means the point of contact for reporting suspicion, seeking help or advice and information on the subject of modern slavery, which as of the date of this Contract is available online at <a href="https://www.modernslaveryhelpline.org/report">https://www.modernslaveryhelpline.org/report</a> or by telephone on 08000 121 700;
<b>"Monthly Season Ticket"</b>	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 (1) month after such day;
<b>"Morning Peak"</b>	means, in relation to any Passenger Service, the period between 0700 and 0959 (inclusive) during a Weekday or such other continuous three hour period between 0600 and 1159 as the Secretary of State may specify from time to time;
<b>"Morning Peak Service"</b>	means a Passenger Service which arrives at Manchester Piccadilly; Manchester Victoria; Manchester Oxford Road; Leeds; Sheffield; Newcastle; or Liverpool Lime Street in the Morning Peak;
<b>"Multi-Modal Tickets"</b>	means passengers who hold tickets that are created pursuant to the multi modal schemes described in paragraph 2 of the Appendix to Schedule 2.5 (Transport, Travel and Other Schemes);
<b>"National Community Rail Steering Group"</b>	means the National Community Rail Steering Group administered by the Department for Transport, or such successor organisation;
<b>"National Cyber Security Centre"</b>	means the National Cyber Security Centre, which is a part of Government Communications Headquarters established to protect UK critical services from cyber-attacks, manage major incidents, and improve the underlying security of the UK Internet through technological improvement and advice to citizens and organisations;
<b>"National Joint ROSCO First-In-Class Project"</b>	means the joint project between Angel Trains Limited, Eversholt Rail (UK) Limited and Porterbrook Leasing Company Limited funded by Network Rail, for implementing ERTMS first in class designs to existing rolling stock which will operate over the routes where ERTMS will be rolled out;
<b>"National Lottery"</b>	means the state-franchised national lottery in the United Kingdom;
<b>"National Rail Enquiry Scheme"</b>	means the telephone information scheme run by RDG, providing information to customers regarding rail journeys throughout the country;
<b>"National Rail Passenger Survey"</b>	means a passenger satisfaction survey in respect of the Rail Services to be carried out by the Passengers' Council as described in paragraph 2 of Schedule 7.2 ( <i>Customer Experience and Engagement</i> ) and shall include any Alternative Survey as referred to in paragraph 2.6 of Schedule 7.2 ( <i>Customer Experience and Engagement</i> );

<b>“National Rail Timetable”</b>	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;
<b>“NCSC Cyber-Security Information Sharing Partnership” or “CSIP”</b>	means the government and industry partnership operated by the National Cyber Security Centre to facilitate the sharing of information and intelligence in relation to cyber security threats;
<b>“Network Change”</b>	has the meaning given to it in the Network Code;
<b>“Network Change Compensation Claims”</b>	has the meaning given to it in paragraph 10.4(a) of Schedule 13.1 ( <i>Rail Industry Initiatives and Co-operation</i> );
<b>“Network Code”</b>	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 applying to Network Rail or NR;
<b>“Network Rail”</b>	means in respect of: <ul style="list-style-type: none"> <li>(a) the network or any relevant facility: <ul style="list-style-type: none"> <li>(i) Network Rail Infrastructure Limited, a company registered in England with registered number 02904587 whose registered office is 1 Eversholt Street, London NW1 2DN; and</li> <li>(ii) any successor in title to the network or any relevant railway facility; or</li> </ul> </li> <li>(b) any new or other sections of network or any relevant new or other railway facilities, the owner (if different);</li> </ul>
<b>“Network Rail Cancellation”</b>	means a Passenger Service: <ul style="list-style-type: none"> <li>(a) which is included in the Enforcement Plan of the Day and which is cancelled; or</li> <li>(b) which is included in the Enforcement Plan of the Day and which operates less than fifty per cent (50%) of its scheduled mileage (as prescribed in the Enforcement Plan of the Day),</li> </ul> <p>in either case in circumstances where responsibility for the same is attributed to Network Rail pursuant to the Track Access Agreement;</p>
<b>“Network Rail Data”</b>	means any information, data and materials that may be provided to the Secretary of State by NR that relates to the Operator and which the Secretary of State decides (in the Secretary of State’s absolute discretion) to add to the RPC Database;
<b>“Network Rail Partial Cancellation”</b>	means a Passenger Service which is included in the Enforcement Plan of the Day and which:



- (a) misses a stop;
- (b) completes fifty per cent (50%) or more, but less than one hundred per cent (100%) of its scheduled mileage as prescribed in the Enforcement Plan of the Day,

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

<b>"Network Rail's Traction Electricity Rules"</b>	means the document entitled " <i>Traction Electricity Rules</i> " as published by the ORR;
<b>"New Facilities"</b>	has the meaning given to such term in paragraph 3.3(a)(ii) of Schedule 7.3 ( <i>Service Quality Regime</i> );
<b>"New Insurance Arrangements"</b>	has the meaning given to it in paragraph 2.4(b) of Schedule 2.2 ( <i>Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases</i> );
<b>"New Services"</b>	has the meaning given to such term in paragraph 1.3(a)(i) of Part A of Schedule 7.3 ( <i>Service Quality Regime</i> );
<b>"New Station"</b>	means: <ul style="list-style-type: none"> <li>(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</li> <li>(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 this Contract or otherwise) railway passenger services operated by the Operator call;</li> </ul>
<b>"Nominee"</b>	has the meaning given to it in paragraph 5.1 of Schedule 15.1 ( <i>Reletting Provisions</i> );
<b>"Non Fares Basket Fare"</b>	means a Fare that is designated as such by the Secretary of State pursuant to paragraph 2.1 of Schedule 5.3 ( <i>Allocation of Fares to the PTE/Protected Fares Basket</i> ) and which has not been de-designated as such pursuant to paragraph 1.1 of Schedule 5.7 ( <i>Changes to Fares and Fares Regulation</i> );
<b>"Northern Brand"</b>	means a brand (which may include sub-brands for specific Routes or types of Passenger Services) which is either: <ul style="list-style-type: none"> <li>(a) created by the Operator; or</li> <li>(b) acquired by the Operator from the Previous Operator or otherwise;</li> </ul>
<b>"Northern Ireland Protocol"</b>	means the Protocol on Ireland/Northern Ireland forming part of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the

European Union and the European Atomic Energy Community;

<b>"Northern Line Station"</b>	means any station on the lines from: <ul style="list-style-type: none"> <li>(a) Ormskirk to Liverpool;</li> <li>(b) Southport to Liverpool to Hunts Cross; and</li> <li>(c) Kirkby Merseyside to Liverpool,</li> </ul> being as follows: <p>Aigburth, Ainsdale, Aintree, Bank Hall, Birkdale, Blundellsands &amp; Crosby, Bootle New Strand, Bootle Oriel Road, Brunswick, Cressington, Fazakerley, Formby, Freshfield Merseyside, Garston Merseyside, Hall Road, Hightown, Hillside, Hunts Cross, Kirkby Merseyside, Kirkdale, Liverpool Central, Liverpool Moorfields, Maghull, Old Roan, Orrell Park, Rice Lane, Sandhills, Seaforth &amp; Litherland, Southport, Spital, St Michaels, Wallasey Grove Road, Walton Merseyside, Waterloo Merseyside, Aughton Park, Ormskirk and Town Green;</p>
<b>"Notified Fault"</b>	has the meaning given to it in paragraph 9.1(b) of Schedule 1.4 ( <i>Passenger Facing Obligations</i> );
<b>"NR"</b>	means Network Rail Limited (company number 04402220), Network Rail Infrastructure Limited (company number 2904587) whose registered offices are both at 1, Eversholt Street, London NW1 2DN or any Affiliate thereof from time to time;
<b>"NR Data Sharing Strategy"</b>	means the data sharing strategy to be developed and agreed between the Operator and Network Rail pursuant as part of the Business Plan Commitments, as may be amended from time to time pursuant to paragraph 2 ( <i>NR Data Sharing Strategy</i> ) of Schedule 13.2 ( <i>Collaboration</i> );
<b>"NRPS Benchmark"</b>	means, in respect of a relevant Contract Year, the benchmark for each NRPS Measure as set out in the NRPS Benchmark Table or as may be agreed or determined in accordance with paragraph 2 of Schedule 7.2 ( <i>Customer Experience and Engagement</i> );
<b>"NRPS Benchmark Table"</b>	means each of the tables setting out the NRPS Benchmarks as set out in the relevant Annual Performance Specifications;
<b>"NRPS Improvement"</b>	means an improvement in the level of customer satisfaction for the relevant NRPS Measure as measured by a National Rail Passenger Survey so that such level is not lower than the related NRPS Benchmark;
<b>"NRPS Improvement Proposal"</b>	has the meaning given to it in paragraph 5.1 of Schedule 7.2 ( <i>Customer Experience and Engagement</i> );
<b>"NRPS Improvement Plan"</b>	has the meaning given to it in paragraph 5.3 of Schedule 7.2 ( <i>Customer Experience and Engagement</i> );
<b>"NRPS Measure"</b>	means each of the factors more particularly described in the Passenger Survey Methodology and grouped as

	"Stations (S)", "Trains (T)", "Customer Service (C)" and "Dealing With Delays (D)";
<b>"NTSN"</b>	means any National Technical Specification Notice (as may be supplemented by any National Technical Rules) published by the Secretary of State with which the Operator is required to comply;
<b>"Off-Peak Passenger Service"</b>	means a Passenger Service that is not a Morning Peak Service or an Evening Peak Service;
<b>"On Time"</b>	means the percentage of recorded station stops called at within 59 seconds of the planned time relating to the Rail Services as produced and/or published by Network Rail;
<b>"On Time Figures"</b>	means the moving annual average percentage published by Network Rail in respect of On Time, rounded to two (2) decimal places;
<b>"Operator Access Station"</b>	means any station at which the Passenger Services call (other than any Station);
<b>"Operator Pension Sections"</b>	has the meaning given to it in paragraph 2 of Schedule 16.1 (Railways Pension Scheme);
<b>"Operator Pension Section Rules"</b>	has the meaning given to it in paragraph 4.2(a) of Schedule 16.1 (Railways Pension Scheme);
<b>"Operator WRR Contact"</b>	means a Business Employee with appropriate seniority to oversee and facilitate the Operator's compliance with its obligations pursuant to paragraph 5A of Schedule 13.1 ( <i>Rail Industry Initiatives and Co-operation</i> );
<b>"Operating Assets"</b>	means all assets (including any Intellectual Property Rights or intangible assets) employed by the Operator in the performance of the Operator's obligations under this Contract;
<b>"Operational Performance Component"</b>	means each of: <ul style="list-style-type: none"> <li>(a) TOC on Self Cancellations;</li> <li>(b) TOC Minutes Delay;</li> <li>(c) Short Formations;</li> <li>(d) T-3;</li> <li>(e) T-15; and</li> <li>(f) All Cancellations;</li> </ul>
<b>"Operational Performance Component Table"</b>	means, with respect to each Operational Performance Component (as applicable) the: <ul style="list-style-type: none"> <li>(a) TOC on Self Cancellations Table;</li> <li>(b) TOC Minute Delay Table;</li> <li>(c) Short Formations Table;</li> </ul>

- (d) T-3 Table;
- (e) T-15 Table; and
- (f) All Cancellations Table;

**“Operational Performance Targets”**

means any of the OP Targets and/or the Enforcement Benchmarks (as the context may require);

**“Operational Planning Matters”**

means matters relating to the continuous improvement of train timetabling and train planning functions, including improvements to:

- (a) the quality of the Operator’s, Network Rail’s timetable planning activities, through, amongst other things:
  - (i) adequate resourcing of train planning and diagramming activities for both rolling stock and traincrew;
  - (ii) collaborative working between the Operator’s and Network Rail or other Train Operators’ planning teams;
  - (iii) the timely sharing of plans for rolling stock and traincrew, including ancillary moves;
  - (iv) timely sharing of rolling stock characteristics required to support timetable simulation and performance modelling; and
  - (v) an increased focus on the advance development of major timetable changes, including through Event Steering Groups;
- (b) the robustness and resilience of the Operator’s and Network Rail’s train plans through collaborative working, to ensure jointly developed train regulation policies, contingency and service recovery plans including but not limited to data in relation to, and plans for:
  - (i) diversionary route availability (including traincrew knowledge and rolling stock clearance); and
  - (ii) traincrew flexibility (including route and traction knowledge, and spare cover);

**“Operations Data Breach”**

means any Personal Data Breach or any infringement of the rights afforded to a Data Subject under the Data Protection Legislation relating in whole or in part to CRM Data and/or Business Employees which is notified to or otherwise comes to the attention of the Information Commissioner (defined below) whether by way of the Operator in its capacity as Data Controller, by any affected Data Subject, by any other person whatsoever, or in any

other way, and which results in the Information Commissioner having any material engagement with the Operator in respect of the same (which shall mean any correspondence, request, direction or other form of engagement with the Operator in connection with a Personal Data Breach or the infringement of rights other than:

- (a) the Information Commissioner's acknowledgement of receipt of the notification or of it otherwise having awareness of the Personal Data Breach or the infringement of rights;
- (b) the Information Commissioner's first request for information following receipt of the notification or of it otherwise having awareness of the Personal Data Breach or the infringement of rights; and
- (c) the Information Commissioner's written confirmation that no action (whether formally or informally) shall be taken under the Data Protection Legislation in relation to the Personal Data Breach or the infringement of rights);

**"Operations Data Processor"**

means any Processor who, from time to time, is processing or has processed CRM Data and/or Personal Data relating to Business Employees on behalf of the Operator;

**"OP Targets"**

means, in relation to each Operational Performance Component in each Reporting Period during the relevant Contract Year, the Relevant OP Component Minimum Performance Level as specified in the relevant Annual Performance Specifications;

**"Original Rolling Stock"**

has the meaning given to it in paragraph 1.1(a) of Schedule 1.6 (*The Rolling Stock*);

**"ORR"**

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;

**"Other Passenger Route Within the Geographical Area"**

means any route which is not a Route but is a route in the Geographical Area over which a passenger train operator other than the Operator operates passenger services included in the National Rail Timetable;

**"Outline Business Plan"**

means, with respect to each Business Plan Component within a Business Plan, the longer-term context and strategy for such Business Plan Component applicable from (a) the end of the relevant Business Plan Year, to (b) the end of the relevant Business Plan Period, which shall (among other things) include identification and consideration of any anticipated or potential developments or enhancements which may be required to be reflected in the Business Plan with respect to any future Business Plan Years during the relevant Business Plan Period to the extent that such developments or enhancements are within the reasonable contemplation of the Parties at the time of agreement or determination of the relevant Business Plan;

<b>"Park Mark"</b>	has the meaning given to it in paragraph 6.7 of Schedule 1.7 ( <i>Stations</i> );
<b>"Partial Cancellation"</b>	<p>means a Passenger Service which is included in the Enforcement Plan of the Day and which:</p> <p>(a) misses a stop; or</p> <p>(b) completes fifty per cent (50%) or more, but less than one hundred per cent (100%) of its scheduled mileage as prescribed in the Enforcement Plan of the Day,</p> <p>in each case, for reasons which are attributed to the Operator pursuant to its Track Access Agreement;</p>
<b>"Participating Employer"</b>	has the meaning given to it in the Pension Trust;
<b>"Pass Rate"</b>	<p>means:</p> <p>(a) in respect of a Reporting Period and for each Service Quality Schedule, the pass rate (<i>i.e. the number of Service Quality Indicators that have passed rather than failed</i>) for a Service Quality Area comprised in such Service Quality Schedule as calculated in accordance with paragraph 1 of Part C of Schedule 7.3 (<i>Service Quality Regime</i>); and</p> <p>(b) in respect of each Service Quality Schedule and for each Contract Year, the pass rate (<i>i.e. the number of Service Quality Indicators that have passed rather than failed</i>) for a Service Quality Area comprised in such Service Quality Schedule calculated in accordance with paragraph 2 of Part C of Schedule 7.3 (<i>Service Quality Regime</i>),</p> <p>both expressed as a percentage;</p>
<b>"Passenger Assist"</b>	means the passenger assistance service provided by train operating companies and referred to by the ORR as <b>"Passenger Assist"</b> , as such service may be further described by the ORR from time to time at: <a href="http://orr.gov.uk/info-for-passengers/passengers-with-disabilities">http://orr.gov.uk/info-for-passengers/passengers-with-disabilities</a> (or such other applicable web address that is adopted by the ORR for these purposes from time to time);
<b>"Passenger Carrying Capacity"</b>	means, in relation to a Passenger Service, the capacity of the vehicles (as stated in Schedule 1.6 ( <i>The Rolling Stock</i> ) or determined by the Secretary of State in accordance with paragraph 2.3 of Schedule 1.6 ( <i>The Rolling Stock</i> )) from which the Passenger Service is formed;
<b>"Passenger Change Date"</b>	means a date upon which significant changes may be made to the Timetable in accordance with or by virtue of the Network Code;
<b>"Passenger Services"</b>	means the Operator's railway passenger services as specified in any Timetable and/or Plan of the Day including those railway passenger services which the Operator may delegate or subcontract or otherwise secure through any

	other person from time to time in accordance with this Contract;
<b>"Passenger Services Enhancement Options"</b>	has the meaning given to it in paragraph 8.1 ( <i>Development of Proposals for Passenger Service Enhancements</i> ) of Schedule 1.1 ( <i>Service Development</i> );
<b>"Passenger Survey Methodology" or "PSM"</b>	has the meaning given to it in paragraph 2.4 of Schedule 7.2 ( <i>Customer Experience and Engagement</i> );
<b>"Passenger's Charter" or "PC"</b>	means the Operator's service commitments to its passengers in the agreed terms marked <b>PC</b> , 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 ( <i>Passenger Facing Obligations</i> );
<b>"Passengers' Council"</b>	means the passengers' council established under section 19 of the Railways Act 2005 (as amended by The Passengers' Council (Non-Railway Functions) Order 2010). The Passengers' Council has been generally known as <b>"Transport Focus"</b> from 30 March 2015;
<b>"Pay As You Go Agreement"</b>	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 smart media technology under the name <b>"Pay as You Go"</b> ;
<b>"Payment Date"</b>	means the date for the payment of Contract Payments in accordance with paragraph 2 of Schedule 8.1 ( <i>Contract Payments</i> );
<b>"Peak"</b>	means the Morning Peak and the Evening Peak;
<b>"Peak Passenger Service"</b>	means, as the case may be, a Morning Peak Service or an Evening Peak Service;
<b>"Pension Trust"</b>	means the pension trust governing the Railways Pension Scheme;
<b>"Pensions Committee"</b>	has the meaning given to it in the Railways Pension Scheme;
<b>"Performance Improvement Management System"</b>	means the rail industry framework for the management of performance risks;
<b>"Performance Strategy Plan"</b>	means any joint plan, which the Operator and Network Rail are party to, which has been designed to achieve the performance objectives set out in Part L of the Network Code (and/or other objectives related to train service reliability and punctuality as agreed by Network Rail and the Operator);
<b>"Permitted Aggregate Increase" or "PAI"</b>	has the meaning given to it in paragraph 4.2 of Schedule 5.4 ( <i>Regulation of Fares Basket Values</i> );
<b>"Permitted Individual Increase" or "PII"</b>	has the meaning given to it in paragraph 2.2 of Schedule 5.5 ( <i>Regulation of Individual Fares</i> );

<b>"Personal Data"</b>	has the meaning given to it in the Data Protection Legislation;
<b>"Personal Data Breach"</b>	has the meaning given to it in the Data Protection Legislation;
<b>"Plan of the Day"</b>	means, in relation to each day during the Contract Term, the Passenger Services scheduled to be operated on that day through specification in the Timetable or as notified to the Operator by Network Rail from time to time prior to 2200 on the previous day;
<b>"Planned Train Mileage"</b>	means the aggregate train mileage planned during each Reporting Period by each train used in the provision of the Passenger Services (excluding, any train mileage planned as a result of positioning or other movements of rolling stock vehicles outside the Timetable);
<b>"Police Scotland"</b>	means the national police force for Scotland as formed in 2013 following the merger of eight regional police forces;
<b>"Preceding Year Ticket Price"</b>	has the meaning given to it in paragraph 2.1 of Schedule 5.5 ( <i>Regulation of Individual Fares</i> );
<b>"Preliminary Database"</b>	means such database as may be put in place by the Secretary of State prior to making any RPC Database available to the Operator, as part of the development of the RPC Database;
<b>"Previous Agreement"</b>	means the services agreement dated 1 March 2020 under which services equivalent to the Rail Services (or a material proportion thereof) were provided by the Operator following termination of the ARN Franchise Agreement;
<b>"Previous Customer Report"</b>	means, in relation to a Customer Report, the Customer Report published by the Operator immediately prior to that Customer Report;
<b>"Previous Operator"</b>	means Northern Rail Limited (Company Number: 03076444), whose registered office is 8th Floor, Albany House, 94-98 Petty France, London, England, SW1H 9EA;
<b>"Previous Passenger Services"</b>	means: <ul style="list-style-type: none"> <li>(a) any railway passenger services operated under a Previous Agreement that is the same or substantially the same as any Passenger Service in terms of departure and arrival times and stopping patterns; and</li> <li>(b) if no such railway passenger service is found under paragraph (a) such other railway passenger services operated under a Previous Agreement which is similar in terms of departure and arrival times and stopping patterns to the Passenger Services as the Secretary of State may determine;</li> </ul>
<b>"Previous Performance Level"</b>	means the level of performance actually achieved in relation to the Previous Passenger Services;



<b>"Price"</b>	means, in respect of any Fare, the price of such Fare before the deduction of any applicable discount to which a purchaser may be entitled, as notified to RSP in accordance with Schedule 5 ( <i>Fares and Smart Ticketing</i> ) to the Ticketing and Settlement Agreement;
<b>"Principles of Inclusive Design"</b>	means planning, designing, building and managing places, while having due regard and a proportionate response to stakeholder views obtained through consultation or otherwise, so that they work better for everybody and reflect the diversity of the people who use them as embodied in the document published by the Commission for Architecture and the Built Environment in 2006 with the title <b>"The Principles of Inclusive Design"</b> (as revised from time to time");
<b>"Prior Train Operator"</b>	means the Train Operator which used or is using the Cascaded Rolling Stock immediately prior to its proposed use by the Operator;
<b>"Processor"</b>	has the meaning given to it in the Data Protection Legislation;
<b>"Procurement Policy"</b>	has the meaning given in Clause 18.1 ( <i>Subsidy Control, State Aid and Procurement Regulations</i> );
<b>"Projected Revenue"</b>	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 ( <i>Regulation of Fares Basket Values</i> );
<b>"Property Lease"</b>	means any Depot Lease, any lease in respect of a Managed Station Area, any lease in respect of the Shared Facilities or any Station Lease and any agreement or lease of a similar or equivalent nature (whether in respect of any such facility or otherwise) which the Operator 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 Rail Services;
<b>"Proposed Business Plan Commitment"</b>	has the meaning given in paragraph 12.7 ( <i>Extended Term Contracts and Extended Term Designatable Contracts</i> ) of Schedule 8.4 ( <i>Business Plan</i> );
<b>"Proposed ERTMS Implementation Plan"</b>	means Network Rail's plans for the implementation of the ERTMS Programme as more particularly described in the document in agreed terms marked ERTMSP;
<b>"Protected Fare"</b>	means a Protected Return Fare or a Protected Weekly Season Ticket;
<b>"Protected Fares Basket"</b>	means the grouping of Protected Fares: <ul style="list-style-type: none"> <li>(a) determined by the Secretary of State pursuant to Schedule 5.3 (<i>Allocation of Fares Basket</i>);</li> <li>(b) for the purposes of regulating their aggregate Prices in accordance with Schedule 5.4 (<i>Regulation of PTE/Protected Fares Basket Values</i>);</li> </ul>

- (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 PTE/Protected Fares Document;

**"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 Operator is entitled or obliged from time to time to set the 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 (1) 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
- (a) for which there was no Saver Return Fare in February 2003, a Return Fare for each such Flow in respect of which the Operator is entitled or obliged from time to time to set the Price under the Ticketing and Settlement Agreement,

except in each case to the extent that a Return Fare for any such Flow is a PTE 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 Operator is entitled or obliged, from time to time, to set the Price of under the Ticketing and Settlement Agreement except to the extent that a Weekly Season Ticket for any such Flow is a PTE Fare;

**"PTE Fare"**

means a TfGM Fare, an MPTE Fare, a SYPTE Fare or a WYPTE Fare;

**"PTE/Protected Fares Basket"**

means the grouping of PTE Fares and Protected Fares:

- (a) determined by the Secretary of State pursuant to Schedule 5.3 (Allocation of Fares Basket);
- (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 PTE/Protected 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

set out in the PTE/Protected Fares Document;

**“PTE/Protected Fares Document”**

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

**“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;

**“Quarter” or “Quarterly”**

means:

- (a) in respect of the first Contract Year only:
  - (i) a commencing on 1 March 2022 and ending on 31 March 2022; or
  - (ii) not used; and
- (b) in respect of each other Contract Year:
  - (i) a period of three (3) consecutive Reporting Periods ending at the end of the third, sixth and ninth Reporting Periods in a Contract Year; or
  - (ii) a period of four (4) consecutive Reporting Periods ending at the end of the thirteenth Reporting Period of a Contract Year,

(and “Quarterly” shall be interpreted accordingly);

**“Quarterly Forecast”**

has the meaning given to it in paragraph 1.4(a) (*Quarterly Financial Information*) of Schedule 8.3 (*Management Information*);

**“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 (3) months after such day;

**“Rail Assets”**

means the property, rights and liabilities of the Operator used in the provision of the Rail Services except as

referred to in paragraph 1.2 of Schedule 14.4 (*Rail Assets*);

<b>"Rail Delivery Group" or "RDG"</b>	means the Rail Delivery Group Limited (company number 08176197) (including any of its successors and assigns) whose principal place of business is at 2 <sup>nd</sup> Floor, 200-202 Aldersgate Street, London EC1A 4HD, which is responsible for preserving and enhancing the benefits for passengers of Britain's national rail network policy formulation and communications on behalf of the whole rail industry;
<b>"Rail Safety and Standards Board" or "RSSB"</b>	means Rail Safety and Standards Board Limited, a company registered in England with registered number 04655675 whose registered office is at The Helicon, 4 <sup>th</sup> Floor, One South Place, London, EC2M 2RB;
<b>"Rail Services"</b>	means such of the Passenger Services, the Light Maintenance Services, the Station Services and the Ancillary Services as the Operator may provide or operate from time to time, including any of such services as the Operator may delegate or subcontract or otherwise secure through any other person from time to time in accordance with this Contract;
<b>"Railmaster"</b>	means the fare of that name which as at the date hereof appears in the South Yorkshire Passenger Transport Executive section of the fares systems of the RSP;
<b>"Railway Operational Code"</b>	has the meaning given to it in Condition H of the Network Code;
<b>"Railway Passenger Services"</b>	means, for the purposes of Schedule 5 ( <i>Fares and Smart Ticketing</i> ) 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 Operator and any other Train Operator from time to time;
<b>"Railways Pension Scheme"</b>	means the pension scheme established by the Railways Pension Scheme Order 1994 (No. 1433);
<b>"RCS"</b>	has the meaning given to it in paragraph 3.2(e) (Flexible Ticket Product) of Schedule 5.2 (Operator's Obligation to Create Fares);
<b>"RDG Design Guidelines"</b>	means the Rail Delivery Group's ticket vending machine design guidelines;
<b>"RDG Guidance on Emergency Planning, Knowledge, Understanding and Responsibilities"</b>	means the guidance that sets out industry best practice for planning for responses to major incidents and emergencies entitled "Emergency Planning, Knowledge, Understanding and Responsibilities" dated April 2015 and published by RDG, as amended or updated from time to time, or other relevant guidance as specified by the Secretary of State during the Contract Term;
<b>"Reactionary Delay"</b>	means a delay that is attributed as "Reactionary Delay" in accordance with the Delay Attribution Principles and Rules;

<b>"Reasonable Commercial Manner"</b>	<p>means:</p> <p>(a) acting in the long-term interests of the Rail Services taking into account the long-term affordability, sustainability and financial robustness of the Operator Pension Section(s) as if the Operator and its employees (as appropriate) were solely responsible for the funding of the Operator Pension Section(s) and, at all times, disregarding the actual allocation of cost risk as between the Operator and the Secretary of State in this Contract; or at the option of the Secretary of State;</p> <p>(b) acting in such other manner as the Secretary of State directs;</p>
<b>"Recruitment Objectives"</b>	has the meaning given to it in paragraph 1.5(a) of Schedule 1.8 ( <i>Diversity and Inclusion and Training and Development</i> );
<b>"Recruitment Targets"</b>	means the recruitment targets and associated timeframes in respect of all new recruits across all grades, jobs, positions and roles, as set out in the Operator's D&I Strategy;
<b>"Rectification Evidence Failure"</b>	has the meaning given to such term in paragraph 3.1(b) of Part B of Schedule 7.3 ( <i>Service Quality Regime</i> );
<b>"Redactions"</b>	has the meaning given to it in paragraph 10.1 of Schedule 17 ( <i>Confidentiality and Data Protection</i> );
<b>"Reference Fare"</b>	has the meaning given to it in paragraph 6.1(a) of Schedule 5.7 ( <i>Changes to Fares and Fares Regulation</i> );
<b>"Reference Flow"</b>	has the meaning given to it in paragraph 6.1(a) of Schedule 5.7 ( <i>Changes to Fares and Fares Regulation</i> );
<b>"Reference Revenue"</b>	means the aggregate Gross Revenue recorded by RSP as attributable to sales of all PTE Fares or Protected Fares for the period of twelve (12) months which ended 31 March 2019 or such other reference period as the Secretary of State may require pursuant to paragraph 3.1(a) of Schedule 5.7 ( <i>Changes to Fares and Fares Regulation</i> );
<b>"Regulated Child Price"</b>	means the Child Price that is permitted to be charged by the Operator in respect of any Fare in any Fare Year as specified in paragraph 1.3 of Schedule 5.5 ( <i>Regulation of Individual Fares</i> );
<b>"Regulated Price"</b>	means the Price that is permitted to be charged by the Operator in respect of any Fare in any Fare Year, determined in accordance with paragraph 2.1 of Schedule 5.5 ( <i>Regulation of Individual Fares</i> );
<b>"Regulated Qualifications Framework"</b>	means the Regulated Qualifications Framework introduced by Ofqual on 1 October 2015 as located at the date of this Contract at <a href="https://www.gov.uk/find-a-regulated-qualification">https://www.gov.uk/find-a-regulated-qualification</a> ;
<b>"Regulated Value"</b>	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*);

<b>"Regulation 1370"</b>	means Regulation (EC) N° 1370/2007 of 23 October 2007 on public passenger transport services by rail and by road as incorporated into domestic law by the European Union (Withdrawal) Act 2018 and as amended by S.I. 2020/504 and S.I 2020/1470, and Regulation (EC) N° 1370/2007 of 23 October 2007 on public passenger transport services by rail and by road as applicable in the European Union;
<b>"Re-inspection Failure"</b>	has the meaning given to it in paragraph 3.1(a) of Part B of Schedule 7.3 ( <i>Service Quality Regime</i> );
<b>"Recognised Accreditation Scheme"</b>	<p>means any of the following diversity accreditation schemes:</p> <ul style="list-style-type: none"> <li>(a) Investors in Diversity;</li> <li>(b) Clear Assured;</li> <li>(c) National Equality Standards;</li> <li>(d) Diversity Development Standard;</li> <li>(e) Inclusive Employers; and/or,</li> </ul> <p>such other scheme as the Secretary of State may designate as a Recognised Accreditation Scheme from time to time;</p>
<b>"Relevant Data"</b>	has the meaning given to it in paragraph 14.1(a) ( <i>Request for Data</i> ) of Schedule 17 ( <i>Confidentiality and Data Protection</i> );
<b>"Relevant Delay"</b>	means any delay to the successful introduction into service of any Relevant Rolling Stock;
<b>"Relevant Documents"</b>	has the meaning given to it in paragraph 9.2(a) of Schedule 4 ( <i>Accessibility and Inclusivity</i> );
<b>"Relevant Employer"</b>	means any of the Operator's Affiliates to whom the Rail Services or services which are in support of or ancillary to the Rail Services have been subcontracted (at any tier) or delegated by the Operator, which employs Business Employees performing or in support of or ancillary to the Rail Services;
<b>"Relevant Flow"</b>	has the meaning given to it in paragraph 3.2(b) (Flexible Ticket Product) of Schedule 5.2 (Operator's Obligation to Create Fares);
<b>"Relevant Managed Station"</b>	means Leeds, Manchester Piccadilly and Liverpool Lime Street Stations;
<b>"Relevant OP Component Minimum Performance Level"</b>	means, in respect of the relevant Operational Performance Component, the value in relation to performance set out in the relevant Operational Performance Component Table;

<b>"Relevant Rectification Period"</b>	has the meaning given to such term in paragraph 3.1(b) of Part B of Schedule 7.3 ( <i>Service Quality Regime</i> );
<b>"Relevant Rolling Stock"</b>	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 Operator;
<b>"Relevant Technical Specification"</b>	means the applicable TSI or NTSN;
<b>"Relevant Third Party"</b>	has the meaning given to it in paragraph 8.1 of Part 4 of Schedule 6.1 ( <i>Service Specific Obligations</i> );
<b>"Reported Reporting Periods"</b>	has the meaning given to it in paragraph 9 of Schedule 1.4 ( <i>Passenger Facing Obligations</i> );
<b>"Reporting Period"</b>	means a period of twenty eight (28) days, provided that: <ul style="list-style-type: none"> <li>(a) the first such period during the Contract Period shall exclude any days up to but not including the Start Date;</li> <li>(b) the first and last such period in any Reporting Year may be varied by up to seven (7) days by notice from the Secretary of State to the Operator;</li> <li>(c) each such period shall start on the day following the last day of the preceding such period; and</li> <li>(d) the last such period during the Contract Period shall end at the end of the Contract Period;</li> </ul>
<b>"Reporting Year"</b>	means a period normally commencing on 1 April in each calendar year, comprising thirteen (13) consecutive Reporting Periods;
<b>"Request for Approval"</b>	has the meaning given to it in paragraph 2.1 of Schedule 11.3 ( <i>Approval Process</i> );
<b>"Request for Business Plan" or "RfBP"</b>	means, with respect to each Business Plan Year, the request issued by the Secretary of State to the Operator (as may be updated or revised from time to time in accordance with paragraph 3.3 of Schedule 8.4 ( <i>Business Plan</i> )), setting out the specification to be achieved by, and the requirements as to the format and content of, the Business Plan with respect to such Business Plan Year, and shall include the Secretary of State's proposed Annual Performance Specifications;
<b>"Request for Data"</b>	has the meaning given to it in paragraph 14.1(a) ( <i>Request for Data</i> ) of Schedule 17 ( <i>Confidentiality and Data Protection</i> );
<b>"Request for Information"</b>	means a request for information or an apparent request under the Freedom of Information Act or the Environmental Information Regulations;
<b>"Required Establishment"</b>	means the number of train crew required in order to operate the Passenger Services, which in the case of drivers shall be calculated in accordance with the Rail

Delivery Group's "Guidance Note on Driver Establishment Calculation (December 2013)" and otherwise in accordance with an equivalent methodology;

**"Required Performance Improvement"**

means, in relation to each relevant Operational Performance Component, an improvement in the Operator's performance:

- (a) in relation to:
  - (i) TOC on Self Cancellations; and/or
  - (ii) TOC Minutes Delay; and/or
  - (iii) Short Formations; and/or
- (b) against:
  - (i) the T-3 Measure; and/or
  - (ii) the T-15 Measure; and/or
  - (iii) the All Cancellations Measure,

in each case, so that such level of performance is better than the Relevant OP Component Minimum Performance Level for the relevant Operational Performance Component;

**"Retail Prices Index"**

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

**"Reward and People Principles"**

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



<b>"RM3P"</b>	means the 'Risk Management Maturity Model for Performance' system to monitor and manage operational performance within the rail industry;
<b>"Rolling Stock Lease"</b>	means any agreement for the leasing of rolling stock vehicles to which the Operator 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 Operator is a party from time to time during the Contract Term whether in addition to, or replacement or substitution for, in whole or in part, any such agreement;
<b>"Rolling Stock Related Contract"</b>	means any Rolling Stock Lease, Maintenance Contract or Technical Support Contract;
<b>"Rolling Stock Units"</b>	has the meaning given to it in paragraph 1(c) of Schedule 10.3 ( <i>Force Majeure and Business Continuity</i> );
<b>"Route"</b>	means any route specified in the Timetable over which the Operator has permission to operate the Passenger Services pursuant to any Track Access Agreement;
<b>"Route Map"</b>	means a map (which may be a topological map) showing each of the Routes and each Other Passenger Route Within the Geographical Area meeting the requirements set out in paragraph 10 of Schedule 1.4 ( <i>Passenger Facing Obligations</i> );
<b>"Route-Specific Required Performance Improvement"</b>	has the meaning given to it in paragraph 9.1(a)(ix), of Schedule 7.1 ( <i>Operational Performance</i> );
<b>"RPC Database"</b>	means a database to be provided by the Secretary of State pursuant to and on the terms of paragraph 7.1 of Schedule 1.5 ( <i>Information about Passengers</i> ) containing rail passenger counts information and providing analytical reporting tools or such other functionality as the Secretary of State may decide from time to time;
<b>"RSP"</b>	means Rail Settlement Plan Limited;
<b>"RSPS3002"</b>	means the RSP document with reference RSPS3002, version 3 (03-00) published on 27 September 2017 (or amended publications that replace this) which specifies standards for issuing, checking and validating rail products on ITSO Certified Smart Media and defines the rail specific rules required to ensure interoperability across the rail network;
<b>"Safeguarding on Rail Scheme"</b>	means the scheme for the accreditation of organisations in relation to the protection of vulnerable children and adults at risk on rail transport and includes the Safeguarding Principles and Measures, as set out in the "Safeguarding on Rail Scheme - Guidance Notes" published by the British Transport Police (as amended or replaced from time to time);
<b>"Safeguarding Principles and Measures"</b>	means the principles and measures to protect vulnerable children and adults at risk on rail transport, contained in the "Safeguarding on Rail Scheme - Guidance Notes" published by the British Transport Police against which the

	Operator will be assessed (as amended or replaced from time to time);
<b>"Safeguarding Strategy"</b>	means a safeguarding strategy which is approved by the British Transport Police and which promotes and enforces: <ul style="list-style-type: none"> <li>(a) the Safeguarding Principles and Measures; and</li> <li>(b) the Safeguarding on Rail Scheme;</li> </ul>
<b>"Safety Certificate"</b>	means the certificate issued by the ORR under the Safety Regulations, certifying its acceptance of the Operator's safety management system (as defined in those regulations) and the provisions adopted by the Operator to meet the requirements that are necessary to ensure safe operation on the Routes;
<b>"Safety Regulations"</b>	means the Railways and Other Guided Transport Systems (Safety) Regulations 2006 (as amended pursuant to the Railways and Other Guided Transport Systems (Safety) (Amendment) Regulations 2006);
<b>"Saver Return Fare"</b>	means a return fare which is shown as a saver fare in the systems of the RSP as at the date of each Fares Setting Round;
<b>"Scheduled Consist Data"</b>	means information as to the type of individual vehicles of rolling stock that have been scheduled by the Operator to form a train in the Train Fleet for any particular Passenger Service and the manner in which they are scheduled to be configured;
<b>"Scottish Ministers"</b>	has the meaning ascribed to it in section 44(2) of the Scotland Act 1998 and shall include any other body replacing them from time to time;
<b>"Season Ticket Fare"</b>	means: <ul style="list-style-type: none"> <li>(a) <b>NOT USED</b>; and</li> <li>(b) 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;</li> </ul>
<b>"Seating and Assistance Provisions"</b>	has the meaning given to it in paragraph 4.2(a) of Schedule 4 ( <i>Accessibility and Inclusivity</i> );
<b>"Secretary of the Access Disputes Committee"</b>	means the person appointed as the secretary of the Access Disputes Committee from time to time;
<b>"Secure Stations Accreditation"</b>	has the meaning given to it in paragraph 6.7 of Schedule 1.7 ( <i>Stations</i> );
<b>"Secure Stations Scheme"</b>	has the meaning given to it in paragraph 6.7 of Schedule 1.7 ( <i>Stations</i> );
<b>"Security Interest"</b>	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;

<b>"Service Group"</b>	has the meaning given to it in the Track Access Agreement or as specified by the Secretary of State from time to time;
<b>"Service Quality Area"</b>	means each of the service quality areas for SQR Trains, SQR Stations and SQR Customer Service as set out in Column 1 of the table (s) in Appendix 2 of Schedule 7.3 ( <i>Service Quality Regime</i> );
<b>"Service Quality Failure"</b>	has the meaning given to such term in paragraph 3.1 of Part B of Schedule 7.3 ( <i>Service Quality Regime</i> );
<b>"Service Quality Improvement"</b>	has the meaning given to it in paragraph 4.1 ( <i>Consequences of Performance falling below the SQR Benchmark</i> ) of Part E of Schedule 7.3 ( <i>Service Quality Regime</i> );
<b>"Service Quality Improvement Proposal"</b>	has the meaning given to it in paragraph 4.2 ( <i>Consequences of Performance falling below the SQR Benchmark</i> ) of Part E of Schedule 7.3 ( <i>Service Quality Regime</i> );
<b>"Service Quality Indicator"</b>	means each of the indicators for SQR Trains, SQR Stations and SQR Customer Service comprised in a Service Quality Area as specifically specified in Column 3 of the table(s) in Appendix 2 of Schedule 7.3 ( <i>Service Quality Regime</i> );
<b>"Service Quality Inspection"</b>	has the meaning given to such term in paragraph 1.1(a) of Part B of Schedule 7.3 ( <i>Service Quality Regime</i> );
<b>"Service Quality Regime" or "SQR"</b>	means the regime for the measurement of standards at SQR Stations, on SQR Trains and SQR Customer Service as set out in Schedule 7.3 ( <i>Service Quality Regime</i> );
<b>"Service Quality Re-inspection"</b>	has the meaning given to it in paragraph 3.1(a) of Part B of Schedule 7.3 ( <i>Service Quality Regime</i> );
<b>"Service Quality Rectification Evidence"</b>	means evidence and/or documentation demonstrating (as the case may be) that the Operator has rectified a relevant Service Quality Failure in relation to SQR Trains or SQR Stations, as applicable;
<b>"Service Quality Schedules"</b>	means each of the service schedules for SQR Trains, SQR Stations and SQR Customer Service contained in Appendix 1 of Schedule 7.3 ( <i>Service Quality Regime</i> );
<b>"Service Recovery Plan"</b>	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 Formation Capacity Plan, a plan implemented by the Operator: <ul style="list-style-type: none"> <li>(a) to minimise the disruption arising from such prevention or restriction of access by operating, during such period of disruption, the best</li> </ul>

possible level of service given such disruption, including by:

- (i) keeping service intervals to reasonable durations;
  - (ii) keeping extended journey times to reasonable durations; and
  - (iii) managing any resulting overcrowding;
- (b) to:
- (i) return the level of service to that level specified in the Timetable as soon as reasonably practicable; and
  - (ii) prior to the attainment of the level of service specified in paragraph (b)(i) operate any reduced level of service agreed with Network Rail for the purpose of minimising such disruption pursuant to paragraph (a);
- (c) in accordance with the principles of service recovery set out in the **"Approved Code of Practice: Contingency Planning for Train Service Recovery - Service Recovery 2013"** 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 Operator, Network Rail and any other affected Train Operator; and
  - (ii) on each occasion, recorded in an official control log by the relevant Region Control Manager of Network Rail;

and prevention or restriction of access to the track or a section of the track shall have the meaning given to that term in paragraph 1(a)(i) of Schedule 10.3 (*Force Majeure and Business Continuity*);

**"Settlement Proposal"**

has the meaning given to it in paragraph 3.2 of Schedule 4 (*Accessibility and Inclusivity*);

**"Shared Facilities"**

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

**"Short Formations Figures"**

means the number of Passenger Services in any Reporting Period formed with less than the required Passenger

Carrying Capacity specified in the Train Formation Capacity Plan;

<b>"Short Formation Passenger Services"</b>	means Passenger Services that are an arrival in the Morning Peak or a departure in the Evening Peak at Manchester Piccadilly, Manchester Victoria, Manchester Oxford Road, Leeds, Sheffield, Newcastle or Liverpool Lime Street provided that any Passenger Service shall only be counted once for the purposes of paragraph 5 (Short Formations) of Schedule 7.1 (Operational Performance);
<b>"Short Formations"</b>	means the relevant measure by which the Operator's operational performance is assessed, as described in and calculated in accordance with paragraph 5.1 ( <i>Short Formations</i> ) of Schedule 7.1 ( <i>Operational Performance</i> );
<b>"Short Formations Table"</b>	means the table entitled "OP Targets - Short Formation" as set out in the relevant Annual Performance Specifications;
<b>"Short Formations Re-Calculation"</b>	has the meaning given to it in paragraph 5.1(b) of Schedule 7.1 ( <i>Operational Performance</i> );
<b>"Significant Alterations"</b>	shall, in relation to any proposed new or amended Timetable, include alterations from the then current Timetable which result in, or are likely to result in: <ul style="list-style-type: none"> <li>(a) the addition or removal of railway passenger services;</li> <li>(b) changes to stopping patterns or destinations or origin;</li> <li>(c) changes of timings for first/last trains by more than ten (10) minutes;</li> <li>(d) changes to clock face (or near clock face) service patterns (meaning the provision of railway passenger services at a specified time or times relative to the hour); and/or</li> <li>(e) significant changes to journey times and/or key connections at the Stations or at other stations at which relevant railway passenger services call by more than ten (10) minutes;</li> </ul>
<b>"Single Fare"</b>	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 (1) day, one (1) journey in Standard Class Accommodation between the stations and/or the zones for which the Fare is valid;
<b>"SKA Rating Standard"</b>	means the recognised environmental assessment tool known as " <b>SKA Rating</b> " for sustainable fit outs published by the Royal Institute of Chartered Surveyors;
<b>"Small and Medium sized Enterprises" or "SMEs"</b>	means any individual micro, small or medium sized enterprise meeting the requirements set out in EU Recommendation 2003/36 and broadly falling into one of three categories, based on a combination of:

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

The three categories are:

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

**“Smart Media”**

means any of the following which can be used as part of a Smart Ticketing Scheme:

- (a) digital barcodes;
- (b) a barcode printed on paper either by customers (e.g. at home, office) or by staff at stations or on board trains;
- (c) ITSO Certified Smart Media;
- (d) contactless payment media (cEMVs);
- (e) Oyster (TfL’s smartcard); and

any of the above formats stored and presented on a portable electronic device;

**“Smart Ticketing Scheme”**

means a scheme that uses Smart Media that can be fulfilled electronically. It must:

- (a) either provide passengers with an electronic way of buying (including at home, on the move or at stations), receiving or collecting and using their ticket; or identify that a passenger has entered and left the rail network at particular stations, and deducts the cost of the journey from their debit/credit card, pre-pay account or other permissible funding mechanism;
- (b) evidence the purchase of a single or multiple Fare(s) for a passenger;
- (c) provide management information that a journey is being/has been made to the relevant back office;

**“Smart Media Target”**

means the targets set out in the Business Plan for increasing take-up of Smart Media by users of the Passenger Services;

**“SMP Data”**

has the meaning given to it in paragraph 1.1(d)(ii) of Schedule 1.7 (Stations);

**“SoS Audits”**

has the meaning given to such term in paragraph 5.1 of Part B of Schedule 7.3 (*Service Quality Regime*);

<b>“SoS Nominee”</b>	has the meaning given to such term in paragraph 4.6 of Part B of Schedule 7.3 ( <i>Service Quality Regime</i> );
<b>“SoS Service Quality Inspection”</b>	means inspections undertaken by the Secretary of State or the Secretary of State’s agents in place of the Operator;
<b>“SoS Service Quality Inspection Period”</b>	has the meaning given to such term in paragraph 1.2(b)(iii) of Part E of Schedule 7.3 ( <i>Service Quality Regime</i> );
<b>“Spares”</b>	means parts and components of rolling stock vehicles which are available for the purpose of carrying out maintenance services on rolling stock vehicles;
<b>“Specified Actions”</b>	include: <ul style="list-style-type: none"> <li>(a) identifying, developing, designing, assessing and/or advising on options or proposals for delivering particular outputs or outcomes, including undertaking or commissioning feasibility studies; keeping records; collating relevant data; developing implementation plans; analysing financial, operational, practical and other impacts and risks; developing business cases; reviewing and commenting on documents, proposals, draft implementation timetables and programmes;</li> <li>(b) supplying to the Secretary of State and other relevant Specified Persons any relevant data or information that is held by the Operator or which the Operator can reasonably be expected to obtain or produce (including any documents, information or other outputs prepared pursuant to paragraph (a) above, and, where applicable, information regarding usage and financial performance of passenger services);</li> <li>(c) providing opinions, advice, expertise, comments, commentary or analysis to relevant Specified Persons, in writing and/or by attending and actively participating in meetings, workshops, steering groups, advisory panels as may be appropriate in the circumstances;</li> <li>(d) carrying out all the activities and actions that might reasonably be required to be carried out or undertaken by a competent train operator to support the effective, efficient and timely delivery of any improvement scheme promoted by any Specified Person;</li> <li>(e) if requested to do so by the Secretary of State, negotiating in good faith with a Specified Person with a view to reaching agreement with that person in relation to the terms (including price) for provision of Passenger Services at any new station or on any new or reopened rail route;</li> <li>(f) not unreasonably exercising its rights under, or raising any objections pursuant to, its Access Agreements or any industry procedures (including Network Change and Station Change)</li> </ul>

in a way designed to directly or indirectly prevent, prejudice or frustrate the implementation or achievement of any Specified Matter in a way that would frustrate the achievement of the Specified Matter;

- (g) if requested by the Secretary of State, identifying a specific person who will act as the Operator's primary point of contact with the Secretary of State in relation to any of the Specified Matters;
- (h) implementing any initiatives or actions that may be agreed with Specified Persons during the course of the cooperation required by paragraph 1.1 (*Duty of Cooperation*) of Schedule 13.2 (*Collaboration*) (but subject to paragraph 1.3 (*Duty of Cooperation*) of Schedule 13.2 (*Collaboration*)); and
- (i) taking, or refraining from taking, such other actions as the Secretary of State may specify by notice to the Operator in accordance with paragraph 1.2 (*Duty of Cooperation*) of Schedule 13.2 (*Collaboration*),

in each case in a timely manner and to the extent applicable in the context of any particular Specified Matter;

**"Special Categories of Personal Data"**

has the meaning given to it in the Data Protection Legislation;

**"Specified Additional Rolling Stock"**

has the meaning given in paragraph 1.1(b) of Schedule 1.6 (*The Rolling Stock*);

**"Specified Industry Initiatives"**

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

- (a) improving level crossing safety and risk mitigation;
- (b) prevention of suicide, trespass and vandalism on the railway;
- (c) improving track worker safety;
- (d) promoting decarbonisation and other environmental improvements;
- (e) improving passenger information including during perturbation;
- (f) the reopening of disused or freight-only railway routes to passenger services;
- (g) Network Rail's long-term strategy and planning activities;
- (h) reforming the manner in which train service requirements are specified by funders and procurers;



**“Specified Matters”**

- (i) the timetable technology strategy;
  - (j) the Traction Decarbonisation Network Study; and
  - (i) not used;
- include:
- (a) the identification, development and design of Improvement Initiatives, including the Specified Industry Initiatives;
  - (b) **NOT USED;**
  - (c) the planning and delivery of improvement works at Stations or Operator Access Stations, including Minor Works and other physical works to improve accessibility;
  - (d) developing opportunities for financing investment at Stations and Operator Access Stations, for example in order to improve the customer experience, to improve energy efficiency and/or achieve other environmental benefits;
  - (e) developing 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;
  - (f) ensuring the continuation of passenger services across the network in a coordinated manner, and in line with the priorities and directions, as may be set out by the Secretary of State from time to time, including:
    - (i) co-ordinating with other Train Operators to ensure consistency of coverage to all communities across the national network, including changes to Rail Services to assist where other Train Operators are unable to fully perform their own Rail Services;
    - (ii) assisting altered or additional freight services to operate on the national rail network and, where appropriate, enabling certain essential goods (such as medical equipment or other urgent items) to be carried on Passenger Services; and
    - (iii) continuing where possible and appropriate to enforce any agreements with third parties to deliver quality and value for money;
  - (g) the design and development of any scheme promoted by a Local Authority or any other person specified in paragraph 1.3 (*Duty of*

*Cooperation*) of Schedule 13.2 (*Collaboration*) aimed at providing additional or varied Passenger Services; improving any station; regenerating, redeveloping or otherwise improving the public realm in the area surrounding any station; constructing and providing passenger services at new stations; opening new railway routes or reopening disused or freight-only railway routes for passenger use; or delivering other improvements that relate to the Rail Services;

- (h) efficient planning, development and implementation of infrastructure maintenance, renewal and enhancement works, including:
  - (i) planning possessions, and
  - (ii) identifying opportunities to coordinate and combine the delivery of works (e.g. renewals and enhancements),

with a view to achieving the optimum compromise between outcomes for passengers and cost-efficiency for the railway industry and ensuring that track worker safety is a key consideration (including incorporating recommendations and learning points from Rail Accident Investigation Branch investigations such as Rail Accident Report 11/2020);

- a. continuous improvement of train timetabling and train planning functions, including the Operational Planning Matters;

- (a) developing and implementing initiatives relating to the Operator's participation or prospective participation in Industry Schemes, where such Industry Schemes relate to the Rail Services;
- (b) conserving and promoting historic buildings and structures forming part of the railway estate;
- (c) identifying and executing joint initiatives with heritage railway lines within the area of the Rail Services, with a view to increasing their usage and providing benefit to Passengers and the community;
- (d) facilitating the achievement of the objectives of any Specified Person, where the achievement of such objectives would:
  - (i) benefit passengers, the environment or the achievement of any other government policy objective; or
  - (ii) improve the cost efficiency of operating the railway; and

- (e) developing and implementing initiatives to improve end-to-end journeys through integrated public transport;
- (f) assisting in the timely, efficient and cost effective implementation and delivery of the HS2 Project in a manner which provides the best overall solution for the network;
- (g) such other activities as the Secretary of State may specify by notice to the Operator in accordance with paragraph 1.2 (*Duty of Cooperation*) of Schedule 13.2 (*Collaboration*);

**“Specified Persons”**

include:

- (a) the Secretary of State;
- (b) Network Rail;
- (c) other train operators, including any operator who is the holder of a passenger licence or non-passenger licence under the Act;
- (d) suppliers (including rolling stock lessors and maintainers);
- (e) any Local Authority or Devolved Transport Body;
- (f) the British Transport Police;
- (g) the ORR;
- (h) the RSSB;
- (i) the Passengers’ Council;
- (j) the London Transport Users’ Committee;
- (k) the Accessibility Panel and other bodies representing the interests of persons who share protected characteristics within the meaning of the EA 2010;
- (l) HS2 Limited;
- (m) HS2 Shadow Operator;
- (n) the Railway Heritage Trust;
- (o) the RDG;
- (p) the GBRTT PR&M;
- (q) any other rail industry body not identified above;
- (r) any local operators of non-rail public transport; and
- (s) such other persons as the Secretary of State may specify by notice to the Operator in accordance

with paragraph 1.2 (*Duty of Cooperation*) of Schedule 13.2 (*Collaboration*),

in each case to the extent applicable in the context of any particular Specified Matter;

<b>"Specified Unit"</b>	has the meaning given in Explanatory Note C under paragraph 1 of Appendix 1 (The Composition of the Train Fleet) to Schedule 1.6 (The Rolling Stock);
<b>"SQR Benchmark"</b>	means any SQR Train Benchmark, SQR Station Benchmark or SQR Customer Service Benchmark (as the context may require);
<b>"SQR Contract"</b>	means any contract between the Operator and the SQR Contractor pursuant to which the SQR Contractor provides any of the SQR Services;
<b>"SQR Contractor"</b>	means any contractor appointed by the Operator under the SQR Contract to undertake any of the SQR Services;
<b>"SQR Customer Service"</b>	means the services measured by the indicators set out in Part 3 of Appendix 1 to Schedule 7.3 ( <i>Service Quality Regime</i> );
<b>"SQR Customer Service Benchmark"</b>	means, in relation to SQR Customer Service, the benchmark for each Service Quality Area as set out in Column 2 of the table in Part 3 of Appendix 2 to Schedule 7.3 ( <i>Service Quality Regime</i> );
<b>"SQR Management System"</b>	has the meaning given to such term in paragraph 1.1 of Part A of Schedule 7.3 ( <i>Service Quality Regime</i> );
<b>"SQR Register"</b>	<p>means the register of the facilities and services which exist on a SQR Train and at a SQR Station and which is to be used for carrying out:</p> <ul style="list-style-type: none"> <li>(a) Service Quality Inspections; and</li> <li>(b) Independent Service Quality Audits, SoS Audits or SoS Service Quality Inspections,</li> </ul> <p>in each case, as such register is required pursuant to paragraph 1.2 of Part A of Schedule 7.3 (<i>Service Quality Regime</i>);</p>
<b>"SQR Services"</b>	<p>means the following services:</p> <ul style="list-style-type: none"> <li>(a) the Service Quality Inspections and/or Service Quality Rectification Evidence (as applicable);</li> <li>(b) the creation, setting up, hosting and/or running of the SQR Management System; and/or</li> <li>(c) the creation, setting up, hosting and/or maintaining of the SQR Register</li> </ul> <p>(together, the <b>"SQR Services"</b>);</p>
<b>"SQR Station"</b>	means the Stations and the Relevant Managed Stations;

<b>"SQR Station Benchmark"</b>	means the benchmark for each Service Quality Area relating to SQR Stations as set out in Column 2 of the table in Part 1 of Appendix 2 to Schedule 7.3 ( <i>Service Quality Regime</i> );
<b>"SQR Train"</b>	means a train engaged in the provision of Passenger Services;
<b>"SQR Train Benchmark"</b>	means, in relation to a SQR Train, the benchmark for each Service Quality Area as set out in Column 2 of the table in Part 2 of Appendix 2 to Schedule 7.3 ( <i>Service Quality Regime</i> );
<b>"Stakeholder"</b>	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;
<b>"Standard Class Accommodation"</b>	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);
<b>"Standard Occupational Classification Codes"</b>	means the codes published in the Standard Occupational Classification 2010 as provided by the Office for National Statistics which can be found at  <a href="https://www.ons.gov.uk/methodology/classificationsandstandards/standardoccupationalclassificationsoc/soc2010/soc2010volume2thestructureandcodingindex">https://www.ons.gov.uk/methodology/classificationsandstandards/standardoccupationalclassificationsoc/soc2010/soc2010volume2thestructureandcodingindex</a> ;
<b>"Start Date"</b>	means 02:00 on 1 March 2022;
<b>"Station"</b>	means: <ul style="list-style-type: none"> <li>(a) any station in respect of which the Operator has entered into a Station Lease; or</li> <li>(b) any New Station at which the Operator becomes the Facility Owner;</li> </ul>
<b>"Station Access Conditions"</b>	has the meaning given to it in the relevant Access Agreement to which it relates;
<b>"Station Asset Management Plan"</b>	means the plan created by the Operator pursuant to paragraph 1 of Schedule 1.7 ( <i>Stations</i> ) and as amended from time to time in accordance with the provisions of Schedule 1.7 ( <i>Stations</i> );
<b>"Station Asset Management Plan Accreditation"</b>	means the certification of the Operator's station asset management organisation and systems for Stations as complying with the requirements of ISO55001:2014 (or such other reasonably equivalent standard as may be

Approved in writing by the Secretary of State from time to time in place of ISO55001:2014);

**"Station Asset Management Plan Accreditation Certificate"** has the meaning given to it in paragraph 1.2(a) of Schedule 1.7 (*Stations*);

**"Station Change"** has the meaning given to the term "Proposal for Change" under the Station Access Conditions;

**"Station Lease" or "SL"** means:

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

**"Station Service"** means:

- (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;
- (b) the provision of access to any person under an Access Agreement at any Station; and
- (c) the provision of any service which the Operator 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;

**"Station Service Quality Inspection"** means an inspection of the facilities and services at a SQR Station in the manner specified in the Service Quality Schedules and in accordance with the requirements of Schedule 7.3 (*Service Quality Regime*);

<b>"Station Sublease"</b>	means a lease or sub lease of premises comprising part or parts of a Station exclusively occupied by another Train Operator;
<b>"Stored Credit Balance"</b>	means any monetary amount held by the Operator which a passenger can apply at a future date to the purchase of a Fare (and stored in any medium);
<b>"Subcontractor"</b>	has the meaning given to it in paragraph 7.3 (b) of Schedule 1.5 ( <i>Information about Passengers</i> );
<b>"Subsequent Business Plan Year"</b>	means any period of twelve (12) months beginning on 1 April and ending on the following 31 March, that commences: <ul style="list-style-type: none"> <li>(a) upon or after the date of expiry of the Initial Business Plan Year; and</li> <li>(b) before the end of the Contract Term,</li> </ul> (regardless of whether such period extends beyond the Contract Term);
<b>"Subsidies Rules"</b>	has the meaning given in Clause 18.2 ( <i>Subsidy Control, State Aid and Procurement Regulations</i> );
<b>"Successor Operator"</b>	means a Train Operator succeeding or intended by the Secretary of State to succeed (and whose identity is notified to the Operator by the Secretary of State) the Operator in the provision or operation of all or any of the Rail Services including, where the context so admits, the Operator where it is to continue to provide or operate the Rail Services following termination of this Contract;
<b>"Successor Operator Timetable"</b>	has the meaning given to it in paragraph 2.2(a) of Schedule 14.1 ( <i>Maintenance of Franchise</i> );
<b>"Suicide Prevention Strategy"</b>	means the 'From Crisis to Care' strategy document for the period 2016-2019 (as amended or replaced from time to time) published by the British Transport Police;
<b>"Suicide Prevention Plan"</b>	means the Operator's suicide prevention plan developed under the Previous Agreement, as may be updated from time to time in accordance with this Contract;
<b>"Suicide Prevention Duty Holders' Group's 9 Point Plan"</b>	means the best practice plan established and published by the "cross-industry suicide prevention group", setting out nine deliverables aimed at suicide reduction (as amended or replaced from time to time);
<b>"T-3 Measure"</b>	means, for each Reporting Period each of the benchmarks specified in the T-3 Table for that Reporting Period;
<b>"T-3 Table"</b>	means the table entitled, "OP Targets – T-3" as set out in the relevant Annual Performance Specifications;
<b>"T-15 Measure"</b>	means, for each Reporting Period each of the benchmarks specified in the T-15 Table for that Reporting Period;
<b>"T-15 Table"</b>	means the table entitled, "OP Targets – T-15" as set out in the relevant Annual Performance Specifications;

<b>"Target Passenger Demand"</b>	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;
<b>"Taxation"</b>	means any kind of tax, duty, levy or other charge whether or not similar to any in force at the date of this Contract and whether imposed by a local, governmental or other competent authority in the United Kingdom or elsewhere;
<b>"TDR Amendment"</b>	has the meaning given to it in paragraph 4.6(a) ( <i>TDR Amendments</i> ) of Schedule 1.1 ( <i>Service Development</i> );
<b>"Technical Support Contract"</b>	means a contract for technical support to which the Operator is a party, relating to the rolling stock vehicles used in the provision of the Passenger Services;
<b>"Tendering/Reletting Process"</b>	means either of the processes described in paragraph 1.1 of Schedule 15.1 ( <i>Reletting Provisions</i> );
<b>"TfGM Fare"</b>	<p>means any:</p> <ul style="list-style-type: none"> <li>(a) Single Fare;</li> <li>(b) Return Fare;</li> <li>(c) Weekly Season Ticket;</li> <li>(d) Monthly Season Ticket;</li> <li>(e) Quarterly Season Ticket; or</li> <li>(f) Annual Season Ticket,</li> </ul> <p>which is valid for use only on Railway Passenger Services and not on any other form of transport, including bus, tram or light rail (but including any such Fare where the origin or destination station is stated to be Manchester Central Zone regardless of whether such Fare is valid for use on any other form of transport within Manchester City Centre), for a journey where the origin and destination stations are both TfGM Stations, including where the origin or destination station is stated to be Manchester Central Zone;</p>
<b>"TfGM Stations"</b>	<p>means:</p> <ul style="list-style-type: none"> <li>(a) for the purposes of the definition of TfGM Fare, any passenger railway station within the Greater Manchester Metropolitan County (as defined in the Local Government Act 1972) together with Dinting, Disley, Glazebrook, Glossop, Hadfield and New Mills Newtown stations; and</li> <li>(b) for all other purposes, each of the following stations: <ul style="list-style-type: none"> <li>Altrincham, Appley Bridge, Ardwick, Ashburys, Ashton-Under-Lyne, Atherton, Belle Vue, Blackrod, Bolton, Bramhall, Bredbury, Brinnington, Bromley Cross, Bryn, Broadbottom,</li> </ul> </li> </ul>



Burnage, Castleton (Manchester), Chassen Road, Cheadle, Clifton, Hulme, Daisy Hill, Davenport, Deansgate, Denton, Dinting, East Didsbury, Eccles, Fairfield, Farnworth, Flixton, Flowery Field, Gathurst, Gatley, Glazebrook, Glossop, Godley, Gorton, Greenfield, Guide Bridge, Hadfield, Hag Fold, Hale, Hallith Wood, Hattersley, Hazel Grove, Heald Green, Heaton Chapel, Hindley, Humphrey Park, Hyde Central, Hyde North, Kearsley, Ince, Irlam, Levenshulme, Littleborough, Lostock, Manchester Victoria, Manchester Oxford Road, Manchester United Halt, Marple, Mauldeth Road, Middlewood, Mills Hill, Moses Gate, Moorside, Moston, Mossley, Navigation Road, Newton-For-Hyde, Orrell, Patricroft, Pemberton, Rose Hill Marple, Reddish North, Reddish South, Rochdale, Romiley, Ryder Brow, Salford Central, Salford Crescent, Smithy Bridge, Strines, Swinton (Manchester), Trafford Park, Urmston, Walkden, Westhoughton, Wigan Wallgate, Woodley and Woodsmoor;

<b>“Third Party Data”</b>	means any information, data and materials that may be provided to the Secretary of State by any third party that relates to the Operator and which the Secretary of State decides (in the Secretary of State’s absolute discretion) to add to the RPC Database;
<b>“Through Ticketing (Non-Travelcard) Agreement”</b>	means the agreement of that name referred to in paragraph 4.1(e) of Appendix 1 ( <i>List of Transport, Travel and Other Schemes</i> ) to Schedule 2.5 ( <i>Transport, Travel and Other Schemes</i> );
<b>“Ticketing and Settlement Agreement”</b>	means the Ticketing and Settlement Agreement dated 23 July 1995 between RSP, the Operator and the other Train Operators named therein, as amended from time to time with the approval of the Secretary of State;
<b>“Ticketless Travel Survey Methodology” or “TTSM”</b>	means the document in the agreed terms marked <b>TTSM</b> ;
<b>“Ticketless Travel Minimum Performance Level”</b>	means the applicable value specified in the relevant Annual Performance Specifications as being the “Ticketless Travel Minimum Performance Level” for the purposes of paragraph 2 ( <i>Ticketless Travel Performance</i> ) of Part A of Schedule 5.12 ( <i>Marketing and Revenue Growth</i> );
<b>“Ticketless Travel Rate”</b>	means, for any Ticketless Travel Survey Period, that proportion (expressed as a percentage to three decimal places) of revenue estimated by the Ticketless Travel Surveys conducted within that Ticketless Travel Survey Period to be associated with passengers travelling on the Passenger Services without a valid ticket or other valid permission to travel;
<b>“Ticketless Travel Survey”</b>	means for the purposes of paragraph 1 of Part A of Schedule 5.12 ( <i>Marketing and Revenue Growth</i> ), the survey carried out by or on behalf of the Secretary of State in each Ticketless Travel Survey Period for the purposes of submitting to the Secretary of State the report required pursuant to paragraph 1.3 of Part A of Schedule 5.12 ( <i>Marketing and Revenue Growth</i> );

<b>"Ticketless Travel Survey Period"</b>	<p>means such day or days as are determined by the Secretary of State falling within each of the following periods (or such alternative periods as the Secretary of State may specify) for the purposes of paragraph 2 of Part A of Schedule 5.12 (<i>Marketing and Revenue Growth</i>):</p> <p>(a) the first to the sixth Reporting Period (inclusive) to fall in any Contract Year; and</p> <p>(b) the seventh to the thirteenth Reporting Period (inclusive) to fall in any Contract Year;</p>
<b>"Time to 3 Minutes" or "T-3" or "Time to 3"</b>	<p>means the percentage of recorded station stops called at within three (3) minutes of the planned time relating to the Rail Services as produced and/or published by Network Rail;</p>
<b>"Time to 15 Minutes" or "T-15" or "Time to 15"</b>	<p>means the percentage of recorded station stops called at within fifteen (15) minutes of the planned time relating to the Rail Services as produced and/or published by Network Rail;</p>
<b>"Time to 3 Minutes Figures"</b>	<p>means the moving annual average percentage published by Network Rail in respect of Time to 3 Minutes, rounded to two (2) decimal places;</p>
<b>"Time to 15 Minutes Figures"</b>	<p>means the moving annual average percentage published by Network Rail in respect of Time to 15 Minutes, rounded to two (2) decimal places;</p>
<b>"Timetable"</b>	<p>means the timetable which reflects the National Rail Timetable containing the departure and arrival times of:</p> <p>(a) all Passenger Services which call at Stations and/or the Operator Access Stations; and</p> <p>(b) principal Connections at those stations and other stations;</p>
<b>"Timetable Development Rights"</b>	<p>means all or any of the rights of the Operator under any Track Access Agreement to:</p> <p>(a) operate Passenger Services and ancillary movements by virtue of that Track Access Agreement;</p> <p>(b) deliver any required notification and/or declaration to Network Rail in respect of its intention to exercise any rights;</p> <p>(c) make or refrain from making any bids for Train Slots, in each case before any relevant priority dates provided for in, and in accordance with, the Network Code;</p> <p>(d) surrender any Train Slots allocated to the Operator by Network Rail in accordance with the Network Code;</p>

	(e)	object to, make representations, appeal or withhold consent in respect of any actual or proposed act or omission by Network Rail; and
	(f)	seek from Network Rail additional benefits as a condition to granting any consent to any actual or proposed act or omission by Network Rail;
<b>"Timetable Planning Rules"</b>		has the meaning given to it in the Network Code;
<b>"Timetabled Services"</b>		means any particular Passenger Service characterised by the day of the week (including Saturday and Sunday), time of day, origin station and destination and calling pattern which is scheduled to operate (for example, the 08:54 service departing Manchester Victoria to Leeds on a Sunday etc.);
<b>"Timetabling and Train Planning Compliance Investigation"</b>		has the meaning set out in paragraph 2.1 of Schedule 1.2 ( <i>Operating Obligations</i> );
<b>"TOC Minutes Delay"</b>		means the relevant measure by which the Operator's operational performance is assessed, as described in and calculated in accordance with paragraph 4.1 ( <i>TOC Minutes Delay Calculations</i> ) of Schedule 7.1 ( <i>Operational Performance</i> );
<b>"TOC Minute Delay Table"</b>		means the table entitled "OP Targets - TOC Minute Delay" as set out in the relevant Annual Performance Specifications;
<b>"TOC Minutes Delay Re-Calculation"</b>		has the meaning given to it in paragraph 4.1(b) of Schedule 7.1 ( <i>Operational Performance</i> );
<b>"TOC on Self Cancellations Re-Calculation"</b>		has the meaning given to it in paragraph 3.1(b) of Schedule 7.1 ( <i>Operational Performance</i> );
<b>"TOC on Self Cancellations"</b>		means the relevant measure by which the Operator's operational performance is assessed, as described in and calculated in accordance with paragraph 3.1 ( <i>TOC on Self Cancellation Calculation</i> ) of Schedule 7.1 ( <i>Operational Performance</i> );
<b>"TOC on Self Cancellations Table"</b>		means the table entitled "OP Targets - TOC on Self Cancellations" as set out in the relevant Annual Performance Specifications;
<b>"Track Access Agreement"</b>		means each Access Agreement between Network Rail and the Operator which permits the Operator to provide the Passenger Services on track operated by Network Rail;
<b>"Trade and Cooperation Agreement"</b>		means the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the One Part, and the United Kingdom of Great Britain and Northern Ireland, of the Other Part signed on 30 December 2020;
<b>"Trade Union"</b>		means any trade union(s) recognised by the Operator or any Relevant Employer in respect of Business Employees;

<b>"Train Crew Numbers Data"</b>	has the meaning given to it in paragraph 3.3(a) ( <i>Sharing further data with Network Rail</i> ) of Schedule 13.2 ( <i>Collaboration</i> );
<b>"Transfer Agreement"</b>	shall have the meaning given to such term in Clause 10.1;
<b>"Train Fleet"</b>	means: <ul style="list-style-type: none"> <li>(a) the rolling stock vehicles described in or required by Schedule 1.6 (<i>The Rolling Stock</i>); and</li> <li>(b) any other rolling stock vehicles the Secretary of State consents to in accordance with paragraph 2 of Schedule 1.6 (<i>The Rolling Stock</i>);</li> </ul>
<b>"Train Formation Capacity Plan" or "TFCP"</b>	means the plan (including sub-plans) prepared by the Operator for the operation of trains and train formations under the Timetable that best matches available capacity to Forecast Passenger Demand as amended from time to time during the Contract Period in accordance with this Contract;
<b>"Train Operator"</b>	means a franchisee, franchise operator or other operator, which in each case operate railway passenger services pursuant to a franchise agreement (or equivalent agreement) or a Public Sector Operator;
<b>"Train Service Quality Inspection"</b>	means an inspection of the facilities and services on a vehicle comprised within a SQR Train in the manner specified in the Service Quality Schedules and in accordance with the requirements of Schedule 7.3 ( <i>Service Quality Regime</i> );
<b>"Train Service Requirement" or "TSR"</b>	means the train service requirement more particularly described in paragraph 1 of Schedule 1.1 ( <i>Service Development</i> ) as such train service requirement may subsequently be amended or replaced in accordance with Schedule 1.1 ( <i>Service Development</i> );
<b>"Train Slots"</b>	has the meaning given to it in the Network Code;
<b>"TransPennine Express Franchise"</b>	means the rights tendered by the Secretary of State to operate certain railway passenger services identified by him as the TransPennine Express passenger services (or by such other name as the Secretary of State may notify to the Operator for this purpose from time to time);
<b>"TransPennine Express Operator"</b>	means the Operator appointed by the Secretary of State on or about the date of this Contract to operate the TransPennine Express Franchise;
<b>"TransPennine Route Upgrade"</b>	means the rail infrastructure upgrade (also known as the 'North TransPennine Upgrade') of the route between Stalybridge and York and Leeds and Selby (with a possible extension to Hull if the business case is approved) involving some or all of the following components: <ul style="list-style-type: none"> <li>(a) electrification;</li> <li>(b) signalling works;</li> </ul>

- (c) line speed enhancements;
- (d) capacity enhancements; and
- (e) other miscellaneous rail infrastructure works,

it being acknowledged that each such rail infrastructure upgrade may be completed in one or more phases with each such phase being, for the purposes of the Service Contract, a TransPennine Route Upgrade;

<b>"TransPennine Route Upgrade Services Proposal"</b>	means a proposal from the Operator in response to a Request for the TransPennine Route Upgrade Services Proposal;
<b>"Transport Act"</b>	means the Transport Act 2000;
<b>"Transport for London" or "TfL"</b>	means Transport for London as established under the Greater London Authority Act 1999;
<b>"Transport for the North"</b>	means the partnership body responsible for transport infrastructure and the co-ordination of public transport in the north of England;
<b>"Transport for Wales"</b>	means a company wholly owned by Welsh Ministers to deliver transport projects in Wales;
<b>"Transport Infrastructure Skills Strategy"</b>	means the document of that name launched by the Department for Transport on 28 January 2016 (as located at the date of this Contract at: <a href="https://www.gov.uk/government/publications/transport-infrastructure-skills-strategy-building-sustainable-skills">https://www.gov.uk/government/publications/transport-infrastructure-skills-strategy-building-sustainable-skills</a> );
<b>"Transport Scotland"</b>	means the national transport agency of Scotland created on 1 January 2006 which is an Executive Agency of the Scottish Government and accountable to Scottish Ministers;
<b>"Travelcard Agreement"</b>	means the agreement of that name referred to in paragraph 4.1(d) of Appendix 1 ( <i>List of Transport, Travel and Other Schemes</i> ) to Schedule 2.5 ( <i>Transport, Travel and Other Schemes</i> );
<b>"Traveline"</b>	means the website available at: <a href="http://www.traveline.info">http://www.traveline.info</a> (or such other applicable address that is adopted from time to time) which is provided by the partnership of transport companies, local authorities and passenger groups which have come together to bring the information on routes and timers for door to door travel by bus, rail, tube, tram, coach and ferry around Great Britain;
<b>"TRH Score"</b>	has the meaning given to it in paragraph 6.7(e) of Schedule 1.7 ( <i>Stations</i> );
<b>"Trustee"</b>	has the meaning given to it in paragraph 4.1 of Schedule 16.1 (Railways Pension Scheme);
<b>"TSI"</b>	means any Technical Standard for Interoperability with which the Operator is required to comply pursuant to Directives EU 96/48 and EU 2001/16 and related legislation;

<b>“TT Action Plan”</b>	has the meaning given to it in paragraph 2.2(a)(i) of Schedule 5.12 ( <i>Marketing and Revenue Growth</i> );
<b>“TT Deemed”</b>	has the meaning given to it in paragraph 2.1 ( <i>Ticketless Travel Survey Periods Calculations</i> ) of Schedule 5.12 ( <i>Marketing and Revenue Growth</i> );
<b>“Turnaround Time”</b>	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;
<b>“Turnover”</b>	means, in relation to any period, the aggregate revenue (excluding any applicable Value Added Tax) accruing to the Operator from the sale of Fares, other revenue and the receipt of Contract Payments during such period;
<b>“T&amp;WPTE”</b>	means Transport for Tyne & Wear, whose principal place of business is at Nexus House, 33 St. James’ Boulevard, Newcastle Upon Tyne, NE1 4AX;
<b>“T&amp;WPTE Fare”</b>	means a fare for a flow in either direction between the following stations: <ul style="list-style-type: none"> <li>(a) Newcastle - Sunderland;</li> <li>(b) Newcastle - Heworth; or</li> <li>(c) Heworth - Sunderland;</li> </ul>
<b>“T&amp;WPTE Season Ticket Fare”</b>	means a T&WPTE 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 zones for which, such T&WPTE Fare is valid;
<b>“T&amp;W Fares Side Agreement”</b>	means the side agreement, relating to certain Fares, and currently between T&WPTE and the Operator in the agreed terms marked <b>“T&amp;WFSA”</b> ;
<b>“UK GDPR”</b>	means the United Kingdom General Data Protection Regulation, as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018;
<b>“Undisputed Cancellation”</b>	means a Cancellation that is not a Disputed Cancellation;
<b>“Undisputed Network Rail Cancellation”</b>	means a Network Rail Cancellation that is not a Disputed Cancellation;
<b>“Undisputed Network Rail Partial Cancellation”</b>	means a Network Rail Partial Cancellation that is not a Disputed Partial Cancellation;
<b>“Undisputed Partial Cancellation”</b>	means a Partial Cancellation that is not a Disputed Partial Cancellation;
<b>“Unrepresented Employees”</b>	has the meaning given to it in paragraph 1.6 of Schedule 1.3 (Rail Workforce);

<b>“Value”</b>	means at any time the aggregate of the Projected Revenue of each Fare in a Fares Basket at that time;
<b>“Value Added Tax”</b>	means value added tax as provided for in the Value Added Tax Act 1994;
<b>“VCSE”</b>	means Voluntary, Community and Social Enterprise, a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives. VCSEs include small local community and voluntary groups, registered charities, foundations, trusts and the growing number of social enterprises and co-operatives;
<b>“Wavelength Programme”</b>	has the meaning given in paragraph 13.1 of Schedule 7.2 (Customer Experience and Engagement);
<b>“Wavelength Survey”</b>	has the meaning given paragraph 13.1 of Schedule 7.2 (Customer Experience and Engagement);
<b>“Weekday”</b>	means any day other than a Saturday, a Sunday or a Bank Holiday;
<b>“Weekly Season Ticket”</b>	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 (7) days after such day;
<b>“Welsh Ministers”</b>	has the meaning ascribed to it in section 45(1)(b) of the Government of Wales Act 2006 and shall include any other body replacing them from time to time;
<b>“Williams Rail Review”</b>	means the root and branch review of Britain’s railway, independently chaired by Keith Williams;
<b>“Williams-Shapps Plan for Rail”</b>	means the government's plan to transform the railways in Great Britain published on 20 May 2021;
<b>“Wirral Line Station”</b>	means any station on the lines from: <ul style="list-style-type: none"> <li>(a) Chester to Liverpool Central;</li> <li>(b) Ellesmere Port to Liverpool Central;</li> <li>(c) Liverpool Moorfields to Chester;</li> <li>(d) Liverpool Moorfields to Ellesmere Port;</li> <li>(e) Liverpool Moorfields to New Brighton;</li> <li>(f) Liverpool Moorfields to West Kirby;</li> <li>(g) New Brighton to Liverpool Central; and</li> <li>(h) West Kirby to Liverpool Central;</li> </ul>
<b>“Withdrawal of Approval Date”</b>	has the meaning given to it in paragraph 5.1 of Schedule 11.3 ( <i>Approval Process</i> );

- “Workers”** has the meaning given to it in paragraph 10 of Schedule 1.3 (*Rail Workforce*);
- “Workforce Diversity Data”** means data on the diversity of the Operator’s workforce including statistics showing:
- (a) the gender, race, disability, sexual orientation and working pattern breakdown for specified jobs, categories and levels;
  - (b) religion and gender reassignment across the whole workforce;
  - (c) the promotion of the Operator’s workforce that fall into the following groups: marriage and civil partnership; pregnancy and maternity; social mobility; and parental leave and caring responsibilities; and
  - (d) such other data as the Secretary of State may notify the Operator in accordance with paragraph 1.6(b)(ii) of Schedule 1.8 (*Diversity and Inclusion and Training and Development*);
- “Yield Management Data”** means data collected by or on behalf of the Operator 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.

4. **START DATE**

The Operator shall commence provision of the Rail Services on the Start Date.

5. **TERM AND TERMINATION**

5.1 This Contract shall commence on the Start Date and terminate on the Expiry Date.



## 5.2 Additional Reporting Periods

If the Secretary of State gives notice to the Operator, by no later than 23:59 on 31 December 2024, the Contract shall continue after such date on the terms set out in the Contract for not less than one (1) and not more than twenty (26) Reporting Periods following the date set out in limb (a) of the definition of Expiry Date, as the Secretary of State may stipulate.

## 6. GENERAL OBLIGATIONS

6.1 DOHL undertakes to secure that the Operator provides the Rail Services subject to and in accordance with the terms and conditions of this Contract and otherwise complies with its obligations, duties and undertakings under this Contract (as amended from time to time in accordance with this Contract or by agreement between the Operator and the Secretary of State).

6.2 The Operator shall perform its obligations under this Contract 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.

6.3 Any obligation on the part of the Operator 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.

6.4 The Operator 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 Contract.

6.5 The Secretary of State shall act reasonably and in good faith in and about the performance of the Secretary of State's obligations and the exercise of Secretary of State's rights pursuant to this Contract.

## 7. NOT USED

## 8. PROCEDURE FOR REMEDYING A CONTRAVENTION OF THE SERVICE CONTRACT

8.1 The Operator shall notify the Secretary of State, so far as possible before it may occur and in any event as soon as practicable thereafter, of any contravention by the Operator of any provision of the Service Contract. This includes where the Operator 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.

8.2 The Operator 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 require for the purpose of determining the existence, likelihood, nature or scope of any contravention of the Service Contract.

8.3 If the Secretary of State is satisfied that the Operator is contravening or is likely to contravene any provision of the Service Contract the Secretary of State may serve written notice ("**Breach Notice**") upon the Operator setting out:

- (a) the provision of this Contract which the Secretary of State is satisfied that the Operator is contravening or is likely to contravene;
- (b) the act or omissions which, in the Secretary of State's opinion, constitute or would constitute contraventions of such provision; and
- (c) the date and time of any meeting that the Secretary of State may require the Operator to attend (which shall be at least five (5) Weekdays from the date the Breach Notice is served) to discuss the causes of the contravention and the measures to be implemented to: (i) remedy the contravention and/or (ii) prevent the occurrence of such contravention; and

the Secretary of State shall be entitled to request such information from the Operator as the Secretary of State reasonably requires for the purposes of the operation of this clause 8.3. The Operator shall provide the information within such time as the Secretary of State may reasonably specify for the purpose.

8.4 The Operator shall:

- (a) ensure that representatives of the Operator and representatives of DOHL (as may be specified by the Secretary of State) attend any meeting convened by the Secretary of State pursuant to clause 8.3(c) at the time and place stated in the Breach Notice (or at such other time and place as the Secretary of State and the Operator may agree); and
- (b) at any such meeting present such reports, plans and/or other information as the Secretary of State may specify pursuant to clause 8.3.

8.5 Following the issue of any Breach Notice or, if applicable following any meeting referred to in clause 8.3, the Secretary of State may issue a further notice (a "**Breach Remedial Notice**") setting out the steps which the Secretary of State reasonably requires the Operator to take in order to remedy or prevent the occurrence of any such contravention and the period within which the Secretary of State requires such steps to be taken.

8.6 The Operator shall comply with the terms of any Breach Remedial Notice except in circumstances where to do so would result in the Operator being in breach of any legal or statutory duty. In those circumstances, the Operator shall as soon as reasonably possible, give notice to the Secretary of State and DOHL with details of the breach which would arise and comply with any reasonable instructions issued by the Secretary of State in those circumstances.

8.7 The Secretary of State agrees that it is not Secretary of State's intention that DOHL or the Operator will in any circumstances be liable to the Secretary of State for any loss or damage caused by any breach of the Service Contract or tortious act or omission or breach of statutory duty by DOHL or the Operator in respect of the Rail Services to the extent permitted by Law. All and any such liability as would, but for this clause 8.7, arise is expressly excluded provided that nothing in this clause 8.7 shall restrict the ability of the Secretary of State to seek an order for specific performance of the Service Contract.

## 9. **COMPLIANCE WITH LAWS**

The Operator shall at all times perform the Rail Services and all its other obligations under this Contract in accordance with all applicable Laws.

## 10. **TRANSFER OF PROPERTY RIGHTS AND LIABILITIES ON EXPIRY**

10.1 The Operator agrees that on the termination of this Contract it will, at the request of the Secretary of State, enter into an agreement in substantially the same form as the document set out in Schedule 15 or in such other form as the Secretary of State may prescribe (the "**Transfer Agreement**") for the purposes of:

- (a) transferring to a Successor Operator all the property, rights and liabilities of the Operator; and
- (b) determining the amounts to be paid in respect of such property, rights and liabilities so transferred to a Successor Operator under the Transfer Agreement.

10.2 The Operator shall comply with its obligations under the Transfer Agreement.

10.3 The Secretary of State agrees, that if the Secretary of State requires the Operator to enter into the Transfer Agreement, the Secretary of State shall impose an obligation on the Successor Operator to enter into the Transfer Agreement and comply with its obligations thereunder.

## 11. DISPUTE RESOLUTION PROCEDURE

### 11.1 Disputes under this Contract

- (a) Wherever this Contract provides that the Secretary of State may reasonably determine any matter, the Operator may, unless this Contract 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.
- (b) Where either Party is entitled, pursuant to the terms of this Contract, to refer a dispute arising out of or in connection with this Contract 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.
- (c) Where, in the absence of an express provision in this Contract entitling it to do so, either Party wishes to refer a dispute arising out of or in connection with this Contract to arbitration pursuant to the Dispute Resolution Rules, the following process shall apply:
  - (i) 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;
  - (ii) the other Party shall respond within twenty (20) Weekdays 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;
  - (iii) 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;
  - (iv) in the event that the Parties do not agree to refer the dispute to arbitration then it shall be resolved or determined in accordance with clause 20 (Governing Law and Jurisdiction); and
  - (v) nothing in this clause 11.1 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;
- (d) 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 Secretary of the Access Disputes Committee from a panel of persons agreed from time to time for such purposes between the Secretary of State and the Operator 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).

## 11.2 Disputes under other agreements

- (a) The Operator 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 Operator's ability to comply with its obligations under this Contract or on the provision of the Rail 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.
- (b) Such notification shall be made both:
- (i) at the time of such submission (and such notification shall include reasonable details of the nature of the dispute); and
  - (ii) 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).
- (c) The Operator shall provide such further details of any dispute referred to in clause 11.1(d) (*Disputes under this Contract*) as the Secretary of State may reasonably request from time to time.

## 11.3 NOT USED

## 12. NOTICES

### 12.1 Notices

- (a) Any notice, notification or other communication under or in connection with this Contract shall be in writing and shall be delivered by hand, e-mail, through the Secretary of State's contract management system, 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

**Email:** franchise.notices@dft.gov.uk

**Attention:** The Market Lead – Northern Franchise

**Name:** DfT OLR Holding Limited

**Address:** Great Minster House, 33 Horseferry Road, London SW1P 4DR

**Email:** franchise.notices@dohl.co.uk

**Attention:** Company Secretary

**Name:** Northern Trains Limited

**Address:** 8th Floor, Albany House, 94-98 Petty France, London, England, SW1H 9EA

**Email:** company.secretary@northernrailway.co.uk

**Attention:** Company Secretary

## 12.2 Deemed Receipt

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; or
- (b) if sent by pre-paid first class post, from and to any place within the United Kingdom, three (3) Weekdays after posting unless otherwise proven; or
- (c) if sent by email, 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); or
- (d) if sent through the Secretary of State's contract management system, an "**actual date**" confirmation in the audit log from the Secretary of State's contract management system.

## 13. PAYMENTS FREE AND CLEAR

- 13.1 Save as otherwise expressly provided under this Contract or required by law, all sums payable under this Contract shall be paid in full and without any set-off or any deduction or withholding including on account of any counter-claim.

## 14. MISCELLANEOUS PROVISIONS

### 14.1 Waivers

- (a) Any Party may at any time waive any obligation of any other Party owed to it under this Contract and the obligations of the Parties hereunder shall be construed accordingly.
- (b) No waiver by any Party of any default by any other Party in the performance of such Party's obligations under this Contract 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 this Contract 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 this Contract shall prevent any further exercise of such right or remedy or the exercise of any other right or remedy.
- (c) A waiver of any right or remedy under this Contract or by law is only effective if given in writing by the Secretary of State.

### 14.2 Time Limits

Where in this Contract any obligation of a Party is required to be performed within a specified time limit (including an obligation to use all reasonable endeavours or reasonable endeavours to secure a particular result within such time limit): (i) 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; (ii) the Parties shall consult on the relevant Party's failure to perform the obligation within the specified time limit; and (iii) the relevant Party shall, as applicable, continue to use all reasonable

endeavours or reasonable endeavours to do or procure that the relevant thing is done as soon as reasonably practicable thereafter.

**14.3 Partial Invalidity**

If any provision in this Contract 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 this Contract but the legality, validity and enforceability of the remainder of this Contract shall not be affected.

**14.4 Further Assurance**

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 this Contract.

**14.5 Rights of Third Parties**

- (a) A person who is not a Party to this Contract shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Contract except to the extent set out in this clause 14.5.
- (b) Any Successor Operator or potential Successor Operator nominated by the Secretary of State and notified to the Operator for the purposes of this clause 14.5 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 clauses 14.5(c) and 14.5(d).
- (c) This Contract may be terminated, and any term may be amended or waived, in each case in accordance with the terms of this Contract, without the consent of any person nominated under clause 14.5(b).
- (d) The person nominated under clause 14.5(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 (1) year of the expiry of the Contract 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 Operator which may constitute a contravention of Schedule 15 (Obligations Associated with Termination) or has been afforded a reasonable opportunity to indicate to the Operator 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).

**14.6 NOT USED**

**14.7 NOT USED**

**14.8 Arm's Length Dealings**

The Operator shall ensure that every contract or other arrangement or transaction to which it may become a party in connection with this Contract with any person is on bona fide arm's length terms.

**14.9 Non-Discrimination**

- (a) The Operator shall not discriminate in:

- (i) seeking offers in relation to, or in awarding, a contract for the purchase or hire of goods, or the purchase of services; or
  - (ii) making offers in relation, or in awarding, a contract for the sale of goods or the sale of services,
- (b) in either case on the grounds:
- (i) of nationality, against a person who is a national of and established in a relevant state; or
  - (ii) that the goods to be supplied under the contract originate in a relevant state.
- (c) For the purposes of this clause, "**relevant state**" means:
- (i) any state which is a party to the EEA agreement entered into on 2 May 1992 (as updated from time to time) where such discrimination is prohibited under the Trade and Cooperation Agreement or under any free trade agreement (whenever entered into) between the United Kingdom and the EEA; and/or
  - (ii) any other state which is a party to a Free Trade Agreement where that Free Trade Agreement prohibits such discrimination.

14.10 **Statutory Director's Written Confirmation, Statement and/or Certificate**

It shall be a contravention of the Service Contract if any written confirmation, statement and/or certification from a statutory director of the Operator, in the reasonable opinion of the Secretary of State, in any material respect, is untrue, inaccurate and/or misleading.

15. **NOT USED**

16. **SUB CONTRACTING/ASSIGNMENT**

16.1 Neither DOHL nor the Operator may subcontract or delegate the provision of any of the Rail Services which are to be provided under this Contract without the prior written consent of the Secretary of State.

16.2 DOHL and the Operator shall not without the prior written consent of the Secretary of State assign, or grant a Security Interest in or over, this Contract or any part thereof or any benefit or interest or rights therein or thereunder

17. **VARIATIONS IN WRITING**

17.1 The terms of this Contract may be varied:

- (a) by the Secretary of State in relation to any aspects of the Rail Services and any provision of this Contract by notice in writing referring to this Clause 17.1 and setting out the variation to the terms of this Contract; and
- (b) otherwise by agreement in writing between the parties and signed by duly authorised representatives of the parties.

17.2 The consent or approval of DOHL shall not be required for any variation or amendment of the rights or obligations of the Secretary of State and the Operator under this Contract.

18. **SUBSIDY CONTROL, STATE AID AND PROCUREMENT REGULATIONS**

18.1 The Operator shall maintain and comply with a procurement policy that is consistent with all requirements (including all publication or notification requirements that apply from time to time) of the Utilities Contracts Regulations 2016 ("**Procurement Policy**"). In addition,

the Procurement Policy shall require the Operator to act in accordance with Commercial Considerations when conducting procurements which are not subject to the Utilities Contracts Regulations 2016. The Operator shall make its Procurement Policy publicly available at all times and shall publish and maintain an up-to-date copy on its website. The Operator shall act in accordance with such Procurement Policy in relation to all processes to procure goods and services that are commenced during the Contract Term.

- 18.2 The Operator acknowledges and agrees that the National Rail Contract must not result in any financial advantage being granted to the Operator that is incompatible with any of the following (together, the "**Subsidies Rules**"): Chapter 3: Subsidy control of Title XI of Part Two of the Trade and Cooperation Agreement; EU rules on State aid and, in particular, Articles 107 and 108 of the Treaty on the Functioning of the European Union insofar as those rules are applicable pursuant to the Northern Ireland Protocol; any other rules on subsidy control contained in any legislation enacted in the United Kingdom, or contained in any Free Trade Agreement, that apply to the Contract from time to time. In that regard, it is noted in particular that Schedule 8 defines the parameters on the basis of which the compensation payment for discharging the public service obligations is to be calculated. In accordance with Articles 4(1) and 6(1) of Regulation 1370, these parameters have been determined in such a way that no compensation payment may exceed the amount required to cover the net financial effect on costs incurred and revenues generated in discharging the public service obligations, taking account of revenue relating thereto kept by the Operator and a reasonable profit. At the end of the term of the Contract, the Secretary of State will carry out an ex-post check to ensure that there has been no overcompensation for the discharge of the public service obligations over the duration of the National Rail Contract in violation of Regulation 1370, or any other financial advantage that is identified as having been granted as a result of the Contract in violation of the Subsidies Rules. The Secretary of State will recover, in accordance (where applicable) with any mechanism that exists from time to time to enforce the Subsidies Rules and/or Regulation 1370, any overcompensation of the Operator over the duration of the Contract in violation of Regulation 1370 or any other financial advantage that is identified as having been granted as a result of the Contract in violation of the Subsidies Rules, and the Operator agrees to repay such monies promptly.
- 18.3 Subject to paragraph 18.4, the Operator shall act in accordance with Commercial Considerations when selling goods or services.
- 18.4 Where the Operator is selling tickets for, or any other right to, travel on Passenger Services, the provisions of paragraph 18.3 do not apply.

## 19. **ENTIRE AGREEMENT**

The Service Contract contains the entire agreement between the Parties in relation to the subject matter of the Service Contract and supersedes all prior agreements and arrangements between the Parties.

## 20. **GOVERNING LAW AND JURISDICTION**

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



**IN WITNESS** whereof the Parties hereto have executed this Contract the day and year first before written:

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

**SEAL REF No.**

)  
)  
)  
)

**Authenticated by authority of  
the Secretary of State for  
Transport**

SIGNED FOR AND ON BEHALF OF  
**DFT OLR HOLDINGS LIMITED**  
ACTING BY ONE DIRECTOR IN THE PRESENCE  
OF A WITNESS

)  
)  
)  
)

**Director**

**Witness signature**

**Witness name**

**Witness address**

**Witness occupation**

SIGNED FOR AND ON BEHALF OF  
**NORTHERN TRAINS LIMITED**  
ACTING BY ONE DIRECTOR IN THE PRESENCE  
OF A WITNESS

)  
)  
)  
)

**Director**

**Witness signature**

**Witness name**

**Witness address**

**Witness occupation**

## **SCHEDULE 1**

### **PASSENGER SERVICE OBLIGATIONS**

Schedule 1.1	Service Development
Schedule 1.2:	Operating Obligations
Schedule 1.3:	Rail Work Force
Schedule 1.4:	Passenger Facing Obligations
Schedule 1.5:	Information about Passengers
Schedule 1.6:	The Rolling Stock
	Appendix 1: The Composition of the Train Fleet
Schedule 1.7:	Stations
	Appendix 1: List of Stations and Car Parks with accreditations
	Appendix 2: Information about Station Improvement Measures
	Appendix 3: NOT USED
	Appendix 4: NOT USED
Schedule 1.8	Diversity and Inclusion and Training and Development

**Schedule 1.1****Service Development****1. Train Service Requirement**

1.1 The Train Service Requirement is the specification of the Passenger Services to be provided by the Operator during the Contract Term. The TSR in the agreed form as initialled by the Parties on the Amendment and Restatement Date shall be superseded by a TSR to be issued by the Secretary of State to the Operator by no later than the date that is four (4) months from the Amendment and Restatement Date.

1.2 The Train Service Requirement shall remain in force unless and until amended or replaced pursuant to this Schedule 1.1.

**2. Train Formation Capacity Plan**

2.1 Subject to paragraph 2.2, for the purposes of this Contract, the "**Train Formation Capacity Plan**" shall be the plan (including sub-plans) prepared by the Operator for the operation of trains and train formations under the Timetable that best matches available capacity to Forecast Passenger Demand as amended from time to time during the Contract Period in accordance with this Contract.

2.2 For the purposes of Schedule 7.1 (*Operational Performance*) references to "**Train Formation Capacity Plan**" shall be construed as the latest version of the Train Formation Capacity Plan which includes any amendments thereto pursuant to paragraphs 3 (*Timetable changes proposed by Network Rail*), 4 (*Timetable changes proposed by the Operator*) and/or 5 (*Timetable changes and Train Formation Capacity Plan changes requested by the Secretary of State*) of Schedule 1.2 (*Operating Obligations*):

(a) where such amendments are required as a consequence of Network Rail exercising its rights pursuant to the Track Access Agreement;

(b) where such amendments proposed by the Operator have prior Approval from the Secretary of State; or

(c) where such amendments are requested by the Secretary of State.

2.3 The Operator shall submit to the Secretary of State a Train Formation Capacity Plan in respect of each Timetable in accordance with this Contract.

2.4 In preparing any Train Formation Capacity Plan, the Operator shall do so by reference to the Timetable that it envisages operating in order to comply with the Train Service Requirement and paragraph 6 of this Schedule 1.1.

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

(a) its start point and departure time;

(b) its terminating point and arrival time;

(c) the number and class of rolling stock vehicles allocated to each such railway passenger service;

(d) the Passenger Carrying Capacity that each such railway passenger service, as formed, is to have; and

(e) its Forecast Passenger Demand and, where this has been requested by the Secretary of State and is capable of calculation, Actual Passenger Demand.

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

2.7 From the Start Date until the next Passenger Change Date, the Operator shall adopt as the Train Formation Capacity Plan the document in the agreed terms marked **TFCP**. It is acknowledged that the Train Formation Capacity Plan in the agreed terms marked **TFCP** shall be replaced from time to time during the Contract Period in accordance with the provisions of paragraph 6.4.

### 3. Consultation on Alterations to the Timetable

3.1 If the Secretary of State is of the opinion that the proposed alterations to the Timetable represent a material alteration, the Secretary of State will require the Operator to undertake a consultation exercise, the scope of which must be agreed in advance with the Secretary of State.

### 4. Timetable Development Rights

4.1 The Operator shall use all reasonable endeavours to amend and/or enter into such Access Agreements as may be necessary or desirable from time to time to obtain the timetable development rights that it requires to secure a Timetable that enables it to operate railway passenger services that comply with the Train Service Requirement or such service amendments as may be agreed by the Secretary of State and Network Rail, pursuant to paragraph 8 and otherwise comply with its obligations under the Service Contract (including under paragraph 6 of this Schedule 1.1).

4.2 Subject to the remaining provisions of this paragraph 4, the Operator shall exercise its Timetable Development Rights so as to secure a Timetable that enables it to operate railway passenger services that comply with the Train Service Requirement and paragraph 6 of this Schedule 1.1 in accordance with its obligations under paragraph 9 of this Schedule 1.1.

4.3 The Operator shall work with Network Rail, for the purposes of securing a Timetable that complies with the Train Service Requirement. In so doing the Operator may, in such a manner as can be reasonably considered appropriate in the circumstances, exercise its rights under the Track Access Agreement (including the Network Code) to object, to make representations and to withhold consent in respect of any actual or proposed act or omission by Network Rail in relation to such agreement in respect of its Timetable Development Rights, and shall inform the Secretary of State of the circumstances providing any supporting evidence from Network Rail.

4.4 If the Secretary of State does not consider that the Operator has taken sufficient steps under paragraph 4.3, the Secretary of State may require the Operator to exercise its rights in such manner as the Secretary of State considers appropriate in the circumstances, including:

(a) disputing any actual or proposed act or omission by Network Rail in respect of any Timetable Development Rights; and

(b) submitting such dispute to any relevant dispute resolution arrangements or procedures and appealing against any award or determination under such arrangements or procedures, including to the ORR.

4.5 Subject to the Operator complying with its obligations under paragraph 4.3 above, it shall not be liable for any failure to secure a Timetable that enables the Operator to operate railway passenger services that comply with the Train Service Requirement and paragraph 6 of this Schedule 1.1, to the extent that such failure is caused by:

(a) the Operator's Timetable Development Rights being inadequate to enable it to secure the requisite Train Slots, provided that the Operator has exercised all reasonable endeavours to obtain the requisite Timetable Development Rights in accordance with paragraph 4.1 above;

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

#### 4.6 TDR Amendments

- (a) If and to the extent that the Operator is not able to secure a Timetable that enables it to operate railway passenger services that comply with the Train Service Requirement as a result of it not being able to obtain the Timetable Development Rights that it requires for that purpose, the Secretary of State shall (subject to paragraphs 4.6(b) and 4.6(c) below) issue to the Operator amendments to the Train Service Requirement ("**TDR Amendment**"). The amendments to the Train Service Requirement contained in the TDR Amendment shall be those that the Secretary of State considers necessary for the purposes of enabling the Operator to secure a Timetable that is compliant with the Train Service Requirement by exercise of the Timetable Development Rights that the Operator does have.
- (b) The Secretary of State shall have a discretion as to whether or not to issue a TDR Amendment in circumstances where the Operator:
  - (i) has failed to exercise all reasonable endeavours to obtain the requisite Timetable Development Rights in accordance with paragraph 4.1; and
  - (ii) is not relieved by paragraph 4.5 above from liability for such failure to secure a Timetable that enables the Operator to operate railway passenger services that comply with the Train Service Requirement.
- (c) The Operator shall not be relieved from its obligations to obtain a Timetable that enables the Operator to operate the Train Service Requirement by the issue of any TDR Amendment where the Secretary of State considers that such failure to secure a Timetable that enables the Operator to operate the Train Service Requirement is partly due to the default of the Operator in not properly complying with its obligations under this Contract in relation to securing timetable development rights. Accordingly any TDR Amendment may be drafted so that it does not relieve the Operator of the obligation to comply with the Train Service Requirement to the extent that the Secretary of State determines that the failure is due to such default of the Operator and the Operator may therefore be in contravention of this Contract.

4.7 Following issue of any TDR Amendment pursuant to paragraph 4.6 the Operator shall, unless otherwise agreed by the Secretary of State, continue to use all reasonable endeavours to amend and/or enter into such Access Agreements as may be necessary or desirable from time to time to obtain the timetable development rights that it requires to secure a Timetable that enables it to operate railway passenger services that comply with the Train Service Requirement without such TDR Amendment.

4.8 Any TDR Amendment issued pursuant to paragraph 4.6 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 Operator has obtained the Timetable Development Rights to secure a Timetable that enables it to operate railway passenger services that comply with the Train Service Requirement without any such TDR Amendment; and
- (b) **NOT USED.**

4.9 With effect from the date on which any TDR Amendment ceases to have effect in accordance with paragraph 4.8:

(a) the Train Service Requirement without such TDR Amendment shall thereafter apply; and

(b) **NOT USED.**

5. **Certification and Notification by Operator of Exercising Timetable Development Rights**

5.1 Before exercising any Timetable Development Right to bid for Train Slots, the Operator shall provide a certificate addressed to the Secretary of State and signed by a statutory director of the Operator confirming that its proposed exercise of that Timetable Development Right will be compliant with its obligation specified in paragraph 4.2.

5.2 The Operator shall also provide a statement of the agreed approach with, and response from, the "*Industry Timetable Change Assurance Programme Management Office*" (or any similar independently minded timetable improvement and assurance cooperative function, as may be identified by the Secretary of State).

5.3 If requested by the Secretary of State, the Operator agrees to demonstrate to the satisfaction of the Secretary of State that the Operator's certificate referred to in paragraph 5.1 is a true and accurate confirmation of compliance with its obligation specified in paragraph 4.2.

5.4 The Operator shall:

(a) keep the Secretary of State fully informed of any discussions with Network Rail in relation to the matters referred to in this Schedule 1.1 which may, in the reasonable opinion of the Operator, have a material impact on the ability of the Operator to deliver the Train Service Requirement or meet the requirements of paragraph 6 of this Schedule 1.1 through the Timetable and shall, if required to do so by the Secretary of State, supply copies of any related correspondence to the Secretary of State; and

(b) update any notification under this paragraph 5.4 and/or certification under paragraph 5.1 as soon as practicable, if at any time it elects or is required to modify any aspect of its exercise of its Timetable Development Rights following Network Rail's proposed or actual rejection or modification of its bid or any part of it or for any other reason.

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

6.1 **Capacity and Timetable Planning**

(a) The Operator shall use all reasonable endeavours to provide for Passenger Carrying Capacity on each Passenger Service that meets as a minimum the Target Passenger Demand for that Passenger Service.

(b) The Operator shall use all reasonable endeavours to provide passengers with a reasonable expectation of a seat:

(i) on boarding any Off-Peak Passenger Service; and

(ii) twenty (20) minutes after boarding (or such other time period as the Secretary of State may stipulate) on any Peak Passenger Service.

## 6.2 Allocation of rolling stock where Operator unable to meet the capacity requirements

If at the time it prepares its Timetable and/or Train Formation Capacity Plan, having exercised all reasonable endeavours, the Operator is unable to prepare a Timetable and/or Train Formation Capacity Plan having the Passenger Carrying Capacity and/or meeting the reasonable expectations referred to in paragraphs 6.1(a) and 6.1(b), then the Timetable and/or the Train Formation Capacity Plan shall specify the best allocation of Passenger Services and rolling stock vehicles to Passenger Services that is practicable with a view to:

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

## 6.3 Preparation of Timetable and Train Formation Capacity Plan

- (a) Subject to paragraph 6.3(b), the Operator shall in preparing its Timetable and its Train Formation Capacity Plan take full and proper account of its calculation of Forecast Passenger Demand and use all reasonable endeavours to ensure that the Train Fleet is deployed in an optimal manner for the purposes of complying with its obligations under paragraphs 6.1 and 6.2 above.
- (b) The Operator shall in preparing its Timetable and Train Formation Capacity 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 at all such times where such deployment of the entire Train Fleet is reasonably required to meet the Operator's obligations pursuant to paragraphs 6.1 and 6.2 above.

## 6.4 Finalising the Train Formation Capacity Plan

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

## 7. **Restrictions Relating to Rail Services**

- 7.1 In preparing its Timetable, the Operator shall not without the prior written consent of the Secretary of State plan to operate Passenger Services other than those required to deliver the Train Service Requirement (including as amended by any TDR Amendment).
- 7.2 The Secretary of State may impose such conditions to the Secretary of State's consent as the Secretary of State considers appropriate for the purpose of securing the continuity of the provision of the Rail Services at the end of the Contract Term.

## 8. **Development of Proposals for Passenger Service Enhancements**

- 8.1 In delivering improvements to Passenger Services (which may include service decrements), the Operator shall co-operate with Network Rail, the Secretary of State and where appropriate, other operators to identify options (the "**Passenger Services Enhancement Options**").

- 8.2 The Passenger Services Enhancement Options shall:

- (a) respond to changes in travel patterns and increases and decreases in demand;
- (b) improve network performance;
- (c) propose/take advantage of changes to the existing infrastructure;
- (d) propose/take advantage of changes in rolling stock capability or reliability as a result of changes in the Train Fleet;
- (e) improve overall industry cost efficiency and/or reduce in costs in relation to any or all parts of the railway network;
- (f) promote decarbonisation and other environmental improvements (in addition to the Secretary of State's goals and ambitions on decarbonisation for rolling stock as set out in the rolling stock part of the Business Plan);
- (g) propose the reopening of disused, freight-only or new railway routes to passenger services; or
- (h) support any government policy objective,

including for this purpose any such options which arise after the expiry of the Contract Term.

- 8.3 Processes contained in this paragraph 8 shall take place in accordance with procedural arrangements and timescales stipulated by the Secretary of State pursuant to paragraph 9.2 of this Schedule 1.1.

- 8.4 The Secretary of State may, in accordance with any stipulation made under paragraph 9.2, issue to the Operator any amended or new Train Service Requirement that the Secretary of State requires the Operator to operate and notice of the amendments (if any) to the Enforcement Benchmarks. Such amended or new Train Service Requirement will be issued prior to the commencement of the timetable development process of Network Rail for the Timetable in respect of which it is proposed to implement the change to Passenger Services arising from the amended or new Train Service Requirement.

- 8.5 Where the Operator is required by the Secretary of State to produce a report pursuant to paragraph 8.6, the Operator shall undertake a feasibility study for the purposes of identifying options for delivering enhanced Passenger Services on Routes where such improvements can be delivered, including by:

- (a) implementing changes to the existing infrastructure;



- (b) improving rolling stock capability or reliability including through the modification of rolling stock or employing efficient maintenance arrangements; and/or
- (c) implementing changes in service patterns.

8.6 At the request of the Secretary of State, the Operator shall submit to the Secretary of State within the timescales specified in any such request (or such other timescales as may be agreed by the Secretary of State and the Operator) a report which sets out the outcomes of the feasibility study undertaken pursuant to paragraph 8.5.

## 9. **Procedural Arrangements and Timescales**

9.1 The Operator 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 Operator, Network Rail and others.

9.2 The Operator 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 Operator for these purposes (which shall be consistent with any relevant standard railway industry processes for the development of the Timetable and the resultant Train Formation Capacity Plan) and that the Secretary of State may amend any such stipulation from time to time.

9.3 The Secretary of State agrees to consult the Operator as far as practicable prior to stipulating or amending any such procedural arrangements and timescales in accordance with paragraph 9.2.

9.4 Any stipulation by the Secretary of State pursuant to paragraph 9.2:

- (a) shall be at the reasonable discretion of the Secretary of State;
- (b) may contain procedural arrangements and timescales to be followed by the Operator in relation to other changes to the Rail Services in conjunction with the Train Service Requirement; and
- (c) may provide for iterations of drafts of any amended or new Train Service Requirement, Train Formation Capacity Plan or Timetable.

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

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

10.1 Subject to the terms of the Licences and any applicable Law, the Operator 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 Operator; and
- (c) a reasonable pattern of railway passenger service is provided on the relevant route(s) to enable passengers to make Connections (particularly where low

frequency railway passenger services are operated, first trains or last trains are involved, taking account of seasonal fluctuations in passenger demand and the time needed to make any such Connection).

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

11.1 Where the Secretary of State considers it requisite for the purposes of better securing the delivery of railway passenger services under this Contract, or any other franchise agreement, or for the better achievement by the Secretary of State of any of the Secretary of State's duties, functions and powers in relation to railways, the Secretary of State may require the Operator:

- (a) to exercise or refrain from exercising any or all of its rights under any Access Agreement or any Property Lease, or any related rights under such other agreements as the Secretary of State may specify; and/or
- (b) subject to the consent of the counterparty thereto, to assign, novate or surrender its rights under any Access Agreement or Property Lease.

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

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

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

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

11.4 If and to the extent that:

- (a) the Secretary of State exercises the Secretary of State's rights pursuant to paragraph 11.1;
- (b) the Operator's compliance with the Secretary of State's requirements pursuant to paragraph 11.1 would lead to the unavoidable consequence of the Operator contravening any other terms of the Service Contract; and
- (c) the Operator duly complies with such requirements,

no such contravention of the Service Contract shall have occurred.

## 12. The Timetable and Network Rail's Working Timetable

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

12.2 The Operator shall ensure, for each period between two (2) consecutive Passenger Change Dates during the Contract Term that the Timetable for such period is, in its reasonable

opinion, not materially different from the relevant working timetable issued by Network Rail.

### 13. **Subcontracting any Passenger Services**

13.1 Subject to paragraph 13.2, the Operator may not subcontract or delegate the provision of the Passenger Services without the prior Approval of the Secretary of State.

13.2 The Operator 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 Operator 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 Operator continues to specify and control the terms and conditions (subject to the requirements of the Inter-Operator Schemes) on which such Passenger Services are to be provided, including the determination of the Price or Child Price (as the case may be) of any Fares;
- (d) the Planned Train Mileage of the Passenger Services so delegated or subcontracted does not exceed five per cent (5%) of the Planned Train Mileage of the Operator in any Reporting Period; and
- (e) the Operator continues to perform its obligations under this Schedule 1.1 in respect of any subcontracted or delegated services.

13.3 Any such subcontracting or delegation shall not relieve the Operator from any of its obligations under the Service Contract, including its obligations under this paragraph 13 and any other obligations under the Service Contract.

### 14. **Boxing Day Services**

14.1 At least six (6) months prior to the Passenger Change Date occurring in December 2023 the Operator shall:

- (a) consult with passengers, user groups, Network Rail, other train operators licensed under the Act and who operate along the affected Routes and other relevant Stakeholders on the potential demand for passenger services on 26 December in each Contract Year ("**Boxing Day Services**"); and
- (b) prepare and submit a report to the Secretary of State which sets out its proposals for operating Boxing Day Services which are additional to those Passenger Services to be operated by the Operator on 26 December in each Contract Year pursuant to the relevant Train Service Requirement (the "**Additional Boxing Day Services**"). Such report shall include:
  - (i) the Operator's view on whether or not the operation of the Additional Boxing Day Services will be commercially viable;
  - (ii) the anticipated impact on Actual Costs and/or Actual Revenue (if any) if the Secretary of State (at the Secretary of State's discretion) elects to vary the Train Service Requirement in accordance with paragraph 8.4 of this Schedule 1.1 to require the provision of the Additional Boxing Day Services.

- 14.2 Following the submission of the report required pursuant to paragraph 14.1(b) the Operator shall:
- (a) promptly respond to the Secretary of State's queries in relation to such report (including the provision of such assistance as the Secretary of State may require in connection with the verification of any information contained in such report); and
  - (b) upon reasonable notice, attend any such meeting as the Secretary of State may require for the purposes of discussing the contents of such report.
- 14.3 The Operator shall have due regard to the outcomes and findings of the consultation referred to in paragraph 14.1(b) in proposing on which Routes the Additional Boxing Day Services should operate if the Secretary of State (at the Secretary of State's discretion) elects to vary the Train Service Requirement to require the provision of the Additional Boxing Day Services.
15. **Passenger Numbers Information**
- 15.1 The Operator shall provide information to the Secretary of State on the extent of the use by passengers of the Passenger Services twice yearly or as otherwise requested by the Secretary of State. Without limitation to the generality of the foregoing, in particular and when so requested, the Operator shall provide information relating to:
- (a) the number of passengers travelling in each class of accommodation:
    - (i) on each Passenger Service;
    - (ii) on each Route; and/or
    - (iii) at any station or between any stations;
  - (b) the times of the day, week or year at which passengers travel; and
  - (c) the Actual Consist Data and the Scheduled Consist Data,
- (the information referred to in the whole of paragraph 15.1 being referred to together as "**Actual Passenger Demand**").
- 15.2 The Operator shall obtain and collate the information specified in paragraph 15.1 by using the technology specified in paragraph 17. The Operator 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 Contract Period. The Operator shall also ensure that, if such technology is not fitted to one hundred per cent (100%) of the Train Fleet, the individual rolling stock vehicles that have been fitted with such technology shall be rotated around the Routes as necessary to satisfy such request for data as is made by the Secretary of State pursuant to paragraph 15.1. The Secretary of State shall have the right to obtain such other information that the Operator has, ought properly to have or could reasonably obtain which may provide a more detailed or accurate view of the extent of use by passengers of the Passenger Services including information about ingress and egress of passengers at ticket gates at Stations.
- 15.3 The Operator shall provide to the Secretary of State all of the information generated by the technology specified in paragraph 17 and/or by using manual counts pursuant to paragraph 16 including the information specified in paragraph 15.1:
- (a) promptly following its collation and in any case within the following timescales:
    - (i) in the case of data collected automatically by the Count Equipment and capable of being transmitted directly and automatically to the RPC Database, within forty-eight (48) hours of its collation;

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

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

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

## 16. **Manual Passenger Counts**

- 16.1 The Secretary of State shall have the right to require the Operator to carry out manual counts in relation to some or all of the Passenger Services at such times as may be required and in such manner (including as to levels of accuracy and the number of days) as may be specified from time to time by the Secretary of State including if, exceptionally, the Operator is unable to comply with its obligations to provide data generated by the technology specified in paragraph 17.
- 16.2 The Secretary of State shall be entitled to audit such counts (whether by specimen checks at the time of such counts, verification of proper compliance with the manner approved by the Secretary of State or otherwise). In the event that such audit reveals, in the opinion of the Secretary of State, a material error, or a reasonable likelihood of material error, in such counts, the Secretary of State may require the counts to be repeated or the results adjusted as the Secretary of State considers appropriate.

## 17. **Technology for Obtaining the Information referred to in paragraph 15.2**

- 17.1 Not used.
- 17.2 The Count Equipment shall be fitted to:
- (a) in the case of any brand new rolling stock which is admitted to the Train Fleet, one hundred per cent (100%) of it from the date that such rolling stock is properly admitted; and
  - (b) in the case of all other rolling stock, by no later than eighteen (18) months from the Amendment and Restatement Date, to every vehicle comprised within no less than thirty-five per cent (35%) of such rolling stock units included in the Train Fleet from time to time in aggregate.

- 17.3 Without limiting the Secretary of State's rights under paragraph 15.1 of this Schedule 1.1, the Count Equipment shall be used to provide counts in respect of, in any period of not less than twelve (12) weeks, at least two (2) of each of the Timetabled Services, and each count shall be carried out on each rolling stock unit comprising a particular train. The Operator may only use a method of extrapolation and use extrapolated data to provide a reliable estimate of a full train's count with the Secretary of State's prior Approval of the use of extrapolated data and the method of extrapolation. The Operator shall comply with its obligation under this paragraph 17 from the date(s) such rolling stock is incorporated into the Train Fleet.
- 17.4 The Parties acknowledge that the information supplied under paragraph 15.1 above, and any product of it created by the RPC Database, may constitute Confidential Information to which Schedule 17 (*Confidentiality and Data Protection*) applies.

## Schedule 1.2

### Operating Obligations

#### 1. Daily Operating Obligations

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

#### 2. Timetabling and Train Planning Compliance Investigation and Contravention

2.1 The Secretary of State shall have the right, by serving notice on the Operator, to instigate an investigation of the Operator's compliance with its obligations of Schedule 1.1 (*Service Development*) regarding creation of the Timetable and Train Formation Capacity Plan, and paragraph 2 of this Schedule 1.2 (*Timetabling and Train Planning Compliance Investigation*).

2.2 Following the service of such a notice the Operator shall fully co-operate to facilitate such audit and provide such information as the Secretary of State may require for the purposes of determining if the Operator has complied with its obligations including evidence of:

- (a) the steps taken by the Operator regarding Access Agreements, and exercise of its rights under the Track Access Agreement;
- (b) the extent to which the Operator 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 Formation Capacity Plan for that Passenger Service;
- (c) the means of Forecast Passenger Demand calculation and assessment;
- (d) any assumptions about the timetables likely to be operated by other Train Operators made by the Operator; and
- (e) the alternative solutions considered by the Operator before finalising the Timetable and Train Formation Capacity Plan and the reasons why any such alternative solutions were not adopted.

2.3 The Secretary of State shall, upon conclusion of the Timetabling and Train Planning Compliance Investigation, provide a copy of the finalised report to the Operator.

2.4 The Secretary of State shall notify the Operator if the Secretary of State concludes the Operator is in contravention of the Service Contract and the Secretary of State may at the Secretary of State's discretion, and entirely without prejudice to the Secretary of State's other rights consequent upon the relevant contravention, serve a Breach Notice pursuant to clause 8 (Procedure for Remediating a Contravention of the Service Contract).

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

3.1 The Operator agrees, after being notified by Network Rail that Network Rail has decided or proposes to exercise its rights under the Track Access Agreement (including the Network Code) 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,

to maintain appropriate record (having regard to both duration and scale) in respect of any actual or proposed omission or rescheduling of Passenger Services by Network Rail.

3.2 To the extent that any such decision or proposal may, in the reasonable opinion of the Operator, materially (having regard to both duration and scale) prejudice the Operator's ability to deliver the Timetable with the Passenger Carrying Capacity stipulated in the Train Formation Capacity Plan the Operator shall (unless the Secretary of State specifically agrees otherwise), and in such a manner as can be reasonably considered appropriate in the circumstances, exercise its rights under the Track Access Agreement (including the Network Code) on a basis that seeks to limit the impact on the Operator whilst accommodating as far as possible the requirements of Network Rail.

3.3 The Operator agrees to supply to the Secretary of State from time to time, in the format required by the Secretary of State, such details of any actual or proposed omission or rescheduling of Passenger Services by Network Rail as the Secretary of State may require, including details of the steps which the Operator reasonably considered appropriate in the circumstances, to exercise its rights under the Track Access Agreement (including the Network Code) to reach agreement of the changes on a basis that seeks to limit the impact on the Operator whilst accommodating as far as possible the requirements of Network Rail.

3.4 The Operator shall explain in such submission the way in which, in its reasonable opinion, such omission or rescheduling may materially (having regard to both duration and scale) prejudice the Operator's ability to deliver the Timetable with the Passenger Carrying Capacity stipulated in the Train Formation Capacity Plan.

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

### 4. **Timetable changes proposed by the Operator**

4.1 The Operator agrees, (with the exception of paragraph 4.3 of this Schedule 1.2), not to implement any:

- (a) addition to the Plan of the Day of any railway passenger services which are not included in the Timetable;
- (b) omission from the Plan of the Day of any Passenger Services included in the Timetable; or
- (c) 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, and wherever possible, the prior agreement of Network Rail.

4.2 The Operator shall (with the exception of paragraph 4.3 of this Schedule 1.2) submit to the Secretary of State an amended Train Formation Capacity Plan in respect of each Timetable change proposal.



4.3 Notwithstanding the provisions of paragraph 7 (*Restrictions Relating to Rail Services*) of Schedule 1.1 (*Service Development*), the Operator shall use all reasonable endeavours to operate adequate railway passenger services to or from any special events which are not already provided for in the Plan of the Day to meet the passenger demand that is reasonably likely to arise from such special events and to ensure that the railway passenger services provided have an appropriate amount of passenger carrying capacity. The Operator shall in meeting its obligations pursuant to this paragraph 4.3:

- (a) if so requested by the Secretary of State, each quarter, submit to the Secretary of State their list of identified special events to which the Operator shall consider application of this paragraph 4.3 (the list is not exhaustive and does not obligate the Operator to amend the Plan of the Day);
- (b) consider amending the Plan of the Day through the omission, addition or rescheduling of Passenger Services;
- (c) consider submitting to the Secretary of State an amended Train Formation Capacity Plan in respect of each special event where to apply the current Train Formation Capacity Plan will have an avoidable detrimental effect to the Short Formations Figures; and
- (d) seek to optimise the effective delivery of the Passenger Services as a whole with the provision of appropriate capacity in the context of the additional demand consequent upon a relevant special event.

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

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

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

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

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

6.1 In the event of any planned or unplanned disruption to railway passenger services operated on the Routes, or on other parts of the network which are local to the Routes, the Operator 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 Operator's ability to deliver the Timetable or deliver the Timetable in accordance with the Train Formation Capacity Plan;
- (b) co-operate with Network Rail and other Train Operators to act in the overall interests of passengers using such railway passenger services, including using all reasonable endeavours to ensure that such disruption is not concentrated on a particular part of the network, except where such concentration either:

- (i) would be in the overall interests of passengers using such Passenger Services or railway passenger services and would not result in disproportionate inconvenience to any group of passengers; or
    - (ii) is reasonably necessary as a result of the cause or the location of the disruption; and
  - (c) use all reasonable endeavours to provide or secure the provision of alternative transport arrangements in accordance with paragraph 6.2.
- 6.2 The Operator shall use all reasonable endeavours to provide or secure the provision of alternative transport arrangements to enable passengers affected by any disruption referred to in paragraph 6.1 to complete their intended journeys in accordance with this paragraph 6.2. In particular, the Operator 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 fit for the purpose of the journey to be undertaken;
  - (b) transport passengers to, or as near as 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 Operator having sufficient notice of such disruption to enable it to provide such publicity;
  - (d) provide sufficient alternative transport capacity for the reasonably foreseeable demand for the disrupted Passenger Services; and
  - (e) ensure, if any planned disruption overruns, that there is a reasonable contingency arrangement for such alternative transport arrangements to continue for the duration of such overrun.

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

- 7.1 Any obligation in this Schedule 1.2 on the part of the Operator to use "**all reasonable endeavours**" shall (with the exception of paragraph 5 of this Schedule 1.2) include an obligation to:
- (a) ensure (so far as it is able to do so) the provision of the Passenger Services as set out in the Plan of the Day in accordance with the Train Formation Capacity Plan in ordinary operating conditions;
  - (b) take reasonable measures to avoid and/or reduce the impact of any disruption to the Rail Services having regard to all the circumstances, including the reasonably foreseeable risks arising from the matters referred to in paragraph 7.2; and
  - (c) actively engage Network Rail in its contractual relationship with the Operator (and provide appropriate management resources for this purpose) so as to secure the best performance reasonably obtainable by these means, having regard to all the circumstances, including the steps referred to in paragraph 8.

- 7.2 The matters to which the Operator is to have regard pursuant to paragraph 7.1(b) shall include:
- (a) variations in weather and operating conditions (including Network Rail's infrastructure not being available for any reason), which may in either case include seasonal variations;
  - (b) default by, or restrictions imposed by, suppliers to the Operator;
  - (c) shortages of appropriately skilled or qualified Business Employees;
  - (d) disputes with Business Employees;
  - (e) the availability of the Train Fleet, having regard to maintenance requirements and any Mandatory Modifications;
  - (f) establishing reasonable Turnaround Time allowances for enabling or disabling (as appropriate) any part of a train, the rostering of any train crew and the servicing or cleaning of any rolling stock vehicles;
  - (g) failures of rolling stock vehicles in service and contingency arrangements (including Hot Standbys and rescue traction); and
  - (h) the impact, and emerging projections relating to the likely or potential impact, from time to time, of COVID-19 on the Operator's ability to provide the Passenger Services and/or the level of passenger demand or reasonably expected passenger demand for the Passenger Services.
- 7.3 For the purpose of taking measures in respect of any disruption to the Rail Services in accordance with paragraph 7.1(b) and assessing the extent of any risk referred to in paragraph 7.1(b) and any such risk's reasonable foreseeability, regard shall be had both:
- (a) to the historical levels of incidence of disruption in the operation of:
    - (i) the Rail Services;
    - (ii) similar services both by the Operator and/or its predecessors; and
    - (iii) other services of a type similar to the Rail Services; and
  - (b) to potential changes in circumstances which may affect those levels.
- 7.4 To the extent not already provided for in the Service Contract, the Operator shall use all reasonable endeavours to ensure the performance by Network Rail of its obligations under any relevant agreement including, where appropriate or where requested by the Secretary of State, enforcing its rights against Network Rail under any such agreement.
- 7.5 When and to the extent requested by the Secretary of State, the Operator shall provide to the Secretary of State evidence of the steps taken by the Operator in order to comply with its obligations under this paragraph 7.
8. **Obligations relating to operating performance management**
- 8.1 The Operator shall actively manage operating performance, in doing so shall consult, co-ordinate and co-operate with Network Rail (or as may be required by the Secretary of State) from time to time in respect of devising a structured framework for continuous improvement in operating performance.

8.2 The steps to which paragraph 8.1 refers include:

- (a) co-operating with Network Rail in the development, agreement and implementation of:
  - (i) a five (5) year (rolling) Performance Strategy Plan;
  - (ii) effective recovery plans in response to failures to achieve the performance levels specified in any Performance Strategy Plan;
  - (iii) analysis of "Reactionary Delay" (as defined by the Delay Attribution Principles and Rules) and below/sub threshold delay, to develop and deliver performance improvement plans to address areas of underperformance, focusing on improving Timetable robustness and contingency planning; and
  - (iv) review and identification of opportunities to improve the delay attribution process set out in the Delay Attribution Principles and Rules;
- (b) co-operating with Network Rail in adopting the principles set out in any industry good practice regarding:
  - (i) Service Recovery Plans agreed between Network Rail and the Operator from time to time, including appropriate diversionary route availability;
  - (ii) jointly developed train regulation policies; and
  - (iii) approaches to improving performance systems, including, if requested by the Secretary of State, the deployment of the RM3P and the Performance Improvement Management System;
- (c) undertaking recording, monitoring and regular reviews of:
  - (i) the most common and most detrimental causes of delay to the Passenger Services; and
  - (ii) the causes of the ten (10) delays to the Passenger Services with the longest duration (to the extent not already reviewed in accordance with paragraph 8.2(c)(i)),  
  
which have occurred during a defined review period (e.g. weekly/four (4) weekly/quarterly) and which have been caused by the Operator, any other Train Operator, any other train operator licensed under the Act or Network Rail;
- (d) undertaking with Network Rail a review of the time taken to recover the Passenger Services following the occurrence of any of the events specified in paragraphs 8.2(c)(i) and 8.2(c)(ii) and seeking to identify and implement actions that reduce the delay effect of such events;
- (e) setting up and holding regular and effective performance review meetings with Network Rail, evidenced by meeting minutes and the closure of actions agreed between the Parties;
- (f) regularly monitoring (at least every Reporting Period) the delivery of local output commitments made by Network Rail in the Performance Strategy Plan and derived delivery plans and using all reasonable endeavours to specify and develop such delivery plans;
- (g) co-operating with Network Rail in other delay management initiatives and ongoing quarterly reviews of the Performance Strategy Plan;

- (h) regularly reviewing (at least every Reporting Period) the imposition and clearance of temporary speed restrictions;
- (i) regularly reviewing (at least every Reporting Period) the timely and efficient handover and hand-back of possessions; and
- (j) where appropriate and where Network Rail fails to perform its obligations under the Track Access Agreement, enforcing the Operator's rights under the Track Access Agreement.

8.3 The Operator undertakes to reasonably co-operate with Network Rail with regard to Network Rail's management of the network, including in relation to:

- (a) Contingency Plans, as defined in paragraph 1(a)(iv) of Schedule 10.3 (*Force Majeure and Business Continuity*);
- (b) weather resilience and seasonal preparedness;
- (c) prevention of trespass and vandalism;
- (d) effects of climate change on the railway; and
- (e) improvements in railway control structure and functions.

## 9. **Improving accuracy of future Timetables and operational planning**

9.1 The Operator shall consult, co-ordinate and co-operate with Network Rail and any relevant Train Operators in respect of the planning, development and implementation of proposals to support the continuous improvement of train timetabling and train planning functions, including:

- (a) collaborative working between the Operator's and Network Rail or other Train Operators' train planning teams;
- (b) establishment of up to date Timetable Planning Rules;
- (c) robust and resilient traincrew flexibility, including for diversionary routes;
- (d) disclosure to, and enabling assurance activity by the "*Industry Timetable Change Assurance Programme Management Office*", including participation in related steering groups, or any similar independently minded timetable improvement and assurance cooperative function, as may be identified by the Secretary of State.

9.2 The Operator shall, provide Network Rail with such information as it may reasonably request in respect of paragraph 9.1, including:

- (a) relevant data required to support timetable simulation and performance modelling; and
- (b) the Operator's assessment of operational resource required to operate the Passenger Services and ancillary train movements, as calculated in accordance with industry standards in each case.

## 10. **Royal Train**

10.1 The Operator shall, if and to the extent requested by any person (including DB Cargo UK Limited, its successors and assigns) and subject to the payment by such person of any reasonable costs of the Operator, co-operate in the provision by such person of railway passenger services for Her Majesty Queen Elizabeth II or any successor head of state or members of the royal family or representatives of either of them.

10.2 The provision of railway services for Her Majesty Queen Elizabeth II or any successor head of state or members of the royal family or representatives of either of them may include:

- (a) running a **"sweeper"** train in front of the royal train;
- (b) having spare locomotives or other rolling stock on standby as rescue traction; and/or
- (c) carrying out security requirements or co-operating with other persons in ensuring that security requirements are carried out prior to calling at any station on the Routes.

## 11. Ancillary Services

11.1 Subject to obtaining the Secretary of State's prior Approval, the Operator, to the extent required in order to best serve the needs of passengers on railway passenger services within Great Britain from time to time, shall use all reasonable endeavours to carry out the following Ancillary Services:

- (a) in any Reporting Period, the subleasing, hiring or licensing of the rolling stock vehicles used in the provision of the Passenger Services;
- (b) the lending, seconding, hiring or contracting out during any Reporting Period to another person or persons (whether for a charge or not) of Business Employees;
- (c) any heavy maintenance of rolling stock vehicles which does not fall within the Light Maintenance Services, carried out on behalf of any other person at the following Depot(s):
  - (i) Neville Hill (Leeds); and
  - (ii) Heaton (Newcastle).

11.2 The Operator:

- (a) may; and
- (b) to the extent required in order to best serve the needs of passengers on railway passenger services within Great Britain from time to time, shall use all reasonable endeavours to,

carry out the following Ancillary Services on an emergency basis; the subleasing, hiring, licensing, lending, selling of any rolling stock vehicles or other assets of the Operator or the lending, hiring or contracting out of any employees of the Operator or the provision of any other services to Network Rail or any other Train Operator.

11.3 The Operator shall not during the Contract 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 Operator'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.

12. **Restrictions On Closures Of Railway Passenger Services Or Railway Facilities**

12.1 Except to the extent that the Secretary of State agrees otherwise, the Operator 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.

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

### Schedule 1.3

#### Rail Work Force

#### 1. Notification of the Secretary of State

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

and where practicable in each case in good time to allow for proper engagement with the Secretary of State, inform the Secretary of State of all relevant information relating to any such matters and any other information the Secretary of State may request from time to time in relation to such matters. Where there is any doubt as to whether a matter requires notification in accordance with this paragraph 1.1, the Operator shall, and shall procure that each other Relevant Employer shall, make a notification in any event. In determining whether to make a notification and/or what information must be provided to the Secretary of State by the Operator, the Operator shall have regard to its obligations under paragraph 7.1 (Duties of the Operator) of this Schedule 1.3.

- 1.2 Following notification to the Secretary of State pursuant to paragraph 1.1 above, the Operator shall, and shall procure that each Relevant Employer shall, prior to any further communication with any Trade Union or other employee representative body in relation to the applicable In-Scope Matter, consult with the Secretary of State with a view to reaching agreement with the Secretary of State on a Mandate.

#### 1.3 NOT USED

- 1.4 Once a Mandate has been agreed, the Operator shall and shall procure that each Relevant Employer shall:
- (a) act in accordance with the Mandate; and
  - (b) act in accordance with paragraph 2 (Reward and People Principles) below,
- in relation to the In-Scope Matter to which that Mandate relates.

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

- 1.6 Where any Business Employees are not subject to collective representation (whether by a Trade Union or any other employee representative body):
- (a) any issue which would require notification in paragraphs 1.1(a) and 1.1 (b) in relation to an In-Scope Matter shall require notification if the issue arises in respect of any group of more than one such unrepresented Business Employees ("**Unrepresented Employees**"); and
  - (b) when paragraph 1.6(a) applies, once a Mandate is required, the provisions of this Schedule 1.3 shall apply in full in respect of the relevant Unrepresented Employees.



## 2. **Reward and People Principles**

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

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

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

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

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

2.2 Nothing in this Schedule 1.3 shall prevent the Operator or Relevant Employer from seeking to reach agreement with any Trade Union, other employee representative body or Business Employees or taking such other steps as are appropriate or necessary regarding new or revised terms and conditions of employment in order to implement the Employment Policy Framework or any Mandate.

2.3 The Operator shall, and shall procure that each Relevant Employer shall, unless otherwise directed by the Secretary of State, conduct any negotiations or consultation with any Trade Union, other employee representative body or group of employees (within paragraph 1.6(a) (*Notification of the Secretary of State*)) regarding the subject of a Mandate in accordance with the Employment Policy Framework.

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

## 3. **Terms of Employment**

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

- 3.2 Without limiting paragraph 3.1, subject to paragraph 3.4, the Operator shall not, and shall procure that each Relevant Employer shall not, without the prior consent of the Secretary of State, vary, or purport or promise to vary the terms or conditions of employment with any Business Employee (in particular, the Operator shall not, and shall procure that each Relevant Employer shall not, promise to make any additional payment or provide any additional benefit or vary any term or condition relating to holiday, leave or hours to be worked) where the revised terms of employment of any existing Business Employee may take effect on or after the Start Date if and to the extent that such terms or conditions are more favourable than the standard terms or conditions of employment of the equivalent or nearest equivalent Business Employee role at the date on which such revised terms and conditions are scheduled to take effect.
- 3.3 Without limiting paragraph 3.1 above, subject to paragraph 3.4, the Operator shall not, and shall procure that each other Relevant Employer shall not, without the prior consent of the Secretary of State, create or grant, or promise to create or grant, terms or conditions of employment for any prospective Business Employee where the employment of such prospective Business Employee by the Operator 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 more favourable than the standard terms or conditions of employment of the equivalent or nearest equivalent Business Employee role at the date on which such employment is scheduled to commence; and
  - (b) if such terms or conditions were granted to such equivalent Business Employee already employed by the Operator by way of variation to their terms or conditions of employment, the Operator would be in contravention of paragraph 3.2.
- 3.4 For the purposes of matters falling within paragraphs 3.2 and 3.3, no consent will be required from the Secretary of State in respect of any changes or proposed changes made or proposed in the ordinary course of business in accordance with human resources policies (in relation to the day to day management of the Operator's or Relevant Employer's business) which exist prior to the Start Date which: (a) are not likely to give rise to material industrial relations risks (including a risk of Industrial Action); and/or (b) will not have a material negative impact on productivity; and/or (c) are not contrary to train passengers' interests.
- 3.5 The expression "**promise to vary**" or "**promise to effect**" when used in paragraphs 3.1 and 3.2 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).

#### 4. **In-Scope Matters**

- 4.1 The Secretary of State may at any time, in the Secretary of State's discretion, determine that a matter is, or is not, an In-Scope Matter. Save where either paragraph 4.4 or 4.5 applies, a determination that a matter is an In-Scope Matter will be final and conclusive but will not prevent the Parties agreeing that a matter is no longer an In-Scope Matter.
- 4.2 Without prejudice to paragraphs 4.3 and 4.4, if a matter is not an In-Scope Matter, no Mandate is required. For these purposes, matters in respect of which a Mandate is not required will include changes to working practices made in the ordinary course of business in accordance with human resources policies (in relation to the day to day management of the Operator's or Relevant Employer's business) which exist prior to the Start Date which:
- (a) are not likely to give rise to material industrial relations risks (including a risk of Industrial Action); and/or
  - (b) will not have a material negative impact on productivity; and/or
  - (c) are not contrary to train passengers' interests.

- 4.3 Where the Operator (or a Relevant Employer) is in any doubt as to whether any matter is an In-Scope Matter requiring a Mandate, it must, or must procure that the Relevant Employer shall, inform the Secretary of State in good time prior to steps being taken to implement such matter or change and the Operator must, or must procure that the Relevant Employer shall, if requested by the Secretary of State, provide an explanation of why it believes the proposed matter or change is not an In-Scope Matter requiring a Mandate. Thereafter, the Secretary of State may make a determination in accordance with paragraph 4.1. Provided the Secretary of State is satisfied that the Operator complied with its obligations under this paragraph 4.3 and paragraph 7.1 (*Duties of the Operator*), the Secretary of State's determination shall, subject to paragraph 4.5, be final and conclusive. Where the Secretary of State has determined that a matter is an In-Scope Matter, nothing will prevent the Parties subsequently agreeing that the matter is no longer an In-Scope Matter.
- 4.4 Where a matter is not an In-Scope Matter, the Parties acknowledge and agree that further developments in relation to, and/or escalation of, that matter may be such that it could result in (a) material industrial relations risks (including a risk of Industrial Action); and/or (b) a material negative impact on productivity; and/or (c) be contrary to train passengers' interests. In any such event, the Operator will make a notification to the Secretary of State in accordance with paragraph 4.3 with a view to seeking a determination from the Secretary of State as to whether the matter has become an In-Scope Matter.
- 4.5 Any determination by the Secretary of State that any matter is an In-Scope Matter is conditional on the Secretary of State being and remaining satisfied that the Operator and, where relevant, the Relevant Employer have disclosed all relevant information relating to such matter and complying and continuing to comply with the duty in paragraph 7.1 (*Duties of the Operator*).

## 5. **Industrial Action**

- 5.1 The Operator shall, and shall procure that each Relevant Employer shall, comply with the Dispute Handling Policy. Without prejudice to any obligations under the Dispute Handling Policy, to the extent the Operator believes that Industrial Action is likely to occur as a result of its (or any Relevant Employer's) compliance with any aspect of this Schedule 1.3 (including any Mandate agreed pursuant to it), or for any other reason, it shall promptly notify the Secretary of State of its reason for that belief and the effect, or the anticipated effect, of such event on the performance of the Rail Services and provide the Secretary of State with such further information as the Secretary of State may request.
- 5.2 As soon as practicable following a notification set out in paragraph 5.1 above, and in any event within three (3) Weekdays following such notification, the Operator shall propose a process it intends to adopt to deal with the relevant Industrial Action in accordance with and subject to the Dispute Handling Policy. The Operator and the Secretary of State shall use all reasonable endeavours to agree how the relevant Industrial Action shall be handled, bearing in mind the Dispute Handling Policy, provided however that the Operator's handling of such Industrial Action will be subject always to the Secretary of State's direction, such agreement and/or direction being the "**Dispute Handling Plan**". The Operator shall, and shall procure that each Relevant Employer shall, act in accordance with the Dispute Handling Plan.

## 5.3 **NOT USED**

## 5.4 **NOT USED**

## 6. **Reform**

- 6.1 The Operator shall, and shall procure that each Relevant Employer shall:
- (a) co-operate with the Secretary of State as may be required by the Secretary of State from time to time in respect of the planning, development and/or implementation (as applicable) of industry reform with respect to the Employment Policy Framework and the Dispute Handling Policy, including co-operating and collaborating with other Train Operators and other organisations

in respect of planning, developing and implementing such reforms to the extent permitted by applicable laws; and

- (b) provide to the Secretary of State, such information and data in relation to the Employment Policy Framework and/or the Dispute Handling Policy (or any aspect of it/them) as the Secretary of State may require from time to time.

6.2 The Operator shall, and shall procure that each Relevant Employer shall, use all reasonable endeavours to introduce, implement and comply with such amendments to the Dispute Handling Policy, the Employment Policy Framework generally and any other applicable industry agreements (including any successor arrangements or any other agreement between the Operator and one or more third parties relating to the sustainability of the Operator's staffing model, people practices, engagement with related industry stakeholders or any related matter) as may be directed by the Secretary of State from time to time.

6.3 During the Contract Term, the Operator shall not, and shall procure that each Relevant Employer shall not, enter into any new Employment Agreements otherwise than in accordance with the terms of this Schedule 1.3 (including any applicable Mandate) and the Employment Policy Framework without the prior written consent of the Secretary of State.

## 7. **Duties of the Operator**

7.1 In relation to any matters dealt with in this Schedule 1.3, the Operator shall, and shall procure that each Relevant Employer shall, deal with the Secretary of State in an open and cooperative way, and must disclose to the Secretary of State on an ongoing basis anything relating to the Business Employees (and any Trade Union or other employee representative body representing any such employees) of which the Secretary of State would expect notice in respect of anything which might be relevant to an In-Scope Matter.

7.2 The Operator shall (and shall procure that each Relevant Employer shall) act within the spirit of this Schedule 1.3 in its communications and dealings with any Trade Union, employee representative body or any Business Employee, both locally and nationally.

7.3 The Operator shall act as a Good and Efficient Operator in the discharge of its obligations under this Schedule 1.3.

## 8. **Cooperation with Secretary of State and Relevant Employer**

8.1 Where the Operator or Relevant Employer reasonably considers that complying with any aspect of this Schedule 1.3, including any aspect of the Employment Policy Framework or any Mandate, will cause it to breach any legal obligation of the Operator or Relevant Employer in their capacity as employer (whether arising under legislation or at common law) including breaches of legislation relating to unlawful discrimination or equal pay, the Secretary of State and Operator shall work in cooperation (and/or, as appropriate, the Secretary of State shall, and the Operator shall use all reasonable endeavours to procure that the Relevant Employer shall, work in cooperation) with a view to agreeing an approach to, as the case may be, compliance with such obligations under this Schedule 1.3 or avoidance or mitigation of the risk of such breach by the Operator or Relevant Employer. Once such an approach is agreed, the Operator shall, and will procure that the Relevant Employer shall, implement it on its terms.

## 9. **NOT USED**

## 10. **Workers**

10.1 To the extent that the Operator or any Relevant Employer engages individuals to work on the Rail Services as workers (howsoever "workers" is defined in relevant English employment legislation from time to time, but excluding "agency workers" as defined in the Agency Worker Regulations 2010, as amended from time to time) ("**Workers**") rather than employees, the provisions in this Schedule 1.3 shall be deemed to cover such Workers. In such circumstances, the engaging party shall be the Operator or the Relevant Employer, as applicable, and references to terms and conditions of employment shall be construed as

references to terms and conditions of engagement and references to Business Employees shall include such workers.

## 11. Changes in Numbers and Total Cost of Employees

11.1 Subject to and excluding any increase in the remuneration of Business Employees permitted under this Schedule 1.3 (*Rail Workforce*) the Operator shall not, and shall secure that each other relevant employer shall not, without the prior Approval of the Secretary of State increase or decrease the number of Business Employees such that:

- (a) the total number of Business Employees or the total cost per annum to the Operator and each other relevant employer of employing all Business Employees is increased by more than five per cent (5%); or
- (b) the total number of Business Employees is decreased by more than five per cent (5%),

in each case (unless otherwise agreed or determined by the Secretary of State), during the Contract Period as compared to (i) the relevant total number of such Business Employees as at the Start Date, or (ii) the budgeted costs of employing such Business Employees as set out in the Operator's first CP Budget, as applicable.

11.2 Subject to paragraph 11.3 below, if at any time the Operator becomes aware that:

- (a) the total number of Business Employees in any particular role or the total cost per annum to the Operator and each other relevant employer of employing all Business Employees in any particular role is likely to increase, or has increased, by more than five per cent (5%); or
- (b) the total number of Business Employees in any particular role or the total cost per annum to the Operator and each other relevant employer of employing all Business Employees in any particular role is likely to decrease, or has decreased, by more than five per cent (5%),

in each case (unless otherwise agreed or determined by the Secretary of State), during the Contract Period as compared to (i) the relevant total number of such Business Employees as at the Start Date, or (ii) the budgeted costs of employing such Business Employees as set out in the Operator's first CP Budget (as applicable) (each a "**Business Employee Change**"), then the Operator shall, as soon as practicable, notify the Secretary of State of any such Business Employee Change together with the reasons behind the relevant Business Employee Change.

11.3 Paragraph 11.2 above shall not apply in respect of any Business Employee Change which is:

- (a) caused by a change of fewer than three (3) full-time Business Employees or full-time equivalent Business Employees; or
- (b) clearly articulated in the Business Plan.

11.4 Following receipt of any notice issued by the Operator pursuant to paragraph 11.2 above, the Secretary of State may direct the Operator to take all reasonable endeavours to reverse the Business Employee Change (either in whole or in part). The Operator shall use all reasonable endeavours to comply with any direction provided under this paragraph 11.4.

11.5 The Operator shall provide to the Secretary of State a report at the end of each Reporting Period which sets out:

- (a) the numbers of Business Employees that fall into the categories of (a) revenue protection, (b) ticket office staff; (c) the sale of tickets or (d) any other category notified by the Secretary of State to the Operator; and

- (b) in outline, the Operator's plan for recruitment to fill any vacancies where the vacant role wholly or partially relates to the categories noted at (a), (b), (c) or (d) in paragraph 11.5(a) above.

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

The Operator 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 the Operator Access Station, by providing to the operator of each such station the departure and arrival times of the Passenger Services that call at each such station and the principal Connections to any other transport services relevant to each such station in the same forms as are specified in paragraphs (i) and (ii); and
  - (iv) on the Operator's website; and
- (b) the timetables of other Train Operators at Stations, in accordance with paragraph 1.4.

**1.2 Timetable Revisions and Alterations**

Unless otherwise directed by the Secretary of State, the Operator shall publish updates or replacements to the Timetable at the locations specified in paragraph 1.1 to the extent necessary to reflect any changes which come into effect on a Passenger Change Date:

- (a) in the case of booklets, at least four (4) weeks before the changes come into effect;
- (b) in the case of information displays, no later than the day before the changes come into effect;
- (c) in the case of information provided to the operators of the Operator 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 Operator's website, at least four (4) weeks before the changes come into effect.

**1.3 In addition, unless otherwise directed by the Secretary of State, the Operator shall:**

- (a) subject to paragraph 1.4, display posters at each Station advising passengers of all Significant Alterations between any two Passenger Change Dates to railway passenger services calling at that Station, as soon as reasonably practicable in advance of the date on which the alterations come into effect; and
- (b) provide posters to the operators of the Operator Access Stations, advising passengers of all Significant Alterations between any two (2) Passenger Change

Dates to the Passenger Services which call at such the Operator Access Stations, in sufficient time for such information to be published by such operators within the time limit provided for in paragraph 1.3(a).

#### 1.4 **Other Train Operators' Timetables**

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

- (a) within the time limits specified in paragraphs 1.2 and 1.3 where and to the extent that such other Train Operator delivers to the Operator the relevant information and materials in sufficient time for the Operator 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 Operator.

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

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

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

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

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

## 2. **Communicating Late Timetable Changes**

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

2.2 Such information shall be provided by:

- (a) revising or adding to the information displays referred to in paragraph 1.1;
- (b) notifying the operators of the Operator Access Stations, as appropriate, including by providing such operators with revised posters; and
- (c) updating the Operator's website.

2.3 The Operator 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 Operator is unable to provide the information specified in paragraph 2.1 because the relevant revisions are made on an emergency basis, the Operator 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 Operator 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 Operator as far in advance as is reasonably practicable.

### 3. **Fares Selling Restrictions**

#### 3.1 **Restrictions on Sales**

The Operator shall ensure that the purchaser of any PTE Fare, Protected Fare or T&WPTE Fare:

- (a) shall be entitled, without further charge, to such rights of access and egress and other similar rights at the commencement and end of the relevant intended journey or journeys as may be reasonably necessary for such purchaser to travel on the Passenger Services;
- (b) shall not be required to incur any cost or take any action beyond the payment of an amount equal to the Price of such PTE Fare, Protected Fare or T&WPTE 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 Operator may reasonably require, or in the case of a T&WPTE Season Ticket Fare, as the T&WPTE may reasonably require by notice in writing to the Operator; 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 PTE Fare, Protected Fare or T&WPTE Fare (as the case may be) on a Passenger Service.

#### 3.2 The Operator shall procure that for any:

- (a) Protected Return Fare, Single Fare or Return Fare which is a PTE Fare or T&WPTE Fare (as the case may be), each such Fare shall be offered for sale wherever and whenever any other Fare (not being a Season Ticket Fare) for a journey between the same origin and destination stations is offered for sale; and
- (b) Protected Weekly Season Ticket or Season Ticket Fare which is a PTE Fare or a T&WPTE Season Ticket Fare (as the case may be), each such Fare shall be offered for sale at all staffed ticket offices at which Fares for a journey between the same origin and destination stations are sold and otherwise wherever and whenever any Season Ticket Fare is offered for sale,

in each case, either by the Operator 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 Operator sets a limit on the number of PTE Fares, Protected Fares or T&WPTE Fares that may be used on any particular train, such limit shall be the greater of:

- (a) the number of seats in Standard Class Accommodation on such train; and
- (b) the capacity of Standard Class Accommodation of the rolling stock vehicles comprising such train according to the tables set out in Appendix 1 to Schedule 1.6 (*The Rolling Stock*).

3.4 the Operator shall not sell or offer to sell:

- (a) any Fare in respect of which the:
  - (i) Prices are regulated under Schedule 5.4 (*Regulation of PTE/Protected Fares Basket Values*) and Schedule 5.5 (*Regulation of Individual Fares*), at prices that are greater than the Prices set for such Fares from time to time in accordance with Schedule 5.4 (*Regulation of PTE/Protected Fares Basket Values*) and Schedule 5.5 (*Regulation of Individual Fares*); and
  - (ii) Child Prices are regulated under paragraph 1.3 of Schedule 5.5 (*Regulation of Individual Fares*) at prices that are no greater than fifty per cent (50%) of the Price of the relevant Fare;
- (b) any Fare or Discount Card which has a validity of thirteen (13) or more months, except to the extent required to do so under the terms of the Ticketing and Settlement Agreement.

### 3.5 **Agents of the Operator**

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

- (a) for Fares in respect of which the:
  - (i) Prices are regulated under Schedule 5.4 (*Regulation of PTE/Protected Fares Basket Values*) and Schedule 5.5 (*Regulation of Individual Fares*), sell or offer to sell at prices no greater than the Prices set for such Fares from time to time in accordance with Schedule 5.4 (*Regulation of PTE/Protected Fares Basket Values*) and Schedule 5.5 (*Regulation of Individual Fares*); and
  - (ii) **NOT USED;**
- (b) for Fares in respect of which the Child Price has been set pursuant to paragraph 2.1 of Schedule 5.2 (*Operator's Obligation to Create Fares*), sell or offer to sell such Fares to any person under the age of 16 for an amount which is no greater than fifty per cent (50%) of the Price of the relevant Fare; and
- (c) for all Fares:
  - (i) do not sell or offer to sell any Fare or Discount Card with a validity of thirteen (13) or more months without the consent of the Secretary of State (such consent not to be unreasonably withheld); and
  - (ii) comply with the provisions of paragraph 5 of Schedule 15.2 (*Last Twelve (12) or Thirteen (13) Months of Contract Period and Other Conduct of Business Provisions*) to the extent they apply to the selling of Fares by the Operator.

### 3.6 **Additional Ancillary Services**

The Operator shall, subject to this paragraph 3, (and in respect of a T&WPTE Fare subject to paragraph 3.9) be entitled to charge a purchaser of any PTE Fare, Protected Fare or T&WPTE Fare for any additional services:

- (a) which are ancillary to the railway passenger service for which such PTE Fare, Protected Fare, T&WPTE 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 Operator 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 **Car Parking Charges at Executive Stations**

The Operator shall not:

- (a) introduce new car parking charges at any Executive Station; or
- (b) vary any car parking charge applicable at any Executive Station immediately prior to the Start Date,

in each case, without the prior written consent of the Secretary of State.

### 3.9 **Carriage of bicycles on Passenger Services operated within the former metropolitan county of Tyne & Wear**

Unless otherwise specified by the Secretary of State from time to time, there shall be no charge for the carriage of bicycles and other accompanied items on the Passenger Services operated within the former metropolitan county of Tyne & Wear.

### 3.10 **Mersey Rail Electrics Fares**

The Operator shall offer for sale to passengers the same range of tickets (including "Saveaway" and "Trio") as are available at the Start Date at stations operated by Merseyrail Electrics 2002 Ltd.

## 4. **Passenger's Charter**

### 4.1 **Content**

The Operator shall:

- (a) publish its Passenger's Charter:
  - (i) in substantially the same form as the document in the agreed terms marked PC; and
  - (ii) in accordance with the requirements specified in paragraph 4.3;
- (b) review the need for changes to the Passenger's Charter at least every two (2) years, in consultation with the Passengers' Council, and shall submit a draft of any revisions to the Passenger's Charter that it wishes to propose, together with proof of such consultation, to the Secretary of State; and
- (c) state the date of publication clearly on the front cover of the Passenger's Charter.

4.1A The Operator shall consult with the Passengers' Council and submit a proposed amended form of Passenger's Charter to the Secretary of State for approval by no later than 15 April 2022. Such proposed amended form of Passenger's Charter shall be required to include provision for automated "one click" Delay Repay Compensation. The Operator shall effect such further amendments to the proposed amended form of Passenger's Charter as the Secretary of State may require to be made in order for the Secretary of State to approve the same in accordance with paragraph 4.2. The Parties acknowledge and agree that the submission of an amended form of Passenger's Charter pursuant to this paragraph 4.1A shall be in addition to the Operator's obligations under paragraph 4.1(b) above.

4.2 The Operator 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 Operator shall publicise its Passenger's Charter by:

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

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

4.4 The Operator 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 Operator by such other Train Operator.

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

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

The Operator shall:

- (a) make all payments which passengers may reasonably expect to be made (which for these purposes shall include delay repay compensation in relation to delays to journeys (including delays to journeys undertaken by passengers who hold Multi-Modal Tickets)) or provided from time to time under the terms of the Passenger's Charter (whether or not the Operator is legally obliged to do so);
- (b) use all reasonable endeavours to make passengers aware of their right to claim compensation pursuant to the Passenger's Charter including by:
  - (i) displaying the relevant information on trains and at Stations;
  - (ii) making appropriate announcements to passengers on trains and at Stations when the circumstances giving rise to that right occur and in doing so shall ensure that, for any such announcements, delay is measured by reference to the Plan of the Day (and not, for the avoidance of doubt, by reference to the Timetable);
  - (iii) making compensation claim forms readily available to passengers at Stations and on the Operator's website; and
  - (iv) any other reasonable means to reflect future advancements in technology proposed in writing either by the Operator or the Secretary of State and agreed by both Parties (acting reasonably); and

- (c) use all reasonable endeavours:
  - (i) to comply with any other obligations, statements and representations; and
  - (ii) to meet any other standards or targets of performance,
  - (iii) as are comprised in its Passenger's Charter from time to time.

#### 4.7 **Compensation**

Save with the prior written consent of the Secretary of State, the Operator shall not:

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

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

The Operator 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 Operator shall permit the carriage of folding cycles on all Passenger Services and non-folding cycles wherever reasonably practicable.

#### 6. **Statutory Notices**

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

#### 7. **Train and Station Cleaning**

The Operator shall:

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

## 8. Publication of Performance Data

8.1 The Operator shall in accordance with paragraph 8.2 of this Schedule 1.4 (and in such format as the Secretary of State may reasonably require) publish on the Operator's website in relation to each Reporting Period during the Contract Term the performance of the Operator by reference to:

- (a) Cancellations Figures;
- (b) **NOT USED;**
- (c) **NOT USED;**
- (d) **NOT USED;**
- (e) Short Formation Figures;
- (f) Time to 3 Minutes Figures;
- (g) Time to 15 Minutes Figures;
- (h) All Cancellations Figures; and
- (i) On Time Figures.

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

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

- (a) in relation to all Passenger Services;
- (b) disaggregated by reference to Service Groups;
- (c) on a periodic and/or on an average basis (as applicable); and
- (d) include details of:
  - (i) the number of Passenger Services operated by the Operator during each relevant Reporting Period which are late in arriving at their final scheduled destination in the Plan of the Day:
    - (A) by between 30 minutes and 59 minutes;
    - (1) by between 60 minutes and 119 minutes; and
    - (2) by 120 minutes or more,

and the percentage that each such category of delayed Passenger Services represents of the total number of Passenger Services scheduled to be provided in the Plan of the Day during such Reporting Period; and
  - (ii) the number of Passenger Services formed with less than the required Passenger Carrying Capacity specified in the Train Formation Capacity Plan during such Reporting Period and the percentage that this represents of all Passenger Services scheduled in the Train Formation Capacity Plan to be operated in that Reporting Period.

- 8.3 As part of each Customer Report to be provided (excluding the first (1<sup>st</sup>) Customer Report) by the Operator pursuant to paragraph 10.1 of Schedule 7.2 (*Customer Experience and Engagement*), the Operator shall publish (in such format as the Secretary of State may reasonably require):
- (a) the mean average of each of the Cancellations Figures and the Short Formation Figures for the Reporting Periods that have elapsed since the last Reporting Period reported on in the previous Customer Report and, in the case of the first (1<sup>st</sup>) Customer Report, those Reporting Periods that have elapsed since the last Reporting Period reported on in the Previous Customer Report (and "Reporting Period" shall be as defined in the Previous Agreement with respect to those Reporting Periods falling prior to the Start Date) provided that such data is available pursuant to the terms of the Previous Agreement;
  - (b) the latest Time to 3 Minutes Figures, Time to 15 Minutes Figures, All Cancellation Figures and On Time Figures for the last Reporting Period before publication of the relevant Customer Report;
  - (c) a summary comparison of the statistics produced pursuant to paragraphs 8.3(a) and 8.3(b) as against the equivalent statistics provided for the Reporting Period(s) falling 13 Reporting Periods before the Reporting Periods referred to in paragraph 8.3(a) and 8.3(b) including where such previous Reporting Periods fall before the Start Date (and "Reporting Period" shall have the meaning given in the Previous Agreement with respect to those Reporting Periods falling before the Start Date) provided that such statistics were produced under the Previous Agreement;
  - (d) an update on the key activities undertaken by the Operator to improve its performance in relation to the measures referred to in paragraphs 8.3(a) and 8.3(b); and
  - (e) a summary of the key activities planned to be undertaken by the Operator in the period in relation to which the next Customer Report will report to improve its performance in relation to the measures referred to in paragraphs 8.3(a) and 8.3(b).

## 9. **Publication of Complaints and Faults Handling Data**

- 9.1 As part of each Customer Report to be provided (excluding the first (1<sup>st</sup>) Customer Report) by the Operator pursuant to paragraph 10.1 of Schedule 7.2 (*Customer Experience and Engagement*), the Operator shall publish (in such format as the Secretary of State may reasonably require) in relation to the Reporting Periods that have elapsed since the last Reporting Period reported on in the previous Customer Report and in the case of the second (2<sup>nd</sup>) Customer Report, those Reporting Periods that have elapsed since the Start Date (the "**Reported Reporting Periods**"):
- (a) a summary of the data published by the ORR from time to time in relation to the handling of passenger complaints regarding the Operator's operation of the Passenger Services;
  - (b) details of the number of faults notified to the Operator by passengers or station users through specified channels including the website of the Operator (each a "**Notified Fault**") in each case identifying the total numbers of Notified Faults (by reference to whether such Notified Faults relate to rolling stock or stations), with such numbers further disaggregated by Service Group and broken down into relevant sub-categories of Notified Fault;
  - (c) the mean average time taken by the Operator:
    - (i) to resolve Notified Faults; and

- (ii) where Notified Faults are not resolved within twenty (20) Weekdays, to provide feedback to applicable passengers and/or station users on its progress in seeking resolution of such Notified Faults; and
- (d) from the third (3<sup>rd</sup>) Customer Report onwards a summary comparison of:
  - (i) the mean average number of Notified Faults notified to the Operator;
  - (ii) the mean average time taken by the Operator to resolve Notified Faults; and
  - (iii) the mean average time taken by the Operator, where Notified Faults have not been resolved within twenty (20) Weekdays to provide feedback to applicable passengers and/or station users on its progress in seeking resolution of such Notified Faults,

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

## 10. **Route Maps**

- 10.1 The Operator shall produce a Route Map which shall include as a minimum;
- (a) all stations served by the Passenger Services; and
  - (b) key stations located on any Other Passenger Route Within the Geographical Area (which shall either be selected by the Operator on a reasonable basis or, if so directed by the Secretary of State, specified by the Secretary of State in a notice to the Operator).
- 10.2 The Route Map shall include notes identifying:
- (a) in relation to any Other Passenger Route Within the Geographical Area with a principal destination point outside of the Geographical Area, such ultimate origin or ultimate destination point; and
  - (b) those Routes over which services are also operated and such service is:
    - (i) operated by a passenger train operator other than the Operator; and
    - (ii) run on a more frequent basis (as stated in the National Rail Timetable) than the Passenger Services.
- 10.3 The Operator shall, as soon as reasonably practicable, update the Route Map in all places where it is displayed where there is any change:
- (a) to the Passenger Services, leading to a change in the routes falling within the definition of Route; or
  - (b) to the passenger services operated by another passenger train operator (as stated in the National Rail Timetable), leading to a change to the routes falling within the definition of Other Passenger Route Within the Geographical Area.
- 10.4 The Route Map shall at all times be displayed:
- (a) in every passenger carrying vehicle within the Train Fleet;
  - (b) at every Station; and



(c) on its website.

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

11. **Baby Changing Facilities**

11.1 The Operator shall throughout the Contract Term ensure that each train operated by the Operator in delivering the Passenger Services that is fitted with toilet facilities is also fitted with such number of baby change facilities as is necessary to be compliant with the requirements of the Relevant Technical Specification.

**Schedule 1.5****Information about Passengers**

1. **NOT USED**
2. **NOT USED**
3. **NOT USED**
4. **Client Relationship Management (CRM) Data**
  - 4.1 The Operator shall ensure that any CRM System is the property of the Operator or is licensed to the Operator 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 Operator shall be:
    - (a) obtained on terms such that the Operator shall be the Controller of such data; and
    - (b) the property of the Operator.
  - 4.2 In relation to any CRM Data obtained by or on behalf of the Operator, the Operator shall:
    - (a) ensure that the CRM Data is collected and processed by or on behalf of the Operator in accordance with the Data Protection Legislation;
    - (b) without prejudice to paragraph 4.2(a) ensure that the fairness principle of the Data Protection Legislation is satisfied including by issuing all relevant privacy notices in relation to its collection and processing of the CRM Data;
    - (c) without prejudice to paragraph 4.2(a) ensure that there is a lawful basis for its collection and processing of the CRM Data;
    - (d) without prejudice to paragraph 4.2(a) ensure that the principles of fairness and lawfulness are satisfied in particular in respect of the disclosure of the CRM Data to any Successor Operator and/or the Secretary of State such that the CRM Data may be processed by any Successor Operator for the same purposes as are relevant to the processing of the CRM Data by the Operator; and
    - (e) without prejudice to paragraph 4.2(a) ensure that where consents are required under the Data Protection Legislation for the processing of the CRM Data by the Operator and any Successor Operator (including in relation to marketing, sign up for notifications or general alerts, sign up for newsletters, and (as relevant) processing of Special Categories of Personal Data) all such consents are sought in such a way as to enable any Successor Operator to process the CRM Data for the same purposes as are relevant to the processing of it by the Operator.
  - 4.3 The consents referred to in paragraph 4.2(e) shall be sought in such manner as shall from time to time be Approved by the Secretary of State (such approval not to be unreasonably withheld or delayed) and shall be on terms such as shall permit, in each case in compliance with Data Protection Legislation:
    - (a) the Operator to disclose such CRM Data to any Successor Operator and/or the Secretary of State; and
    - (b) any such Successor Operator to process such CRM Data in the manner contemplated by paragraph 4.2.

- 4.4 The Operator shall:
- (a) disclose, publish, share, provide and otherwise make available the CRM Data to any person (including a Successor Operator or any participant involved with the re-letting of the Franchise); and
  - (b) provide access to any CRM System,
- in each case pursuant to the terms of this Contract (together, the "**CRM Data Obligations**") to the extent that compliance with the CRM Data Obligations is in accordance with the Data Protection Legislation.
5. **Yield Management Data**
- 5.1 The Operator shall ensure that any Yield Management Data and Yield Management System are the property of the Operator or are licensed to the Operator on terms which have been approved by the Secretary of State (such approval not to be unreasonably withheld or delayed).
- 5.2 **NOT USED**
- 5.3 The Operator shall notify the Secretary of State in writing of the full names and registered office addresses of the entities which from time to time are hosting or storing any of the Yield Management Data, or which are otherwise holding within their possession or control any of the Yield Management Data, together with the location(s) in which the Yield Management Data is hosted, stored or otherwise held. In cases where the hosting, storage or holding of the Yield Management Data occurs in location(s) which are outside of the United Kingdom the notification shall include details of the relevant country(ies) or territory(ies).
- 5.4 The Operator hereby acknowledges that the Secretary of State legitimately wishes to have knowledge of the locations in which the Yield Management Data is hosted, stored or otherwise held from time to time (whether inside or outside of the United Kingdom) given that all such information would be relevant in the event of any transfer of the Franchise to a Successor Operator.
6. **NOT USED**
7. **Rail Passenger Counts Database**
- 7.1 Subject to compliance by the Operator with its obligations set out in this Schedule 1.5, the Secretary of State shall as soon as reasonably practicable following the date of this Contract:
- (a) use reasonable endeavours to set up and thereafter maintain the RPC Database;
  - (b) use reasonable endeavours to populate the RPC Database with such Actual Passenger Demand information as the Operator shall provide pursuant to the Operator's obligations contained elsewhere in this Contract and any other information that the Secretary of State shall desire; and
  - (c) use reasonable endeavours to provide the Operator with log-in details to the RPC Database in order to allow the Operator to access Actual Passenger Demand information that has been provided by the Operator, any Network Rail Data, any Third Party Data and to generate reports from the RPC Database.
- 7.2 The RPC Database is not intended to be used as the sole basis for any business decision. The Secretary of State makes no representation as to the accuracy and/or completeness of:
- (a) any data or information contained in the RPC Database;

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

## 7.3

- (a) The Secretary of State is not liable for:
  - (i) any inaccuracy, incompleteness or other error in Actual Passenger Demand information, Network Rail Data, Third Party Data or product of the above provided to the Secretary of State by the Operator, NR or a third party; or
  - (ii) any failure of the RPC Database to achieve any particular business result for the Operator. For the avoidance of doubt, it is the responsibility of the Operator to decide the appropriateness of using the RPC Database to achieve its own business results; or
  - (iii) any loss, destruction, corruption, degradation, inaccuracy or damage of or to the Actual Passenger Demand information following its submission to the RPC Database; or
  - (iv) any loss or damage to the property or assets of the Operator (tangible or intangible) as a result of a contravention of paragraph 7.1 of this Schedule 1.5; or
  - (v) any indirect, special or consequential loss or damage.
- (b) The Secretary of State's total liability for the duration of this Contract in respect of a contravention of its obligations under paragraph 7.1 of this Schedule 1.5 for all other heads of loss or damage which can lawfully be limited shall be limited to the extent to which the Secretary of State is successful in recovering the equivalent loss from such entity to whom the Secretary of State subcontracts its obligations under paragraph 7.1 of this Schedule 1.5 (the "**Subcontractor**"), subject to the following provisions:
  - (i) if reasonably requested by the Operator within three (3) months of incurring such loss or damage, the Secretary of State shall use reasonable endeavours to recover the equivalent losses from the Subcontractor;
  - (ii) it shall not be reasonable for the Operator to make a request pursuant to paragraph 7.3(b)(i) above if the value of the Operator's losses does not exceed **[REDACTED<sup>2</sup>]**
  - (iii) prior to accounting to the Operator for any sums recovered from the Subcontractor pursuant to this paragraph 7.3(b), the Secretary of State shall be entitled to deduct and retain any reasonable costs and expenses incurred in pursuing such a claim which the Secretary of State does not successfully recover from the Subcontractor; and
  - (iv) the Secretary of State shall be entitled to deduct from any sums recovered from the Subcontractor pursuant to this paragraph 7.3(b) such sum as the Secretary of State reasonably

<sup>2</sup> **21 September 2022 (Date of Redactions Approval) CR03455 - 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.**

deems appropriate to take account of the Secretary of State's actual or potential liability to other train operating companies pursuant to equivalent arrangements with them, with a view to distributing any sums received from the Subcontractor fairly between the various operators.

- (c) The Operator shall use all reasonable endeavours to mitigate any losses incurred by it as a result of a contravention by the Secretary of State of the Secretary of State's obligations contained in paragraph 7.1 of this Schedule 1.5.

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

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

## 8. Intellectual Property Rights and General Provisions

8.1 All Intellectual Property Rights in the RPC Database and Derivative Output shall at all times remain owned by the Secretary of State and to the extent that any rights in the RPC Database vest in the Operator by operation of law, the Operator hereby assigns such rights to the Secretary of State.

8.2 Subject to Schedule 15.4 (*Provisions applying on and after Termination*), all Intellectual Property Rights in the Actual Passenger Demand information will at all times remain owned by the Operator and (subject as previously stated) to the extent that any rights in the Actual Passenger Demand information vest in the Secretary of State by operation of law, the Secretary of State hereby assigns such rights to the Operator.

8.3 All Intellectual Property Rights in the Network Rail Data will at all times remain owned by the relevant NR entity and to the extent that any rights in the Network Rail Data vest in the Secretary of State or the Operator by operation of law, the Secretary of State and/or the Operator (as applicable) will enter into a separate agreement with the relevant Network Rail entity to assign such rights to it.

8.4 All Intellectual Property Rights in the Third Party Data will at all times remain owned by the third party from whom they have been obtained and to the extent that any rights in the Third Party Data vest in the Secretary of State or the Operator by operation of law, the Secretary of State and/or the Operator (as applicable) will enter into a separate agreement with the relevant Third Party to assign such rights to it.

8.5 Subject to Schedule 14.4 (*Rail Assets*) and Schedule 15.4 (*Provisions Applying on and after Termination*), each Party:

- (a) acknowledges and agrees that it shall not acquire or claim any title to any of the other Party's Intellectual Property Rights (or those of the other Party's licensors) by virtue of the rights granted to it under this Contract or through its use of such Intellectual Property Rights; and

(b) agrees that it will not, at any time, do, or omit to do, anything which is likely to prejudice the other Party's ownership (or the other Party's licensors' ownership) of such Intellectual Property Rights.

8.6 The Secretary of State hereby grants, for the duration of the Contract Period, the Operator a non-exclusive, non-transferable licence to use:

- (a) the RPC Database;
- (b) any Derivative Output; and
- (c) all Intellectual Property Rights in the same,

in the United Kingdom for the purposes of accessing the Actual Passenger Demand information by using the functionality of the RPC Database.

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

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

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

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

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

## Schedule 1.6

### The Rolling Stock

#### 1. The Composition/Deployment of the Train Fleet

##### 1.1 The Train Fleet consists of:

- (a) from the Start Date until the lease expiry dates referred to in Column 6 of Table 1 in Appendix 1 to this Schedule 1.6 the rolling stock vehicles set out in Table 1 in Appendix 1 to this Schedule 1.6 ("**Original Rolling Stock**") with the Passenger Carrying Capacity per unit referred to in Column 3 and Column 4 of Table 1 in Appendix 1 to this Schedule 1.6; and
- (b) from the dates set out in Column 6 of Table 2 in Appendix 1 to this Schedule 1.6, until the lease expiry dates referred to in Column 7 of Table 2 in Appendix 1 to this Schedule 1.6 the rolling stock vehicles including new build or cascaded rolling stock ("**Specified Additional Rolling Stock**") set out in Table 2 in Appendix 1 to this Schedule 1.6, with the Passenger Carrying Capacity per unit referred to in Column 3 and Column 4 of Table 2 in Appendix 1 to this Schedule 1.6.

##### 1.2 The Passenger Carrying Capacity of any rolling stock vehicles shall be as set out in Tables 1 or 2 in Appendix 1 to this Schedule 1.6.

##### 1.3 The Operator shall procure that the rolling stock vehicles described in the Tables 1 or 2 in Appendix 1 to this Schedule 1.6, with the capacity and other characteristics referred to there, are available for deployment in the provision of the Passenger Services to the extent required by the Timetable and Train Formation Capacity Plan during the periods referred to therein.

#### 2. Changes to the Train Fleet

##### 2.1 The Operator shall maintain the composition of the Train Fleet during the Contract Period, unless the Secretary of State otherwise agrees or otherwise directs the Operator pursuant to paragraph 2.4, such that there are no changes to the Train Fleet, including changes:

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

of any rolling stock vehicles specified in the Train Fleet.

##### 2.2 During the Contract Period, the Operator shall advise the Secretary of State of any rolling stock vehicles damaged beyond economic repair or likely to be unavailable for service for a period of three (3) consecutive Reporting Periods or more.

##### 2.3 If any change is made to the Train Fleet in accordance with this Schedule 1.6, the Secretary of State may, after consulting the Operator, determine the Passenger Carrying Capacity of any rolling stock vehicles or class of rolling stock vehicles comprising the Train Fleet following such change. The Secretary of State shall notify the Operator of the Secretary of State's determination of any such Passenger Carrying Capacity.

##### 2.4 The Secretary of State may (by Business Plan Revision) require the Operator to:

- (a) change the composition of the Train Fleet during the term of this Contract;

- (b) sub-let some of its Train Fleet to another Train Operator or to sub-lease a Train Fleet from another Train Operator;
- (c) procure modifications to the Train Fleet and to manage any modification programme subject to payment of the Operator's reasonable costs by the Secretary of State or a relevant third party; and/or
- (d) work in collaboration with the Secretary of State to identify and secure additional or replacement rolling stock vehicles during the term of this Contract in which case the Secretary of State may require the Operator to set the specification of such rolling stock, subject to the Secretary of State's prior written consent.

### 3. **Train Maintenance**

- 3.1 The Operator shall procure that heavy maintenance of Train Fleet is undertaken in accordance with the standard expected of a competent, skilled and experienced train operator.
- 3.2 The Operator shall seek Approval from the Secretary of State for any changes to the heavy maintenance regime for the Train Fleet where such change will result in any cost saving to the Operator including the reduction of any lease payments for the relevant rolling stock.

### 4. **Revisions to the passenger carrying capacity numbers/Train Formation Capacity Plan**

- 4.1 Within three (3) months of the Amendment and Restatement Date the Secretary of State shall calculate (and notify to the Operator) the revised Passenger Carrying Capacity numbers to be inserted in column 3 of each of the tables set out in Part 1 and Part 2 of Appendix 1 to this Schedule 1.6. The Parties agree that from the date of the notification of the revised Passenger Carrying Capacity numbers by the Secretary of State to the Operator Column 3 of the each of the tables set out in Part 1 and Part 2 of Appendix 1 to this Schedule 1.6 and the Train Formation Capacity Plan applicable from the Amendment and Restatement Date shall be amended (and shall be deemed to be amended) to reflect such revised Passenger Carrying Capacity numbers for each of the rolling stock comprised in the Train Fleet.
- 4.2 To assist the Secretary of State in performing the calculation of the revised Passenger Carrying Capacity numbers as contemplated in paragraph 4.1 the Operator shall provide to the Secretary of State such information as the Secretary of State may request for these purposes.



**APPENDIX 1 TO SCHEDULE 1.6**

**The Composition of the Train Fleet**

**1. Original Rolling Stock**

**Explanatory Note A:** Such rolling stock may be returned to the lessor prior to such date provided that the Operator shall not return any rolling stock unit to the lessor or sub lease or hire it or otherwise take steps that render it unable to be used in the delivery of the Passenger Services until after any rolling stock unit that can be reasonably regarded as replacing it has been introduced into unrestricted use delivering the Passenger Services.

**Explanatory Note B:** the Operator shall not return any rolling stock unit to the lessor or sub lease or hire it or otherwise take steps that render it unable to be used in the delivery of the Passenger Services until after any rolling stock unit that can be reasonably regarded as replacing it has been introduced into unrestricted use delivering the Passenger Services.

**Explanatory Note C:** Where in Column 5 both a scheduled lease expiry date and an early redelivery date are specified in relation to one or more specified units (each being a "Specified Unit") the lease expiry date for the Specified Units shall be the early redelivery date provided that where any unit shown in Table 2 or Table 3 below as replacing any Specified Unit from the early delivery date is delivered after the early redelivery date such Specified Unit shall remain in the Train Fleet until the relevant scheduled lease expiry date or such earlier date as the Secretary of State may agree.

**Table 1 (Original Rolling Stock)**

Column 1 Class of vehicle/unit	Column 2 Number of vehicles in fleet and unit configuration	Column 3 Passenger Carrying Capacity per unit			Column 4 Owner/Lessor	Column 5 Lease expiry date(s) (See Explanatory Note C above)
		Seats	Standing	Total		Scheduled Lease Expiry Date
Class 142	12 (6 x 2 Car)	106, 114 or 121	16, 23 or 31	137	Angel Trains Limited	31 May 2020 (see Note A)
Class 144	26 (13 x 2 Car)	99	49	148	Porterbrook Limited	Leasing Company 31 August 2020 (see Note A)
Class 144	30 (10 x 3 Car)	157	65	222	Porterbrook Limited	Leasing Company 31 August 2020 (see Note A)
Class 150	134 (67 x 2 Car)	124, 131, or 149	49, 67 or 80	198 or 204	Angel Trains Limited	End of Contract Term

<b>Table 1 (Original Rolling Stock)</b>								
<b>Column 1 Class of vehicle/unit</b>	<b>Column 2 Number of vehicles in fleet and unit configuration</b>	<b>Column 3 Passenger Carrying Capacity per unit</b>			<b>Column 4 Owner/Lessor</b>			<b>Column 5 Lease expiry date(s) (See Explanatory Note C above)</b>
		<b>Seats</b>	<b>Standing</b>	<b>Total</b>				<b>Scheduled Lease Expiry Date</b>
Class 150	134 (67 x 2 Car)	124, 131, or 149	49, 67 or 80	198 or 204	Angel Trains Limited			End of Contract Term
Class 150	22 (11 x 2 Car)	124 or 131	67 or 89	213	Porterbrook Limited	Leasing	Company	End of Contract Term
Class 155	14 (7 x 2 Car)	152 or 160	56 or 60	208 or 220	Porterbrook Limited	Leasing	Company	End of Contract Term
Class 156	58 (29 x 2 Car)	138 or 152	66 or 72	204 or 224	Angel Trains Limited			End of Contract Term
Class 156	44 (22 x 2 Car)	138 or 146	66 or 78	204 or 224	Porterbrook Limited	Leasing	Company	End of Contract Term
Class 158	20 (10 x 2 Car)	138 or 143	81 or 88	219 or 231	Eversholt Rail (UK) Limited			End of Contract Term
Class 158	70 (35 x 2 Car)	138 or 143	81 or 88	219 or 231	Angel Trains Limited			End of Contract Term
Class 158	24 (8 x 3 Car)	207 or 221	118 or 122	329 or 339	Porterbrook Limited	Leasing	Company	End of Contract Term
Class 170	32 (16 x 2 Car)	198	132	330	Porterbrook Limited	Leasing	Company	End of Contract Term
Class 195	50 (25 x 2 Car)	124	97	221	Eversholt Rail (UK) Limited			End of Contract Term
Class 195	99 (33 x 3 Car)	204	142	346	Eversholt Rail (UK) Limited			End of Contract Term
Class 319	60 (15 x 4 Car)	286 or 303	105 or 109	391 or 412	Porterbrook Limited	Leasing	Company	End of Contract Term
Class 323	51 (17 x 3 Car)	259 or 289	68 or 98	357	Porterbrook Limited	Leasing	Company	End of Contract Term
Class 331	93 (31 x 3 Car)	204	141	345	Eversholt Rail (UK) Limited			End of Contract Term
Class 331	48 (12 x 4 Car)	284	185	469	Eversholt Rail (UK) Limited			End of Contract Term
Class 333	64 (16 x 4 Car)	360	107	467	Angel Trains Limited			End of Contract Term
Class 769	32 (8 x 4 Car)	286 or 303	105 or 109	391 or 412	Porterbrook Limited	Leasing	Company	End of Contract Term

2. Specified Additional Rolling Stock

**Table 2 (Specified Additional Rolling Stock)**

Column 1 Class of vehicle/unit	Column 2 Number of vehicles in fleet and unit configuration	Column 3 Passenger Carrying Capacity per unit			Column 4 Owner/Lessor	Column 5 Date of introduction into revenue earning passenger service	Column 6 Lease expiry date(s)
		Seats	Standing	Total			
Class 323*	51 (17 x 3 Car)	259 or 289	68 or 98	357	Porterbrook Leasing Company Limited	2 x Units on 14th November 2022 2 x Units on 21st November 2022 2 x Units on 5th December 2022 5 x Units on 9th January 2023 4 x Units on 13th February 2023 2 x Units on 8th May 2023	End of the Contract Term
Class 156**	22 (11 x 2 car)	138 or 146	66 or 78	204 or 224	Porterbrook Leasing Company Limited	4 December 2022	End of the Contract Term

**Notes:**

\* The rolling stock identified is currently sub-leased by the Operator to West Midlands Trains Limited. The dates in Column 5 indicate the Scheduled Redelivery Date as currently defined in the sub-lease arrangements dated 19 August 2021.

\*\* The rolling stock identified is currently sub-leased by the Operator to East Midlands Railway Limited. The date in Column 5 indicate the Scheduled Redelivery Date as currently defined in the sub-lease arrangements dated 15 December 2020.

## Schedule 1.7

### Stations

#### 1. Station Asset Management Plan

1.1 The Operator shall ensure that:

- (a) Not used;
- (b) prior to the Start Date, the processes and procedures for the management of assets as detailed in the Station Asset Management Plan have been certified as complying with the requirements of ISO55001:2014 (or such other reasonably equivalent standard as may be approved in writing by the Secretary of State from time to time in place of ISO55001:2014) (the "**Station Asset Management Plan Accreditation**");
- (c) it has put in place such arrangements as are necessary (to the satisfaction of the Secretary of State) to ensure that the Station Asset Management Plan is (and continues to be maintained in) a format acceptable to the Secretary of State which is capable of being transferred to a Successor Operator so that the Successor Operator is able to access, use and amend the Station Asset Management Plan using the same format;
- (d) in relation to the asset management system utilised by the Operator (which as at the Start Date is known as the "MyMCS") for the purposes of recording all information relating to the condition of all assets and facilities at Stations, the Operator shall:
  - (i) ensure that any such asset management system is the property of the Operator or is licensed to the Operator on terms which permit the transfer, at the end of the Franchise Period, of such licence to the Secretary of State or the Secretary of State's nominee on terms which are substantially the same as that which applied to the Operator in the last 13 months immediately preceding the end of the Franchise Period;
  - (ii) ensure that any data or information relating to or contained in such asset management system is the property of the Operator (the "**SMP Data**"); and
  - (iii) immediately on expiry of the Franchise Period provide to the Secretary of State and the Successor such access to such asset management system and/or make available to the Secretary of State and the Successor Operator the SMP Data in such format as may be reasonably specified by the Secretary of State. If, at the end of the Franchise Period, the SMP Data is transferred to the Secretary of State or the Secretary of State's nominee (whether pursuant to the Transfer Scheme or otherwise) the transfer value of such SMP Data shall be nil.

1.2 The Operator shall:

- (a) promptly upon receipt by the Operator, provide to the Secretary of State a certificate of accreditation issued by an organisation accredited by the United Kingdom Accreditation Service (UKAS) which has been signed by a statutory director of the Operator and which confirms that the Station Asset Management Plan Accreditation has been achieved (the "**Station Asset Management Plan Accreditation Certificate**"); and

- (b) maintain the Station Asset Management Plan Accreditation from the date that it is required to be achieved (being the first anniversary of the Start Date) for the remainder of the Contract Term.

If the Station Asset Management Plan Accreditation is at any time lost then the Operator shall promptly report that fact to the Secretary of State and secure the restoration of the Station Asset Management Plan Accreditation as soon as reasonably practicable, reporting to the Secretary of State on the measures it is proposing to take to achieve that restoration and progress made.

- 1.3 By the date of each anniversary of the "Start Date" of the Previous Agreement, the Operator shall conduct consultations with relevant stakeholders (including applicable Community Rail Network, passengers, Station users and members of relevant local communities) in relation to the potential risks, opportunities and priorities for investment and operational efficiencies in relation to Stations. The Operator shall act reasonably in determining the scope of the specification of such consultations including the Stations to be considered.
- 1.4 By the date of each anniversary of the "Start Date" of the Previous Agreement the Operator shall have reviewed the Station Asset Management Plan and shall submit to the Secretary of State a draft updated version of the Station Asset Management Plan incorporating a schedule of any revisions to the Station Asset Management Plan and a brief summary of the rationale supporting any change for review and Approval. Updating shall reflect changed and developing circumstances and the requirements of the Station Asset Management Plan Accreditation (when obtained) together with, where relevant, the outcomes of, and the Operator's responses to the stakeholder consultation process described in paragraph 1.3 above. The updated Station Asset Management Plan shall include the information required by paragraph 1.1(a) of Schedule 6.2 of the Previous Agreement, save that for the purposes of this paragraph 1.4, references to "Start Date" in that paragraph 1.1(a) shall be read as "the date on which the Station Asset Management Plan is reviewed by the Operator in accordance with paragraph 1.3 of this Schedule". The Station Asset Management Plan shall be updated so that following each update it continues to cover a forty year time period from the date of the update.
- 1.5 If:
- (a) the Secretary of State Approves an updated draft Station Asset Management Plan submitted to it pursuant to paragraph 1.4 above, such document shall become the then current Station Asset Management Plan; or
- (b) the Secretary of State does not Approve an updated draft Station Asset Management Plan submitted to it pursuant to paragraph 1.4 above, then the Operator shall make such amendments to it as the Secretary of State shall reasonably direct.

2. **Not Used**

3. **Not Used**

4. **Consultations**

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

5. **NOT USED**

6. **Security at Stations**

- 6.1 The Operator shall maintain for the duration of the Contract Period the Secure Stations Accreditation at each of the Stations set out in Appendix 1 to this Schedule 1.7.
- 6.2 The Operator shall maintain for the duration of the Contract Period the Park Mark scheme at the car parks located at each of the Stations set out in Appendix 1 to this Schedule 1.7.
- 6.3 In the event that the TRH Score for a Station increases by five per cent (5%) or more from the previous year's TRH Score for such Station, the Operator shall:
- (a) in respect of a Station that does not have Secure Station Accreditation, notify the Secretary of State of such increase and, as soon as reasonably practicable, obtain Secure Station Accreditation for such Station and shall maintain the same throughout the Franchise Period; or
  - (b) in respect of a Station that already has Secure Station Accreditation (either pursuant to paragraph 6.1 above, or because the Operator has been required to obtain Secure Station Accreditation pursuant to paragraph 6.3(a) above), notify the Secretary of State of such TRH Score increase and the provisions of paragraph 6.4 shall apply.
- 6.4 Upon the Secretary of State receiving notification pursuant to paragraph 6.3(b) above, the Secretary of State may, following consultation with the British Transport Police, revoke the Secure Station Accreditation for such Station.
- 6.5 Where a Station loses its Secure Station Accreditation (whether pursuant to paragraph 6.4 or otherwise) the Operator shall:
- (a) obtain Secure Station Accreditation for such Station as soon as reasonably practicable, in any event no later than twelve (12) months from and including the date of the loss of such Secure Station Accreditation; and
  - (b) maintain such Secure Station Accreditation once obtained for the duration of the Franchise Period.
- 6.6 **NOT USED**
- 6.7 In this paragraph 6:
- (a) **"Park Mark"** means the certification scheme administered by the parking industry and which sets car park design and management safety standards for crime reduction within car parks;
  - (b) **"Secure Stations Accreditation"** means Stations which have achieved accreditation under the Secure Stations Scheme;
  - (c) **"Secure Stations Scheme"** means the certification scheme which is managed by the Department for Transport and British Transport Police and sets station design and management safety standards for crime reduction at railway stations; and
  - (d) **"TRH Score"** means the threat, risk harm score for each Station calculated by the British Transport Police in accordance with the methodology specified by British Transport Police for railway stations.

## 7. **Information about Station Improvement Measures**

- 7.1 The Operator shall at all times during the Contract Term maintain records in relation to the measures taken by it to improve the Station environment at each of the Stations, covering the areas and the information set out in Table A below.

7.2 The Operator shall, subject to paragraph 7.3 below, provide to the Secretary of State the information set out in Table A within one Reporting Period of each 1 April during the Contract Term.

7.3 When so requested by the Secretary of State, the Operator shall, within such reasonable period as the Secretary of State may specify, make such information available for review by the Secretary of State by reference to:

- (a) such level of disaggregation as is reasonably specified by the Secretary of State; and
- (b) any particular Station as is reasonably specified by the Secretary of State.

7.4 The information to be provided by the Operator to the Secretary of State within the timescales stipulated in paragraph 7.2 are set out in the Table in the Appendix to this Schedule 1.7.

## 8. **Station Transfers**

8.1 The Operator shall at all times during the Contract Term, continue to be an active member of the Greater Manchester Rail Station Alliance and co-operate in good faith with the other Greater Manchester Rail Station Alliance members.

8.2 The Operator shall co-operate in good faith and shall provide such assistance and information as the Secretary of State may reasonably require to assist.

8.3 If, during the Contract Term, agreement is reached between the Secretary of State and the TfGM Station Transferee in relation to the transfer of all or some of the TfGM Stations then the Secretary of State may direct the Operator (including by exercising the Secretary of State's rights under paragraph 4 of Schedule 1.1 (Service Development)) to take such actions as may be necessary to give effect to the transfer of such TfGM Stations to the TfGM Station Transferee. Any such direction by the Secretary of State shall be an event which shall have the potential to give rise to revisions to the CP Budget pursuant to paragraph 5 of Schedule 8.1 (*Contract Payments*).

8.4 For the purposes of paragraph 8.3, "**TfGM Station Transferee**" shall mean:

- (a) the Greater Manchester Rail Station Alliance (being the alliance that forms part of Greater Manchester Combined Authority's station partnership programme and comprising the Greater Manchester Combined Authority, Network Rail, Transport for Greater Manchester, London Continental Railway Limited, the Operator, and the franchisee of the TransPennine Express Operator (or their respective successors); or
- (b) any other third party.

## 9. **Station Investment**

9.1 The Operator shall at all times during the Contract Term, co-operate with the Secretary of State and any third party nominated by the Secretary of State and notified to the Operator in developing opportunities for financing investment at Stations and the Operator Access Stations in order to improve the station environment at such stations.

9.2 In co-operating with the Secretary of State and/or any nominated third party in developing any such financing opportunities, the Operator shall:

- (a) attend meetings with the Secretary of State and/or such third party to discuss such opportunities;
- (b) provide the Operator's opinion on those opportunities;

- (c) review and comment on implementation timetables and programmes for any such opportunities; and
- (d) where requested by the Secretary of State to do so use all reasonable endeavours to engage with Network Rail for the purposes of ascertaining the feasibility and costs of making amendments to any Station Leases in order to facilitate the implementation of those opportunities.

10. **Station Toilet Access**

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



**APPENDIX 1 TO SCHEDULE 1.7****List of Stations and Car Parks with accreditation****1. Stations**

- (a) Adwick;
- (b) Alnmouth;
- (c) Barnsley;
- (d) Bishop Auckland;
- (e) Bredbury;
- (f) Broad Green;
- (g) Chapeltown;
- (h) Chester Le Street;
- (i) Eaglescliffe;
- (j) Ecclestone Park;
- (k) Edge Hill;
- (l) Halewood;
- (m) Hartlepool;
- (n) Hexham;
- (o) Horwich Parkway;
- (p) Huyton;
- (q) Lea Green;
- (r) Meadowhall;
- (s) Morpeth;
- (t) Mossley Hill;
- (u) Newton-Le-Willows;
- (v) Prescot;
- (w) Rainhill;
- (x) Redcar Central;
- (y) Roby;
- (z) Rotherham Central;
- (aa) St Helens Central;

- (bb) Sunderland;
- (cc) Swinton South Yorks;
- (dd) Thorne North;
- (ee) Wavertree Tech Park;
- (ff) West Allerton;
- (gg) Whiston;
- (hh) Wombwell;
- (ii) Arnside;
- (jj) Barrow-in-Furness;
- (kk) Birchwood;
- (ll) Burneside;
- (mm) Carnforth;
- (nn) Grange Over Sands;
- (oo) Kendal;
- (pp) Staveley;
- (qq) Ulverston;
- (rr) Warrington Central; and
- (ss) Windermere.

2. **Car Parks**

- (a) Baildon
- (b) Barnsley Interchange
- (c) Ben Rhydding
- (d) Beverley
- (e) Bolton On Dearne
- (f) Bradford Forster Square
- (g) Bridlington
- (h) Brighouse
- (i) Burley in Wharfedale
- (j) Crossflats
- (k) Darton
- (l) Dore & Totley

- (m) Eaglescliffe
- (n) Goole
- (o) Harrogate (Long Stay)
- (p) Harrogate (Short Stay)
- (q) Hebden Bridge
- (r) Hexham
- (s) Hexham (Rear Car Park)
- (t) Kirkstall Forge
- (u) Mexborough
- (v) Morpeth
- (w) Outwood
- (x) Pontefract Monkhill
- (y) Redcar Central
- (z) Rotherham Central
- (aa) Sandall & Agbrigg
- (bb) Skipton
- (cc) Sowerby Bridge
- (dd) Steeton & Silsden
- (ee) Thorne North
- (ff) Todmorden
- (gg) Wakefield Kirkgate
- (hh) Whitby
- (ii) Woodlesford
- (jj) Accrington
- (kk) Adlington
- (ll) Ashton Under Lyne
- (mm) Bamber Bridge
- (nn) Bare Lane
- (oo) Blackburn Boulevard
- (pp) Blackpool North
- (qq) Blackrod

(rr) Bredbury  
(ss) Broadbottom  
(tt) Bromley Cross  
(uu) Buckshaw Parkway  
(vv) Burnley Central  
(ww) Burnley Manchester Road  
(xx) Burscough Bridge  
(yy) Burscough Junction  
(zz) Buxton  
(aaa) Carnforth  
(bbb) Castleton  
(ccc) Chinley  
(ddd) Chorley  
(eee) Congleton  
(fff) Daisy Hill  
(ggg) Earlestown  
(hhh) Euxton Balshaw Lane  
(iii) Goostrey  
(jjj) Guide Bridge  
(kkk) Hindley  
(lll) Holmes Chapel  
(mmm) Horwich Parkway  
(nnn) Hough Green  
(ooo) Huyton  
(ppp) Kirkham & Wesham  
(qqq) Knutsford  
(rrr) Layton  
(sss) Lea Green  
(ttt) Leyland  
(uuu) Littleborough  
(vvv) Lostock Parkway

(www) Marple  
(xxx) Mossley Hill  
(yyy) Mossley  
(zzz) New Mills Newtown  
(aaaa) Northwich  
(bbbb) Poynton  
(cccc) Prescot  
(dddd) Romiley  
(eeee) Rose Hill  
(ffff) Sandbach  
(gggg) St Annes On The Sea  
(hhhh) St Helens Central  
(iiii) St Helens Junction  
(jjjj) Thatto Heath  
(kkkk) Whiston  
(llll) Widnes  
(mmmm) Wilmslow  
(nnnn) Aspatria  
(oooo) Cark and Cartmel  
(pppp) Harrington Station  
(qqqq) Maryport Station  
(rrrr) Sellafield Station  
(ssss) Whitehaven Station  
(tttt) Workington Station  
(uuuu) Worksop Station Main  
(vvvv) Worksop Station Overflow  
(wwww) Warrington Central  
(xxxx) Barrow in Furness  
(yyyy) Carnforth  
(zzzz) Grange over Sands  
(aaaaa) Ulverston

(b) Windermere

## APPENDIX 2 TO SCHEDULE 1.7

## Information about Station Improvement Measures

Information to be provided	Information (format)	When information to be provided
<b>Cost for provision of services at stations</b>		
Total investment (Capex) in station schemes	Number	As per paragraph 7.2 but subject to paragraph 7.3
SIF station spend	Report	As per paragraph 7.2 but subject to paragraph 7.3
% of stations with real time information	Number	As per paragraph 7.2 but subject to paragraph 7.3
% of stations with ticket vending machines	Number	As per paragraph 7.2 but subject to paragraph 7.3
% of stations with CCTV	Number	As per paragraph 7.2 but subject to paragraph 7.3
Cost of Planned Preventative Maintenance	Number	As per paragraph 7.2 but subject to paragraph 7.3
Cost of Reactive Maintenance	Number	As per paragraph 7.2 but subject to paragraph 7.3
Car parking investment	Number	As per paragraph 7.2 but subject to paragraph 7.3
<b>Passenger satisfaction with stations</b>		
NRPS - Stations contracted score in FA	Number	As per paragraph 7.2 but subject to paragraph 7.3
NRPS - Overall satisfaction with the station	Number	As per paragraph 7.2 but subject to paragraph 7.3
NRPS - Ticket buying facilities	Number	As per paragraph 7.2 but subject to paragraph 7.3
NRPS - Upkeep/repair of station buildings	Number	As per paragraph 7.2 but subject to paragraph 7.3
NRPS - Cleanliness of the station	Number	As per paragraph 7.2 but subject to paragraph 7.3
NRPS - Facilities and services at the station	Number	As per paragraph 7.2 but subject to paragraph 7.3
NRPS - Connections with public transport	Number	As per paragraph 7.2 but subject to paragraph 7.3
NRPS - Facilities for car parking	Number	As per paragraph 7.2 but subject to paragraph 7.3

<b>Information to be provided</b>	<b>Information (format)</b>	<b>When information to be provided</b>
NRPS - Overall environment of the station	Number	As per paragraph 7.2 but subject to paragraph 7.3
NRPS - Personal security at station	Number	As per paragraph 7.2 but subject to paragraph 7.3
NRPS - Provision of shelter facilities	Number	As per paragraph 7.2 but subject to paragraph 7.3
NRPS - Availability of seating	Number	As per paragraph 7.2 but subject to paragraph 7.3
NRPS - Facilities for bicycle parking	Number	As per paragraph 7.2 but subject to paragraph 7.3
NRPS - Overall station satisfaction (by route)	Number	As per paragraph 7.2 but subject to paragraph 7.3
NRPS - Station Manager (overall station)	Number	As per paragraph 7.2 but subject to paragraph 7.3
SQ benchmark - Ambience	Number	As per paragraph 7.2 but subject to paragraph 7.3
SQ benchmark - Maintenance	Number	As per paragraph 7.2 but subject to paragraph 7.3
SQ benchmark - Cleanliness	Number	As per paragraph 7.2 but subject to paragraph 7.3
SQ benchmark - Information	Number	As per paragraph 7.2 but subject to paragraph 7.3
SQ benchmark - Ticketing	Number	As per paragraph 7.2 but subject to paragraph 7.3
SQ failures	Number	As per paragraph 7.2 but subject to paragraph 7.3
Number of station audits	Number	As per paragraph 7.2 but subject to paragraph 7.3
Number of complaints about stations	Number	As per paragraph 7.2 but subject to paragraph 7.3
Letters/emails of praise about stations	Number	As per paragraph 7.2 but subject to paragraph 7.3
Accidents - slips trips falls at stations	Number	As per paragraph 7.2 but subject to paragraph 7.3
<b>Levels of inclusivity and accessibility</b>		
Number of step free stations	Number	As per paragraph 7.2 but subject to paragraph 7.3



Information to be provided	Information (format)	When information to be provided
Percentage of station footfall step free	Number	As per paragraph 7.2 but subject to paragraph 7.3
<b>Meeting the community's need</b>		
Number of buildings used for community use	Spreadsheet	As per paragraph 7.2 but subject to paragraph 7.3
Awards and rewards	Narrative	As per paragraph 7.2 but subject to paragraph 7.3
CCIF spend	Number	As per paragraph 7.2 but subject to paragraph 7.3
Third party funding secured	Spreadsheet	As per paragraph 7.2 but subject to paragraph 7.3
Number of station travel plans	Number	As per paragraph 7.2 but subject to paragraph 7.3
<b>Retail activity</b>		
Letting income by station	Spreadsheet	As per paragraph 7.2 but subject to paragraph 7.3
Total station letting income	Spreadsheet	As per paragraph 7.2 but subject to paragraph 7.3
Square meterage of space let commercially	Spreadsheet	As per paragraph 7.2 but subject to paragraph 7.3
Space filled for social use (Sq M)	Spreadsheet	As per paragraph 7.2 but subject to paragraph 7.3
Vacant space (Sq M)	Spreadsheet	As per paragraph 7.2 but subject to paragraph 7.3
Number of parking spaces (total)	Number	As per paragraph 7.2 but subject to paragraph 7.3
Spaces with Park Mark award	Spreadsheet	As per paragraph 7.2 but subject to paragraph 7.3
Car parking revenue	Number	As per paragraph 7.2 but subject to paragraph 7.3

**APPENDIX 3 TO SCHEDULE 1.7**

**NOT USED**

**APPENDIX 4 TO SCHEDULE 1.7**

**NOT USED**

**Schedule 1.8****Diversity and Inclusion and Training and Development****Diversity and Inclusion****1. Diversity and Inclusion Strategy**

- (a) The Operator shall use all reasonable endeavours to implement and comply with its D&I Strategy.
- (b) In respect of any new contract or arrangements it enters into with third parties during the Contract Term, the Operator shall use all reasonable endeavours to ensure it obliges its counterparty to comply with and implement suitable diversity and inclusion policies.
- (c) To the extent the Operator is entering into any material amendments to any existing contracts or arrangements with third parties, it shall use all reasonable endeavours to ensure that the contract or arrangement (as amended) does not materially adversely affect the Operator's ability to comply with its D&I Strategy.

**1.2 Diversity Accreditation**

The Operator shall use all reasonable endeavours to attain and/or maintain at least one diversity accreditation from a Recognised Accreditation Scheme within such timeframe as may be set out in its D&I Strategy which shall comply with the timescales set by the relevant Recognised Accreditation Scheme or as otherwise agreed between the Parties.

**1.3 Performance Reporting**

The Operator shall submit a D&I Annual Report to the Secretary of State on the D&I Annual Reporting Date. The Parties acknowledge and agree that the Operator's D&I Annual Report shall be provided substantially in the same form as the Secretary of State may request and shall include:

- (a) evidence of the Operator's performance against, and impact of implementing, its D&I Strategy;
- (b) evidence of the Operator's performance against the Diversity KPIs;
- (c) evidence of the Operator working towards achieving and maintaining diversity accreditation in accordance with paragraph 1.2 (*Diversity Accreditation*);
- (d) evidence of the Operator establishing diversity in its procurement process and using a diverse supply chain;
- (e) evidence of the Operator's performance against its Recruitment Objectives;
- (f) a record of any other diversity data collected by the Operator in respect of its workforce; and
- (g) such other information and data as the Secretary of State may request at least three (3) months prior to the D&I Annual Reporting Date.

**1.4 Diversity and Inclusion Champion**

- (a) As soon as practicable and by no later than three months from the Amendment and Restatement Date, the Operator shall (to the extent that the Operator has

not already done so) nominate a board director of the Operator or a member of the senior executive team of the Operator to act as D&I Champion.

- (b) The Operator shall ensure that the D&I Champion role is filled as soon as practicable after such role becomes vacant throughout the term of this Contract.

#### 1.5 **Recruitment Targets and Objectives**

- (a) The Operator shall use all reasonable endeavours to:
- (i) be objective, transparent and fair in its recruitment processes;
  - (ii) meet Recruitment Targets; and
  - (iii) improve retention rates of underrepresented groups
- (together, the "**Recruitment Objectives**").
- (b) The Operator shall report on its performance against its Recruitment Objectives as part of its D&I Annual Report, together with relevant supporting evidence. Such supporting evidence may include details of Operator policies and procedures such as: advertising across a variety of channels to reach a broad range of candidates; blind sifting applications; engaging in CV blind interviewing; engaging in outreach programmes; establishing a returners policy; and/or establishing mentoring schemes.
- (c) Nothing in this paragraph 1.5 or this Schedule 1.8 is intended to impose or require any quota.

#### 1.6 **Data – Collecting, Monitoring and Reporting**

- (a) During the Contract Term, the Operator shall monitor the diversity profile of its workforce and collect Workforce Diversity Data.
- (b) Within six (6) weeks of the Start Date, the Secretary of State may notify the Operator of any further data requirements it may have, including:
- (i) any additions to the scope of the Workforce Diversity Data the Operator is required to monitor and collect;
  - (ii) the frequency in which it shall be measured or collected; and
  - (iii) the form in which the Operator is required to deliver this to the Secretary of State via such data hub as the Secretary of State may direct.
- (c) The Operator shall use all reasonable endeavours to collect and submit this data in accordance with the Secretary of State's data requirements.
- (d) The Operator acknowledges and agrees that the Secretary of State may use any data provided to it by the Operator pursuant to this Schedule 1.8 for analytical and policy development purposes.
- (e) The Operator shall provide a detailed report to the Secretary of State of its Workforce Diversity Data by no later than six (6) weeks from the Amendment and Restatement Date and thereafter on the 31 March in each Contract Year.
- (f) The Operator shall organise the detailed report in accordance with the characteristics listed in the definition of Workforce Diversity Data.

## 1.7 Improvement and Remedial Plans

- (a) If and to the extent that the Secretary of State considers that the Operator has not adequately:
- (i) delivered its D&I Strategy;
  - (ii) achieved accreditation in accordance with its D&I Strategy or has otherwise lost its accreditation;
  - (iii) used all reasonable endeavours to deliver against its Recruitment Objectives; or
  - (iv) collected, monitored and reported on data pursuant to paragraph 1.6 (*Data - Collecting, Monitoring and Reporting*),
- it may notify the Operator that it requires it to deliver a plan for how it will improve its performance in the relevant area (a "**D&I Improvement Plan**") for the Secretary of State's review and consent. The D&I Improvement Plan shall include the Operator's proposed timeline for implementing any changes or actions.
- (b) If the Parties cannot agree the D&I Improvement Plan within twenty (20) Weekdays from the Secretary of State's notification pursuant to paragraph 1.7(a), the Secretary of State may impose such D&I Improvement Plan as it considers reasonable.
- (c) If the Operator fails to implement the D&I Improvement Plan, then the Secretary of State may serve a Breach Notice on the Operator in accordance with clause 8 (Procedure for Remedying a Contravention of the Service Contract).

## 2. Apprenticeships

- 2.1 The Operator shall at all times keep accurate and complete records of the Apprenticeships (and the training provided to apprentices) offered by the Operator and (if applicable) its immediate UK based supply chain in delivering the Rail Services on a basis which is at all times compliant with Data Protection Legislation. In particular, in relation to each Reporting Period the Operator shall record:
- (a) the number of new Apprenticeships created, continuing and concluding in that Reporting Period;
  - (b) the date of commencement and conclusion of each Apprenticeship; and
  - (c) in relation to each Business Employee that commences an Apprenticeship in such Reporting Period:
    - (i) the level of such Apprenticeship as described in the Regulated Qualifications Framework;
    - (ii) the skills category (as described in the Standard Occupational Classification Codes) within which Apprenticeship falls;
    - (iii) the month and year of birth of that Business Employee;
    - (iv) the current occupation of that Business Employee;
    - (v) the gender of that Business Employee (except in relation to those Business Employees who do not permit disclosure);

- (vi) whether that Business Employee is of ethnic background (except in relation to those Business Employees who do not permit disclosure);
  - (vii) the postcode of the location at which that Business Employee is principally employed at (e.g. the relevant train crew depot of train crew); and
  - (viii) the first half of that Business Employee's residential postcode.
- 2.2 Subject to paragraph 12.1 (*Data Protection – Apprenticeships*) of Schedule 17 (*Confidentiality and Data Protection*), the Operator shall provide an Apprenticeships Data Collection Form to the Rail Delivery Group containing the information set out in paragraph 2.1 for the purpose of enabling the Secretary of State to monitor the achievement of the apprenticeship targets set out in the Transport Infrastructure Skills Strategy and check for any duplication of records.
- 2.3 By no later than 31 January each year (and within one (1) month of the end of the Contract Period) the Operator shall deliver to the Rail Delivery Group the breakdown of the information recorded pursuant to paragraph 2.1, and (subject to the requirements of paragraph 2.2) it shall record this during the calendar year (or part thereof) which ended on the immediately preceding 31 December or at the end of the Contract Period (as applicable), and that information is to be transmitted via the completed Apprenticeships Data Collection Form and submitted to the Rail Delivery Group for onward transmission to the Secretary of State on an annual basis or at such other time as the Secretary of State may specify.
- 2.4 The Operator shall ensure that the number of Business Employees who begin an Apprenticeship in any Contract Year shall constitute no fewer than the proportion of Business Employees specified in the Business Plan in relation to that Contract Year, such proportion to be no less than 2.5% (the "**Apprenticeships Requirement**") provided that:
  - (a) the Apprenticeships Requirement shall be subject to a pro rata reduction in relation to the first Contract Year; and
  - (b) the Apprenticeships Requirement shall be subject to a pro rata reduction in respect of the Final Contract Year in the event that the Final Contract Year consists of less than thirteen (13) Reporting Periods,and the Operator shall provide evidence of the satisfaction of the Apprenticeships Requirement to the Secretary of State within ten (10) days of the end of each Contract Year.

## SCHEDULE 2

### ASSETS, LEASES, OTHER THE OPERATORS 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:	Other Franchisees
Schedule 2.4:	NOT USED
Schedule 2.5:	Transport, Travel and Other Schemes
	Appendix 1: List of Transport, Travel and Other Schemes



**Schedule 2.1****Asset Vesting and Transfer****1. Vesting of Property Leases at the Start Date**

- 1.1 The Operator 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 Operator 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 Network Rail, the Operator 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 Operator acknowledge that it is their intention that section 31 of the Act shall continue to apply to such assigned or amended lease.
- 1.4 The Operator shall use all reasonable endeavours to ensure that any Station Lease that it enters into accurately records all fixtures and fittings in relation to such Station Lease.

## Schedule 2.2

### Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases

#### 1. **Novation of Access Agreements during the Contract Term**

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

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

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

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

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

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

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

1.4 The Operator 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 Operator is also party, agree to the novation of the relevant Train Operator's interest under the relevant Access Agreement to the Secretary of State or as the Secretary of State may direct, subject, to the extent applicable, to the consent of the ORR. The provisions of paragraph 1.3 shall apply to any such novation.

1.5 The Operator 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 Operator 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 Operator 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 Operator or the relevant counterparty or which may result in it being reasonably likely to be unable to comply with the terms of this Contract; or
- (c) amend or waive the terms of any Rolling Stock Related Contract,

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

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

- (a) such other information or documentation relating to such Rolling Stock Related Contract and/or the relevant rolling stock as the Secretary of State may request (which may include offer letters (original and final));
- (b) the terms proposed by any person providing finance in relation to the relevant rolling stock (including cash flows);
- (c) any agreement (in whatever form) to which the Operator is a party and which relates to the relevant rolling stock;
- (d) information relating to capital allowances, details of any changes in the terms (including rentals) on which the relevant rolling stock is proposed to be leased compared to the terms on which such rolling stock was previously leased; and
- (e) a detailed justification of the Operator's proposed maintenance strategy for the relevant rolling stock and/or the Operator's analysis of the whole life costs of the relevant rolling stock.

2.3 Where the information or documentation so requested by the Secretary of State is not held by the Operator, the Operator shall use reasonable endeavours to obtain the relevant information or documentation from a third party (including any person from whom the Operator leases rolling stock).

2.4 The Operator 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").

2.5 The Operator 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 Operator, whether on a reciprocal basis or otherwise.

3. **Cascaded Rolling Stock and Delayed Cascade Mitigation Plan**

3.1 **NOT USED**

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

- (a) as a condition of giving the Secretary of State's consent to the Operator 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 Operator 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 Operator 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 Operator to make the Cascaded Rolling Stock available for use by the Prior Train Operator during such period as the Secretary of State may require.

3.3 Where the Secretary of State exercises the Secretary of State's right pursuant to paragraph 3.2(b) to make Cascaded Rolling Stock available for use by the Prior Train Operator during a specified period the exercise of such right shall be an event which shall have the potential to give rise to revisions to the CP Budget pursuant to paragraph 5 of Schedule 8.1 (*Contract Payments*).

3.4 **NOT USED**

3.5 **NOT USED**

3.6 **NOT USED**

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

- (a) such failure to comply arises directly as a result of the Operator being unable to use the Cascaded Rolling Stock; and
- (b) the Operator uses all reasonable endeavours to comply with the relevant obligations notwithstanding the unavailability of the Cascaded Rolling Stock.

3.8 The Operator 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 Operator shall use all reasonable endeavours to mitigate the impact on the delivery of the Rail Services of the unavailability of the Cascaded Rolling Stock at the expected time including by identifying and proposing value for money alternative sources of replacement rolling stock.

3.9 If a Relevant Delay has occurred or the Secretary of State believes that there is a material risk that a Relevant Delay will occur the Secretary of State may serve a notice on the Operator 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 Operator to mitigate the direct or indirect impact of the Relevant Delay on the Prior Train Operator or any other affected Train Operator. The Delayed Cascade Mitigation Plan shall provide a comprehensive analysis backed by relevant data and assumptions of:

- (a) all cost and revenue and other financial implications of options contained within it including the potential implications for Contract Payments;
  - (b) the implications (if any) for the Operator's performance in relation to TOC on Self Cancellations, TOC Minutes Delay and/or Short Formations; and
  - (c) the likely impact of options within it for existing and future passenger journeys and journey opportunities.
- 3.10 The Operator shall meet with the Secretary of State to discuss the Delayed Cascade Mitigation Plan and provide such further information or analysis and further iterations of the Delayed Cascade Mitigation Plan as the Secretary of State shall reasonably require.
- 3.11 Where any rolling stock vehicles cease to be part of the Train Fleet but are acquired by another Train Operator for use in delivering passenger services the Operator shall:
- (a) ensure that:
    - (i) such rolling stock is in an acceptable redelivery condition consistent with the hand back terms agreed with the lessor;
    - (ii) a complete set of maintenance and mileage records are handed over in a suitable format; and
    - (iii) the Train Operator is given reasonable access to the relevant rolling stock prior to handover to assist with an effective hand over in relation to both operation and maintenance; and
  - (b) use reasonable endeavours to ensure that:
    - (i) the Train Operator is offered 'knowledge transfer' sessions to enable recipient engineers and operational personnel to learn from informed peers;
    - (ii) the Train Operator is offered on-train development programmes to train their maintenance staff to an appropriate level of competence; and
    - (iii) it offers medium-term support and advice in relation to such rolling stock including technical and operational support.

#### 4. **Assignment of Property Leases during the Contract Term**

- 4.1 The Operator shall (other than on termination of this Contract, for which the provisions of paragraph 4.5 of Schedule 15.4 (Provisions applying on and after Termination) shall apply) following receipt of a notice purporting to terminate a Property Lease or on becoming aware of any proceedings or any other steps having or purporting to have similar effect, if requested by the Secretary of State, assign its interest under all or any Property Leases to the Secretary of State or as the Secretary of State may direct, subject where applicable to the agreement of any other party to such Property Lease or the ORR.
- 4.2 Such assignment shall be on such terms as the Secretary of State may reasonably require, including:
- (a) that the Operator 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 antecedent 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 contravention referred to in paragraph 4.2(a), and the Operator 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.

4.3 The Operator shall, on the occurrence of any of the circumstances specified in paragraph 4.1 in relation to any other Train Operator who is a party to a Property Lease to which the Operator is also party, agree to the assignment of such Train Operator's interest under the relevant Property Lease to the Secretary of State or as the Secretary of State may direct, subject, where applicable, to the consent of Network Rail. The provisions of paragraph 4.2 shall apply to any such assignment.

4.4 The Operator 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 Operator to assign its interest or agree to the assignment of another Train Operator's interest under this paragraph 4.

## 5. **Station and Depot Leases**

5.1 The Operator shall at all times enforce its rights under each Station Lease and Depot Lease.

5.2 The Operator 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 Operator 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 Contract Term or if consent to the Closure of the relevant Station or Depot has been granted).

## 6. **Station Subleases**

6.1 Unless the Secretary of State agrees otherwise, the Operator 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 this Contract; and
- (b) is excluded from the provisions of Part II of the Landlord and Tenant Act 1954 and the Tenancy of Shops (Scotland) Act 1949.

6.2 If so requested by the Secretary of State, the Operator 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 Contract Term of the Train Operator who is the lessee under such Station Sublease); and
- (b) if such Station Sublease terminates (which for the purposes of this paragraph 6.2(b) shall include the termination, at or around the time of termination of the Previous Agreement, of a station sublease in respect of which the Operator 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 Contract Term of the Train Operator who is the lessee under such Station Sublease),

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

- 6.3 The Operator shall notify the Secretary of State immediately on it becoming aware of any event which might give the Operator a right to forfeit or terminate any Station Sublease. the Operator shall notify the Secretary of State if it wishes to forfeit or terminate any such Station Sublease but shall not (without the Secretary of State's prior written consent) effect such forfeiture or termination until the date which occurs three (3) months after the date of such notice.

### Schedule 2.3

#### Other Franchisees

#### 1. Other Franchisees

- 1.1 If the franchise agreement of another franchisee terminates or a railway administration order is made in respect of another franchisee, the Operator 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 Operator and such other franchisee which were designated as a key contract under such franchise agreement immediately prior to its termination or to a railway administration order being made will continue to be provided to any successor Train Operator or to the railway administrator.
- 1.2 The benefit of any arrangements of the type referred to in paragraph 1.1(b) shall be provided on substantially the same terms as previously obtained by the relevant franchisee, subject to clause 14.8 (Arm's Length Dealings) and paragraph 1.3 of this Schedule 2.3, provided that the Secretary of State may exclude or modify any terms agreed or amended by such franchisee in the twelve (12) months preceding the date on which such franchisee's franchise agreement was terminated or the date on which the relevant railway administration order was made which were, in the Secretary of State's reasonable opinion, to the material detriment of such franchisee's business. The benefit of such arrangements shall be provided for such period as the Secretary of State may reasonably require to allow the relevant Train Operator or railway administrator to renegotiate such arrangements or make alternative arrangements.
- 1.3 The Operator shall notify the Secretary of State of its intention to terminate any contract with any other Train Operator which is designated as a Key Contract under that Train Operator's franchise agreement and shall give that Train Operator sufficient notice to enable it to make suitable alternative arrangements for its passengers without causing disruption to the railway passenger services provided by such Train Operator.
- 1.4 If the franchise agreement of another franchisee terminates in contemplation of the entry into or entry into effect of a new franchise agreement with the same franchisee in respect of all or a material part of the relevant railway passenger services, the Operator shall waive any event of default or other right it may have to terminate any agreement with such franchisee arising out of such termination, provided that the entry into or entry into effect of such new franchise agreement takes place.
- 1.5 References in this paragraph 1 to **"a franchisee"** include references to any franchise operator of that franchisee.



**Schedule 2.4**

**NOT USED**

**Schedule 2.5**

**Transport, Travel and Other Schemes**

**1. Local Authority Concessionary Travel Schemes**

1.1 The Operator shall:

- (a) participate in and comply with its obligations under:
  - (i) the concessionary travel schemes listed in Appendix 1 (List of Transport, Travel and Other Schemes) to this Schedule 2.5; and
  - (ii) any other concessionary travel scheme which the Operator is required to participate in during the Contract Term pursuant to paragraph 1.1(b); and
- (b) if so requested by the Secretary of State, participate in and comply with its prospective obligations under:
  - (i) any concessionary travel scheme listed in this Contract the terms of which have been amended since the date of this Contract; and
  - (ii) such other concessionary travel schemes as any relevant Local Authority may require or request it to participate in.

1.2 **NOT USED**

1.3 **NOT USED**

1.4 **NOT USED**

1.5 The Operator shall supply to the Secretary of State, in respect of any concessionary travel schemes referred to in paragraph 1.1(b), such information within such period as the Secretary of State may reasonably require.

1.6 **NOT USED**

**2. Multi-modal Fares Schemes**

2.1 The Operator shall:

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

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

- (b) if so requested by the Secretary of State, participate in and comply with its prospective obligations under:

- (i) any multi-modal fares scheme set out in paragraph 2 of Appendix 1 (List of Transport, Travel and Other Schemes) to this Schedule 2.5, the terms of which have been amended since the date of signature of this Contract; and
- (ii) such other multi-modal fares schemes as any relevant Local Authority may require or request it to participate in.

2.2 **NOT USED**

2.3 **NOT USED**

2.4 **NOT USED**

2.5 **NOT USED**

2.6 The Operator shall supply to the Secretary of State, in respect of any multi-modal fares schemes referred to in paragraph 2.1 such information within such period as the Secretary of State may reasonably require.

2.7 **NOT USED**

### 3. **Discount Fare Schemes**

3.1 If the Secretary of State:

- (a) effects, or proposes to effect, an amendment to a Discount Fare Scheme;
- (b) introduces any new Discount Fare Scheme; or
- (c) ceases to approve a Discount Fare Scheme,

then the Secretary of State shall provide a reasonable opportunity to the Operator to make representations to the Secretary of State before amending, introducing or ceasing to approve a Discount Fare Scheme.

3.2 **NOT USED**

3.3 The Operator shall supply to the Secretary of State, in respect of any Discount Fare Scheme referred to in paragraph 3.1, such information within such period as the Secretary of State may reasonably require for the purposes of determining the financial effect of any such amendment, intended amendment, introduction or cessation of approval.

### 4. **Inter-Operator Schemes**

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

4.2 Without limiting paragraphs 4.1 and 4.3, the Operator agrees to be bound by Parts IV and V of Chapter 4 of the Ticketing and Settlement Agreement and shall not amend, or agree or propose to amend, the Ticketing and Settlement Agreement without the prior written consent of the Secretary of State.

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

4.4 The Operator shall:

- (a) provide reasonable notice to the Secretary of State of any proposal to amend any Inter-Operator Scheme which it intends to make or of which it receives

notification and which, in its opinion, is reasonably likely to materially affect the provision of the Rail Services; and

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

4.5 If an amendment is effected or proposed to be effected to an Inter-Operator Scheme which requires the consent or approval of the Secretary of State in accordance with the terms thereof, such amendment shall be an event which shall have the potential to give rise to revisions to the CP Budget pursuant to paragraph 5 of Schedule 8.1 (*Contract Payments*).

**APPENDIX 1 TO SCHEDULE 2.5****List of Transport, Travel and Other Schemes****1. Local Authority Concessionary Travel Schemes**

1.1 Each of the following schemes as at the Start Date:

- (a) Transport for Greater Manchester: Concessionary Fares Scheme (free, discounted price or flat fares for elderly, disabled and young persons).
- (b) Merseytravel: Concessionary Fares Scheme (free or discounted price travel for elderly, disabled and young persons).
- (c) West Yorkshire Combined Authority: Concessionary Fares Scheme (free or discounted price travel for senior citizens, blind, disabled and young persons).
- (d) South Yorkshire Passenger Transport Executive: Concessionary Fares Scheme.
- (e) Tyne & Wear Passenger Transport Executive: Concessionary Fare Scheme.
- (f) Education season ticket schemes also operate with the following:  
  
Lancashire County Council, Cheshire County Council, Derbyshire County Council, and Cumbria County Council.
- (g) Concessionary schemes with the following bodies:  
  
Durham County Council, North Lincolnshire County Council, North East Lincolnshire County Council, Hull City Council and Derbyshire County Council.
- (h) Scholar Season Ticket schemes with the following authorities:  
  
North Lincolnshire County Council, North East Lincolnshire County Council, West Yorkshire Combined Authority, Lincolnshire County Council, North Yorkshire County Council (one scheme on the Whitby branch line and one relating to the Esk Valley Rail Partnership), Northumberland County Council, Hull City Council.

1.2 Any other concessionary travel scheme which the Operator is required to participate in during the Contract Term pursuant to paragraph 1.1(b) of Schedule 2.5.

**2. Multi-modal Fares Schemes**

2.1 Each of the following schemes as at the Start Date:

- (a) Transport for Greater Manchester:
  - (i) County Cards (Greater Manchester Travelcards Limited season tickets);
  - (ii) Metrolink tickets (Metro and train);
  - (iii) Wayfarer tickets (bus, Metro and train);
  - (iv) Day Saver (Off peak Rover ticket with bus, train and tram combinations); and
  - (v) Rail Ranger.

- (b) Merseytravel:  
TRIO, Rail Pass and Saveaway-Multi-modal season tickets and off peak Rovers.
- (c) West Yorkshire Combined Authority:
  - (i) Metrocards/M-Cards;
  - (ii) Metro Dayrover tickets (daily off-peak);
  - (iii) Not used; and
  - (iv) Metrorover tickets (half-price travel for the unemployed).
- (d) Tyne & Wear Passenger Transport Executive:  
Network Travel tickets.
- (e) South Yorkshire Passenger Transport Executive:
  - (i) Travelmaster; and
  - (ii) Railmaster.
- (f) Derbyshire County Council  
Derbyshire Wayfarer - off peak Rover.

2.2 Any other multi-modal fares travel scheme which the Operator is required to participate in during the Contract Term pursuant to paragraph 2.1(b) of Schedule 2.5.

### 3. **Discount Fare Schemes**

3.1 Each of the following schemes as at the Start Date:

- (a) Disabled Persons Railcard Scheme dated 23 July 1995 between the participants therein;
- (b) Young Persons Railcard Scheme dated 23 July 1995 between the participants therein; and
- (c) Senior Railcard Scheme dated 23 July 1995 between the participants therein; or
- (d) Not Used; or
- (e) 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.

### 4. **Inter-Operator Schemes**

4.1 Each of the following schemes as at the Start Date which relate to arrangements between the Operator and other participants in the railway industry:

- (a) Staff Travel Scheme dated 23 July 1995 between the participants named therein;
- (b) Ticketing and Settlement Agreement;

- (c) LRT Scheme dated 23 July 1995 between the participants named therein;
- (d) Travelcard Agreement dated 15 October 1995 between London Regional Transport and the parties named therein;
- (e) Through Ticketing (Non-Travelcard) Agreement dated 15 October 1995 (as amended and restated) between London Regional Transport and the parties named therein;
- (f) National Rail Enquiry Scheme dated 11 June 1996 between the participants named therein;
- (g) any other scheme, agreement and/or contract of a similar or equivalent nature as may from time to time during the Contract Period amend, replace or substitute, in whole or in part, any of such schemes, agreements and/or contracts;
- (h) any Discount Fare Scheme;
- (i) the 16-17 Saver railcard scheme introduced for use with effect from 2 September 2019 between the participants named therein; and
- (j) the Veterans Railcard scheme introduced on or about 11 November 2020 between the participants named therein.

**SCHEDULE 3**

**NOT USED**

NOT USED



## SCHEDULE 4

### ACCESSIBILITY AND INCLUSIVITY

#### 1. Relationship with other obligations relating to Disabled Persons

1.1 The Operator 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 Disabled Persons); and
- (c) any other requirements of the Service Contract.

1.2 This Schedule 4 sets out requirements for changes, improvements to and maintenance of stations to facilitate and maximise accessibility and use by Disabled Persons and those requiring assistance.

1.3

- (a) Subject to paragraph 1.3(c) below, it is acknowledged that the Operator is subject to obligations regarding accessibility under the terms of its Licences (including under the form of its Accessible Travel Policy as approved from time to time by the ORR in connection with the requirements of its Licences) (the "**Licence Accessibility Obligations**").
- (b) Where any matter included in this Schedule 4 is the subject of a Licence Accessibility Obligation, it is agreed that compliance with the Licence Accessibility Obligation shall take precedence over this Schedule 4 such that compliance with the Licence Accessibility Obligation shall be deemed to fulfil the obligation of the Operator in respect of that matter under this Schedule 4 and any failure by the Operator in respect of that matter shall be addressed under that Licence and not under the Service Contract.
- (c) Paragraph 1.3(a) shall have no application to paragraph 3 (Dealing with Claims relating to Stations).

#### 2. Physical Alterations and Accessibility of Stations

2.1 Standards set out in the 'Design Standards for Accessible Railways: Code of Practice' or any successor regulatory document must be met whenever station infrastructure is installed, replaced or renewed. In respect of physical alteration works at stations to facilitate accessibility and use by Disabled Persons, it is acknowledged by the Operator that:

- (a) there is limited funding available to the Secretary of State to assist Train Operators 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 as identified through an accessibility (audit) data collection with the Operator responsible for designing and delivering this; and
- (c) the Secretary of State's Access for All programme of works of physical alterations at stations addresses these issues in a structured way.

- 2.2 The Operator shall:
- (a) co-operate 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 practicable, usage of Stations by Disabled Persons); and
    - (ii) following consultation with its Accessibility Panel, advice as to the most effective way in which accessibility for Disabled Persons could, in the Operator's reasonable opinion, be improved at Stations;
  - (b) co-operate reasonably with other Train Operators and/or Network Rail to seek to ensure that the needs of Disabled Persons are considered in any planned work on the Stations and, so far as 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 of the Operator) 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 National Lottery funding. The Operator 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 Operator 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 and shall not make physical access more difficult as a result of inappropriately designed and/or sited barriers or other physical changes required by the multi-modal scheme.
- 2.4 If, during the Contract Term:
- (a) the Operator 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
  - (b) notwithstanding such compliance, the Operator 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 and which was not contemplated in the CP Budget,
- the Operator may propose a change to the CP Budget in respect of the same.
- 2.5 If the Operator proposes a change to the CP Budget 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 change to the CP Budget shall occur at the next Quarter following the operator's proposal under paragraph 2.4 and the Operator shall deliver the relevant improvements so as to comply with the EA Requirements referred to in paragraph 2.4(b).
- 2.6 If and to the extent the Operator 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 an Operator Access Station, provided that the Operator:

- (a) notifies the Secretary of State within seven (7) days of becoming aware of any proposal for the increase in such charges (or the works to which they relate); and
- (b) complies with the Secretary of State's directions regarding the exercise of any rights the Operator may have in respect thereof,

the imposition of the increased access charges shall result in a change to the CP Budget.

### 3. Dealing with Claims relating to Stations

3.1 If the Operator 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 Operator shall:

- (a) notify the Secretary of State within seven (7) days of receiving notification of the EA Claim. The Operator 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 shall, subject to paragraph 3.4, pay the Operator'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 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 Operator, 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 review and consent a settlement proposal, setting out the terms of the Operator'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 Operator to defend the EA Claim (or any aspect of it) then the Operator shall defend the EA Claim in accordance with paragraph 3.1.

3.4 If the Operator 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 the Secretary of State shall pay to the Operator:

- (a) the total amount of such award; and; and
- (b) the further reasonable costs incurred or payable by the Operator 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 **NOT USED**

4. **Specific additional obligations relating to Disabled Persons**

4.1 To the extent the Previous Operator did so prior to the Start Date, the Operator shall continue to implement procedures necessary to:

- (a) record the making of reservations for seating accommodation and for spaces for wheelchairs and/or for the provision of assistance to, Disabled Persons which are made through the Passenger Assist (or whatever service may replace it from time to time for the purposes of ORR's most recent guidance on the Accessible Travel Policies);
- (b) record whether such seating accommodation and/or assistance is actually provided, whether there has been a delay in providing such assistance at either departing, arrival or any interchange stations, and whether the journeys planned using Passenger Assist have been completed successfully (e.g. by surveying a representative sample of users); and
- (c) provide the results of such records to the Secretary of State, and publish a summary of the data in its Customer Report(s) and on the relevant section of the Operator's website.

4.2 By no later than one (1) month after the Amendment and Restatement Date, the Operator shall notify the Secretary of State of:

- (a) the extent to which it recorded the matters described in paragraphs 4.1(a) and 4.1(b) above (collectively referred to as the "**Seating and Assistance Provisions**"), as at the date of the notification; and
- (b) if and to the extent to which it did not previously record any aspect of the Seating and Assistance Provisions, its assessment of the costs, practicalities and timescales involved in putting in place the necessary systems and processes to enable them to do so.

4.3 Following the Amendment and Restatement Date:

- (a) if the Operator already records the Seating and Assistance Provisions, it shall continue to do so and shall provide the results of such records to the Secretary of State, and publish a summary of the data in its Customer Report(s) and on the relevant section of the Operator's website; and
- (b) if the Operator does not record any aspect of the Seating and Assistance Provisions, then the Secretary of State may by a Business Plan Revision require the Operator to establish and implement the necessary systems and processes by such date as the Secretary of State may specify (having regard to any assessment provided by the Operator pursuant to paragraph 4.1 above), and with effect from such date, it shall record Seating and Assistance Provisions and shall provide the results of such records to the Secretary of State and publish a summary of the data in its Customer Report(s) and on the relevant section of the Operator's website.

4.4 The Operator shall promptly send to the Secretary of State a copy of:

- (a) each set of results of the surveys of Passenger Assist users that the Operator undertakes pursuant to its Accessible Travel Policy; and
- (b) any reports that the Operator submits to ORR in connection with the effectiveness of, and satisfaction with, the Passenger Assist service.

- 4.5 The Operator shall promptly send to the Secretary of State a copy of:
- (a) each set of results of the surveys of Passenger Assist users that the Operator undertakes pursuant to its Accessible Travel Policy; and
  - (b) any reports that the Operator submits to ORR in connection with the effectiveness of, and satisfaction with, the Passenger Assist service.

4.6 The Operator shall comply with the requirements set out in Appendix 1 (Accessible Transport Arrangements) to this Schedule 4 in respect of the provision of accessible transport arrangements for Disabled Persons.

## 5. Annual Accessibility Update

5.1 The Parties acknowledge that the Operator, pursuant to its Licence Accessibility Obligations, is required to submit reports from time to time to ORR in respect of accessibility matters, including, in relation to:

- (a) the activities undertaken by the Operator to improve accessibility to the Rail Services;
- (b) the approach that the Operator has taken to assessing the accessibility requirements of passengers pursuant to the requirements of the EA, for example when making decisions about operations, design and service improvements; and
- (c) the action(s) taken by the Operator to remedy any failure (whether identified by the Operator or ORR) to comply with the Operator's Accessible Travel Policy or any other accessibility related obligation arising pursuant to its Licence Accessibility Obligations.

5.2 The Operator shall provide a copy of any report submitted to ORR pursuant to paragraph 5.1 to the Secretary of State within seven (7) Weekdays of it being submitted to ORR.

## 6. Accessibility Director and Accessibility Manager

6.1 As soon as practicable and by no later than the Amendment and Restatement Date, the Operator shall nominate (to the extent that the Operator has not already done so):

- (a) a director to the board of directors of the Operator; and
- (b) an operational manager,

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

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

## 7. Accessibility Panel

7.1 The Operator shall:

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

- (c) provide the Accessibility Panel the opportunity to report to the board of directors of the Operator on a quarterly basis.

## 8. Enhanced Disability Awareness Training

### 8.1

- (a) By no later than 1 March 2025 (or such later date as may be agreed by the Secretary of State and the Operator), the Operator shall deliver Enhanced Disability Awareness Training to:
  - (i) all Business Employees in customer facing roles (which shall include train drivers); and
  - (ii) all staff with management responsibilities (which shall include executive board members of the Operator's board of directors),
 who have not received such training under the Previous Agreement.
- (b) The Operator shall also ensure it delivers the Enhanced Disability Awareness Training to any Business Employees in customer facing roles and any staff with management responsibilities appointed following the Start Date (excluding Business Employees in customer facing roles and any staff with management responsibilities appointed less than two (2) months prior to the Expiry Date if it is not practicable to deliver Enhanced Disability Awareness Training to such Business Employees or staff) as soon as practicable after their appointment.
- (c) If at any time there is material change to the Enhanced Disability Awareness Training as compared to the relevant training provided previously to Business Employees in customer facing roles and staff with management responsibilities pursuant to this paragraph 8.1, the Operator shall use all reasonable endeavours to communicate the new and/or amended Enhanced Disability Awareness Training (including relevant materials) to the Business Employees in customer facing roles and staff with management responsibilities which had received the previous Enhanced Disability Awareness Training.

### 8.2 In developing the Enhanced Disability Awareness Training, the Operator shall:

- (a) take into account a wide range of disabilities (including non-visible disabilities); and
- (b) ensure the content complies with the requirements of the ORR's Accessible Travel Policy guidance.

### 8.3 The Operator shall involve Disabled Persons and/or groups representing Disabled Persons (which may include the Accessibility Panel) in the delivery of the Enhanced Disability Awareness Training.

## 9. Accessible Formats of Passenger Facing Information

### 9.1 By no later than three (3) months after the Amendment and Restatement Date the Operator shall ensure (and continue to ensure throughout the Contract Term) that, if and to the extent practicable, passenger facing information (in whatever form or media) is presented or made available in a range of accessible formats, taking into account the requirements of Disabled Persons in relation to communication (such as passengers who use British Sign Language or "easy read").

### 9.2 The Parties acknowledge that:

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

- (b) insofar as the obligation in paragraph 9.1 above applies to the Relevant Documents, enforcement action is within the remit of the ORR and accordingly a failure to comply with paragraph 9.1 in respect of the Relevant Documents shall not be treated as a contravention of this Contract (but the Operator nevertheless acknowledges that it will remedy any such failure, as soon as practicable and in accordance with any directions as may be given by the ORR).

#### 10. **Diversity Impact Assessments**

- 10.1 The Operator shall, from the Amendment and Restatement Date and throughout the Contract Term, ensure that it conducts a diversity impact assessment on all projects and initiatives that will or may affect the interests of persons with protected characteristics (as defined under the EA) carried out by the Operator (except where in the reasonable opinion of the Operator, the project or initiative is sufficiently completed such that a diversity impact assessment is not reasonably expected to materially influence the outcome of the project, in which case the requirement to conduct a diversity impact assessment in respect of that particular project shall not apply).
- 10.2 The Operator shall take such steps as it considers appropriate in light of the conclusions of the diversity impact assessment to ensure that issues affecting people with protected characteristics (as defined under the EA) are properly addressed in compliance with applicable Laws.

#### 11. **Station Accessibility Data Collection**

- 11.1 The Operator shall comply with any request by the Secretary of State in connection with the development and implementation of a station accessibility data collection plan which may include (but shall not be limited to):
  - (a) supporting the Secretary of State in developing and designing the methodology for data collection;
  - (b) completing questionnaires and/or using all reasonable endeavours to procure that the relevant station Facility Owner completes the relevant questionnaire;
  - (c) providing information in relation to Station accessibility and/or using all reasonable endeavours to procure that the relevant station Facility Owner provides such information; and
  - (d) providing access to Stations to facilitate accessibility data collection and/or using all reasonable endeavours to procure that the relevant station Facility Owner provides such access,

in each case, in a timely manner.

**APPENDIX 1 TO SCHEDULE 4****Accessible Transport Arrangements**

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

the Operator shall provide accessible transport arrangements for that passenger in accordance with paragraph 3.
3. The Operator shall provide accessible transport arrangements for the passenger referred to in paragraph 2:
  - 3.1 from the Departure Station to the next station at which the Passenger Service is scheduled to call and at which it is possible for the passenger to access that Passenger Service;
  - 3.2 to the Destination Station, from the station closest to such station at which the Passenger Service is scheduled to call and which it is possible for the passenger to use to disembark from that Passenger Service; and/or
  - 3.3 to or from such other station as the Operator 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 Operator's obligations under this Appendix 1 to Schedule 4 (Accessibility and Inclusivity) are subject to:
  - 4.1 reasonable prior notice of the passenger's requirement for accessible transport arrangements; and
  - 4.2 the availability of suitable accessible transport arrangements (provided that the Operator has used all reasonable endeavours to ensure that it has arrangements in place to meet requirements for the provision of such accessible transport arrangements).



## **SCHEDULE 5**

### **FARES AND SMART TICKETING**

Schedule 5.1:	Purpose, Structure and Construction
Schedule 5.2:	The Operator's Obligation to Create Fares
Schedule 5.3:	Allocation of Fares Basket
Schedule 5.4:	Regulation of PTE/Protected 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:	Smart Ticketing
Schedule 5.10:	Trials
Schedule 5.11:	Fares Setting and Monitoring
Schedule 5.12:	Marketing and Revenue Growth

## Schedule 5.1

### Purpose, Structure and Construction

#### 1. Purpose of provisions relating to Creating Fares

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

#### 1.2 Purpose of Fares Regulation

- (a) The purpose of Schedule 5.3 (*Allocation of Fares Basket*) to Schedule 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.
- (b) For the purpose of regulating Fares, each Fare that is to be regulated shall be allocated in accordance with this Schedule 5.1 to the PTE/Protected Fares Basket.
- (c) The Secretary of State's regulation of Fares places a limit on:
- (i) the Price of each Fare that is allocated by the Secretary of State to the PTE/Protected Fares Basket. The limit on the Price of each Fare is set by reference to:
    - (A) the overall increase of the Prices of all Fares in the PTE/Protected Fares Basket;
    - (B) the individual increase in the Price of each Fare in the PTE/Protected Fares Basket; and
  - (ii) the Child Price of each Fare as specified in paragraph 1.3 of Schedule 5.5 (Regulation of Individual Fares).
- (d) Subject to the more detailed provisions of Schedule 5.4 (Regulation of PTE/Protected Fares Basket Values) and Schedule 5.5 (Regulation of Individual Fares):
- (i) the overall increase of the Prices of all Fares in the PTE/Protected Fares Basket may not exceed the Retail Prices Index + k per cent per annum in respect of each Fare Year; and
  - (ii) the increase in the Price of any individual Fare in the PTE/Protected Fares Basket may not exceed the Retail Prices Index + k per cent + f per cent per annum in respect of each Fare Year.
- For the purposes of paragraph 1.2(d)(i), "k" shall have the meaning given to it in paragraph 4.2 of Schedule 5.4 (Regulation of PTE/Protected Fares Basket Values) and for the purposes of paragraph 1.2(d)(ii) "k" and "f" shall each have the meaning given to each such term in paragraph 2.2 of Schedule 5.5 (Regulation of Individual Fares).
- (e) The Secretary of State may alter these limits, and other aspects of the regulation of Fares, in accordance with the more detailed provisions of Schedule 5.7 (Changes to Fares and Fares Regulation).

## 2. **Structure of Schedule 5**

- 2.1 Schedule 5.2 (*The Operator's Obligation to Create Fares*) sets out or refers to the Operator's obligations to Create Fares.
- 2.2 Schedule 5.3 (*Allocation of Fares Fares Basket*) sets out the allocation of Fares to the PTE/Protected Fares Basket.
- 2.3 Schedule 5.4 (*Regulation of PTE/Protected Fares Basket Values*) sets out the limits applicable to the overall increase in Prices of all Fares in the PTE/Protected Fares Basket.
- 2.4 Schedule 5.5 (*Regulation of Individual Fares*) sets out the limits applicable to the increase in the Price of any individual Fare in the PTE/Protected Fares Basket and the Child Price of each Fare.
- 2.5 Schedule 5.6 (*Exceeding the Regulated Value, Regulated Price or Regulated Child Price*) sets out the consequences of the Operator exceeding:
- (a) the Regulated Value of the PTE/Protected Fares Basket; or
  - (b) the Regulated Price and/or Regulated Child Price of any Fare.
- 2.6 Schedule 5.7 (*Changes to Fares and Fares Regulation*) sets out the Secretary of State's ability to vary the foregoing provisions.
- 2.7 Schedule 5.8 (*Fares Regulation Information and Monitoring*) sets out Fares regulation information and monitoring provisions.
- 2.8 Schedule 5.9 (*Smart Ticketing*) sets out provisions relating to the introduction of smart ticketing.

## 3. **References to "Fare"**

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

## 4. **PTE/Protected Fares Document**

- 4.1 In the event that, in the Secretary of State's reasonable opinion, there is an immaterial inconsistency between the Fares or the maximum Price (as the case may be) for any Fare recorded by RSP in 2019 or the 2019 Nominal Ticket Sales:
- (a) described in or determined in accordance with this Schedule 5; and
  - (b) described in the PTE/Protected Fares Document,
- the PTE/Protected Fares Document shall prevail.

4.2 In the event that, in the Secretary of State's reasonable opinion, there is a material inconsistency between the Fares or the maximum Price (as the case may be) for any Fare recorded by RSP in 2019 or the 2019 Nominal Ticket Sales:

(a) described in or determined in accordance with this Schedule 5; and

(b) described in the PTE/Protected Fares Document,

this Schedule 5 shall prevail.

#### 5. **Setting of Child Prices**

5.1 Any requirement under this Schedule 5 to set a Child Price in respect of a Fare shall be satisfied by the Operator 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 5.1(b)(i).

#### 6. **New Stations**

6.1 Subject to paragraph 3.2, the Secretary of State may include within the definitions of:

(a) PTE/Protected Fares Basket;

(b) PTE Fare; and

(c) Protected Fare,

Fares to or from any New Station, on such basis as the Secretary of State may, after consultation with the Operator, reasonably determine and references in this Schedule 5 to PTE/Protected Fares Basket, PTE Fare, Protected Fare and Fares and other relevant definitions shall be construed accordingly.

## Schedule 5.2

### The Operator's Obligation to Create Fares

#### 1. Creation of PTE Fares and Protected Fares

The Operator shall ensure that each PTE Fare and Protected Fare has been Created, in accordance with the Fares Plan (as may be amended from time to time in accordance with a Business Plan Revision pursuant to paragraph 6 of Schedule 8.4) and to the extent it is entitled or obliged to do so under the terms of the Ticketing and Settlement Agreement.

#### 2. Restrictions on Creation of Fares

2.1 The Operator 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 fifty per cent (50%) of the Price of the relevant Fare.

2.2 The Operator shall not Create or agree to Create any Fare or Discount Card with a validity of thirteen (13) or more months without the consent of the Secretary of State (such consent not to be unreasonably withheld).

#### 3. Flexible Ticket Product

3.1 The Parties acknowledge that, pursuant to the Previous Agreement the Previous Operator was, from the Flexible Ticket Commencement Date, required to make available a flexible ticket product on the terms set out under the Previous Agreement (the "**Flexible Ticket**").

3.2 From the Start Date, the Operator shall continue to make available to passengers the Flexible Ticket, which shall:

(a) be valid for use for a period of four weeks from a start date nominated by the holder at the time of purchase of the Flexible Ticket (the "**Flexible Ticket Validity Period**") and sold in multiples of eight (8);

(b) be capable of use:

(i) on any Flow in respect of which the Operator is entitled to Create a Fare under the terms of the Ticketing and Settlement Agreement and a Weekly Season Ticket has been purchased at any time in the twenty-four months immediately prior to 17 May 2021, save where:

(A) such Flow is wholly within Zones 1-6;

(B) such Flow is a cross London flow (being a Flow on which the holder of a Cross London Ticket (as defined in the Through Ticketing (Non Travelcard) Agreement) is permitted to travel);

(C) not used; and

(D) such Flow is a Flow on which the holder of an Inter-Available Fare is permitted to travel on the passenger services operated by any of the Train Operators from time to time of the Wales and Borders, Merseyrail or Scotrail franchises (or any successor Train Operator of such passenger services) provided that, to the extent there is in effect an agreement between the Operator and such Train Operator for the use of Flexible Tickets on the passenger services operated by such Train

Operator, the foregoing provisions of this paragraph 3.2(b)(i)(D) shall not apply, and the Operator shall use all reasonable endeavours to enter into such an agreement with each such Train Operator; or

- (E) the Secretary of State agrees in writing that the Flexible Ticket does not need to be capable of use on a particular Flow,

(each such flow being a "**Relevant Flow**"); and

(ii) only:

- (A) by persons having attained the age of sixteen years; and

- (B) in respect of travel in Standard Class Accommodation;

(c) entitle the holder to make an unlimited number of journeys in either direction on the Passenger Services and the passenger services of other Train Operators on a Relevant Flow on any one (1) day during the Flexible Ticket Validity Period, and where a Flexible Ticket is used on any such day it shall entitle the holder to travel on such Relevant Flow until 04.29 hours on the immediately following day;

(d) unless otherwise agreed by the Secretary of State, be available to purchase through online channels only and be priced midway between the Price of an anytime day return and twenty per cent (20%) of the Price of a Weekly Season Ticket (in each case in respect of the relevant Flow) in accordance with the following formula:

$$FST = (ADR + (7DS/5))/2$$

where:

FST = the Price of a Fare comprised in a Flexible Ticket available in respect of a particular Flow;

ADR = the Price of an anytime day return in respect of such Flow, provided that:

(i) where the Price of an anytime day return in respect of such Flow is different depending on the direction of travel of the outward leg, the Price of the more expensive Fare shall be used for these purposes; and

(ii) where no anytime day return is available in respect of such Flow, the Price of a Fare for an equivalent return journey on such Flow shall be used for these purposes, being the Price of an anytime open return or (if no such Fare is available) the Price of an open standard return;

7DS = the Price of a Weekly Season Ticket in respect of such Flow,

(references to Prices of tickets above being to the Price of such ticket on the date of commencement of the Flexible Ticket Validity Period) provided always that:

(iii) FST, and the product of any calculation of twenty per cent (20%) of 7DS or eighty-seven point five per cent (87.5%) of ADR in accordance with paragraphs (ii) and (iii) below respectively, shall:

- (A) (if ending in £0.05 or more) be rounded up to the nearest £0.10; and

- (B) (if ending in less than £0.05) be rounded down to the nearest £0.10;
  - (C) FST shall (save to the extent such outcome arises solely as a result of any rounding in accordance with the provisions of paragraph (i) above) never be less than twenty per cent (20%) of 7DS (and any calculation made in accordance with the preceding formula which would otherwise result in FST being less than twenty per cent (20%) of 7DS shall be deemed to result in FST being an amount equal to twenty per cent (20%) of 7DS, rounded in accordance with the provisions of paragraph (i) above);
  - (D) FST shall (save to the extent such outcome arises solely as a result of any rounding in accordance with the provisions of paragraph (i) above) never be less than eighty seven point five per cent (87.5%) of ADR (and any calculation made in accordance with the preceding formula which would otherwise result in FST being less than eighty seven point five per cent (87.5%) of ADR shall be deemed to result in FST being an amount equal to eighty seven point five per cent (87.5%) of ADR, rounded in accordance with the provisions of paragraph (i) above); and
  - (E) FST shall not be discounted to the purchaser pursuant to any Local Authority Concessionary Travel Scheme, Multi-Modal Scheme, Discount Fare Scheme or Inter-Operator Scheme (each as set out in Appendix 1 to Schedule 2.5 (*Transport, Travel and Other Schemes*)) or otherwise provided that FST shall be discounted pursuant to either the 16-17 Saver railcard scheme or the Job Centre Plus Travel Discount card scheme;
- (e) be enabled by the Operator within the retail control service operated by Rail Settlement Plan Limited (the "**RCS**") for fulfilment on ITSO Certified Smart Media and, subject to the Operator having developed the capability to accept the same on the Relevant Flow on which a Flexible Ticket entitles the holder to travel, barcode enabled media by any person entitled to retail the same in accordance with the Ticketing and Settlement Agreement, save that the Operator shall be obliged to enable Flexible Tickets for fulfilment on ITSO Certified Smart Media only (and not on barcode enabled media) where:
- (i) either or both of the origin and destination stations on the Relevant Flow on which the Flexible Ticket entitles the holder to travel are operated by or on behalf of any of TfL (including any franchisee or concessionaire thereof) or the Train Operators of any of the c2c or Merseyrail franchises; and
  - (ii) barcode enabled media is not accepted by the operator at such station;
- (f) (subject to prior approval in writing from the Secretary of State to incur any associated costs to enable the same) be retailed by the Operator on ITSO Certified Smart Media or (save where sub-paragraphs 3.2(e)(i) and (ii) above apply) barcode enabled media, or both, and the Operator shall retail all similar and equivalent products created and enabled for fulfilment within RCS by other Train Operators on ITSO Certified Smart Media or (to the extent enabled for fulfilment within RCS on such media) barcode enabled media, or both;
- (g) not include a Travelcard when offered for sale;

- (h) offer additional benefits of convenience, including greater flexibility of use, than a Weekly Season Ticket; and
  - (i) include such other characteristics as the Secretary of State may notify the Operator in writing from time to time.
- 3.3 In addition to the obligations set out at paragraph 3.2, the Operator shall take such other action in connection with the Flexible Ticket as the Secretary of State may notify the Operator in writing from time to time, including such actions as the Secretary of State may require in order for the Operator to:
  - (a) promote and market the Flexible Ticket to potential users; and
  - (b) make the Flexible Ticket available to users without independent access to smart media or barcode enabled devices in such manner as the Secretary of State may from time to time approve or instruct.
- 3.4 The Secretary of State and the Operator shall undertake a review of the Flexible Ticket during the period falling six (6) to nine (9) months from Flexible Ticket Commencement Date (or such later period as the Secretary of State may notify the Operator in writing), following which the Secretary of State may instruct the Operator to make such alterations to the product as the Secretary of State considers necessary. The Operator may also propose to the Secretary of State such alterations to the Flexible Ticket as the Operator considers necessary, specifying its reasons for the same and the Secretary of State may, in the Secretary of State's discretion, permit the Operator to make such alterations to the Flexible Ticket, subject to any adjustments required by the Secretary of State. The Operator shall from time to time provide the Secretary of State with such information as the Secretary of State may request in writing.
- 3.5 The Secretary of State may vary the terms on which the Operator shall make the Flexible Ticket available to passengers pursuant to this paragraph 3 upon reasonable notice of such variation to the Operator.



**Schedule 5.3****Allocation of Fares Basket****1. Allocation of Fares to Fares Baskets**

- 1.1 On or prior to the Start Date the Secretary of State shall allocate each PTE Fare and Protected Fare to the PTE/Protected Fares Basket in accordance with this Schedule 5.3.
- 1.2 Subject to paragraph 2, every PTE Fare and Protected Fare shall be allocated by the Secretary of State to the PTE/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) rank, in descending order according to their Gross Revenue for the period of twelve (12) months which ended 31 March 2019:
    - (i) all PTE Fares; and
    - (ii) all Protected Fares;
  - (b) aggregate, following such ranking:
    - (i) those PTE Fares with the lowest Gross Revenue, until the total of the aggregated Gross Revenue of such fares accounts for up to five per cent (5%) of the aggregate Reference Revenue of all PTE Fares;
    - (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 (5%) of the aggregate Reference Revenue of all Protected Fares; and
  - (c) designate, following such aggregation:
    - (i) those PTE 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 the PTE/Protected 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 Regulation*), any PTE Fare or Protected Fare that is also designated as a Non Fares Basket Fare shall not be allocated to the PTE/Protected Fares Basket.
- 2.3 The Secretary of State may de designate any Non Fares Basket Fare pursuant to paragraph 1.1(d)(iii) of Schedule 5.7 (*Changes to Fares and Fares Regulation*).

**Schedule 5.4**

**Regulation of PTE/Protected Fares Basket Values**

**1. Value of PTE/Protected 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 Operator shall procure that the Value of the PTE/Protected Fares Basket at any time in any Fare Year does not exceed its Regulated Value for that Fare Year.

**2. Value**

The Value of the PTE/Protected Fares Basket at any time shall be the aggregate of the Projected Revenue of each Fare in the PTE/Protected Fares Basket at that time.

**3. Projected Revenue**

The Projected Revenue of any Fare at any time shall be an amount equal to:

<b>P x 2019 Nominal Ticket Sales</b>	
<b>where:</b>	
<b>P</b>	is the Price of that Fare at that time; and
<b>2019 Nominal Ticket Sales</b>	is the number of nominal ticket sales of that Fare for 2019, ascertained as follows:
	$\frac{A}{B}$
	<b>where:</b>
<b>A</b>	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 ( <i>Allocation of Fares Basket</i> ) for the period of twelve (12) months which ended 31 March 2019; and
<b>B</b>	is the Price for that Fare recorded by RSP in February 2019.

**4. Regulated Value**

4.1 The Regulated Value of the PTE/Protected Fares Basket for any Fare Year shall be an amount equal to:

<b>2019 Ticket Revenue x PPAI</b>	
<b>where:</b>	
<b>2019 Ticket Revenue</b>	is the aggregate Gross Revenue recorded by RSP as attributable to sales of all Fares in the PTE/Protected Fares Basket for the period of twelve (12) months which ended 31 March 2019;
<b>PPAI</b>	is:
	<b>where:</b>
	(a)
(b)	in respect of each Fare Year commencing on or after 1 January 2021, the product of the Permitted Aggregate Increase for each Fare Year between that Fare Year and the Fare Year which begins on 1 January 2020 (inclusively).

4.2 The Permitted Aggregate Increase in any Fare Year shall be an amount equal to:

<b>PAI =</b>	$PAI = \frac{(100 \times RPI) + k}{100}$	
<b>where:</b>		
<b>PAI</b>	is the Permitted Aggregate Increase in that Fare Year;	
<b>RPI</b>	is an amount equal to:	
	$\frac{RPI - 1}{RPI - 2}$	
	where:	
	<b>RPI-1</b>	is the Retail Prices Index for the July of the calendar year preceding that Fare Year; and
<b>RPI-2</b>	is the Retail Prices Index for the July of the calendar year preceding the calendar year referred in the definition of <b>RPI-1</b> ; and	
<b>k</b>	shall be as specified in writing by the Secretary of State from time to time	

**Schedule 5.5**

**Regulation of Individual Fares**

**1. Price not to exceed Regulated Price or Regulated Child Price**

1.1 The Operator shall procure that the Price of:

- (a) **NOT USED;**
- (b) each PTE Fare and each Protected Fare included in the PTE/Protected Fares Basket,

in any Fare Year does not exceed the Regulated Price for such Fare in that Fare Year.

1.2 The Operator shall procure that the Price of any Season Ticket Fare shall be the same in both directions.

1.3 The Operator shall procure that the Child Price of each Fare in any Fare Year does not exceed fifty per cent (50%) of the Price for such Fare in that Fare Year.

**2. Regulated Price**

2.1 The Regulated Price for any Fare in any Fare Year shall be an amount equal to the greater of:

(a)	Preceding Year Ticket Price + £0.20p; and
(b)	Preceding Year Ticket Price x PII provided that where Preceding Year Ticket Price x PII when rounded to two (2) decimal places results in a value: <ul style="list-style-type: none"> <li>(i) ending in five (5) pence to nine (9) pence (inclusive), then Preceding Year Ticket Price x PII shall be rounded up to the nearest whole multiple of £0.10; or</li> <li>(ii) ending in one (1) pence to four (4) pence (inclusive), then Preceding Year Ticket Price x PII shall be rounded down to the nearest whole multiple of £0.10;</li> </ul>
<b>where:</b>	
<b>Preceding Year Ticket Price</b>	for the Fare Year commencing 1 January 2020, is the maximum Price for that Fare recorded by RSP in 2019 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
<b>PII</b>	is the Permitted Individual Increase in any Fare Year, as determined in accordance with paragraph 2.2.

2.2 The Permitted Individual Increase in any Fare Year shall be an amount equal to:

<b>PII =</b>	$\frac{(100 \times RPI) + k + f}{100}$
<b>where:</b>	
<b>PII</b>	is the Permitted Individual Increase in that Fare Year;
<b>RPI</b>	is an amount equal to:

	<i>RPI - 1</i>	
	<i>RPI - 2</i>	
	where:	
	RPI-1	is the Retail Prices Index for the July of the calendar year preceding that Fare Year; and
	<b>RPI-2</b>	is the Retail Prices Index for the July of the calendar year preceding the calendar year referred in the definition of <b>RPI-1</b> ;
k	shall be as specified in writing by the Secretary of State from time to time	
f	shall be as specified in writing by the Secretary of State from time to time	

2.3 Where:

- (a) the Operator sets the Price of any PTE Fare or Protected Fare in any Fare Year; and
- (b) the Secretary of State reasonably determines that the Price of such PTE Fare or Protected Fare was set solely for the purpose of increasing the value of the Preceding Year Ticket Price in the next Fare Year,

the Preceding Year Ticket Price for the purposes of determining the Regulated Price pursuant to paragraph 2.1 in the next Fare Year shall be the maximum Price prior to such setting that complied with the requirements of this Schedule 5, as recorded by RSP in the relevant preceding Fare Year.

3. **T&W Fares Side Agreement**

- 3.1 The Operator shall on or before the Start Date enter into the T&W Fares Side Agreement.
- 3.2 The Operator shall negotiate in good faith with T&WPTE in order to seek to agree amendments and updates to the T&W Fares Side Agreement (as may be appropriate in the relevant circumstances) and shall, prior to entering into any revised T&W Fares Side Agreement deliver such draft agreement, containing all proposed revisions, for the Secretary of State’s approval (such approval not to be unreasonably withheld or delayed).

4. **Compulsory Inter available Flows**

4.1 Where the Operator:

- (a) as Lead Operator for a Compulsory Inter available Flow, is responsible for setting the Price of a Fare for that Flow; and
- (b) has notified RSP of the Price of that Fare in any Fares Setting Round,

the Operator shall not increase the Price of that 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 Operator is in contravention of paragraph 1 of Schedule 5.4 (Regulation of PTE/Protected Fares Basket Values) in respect of either the PTE/Protected Fares Basket:
- (a) it shall reduce the Price of Fares in the PTE/Protected 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 PTE/Protected Fares Basket Values) from such date; and
  - (b) the Secretary of State may adjust Contract Payments by an amount equivalent in the Secretary of State's opinion to the sum of:
    - (i) any additional gross revenue accruing to the Operator or any person selling Fares on its behalf as a result of the Value of the PTE/Protected Fares Basket exceeding its Regulated Value permitted under Schedule 5.4 (Regulation of PTE/Protected 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 Contract Payments by the Secretary of State pursuant to paragraph 1.1:
- (a) **NOT USED**
  - (b) shall be without prejudice to any other rights or remedies of the Secretary of State under the Act or this Contract in respect of such contravention.
- 1.3 It shall not be a contravention of paragraph 1 of Schedule 5.4 (Regulation of PTE/Protected Fares Basket Values) if and to the extent that:
- (a) the Value of the PTE/Protected Fares Basket exceeds its Regulated Value in any Fare Year;
  - (b) such excess is caused by the Price of any relevant PTE Fare being set pursuant to the terms of the Ticketing and Settlement Agreement by another person (other than an Affiliate); and
  - (c) the Operator does not have a reasonable opportunity, under any procedure for consulting or notifying Train Operators of alterations to the Prices of Fares under the Ticketing and Settlement Agreement or otherwise, to alter some or all of the other PTE/Protected Fares in the Fares Basket so as to avoid the Value of the PTE/Protected 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 Operator shall not subsequently increase during that Fare Year, or any subsequent Fare Year, the Price of any PTE Fare in the PTE/Protected Fares Basket which it is entitled to set pursuant to the terms of the Ticketing and Settlement Agreement, unless, following such increase, the Operator would, otherwise than under paragraph 1.3, comply with the provisions of paragraph 1 of Schedule 5.4 (Regulation of PTE/Protected Fares Basket Values) in relation to the PTE/Protected Fares Basket.
- 1.5 Where circumstances described in paragraph 1.3 prevail in any Fare Year, the Operator shall not be required to reduce the Price of any other PTE Fare at any time during that Fare

Year, or any subsequent Fare Year, where such Price has previously been set in a Fares Setting Round.

2. **Exceeding the Regulated Price or Regulated Child Price**

2.1 If the Operator is in contravention of any of the provisions of paragraph 1 of Schedule 5.5 (Regulation of Individual Fares):

- (a) it shall reduce the Price and/or Child Price (as the case may be) 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 Contract Payments by an amount equivalent in the Secretary of State's opinion to the sum of:
  - (i) any additional gross revenue accruing to the Operator 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 Contract Payments by the Secretary of State pursuant to paragraph 2.1:

- (a) **NOT USED**
- (b) shall be without prejudice to any other rights or remedies of the Secretary of State under the Act or this Contract in respect of such contravention.

## Schedule 5.7

### Changes to Fares and Fares Regulation

#### 1. Changes to PTE/Protected Fares Basket

1.1 The Secretary of State may require the content of the PTE/Protected Fares Basket to change in accordance with the following:

- (a) where the Secretary of State is not satisfied that the Price of any Non Fares Basket Fare is reasonably constrained by the 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 PTE/Protected Fares Basket,

the Secretary of State may de-designate any Non Fares Basket Fare and include such Non Fares Basket Fare in the PTE/Protected Fares Basket;
- (b) where any PTE Fare for a Flow has been included in the PTE/Protected Fares Basket, the Secretary of State may require the inclusion in the PTE/Protected 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 2019;
- (c) where any Protected Fare for a Flow has been included in the PTE/Protected Fares Basket, the Secretary of State may require the inclusion in the PTE/Protected Fares Basket of any Protected Return Fare or Protected Weekly Season Ticket that existed on that Flow in February 2003; and/or
- (d) where the Secretary of State changes the Reference Revenue and/or the Gross Revenue of any Fare pursuant to paragraphs 3.1(a) and/or 3.1(b) then, in relation to the PTE/Protected 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 the PTE/Protected 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 Basket*); and/or
  - (iii) de-designate any Non Fares Basket Fare and include such Non Fares Basket Fare in the PTE/Protected Fares Basket.

1.2 The Secretary of State shall serve notice in writing on the Operator:

- (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 PTE/Protected Fares Basket or to designate any Fare as a Non Fares Basket Fare pursuant to paragraph 1.1.



## 2. Changes to the 2019 Nominal Ticket Sales

2.1 The Operator may, in the event of any significant change to the pattern of travel on the Passenger Services during the Contract Term, apply to the Secretary of State for the **value of factors A and/or B** in the formula for determining 2019 Nominal Ticket Sales in paragraph 3 of Schedule 5.4 (Regulation of PTE/Protected 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 twelve (12) months ending 31 March; and/or
- (b) the **value of factor B** is recalculated by using the Price 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 PTE/Protected Fares Basket.

## 3. Changes to the Reference Revenue, Gross Revenue, 2019 Nominal Ticket Sales and/or 2019 Ticket Revenue

3.1 The Secretary of State may, by notice in writing served on the Operator no later than the date of commencement of any Fares Setting Round, require:

- (a) the Reference Revenue of the PTE/Protected 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 Basket*) than the period of twelve (12) months ended 31 March 2019; and/or
- (b) the Gross Revenue of all PTE Fares and Protected Fares to be recalculated for the purpose of paragraph 2 of Schedule 5.3 (*Allocation of Fares to the PTE/Protected Fares Basket*) by reference to a different reference period than the period of twelve (12) months ended 31 March 2019; and/or
- (c) **the value of factor A** in the formula for determining the 2019 Nominal Ticket Sales in paragraph 3 of Schedule 5.4 (*Regulation of PTE/Protected Fares Basket Values*) to be recalculated in respect of any Fare by reference to a different reference period than the period of twelve (12) months ended 31 March 2019; and/or
- (d) **the value of factor B** in the formula for determining the 2019 Nominal Ticket Sales in paragraph 3 of Schedule 5.4 (*Regulation of PTE/Protected Fares Basket Values*) to be re calculated in respect of any Fare by reference to a different reference date other than February 2019; and/or
- (e) the 2019 Ticket Revenue in respect of the PTE/Protected Fares Basket to be re calculated for the purpose of paragraph 4 of Schedule 5.4 (*Regulation of PTE/Protected Fares Basket Values*) by reference to a different reference period than the period of twelve (12) months ended 31 March 2019.

3.2 Where, in accordance with paragraph 3.1(e), the 2019 Ticket Revenue in respect of the PTE/Protected 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 PTE/Protected 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 Operator may from time to time submit proposals to the Secretary of State to increase any Prices beyond the levels permitted under Schedule 5.4 (Regulation of PTE/Protected Fares Basket Values) and Schedule 5.5 (*Regulation of Individual Fares*) in connection with any proposed or actual improvement in any aspect of the Passenger Services relating to such Fares. The Secretary of State shall consider any such proposal and may, at his sole discretion) require the Operator to implement any such proposal in whole or in part.

#### 5. **Changes to Fares Regulation**

5.1 The Parties agree that the Secretary of State shall have the power at any time and on more than one occasion during the Contract Term to alter the obligations of, and restrictions on, the Operator under Schedule 5.1 (Purpose, Structure and Construction) to Schedule 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 PTE/Protected 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*)).

#### 5.2 **NOT USED**

#### 6. **Changes to Compulsory Inter available Flows**

6.1 Where:

- (a) pursuant to Clauses 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 PTE 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 the Secretary of State's consent to the abolition of the Reference Flow, by written notice to the Operator, require any Fare Created in respect of the Equivalent Flow which has substantially the same characteristics as the Reference Fare to be included in the PTE/Protected Fares Basket (**"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 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 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 Operator 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 Operator shall inform the Secretary of State if it becomes the Lead Operator in respect of any Flow. Upon the Operator becoming the Lead Operator in respect of any Flow, the Secretary of State may without limiting paragraph 3, exercise the Secretary of State's rights pursuant to paragraph 3 in relation to the PTE/Protected Fares Basket.

7.3 The Operator shall inform the Secretary of State if it ceases to be a Major Flow Operator in respect of any Flow.

## 8. Changes to the PTE/Protected Fares Document

8.1 Following:

- (a) any allocation of Fares to the PTE/Protected Fares Basket pursuant to Schedule 5.3 (*Allocation of Fares Basket*); or
- (b) any subsequent adjustment thereof pursuant to this Schedule 5.7,

the Secretary of State shall set out in the PTE/Protected Fares Document all Fares then included in the PTE/Protected Fares Basket and, as soon as reasonably practicable thereafter, the Secretary of State shall reissue the PTE/Protected Fares Document to the Operator.

## 9. Changes to Applicable Fares Plans

9.1 Where the Secretary of State exercises any of the Secretary of State's rights specified in any of paragraphs 1 to 8 of this Schedule 5.7, it is acknowledged that Business Plan Revisions may be required pursuant to paragraph 6 of Schedule 8.4 (*Business Plan*).

## 10. Overlapping Fares

10.1 Subject to paragraph 10.2, the Operator shall, with respect to Operator Dedicated Fares offered on each Overlapping Flow, ensure that during the Dual Operating Period such Operator Dedicated Fares:

- (a) remain available at the same Price and/or Child Price (as the case may be) as was offered under the Previous Agreement and shall not be increased in each Fare Year by more than  $RPI + k$  (and for these purposes "RPI" and "k" shall have the meaning given in paragraph 2.2 of Schedule 5.5); and
- (b) continue to be offered for the same number of seats on each Passenger Service as were offered under the Previous Agreement.

10.2 The restrictions in paragraph 10.1 shall not apply to any change (whether of the nature contemplated in paragraph 10.1 or otherwise) to a Operator Dedicated Fare which was initiated or introduced under the Previous Agreement and which continues to be effective as at the Start Date.

10.3 For the purposes of this paragraph 10.1:

- (a) **"Dual Operating Period"** means the period commencing at 02:00 on 1 March 2020 and expiring on the earlier to occur of: (a) either of the Operator or LNER or both the Operator and LNER ceasing to be a wholly owned subsidiary of the Secretary of State; or (b) either of LNER or the Operator or both the Operator and LNER ceasing to operate Passenger Services on an Overlapping Flow;
- (b) **"LNER"** means London North Eastern Railway Limited (company number 04659712);
- (c) **"Overlapping Flow"** means any point to point Flow with respect to which passenger services are operated by both the Operator and LNER; and
- (d) **"Operator Dedicated Fare"** means a Fare offered on an Overlapping Flow which entitles the purchaser to travel only on the passenger services operated by the Operator.

## Schedule 5.8

### Fares Regulation Information and Monitoring

#### 1. Information

- 1.1 The Operator shall provide to the Secretary of State by no later than week twelve (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 of the PTE Fares or Protected Fares it is intending to set.
- 1.2 The Operator shall notify, or procure the notification to, the Secretary of State of any proposed increase to the Price of any PTE Fare or 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 Operator shall make available, or procure that RSP makes available, to the Secretary of State, for any Fares Setting Round during the Contract Term, such details (including the proposed Prices) of the Initial Permanent Fare of any PTE 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 Operator shall provide to the Secretary of State:
  - (a) such access as the Secretary of State may require to information pertaining to the Prices of PTE 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 Operator in relation to any particular Fare or Fares or any particular period.
- 2.2 By no later than week seventeen (17) of each Fares Setting Round, the Operator shall provide to the Secretary of State written confirmation from a statutory director of the Operator of whether the Operator has complied with its obligations under this Schedule 5 (*Fares and Smart Ticketing*) during each such Fares Setting Round.
- 2.3 the Operator shall take such action as the Secretary of State may require following receipt of any details from the Operator pursuant to paragraph 1 in order to ensure that the Operator shall comply with the provisions of Schedule 5.2 (the Operator's Obligation to Create Fares) to this Schedule 5.8 (inclusive).

#### 3. Car Park Revenue

- 3.1 Where the Operator sells Fares that incorporate car park tickets in the purchase price (each a "**Combined Ticket**"), the Operator shall ensure that the revenue received from such sales is apportioned between passenger revenue and car park revenue so as to reflect the respective value of the Fare and the car park ticket.
- 3.2 Notwithstanding paragraph 3.1 of this Schedule 5.8, the Operator shall notify the Secretary of State in writing of any proposals to:
  - (a) introduce new Combined Tickets; and/or
  - (b) change the apportionment of revenue received from Combined Tickets between passenger revenue and car park revenue,(each a "**Combined Ticket Notification**").

- 3.3 Each Combined Ticket Notification shall be provided to the Secretary of State not less than thirty (30) days prior to the proposed implementation of the introduction or change that is the subject of the Combined Ticket Notification and shall include the following information:
- (a) details of the applicable Fare and car park ticket (including the origin, destination and type of Fare and the location of the car park) that comprise the Combined Ticket or that will comprise the proposed Combined Ticket (as applicable);
  - (b) a breakdown of how the existing Combined Ticket or proposed Combined Ticket revenue (as applicable) will be apportioned between passenger revenue and car park revenue; and
  - (c) the revenue that would have been derived from the Fare and car park ticket comprising the existing Combined Ticket or proposed Combined Ticket (as applicable) had they been sold separately.
- 3.4 The Secretary of State may consider whether the proposed apportionment between passenger revenue and car park revenue as set out in the Combined Ticket Notification is reasonable. Where the Secretary of State determines that such apportionment is not reasonable, the Secretary of State may amend such apportionment accordingly.
- 3.5 Within thirty (30) days of any request by the Secretary of State, the Operator shall provide a report setting out:
- (a) the total sales of Combined Tickets;
  - (b) the information set out in paragraph 3.3 of this Schedule 5.8 in respect of such Combined Tickets; and
  - (c) any further information requested by the Secretary of State from time to time.

**Schedule 5.9****Smart Ticketing****1. NOT USED****2. Smart Ticketing****2.1 The Operator shall:**

- (a) join and comply with any RDG approved Smart Ticketing Schemes relevant to some or all of the Passenger Services unless otherwise directed by the Secretary of State;
- (b) fully and effectively co-operate with Network Rail, other Train Operators, Transport for the North and relevant Local Authorities, including in relation to the provision of any required equipment, to implement and operate Smart Ticketing Schemes;
- (c) fully and effectively co-operate with other Train Operators, Transport for the North and Local Authorities and other organisations in relation to proposals to apply Smart Ticketing Schemes to new or existing multi-modal fares schemes, including in the implementation of any Smart Media technology pursuant to any multi-modal fares schemes that it may participate in pursuant to its obligations under paragraph 2.1 (*Multi Modal Fares Schemes*) of Schedule 2.5 (*Transport, Travel and Other Schemes*) or as directed by the Secretary of State within and beyond the Rail Services boundary on other modes; and
- (d) prepare and submit a report to the Secretary of State in advance of each Contract Performance Meeting (in such form as the Secretary of State may require) setting out:
  - (i) the baseline of uptake and journey usage of Smart Media from the Start Date and level of migration from magstripe tickets and increased take-up and journeys made using Smart Ticketing Schemes, as a minimum disaggregated between types of fares (Season Ticket Fares, Single Fares and Saver Return Fares) and type of Smart Media (using the LENNON database as the sole source of data unless otherwise agreed with the Secretary of State) by users of the Passenger Services, for each completed Reporting Period during the Contract Term;
  - (ii) the Operator's performance against the Smart Media Targets as specified in the Business Plan;
  - (iii) the steps that the Operator is taking, including other Train Operators, Network Rail, Transport for the North, Local Authorities or other organisations that it will be working with, to increase channel shift to Smart Ticketing Schemes operated by the Operator, or enabled by the Operator for other Smart Ticketing Schemes, and increase usage of Smart Ticketing Schemes by users of the Passenger Services; and
  - (iv) demonstrate how the information and data provided by Smart Ticketing Schemes has been used to better inform customers and provide customer support before, during and after their journey,

and the Operator shall present the report at the Contract Performance Meeting.

- 2.2 The Operator shall ensure, with effect from the Start Date in relation to any ITSO Smart Media Ticketing Scheme which the Operator operated prior to the Start Date and from the date of commissioning in relation to any ITSO Smart Media Ticketing Scheme introduced by it during the Contract Term, that from such relevant date until the end of the Contract Term:
- (a) it continues to provide, make available and promote (and where applicable effectively maintain) such ITSO Smart Media Ticketing Scheme (including any associated infrastructure);
  - (b) all components of the ITSO Smart Media Ticketing Scheme (and any amendment, extension or replacement thereof) inherited, used or introduced by the Operator (whether on a permanent or a trial basis) are at all times compliant with:
    - (i) version 2.1.4 of the ITSO Specification;
    - (ii) the ITSO Operating Licence; and
    - (iii) RSPS3002,
 or such subsequent versions as the Operator and the Secretary of State may agree;
  - (c) any ITSO Certified Smart Media readers introduced by the Operator (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);
  - (d) both the RDG operated central back office and the RSP owned product set that is compliant with the ITSO Specification are used;
  - (e) all available Fares on all Flows for which it is Lead Operator are capable of residing upon and being fulfilled as soon as practicable by the use of ITSO Certified Smart Media; and
  - (f) if so requested in writing by another Train Operator, the Operator shall as soon as practicable give all necessary permissions to that Train Operator so that all available Fares on all Flows for which that Train Operator is Lead Operator are capable of residing upon and being fulfilled by the use of ITSO Certified Smart Media.
- 2.3 Where the Previous Operator was a participant in any RDG approved Smart Ticketing Scheme pursuant to the Previous Agreement, the Operator shall take such action as may be required to ensure that it continues to participate in such Smart Ticketing Scheme from the Start Date without any disruption to the continuity of service received by passengers unless otherwise directed by the Secretary of State.
- 2.4 Without prejudice to its other obligations pursuant to paragraphs 2 and 3 of this Schedule 5.9, the Operator shall undertake such further actions as the Secretary of State may require in connection with the introduction of Smart Ticketing Schemes.
- 2.5 Either Party may propose, or the Secretary of State may determine, a change to the definition of "Smart Media" to include any new technology which enables the fulfilment of a Smart Ticketing Scheme.
- 2.6 The Operator shall ensure that all Weekly Season Tickets, Monthly Season Tickets and Annual Season Tickets which are ordered through the Operator's online retail channels or at ticket offices are, as the default option, offered to the customer on Smart Media.

### 3. **Retail**

- 3.1 The Operator shall provide a high quality standard of ticket retailing to all customers including people with physical, developmental, cognitive and/or sensory impairments, people with mental health conditions, people with reduced mobility, and any other class of people that the Secretary of State may designate from time to time across the different communication channels and points of purchase. This will include but is not limited to:
- (a) providing clear information about fares, Passenger Services and ticketing options, including restrictions and fulfilment methods, ensuring:
    - (i) these are easy to access and consistent across the different communication channels, points of purchase and on tickets; and
    - (ii) customers can easily identify and choose the cheapest appropriate fare for their journey;
  - (b) ensuring online, digital and self-service channels are easy to access, clear and user-friendly and incorporate and promote Smart Media functionality;
  - (c) any new or substantially upgraded ticketing retail machines and systems incorporate Smart Media functionality as directed by the Secretary of State;
  - (d) ticket vending machines adopting the RDG Design Guidelines;
  - (e) accepting multiple payment methods; and
  - (f) providing options for those without access to, or unable to use, technology.
- 3.2 The Operator shall promote Smart Media across all retail channels enabling customers to make journeys without a magstripe ticket and facilitating integration for all journeys made entirely on Passenger Services.
- 3.3 Without prejudice to its other obligations pursuant to paragraphs 2 and 3 of this Schedule 5.9, the Operator shall undertake such further actions as the Secretary of State may require in connection with the introduction of retailing proposals.
- 3.4 The Operator shall:
- (a) bring forward new proposals for implementing; and/or
  - (b) introduce and implement,
- such amendments to the Ticketing and Settlement Agreement, the Pay As You Go Agreement and any other applicable industry agreements (including any successor arrangements or any other agreement between the Operator and one or more other Train Operators, rail industry parties and other relevant organisations (including Transport for London) relating to ticketing, fares, fares settlement, the operation of discount schemes or any related matter) as may be directed by the Secretary of State from time to time.
- 3.5 During the term of this Contract, the Operator shall not enter into any new arrangements or material amendments to existing arrangements for the delivery of Fares, ticketing or the retailing of tickets without the prior written consent of the Secretary of State.
- 3.6 The Operator shall promptly (and in any event within any timeframes specified by the Secretary of State) provide to the Secretary of State such information and data in relation to Fares, ticketing and the retail of tickets as the Secretary of State may require from time to time.



**Schedule 5.10****Trials**

1. In order to investigate improved fares and ticketing options for passengers, the Operator shall, as requested by the Secretary of State, co-operate with the Secretary of State in the planning, proposed implementation and evaluation by the Operator of trials in the Franchise area that relate to fares, ticketing and ticket retail reforms, including, but not limited to, single-leg pricing, part-time season tickets and smart based ticketing solutions (the "**Fares, Ticketing and Retail Trials**").
2. The Parties shall agree or the Secretary of State may reasonably determine the form and scope of any Fares, Ticketing and Retail Trial as agreed or determined.

**Schedule 5.11****Fares Setting and Monitoring**

1. **Objective**
- 1.1 **NOT USED**
- 1.2 This Schedule sets out:
  - (a) the terms and conditions and the further restrictions that are placed on the Operator's ability to Create Fares, in addition to those contained in Schedules 5.1 (*Purpose, Structure and Construction*) to 5.7 (*Changes to Fares and Fares Regulations*) and Schedule 5.9 (*Smart Ticketing*); and
  - (b) information and monitoring provisions which apply to all Fares Created, which are in addition to those set out in Schedule 5.8 (*Fares Regulation Information and Monitoring*).
2. **NOT USED**
3. **NOT USED**

## Schedule 5.12

### Marketing and Revenue Growth

#### Part A – Marketing And Revenue Growth

#### 1. Ticketless Travel Surveys

1.1 The Operator on behalf of the Secretary of State shall carry out Ticketless Travel Surveys in each Ticketless Travel Survey Period in accordance with the Ticketless Travel Survey Methodology.

1.2 It is acknowledged and agreed by the Operator that:

- (a) a Ticketless Travel Survey can only be carried out during a Ticketless Travel Survey Period; and
- (b) nothing in this paragraph 1 shall prevent the Secretary of State from carrying out any other ticketless travel surveys as the Secretary of State may wish to undertake from time to time (such surveys not to be subject to the provisions of this paragraph 1).

1.3 Within thirty (30) days of the completion of each Ticketless Travel Survey the Operator shall produce and provide to the Secretary of State a report setting out the results of such Ticketless Travel Survey and detailing how such Ticketless Travel Survey was carried out in accordance with the Ticketless Travel Survey Methodology.

#### 2. Ticketless Travel Performance

##### 2.1 Ticketless Travel Survey Periods Calculations

(a) Calculation of "TT Deemed"

At the end of the second and each subsequent Ticketless Travel Survey Period the Secretary of State shall use the Ticketless Travel Rate for such Ticketless Travel Survey Period to calculate the Operator's performance against the Ticketless Travel Minimum Performance Level and/or the Breach Ticketless Travel Benchmark (as applicable) in accordance with the following formula:

$$[TT\ Deemed\ =] \frac{A + B}{2}$$

**TT Deemed** is the Operator's deemed performance against the Ticketless Travel Minimum Performance Level and/or the Breach Ticketless Travel Benchmark (as applicable);

**A** is the Ticketless Travel Rate for that Ticketless Travel Survey Period; and

**B** is the Ticketless Travel Rate for the preceding Ticketless Travel Survey Period.

##### 2.2 Consequences of Poor Performance

(a) If for any Ticketless Travel Survey Period the TT Deemed as calculated pursuant to paragraph 2.1 above is:

- (i) more than (that is, is **equal to or worse than**) the Ticketless Travel Minimum Performance Level the Operator shall produce a

plan intended to ensure that the Ticketless Travel Rates will be below (that is, **better than**) the Ticketless Travel Minimum Performance Level ("**TT Action Plan**");

- (ii) more than (that is, is **equal or worse than**) the relevant Breach Ticketless Travel Benchmark then a contravention shall occur and the Secretary of State may serve a Breach Notice in accordance with clause 8 (Procedure for Remedying a Contravention of the Service Contract).
- (b) The Operator shall (i) produce, (ii) obtain the Secretary of State's consent in relation to, and (iii) commence the implementation of the TT Action Plan within three (3) months after the TT Deemed is calculated as being more than (that is, is **equal to or worse than**) the Ticketless Travel Minimum Performance Level.
- (c) The TT Action Plan shall contain specific tangible action points and indicate in the case of each action point:
  - (i) how that action will contribute to ensuring that the Ticketless Travel Rates will be below (that is, **better than**) the Ticketless Travel Minimum Performance Level;
  - (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 TT Action Plan shall include specific review dates; and
  - (iv) how performance of the action is to be measured.
- (d) The Operator shall, except to the extent otherwise agreed by the Secretary of State in advance, implement each TT Action Plan in accordance with its terms.
- (e) It is acknowledged by the Operator that the consent or lack of consent of the Secretary of State in respect of each TT Action Plan as contemplated in this paragraph shall not relieve the Operator of its obligations in relation to this paragraph 2 or any other provisions of the Service Contract.

## **SCHEDULE 6**

### **SERVICE SPECIFIC OBLIGATIONS**

Schedule 6.1:	Service Specific Obligations
	Part 1: NOT USED
	Part 2: NOT USED
	Part 3: Service Specific Obligations
	Part 4: Bespoke Obligations
	Appendix - Bilateral Agreements
Schedule 6.2:	Environment and Sustainability
	Appendix: Environmental Information
	Part 2: NOT USED
Schedule 6.3:	Alliances

**Schedule 6.1**

**Service Specific Obligations**

**PART 1 - NOT USED**

**PART 2 - NOT USED**

**PART 3 - SERVICE SPECIFIC OBLIGATIONS****SECTION 1 1A Entitlements from and claims against third parties**

1A.1 It is acknowledged by each of the Secretary of State and the Operator that the Operator:

- (a) is entitled to payments from Network Rail and, where relevant, third parties pursuant to:
  - (i) Schedule 4 and Schedule 8 of the Track Access Agreement;
  - (ii) Parts F and G of the Network Code;
  - (iii) Parts C3.2, C3.4 and Part L of the Depot Access Conditions;
  - (iv) Part C3.2, C3.4 and Part L of the Station Access Conditions,in order to compensate the Operator against, inter alia, costs and losses arising from certain events specified in the provisions referred to in paragraphs 1A.1(a)(i) to (iv) above; and
- (b) may become entitled to payments from third parties pursuant to claims or other contractual rights against those third parties in order to compensate the Operator against, inter alia, costs and losses for which that third party is contractually liable, and

the rights and entitlements referred to in paragraph 1A.1(a) and 1A.1(b) shall for the purposes of this paragraph 1A be referred to as the "Compensation Rights".

1A.2 Accordingly the Operator:

- (a) hereby agrees to hold the benefit of the Compensation Rights on trust for the benefit of the Secretary of State; and
- (b) without limiting paragraph 1A.2(a) shall, immediately on demand, indemnify the Secretary of State for any loss that is suffered by the Secretary of State as a result of an event for which the Operator is compensated pursuant to the Compensation Rights provided that:
  - (i) the Operator's maximum liability under the indemnity specified in this paragraph 1A.2(b) shall not exceed the amount that the Operator actually receives from Network Rail or a relevant third party in respect of any claim under the Compensation Rights; and
  - (ii) there shall be no double recovery by the Secretary of State pursuant to paragraphs 1A.2(a) and 1A.2(b).



## PART 4 - BESPOKE OBLIGATIONS

### 1. **Efficiency Benefit Share**

- 1.1 The Operator shall obtain the prior consent of the Secretary of State prior to exercising any rights it may have under the Track Access Agreement or otherwise to opt out from or otherwise change its position (opted in or out) in respect of the Efficiency Benefit Share Mechanism.

### 2. **Stations related provisions**

#### **Inclusive design**

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

#### **Addressing issues of security, antisocial behaviour and crime at Stations**

- 2.2 The Operator shall, on a continuous basis during the Contract Term, monitor and record all reported and observed incidents of:

- (a) anti-social behaviour; and
- (b) criminality (including assaults on passengers and Business Employees, theft, criminal damage to railway property and graffiti vandalism),

which occur at Stations, and shall in each case take active and vigorous steps to address, minimise and avoid future instances of anti-social behaviour and criminality at Stations taking account of such data. the Operator may comply with its obligations to monitor and record incidents under this paragraph by providing copies of relevant information provided by the Operator to the British Transport Police where such information is relevant.

- 2.3 The Operator shall provide to the Secretary of State upon request such information as the Secretary of State may reasonably require from time to time in respect of the Operator's compliance with the requirements of paragraph 2.2 above.

### 3. **Co-operation with Local Authority Increment and Decrement schemes**

Without prejudice to its other obligations to the Secretary of State pursuant to this Contract the Operator shall fully and effectively co-operate with relevant Local Authorities and act reasonably and in good faith in its engagement with each of them in relation to any Local Authority Increment Schemes and/or Local Authority Decrement Schemes proposed by a Local Authority during the Contract Term.

### 4. **Interface with Rail North Partnership and Transport for the North**

- 4.1 The Operator:

- (a) agrees that it shall co-operate with the Secretary of State and Transport for the North for the purposes of facilitating the management of this Contract;
- (b) acknowledges the Rail North Partnership Agreement and the matters relating to each party to that agreement; and
- (c) shall at the request of the Secretary of State, deliver to Secretary of State and/or Transport for the North (as the case may be) such information as may be reasonably required for the purposes of Rail North Partnership committees and meetings (and any other meetings as the Secretary of State may request); and
- (d) shall attend Rail North Partnership committees and meetings, and any other meetings, at the request of the Secretary of State, the representatives of the

Operator being appropriate to the matters under discussion at such committees and meetings.

5. **Not Used**

6. **Not Used**

7. **Not Used**

8. **Co-operation with third party promoted franchise schemes**

8.1 The Operator shall at all times during the Contract Term as requested by the Secretary of State fully and effectively co-operate with the Secretary of State, the Welsh Ministers, Network Rail, any Local Authority and/or any relevant third party (each, other than the Secretary of State, being for the purposes of this paragraph 8 a "**Relevant Third Party**") in the development and implementation of plans and proposals to:

- (a) enhance existing stations;
- (b) open new stations;
- (c) open new rail routes, or re-open existing rail routes that are not currently used to operate regular passenger services;
- (d) regenerate and redevelop the areas at or immediately surrounding stations; and
- (e) otherwise enhance rail infrastructure.

8.2 The obligation to co-operate pursuant to paragraph 8.1 shall include the Operator carrying out in a timely manner all the activities and actions reasonably required to be carried out or taken by a Train Operator who:

- (a) in the case of paragraph 8.1(a) only, is the Facility Owner at the relevant station;
- (b) in any of cases of paragraphs 8.1(a)-(e)(inclusive) is or is likely to be a provider of passenger services at the station or on the route in question.

8.3 Without limiting the above, the obligation to co-operate pursuant to paragraph 8.1 shall also include:

- (a) attending meetings with the Secretary of State, Network Rail, a Local Authority or any Relevant Third Party (as the case may be);
- (b) reviewing and commenting on the implementation and programme plans for the development of a brand new station;
- (c) providing analysis and advice to the Secretary of State and any Relevant Third Party in relation to station location and design, timetabling, staffing, marketing, rolling stock and other relevant operational and practical issues;
- (d) negotiating in good faith with the Secretary of State and/or any Relevant Third Party with a view to reaching agreement with that person in relation to the terms (including price) for provision of Passenger Services at any new station or on any new or re-opened rail route;
- (e) maintaining records of usage and financial performance of passenger services calling at the relevant stations or operating on the relevant routes;
- (f) make available those records to the Secretary of State or Relevant Third Party;

- (g) co-operate with any reasonable request by the Secretary of State or Relevant Third Party to undertake a review of the operational and financial performance of the Passenger Services at the relevant stations or on the relevant routes (including their value for money); and
- (h) in the case of paragraph 8.1(a) or 8.1(b) above only, using reasonable endeavours to achieve any necessary amendments to any Station Lease or enter into new station leases as may be required for the purposes of the development and implementation of any such new station.

## 9. **Branding**

- 9.1 The Operator shall continue to use the co-branding as was used under the Previous Agreement (except as agreed by the Secretary of State from time to time, including to take into account any adjustments reasonably necessary to take into account matters which are consequential on compliance by the Operator with its other obligations under this Contract) by continuing to co-brand each Station listed in the document in the agreed terms marked "**CBS**" in the same manner as applied immediately prior to the Start Date and as specified in relation to such Station in the agreed terms document "**CBS**".
- 9.2 The Secretary of State may review, provide comments and/or require the Operator to update the CBS from time to time and the Franchise shall update the CBS and submit the revised draft of the CBS for the Secretary of State's approval as soon as is reasonably practicable. Following the approval of the revised draft of the CBS by the Secretary of State (such approval not to be unreasonably withheld) and if the Secretary of State requires no further amendments to be made to the revised draft of the CBS by the Operator, then the approved draft of the CBS shall become the updated "**CBS**".

## 10. **NOT USED**

## 11. **The TransPennine Route Upgrade**

- 11.1 The Operator and the Secretary of State acknowledge that:
  - (a) the timing of the TransPennine Route Upgrade is uncertain and may be completed in phases (with potentially a few years between the completion of each such phase); and
  - (b) if a TransPennine Route Upgrade is completed during the Contract Term it is likely that the Secretary of State will wish to vary the Rail Services to ensure that the outputs of a TransPennine Route Upgrade Infrastructure are appropriately utilised.
- 11.2 The Operator shall from the Start Date until the completion of a TransPennine Route Upgrade engage constructively with Network Rail and all other relevant parties responsible for the delivery of it with the intention of assisting its timely, efficient and cost effective completion.
- 11.3 The Operator acknowledges the role of the rail delivery partners and in particular the TransPennine Express Operator as the delivery partner to the Secretary of State in relation to the planning of the TransPennine Route Upgrade and accordingly it shall use all reasonable endeavours to co-operate with the TransPennine Express Operator to facilitate its role of leading and co-ordinating train operator input into the planning and delivery process for a TransPennine Route Upgrade with the intention that the TransPennine Route Upgrade is to the greatest extent reasonably practicable:
  - (a) designed in a way that optimises the ability of train operators to utilise the outputs of the TransPennine Route Upgrade; and
  - (b) delivered in a cost efficient and effective manner balancing the needs to avoid undue disruption to passenger services and facilitate appropriate possessions.

- 11.4 To the extent that the TransPennine Route Upgrade leads to the Operator having rights under railway industry procedures (including Network Change and Station Change) the Operator shall not act in a way designed to directly or indirectly prevent, prejudice or frustrate the delivery of such TransPennine Route Upgrade and the Operator shall not unreasonably raise any objection under any railway industry procedure (including Network Change or Station Change) and any reasonable objections shall be raised by the Operator in accordance with the relevant railway industry procedures.
- 11.5 The Operator shall fully and effectively co-operate with the Secretary of State and Network Rail in the development and amendment of the specification of the TransPennine Route Upgrade in accordance with the reasonable requirements of the Secretary of State. The Operator may be required to provide its opinion, as a skilled and experienced train operator, on the operational and commercial impacts of the proposed specification and any amendment to it and the benefits and disbenefits of different options to achieve the output specification required by the Secretary of State. The Operator may be required to comment on rolling stock implications of options under consideration.
- 11.6 The Secretary of State may at any time issue a Request for a TransPennine Route Upgrade Services Proposal. The matters to be addressed in the TransPennine Route Upgrade Services Proposal shall be those specified by the Secretary of State and may include:
- (a) the implications of proposed changes to the Train Service Requirement;
  - (b) the acquisition of electrically powered rolling stock and related depot facilities and stabling solutions and their specification;
  - (c) proposals for a cascade of diesel rolling stock expected to be displaced by new electric rolling stock;
  - (d) the implications for the Business Employees including in relation to training and recruitment;
  - (e) support of integration of new electrically powered rolling stock and new infrastructure and the management of delivery and commissioning of new rolling stock and depot and stabling facilities;
  - (f) potential staged changes to the specification of the Passenger Services in consequence of any staged completion of the outputs of the TransPennine Route Upgrade; and
  - (g) the impacts of consequent alterations to costs and revenues.

The Operator shall submit the TransPennine Route Upgrade Services Proposal on or before such date as the Secretary of State shall reasonably specify.

- 11.7 The Operator shall provide such further or additional information as the Secretary of State may reasonably require for the purposes of considering and developing the TransPennine Route Upgrade Services Proposal and shall meet with the Secretary of State for discussion purposes as the Secretary of State shall reasonably require.
- 11.8 The Secretary of State may require a variation to this Contract in accordance with Clause 17 to implement the changes to the Rail Services reasonably required to utilise the outputs of a TransPennine Route Upgrade.

**12. Acceptance of Tyne & Wear Metro tickets on Passenger Services operating on the T&WPTE Flows**

Tickets which are valid for travel on Tyne & Wear Metro on the T&WPTE Flows (being those flows referred to in the definition of T&WPTE Fare) shall be accepted by the Operator, without further charge, for travel on the Passenger Services on the T&WPTE Flows.

**13. Through Fares Between City Line Stations And Northern or Wirral Line Stations**

Where the Operator is the Lead Operator in respect of a Flow in either direction between any City Line Station and any Northern Line Station or Wirral Line Station, the Operator shall not set the Price or Child Price of any Fare between any City Line Station and any Northern Line Station or Wirral Line Station in either direction at an amount which is greater than the sum of the Price or Child Price (as the case may be) of the same or equivalent Fare for that part of the journey which is between City Line Stations and the Price or the Child Price (as the case may be) of the same or equivalent Fare for that part of the journey which is between Northern Line Stations and/or Wirral Line Stations.

14. **Termination rights prior to the Acceptance of the New DMUs and the New EMUs**

14.1 The Operator shall keep the Secretary of State fully informed of progress in relation to the performance by the Manufacturer of its obligations pursuant to the New DMU MSA and the New EMU MSA (as the case may be). In particular the Operator shall keep the Secretary of State updated on progress in relation to compliance with the anticipated delivery schedule of New DMUs and the New EMUs and risk that a Minimum Fleet Requirement Termination Right or any Manufacturer Events of Default Termination Right will become exercisable prior to the date upon which all of the New DMUs and New EMUs that have been ordered have been Accepted. In the absence of significant unforeseen adverse developments (in which case the Operator shall keep the Secretary of State promptly informed), the Operator may keep the Secretary of State so informed at the Contract Performance Meetings.

14.2 The Operator shall consult with the Secretary of State if the Minimum Fleet Requirement Termination Right has become exercisable or is likely to become exercisable or if any Manufacturer Events of Default Termination Right has become exercisable or is likely to become exercisable prior to the date upon which all of the New DMUs and New EMUs which have been ordered have been Accepted. The Operator shall not exercise the Minimum Fleet Requirement Termination Right or any Manufacturer Events of Default Termination Right prior to the date upon which all of the New DMUs and New EMUs that has been ordered have achieved Accepted Unit status without the prior consent of the Secretary of State.

14.3 If the Minimum Fleet Requirement Termination Right or any Manufacturer Events of Default Termination Right has arisen or the Secretary of State believes that there is a material risk that the Minimum Fleet Requirement Termination Right or any Manufacturer Events of Default Termination Right may arise the Secretary of State may serve a notice on the Operator requiring it to produce a draft of a plan to a reasonable specification provided with the notice to mitigate the direct or indirect impact of the exercise of the Minimum Fleet Requirement Termination Right or any Manufacturer Events of Default Termination Right ("**Termination Mitigation Plan**"). The draft Termination Mitigation Plan shall be provided with a reasonably detailed analysis taking account of the circumstances backed by relevant data and assumptions of:

- (a) all cost and revenue and other financial implications of options contained within;
- (b) the implications (if any) for the Operator's performance in relation to TOC on Self Cancellations, TOC Minutes Delay and/or Short Formations; and
- (c) the likely impact of options within it for existing and future passenger journeys and journey opportunities.

The Operator shall meet with the Secretary of State to discuss the Termination Mitigation Plan and provide such further information or analysis and further iterations of the draft Termination Mitigation Plan as the Secretary of State shall reasonably require. The Secretary of State and the Operator shall use all reasonable endeavours to agree the terms of the Termination Mitigation Plan and in the absence of agreement the Secretary of State shall have the right to reasonably determine such terms.

14.4 If the Minimum Fleet Requirement Termination Right or any Manufacturer Events of Default Termination Right is exercised prior to the date upon which all of the New DMUs and/or New EMUs that have been ordered have achieved Accepted Unit status the Secretary of State shall have the right to require the Operator to comply with the Termination Mitigation Plan as agreed or as reasonably determined by the Secretary of State.

14.5 For the purposes of this paragraph 14:

- (a) **"Accepted Unit"**, **"Owner"** and **"Manufacturer"** shall each have the meaning ascribed to it in the New DMU MSA and the New EMU MSA (as the case may be);
- (b) **"New DMUs"** shall mean the 140 new Diesel Multiple Unit vehicles formed into 25 two car units and 33 three car units referred to in Table 2 of Schedule 1.6 and **"New EMUs"** shall mean the 141 new Electric Multiple Unit vehicles formed into 31 three car units and 12 four car units referred to in Table 2 of Schedule 1.6;
- (c) **"Manufacturer Events of Default Termination Right"** means the right given to the Operator jointly with the Owner pursuant to:
  - (i) in relation to the New DMUs, clause 31 of the New DMU MSA; and
  - (ii) in relation to the New EMUs, clause 31 of the New EMU MSA,
 in each case to terminate such agreement in specified circumstances;
- (d) **"Minimum Fleet Requirement Termination Right"** means the right given to the Operator jointly with the Owner pursuant to:
  - (i) in relation to the New DMUs, clause 32 of the New DMU MSA; and
  - (ii) in relation to the New EMUs, clause 32 of the New EMU MSA,
 in each case to terminate such agreement if a minimum quantity of New DMUs and New EMUs are not supplied by a specified date;
- (e) **"New DMU MSA"** means the manufacture and supply agreement in respect of the fleet of 25 x 2 car and 30 x 3 car Civity UK diesel multiple units and associated equipment dated 21 January 2016 and originally entered into between Construcciones y Auxiliar de Ferrocarriles, SA, European Rail Finance (GB) Limited and Arriva Rail North Limited; and
- (f) **"New EMU MSA"** means the manufacture and supply agreement in respect of the fleet of 12 x 4 car and 31 x 3 car Civity UK electric multiple units and associated equipment dated 21 January 2016 and originally entered into between Construcciones y Auxiliar de Ferrocarriles, SA, European Rail Finance (GB) Limited and Arriva Rail North Limited.

## 15. **Bilateral Arrangements**

15.1 The Parties agree and acknowledge that the Bilateral Arrangements are necessary for the effective delivery of the Rail Services.

15.2 In respect to those Bilateral Arrangements that have not been assigned or novated to the Operator at the Start Date the Operator shall, in respect of such arrangements, use all reasonable endeavours to either (as the case may be):

- (a) accede to the terms of the relevant Bilateral Agreement; or
- (b) enter into a new contract with the relevant counterparty on terms that are substantially the same or similar to the relevant Bilateral Arrangement,

in either case within three (3) months of the Start Date.

15.3 For the purposes of this paragraph 15, **"Bilateral Arrangements"** means the contracts or arrangements listed and described in Appendix 1 to this Part 4 of Schedule 6.1 to which the Operator was a party under the Previous Agreement.



## APPENDIX

## Bilateral Arrangements

Local Authority	Agreement/ arrangement and description
<b>West Yorkshire Combined Authority</b>	Rail Park & Ride Phase 1: Garforth. Section 56 agreement dated 16 May 2018
	Rail Park & Ride Phase 1: Garforth. Further Section 56 agreement dated 19 June 2019
	Rail Park & Ride Phase 1: Steeton and Silsden. Section 56 agreements dated 11 December 2009
	Rail Park & Ride Phase 1: Hebden Bridge Normanton Mirfield A&C Mytholmroyd Shipley Steeton & Silsden South Elmsall Section 56 agreements dated January 2017
	Rail Park & Ride Phase 1: Hebden Bridge. Further Section 56 agreement dated August 2017.
	Rail Park & Ride Phase 1: Mytholmroyd. Further Section 56 agreement dated March 2018.
	Rail Park & Ride Phase 1: Mytholmroyd. Further Section 56 agreement dated 18 November 2019.
	Rail Park & Ride Phase 1: Moorthorpe. Section 56 agreement dated 02 May 2018.
	Rail Park & Ride Phase 1: Mirfield. Section 56 agreement dated 5 January 2018.
	Rail Park & Ride Phase 1 : Steeton & Silsden Shipley Further Section 56 agreements dated 2 May 2018.
	Development - Station Improvement: Castleford. Section 56 agreement dated 27 February 2018.
	Development - Station Improvement: Castleford. Further Section 56 agreement dated 23 August 2018.
	Development - Station Improvement: Castleford. Further Section 56 agreement dated October 19.
	Development Car Park Extensions: New Pudsey. Section 56 agreement dated October 2018.
	Development New Stations: White Rose. Memorandum of Understanding
	Rail Park and Ride Programme: Phase 1 Sites
	Partners on Park and Ride Programme Board: Steering of the Park and Ride sites programme. Heads of Terms.
	Future Car Park Extensions: Normanton



	Future Car Park Extensions: Moorthorpe
	Future Car Park Extensions: Shipley
	WYCA Owned Rail Car Parks: Low Moor. Dated September 2017.
	Maintenance and management of WYCA owned Rail Car Parks:
	Apperley Bridge
	Glasshoughton
	Brighouse
	Steeton & Silsden
	WYCA Leased Car Park: Keighley
	Station assets provided by WYCA: Station signage, appearance and assets
	Sign totems on railway land:
	Station signage, appearance and assets
	ITSO Smart Card readers at stations. Dated March 2016
	Patronage data. Non-disclosure agreement dated 11/11/2019.
	Car Park Charging: Castleford (payment of enforcement proceeds to Wakefield Council)
	Car Park Charging: Wakefield Kirkgate (charging and proceeds)
	Lease agreement: Bradford Interchange
<b>SYLTE/ Sheffield City Region</b>	Penistone CCTV: £8,000 SYLTE Contribution to wider station improvements ( Purchase Order: RAIL178930)
	Kirk Sandall CCTV: SYLTE Contribution to deliver CCTV improvements (Purchase Order: RAIL178093)
	Adwick Station - Building Maintenance: Repair damage to SYLTE building after removal of rail ticket machine
	License Agreement for SIF Assets installed on SYLTE land - Several assets (Ticket Machines) installed on SYLTE land and use of SYLTE utilities
	SIF (Accessibility Hub) Barnsley Station - Proposed works affect SYLTE's sub-leased area and associated responsibilities
	TCF (Transforming Cities Fund) - Support delivery of new facilities incorporated within the SYLTE TCF bid
	Tram/Train Rotherham Central - Provision of services related to operating low level platforms at Rotherham Central station relating to the tram train service
<b>Transport for Greater Manchester</b>	Long Term Charge Horwich Parkway Rail Station - payment to TfGM (as SFO and owner of station assets) of a Long Term Charge
	Horwich maintenance and OPEX - includes events mgt. costs Bolton Wanderers match days (contracting out the day to day operation and maintenance of the station to Operator)
	Altrincham-ticket commission sales (TfGM sales of Rail Tickets)
	Ticket acceptance scheme - for ticket acceptance at times of disruption
	RSIS Schemes - TfGM funded station improvement schemes which are delivered by the Operator
<b>Merseytravel</b>	Prescot station - Access and park and ride. Delivery of new lifts and improved park and ride in conjunction with other work within the Liverpool City Region.

Broad Green - Access - Delivery of GRIP 3 design for new lifts. This is funded partly through Access for All and will require a delivery contract in the near future.

Newton-le-Willows - Park and Ride - Lease agreement between LCR and the Operator to maintain and operate the park and ride owned by the LCR

City Lines - Voluntary ticketing scheme and concessionary passes. Acceptance and retail of multi operator and modal ticketing and of local concessionary passes

**Schedule 6.2****Environment and Sustainability****1. Environmental Information****1.1 Data Sharing**

- (a) Within three (3) months following the end of each Contract Year, the Operator shall report to the Secretary of State and the RSSB the Initial Dataset corresponding to the previous Contract Year by completing the RSSB's online "Environmental Reporting Tool".
- (b) The Operator shall share all available environmental data with the Secretary of State and/or RSSB as requested from time to time by the Secretary of State and/or RSSB, acting reasonably, including in relation to:
  - (i) air pollution emissions referenced in the Clean Air Strategy 2019 (including nitrogen oxides and particulate matter);
  - (ii) emissions of Greenhouse Gases (as defined in the Kyoto Protocol to the United Nations Framework Convention on Climate Change); and
  - (iii) energy usage.
- (c) The Secretary of State and/or (with the prior approval of the Secretary of State) RSSB, acting reasonably, may instruct the Operator to collect and share with the Secretary of State and/or RSSB (as applicable) such additional environmental data as the Secretary of State and/or RSSB (as applicable) may require from time to time.

**1.2 Environmental Information Data Collection Plan**

- (a) If the Operator is unable to provide the Initial Dataset in respect of any Contract Year they will promptly inform the Secretary of State and RSSB with a written explanation of why they are unable to provide such data.
- (b) The Operator shall cooperate with the Secretary of State and/or RSSB to seek to identify improvements in type of data to be collected, the method of collection and the efficiency and cost effectiveness of collection.
- (c) The Operator shall ensure that the form of measurement of the Initial Dataset for each Contract Year enables it to report a consolidated periodic or annual usage figure to the Secretary of State and RSSB as specified for each measure in Table 1 in paragraph 1 (*Environmental Impact Monitoring Dataset*) of Appendix 1 (*Environmental Information*) to this Schedule 6.2.
- (d) In addition to paragraph 1.2(c) above and in complying with its obligations in paragraph 1.1(a) above, the Operator shall deliver the information for each measure in Table 1 in paragraph 1 (*Environmental Impact Monitoring Dataset*) of Appendix 1 (*Environmental Information*) to this Schedule 6.2, in the units, with the granularity and in respect of the regularity required for each measure as indicated in that Table 1.

**1.3 Environmental Impact Monitoring Audit**

The Operator shall procure a suitably qualified independent body (such independent body to be appointed only with the prior Approval of the Secretary of State) to undertake an independent audit of the data provided to RSSB and/or the Secretary of State and the

collection methodology of the Initial Dataset in respect of the first Contract Year then as requested by the Secretary of State (the "**Environmental Impact Monitoring Audit**"). The scope of the Environmental Impact Monitoring Audit shall be agreed in advance with the Secretary of State.

#### 1.4 Remedial Actions

- (a) In the event that an Environmental Impact Target is not met in any Contract Year, the Operator shall as soon as practicable produce and provide to the Secretary of State a revised Environmental Impact Targets Plan which, in the opinion of the Secretary of State, is capable of achieving the Environmental Impact Targets.
- (b) The Operator shall use all reasonable endeavours to implement the revised Environmental Impact Targets Plan, which shall be the Environmental Impact Targets Plan for the purposes of this Contract.

#### 1.5 Publication

The Operator shall publish (in such format as the Secretary of State may require) details of its performance against the Environmental Impact Targets in widely accessible forms including, as a minimum, publishing them on its website and in each Customer Report (excluding the first (1st) Customer Report).

### 2. Air Quality Monitoring and Improvement

#### 2.1 The Operator shall for the purposes of air quality monitoring at Stations or depots under its control:

- (a) provide to the Secretary of State all existing data in relation to air quality and measures that the Operator is implementing to improve air quality at Stations or depots under its control;
- (b) provide to the Secretary of State, RSSB, or any person whom the Secretary of State might specify, access to any sites, power supplies and telemetry under its control as requested by the Secretary of State or RSSB from time to time, including for the purpose of installing air quality monitors; and
- (c) assist the Secretary of State, RSSB or any person whom the Secretary of State might specify in the placement, replacement and dispatch of diffusion tubes.

#### 2.2 The Operator shall for the purposes of air quality monitoring on rolling stock vehicles:

- (a) provide to the Secretary of State, RSSB or any person whom the Secretary of State might specify during the Contract Term, free-of-charge access to rolling stock vehicles and on board power supplies whilst in or out of service;
- (b) consent for equipment to be installed on rolling stock vehicles for the purposes of air quality monitoring;
- (c) provide available on-train air quality data, train management system data and/or OTMR data as the Secretary of State may require from time to time.

#### 2.3 The Operator shall for the purposes of monitoring and reducing air pollutant emissions from traction:

- (a) through an industry-led industry working group, support the development and delivery of a policy in relation to the maximum time for which a train's engine may be kept idling while stationary;
- (b) use all reasonable endeavours to work with the fleet owner to develop an air pollution emissions reduction pathway for all diesel rolling stock vehicles; and

- (c) provide to the Secretary of State such information and/or data in relation to exhaust emissions from rolling stock vehicles comprised within the Train Fleet as the Secretary of State may require from time to time for the purposes of data collection and analysing the consequent impact of such emissions on air quality in Depots and Stations and along the Routes on which such rolling stock vehicles are deployed.

2.4 The Operator shall for the purposes of supporting wider industry approaches to air pollution emissions reduction:

- (a) consider the impact of any rolling stock vehicle, operational or infrastructure changes on emissions; and
- (b) provide to the Secretary of State and RSSB, and update as necessary, a named contact as a point of enquiry in relation to air quality.

### 3. Sustainability

#### 3.1 Environmental Management and Sustainability Accreditation

- (a) The Operator shall at all times maintain certification pursuant to ISO14001:2015 and ISO50001:2011 or equivalent standards.
- (b) The Operator shall provide the Secretary of State with copies of the certification audit reports and a copy of their ISO50001 Energy Review within four (4) weeks of their certification and each subsequent recertification during the Contract Period.

#### 3.2 Sustainable Construction

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

- (a) which are either being funded by the Operator or in respect of which the Operator has design responsibility; and
- (b) in respect of which the total capital cost exceeds [REDACTED<sup>3</sup>]

the Operator shall use all reasonable endeavours to achieve at least an “**excellent**” rating from an accredited assessor using BREEAM (or a rating equivalent to “**excellent**” in an equivalent recognised standard such as the SKA Rating Standard as appropriate) at both the design stage and the post-construction stage unless the Secretary of State agrees that the relevant project is not of a suitable scale or type to be so assessed and the Operator shall provide to the Secretary of State such information in relation to any construction project as the Secretary of State may request.

### 4. Measurement of Traction Energy Usage

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

4.2 The Operator shall become a Metered Train Operator as soon as practicable but in any event by no later than 31 May 2023.

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<sup>3</sup> 21 September 2022 (Date of Redactions Approval) CR03455 - Where text has been omitted from the document - this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

**APPENDIX 1 TO SCHEDULE 6.2**

**Environmental Information**

**1. Environmental Impact Monitoring Dataset**

<b>Table 1</b>			
<b>Subject</b>	<b>Unit</b>	<b>Granularity</b>	<b>Regularity</b>
<b>TRACTION</b>	EC4T (kWh)	Breakdown per distinct fleet - metered	Four (4) week period
	EC4T (kWh)	Breakdown per distinct fleet - unmetered	Four (4) week period
	Gas-oil (litres)	Breakdown per distinct fleet	Four (4) week period
<b>NONTRACTION</b>	Electricity (kWh)	Total	Four (4) week period or monthly
	Gas (kWh)	Total	Four (4) week period or monthly
	Gas-oil (litres)	Total	Four (4) week period or monthly
<b>CARBON</b>	Scope 1 emissions (tonnes)	Total	Annual
	Scope 2 emissions (tonnes)	Total	Annual
	Embodied carbon in new infrastructure projects over the amount set out in paragraph 3.2(b) (Sustainable Construction) of Schedule 6.2 (Environment and Sustainability)	Total	Per project
<b>WATER</b>	Mains Water consumption (m <sup>3</sup> )	Total	Annual
	Water recycling initiatives	Narrative	Annual
<b>WASTE</b>	Waste generated (tonnes)	Total	Annual
	Waste recycled (tonnes)	Total	Annual
	Waste subject to other recovery (tonnes)	Total	Annual
	Waste to landfill (tonnes)	Total	Annual
	Hazardous waste	Total	Annual
<b>ENVIRONMENTAL MANAGEMENT SYSTEM (EMS)</b>	Enforcement/information Notices	Total	Annual
	Environmental fines or prosecutions	Total	Annual
	Environmental incidents reported through the EMS	Total	Annual

2. **Environmental Impact Targets**

<b>Table 2</b>			
<b>Traction Carbon Emissions</b>	<b>Non-Traction Energy Use</b>	<b>Waste</b>	<b>Mains Water</b>
A reduction in kg CO2E per vehicle km in the relevant Contract Year against the kg CO2E per vehicle km recorded in the preceding Contract Year, such that there is a year on year reduction of kg CO2E per vehicle km over the Contract Term.	A reduction in kilowatt hours (kWh) in the relevant Contract Year against the kilowatt hours (kWh) recorded in the preceding Contract Year such that there is a year on year reduction of kilowatt hours (kWh) over the Contract Term.	A reduction in the percentage of waste to landfill in the relevant Contract Year against the percentage of waste to landfill recorded in the preceding Contract Year such that there is a year on year reduction in the percentage of waste to landfill over the Contract Term.	A reduction in the volume (m3) of mains water used in the relevant Contract Year against the volume (m3) of mains water used in the preceding Contract Year such that there is a year on year reduction in usage per over the Contract Term.

**PART 2**

**NOT USED**



**Schedule 6.3****Alliances****1. Co-operation with Network Rail****1.1 General Co-operation**

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

**1.2 Sharing of information with Network Rail**

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

**2. Not Used****3. Not Used****4. Not Used**

## **SCHEDULE 7**

### **PERFORMANCE BENCHMARKS**

Schedule 7.1	Operational Performance
Schedule 7.2	Customer Experience and Engagement
	Appendix 1 to Schedule 7.2 – NOT USED
	Appendix 2 to Schedule 7.2 - NOT USED
Schedule 7.3	Service Quality Regime
	Part A - Service Quality Management Process
	Part B - Inspections and Audits
	Part C - Calculations Of Pass Rates
	Part D - Publication and Reporting Requirements
	Part E - Remedies
	Appendix 1 to Schedule 7.3 - Service Quality Schedules
	Part 1 - SQR Stations
	Part 2 - SQR Trains
	Part 3 – SQR Customer Service
	Part 4 - Pass Rate Calculation Principles For Reinspection And Rectification Evidence Failures
	Appendix 2 to Schedule 7.3 - Service Quality Areas/SQR Benchmarks/Service Quality Indicators/Weightings
	Part 1 - SQR Stations
	Part 2 - SQR Trains
	Part 3 – SQR Customer Service

## Schedule 7.1

### Operational Performance

#### 1. **Track Access Agreement, Amendments to Operational Performance Targets and Notice of Performance Results**

1.1 The OP Targets in relation to TOC on Self Cancellations and Enforcement TOC on Self Cancellations Benchmarks are set out in the TOC on Self Cancellations Table and the Enforcement TOC on Self Cancellations Benchmark Table.

1.2 The OP Targets in relation to TOC Minute Delay and Enforcement TOC Minute Delay Benchmarks are set out in TOC Minute Delay Table and the Enforcement TOC Minute Delay Benchmark Table.

1.3 The OP Targets in relation to Short Formation and Enforcement Short Formation Benchmarks are set out in the Short Formations Table and Enforcement Short Formation Benchmark Table.

1.4 The T-3 Measure is set out in T-3 Table.

1.5 The T-15 Measure is set out in the T-15 Table.

1.6 The All Cancellations Measure is set out in the All Cancellations Table.

#### 1.7 **Track Access Agreement**

The Operator agrees with the Secretary of State to comply with the requirements of the Track Access Agreement in respect of cancellations attribution (Cancellations, Partial Cancellations, Network Rail Cancellations and Network Rail Partial Cancellations) and Minutes Delay attribution.

1.8 **Not used**

#### 1.9 **Notice of Performance Results**

As soon as practicable after the end of each Reporting Period and each Contract Year, the Secretary of State shall notify the Operator of the results of the calculations performed pursuant to this Schedule 7.1.

#### 2. **Reporting Requirements**

The Operator shall at the end of each Reporting Period and in accordance with the relevant requirements of paragraph 12 (*Operational Performance Information*) of this Schedule 7.1 (*Operational Performance*) report to the Secretary of State the operational information as specified in paragraph 12 (*Operational Performance Information*) of this Schedule 7.1 (*Operational Performance*) and required for the purposes of the Secretary of State undertaking any of the calculations required to be performed by the Secretary of State pursuant to this Schedule 7.1.

#### 3. **TOC on Self Cancellation Calculation**

3.1 For each Reporting Period during the Contract Term the Secretary of State shall:

- (a) calculate the Operator's performance in relation to TOC on Self Cancellations in accordance with the formula set out in Table 1 below (each an "**Initial TOC on Self Cancellations Calculation**"); and

- (b) (other than for the first (1<sup>st</sup>) and second (2<sup>nd</sup>) Reporting Periods following the Amendment and Restatement Date) re-calculate the Operator’s performance in relation to TOC on Self Cancellations for the two (2) Reporting Periods immediately preceding the relevant Reporting Period using the formula set out in Table 1 below (each a **“TOC on Self Cancellations Re-Calculation”**), except that
- (c) if there are outstanding claims with regard to any Force Majeure Event relating to TOC on Self Cancellations for any Reporting Period then a further TOC on Self Cancellations Re-Calculation shall be undertaken for the relevant Reporting Period once the relevant claims have been resolved.

3.2 In the event that a TOC on Self Cancellations Re-Calculation demonstrates that the Initial TOC on Self Cancellations Calculation or an earlier TOC on Self Cancellations Re-Calculation was incorrect, the Initial TOC on Self Cancellations Calculation and/or the relevant earlier TOC on Self Cancellations Re-Calculation shall, for the relevant Reporting Period, be replaced with the latest TOC on Self Cancellations Re-Calculation.

<b>Table 1</b>		
<b>A</b>	=	$\frac{B}{C} \times 100$
<b>where:</b>		
	B	is the total number of Cancellations or Partial Cancellations of Passenger Services scheduled to be operated in the Enforcement Plan of the Day for that Reporting Period, on the basis that: <ol style="list-style-type: none"> <li>1. a Cancellation shall count as 1;</li> <li>2. a Partial Cancellation shall count as 0.5; and</li> <li>3. any Cancellations or Partial Cancellations during that Reporting Period which were caused by the occurrence or continuing effect of a Force Majeure Event,</li> </ol> shall, if the Operator has complied with paragraph 7 ( <i>Service Recovery Plans and Force Majeure</i> ) of this Schedule 7.1, be disregarded in determining such total number of Cancellations and Partial Cancellations;
	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 Operator has complied with paragraph 7 ( <i>Service Recovery Plans and Force Majeure</i> ) of this Schedule 7.1, any Cancellations or Partial Cancellations during that Reporting Period which were caused by the occurrence or continuing effect of a Force Majeure Event.

4. **TOC Minutes Delay Calculations**

- 4.1 For each Reporting Period during the Contract Term the Secretary of State shall:
  - (a) calculate the Operator’s performance in relation to TOC Minutes Delay in accordance with the formula set out in Table 2 below (each an **“Initial TOC Minutes Delay Calculation”**); and
  - (b) (other than for the first (1<sup>st</sup>), and second (2<sup>nd</sup>) Reporting Periods following the Amendment and Restatement Date) re-calculate the Operator’s performance in relation to TOC Minutes Delay for the two (2) Reporting Periods immediately preceding the relevant Reporting Period using the formula set out in Table 2 below (each a **“TOC Minutes Delay Re-Calculation”**), except that:

- (c) if there are outstanding claims with regard to any Force Majeure Event relating to TOC Minutes Delay for any Reporting Period then a further TOC Minutes Delay Re-Calculation shall be undertaken for the relevant Reporting Period once relevant claims have been resolved.

4.2 In the event that a TOC Minutes Delay Re-Calculation demonstrates that the Initial TOC Minutes Delay Calculation or an earlier TOC Minutes Delay Re-Calculation was incorrect, the Initial TOC Minutes Delay Calculation and/or the relevant earlier TOC Minutes Delay Re-Calculation shall, for the relevant Reporting Period, be replaced with the latest TOC Minutes Delay Re-Calculation.

<b>Table 2</b>	
$\frac{MD_{SRP}}{H_{SRP}}$	
<b>where:</b>	
<b>MD<sub>SRP</sub></b>	is the sum of Minutes Delay that are attributable to the Operator in that Reporting Period.
<b>H<sub>SRP</sub></b>	is ascertained as follows:
	$\frac{V}{1000}$
<b>where:</b>	
<b>V</b>	is the sum of Actual Train Mileage in that Reporting Period.

5. **Short Formations**

5.1 **Short Formations Calculation**

For each Reporting Period during the term of the Contract Term the Secretary of State shall:

- (a) calculate the Operator’s performance in relation to Short Formations in accordance with the formula set out in Table 3 below (each an **“Initial Short Formations Calculation”**); and
- (b) (other than for the first (1st) and second (2nd) Reporting Periods following the Amendment and Restatement Date), re-calculate the Operator’s performance in relation to Short Formations (and, if applicable, re-calculate the Operator’s performance in respect of Short Formations against the OP Target for Short Formations) for the two (2) Reporting Periods immediately preceding the relevant Reporting Period using the formula set out in Table 3 below (each a **“Short Formations Re-Calculation”**), except that
- (c) if there are outstanding claims with regard to any Force Majeure Event relating to Short Formations for any Reporting Period then a further Short Formations Re-Calculation shall be undertaken for the relevant Reporting Period once the relevant claims have been resolved.

5.2 In the event that a Short Formations Re-Calculation demonstrates that the Initial Short Formations Calculation or an earlier Short Formations Re-Calculation was incorrect, the Initial Short Formations Calculation and/or the relevant earlier Short Formations Re-Calculation shall, for the relevant Reporting Period, be replaced with the latest Short Formations Re-Calculation.

<b>Table 3</b>	
<b>A<sup>SF</sup></b>	= $\frac{\mathbf{B}_{\mathbf{SF}}}{\mathbf{C}_{\mathbf{SF}}} \times 100$
<b>where:</b>	
<b>B<sub>SF</sub></b>	is the total number of Short Formation Passenger Services in that Reporting Period operated with less Passenger Carrying Capacity than that specified for such Short Formation Passenger Services in the Train Formation Capacity Plan disregarding, if the Operator has complied with paragraph 7 ( <i>Service Recovery Plans and Force Majeure</i> ) of this Schedule 7.1, any such Short Formation Passenger Services which were operated in that way as a result of the occurrence or continuing effect of a Force Majeure Event; and
<b>C<sub>SF</sub></b>	is the total number of Short Formation Passenger Services scheduled to be operated in that Reporting Period disregarding, if the Operator has complied with paragraph 7 ( <i>Service Recovery Plans and Force Majeure</i> ) of this Schedule 7.1, any such Short Formation Passenger Service operated with less Passenger Carrying Capacity than that specified for such Short Formation Passenger Services in the Train Formation Capacity Plan as a result of the occurrence or continuing effect of a Force Majeure Event.

5.3 For the purposes of the calculation to be undertaken by the Secretary of State pursuant to paragraph 5.1:

- (a) if and to the extent that any Short Formation Passenger Services are operated in excess of the Passenger Carrying Capacity specified for such Short Formation Passenger Service in the Train Formation Capacity Plan, the excess capacity shall be disregarded; and
- (b) any Short Formation Passenger Service that are the subject of a Cancellation or a Partial Cancellation shall be disregarded.

**6. Calculations**

6.1 The Secretary of State shall perform the calculations referred to in paragraphs 3.1, 4.1 and 5.1 rounded to two (2) decimal places with the midpoint (that is, 11.115) rounded upwards (that is, 11.12).

**7. Service Recovery Plans and Force Majeure**

7.1 Subject to paragraphs 8.1 and 8.2(b)(i) (*Obligations relating to operating performance management*) of Schedule 1.2 (*Operating Obligations*), the Operator shall create and implement such Service Recovery Plan(s) as may be agreed by Network Rail from time to time (as more particularly described in the "Approved Code of Practice 2013" or any document of a similar equivalent nature) during a Reporting Period.

7.2 The Parties acknowledge that the relevant Enforcement Benchmarks and the relevant OP Targets shall be deemed to be inclusive of the implementation of any Service Recovery Plans as may be agreed from time to time in accordance with paragraph 7.1 above.

7.3 In performing the calculations pursuant to paragraphs 3.1 (*TOC on Self Cancellations Calculations*), 4.1 (*TOC Minutes Delay Calculations*) and 5.1 (*Short Formations*) the Secretary of State shall disregard any TOC on Self Cancellations, Minutes Delay, or Short Formations (as applicable) that have been agreed or finally determined to have been caused by the occurrence or continuing effect of a Force Majeure Event.

## 8. Consequences for Poor Performance - Enforcement Benchmarks

8.1 The Operator shall ensure that its performance in each Reporting Period as calculated by the Secretary of State in accordance with the requirements of this Schedule 7.1, is not equal to or worse than each Breach Performance Level in respect of the relevant Contract Year.

8.2 If in any Reporting Period the Operator's performance, as calculated by the Secretary of State in accordance with the requirements of this Schedule 7.1, is equal to or worse than any Breach Performance Level relating to an Enforcement Benchmark in respect of the relevant Contract Year, then a contravention of the Service Contract shall occur and the Secretary of State may serve a Breach Notice in accordance with clause 8 (Procedure for Remedying a Contravention of the Service Contract).

8.3 **NOT USED**

8.4 **NOT USED**

## 9. Consequences for Poor Performance

### 9.1 Action Plans

(a) If in any three (3) consecutive Reporting Periods the:

(i) Operator's performance against the OP Target for Cancellations is worse than Relevant OP Component Minimum Performance Level; and/or

(ii) Operator's performance against the OP Target for TOC Minutes Delay is worse than Relevant OP Component Minimum Performance Level; and/or

(iii) Operator's performance against the OP Target for Short Formations is worse than the Relevant OP Component Minimum Performance Level; and/or

(iv) Actual T-3 Performance Level is worse than the Relevant OP Component Minimum Performance Level; and/or

(v) Actual T-15 Performance Level is worse than the Relevant OP Component Minimum Performance Level; and/or

(vi) Actual All Cancellations Performance Level is worse than the Relevant OP Component Minimum Performance Level; and/or

(vii) the Secretary of State considers the Operator's performance on a Route or group of Routes (as applicable) to be unacceptably poor notwithstanding the fact that the Operator's overall performance in respect of any applicable target or level measured pursuant to this Schedule 7.1 meets the relevant target or threshold,

then the Secretary of State shall be entitled to request from the Operator a plan in order to secure:

(viii) in respect of paragraphs 9.1(a)(i) to (vi) above, a Required Performance Improvement; and

(ix) in respect of paragraph 9.1 (a)(vii) above, an improvement of the Operator's performance level on a Route or group of Routes (as applicable) to the satisfaction of the Secretary of State (a "**Route-Specific Required Performance Improvement**").

- (b) Within one (1) month of the Secretary of State's request pursuant to paragraph 9.1(a) above, the Operator shall:
- (i) produce and deliver to the Secretary of State its draft plan for securing a Required Performance Improvement and/or Route-Specific Required Performance Improvement (as applicable) (the "Draft Action Plan"); and
  - (ii) subject to paragraph 9.1(d)(iv) below:
    - (A) obtain the Secretary of State's consent in relation to the Draft Action Plan in accordance with paragraph 9.1(d) below; and
    - (B) commence the implementation of a resulting Action Plan.
- (c) The Draft Action Plan shall contain specific tangible action points and indicate in the case of each action point:
- (i) how that action will contribute to achieving the Required Performance Improvement and/or Route-Specific Required Performance Improvement (as applicable);
  - (ii) where the action is to be implemented;
  - (iii) when the action is to be commenced and by when it is to be implemented provided always that where any action is expressed to be ongoing the Draft Action Plan shall include specific review dates;
  - (iv) how performance of the action is to be measured; and
  - (v) set out the additional expenditure associated with each action.
- (d) The Secretary of State shall be entitled to:
- (i) request further information from the Operator with respect to its Draft Action Plan and the Operator shall submit such further information to the Secretary of State within the timescales as requested by the Secretary of State; and/or
  - (ii) propose amendments to the Draft Action Plan and the Parties shall agree and, in the absence of agreement, the Secretary of State shall determine the amendments to the Draft Action Plan, in which case paragraph 9.1(e) below shall apply; or
  - (iii) accept the Draft Action Plan, in which case paragraph 9.1(e) below shall apply; or
  - (iv) not accept the Draft Action Plan, in which case the Operator shall not be obliged to undertake any further action with respect to its Draft Action Plan.
- (e) The Draft Action Plan as agreed, determined or accepted by the Secretary of State (as the case may be) in accordance with paragraph 9.1(d) above, shall be referred to as the "**Action Plan**". The Operator shall implement the Action Plan in accordance with its terms.
- (f) The Operator acknowledges and agrees that the consent or lack of consent of the Secretary of State in respect of each Draft Action Plan as contemplated in this paragraph 9.1 shall not relieve the Operator of its obligations under this Schedule 7.1 or any other provisions of the Service Contract.



9.2 **NOT USED**

10. **Allocation of Disputed Cancellations/Disputed Partial Cancellations**

10.1 For the purpose of performing the calculations referred to in paragraph 3.1 of this Schedule 7.1 the Secretary of State shall, subject to paragraph 10.2, allocate any Disputed Cancellations and/or Disputed Partial Cancellations between the Operator and Network Rail at the end of a Reporting Period in the following ratio of:

<b>Table 4</b>	
<b>F:G</b>	
<b>where:</b>	
<b>F</b>	is the total number of Undisputed Cancellations and/or Undisputed Partial Cancellations from the twelve (12) preceding Reporting Periods including any Disputed Cancellations or Disputed Partial Cancellations which were resolved or determined (and attributed to the Operator) during such twelve (12) preceding Reporting Periods; and
<b>G</b>	is the total number of Undisputed Network Rail Cancellations and/or Undisputed Network Rail Partial Cancellations from the twelve (12) preceding Reporting Periods including any Disputed Cancellations or Disputed Partial Cancellations which were resolved or determined (and attributed to Network Rail) during such twelve (12) preceding Reporting Periods.

10.2 For so long as fewer than thirteen (13) Reporting Periods have elapsed following the Start Date, the Secretary of State shall, for the purposes of allocating Disputed Cancellations and/or Disputed Partial Cancellations between the Operator and Network Rail in accordance with Table 4, assume performance at the Previous Performance Level in respect of the relevant Reporting Periods (up to a maximum of twelve (12) Reporting Periods) that precede the Start Date.

11. **Allocation of Disputed Minutes Delay**

11.1 Where the attribution of any Minutes Delay is in dispute between Network Rail and the Operator at the end of a Reporting Period the Secretary of State shall, subject to paragraph 11.2, for the purpose of performing the calculations referred to in paragraph 4.1 of this Schedule 7.1, allocate any disputed Minutes Delay between the Operator and Network Rail in the ratio of:

<b>Table 5</b>	
<b>FF:GG</b>	
<b>where:</b>	
<b>FF</b>	is the total number of undisputed Minutes Delay, in each case, from the twelve (12) preceding Reporting Periods that are attributable to the Operator including any disputed attributions which were resolved or determined (and attributed to the Operator) during such twelve (12) preceding Reporting Periods; and
<b>GG</b>	is the total number of undisputed Minutes Delay, in each case from the twelve (12) preceding Reporting Periods that are attributable to Network Rail including any disputed attributions which were resolved or determined (and attributed to Network Rail) during such twelve (12) preceding Reporting Periods.

11.2 For so long as fewer than thirteen (13) Reporting Periods have elapsed following the Start Date, the Secretary of State shall, for the purposes of allocating disputed Minutes Delay

between the Operator and Network Rail in accordance with Table 5, assume performance at the Previous Performance Level in respect of the relevant Reporting Periods (up to a maximum of twelve (12) Reporting Periods) that precede the Start Date.

**12. Operational Performance Information**

12.1 The Operator shall provide to the Secretary of State the information specified in paragraph 12 (Operational Performance Information) to this Schedule 7.1 at the times specified herein.

**Information about the operational performance of the Operator**

12.2 The Operator shall at all times during the Contract Term maintain records in relation to its operational performance under the Service Contract, covering the areas and the information described in this paragraph 12. Such information shall include details as to whether or not any curtailment, diversion, delay or failure to attain any connection is attributable, in the Operator’s opinion, to either a Force Majeure Event or the implementation of a Service Recovery Plan.

12.3 The Operator shall, subject to paragraph 12.4, 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”**.

12.4 When so requested by the Secretary of State, the Operator 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 specified by the Secretary of State; and
- (b) any particular day, week or other longer period as is specified by the Secretary of State.

12.5 The following key shall apply to the table in this paragraph 12:

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

12.6 For the purposes of this paragraph 12, the following words and expressions shall have the following meanings:

Direct Delay attributable to any other Train Operator	means the number of minutes of delay to the Passenger Services that are:  (a) attributed as a “Direct Delay” in accordance with the Delay Attribution Principles and Rules; and  (b) attributable to any other Train Operator;
Direct Delay attributable to Network Rail	means the number of minutes of delay to the Passenger Services that are:

	<ul style="list-style-type: none"> <li>(a) attributed as a "Direct Delay" in accordance with the Delay Attribution Principles and Rules; and</li> <li>(b) attributable to Network Rail;</li> </ul>
Direct Delay attributable to the Operator	<p>means the number of minutes of delay to the Passenger Services that are:</p> <ul style="list-style-type: none"> <li>(a) attributed as a "Direct Delay" in accordance with the Delay Attribution Principles and Rules; and</li> <li>(b) attributable to the Operator;</li> </ul>
Direct Delay on other operators attributable to the Operator	<p>means the number of minutes of delay to passenger services operated by any other Train Operator or services operated by freight operators that are attributed:</p> <ul style="list-style-type: none"> <li>(a) as "Direct Delay" in accordance with the Delay Attribution Principles and Rules; and</li> <li>(b) to the Operator pursuant to the Track Access Agreement;</li> </ul>
Reactionary Delay attributable to any other Train Operator	<p>means the number of minutes of delay to the Passenger Services that are:</p> <ul style="list-style-type: none"> <li>(a) attributed as a "Reactionary Delay" in accordance with the Delay Attribution Principles and Rules; and</li> <li>(b) attributable to any other Train Operator;</li> </ul>
Reactionary Delay attributable to Network Rail	<p>means the number of minutes of delay to the Passenger Services that are:</p> <ul style="list-style-type: none"> <li>(a) attributed as a "Reactionary Delay" in accordance with the Delay Attribution Principles and Rules; and</li> <li>(b) attributable to Network Rail;</li> </ul>
Reactionary Delay attributable to the Operator	<p>means the number of minutes of delay to the Passenger Services that are:</p> <ul style="list-style-type: none"> <li>(a) attributed as a "Reactionary Delay" in accordance with the Delay Attribution Principles and Rules; and</li> <li>(b) attributable to the Operator; and</li> </ul>
Reactionary Delay on other operators attributable to the Operator	<p>means the number of minutes of delay to passenger services operated by any other Train Operator or services operated by freight operators that are attributed:</p> <ul style="list-style-type: none"> <li>(a) as "Reactionary Delay" in accordance with the Delay Attribution Principles and Rules; and</li> <li>(b) to the Operator pursuant to the Track Access Agreement.</li> </ul>

12.7 This paragraph 12 shall be interpreted in accordance with any guidance issued by the Secretary of State from time to time for that purpose.

<b>Table 6 – Operational Performance Information</b>		
<b>Information to be provided</b>	<b>Information (format)</b>	<b>When information to be provided</b>
<b>Number of Passenger Services</b>		
Number of Passenger Services in the Timetable	[number]	B
Number of Passenger Services in the Enforcement Plan of the Day	[number]	B
<b>Number of Cancellations and Partial Cancellations</b>		
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 Network Rail Cancellation	[number]	B
Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Network Rail Partial Cancellation	[number]	B
Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Disputed Cancellation	[number]	B
Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Disputed Partial Cancellation	[number]	B
Number of Disputed Cancellations and Disputed Partial Cancellations for the twelve (12) preceding Reporting Periods for which the attribution remains in dispute between Network Rail and the Operator	[number]	B
Number of Disputed Cancellations and Disputed Partial Cancellations from the twelve (12) preceding Reporting Periods for which disputed attribution has been resolved or determined since the Operator's previous report including whether each relevant Disputed Cancellation and/or Disputed Partial Cancellation was attributed to Network Rail or to the Operator	[number]	B
Where there is a difference between the Timetable and the Plan of the Day on any day the following: (a) the fact of such difference; and (b) the number of: (i) Passenger Services affected; and (ii) Cancellations or Partial Cancellations which would have arisen if the Timetable on that day had been the same as the Plan of the Day	[number]	B

<b>Table 6 – Operational Performance Information</b>		
<b>Information to be provided</b>	<b>Information (format)</b>	<b>When information to be provided</b>
Where there is a difference between the Plan of the Day and the Enforcement Plan of the Day on any day:  (a) the fact of such difference;  (b) the number of:  (i) Passenger Services affected; and  (ii) Cancellations or Partial Cancellations which would have arisen if the Plan of the Day had been the same as the Enforcement Plan of the Day	[number]	B
Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a cancellation and which satisfied the conditions of the term Cancellation, except that such cancellations occurred for reasons attributable to the occurrence of a Force Majeure Event	[number]	B
Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a partial cancellation and which satisfied the conditions of the term Partial Cancellation, except that such partial cancellations occurred for reasons attributable to the occurrence of a Force Majeure Event	[number]	B
<b>Number of Short Formations</b>		
<b>Simple Short Formations</b>		
Number of Short Formation Passenger Services that have <i>less than the required Passenger Carrying Capacity</i> specified in the Train Formation Capacity Plan	[number]	B
Number of Short Formation Passenger Services that have <i>less than the required Passenger Carrying Capacity</i> specified in the Train Formation Capacity Plan attributable to the Operator’s implementation of a Service Recovery Plan	[number]	B
Number of Short Formation Passenger Services that have <i>less than the required Passenger Carrying Capacity</i> specified in the Train Formation Capacity Plan attributable to the occurrence of a Force Majeure Event	[number]	B
Number of Short Formation Passenger Services scheduled (excluding Cancellations or Partial Cancellations)	[number]	B
<b>Minutes Delay</b>		
Number of Minutes Delay attributable to the Operator	[number]	B
Number of Minutes Delay attributable to Network Rail	[number]	B

<b>Table 6 – Operational Performance Information</b>		
<b>Information to be provided</b>	<b>Information (format)</b>	<b>When information to be provided</b>
Number of Minutes Delay attributable to any other Train Operator	[number]	B
Number of Minutes Delay for such Reporting Period for which the attribution is in dispute between Network Rail and the Operator	[number]	B
Number of Minutes Delay for the twelve (12) preceding Reporting Periods for which the attribution remains in dispute between Network Rail and the Operator	[number]	B
Number of Minutes Delay from the twelve (12) preceding Reporting Periods for which disputed attribution has been resolved or determined since the Operator’s previous report and the number of such Minutes Delay attributed to each of the Operator and Network Rail as a result of such resolution or determination	[number]	B
Number of Minutes Delay attributed to the occurrence of a Force Majeure Event	[number]	B
<b>T-3, T-15, All Cancellations and On Time</b>		
Time to 3 Minutes percentage published by Network Rail, rounded to two (2) decimal places	[number]	B
Time to 15 Minutes percentage published by Network Rail, rounded to two (2) decimal places	[number]	B
All Cancellations percentage published by Network Rail, rounded to two (2) decimal places	[number]	B
On Time percentage published by Network Rail, rounded to two (2) decimal places	[number]	B
<b>Train Mileage</b>		
Planned Train Mileage	[mileage]	A
Actual Train Mileage	[mileage]	B
<b>Direct Delay and Reactionary Delay</b>		
Direct Delay attributable to the Operator	[number]	B
Reactionary Delay attributable to the Operator	[number]	B
Direct Delay attributable to Network Rail	[number]	B
Reactionary Delay attributable to Network Rail	[number]	B
Direct Delay attributable to any other Train Operator	[number]	B
Reactionary Delay attributable to any other Train Operator	[number]	B
Direct Delay on other operators attributable to the Operator	[number]	B
Reactionary Delay on other operators attributable to the Operator	[number]	B

**SCHEDULE 7.2****CUSTOMER EXPERIENCE AND ENGAGEMENT**

1. **Not Used**
2. **Conduct of National Rail Passenger Surveys**
  - 2.1 The Operator agrees with the Secretary of State that:
    - (a) the Passengers' Council may measure the level of passenger satisfaction with the Rail 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 Operator 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 Operator 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.
  - 2.2 The Secretary of State shall ensure or shall procure that:
    - (a) the findings of any National Rail Passenger Survey are made available by the Passengers' Council to the Operator 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 Operator to comply with its obligations under paragraph 2.3; 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.
  - 2.3 the Operator shall, as soon as reasonably practicable after such information is made available to the Operator in accordance with paragraph 2.2, publicise its performance against the NRPS Benchmarks by including such information in its Customer Report and displaying such information at all of the Stations and on its website.
  - 2.4 It is agreed by the Operator that, subject to paragraph 2.5, the methodology to be adopted by the Passengers' Council in conducting any such National Rail Passenger Survey shall be as described in the document in the agreed terms marked **PSM** (the "**Passenger Survey Methodology**");
  - 2.5 If:
    - (a) at any time during the Contract Term the methodology adopted in conducting any National Rail Passenger Survey is, in the reasonable opinion of the Secretary of State, materially inconsistent with the Passenger Survey Methodology; and
    - (b) the Secretary of State reasonably determines that in consequence a revision to the NRPS Benchmark is required in order to hold constant the risk of the Operator failing to satisfy the NRPS Benchmark,

then the Secretary of State shall make such revisions to such NRPS Benchmarks as the Secretary of State reasonably considers appropriate to hold constant such risk.

2.6 If:

- (a) National Rail Passenger Surveys are replaced by an alternative survey; or
- (b) the Secretary of State after consultation with the Operator, determines that an alternative passenger survey would be more appropriate,

then in each case the provisions of this Schedule 7.2 relating to the results of National Rail Passenger Surveys shall apply in respect of any alternative survey (the "**Alternative Survey**") and for these purposes Passengers' Council shall be replaced with such other entity that is responsible for conducting such Alternative Survey.

### 3. **NRPS Benchmarks**

3.1 It is agreed by the Secretary of State and the Operator that, subject to paragraph 2.6, the results of the National Rail Passenger Survey(s) published by the Passengers' Council in any Contract Year should be used to determine the Operator's performance against the NRPS Benchmarks for that Contract Year. If in any Contract Year the Passengers' Council has published:

- (a) only one (1) National Rail Passenger Survey in that Contract Year then the performance of the Operator against the NRPS Benchmarks shall be measured against the results of such National Rail Passenger Survey; or
- (b) more than one (1) National Rail Passenger Survey in that Contract Year then the performance of the Operator against the NRPS Benchmarks shall be measured against the average of the results of all of the National Rail Passenger Surveys published by the Passengers' Council in that Contract Year;
- (c) only one (1) National Rail Passenger Survey in that Contract Year then the performance of the Operator against the NRPS Benchmarks shall be measured against the most recently published results of such National Rail Passenger Survey including, with respect to the first Contract Year, where such results relate to a period preceding the Start Date.

### 4. **Performance Review**

4.1 For each Contract Year the Secretary of State shall determine the Operator's performance against each NRPS Benchmark by comparing:

- (a) if only one (1) National Rail Passenger Survey has been published by the Passengers' Council in that Contract Year, the results of such National Rail Passenger Survey against the NRPS Benchmarks applicable in respect of that Contract Year; or
- (b) if more than one (1) National Rail Passenger Survey has been published by Passengers' Council in that Service Year, the average of the results of all of the National Rail Passenger Surveys published by the Passengers' Council in that Contract Year against the NRPS Benchmarks applicable in respect of that Contract Year.

4.2 For the purposes of undertaking the comparison pursuant to paragraph 4.1, the results referred to in paragraph 4.1(a) or paragraph 4.1(b) (as the case may be) shall be rounded up to one (1) decimal place with the midpoint (that is, 4.45) rounded upwards (that is, 4.5).

4.3 If, following the Secretary of State's determination pursuant to any of paragraphs 4.1(a) or 4.1(b) (as the case may be), the results show that the level of customer satisfaction in respect of any NRPS Measure is below the NRPS Benchmark for such measure then the



Secretary of State shall be entitled to request from the Operator a plan in order to secure an NRPS Improvement.

## 5. NRPS Improvement Proposals

5.1 Within thirty (30) Weekdays of the Secretary of State's request (or such longer period as may be agreed by the Secretary of State) pursuant to paragraph 4.3, the Operator shall, prepare and deliver to the Secretary of State its proposal (the "**NRPS Improvement Proposal**") for achieving an NRPS Improvement which shall:

- (a) contain specific tangible actions points and indicate in the case of each action point:
  - (i) how that action will contribute to meeting the relevant NRPS Measure;
  - (ii) where the action is to be implemented;
  - (iii) the proposed timescales for implementing such action and where any action is expressed to be ongoing, proposed review dates; and
  - (iv) how the Operator proposes to measure the performance of the action; and
- (b) the additional expenditure associated with each action.

5.2 The Secretary of State shall be entitled to:

- (a) request further information from the Operator with respect to its NRPS Improvement Proposal, and the Operator shall submit such further information to the Secretary of State within the timescales as reasonably requested by the Secretary of State; and/or
- (b) propose amendments to the NRPS Improvement Proposal and the parties shall agree and, in the absence of agreement, the Secretary of State shall reasonably determine the amendments to the NRPS Improvement Proposal, in which case paragraph 5.3 shall apply; or
- (c) accept the NRPS Improvement Proposal, in which case paragraph 5.3 shall apply; or
- (d) not accept the NRPS Improvement Proposal, in which case the Operator shall not be obliged to undertake any further action with respect to its NRPS Improvement Proposal.

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

6. **NOT USED**

7. **NOT USED**

8. **Consultations**

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

- (a) passengers, potential passengers, Stakeholders and other users of the rail network;

- (b) Disabled Persons who are the subject of the Operator's Accessible Travel Policy; and
  - (c) persons with other protected characteristics within the meaning of the EA,
- for the purposes of the Customer Report.

## 9. **Customer and Stakeholder Engagement Strategy**

- 9.1 The Operator shall comply with the Customer and Stakeholder Engagement Strategy from the Start Date.
- 9.2 The Operator shall:
- (a) undertake and complete a review of the Customer and Stakeholder Engagement Strategy in each Contract Year; and
  - (b) provide the Secretary of State with any proposed revisions to the Customer and Stakeholder Engagement Strategy in each Subsequent Business Plan Year.
- 9.3 The aim of the review referred to in paragraph 9.2 shall be 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.
- 9.4 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).

## 10. **Customer Report**

- 10.1 The Operator shall, in accordance with the requirements of paragraph 10.2 and paragraph 10.3 below, publish a Customer Report in such readily accessible formats as the Secretary of State may require (including in booklet or other similar hard copy formats, in electronic formats (such as on the Operator's website, through social media channels and by email)), in each case in accordance with the provisions of paragraph 8 (Publication of Performance Data) and paragraph 9 (Publication of Complaints and Faults Handling Data) of Schedule 1.4 (Passenger Facing Obligations) and paragraph 1.2 (Environmental Information Data Collection Plan) to Schedule 6.2 (Environment and Sustainability).
- 10.2 The Operator shall publish a Customer Report as follows:
- (a) in respect of the first (1st) Contract Year:
    - (i) where such Contract Year is less than seven (7) Reporting Periods, the Operator shall only be required to publish a Customer Report for that Contract Year by no later than the Start Date (or if later, the date falling six (6) months after the Previous Operator last published an equivalent contract report under the Previous Agreement); or
    - (ii) where such Contract Year is equal to or less than thirteen (13) Reporting Periods but equal to or more than seven (7) Reporting Periods, the Operator shall be required to publish two (2) Customer Reports in that Contract Year, the first Customer Report to be published by no later than the Start Date (or if later, the date falling six (6) months after the Previous Operator last published an equivalent contract report under the Previous Agreement) and the second Customer Report to be published before the end of that first Contract Year; and

- (b) in respect of each subsequent Contract Year, the Operator shall be required to publish a Customer Report at least twice in that Contract Year provided that where the final Contract Year is less than seven (7) Reporting Periods the Operator shall not be required to publish a Customer Report,

provided that in no circumstances shall the Operator be required to publish more than one Customer Report in any period of six (6) consecutive months.

- 10.3 Without prejudice to the obligations of the Operator as specified in each of paragraphs 12 (*Customer Service and Satisfaction Data*) of this Schedule 7.2, paragraph 8 (*Publication of Performance Data*) and paragraph 9 (*Publication of Complaints and Faults Handling Data*) of Schedule 1.4 (*Passenger Facing Obligations*) and paragraph 1.2 (*Environmental Information Data Collection Plan*) to Schedule 6.2 (*Environment and Sustainability*), the Secretary of State and the Operator acknowledge and agree that in respect of each Contract Year to which the provisions of paragraph 1.2(b) apply, the first (1st) Customer Report to be published for that Contract Year shall be prepared in respect of the first six (6) Reporting Periods of that Contract Year and the second (2nd) Customer Report to be published for that Contract Year shall be prepared in respect of the last seven (7) Reporting Periods of that Contract Year.
- 10.4 The Operator shall ensure that a summary of the then current Customer Report is made available at all staffed Stations (in such format as the Secretary of State may require) and that such summary includes instructions to enable passengers to locate and obtain a full copy of the applicable Customer Report.
- 10.5 The Operator shall ensure that the Pass Rates published by it pursuant to paragraph 13.1 of Part D of Schedule 7.3 (*Service Quality Regime*) are also recorded in the subsequent Customer Report which relates to the Reporting Periods during which the applicable Pass Rates were achieved, along with:
- (a)
- (i) (in relation to the third (3rd) Customer Report) a comparison with the Pass Rates achieved in relation to the Reporting Periods that have elapsed since the last Reporting Period reported on in the relevant Previous Customer Report accompanied by a supporting narrative describing the outcomes and implications of the results of such comparison exercise onwards;
- (ii) (in the case of each subsequent Customer Report) a comparison with the Pass Rates achieved in relation to the Reporting Periods that have elapsed since the last Reporting Period reported on in the relevant Previous Customer Report for the same Reporting Periods in the previous Contract Year accompanied by a supporting narrative describing the outcomes and implications of the results of such comparison exercise onwards;
- (b) details of any remedial work either:
- (i) planned by the Operator to occur in the period in relation to which the next Customer Report will report to improve the Operator's performance in relation to achieving and exceeding the SQR Benchmarks in respect of any Service Quality Area where performance is below the applicable SQR Benchmark; or
- (ii) undertaken by the Operator during the Reporting Periods that have elapsed since the previous Customer Report or, in the case of the first Customer Report, since the Start Date, for the purposes of improving the Operator's performance in relation to achieving and exceeding the SQR Benchmarks for any Service Quality Area where performance was below the applicable SQR Benchmark; and

- (c) details of any other initiatives planned to be implemented by the Operator to improve the Operator's performance against the SQR Benchmarks.

11. **NOT USED**

12. **Customer Service and Satisfaction Data**

12.1 As part of each Customer Report to be provided by the Operator pursuant to paragraph 10.1 of this Schedule 7.2, the Operator shall publish (in such format as the Secretary of State may require) details of the Operator's:

- (a) level of adherence to scheduled ticket office opening hours at Stations (so that the Customer Report shows, as a percentage, the proportion of scheduled ticket office opening hours not delivered aggregated across all ticket offices at all Stations); and
- (b) performance by reference to such benchmarks as may be agreed between the Operator and the ORR as part of the Operator's Accessible Travel Policy in respect of the Passenger Assist service operated by the Operator,

In each case in relation to the Reporting Periods that have elapsed since the last Reporting Period reported on in the Previous Customer Report or, in the case of the first (1<sup>st</sup>) Customer Report, since the last Reporting Period reported on in the last Customer Report provided by the Previous Operator in accordance with the Previous Agreement (and as defined therein), along with a comparison with the relevant statistics or results (as applicable) provided for the same Reporting Periods in the previous Contract Year.

12.2 The Operator shall publish on its website (in such format as the Secretary of State may require):

- (a) within twenty (20) Weekdays of the publication of each National Rail Passenger Survey carried out by the Passengers' Council during the Contract Term, details of the scores achieved by the Operator in such National Rail Passenger Survey, including the scores achieved in respect of passengers' "overall satisfaction"; and
- (b) within twenty (20) Weekdays of the publication of the last National Rail Passenger Survey to be carried out by the Passengers' Council during any Contract Year, details of the scores achieved by the Operator as against each NRPS Benchmark, as calculated in accordance with paragraph 4 (*Performance Review*) of Schedule 7.2 (*Customer Experience and Engagement*).

12.3 The Operator shall ensure that the scores achieved as against each NRPS Benchmark (if applicable), published by it pursuant to paragraph 11.2, are also recorded in the subsequent Customer Report which relates to the Reporting Periods during which the applicable scores were achieved, along with:

- (a) if available, a comparison with the scores that were achieved as against each NRPS Benchmark for the same Reporting Periods in the previous Contract Year, accompanied by a supporting narrative describing the outcomes and implications of the results of any such comparison exercise;
- (b) details of any remedial work either:
  - (i) planned by the Operator to occur in the period in relation to which the next Customer Report will report to improve the Operator's performance in relation to achieving and exceeding the NRPS Benchmarks (for instance, the planned application of additional expenditure); or
  - (ii) undertaken by the Operator during the Reporting Periods that have elapsed since the last Reporting Period reported on in the

Previous Customer Report or, in the case of the first (1st) Customer Report, since the last Reporting Period reported on in the last Customer Report provided by the Previous Operator in accordance with the Previous Agreement (and as defined therein), for the purposes of improving the Operator's performance in relation to achieving and exceeding the NRPS Benchmarks (for instance, the planned application of additional expenditure); and

- (c) details of any other initiatives planned to be implemented by the Operator to improve passenger experience.

### 13. **Wavelength**

13.1 For the purpose of this paragraph:

- (a) **"Wavelength Programme"** means the programme of work being developed by the rail industry which involves collecting a wide range of information about the customer experience by tracking, amongst other things, the Operator's performance against certain journey touchpoints (as specified in the Wavelength Survey) and certain key commitments based on core passenger priorities; and
- (b) **"Wavelength Survey"** means the weekly survey relating to the Passenger Services (in such form as may be agreed from time to time), which is undertaken as part of the Wavelength Programme to monitor, amongst other things, the Operator's performance against certain journey touchpoints (as specified in the Wavelength Survey) and certain key commitments based on core passenger priorities.

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

- (a) fully and effectively engage with the Wavelength Programme;
- (b) subject to the relevant information being made available to the Operator via the Wavelength portal, provide to the Secretary of State by no later than seven (7) Weekdays following the end of each Reporting Period, a report setting out the results of the Wavelength Survey undertaken during that Reporting Period, such results to be presented in such aggregated or disaggregated format as the Secretary of State may specify from time to time; and
- (c) subject to the relevant information being made available to the Operator via the Wavelength portal, provide to the Secretary of State by no later than fourteen (14) Weekdays following the end of each Quarter, a report detailing:
  - (i) how the Operator has used the full range of Wavelength Programme insights (including the analysis of data received through the Wavelength Survey) to implement and/or invest in:
    - (A) customer-focused initiatives; and/or
    - (B) tangible benefits or improvements for customers; and
  - (ii) whether such initiatives, benefits or improvements referred to in paragraph 22.2(c)(i) have:
    - (A) resulted in any improvement in the Wavelength Survey scores collected to date; and/or
    - (B) any other improvements or benefits to the Operator.

**APPENDIX 1 TO SCHEDULE 7.2**

**NOT USED**

**APPENDIX 2 TO SCHEDULE 7.2**

**NOT USED**

**SCHEDULE 7.3****SERVICE QUALITY REGIME****1. Purpose**

1.1 This Schedule 7.3 sets out the following:

- (a) Part A - Service Quality Management Process;
- (b) Part B - Inspections and Audits;
- (c) Part C - Calculation of Pass Rates;
- (d) Part D - Publication and Reporting Requirements; and
- (e) Part E - Remedies.

**2. NOT USED**



## Part A - Service Quality Management Process

### 1. Service Quality Management

#### 1.1 SQR Management System

- (a) The Operator shall put in place service quality management arrangements and processes (including the collection of relevant data) which shall (as a minimum):
- (i) be capable of measuring and reporting the Operator's performance against each Service Quality Indicator comprised in a Service Quality Area;
  - (ii) be capable of recording and retaining Service Quality Rectification Evidence; and
  - (iii) set out procedures for:
    - (A) ensuring compliance with the requirements of this Part A of Schedule 7.3 including the obligation to conduct Service Quality Inspections as required pursuant to this paragraph 3; and
    - (B) identifying and rectifying failures identified during each Service Quality Inspection (including processes which ensure that corrective actions identified during any Service Quality Inspection are undertaken in a diligent and prompt manner),

(the "**SQR Management System**").

- (b) The SQR Management System shall be implemented and fully operational by no later than 1 April 2022.

#### 1.2 SQR Register

- (a) The Operator shall prepare and complete the SQR Register so as to include the facilities and services which exist on every SQR Train and every SQR Station by no later than 1 April 2022.
- (b) The form and content of the SQR Register shall include as a minimum the following content:
- (i) description, purpose and quantity of each facility or service;
  - (ii) photographic evidence of each facility or service;
  - (iii) Not Used;
  - (iv) details of the applicable Service Quality Indicators against which the facility or service will be measured and reported against as set out in Appendix 2 (*Service Quality Areas/Service Quality Indicators/Weightings*) of this Schedule 7.3.
  - (v) Not Used.
- (c) The Operator shall maintain the SQR Register and update such SQR Register at such regular intervals as is reasonably necessary to ensure compliance with its obligations under this Schedule 7.3. The Operator shall not, without the prior Approval of the Secretary of State, remove any facility or service from the SQR Register unless such facility or service relates solely to a Ceased Service.

- (d) The Operator shall provide an up to date copy of the SQR Register to the Secretary of State (when requested to do so from time to time) or to any person carrying out an SoS Audit or SoS Service Quality Inspection on behalf of the Secretary of State.

### 1.3 Changes to the Rail Services

- (a) If at any time during the Contract Term, the Operator:
  - (i) operates additional railway passenger services or operates additional stations which are not part of the SQR Trains or SQR Stations (as the case may be) at the Start Date (including where such are transferred from another Train Operator) ("**New Services**"); and/or
  - (ii) introduces new facilities or services on a SQR Train and/or on a SQR Station which were not in existence at the Start Date (including where such are transferred from another Train Operator) ("**New Facilities**"),

then it shall update its SQR Management System and the SQR Register to include such New Services and New Facilities by no later than the first day of the first Reporting Period which commences after the date upon which the Operator begins to operate such New Services or such New Facilities are introduced (as the case may be).

- (b) The requirements of this Schedule 7.3 shall begin to apply in relation to such New Services and such New Facilities from the first day of the first Reporting Period which commences after the date on which the Operator commences the operation of such New Services or New Facilities are introduced (as the case may be).
- (c) If at any time during the Contract Term, the Secretary of State directs the Operator to:
  - (i) permanently stop operating certain railway passenger services or permanently stop operating stations which are part of the SQR Trains or SQR Stations, (as the case may be) at the Start Date; and/or
  - (ii) to remove any facilities or services which are part of the SQR Trains or SQR Stations (as the case may be),

(together, the "**Ceased Services**"),

then the Operator shall update the SQR Management System and the SQR Register to remove such Ceased Services by no later than the first day of the first Reporting Period which commences after the date upon which the Operator stopped operating such Ceased Services.

- (d) The requirements of this Schedule shall cease to apply in relation to such Ceased Services from the first day of the first Reporting Period which commences after the date on which the Operator stops the operation of such Ceased Services are introduced.

### 1.4 Procuring SQR Services

Prior to any procurement by the Operator of any of the SQR Services, the Operator shall agree with the Secretary of State the scope and terms of the work and/or service to be procured.

## Part B - Inspections and Audits

### 2. The Operator Service Quality Inspections

2.1 In each Reporting Period commencing from 1 April 2022, the Operator shall procure the undertaking of:

- (a) Station Service Quality Inspections, and Train Service Quality Inspections and Customer Service Quality Inspections (together to be known as the **"Service Quality Inspections"**) in accordance with the requirements of paragraph 4.3;
- (b) Service Quality Re-inspections, in accordance with the requirements of paragraph 6.1(a); and
- (c) audits to verify the matters referred to in paragraph 6.1(b).

2.2 For the purposes of this Part B of Schedule 7.3, where the definition of **"SQR Station"** refers to the Relevant Managed Stations, this shall exclude any areas that are exclusively utilised by operators other than the Operator.

2.3 The Operator shall (as a minimum):

- (a) ensure that each Service Quality Inspection is carried out so as to determine whether any Service Quality Indicator has been passed or failed in accordance with the failure criteria specified in the Service Quality Schedules;
- (b) ensure that each Service Quality Inspection is carried out accurately and impartially by independent persons (who for the purposes of the Station Service Quality Inspections and Train Service Quality Inspections only can be Business Employees dedicated to delivering the Service Quality Regime);
- (c) if the Operator elects for Station Service Quality Inspections and/or Train Service Quality Inspections to be carried out by Business Employees then any such Business Employees must not be persons:
  - (i) who are responsible for customer service or the management or operation of any of the SQR Stations or SQR Trains which are the subject of the Station Service Quality Inspection or Train Service Quality Inspection; or
  - (ii) whose base salary payment or provision of any benefit (whether contractual or otherwise) are dependent on the result of any Station Service Quality Inspection or Train Service Quality Inspection;
- (d) ensure that any Business Employee who is a member of the customer relations team or who is involved in the operation of any SQR Stations or SQR Train (including any person who is responsible for the management and operation of any such SQR Stations or SQR Train) in respect of which a Station Service Quality Inspection or Train Service Quality Inspection is to be undertaken is not notified or otherwise made aware of the date or time of any proposed or actual Service Quality Inspection;
- (e) ensure that:
  - (i) each SQR Station (which is not a Relevant Managed Station) is the subject of a Station Service Quality Inspection at least four (4) times in each Service Year; and
  - (ii) each Station Service Quality Inspection is carried out in respect of each Reporting Period at one-hundred and fifty (150) different

SQR Stations (which are not Relevant Managed Stations) with such Station Service Quality Inspection being distributed across the day and between the days of the week in proportion to typical passenger use of the SQR Station across the day and the days of the week in each such Reporting Period. Such Station Service Quality Inspections shall be reasonably apportioned so that subsequent Service Quality Inspections in respect of each SQR Station are not unduly concentrated on a particular time of the day or day of the week; and

- (iii) each SQR Station (which is a Relevant Managed Station) is the subject of a Station Service Quality Inspection two (2) times in each Contract Year with such Station Service Quality Inspection being distributed across the day and between the days of the week in proportion to typical passenger use of the SQR Station across the day and the days of the week; and

(f) ensure that:

- (i) in respect of each Reporting Period, five hundred and fifty (550) Train Service Quality Inspections are carried out in respect of different vehicles comprised within different SQR Trains with such Train Service Quality Inspection being apportioned across the day and between the days of the week in proportion to the typical distribution of passenger journeys across the day and between the days of the week; and
- (ii) Train Service Quality Inspections are carried out in respect of vehicles operating on each Route once every other Reporting Period. Such Train Service Quality Inspections shall not be unduly concentrated on vehicles that operate on a particular Route; and
- (iii) NOT USED; and

(g) ensure that, in each Reporting Period:

- (i) at least 64 Customer Service Quality Inspections are conducted of the "Helpfulness of Staff at Stations" Service Quality Indicator;
- (ii) at least 80 Customer Service Quality Inspections are conducted of the "Helpfulness of Staff on Trains" Service Quality Indicator;
- (iii) at least 36 Customer Service Quality Inspections are conducted of the "Social Media Mystery Shopper Question" Service Quality Indicator; and
- (iv) at least 28 Customer Service Quality Inspections are conducted of the "Planned and Unplanned Disruption" Service Quality Indicator,

in each case, in accordance with the provisions of the Service Quality Schedules; and

(h) ensure that:

- (i) 25% of Customer Service Quality Inspections of the "Helpfulness of Staff at Stations" and 25% of Customer Service Quality Inspections of the "Helpfulness of Staff on Trains" Service Quality Indicators are completed by mystery shoppers who require additional assistance (including disabled persons with mobility or other impairments) in each Reporting Period;

- (ii) 25% of all Customer Service Quality Inspections of the "Social Media Mystery Shopper Question" Service Quality Indicator are related to questions about accessibility in each Reporting Period;
- (iii) Customer Service Quality Inspections relating to SQR Stations are apportioned across the day and between the days of the week in proportion to typical passenger use of the SQR Station across the day and the days of the week in each such Reporting Period; and
- (iv) Customer Service Quality Inspections relating to SQR Trains and SQR Stations are carried out on each Route once every Reporting Period. Such Customer Service Quality Inspections shall be reasonably apportioned so that they are undertaken on SQR Trains and SQR Stations across the different Routes.

2.4 For any Reporting Period which is longer than thirty-two (32) days or shorter than twenty-five (25) days the minimum number of:

- (a) Station Service Quality Inspections as specified in paragraph 4.3(e); and
- (b) Train Service Quality Inspections as specified in paragraph 4.3(f);
- (c) Customer Service Quality Inspections as specified in paragraph 4.3(g) and 4.3(h),

shall be increased or reduced pro rata based on a normal Reporting Period of twenty-eight (28) days.

2.5 For any Contract Year which has less than thirteen (13) Reporting Periods:

- (a) Station Service Quality Inspections as specified in paragraph 4.3(e); and
- (b) Train Service Quality Inspections as specified in paragraph 4.3(f);
- (c) Customer Service Quality Inspections as specified in paragraph 4.3(g) and 4.3(h),

shall be reduced pro rata based on a normal Contract Year of thirteen (13) Reporting Periods.

2.6 For any Contract Year which has more than thirteen (13) Reporting Periods:

- (a) Station Service Quality Inspections as specified in paragraph 4.3(e); and
- (b) Train Service Quality Inspections as specified in paragraph 4.3(f);
- (c) Customer Service Quality Inspections as specified in paragraph 4.3(g) and 4.3(h),

shall be increased pro rata based on a normal Contract Year of thirteen (13) Reporting Periods.

3. **NOT USED**

4. **Service Quality Re-Inspections and Service Quality Rectification Evidence**

4.1 If in any Reporting Period a "fail" is recorded against any Service Quality Indicator set out in any Service Quality Schedule ("**Service Quality Failure**") then:

- (a) in relation to SQR Stations, the Operator shall rectify such specific Service Quality Failure and undertake an inspection of the relevant facility or service

which resulted in the occurrence of such Service Quality Failure within the relevant time period set out within the Service Quality Schedule ("**Service Quality Re-inspection**") and the requirements of paragraphs 4.3(b) and 4.3(c) shall apply to any such Service Quality Re-inspection. Where such Service Quality Re-inspection identifies that the Service Quality Failure has not been rectified, then a further Service Quality Failure shall occur ("**Re-inspection Failure**"); and

- (b) in relation to SQR Trains and the applicable Service Quality Indicators for SQR Stations as set out in the Service Quality Schedules, the Operator shall within the relevant time period specified in the Service Quality Schedule (the "**Relevant Rectification Period**"), ensure that relevant Service Quality Rectification Evidence is recorded and retained in the SQR Management System. If no Service Quality Rectification Evidence is recorded in the SQR Management System within the Relevant Rectification Period, then a further Service Quality Failure shall occur ("**Rectification Evidence Failure**").
- 4.2 Where a Service Quality Re-inspection or Rectification Evidence Failure results in a Service Quality Failure being recorded against a facility or service, such Service Quality Failure(s) shall be included in the calculation of the Pass Rates for the Reporting Period in which the Service Quality Re-inspection is conducted or the Rectification Evidence Failure occurs, in accordance with the provisions of paragraph 10 of Part C of this Schedule 7.3 (*Calculation of Pass Rates*), paragraph 20 of this Part C of this Schedule 7.3 and Part 4 to Appendix 1 (*Service Quality Schedules*) of this Schedule 7.3.
- 4.3 The provisions of this paragraph 6 shall continue to apply until such a time as:
- (a) in the case of the circumstances described in paragraph 6.1(a), the relevant facility or service which has resulted in the occurrence of a Service Quality Failure is rectified and a Service Quality Re-inspection in respect of that facility or service has not resulted in a Service Quality Failure; or
  - (b) in the case of the circumstances described in paragraph 6.1(b), the Operator has recorded relevant Service Quality Rectification Evidence within the Relevant Rectification Period and accordingly a Service Quality Failure has not occurred.
- 4.4 If following two (2):
- (a) Re-inspection Failures, the original Service Quality Failure has not been rectified; or
  - (b) Rectification Evidence Failures, no Service Quality Rectification Evidence has been recorded in the SQR Management System in respect of the facility or service which resulted in the occurrence of the original Service Quality Failure;
- then the Operator shall within fourteen (14) days of the occurrence of such Re-inspection Failure or Rectification Evidence Failure notify the Secretary of State of such failure.
- 4.5 The Operator shall prepare and submit to the Secretary of State, together with such notice, a plan which sets out the steps the Operator proposes to implement to ensure that the Re-inspection Failure or Rectification Evidence Failure is rectified before the next Service Quality Inspection and the Re-inspection Failure or Rectification Evidence Failure does not reoccur. The Operator shall use all reasonable endeavours to implement such plan in accordance with its terms.
- 4.6 The provisions of this paragraph 6 shall not apply to Relevant Managed Stations, Customer Service Quality Inspections, or the Service Quality Indicators relating to "*Information During Disruption*".

## 5. Independent Service Quality Audit

- 5.1 In respect of each Contract Year the Operator shall procure the carrying out of an independent audit ("**Independent Service Quality Audit**").
- 5.2 the Operator shall agree the terms of reference for the procurement of any Independent Service Quality Audit and the identity of any independent person proposed to undertake such Independent Service Quality Audit with the Secretary of State prior to any procurement by the Operator of any such Independent Service Quality Audit.
- 5.3 The Independent Service Quality Audit shall be undertaken a minimum of once per year to verify and confirm that the:
- (a) SQR Management System complies with the requirements of paragraph 3.1 (SQR Management System) and has been implemented as required pursuant to this Schedule 7.3, including that Service Quality Rectification Evidence has been recorded and retained in accordance with (and is otherwise in compliance with) the requirements of this Schedule 7.3;
  - (b) Service Quality Inspections undertaken in that Service Year comply with the requirements of paragraph 4.3 (*the Operator Service Quality Inspections*);
  - (c) SQR Register has been maintained and updated as required pursuant to paragraph 3.2 (SQR Register);
  - (d) Pass Rates reported by the Operator for Reporting Periods within that Contract Year have been calculated in accordance with the requirements of paragraph 10.1 (Calculation of Pass Rates);
  - (e) Pass Rates reported by the Operator for that Contract Year have been calculated in accordance with paragraph 10.2 (Calculation of Pass Rates).
- 5.4 Any Independent Service Quality Audit shall either:
- (a) confirm that, after having regard to the findings of such inspections, its assessment of the matters referred to in paragraphs 7.3(a) to 7.3(e) and any other relevant information at the disposal of any person conducting such Independent Service Quality Audit, it can reasonably be concluded that the Pass Rates reported by the Operator for that Reporting Periods within that Service Year and/or for that Service Year are a fair, accurate and impartial reflection of the Operator's performance against each Service Quality Indicator or Service Quality Area; or
  - (b) state that such confirmation cannot be provided and proceed to comply with paragraph 7.9 below.
- 5.5 Any Independent Service Quality Audit carried out on behalf of the Operator as required under this paragraph 7 shall be for the benefit of the Secretary of State.
- 5.6 The Secretary of State (and any of the Secretary of State's employees, agents, representatives and/or advisers, including for these purposes Transport for the North and any of its advisers, representatives and employees (each such person to be referred to as a "**SoS Nominee**")) shall have the right to witness any inspection carried out as part of an Independent Service Quality Audit.
- 5.7 The Operator shall co-operate in good faith with the Secretary of State in permitting the Secretary of State (including a SoS Nominee) to exercise the Secretary of State's rights under paragraph 7.6 and this paragraph 7.7 including by promptly providing to the Secretary of State the details of how and when any Independent Service Quality Audit will be conducted a reasonable time (and in any event not less than two (2) weeks) prior to the commencement of any such Independent Service Quality Audit.

5.8 The Operator shall provide the report together with all data produced as a consequence of any Independent Service Quality Audit to the Secretary of State as soon as reasonably practicable after the completion of the Independent Service Quality Audit to which it relates and in any event by no later than the date that is 28 days following the last day of the Contract Year to which Independent Service Quality Audit.

5.9 To the extent that the confirmation specified in paragraph 7.4(b) cannot be provided in respect of any Independent Service Quality Audit, the Operator shall procure that any such audit report specifies in detail the reasons why such confirmation cannot be provided (including details of any Material Discrepancies between any Pass Rate reported by the Operator in accordance with paragraph 14 (Reporting Requirements) and a comparable Pass Rate derived from the inspections carried out as part of the Independent Service Quality Audit (and in particular where any such Material Discrepancies are in favour of the Operator)).

## 6. **Secretary of State's Right of Audit**

6.1 Without prejudice to any other audit rights the Secretary of State may have under this Contract, the Secretary of State (and a SoS Nominee on the Secretary of State's behalf), shall have the right to carry out audits (the "**SoS Audits**") for the purposes of verifying, as a minimum, the matters referred to in paragraph 4.1 (*the Operator Service Quality Inspections*).

6.2 The Secretary of State shall use the Secretary of State's reasonable endeavours to procure that any inspections carried out as part of any SoS Audits undertaken pursuant to this paragraph 8 are conducted on a basis that is, as far as reasonable practicable, consistent with the Service Quality Inspections undertaken in respect of the Service Year to which the SoS Audit relates.

## 7. **Access Rights**

7.1 the Operator shall grant such access to information, individuals and facilities including:

- (a) access to the SQR Trains and SQR Stations;
- (b) access to schedules of the locations and times of any actual or planned Independent Service Quality Audits or Service Quality Inspections (as the case may be);
- (c) access to the relevant Business Employees, records and information (including access to relevant third parties and information, records and other materials kept by such third parties on behalf of the Operator); and
- (d) access to any and all Service Quality Rectification Evidence,

as is reasonably necessary to enable the Secretary of State and/or the SoS Nominees to carry out SoS Audits or SoS Service Quality Inspections (as the case may be) or to witness any Service Quality Inspections, or Independent Service Quality Audits.

7.2 the Operator shall ensure that it has necessary arrangements in place with any relevant third parties for the purposes of ensuring that it can comply with its obligations under this paragraph 9.

7.3 The Secretary of State shall use reasonable endeavours to ensure that the persons employed in undertaking any SoS Service Quality Inspections or SoS Audits carry out such audits diligently and objectively.

7.4 The Secretary of State shall use reasonable endeavours to notify the Operator of the result of any SoS Service Quality Inspection or SoS Audit that is undertaken.

7.5 In carrying out any SoS Service Quality Inspection or SoS Audit (as the case may be) or witnessing any Service Quality Inspections, or Independent Service Quality Audits, the



Secretary of State shall, subject to paragraph 9.6, be responsible for ensuring that the SoS Nominees:

- (a) are appropriately trained and briefed with respect to such reasonable location-specific safety rules and regulations; and
- (b) obey such reasonable location-specific rules and regulations in respect of security and access,

in each case, as have been notified to the Secretary of State under paragraph 9.6.

- 7.6 The Operator shall provide reasonable prior notice from time to time of current location-specific access, security and safety rules and regulations to the Secretary of State for the purpose of ensuring that the Secretary of State (and the SoS Nominees) can carry out their respective inspection and auditing rights in an efficient, secure and safe manner.

**Part C - Calculations of Pass Rates**

**1. Calculation of Pass Rates**

1.1 From 1 April 2022, the Operator shall calculate the Pass Rates for the Train Service Quality Inspections , the Station Service Quality Inspections and the Customer Service Quality Inspections for each Reporting Period as follows:

<b>Table 1</b>		
<b>SQA<sub>rp</sub> = ΣIPR<sub>rp</sub></b>		
<b>where:</b>		
<b>SQA<sub>rp</sub></b>	is the Pass Rate for each Service Quality Area comprised in such Service Quality Schedule for that Reporting Period;	
<b>IPR<sub>rp</sub></b>	is ascertained as follows:	
	$p \times w$	
	where:	
	p is ascertained as follows:	
	$p = \left(\frac{SQ_i - SQ_f}{SQ_i}\right) \times 100$	
	where:	
	<b>SQ<sub>i</sub></b>	is, in respect of each Service Quality Indicator relevant to a Service Quality Area, the total number of: <ul style="list-style-type: none"> <li>(a) Service Quality Inspections carried out;</li> <li>(b) Service Quality Re-inspections in which a Re-inspection Failure was recorded; and</li> <li>(c) occasions on which a Rectification Evidence Failure occurred,</li> </ul> in respect of that Service Quality Indicator for that Reporting Period;
	<b>SQ<sub>f</sub></b>	is, in respect of each Service Quality Indicator relevant to a Service Quality Area, the total number of: <ul style="list-style-type: none"> <li>(a) Service Quality Inspections where a "fail" was recorded;</li> <li>(b) Service Quality Re-inspections in which a Re-inspection Failure was recorded; and</li> <li>(c) occasions on which a Rectification Evidence Failure occurred,</li> </ul> in respect of that Service Quality Indicator for that Reporting Period;
<b>w</b>	is the weighting as specified in either Column 3 (Weighting) or Column 4 (Alternative Weighting) (as	

Table 1		
		applicable) of the table(s) in Appendix 2 (Service Quality Areas/Service Quality Indicators/Weightings) of this Schedule 7.3 in respect of the relevant Service Quality Indicator comprised in that Service Quality Area.

1.2 Within fourteen (14) days after the end of each Contract Year, the Operator shall provide to the Secretary of State its calculation of the Pass Rate for the relevant Contract Year in respect of each Service Quality Area comprised in each Service Quality Schedule, such Pass Rate to be separately calculated for the Train Service Quality Inspections, the Station Service Quality Inspections and the Customer Service Quality Inspections as follows:

Table 2		
<b>SQA<sub>Yr</sub> = ΣIPR<sub>Yr</sub></b>		
<b>where:</b>		
<b>SQA<sub>Yr</sub></b>	is the Pass Rate for each Service Quality Area comprised in such Service Quality Schedule for that Contract Year;	
<b>IPR<sub>Yr</sub></b>	is ascertained as follows:	
	$p \times w$	
	where:	
	p is ascertained as follows:	
	$p = \left( \frac{SQ_i - SQ_f}{SQ_i} \right) \times 100$	
	where:	
	SQ <sub>i</sub>	is, in respect of each Service Quality Indicator relevant to a Service Quality Area, the total number of: <ul style="list-style-type: none"> <li>(a) Service Quality Inspections carried out;</li> <li>(b) Service Quality Re-inspections in which a Re-inspection Failure was recorded;</li> <li>(c) occasions on which a Rectification Evidence Failure occurred,</li> </ul> in respect of that Service Quality Indicator for that Contract Year;
SQ <sub>f</sub>	is, in respect of each Service Quality Indicator relevant to a Service Quality Area, the total number of: <ul style="list-style-type: none"> <li>(a) Service Quality Inspections where a "fail" was recorded;</li> <li>(b) Service Quality Re-inspections in which a Re-inspection Failure was recorded; and</li> <li>(c) occasions on which a Rectification Evidence Failure occurred,</li> </ul>	

Table 2		
		in respect of that Service Quality Indicator for that Contract Year;
	w	is the weighting as specified in either Column 3 (Weighting) or Column 4 (Alternative Weighting) (as applicable) of the table(s) in Appendix 2 (Service Quality Areas/Service Quality Indicators/Weightings) of this Schedule 7.3 in respect of the relevant Service Quality Indicator comprised in that Service Quality Area.

1.3 The Operator shall perform the calculations referred to in paragraphs 10.1 and 10.2 rounded to two (2) decimal places with the midpoint (that is, 0.115) rounded upwards (that is, 0.12).

2. **Calculations related to the Service Quality Regime**

2.1 **NOT USED**

2.2 **NOT USED**

2.3 On the later of receipt of the:

- (a) notification referred to in paragraph 10.2 by the Secretary of State in respect of a Service Year; and
- (b) any audit report relating to any Independent Service Quality Audit or SoS Audit (as the case may be) undertaken in respect of that Contract Year:

the Secretary of State shall:

- (i) confirm to the Operator whether the Secretary of State agrees with the calculation of **SQAyr**; or
- (ii) where any Independent Service Quality Audit or SoS Audit (as the case may be) reveals that there were Material Discrepancies in the calculation of the Pass Rate in favour of the Operator for that Service Year (including where any such Independent Service Quality Audit or SoS Audit (as the case may be) fails to confirm or verify any of the matters specified in paragraph 7.1 (Independent Service Quality Audits)), notify the Operator of that fact and the provisions of paragraph 18 (Material Discrepancies) shall apply.

3. **NOT USED**

## Part D - Publication and Reporting Requirements

### 1. Publication of Pass Rates

1.1 The Operator shall publish (as a minimum) on its web site (in such format as the Secretary of State may reasonably require) details of:

- (a) within two (2) weeks of the end of each Reporting Period, the Pass Rate for SQR Stations and SQR Trains for that Reporting Period, alongside the SQR Benchmark for such Service Quality Area; and
- (b) within two (2) weeks of receipt of the confirmation from the Secretary of State provided in accordance with paragraph 11.3(b) (ii) (Calculations related to the Service Quality Regime), the Pass Rate for each Service Quality Area for each Service Year alongside the applicable SQR Benchmark for such Service Quality Area.

1.2 The Operator shall ensure that the Pass Rates published by it pursuant to paragraph 13.1 are also recorded in the subsequent Customer Report which relates to the Reporting Periods during which the applicable Pass Rates were achieved, along with:

- (a) a comparison with the Pass Rates achieved in relation to the Reporting Periods that have elapsed since the last Reporting Period reported on in the previous Customer Report or, in the case of the first (1<sup>st</sup>) Customer Report, since the last Reporting Period reported on in the Previous Customer Report, along with a comparison with the relevant statistics or results (as applicable) provided for the same Reporting Periods in the previous Contract Year (including where applicable the final Franchisee Year as defined in the Previous Agreement);
- (b) details of any remedial work either:
  - (i) planned by the Operator to occur in the period in relation to which the next Customer Report will report to improve the Operator's performance in relation to achieving and exceeding the SQR Benchmarks in respect of any Service Quality Area where performance is below the applicable SQR Benchmark; or
  - (ii) undertaken by the Operator during the Reporting Periods that have elapsed since the previous Customer Report or, in the case of the first Customer Report since the last Reporting Period reported on in the Previous Customer Report, for the purposes of improving the Operator's performance in relation to achieving and exceeding the SQR Benchmarks for any Service Quality Area where performance was below the applicable SQR Benchmark; and
- (c) details of any other initiatives planned to be implemented by the Operator to improve the Operator's performance against the SQR Benchmarks.

### 2. Reporting Requirements

2.1 Within fourteen (14) days after the end of each Reporting Period, the Operator shall provide to the Secretary of State:

- (a) a statement (disaggregated to separately show the total number of Train Service Quality Inspections and Station Service Quality Inspections carried out in that Reporting Period and, from 1 April 2022, the total number of Customer Service Quality Inspections carried out in that Reporting Period) setting out the following:

- (i) the raw data produced by any Service Quality Inspection (and where applicable Service Quality Re-inspections) and/or the recording of Service Quality Rectification Evidence in the SQR Management System within the Relevant Rectification Period pursuant to paragraph 6.1(b) (where applicable)<sup>4</sup>;
  - (ii) the number of:
    - (A) Service Quality Inspections (and where applicable, Service Quality Re-inspections) carried out in respect of each Service Quality Schedule in that Reporting Period; and
    - (B) occasions on which the Operator was required to record Service Quality Rectification Evidence in the SQR Management System within the Relevant Rectification Period pursuant to paragraph 6.1(b) in that Reporting Period;
  - (iii) the number of:
    - (A) Service Quality Inspections (and where applicable, Service Quality Re-inspections) where a "fail" was recorded in respect of a Service Quality Indicator in that Reporting Period; and
    - (B) Service Quality Failures occurring in the circumstances described in paragraph 6.1(b) in that Reporting Period;
  - (iv) the number of:
    - (A) Service Quality Inspections (and where applicable, Service Quality Re-inspections) where a "pass" was recorded in respect of a Service Quality Indicator in that Reporting Period for each Service Quality Schedule; and
    - (B) occasions on which the Operator was required to record Service Quality Rectification Evidence in the SQR Management System within the Relevant Rectification Period pursuant to paragraph 6.1(b) in that Reporting Period and a Service Quality Failure did not occur in respect of the same pursuant to paragraph 6.1(b); and
  - (v) for each Service Quality Schedule and in respect of a Service Quality Area, the total number of "passes" and "fails" recorded in respect of each Service Quality Indicator comprised in such Service Quality Area; and
- (b) in respect of that Reporting Period, the Operator's calculation of the Pass Rate for each Service Quality Area comprised in the relevant Service Quality Schedule.
- 2.2 The Pass Rate shall be separately calculated for the Train Service Quality Inspections and the Station Service Quality Inspections, and from 1 April 2022 for the Customer Service Quality Inspections, in that Reporting Period determined as set out in paragraph 10 (Calculation of Pass Rates).

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<sup>4</sup> Rail Industry Note: Any data provided pursuant to Schedule 7.3 should not contain any Personal Data.

3. **Additional Information Requirements for Service Quality Re-inspections and Service Quality Rectification Evidence**

3.1 In addition to the information to be provided by the Operator pursuant to paragraph 14 (Reporting Requirements), the Operator shall at the end of each Reporting Period during which Service Quality Inspections have been carried out provide to the Secretary of State a list of each facility or service or train comprised in a SQR Train and SQR Station (on a Station by Station basis) against which a "fail" was recorded:

(a) during any Service Quality Inspections or Service Quality Re-inspection (as the case may be); or

(b) in the circumstances described in paragraph 6.1(b).

4. **Maintenance of Records**

4.1 Without limiting the obligations of the Operator pursuant to paragraph 3 (*Maintenance of Records*) of Schedule 11.1 (*Organisation and Management*), the Operator shall maintain true, up to date and complete records of the results of each Service Quality Inspection, its calculations of the Pass Rates in relation to such Service Quality Inspections and the results of each Independent Service Quality Audit.

4.2 The Operator shall, immediately at the request of the Secretary of State make any records required under this Schedule 7.3 available to the Secretary of State.

## Part E - Remedies

### 1. Consequences of a Failed Audit

#### 1.1 If:

- (a) following an Independent Service Quality Audit or SoS Audit (as the case may be) any such audit cannot verify or confirm any of the matters referred to in paragraph 7 (*Independent Service Quality Audits*) or any confirmation required by paragraph 7.4(a) (*Independent Service Quality Audits*) cannot be provided; or
- (b) the Operator fails to:
  - (i) carry out a Service Quality Inspection as required by paragraph 4.1 (the Operator Service Quality Inspection); or
  - (ii) calculate the Pass Rates and/or report to the Secretary of State the Pass Rates as required pursuant to paragraphs 10.1 and 10.2 (*Calculation of the Pass Rates*); or
  - (iii) procure that an Independent Service Quality Audit is carried out or fails to provide an audit report as required pursuant to paragraph 7.9 (*Independent Service Quality Audits*),

then the provisions of this paragraph 17 shall apply.

#### 1.2 If any of the circumstances specified in paragraph 17.1 occur then:

- (a) the Secretary of State may in the case of an SoS Audit, require the Operator to reimburse to the Secretary of State the reasonable and proper costs incurred in undertaking any such SoS Audit; and
- (b) the Secretary of State may in all cases:
  - (i) require the Operator to carry out additional Service Quality Inspections (that is, in excess of those required pursuant to paragraph 4.1 (the Operator Service Quality Inspections));
  - (ii) require the Operator to procure a further Independent Service Quality Audit (or the Secretary of State may carry out a further SoS Audit) for the purposes of verifying whether any deficiencies in the SQR Management System have led or contributed to the failure of any Independent Service Quality Audit or SoS Audit or to confirm or verify whether any of the matters referred to in paragraph 7 (*Independent Service Quality Audits*) have been subsequently rectified by the Operator; or
  - (iii) elect to step in and carry out SoS Service Quality Inspections in place of the Service Quality Inspections for such period as the Secretary of State may specify (the "**SoS Service Quality Inspection Period**") and in these circumstances:
    - (A) the results of each SoS Service Quality Inspection shall be used for the purposes of calculating the Pass Rates in accordance with paragraph 10 (*Calculation of Pass Rates*);
    - (B) the Operator's obligations to undertake Service Quality Inspections and procure an Independent Service Quality Audit shall cease to apply for the duration of the SoS Service Quality Inspection Period; and



(C) Not Used.

## 2. **Material Discrepancies**

2.1 For the purposes of this Schedule 7.3, "**Material Discrepancies**" means:

- (a) discrepancies in the Operator's calculation of the Pass Rate which in the reasonable opinion of the Secretary of State are considered to be material; or
- (b) where an Independent Service Quality Audit or SoS Audit fails to confirm or verify any of the matters specified in paragraph 7.3 (*Independent Service Quality Audits*) in circumstances where the Pass Rate has been calculated wrongly; or
- (c) where an Independent Service Quality Audit or SoS Audit confirms that there would have been a different Pass Rate if the Operator had complied with the requirements of paragraph 7.3 (*Independent Service Quality Audits*).

2.2 If any Independent Service Quality Audit or SoS Audit (as the case may be) identifies any Material Discrepancies (irrespective of the nature or type of such Material Discrepancy) then this shall constitute a contravention of the Service Contract and the Secretary of State shall be entitled to serve a Breach Notice on the Operator in accordance with Clause 8 (Procedure for Remediating a Contravention of the Service Contract).

## 3. **NOT USED**

## 4. **Consequences of Performance falling below the SQR Benchmark**

4.1 If:

- (a) the Pass Rate of any individual Service Quality Indicator falls below the SQR Benchmark (as applicable) for the applicable Service Quality Area ("**Affected Service Quality Indicator**") for:
  - (i) any three (3) consecutive Reporting Periods;
  - (ii) any four (4) Reporting Periods within any period of thirteen (13) consecutive Reporting Periods; or
- (b) the Pass Rate as calculated in accordance with paragraph 10 (Calculation of the Pass Rates) in respect of any Service Quality Area is below any SQR Benchmark for that Service Quality Area ("**Affected Service Quality Area**") for:
  - (i) any three (3) consecutive Reporting Periods; or
  - (ii) any four (4) Reporting Periods within any period of thirteen (13) consecutive Reporting Periods; or
  - (iii) any Contract Year,

then the Operator shall immediately notify the Secretary of State of such fact and the Secretary of State shall be entitled to request from the Operator a plan for ensuring that the Affected Service Quality Area or Affected Service Quality Indicator (as applicable) will, as soon as reasonably practicable, be provided at a level that is equal to the SQR Benchmark (a "**Service Quality Improvement**").

- (x) NOT USED.
- (y) NOT USED.

4.2 Within twenty-eight (28) days of the Secretary of State's request pursuant to paragraph 20.1 (or such longer period as the Secretary of State may specify), the Operator

shall prepare and submit to the Secretary of State (for the Secretary of State's approval) the Operator's proposals for achieving a Service Quality Improvement ("**Service Quality Improvement Proposal**") which shall:

- (a) contain specific tangible actions points and indicate in the case of each action point:
  - (i) how that action will contribute to meeting the relevant SQR Benchmark;
  - (ii) where the action is to be implemented;
  - (iii) the proposed timescales for implementing such action and where any action is expressed to be ongoing, proposed review dates;
  - (iv) the date by which the Service Quality Improvement will be achieved; and
- (b) the additional expenditure associated with each action.

4.3 The Secretary of State shall be entitled to:

- (a) request further information from the Operator with respect to its Service Quality Improvement Proposal, and the Operator shall submit such further information to the Secretary of State within the timescales as reasonably requested by the Secretary of State; and/or
- (b) propose amendments to the Service Quality Improvement Proposal and the parties shall agree and, in the absence of agreement, the Secretary of State shall reasonably determine the amendments to the Service Quality Improvement Proposal, in which case paragraph 20.4 shall apply; or
- (c) accept the Service Quality Improvement Proposal, in which case paragraph 20.4 shall apply; or
- (d) not accept the Service Quality Improvement Proposal, in which case the Operator shall not be obliged to undertake any further action with respect to its Service Quality Improvement Proposal.

4.4 The Operator shall implement the Service Quality Improvement Proposal as amended, determined or accepted by the Secretary of State (as the case may be) in accordance with paragraph 20.3.

4.5 If:

- (a) the Operator fails to implement any Service Quality Improvement Proposal (as approved by the Secretary of State) as required pursuant to paragraph 20.4 within the required timescales; or
- (b) the Operator's performance in relation to the Affected Service Quality Area is not at a level that is equal to or above the SQR Benchmark within the period specified in Service Quality Improvement Proposal,

then this shall constitute a contravention of this Contract and the Secretary of State may serve a Breach Notice in accordance with the provisions of Clause 8 (Procedure for Remedying a Contravention of the Service Contract).

5. **Not Used**

**Appendix 1 to Schedule 7.3****Service Quality Schedules****PART 1 – SQR STATIONS**

Please note that a Service Quality Indicator should only be subject to a Service Quality Inspection if the relevant facility or service is included in the SQR Register for that SQR Station.

For the purposes of this Part 1, the 'customer-facing areas of the station' shall be categorised as follows:

1. Approach and entrance, including cycle storage facilities (exterior);
2. Concourse area/ticket office, including any waiting facilities and toilets/baby change facilities within these areas;
3. Platforms, including waiting rooms/shelters and toilets/baby change facilities (separate platforms facing each other (not island platforms) shall be classed together as one 'area'; each individual island platform shall be classed as one 'area');
4. Lifts/escalators and footbridges/underpasses/mezzanine areas (each footbridge/underpass/mezzanine to be classed as its own 'area', with any access lifts/escalators classed as part of that 'area'. Lifts/escalators directly from concourse to platform will be classed as part of the concourse); and
5. Car parks (each car park classed as its own 'area', except multi-storey car parks, where each level is its own 'area').

These categories may need to be amended to reflect the unique footprint of each SQR Station.

***Operator responsible items requiring possession or power isolation***

*Where any fault(s) identified under any Service Quality Indicator require a possession or power isolation, and they are the Operator's responsibility to rectify, a Service Quality Failure will be recorded and the Operator shall engage proactively with Network Rail to agree a plan to expedite rectification.*

*The Operator shall subsequently record evidence in the SQR Management System that any faults have been rectified within the agreed timescale. If no such evidence is provided, a Rectification Evidence Failure will occur and the principles of paragraph 6 of Schedule 7.3, will apply, provided that no such Rectification Evidence Failure shall occur if Network Rail cancel or postpone the scheduled possession or power isolation. In these circumstances, the Operator shall further engage with Network Rail to ensure that the visit is rescheduled at the earliest opportunity, and this shall be used as the timescale for supplying Rectification Evidence.*

<b>Table 1</b>			
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>	<b>Column 4</b>
<b>Service Quality Area</b>	<b>Service Quality Indicator</b>	<p><b>Failure Criteria</b></p> <p><i>The Failure Criteria should be read in conjunction with any 'supplementary guidance' produced and agreed between the SQR Contractor, the Secretary of State and the Operator.</i></p> <p><i>Record a 'fail' (a Service Quality Failure) for the Service Quality Indicator if any of the individual criteria apply.</i></p> <p><i>Only one Service Quality Failure shall be recorded per Service Quality Indicator, regardless of how many criteria apply or how many 'customer-facing areas' are identified as having failed.</i></p>	<b>Reinspection Timescale</b>
Ambience & Assets	Lighting	<p>(a) 10% or more of lighting is missing, broken or defective (including if obscured by vegetation); and/or</p> <p>(b) there are any areas of blackout, within any of the individual customer-facing areas of the station set out in the SQR Register.</p> <p><i>For (a), a 'fail' shall only be recorded if the criteria apply to the individual area being assessed, not cumulatively across the whole station.</i></p>	After 7 days
	Seating <i>(including Priority Seats)</i>	<p>(a) Any seats are not present where they are intended to be as specified in the SQR Register.</p> <p>(b) Any seats, including accessible seats for Disabled Persons where provided, are damaged or unsuitable for use by the public including torn upholstery, splinters, wood or metal likely to cause injury or damage to clothing.</p> <p>(c) Any seats are dirty (includes rust stains and dirt likely to soil clothing).</p> <p>(d) Any seats are unsecure and/or unstable.</p> <p>(e) Paintwork is flaking or damaged to a point which is immediately noticeable from a distance of 1 metre.</p>	<p>(a), (d), (e) after 28 days</p> <p>(b) after 24 hours to identify if made safe and 28 days to identify if rectified</p> <p>(c) after 48 hours</p>

	Shelters/Canopies/Waiting Areas	<p>(a) Any shelters, waiting areas or canopies are not present where they are intended to be as specified in the SQR Register.</p> <p>(b) Any shelters, waiting area or canopy (including any such facilities designated for use by passengers with restricted mobility) is not fit for purpose, is inaccessible or is damaged in any way that restricts its use (e.g. holes in panels, missing panels, broken windows, doors are not working, clouded or unclear polycarbonate which significantly restricts visibility, burn marks).</p> <p>(c) Any shelters, waiting rooms or canopies have leaks or are not waterproof where designed to be waterproof.</p> <p>(d) Any heating or cooling unit, which is part of a waiting area, is not safe and operational (providing heat or cooling to the passenger, as necessary).</p> <p>(e) Any shelters or waiting areas are closed when they are advertised to be open, as specified in the SQR Register, and this is not due to the facility being damaged in way that prevents its use.</p>	All failure criteria apart from (e) after 28 days (e) after 24 hours
	Lifts, Escalators & Ramps	<p>(a) Any lift or escalator is not working or is not operational when it is supposed to be.</p> <p>(b) The visual and/or aural facilities of any lift are not working.</p> <p>(c) Ramps to assist those with additional needs (e.g. wheelchair users or customers travelling with buggies) are faulty or are not available, as specified in the SQR Register.</p>	After 48 hours
	Toilet Operation <i>(all toilets, including accessible toilets/Changing Places)</i>	<p>(a) The toilet is not open as specified in the SQR Register.</p> <p>(b) Any cubicles are out of use.</p> <p>(c) Any lavatories or urinals are blocked.</p> <p>(d) Any flush system is not functioning correctly.</p> <p>(e) Any lavatory seats are missing or broken.</p> <p>(f) Accessible toilet facilities are not operational.</p> <p>(g) Baby change facilities are not operational.</p>	All failure criteria apart from (d) after 24 hours (d) after 48 hours

		<ul style="list-style-type: none"> <li>(h) Hand wash facilities are not operational.</li> <li>(i) Any door locks are not operational.</li> <li>(j) There is no toilet paper available in individual cubicles.</li> <li>(k) Soap is not available.</li> <li>(l) Facilities to dry hands are not operational or available i.e. hand dryers should be present and working and/or paper towels provided.</li> </ul>	
	<p>Car Parking/Cycle Parking</p>	<ul style="list-style-type: none"> <li>(a) Any car parking or waiting bays are not clearly marked (including disabled bays).</li> <li>(b) There is inconsiderate parking and no evidence of management of the issue e.g. cars parked out of bays, across bays, non-'Blue Badge' or other permit holders parked in disabled bays, blocking access routes to the car park or station.</li> <li>(c) Information and signage informing customers about who may park in the car park/terms &amp; conditions of use and payment is not available as specified in the SQR Register, is illegible or is obscured.</li> <li>(d) The minimum number of disabled parking spaces as required by the Design Standards for Accessible Railway stations: Code of Practice are not available for use.</li> <li>(e) Car park ticket machines are not working (where present) or there is no clear instruction about charges and/or payment methods.</li> <li>(f) Car park ticket barriers are left open.</li> <li>(g) Potholes are present.</li> <li>(h) There are apparent issues with drainage and standing water is present.</li> <li>(i) Help points are not operational (where present).</li> <li>(j) Help points (where present) are not answered within 30 seconds.</li> <li>(k) Cycle racks/lockers/hoops are broken or damaged to the extent that they cannot be used.</li> </ul>	<p>All criteria except (i) and (j) after 28 days (i), (j) after 7 days</p> <p><i>Where failure criteria (g) and/or (h) apply and car park maintenance is the responsibility of a local council, the Operator shall, within 28 days, record evidence in its Service Quality Management System that it has reported the issue to the relevant parties. Where the Operator has recorded such evidence, no Service Quality Failure shall occur.</i></p> <p><i>Where the Operator has not recorded such evidence, a Service Quality Failure shall occur and this shall be included in the calculation of the Pass Rate for the Reporting Period in which the Service Quality Failure has been identified.</i></p> <p><i>The Operator shall continue to report these issues to the council every 3 [three] Reporting Periods until they have been remedied. Where the Operator has not done so, a Rectification Evidence Failure shall occur and the principles of paragraph 6 of schedule 7.3 shall apply.</i></p>

		<p>(l) Cycle racks/lockers/hoops are not present as specified in the SQR Register.</p> <p>(m) Cycles are parked outside of designated areas/there is evidence of abandoned bicycles (including damaged bikes) and there is no evidence that this is being managed.</p>	
	Vegetation	<p>(a) Any customer-facing area of the station (excluding the track) is blocked by, or suffers encroachment to any material extent from, vegetation.</p> <p>(b) Any growth or overgrowth of vegetation poses a risk of injury to persons or damage (including by staining) to their clothing or articles.</p> <p>(c) Any customer-facing area of the station (excluding the track) intended to be laid out with vegetation is not neat and tidy, and/or vegetation is overgrown.</p>	<p>(b) , (c) After 28 days (c) After 7 days</p>
Cleanliness and Graffiti	General Cleanliness	<p>(a) Any area or facility that a customer may come into contact with appears unclean (such that a customer would not wish to touch it).</p> <p>(b) When COVID-19 Guidance and Regulation applies, hand sanitiser facilities within the station are damaged or are not replenished (excluding facilities within toilets).</p> <p>(c) There are any patches of ice, snow or other liquids or materials (including fallen leaves) which are slippery underfoot and there is no mitigation (i.e. signage indicating the presence of a slip hazard, or treatment has been applied to remove the danger).</p> <p>(d) There is staining to the floor or walls, or fluid on the floor (excluding standing water).</p> <p>(e) There is evidence of bird roosting which is not being managed.</p> <p>(f) There is noticeable dirt on glass surfaces.</p> <p>(g) Any area has a prolonged/lingering bad smell (which is not perceived to be temporary).</p> <p>(h) There is evidence of unhygienic or dangerous substances e.g. vomit/broken glass.</p> <p>(i) Bins are not present in line with the SQR Register.</p> <p>(j) There is no space in litter bins to place items, and/or bin-liners are not present.</p>	<p>(a), (d), (f), (g), (h), (j) after 48 hours (b), (c) after 24 hours (e) after 14 days (i) after 28 days</p>

	<p>Toilets <i>(all toilets, including accessible toilets/Changing Places)</i></p>	<p>(a) Any lavatory, urinal, sink or baby change facility is soiled.                  (b) Floors, doors or walls are stained.                  (c) There are fluids on the floor (not to include mild splashing).                  (d) There are no litter bins, or bins for sanitary products in cubicles or there is no space in them to place items.</p>	<p>After 24 hours</p>
	<p>Litter</p>	<p>(a) The following quantities of litter are present at the station (excluding any car parks and the track bed), each item being equivalent to or larger than the size of a credit card:                  (i) Stations with up to 3 platforms in regular passenger use – more than 10 items across the customer-facing areas as a whole;                  (ii) Stations with 4 or more platforms in regular passenger use – more than 10 items within any individual customer-facing area of the station, such areas being set out in the SQR Register, or more than 25 items across the customer-facing areas as a whole;                  (b) There are more than 10 items of litter present within any station car park, or if a multi-storey car park, more than 10 items of litter on any individual level of that multi-storey car park, each item being equivalent to or larger than the size of a credit card.                  (c) There is any evidence of fly tipping within the station area.                  (d) There are significant accumulations of litter on the track bed, or the track bed has effluent discharge.                  (e) There is evidence of fly posting/unauthorised posters, stickers or fliers.</p>	<p>(a), (b), (c), (e) after 48 hours                  (d) after 28 days</p>
	<p>Graffiti &amp; Etching</p>	<p>(a) There is any offensive graffiti/etching of any size or type within any customer-facing area of the station.</p>	<p>Offensive graffiti – after 24 hours                  Non-offensive surface-based graffiti (e.g. painted/pen) – after 28 days                  Offensive etching – after 7 days</p>



		<p>(b) Any single piece or item of non-offensive graffiti/etching within any customer-facing area of the station (that would be immediately evident to a customer) is greater than an area which can be covered by an A4 sheet of paper. This excludes graffiti/etching which is ingrained and cannot be cleaned off or removed without replacing the item on which the graffiti/etching is administered or without undertaking constructional work, except where the graffiti/etching is located on an item that is easily replaceable (e.g. a Perspex panel).</p> <p>(c) There are more than 10 individual pieces or items of non-offensive graffiti/etching, within any customer-facing area within the station extending to 100 square metres, regardless of the size or area of these items individually or collectively, that would be immediately evident to a customer. This excludes graffiti/etching which is ingrained and cannot be cleaned off/removed without replacing the item on which the graffiti/etching is administered or without undertaking constructional work, except where the graffiti/etching is located on an item that is easily replaceable (e.g. a Perspex panel).</p>	<p>Non-offensive etching– after 28 days</p> <p><b>Network Rail responsible items</b></p> <p><i>Where any of criteria (a), (b) or (c) apply and the graffiti or etching is the responsibility of Network Rail to remove (e.g. items on trackside walls), the Operator shall, within 24 hours for offensive graffiti, 7 days for offensive etching and 28 days for all other items, record evidence in its Service Quality Management System that it has reported the issue to Network Rail. Where the Operator has recorded such evidence, no Service Quality Failure shall occur.</i></p> <p><i>Where the Operator has not recorded such evidence, a Service Quality Failure shall occur and this shall be included in the calculation of the Pass Rate for the Reporting Period in which the Service Quality Failure has been identified.</i></p> <p><i>The Operator shall continue to report these faults to Network Rail every 14 days for offensive graffiti/etching and 3 Reporting Periods for other items until they have been remedied. Where the Operator has not done so, a Rectification Evidence Failure shall occur and the principles of paragraph 6 of schedule 7.3 shall apply.</i></p>
<p>Information</p>	<p>Customer Information Screens</p>	<p>(a) Any customer information screen is not present as specified in the SQR Register.</p> <p>(b) Any customer information screen is not functioning correctly.</p> <p>(c) Any customer information screen is functional but displaying illegible information.</p> <p>(d) Any customer information screen is showing incorrect information at the time of audit including the expected time of arrival and the destination of services.</p> <p>(e) Any clocks are inaccurate or there are no clocks.</p> <p>(f) Any additional information messages are out of date.</p>	<p>(a) after 14 days</p> <p>(b), (c), (d), (e), (f) after 48 hours</p> <p>(g) after 24 hours</p>

		<p>(g) When COVID-19 Guidance and Regulation applies, appropriate messages are not displayed at appropriate intervals, are not clear and/or up-to-date (this may include, but is not limited to, messages about social distancing and the wearing of face masks).</p>	
	<p>Help Points <i>(including Help Points in Lifts)</i></p>	<p>(a) Any help point is not present if shown on the SQR Register.                  (b) Any help point is out of operation, faulty or has poor reception.                  (c) Any help point is not answered within 30 seconds.                  (d) Any help point is inaudible and/or unclear.</p>	<p>After 7 days</p>
	<p>Posters and Frames</p>	<p>(a) Any poster or frame is not present where specified in the SQR Register.                  (b) Any poster frame is damaged, rusting or unsecure.                  (c) Any information on the poster is not fully visible.                  (d) Any poster is not in the correct location as specified in the SQR Register.                  (e) Any poster is showing incorrect or out of date information.                  (f) Any poster is torn, damaged or slipped in the case.                  (g) Any poster is visibly faded from a distance of one metre.</p>	<p>(a), (b) after 7 days                  (c), (d), (e), (f), (g) after 48 hours</p>
	<p>Public Address System</p>	<p>(a) A public address system is not present or not operational where intended to be.                  (b) The public address system is inaudible or unclear.                  (c) Announcements are not made when required e.g. on approach of the arrival of services and during disruption.                  (d) Information is not provided in a timely way or is incorrect at time of audit.                  (e) When COVID-19 Guidance and Regulation applies, appropriate announcements are not made at appropriate intervals, are not clear and/or up-to-</p>	<p>(a), (b) after 14 days                  (c), (d) after 48 hours                  (e) after 24 hours</p>

		date (this may include, but is not limited to, messages about social distancing and the wearing of face masks).	
	Signage & Information <i>(covers all customer-facing signage not within poster frames)</i>	<ul style="list-style-type: none"> <li>(a) Any station name signs or wayfinding signs are not easy to read from 4m, and any other signs are not easy to read from 2m.</li> <li>(b) Any signs are missing from those specified in the SQR Register.</li> <li>(c) Any signs are damaged, defaced or illegible.</li> <li>(d) Any signs provide incorrect information.</li> <li>(e) When COVID-19 Guidance and Regulation applies, appropriate messages are not displayed at appropriate locations within the station, or they are not clear and/or up-to-date (this may include, but is not limited to, messages about social distancing and the wearing of face masks).</li> <li>(f) A map or poster is not available showing up to date information on the location and times of onward transport services.</li> <li>(g) There is no wayfinding to onward transport services, where relevant.</li> <li>(h) Any out of date leaflets are present.</li> <li>(i) At staffed stations, up to date "Delay Repay" forms, timetables relevant to the station and customer complaint forms are not available. At unstaffed stations, there is no information on how to find these items.</li> <li>(j) Leaflets are kept in an untidy manner.</li> </ul>	<ul style="list-style-type: none"> <li>(a), (b),(c) after 14 days</li> <li>(d), (f), (g), (h), (i), (j) after 7 days</li> <li>(e) after 24 hours</li> </ul>
	Information During Disruption	<ul style="list-style-type: none"> <li>(a) An audio-visual passenger announcement is not made within 3 minutes where there is a delay of more than 5 minutes, detailing the nature of the delay and anticipated length of delay (or, if any information about the delay is not known the announcement should detail steps being taken to obtain this information).</li> </ul>	N/A

		<p>(b) Information provided through announcements is inconsistent with that provided through social media, the websites and the Smartphone application.</p> <p>(c) Information provided through announcements is unclear and/or contains jargon.</p> <p>(d) Where a delay of over 15 minutes is announced, accurate information is not provided on alternative journey options / next steps.</p> <p>(e) Where a delay occurs, an apology for this delay is not provided.</p> <p>(f) Where a delay of over 15 minutes occurs, no information is given about right to claim compensation.</p>	
<p>Ticketing &amp; Staffing</p>	<p>Ticket Vending Machines</p>	<p>(a) Any ticket machines are not present as specified in the SQR Register.</p> <p>(b) Any ticket machines are not operational.</p> <p>(c) The full functionality of any ticket machine is not available.</p> <p>(d) Any of the following information is missing: brand, name, address of Operator, range of fares available, what process passengers should follow in the event of a problem or to obtain a refund and contact details.</p>	<p>After 48 hours</p>
	<p>Ticket Office</p>	<p>(a) The ticket office is not open when it is advertised to be so at the station as set out in the SQR Register.</p> <p>(b) Where speaker/microphone systems and/or hearing aid induction loops are fitted at the ticket office, any of these are not operational (e.g. working and available to the passenger) or do not permit clearly audible conversation.</p>	<p>After 48 hours</p>
	<p>Staff Presence</p>	<p>(a) Staff are not available at the station as required pursuant to the SQR Register.</p> <p>(b) Staff are not in full uniform.</p> <p>(c) A member of staff cannot be contacted (either face to face or remotely) by passengers of any</p>	<p>After 48 hours</p>

		train service using that station (regardless of train Operator).	
	Ticket Gates	<p>(a) Any ticket gates are out of use due to a fault or are not functioning correctly or are unstaffed (directly or indirectly).</p> <p>(b) Where an excess fares window is available at a station, the excess fares window is not open whilst ticket barriers are in use.</p>	After 7 days

**PART 2 – SQR TRAINS**

Please note that a Service Quality Indicator should only be subject to a Service Quality Inspection if the relevant facility or service is included in the SQR Register for that SQR Train.

<b>Table 2</b>			
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>	<b>Column 4</b>
<b>Service Quality Area</b>	<b>Service Quality Indicator</b>	<p><b>Failure Criteria</b></p> <p><i>The Failure Criteria should be read in conjunction with any 'supplementary guidance' produced and agreed between the SQR Contractor, the Secretary of State and the Operator.</i></p> <p><i>Record a 'fail' (a Service Quality Failure) for the Service Quality Indicator if any of the individual criteria apply.</i></p> <p><i>Only one Service Quality Failure shall be recorded per Service Quality Indicator, regardless of how many criteria apply or how many 'customer-facing areas' are identified as having failed.</i></p>	<p><b>Rectification Evidence Timescale</b></p> <p><i>See Part 4 of this document, and paragraph 6 of Schedule 7.3, for details of how Reinspection and Rectification Evidence Failures should be recorded.</i></p>
Ambience and Assets	Heating and Lighting	<ul style="list-style-type: none"> <li>(a) Any light bulb or lighting tube does not illuminate when the power is on (except during load shedding).</li> <li>(b) Any light cover is cracked or broken, is loose or is otherwise unfit for purpose or missing.</li> <li>(c) The temperature is excessively hot or cold.</li> </ul>	<ul style="list-style-type: none"> <li>(a) and (b) after 7 days</li> <li>(c) after 28 days</li> </ul>
	Seating <i>(including Priority Seats)</i>	<ul style="list-style-type: none"> <li>(a) Any seat or seat cushion is missing.</li> <li>(b) Any seat has an assembly which is insecure or unstable or is noticeably damaged.</li> <li>(c) Any seat is damaged or has been contaminated in such a way that it could injure passengers or cause damage to their clothing or articles (including by staining).</li> <li>(d) There are tears in the seat fabric/antimacassar.</li> <li>(e) Any seat cover is worn, visible from 1m.</li> </ul>	<ul style="list-style-type: none"> <li>(a), (b), (c) after 6 Weekdays for Priority Seats, after 28 days for all other types of seat</li> <li>(d) and (e) after 28 days</li> </ul>

<b>Table 2</b>			
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>	<b>Column 4</b>
<b>Service Quality Area</b>	<b>Service Quality Indicator</b>	<b>Failure Criteria</b> <i>The Failure Criteria should be read in conjunction with any 'supplementary guidance' produced and agreed between the SQR Contractor, the Secretary of State and the Operator.</i> <i>Record a 'fail' (a Service Quality Failure) for the Service Quality Indicator if any of the individual criteria apply.</i> <i>Only one Service Quality Failure shall be recorded per Service Quality Indicator, regardless of how many criteria apply or how many 'customer-facing areas' are identified as having failed.</i>	<b>Rectification Evidence Timescale</b> <i>See Part 4 of this document, and paragraph 6 of Schedule 7.3, for details of how Reinspection and Rectification Evidence Failures should be recorded.</i>
	Vehicle Interior Condition	(a) There are any unsightly damaged panels or damaged panel trims. (b) There is heavy wear on floor coverings visible from 1m. (c) Any window seals are loose, torn or missing. (d) Any windows are broken, cracked or scratched (not to include etching). (e) There are any holes in the floor vinyl/ carpet. (f) Luggage racks are broken, cracked or damaged. (g) There are any broken or missing door buttons.	After 28 days
	Accessibility features	(a) Signage to denote wheelchair space priority is damaged or missing. (b) Signage to denote priority seating is missing or damaged. (c) Passenger call for aid facilities are visibly damaged or not functioning.	After 48 hours
	Toilet Operation <i>(all toilets, including accessible toilets)</i>	(a) Any standard toilet is out of use. (b) Any accessible toilet is out of use. (c) The door handle or locking mechanism is not operating correctly.	After 24 hours

<b>Table 2</b>			
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>	<b>Column 4</b>
<b>Service Quality Area</b>	<b>Service Quality Indicator</b>	<b>Failure Criteria</b> <i>The Failure Criteria should be read in conjunction with any 'supplementary guidance' produced and agreed between the SQR Contractor, the Secretary of State and the Operator. Record a 'fail' (a Service Quality Failure) for the Service Quality Indicator if any of the individual criteria apply. Only one Service Quality Failure shall be recorded per Service Quality Indicator, regardless of how many criteria apply or how many 'customer-facing areas' are identified as having failed.</i>	<b>Rectification Evidence Timescale</b> <i>See Part 4 of this document, and paragraph 6 of Schedule 7.3, for details of how Reinspection and Rectification Evidence Failures should be recorded.</i>
		<ul style="list-style-type: none"> <li>(d) Any toilet seat is not in place.</li> <li>(e) Any toilet is blocked.</li> <li>(f) Any toilet flush system is not in working order.</li> <li>(g) The hand wash system is not operating correctly, including water and soap dispensers.</li> <li>(h) The baby change facilities (if present) are not in working order.</li> <li>(i) The disabled access facilities (if present) are not in working order (including if the call for aid facility is visibly damaged or out of order).</li> <li>(j) There is no toilet tissue available.</li> <li>(k) There is no room in litter or disposal bins for additional items.</li> <li>(l) A mirror is not provided.</li> <li>(m) There is no means of hand drying available i.e. the hand dryer is not operational/there are no paper towels.</li> </ul>	
Cleanliness and Graffiti	Exterior	(a) There are apparent stains or ingrained dirt on the front, rear and/or sides of the vehicle.	After 7 days except where the temperature is below 4 degrees centigrade for prolonged periods



<b>Table 2</b>			
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>	<b>Column 4</b>
<b>Service Quality Area</b>	<b>Service Quality Indicator</b>	<b>Failure Criteria</b>	<b>Rectification Evidence Timescale</b>
		<p><i>The Failure Criteria should be read in conjunction with any 'supplementary guidance' produced and agreed between the SQR Contractor, the Secretary of State and the Operator.</i></p> <p><i>Record a 'fail' (a Service Quality Failure) for the Service Quality Indicator if any of the individual criteria apply.</i></p> <p><i>Only one Service Quality Failure shall be recorded per Service Quality Indicator, regardless of how many criteria apply or how many 'customer-facing areas' are identified as having failed.</i></p>	<p><i>See Part 4 of this document, and paragraph 6 of Schedule 7.3, for details of how Reinspection and Rectification Evidence Failures should be recorded.</i></p>
		(b) The windows are evidently dirty.	
	Interior	<p>(a) Any surface in the interior of the vehicle is subject to excessive dust, dirt (that a letter can be written in the dirt or dust and is legible) staining or recent chewing gum.</p> <p>(b) The floor has ingrained dirt excepting recent tracked dirt from people's shoes.</p> <p>(c) There is any fly posting or stickers.</p> <p>(d) There are fluids on the floor (not mild splashing).</p>	After 24 hours
	Graffiti & Etching <i>(vehicle interior and exterior)</i>	<p>(a) There is any offensive graffiti/etching of any size or type within any customer-facing area of the vehicle.</p> <p>(b) Any single piece or item of non-offensive graffiti/etching (that is immediately evident to a customer) within any customer-facing area of the vehicle is greater than an area that can be covered by an A4 sheet of paper.</p> <p>(c) There are more than 10 individual pieces or items of non-offensive graffiti/etching (that would be immediately evident to a customer), within any customer-facing area of the</p>	<p>Offensive graffiti – after 24 hours</p> <p>Non-offensive graffiti – after 28 days</p> <p>Offensive etching – after 7 days</p> <p>Non-offensive etching – after 28 days</p>

<b>Table 2</b>			
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>	<b>Column 4</b>
<b>Service Quality Area</b>	<b>Service Quality Indicator</b>	<b>Failure Criteria</b> <i>The Failure Criteria should be read in conjunction with any 'supplementary guidance' produced and agreed between the SQR Contractor, the Secretary of State and the Operator.</i> <i>Record a 'fail' (a Service Quality Failure) for the Service Quality Indicator if any of the individual criteria apply.</i> <i>Only one Service Quality Failure shall be recorded per Service Quality Indicator, regardless of how many criteria apply or how many 'customer-facing areas' are identified as having failed.</i>	<b>Rectification Evidence Timescale</b> <i>See Part 4 of this document, and paragraph 6 of Schedule 7.3, for details of how Reinspection and Rectification Evidence Failures should be recorded.</i>
		vehicle, regardless of the size or area of these items individually or collectively.	
	Litter	(a) There are more than six items of litter each equivalent to or larger in size than a credit card in the interior of the vehicle. (b) There is no space to place rubbish in the bins.	After 24 hours
	Toilets <i>(all toilets, including accessible toilets)</i>	(a) Any toilet is soiled. (b) Any sink is soiled. (c) Any baby change facility is soiled. (d) There is staining on the floor or walls. (e) There are fluids on the floor (not mild splashing). (f) Any fixtures or fittings are unclean. (g) There are no litter bins, or bins for sanitary products in cubicles or there is no space in them to place items.	After 24 hours
Information	Passenger Information Screens	(a) Any passenger information display is not working. (b) Any passenger information display is working but not legible.	After 48 hours

<b>Table 2</b>			
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>	<b>Column 4</b>
<b>Service Quality Area</b>	<b>Service Quality Indicator</b>	<b>Failure Criteria</b> <i>The Failure Criteria should be read in conjunction with any 'supplementary guidance' produced and agreed between the SQR Contractor, the Secretary of State and the Operator.</i> <i>Record a 'fail' (a Service Quality Failure) for the Service Quality Indicator if any of the individual criteria apply.</i> <i>Only one Service Quality Failure shall be recorded per Service Quality Indicator, regardless of how many criteria apply or how many 'customer-facing areas' are identified as having failed.</i>	<b>Rectification Evidence Timescale</b> <i>See Part 4 of this document, and paragraph 6 of Schedule 7.3, for details of how Reinspection and Rectification Evidence Failures should be recorded.</i>
		<ul style="list-style-type: none"> <li>(c) Any passenger information display is showing incorrect information.</li> <li>(d) Any passenger information display is not showing next stop information (internal) and major/final destinations (internal and external).</li> <li>(e) When COVID-19 Guidance and Regulation applies, social distancing messages are not displayed at appropriate intervals, are not clear and/or up-to-date.</li> </ul>	
	Public Announcement	<ul style="list-style-type: none"> <li>(a) Any announcement is not audible or capable of being understood.</li> <li>(b) An announcement of the train destination and major destinations is not made prior to departure of any station allowing sufficient time for people who have boarded an incorrect train to alight.</li> <li>(c) An announcement of the next station is not made between one and five minutes before arrival at the next station.</li> </ul>	After 48 hours

<b>Table 2</b>			
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>	<b>Column 4</b>
<b>Service Quality Area</b>	<b>Service Quality Indicator</b>	<b>Failure Criteria</b> <i>The Failure Criteria should be read in conjunction with any 'supplementary guidance' produced and agreed between the SQR Contractor, the Secretary of State and the Operator.</i> <i>Record a 'fail' (a Service Quality Failure) for the Service Quality Indicator if any of the individual criteria apply.</i> <i>Only one Service Quality Failure shall be recorded per Service Quality Indicator, regardless of how many criteria apply or how many 'customer-facing areas' are identified as having failed.</i>	<b>Rectification Evidence Timescale</b> <i>See Part 4 of this document, and paragraph 6 of Schedule 7.3, for details of how Reinspection and Rectification Evidence Failures should be recorded.</i>
		<ul style="list-style-type: none"> <li>(d) An announcement is not made requesting passengers to move down the train or free up seats from bags, etc. during crowding.</li> <li>(e) Where selective door operation is in operation, passengers are not informed before arrival at each station of the section of the train where doors will not be operational at that station.</li> <li>(f) When COVID-19 Guidance and Regulation applies, social distancing announcements are not made at appropriate intervals, are not clear and/or up-to-date.</li> </ul>	
	Wi-Fi	(a) A Wi-Fi connection to the internet is not possible.	After 7 days
	Posters, Frames & Signs	<ul style="list-style-type: none"> <li>(a) Any poster, frame or sign is missing, in line with the SQR Register.</li> <li>(b) Any poster frame is damaged, rusting or unsecure.</li> <li>(c) Any information on the poster is not visible.</li> <li>(d) Any poster or sign is showing incorrect or out of date information.</li> </ul>	<ul style="list-style-type: none"> <li>(a) after 7 days</li> <li>(b), (c), (d), (e),(f), (g),(h) after 48 hours</li> </ul>

<b>Table 2</b>			
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>	<b>Column 4</b>
<b>Service Quality Area</b>	<b>Service Quality Indicator</b>	<p><b>Failure Criteria</b></p> <p><i>The Failure Criteria should be read in conjunction with any 'supplementary guidance' produced and agreed between the SQR Contractor, the Secretary of State and the Operator.</i></p> <p><i>Record a 'fail' (a Service Quality Failure) for the Service Quality Indicator if any of the individual criteria apply.</i></p> <p><i>Only one Service Quality Failure shall be recorded per Service Quality Indicator, regardless of how many criteria apply or how many 'customer-facing areas' are identified as having failed.</i></p>	<p><b>Rectification Evidence Timescale</b></p> <p><i>See Part 4 of this document, and paragraph 6 of Schedule 7.3, for details of how Reinspection and Rectification Evidence Failures should be recorded.</i></p>
		<ul style="list-style-type: none"> <li>(e) Any poster is torn, damaged or slipped in the case.</li> <li>(f) Any poster is faded, evident from 1m.</li> <li>(g) Any signs fixed to the interior of the train are damaged or illegible.</li> <li>(h) Route diagrams are not available showing train routes and key connection information.</li> </ul>	
	Information During Disruption	<ul style="list-style-type: none"> <li>(a) Where a delay has occurred, an announcement was not made following the delay or was made more than two minutes after the delay commenced.</li> <li>(b) Where a delay has occurred, information was not provided about the nature of the delay and expected duration (or if this is not known, an update on the action being taken to establish the nature of the delay is not provided).</li> <li>(c) Where a delay has occurred, information provided through announcements is unclear and/or contains jargon.</li> </ul>	N/A

<b>Table 2</b>			
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>	<b>Column 4</b>
<b>Service Quality Area</b>	<b>Service Quality Indicator</b>	<b>Failure Criteria</b> <i>The Failure Criteria should be read in conjunction with any 'supplementary guidance' produced and agreed between the SQR Contractor, the Secretary of State and the Operator.</i> <i>Record a 'fail' (a Service Quality Failure) for the Service Quality Indicator if any of the individual criteria apply.</i> <i>Only one Service Quality Failure shall be recorded per Service Quality Indicator, regardless of how many criteria apply or how many 'customer-facing areas' are identified as having failed.</i>	<b>Rectification Evidence Timescale</b> <i>See Part 4 of this document, and paragraph 6 of Schedule 7.3, for details of how Reinspection and Rectification Evidence Failures should be recorded.</i>
		(d) Where disruption has occurred, ongoing updates are not provided every three minutes or less for the duration of the disruption. (e) If the train is to terminate before its destination, fails to stop or is going to skip a stop due to disruption, or for delays of over 15 minutes, information on next steps, alternatives and passenger ticket validity on other Operators' services is not provided. (f) Where a delay has occurred and is resolved, an update on scheduled arrival times is not provided. (g) Information provided by on train announcement is not consistent with the information provided through social media, the websites and the Smartphone application. (h) Where a delay has occurred, an apology for the delay is not received. (i) Where a delay of over 15 minutes occurs, no information is given about right to claim compensation.	

**PART 3 – SQR CUSTOMER SERVICE**

Please note that a Service Quality Indicator should only be subject to a Service Quality Inspection if the relevant facility or service is included in the SQR Register for that SQR Station or SQR Train.

<b>Table 3</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Service Quality Area</b>	<b>Service Quality Indicator</b>	<b>Failure Criteria</b>
Staff Helpfulness	Helpfulness of Staff at Stations	<ul style="list-style-type: none"> <li>(a) Staff member does not provide a friendly interaction with the mystery shopper.</li> <li>(b) Staff member does not have the correct information to hand when responding to a mystery shopper question.</li> <li>(c) Staff member gives incorrect information in response to a mystery shopper question.</li> <li>(d) The staff member's behaviour and/or body language reflects poorly on the Operator.</li> <li>(e) If so required, the staff member does not recognise or acknowledge the mystery shopper's disability or additional needs.</li> <li>(f) If so required, the staff member does not attend to the mystery shopper at a Passenger Assist meeting point or provide the required pre-booked assistance.</li> </ul>
	Helpfulness of Staff on Trains	<ul style="list-style-type: none"> <li>(a) Staff member does not provide a friendly interaction with the mystery shopper.</li> <li>(b) Staff member does not have the correct information to hand when responding to a mystery shopper question.</li> <li>(c) Staff member gives incorrect information in response to a mystery shopper question.</li> <li>(d) The staff member's behaviour and/or body language reflects poorly on the Operator.</li> <li>(e) If so required, the staff member does not recognise or acknowledge the mystery shopper's disability or additional needs;</li> <li>(f) If requested, the staff member does not attend to the mystery shopper's additional needs.</li> </ul>
Online Information	Social Media Mystery Shopper Question	<ul style="list-style-type: none"> <li>(a) No response within 30 minutes.</li> <li>(b) The response did not answer the question or advise to where additional information could be found.</li> </ul>
	Planned and Unplanned Disruption ( <i>website, app and social media, where applicable</i> )	<ul style="list-style-type: none"> <li>(a) Information about unplanned disruption is not provided within 10 minutes of the occurrence of such disruption.</li> <li>(b) Information about planned disruption is not provided at least 7 days prior to commencement of such works.</li> <li>(c) Any information about planned or unplanned disruption is inaccurate, contradictory or unclear (including due to use of jargon). Such information includes (but is not limited to) the services affected, expected duration of the disruption, alternative travel arrangements, ticket acceptance and advice for passengers with additional needs.</li> <li>(d) Any information about planned or unplanned disruption is not easy to find on the relevant site/app.</li> <li>(e) Information about unplanned disruption is not updated at regular intervals (as appropriate to the situation) and passengers are being provided with out-of-date advice.</li> <li>(f) Information about planned disruption is out-of-date.</li> </ul>

## Part 4: Pass Rate Calculation Principles for Reinspection and Rectification Evidence Failures

### Background

A Service Quality Inspection is defined as the first occurrence of an inspection, which will be the first time any fault is identified.

During Service Quality Inspections, each Service Quality Indicator is assessed and will either 'pass' or 'fail'.

This assessment is based on the condition of assets/customer service as detailed within parts 1, 2 & 3 of this document.

An SQ Indicator could 'fail' if *any* or *all* failure criteria are present during an inspection. The first occasion of a "failure" is known as a '**Service Quality Failure**', this term is for both station and train inspections. Only **one Service Quality Failure is recorded per Indicator, regardless of how many individual failure criteria apply.**

When failures occur, this triggers Reinspection (for stations) or the requirement to provide Rectification Evidence (mostly for trains, though there are some station items for which this applies – see Part 1).

Each SQ Indicator failure criteria have corresponding Reinspection or Rectification Timescales, known as the '**Relevant Rectification Period**' (in the example of station lighting, above, the "Relevant Rectification Period" is 'after 7 days' – meaning that after 7 days, a reinspection is required to determine whether the fault has been remedied). This should take place **as soon as possible** after the timescale has elapsed.

If the reinspection identifies that the fault has not been remedied, or no Rectification Evidence is provided that demonstrates that the fault has been remedied, another Service Quality Failure will be recorded. This is called a '**Reinspection Failure (RF)**' for stations, or a '**Rectification Evidence Failure (REF)**' for trains (or the handful of stations criteria that require Rectification Evidence).

### Pass Rate calculation

Where there are any Reinspection Failure or Rectification Evidence Failure occurrences, these failures will be utilised in the calculation of the Pass Rates for the Reporting Period in which the Reinspection was conducted, or the requirement to provide Rectification Evidence applied, in accordance with the provisions of paragraph 10 (*Calculation of Pass Rates*) and paragraph 20 (*Consequences of Performance falling below the SQR Benchmark*).

The pass rate (**P**) for any Service Quality Indicator in a single Reporting Period is arrived at by:

#### 1. First, calculate SQi – this is:

- a. The number of Service Quality Inspections of that Indicator conducted in that Period;
- b. If relevant, the number of station Reinspections conducted in that Period where a Reinspection Failure was recorded for the Indicator; and
- c. If relevant, the number of Rectification Evidence failures recorded in that Period.

Add each of these together to derive a total figure for inspection related activity (SQi).

#### 2) Next, calculate the total number of failures (SQf) – this is:

- a. The number of initial Service Quality Failures for that Indicator conducted in that Period;
- b. If relevant, the number of station Reinspections conducted in that Period where a Reinspection Failure was recorded for the Indicator; and
- c. If relevant, the number of Rectification Evidence failures recorded in that Period for the Indicator.



Add each of them together to derive a total figure for failures.

**3) Finally, we subtract the SQf total from the SQi total and divide by the SQi total. We then convert this figure into a percentage to obtain our pass rate (P).**

**Example - Calculating Period Pass Rate (P):**

We wish to calculate the Pass Rate for the Service Quality Indicator 'Lighting' in Period 7.

There have been a total of 40 Service Quality Inspections of the Lighting Indicator this Period. 10 of these have recorded a Service Quality Failure.

There have also been 5 Reinspection Failures and 5 Rectification Evidence Failures recorded against the Lighting Indicator this Period.

The Pass Rate is calculated as follows:

**SQi** = 40 Service Quality Inspections + 5 Reinspection Failures + 5 Rectification Evidence Failures = **50**

**SQf** = 10 Service Quality Inspection failures + 5 Reinspection Failures + 5 Rectification Evidence Failures = **20**

We subtract **SQf** from **SQi**: 50 minus 20 = **30**

We next divide our net figure (30) by the total value of SQi (50) and multiply by 100 to obtain the net figure expressed as a percentage of all Period activity for this indicator (the resulting number is 'P').

30 divided by 50 x 100 = **P = 60**

Each SQR indicator has a weighting (**w**) to be applied for the purposes of calculating the overall Service Quality Area Pass Rate – for this example, we will assume the lighting weighting is 15%.

We then take 'P' = 60 and multiply this by 'w' = 15% (60 x 0.15) = **9**

Finally, we repeat this process for all indicators in an area and add the totals together (**ΣIPRp**), which gives us the Service Quality Area Pass Rate (**SQArp**).

**Treatment of multiple faults under the same Service Quality Indicator within Reinspection and Rectification Evidence Failures**

There are a few important points of principle to apply when considering how Reinspection Failures and Rectification Evidence Failures are to be incorporated within the calculation of the Pass Rate.

During the initial Service Quality Inspection, when assessing an indicator e.g., 'Graffiti & Etching', if a) any single failure criteria applies or b) a combination of criteria apply, or c) all criteria within the indicator apply, then the whole Indicator fails = **1 'fail' mark**. There is only ever one Service Quality Failure, or one pass, recorded for each Indicator at the initial stage.

**As above in example a)**

SQA	SQi	Pass/Fail	Criteria	Description	P/F count
Cleanliness and Graffiti	Graffiti and Etching	Fail	b	Non-offensive spray item larger than A4 on station building	1

**As above in example b)**

SQA	SQi	Pass/Fail	Criteria	Description	P/F count
Cleanliness and Graffiti	Graffiti and Etching	Fail	b, c	6 x items of non-offensive etching larger than A4, 15 x non-offensive etching smaller than A4, and non-offensive etching on a Perspex platform shelter panel	1

ii) After the initial inspection which resulted in 1 failure, there are variations to consider in your calculations:

**1) If multiple faults are identified under the same failure criteria within the same Service Quality Indicator, all faults must be fixed to 'pass' the Reinspection or Rectification Evidence requirement**

**Example:** In the initial station Service Quality Inspection, there were 2 items of offensive graffiti identified at Skipton station. This resulted in **1 x Service Quality Failure** under the **Graffiti SQI** and the Operator had 24 hours to remedy before a reinspection occurred.

**Scenarios:**

- a) When the inspector returned, both items of offensive graffiti were removed = this is **completed and there is no further action to record**.
- b) When the inspector returned 1 of the 2 items of offensive graffiti was *not* removed = a single **Reinspection Failure** is recorded, and the process repeats per *paragraph 6 of schedule 7.3*.
- c) When the inspector returned both items of offensive graffiti were *not* removed = a single failure **Reinspection Failure** is recorded, and the process repeats per *paragraph 6 of schedule 7.3*.

**2) If multiple faults are identified under different failure criteria within the same Service Quality Indicator, but they have the same Reinspection or Rectification Evidence timescales, all faults must be fixed to 'pass' the Reinspection or Rectification Evidence requirement**

**Example:** In the initial train Service Quality Inspection, there was 1 hole in the carpet on vehicle 64564. There was also a damaged panel trim. This resulted in **1 x Service Quality Failure** under the **Vehicle Interior Condition SQI** and the Operator had **28 days to provide Rectification Evidence of both issues** in its Management System.

**Scenarios:**

- a) The carpet was repaired, and the damaged panel was replaced, **rectification evidence was logged within the management system = this is completed and there is no further action**.
- b) Both the carpet *and* panel are still damaged and not repaired = this is not complete, and a further failure is recorded as 1 x **Rectification Evidence Failure**, and the process repeats per *paragraph 6 of schedule 7.3*.
- c) The carpet was repaired, but the damaged panel was not replaced, rectification evidence was logged within the management system for the carpet = this is not complete as the panel is still damaged. A further failure is recorded as 1 x **Rectification Evidence Failure**.

**3) If multiple faults are identified under different failure criteria within the same Service Quality Indicator, and they have different Reinspection or Rectification Evidence timescales, the individual faults are treated separately in calculating the Pass Rate and each generate their own Reinspection or Rectification Evidence Failure**

**Example:** In the initial station Service Quality Inspection, a COVID hand sanitiser facility was broken at Skipton station. The handrails to the footbridge were dirty and there was evidence of bird roosting that is not being managed. This is **1 x Service Quality Failure** under the **General Cleanliness SQI**.

In this example, each failure criteria carries different Reinspection Timescales. The Operator had 24 hours to fix the hand sanitisers before a reinspection occurred, 48 hours to clean the dirty handrails before *another separate reinspection* occurred, and 14 days to remedy the bird roosting issue before *another separate reinspection* occurred.

**Scenarios:**

- a) The inspector reinspects on three separate occasions (hand sanitiser after 24 hours, handrails after 48hours, and bird roosting after 14 days). On each reinspection the initial failure has been rectified (across all three items) and therefore reinspection activity is **completed and there is no further action**.
- b) The inspector reinspects the hand sanitiser after 24 hours and this is rectified, so is **completed and there is no further action**. However, the handrails are still dirty when inspected after 48 hours and these now receive 1 x **Reinspection Failure** and the process repeats per *paragraph 6 of schedule 7.3*. The bird roosting is inspected after 14 days and also has not been addressed. This will receive its own **Reinspection Failure** and the process repeats per *paragraph 6 of schedule 7.3*. In total, **two Reinspection Failures** will have been recorded in this circumstance, but only one Service Quality Failure during the initial inspection.

**Appendix 2 to Schedule 7.3**

**Service Quality Areas/Service Quality Indicators/Weightings**

**PART 1 - SQR STATIONS**

Where no Service Quality Inspections are conducted of the 'Information During Disruption' Indicator during a Reporting Period, the weightings in column 4 shall apply in place of the weightings in column 3 for those Indicators relating to the Service Quality Area 'Information', when conducting the calculations referred to in paragraph 10 of this Schedule 7.3.

Column 1	Column 2	Column 3	Column 4
Service Quality Area	Service Quality Indicators	Weighting	Alternative Weighting
Ambience and Assets	Lighting	15%	N/A
	Seating	15%	
	Shelters and Waiting Rooms	15%	
	Lifts, Escalators and Ramps	15%	
	Toilet Operation	20%	
	Car Parking/Cycle Parking	10%	
	Vegetation	10%	
Cleanliness	General Cleanliness	25%	N/A
	Toilets	25%	
	Litter	25%	
	Graffiti and Etching	25%	
Information	CIS	20%	22.22%
	PA	20%	22.22%
	Help Points	20%	22.22%
	Posters and Frames	15%	16.66%
	Signage and Information	15%	16.66%
	Information During Disruption	10%	N/A
Ticketing and Staffing	TVMs	40%	N/A
	Ticket Offices	20%	
	Staff Presence	20%	
	Ticket Gates	20%	

**PART 2 - SQR TRAINS**

Where no Service Quality Inspections are conducted of the 'Information During Disruption' Indicator during a Reporting Period, the weightings in column 4 shall apply in place of the weightings in column 3 for those Indicators relating to the Service Quality Area 'Information', when conducting the calculations referred to in paragraph 10 of this Schedule 7.3.

Column 1	Column 2	Column 3	Column 4
Service Quality Area	Service Quality Indicators	Weighting	Alternative Weighting
Ambience and Assets	Heating and Lighting	20%	N/A
	Seating	20%	
	Vehicle Interior Condition	20%	
	Accessibility Features	20%	
	Toilet Operation	20%	
Cleanliness	Interior	20%	N/A
	Exterior	20%	
	Litter	20%	
	Toilets	20%	
	Graffiti and Etching	20%	
Information	PIS	30%	33.33%
	PA	20%	22.22%
	Wi-fi	20%	22.22%
	Posters, Frames and Signs	20%	22.22%
	Information During Disruption	10%	N/A

**PART 3 - SQR CUSTOMER SERVICE**

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Service Quality Area</b>	<b>Service Quality Indicators</b>	<b>Weighting</b>
Staff Helpfulness	Helpfulness of Staff at Stations	40%
	Helpfulness of Staff on Trains	60%
Online Information	Social Media Question	50%
	Planned and Unplanned Disruption	50%

## **SCHEDULE 8**

### **PAYMENTS**

Schedule 8.1:	Contract Payments
Schedule 8.2	NOT USED
	Appendix 1 to Schedule 8.2 – NOT USED
	Appendix 2 to Schedule 8.2 – NOT USED
Schedule 8.3	Management Information
Schedule 8.4	Business Plan

## Schedule 8.1

### Contract Payments

1.

1.1 The Contract Payment (£CP) for the Reporting Period commencing on the Start Date and ending on 31 March 2022 shall be the amount equal to that specified in the second column of the Table below for that Reporting Period.

Column 1 First Reporting Period	Column 2 Contract Payment (£CP)
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Period 1 [REDACTED<sup>5</sup>] [REDACTED<sup>6</sup>]

1.2 The Contract Payment payable by the Operator to the Secretary of State or the Secretary of State to the Operator (as the case may be) for a Reporting Period in a Quarter shall be determined as specified in paragraph 5.1A or 5.1 (as the case may be).

1.3 The Parties agree that:

- (a) where the Contract Payment (value of £CP<sub>CPQ</sub>) as determined pursuant to paragraph 5.1A or 5.1 (as the case may be) is a **positive number**, the Secretary of State shall pay that amount to the Operator on the Payment Date for that Reporting Period;
- (b) where the Contract Payment (value of £CP<sub>CPQ</sub>) as determined pursuant to paragraph 5.1A or 5.1 (as the case may be) is a **negative number**, the Operator shall pay the corresponding positive amount to the Secretary of State on the Payment Date for that Reporting Period.

## 2. Payment of Contract Payments

2.1 The Secretary of State shall notify the Operator, no less than five (5) Weekdays prior to the start of each Reporting Period, of the amount of the Contract Payment payable in respect of that Reporting Period.

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

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

2.4 Each Contract Payment shall be payable by the Operator or, as the case may be, the Secretary of State in the amount notified by the Secretary of State in accordance with paragraph 2.1 of this Schedule 8.1 (*Contract Payments*) on the Payment Date of the Reporting Period to which it relates.

2.5 Each Contract 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

<sup>5</sup> 21 September 2022 (Date of Redactions Approval) CR03455 - 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.

<sup>6</sup> 21 September 2022 (Date of Redactions Approval) CR03455 - 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) so that cleared funds are received in that account on or before the due date for payment.

2.6 References in this Schedule 8.1 (*Contract Payments*) to Reporting Period or Contract Year shall be deemed amended to the extent necessary to allow Contract Payments to be calculated and paid after the date of termination or expiry of this Contract in accordance with the provisions of this Schedule 8.1 (*Contract Payments*).

**3. No Double Recovery**

3.1 Neither Party shall be entitled to recover (by way of an adjustment to Contract Payment, CP Budget or otherwise) more than once in respect of the same amount.

3.2 The Operator shall use all reasonable endeavours to avail itself of, including applying for, any governmental support or support from any local authority or other such body that:

- (a) is offered to it;
  - (b) the details of which are notified to it by the Secretary of State; or
  - (c) which a Good and Efficient Operator should have been aware of,
- in relation to the impact of and/or recovery from the impacts of COVID-19 from time to time.

3.3 If and to the extent that the Operator is successful in receiving any such support described in paragraph 3.2, this shall be taken into account in relation to the relevant payment and adjustments in this Schedule 8.1 (*Contract Payments*) such that the Operator does not benefit from double recovery or double counting.

**4. Force Majeure and Payments**

4.1 Following the occurrence of a Force Majeure Event, the payment of Contract Payments shall continue to be calculated in accordance with this Schedule 8.1 (*Contract Payments*) and the payment of such Contract Payments shall continue unaffected.

**5. Periodic Contract Payments in each Quarter and Revisions to the CP Budget**

5.1A The Parties acknowledge that in relation to the first Quarter following the Start Date (being the Quarter commencing on 1 April 2022 and ending on 25 June 2022), the Secretary of State and the Operator shall, using the Costs Budget and Forecast Revenues as specified in the agreed CP Budget calculate the Contract Payments that will be payable by the Operator to the Secretary of State or Secretary of State to the Operator (as the case may be) for each Reporting Period falling within such first Quarter:

- (a) in accordance with the formula for calculation of £CP<sub>CPQ</sub> as set out in paragraph 5.1 below; and
- (b) so as to enable compliance with the notification and payment timescales specified in paragraphs 2.1 and 2.3 above in respect of each Contract Payment to be made in respect of Reporting Periods falling within such Quarter.

5.1 Immediately following the date of completion of the revisions to the then current CP Budget for each Quarter pursuant to paragraph 5.2, the Secretary of State and the Operator shall, using the Costs Budget and Forecast Revenues as specified in the agreed or determined CP Budget or revised CP Budget (as the case may be) calculate the Contract Payments that will be payable by the Operator to the Secretary of State or Secretary of State to the Operator (as the case may be) for each Reporting Period falling within the next Quarter as follows:

<b>£CP<sub>CPQ</sub></b> =	<b>(CBRP – FRRP) + QADJ + AMADJ + AAADJ</b>
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Where:

<b>CBRP</b>	means the total Cost Budget in respect of the Reporting Period in question as specified in the then-current CP Budget. CBRP may only be a positive number;
<b>FRRP</b>	the total Forecast Revenue in respect of the Reporting Period in question as specified in the then-current CP Budget. FRRP may only be a positive number;
<b>QADJ</b>	means any Quarterly Adjustment, determined in accordance with paragraph 6 ( <i>Quarterly Adjustment</i> ), to be made on that Reporting Period's Payment Date. QADJ may be a positive or negative number;
<b>AMADJ</b>	means any Annual Management Accounts Adjustment, determined in accordance with paragraph 7 ( <i>Annual Management Accounts Adjustment</i> ), to be made on that Reporting Period's Payment Date. AMADJ may be a positive or negative number; and
<b>AAADJ</b>	means any Annual Audited Accounts Adjustment, determined in accordance with paragraph 8 ( <i>Annual Audited Accounts Adjustment</i> ), to be made on that Reporting Period's Payment Date. AAADJ may be a positive or negative number.

- 5.2 As part of the Quarterly Forecast the Operator shall deliver to the Secretary of State:
- (a) its proposed revisions (if any) to the then current CP Budget for the remaining Reporting Periods of the Contract Year; and
  - (b) a full and detailed explanation for the proposed revisions,

and the Parties may agree (or in the absence of agreement the Secretary of State shall reasonably determine) whether revisions are to be made to the then current CP Budget, and (if so) the revisions to be made, and the date from which the revised CP Budget shall take effect.

- 5.2A The Parties acknowledge that the CP Budget which applies from the first Reporting Period in each Contract Year (other than the first Contract Year) shall be agreed or determined in accordance with the annual business planning process set out in paragraph 3 of Schedule 8.4 (*Business Plan*).

**Provisions applying to all revisions**

- 5.3 Each revision to the CP Budget shall (unless the Parties otherwise agree):
- (a) adopt the same format and structure as the original version in agreed terms (or where the preceding version has included any changes from that format and structure expressly agreed by the Parties for this purpose) from the preceding version;
  - (b) make no assumptions or include any costs, revenue or other adjustments which are not consistent with the definition of Costs Budget and Forecast Revenue (except as may be otherwise expressly agreed by the Parties for that purpose);
  - (c) adopt the same accounting principles and standards as the original version (as these may be expressly varied by agreement between the Parties for this purpose or, in the case of accounting standards, as these may be reasonably revised by the Secretary of State to take account of changes to GAAP in the United Kingdom); and
  - (d) otherwise facilitate easy comparison with the definitions of Costs Budget and Forecast Revenue and with the information reported in the Management Accounts, Annual Management Accounts and the Annual Audited Accounts.

- 5.4 Each time it is agreed or determined that the CP Budget is to be revised, the Secretary of State shall be entitled to:

- (a) make the agreed or determined revisions to the CP Budget (or procure this is done on behalf of the Secretary of State) and provide copies of those revised documents to the Operator; or
- (b) require the Operator to provide the agreed or determined revisions to the CP Budget for approval by the Secretary of State, which the Operator shall do and provide revised versions to the Secretary of State within such time as the Secretary of State shall specify for this purpose.

5.5 The Operator shall provide the Secretary of State with all further information as the Secretary of State may request from time to time for the purposes of the operation of this paragraph 5, within such time as the Secretary of State may reasonably specify for that purpose.

5.6 The Parties shall at all times act in good faith, reasonably and in a timely manner in the interpretation and application of the provisions for agreeing revisions to the CP Budget.

**6. Quarterly Adjustment**

6.1 The value of QADJ in respect of a Quarter(n) shall be equal to the following:

<b>QADJ for Quarter(n) =</b>	$((ACQ-CBQ) - (ARQ-FRQ))$
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**Where:**

<b>CBQ</b>	means the aggregate of the Cost Budgets for each Reporting Period during that Quarter(n), provided that in each case the Cost Budget for a relevant Reporting Period shall be the Cost Budget which applied at the time the Contract Payment for that Reporting Period was paid.  CBQ may only be a positive number;
<b>ACQ</b>	means the total Actual Costs in Quarter(n) as set out in the Management Accounts for each Reporting Period in that Quarter(n).  ACQ may only be a positive number;
<b>FRQ</b>	means the aggregate of the Forecast Revenue for each Reporting Period during that Quarter(n), provided that in each case the Forecast Revenue for a relevant Reporting Period shall be the Forecast Revenue which applied at the time the Contract Payment for that Reporting Period was paid.  FRQ may only be a positive number; and
<b>ARQ</b>	means the total Actual Revenue in Quarter(n) as set out in the Management Accounts for each Reporting Period in that Quarter(n).  ARQ may only be a positive number.

6.2 The value of QADJ shall be made as an adjustment to the next Contract Payment payable after that calculation of QADJ is determined ("**Quarterly Adjustment**").

6.3 The Secretary of State agrees that, provided the Management Accounts in respect of each Reporting Period in Quarter(n) (in a form consistent with the obligations of the Operator under Schedule 8.3 (*Management Information*)) are received from the Operator within the timescale specified in paragraph 1.4(a) of Schedule 8.3 (*Management Information*), the Secretary of State will provide the Operator with the value of QADJ in sufficient time for the

Quarterly Adjustment to be included in the Contract Payment for the Reporting Period which falls two (2) Reporting Periods after the commencement of the Quarter falling immediately after Quarter(n) (as defined in paragraph 6.1).

6.4 If the Operator fails to provide the Management Accounts in respect of any Reporting Period in Quarter(n) in accordance with its obligations under Schedule 8.3 (*Management Information*), the Secretary of State shall (without prejudice to his other rights) be entitled (but not obliged) to determine the amount of any Quarterly Adjustment in accordance with this paragraph 6 but by reference to the relevant information available to the Secretary of State at the time of such determination.

7. **Annual Management Accounts Adjustment**

7.1 The value of AMADJ in respect of a Contract Year(n) shall be equal to the following:

<b>AMADJ for Contract Year(n) =</b>	(ACCY-CBCY) – (ARCY-FRCY) - TotalQADJ
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**Where:**

<b>CBCY</b>	means the aggregate of the Cost Budgets for each Reporting Period during that Contract Year(n) (provided that in each case the Cost Budget for a relevant Reporting Period shall be the Cost Budget which applied at the time the Contract Payment for that Reporting Period was paid and the Cost Budget relating to the first Reporting Period of the first Contract Year (that is the period commencing from 1 March 2022 and ending on 31 March 2022 (both dates inclusive)) shall be disregarded.  CBCY may only be a positive number;
<b>ACCY</b>	means the total Actual Costs in Contract Year(n) as set out in the Annual Management Accounts for that Contract Year(n) provided that in respect of the first Contract Year the Actual Costs relating to the first Reporting Period of the first Contract Year ((that is the period commencing from 1 March 2022 and ending on 31 March 2022 (both dates inclusive)) shall be disregarded.  ACCY may only be a positive number;
<b>FRCY</b>	means the aggregate of the Forecast Revenue for each Reporting Period during that Contract Year(n) (provided that in each case the Forecast Revenue for a relevant Reporting Period shall be the Forecast Revenue which applied at the time the Contract Payment for that Reporting Period was paid and the Forecast Revenue relating to the first Reporting Period of the first Contract Year (that is the period commencing from 1 March 2022 and ending on 31 March 2022 (both dates inclusive)) shall be disregarded).  FRCY may only be a positive number;
<b>ARCY</b>	means the total Actual Revenue in Contract Year(n) as set out in the Annual Management Accounts for that Contract Year(n), provided that in respect of the first Contract Year the Actual Revenue relating to the first Reporting Period of the first Contract Year (that is the period commencing from 1 March

	2022 and ending on 31 March 2022 (both dates inclusive) shall be disregarded.  ARCY may only be a positive number; and
<b>TotalQADJ</b>	means the total net value of QADJ paid in respect of the Reporting Periods falling in each Quarter during Contract Year(n). TotalQADJ may be a positive number or a negative number.

7.2 The value of AADJ shall be made as an adjustment to the next Contract Payment payable after that calculation of AADJ is determined (“**Annual Management Accounts Adjustment**”).

7.3 If the Operator fails to provide the information required by paragraph 1.5(a) of Schedule 8.3 (*Management Information*) by the date specified in that paragraph the Secretary of State shall (without prejudice to his other rights) be entitled (but not obliged) to determine the amount of any Annual Management Accounts Adjustment in accordance with this paragraph 7 but by reference to the relevant information available to the Secretary of State at the time of such determination, including any information contained in the latest cumulative, year to date Management Accounts.

**8. Annual Audited Accounts Adjustment**

8.1 The value of AAADJ in respect of a Contract Year(n) shall be equal to the following:

<b>AAADJ for Contract Year(n) =</b>	$(ACCY_{AAC} - CBCY) - (ARCY_{AAC} - FRCY) - TotalAMADJ + PM$
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**Where:**

ACCY <sub>AAC</sub>	means the total Actual Costs in Contract Year(n) as set out in the Annual Audited Accounts for that Contract Year(n) provided that in respect of the first Contract Year the Actual Costs relating to the first Reporting Period of the first Contract Year ((that is the period commencing from 1 March 2022 and ending on 31 March 2022 (both dates inclusive)) shall be disregarded.  ACCY <sub>AAC</sub> may only be a positive number;
CBCY	has the meaning given to “CBCY” in paragraph 7.1;
ARCY <sub>AAC</sub>	means the total Actual Revenue in Contract Year(n) as set out in the Annual Audited Accounts for that Contract Year(n) provided that in respect of the first Contract Year the Actual Revenue relating to the first Reporting Period of the first Contract Year (that is the period commencing from 1 March 2022 and ending on 31 March 2022 (both dates inclusive) shall be disregarded.  ARCY <sub>AAC</sub> may only be a positive number;
FRCY	has the meaning given to “FRCY” in paragraph 7.1;
TotalAMADJ	means the total net value of AMADJ paid in respect Contract Year(n). TotalAMADJ may be a positive number or a negative number; and

PM	means an amount equal to:  $ACCY_{AAC} \div (100-X)$  Where $X = 1$
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8.2 The value of AAADJ shall be made as an adjustment to the next Contract Payment payable after that calculation of AAADJ is determined (“**Annual Audited Accounts Adjustment**”).

8.3 If the Operator fails to provide the information required by paragraph 1.5(b) of Schedule 8.3 (*Management Information*) by the date specified in that paragraph the Secretary of State shall (without prejudice to his other rights) be entitled (but not obliged) to determine the amount of any Annual Audited Accounts Adjustment in accordance with this paragraph 8 but by reference to the relevant information available to the Secretary of State at the time of such determination, including any information contained in the latest cumulative, year to date Management Accounts or in the Annual Management Accounts.

9. **Funding Deed**

9.1 It is acknowledged by the Secretary of State, DOHL and the Operator that:

- (a) the Funding Deed has been entered into between DOHL and the Operator; and
- (b) the Operator shall be entitled to make a demand under the Funding Deed if in any Reporting Period:
  - (i) the available Cash Balance at the end of the preceding Reporting Period was below [REDACTED<sup>7</sup>] or
  - (ii) the Operator reasonably believes that its available Cash Balance will fall below [REDACTED<sup>8</sup>] at any time within the Reporting Period immediately following that Reporting Period.

9.2 Any amounts that the Operator draws down under the Funding Deed shall be repaid as specified therein.

10. **Indexation**

For the purposes of calculating the Contract Payment or any other payment under this Schedule 8.1 (*Contract Payments*) only, it is agreed that the Contract Payment and its components, any sum shown in any CP Budget for any given Contract Year (or other period) shall not, as part of such calculation, be subject to indexation or adjustment to take into account the effect of inflation.

11. **Further Obligations of the Operator**

11.1 Except to the extent otherwise agreed by the Secretary of State, the Operator will act as a Good and Efficient Operator in all respects in connection with the operation of this Schedule 8.1 (*Contract Payments*).

11.2 Not Used

11.3 Not Used

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<sup>7</sup> 21 September 2022 (Date of Redactions Approval) CR03455 - 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.

<sup>8</sup> 21 September 2022 (Date of Redactions Approval) CR03455 - Where text has been omitted from the document - this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

- 11.4 The Operator shall, in the performance of its obligations under, and when incurring any expenditure in connection with, the Service Contract comply with the requirements of the Procurement Policy.
- 11.5 The Secretary of State shall be entitled to notify the Operator of any future initiatives or proposals that the Secretary of State considers may have the potential to reduce certain Actual Costs below the costs in the then-current CP Budget and the Operator shall discuss with the Secretary of State all such matters as are relevant to the possible implementation of such initiatives.
- 11.6 The Operator shall, consistent with its obligation to act as a Good and Efficient Operator, generally use all reasonable endeavours to:
- (a) maximise revenue and minimise or mitigate the impacts of any factors leading to revenue being reduced or increasing less quickly than the Operator had forecast; and
  - (b) reduce costs and minimise or mitigate the impacts of any factors leading to costs being increased or decreasing less quickly than the Operator had forecast,
- 11.7 unless otherwise directed in writing by the Secretary of State, provided that where compliance with paragraph (a) in relation to revenue will have consequential impacts on costs and/or compliance with (b) in relation to costs will have consequential impacts on revenue, the Operator's obligation will be to use all reasonable endeavours to optimise in combination the revenue and cost position.
- 11.8 The Operator shall proactively consider and implement actions to meet its obligations pursuant to paragraph 10.6 above, provided that where the consent of the Secretary of State is required to any action pursuant to the terms of the Service Contract, the Operator shall seek the Secretary of State's consent as soon as practicable and shall only pursue such action once consent has been provided.
- 11.9 The Secretary of State shall have the right to propose to the Operator measures that the Operator could take to maximise revenue and minimise or mitigate the impacts of any factors leading to revenue being reduced or increasing less quickly than the Operator had forecast, such measures being consistent with a train operator bearing revenue risk in relation to its rail services and acting in an economical and efficient manner. The Operator shall give reasonable consideration to any such measures proposed by the Secretary of State and shall either implement such actions or shall explain why in its reasonable opinion such measures would not be appropriate.

**Schedule 8.2**

**NOT USED**



**APPENDIX 1 TO SCHEDULE 8.2**

**NOT USED**

**APPENDIX 2 TO SCHEDULE 8.2**

**NOT USED**

## Schedule 8.3

### Management Information

#### 1. Financial Information

##### 1.1 Accounting Records

The Operator shall prepare and at all times during the Contract Term maintain true, up to date and complete accounting records as are required to be kept under section 386 of the Companies Act 2006. Such records shall be prepared on a consistent basis for each Reporting Period of the Contract Year.

##### 1.2 Not Used

##### 1.3 Reporting Period Financial Information

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

(i) Management Accounts for such Reporting Period, setting out a cash flow statement, profit and loss account and balance sheet for each of:

(A) that Reporting Period; and

(B) cumulatively for the Contract Year to date; and

in respect of the Management Accounts produced in relation to the first Contract Year only,

(C) Not Used; and

(D) cumulatively for the period from 1 April 2021 to date,

ensuring that:

(E) costs within the profit and loss account shall adopt, be allocated to and be presented in the same format and structure as those shown in the most disaggregated line items included within the CP Budget, or other such level of aggregation as included within the CP Budget as agreed by the Secretary of State from time to time, sufficient to allow for an accurate and consistent comparison between costs shown in the CP Budget and Actual Costs;

(F) revenues within the profit and loss account shall be reported in sufficient detail to allow for an understanding of revenue from Fare revenue (including from different ticket types, flow groups and sources to be obtained) and other revenue;

(G) there shall be no netting off between costs and revenues reported, or between individual costs included in the CP Budget, with all transactions shown on a gross basis; and

(H) the Management Accounts clearly and separately identify each of:

(1) Actual Costs and Actual Revenues;

- (2) not used; and
- (3) not used; and
- (I) not used;
- (ii) written confirmation that the Management Accounts, to the best of the knowledge, information and belief of the board of directors of the Operator, contain a true and accurate reflection of the Actual Revenue, Actual Costs and other relevant profit and loss transactions, assets and liabilities of the Operator 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 require;
- (iii) not used;
- (iv) any further information the Secretary of State requests for the purpose of calculating the Contract Payment; and
- (v) not used.
- (b) The Management Accounts shall also set out:
  - (i) not used;
  - (ii) not used;
  - (iii)
    - (A) a comparison of Actual Revenue in relation to this Contract compared to the Forecast Revenue:
      - (1) for that Reporting Period;
      - (2) cumulatively for the Reporting Periods in the Contract Year to date;
    - (B) a comparison of Actual Costs incurred in relation to this Contract compared to the Cost Budget:
      - (1) for that Reporting Period; and
      - (2) cumulatively for the Reporting Periods in the Contract Year to date;
    - (C) not used;
    - (D) a comparison between the actual payments to and from Affiliates of the Operator and the forecast of such payments included in the Cost Budget and the Forecast Revenue:
      - (1) for that Reporting Period; and
      - (2) cumulatively for the Reporting Periods in the Contract Year to date;
  - (iv) a detailed and comprehensive written explanation regarding any material variances within the comparative information provided in paragraph 1.3(b)(iii) to this Schedule 8.3 (Management Information);

- (v) not used; and
- (vi) not used.
- (c) Within fifteen (15) Weekdays after receipt of the Management Accounts for each Reporting Period in accordance with paragraphs (a) and (b) above, the Secretary of State shall notify the Operator of any further information, explanation or analysis which the Secretary of State requires in relation to the Management Accounts (including information in relation to the calculation of the Contract Payment under the provisions of Schedule 8.1 (*Contract Payments*)) and the Operator shall promptly provide such further information or analysis.
- (d) Not Used.

#### 1.4 **Quarterly Financial Information**

- (a) No later than fifteen (15) Weekdays after the start of the second, third and fourth Quarters, the Operator shall deliver to the Secretary of State the following information (a "**Quarterly Forecast**"):
  - (i) a comprehensive updated profit and loss forecast, cash flow forecast and forecast balance sheet (including a comprehensive forecast of Actual Revenue), together with:
    - (A) a detailed and comprehensive written explanation as to any changes in such forecast from any previous forecast provided pursuant to the provisions of this Schedule 8.3 (Management Information), for each Reporting Period for the then current Contract Year and for the following four (4) years, which the Secretary of State may (at the discretion of the Secretary of State) take account of to determine any revision to Forecast Revenue; and
    - (B) a forecast of any costs, revenues or other debits and credits which relate to the Previous Agreement, disaggregated between those relating to the period prior to the Start Date and those relating to the period from the Start Date;
  - (ii) not used;
    - (A) not used;
    - (B) not used; and
    - (C) not used; and
  - (iii) a statement from a statutory director of the Operator confirming that the profit and loss forecast delivered pursuant to paragraph 1.4(a)(i) has been prepared in accordance with the requirements of this Contract.

#### 1.5 **Annual Financial Information**

##### **Annual Management Accounts**

- (a) Within fifteen (15) Weekdays after:
  - (i) the end of each Contract Year; and
  - (ii) not used,

the Operator shall deliver to the Secretary of State:

- (A) its Annual Management Accounts for:
  - (1) the period from 1 April 2021 to the end of the first Contract Year; and thereafter
  - (2) for each Contract Year,

with line items disaggregated between sections in relation to Actual Costs and Actual Revenues in accordance with the requirements set out in paragraph 1.3(a)(i) (*mutatis mutandis*); and
- (B) a supplementary explanation setting out details of any other costs which are not Actual Costs.

### **Annual Audited Accounts and Audited Accounts Reconciliation**

- (b) By no later than 31 July in each year, the Operator shall deliver to the Secretary of State:
  - (i) certified true copies of its annual report and Annual Audited Accounts for:
    - (A) the period from 1 April 2021 to the end of the first Contract Year; and thereafter
    - (B) the preceding Contract Year,

together with copies of all related directors' and auditors' reports. Additionally, the auditors shall certify that the accounting for and reporting of any annual related bonuses paid to the directors and managers is reasonably consistent with GAAP;
  - (ii) a detailed and comprehensive reconciliation between:
    - (A) the Annual Audited Accounts, the Annual Management Accounts and the Management Accounts for the preceding Contract Year (the "**Audited Accounts Reconciliation**"). The Audited Accounts Reconciliation shall include a detailed reconciliation, disaggregating Actual Costs, Actual Revenues, costs, revenues or other debits and credits which relate to the Previous Agreement prior to the Start Date and costs, revenues or other debits and credits which relate to the Previous Agreement after the Start Date in the Annual Audited Accounts to: (aa) each of the periodic Management Accounts within such Contract Year and (bb) the Annual Management Accounts in relation to such Contract Year, all in a format to be from time to time specified by the Secretary of State. This reconciliation shall:
      - (1) disaggregate the Actual Costs and Actual Revenues in the Annual Audited Accounts so as to report against (and show in a format consistent with that used in) the CP Budget;
      - (2) facilitate the identification of Actual Costs and Actual Revenues as reported in the Annual Audited Accounts; and

- (3) be disaggregated and reconcile the information specified in paragraph 1.3(a)(i) (*mutatis mutandis*);
- (iii) a statement from the Operator's auditors (in a format to be specified by the Secretary of State from time to time, on the basis of providing the Secretary of State with reasonable assurance) that the Audited Accounts Reconciliation has been undertaken accurately;
- (iv) a certificate addressed to the Secretary of State and signed by a statutory director of the Operator confirming that:
  - (A) the Audited Accounts Reconciliation contains a true and accurate reflection of the transactions and balances of the Operator pursuant to the requirements of paragraphs (ii) above and have been prepared accurately and in line with principles set out in this Contract;
  - (B) Not Used;
- (v) a statement from the Operator's auditors confirming that GAAP has been applied in a fair and consistent manner;
- (vi) not used; and
- (vii) any further information the Secretary of State requests for the purpose of calculating the Contract Payment.
- (c) Not used.

#### 1.6 **Accounting Standards and Practices**

- (a) Each set of Management Accounts and Annual Management Accounts shall:
  - (i) be in the format as the Secretary of State specifies from time to time;
  - (ii) be prepared:
    - (A) in accordance with the Operator's obligations in clause 6 (General Obligations); and
    - (B) consistently in accordance with the Operator's normal accounting policies, details of which shall be supplied on request to the Secretary of State; and
  - (iii) not include any changes in such accounting policies from those policies that were applied in preparing each of the profit and loss account, the cash flow projection and the balance sheet contained in the CP Budget.
- (b) The Annual Audited Accounts shall:
  - (i) be prepared and audited in accordance with GAAP, consistently applied and in accordance with the Companies Act 2006; and
  - (ii) give a true and fair view of:
    - (A) the state of affairs, profits and financial condition of the Operator for the period covered by such accounts; and

- (B) the amount of its total revenue (being all revenue whatsoever from any source obtained from any commercial or non-commercial activity or undertaking of the Operator), such revenue to be disaggregated by reference to revenue derived by the Operator from:
- (1) the sale of tickets;
  - (2) income received from Network Rail pursuant to Schedule 4 and Schedule 8 to the Track Access Agreement; and
  - (3) other items of revenue.

#### 1.7 **Changes to Accounting Policies**

The Operator shall not, without the express written consent of the Secretary of State, make any alteration to its accounting policies or basis of preparation in relation to its Management Accounts, Annual Management Accounts, Annual Audited Accounts or Audited Accounts Reconciliation.

#### 1.8 **Not Used**

#### 1.9 **Secretary of State Audit of Calculations and Data provided pursuant to paragraphs 1.3, 1.4 and 1.5**

- (a) Without prejudice to Schedule 12 (*Financial Covenants*) or to any other rights of the Secretary of State under this Contract, the Secretary of State and the Secretary of State's representatives shall be permitted to inspect at any time the books, records and any other material kept by or on behalf of the Operator in order to check or audit any item contained in or relating to the Management Accounts, the Annual Management Accounts, the Annual Audited Accounts, the Audited Accounts Reconciliation, and any information held or provided in connection with the Operator's obligations under Schedule 8.1 (*Contract Payments*) and Schedule 12 (*Financial Covenants*).
- (b) The Operator shall make available to the Secretary of State and the Secretary of State's representatives such information and grant such access or procure the grant of such access (including to or from third parties) as they shall require in connection with any audit to be carried out pursuant to paragraph 1.9(a). If any audit carried out pursuant to paragraph 1.9(a) reveals, in the opinion of the Secretary of State, any material inaccuracy in the Management Accounts, Annual Management Accounts or Audited Accounts Reconciliation, then:
- (i) the Secretary of State may:
    - (A) determine any item contained in or relating to the Management Accounts, Annual Management Accounts or Audited Accounts Reconciliation; or
    - (B) require any item contained in or relating to the Management Accounts, Annual Management Accounts or Audited Accounts Reconciliation to be adjusted in a manner which is fair and reasonable and, so far as determinable, on the basis on which such particular item should have been accounted for by the Operator as determined by the Secretary of State,
  - (ii) in either case to the extent that the Secretary of State considers appropriate in the circumstances for the purpose of making any such reasonable determination; and
  - (iii) Not used.



- (c) Not used.

1.10 **Adjustment and Restatement of the Annual Audited Accounts**

The Operator shall promptly notify the Secretary of State as soon as it becomes aware of any requirement to adjust or restate the Annual Audited Accounts and shall deliver to the Secretary of State any such adjusted or restated Annual Audited Accounts along with an updated Audited Accounts Reconciliation, as soon as such accounts are available.

1.11 **Access to financial information**

The Secretary of State, the Secretary of State's representatives and/or advisors shall be permitted to inspect at any time the books, records and other material kept by or on behalf of the Operator in order to check or audit any item contained in or relating to the financial information provided pursuant to the provisions of the Service Contract, and to request further information or review of this information, including:

- (a) the use of an external auditor;
- (b) provision of full access to this information by the Secretary of State's officials, representatives and/or advisors on an "open book" basis; and
- (c) provision of full access to this information by the National Audit Office or other equivalent body on an "open book" basis.

## Schedule 8.4

### Business Plan

#### 1. Contents of the Business Plan

##### 1.1 Each Business Plan shall include:

- (a) the following seven (7) components (the "**Business Plan Components**"):
  - (i) Leadership, Management and Resourcing Plan;
  - (ii) People Plan;
  - (iii) Collaboration Plan;
  - (iv) Train Service Operations Plan;
  - (v) Customer & Communities Plan;
  - (vi) Revenue Plan;
  - (vii) Environment and Sustainability Plan; and
  - (viii) any additional component as specified by the Secretary of State in any Request for Business Plan;
  - (ix) the Financial Plan; and
  - (x) the Annual Performance Specifications,

and shall otherwise be in such form as may be specified by the Secretary of State.

##### 1.2 Each Business Plan Component shall include:

- (a) an Outline Business Plan with respect to such Business Plan Component in relation to the relevant Business Plan Period; and
- (b) clearly identified:
  - (i) Business Plan Commitments;
  - (ii) Business Plan KPIs,

together with the Business Plan Approach, in each case with respect to such Business Plan Component.

##### 1.3 The Financial Plan shall include:

- (a) evidence and explanation of the analysis carried out by the Operator (including appropriate benchmarking evidence and identification of efficiencies) to support the content of the CP Budget with respect to the relevant Business Plan Year to which the Business Plan relates;
- (b) a statement from a statutory director of the Operator confirming that the CP Budget has been prepared in accordance with the requirements of the Contract;
- (c) a statement from each of a statutory director of the Operator and a statutory director of DOHL confirming that the CP Budget has been provided to, considered

and endorsed by the board of directors of DOHL and that the board of directors of DOHL is not aware of any other plan which may alter, vary or impact on the Business Plan and shall at any time during the following twelve (12) months notify the Secretary of State should any of them become aware of any such plan;

- (d) **NOT USED**
- (e) **NOT USED**
- (f) **NOT USED**
- (g) details of any new technologies, processes, developments and/or proposals which could improve the provision of the Rail Services, reduce the cost of providing the Rail Services or enable the Rail Services to be provided more efficiently together with confirmation that the implementation of any such new technologies, processes, developments and proposals would comply with all the requirements of this Contract;
- (h) an analysis of the impact of any technologies, processes, developments and/or proposals that are proposed in relation to the Rail Services, including analyses of the costs of and timescale for effecting such changes and the impact on the provision of the Rail Services;
- (i) details of those technologies, processes, developments and/or proposals which the Operator proposes to implement during that Business Plan Year together with confirmation that such technologies, processes, developments and/or proposals will comply with all the requirements of this Contract;
- (j) an analysis of the technologies, processes, developments and/or proposals which the Operator implemented in the previous Business Plan Year, including details of any cost reductions and/or efficiency gains arising from the same and a reconciliation to the annual improvement plan for the previous Business Plan Year;
- (k) A **"Cost Efficiency Analysis"**, including:
  - (i) A year-to-year bridge bar chart analysis showing the trend in costs identifying the differences between:
    - (i) the previous Business Plan Year's Actual Costs; and
    - (ii) the Quarterly Forecast as at the end of the 9th Reporting Period for current Business Plan Year forecast costs; and
    - (iii) the proposed CP Budget for the Business Plan Year for which the Financial Plan applies; and
    - (iv) **NOT USED**
  - (ii) an analysis of each proposed CP Budget for the Business Plan Year for which the Financial Plan applies, explaining the trends in each area by attributing them to:
    - (i) changes in required or business plan outputs;
    - (ii) changes in the efficiency of resource volumes; or
    - (iii) changes in market prices for materials, services and human resources;
    - (iii) benchmarking research and analysis of all key resource volumes of each cost specified in the CP Budget against other relevant

businesses in the UK and overseas, key operational/output metrics. This should not be limited to the other operations of the Operator or its Affiliates, and the Operator should use all reasonable endeavours to gain intelligence on other rail, bus and transit operations to the extent relevant;

- (iv) market testing and research on the prevailing market prices for all key categories of materials, services and human resources to be employed in delivering the Business Plan;
- (v) conclusions on current and potential future cost efficiency, envisaging opportunities arising from emerging innovations, technological advancement and changes to industry practices, as well as seeking to re-optimize cost efficiency where the level of outputs is changed;
- (vi) a strategic plan for maintaining / improving cost efficiency over the long term. This should set out target efficiency trends for the Business Plan Year for which the Financial Plan applies and the following four (4) years and approaches to meeting those targets with evidence that these are realistic and deliverable. It should include a demonstration that the proposed CP Budget is consistent with this plan in terms of progress for the Business Plan Year for which the Financial Plan applies;
- (vii) an explanation of costs included in the CP Budget for planned revenue growth initiatives, as well as benchmarking and other analysis of how these initiatives represent value for money by delivering a positive revenue return, which is reflected in the Forecast Revenue; and
- (viii) **NOT USED**
- (l) **NOT USED**

1.4 **NOT USED**

1.5 **NOT USED**

## 2. **Initial Business Plan**

2.1 Prior to the date of this Contract, the Secretary of State issued a Request for Business Plan to the Operator, and the Parties agreed the Business Plan with respect to the Initial Business Plan Year.

## 3. **Annual Business Plan Process**

3.1 By no later than 30 September falling prior to the commencement of each Subsequent Business Plan Year, the Secretary of State shall provide the Operator with a Request for Business Plan with respect to the applicable Subsequent Business Plan Year.

3.2 In the Request for Business Plan with respect to the Final Full Year, the Secretary of State may instruct the Operator that the duration of the final Subsequent Business Plan Year shall be the Extended Final Year.

3.3 Following the Secretary of State's provision of any Request for Business Plan in accordance with paragraph 3.1 above, such Request for Business Plan may be updated or revised from time to time by agreement between the Parties (each acting in a timely manner) or as directed by the Secretary of State.

3.4 Following receipt of the Request for Business Plan with respect to any Subsequent Business Plan Year, the Operator shall deliver to the Secretary of State a draft Business Plan and

draft versions of the CP Budget in respect of such Subsequent Business Plan Year on or before the 15 December falling prior to the commencement of such Subsequent Business Plan Year, which:

- (a) comply with the requirements of such Request for Business Plan;
- (b) ensure that, by the end of such Subsequent Business Plan Year, the Operator would be in a position to be able to meet the requirements of the Outline Business Plan (as set out in such draft Business Plan); and
- (c) **NOT USED**

3.5 The Parties, each acting through sufficiently senior representatives, shall each use all reasonable endeavours to agree the Business Plan and the CP Budget with respect to each Subsequent Business Plan Year in a timely manner and, in any event, on or before the 28 February falling prior to the commencement of such Subsequent Business Plan Year. During such period, the Operator shall comply, in a timely manner, with any written requests made by the Secretary of State that the Operator:

- (a) provide further detail or evidence in relation to the draft Business Plan and/or draft CP Budget delivered in accordance with paragraph 3.4; and/or
- (b) amend the draft Business Plan and/or draft CP Budget in accordance with the Secretary of State's requirements and provide the amended draft(s) to the Secretary of State.

3.6 **NOT USED**

3.7 To the extent that the Parties do not agree the Business Plan and/or draft CP Budget with respect to any Subsequent Business Plan Year on or before the 28 February falling prior to the commencement of such Subsequent Business Plan Year, the Secretary of State may reasonably determine the content of such Business Plan and/or CP Budget, and provide the Operator with written notice of the determined Business Plan and/or CP Budget. Any Secretary of State determination pursuant to this paragraph 3.7 may be subject to the Dispute Resolution Rules.

3.8 In considering or determining the draft Business Plan or CP Budget, the Secretary of State shall (inter alia) take account of:

- (a) the Operator's obligations to perform the Rail Services in accordance with the provisions of the Contract; and
- (b) the ability of a Good and Efficient Operator to deliver the Business Plan Commitments, having regard to the associated CP Budget with respect to the relevant Business Plan Year.

3.9 Once agreed or determined in accordance with this paragraph 3 (Annual Business Plan Process) of Schedule 8.4 (Business Plan), such Business Plan and CP Budget shall apply in respect of the relevant Subsequent Business Plan Year to which they relate.

#### 4. **Business Plan Commitments**

4.1 In each Business Plan Year, the Operator shall deliver the Business Plan Commitments in accordance with the Business Plan with respect to such Business Plan Year.

4.2 If the Secretary of State considers that the Operator is likely to fail to deliver any Business Plan Commitment, the Secretary of State may give notice to the Operator requiring the Operator to perform or deliver such relevant requirements of the Business Plan Approach as the Secretary of State may determine (to the extent that the Business Plan Approach relates to the performance of the relevant Business Plan Commitment).

4.3 If the Operator fails to perform or deliver any relevant requirement of the Business Plan Approach as the Secretary of State may specify in a notice to the Operator in accordance with paragraph 4.2, this shall constitute a contravention of the Contract.

4.4 Except otherwise agreed by the Parties, any requirement for the Operator to perform or deliver relevant requirements of the Business Plan Approach pursuant to paragraph 4.2 shall not entitle the Operator to any adjustment to the CP Budget.

4.5 **Continuation of Availability**

(a) Where the Operator is obliged pursuant to any Business Plan Commitment for any Business Plan Year to provide, implement or install something (whether a service, facility or otherwise) the Operator shall ensure that once the same is provided, implemented or installed that it continues to be provided and made available (and where relevant, effectively maintained) for the remainder of the Contract Term unless the contrary is instructed by the Secretary of State or expressly stated.

(b) Where the Business Plan Commitments include a commitment:

(i) regarding the maintenance of certain facilities or activities or other similar analogous matters which are the subject of the Business Plan Commitments, the Operator shall not be regarded as having contravened the relevant obligation due to any temporary non-availability of the facility or activity (as the case may be) due to accidental damage or vandalism or maintenance, repair or replacement activities; or

(ii) regarding staffing requirements or particular appointments the Operator is required to make and maintain, the obligation of the Operator shall not be regarded as being contravened by:

(i) temporary absences (for example for sickness or holiday); or

(ii) temporary non-fulfilment of a relevant post whilst the Operator is recruiting for that post,

(iii) providing always that the Operator is using all reasonable endeavours to keep the duration of any (1) non-availability of a facility or activity or (2) vacant or unfulfilled post or appointment (as the case may be) as short as practicable.

4.6 **Expenditure Commitment**

(a) **Annual Expenditure**

Where a Business Plan Commitment provides for the expenditure of an annual amount (or an amount over some other period) by the Operator, that amount:

(i) is assessed net of Value Added Tax; and

(ii) is the amount required to be expended by the Operator itself or procured by the Operator to be expended.

(b) **Expenditure Commitments in nominal amounts**

All Business Plan Commitments related to expenditure shall be expressed in nominal terms with respect to the relevant Business Plan Year in which such Business Plan Commitments are to be delivered.

#### 4.7 **Nature of Business Plan Commitment**

- (a) Any Business Plan Commitment shall be in addition to any obligation of the Operator elsewhere in the Service Contract and nothing in this Schedule 8.4 (Business Plan) or in any Business Plan Commitment shall limit or restrict an obligation imposed on the Operator elsewhere in the Service Contract.
- (b) Save as expressly provided in the relevant Business Plan, each Business Plan Commitment is a separate obligation from any other Business Plan Commitment and satisfaction of or steps taken towards the satisfaction of one Business Plan Commitment will not amount to or contribute towards satisfaction of any other Business Plan Commitment.
- (c) Where in the relevant Business Plan, references are made to particular:
  - (i) manufacturers or suppliers of equipment or services, the Operator may fulfil its relevant commitment by using reasonable equivalents; or
  - (ii) stakeholders, the Operator may fulfil its relevant commitment with reference to successor bodies to the relevant stakeholder.

#### 4.8 **Consequences of Late Completion or Non-Delivery of Business Plan Commitments**

If the Operator fails to deliver in full a Business Plan Commitment in accordance with, and by the timeframe specified for its delivery in, the relevant Business Plan, such late, partial or non-delivery shall constitute a contravention of the Contract.

#### 4.9 **Obligations on Delivery of a Business Plan Commitment**

By no later than thirty (30) days after the date of delivery of a Business Plan Commitment the Operator shall provide to the Secretary of State a certificate (in such form as may be specified by the Secretary of State from time to time) signed by a statutory director of the Operator confirming that such Business Plan Commitment has been delivered in full and in accordance with its terms. Any supporting information as may be requested by the Secretary of State from time to time shall be provided by the Operator as soon as practicable, and in any event within such period as the Secretary of State may specify.

### 5. **Business Plan KPIs**

5.1 In each Business Plan Year, the Operator shall use all reasonable endeavours to achieve the Business Plan KPIs set out in the Business Plan with respect to such Business Plan Year.

#### 5.2 **Business Plan KPI Performance Review**

- (a) The Operator shall report on its performance against the Business Plan KPIs to the Secretary of State in accordance with paragraph 5 (Periodic Update Reports) of Schedule 11.1 (Organisation and Management).
- (b) At each Contract Performance Meeting during each Business Plan Year, the Secretary of State and the Operator shall discuss the Operator's performance against the Business Plan KPIs set out in the Business Plan with respect to such Business Plan Year.
- (c) If the Operator has failed (or the Secretary of State considers that the Operator is likely to fail) to meet any relevant target for any Business Plan KPI then the Secretary of State shall notify the Operator of such failure and shall be entitled to:
  - (i) request from the Operator a Business Plan KPI Improvement Plan in order to enable the Operator to meet such Business Plan KPIs; and/or

- (ii) require that the Operator performs or delivers any relevant requirements of the Business Plan Approach as the Secretary of State may determine (to the extent that the Business Plan Approach relates to the performance of the relevant Business Plan KPI), during such time as the plan referred to under paragraph 5.2(c)(i) is developed and implemented, and/or for the remainder of the Business Plan Year. Except as otherwise agreed by the Parties, any such requirement for the Operator to perform or deliver relevant requirements of the Business Plan Approach shall not entitle the Operator to any adjustment to the CP Budget.

### 5.3 **Business Plan KPI Improvement Plan**

As soon as practicable following receipt of the Secretary of State's request pursuant to paragraph 5.2(c)(i) (or within such longer period as may be agreed by the Secretary of State), the Operator shall prepare and deliver to the Secretary of State its draft improvement plan for meeting the Business Plan KPIs which shall:

- (a) contain specific tangible action points and indicate in the case of each action point:
  - (i) how that action will contribute to meeting the relevant Business Plan KPI;
  - (ii) where the action is to be implemented;
  - (iii) the proposed timescales for implementing such action and, where any action is expressed to be ongoing, proposed review dates; and
  - (iv) how the Operator proposes to measure the performance of the action; and
- (b) the additional expenditure associated with each action.

5.4 The Parties shall seek to agree the draft improvement plan for meeting the Business Plan KPIs as soon as practicable. In the event that the Parties are unable to agree such draft improvement plan by such time as the Secretary of State may require, the Secretary of State shall be entitled to determine the content of the draft improvement plan.

5.5 The draft improvement plan as agreed or determined by the Secretary of State (as the case may be) in accordance with paragraph 5.4 shall be referred to as the "**Business Plan KPI Improvement Plan**". The Operator shall implement the Business Plan KPI Improvement Plan in accordance with its terms and the agreement or determination of the Business Plan KPI Improvement Plan shall result in a change to the CP Budget provided that any other action point that would require the Operator to perform or deliver relevant requirements of the Business Plan Approach shall not, unless otherwise agreed by the Parties, entitle the Operator to any adjustment to the CP Budget.

## 6. **Business Plan Revisions**

### 6.1

- (a) in each Quarter, the Parties shall seek to agree (each acting in a timely manner) any revisions to the then current Business Plan as may be necessary in order to properly reflect the impact of any changes to the CP Budget;
- (b) **NOT USED**
- (c) **NOT USED**
- (d) either Party may from time to time propose, by notice to the other Party, that revisions may be made to the then current Business Plan,



and in each case, revisions to the then current Business Plan may be agreed between the Parties or determined at the Secretary of State's discretion (and any such determination may be subject to the Dispute Resolution Rules), provided that (to the extent practicable) the Secretary of State shall act reasonably and shall not make such a determination without first consulting with, and taking due regard of any views of, the Operator, any such revision being a "Business Plan Revision" for the purposes of this Contract.

6.2 The Operator's performance and progress against the Business Plan will be reviewed in particular at each Contract Performance Meeting and in each Quarter. In each Quarter, the Operator shall:

- (a) provide an updated version of the Quarterly Forecast for the then current Business Plan Year which would not automatically override any CP Budget;
- (b) set out the progress it has made against its obligations under this Contract, Business Plan Commitments and Business Plan KPIs; and
- (c) outline any material deviations from the Business Plan Approach.

## 7. Industry Change Projects

7.1 Without prejudice to paragraph 3 (Annual Business Plan Process) of this Schedule 8.4, the Operator may give notice to the Secretary of State from time to time of any proposed Industry Change Project.

7.2 Following receipt of any proposal of an Industry Change Project by the Operator, the Secretary of State shall notify the Operator whether (in the Secretary of State's discretion):

- (a) the Secretary of State wishes the parties to seek to agree the terms of such Industry Change Project pursuant to paragraph 7.3 below;
- (b) the Secretary of State wishes the Operator to amend its proposal with respect to such Industry Change Project, and/or provide further information as the Secretary of State may request in relation to such Industry Change Project (and following the submission of any such amended Industry Change Project proposal and/or additional information, the Secretary of State shall notify the Operator whether (in the Secretary of State's discretion) the Secretary of State is then minded to apply limb (a), (b) or (c) of this paragraph 7.2 in relation to such Industry Change Project); or
- (c) the Secretary of State does not wish to proceed with such Industry Change Project.

7.3 Following any notification from the Secretary of State to the Operator pursuant to paragraph 7.2(a) above, the Parties shall each act in a timely manner to seek to agree the terms of such Industry Change Project, such that the Operator is enabled to deliver such Industry Change Project under this Contract.

## 8. Conflicts between the Service Contract and the Business Plan

8.1 In the event of any conflict between the Service Contract and any Business Plan Commitment or other element of the Operator's then current Business Plan:

- (a) each Party shall notify the other promptly on becoming aware of any such conflict; and
- (b) subject to paragraph 8.2 below, the provisions of the Service Contract shall prevail.

8.2 If at any time there is a conflict between the Service Contract and any Business Plan Commitment or other element of the Operator's then current Business Plan, the Parties

may agree or the Secretary of State may give notice to vary this Contract in accordance with the provisions of Clause 17 (Variations).

## 9. **Business Plan Intellectual Property Rights**

### **Ownership of Business Plan IP**

9.1 Nothing in this Contract shall transfer or assign any title, interest of either the Operator or the Secretary of State in any Background IP comprised, described or subsisting in, or incorporated into, any draft Business Plan or preparatory materials relating to any Business Plan or any Business Plan Component ("**BP Background**").

9.2A As between the Parties, the Operator shall own any Foreground IP created or developed by or on behalf of the Operator comprised, described or subsisting in, or incorporated into, any draft Business Plan or preparatory materials relating to any Business Plan or any Business Plan Component ("**BP Foreground**"), and such BP Foreground will immediately vest in the Operator.

9.2B Neither BP Background nor BP Foreground shall encompass Intellectual Property Rights in individual physical items or specific items of software that may be mentioned or referred to in any draft Business Plan or preparatory materials relating to any Business Plan or any Business Plan Component.

### **Cross-licensing of Business Plan IP**

9.2 Subject to paragraph 9.5 below, the Secretary of State hereby grants (or shall procure the grant of) to the Operator:

(a) a non-exclusive, sub-licensable, royalty-free, paid-up, licence to use, copy, maintain and modify the Secretary of State's BP Background during the Contract Period to the extent necessary and for the purposes of: (i) the performance of the Rail Services under this Contract; and/or (ii) implementing, amending or modifying any Business Plan; and

(b) a non-exclusive, perpetual, sub-licensable, royalty-free, paid-up, licence to use and copy the Secretary of State's BP Background for any purpose, but only to the extent that such BP Background is incorporated into or necessary for the use of BP Foreground.

9.3 Subject to paragraph 9.5 below, the Operator hereby grants to the Secretary of State a non-exclusive, perpetual, irrevocable, royalty-free, paid-up licence to use, copy, maintain and modify the Operator's BP Background and the BP Foreground for any purpose related to the provision of rail services on the United Kingdom heavy rail network.

9.4 Prior to any disclosure of any confidential BP Background belonging to the other Party or any confidential BP Foreground to a third party pursuant to any sub-licence permitted under paragraph 9.3 or 9.4 above, the disclosing Party shall ensure that such third party is bound by obligations of confidentiality no less onerous than those contained in this Contract, including relevant obligations set out in Schedule 17 (Confidentiality and Data Protection). Notwithstanding the foregoing provisions of this paragraph 9.5, the Operator shall not disclose any commercially sensitive information to any third party without the prior written consent of the Secretary of State.

## 10. **Industry Change Projects Intellectual Property Rights**

### **Ownership of Industry Change Project IP**

10.1 Nothing in this Contract shall transfer or assign any title, interest of either the Operator or the Secretary of State in any Background IP used or incorporated in, provided to, or introduced into any Industry Change Project ("**ICP Background**").

- 10.2 As between the Parties, the Operator shall own any Foreground IP created or devised by or on behalf of the Operator for the purposes of, or in the course of undertaking any services relating to, or for the planning or implementation of, any Industry Change Project (including any preparatory design work) ("**ICP Foreground**"), and such ICP Foreground will immediately vest in the Operator.

***Cross-licensing of Industry Change Project IP***

- 10.3 Subject to paragraph 10.5 below, the Secretary of State hereby grants (or shall procure the grant of) to the Operator:

- (a) a non-exclusive, sub-licensable, royalty free, paid-up licence to use, copy, maintain and modify the Secretary of State's ICP Background during the Contract Period to the extent necessary and for the sole purpose of undertaking any aspect of an Industry Change Project; and
- (b) a non-exclusive, perpetual, sub-licensable, royalty free, paid-up licence to use and copy the Secretary of State's ICP Background for any purpose, but only to the extent that such ICP Background is incorporated into or necessary for the use of ICP Foreground.

- 10.4 Subject to paragraphs 10.5 and 10.6 below, the Operator hereby grants (or shall procure the grant of) to the Secretary of State a non-exclusive, perpetual, sub-licensable, royalty-free, paid-up licence to use, copy, maintain and modify the ICP Background belonging to the Operator and the ICP Foreground in connection with any heavy rail services in the United Kingdom.

- 10.5 In the case of any third party Background IP that is embedded in, or is an integral part and/or required for the use of any ICP Foreground IP ("**Embedded ICP Background**"), the Operator shall use all reasonable efforts to procure for the Secretary of State a non-exclusive, perpetual, royalty-free, paid-up, licence to use and copy such Embedded ICP Background for any purpose related to the provision of rail services on the United Kingdom heavy rail network, with the right to grant sub-licences to any Successor Operator. Where, having used all reasonable efforts to procure the foregoing licence, the Operator has been unable to do so, and where the Operator intends to proceed with the use of the applicable Embedded ICP Background in relation to the provision of rail services, it shall notify the Secretary of State in writing, providing brief details of: (i) the applicable Embedded ICP Background and the ICP Foreground to which it relates; (ii) the third party owner or licensor of such Embedded ICP Background; and (iii) the terms on which the Operator proposes to licence the Embedded ICP Background from the applicable owner or third party licensor. The Operator may not proceed with the use of such third party Embedded ICP Background IP unless the Secretary of State Approves.

- 10.6 Prior to any disclosure of any confidential ICP Background of the other Party or any confidential ICP Foreground to a third party pursuant to any sub-licence permitted under paragraph 10.3(b) or 10.4 above, the disclosing Party shall ensure that such third party recipient is bound by obligations of confidentiality no less onerous than those contained in this Contract, including relevant obligations set out in Schedule 17 (Confidentiality and Data Protection). Notwithstanding the foregoing provisions of this paragraph 10.5, the Operator shall not disclose any commercially sensitive information to any third party without the prior written consent of the Secretary of State.

**11. Access to IP Materials and Resources**

- 11.1 The Operator shall upon the request of the Secretary of State provide access to or copies of all such materials and resources as the Secretary of State requires:

- (a) for the purpose of utilising any results, deliverables, facilities, or any other matter resulting from the Industry Change Project; and/or
- (b) in connection with any heavy rail services in the United Kingdom,

including provision of copies of software source code and electronic and hard copies of documentation. Upon expiry of the Contract Period, the Operator shall make available any such materials in static form that is not dependent upon access to any systems provided to or via the Operator.

## 12. **Extended Term Contracts and Extended Term Designatable Contracts**

12.1 The provisions of this paragraph 12 shall:

(a) **NOT USED**

(b) not apply in respect of:

(i) Rolling Stock Related Contracts, Access Agreements, Property Leases; and

(ii) any other contracts, licences and arrangements in relation to which the Secretary of State has expressly agreed that this paragraph 12 will not apply.

12.2 The Parties agree and acknowledge that where a Business Plan includes:

(a) details of the proposed Business Plan Approach for Subsequent Business Plan Years, any actual implementation and delivery of that approach will be dependent upon the Secretary of State (in the Secretary of State's discretion) deciding to agree such implementation and delivery and related funding as part of the Business Plan for each of the relevant Subsequent Business Plan Years so referred to in the Business Plan Approach; and

(b) Business Plan Commitments that are to continue for Subsequent Business Plan Years, any actual implementation and delivery of that Business Plan Commitment will be dependent upon the Secretary of State (in the Secretary of State's discretion) deciding to agree such implementation and delivery and related funding as part of the Business Plan for each of the relevant Subsequent Business Plan Years to which the continuation of that Business Plan Commitment relates.

12.3 At the end of each Quarter, the Operator shall provide to the Secretary of State a report listing:

(a) each contract entered into by the Operator during the relevant Quarter which:

(i) the Operator requires to deliver any Business Plan Commitment; and

(ii) has a term extending beyond the then current Business Plan Year,

(each an "**Extended Term Contract**");

(b) the purpose and scheduled expiry date of each relevant Extended Term Contract; and

(c) the potential breakage and termination costs which would be incurred in respect of each relevant Extended Term Contract if the relevant Extended Term Contract were terminated by the Operator prior to the end of its term.

12.4 The Operator shall not, without the prior consent (or Approval, if so required in accordance with the terms of this Contract in relation to the subject matter and/or effect of the relevant contract) of the Secretary of State, enter into any contract which:

(a) the Operator requires for the performance of or compliance with its obligations under this Contract, including to deliver any Business Plan Commitment;

- (b) has a term extending beyond the Expiry Date (or such later date as notified by the Secretary of State); and
- (c) does not provide a right for the Operator to terminate the relevant contract on three (3) months' notice (or less) on or after the Expiry Date (or such later date as notified by the Secretary of State) without the Operator incurring breakage or termination costs,

(an "**Extended Term Designatable Contract**").

12.5 The Operator shall provide to the Secretary of State:

- (a) by no later than the Start Date, a report listing all of the Extended Term Designatable Contracts to which the Operator is a party and which the Secretary of State has Approved or consented to (as applicable), together with details of the Operator's novation rights contained within each Extended Term Designatable Contract; and
- (b) on or before each anniversary of the Start Date, an updated version of the report provided pursuant to paragraph 12.5(a),

unless otherwise directed by the Secretary of State.

12.6 When seeking the Secretary of State's Approval or consent (as applicable) in respect of any Extended Term Designatable Contract, the Operator shall specify (i) the preferred term of each relevant contract; (ii) why it believes that such term is optimal by reference to all relevant factors including contract terms, costs and value for money considerations; (iii) potential breakage and termination costs if any such contract was to be terminated by the Operator prior to the end of the proposed term; and (iv) details of the Operator's novation rights which are anticipated to be contained within each relevant contract. If relevant, the Operator shall also provide by way of comparator details of the contracts that it could obtain for the same outputs terminating as the case may be at the end of the Expiry Date (or such later date as notified by the Secretary of State) or on no more than three (3) months' notice thereafter.

12.7 In developing the scope and content of any: (i) proposed Business Plan Commitments set out in a draft Business Plan (pursuant to paragraph 3 (Annual Business Plan Process) of Schedule 8.4 (Business Plan)), or (ii) any proposed revisions to Business Plan Commitments resulting from proposed Business Plan Revisions (in either case a "Proposed Business Plan Commitment"), the Operator shall also provide details to the Secretary of State of any Extended Term Designatable Contract that the Operator considers it will reasonably need to enter into in order to deliver a Proposed Business Plan Commitment, unless otherwise directed by the Secretary of State.

12.8 Notwithstanding Schedule 11.3 (Approval Process), following receipt of the information provided by the Operator pursuant to paragraph 12.6 above and paragraph 12.7 above (if applicable), the Secretary of State shall be entitled to:

- (a) Approve or consent to (as applicable) the contracting approach proposed by the Operator with respect to such Extended Term Designatable Contract and confirm that the Secretary of State Approves or consents to (as applicable) the Operator entering into the relevant Extended Term Designatable Contract subject to the Secretary of State's Approval or consent of the terms of that contract; and
- (b) reject the requirement for an Extended Term Designatable Contract and instead specify those terms that the Secretary of State requires to be included in the relevant contract, including provisions allowing for that contract to expire or terminate, without any termination liabilities or breakage costs accruing. Prior to the Operator entering into any such contract on those terms as specified by the Secretary of State, the Secretary of State shall be entitled to review and propose amendments to or Approve or consent to (as applicable) the relevant contract.

- 12.9 The Operator shall, in negotiating the terms of any Extended Term Contract, Extended Term Designatable Contract or contract referred to in paragraph 12.8(b), acting as a Good and Efficient Operator achieve the most commercially advantageous terms to the Operator (in the context of the position of the Secretary of State under this Contract) and if requested by the Secretary of State, use all reasonable endeavours to obtain terms to a specification requested by the Secretary of State.
- 12.10 In relation to any Extended Term Contract where a Business Plan Commitment extends into Subsequent Business Plan Years and that Business Plan Commitment is not included in any relevant Subsequent Business Plan Year, then the CP Budget for that Subsequent Business Plan Year will include any such breakage costs and redundancy costs as contained in the relevant Extended Term Contract provided that:
- (a) the Operator has used all reasonable endeavours to minimise and mitigate such costs to the maximum extent reasonably practicable; and
  - (b) if the relevant Extended Term Contract is also an Extended Term Designatable Contract, the Secretary of State has Approved or consented to (as applicable) the relevant Extended Term Designatable Contract applicable to that Business Plan Commitment in accordance with paragraph 12.8(a).
- 12.11 If the Operator is, at the date of this Contract, a party to a contract which meets the conditions set out in paragraph 12.4(a) to (c) above, the Parties agree that such contracts shall:
- (a) constitute an Extended Term Designatable Contract for the purpose of this Contract; and
  - (b) be deemed to be Approved pursuant to paragraph 3 (Deemed Approval) of Schedule 11.3 (Approval Process) on the date of this Contract,

provided that the Operator shall, within such timescales as may be specified by Secretary of State, use all reasonable endeavours to vary or replace the relevant contract so as to incorporate a right for the Operator to terminate the relevant contract on three (3) months' notice (or less) on or after the Expiry Date (or such later date as notified by the Secretary of State) without the Operator incurring breakage or termination costs.

**SCHEDULE 9**

**NOT USED**

NOT USED

## **SCHEDULE 10**

### **REMEDIES, EVENTS OF DEFAULT AND TERMINATION EVENTS**

Schedule 10.1:	NOT USED
Schedule 10.2:	NOT USED
Schedule 10.3:	Force Majeure and Business Continuity
Schedule 10.4:	NOT USED



**Schedule 10.1**

**NOT USED.**

**Schedule 10.2**

**NOT USED.**

### Schedule 10.3

#### Force Majeure and Business Continuity

##### 1. Definition of Force Majeure Events

The following events shall constitute "Force Majeure Events", subject to the conditions specified in paragraph 2 being satisfied:

- (a) The Operator or any of its agents or subcontractors is prevented or restricted by Network Rail (including by virtue of the implementation of any Contingency Plan) from gaining access to any section or part of track (including any track running into, through or out of a station). For the purposes of this paragraph 1:
  - (i) references to a party being prevented or restricted from gaining access to any section or part of track shall mean that such party is not permitted to operate any trains on the relevant section or part of track, or is only permitted to operate a reduced number of trains from that which it was scheduled to operate;
  - (ii) the period of such prevention or restriction shall be deemed to commence with effect from the first occasion on which the Operator is prevented or restricted from operating a train on such section or part of track;
  - (iii) references in paragraphs 1(a)(i) and 1 (a)(ii) to the operation of trains include scheduled empty rolling stock vehicle movements; and
  - (iv) **"Contingency Plan"** means a contingency plan (as defined in the Railway Operational Code or where the Railway Operational Code ceases to exist such other replacement document of a similar or equivalent nature which contains a definition of contingency plan similar to that contained in the Railway Operational Code) implemented by and at the instigation of Network Rail, or such other contingency or recovery plan as the Secretary of State may agree from time to time;
- (b) The Operator or any of its agents or subcontractors is prevented or restricted by Network Rail or any Facility Owner (other than a Facility Owner which is an Affiliate of the Operator) from entering or leaving:
  - (i) any station or part thereof (excluding any prevention or restriction from gaining access to any section or part of track running into, through or out of a station); or
  - (ii) any depot or part thereof (including the movement of trains on tracks within any depot but excluding any prevention or restriction from gaining access to any track outside such depot running into or out of that depot);
- (c) any of the following events occurs:
  - (i) a programme of Mandatory Modifications commences;
  - (ii) any Rolling Stock Units are damaged by fire, vandalism, sabotage or a collision and are beyond repair or beyond economic repair; or
  - (iii) a government authority prevents the operation of Rolling Stock Units on the grounds of safety,

and, in each case, the greater of two (2) Rolling Stock Units and ten (10) per cent of all rolling stock vehicles used by the Operator in the provision of the Passenger Services in relation to any Service Group are unavailable for use in the provision of the Passenger Services as a result of the occurrence of such event.

For the purposes of this paragraph 1(c), **"Rolling Stock Units"** means the smallest number of rolling stock vehicles which are normally comprised in a train used by the Operator in the provision of the Passenger Services;

- (d) The Operator prevents or restricts the operation of any train on safety grounds provided that:
- (i) the Operator 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 Operator or its agents or subcontractors being prevented or restricted by Network Rail from gaining access to any relevant section or part of track; and
- (f) any strike or other Industrial Action by any or all of the employees of the Operator or any or all of the employees of:
- (i) Network Rail;
  - (ii) the operator of any other railway facility; or
  - (iii) any person with whom the Operator 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 Operator in the provision of the Rail Services,

or of the agents or sub-contractors of any such person listed in paragraphs 1(f)(i) to 1(f)(iii).

## 2. Conditions to Force Majeure Events

2.1 The occurrence, and continuing existence of a Force Majeure Event shall be subject to satisfaction of the following conditions:

- (a) in relation to an event occurring under paragraph 1(a), that event has continued for more than twelve (12) consecutive hours;
- (b) the Operator notifies the Secretary of State within two (2) Weekdays of it becoming aware or, if circumstances dictate, as soon as reasonably practicable thereafter, of:
  - (i) the occurrence or likely occurrence of the relevant event; and
  - (ii) the effect or the anticipated effect of such event on the Operator's performance of the Passenger Services;
- (c) at the same time as the Operator 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 Operator 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;
  - (i) the relevant event did not occur as a result of:
  - (ii) any act or omission to act by the Operator or its agents or subcontractors, save that in respect of the occurrence of Industrial Action in accordance with paragraph 1(f), the provisions of paragraph 2.2 apply; or
- (d) the Operator's own contravention of, or default under, this Contract, any Access Agreement, Rolling Stock Related Contract, Property Lease or any other agreement;
- (e) the Operator 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 Operator shall, to the extent reasonably so requested by the Secretary of State, exercise its rights and remedies under any relevant agreement to prevent the occurrence or recurrence of any such event and to obtain appropriate redress and/or compensation from any relevant person.

2.2 Where:

- (a) Industrial Action in accordance with paragraph 1(f) occurs as a result of an act or omission to act by the Operator or its agents or subcontractors;
  - (b) the Secretary of State reasonably believes that it was reasonable for the Operator, its agents or subcontractors (as the case may be) so to act or omit to act; and
  - (c) the other conditions specified in paragraph 2.1 have been satisfied,
- such occurrence shall be a Force Majeure Event.

**3. Consequences of Force Majeure Events**

3.1 The Operator shall not be responsible for any failure to perform any of its obligations under this Contract, nor shall there be any contravention of this Contract if and to the extent that such failure is caused by any Force Majeure Event.

3.2 Without prejudice to the Secretary of State's other rights under this Contract, if any Force Majeure Event continues, with the effect of preventing the Operator from delivering, wholly or mainly, the Passenger Services for more than six (6) consecutive months, the Secretary of State shall be entitled to immediately terminate this Contract.

**4. Business Continuity****4.1 NOT USED****4.1A Obligation to Maintain the BCP**

(a) The Operator 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.

(b) The Operator shall update the Business Continuity Plan at least once during each Contract Year.

the Operator will, on request, provide a copy of the Business Continuity 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.

**4.2 No Relief under Force Majeure**

(a) Nothing in paragraph 3 (Consequences of Force Majeure Events) will relieve the Operator from its obligations under this Contract to create, implement and operate the Business Continuity Plan.

(b) If a Force Majeure Event affecting the Operator occurs which is an event or circumstance that is within the scope of the Business Continuity Plan, then paragraph 3.1 will only apply to that Force Majeure Event to the extent that the impacts of that Force Majeure Event would have arisen even if:

(i) the Operator had complied with this paragraph 4; and

(ii) the Business Continuity Plan had been fully and properly implemented and operated in accordance with this paragraph 4 and the terms of the Business Continuity Plan in respect of that Force Majeure Event.

**Schedule 10.4**

**NOT USED**

## **SCHEDULE 11**

### **LEADERSHIP AND MANAGEMENT**

- Schedule 11.1: Organisation and Management
- Schedule 11.2: Strategies and Plans
- Schedule 11.3: Approval Process



**Schedule 11.1****Organisation and Management****1. Corporate Information**

1.1 The Operator shall provide the following information to the Secretary of State no later than the Start Date and shall notify the Secretary of State of any change to such information within twenty one (21) days of such change:

- (a) its name;
- (b) its business address and registered office;
- (c) its directors and company secretary;
- (d) its auditors;
- (e) its trading name or names; and
- (f) not used.

1.2 The Operator 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).

1.3 The Operator shall provide the Secretary of State any information the Secretary of State may reasonably require for the purpose of complying with its obligations under Article 4.7, Chapter 4 of Title XI of Part Two of the Trade and Cooperation Agreement.

**2. NOT USED****3. Maintenance of Records**

3.1 The Operator shall at all times create and maintain true, up to date and complete records, books and other materials relating to the:

- (a) operation and maintenance of Rail Assets;
- (b) operation of the Rail Services; and
- (c) financial performance of the Rail Services,

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

3.2 Unless otherwise agreed by the Secretary of State, all records, books and materials required to be maintained by the Operator in accordance with this Contract, shall be held in a form that is capable of audit for a period of not less than six (6) years following the Expiry Date or the date of any earlier termination of this Contract.

3.3 References to records, books and materials in this Schedule 11.1 shall include records, books and materials maintained under any Previous Agreement to the extent that such records relate to services equivalent to the Rail Services and the Operator has access to them (which it shall use all reasonable endeavours to secure). Notwithstanding the requirements of paragraphs 3.2 and 3.4, the Operator shall only be required to hold such

records, books and materials created under any Previous Agreement for a period of six (6) years following the date of this Contract.

- 3.4 Without prejudice to the reporting obligations of the Operator under the Previous Agreement and for the purposes of this paragraph 3 only, the Operator shall not be responsible for any records, books or materials maintained under any Previous Agreement, as referred to in paragraph 3.3, being true, complete and up to date. As soon as practicable after becoming aware that any such records, books or materials are not true, complete and up to date, the Operator shall use all reasonable endeavours to remedy any such deficiency, and shall thereafter maintain such records, books or materials in accordance with paragraph 3.1.

#### 4. **Right to Inspect**

- 4.1 The Operator shall, if requested by the Secretary of State, allow the Secretary of State and the Secretary of State's representatives and advisers:

- (a) to inspect and copy any records referred to in this Schedule 11 (Leadership and Management), Schedule 1 (Rail Services), Schedule 2 (Assets, Leases, Third Parties, Other Franchise Operations and Schemes), Schedule 8 (Payments), Schedule 14 (Preservation of Assets) or Schedule 15 (Obligations Associated with Termination) and the Secretary of State may verify any such records; and/or
- (b) to inspect and copy at any reasonable time any books, records and any other material kept by or on behalf of the Operator and/or its auditors and any assets (including the Assets) used by the Operator in connection with the Rail Services.

- 4.2 The Operator shall make available to the Secretary of State, the Secretary of State's representatives and advisers the information referred to in paragraph 4.1 and grant or procure the grant of such access (including to or from third parties) as the Secretary of State, the Secretary of State's representatives and advisers shall reasonably require in connection therewith. The obligation of the Operator under this paragraph 4.2 shall include an obligation on the Operator to grant or procure the grant of such access to premises (including third party premises) where the information referred to in paragraph 4.1 is kept by or on behalf of the Operator.

- 4.3 The Secretary of State, the Secretary of State's representatives and advisers shall be permitted to take photographs, film or make a video recording, or make any other kind of record of any such inspection.

#### 4.4 **NOT USED**

#### 5. **Periodic Update Reports**

- 5.1 The Operator shall prepare and submit to the Secretary of State, a periodic report in each Reporting Period, not later than five (5) days prior to each Contract Performance Meeting held in accordance with paragraph 8 (Contract Performance Meetings), which shall:

- (a) contain updates on the Operator's progress in complying with its Business Plan Commitments, the Operator's performance against its Business Plan KPIs and the Operator's compliance with its other obligations under this Contract, together with any other information as the Secretary of State may specify from time to time;
- (b) relate to the previous Reporting Period, unless another period is reasonably required by the Secretary of State; and
- (c) be disaggregated to the extent required by the Secretary of State.

- 5.2 Where, as part of the periodic report referred to in paragraph 5.1, the Secretary of State requires the Operator to provide information and/or details in addition to those required

pursuant to paragraph 5.1, the Operator shall ensure that the periodic report includes such additional information and/or details subject to the Operator having received at least twenty eight (28) days' notice of the additional information and/or details required by the Secretary of State.

5.3 **NOT USED**

6. **Contract Management System**

6.1 The Operator shall, no later than the Start Date and thereafter throughout the Contract Term:

- (a) use the contract management system which the Secretary of State uses to manage the delivery of the obligations under the Service Contract; and
- (b) use the contract management system to administer any variations to the Service Contract after the Start Date.

7. **Identification of Key Personnel and Provision of Organisation Chart**

7.1 The Operator shall identify and provide to the Secretary of State a schedule of Key Personnel who shall be employed by the Operator in the performance of the Service Contract. 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 Rail Services;
- (b) a train service delivery director, whose role will include responsibility for ensuring compliance by the Operator with Schedule 7.1 (Operational Performance);
- (c) a safety director, whose role will include responsibility for ensuring that the Operator complies with its legal obligations in relation to the Rail Services including the Safety Certificate; and
- (d) a finance director, whose role will include responsibility in relation to the CP Budget, the Annual Audited Accounts and the provision of other financial data to Secretary of State.

7.2 The Operator shall nominate a board level director of the Operator (or at the Secretary of State's discretion, a board level director of DOHL or any appropriate Affiliate) within fourteen (14) Weekdays of the Start Date. Such board level director's responsibilities shall include overseeing, at a strategic level, the Operator's interface with the Secretary of State in relation to sections 119 to 121 (inclusive) of the Act and co-ordinating relevant activities and delivery of counter terrorist security on behalf of the Operator and in connection with the Operator's compliance with relevant instructions issued by the Secretary of State under section 119 of the Act from time to time. Such board level director shall be identified by job title in the organisation chart referred to in Section 7 and shall be deemed part of the Key Personnel.

7.3 On or before the Start Date the Operator shall provide to the Secretary of State the schedule of Key Personnel and the organisation chart detailing the responsibilities and reporting lines of each of the Key Personnel and shall update such schedule and organisation chart (and provide copies to the Secretary of State promptly thereafter) as and when any changes occur.

8. **Contract Performance Meetings**

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

- 8.2 The Operator shall ensure that:
- (a) the representatives of the Operator at a Contract Performance Meeting shall include such directors and/or senior managers of the Operator as the Secretary of State may require; and
  - (b) representatives of DOHL (which shall include such directors and/or senior managers of DOHL as the Secretary of State may require) attend a Contract Performance Meeting at least once every quarter.
- 8.3 The Operator shall prepare and present such reports to each Contract Performance Meeting as the Secretary of State may reasonably request. The Operator's obligations under this paragraph 8.3 are subject to the Operator receiving at least twenty eight (28) days' notice of the requirement to prepare and present any such report.
- 8.4 No comment or failure to comment nor any agreement or approval, implicit or explicit by either Party at a Contract Performance Meeting will relieve a party of its obligations, constitute a waiver of an obligation or otherwise vary the terms of the Service Contract.

## Schedule 11.2

### Strategies and Plans

#### 1. Small and Medium-sized Enterprises

1.1 The Operator shall at all times keep accurate and complete records of its use of and interaction with SMEs and VCSEs in delivering the Rail Services.

1.2 By no later than 30 April in each year (and within one (1) month of the end of the Contract Period) the Operator shall deliver to the Secretary of State:

- (a) a breakdown of the number of SMEs and VCSEs used by the Operator in providing the Rail Services;
- (b) the total value of expenditure on all subcontracts; and
- (c) the value of expenditure on (i) SMEs and (ii) VCSEs (as proportions of the figure referred to in paragraph 1.2(b) above),

during the Contract Year (or part thereof) which ended on the immediately preceding 31 March or at the end of the Contract Period (as applicable).

#### 2. Business Continuity Plan

2.1 Within one (1) month following the Start Date the Operator shall produce and provide to the Secretary of State a written Business Continuity Plan in respect of the Rail Services and the people, facilities and assets used to provide them which is consistent with the requirements of ISO 22301:2012.

2.2 Within one (1) month of the end of each Contract Year the Operator shall provide to the Secretary of State a certificate addressed to the Secretary of State and signed by a statutory director of the Operator confirming that the Business Continuity Plan is consistent with the requirements of the ISO 22301:2012.

#### 3. Suicide Prevention Plan

3.1 The Operator shall review and update the Suicide Prevention Plan:

- (a) immediately following any amendment to, or replacement of, the Suicide Prevention Strategy and/or the Suicide Prevention Duty Holders' Group's 9 Point Plan; and
- (b) as requested by the Secretary of State or the British Transport Police from time to time.

Any such review and any updating shall be by reference to changing circumstances, new relevant information and any amended or replaced Suicide Prevention Strategy and/or the Suicide Prevention Duty Holders' Group's 9 Point Plan with the intention that it is kept as up to date and effective as practicable. The Operator shall consult with the British Transport Police and wider cross-industry suicide prevention group (as appropriate) in relation to any such review and update of the Suicide Prevention Plan. The Operator shall deliver a copy of any revised and/or updated Suicide Prevention Plan to the Secretary of State as soon as is practicable together with written confirmation from the British Transport Police that the Plan complies with the requirements of the Suicide Prevention Strategy and the Suicide Prevention Duty Holders' Group's 9 Point Plan and accordingly remains approved by it.

3.2 The Operator shall implement the Suicide Prevention Plan as it may be revised and/or updated pursuant to paragraph 3.1 in accordance with its then prevailing provisions.

#### 4. **Safeguarding Strategy**

- 4.1 The Operator shall review and, as necessary, update the Safeguarding Strategy:
- (a) within one (1) month following the publication of any amendment to, or replacement of the Safeguarding on Rail Scheme; and
  - (b) as requested by the Secretary of State.
- 4.2 Any review and necessary updates to the Safeguarding Strategy in accordance with paragraph 4.1 shall take into account any changes to, or replacement of the Safeguarding on Rail Scheme and any other relevant circumstances that would reasonably be considered to impact the objectives contained in the Safeguarding on Rail Scheme and shall ensure that the Safeguarding Strategy remains up-to-date and appropriate for delivering the objectives contained in the Safeguarding on Rail Scheme.
- 4.3 The Operator shall undertake any review and necessary updates to the Safeguarding Strategy in accordance with paragraph 4.1 in consultation with the British Transport Police and such other relevant groups as the Operator and/or the British Transport Police consider appropriate. The Operator shall submit such updated Safeguarding Strategy to the British Transport Police within one (1) month of such review for its approval that the Safeguarding Strategy complies with the requirements of the Safeguarding on Rail Scheme and the Operator shall take into account any comments or amendments proposed by:
- (a) the British Transport Police; and
  - (b) such other relevant groups as the Operator and/or the British Transport Police consider appropriate,

as are required to ensure that the Safeguarding Strategy remains up-to-date and appropriate for delivering the objectives contained in the Safeguarding on Rail Scheme.

- 4.4 The Operator shall deliver a copy of any updated Safeguarding Strategy to the Secretary of State together with written confirmation of the approval issued by the British Transport Police as soon as practicable following such approval.
- 4.5 The Operator shall implement the approved Safeguarding Strategy as it may be revised and/or updated pursuant to this paragraph 4 from time to time.
- 4.6 The Operator shall, as soon as practicable, obtain and thereafter maintain for the duration of the Contract Period, the Safeguarding on Rail Scheme accreditation standard, provided that if at any time the Operator receives a "working towards accreditation" award, the Operator shall achieve the full accreditation standard as soon as practicable.

#### 5. **Incident Response Plan**

- 5.1 By no later than six (6) months following the Start Date the Operator shall prepare and provide to the Secretary of State for Approval the Incident Response Plan.
- 5.2 The Incident Response Plan shall:
- (a) detail how the Operator would respond to an incident or emergency (including cyber security incidents); and
  - (b) reflect the RDG Guidance on Emergency Planning, Knowledge, Understanding and Responsibilities,

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

- 5.3 Where the Secretary of State does not Approve the draft Incident Response Plan submitted to it, the Operator shall make:
- (a) such amendments to it as the Secretary of State shall direct; and
  - (b) provide such additional information as the Secretary of State may require.

- 5.4 From the date of Approval, the Operator shall implement and comply with the Incident Response Plan.
- 5.5 The Incident Response Plan shall be updated by the Operator on an annual basis and submitted to the Secretary of State for Approval.
- 5.6 Each updated version of the Incident Response Plan shall incorporate a schedule of revisions to the Incident Response Plan compared to the previous version and a brief summary of the rationale supporting each such revision.
- 5.7 If:
- (a) the Secretary of State Approves an updated draft Incident Response Plan submitted to it pursuant to paragraph 5.5, such document shall become the then current Incident Response Plan; or
  - (b) the Secretary of State does not Approve an updated draft Incident Response Plan submitted to it pursuant to paragraph 5.5, the provisions of paragraph 5.3 shall apply.

## 6. **Cyber Security Information Sharing**

The Operator shall:

- (a) share, as soon as practicable, information regarding cyber security threats and incidents with the Department for Transport, British Transport Police, Police Scotland (where relevant), the National Cyber Security Centre and other industry partners; and
- (b) comply at all times with the latest Secretary of State's cyber incident reporting guidance including use of the NCSC Cyber-Security Information Sharing Partnership (CISP).

## 7. **Modern Slavery, Child Labour and Inhumane Treatment**

7.1 The Operator:

- (a) shall not use, or allow its subcontractors to use, forced, bonded or involuntary prison labour;
- (b) shall not require any Operator or subcontractor staff to lodge deposits or identity papers with the relevant employer or deny Operator staff freedom to leave their employer after reasonable notice;
- (c) warrants and represents that neither it nor DOHL has been convicted of any slavery or human trafficking offences anywhere around the world;
- (d) warrants that to the best of its knowledge neither it nor DOHL is currently under investigation, inquiry or enforcement proceedings in relation to any allegation of slavery or human trafficking offences anywhere around the world;
- (e) shall make reasonable enquiries to ascertain that its officers and subcontractors have not been convicted of slavery or human trafficking offences anywhere around the world;
- (f) shall have and maintain throughout the term of the Contract its own policies and procedures to ensure its compliance with the Modern Slavery Act 2015 and shall include in its contracts with its subcontractors anti-slavery and human trafficking provisions;

- (g) shall implement appropriate due diligence procedures to ascertain any non-compliance by its subcontractors with the anti- slavery and human trafficking procedures required by this clause;
- (h) if requested to do so by the Secretary of State, shall prepare and deliver to the Secretary of State a slavery and human trafficking report setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business;
- (i) shall not use, or allow its employees or subcontractors to use, physical abuse or discipline, the threat of physical abuse, sexual or other harassment and verbal abuse or other forms of intimidation of its employees or subcontractors;
- (j) shall not use, or allow its subcontractors to use, child or slave labour; and
- (k) shall report the discovery or suspicion of any slavery or trafficking by it or its subcontractors to the Secretary of State and Modern Slavery Helpline.



**Schedule 11.3****Approval Process****1. Approval**

1.1 Where any item or matter in this Contract is subject to the Approval of the Secretary of State, such Approval shall only be granted (or deemed to have been granted) in accordance with the process set out in this Schedule 11.3.

**2. Approval Process**

2.1 Where any item or matter in this Contract or the Business Plan requires Approval by the Secretary of State, the Operator may submit a request for such Approval (in each case, a "Request for Approval"):

- (a) not less than twenty (20) Weekdays prior to the date on which the Operator requires such Approval; and
- (b) otherwise in accordance with all relevant notice requirements pursuant to this Contract.

2.2 Together with each Request for Approval pursuant to paragraph 2.1, the Operator shall provide the following information to the Secretary of State:

- (a) a statement that the Request for Approval is submitted pursuant to this paragraph 2 of Schedule 11.3 (Approval Process) of the Contract;
- (b) a reference to the relevant provision(s) of this Contract and/or the Business Plan pursuant to which the requested Approval is required;
- (c) all accompanying information and evidence as may be required pursuant to the relevant provision(s) referenced under paragraph 2.2(b) above;
- (d) details of any budgetary implications associated with Approval of the item or matter in respect of which Approval is requested (including the associated impacts on the Operator's costs and revenues, and (where relevant) the Operator's assessment of any cost and revenue impacts for other Train Operators and/or Network Rail);
- (e) details of the extent of, and justification for, any derogation or variation from any existing requirements of this Contract and/or any Business Plan Commitment which would or may be consequential on such Approval being granted;
- (f) detail of any novel, contentious and/or precedent setting (within the rail industry or for public bodies more generally) aspects associated with the Approval sought; and
- (g) references to any previous guidance or requirements issued by the Secretary of State which are applicable or related to the item or matter in respect of which Approval is sought.

2.3 At any time following receipt of a Request for Approval, the Secretary of State may notify the Operator that the Secretary of State:

- (a) grants the relevant Approval;
- (b) refuses the relevant Approval;

- (c) requires further information or evidence (in addition to the information required pursuant to paragraph 2.2) in relation to such Request for Approval;
  - (d) otherwise requires more time to consider the Secretary of State's response to the Request for Approval (in which case the Secretary of State shall provide the Operator with an estimated timescale for the Secretary of State's determination); or
  - (e) does not consider that the information specified in paragraph 2.2 has been provided in respect of such Request for Approval.
- 2.4 If the Secretary of State notifies the Operator pursuant to paragraph 2.3(e) that any Request for Approval does not include all information specified in paragraph 2.2, the date of such Request for Approval (for the purposes of paragraphs 3 and 4) shall be the date on which all of such information is subsequently received by the Secretary of State.
- 2.5 If the Secretary of State notifies the Operator that it requires further information or evidence in relation to any Request for Approval pursuant to paragraph 2.3(c) (including following deemed Approval having been triggered pursuant to paragraph 3 below), the Operator shall provide such information or evidence as soon as practicable, and in any event within ten (10) Weekdays from receipt of such notification from the Secretary of State.
- 2.6 For the purposes of this Contract, the relevant item or matter which is the subject of a Request for Approval shall be Approved when:
- (a) the Secretary of State notifies the Operator that Approval is granted pursuant to paragraph 2.3(a) above; or
  - (b) Approval is deemed to have been granted in accordance with paragraph 3 below.

### 3. **Deemed Approval**

- 3.1 Provided that a Request for Approval is submitted by the Operator in accordance with the requirements of paragraphs 2.1, if:
- (a) the Secretary of State does not provide the Operator with any response to a Request for Approval in accordance with paragraphs 2.3(a) to (e) above within fifteen (15) Weekdays of its receipt from the Operator; or
  - (b) the Operator has provided all additional information as may have been requested by the Secretary of State pursuant to paragraph 2.3(c), and the Secretary of State has not issued the Operator with a response pursuant to paragraph 2.3(a), (b), (d) or (e) by the later of:
    - (i) the date falling five (5) Weekdays after receipt of all of such additional information from the Operator; and
    - (ii) the date falling fifteen (15) Weekdays after receipt of the relevant Request for Approval;

the Operator may serve a further notice on the Secretary of State stating that (pending any such response from the Secretary of State to the relevant Request for Approval), the relevant item or matter in respect of which Approval is sought would be deemed to be Approved pursuant to paragraph 3.2 on the expiry of five (5) Weekdays from receipt of such further notice by the Secretary of State.

- 3.2 Provided that the Operator has served a further notice on the Secretary of State in accordance with paragraph 3.1, if:
- (a) the Secretary of State has not provided any response to the relevant Request for Approval in accordance with paragraphs 2.3(a) to (e) by the later of:

- (i) the date falling twenty (20) Weekdays after receipt of the Request for Approval from the Operator; and
  - (ii) the date falling five (5) Weekdays after receipt of the Operator's further notice pursuant to paragraph 3.1; or
- (b) the Operator has provided all additional information as may have been requested by the Secretary of State pursuant to paragraph 2.3(c), and the Secretary of State has not issued the Operator with a response pursuant to paragraph 2.3(a), (b), (d) or (e) by the latest of:
- (i) the date falling ten (10) Weekdays after receipt of all of such additional information from the Operator;
  - (ii) the date falling twenty (20) Weekdays after receipt of the relevant Request for Approval; and
  - (iii) the date falling five (5) Weekdays after receipt of the Operator's further notice pursuant to paragraph 3.1;

then the relevant item or matter shall be deemed to be Approved for the purposes of this Contract.

#### 4. **Delay to Approval**

4.1 Provided that a Request for Approval is submitted by the Operator in accordance with the requirements of paragraphs 2.1 and 2.2, in the event that:

- (a) the Secretary of State notifies the Operator that the Secretary of State requires more than twenty (20) Weekdays to consider its response to the Request for Approval pursuant to paragraph 2.3(d); or
- (b) the Secretary of State requires the Operator to provide additional information in respect of such Request for Approval pursuant to paragraph 2.3(c),

the Secretary of State shall grant the Operator a derogation in respect of any non-compliance with the requirements of this Contract and/or the Business Plan caused by the delay to the grant of Approval of the relevant item or matter, but only in respect of the period from the expiry of twenty (20) Weekdays following receipt of the Request for Approval until the date on which the relevant item or matter is Approved (or if earlier, the date on which the Secretary of State notifies the Operator that Approval is refused pursuant to paragraph 2.3(b)).

#### 5. **Withdrawal of Approval**

5.1 Where any item or matter has been deemed to have been Approved pursuant to paragraph 3, the Secretary of State may at any time subsequently notify the Operator that such deemed Approval is withdrawn with effect from the date of receipt of such notice by the Operator (or such later date as the Secretary of State may specify) (the "**Withdrawal of Approval Date**").

**SCHEDULE 12**  
**FINANCIAL COVENANTS**

Schedule 12: Financial Covenants  
Appendix 1: NOT USED  
Appendix 2: NOT USED

**Schedule 12.1****Financial Covenants****1. Obligations**

Except to the extent that the Secretary of State may otherwise agree from time to time, the Operator shall not:

- (a) incur any liability or financial indebtedness except in the ordinary course of providing and operating the Rail Services;
- (b) make any loan or grant any credit, or have or permit to subsist any loan or any credit, to any person (other than the deposit of cash with a Bank as permitted under paragraph (d) or to an employee in the ordinary course of its business);
- (c) create or permit to subsist any Security Interest over any of its assets or property or give any guarantee or indemnity to or for the benefit of any person or otherwise assume liability or become obliged (actually or contingently) in respect of any obligation of any other person, in each case other than in the ordinary course of the business of providing and operating the Rail 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. **NOT USED**

3. **NOT USED**

4. **NOT USED**

5. **NOT USED**

6. **NOT USED**

**APPENDIX 1 TO SCHEDULE 12**

**NOT USED**

**APPENDIX 2 TO SCHEDULE 12**

**NOT USED**

## **SCHEDULE 13**

### **RAIL INDUSTRY INITIATIVES**

Schedule 13.1: Rail Industry Initiatives and Co-operation

Appendix 1: Community Rail Partnerships

Schedule 13.2: Collaboration

Schedule 13.3: NOT USED



**Schedule 13.1****Rail Industry Initiatives and Co-operation****1. British Transport Police**

1.1 The Operator 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 Operator under any contract or arrangement entered into between the British Transport Police and the Operator.

1.2 The Operator shall:

- (a) work with the British Transport Police to:
  - (i) reduce crime and anti-social behaviour on the railway;
  - (ii) reduce minutes lost to police-related disruption;
  - (iii) increase passenger confidence with personal security on train and on station;
- (b) work in partnership with the British Transport Police and conduct an annual assessment of the security and crime risk at all Stations and across the Rail Services generally;
- (c) co-operate with the British Transport Police to provide it with access to records and/or systems maintained by the Operator which relate to lost property to enable the British Transport Police to have access to such information when dealing with items reported to them as lost; and
- (d) consult with the British Transport Police as to its requirements in relation to records and/or systems and shall ensure that the British Transport Police has access to such records and/or systems within fifteen (15) Weekdays of the Start Date and in any event within five (5) Weekdays of the notification of a crime by the British Transport Police.

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

**2. Community Rail Partnerships**

2.1 The Operator shall become a member of and shall continue to participate in the Community Rail Partnerships relevant to the Passenger Services, including the Community Rail Partnerships listed in the table in Appendix 1 to this Schedule 13.1 (and any successor Community Rail Partnerships). As part of such participation the Operator shall identify a senior Business Employee whose duties shall include:

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

- 2.2 The Operator shall, at the request of the Secretary of State:
- (a) co-operate with the Secretary of State, Network Rail, Community Rail Network, local transport authorities and/or any other person as the Secretary of State may nominate for the purposes of developing and furthering the success of the Community Rail Partnerships;
  - (b) co-operate with, establish and/or participate in any Community Rail Partnership;
  - (c) provide technical support in respect of timetable specification for the Community Rail Partnerships, including providing appropriate journey and revenue data; and
  - (d) co-operate in the development of the Secretary of State's initiatives to examine:
    - (i) options for a more cost effective delivery of the railway passenger services operated on any Community Rail Route (such options to include changes in working practices of the relevant Business Employees, reducing rolling stock lease costs and maximising opportunities for obtaining local funding of development at relevant stations and developing new ways of maintaining and renewing relevant railway infrastructure); and
    - (ii) the actual costs incurred in operating, maintaining and renewing the infrastructure relevant for such Community Rail Route.
- 2.3 The Operator shall use all reasonable endeavours to develop and implement the Community Rail Partnership's initiatives in order to increase the use of the Passenger Services by non-users of the Passenger Services and tourists including, where appropriate, the development of and implementation of marketing strategies.
- 2.4 The Secretary of State may at any time, by proposing a variation pursuant to Clause 17 (Variations) require the transfer of any Rail Services to another Train Operator in order to deliver either of the initiatives that were examined pursuant to paragraph 2.2(d).
- 2.5 The Operator shall become a member and shall continue to participate in the National Community Rail Steering Group.
- 2.6 Within one (1) month of the Start Date in respect of the first Contract Year and no later than three (3) months before the start of each subsequent Contract Year, the Operator shall provide to the Secretary of State a report ("**Community Rail Report**") setting out the distribution of the CRP Amount in full amongst the Community Rail Partnerships identified in paragraphs 2.1 and 2.2.
- 2.7 The Community Rail Report shall contain the following information:
- (a) a statement confirming that the Operator's distribution of funds to the Community Rail Partnerships takes account of the Secretary of State's then current published Community Rail Strategy;
  - (b) a statement confirming that the Operator has discussed the funding of the Community Rail Partnerships with Community Rail Network and has taken sufficient account of Community Rail Network's views;
  - (c) confirmation that the Operator has discussed with all Community Rail Partnerships the aims and needs of such partnerships and the funding required to achieve these;
  - (d) a table setting out the relevant portions of the CRP Amount which are to be paid to each Community Rail Partnership (on a non-indexed basis) over the next three (3) years (it being acknowledged that these amounts are likely to be different for each Community Rail Partnership);

- (e) the activities undertaken by the Operator pursuant to paragraph 2.3 of this Schedule 13.1;
  - (f) from the second (2nd) Community Rail Report onwards, a table setting out how the CRP Project Sum has been allocated and a description of the projects that have received CRP Project Sum funding since the previous Community Rail Report was submitted; and
  - (g) such further information as the Secretary of State may from time to time request.
- 2.8 The Operator shall within thirty (30) days of the commencement of each Contract Year, make the relevant payments totalling the CRP Amount to each of the Community Rail Partnerships identified in the Community Rail Report for that year.
- 2.9 The Operator shall hold an annual conference for the Community Rail Partnerships' officers and station adopters in conjunction with the Community Rail Network to encourage the spread of best practice and to communicate plans for service development. The first such conference shall be held no later than one (1) year after the last such conference held pursuant to the Previous Agreement.
- 2.10 The Operator shall devise and implement, in collaboration with the relevant Community Rail Partnership, a "station adopters scheme" under which members of the local community can "adopt" a local Station and engage in activities such as:
- (a) promotion of the Passengers Services calling at the Station;
  - (b) monitoring and reporting faults, damage and anti-social and criminal behaviour;
  - (c) carrying out minor Station cleaning and maintenance tasks and the development and cultivation of station gardens.
- 2.11 The Operator shall use all reasonable endeavours to promote the station adopters scheme and provide safety and other training and support to participants.
- 2.12 In collaboration with the relevant Community Rail Partnership and other Stakeholders the Operator shall use all reasonable endeavours to identify sources of third party funding for the Community Rail Partnerships and encourage such third parties to make funding commitments.

### 3. **Development of Industry Systems**

The Operator shall fully and effectively co-operate, in a manner consistent with it being a responsible Train Operator, with Network Rail, the Secretary of State, ORR, HS2 Limited and all other relevant railway industry bodies and organisations in relation to the development of anything that can reasonably be considered to be a railway industry system including systems in relation to the attribution of train delay, the allocation of revenue and the collection and dissemination of industry wide information.

### 4. **Co-operation with Industry Schemes**

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

### 5. **Co-operation with Local Authorities**

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

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

## **5A Co-operation with Williams Rail Review**

### **5A.1 NOT USED**

5A.2 The Parties acknowledge and agree that as at the date of this Contract, the implications of the Williams Rail Review (including in respect of the franchise) are unknown.

5A.3 The Operator shall (at the request of the Secretary of State) fully and effectively co-operate with the Secretary of State in connection with matters associated with the conclusions of the Williams Rail Review (including the identification and consideration of options, the provision of relevant information, advice and/or analysis) for the purposes of informing future decisions which the Secretary of State may make in respect of the Rail Services.

5A.4 In consultation with the Secretary of State, the Operator shall assign a Operator WRR Contact and shall confirm the identity of such Operator WRR Contact to the Secretary of State by no later than the Start Date.

5A.5 The Operator WRR Contact will act as the Operator's primary point of contact with the Secretary of State in relation to all matters contemplated by this paragraph 5A.

5A.6 The Operator shall procure that the Operator WRR Contact shall be supported from time to time by such other Business Employees as shall be reasonably required to ensure the Operator's compliance with this paragraph 5A.

5A.7 The Operator's obligations pursuant to this paragraph 5A shall include:

- (a) upon reasonable notice, attending meetings with the Secretary of State to discuss and provide an opinion on any relevant issues;
- (c) providing information, data, reports, feasibility studies, business cases, comments, commentary and analysis reasonably required by the Secretary of State (the cost of any such externally commissioned documents to be agreed as between the Parties); and
- (d) (where applicable) reviewing and commenting on implementation timetables and programmes for changes proposed by the Secretary of State,

in each case as may be required as a result of or in connection with the conclusions of the Williams Rail Review.

6. **NOT USED**

7. **NOT USED**

8. **NOT USED**

9. **NOT USED**

10. **ERTMS Strategy**

10.1

- (a) The Operator shall:

- (i) co-operate in good faith with the relevant third parties involved in the implementation of the ERTMS Programme (including Network Rail and the relevant rolling stock providers) with the intention of ensuring its timely, efficient and cost effective implementation and, in particular assisting in the development and implementation of the programme for the design and fitment of the relevant ERTMS equipment on the first rolling stock unit of each class of rolling stock comprised in the Train Fleet for which the Operator is identified as the "Lead TOC" under the National Joint ROSCO First-In-Class Project (the "First in Class Unit") and the testing and commissioning of such equipment on each First in Class Unit. It is acknowledged by the Secretary of State and the Operator that Network Rail is responsible for the capital costs for the design and fitment of the relevant ERTMS equipment on each First in Class Unit;
  - (ii) prepare a plan and submit a plan to the Secretary of State within three months of the Start Date (and keep such plan under review and provide an updated plan to the Secretary of State on a quarterly basis) which addresses how it will deliver those activities for the implementation of the ERTMS Programme for which it is responsible including:
  - (iii) the training of Business Employees who are drivers or rolling stock maintenance staff and other relevant Business Employees;
  - (iv) the obtaining of such approvals and consents as may be required for the retro fitment of the relevant equipment to the other rolling stock units (other than the First In Class Units) comprised in the Train Fleet as are to be used for the operation of the Passenger Services on the ERTMS Enabled Network (the "**Affected Train Fleet**");
  - (v) the installation, testing and commissioning of the relevant ERTMS equipment on each unit comprised in the Affected Train Fleet; and
  - (vi) the maintenance of any such ERTMS equipment fitted on the Affected Train Fleet and the First in Class Units,  
  
(the "**Operator ERTMS Plan**") and any Operator ERTMS Plan prepared by the Operator pursuant to this paragraph shall be prepared on the basis that is consistent with the Proposed ERTMS Implementation Plan;
  - (iii) implement the Operator ERTMS Plan in accordance with its terms; and
  - (iv) following the implementation of ERTMS on any part of the routes specified in the Proposed ERTMS Implementation Plan (the "ERTMS Enabled Network") co-operate, in good faith, with Network Rail, the lessors of the Affected Train Fleet and the First in Class Units and other relevant third parties, with a view to ensuring the on-going efficient operation of the Passenger Services operated on the ERTMS Enabled Network including by working together with Network Rail, the lessors of the Affected Train Fleet and the other relevant third parties to resolve any compatibility issues that may arise between the train borne equipment and the trackside equipment.
- (b) If at any time the Secretary of State (acting reasonably) is satisfied that the Operator has not complied or is not likely to comply with its obligations in this paragraph 11.1 the Secretary of State may at the Secretary of State's discretion serve a Beach Notice pursuant to Clause 8.

10.2 The Operator shall at the request of the Secretary of State provide to him (as soon as reasonably practicable and in any event within five Weekdays following the receipt by the Operator of any such request) such information (including progress reports and the latest the Operator ERTMS Plan as at the date of such request) as the Secretary of State may reasonably require in relation to the implementation of the ERTMS Programme including for the purposes of:

- (a) satisfying himself that:
  - (A) the Operator ERTMS Plan is robust and deliverable; and
  - (B) the implementation of the ERTMS Programme is being undertaken in accordance with the Proposed ERTMS Implementation Plan; and
- (b) reporting on progress in relation to matters relating to the implementation of the ERTMS Programme (including progress on the implementation of the Operator ERTMS Plan).

The Operator shall, upon reasonable notice, attend any such meeting as the Secretary of State may reasonably require for the purposes of discussing and explaining the Operator ERTMS Plan (including progress on the implementation of such plan).

10.3 Within one year following the first implementation of ERTMS on the ERTMS Enabled Network, the Operator shall carry out a detailed review of (i) the performance of the relevant ERTMS equipment installed by the Operator on the Affected Train Fleet and the First in Class Units pursuant to this paragraph 11.3 following the implementation of ERTMS on the ERTMS Enabled Network by Network Rail and (ii) the extent to which the performance of the relevant ERTMS equipment installed by the Operator on the Affected Train Fleet and the First in Class Units pursuant to this paragraph 11 has been adversely impacted or otherwise affected by failures in the trackside ERTMS equipment installed by Network Rail on the ERTMS Enabled Network and submit a report to the Secretary of State documenting the outcomes of such review in such format (and in such detail) as the Secretary of State may (acting reasonably) specify.

10.4 The Operator shall use all reasonable endeavours to ensure that any Track Access Agreement that it enters into with Network Rail reflects the following principles:

- (a) there will be no right for the Operator to claim compensation from Network Rail under Condition G.2 of the Network Code in relation to the direct or indirect consequences of any and all impacts on the Passenger Services due to the implementation of the ERTMS Programme except in the circumstances provided in paragraph 11.4(b) ("Network Change Compensation Claims"); and
- (b) the Operator will have the right to claim under Condition G.2 of the Network Code for any additional costs (which for these purposes shall include any loss of revenue which the Operator is entitled to claim thereunder) it incurs where there is a material change to the actual implementation plans (including the relevant timescales for the delivery of such plans) adopted by Network Rail in respect of the ERTMS Programme when compared to the plans as specified in the Proposed ERTMS Implementation Plan except where such material change is wholly attributable to the actions or inactions of the Operator.

10.5 If and to the extent that the Track Access Agreement entered into by the Operator does not reflect any of the principles set out in paragraph 11.4 including as a result of:

- (a) the Operator not being able to obtain the ORR's approval to any such terms; or
- (b) the Operator not complying with its obligations under paragraph 11.4 and entirely without prejudice to the other rights the Secretary of State may have under this Contract consequent upon a contravention by the Operator of the provisions of paragraph 11.4,

then the Operator shall immediately pay to the Secretary of State (as a debt), an amount equal to any amounts received by the Operator from Network Rail in respect of any Network Change Compensation Claim(s). Any amounts payable by the Operator to the Secretary of State pursuant to this paragraph 11.5 shall be paid on the next Payment Date following receipt by the Operator of any such amounts from Network Rail or where no such Payment Date exists shall be paid within 30 days of receipt by the Operator of any such amounts from Network Rail.

11. **NOT USED**

12. **HS2 Project**

12.1 The Operator shall from the Start Date until the completion of the HS2 Project fully and effectively co-operate and engage constructively with all relevant parties responsible for the delivery of the HS2 Project with the intention of assisting in the timely, efficient and cost effective implementation and delivery of the HS2 Project in a manner which provides the best overall solution for the network. To the extent that the HS2 Project leads to the Operator having rights under railway industry procedures including Network Change or Station Change the Operator shall not act in a way designed to directly or indirectly prevent, prejudice or frustrate the delivery of the HS2 Project and the Operator shall not unreasonably raise any objection under any railway industry procedure including Network Change or Station Change. It is acknowledged that the Operator may make reasonable objections with a view to mitigating the impact of the HS2 Project and their implementation on passengers and the Rail Services, while recognising the need for the HS2 Project to be able to be undertaken in a reasonable manner.

12.2 The Operator shall provide such information in respect of the HS2 Project as the Secretary of State may reasonably request from time to time.

13. **NOT USED**

14. **NOT USED**

15. **NOT USED**

16. **NOT USED**

17. **CCTV**

17.1 The Operator shall ensure that any installation of, or upgrade to, CCTV in the areas accessible by passengers of any vehicle that is operated as part of the Train Fleet shall be undertaken in accordance with the CCTV Guidance.

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

17.3 The Operator shall ensure that any body worn video equipment used by any Business Employees, and any system associated with it, shall comply with the CCTV Guidance.

## APPENDIX 1 TO SCHEDULE 13.1

## Community Rail Partnerships

Community Rail Partnership	Line / Services forming Partnership
(a) Bentham Line	Leeds - Lancaster - Morecombe
(b) Bishop Line	Darlington - Bishop Auckland
(c) Calder Valley	Mills Hill via Rochdale and Todmorden to Brighouse, Bradford via Halifax and Halifax to Huddersfield via Brighouse
(d) Clitheroe Line	Clitheroe - Manchester Victoria
(e) Crewe - Manchester	Crewe - Manchester
(f) Cumbrian Coast	Carlisle - Barrow
(g) East Lancashire	Colne - Preston
(h) Esk Valley Railway Development Company	Middlesbrough - Whitby
(i) Furness Line	Lancaster - Barrow-in-Furness
(j) Hope Valley & High Peak	Manchester - Sheffield / Buxton / Glossop
(k) Lakes Line	Oxenholme - Windermere
(l) Mid Cheshire	Manchester - Northwich - Chester
(m) North Cheshire	Chester - Warrington
(n) North Notts and Lincs	Shireoaks - Barnetby / Lincoln; Lincoln - Barnetby
(o) Penistone Line	Huddersfield - Sheffield
(p) Settle Carlisle Railway Development Company	Leeds - Carlisle
(q) South Fylde	Preston - Blackpool South
(r) Tyne Valley	Newcastle - Carlisle
(s) South East Lancashire	Bolton - Wigan / Preston / Bromley Cross / Manchester
(t) West Lancashire	Wigan - Southport and Preston - Ormskirk
(u) Yorkshire Coast	Hull - Scarborough



**Schedule 13.2****Collaboration****1. Duty of Cooperation**

1.1 The Operator shall fully and effectively cooperate with each of the Specified Persons, to the extent applicable, in respect of each of the Specified Matters. This cooperation shall include such of the Specified Actions as are relevant or applicable to the particular Specified Matter. These Specified Actions shall be undertaken by the Operator in collaboration with such of the Specified Persons (if any) as may be appropriate in the particular circumstances.

1.2 At any time the Secretary of State may specify, by notice to the Operator, any additional Specified Persons, Specified Matter and/or Specified Action as the Secretary of State may determine. The Operator's obligations pursuant to paragraph 1.1 above in relation to any such additional Specified Persons, Specified Matter and/or Specified Action determined by the Secretary of State shall take effect from the date of the Operator's receipt of such notice.

1.3 If in the course of the cooperation required pursuant to paragraph 1.1 above, a Specified Person seeks to require the Operator to implement:

(a) any Specified Action; or

(b) any initiative or action that is not a Specified Action,

and such implementation would necessitate additional staff headcount or other material out-of-pocket expenses that are not to be fully funded by a third party and that were not provided for within the CP Budget, the Operator shall discuss the matter with the Secretary of State and paragraph 1.1 above shall not require the Operator to implement that initiative or action unless the Parties agree or the Secretary of State instructs to the contrary.

1.4 Notwithstanding any other terms of this paragraph 1, the Operator shall not be required to do anything which would put it in breach of any obligation on the Operator arising under applicable Law (including competition law under the Competition Act 1998) or the terms of its Licences.

**2. NR Data Sharing Strategy**

2.1 Following the agreement or determination of the NR Data Sharing Strategy pursuant to the Business Plan, the Operator shall use all reasonable endeavours to implement the NR Data Sharing Strategy in accordance with its terms, and shall consult, collaborate and co-operate with Network Rail to agree any reasonable amendments or updates to the NR Data Sharing Strategy from time to time.

2.2 The Operator shall propose and use all reasonable endeavours to agree with Network Rail suitable amendments to the NR Data Sharing Strategy to ensure compliance with any guidance or instructions issued or provided by the Secretary of State from time to time.

2.3 The Operator shall not unreasonably withhold or delay its consent to any amendments which Network Rail may reasonably propose to the NR Data Sharing Strategy, provided that the Operator shall not agree to any amendments which would not be in compliance with any guidance the Secretary of State may provide or issue from time to time.

2.4 Notwithstanding any other term of this paragraph 2, the Operator shall not be required to do anything which would put it in breach of any obligation on the Operator arising under applicable Law (including competition law under the Competition Act 1998) or the terms of its Licences.

### 3. **Sharing further data with Network Rail**

- 3.1 The Operator shall, to the extent reasonably requested by Network Rail, share with Network Rail all relevant data including GPS data and data derived from geometry measurement systems, forward facing CCTV, driver advisory systems and train condition monitoring systems fitted to any rolling stock within the Train Fleet. Any such data provided to Network Rail shall be provided in an open standard format as Network Rail may reasonably request as soon as practicable and without charge.
- 3.2 The Operator shall, if so requested by Network Rail, provide advice to Network Rail on the feasibility, costs and associated practicalities of providing Network Rail with real-time access to live replay footage from on-train forward-facing CCTV systems.
- 3.3 The Operator shall, as soon as practicable following any request, provide Network Rail with such information as it may reasonably request, including:
- (a) information in relation to current and projected future numbers of train crew employed, in aggregate and in respect of each individual train crew depot or link, and distinguishing in each case between different types of train crew and between fully qualified individuals and trainees (the "**Train Crew Numbers Data**"); and
  - (b) a comparison of the Train Crew Numbers Data against the Operator's most recent assessment of the current and expected future Required Establishment in each case.

### 4. **Safety Information**

- 4.1 The Operator 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 Operator shall notify the Secretary of State as soon as practicable of the receipt and contents of any formal notification relating to safety or any improvement or prohibition notice received from the ORR. Immediately upon receipt of such notification or notice, the Operator shall provide the Secretary of State with a copy of such notification or notice.
- 4.3 The Operator shall participate in industry groups and committees addressing safety agenda of the Railway Group.

### 5. **NOT USED**

### 6. **Co-operation with Welsh Ministers**

- 6.1 The Operator shall at all times during the Contract Term fully and effectively co-operate with Welsh Ministers in relation to:

- (a) any scheme to reopen or divert any rail route; and
- (b) any proposal which may be promoted by (or on behalf of) Welsh Ministers during the Contract Term for the provision of additional, varied or extended Passenger Services to and from destinations in Wales, such co-operation to:

include the provision of information to Welsh Ministers in respect of the implications of such proposals on the operation of the existing Passenger Services in Wales, costs and revenues and any other impact on the Operator's obligations under this Contract.

### 7. **Co-operation with Scottish Ministers**

- 7.1 The Operator shall at all times during the Contract Term fully and effectively co-operate with Scottish Ministers in relation to:

- (a) any scheme to reopen or divert any rail route; and
- (b) any proposal which may be promoted by (or on behalf of) Scottish Ministers during the Contract Term for the provision of additional, varied or extended Passenger Services to and from destinations in Scotland, such co-operation to:

include the provision of information to Scottish Ministers in respect of the implications of such proposals on the operation of the existing Passenger Services in Scotland, costs and revenues and any other impact on the Operator's obligations under this Contract.

**Schedule 13.3**

**NOT USED**

## **SCHEDULE 14**

### **PRESERVATION OF ASSETS**

- Schedule 14.1: Maintenance as a going concern
- Schedule 14.2 Maintenance of Operating Assets and Branding
  - Appendix 1: List of Trade Marks
- Schedule 14.3 Key Contracts
  - Appendix 1: List of Key Contracts
- Schedule 14.4: Rail Assets
  - Appendix 1: Not Used
- Schedule 14.5: Dealing with Rail Assets
- Schedule 14.6: NOT USED
  - Appendix 1: NOT USED
- Schedule 14.7: NOT USED

**Schedule 14.1****Maintenance as a going concern****1. Maintenance as a going concern**

- 1.1 The Operator shall maintain and manage the business of providing the Rail Services so that, to the greatest extent possible and practicable:
- (a) the Operator is able to perform its obligations under this Contract; and
  - (b) a Successor Operator would be able to take over the business of providing the Rail Services immediately at any time.
- 1.2 The Operator's obligation under paragraph 1.1 shall include an obligation to ensure that any computer and information technology systems of the Operator shared in whole or in part with Affiliates or third parties can be operated by a Successor Operator as a stand-alone system without continued reliance on such Affiliates or other third parties immediately from the date of termination of this Contract 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 Operator to obtain consent to such arrangements relating to sharing computer and information technology systems from the Secretary of State).
- 1.3 The Operator shall use all reasonable endeavours to ensure that such Successor Operator would have immediate access to all Business Employees and Rail Assets for such purpose.
- 1.4 The Operator shall maintain and manage the business of providing the Rail Services on the basis that such business will be transferred, in the manner contemplated under this Contract, as a going concern at the end of the Contract Period to, and continued immediately thereafter by, a Successor Operator.
- 1.5 The Operator 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 Contract Period and in so doing shall plan for the recruitment and training of Business Employees to continue up until the end of the Contract Term.
- 1.6 The Operator 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 Contract Term.

**2. Post-Franchise Timetables**

- 2.1 Both prior to and following the selection of a Successor Operator (whether a the Operator or otherwise and whether or not subject to the satisfaction of any conditions), the Operator shall:
- (a) co-operate with, where a Successor Operator has been appointed, that Successor Operator, or where not, the Secretary of State; and
  - (b) take such steps as may reasonably be requested by the Secretary of State, so as to ensure the continuity of, and orderly handover of control over the Rail Services.

- 2.2 The steps that the Secretary of State may reasonably request the Operator to take pursuant to paragraph 2.1 include:
- (a) participating in any timetable development process that takes place during the Contract Period, but which relates to any timetable period applying wholly or partly after the expiry of the Contract 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 Contract 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 Operator shall not be required to enter into any such Access Agreement unless the Secretary of State has first provided to it confirmation in writing that the Secretary of State will include that Access Agreement in any Transfer Agreement pursuant to clause 10 (Transfer of Property rights and liabilities on Expiry) of this Contract.
- 2.3 In addition to its obligation in paragraph 2.1(c), the Operator shall undertake such planning, preparation and organisation to ensure the successful operation of the Successor Operator Timetable from the Passenger Change Dates in May 2022 and December 2022 as if the Operator were to be operating the same from that date.

**Schedule 14.2****Maintenance of Operating Assets and Branding****1. Operating Assets**

- 1.1 The Operator shall maintain, protect and preserve the Operating Assets in good standing or good working order, subject to fair wear and tear.
- 1.2 The Operator shall carry out its obligations under paragraph 1.1 so that the Operating Assets may be transferred at the end of the Contract Period to a Successor Operator and used by such Successor Operator in the provision or operation of similar services to the Rail Services.
- 1.3 Where any Operating Asset is lost, destroyed or otherwise beyond repair, the Operator shall replace the Operating Asset with property, rights or liabilities in modern equivalent form to the Operating Asset to be replaced. The Operator 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 this Contract.
- 1.4 The Secretary of State may at any time require the Operator to provide to the Secretary of State a schedule specifying the condition of any asset or class of assets that the Secretary of State specifies for this purpose. Such schedule shall cover such aspects of asset condition as the Secretary of State may reasonably require. If the Parties are unable to agree the content of such schedule of condition, either Party may refer the dispute for resolution in accordance with the Dispute Resolution Rules. Until such dispute is resolved, the Operator shall comply with the Secretary of State's requirements in respect of such schedule of condition.

**2. Spares**

The obligation of the Operator to maintain, preserve and protect the Operating Assets under this Schedule 14.2 shall, in respect of Spares, include the obligation to replace any Spare which is a Service Asset and which subsequent to it being a Service Asset ceases to be part of the stock of Spares available to the Operator for use in the provision of the Rail Services, with an equivalent Spare of equal or better quality than the Spare so replaced.

**3. Brand Licence and Branding****3.1 Brand Licences**

The Operator shall comply with its obligations under the Brand Licence.

**3.2 Branding**

Subject to any applicable obligations or restrictions on the Operator (including the terms of the Rolling Stock Leases), the Operator shall apply the registered or unregistered trade marks specified in the Brand Licence(s) and as listed in Appendix 1 (*List of Trade Marks*) of this Schedule 14.2 to all those assets owned or used by the Operator in the operation and provision of the Rail Services, including but not limited to:

- (a) the Train Fleet;
- (b) the Stations;
- (c) staff uniforms;
- (d) marketing materials;
- (e) publications;



(f) ticket sales channels; and

(g) visual display screens.

3.3 **NOT USED**

4. **Branding Requirements**

4.1 **NOT USED**

4.2 The Operator shall implement and maintain the Northern Brand throughout the Contract Term.

4.3 The Operator shall use and apply the Northern Brand in relation to the Train Fleet (subject to the terms of the Rolling Stock Leases) and all Stations, staff uniforms, marketing materials, publications, ticket sales channels and visual display screens used by the Operator (and any other assets owned or used by the Operator in the operation and provision of the Rail Services which the Operator uses branding on) throughout the Contract Term and in connection with the provision of the Rail Services.

4.4 **NOT USED**





4.5 The Operator shall ensure that all rights in the Northern Brand (as may be modified from time to time) are capable of being designated as Rail Assets and accordingly capable of being transferred to the Successor Operator.

5. **NOT USED**

**APPENDIX 1 TO SCHEDULE 14.2**

**List of Trade Marks**

**1. Registered Trade Marks**

<b>Trade Mark</b>	<b>Registration No</b>	<b>Classes</b>	<b>Date of Filing</b>
Double Arrows Symbol 	2107832	16, 35, 37, 39, 41, 42	16 August 1996
Sprinter 	1275685	39	1 October 1986
Pacer	1276981	39	1 October 1986
Sprinter	1276982	39	1 October 1986
Viaduct Symbol 	1541196	39	9 July 1993
Welcome Aboard 	2053995	16	26 January 1996

**2. Unregistered Trade Marks**

None.

## Schedule 14.3

### Key Contracts

#### 1. Key Contracts

1.1 This Schedule sets out the rights of the Secretary of State to:

- (a) designate certain contracts or categories of contracts as Key Contracts where the Secretary of State considers that such contracts or categories of contract are necessary for the purposes of securing continuity of the Rail Services by a Successor Operator on expiry of the Contract Period; and
- (b) in accordance with paragraph 5, require the Operator to procure that a counterparty to a Key Contract enters into a Direct Agreement with the Secretary of State.

This Schedule 14.3 shall apply to all contracts designated as Key Contracts from time to time.

1.2

- (a) The Key Contracts as at the date of this Contract are set out in Appendix 1 (List of Key Contracts) to this Schedule 14.3.
- (b) The Operator shall enter into any and all Key Contracts which are necessary for this Contract to continue in accordance with clause 5 (Term and Termination).
- (c) Where at any time after the date of this Contract the Operator proposes to enter into any agreement, contract, licence or other arrangement which falls within one of the categories listed in Appendix 1 (List of Key Contracts) to this Schedule 14.3 the Operator shall:
  - (i) inform the Secretary of State from time to time of any such agreement, contract, licence or other arrangement which it may be intending to enter into; and
  - (ii) comply with the provisions of paragraph 5.1 in respect of any such agreement, contract, licence or other arrangement.

1.3 Without prejudice to the provisions of paragraphs 2, 3 and 4 of this Schedule 14.3, Appendix 1 (List of Key Contracts) to this Schedule 14.3 shall be amended as considered necessary from time to time to take account of any:

- (a) designation by the Secretary of State of any actual or prospective agreement, contract, licence or other arrangement or any category of agreement, contract, licence or other arrangement, to which or under which the Operator 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 Rail Services or the provision of services similar to the Rail

Services by a Successor Operator in accordance with this Contract, the Secretary of State may make a designation pursuant to paragraph 2.2.

2.2 The Secretary of State may at any time, by serving notice on the Operator, 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 Operator 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 Operator 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 Operator, 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 Operator, 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 Operator 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 this Contract; or
  - (iii) the making of a railway administration order in respect of the Rail Services.

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 Operator is already a party; or
- (b) any category of agreement, contract, licence or other arrangement where the Operator 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 Operator 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 Operator 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 Operator as a result of, or in connection with:
- (a) any breach by the Operator of the terms of the Key Contract to which the relevant Direct Agreement relates; or
  - (b) any unsuccessful claim being brought by the Operator against the counterparty of any such Key Contract in relation to the termination of such Key Contract.

## 6. **Emergencies**

6.1 Where any emergency may arise in connection with the provision and operation of the Rail Services, the Operator:

- (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 Operator shall not without the prior consent of the Secretary of State (which shall not be unreasonably withheld) vary, or purport to vary, the terms or conditions of any Key Contract at any time, unless directed to do so by the ORR.

## 8. **Replacement of Key Contracts**

The Operator shall, prior to the scheduled expiry date of any Key Contract (or, if earlier, such other date on which it is reasonably likely that such Key Contract will terminate), take all reasonable steps to enter into an appropriate replacement contract (whether with the counterparty to the existing Key Contract or not) and shall comply with the reasonable instructions of the Secretary of State in relation to such replacement contract.

## 9. **Termination of Key Contracts**

The Operator shall, to the extent so requested by the Secretary of State, exercise its right to terminate any Key Contract on the Expiry Date.

**APPENDIX 1 TO SCHEDULE 14.3****List of Key Contracts**

Subject to any de-designations by the Secretary of State under paragraph 3 of Schedule 14.3 (Key Contracts), the following items have as at the date of this Contract been agreed between the Parties to be Key Contracts:

1. any Access Agreement to which the Operator is a party other than in its capacity as a Facility Owner;
2. any Property Lease and all side agreements relating to such relevant Property Lease;
3. any Rolling Stock Related Contract including the Rolling Stock Leases listed in Table 1 (Original Rolling Stock) and Table 2 (Specified Rolling Stock);
4. NOT USED
5. any contract or arrangement for the lending, seconding, hiring, contracting out, supervision, training, assessment, or accommodation by another Train Operator or other third party of any train drivers, conductors or other train crew used by the Operator in the provision of the Passenger Services;
6. any contract or arrangement for the subcontracting or delegation to another Train Operator or other third party of the provision of any of the Passenger Services (whether or not the consent of the Secretary of State is required to such subcontracting or delegation under paragraph 13 (Subcontracting any Passenger Services) of Schedule 1.1 (Service Development));
7. any contract or arrangement with a Train Operator or other third party (other than an Access Agreement) for the provision to the Operator of train dispatch, performance or supervision of platform duties, security activities, evacuation procedures, advice or assistance to customers, assistance to disabled customers, operation of customer information systems, cash management or ticket issuing systems administration;
8. any contract or arrangement with a Train Operator or other third party for the provision of breakdown or recovery, and track call services to assist in the provision of the Passenger Services;
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 Operator;
12. any contract or arrangement relating to the operation of smart ticketing;
13. any licence of any CRM System or Yield Management System;
14. any contract or arrangement for the procurement, implementation, processing and/or operation of Delay Repay Compensation (including Intellectual Property Rights (or licence to use the same) relating to Delay Repay Compensation);
15. any contract or arrangement for the provision or lending of Computer Systems (other than the CRM System and Yield Management System) that the Secretary of State reasonably considers is essential for the delivery of the Rail Services;
16. 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; and

17. any SQR Contract.

**Schedule 14.4****Rail Assets**

1. **Rail Assets**
- 1.1 Subject to paragraph 1.2, all property, rights and liabilities of the Operator from time to time during the Contract Period shall be Rail Assets and the provisions of paragraph 4 of Schedule 14.5 (dealing with Rail Assets) shall apply to all Rail Assets.
- 1.2 The rights and liabilities of the Operator in respect of the following items shall not be Rail Assets and the provisions of paragraph 4 of Schedule 14.5 (dealing with Rail Assets) shall not apply to such rights and liabilities:
  - (a) any contracts of employment;
  - (b) this Contract and any Transfer Agreement;
  - (c) the Ticketing and Settlement Agreement;
  - (d) any sums placed on deposit with a bank or other financial institution;
  - (e) any Rolling Stock Leases; and
  - (f) such other property, rights and liabilities as the Secretary of State may specify from time to time.
- 1.3 **NOT USED**
2. **NOT USED**
3. **NOT USED**
4. **NOT USED**
5. **NOT USED**
6. **NOT USED**
7. **NOT USED**
8. **NOT USED**
9. **NOT USED**
10. **NOT USED**
11. **NOT USED**



**APPENDIX 1 TO SCHEDULE 14.4**

**NOT USED**

**Schedule 14.5****Dealing with Rail Assets**

1. **NOT USED**

2. **NOT USED**

3. **NOT USED**

4. **Prohibition on Other Security Interests**

4.1 Except with the prior written consent of the Secretary of State, the Operator:

- (a) shall not transfer or agree to transfer, create or agree to create a Security Interest over, any Service Asset (or any interest in or rights over any Rail Assets; or
- (b) shall not create or extinguish or agree to create or extinguish any interest in, or rights over, any Service Asset; or
- (c) if and to the extent that the Rail Assets are liabilities, shall not enter into any agreement under which any such liability is released or discharged or transferred to some other person.

5. **Miscellaneous**

The Operator shall promptly inform the Secretary of State of any Security Interest arising at any time over any of its property or rights and shall provide the Secretary of State with such information in relation thereto as the Secretary of State may reasonably require.

**Schedule 14.6**

**NOT USED**

**APPENDIX 1 TO SCHEDULE 14.6**

**NOT USED**

**Schedule 14.7**

**NOT USED**

## **SCHEDULE 15**

### **OBLIGATIONS ASSOCIATED WITH TERMINATION**

- Schedule 15.1: Reletting Provisions
- Schedule 15.2: NOT USED
- Schedule 15.3: NOT USED
- Appendix 1: NOT USED
- Schedule 15.4: Provisions applying on and after Termination
  - Appendix 1: Form of Transfer Agreement
  - Appendix 2: NOT USED

## Schedule 15.1

### Reletting Provisions

#### 1. Reletting of Franchise

- 1.1 The Operator acknowledges that the Secretary of State may wish, at or before the expiry of the Contract 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 all or some of the Passenger Services without having gone through a tendering process.
- 1.2 The Operator further acknowledges that the Secretary of State has in certain circumstances a duty under section 30 of the Act to secure the continued provision of services equivalent to the Passenger Services on expiry or termination of this Contract. The Operator accordingly accepts and agrees to the restrictions and obligations imposed on it under Schedule 1.1 (Service Development), Schedule 14 (Preservation of Assets) and this Schedule 15 (Obligations Associated with Termination).

#### 2. Preparation for Reletting

- 2.1 The Operator shall, if so requested by the Secretary of State provide the Secretary of State and the Secretary of State's representatives and advisers with access to officers, Business Employees and all books, records and other materials kept by or on behalf of the Operator in connection with the Rail Services (including electronic or magnetic records, any CRM System and any Yield Management System) for the purpose of assisting such representatives and advisers:
- (a) to prepare reports or other documents in connection with any invitation to potential Successor Operators to tender for the right and obligation to operate all or any of the Rail Services;
  - (b) to prepare invitations to other potential the Operators to tender for the right and obligation to provide any other railway passenger services or operate any other additional railway asset; or
  - (c) to enter into any franchise agreement or other agreement (including any agreement entered into by the Secretary of State in fulfilment of the Secretary of State's duties under section 30 of the Act) relating to the services equivalent to the Rail Services (or any part thereof), without undergoing a tendering process,

provided that the exercise of such access rights by the Secretary of State and the Secretary of State's representatives and advisers shall not unduly interfere with the continuing provision and operation of the Rail Services by the Operator.

#### 3. Data Site Information

- 3.1 the Operator shall, at the request of the Secretary of State, make available to the Secretary of State and the Secretary of State's representatives and advisers:
- (a) the information relating to the Rail Services as specified in the document in the agreed terms marked DSMI (the "Data Site Monitor and Index"); and
  - (b) such other information as they shall reasonably require in connection with the matters referred to in paragraph 2.1,

in each case, by no later than three (3) months after the date of any such request. For the purposes of this paragraph 3 the information referred to in paragraphs 3.1(a) and 3.1(b) shall be the "**Data Site Information**".

- 3.2 The Data Site Monitor and Index shall be amended and updated by the Secretary of State from time to time. Such amended and updated Data Site Monitor and Index shall, from the date that the Operator receives notification from the Secretary of State of any such amendment or update, be the applicable Data Site Monitor and Index for the purposes of this paragraph 3.
- 3.3 The Operator shall prepare and present the Data Site Information in such manner and in such format (including in disaggregated form) as the Secretary of State may specify in the Data Site Monitor and Index or otherwise require, and shall provide such assistance as the Secretary of State may require in connection with the verification and the updating of such Data Site Information.
- 3.4 The Operator shall provide such confirmation in relation to the accuracy of:
- (a) the contents of the documents referred to in paragraph 2.1; and
  - (b) any Data Site Information uploaded to such electronic data site as the Secretary of State may require pursuant to paragraph 3.5,
- in each case, as the Secretary of State shall require from time to time.
- 3.5 The Operator shall upload the Data Site Information to such electronic data site as the Secretary of State may specify and shall make a sufficient number of appropriate staff available for that purpose. The Operator 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).
- 3.6 The Operator shall:
- (a) comply with its obligations under paragraph 2.1 and this paragraph 3 promptly and in any case in accordance with any reasonable timetable with which the Secretary of State requires the Operator by notice in writing to comply;
  - (b) where the Secretary of State raises with the Operator any query in relation to any Data Site Information, make a full and substantive response to such query within five (5) Weekdays. Such response shall include any further information requested by the Secretary of State in relation to such query; and
  - (c) nominate a person to whom:
    - (i) all queries or requests for information pursuant to paragraph 3.6(b);
    - (ii) requests for access to premises pursuant to paragraph 5; and
    - (iii) requests for access to employees,shall be addressed and who shall be responsible for complying with any such queries or requests for information and such requests for access to employees and premises. The Operator shall notify the Secretary of State (the Secretary of State's representatives and advisers) of the name and contact details of such person.
- 3.7 In connection with any proposal (whether or not yet finalised) to enter into separate franchise agreements and/or other agreements with more than one Successor Operator, each relating to some only of services equivalent to the Rail Services (whether or not together with other railway passenger services) at or following the end of the Contract Period, the Operator agrees and acknowledges that the Secretary of State may require:
- (a) that the Operator 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 Operator in relation to such Service Groups; and
    - (ii) identification of those employees, assets and liabilities which relate to such Service Groups together with an indication of the extent to which the same are shared between the operation of different Service Groups; and
  - (b) subject to paragraph 3.8, that the Operator reorganises the business of providing services equivalent to the Rail Services in order to facilitate the transfer anticipated by this Schedule 15.1 on an ongoing basis of the business of providing the Rail 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 Rail Services within that Service Group; and
  - (c) that the Operator uploads Data Site Information to more than one data site.
- 3.8 Subject to paragraph 3.9, the Secretary of State shall reimburse any reasonable out-of-pocket expenses that the Operator may incur in complying with its obligations under this paragraph 3.
- 3.9 Without prejudice to any other rights the Secretary of State may have (under this Contract or otherwise) in respect of any contravention by the Operator of its obligations under this paragraph 3, if the Secretary of State is of the reasonable opinion that the Operator does not have sufficient resources to enable its compliance with its obligations under this paragraph 3 the Secretary of State may:
- (a) require the Operator to employ; or
  - (b) after notification to the Operator, employ,
- such suitable additional resource as may be required to ensure that the Operator can comply with its obligations under this paragraph 3. The Operator shall reimburse to the Secretary of State, by way of adjustment to Contract Payments, any proper costs (including staff costs) incurred by the Secretary of State in the employment of any such additional resource pursuant to paragraph 3.9(b).
- 3.10 To the extent reasonably practicable, prior to taking any of the actions referred to in paragraph 3.9, the Secretary of State shall allow the Operator a reasonable opportunity to make representations to the Secretary of State concerning the exercise by the Secretary of State of the Secretary of State's rights under paragraph 3.9 but the Secretary of State shall not be obliged by those representations to refrain from exercising any of the actions specified under paragraph 3.9.
4. **Non-Frustration of Transfer to Successor Operator**
- 4.1 The Operator 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 Rail Services at the end of the Contract Period to a Successor Operator; or

(b) to avoid, frustrate or circumvent any provision of this Contract (including in particular the provisions of Schedule 14 (Preservation of Assets) and this Schedule 15) which is included in whole or in part for the purpose of preventing any such preventive, prejudicial or frustrating action or steps.

4.2 Subject to the restrictions set out in paragraph 4.1 and the other provisions of this Contract, the Operator may take such action as it may require for the purposes of bidding to become, or becoming, a Successor Operator.

## 5. **Inspection Rights during the Tendering/Reletting Process**

5.1 Without limiting any other rights of the Secretary of State under this Contract and subject to paragraph 5.3, the Operator shall permit the undertaking of inspections (including the taking of inventories) or surveys of:

- (a) trains;
- (b) Stations;
- (c) Depots;
- (d) sidings; and/or
- (e) other premises owned or occupied by the Operator or any of its Affiliates or used in connection with the provision of the Rail Services by the Operator or any of its Affiliates,

("Inspections") by the Secretary of State (or the Secretary of State's nominee, which for these purposes shall include potential Successor Operators including potential bidders who have expressed an interest in tendering for the right and obligation to operate any or all of the Rail Services, and who carry suitable identification and evidence of authorisation ("Nominee")) as the Secretary of State may reasonably require in connection with any Tendering/Reletting Process.

5.2 The Operator shall provide a travel permit(s) which will allow the Secretary of State or a Nominee to travel free of charge on the Routes in order to carry out the Inspections.

5.3 The Secretary of State shall use reasonable endeavours to ensure that any Inspections shall be undertaken so as not to unduly interfere with the continuing provision and operation of the Rail Services by the Operator.

**Schedule 15.2**

**NOT USED**

**Schedule 15.3**

**NOT USED**

**APPENDIX 1 TO SCHEDULE 15.3**

**NOT USED**

**Schedule 15.4****Provisions applying on and after Termination****1. Novation of Access Agreements on Termination of this Contract**

1.2 The Operator shall, to the extent so requested by the Secretary of State on termination of this Contract, in relation to any Access Agreement to which it is a party, novate its interest under any relevant Access Agreement (and any related Collateral Agreement) to the Secretary of State or as the Secretary of State may direct.

1.3 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.

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

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

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

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

1.5 The Operator shall, on the occurrence of the circumstances specified in paragraph 1.1 in relation to any other Train Operator who is a party to an Access Agreement to which the Operator is also party, agree to the novation of the relevant Train Operator's interest under the relevant Access Agreement to the Secretary of State or as the Secretary of State may direct, subject, to the extent applicable, to the consent of the ORR. The provisions of paragraph 1.3 shall apply to any such novation.

1.6 The Operator 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 Operator 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 Rail Services, the Operator shall co-operate with:

(a) where a Successor Operator has been appointed, such Successor Operator; or

(b) the Secretary of State, or

(c) any relevant Train Operator

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 Operator shall make appropriately skilled and qualified Business Employees reasonably available to attend such meetings with the Secretary of State, the Successor Operator, Network Rail, ORR, HS2 Limited, any relevant Train Operator, any rolling stock lessor and/or and other relevant third party as are reasonably required in order to determine:
- 2.3 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
  - (g) 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. **NOT USED**

4. **Associated Obligations on Termination**

4.1 **Assistance in Securing Continuity**

- (a) In order to facilitate the continuity of the Rail Services on expiry of the Contract Period, the Operator shall take such steps, both before and after the expiry of the Contract Period, as the Secretary of State may reasonably require, to assist and advise any Successor Operator in providing and operating the Rail Services.
- (b) In particular, the Operator shall provide any Successor Operator with such records and information relating to or connected with the Rail Services as the Secretary of State may reasonably require (other than confidential financial information but including all records relating to the Business Employees).

4.2 **Access**

On the expiry of the Contract Period, the Operator shall grant the Secretary of State and the Secretary of State's representatives such access as the Secretary of State may reasonably request to any property owned, leased or operated by the Operator at such time, for the purpose of facilitating the continued provision of the Rail Services.

4.3 **Key Contracts**

- (a) The Operator 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 Operator 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 Operator to undertake not to enforce any rights under a Key Contract relating to the period prior to the expiry of the Contract Period.

4.4 **Change of Name**

The Operator shall cease to use any trademarks which are licensed to the Operator under any of the Brand Licences forthwith upon expiry of the Contract Period and shall take all necessary steps to change any company name which incorporates any such marks as soon as practicable.

#### 4.5 **Property Leases**

- (a) The Operator shall, on the expiry of the Contract Period, if requested by the Secretary of State, assign its interest under all or any Property Leases to the Secretary of State or as the Secretary of State may direct, subject where applicable to the agreement of any other party to such Property Lease or the ORR.
- (b) Such assignment shall be on such terms as the Secretary of State may reasonably require, including:
  - (i) that the Operator shall not be released from any accrued but unperformed obligation, the consequences of any antecedent breach of a covenant or obligation in the Property Leases or any liability in respect of any act or omission under or in relation to the Property Lease prior to, or as at the date of, any such assignment (except to the extent that the Secretary of State or the Secretary of State's nominee agrees to assume responsibility for such unperformed obligation, such liability or the consequences of such breach in connection with the relevant assignment); and
  - (ii) that neither the Secretary of State nor the Secretary of State's nominee shall be obliged, in connection with such assignment, to agree to assume responsibility for any unperformed obligation, liability or consequences of a breach referred to in paragraph 4.5(b)(i), and the Operator shall indemnify the Secretary of State or the Secretary of State's nominee, as the case may be, on demand, on an after-tax basis against any costs, losses, liabilities or expenses suffered or incurred in relation thereto.
- (c) The Operator 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 Operator is also party, agree to the assignment of such Train Operator's interest under the relevant Property Lease to the Secretary of State or as the Secretary of State may direct, subject, where applicable, to the consent of Network Rail. The provisions of paragraph 4.5(b) shall apply to any such assignment.
- (d) The Operator 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 Operator 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 Operator shall immediately on the expiry of the Contract 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 Operator 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 Operator agrees that the Secretary of State or the Secretary of State's agents may have access to and use free of charge any information contained in any Computer System or in hard copy format as the Secretary of State sees fit (for the purposes of continuing the operation of the Rail Services).

## 6. **Maintenance Records**

6.1 The Operator shall immediately on expiry of the Contract 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 an Asset,

including the extent of completion of examinations and the modification status of each such rolling stock vehicle.

## 7. **Ticketing Arrangements**

7.1 The Operator shall provide immediately on expiry of the Contract 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. **The Operator's Intellectual Property**

8.1 On the expiry of the Contract Period, the Operator will grant to any Successor Operator licences of any Intellectual Property Rights which:

- (a) are owned by or licensed to the Operator;
- (b) were not owned by or licensed to it immediately prior to the Start Date;
- (c) NOT USED;
- (d) do not represent or constitute a Mark; and
- (e) may, in the reasonable opinion of the Secretary of State, be necessary for any Successor Operator to operate the Rail Services on an efficient and economic basis after the expiry of the Contract Period.

- 8.2 When agreeing the terms on which Intellectual Property Rights are to be licensed to it, the Operator shall use all reasonable endeavours to ensure that such terms include the right to sub-license such Intellectual Property Rights in accordance with this paragraph 8. The Operator shall not enter into a licence that does not include such a provision unless the Secretary of State Approves.
- 8.3 Any licence of any Intellectual Property Rights shall be granted to the relevant Successor Operator for such period as the Secretary of State may determine to be reasonably necessary for the purpose of securing continuity of the provision of the Rail Services. Such licence shall be free of charge and royalty-free for a minimum of three (3) months.
- 8.4 If the licence of any Intellectual Property Rights is for a period in excess of three (3) months, the grant of the licence shall be subject to payment of a reasonable royalty (backdated to the expiry of the Contract Period) on the basis of a willing licensor and licensee entering into a licence on comparable terms to similar licences of such Intellectual Property Rights. If the Operator and the relevant Successor Operator are unable to agree such royalty, the Operator shall submit such dispute for resolution in accordance with such dispute resolution rules as the Secretary of State may require.
- 8.5 Any such licence shall be in such form as the Secretary of State shall reasonably determine and shall:
- (a) be non-exclusive and limited to use solely for the purposes of the provision and operation of the Rail Services and will not provide for any right to use such Intellectual Property Rights for any other purpose (including its marketing or exploitation for any other purpose);
  - (b) be terminable on material breach by the Successor Operator;
  - (c) contain an indemnity from the Operator to the effect that to the best of its knowledge and belief it owns the relevant Intellectual Property Rights or has the right to license them and the licensing of such Intellectual Property Rights and the subsequent use of the Intellectual Property Rights will not infringe any third party Intellectual Property Rights; and
  - (d) require the Successor Operator, to the extent that it relates to any trade marks, to use such trade marks in such manner as may reasonably be required by the Operator provided that it shall not be reasonable for the Operator to require any such trade mark to be used in a manner materially different from its use during the Contract Period.

## 9. **Information about Passengers**

- 9.1 The Operator shall immediately on the expiry of the Contract Period make available to the Secretary of State and/or the Secretary of State's nominee:
- (a) passenger numbers information specified in paragraph 15 of Schedule 1.1 (Service Development), in such format and to such level of disaggregation as the Secretary of State and/or his nominee may reasonably require; and
  - (b) the CRM Data; and
  - (c) the Yield Management Data.

**APPENDIX 1 TO SCHEDULE 15.4**

**Form of Transfer Agreement**

Dated [INSERT DATE]

**[Northern Trains Limited]**

and

**[INSERT NAME OF SUCCESSOR OPERATOR]**

TRANSFER AGREEMENT

in respect of

certain property, rights and liabilities

of [Northern Trains Limited]

**THIS TRANSFER AGREEMENT** is made on [\_\_\_\_\_] 20[●]

**BETWEEN**

1. **[Northern Trains Limited]** (Company no: [INSERT]), whose registered office is at [INSERT] (the **Transferor**); and
2. **[SUCCESSOR OPERATOR]** (Company no: [ ]), whose registered office is at [registered office] (the **Transferee**).

**Whereas**

- (1) The Transferor has been providing certain services for the carriage of passengers by railway and operating certain stations and light maintenance depots (the **"Rail Services"**) pursuant to an agreement dated [INSERT DATE] and entered into between the Secretary of State for Transport (the **"Secretary of State"**) and the Transferor (the **"Services Agreement"**).
- (G) The Transferee has been selected by the Secretary of State to continue the provision of all or part of such services pursuant to a franchise agreement with the Secretary of State dated [INSERT DATE].
- (H) The Secretary of State has requested the Transferor, and the Transferor has agreed, to transfer to the Transferee certain property, rights and liabilities of the Transferor.
- (I) This Contract sets out certain terms between the Transferor and the Transferee in relation to the transfer of such property, rights and liabilities.

**IT IS AGREED THAT:**

**(A) Definitions and Interpretation**

- 1.1 The following words and expressions shall have the following meaning:

**Act** means the Railways Act 1993 as amended from time to time (including by the Transport Act 2000 and the Railways Act 2005);

**Assets and Liabilities Letter** means the letter dated on or about the Transfer Date to be issued by the Secretary of State to the Transferor and Transferee confirming the property, rights and liabilities of the Transferor that will transfer from the Transferor to the Transferee in accordance with the terms of this Agreement;

**Business** means such of the undertaking or part of the undertaking of the Transferor that consists of the provision of the Rail Services and which is continued by the Transferee after the Transfer Date;

**Completion Payment** has the meaning given to that term in clause 2.5

**Credit** has the meaning given to that term under the Ticketing and Settlement Agreement;

**Debit** has the meaning given to that term under the Ticketing and Settlement Agreement;

**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 Transferor and Transferee, determine from time to time);

**Law** means any enactment, subordinate legislation, rule, regulation, order, directive or other provision, including (without limitation) 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);

**Net Asset Statement** means the statement to be drawn up pursuant to clause 2.6;

**Net Asset Value** means the aggregate of the amounts of the Relevant Assets, the Relevant Debits and Credits and the Relevant Employee Liabilities as shown in the Net Asset Statement;

**Purchase Price** means an amount equal to the Net Asset Value;

**Relevant Assets** means the property, rights and liabilities of the Transferor which are or are to be transferred to the Transferee, as listed in the Assets and Liabilities Letter;

**Relevant Debits and Credits** means such Debits and Credits of the Transferor which relate to Fares sold before the Transfer Date and which may be received by the Transferee as a result of clause 11-33 of the Ticketing and Settlement Agreement;

**Relevant Employee Liabilities** means such rights and liabilities of the Transferor (or any other relevant employer or person) under any contracts of employment relating to the Relevant Employees which have been or are to be transferred to the Transferee by virtue of the operation of Law (including the Transfer Regulations);

**Relevant Employees** means all persons employed in the Business immediately before the Transfer Date (whether employed by the Transferor or otherwise) whose contract of employment has been or is to be transferred to the Transferee by virtue of the operation of Law (including the Transfer Regulations) or any other person employed 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);

**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;

**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;

**Security Interests** 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;

**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 [●];

**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(a);

**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;

**Undisclosed Employee** has the meaning assigned to that term in clause 7.1(d).

## Construction and Interpretation

1.2 In this Agreement:

- (a) terms and expressions defined under the Terms shall have the same meaning where used in this Agreement unless the context otherwise implies;
- (b) the terms "contract of employment", "collective agreement", "employee representatives" and "trade union" shall have the same meanings respectively as in the Transfer Regulations;
- (c) 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;
- (d) words and expressions defined in the Interpretation Act 1978 have the same meanings when used in this Agreement;
- (e) the words "include", "including" and "in particular" are to be construed without limitation;
- (f) references to any person include its successors, transferees or assignees;
- (g) headings and references to headings shall be disregarded in construing this Agreement;
- (h) 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; and
- (i) words importing the masculine gender include the feminine and vice-versa, and words in the singular include the plural and vice-versa.

## 2. Agreement to Transfer and Transfer Price

### Agreement to Transfer

2.1 As of and with effect from the Transfer Date and to the extent not transferring by virtue of the operation of Law (including the Transfer Regulations):

- (a) the Transferor transfers, assigns and conveys to the Transferee each of:
  - (i) the Relevant Assets;
  - (ii) the Relevant Debits and Credits; and
  - (iii) the Relevant Employee Liabilities,

(together, the ***Transferring Assets and Liabilities***); and

2.2 the Transferee accepts such assets and assumes such rights, liabilities and obligations, in each case, on the terms set out in this Agreement.

2.3 Each of the Transferor and the Transferee agrees that the Secretary of State will issue the Assets and Liabilities Letter to the Transferor and the Transferee which will set out the list of the Transferor's property, rights and liabilities that will:

- (a) subject to clause 2.4, transfer to the Transferee under this Agreement; and
- (b) not transfer to the Transferee under this Agreement.

2.4 The Transferor and the Transferee agree to:

- (a) enter into, execute and deliver, and procure that any third party enters into, executes and delivers, in each case with effect from the Transfer Date, such further instruments (including, without limitation, any novation agreements); and
- (b) obtain, on or before the Transfer Date, such third party consents, agreements and approvals,

in each case, as shall be necessary or expedient to give effect to the transfer referred to in clause 2.1. Nothing in this clause 2.4 shall require the Transferor to assume any additional liabilities.

### **Amount and Payment**

2.5 The price for the transfer of the Transferring Assets and Liabilities shall (subject to adjustment as expressly provided in this Agreement) be an amount equal to the Net Asset Value of which the sum of £[*amount*], as determined by the Secretary of State (the **Completion Payment**) shall be paid in immediately available funds by the Transferor to the Transferee, or by the Transferee to the Transferor on the Transfer Date and the balance (if any) shall be paid in accordance with clause 2.9.

### **Net Asset Statement**

2.6 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.

2.7 The Net Asset Statement shall be:

- (a) drawn up in the manner described in Schedule 2 (*Net Asset Statement*);
- (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 Schedule 1; and
- (c) presented, initially as a draft, to the Transferor immediately following its preparation for review in conjunction with its auditors.

2.8 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**

2.9 If the Purchase Price exceeds or is less than the 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 Reporting Accountants**

3.1 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 3.1(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; and
- (f) the decision of the Reporting Accountants shall (in the absence of objection on the grounds of any error discovered within 14 days of the issue of their decision) be conclusive and binding and shall not be the subject of any appeal by way of legal proceeding or arbitration or otherwise.

### 4. **Warranty**

The Transferor warrants and represents to the Transferee that the Relevant 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 Relevant Assets, the Relevant Contract Liabilities, the Relevant Debits and Credits and the Relevant Employee Liabilities are 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 Relevant Assets, the Relevant Contract Liabilities, the Relevant Debits and Credits and the Relevant Employee 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 Relevant Assets, the Relevant Contract Liabilities, the Relevant Debits and Credits and the Relevant Employee 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 of such direction may be chargeable on the transfer of the Relevant Assets, the Relevant Contract Liabilities, the Relevant Debits and Credits and the Relevant Employee 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. 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 Assets, Relevant Contract Liabilities, Relevant Debits and Credits and Relevant Employee Liabilities pursuant to this Agreement, clauses 6.3 to 6.6 inclusive shall apply *mutatis mutandis* to such payment substituting "Transferor" for "Transferee" and vice versa.
- 6.8 All of the records referred to in Section 49 of the Value Added Tax Act 1994 relating to the business (being the purchase records) shall be retained by the Transferor and the Transferor shall undertake to the Transferee to:
- (a) preserve those records in such manner and for such periods as may be required by law; and
  - (b) give the Transferee as from the Transfer Date reasonable access during normal business hours to such records and allow the Transferee 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, to the extent provided by the Transfer Regulations, insofar as such contract relates to any occupational pension scheme) shall be transferred to the Transferee with effect from the Transfer Date which shall be the "time of transfer" under the Transfer Regulations and the Transferee shall employ each such Relevant Employee on the terms of those contracts of employment (save to the extent provided by the Transfer Regulations, insofar as such contract relates to any occupational pension scheme) with effect from the Transfer Date;
- (b) the Transferor shall perform and discharge all its obligations in respect of all the Relevant Employees for its own account up to and including the Transfer Date including, without limitation, discharging all wages and salaries of the Relevant Employees, all employer's contributions to any relevant occupational pension scheme and all other costs and expenses related to their employment (including, without limitation, any Taxation, accrued holiday pay, accrued bonus, commission or other sums payable in respect of service prior to the close of business on the Transfer Date) and shall indemnify the Transferee and keep the Transferee indemnified against each and every action, proceeding, liability (including, without limitation, any Taxation), cost, claim, expense (including, without limitation, reasonable legal fees) or demand arising from the Transferor's failure so to discharge;
- (c) the Transferor shall indemnify the Transferee and keep the Transferee indemnified against each and every action, proceeding, cost, claim, liability (including, without limitation, any Taxation), expense (including, without limitation, reasonable legal fees) or demand which relates to or arises out of any act or omission by the Transferor or any other event or occurrence prior to the Transfer Date and which the Transferee may incur in relation to any contract of employment or collective agreement concerning one or more of the Relevant Employees pursuant to the provisions of the Transfer Regulations or otherwise including, without limitation, any such matter relating to or arising out of:
- (i) the Transferor's rights, powers, duties and/or liabilities (including, without limitation, any Taxation) under or in connection with any such contract of employment or collective agreement, which rights, powers, duties and/or liabilities (as the case may be) are or will be transferred to the Transferee in accordance with the Transfer Regulations; or
- (ii) anything done or omitted before the Transfer Date by or in relation to the Transferor in respect of any such contract of employment or collective agreement of 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 this Contract prior to the Transfer Date shall have effect as if originally made between the Transferee and any employee ("**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; and

- (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) above; 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 Indemnity**

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 this 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 authority 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. Clause 7.5.

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 Regulations 13(2)(d) and 13(6) of the Transfer Regulations concerning measures envisaged by the Transferee in relation to the Relevant Employees.

### **Details of Relevant Employees**

- 7.4 Without prejudice to the Transferor's duties under the Transfer Regulations to provide Employee Liability Information, the Transferor warrants to the Transferee that it has (to the extent not made available to the Secretary of State under this Contract 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 of 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 of 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).

### **Pensions**

- 7.6 The Transferee shall comply with the Pensions Regulations in respect of the Relevant Employees.

## **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 and the Secretary of State.

### **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 London North Eastern Railway Limited 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 A person who is not a party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement except to the extent set out in clause 8.8.

8.8 The Secretary of State may, to the same extent as if the Secretary of State were a party, enforce and rely on any provision of this Agreement where the Secretary of State is expressed to have a right in respect of any such provision.

**Governing Law**

8.9 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  
[Northern Trains Limited]

}

DIRECTOR:

DIRECTOR/SECRETARY:

SIGNED FOR AND ON  
BEHALF OF THE  
[**TRANSFeree**]

DIRECTOR: }

DIRECTOR/SECRETARY:

**SCHEDULE TO THE TRANSFER SCHEME****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:**

<b>C</b>	<p>equals the Credit (exclusive of any Valued Added Tax) received by the Transferor in respect of the Fare provided that:</p> <ol style="list-style-type: none"> <li>(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;</li> <li>(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;</li> <li>(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</li> <li>(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);</li> </ol>
<b>D</b>	<p>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);</p>

$\frac{A}{B}$ equals	<p>(a) in the case of a Season Ticket Fare, the number of journeys which the purchaser of the Fare is estimated to make from (and including) the Transfer Date to (and including) the last day on which the Fare is valid (including any extensions to its original period of validity) divided by the total number of journeys which the purchaser of the Fare is estimated to make with that Fare (as determined in each case in accordance with Schedule 28 of the Ticketing and Settlement Agreement);</p> <p>(b) in the case of any other Fare which entitles the holder thereof to make more than two journeys, the number of days for which the Fare continues to be valid after the Transfer Date (including any extensions to its original period of validity) divided by the total number of days for which such Fare is valid on issue (except to the extent that it can reasonably be estimated what proportion of the journeys which could be made on issue of the Fare have not been made prior to the Transfer Date); or</p> <p>(c) in the case of any other Fare, zero; and</p>
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**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,

and for these purposes a Credit or Debit shall be deemed to be received when the relevant Fare is Accepted for Clearing (as defined in the Ticketing and Settlement Agreement).

2. Rights and liabilities relating to an Excess Fare, Reservation or Upgrade (as such terms are defined in the Ticketing and Settlement Agreement) shall be valued at zero unless such Excess Fare, Reservation or Upgrade involves more than two journeys, in which case they shall be valued in accordance with paragraph 1 and references to Fare in paragraph 1 shall be construed accordingly.
3. Rights and liabilities under a Discount Card shall be valued in accordance with the following formula:

$$(C - D) \times \frac{A}{B}$$

**where:**

<b>C</b>	equals the Credit (exclusive of any Value Added Tax) received by the Transferor in respect of the Discount Card;
<b>D</b>	equals the Debit (exclusive of any Value Added Tax) received by the Transferor in respect of the commission due in respect of the sale of the Discount Card (provided that for these



purposes the amount of such commission shall not exceed the National Standard Rate of Commission (as defined in the Ticketing and Settlement Agreement) in respect of the Discount Card); and

$\frac{A}{B}$  equals the number of days for which the Discount Card continues to be valid after the Transfer Date (including any extensions to its original period of validity) divided by the total number of days for which such Discount Card is valid on issue, or in the case of any Discount Card listed in Schedules 12 or 39 of the Ticketing and Settlement Agreement on the Start Date, zero,

and for these purposes a Credit or Debit shall be deemed to be received when the relevant Discount Card is Accepted for Clearing (as defined in the Ticketing and Settlement Agreement).

- 4. Relevant Debits and Credits shall be valued at the full amount of such Debits and Credits (inclusive of any Value Added Tax) but excluding any Debits and Credits arising in respect of Adjustment Amounts (as defined in the Ticketing and Settlement Agreement) which are received by the Transferee in respect of a change to the Credit which is used to value any relevant Season Ticket Fare under paragraph 1 of this Schedule to the extent such Adjustment Amounts (as defined in the Ticketing and Settlement Agreement) relate to a period after the Transfer Date.
- 5. Rights and liabilities in respect of any contract, lease, licence or other equivalent arrangement (excluding rights and liabilities valued under paragraphs 1 to 4) shall be valued at nil except to the extent that the relevant rights and liabilities include matters specified in the left hand Column of the following table, which shall be valued on the basis specified in the right hand Column of the following table:

Rights and Liabilities	Value
Any accrued rights to receive payment	Monetary amounts so accrued, subject to any provision being made for payment not being received from any other person
Any right to receive payment in respect of goods and/or services provided by the Transferor prior to the Transfer Date where the due date for such payment is after the Transfer Date	Amount payable under such contract, lease, licence or other equivalent arrangement for the goods and/or services so provided by the Transferor, subject to any provision being made for payment not being received from any other person
Any accrued liabilities to make payment	Monetary amounts so accrued
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

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.	CRM Data, Yield Management Data and Actual Passenger Demand information (and all Intellectual Property Rights in respect of the same) shall be valued at nil.
7.	The Stored Credit Balance held by the Operator at the Transfer Date shall be valued at the monetary amount so held.
8.	Any DfT Funded Assets shall be valued at nil.
9.	Any equipment compliant with the ITSO Specification (including Smart Media and ITSO Certified Smart Media readers) and any databases and any Intellectual Property Rights associated with this equipment transferred from the Transferor to the Transferee pursuant to the Transfer Scheme shall be valued at nil.
10.	Any other property, rights or liabilities shall be valued on the basis of a willing vendor and purchaser and ongoing usage within the railway industry.

**APPENDIX 2 TO SCHEDULE 15.4**

**NOT USED**

## **SCHEDULE 16**

### **PENSIONS**

- Schedule 16.1: Railways Pension Scheme  
Appendix 1: List of Shared Costs Sections
- Schedule 16.2: NOT USED

## Schedule 16.1

### Railways Pension Scheme

#### 1. Definitions

Unless otherwise defined in this Contract, terms used in this Schedule 16.1 shall have the meanings given to them in the Railways Pension Scheme.

#### 2. Operator Pensions Sections

The Operator shall participate in and become the Designated Employer in relation to the Shared Cost Sections of the Railways Pension Scheme as specified in Appendix 1 to this Schedule 16.1 (together the "**Operator Pension Sections**") in respect of the Rail Services. Subject to paragraphs 3 and 4.2(d) membership of an Operator Pension Section will be offered to each employee of the Operator only.

#### 3. Closed Schemes

3.1 Subject to any requirements of Her Majesty's Revenue and Customs, the Operator 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 Contract Period.

3.2 For the purposes of this paragraph 3, "**Closed Scheme Employees**" means such of the employees of the Operator who were, immediately prior to the commencement of their employment with the Operator, members of either of the British Railways Superannuation Fund or the BR (1974) Pension Fund.

#### 4. Variations in benefits, contributions and investment

4.1 If the Operator is considering making a proposal that falls within the scope of paragraphs 4.2(a) to 4.2(g) inclusive, it shall promptly consult with the Secretary of State in relation to that proposal prior to putting such a proposal to the Pensions Committee of any Operator Pension Section, the Trustee of the Railways Pension Scheme (the "**Trustee**"), or to any trade union. The Operator must otherwise consult in good time with the Secretary of State in relation to any proposal falling within the scope of paragraphs 4.2(a) to 4.2(g) inclusive.

4.2 Separately and in addition to complying with its obligations under paragraph 4.1, the Operator 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 Operator in such a way as to increase the part of those earnings which qualifies as pensionable earnings under the rules of the Railways Pension Scheme applicable to any Operator Pension Section (the "**Operator Pension Section Rules**") or take any action (or consent to the taking of any action) which could detrimentally affect the funding of any Operator Pension Section, including varying or providing different or additional benefits under that Operator Pension 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 Operator Pension Section and on or prior to the effective date of the change the Operator 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 Operator Pension Section; or

- (iii) would not lead to substantial changes in the funding of any Operator Pension Section and is the result of the normal application of the Operator Pension Section Rules in the ordinary day to day running of the business of the Rail Services, 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 Operator Pension 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 Operator Pension Section or as provided in paragraph 3;
  - (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 Operator shall not under this Schedule 16.1 be obliged for the purposes of this Contract to offer such benefits to any employee employed on a fixed term contract of twelve (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 Operator Pension Section, including exercising any discretion allowed to the Operator as Designated Employer arising out of any actuarial valuation of an Operator Pension Section, and varying or providing different or additional benefits under the Operator Pension Sections in respect of future service, unless such action is required by Law;
  - (f) close an Operator Pension Section to new members; or
  - (g) take (or omit to take) any action which could result in any Operator Pension Section being wound up, in whole or in part.
- 4.3 The Operator shall consult with the Secretary of State on:
- (h) any proposal made by the Trustee to change the statement of investment principles applicable to any Operator Pension Section; and
  - (i) any proposal to alter the rate of contributions payable by the Operator or its employees under a new schedule of contributions for the Operator Pension Section.
- 4.4 With respect to any proposal falling within the scope of paragraph 4.3(a) or 4.3(b), the Operator 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.
- 5. Funding Liabilities**
- 5.1 The Operator shall pay the employer contributions required under the schedule of contributions applicable to each Operator Pension Section (or either of the British Railways Superannuation Fund or the BR (1974) Pension Fund in which it participates) in respect of the Contract Term subject to the provisions of paragraph 5.2 below.
- 5.2 Where, during the Contract Term, Rail Services are aggregated or disaggregated by the Secretary of State (for example, as a result of remapping) and, as a consequence, an Operator Pension Section of which the Operator 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 Operator has no liability for any resulting deterioration immediately arising in the funding level of the Operator Pension Section measured in accordance with the Operator Pension 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 Operator Pension Section linked to such transfer in or out of members.

## 6. Discharge of Obligations

6.1 The Secretary of State may at any time during the Contract Term seek information from the Trustee with a view to satisfying himself that the Operator 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 Operator Pension Section.

6.2 The Operator shall promptly provide such information in relation to any Operator Pension 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.

6.3 The Operator shall, in respect of the Contract Term, use all reasonable endeavours to provide to the Secretary of State:

- (a) within one (1) month of the expiry of each Contract 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 Operator Pension Sections stating either that the Operator has fully complied with its obligations under the Railways Pension Scheme, including its obligation to contribute to the Operator Pension 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 6.3(a), it shall cover the relevant Contract Year. Where the certificate has been given pursuant to paragraph 6.3(b), it shall cover such period as the Secretary of State shall specify.

## 7. Termination of this Contract

The Secretary of State shall at the end of the Contract Period ensure that the Operator has no liability for any deficit in the Operator Pension Sections (other than for contributions due and payable by the Operator to the Operator Pension Sections for any period prior to the end of the Contract Term) and shall have no right to benefit from any surplus which may exist in the Operator Pension Sections. For the avoidance of doubt, this paragraph 7 shall apply where the Rail Services are either aggregated or disaggregated (for example, as a result of remapping).

## 8. Operator Obligations to Participate in any Investigation and Reform

8.1 The Operator shall:

- (a) act in good faith and in a Reasonable Commercial Manner at all times; and
- (b) engage appropriately with the RDG, the Pensions Regulator and the relevant trade unions,

in discharging its obligations under paragraph 8.2 of this Schedule 16.1.

8.2 The Operator shall use all reasonable endeavours to participate in:

- (a) the development and implementation of the RDG's response to the current and any future Investigation and the associated concerns raised by the Pensions Regulator regarding those sections of the Railways Pension Scheme for which a Train Operator is the designated employer;

- (b) any Investigation concerning one or more of the Operator Pension Sections, in which case the Operator shall use all reasonable endeavours to achieve an outcome from that Investigation with which a reasonable Train Operator, who was in the position of the Operator and acting in a Reasonable Commercial Manner, would be satisfied; and
- (c) any industry wide efforts to reform the pension arrangements or benefits payable under the Railways Pension Scheme or offered to employees of Train Operators, recognising the need for the British passenger rail industry to be affordable and offer value for money in the interests of relevant stakeholders including taxpayers.

## 9. **Information Powers**

Where required by the Secretary of State, the Operator agrees to allow the Secretary of State or the Secretary of State's representatives to attend any meeting between the Operator and the Trustee and/or the Pensions Regulator where the meeting in whole or part relates to matters to which paragraph 8 or 10 of this Schedule 16.1 applies.

## 10. **Pension Directions by the Secretary of State**

- 10.1 The Secretary of State may, at any time, by written notice to the Operator, direct that the Operator take such action in relation to pensions for employees and workers of the Operator as the Secretary of State may in its discretion determine. The Secretary of State may consult with the Operator before issuing any such direction under this paragraph 10. The Secretary of State may issue more than one direction to the Operator under this paragraph 10.
- 10.2 Without limiting the generality of paragraph 10.1, such directions may include:
- (a) directing the Operator to propose a schedule of contributions or recovery plan to the Trustee of the Railways Pension Scheme incorporating such employer and employee contributions and over such period as the Secretary of State may determine;
  - (b) directing the Operator to offer such alternative pension arrangements to employees or workers of the Operator as the Secretary of State may determine; and
  - (c) directing the Operator to make proposals to the Trustee of the Railways Pension Scheme in relation to benefits, contributions or investments.
- 10.3 Where the Operator receives a direction under paragraph 10.1, the Operator will use all reasonable endeavours to implement the direction and to work in good faith and act in a Reasonable Commercial Manner with other parties to give effect to the direction.
- 10.4 To the extent that the terms of any direction given under paragraph 10.1 conflict with any of the other terms of this Schedule 16.1, the terms of the direction shall prevail to the extent of that inconsistency.
- 10.5 The Operator will provide the Secretary of State with any documents or information which it may request in connection with any matter which is relevant to the subject of any direction given under paragraph 10.1 or its implementation.
- 10.6 Nothing in this paragraph 10 shall require the Operator to breach any legal obligation to which it is subject. Where the Operator reasonably considers that the implementation of any aspect of the direction will cause it to breach any legal obligation of the Operator the Secretary of State shall work in cooperation with the Operator with a view to agreeing an approach to discuss changes to avoid or otherwise mitigate the risk of such breach.



**APPENDIX 1 TO SCHEDULE 16.1**

**List of Shared Costs Sections**

**Shared Costs Sections**

**Northern (ex North East) Section**

**Northern (ex North West) Section**

**Schedule 16.2**

**NOT USED**

## SCHEDULE 17

### CONFIDENTIALITY AND DATA PROTECTION

#### 1. Confidentiality

1.1 Subject to the provisions of the Act, the Environmental Information Regulations, the Freedom of Information Act (and any code of practice or other guidance related to the same) and paragraphs 2 (Disclosure of Confidential Information) to 8 (Continuing Obligation) and 10 (Redactions) inclusive of this Schedule 17, each Party shall hold in confidence the Contract Documents and 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 Service Contract) (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 Service Contract 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 Service Contract, whereupon to the extent that it is in the public domain this obligation shall cease.

#### 2. Disclosure of Confidential Information

2.1 Each Party may disclose any data or information acquired by it under or pursuant to this Contract or information relating to a dispute arising under this Contract 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 (*Confidentiality*) above;
- (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 (*Confidentiality*) above;
- (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 (*Confidentiality*) above;
- (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 this Contract 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 (*Confidentiality*) above;
- (f) to any director, employee or officer of such Party, to the extent necessary to enable such Party to perform its obligations under this Contract or to protect or enforce its rights under this Contract; or
- (g) by the Operator, to the ORR, the Passengers’ Council or a Local Authority; or
- (h) by the Secretary of State (with the consent of the Operator (such consent not to be unreasonably withheld or delayed)) to Transport for the North and its

consultants and advisors, upon obtaining from Transport for the North or its relevant consultant or advisor (as the case may be) an undertaking of confidentiality equivalent to that contained in paragraph 1 (*Confidentiality*) above.

2.2 The Secretary of State may disclose the Confidential Information of the Operator:

- (a) on a confidential basis to any Central Government Body for any proper purpose of the Secretary of State or of the relevant Central Government Body;
- (b) to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
- (c) to the extent that the Secretary of State (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
- (d) on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in paragraph 2.2(a) of this Schedule 17 (including any benchmarking organisation) for any purpose relating to or connected with the Rail Services;
- (e) on a confidential basis for the purpose of the exercise of its rights under this Contract, including but not limited to its right of audit, assessment or inspection pursuant to paragraph 4 of Schedule 11.1 (Organisation and Management) and its rights pursuant to Schedule 15.1 (Reletting Provisions);
- (f) on a confidential basis to a Local Authority or other relevant Stakeholder to the extent that the Secretary of State (acting reasonably) deems such disclosure necessary or appropriate for the purposes of the development and/or implementation of any proposal promoted by (or on behalf of) such Local Authority or other relevant Stakeholder in relation to the provision of additional, varied and/or extended Passenger Services, introduction of new stations or enhancements to Stations or other infrastructure schemes which impact on the Rail Services;
- (g) on a confidential basis to a proposed successor, transferee or assignee of the Secretary of State in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Contract;
- (h) on a confidential basis to any Devolved Transport Body for any proper purpose of the Secretary of State or of the relevant Devolved Transport Body;
- (i) on a confidential basis, to the extent necessary to provide Business Plans, Costs Budgets and any related information to a prospective Successor Operator or any persons invited to tender for the right to provide all or some of the Passenger Services; and
- (j) to the European Union, to the extent required under Article 4.7, Chapter 4 of Title XI of Part Two of the Trade and Cooperation Agreement,

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Secretary of State under this paragraph 2.2 of this Schedule 17.

### 3. **Publication of Certain Information**

3.1 Notwithstanding the provisions of paragraph 1 of this Schedule 17 (*Confidentiality and Data Protection*), paragraph 9.5 (*Cross-licensing of Business Plan IP*) and paragraph 10.5 (*Cross-licensing of Industry Change Project IP*) of Schedule 8.4 (*Business Plan*), the Secretary of State may publish (for purposes including section 73 of the Act) and whether to the press, the public or to one or more individuals, companies or other bodies, including to any

prospective Successor Operator) in such form and at such times as the Secretary of State sees fit, the following (irrespective of whether the same was provided to the Secretary of State by the Operator or a third party):

- (a) any or all of the Contract Documents provided that the Secretary of State shall, prior to publishing the same, redact from any Contract Documents any Redactions pursuant to paragraph 10 (*Redactions*) of this Schedule 17;
- (b) the amount of any Contract Payments payable under this Contract and the aggregate amount of Contract Payments paid in each year under this Contract;
- (c) such information as the Secretary of State may consider necessary to publish in connection with the performance of the Secretary of State's functions in relation to any Closure or proposed Closure;
- (d) the amount of any payments by the Operator under the Passenger's Charter;
- (e) such information (including CRM Data and Yield Management Data) as may be required for the retendering or reletting of any other railway passenger services, provided that such information may only be published during the period of, or during the period leading up to, such retendering or reletting;
- (f) any reports and accounts delivered to the Secretary of State under the Service Contract 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 Operator in the provision of the Rail Services (including any information provided under Schedule 1;
- (h) the results, on a Service Group, Route, station or other comparable basis, of any calculation of passenger numbers under Schedule 1.1 (*Service Development*);
- (i) the results of any survey under Schedule 7.2 (*Customer Experience Performance*);
- (j) the results of any assessment or inspection under Schedule 8.3 (*Management Information*) or Schedule 11.1 (*Organisation and Management*);
- (k) details of the Operator's plans and performance in respect of safety;
- (l) such information as the Secretary of State may require to include in the Secretary of State's annual report in respect of the Operator provided that, in preparing that report, the Secretary of State shall have regard to the need for excluding, so far as is practicable, the matters specified in paragraphs (a) and (b) of section 71(2) of the Act for this purpose, taking references in those paragraphs to the ORR as references to the Secretary of State;
- (m) such information as the Secretary of State may require to publish at or around the expiry or possible termination of the Contract Period in order to secure continuity of the provision and operation of the Rail Services; and
- (n) any information provided to the Secretary of State pursuant to any provision of the Service Contract including pursuant to a Request for Data where in the opinion of the Secretary of State publication is appropriate for the purposes of properly carrying out its duties.

3.2 Without prejudice to any other provision of this Schedule 17, the Secretary of State may publish any other information relating to the Operator if the Secretary of State has previously notified the Operator and the Operator does not demonstrate to the satisfaction of the Secretary of State within fourteen (14) days of such notification that the publication of such information would, in the reasonable opinion of the Operator, have a material

adverse effect on its business. If the Operator attempts so to demonstrate to the Secretary of State but the Secretary of State is not so satisfied, the Secretary of State shall allow seven (7) more days before publishing the relevant information.

4. **Service Development Information**

Nothing in this Schedule 17 shall be deemed to prohibit, prevent or hinder, or render either Party liable for, the disclosure by either Party to Network Rail, the ORR, other Train Operators, any operators of services for the carriage of goods by rail, the Passengers' Council and/or any Local Authority of any information relating to the development of the Train Service Requirement in accordance with Schedule 1 (*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 the Secretary of State's functions.

6. **Provision of Information to the ORR**

The Operator 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 Operator under this Contract.

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 the Secretary of State has obtained pursuant to those Acts and which a Party to this Contract 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 this Contract, irrespective of the reason for termination.

9. **Freedom of Information - General Provisions**

9.1 Both Parties acknowledge that each of them is subject to the requirements of the Freedom of Information Act and the Environmental Information Regulations and accordingly agrees to assist and co-operate with each other to enable each Party to comply with their obligations under the Freedom of Information Act and/or the Environmental Information Regulations. The forgoing shall not preclude either party from objecting to a disclosure of information.

9.2 Without prejudice to the generality of this paragraph 9, the Operator shall and shall procure that its employees, advisers, representatives or agents shall, in relation to information held by the Operator on behalf of the Secretary of State and the disclosure of which is validly requested in a Request for Information, provide the Secretary of State with details about and/or copy of all such information that the Secretary of State reasonably requests. Such information shall be provided within 5 (five) Weekdays of receipt of a copy of the Request for Information from the Secretary of State (or such other period as the Secretary of State may reasonable specify) and in such form as the Secretary of State may reasonable specify.

9.3 Where one Party receives a Request for Information relating to this Contract that Party shall as soon as practicable, and in any event within five (5) Weekdays of receipt of such Request for Information, send a copy of the Request for Information to the other party and both

parties shall consult with each other on who should handle and respond to such Request for Information. If it is agreed that the Secretary of State will respond to the Request for Information, the Secretary of State shall consult the Operator on how disclosure Freedom of Information Act and/or the Environmental Information Regulations would affect the commercial interests of the Operator.

- 9.4 The Party in receipt of the Request for Information shall determine whether information is exempt information under the Freedom of Information Act and/or the Environmental Information Regulations and what Information will be disclosed in response to a Request for Information in accordance with Freedom of Information Act and/or the Environmental Information Regulations, giving due regard to the representations made by the other Party pursuant to paragraph 9.3. Neither Party shall disclose any information set out in the Service Contract or otherwise supplied to them by the other Party in response to a Request for Information unless legally obliged to do so and shall, in any event, not disclose any such information if it determines that any relevant exemption of the Freedom of Information Act and/or the Environmental Information Regulations is applicable.

## 10. Redactions

- 10.1 Subject to paragraph 9 (*Freedom of Information - General Provisions*), by no later than the date which is:

- (a) twenty (20) Weekdays after the date of this Contract (in respect of the Contract Documents referred to in paragraphs (a) and (f) of the definition thereof);
- (b) twenty (20) Weekdays after the date of their respective execution (in respect of the Contract Documents referred to in paragraphs (b), (c) and (g) of the definition thereof);
- (c) twenty (20) Weekdays after the dates that such Contract Documents are agreed or determined (in respect of the Contract Documents referred to in paragraphs (d) and (f) of the definition thereof);
- (d) twenty (20) Weekdays after the date of notification by the Secretary of State to the Operator of another agreement that is required for publication (in respect of the Contract Documents referred to in paragraph (e) and (h) of the definition thereof); and
- (e) twenty (20) Weekdays after the date of any document varying the terms of any Contract Documents,

the Operator shall provide to the Secretary of State details of any provisions of the Contract Documents or any such variation which the Operator believes are exempt from disclosure in accordance with the provisions of the Freedom of Information Act, the Environmental Information Regulations and/or section 73(3) of the Act (the "**Redactions**").

- 10.2 For each such Redaction the Operator should specify:

- (a) the exact text of the Contract Documents or variation that the Operator proposes is redacted using the template table(s) provided by the Secretary of State from time to time;
- (b) whether the Operator proposes that the Redaction applies in relation to the publication of the relevant Contract Documents or variation on the website of the Department for Transport, on the register required to be maintained by the Secretary of State pursuant to section 73 of the Act or on both such website and such register; and
- (c) the reasons why the Operator 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. Such reasons shall be

stated in the template table(s) provided by the Secretary of State from time to time.

- 10.3 The Secretary of State shall consult with the Operator in relation to the Operator's proposed Redactions (provided that the same are provided to the Secretary of State in accordance with paragraph 10.1).
- 10.4 If the Secretary of State and the Operator are unable to agree upon any proposed Redaction, the Secretary of State shall be entitled to determine, in the Secretary of State's discretion, whether or not to make such proposed Redaction.
- 10.5 If the Operator does not provide its proposed Redactions to the Secretary of State in accordance with paragraph 10.1, the Operator shall be deemed to have consented to publication of the relevant document without any Redactions.

## 11. **Data Protection**

11.1 In respect of any Personal Data processed by the Operator, including CRM Data and Personal Data relating to Business Employees, the Operator agrees that it shall:

- (a) comply with the Data Protection Legislation; and
- (b) procure that its agents and sub-contractors, including the Operations Data Processors, shall comply with the Data Protection Legislation.

11.2 The Operator shall promptly:

- (a) notify the Secretary of State of any Operations Data Breach, upon the Operator's awareness of the same, including all relevant details, whether the Operations Data Breach is by itself or by an Operations Data Processor;
- (b) provide the Secretary of State on request with all reasonable information, assistance and co-operation in relation to its processing of the CRM Data and the Personal Data relating to Business Employees, and procure that any Operations Data Processor which it appoints shall provide the Operator with all reasonable information, assistance and co-operation in relation to the processing of the CRM Data and the Personal Data relating to Business Employees by the Operations Data Processor, in each case in order to permit the Secretary of State to make an accurate and complete assessment of compliance by the Operator with this paragraph 11; and
- (c) provide the Secretary of State on request with all reasonable information, assistance and co-operation in relation to any audit of the Operator in relation to its processing of the CRM Data and the Personal Data relating to Business Employees, and procure that any Operations Data Processor which it appoints shall submit itself to audits by the Operator of the Operations Data Processor (whether those audits are by the Operator or by any person appointed on its behalf), in each case in order to permit the Secretary of State to make an accurate and complete assessment of compliance by the Operator with this paragraph 11.

11.3 The Operator shall and shall procure that any Operations Data Processor which it appoints shall:

- (a) notify (in the case of Operator) the Secretary of State and (in the case of any Operations Data Processor) the Operator in writing of the full names and registered office addresses of the entities which are from time to time carrying out any storage, hosting and/or other processing of the CRM Data and/or the Personal Data relating to Business Employees, together with the storage, hosting and/or other processing location(s);



- (i) ensure that in cases where the storage, hosting and/or other processing location(s) are outside of the United Kingdom the notification shall include details of the relevant country(ies) or territory(ies); and
- (ii) ensure that in cases where the storage, hosting and/or other processing locations(s) are in a third country (which has the meaning given in the Data Protection Legislation) the notification shall include a description of the appropriate safeguards which are in place under the Data Protection Legislation in respect of the same including that there is in force a United Kingdom decision that the country or territory to which the transfer is made ensures an adequate level of protection for processing of Personal Data and that there are in place the standard contractual clauses approved by the Information Commissioner's Office for the transfer of personal data to processors established in third countries accompanied by a valid transfer impact assessment in each case in relation to the transfer.

11.4 With reference to paragraphs 11.1 to 11.3 inclusive, the Operator hereby acknowledges that whilst the Secretary of State is not the Controller in respect of the CRM Data or Personal Data relating to Business Employees, the Secretary of State's legitimate interests given its duties under the Act, and its reputation, may be adversely affected in the event of any unlawful processing of CRM Data and/or Personal Data relating to Business Employees, or in the event of any Operations Data Breach. In addition, the Operator hereby acknowledges that the Secretary of State legitimately wishes to have knowledge of the locations in which the CRM Data and the Personal Data relating to Business Employees is stored, hosted or otherwise processed from time to time (whether inside or outside of the United Kingdom) given that all such information would be relevant in the event of any transfer of the Rail Services to a Successor Operator.

## 12. **Data Protection – Apprenticeships**

12.1 In respect of information relating to each Business Employee who commences an Apprenticeship and which is included in the Apprenticeships Data Collection Form:

- (a) the Operator shall not cause or permit any Personal Data whatsoever which relates to any Business Employee who commences an Apprenticeship to be included in any Apprenticeships Data Collection Form or otherwise shared with the Secretary of State or the Rail Delivery Group (whether in written form, on the telephone, or otherwise) and, accordingly, the Operator shall convert into anonymised aggregated form all Personal Data that is in the first instance included in the Apprenticeships Data Collection Form prior to sharing the Apprenticeships Data Collection Form with the Rail Delivery Group for the purpose described in paragraph 2.2 (Apprenticeships) of Schedule 1.8 (Diversity and Inclusion and Training and Development) (and the Operator hereby acknowledges and agrees that if it should be possible in any way to identify any Business Employee from the anonymised aggregated data there would be a disclosure of Personal Data by the Operator and, accordingly, the Operator would be in contravention of this paragraph 12.1(a) in that event); and
- (b) the Parties acknowledge that, notwithstanding the requirements of paragraph 12.1(a) including the absolute obligation that is imposed on the Operator to effect the anonymised aggregation of the Personal Data comprised in information relating to each Business Employee who commences an Apprenticeship, it may still be possible from time to time to identify the Business Employee from the Apprenticeships Data Collection Form and that there will be processing of Personal Data inherent in that circumstance, and accordingly, the Operator shall in preparation for that possibility ensure that:
  - (i) the Business Employee who commences an Apprenticeship is made aware that their Personal Data may be shared with the Rail Delivery Group (and onward to the Secretary of State) for the

purpose described in paragraph 2.2 (Apprenticeships) of Schedule 1.8 (Diversity and Inclusion and Training and Development);

- (ii) the Personal Data is collected and processed by or on behalf of the Operator in accordance with the Data Protection Legislation;
- (iii) the fairness principle of the Data Protection Legislation is satisfied including by issuing all relevant privacy notices in relation to the collecting and processing of the Personal Data by the Operator, and for the disclosure to and subsequent processing by the Rail Delivery Group (and the Secretary of State) for the purpose described in paragraph 2.2 (Apprenticeships) of Schedule 1.8 (Diversity and Inclusion and Training and Development);
- (iv) there is a lawful basis for the collection and processing of the Personal Data by the Operator, and for the disclosure to and subsequent processing by the Rail Delivery Group (and the Secretary of State) for the purpose described in paragraph 2.2 (Apprenticeships) of Schedule 1.8 (Diversity and Inclusion and Training and Development); and
- (v) the Business Employee is made aware that their Personal Data shall be retained by the Secretary of State for a period of seven (7) years following its receipt of the same from the Rail Delivery Group.

12.2 Nothing in paragraph 12.1(b) is intended by the Parties to absolve the Operator from its obligations under paragraph 12.1(a)).

### 13. Further Information

13.1 The Operator shall:

- (a) deliver to the Secretary of State, or procure the delivery to the Secretary of State of, such data, information, records or documents as he may request within such period as the Secretary of State may require and which relate to or are connected with the Operator's performance of the Service Contract; and
- (b) procure that each Affiliate of the Operator complies with paragraph 13.1(a) in respect of any data, information, records or documents that relate to its dealings with the Operator in connection with the Operator's performance of its obligations under the Service Contract.

13.2 The information referred to in paragraph 13.1 shall include:

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

- (a) in so far as the Operator 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;
- (b) any agreement for the manufacture or supply of any rolling stock vehicles; and
- (c) any arrangements for the securitisation of any lease granted in respect of such rolling stock vehicles.

13.3 The Secretary of State may require the Operator to provide:

the information required to be provided under the Service Contract more frequently than set out in this Contract;

- (a) the information required to be provided under the Service Contract, or, in the Secretary of State's discretion, more detailed financial information, at any time in connection with the re-letting of the Rail Services;
- (a) such unaudited accounts under such accounting policies as may be prescribed by the Secretary of State from time to time;
- (b) research or survey datasets which relate to or are connected with the Operator's performance of the Service Contract;
- (c) any data or information which supports operational and business functions; and
- (d) information about any agreement, contract or arrangement to which the Operator is a party and which relate to or are connected with the Operator's performance of the Service Contract.

#### 14. **Request for Data**

##### 14.1

- (a) If the Secretary of State requires any further information, data, records or documents during the Contract Term which the Operator is not otherwise required to provide pursuant to this Contract (the "**Relevant Data**"), the Secretary of State may issue a request to the Operator specifying:
  - (i) the Relevant Data the Operator is to provide to the Secretary of State;
  - (ii) any requirement in relation to timeliness, format and method of delivery of such Relevant Data; and
  - (iii) where such Relevant Data is required to be provided on an ongoing basis, may include the frequency with which such Relevant Data shall be required to be delivered,
 (each a "**Request for Data**").
- (b) The Operator acknowledges and agrees that any Relevant Data provided by the Operator pursuant to a Request for Data may be shared with other persons who are acting on the Secretary of State's behalf or such other persons as the Secretary of State may notify, in each case, in accordance with this Schedule 17.
- (c) Within fourteen (14) days of the date of issuance of a Request for Data by the Secretary of State or such other timeframe as may be specified in the relevant Request for Data, the Operator shall:
  - (i) provide to the Secretary of State all Relevant Data specified in the Request for Data as it is reasonably able to provide or procure within such period; and
  - (ii) if the Operator has not provided all the Relevant Data specified in the Request for Data, it shall provide the Secretary of State with:
    - (i) details of any further action that would be required to enable it to provide such Relevant Data, including the rationale for requiring such further action together with relevant supporting evidence;
    - (ii) the Operator's proposed timescales for taking such action in timely manner and the rationale for arriving at such timeframe; and

- (iii) where applicable, an estimate (including a breakdown of the individual cost components) of any additional costs the Operator expects to incur in order to provide such Relevant Data together with relevant supporting evidence.
  - (d) The Secretary of State may, following review of the Operator's response pursuant to paragraph 14.1(c)(ii), require the Operator to take such further action as the Secretary of State may specify, including providing part or all of the Relevant Data which remains outstanding or taking any steps to mitigate the amount of any costs that the Operator may incur in order to comply with the Request for Data.
- 14.2 The Operator shall provide an audit of data sources and information that are used by the Operator's business, as requested by the Secretary of State from time to time. The Secretary of State may also request information and guidance from the Operator about its data sources, including the purpose for collecting such data, any risks associated with handling or sharing such data, and any third party contracts or agreements used to collect and process the data.
- 14.3 Nothing in paragraph 13, this paragraph 14 or paragraph 15 (Information from Third Parties) of this Schedule 17 shall require the Operator to provide any Relevant Data or any other data, information, records or documents which would, or is reasonably likely to:
  - (a) require it to incur additional costs, over and above those provided for within the CP Budget, unless the Secretary of State otherwise directs; or
  - (b) put it in breach of any applicable law or regulation.
- 14.4 **NOT USED**
- 15. **Information from Third Parties**
- 15.1 The Operator shall, if the Secretary of State so requests, through a Request for Data or otherwise, use all reasonable endeavours to ensure that the Secretary of State has direct access to any information, data or records relating to the Operator 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 Service Contract.
- 15.2 The Operator 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 Operator is entitled to receive under the Ticketing and Settlement Agreement, in such form as the Secretary of State may specify from time to time.
- 15.3 The obligations of the Operator to provide information to the Secretary of State shall not apply if the Secretary of State notifies the Operator that the Secretary of State has received the relevant information directly from any other person (including Network Rail, HS1 Limited or RSP). The Operator shall, if the Secretary of State so requests, confirm or validate any such information which is received from any such other person.
- 15.4 The Operator shall promptly advise the Secretary of State of any changes that are to be made to the databases, systems or processes which are owned, operated or otherwise used by the Operator which may have an impact on the Operator's ability to meet its data sharing obligations pursuant to the Service Contract or any Request for Data issued by the Secretary of State or will, in the reasonable opinion of the Operator, materially affect the continuity of any supply of information or data that the Operator is required to provide to the Secretary of State. Any such advice shall include an assessment of the materiality of the relevant change.
- 15.5 To the extent that collection or supply of any data, information, records or documents is managed by a third party on the Operator's behalf:

- (a) the Operator shall use all reasonable endeavours to ensure that all relevant third party service providers permit the sharing with the Secretary of State of all data, information, records or documents which such third party service provider shall be required to provide or may provide on request to the Operator; or
- (b) where the Operator is unable to procure access pursuant to paragraph 15.5(a), it shall use all reasonable endeavours to agree a variation or amendment to any contract or other arrangement in place between the Operator and the relevant third party as may be required to comply with paragraph 15.5(a).

15.6 During the Contract Term, the Operator shall:

- (a) not enter into any new contracts or other arrangements which may materially adversely affect the Operator's ability to comply with paragraph 13 (Further Information), paragraph 14 (Request for Data) and this paragraph 15 of this Schedule 17, without the Approval of the Secretary of State; and
- (b) to the extent it is entering into any material amendments to any existing contracts or arrangements with third parties, use all reasonable endeavours to ensure that the contract or arrangement (as amended) does not materially adversely affect the Operator's ability to comply with its requirements pursuant to paragraph 13 (Further Information), paragraph 14 (Request for Data) and this paragraph 15 of this Schedule 17.

16. **Compatibility of information**

- 16.1 All financial, operational or other information, and any data and records required to be provided to the Secretary of State under the Service Contract 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.
- 16.2 The Operator shall ensure that the interconnection of such systems or the provision of such information, data and records to the Secretary of State under the Service Contract 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.