

RAIL PUBLIC REGISTER COPY
REDACTED IN ACCORDANCE WITH FOIA 2000

Dated

29 March 2020

- (1) The Secretary of State for Transport
- (2) First Greater Western Limited

**DIRECT AWARD FRANCHISE AGREEMENT NO 3 UNDER THE
RAILWAYS ACT 1993 (AS AMENDED)**
relating to
Great Western Franchise

Withdrawn

TABLE OF CONTENTS

PARTIES 19

BACKGROUND 19

1. INTERPRETATION 19

2. AGREED DOCUMENTS 22

3. DEFINITIONS 23

4. COMMENCEMENT116

5. DURATION OF THE FRANCHISE AGREEMENT117

6. GENERAL OBLIGATIONS118

7. ASSIGNMENT118

8. CHANGE OF CONTROL AND FACILITATION FEE118

9. COMPLIANCE WITH LAWS120

10. CUMULATIVE RIGHTS AND REMEDIES120

11. DISPUTE RESOLUTION PROCEDURE120

11.1 DISPUTES UNDER THE FRANCHISE AGREEMENT120

11.2 DISPUTES UNDER OTHER AGREEMENTS121

11.3 DISPUTES UNDER SCHEDULE 8 (PAYMENTS) OF THIS AGREEMENT121

12. NOTICES121

12.1 NOTICES121

12.2 DEEMED RECEIPT123

13. SET-OFF123

14. MISCELLANEOUS PROVISIONS123

14.1 WAIVERS123

14.2 TIME LIMITS124

14.3 PARTIAL INVALIDITY124

14.4 FURTHER ASSURANCE124

14.5 RIGHTS OF THIRD PARTIES124

14.6 SECRETARY OF STATE’S CONSENT OR APPROVAL125

14.7 ENFORCEMENT COSTS125

14.8 ARM’S LENGTH DEALINGS125

14.9 NON-DISCRIMINATION125

14.10 STATUTORY DIRECTOR’S WRITTEN CONFIRMATION, STATEMENT AND/OR
CERTIFICATE125

14.11 NOT USED125

14.12 NOT USED125

15. COMPETITION125

16. ENTIRE AGREEMENT127

17. GOVERNING LAW AND JURISDICTION128

SIGNATURE PAGE129

SCHEDULE 1 - PASSENGER SERVICE OBLIGATIONS130

SCHEDULE 1.1 - FRANCHISE SERVICES AND SERVICE DEVELOPMENT131

PART 1 - FRANCHISE SERVICES131

1. FRANCHISE SERVICES131

2. STATION SERVICES131

3. LIGHT MAINTENANCE SERVICES132

4. ANCILLARY SERVICES132

5. ROYAL TRAIN135

6. RESTRICTIONS RELATING TO FRANCHISE SERVICES135

7. RESTRICTIONS ON CLOSURES OF RAILWAY PASSENGER SERVICES OR RAILWAY FACILITIES136

8. SUBCONTRACTING ANY PASSENGER SERVICES137

PART 2 - SERVICE DEVELOPMENT138

9. TRAIN SERVICE REQUIREMENT - PURPOSE AND RESPONSIBILITY138

10. TRAIN PLAN138

11. CONSULTATION ON SIGNIFICANT ALTERATIONS TO THE TIMETABLE139

12. TIMETABLE DEVELOPMENT RIGHTS140

13. CERTIFICATION AND NOTIFICATION BY FRANCHISEE OF EXERCISING TIMETABLE DEVELOPMENT RIGHTS143

14. PLANNING TO MEET TARGET PASSENGER DEMAND144

15. CAPACITY MITIGATION PROPOSAL145

16. NEW OR AMENDED TRAIN SERVICE REQUIREMENT BY THE SECRETARY OF STATE AND FRANCHISEE INFORMED OPINION147

17. PROCEDURAL ARRANGEMENTS AND TIMESCALES149

18. OBLIGATIONS IN RELATION TO OTHER TRAIN OPERATORS149

19. PROVISIONS RELATING TO ACCESS AGREEMENTS AND PROPERTY LEASES150

20. THE TIMETABLE AND NETWORK RAIL'S WORKING TIMETABLE151

21. NOT USED151

SCHEDULE 1.2 - OPERATING OBLIGATIONS152

1. DAILY OPERATING OBLIGATIONS152

2. TIMETABLING AND TRAIN PLANNING COMPLIANCE INVESTIGATION152

3. TIMETABLE CHANGES PROPOSED BY NETWORK RAIL154

4. TIMETABLE CHANGES PROPOSED BY THE FRANCHISEE155

4A. SPECIAL EVENTS155

5. TIMETABLE CHANGES AND TRAIN PLAN CHANGES REQUESTED BY THE SECRETARY OF STATE155

6. OBLIGATIONS OF THE FRANCHISEE IN THE EVENT OF DISRUPTION TO RAILWAY PASSENGER SERVICES156

7. OBLIGATION TO USE ALL REASONABLE ENDEAVOURS UNDER SCHEDULE 1.2157

SCHEDULE 1.3 -NOT USED160

SCHEDULE 1.4 - PASSENGER FACING OBLIGATIONS161

1. PUBLISHING THE TIMETABLE161

2. COMMUNICATING LATE TIMETABLE CHANGES162

3. FARES SELLING RESTRICTIONS163

4. PASSENGER'S CHARTER165

5. END TO END JOURNEYS AND CYCLES173

6. STATUTORY NOTICES173

7. TRAIN AND STATION CLEANING173

8. PUBLICATION OF PERFORMANCE DATA173

9. PUBLICATION OF COMPLAINTS AND FAULTS HANDLING DATA175

10. NOT USED176

SCHEDULE 1.5 – INFORMATION ABOUT PASSENGERS177

1. PASSENGER NUMBERS INFORMATION177
2. MANUAL PASSENGER COUNTS178
3. TECHNOLOGY FOR OBTAINING THE INFORMATION REFERRED TO IN PARAGRAPH 1.2179
4. CUSTOMER RELATIONSHIP MANAGEMENT (CRM) DATA179
5. YIELD MANAGEMENT DATA180
6. NOT USED181
7. RAIL PASSENGER COUNTS DATABASE181
8. INTELLECTUAL PROPERTY RIGHTS AND GENERAL PROVISIONS183

SCHEDULE 1.6 – THE ROLLING STOCK186

1. PURPOSE186
2. THE COMPOSITION/DEPLOYMENT OF THE TRAIN FLEET186
3. CHANGES TO THE TRAIN FLEET187
4. ROLLING STOCK TESTING AND COMMISSIONING187
5. CONTROLLED EMISSION TOILETS188
6. BABY CHANGING FACILITIES188
7. MEASUREMENT OF TRACTION ENERGY USAGE188
8. MONITORING OF AIR QUALITY ON TRAINS188

APPENDIX 1 TO SCHEDULE 1.6 - THE COMPOSITION OF THE TRAIN FLEET190

SCHEDULE 1.7 - STATIONS196

1. STATION ASSET MANAGEMENT196
2. NOT USED199
3. STATION SOCIAL AND COMMERCIAL DEVELOPMENT PLAN200
4. CONSULTATIONS201
5. NOT USED201
7. INFORMATION ABOUT STATION IMPROVEMENT MEASURES202
8. NOT USED203
9. STATION INVESTMENT203
10. STATION TOILET ACCESS203

APPENDIX 1 TO SCHEDULE 1.7 - LIST OF STATIONS AND CAR PARKS WITH ACCREDITATION204

APPENDIX 2 TO SCHEDULE 1.7 – NOT USED211

APPENDIX 3 TO SCHEDULE 1.7 - NOT USED212

APPENDIX 4 TO SCHEDULE 1.7 - NOT USED213

SCHEDULE 2 - ASSETS, LEASES, OTHER FRANCHISEES AND SCHEMES214

SCHEDULE 2.1 - ASSET VESTING AND TRANSFER215

1. NOT USED215
2. VESTING OF PROPERTY LEASES DURING THE FRANCHISE TERM215

SCHEDULE 2.2 - SECURITY OF ACCESS AGREEMENTS, ROLLING STOCK LEASES, STATION AND DEPOT LEASES217

1. NOVATION OF ACCESS AGREEMENTS DURING THE FRANCHISE TERM217
2. ROLLING STOCK RELATED CONTRACTS AND INSURANCE ARRANGEMENTS218
- 3A. TRAIN MAINTENANCE219
3. CASCADED ROLLING STOCK AND DELAYED CASCADE MITIGATION PLAN219
4. ASSIGNMENT OF PROPERTY LEASES DURING THE FRANCHISE TERM222

5. STATION AND DEPOT LEASES.....222

6. STATION SUBLEASES223

SCHEDULE 2.3 - OTHER FRANCHISEES224

1. OTHER FRANCHISEES224

SCHEDULE 2.4 - NOT USED225

SCHEDULE 2.5 - TRANSPORT, TRAVEL AND OTHER SCHEMES226

1. LOCAL AUTHORITY CONCESSIONARY TRAVEL SCHEMES226

2. MULTI-MODAL FARES SCHEMES.....227

3. DISCOUNT FARE SCHEMES.....229

4. INTER-OPERATOR SCHEMES.....229

APPENDIX 1 TO SCHEDULE 2.5 - LIST OF TRANSPORT, TRAVEL AND OTHER SCHEMES
.....230

SCHEDULE 3 - NOT USED232

SCHEDULE 4 - ACCESSIBILITY AND INCLUSIVITY233

SCHEDULE 4 - ACCESSIBILITY AND INCLUSIVITY234

1. RELATIONSHIP WITH OTHER OBLIGATIONS RELATING TO PERSONS WITH
DISABILITIES234

2. PHYSICAL ALTERATIONS AND ACCESSIBILITY OF STATIONS.....234

3A. NOT USED.....237

3. DEALING WITH CLAIMS RELATING TO STATIONS.....237

4. SPECIFIC ADDITIONAL OBLIGATIONS RELATING TO PERSONS WITH
DISABILITIES238

APPENDIX 1 TO SCHEDULE 4 - NOT USED241

APPENDIX 2 TO SCHEDULE 4 - ACCESSIBLE TRANSPORT ARRANGEMENTS242

SCHEDULE 5 - FARES AND SMART TICKETING243

SCHEDULE 5.1 - PURPOSE, STRUCTURE AND CONSTRUCTION.....244

1 PURPOSE OF PROVISIONS RELATING TO CREATING FARES.....244

2. STRUCTURE OF SCHEDULE 5.....245

3. REFERENCES TO "FARE".....245

4. FARES DOCUMENTS246

5. SETTING OF CHILD PRICES.....246

6. NEW STATIONS246

SCHEDULE 5.2 - FRANCHISEE'S OBLIGATION TO CREATE FARES247

1. CREATION OF COMMUTER FARES AND PROTECTED FARE.....247

2. RESTRICTIONS ON CREATION OF FARES247

SCHEDULE 5.3 - ALLOCATION OF FARES TO FARES BASKETS.....248

1. ALLOCATION OF FARES TO FARES BASKETS.....248

2. DESIGNATION OF NON FARES BASKET FARES248

SCHEDULE 5.4 - REGULATION OF FARES BASKET VALUES249

1. VALUE OF FARES BASKET NOT TO EXCEED REGULATED VALUE249

2. VALUE249

3. PROJECTED REVENUE249

4. REGULATED VALUE249

SCHEDULE 5.5 - REGULATION OF INDIVIDUAL FARES251

1. PRICE NOT TO EXCEED REGULATED PRICE OR REGULATED CHILD PRICE251

2. REGULATED PRICE251

3. COMPULSORY INTER-AVAILABLE FLOWS.....252

SCHEDULE 5.6 - EXCEEDING THE REGULATED VALUE, REGULATED PRICE OR REGULATED CHILD PRICE253

1. EXCEEDING THE REGULATED VALUE253

2. EXCEEDING THE REGULATED PRICE OR REGULATED CHILD PRICE.....254

SCHEDULE 5.7 - CHANGES TO FARES AND FARES REGULATION255

1. CHANGES TO FARES BASKETS.....255

2. CHANGES TO THE 2010 NOMINAL TICKET SALES.....256

3. CHANGES TO THE REFERENCE REVENUE, GROSS REVENUE, 2010 NOMINAL TICKET SALES AND/OR 2010 TICKET REVENUE256

4. CHANGES TO PRICES257

5. CHANGES TO FARES REGULATION257

6. CHANGES TO COMPULSORY INTER-AVAILABLE FLOWS257

7. CHANGE OF LEAD OPERATOR/MAJOR FLOW OPERATOR258

8. CHANGES TO FARES DOCUMENTS.....258

SCHEDULE 5.8 - FARES REGULATION INFORMATION AND MONITORING.....259

1. INFORMATION259

2. MONITORING.....259

3. NOT USED.....259

SCHEDULE 5.9 - SMART TICKETING260

1. DEFINITIONS.....260

2. SMART TICKETING261

3. COSTS.....263

4. STNR PROJECT263

SCHEDULE 5.10 - FARES, TICKETING AND RETAIL TRIALS265

SCHEDULE 6 - FRANCHISE SPECIFIC OBLIGATIONS AND COMMITTED OBLIGATIONS.266

SCHEDULE 6.1 - FRANCHISE SPECIFIC OBLIGATIONS267

PART 1 - PREVIOUS FRANCHISE AGREEMENT COMMITTED OBLIGATIONS267

1. APPLICATION OF SPECIAL TERMS267

2. DEFINITIONS.....267

3. APPLICATION.....268

4. COMPLETION OF COMMITTED OBLIGATIONS FROM THE PREVIOUS FRANCHISE AGREEMENT268

5. TRAIN FLEET MAINTENANCE.....268

6. TREATMENT OF DA2 CO UNDERSPEND AND DA2 CI UNDERSPEND277

7. SUPPORT FOR TRANSPORT FOCUS280

PART 2 - MANDATORY FRANCHISE SPECIFIC OBLIGATIONS.....281

1. NOT USED.....281

2. BOXING DAY SERVICES281

PART 3 - FRANCHISE SPECIFIC OBLIGATIONS282

1. CROSSRAIL282

2. NOT USED.....288

3. TRANSFERRING STATIONS.....288

4. NOT USED.....288

5. NOT USED.....288

6. NOT USED.....288

7. HEATHROW289

8. NOT USED.....289

9. NOT USED.....289

10. NOT USED.....289

11. NOT USED.....289

12. NOT USED.....289

13. NOT USED.....289

14. RAILWAY HERITAGE289

15. NOT USED.....289

16. NOT USED.....289

17. NOT USED.....289

18. EAST WEST RAIL SCHEME289

19. NOT USED.....290

20. CO-OPERATION WITH WELSH MINISTERS290

21. NOT USED.....290

22. DEPOT CONNECTION AGREEMENTS.....290

23. STATION IMPROVEMENT FUND291

24. CO-OPERATION WITH WEST MIDLANDS RAIL298

PART 4 - BESPOKE OBLIGATIONS300

1. RAIL DEVELOPMENT PARTNERSHIP308

2. OBLIGATIONS IN RELATION TO PROPOSED SCHEMES310

3. OBLIGATIONS IN RELATION TO COMMITTED SCHEMES312

4. FEASIBILITY STUDIES INTO PROSPECTIVE FUTURE TRAIN SERVICE
ENHANCEMENTS313

5. COMMITTED SCHEMES AND INDUSTRY PROCEDURES.....315

6. COMMITTED SCHEMES AND RESTRICTION OF USE.....315

7. PROGRAMME OF COMMUNICATION IN RELATION TO COMMITTED SCHEMES ...317

8. NOT USED318

9. NOT USED318

10. NOT USED318

11. NOT USED.....318

12. NOT USED.....318

13. NOT USED.....318

14. PEOPLE STRATEGY318

15. TRAIN CREW ESTABLISHMENT.....321

16. NOT USED.....325

17. STUDY INTO LONGER-TERM FUTURE OPTIONS FOR THE RESIDUAL DIESEL
FLEETS325

18. WI-FI AT STATIONS327

19. CONTINUED PROVISION OF THE MOBILE CONNECTIVITY SERVICE327

20. LONG TERM PLANNING FOR MITIGATION OF ADVERSE WEATHER CONDITIONS
.....327

21. PREPARATION FOR POTENTIAL OUTCOMES OF THE WILLIAMS RAIL REVIEW ...328

22. ANTICIPATED VARIATIONS AND OTHER CHANGES328

23. NOT USED.....329

24. EXETER DEPOT FUNDED WORKS329

25. CLASS 769 UNITS335

26. GWR PERFORMANCE REPORT AND PLAN339

27. NOT USED340

28. NOT USED340

29. DISCLOSURE BY THE FRANCHISEE OF RELEVANT INFORMATION TO RELEVANT PERSONS340

30. NETWORK RAIL DATA SHARING AND CONFIDENTIALITY AGREEMENT340

31. STATION TRANSFERS341

32. MOBILE TICKETING INFORMATION SYSTEM OBLIGATIONS.....341

33. WECA FUNDING AGREEMENT.....342

APPENDIX 1 TO PART 4 OF SCHEDULE 6.1 - MATTERS ASSOCIATED WITH PARAGRAPH 24 OF PART 4 OF SCHEDULE 6.1 (EXETER DEPOT FUNDED WORKS).....343

APPENDIX 2 TO PART 4 OF SCHEDULE 6.1 - NOT USED.....345

SCHEDULE 6.2 - COMMITTED OBLIGATIONS346

PART 1 - COMMITTED OBLIGATIONS346

PART 2 - SPECIAL TERMS RELATED TO THE COMMITTED OBLIGATIONS.....404

1. CONTINUATION OF AVAILABILITY404

2. EXPENDITURE COMMITMENTS404

3. UNDERSPEND405

4. NATURE OF COMMITMENT405

5. REVIEW OF COMPLIANCE406

6. CONSEQUENCES OF LATE COMPLETION OR NON-DELIVERY OF COMMITTED OBLIGATIONS.....406

7. NOT USED406

8. THIRD PARTY CONSENTS, AGREEMENT AND CONDITIONS406

9. DESIGNATION OF ASSETS COMPRISED IN COS AS PRIMARY FRANCHISE ASSETS406

10. OBLIGATIONS ON DELIVERY OF A COMMITTED OBLIGATION.....407

11. LIAISON AND CO-OPERATION.....407

SCHEDULE 6.3 - CONTRACTUAL INCENTIVE MITIGATIONS408

1. DEFINITIONS.....408

2. APPLICATION OF CONTRACTUAL INCENTIVE MITIGATIONS410

3. GENERAL OBLIGATION OF THE FRANCHISEE WHEN THE PROVISIONS OF SCHEDULE 6.3 (CONTRACTUAL INCENTIVE MITIGATIONS) APPLY410

4. BESPOKE REVENUE INITIATIVE PROPOSAL.....411

5. MARKETING PLAN412

6A. TICKETLESS TRAVEL SURVEYS415

7. OPERATIONAL PERFORMANCE421

8. CHANGES IN NUMBERS AND TOTAL COST OF EMPLOYEES422

9. PERCENTAGE ALLOCATIONS.....425

10. THE BID FARES STRATEGY426

11. CHANGES TO THE BID FARES STRATEGY426

12. INDUSTRIAL ACTION427

13. CLEANING AND PRESENTATION CONTRACTS.....427

14. ADDITIONS TO THE ANNUAL BUSINESS PLAN428

15. NOT USED.....429

16. NOT USED429

17. NOT USED429

18. NOT USED429

APPENDIX 1 – MINIMUM MARKETING SPEND430

APPENDIX 2 – TICKETLESS TRAVEL PAYMENTS430

APPENDIX 3 – CIM PERFORMANCE SUM TABLES433

APPENDIX 4 SPECIFIED EMPLOYMENT CATEGORY TABLE434

SCHEDULE 6.4 - ALLIANCES435

1. CO-OPERATION WITH NETWORK RAIL435

2. COMPLIANCE WITH THE ALLIANCE AGREEMENT435

3. TERMINATION OF THE ALLIANCE AGREEMENT435

4. REPORTING ON THE ALLIANCE AGREEMENT436

SCHEDULE 6.5 - NOT USED437

SCHEDULE 6.6 - NOT USED438

SCHEDULE 6.7 – THE IEP PROVISIONS439

1. DEFINITIONS AND INTERPRETATION439

2. THE MARA PROVISIONS440

3. TARA PROVISIONS445

4. STEP-IN/STEP-OUT PROCESSES446

5. TARA BUSINESS RATES447

6. FLEET ACCEPTANCE PROVISIONS448

7. FITMENT OF ELECTRO-MAGNETIC INTERFERENCE REDUCTION FILTERS448

8. SHORE SUPPLY ELECTRICITY CHARGES449

SCHEDULE 7 - PERFORMANCE BENCHMARKS451

SCHEDULE 7.1 - OPERATIONAL PERFORMANCE452

1. DEFINITIONS, CHARGING REVIEW, TRACK ACCESS AGREEMENT, CHANGES TO BENCHMARKS AND ANNUAL BENCHMARKS AND NOTICE OF PERFORMANCE RESULTS452

2. REPORTING REQUIREMENTS459

3. CANCELLATION CALCULATION: VALUE OF A460

4. NOT USED461

5. NOT USED461

6. PERIODIC CANCELLATION CALCULATIONS461

7. NOT USED461

8. NOT USED461

9. NOT USED461

10. NOT USED461

11. NOT USED461

12. PERIODIC TOC MINUTE DELAY CALCULATIONS461

13. NOT USED462

14. NOT USED462

15. SHORT FORMATIONS462

16. CALCULATIONS463

17. SERVICE RECOVERY PLANS AND FORCE MAJEURE463

18. CONSEQUENCES FOR POOR PERFORMANCE – BENCHMARKS464

19. ANNUAL CANCELLATIONS CALCULATIONS.....465

20. ANNUAL TOC MINUTE DELAY CALCULATIONS465

21. ANNUAL SHORT FORMATION CALCULATIONS466

22. PERFORMANCE SUM PAYMENTS466

23. DETERMINATION FOR FRANCHISEE YEARS THAT ARE LESS THAN THIRTEEN (13) REPORTING PERIODS BUT ARE SIX (6) REPORTING PERIODS OR MORE479

24. DETERMINATION FOR FRANCHISEE YEARS THAT ARE LESS THAN THIRTEEN (13) REPORTING PERIODS BUT ARE SIX (6) REPORTING PERIODS OR MORE483

25. NETWORK RAIL CLAIMS484

26. CONSEQUENCES FOR POOR PERFORMANCE484

27. PAYMENTS MADE BY THE SECRETARY OF STATE DURING THE FRANCHISE TERM486

28. MAXIMUM AMOUNT OF PERFORMANCE SUM PAYMENTS486

29. PAYMENTS IN RESPECT OF THE FINAL FRANCHISEE YEAR.....488

30. ALLOCATION OF DISPUTED CANCELLATIONS/DISPUTED PARTIAL CANCELLATIONS489

31. ALLOCATION OF DISPUTED MINUTES DELAY489

SCHEDULE 7.2 - CUSTOMER EXPERIENCE AND ENGAGEMENT509

1. DEFINITIONS.....509

2. CONDUCT OF NATIONAL RAIL PASSENGER SURVEYS.....510

3. NRPS BENCHMARKS511

4. PERFORMANCE REVIEW511

5. REQUIRED IMPROVEMENT AND NRPS ACTION PLANS512

6. ADDITIONAL EXPENDITURE.....513

7. PAYMENTS ON TERMINATION OR EXPIRY513

8. CONSULTATIONS513

9. CUSTOMER AND STAKEHOLDER ENGAGEMENT STRATEGY514

10. CUSTOMER REPORT.....514

11. CUSTOMER AND COMMUNITIES INVESTMENT (CCI) SCHEME515

12. CUSTOMER SERVICE AND SATISFACTION DATA.....517

APPENDIX 1 TO SCHEDULE 7.2 - NRPS BENCHMARK TABLE.....519

APPENDIX 2 TO SCHEDULE 7.2 - CALCULATION OF THE ADDITIONAL EXPENDITURE .522

SCHEDULE 7.3 SERVICE QUALITY REGIME525

1. PURPOSE525

2. DEFINITIONS.....525

PART A - SERVICE QUALITY MANAGEMENT PROCESS529

3. SERVICE QUALITY MANAGEMENT529

PART B – INSPECTIONS AND AUDITS531

4. FRANCHISEE SERVICE QUALITY INSPECTIONS531

5. MYSTERY SHOPPER INSPECTION.....533

6. SERVICE QUALITY RE-INSPECTION533

7. INDEPENDENT SERVICE QUALITY AUDIT.....534

8. SECRETARY OF STATE’S RIGHT OF AUDIT536

9. ACCESS RIGHTS536

PART C - CALCULATIONS OF PASS RATES AND SERVICE QUALITY PAYMENTS537

10. CALCULATION OF PASS RATES538

11. CALCULATION OF THE SERVICE QUALITY PAYMENTS541

12. PAYMENT OF SERVICE QUALITY PAYMENTS544

PART D PUBLICATION AND REPORTING REQUIREMENTS544

13. PUBLICATION OF PASS RATES544

14. REPORTING REQUIREMENTS545

15. ADDITIONAL INFORMATION REQUIREMENTS FOR SERVICE QUALITY RE-INSPECTIONS546

16. MAINTENANCE OF RECORDS546

PART E - REMEDIES.....547

17. CONSEQUENCES OF A FAILED AUDIT547

18. MATERIAL DISCREPANCIES548

19. CONTRAVENTION OF THE FRANCHISE AGREEMENT IN RESPECT OF MATERIAL DISCREPANCIES548

20. CONSEQUENCES OF PERFORMANCE FALLING BELOW THE SQR BENCHMARK...549

21. VARIATIONS TO THE SERVICE QUALITY REGIME.....550

PART F - NOT USED.....550

22. NOT USED.....550

23. NOT USED.....550

24. NOT USED.....550

25. NOT USED.....550

26. NOT USED.....550

APPENDIX 1 TO SCHEDULE 7.3 - SERVICE QUALITY SCHEDULES551

APPENDIX 2 TO SCHEDULE 7.3 - SERVICE QUALITY AREAS/SQR BENCHMARKS/SERVICE QUALITY INDICATORS/WEIGHTINGS562

PART 1 – SQR STATIONS562

PART 2 – SQR TRAINS564

PART 3 – SQR CUSTOMER SERVICE.....565

SCHEDULE 8 - PAYMENTS566

SCHEDULE 8.1 - FRANCHISE PAYMENTS567

1. FRANCHISE PAYMENTS567

2. PAYMENT OF FRANCHISE PAYMENTS571

3. INTEREST.....572

4. DISPUTES UNDER SCHEDULE 8572

5. INDUSTRIAL ACTION572

6. NO DOUBLE RECOVERY.....572

7. FORCE MAJEURE AND PAYMENTS572

8. FIXED TRACK CHARGE WASH-UP PAYMENTS572

9. CAPPING OF FRANCHISEE’S LIABILITY IN RESPECT OF THE INCENTIVE REGIMES573

APPENDIX 1 TO SCHEDULE 8.1 - ANNUAL FRANCHISE PAYMENTS.....577

APPENDIX 2 TO SCHEDULE 8.1 - FIGURES FOR CALCULATION OF ANNUAL FRANCHISE PAYMENTS579

SCHEDULE 8.2 - PROFIT SHARE MECHANISM581

1. PROFIT SHARE.....581

2. ADDITIONAL COMPENSATION OR SETTLEMENT PAYMENTS586

3. RELEVANT PROFIT REPORT.....587

Withdrawn

4. PAYMENT OF PROFIT SHARE AND DETERMINATION BY THE SECRETARY OF STATE588

APPENDIX 1 TO SCHEDULE 8.2 - PROFIT SHARE THRESHOLDS.....589

APPENDIX 2 TO SCHEDULE 8.2 - COMPONENTS OF AFA AND DFR592

SCHEDULE 8.3 - TRACK ACCESS ADJUSTMENTS AND STATION CHARGE ADJUSTMENTS594

1. TRACK ACCESS ADJUSTMENTS594

2. STATION CHARGE ADJUSTMENT595

SCHEDULE 8.4 - NOT USED597

SCHEDULE 8.5 - NOT USED598

SCHEDULE 8.6 - FORECAST REVENUE MECHANISM.....599

1. PURPOSE AND APPLICATION599

2. DEFINITIONS.....599

3. REVENUE SHARE.....603

4. REVENUE SHARE RECONCILIATION AMOUNT.....605

5. REVENUE SUPPORT605

6. REVENUE SUPPORT RECONCILIATION AMOUNT607

7. FINAL FRANCHISEE YEAR607

8. PRO-RATA ADJUSTMENT TO TARGET REVENUE AT THE END OF THE FRANCHISE PERIOD.....608

9. FRM REVENUE REPORT609

10. AFFILIATES AND FORECAST REVENUE MECHANISM.....610

11. NOT USED.....610

APPENDIX 1 TO SCHEDULE 8.6 - TARGET REVENUE.....611

SCHEDULE 9 - CHANGES AND VARIATIONS612

SCHEDULE 9.1 - FINANCIAL AND OTHER CONSEQUENCES OF CHANGE613

1. PURPOSE AND APPLICATION OF SCHEDULE613

2. TIMESCALES.....614

3. HOW ANY ADJUSTMENTS TO FRANCHISE PAYMENTS WILL BE ESTABLISHED ..614

4. HOW MODEL CHANGES AND/OR REVISED INPUTS WILL BE ESTABLISHED.....615

5. CHANGES TO BENCHMARKS AND/OR ANNUAL BENCHMARKS AND/OR TICKETLESS TRAVEL BENCHMARK AND/OR ANNUAL TICKETLESS TRAVEL BENCHMARK.....615

6. RUN OF THE FINANCIAL MODEL FOLLOWING AGREEMENT OR DETERMINATION OF THE REVISED INPUTS AND MODEL CHANGES616

7. CERTIFICATION OR AUDIT OF THE NEW RESULTS.....617

8. COSTS OF AUDIT617

9. RESTATEMENT OF ANNUAL FRANCHISE PAYMENT COMPONENTS AND/OR BENCHMARKS AND/OR ANNUAL BENCHMARKS AND/OR PROFIT SHARE COMPONENTS.....618

10. ESTIMATED REVISIONS619

11. INFORMATION622

APPENDIX 1 TO SCHEDULE 9.1 - DEFINITION OF THRESHOLD AMOUNT623

APPENDIX 2 TO SCHEDULE 9.1 - AGREEMENT OR DETERMINATION OF REVISED INPUTS624

SCHEDULE 9.2 - IDENTITY OF THE FINANCIAL MODEL (ESCROW DOCUMENTS).....628

1. FRANCHISEE'S OBLIGATIONS628

2. SECRETARY OF STATE'S OBLIGATIONS628

3. ERRORS IN ESCROW DOCUMENTS630

SCHEDULE 9.3 - VARIATIONS TO THE FRANCHISE AGREEMENT AND INCENTIVISING BENEFICIAL CHANGES631

1. VARIATIONS.....631

2. PROTECTED PROPOSALS632

3. CAPITAL EXPENDITURE.....633

SCHEDULE 9.4 – SECRETARY OF STATE RISK ASSUMPTIONS635

1. LONDON PADDINGTON TO CARDIFF OPEN ACCESS OPERATION635

2. CROSSRAIL: AMENDMENT TO PERCENTAGE ALLOCATION ADJUSTMENT MECHANISM635

3. SEVEN DAY WORKING RAILWAY **ERROR! BOOKMARK NOT DEFINED.**

4. HEX SERVICES PLATFORM USAGE AT LONDON PADDINGTON638

5. CLASS 802 CAPITAL LEASE COSTS639

SCHEDULE 9.5 – INFRASTRUCTURE AND ROLLING STOCK RELATED CHANGE.....640

1. DEFINITIONS.....640

2. NOT USED642

3. NOT USED642

4. USE OF RAIL INDUSTRY COMPENSATION MECHANISMS AND RIGHTS OF THE SECRETARY OF STATE IN RELATION TO MULTIPLE OR EXCESSIVE COMPENSATION IN RELATION TO RELEVANT LOSSES.....642

5. RELATED INFRASTRUCTURE TIMETABLE AND ROLLING STOCK RELATED CHANGES.....643

6A.. SEVERN TUNNEL ELECTRIFICATION644

6. CHIPPENHAM ELECTRIFICATION PROJECT644

7. ADDITIONAL ELECTRIFICATION PROJECTS645

8. USE OF CLASS 769 UNITS IN ELECTRIC MODE ON THE NORTH DOWNS ROUTE645

SCHEDULE 9.6 – FRANCHISING OF THE HEATHROW EXPRESS SERVICES648

1. SECRETARY OF STATE INSTRUCTION648

2. PROCESS FOR AGREEING THE HEATHROW EXPRESS SERVICES QUALIFYING CHANGE.....648

SCHEDULE 9.7 – SPLIT TICKETING IMPACT MODEL ADJUSTMENT MECHANISM AND MITIGATIONS651

SCHEDULE 9.8 – EMERGENCY MEASURES652

SCHEDULE 10 - REMEDIES, EVENTS OF DEFAULT AND TERMINATION EVENTS660

SCHEDULE 10.1 - PROCEDURE FOR REMEDYING A CONTRAVENTION OF THE FRANCHISE AGREEMENT661

1. CONTRAVENTIONS OF THE FRANCHISE AGREEMENT661

2. REMEDIES FOR CONTRAVENTIONS OF THE FRANCHISE AGREEMENT.....661

3. REMEDIAL PLAN NOTICES661

4. REMEDIAL PLANS661

5. REMEDIAL AGREEMENTS.....662

6. EFFECT OF FORCE MAJEURE EVENT ON A REMEDIAL AGREEMENT662

7. ENHANCED MONITORING BY THE SECRETARY OF STATE662

SCHEDULE 10.2 - EVENTS OF DEFAULT AND TERMINATION EVENTS664

1. DEFINITION OF EVENTS OF DEFAULT664

2. DEFINITION OF TERMINATION EVENTS.....668

3. CONSEQUENCES OF EVENTS OF DEFAULT668

4. NOTIFICATION OF EVENT OF DEFAULT668

5. TERMINATION NOTICES.....668

6. CONSEQUENCES OF TERMINATION OR EXPIRY669

SCHEDULE 10.3 - FORCE MAJEURE AND BUSINESS CONTINUITY670

1. DEFINITION OF FORCE MAJEURE EVENTS670

2. CONDITIONS TO FORCE MAJEURE EVENTS.....672

3. CONSEQUENCES OF FORCE MAJEURE EVENTS673

4. BUSINESS CONTINUITY673

SCHEDULE 10.4 - LIABILITY675

1. EXCLUSION OF LIABILITY675

2. REVIEW OR MONITORING BY THE SECRETARY OF STATE.....675

SCHEDULE 11 - FRANCHISE PERFORMANCE MEETINGS AND MANAGEMENT INFORMATION677

SCHEDULE 11.1 - FRANCHISE PERFORMANCE MEETINGS.....678

1. FRANCHISE PERFORMANCE MEETINGS678

2. CONTRACT MANAGEMENT SYSTEM.....678

SCHEDULE 11.2 - MANAGEMENT INFORMATION.....679

1. CORPORATE INFORMATION679

2. INFORMATION ABOUT ASSETS USED IN THE FRANCHISE.....679

3. IDENTIFICATION OF KEY PERSONNEL AND PROVISION OF ORGANISATION CHART680

4. OPERATIONAL PERFORMANCE INFORMATION680

5. MAINTENANCE OF RECORDS680

6. RIGHT TO INSPECT681

7. INFORMATION TO THE PASSENGERS' COUNCIL AND LOCAL AUTHORITIES682

8. PERIODIC UPDATE REPORTS682

9. FINANCIAL INFORMATION682

10. BUSINESS PLANS.....687

11. SAFETY INFORMATION.....689

12. FURTHER INFORMATION689

13. INFORMATION FROM THIRD PARTIES690

14. COMPATIBILITY OF INFORMATION691

15. ENVIRONMENTAL INFORMATION.....691

16. ENVIRONMENTAL IMPACT TARGETS694

16. MOBILE CONNECTIVITY REPORTING REQUIREMENTS695

APPENDIX 1 TO SCHEDULE 11.2 - ENVIRONMENTAL INFORMATION698

APPENDIX 2 TO SCHEDULE 11.2 - OPERATIONAL PERFORMANCE INFORMATION.....701

APPENDIX 3 TO SCHEDULE 11.2 - SUMMARY OF REPORTING AND OTHER REQUIREMENTS705

SCHEDULE 12 - FINANCIAL COVENANTS AND BONDS.....717

SCHEDULE 12 - FINANCIAL COVENANTS AND BONDS.....718

1. OBLIGATIONS.....718

2. FINANCIAL RATIOS718

3. BREACH OF FINANCIAL RATIOS719

4. PERFORMANCE BOND720

Withdrawn

5. SEASON TICKET BOND723

6. TAX COMPLIANCE727

APPENDIX 1 TO SCHEDULE 12 - TEMPLATE FORM OF PERFORMANCE BOND729

APPENDIX 2 TO SCHEDULE 12 - TEMPLATE FORM OF SEASON TICKET BOND743

SCHEDULE 13 - RAIL INDUSTRY INITIATIVES AND INNOVATION OBLIGATIONS749

SCHEDULE 13.1 - RAIL INDUSTRY INITIATIVES AND CO-OPERATION750

1. BRITISH TRANSPORT POLICE750

2. COMMUNITY RAIL PARTNERSHIPS750

3. DEVELOPMENT OF INDUSTRY SYSTEMS753

4. CO-OPERATION WITH INDUSTRY SCHEMES.....753

5. CO-OPERATION WITH LOCAL AUTHORITIES753

6. NOT USED754

7. NOT USED754

8. SMALL AND MEDIUM-SIZED ENTERPRISES754

9. APPRENTICESHIPS754

10. SUSTAINABILITY AND OTHER RELATED INITIATIVES756

11. NATIONAL JOINT ROSCO PROJECT759

12. NOT USED759

13. HS2 PROJECT759

14. SUICIDE PREVENTION STRATEGY760

15. SAFEGUARDING STRATEGY761

16. INCIDENT RESPONSE PLAN762

17. CYBER SECURITY INFORMATION SHARING STRATEGY763

18. CCTV765

19. BODY WORN VIDEO.....765

APPENDIX 1 TO SCHEDULE 13.1 - COMMUNITY RAIL PARTNERSHIPS766

SCHEDULE 13.2 - NOT USED767

APPENDIX 1 TO SCHEDULE 13.2 - NOT USED768

SCHEDULE 13.3 - NOT USED.....769

SCHEDULE 14 - PRESERVATION OF ASSETS770

SCHEDULE 14.1 - MAINTENANCE OF FRANCHISE771

1. MAINTENANCE AS A GOING CONCERN.....771

2. POST-FRANCHISE TIMETABLES772

SCHEDULE 14.2 - MAINTENANCE OF OPERATING ASSETS AND BRANDING773

1. OPERATING ASSETS773

2. SPARES773

3. BRAND LICENCE AND BRANDING773

4. BRANDING REQUIREMENTS.....774

5. BRANDING GUIDANCE776

APPENDIX 1 TO SCHEDULE 14.2 - LIST OF TRADE MARKS.....779

1. REGISTERED TRADE MARKS779

APPENDIX 2 TO SCHEDULE 14.2 - GREAT WESTERN RAILWAY BRAND SAMPLE780

SCHEDULE 14.3 - KEY CONTRACTS781

1. KEY CONTRACTS781

2. DESIGNATION OF KEY CONTRACTS782

3. DE-DESIGNATION OF KEY CONTRACTS782

4. RE-DESIGNATION OF KEY CONTRACTS782

5. DIRECT AGREEMENTS782

6. EMERGENCIES783

7. NO AMENDMENT783

8. REPLACEMENT OF KEY CONTRACTS784

9. TERMINATION OF KEY CONTRACTS784

APPENDIX 1 TO SCHEDULE 14.3 - LIST OF KEY CONTRACTS785

SCHEDULE 14.4 - DESIGNATION OF FRANCHISE ASSETS787

1. FRANCHISE ASSETS787

2. PRIMARY FRANCHISE ASSETS787

3. DESIGNATION OF ADDITIONAL PRIMARY FRANCHISE ASSETS789

4. DESIGNATION DURING LAST TWELVE (12) MONTHS OF FRANCHISE PERIOD ..789

5. DESIGNATION OF KEY CONTRACTS AS PRIMARY FRANCHISE ASSETS789

6. DESIGNATION OF FARES AND DISCOUNT CARDS789

7. RIGHTS AND LIABILITIES789

8. DISPUTES OVER DESIGNATION790

9. PROVISION OF INFORMATION TO THE SECRETARY OF STATE790

10. DE-DESIGNATION OF FRANCHISE ASSETS AND PRIMARY FRANCHISE ASSETS 791

11. AMENDMENT OF THE LIST OF PRIMARY FRANCHISE ASSETS791

APPENDIX 1 TO SCHEDULE 14.4 - LIST OF PRIMARY FRANCHISE ASSETS792

SCHEDULE 14.5 - DEALING WITH FRANCHISE ASSETS804

1. ASSETS NOT DESIGNATED AS PRIMARY FRANCHISE ASSETS804

2. LIABILITIES NOT DESIGNATED AS PRIMARY FRANCHISE ASSETS804

3. FRANCHISE ASSETS AND PRIMARY FRANCHISE ASSETS804

4. PROHIBITION ON OTHER SECURITY INTERESTS805

5. MISCELLANEOUS805

SCHEDULE 14.6 - NOT USED806

SCHEDULE 14.7 - NOT USED808

SCHEDULE 15 - OBLIGATIONS ASSOCIATED WITH TERMINATION809

SCHEDULE 15.1 - RELETTING PROVISIONS810

1. RELETTING OF FRANCHISE810

2. PREPARATION FOR RELETTING810

3. DATA SITE INFORMATION811

4. NON-FRUSTRATION OF TRANSFER TO SUCCESSOR OPERATOR813

5. INSPECTION RIGHTS DURING THE TENDERING/RELETTING PROCESS814

SCHEDULE 15.2 - LAST TWELVE (12) OR THIRTEEN (13) MONTHS OF FRANCHISE PERIOD AND OTHER CONDUCT OF BUSINESS PROVISIONS815

1. LAST TWELVE (12) OR THIRTEEN (13) MONTH PERIOD815

2. TERMS OF EMPLOYMENT OF EXISTING EMPLOYEES815

3. TERMS OF EMPLOYMENT OF NEW EMPLOYEES817

4. CHANGES IN NUMBERS AND TOTAL COST OF EMPLOYEES817

5. FARES818

6. VOTING ON SCHEME COUNCILS819

7. SUCCESSOR OPERATOR820

SCHEDULE 15.3 - HANDOVER PACKAGE.....821

1. HANDOVER PACKAGE STATUS821

2. DIRECTOR'S CERTIFICATE.....821

3. KEY CONTACTS LIST822

APPENDIX 1 TO SCHEDULE 15.3 - FORM OF HANDOVER PACKAGE823

SCHEDULE 15.4 - PROVISIONS APPLYING ON AND AFTER TERMINATION.....825

1. NOVATION OF ACCESS AGREEMENTS ON TERMINATION OF THE FRANCHISE AGREEMENT825

2. CO-OPERATION WITH SUCCESSOR OPERATOR826

3. TRANSFER OF PRIMARY FRANCHISE ASSETS826

4. ASSOCIATED OBLIGATIONS ON TERMINATION828

5. ACTIONS REQUIRED IMMEDIATELY ON HANDOVER830

6. MAINTENANCE RECORDS830

7. TICKETING ARRANGEMENTS.....831

8. FRANCHISEE'S INTELLECTUAL PROPERTY.....831

9. INFORMATION ABOUT PASSENGERS.....832

APPENDIX 1 TO SCHEDULE 15.4 - TEMPLATE FORM OF TRANSFER SCHEME833

APPENDIX 2 TO SCHEDULE 15.4 - TEMPLATE FORM OF SUPPLEMENTAL AGREEMENT .837

APPENDIX 3 TO SCHEDULE 15.4 - FORM OF HEX BUSINESS TRANSFER AGREEMENT .855

SCHEDULE 16 - PENSIONS877

SCHEDULE 16.1 - RAILWAYS PENSION SCHEME878

1. DEFINITIONS.....878

2. FRANCHISE SECTIONS.....878

3. CLOSED SCHEMES878

4. VARIATIONS IN BENEFITS, CONTRIBUTIONS AND INVESTMENT878

5. FUNDING LIABILITIES880

6. DISCHARGE OF OBLIGATIONS.....880

7. TERMINATION OF FRANCHISE881

APPENDIX 1 TO SCHEDULE 16.1 - LIST OF SHARED COSTS SECTIONS882

SCHEDULE 16.2 - DEFICIT CONTRIBUTION RISK SHARING.....883

PART 1 - GENERAL883

1. DEFINITIONS.....883

2. DEFICIT CONTRIBUTION PROTECTION SUBJECT TO OVERRIDING CONDITIONS883

3. APPLICATION OF PARTS 2 AND 3884

4. TERMINATION OR SUSPENSION OF DEFICIT CONTRIBUTION PROTECTION884

5. FRANCHISEE OBLIGATIONS TO PARTICIPATE IN ANY INVESTIGATION AND REFORM.....885

6. INFORMATION POWERS885

PART 2 - DEFICIT CONTRIBUTION PROTECTION887

7. DEFICIT CONTRIBUTION PROTECTION.....887

8. PAYMENT OF DEFICIT CONTRIBUTION TOP-UP.....888

PART 3 - DEFICIT CONTRIBUTION RETURN AMOUNTS.....889

9. DEFICIT CONTRIBUTION RETURN AMOUNTS889

10. PAYMENT OF DEFICIT CONTRIBUTION RETURN AMOUNTS.....889

PART 4 - DEFINITIONS890

11. DEFINITIONS.....890

APPENDIX 1 TO SCHEDULE 16.2 – DEFICIT CONTRIBUTION THRESHOLDS.....896

SCHEDULE 17 – CONFIDENTIALITY, FREEDOM OF INFORMATION AND DATA PROTECTION898

SCHEDULE 17 – CONFIDENTIALITY, FREEDOM OF INFORMATION AND DATA PROTECTION899

1. CONFIDENTIALITY.....899

2. DISCLOSURE OF CONFIDENTIAL INFORMATION.....899

3. PUBLICATION OF CERTAIN INFORMATION.....901

4. SERVICE DEVELOPMENT INFORMATION902

5. PUBLICATION BY SECRETARY OF STATE902

6. PROVISION OF INFORMATION TO THE ORR.....903

7. DISCLOSURE BY COMPTROLLER AND AUDITOR GENERAL903

8. CONTINUING OBLIGATION903

9. FREEDOM OF INFORMATION - GENERAL PROVISIONS903

10. REDACTIONS.....904

11. DATA PROTECTION.....905

[REDACTED¹]

Withdrawn

¹ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

THIS AGREEMENT is dated ____ March 2020**BETWEEN:**

- (1) **THE SECRETARY OF STATE FOR TRANSPORT**, whose principal address is at 33 Horseferry Road, London SW1P 4DR (the "**Secretary of State**"); and
- (2) **FIRST GREATER WESTERN LIMITED** (Company Number: 05113733), whose registered office is at Milford House, 1 Milford Street, Swindon, Wiltshire, SN1 1HL (the "**Franchisee**").

BACKGROUND:

- (A) The Secretary of State and the Franchisee were parties to the Previous Franchise Agreement pursuant to which the Franchisee provided the Previous Passenger Services. The Previous Franchise Agreement expires at 01:59 on 1 April 2020 and the Parties have agreed that the Franchise Services will be provided by the Franchisee pursuant to this Agreement during the period from the Start Date until the Expiry Date. The Secretary of State has issued a Statement of Policy dated March 2013 on the exercise of the Secretary of State's power under section 26(1) of the Railways Act 1993 which confirms that the person who is appointed as a franchisee to provide the Franchise Services under a franchise agreement need not be selected from among those who submit tenders in response to an invitation to tender.
- (B) The Secretary of State wishes to appoint a franchisee to provide railway passenger services within the Franchise and expects a franchisee, on the terms of the Franchise Agreement, actively to seek, in all reasonable business ways, greatly improved performance over the Franchise Term from its employees, its Train Fleet and other assets, and from the Infrastructure Manager and its other suppliers, so as to deliver to the passenger the best railway passenger service that can be obtained from the resources that are available to it.
- (C) The Franchisee wishes to be appointed as the Secretary of State's franchisee for the Franchise and intends, on the terms of this Agreement, actively to seek, in all reasonable business ways, greatly improved performance over the Franchise Term from its employees, its Train Fleet and other assets, and from the Infrastructure Manager and its other suppliers, so as to deliver to the passenger the best railway passenger service that can be obtained from the resources that are available to it.
- (D) The Parties have agreed terms on which the Franchisee shall provide the Franchise Services and wish to record their agreement. The following provisions of this Agreement are intended to reflect and give effect to the matters referred to in Recitals (B) and (C) inclusive.

1. INTERPRETATION

- 1.1 In the Franchise Agreement, except to the extent the context otherwise requires:
- (a) words and expressions defined in Part I of the Act have the same meanings when used therein provided that, except to the extent expressly stated, "**railway**" shall not have the wider meaning attributed to it by section 81(2) of the Act;
- (b) words and expressions defined in the Interpretation Act 1978 have the same meanings when used in the Franchise Agreement;

- (c) references to **"Parties"** shall mean the Secretary of State and the Franchisee (and references to a **"Party"** shall mean the Secretary of State or the Franchisee 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 the Franchise Agreement as in section 1162 of the Companies Act 2006;
- (g) references in any of the agreements comprising the Franchise Agreement 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 the Franchise Agreement to a Part, paragraph or Appendix are references to a Part, paragraph or Appendix of that Schedule (or the relevant Part of a Schedule), unless expressly specified to the contrary;
- (I) headings and references to headings shall be disregarded in construing the Franchise Agreement;
- (j) references to any enactment include any subordinate legislation made from time to time under such enactment and are to be construed as references to that enactment as for the time being amended or modified or to any enactment for the time being replacing or amending it and references to any subordinate legislation are to be construed as references to that legislation as for the time being amended or modified or to any legislation for the time being replacing or amending it;
- (k) references to an agreement or any other document shall be construed as referring to that agreement or document as from time to time supplemented, varied, replaced, amended, assigned or novated;
- (l) references to any particular provisions of any agreement or any other document shall be construed to include any other provisions of, or incorporated in, that agreement or other document which the Secretary of State reasonably considers have an equivalent effect or are intended to fulfil the same function;
- (m) 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 Franchisee bidding for Train Slots or a Timetable shall mean the final action incumbent on the Franchisee under the Network Code to confirm to the Infrastructure Manager its interests in the Train Slots to which that confirmation relates, and **“bid”** shall be construed accordingly;
- (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 the Infrastructure Manager 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 Franchisee shall be to such sums exclusive of Value Added Tax;
- (w) the words **“shall not be liable”** are to be construed as meaning that no contravention of the Franchise Agreement and no Event of Default shall arise as a result of the occurrence of the matter to which such words relate;
- (x) references to a **“contravention of the Franchise Agreement”** or a **“contravention”** (and cognate expressions) are to be construed as meaning **a breach of the Franchise Agreement**;
- (y) wherever provision is made for the Franchisee to **“procure”** or **“ensure”** the delivery of an obligation under the Franchise Agreement, unless otherwise specified, that provision shall be construed as a primary obligation on the Franchisee to deliver that obligation;
- (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 2.1 of Schedule 14.4 (Designation of Franchise Assets), paragraph 9 of Schedule 13.1 (Apprenticeships), and paragraph 11 (Data Protection) of Schedule 17 (Confidentiality, Freedom of Information and Data Protection).

1.2 Where there is a requirement on the Franchisee 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 Franchisee taking into account and subject to the response of the other third parties concerned. It does not indicate an obligation on the Franchisee 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 Franchisee 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 Franchisee reasonably considers in all of the circumstances to be an appropriate use of its resources and effective to achieve the relevant objective.

1.3 In the Franchise Agreement, the Secretary of State is acting as part of the Crown.

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 Franchisee.

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

AA	Alliance Agreement;
ABD	Actual Benchmark Data;
BFS	Bid Fares Strategy;
BTP	BTP Methodology;
CFD	Commuter Fares Document;
CSES	Customer & Stakeholder Engagement Strategy;
DSMI	Data Site Monitor and Index;
DL	Depot Lease;
FF	Financial Formats;
FM	Financial Model;
FG	Facilities Guide;
NDSCA	NR Data Sharing and Confidentiality Agreement;
NRCA	Network Rail Collateral Agreement;
OM	Operational Model;
PC	Passenger's Charter;
PDF	Protected Fares Document;
POA	Power of Attorney;
PSM	Passenger Survey Methodology;
RDP	Rail Development Partnership Protocol;

ROA	Record of Assumptions;
SCDP	Station Social and Commercial Development Plan;
SL	Station Lease;
TCA	Template Confidentiality Agreement;
TP	Train Plan;
TSR	Train Service Requirement (TSR 1/TSR 2); and
TTSM	Ticketless Travel Survey Methodology.

3. DEFINITIONS

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

"2010 Nominal Ticket Sales"	has the meaning given to it in paragraph 3 of Schedule 5.4 (<i>Regulation of Fares Basket Values</i>);
"2010 Ticket Revenue"	has the meaning given to it in paragraph 4 of Schedule 5.4 (<i>Regulation of Fares Basket Values</i>);
"Access Agreement"	has the meaning given to the term "access agreement" in section 83(1) of the Act;
"Access for All Programme"	means a programme of funding, allocated by the Secretary of State, for schemes to improve the accessibility of stations;
"Accessible Travel Policy"	means the Franchisee's policy for accessible travel which the Franchisee is required to establish and review from time to time in accordance with the conditions of its Licences in respect of the operation of railway passenger services and/or stations;
"Accessible Travel Policy Guidance"	means the <i>"Accessible Travel Policy: Guidance for Train and Station Operators"</i> , published by the ORR in July 2019;
"Accessibility Panel"	means the regular forum of disabled passengers, including users of assisted travel, which the Franchisee must operate and consult on accessibility issues by virtue of section B5 of the Accessible Travel Policy Guidance, and which the Franchisee will establish by no later than 30 June 2020;
"ACoRP"	means the Association of Community Rail Partnerships whose principle place of business is The Old Water Tower, Huddersfield Railway Station, St Georges Square, Huddersfield, HD1 1JF or any

successor body whose purpose is to support Community Rail Partnerships;

“Act” 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;

“Action Plan” has the meaning given to it in paragraph 26.2(a) of Schedule 7.1 (*Operational Performance*);

“Actual All Cancellations Performance Level” has the meaning given to it in paragraph 1.1 of Schedule 7.1 (*Operational Performance*);

“Actual Benchmark Data” or “ABD” means the document in the agreed terms marked **“ABD”**;

“Actual Consist Data” 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;

“Actual Marketing Spend” has the meaning given to it in paragraph 1.1 of Schedule 6.3 (Contractual Incentive Mitigations);

“Actual Marketing Team Spend” has the meaning given to it in paragraph 1.1 of Schedule 6.3 (Contractual Incentive Mitigations);

“Actual Operating Costs” means:

(a) the Franchisee's total operating expenses for the period being reviewed as stated in its profit and loss account, or in the case of (v) and (vi) below as derived from underlying accounting records supporting the profit and loss account, including any of the following operating expenses that are payable during that period:

- (i) amounts payable to the Secretary of State and the Infrastructure Manager;
- (ii) taxation;
- (iii) shareholder distributions including dividends;
- (iv) interest;
- (v) capital expenditure (net of grants received);

- (vi) cash lease payments in relation to on-balance sheet leased assets (and for the avoidance of doubt these lease payments include cash paid or payable, in relation to the period being reviewed, under any lease which has been accounted for in accordance with "IFRS 16 – Leases" or any equivalent element of GAAP);
- (vii) **NOT USED**; and
- (viii) operating costs incurred in the delivery of the HEx Services Agreement,

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

- (A) finance/interest costs solely relating to on-balance sheet leased assets;
- (B) depreciation (including in relation to on-balance sheet leased assets);
- (C) amortisation;
- (D) bad debt provisions; and
- (E) **NOT USED**;

(b) either:

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

where creditors:

- (A) include any persons owed amounts by the Franchisee in respect of loans or funding agreements, operating expenses, including the types of expenses set out in paragraphs (a)(i) to (a)(v) above inclusive, provisions and deferred income balances; but
- (B) exclude persons owed amounts by the Franchisee in respect of season ticket liabilities, lease

liabilities in relation to on-balance sheet leased assets and liabilities in relation to grants received for the purchase of fixed and non-current assets;

(C) exclude any creditors or other liabilities relating to on-balance sheet leases;

“Actual Passenger Demand”	has the meaning given to it in paragraph 1.1 of Schedule 1.5 (<i>Information about Passengers</i>);
“Actual T-3 Performance Level”	has the meaning given to it in paragraph 1.1 of Schedule 7.1 (<i>Operational Performance</i>);
“Actual T-15 Performance Level”	has the meaning given to it in paragraph 1.1 of Schedule 7.1 (<i>Operational Performance</i>);
“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 2.1 (b) of Part 2 of Schedule 6.1 (<i>Franchise Specific Obligations</i>);
“Additional Expenditure” or “AD”	has the meaning given to it in paragraph 6.1 of Schedule 7.2 (<i>Customer Experience and Engagement</i>);
“Administration Fee”	has the meaning given to it in clause 8.5 (<i>Change of Control and Facilitation Fee</i>);
“Advance Purchase Train-specific Fares”	has the meaning given to it under the Ticketing and Settlement Agreement;
“Affected Party”	has the meaning given to it in paragraph 6.3 of Schedule 12 (<i>Financial Covenants and Bonds</i>);
“Affiliate”	means, <ul style="list-style-type: none"> (a) in respect of any person (“A”): <ul style="list-style-type: none"> (i) any person which A Controls or which Controls A; or (ii) any person which is Controlled by any other Affiliate of A; and

(b) for the purposes of Schedule 8.2 (*Profit Share Mechanism*) only, any person which directly or indirectly (including as a shareholder in any immediate parent undertaking):

(i) holds any share capital in the Franchisee;

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

(iii) has any voting power in the Franchisee,

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

“Aggregated Qualifying Change”

means two (2) or more Changes which:

(a) are notified or agreed (in the case of a Change which is a Variation pursuant to paragraph 1.1 of Schedule 9.3 (*Variations to the Franchise Agreement and Incentivising Beneficial Changes*)); and/or

(b) a Party has become aware of (in the case of any other kind of Change),

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

(i) the net present value of the adjustment in Franchise Payments which would result from a Run of the Financial Model (where Schedule 9.1 (*Financial and Other Consequences of Change*) applies) in respect of each Change shall be calculated in accordance with the process described in the definition of Qualifying Change; and

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

"Agreement"	means clauses 1 to 17 and Schedules 1 to 17 including any Appendices and Annexes as varied from time to time;
"All Cancellations"	means the sum of Cancellations, Partial Cancellations, Network Rail Cancellations and Network Rail Partial Cancellations relating to the Franchise as produced and/or published by Network Rail;
"All Cancellation Figures"	means the moving annual average percentage published by Network Rail in respect of All Cancellation, rounded to two (2) decimal places;
"All Cancellations Performance Sum"	means an amount determined in accordance with paragraph 22.7C of Schedule 7.1 (<i>Operational Performance</i>) payable by the Secretary of State to the Franchisee or to be incurred (other than in respect of the Final Franchisee Year where the provisions of paragraph 29 shall apply) by the Franchisee (as the case may be);
"Alliance Agreement"	means the agreement in the agreed terms marked AA , as amended from time to time with the prior consent of the Secretary of State in accordance with paragraph 2.3 of Schedule 6.4 (<i>Alliances</i>);
"Alternative Fare"	has the meaning given to it in paragraph 11.1 (a)(ii) of Schedule 6.3 (<i>Contractual Incentive Mitigations</i>);
"Alternative NRPS"	has the meaning given to such term in paragraph 2.6 of Schedule 7.2 (<i>Customer Experience and Engagement</i>);
"Ancillary Service"	means any service specified in paragraph 4 of Part 1 (<i>Franchise Services</i>) of Schedule 1.1 (<i>Franchise Services and Service Development</i>) and which shall not include the HEx Outsourced Services;
"Annual All Cancellations Measure"	has the meaning given to it in paragraph 1.1 of Schedule 7.1 (<i>Operational Performance</i>);
"Annual All Cancellations Payment Table"	has the meaning given to it in paragraph 1.1 of Schedule 7.1 (<i>Operational Performance</i>);
"Annual All Cancellations Table"	has the meaning given to it in paragraph 1.1 of Schedule 7.1 (<i>Operational Performance</i>);
"Annual Audited Accounts"	means the accounts of the Franchisee which: <ul style="list-style-type: none"> (a) comply with paragraph 9.5(b) of Schedule 11.2 (<i>Management Information</i>); and (b) are delivered to the Secretary of State by the Franchisee in accordance with

paragraph 9.4(b) of Schedule 11.2 (*Management Information*) and certified by the Franchisee's auditors as true and fair;

- "Annual Benchmark"** means any of the Annual Cancellations Benchmark, the Annual TOC Minute Delay Benchmark or the Annual Short Formation Benchmark;
- "Annual Business Plan"** means the plan to be provided by the Franchisee to the Secretary of State in accordance with paragraph 10.2 of Schedule 11.2 (*Management Information*);
- "Annual Cancellations Benchmark"** has the meaning given to it in paragraph 1.1 of Schedule 7.1 (*Operational Performance*);
- "Annual Cancellations Benchmark Table"** has the meaning given to it in paragraph 1.1 of Schedule 7.1 (*Operational Performance*);
- "Annual Cancellations Payment Table"** has the meaning given to it in paragraph 1.1 of Schedule 7.1 (*Operational Performance*);
- "Annual Cap Performance Level"** has the meaning given to it in paragraph 1.1 of Schedule 7.1 (*Operational Performance*);
- "Annual Floor Performance Level"** has the meaning given to it in paragraph 1.1 of Schedule 7.1 (*Operational Performance*);
- "Annual Floor Ticketless Travel Benchmark"** has the meaning given to it in paragraph 1.1 of Schedule 6.3 (*Contractual Incentive Mitigations*);
- "Annual Franchise Payment" or "AFP"** means, in relation to any Franchisee Year, the amount determined in accordance with Appendix 1 (*Annual Franchise Payments*) to Schedule 8.1 (*Franchise Payments*);
- "Annual Franchise Payment Components"** means the values of **FXD, VCRPI, VCAWE, PRPI, ORRPI, PRRPI** and **VCCPI** specified for each Franchisee Year in the table set out in Appendix 2 (*Figures for Calculation of Annual Franchise Payments*) to Schedule 8.1 (*Franchise Payments*);
- "Annual Management Accounts"** means the management accounts of the Franchisee which:

 - (a) comply with paragraph 9.5(a) of Schedule 11.2 (*Management Information*); and
 - (b) are delivered to the Secretary of State by the Franchisee in accordance with paragraph 9.4(a) of Schedule 11.2 (*Management Information*);
- "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;
"Annual Short Formation Benchmark"	has the meaning given to it in paragraph 1.1 of Schedule 7.1 (<i>Operational Performance</i>);
"Annual Short Formation Benchmark Table"	has the meaning given to it in paragraph 1.1 of Schedule 7.1 (<i>Operational Performance</i>);
"Annual Short Formation Payment Table"	has the meaning given to it in paragraph 1.1 of Schedule 7.1 (<i>Operational Performance</i>);
"Annual T-3 Measure"	has the meaning given to it in paragraph 1.1 of Schedule 7.1 (<i>Operational Performance</i>);
"Annual T-3 Payment Table"	has the meaning given to it in paragraph 1.1 of Schedule 7.1 (<i>Operational Performance</i>);
"Annual T-3 Table"	has the meaning given to it in paragraph 1.1 of Schedule 7.1 (<i>Operational Performance</i>);
"Annual T-15 Measure"	has the meaning given to it in paragraph 1.1 of Schedule 7.1 (<i>Operational Performance</i>);
"Annual T-15 Payment Table"	has the meaning given to it in paragraph 1.1 of Schedule 7.1 (<i>Operational Performance</i>);
"Annual T-15 Table"	has the meaning given to it in paragraph 1.1 of Schedule 7.1 (<i>Operational Performance</i>);
"Annual Target Performance Level"	has the meaning given to it in paragraph 1.1 of Schedule 7.1 (<i>Operational Performance</i>);
"Annual Target Ticketless Travel Benchmark"	has the meaning given to it in paragraph 1.1 of Schedule 6.3 (Contractual Incentive Mitigations);
"Annual Ticketless Travel Benchmark"	has the meaning given to it in paragraph 1.1 of Schedule 6.3 (Contractual Incentive Mitigations);
"Annual TOC Minute Delay Benchmark"	has the meaning given to it in paragraph 1.1 of Schedule 7.1 (<i>Operational Performance</i>);
"Annual TOC Minute Delay Benchmark Table"	has the meaning given to it in paragraph 1.1 of Schedule 7.1 (<i>Operational Performance</i>);
"Annual TOC Minute Delay Payment Table"	has the meaning given to it in paragraph 1.1 of Schedule 7.1 (<i>Operational Performance</i>);
"Apprenticeship"	means (as the context requires) an individual apprenticeship pursuant to: <ul style="list-style-type: none"> (a) an apprenticeship programme operated by the Franchisee:

- (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 Agreement at: <https://acecerts.co.uk/web/frameworks-library>); 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 Franchisee 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 Franchisee and included within the People Strategy specifying in relation to each Franchisee Year the number of Apprenticeships to be commenced in such Franchisee 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 with the prior written consent of the Secretary of State following a review of the People Strategy pursuant to paragraph 14 of Part 4 of Schedule 6.1;

"Apprenticeships Requirement"

has the meaning given to it in paragraph 9.4 of Schedule 13.1 (*Rail Industry Initiatives and Co-operation*);

"Approved CCI Scheme"

means a CCI Scheme approved by the Secretary of State in accordance with paragraph 11.4 of Schedule 7.2 (*Customer Experience and Engagement*);

"Approved SIF Scheme"

means a SIF Scheme (including, for the avoidance of doubt, a SIF Accessibility Improvements Scheme) approved by the Secretary of State in accordance with paragraph 23.7 of Part 3 of Schedule 6.1 (Franchise Specific Obligations);

"Average Weekly Earnings"

means the United Kingdom average weekly earnings measure excluding bonuses as published from time to time by the Office for National Statistics or, if such

measure shall cease to be published or if, in the reasonable opinion of the Secretary of State, there is a material change in the basis of such measure, such other alternative index as the Secretary of State may, after consultation with the Franchisee, determine to be appropriate in the circumstances;

"AWE" has the meaning given to it in Appendix 1 (*Annual Franchise Payments*) to Schedule 8.1 (*Franchise Payments*);

"BAME" means Black, Asian and Minority Ethnic;

"Bank" means a person which has a permission under Part 4A of the Financial Services and Markets Act 2000 to carry on the regulated activity of accepting deposits thereunder and which is reasonably acceptable to the Secretary of State;

"Bank Holiday" means any day other than a Saturday or Sunday on which banks in the City of London are not open for business;

"Benchmark" means any of the Cancellations Benchmark or the TOC Minute Delay Benchmark (as the context may require);

"Bespoke Revenue Initiative Proposal" has the meaning given to it in paragraph 4.1 of Schedule 6.3 (Contractual Incentive Mitigations);

"Bid Fares Strategy" or "BFS" means the document in the agreed terms marked BFS as updated pursuant to paragraphs 10 and 11 of Schedule 6.3 (Contractual Incentive Mitigations);

"Bid Profit Stream" means the estimated total operating profit of the Franchisee from the date that the Change of Control (pursuant to clause 8 (*Change of Control and Facilitation Fee*)) is to occur until the Expiry Date as shown in the profit and loss forecast in the Initial Business Plan (without taking into account any Annual Business Plan) calculated in real terms as at the date of the Change of Control and applying the prevailing discount rate per annum (in real terms) stated in HM Treasury's **"Green Book Appraisal Guidelines"** (such rate being three point five per cent (3.5%) per annum (in real terms) as at the date of the Franchise Agreement);

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

(a) a Bank; or

(b) an insurance company,

in each case with the Relevant Credit Rating;

“Bond Year”

means the period beginning on the Start Date and ending on 31 March 2021 and any subsequent period of thirteen (13) Reporting Periods beginning on the day after the end of the preceding Bond Year provided that:

(a) the Franchisee and the Secretary of State may agree to vary the Reporting Period in which a Bond Year ends from time to time; and

(b) the last Bond Year shall expire on the expiry of the Franchise Period and may be a period of less than thirteen (13) Reporting Periods;

“Boxing Day Services”

has the meaning given to it in paragraph 2.1 (a) of Part 2 of Schedule 6.1 (*Franchise Specific Obligations*);

“Brand Licence”

means any licence between the Secretary of State (or any company wholly owned by the Secretary of State) and the Franchisee in respect of any registered or unregistered trademarks which are listed in Appendix 1 (*List of Trade Marks*) of Schedule 14.2 (*Maintenance of Operating Assets and Branding*);

“Breach Performance Level”

has the meaning given to it in paragraph 1.1 of Schedule 7.1 (*Operational Performance*);

“Breach Reporting Stage”

has the meaning given to it in paragraph 1.1 of Schedule 7.1 (*Operational Performance*);

“Breach Ticketless Travel Benchmark”

has the meaning given to it in paragraph 1.1 of Schedule 6.3 (*Contractual Incentive Mitigations*);

“British Transport Police”

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);

“BTP Methodology”

has the meaning given to it in paragraph 6.7 of Schedule 1.7 (*Stations*);

“Buildings Research Establishment Environmental Assessment Method” or “BREEAM”

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;

“Business Action Plan”

means an action plan produced by the Franchisee in relation to the delivery of any aspect of the Franchise Services (including in respect of any outcome

anticipated by its Business Plan, in accordance with paragraph 10.2(c) of Schedule 11.2 (*Management Information*));

“Business Continuity Plan” or “BCP”

means a business continuity and disaster recovery plan (including a Force Majeure Events recovery plan) required to be produced, maintained and implemented by the Franchisee in accordance with the requirements of paragraph 4 of Schedule 10.3 (*Force Majeure and Business Continuity*);

“Business Plan”

means the Initial Business Plan or any Annual Business Plan, as the context requires, to be delivered in accordance with paragraphs 10.1 and 10.2 of Schedule 11.2 (*Management Information*);

“BWV Equipment”

has the meaning given to it in paragraph 19.1 of Schedule 13.1;

“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 Franchisee 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 Franchisee pursuant to its Track Access Agreement;

“Cancellations Benchmark”

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

“Cancellations Benchmark Table”

has the meaning given to it in paragraph 1.1 of Schedule 7.1 (*Operational Performance*);

“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;

“Cancellations Performance Sum”

means an amount determined in accordance with paragraph 22.3 of Schedule 7.1 (*Operational Performance*) and payable by the Secretary of State to the Franchisee or to be incurred (other than in respect of the Final Franchisee Year where the provisions of paragraph 29 of Schedule 7.1

(Operational Performance) shall apply) by the Franchisee (as the case may be);

“Capacity Mitigation Proposal”	has the meaning given to it in paragraph 15.1 of Part 2 (<i>Service Development</i>) of Schedule 1.1 (<i>Franchise Services and Service Development</i>);
“Capital Expenditure”	has the meaning given to it in paragraph 3.4 of Schedule 9.3 (<i>Variations to the Franchise Agreement and Incentivising Beneficial Changes</i>);
“Cascaded Rolling Stock”	has the meaning given to it in paragraph 3.1 of Schedule 2.2 (<i>Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases</i>);
“CCI Amount”	means the sum of [REDACTED ²] (indexed by the Retail Prices Index in the same way as variable costs are indexed in Appendix 1 to Schedule 8.1 (<i>Franchise Payments</i>)) per Franchisee Year within a CCI Period (reduced pro-rata in respect of any Franchisee Year within a CCI Period of less than three hundred and sixty five (365) days) as adjusted in accordance with paragraph 11.8(a) (<i>Customer and Communities Investment (CCI) Scheme</i>) of Schedule 7.2 (<i>Customer Experience and Engagement</i>);
“CCI Period”	means each individual Franchisee Year which is comprised in the Franchise Term;
“CCI Programme”	means a document accumulating and describing the Franchisee’s Approved CCI Schemes for each CCI Period (as amended from time to time as permitted by paragraph 11.5B of Schedule 7.2 (<i>Customer Experience and Engagement</i>));
“CCI Scheme”	has the meaning given to it in paragraph 11.1 of Schedule 7.2 (<i>Customer Experience and Engagement</i>);
“CCI Scheme Cost”	means in respect of any CCI Scheme, the total cost to the Franchisee of developing and implementing that CCI Scheme;
“CCI Scheme Margin”	means five per cent (5%) of the applicable CCI Scheme Costs;
“CCI Scheme Revenue”	means in respect of any CCI Scheme, the revenue earned by the Franchisee from that CCI Scheme;

² 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

"CCI Scheme Shortfall"

means, in relation to a CCI Scheme, the amount (if any) by which the CCI Scheme Revenue is less than the aggregate of the CCI Scheme Costs and the CCI Scheme Margin;

"CCI Scheme Underspend"

has the meaning given to it in paragraph 11.6 of Schedule 7.2 (*Customer Experience and Engagement*);

"CCTV Guidance"

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

"Central Government Body"

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

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

"Change"

means if and whenever any of the following occurs:

- (a) an event set out in any Secretary of State Risk Assumptions specified in Schedule 9.4 (*Secretary of State Risk Assumptions*);
- (b) a Charge Variation;
- (c) a Change of Law (excluding any Change of Law to the extent that it results in an adjustment to the Franchise Payments pursuant to Schedule 8.3 (*Track Access Adjustments and Station Charge Adjustments*));
- (d) a change to the Train Service Requirement previously in force pursuant to the issue of an amended or new Train Service Requirement in accordance with paragraph 16.6 of Schedule 1.1 (*Franchise Services and Service Development*);

- (e) the Franchisee is required to take any action pursuant to paragraph 19.1(a) and/or paragraph 19.1(b) of Schedule 1.1 (*Franchise Services and Service Development*);
- (f) the Secretary of State effects an amendment to a Discount Fare Scheme, introduces a new Discount Fare Scheme or ceases to approve a Discount Fare Scheme for the purposes of section 28 of the Act;
- (g) the Secretary of State approves an amendment or proposed amendment to an Inter-Operator Scheme, as referred to in paragraph 4.5 of Schedule 2.5 (*Transport, Travel and Other Schemes*) to the extent and only to the extent that the Franchisee makes a saving as a consequence of such amendment or proposed amendment;
- (h) the imposition, subject to the provisions of paragraph 2.6 of Schedule 4 (*Accessibility and Inclusivity*), of any increased access charges in respect of EA Requirements at Franchisee Access Stations;
- (i) the Secretary of State exercises the Secretary of State's power pursuant to paragraph 5 of Schedule 5.7 (*Changes to Fares and Fares Regulation*) to alter the obligations of and restrictions on the Franchisee under Schedule 5 (*Fares and Smart Ticketing*);
- (j) the Franchisee is obliged to charge Value Added Tax on a Fare or there is an increase or decrease in the rate of Value Added Tax which it must charge on such Fare, in either case due to a change in the Value Added Tax treatment of the provision of Passenger Services;
- (k) the exercise by the Secretary of State of the Secretary of State's rights pursuant to paragraph 1.11 (*Charging Review*) of Schedule 7.1 (*Operational Performance*);
- (l) the exercise by the Secretary of State of the Secretary of State's rights pursuant to paragraph 15.1(c) (*Environmental Information Data Collection Plan*) of Schedule 11.2 (*Management Information*);
- (m) **NOT USED**;

- (n) **NOT USED;**
- (o) a Variation to the terms of the Franchise Agreement pursuant to paragraph 1.1 of: Schedule 9.3 (*Variations to the Franchise Agreement and Incentivising Beneficial Changes*);
- (p) **NOT USED;**
- (q) **NOT USED;**
- (r) the circumstances set out in paragraph 3.2 of Schedule 2.2 (*Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases*) occur;
- (s) **NOT USED;**
- (t) **NOT USED;**
- (u) **NOT USED;**
- (v)
 - (i) the Secretary of State issues a TDR Amendment pursuant to paragraph 12.8 (*TDR Amendments*) of Schedule 1.1 (*Franchise Services and Service Development*) in the circumstances described in paragraph 12.10(b); or
 - (ii) the circumstances contemplated in paragraph 12.11(b) of Schedule 1.1 (*Franchise Services and Service Development*) occur;
- (w) the exercise by the Secretary of State of the Secretary of State's rights pursuant to paragraph 11.2 (Changes to the Bid Fares Strategy) of Schedule 6.3 (Contractual Incentive Mitigations);
- (x) the Secretary of State exercises the Secretary of State's right to vary the provisions of Schedule 7.3 (Service Quality Regime) pursuant to paragraph 21.2 (Variations to the Service Quality Regime) of Schedule 7.3 (Service Quality Regime);
- (y) **NOT USED;**
- (z) **NOT USED;**
- (za) the circumstance set out in paragraph 6A.3 (Severn Tunnel Electrification) of Schedule 9.5

(Infrastructure and Rolling Stock Related Change);

- (zb) **NOT USED**;
- (zc) the circumstance set out in paragraph 6.3 (Chippenham Electrification Project) of Schedule 9.5 (Infrastructure and Rolling Stock Related Change);
- (zd) the circumstance set out in paragraph 7.3 (Additional Electrification Projects) of Schedule 9.5 (Infrastructure and Rolling Stock Related Change);
- (ze) the circumstance set out in paragraph 8.4 (Use of Class 769 Units in electric mode on the North Downs Route) of Schedule 9.5 (Infrastructure and Rolling Stock Related Change);
- (zf) the circumstances set out in paragraphs 9.1, 9.2 and 9.3 and 9.4 of Schedule 9.5 (Infrastructure and Rolling Stock Related Change);
- (zg) the Secretary of State exercises his right pursuant to paragraph 1.1 of Schedule 9.6 (Franchising of the Heathrow Express Services);
- (zh) any of the circumstances set out in paragraphs 2.9, 3.2, 4.1, 4.3 and 7.1(c) (as the case may be) of Schedule 6.7 (*The IEP Provisions*); or
- (zi) the circumstances set out in paragraphs 4.9 and 4.16 of Schedule 1.4;
- (zj) the circumstances set out **[REDACTED³]**;
- (zk) the circumstances set out in paragraph 7.1 of Schedule 9.8 (*Emergency Measures*);
- (zl) the exercise of the Secretary of State's right to direct the Franchisee to use all reasonable endeavours to implement a Delayed Class 769 Mitigation Plan pursuant to paragraph 25.5 of Part 4 of Schedule 6.1; and
- (aa) any two or more of the foregoing that the Secretary of State groups together in

³ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

accordance with any procedures issued by the Secretary of State pursuant to paragraph 1.4 of Schedule 9.3 (*Variations to the Franchise Agreement and Incentivising Beneficial Changes*) occur,

it being acknowledged and agreed, for the avoidance of doubt, that a "Change" arising under the HEx Services Agreement shall not, unless expressly provided for by this Franchise Agreement, be considered a Change under this Franchise Agreement;

"Change of Control"

has the meaning given to it in clause 8.1 (*Change of Control and Facilitation Fee*);

"Change of Law"

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

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

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

- (i) excluding any changes in Taxation;
- (ii) excluding any changes which were foreseeable at the date of the Franchise Agreement, and for this purpose, but without limitation, there shall be regarded as foreseeable any Legislation which on the date of the Franchise Agreement has been published:

- (A) in a draft parliamentary bill as part of a government departmental consultation paper;
- (B) in a parliamentary bill;
- (C) in a draft statutory instrument; or
- (D) as a proposal in the Official Journal of the European Union except to the extent that such proposal is intended to apply

solely within member states
other than the United Kingdom,

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

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

"Charge Variation"

means a variation:

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

"Charging Review"

means:

- (a) the exercise by the ORR of its powers under:
 - (i) Part 7 of Schedule 7 of the Track Access Agreement to which the Franchisee is a Party on the Start Date or any Replacement Agreement which is or is deemed to be a Relevant Agreement in accordance with the definition of that term;
 - (ii) Condition F11.4 (*Review of Long Term Charge*) of the Station Access Conditions in relation to any station which is not an Independent Station; or
 - (iii) Condition F12.4 (*Review of Access Generally*) of the Station Access Conditions in relation to any station which is not an Independent Station; or

- (iv) Condition 42.4 (*Review of the Long Term Charge*) of the Independent Station Access Conditions in relation to any station which is an Independent Station or a Station;
- (b) the following by the ORR of the procedure in Schedule 4A of the Act;
- (c) the exercise by the ORR of any of its powers or the following of any other procedure, which, in the Secretary of State's reasonable opinion:
 - (i) has an equivalent effect to; or
 - (ii) is intended to fulfil the same function as,

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

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

“Charter Service”

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

- (a) which is not reflected in the Timetable;
- (b) which does not conform to the pattern of railway passenger services normally provided by the Franchisee;
- (c) for which the advance booking or booking arrangements for seats on the relevant service are, in the reasonable opinion of the Secretary of State, materially different from those generally applicable to the Passenger Services;

- (d) for which tickets are available on a restricted basis or on terms and conditions which, in the reasonable opinion of the Secretary of State, are materially different from those generally applicable to the Passenger Services; and/or
- (e) for which the departure time, journey time and calling pattern are, in the reasonable opinion of the Secretary of State, materially different from those of the Passenger Services,

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

“Child Price”

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

“CIM Performance Sum”

has the meaning given to it in paragraph 1.1 of Schedule 6.3 (Contractual Incentive Mitigations);

“Closed Scheme Employees”

has the meaning given to it in paragraph 3.2 of Schedule 16.1 (*Railways Pension Scheme*);

“Closure”

means a discontinuance or closure under Part 4 of the Railways Act 2005 of any of the Passenger Services or of any network on which the Passenger Services may be operated or of any of the Stations or of any part of such network or Station;

“CMA”

has the meaning given to it in clause 15.1(a) (*Competition*);

“Code of Practice”

means the code of practice for protecting the interests of users of railway passenger services or station services who have disabilities, as prepared, revised from time to time (with the approval of the Disabled Persons Transport Advisory Committee) and published by the Secretary of State pursuant to section 71B of the Act and which is available at <https://www.gov.uk/government/publications/accessible-railway-stations-design-standards> (or such other applicable web address that is adopted by the Secretary of State from time to time);

“Commercial Return”

means where the CCI Scheme Revenue equals or exceeds the aggregate of the CCI Scheme Costs and the CCI Scheme Margin;

“Commitment”

has the meaning given to it in clause 15.1(b) (*Competition*);

- “Committed Obligations” or “COs”** means any of the Franchisee's obligations listed in Part 1 (*Committed Obligations*) of Schedule 6.2 (*Committed Obligations*) or any other obligation of the Franchisee expressed as a Committed Obligation under the Franchise Agreement;
- “Community Rail Partnership”** means any not for profit organisation of the same name that has an interest in the development of responsive and good quality railway passenger services;
- “Community Rail Report”** has the meaning given to it in paragraph 2.6 of Schedule 13.1 (*Rail Industry Initiatives and Co-operation*);
- “Community Rail Route”** means any Route in respect of which the Secretary of State determines that any relevant Community Rail Partnership has an interest;
- “Community Rail Strategy”** means the Community Rail Development Strategy (as may be updated from time to time) published in November 2004 and which provides a broad framework within which rural community routes can be put on an improved financial footing;
- “Commuter Fare”** means any:
- (a) Weekly Season Ticket, Monthly Season Ticket, Quarterly Season Ticket and Annual Season Ticket (and their equivalent products compliant with the ITSO Specification) between each London Station and any other such station or other Suburban Station; and
 - (b) unrestricted Single Fare and unrestricted Return Fare (and their equivalent products compliant with the ITSO Specification) between each London Station; and
 - (c) unrestricted Single Fare and unrestricted Return Fare (and their equivalent products compliant with the ITSO Specification) from each Suburban Station to each London Station (but not in the other direction); and
 - (d) PAYG Peak Fare or PAYG Off-Peak Fare (and their equivalent products compliant with the ITSO Specification) between each London Station and any other such station (and the CPAY equivalent fares),
- for which the Franchisee is entitled to be allocated all or part of the revenue therefrom pursuant to the Ticketing and Settlement Agreement;

"Commuter Fares Basket"	means the grouping of Commuter Fares:
	(a) determined by the Secretary of State pursuant to Schedule 5.3 (<i>Allocation of Fares to Fares Baskets</i>);
	(b) for the purposes of regulating aggregate Prices, as the case may be, in accordance with Schedule 5.4 (<i>Regulation of Fares Basket Values</i>);
	(c) amended by the Secretary of State from time to time in accordance with Schedule 5.7 (<i>Changes to Fares and Fares Regulation</i>); and
	(d) set out in the Commuter Fares Document;
"Commuter Fares Document" or "CFD"	means the document in the agreed terms marked CFD as the same may be amended from time to time in accordance with Schedule 5.7 (<i>Changes to Fares and Fares Regulation</i>);
"Competition Authority"	has the meaning given to it in clause 15.1(c) (<i>Competition</i>);
"Competition Event"	has the meaning given to it in clause 15.1(d) (<i>Competition</i>);
"Competition Event Notice"	has the meaning given to it in clause 15.5 (<i>Competition</i>);
"Compulsory Inter-available Flow"	has the meaning given to it in the Ticketing and Settlement Agreement;
"Computer System"	means computer hardware and computer software, including licensed third party software and data protocols;
"Confidential Information"	has the meaning given to it in paragraph 1 of Schedule 17 (<i>Confidentiality, Freedom of Information and Data Protection</i>);
"Connection"	means a connection (however described) between any of the Passenger Services provided by the Franchisee and any other railway passenger service provided by the Franchisee or any other Train Operator or any bus, ferry or shipping service and cognate phrases shall be construed accordingly;
"Contingency Plan"	has the meaning given to it in paragraph 1(a)(iv) of Schedule 10.3 (<i>Force Majeure and Business Continuity</i>);
"Continuation Document"	means any franchise agreement, direct award, interim franchise agreement or other arrangement pursuant to which the Franchisee is required to

provide services for the carriage of passengers by railway which is entered into by the Franchisee in respect of some or all of the same Passenger Services by way of direct or indirect continuation of the arrangement currently in place under the Franchise Agreement;

“Contract Manager”

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

“Contractual Incentive Mitigations”

means the additional and amended obligations imposed upon the Franchisee pursuant to the operation of Schedule 6.3 (*Contractual Incentive Mitigations*);

“Control”

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):

- (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:
 - (i) A;
 - (ii) any person who has equivalent rights over A; or
 - (iii) any person who A has equivalent rights over;
- (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;

"Controlled Emission Toilet" or "CET" means a toilet fitted on a Rolling Stock Unit and which retains effluent in retention tanks such that effluent is not discharged on the rail tracks;

"Core Amount" has the meaning given to it in paragraph 6 of Schedule 7.2 (*Customer Experience and Engagement*);

"Count Equipment" 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, including that specified in paragraph 3 of Schedule 1.5 (*Information about Passengers*);

"CPAY" means an arrangement operated by TfL under which contactless payment cards can be used by

passengers to obtain access to the public transport services in London without the requirement for purchase of a separate ticket or permission to travel;

“CPAY Agreement”

means an agreement dated 30 July 2014 between Transport Trading Limited and train operators operating in London relating to the acceptance of certain contactless payment cards for “pay as you go” journeys in London;

“CPI”

has the meaning given to it in Appendix 1 (*Annual Franchise Payments*) to Schedule 8.1 (*Franchise Payments*);

“Consumer Prices Index”

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

“Creating”

has the meaning given to it in the Ticketing and Settlement Agreement, cognate expressions and references to **“Create”** shall be construed accordingly;

“CRM Data”

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 Franchisee relating to:

- (a) persons travelling on or purchasing tickets for travel on the Passenger Services or other services for the carriage of passengers by railway; or
- (b) **NOT USED;**

“CRM System”

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

“Crossrail Operator”

has the meaning given to such term in paragraph 1.1 of Part 3 of Schedule 6.1 (*Franchise Specific Obligations*);

“Crossrail Programme”

has the meaning given to such term in paragraph 1.1 of Part 3 of Schedule 6.1 (*Franchise Specific Obligations*);

“Crossrail Services”	has the meaning given to such term in paragraph 1 of Part 3 of Schedule 6.1 (<i>Franchise Specific Obligations</i>);
“Crossrail Stage 5b Timetable Date”	has the meaning given to it in paragraph 1 of Schedule 9.5;
“Crossrail Stations”	has the meaning given to such term in paragraph 1.1 of Part 3 of Schedule 6.1 (<i>Franchise Specific Obligations</i>);
“CRP Amount”	means the sum [REDACTED⁴] (indexed by the Retail Prices Index in the same way as variable costs are indexed in Appendix 1 (Annual Franchise Payments) to Schedule 8.1 (Franchise Payments)) per Franchisee Year (reduced pro-rata in respect of any Franchisee Year of less than three hundred and sixty five (365) days);
“CRP Project Sum”	means the sum of [REDACTED⁵] (indexed by the Retail Prices Index in the same way as variable costs are indexed in Appendix 1 (Annual Franchise Payments) to Schedule 8.1 (Franchise Payments)) per Franchisee Year (reduced pro rata in respect of any Franchisee Year of less than three hundred and sixty five (365) days);
“Current Franchisee Year”	has the meaning given to it in paragraph 2.1 (<i>Additional Compensation or Settlement Payments</i>) of Schedule 8.2 (<i>Profit Share Mechanism</i>);
“Customer and Stakeholder Engagement Strategy” or “CSES”	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 paragraphs 9.2 to 9.4 (inclusive) (<i>Customer and Stakeholder Engagement Strategy</i>) of Schedule 7.2 (<i>Customer Experience and Engagement</i>);
“Customer Report”	means a report in the format and providing the information specified in the Customer and Stakeholder Engagement Strategy published in accordance with paragraph 10.1 (<i>Customer Report</i>) of Schedule 7.2 (<i>Customer Experience and Engagement</i>);

⁴ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁵ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

"Cyber Information Sharing Platform"	has the meaning given to it in paragraph 17.1 of Schedule 13.1 (<i>Rail Industry Initiatives and Co-operation</i>);
"Cyber Security Information Sharing Strategy" or "CSISS"	has the meaning given to it in paragraph 17.1 of Schedule 13.1 (<i>Rail Industry Initiatives and Co-operation</i>);
"Dataset"	means the data specified in Appendix 1 (<i>Environmental Information</i>) to Schedule 11.2 (<i>Management Information</i>) as the same may be amended from time to time by the Secretary of State (acting reasonably);
"Data Protection Act"	means the Data Protection Act 2018;
"Data Protection Legislation"	means all Laws relating to data protection, the Processing of Personal Data and privacy in force from time to time including the Data Protection Act 2018, (for so long as and to the extent that the law of the European Union has legal effect in the United Kingdom) the GDPR, 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);
"Data Subject"	has the meaning given to it in the Data Protection Legislation;
"Data Site Information"	has the meaning given to it in paragraph 3.1 (<i>Data Site Information</i>) of Schedule 15.1 (<i>Reletting Provisions</i>);
"Data Site Monitor and Index" or "DSMI"	has the meaning given to it in paragraph 3.1 (<i>Data Site Information</i>) of Schedule 15.1 (<i>Reletting Provisions</i>);
"Default Performance Level"	means, in relation to a Benchmark for any Reporting Period, the number set out in the relevant Column of the Cancellation Benchmark Table and TOC Minute Delay Benchmark Table to Schedule 7.1 (<i>Operational Performance</i>) and in the row of that table for that Reporting Period;
"Delayed Cascade Mitigation Plan"	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>);
"Departure Station"	has the meaning given to it in paragraph 2.2 of Appendix 2 (<i>Accessible Transport Arrangements</i>) to Schedule 4 (<i>Accessibility and Inclusivity</i>);
"Depot"	means a depot in respect of which the Franchisee has entered into a Depot Lease;

"Depot Access Conditions"	has the meaning given to it in the relevant Access Agreement to which it relates;
"Depot Lease" or "DL"	means: <ul style="list-style-type: none"> (a) any lease of a depot to which the Franchisee is a party as at the Start Date; or (b) any other lease of a depot in relation to which the Franchisee becomes the Facility Owner at any time during the Franchise Period;
"Derivative Output"	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);
"Designated CO Primary Franchise Assets"	has the meaning given to it in paragraph 9.1 (<i>Designation of Assets comprised in COs as Primary Franchise Assets</i>) of Part 2 (<i>Special Terms related to the Committed Obligations</i>) to Schedule 6.2 (<i>Committed Obligations</i>);
"Designated Employer"	has the meaning given to it in the Pension Trust;
"Destination Station"	has the meaning given to it in paragraph 2.2 of Appendix 2 (<i>Accessible Transport Arrangements</i>) to Schedule 4 (<i>Accessibility and Inclusivity</i>);
"Direct Agreement"	means any agreement made, or to be made, from time to time between the Secretary of State and the counterparty of a Key Contract in relation to such Key Contract, including any agreement entered into by the Secretary of State under Schedule 14.3 (<i>Key Contracts</i>);
"Direct Award Collateral Agreement"	means the agreement between the Secretary of State and the Franchisee regulating the rights and obligations of the Parties in the event that a legal challenge is successfully raised as a result of the entering into of this Agreement;
"Disabled Person"	is a reference to a person who has a disability as defined in the EA;
"Disabled Persons Transport Advisory Committee" or "DPTAC"	means the committee with that name established under section 125 of the Transport Act 1985 and its statutory successors;
"Discount Card"	has the meaning given to it in the Ticketing and Settlement Agreement;

"Discount Fare Scheme"	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>);
"Dispute Resolution Rules"	means the procedures for the resolution of disputes known as "The Railway Industry Dispute Resolution Rules" , as amended from time to time in accordance with the terms thereof. The rules are available at http://accessdisputesrail.org/RIDR/RIDR_Rules.pdf (or such other applicable web address that is adopted from time to time);
"Disputed Cancellation"	means a Passenger Service: <ul style="list-style-type: none"> (a) which is included in the Enforcement Plan of the Day and which is cancelled; or (b) which is included in the Enforcement Plan of the Day and which operates less than fifty per cent (50%) of its scheduled mileage (as prescribed in the Enforcement Plan of the Day), <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 Franchisee pursuant to the Track Access Agreement;</p>
"Disputed Partial Cancellation"	means a Passenger Service which is included in the Enforcement Plan of the Day and which: <ul style="list-style-type: none"> (a) misses a stop; or (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>in either case, in circumstances where attribution of responsibility for the same is, at the relevant time, in dispute between Network Rail and the Franchisee pursuant to the Track Access Agreement;</p>
"DOTAS"	has the meaning given to it in paragraph 6.3 of Schedule 12 (<i>Financial Covenants and Bonds</i>);
"Draft Marketing Plan"	has the meaning given to it in paragraph 1.1 of Schedule 6.3 (<i>Contractual Incentive Mitigations</i>);
"Driver Controlled Operation in Passenger Mode"	means operation of relevant rolling stock by a driver alone without the operational need for a conductor;
"EA"	means the Equality Act 2010;

"EA Claim"	has the meaning given to it in paragraph 3.1 of Schedule 4 (<i>Accessibility and Inclusivity</i>);
"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;
"East West Rail Scheme"	means a scheme to re-establish a rail link between Cambridge and Oxford to improve connections between East Anglia and central, southern and western England;
"EEA state"	has the meaning given to it in clause 14.9 (<i>Non-Discrimination</i>);
"Emergency Events"	has the meaning given to it in paragraph 1(e) of Schedule 10.3 (<i>Force Majeure and Business Continuity</i>);
"EMV"	has the meaning given to it in paragraph 1.1 of Schedule 5.9 (<i>Smart Ticketing</i>);
"Enduring Branding"	has the meaning given to it in paragraph 4.1 of Schedule 14.2 (<i>Maintenance of Operating Assets and Branding</i>);
"Enforcement Plan of the Day"	<p>means the Plan of the Day except for any:</p> <ul style="list-style-type: none"> (a) additions to such Plan of the Day of any railway passenger services which are not included in the Timetable; (b) omissions from such Plan of the Day of any Passenger Services included in the Timetable; and/or (c) rescheduling in such Plan of the Day of any Passenger Services from their scheduling in the Timetable, <p>in each case:</p> <ul style="list-style-type: none"> (i) as proposed by the Franchisee in breach of its obligations in paragraph 4 of Schedule 1.2 (<i>Operating Obligations</i>); or (ii) as agreed by the Franchisee in breach of its obligations in paragraph 3 of Schedule 1.2 (<i>Operating Obligations</i>);
"Environmental Data Collection Plan"	has the meaning given to it in paragraph 15.1(a)(iii) of Schedule 11.2 (<i>Management Information</i>);

“Environmental Impact Targets”	has the meaning given to it in paragraph 16.1 of Schedule 11.2 (<i>Management Information</i>);
“Environmental Impact Targets Plan”	has the meaning given to it in paragraph 16.2(c) of Schedule 11.2 (<i>Management Information</i>);
“Environmental Impact Monitoring Audit”	has the meaning given to it in paragraph 15.2(b) of Schedule 11.2 (<i>Management Information</i>);
“Environmental Impact Monitoring Report”	has the meaning given to it in paragraph 15.2(a) of Schedule 11.2 (<i>Management Information</i>);
“Environmental Information Regulations”	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;
“Equivalent Fare”	has the meaning given to it in paragraph 6.1 of Schedule 5.7 (<i>Changes to Fares and Fares Regulation</i>);
“Equivalent Flow”	has the meaning given to it in paragraph 6.1(b) of Schedule 5.7 (<i>Changes to Fares and Fares Regulation</i>);
“ERTMS”	means the European Rail Traffic Management System;
“Escrow Documents”	means those documents and other items referred to in paragraph 1.1 of Schedule 9.2 (<i>Identity of the Financial Model (Escrow Documents)</i>);
“Estimated Profit Stream”	means estimated total operating profit of the Franchisee from the date that the Change of Control (pursuant to clause 8 (<i>Change of Control and Facilitation Fee</i>)) is to occur until the Expiry Date as reasonably determined by the Secretary of State. In reasonably determining the Estimated Profit Stream the Secretary of State shall: <ul style="list-style-type: none"> (a) take into account all relevant circumstances and have due regard to the Financial Model, the profit and loss forecast in the Initial Business Plan and the most recent Annual Business Plan and the assumptions in the Record of Assumptions; (b) use the accounting policies and standards set out in the Record of Assumptions and applied through the Financial Model; (c) estimate profit: <ul style="list-style-type: none"> (i) before taking into account:

- (A) interest, finance income and finance charges (other than finance items recognised in respect of retirement benefits) and dividends and other distributions of profit;
 - (B) any taxation on profits including corporation tax;
 - (C) shares of the profit of any Affiliate of the Franchisee, except dividends received in cash;
 - (D) non cash entries in respect of the Franchise Section and any other pension schemes to the extent connected with the Franchise, excluding accruals or prepayments of any normal pension contributions due; and
- (ii) after taking into account:
- (A) Franchise Payments;
 - (B) all extraordinary and exceptional items, as defined under GAAP;
 - (C) the Franchisee's normal pension contributions in relation to the Franchise Section and any other pension schemes to the extent connected with the Franchise;
 - (D) any payments to Affiliates of the Franchisee (including management fees and royalty fees) except to the extent that such payments exceed the amount(s) determined in accordance with paragraph 1.2 (a)(v) (*Relevant Profit*) of Schedule 8.2 (*Profit Share Mechanism*); and
 - (E) any sums capitalised in relation to maintenance expenditure on rolling stock or other capital equipment; and
- (d) calculate amounts in real terms as at the date of the Change of Control and apply the

Withdrawn

prevailing discount rate per annum (in real terms) stated in HM Treasury's "**Green Book Appraisal Guidelines**" (such rate being as at the date of the Franchise Agreement three point five per cent (3.5%) per annum (in real terms));

"Estimated Revisions"	has the meaning given to it in paragraph 10.3 of Schedule 9.1 (<i>Financial and Other Consequences of Change</i>);
"EU Merger Regulation"	has the meaning given to it in clause 15.2 (a) (<i>Competition</i>);
"Evening Peak"	means, in relation to any Passenger Service, the period between 1600 and 1859 (inclusive) during a Weekday or such other continuous three hour period between 1200 and 2359 (inclusive) as the Secretary of State may specify from time to time;
"Evening Peak Service"	means a Passenger Service which departs from London Paddington, Bristol Temple Meads or Exeter St David's station in the Evening Peak;
"Event of Default"	means any of the events set out in paragraph 1 (<i>Definition of Events of Default</i>) of Schedule 10.2 (<i>Events of Default and Termination Events</i>);
"Excluded Data"	has the meaning given to it in paragraph 15.1(a)(i) (<i>Environmental Information</i>) of Schedule 11.2 (<i>Management Information</i>);
"Existing Expenditure"	has the meaning given to it in paragraph 6.2(a) (<i>Additional Expenditure</i>) of Schedule 7.2 (<i>Customer Experience and Engagement</i>);
"Expiry Date"	means the later of: <ul style="list-style-type: none"> (a) 01:59 on 1 April 2023; or (b) NOT USED; (c) any such later date to which the Franchise Agreement is continued in accordance with clause 5.2 (<i>Additional Reporting Periods</i>);
"Facilitation Fee"	has the meaning given to it in clause 8.4 (<i>Change of Control and Facilitation Fee</i>);
"Facility Owner"	has the meaning given to the term facility owner in section 17(6) of the Act;
"Fare"	means: <ul style="list-style-type: none"> (a) the right, exercisable against one or more Train Operators, subject to any applicable

rights or restrictions and the payment of the relevant price, to make one or more journeys on the network or to carry on such a journey an item of luggage or an animal (where this right does not arise under the relevant conditions of carriage except on the payment of a fee) and, where applicable, to obtain goods or services from a person; and

(b) for the purposes only of Schedule 5.3 (*Allocation of Fares to Fares Baskets*) to Schedule 5.8 (*Fares Regulation Information and Monitoring*) (inclusive) and the definitions of Commuter Fare, Protected Fare, Return Fare, Single Fare, Protected Weekly Season Ticket, Protected Return Fare and paragraph (b) of the definition of Season Ticket Fare, a Fare as defined under paragraph (a) that is:

(i) valid for a journey or journeys on the Passenger Services included in the Timetable or other railway passenger services which are required to be included in another relevant Train Operator's passenger timetable by the Secretary of State;

(ii) sold under the Travelcard Agreement; or

(iii) a Cross London Ticket (as defined in the Through Ticketing (Non Travelcard) Agreement); or

(iv) sold under the Pay As You Go Agreement utilising TTL smart media as defined in such agreement; but

(c) excluding any Fare as defined under paragraph (a) that is sold in respect of the HEx Services;

"Fare Year"

means the period from 1 January in any year to 31 December in the same year;

"Fares Basket"

means either the Commuter Fares Basket or the Protected Fares Basket;

"Fares Document"

means any of the Commuter Fares Document and/or the Protected Fares Document;

"Fares Setting Round"

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

"Fares, Ticketing and Retail Trials"	has the meaning given to it in paragraph 1.1 of Schedule 5.10 (<i>Fares, Ticketing and Retail Trials</i>);
"Final Franchisee Year"	means the Franchisee Year ending on the last day of the Franchise Period;
"Financial Action Plan"	means any action plan produced by the Franchisee pursuant to paragraph 9.2(b)(vi) of Schedule 11.2 (<i>Management Information</i>), where the level of its financial performance specified in the Management Accounts is materially worse than forecast by the Franchisee in its current Business Plan;
"Financial Conduct Authority"	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;
"Financial Formats" or "FF"	means the Franchisee's financial formats in the agreed terms marked FF ;
"Financial Model" or "FM"	means the Franchisee's financial model in the agreed terms marked FM deposited with the Secretary of State on the date of the Franchise Agreement in accordance with Schedule 9.2 (<i>Identity of the Financial Model (Escrow Documents)</i>), as may be subsequently revised in accordance with Schedule 9.2 (<i>Identity of the Financial Model (Escrow Documents)</i>);
"Financial Ratios"	means the financial ratios specified in paragraph 2 of Schedule 12 (<i>Financial Covenants and Bonds</i>);
"First Additional Expenditure Year"	has the meaning given to it in paragraph 6.2 (a) of Schedule 7.2 (<i>Customer Experience and Engagement</i>);
"First FRM Franchisee Year"	has the meaning given to it in paragraph 2.1 of Schedule 8.6 (<i>Forecast Revenue Mechanism</i>);
"First Profit Share Threshold" or "FPST"	has the meaning given to it in paragraph 1.1 of Schedule 8.2 (<i>Profit Share Mechanism</i>);
"Fixed Track Charge Wash-Up Payment"	has the meaning given to it in paragraph 8.3 of Schedule 8.1 (<i>Franchise Payments</i>);
"Floor Ticketless Travel Benchmark"	has the meaning given to it in paragraph 1.1 of Schedule 6.3 (<i>Contractual Incentive Mitigations</i>);
"Flow"	has the meaning given to it in the Ticketing and Settlement Agreement;
"Force Majeure Event"	means any of the events described as such in paragraph 1 of Schedule 10.3 (<i>Force Majeure and Business Continuity</i>) where the conditions specified

in paragraph 2 of Schedule 10.3 (*Force Majeure and Business Continuity*) are satisfied;

“Forecast Modified Revenue” means, in relation to any Reporting Period, the items specified in the definition of Modified Revenue, as most recently forecast for that Reporting Period pursuant to paragraphs 9.2(b) and 9.3(a) of Schedule 11.2 (*Management Information*);

“Forecast Operating Costs” means, in relation to any Reporting Period, the items specified in the definition of Actual Operating Costs, as most recently forecast for that Reporting Period pursuant to paragraphs 9.2(b) and 9.3(a) of Schedule 11.2 (*Management Information*) adjusted for any movement in creditors arising from deemed PCS Facility borrowing pursuant to Clause 18 of the Funding Deed;

“Forecast Passenger Demand” means the forecast prepared by the Franchisee pursuant to paragraph 12.2 of Part 2 (*Service Development*) of Schedule 1.1 (*Franchise Services and Service Development*) in respect of:

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

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

“Franchise” means the rights proposed by the Secretary of State in the Request for Proposal to operate railway passenger services over the Routes prescribed in paragraph 6.1 (*Restrictions relating to Franchise Services*) of Part 1 (*Franchise Services*) of Schedule 1.1 (*Franchise Services and Service Development*);

“Franchise Agreement” means this Agreement, which is a **“franchise agreement”** for the purposes of the Act;

“Franchise Assets” means the property, rights and liabilities designated as such pursuant to paragraph 1 of Schedule 14.4 (*Designation of Franchise Assets*) but excluding such property, rights or liabilities as shall, in accordance

with the terms of the Franchise Agreement, cease to be so designated;

“Franchise 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 Franchise Employees which is notified to or otherwise comes to the attention of the Information Commissioner (defined below) whether by way of the Franchisee 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 Franchisee in respect of the same (which shall mean any correspondence, request, direction or other form of engagement with the Franchisee 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);

“Franchise Data Processor”

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

“Franchise Documents”

means:

- (a) this Agreement;
- (b) the Direct Award Collateral Agreement;
- (c) the Funding Deed;
- (d) the Train Service Requirement; and

- (e) any other agreement signed by the Franchisee at the time of the award of the Franchise which is in the possession of the Secretary of State and which is notified by the Secretary of State to the Franchisee as being required for publication;

“Franchise Employee”

means:

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

“Franchise Manager”

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

“Franchise Payment”

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

“Franchise Performance Meeting”

means a meeting between the Secretary of State and the Franchisee to be held in accordance with paragraph 1 of Schedule 11.1 (*Franchise Performance Meetings*);

“Franchise Period”

means the period commencing on the Start Date and ending on the Expiry Date or, if earlier, the date of termination of the Franchise Agreement pursuant to

Schedule 10 (*Remedies, Events of Default and Termination Events*);

"Franchise Sections"	has the meaning given to it in paragraph 2 of Schedule 16.1 (<i>Railways Pension Scheme</i>);
"Franchise Section Rules"	has the meaning given to it in paragraph 4.2(a) of Schedule 16.1 (<i>Railways Pension Scheme</i>);
"Franchise Services"	means such of the Passenger Services, the Light Maintenance Services, the Station Services and the Ancillary Services as the Franchisee may provide or operate from time to time, including any of such services as the Franchisee may delegate or subcontract or otherwise secure through any other person from time to time in accordance with the Franchise Agreement, but, for the avoidance of doubt, excluding the HEx Services;
"Franchise Term"	means the period commencing on the Start Date and expiring on the Expiry Date;
"Franchisee Access Station"	means any station at which the Passenger Services call (other than any Station);
"Franchisee Year"	means any period of twelve (12) months during the Franchise Period, beginning on 1 April and ending on 31 March, except that the first Franchisee Year and the Final Franchisee Year may be for a period of less than twelve (12) months and the first Franchisee Year shall begin on the Start Date and the Final Franchisee Year shall end on the last day of the Franchise Period;
"Freedom of Information Act" or "FOIA"	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;
"FRM Revenue"	has the meaning given to it in paragraph 2.1 of Schedule 8.6 (<i>Forecast Revenue Mechanism</i>);
"FRM Revenue Report"	has the meaning given to it in paragraph 2.1 of Schedule 8.6 (<i>Forecast Revenue Mechanism</i>);
"FRM Review Procedures"	has the meaning given to it in paragraph 2.1 of Schedule 8.6 (<i>Forecast Revenue Mechanism</i>);
"Funding Deed"	means the deed made between the Secretary of State, the Franchisee and the Guarantor dated on or about the date of the Franchise Agreement specifying arrangements relating to the funding for the Franchisee by the Guarantor and giving rights to the Secretary of State in relation to such funding;

"FXD"	has the meaning given to such term in Appendix 1 (<i>Annual Franchise Payments</i>) to Schedule 8.1 (<i>Franchise Payments</i>);
"GAAP"	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;
"GDPR"	means the General Data Protection Regulation (Regulation (EU) 2016/679);
"General Anti-Abuse Rule"	has the meaning given to it in paragraph 6.3 of Schedule 12 (<i>Financial Covenants and Bonds</i>);
"Good Operator Standard"	means: <ul style="list-style-type: none"> (a) the standard of a skilled and experienced Train Operator bearing the farebox revenue risk in relation to a railway passenger services franchise of a type, size and complexity similar to the Franchise and seeking to maximise its profit consistent with its other obligations under a franchise agreement in terms similar to the Franchise Agreement (including compliance with Schedule 5.4 (<i>Regulation of Fares Basket Values</i>) and Schedule 5.5 (<i>Regulation of Individual Fares</i>); (b) NOT USED;
"Great Western Railway Brand"	has the meaning given to it in paragraph 4.1 of Schedule 14.2 (<i>Maintenance of Operating Assets and Branding</i>);
"Gross Revenue"	means, in relation to any period and any Fare, the gross revenue to the Franchisee (or any relevant predecessor of the Franchisee) attributable to such Fare over the relevant period, excluding any applicable Value Added Tax, costs, commissions or other expenses which may be paid or incurred in connection with such Fare;
"Guarantor"	has the meaning given to it under the Funding Deed;
"GWR Trade Mark"	has the meaning given to it in paragraph 4.1 of Schedule 14.2 (<i>Maintenance of Operating Assets and Branding</i>);
"HAL"	means Heathrow Airport Limited, a company registered in England and Wales with number

01991017 whose registered office is at The Compass Centre, Nelson Road, Hounslow, Middlesex, TW6 2GW;

"Halifax Abuse Principle"	has the meaning given to it in paragraph 6.3 of Schedule 12 (<i>Financial Covenants and Bonds</i>);
"Handover Package"	has the meaning giving to it in paragraph 1.1(a)(i) of Schedule 15.3 (<i>Handover Package</i>);
"HEOC"	means Heathrow Express Operating Company Limited, a company registered in England and Wales with company number 03145133 whose registered office is at The Compass Centre, Nelson Road, Hounslow, Middlesex, TW6 2GW;
"HEX Business Transfer Agreement"	means a business transfer agreement between the Franchisee and a Successor Operator to be entered into substantially in the form of Appendix 3 (Form of HEX Business Transfer Agreement) to Schedule 15.4 (Provisions Applying on and after Termination), but subject to such amendments as the Secretary of State may reasonably make thereto as a result of any change of circumstances (including any Change of Law) affecting such business transfer agreement between the date of this Agreement and the date on which the HEX Business Transfer Agreement becomes effective;
"HEX Outsourced Services"	means the provision of train crew, rolling stock and certain management services provided or to be provided by the Franchisee pursuant to the HEX Services Agreement;
"HEX Rolling Stock"	means the rolling stock vehicles operated by the Franchisee in the provision of the HEX Outsourced Services;
"HEX Services"	means the passenger train services between London Paddington station and the HEX Stations, in respect of which HEOC is the licensed passenger train operator;
"HEX Services Agreement"	means the agreement dated 17 April 2018 entered into between HAL, HEOC and the Franchisee relating to the provision of crew, rolling stock and management services in connection with the HEX Services;
"HEX Services Fare Revenue"	means revenue from Fares used or to be used on the HEX Services which the Franchisee is entitled to be allocated (whether all or part) pursuant to the Ticketing and Settlement Agreement;
"HEX Station"	means any station at Heathrow Airport;

“Hot Standby”	<p>means any rolling stock vehicle specified in the Train Plan which:</p> <ul style="list-style-type: none"> (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: <ul style="list-style-type: none"> (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 High Speed Services”	means the passenger services which will use the HS2 Network for some part of their route and are operated by the high speed rolling stock;
“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 HS2 High Speed Services, and the recast of conventional services associated with the introduction of the HS2 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;
“Identified Station”	has the meaning given to it in paragraph 3.1(a) of Part 3 of Schedule 6.1 (<i>Franchise Specific Obligations</i>);

“Incident Response Plan”	has the meaning given to it in paragraph 16.1 of Schedule 13.1 (<i>Rail Industry Initiatives and Co-operation</i>);
“Incremental Output Statement Charge”	means the charge to which that description is commonly given, first introduced into Relevant Agreements in April 2001;
“Independent Station”	has the meaning given to it in paragraph 2.7 of Schedule 8.3 (<i>Track Access Adjustments and Station Charge Adjustments</i>);
“Independent Station Access Conditions”	has the meaning given to it in the Access Agreement to which it relates;
“Individual Station Charge Adjustment”	has the meaning given to it in paragraph 2.2 of Schedule 8.3 (<i>Track Access Adjustments and Station Charge Adjustments</i>);
“Industrial Action”	means any concerted action taken in connection with the employment of any employees of the Franchisee or of any of the employees of persons listed in paragraphs 1(f)(i) to 1(f)(iii) of Schedule 10.3 (<i>Force Majeure and Business Continuity</i>) (whether or not that action involves any breach of such employees’ conditions of employment, and including any action taken in furtherance of a dispute, or with a view to improving the terms of employment of the relevant employees or by way of support for any other person) subject always, in the case of any unofficial industrial action, to the Franchisee being able to demonstrate the occurrence of such unofficial industrial action to the reasonable satisfaction of the Secretary of State;
“Industry Schemes”	has the meaning given to it in paragraph 4 of Schedule 13.1 (<i>Rail Industry Initiatives and Co-operation</i>);
“Information Commissioner”	has the same meaning as “Commissioner” in section 3 of the Data Protection Act;
“Infrastructure Manager”	means Network Rail;
“Initial Business Plan”	means the business plan to be provided by the Franchisee to the Secretary of State as described in paragraph 10.1 of Schedule 11.2 (<i>Management Information</i>);
“Initial Dataset”	has the meaning given in paragraph 15.1(b) of Schedule 11.2 (<i>Management Information</i>);
“Initial Performance Bond”	means the performance bond issued or to be issued on or prior to the date of this Agreement by a Bond Provider to the Secretary of State which complies

	with the requirements of paragraph 4.2 of Schedule 12 (<i>Financial Covenants and Bonds</i>);
“Initial Period”	has the meaning given to it in paragraph 7.5 of Schedule 9.1 (<i>Financial and Other Consequences of Change</i>);
“Initial Permanent Fare”	has the meaning given to it in the Ticketing and Settlement Agreement;
“Inspections”	has the meaning given to it in paragraph 5.1 of Schedule 15.1 (<i>Reletting Provisions</i>);
“Institute of Asset Management”	means The Institute of Asset Management, a company limited by guarantee, registered with company number 05056259 with registered office Woodlands Grange, Woodlands Lane, Bradley Stoke, Bristol, BS32 4JY or its successors;
“Integrated Services TSRs”	means any train service requirement which requires the operation of HS2 High Speed Services as developed by the Secretary of State and provided to the HS2 Shadow Operator;
“Intellectual Property Rights”	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;
“Interest Rate”	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 Franchisee, determine from time to time) during any period in which an amount payable under the Franchise Agreement remains unpaid;
“Inter-Operator Schemes”	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>);
“International Organisation for Standardisation”	means the international standard setting body known as “ISO” or any such successor body;

"Intervention"	has the meaning given to it in clause 15.1(e) (<i>Competition</i>);
"IR Excluded Event Refund"	has the meaning given in the HEx Services Agreement;
"ISO 50001:2011"	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;
"ISO20400:2007"	means the standard that is set by the International Organisation for Standardisation which provides guidance on the integration of sustainability within procurement, or any equivalent standard which is generally recognised as having replaced it;
"ISO 22301:2012"	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;
"ISO 55001:2014"	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;
"ISO 14001:2015"	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;
"ISO 50001 Energy Review"	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;

- "ITSO Ltd"** has the meaning given to it in paragraph 1.1 of Schedule 5.9 (*Smart Ticketing*);
- "ITSO Specification"** means the common specification issued by ITSO Ltd and which enables the use of interoperable Smart Media in transport and other areas;
- "ITSO Certified Smart Media"** 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;
- "ITSO Operating Licence"** has the meaning given to it in paragraph 1.1 of Schedule 5.9 (*Smart Ticketing*);
- "ITSO Smartmedia Ticketing Scheme"** has the meaning given to it in paragraph 1.1 of Schedule 5.9 (*Smart Ticketing*);
- "Key Contacts List"** means a list of the following Franchise Employees:
- (a) all directors (statutory or otherwise);
 - (b) all managers with responsibility for a department/function within the Franchisee's business;
 - (c) all managers in the operations, commercial, personnel and public affairs departments or in each case their nearest equivalents; and
 - (d) all Key Personnel,
- which contains the name, office address, office telephone number, business mobile telephone number and a brief description of the person's role and responsibilities in the business;
- "Key Contract"** means:
- (a) each agreement and contract listed in Appendix 1 (*List of Key Contracts*) to Schedule 14.3 (*Key Contracts*) as at the date of the Franchise Agreement; and
 - (b) any other agreement, contract, licence or other arrangement to which the Franchisee is a party or under which the Franchisee is the beneficiary from time to time which is designated as such pursuant to Schedule 14.3 (*Key Contracts*),
- but excluding the HEx Services Agreement and any such agreement, contract, licence or other arrangement which ceases, in accordance with the

terms of the Franchise Agreement, to be designated as a Key Contract;

“Key Personnel”

means those persons identified by the Franchisee in accordance with paragraph 3.1 of Schedule 11.2 (*Management Information*);

“Know-How”

means formulae, methods, plans, inventions, discoveries, improvements, processes, performance methodologies, techniques, specifications, technical information, tests, results, reports, component lists, manuals and instructions;

“Law”

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

“Lead Operator”

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

“Legislation”

means any enactment or subordinate legislation, rule, regulation, order, directive or other provision including those of the European Community, which has, in each case, the force of Law in the United Kingdom or any part of it, but excluding any order under section 1 of the Transport and Works Act 1992;

“Licences”

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

“Light Maintenance Service”

means any service specified in paragraph 3 of Part 1 (*Franchise Services*) of Schedule 1.1 (*Franchise Services and Service Development*) which may be provided by the Franchisee at the Depots and Stations;

“Local Authority”

means:

- (a) in England, a county council, a district council, a unitary authority, a passenger transport executive, a London borough council, the common council of the City of London, or a council which is established under the Local Government Act 1992 and which is either an authority responsible for expenditure on

public passenger transport services within the meaning of section 88 of the Transport Act 1985 or a local authority for the purposes of section 93 of the Transport Act 1985;

- (b) in Wales, a county council, a district council or a council which is established under the Local Government Act 1972 or the Local Government (Wales) Act 1994;
- (c) in Scotland, the Strathclyde Passenger Transport Executive, or a district council or a unitary authority which is established under the Local Government (Scotland) Act 1973 or the Local Government, etc. (Scotland) Act 1994;
- (d) in London, the Mayor of London and Transport for London established under the Greater London Authority Act 1999;
- (e) 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;

“Lock-up Period” has the meaning given to it in paragraph 3.2 of Schedule 12 (*Financial Covenants and Bonds*);

“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;

“Long Term Charge” has the meaning given to it in the Station Access Conditions;

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

“Major Flow Operator”	has the meaning given to it in the Ticketing and Settlement Agreement;
“Managed Station”	means any station used in connection with the provision of the Franchise Services where the Infrastructure Manager is the Facility Owner or becomes the Facility Owner during the Franchise Period;
“Managed Station Area”	means the premises comprising part or parts of a Managed Station to be occupied by the Franchisee on or after the Start Date and to be used for or in connection with the provision of the Franchise Services;
“Management Accounts”	means, in relation to any Reporting Period, the Franchisee's management accounts which: <ul style="list-style-type: none"> (a) comply with paragraph 9.5(a) of Schedule 11.2 (<i>Management Information</i>); and (b) are required to be delivered to the Secretary of State by the Franchisee in accordance with paragraphs 9.2(a) and 9.2(b) of Schedule 11.2 (<i>Management Information</i>);
“Management Fee”	has the meaning given in the HEx Services Agreement;
“Mandatory Modification”	means a modification or addition to any rolling stock vehicle which is required to be made under any applicable Law or any directive of the Rail Safety and Standards Board or any government authority;
“MARA”	has the meaning given to such term in paragraph 2.1 of Schedule 6.7 (<i>The IEP Provisions</i>);
“Marks”	means such trade marks as the Franchisee may apply to any Primary Franchise Asset or other asset used by it under a Key Contract, which are applied on the expiry of the Franchise Period and are not the subject of a Brand Licence;
“Marketing Plan”	has the meaning given to it in paragraph 1.1 of Schedule 6.3 (<i>Contractual Incentive Mitigations</i>);
“Marketing Team”	has the meaning given to it in paragraph 1.1 of Schedule 6.3 (<i>Contractual Incentive Mitigations</i>);
“Minimum Marketing Spend”	has the meaning given to it in paragraph 1.1 of Schedule 6.3 (<i>Contractual Incentive Mitigations</i>);
“Minimum Marketing Team Spend”	has the meaning given to it in paragraph 1.1 of Schedule 6.3 (<i>Contractual Incentive Mitigations</i>);

“Minister of the Crown” has the meaning given to it in section 8(1) of the Minister of the Crown Act 1975;

“Minutes Delay” means the minutes of delay to the Passenger Services that are attributed to the Franchisee or the Infrastructure Manager (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;

“Mobile Connectivity Service” has the meaning given to it in paragraph 19.1 of Part 4 of Schedule 6.1;

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

“Modified Revenue” means:

(a) the sum of:

(i) the Franchisee's total revenue for the period being reviewed as stated in its profit and loss account:

(A) including any amounts receivable from the Secretary of State, the Infrastructure Manager and any interest;

(B) including any amounts receivable in the delivery of the HEx Services Agreement; but

(C) excluding the proportion of income recognised in the profit and loss account in relation to grants received in respect of capital expenditure; and

(ii) the opening cash balance for the period being reviewed excluding:

(A) any cash held for the exclusive purpose of the provision of the Performance Bond; and

(B) the amount equivalent to:

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

general operating purposes;

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

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

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

(b) either:

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

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

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

“Monthly Season Ticket”

means a Season Ticket Fare which is valid in Standard Class Accommodation from (and including) the day it first comes into effect until (but excluding) the day which falls one (1) month after such day;

“Morning Peak”

means, in relation to any Passenger Service, the period between 0700 and 0959 (inclusive) during a Weekday or such other continuous three hour period between 0600 and 1159 (inclusive) as the Secretary of State may specify from time to time;

“Morning Peak Service”

means a Passenger Service which arrives at London Paddington, Bristol Temple Meads or Exeter St David’s station in the Morning Peak;

“National Community Rail Steering Group”

means the National Community Rail Steering Group administered by the Department for Transport, or such successor organisation;

“National Cyber Security Centre”

has the meaning given to it in paragraph 17.1 of Schedule 13.1 (*Rail Industry Initiatives and Co-operation*);

“National Joint ROSCO Project”

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;

- “National Rail Enquiry Scheme”** means the telephone information scheme run by RDG, providing information to customers regarding rail journeys throughout the country;
- “National Rail Passenger Survey”** means a passenger satisfaction survey in respect of the Franchise Services to be carried out by the Passengers' Council as described in paragraph 2 of Schedule 7.2 (*Customer Experience and Engagement*) and shall include any Alternative NRPS as referred to in paragraph 2.6 of Schedule 7.2 (*Customer Experience and Engagement*);
- “National Rail Timetable”** means the passenger timetable published by Network Rail (currently twice per annum) specifying the timings and stopping patterns of all passenger railway services in Great Britain;
- “Net Revenue Share”** has the meaning given to it in paragraph 2.1 of Schedule 8.6 (*Forecast Revenue Mechanism*);
- “Net Revenue Support”** has the meaning given to it in paragraph 2.1 of Schedule 8.6 (*Forecast Revenue Mechanism*);
- “Network Change”** has the meaning given to it in the Network Code;
- “Network Code”** means the document known as the Network Code and formerly known as the Railtrack Track Access Conditions 1995 (as subsequently replaced or amended from time to time) or any equivalent code or agreement applying to Network Rail or NR;
- “NR”** 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;
- “Network Rail”** means in respect of:
- (a) the network or any relevant facility (other than the HS2 Network):
 - (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
 - (ii) any successor in title to the network or any relevant railway facility; or

- (b) any new or other sections of network or any relevant new or other railway facilities, (other than the HS2 Network or any railway facilities constructed solely in relation to the HS2 Network) the owner (if different);

“Network Rail Asset Management Policy”

means the policy set by Network Rail for a holistic asset management approach that includes asset capability, asset performance and reporting, sustainability, asset whole-life cost modelling, forecasting and reporting, cost efficient asset management, and asset management to meet customer service requirements;

“Network Rail Cancellation”

means a Passenger Service:

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

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

“Network Rail Collateral Agreement”

means an agreement in the agreed terms marked **NRCA** which is required to be entered into by the Franchisee with Network Rail or any other franchisee as a condition to any Access Agreement of which the Franchisee is the beneficiary;

“Network Rail Data”

means any information, data and materials that may be provided to the Secretary of State by NR that relates to the Franchisee and which the Secretary of State decides (in the Secretary of State’s absolute discretion) to add to the RPC Database;

“Network Rail Partial Cancellation”

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

- (a) misses a stop;
- (b) completes 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;

"Network Rail's Traction Electricity Rules"	means the document entitled " <i>Traction Electricity Rules</i> " as published by the ORR;
"New Insurance Arrangements"	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>);
"New Results"	means, in relation to any Change, the following as restated in accordance with Schedule 9.1 (<i>Financial and Other Consequences of Change</i>) following a Run of the Financial Model in relation to that Change: <ul style="list-style-type: none"> (a) the restated values of FXD, VCRPI, VCAWE, PRPI, ORRPI, PRRPI and VCCPI to be specified for each Franchisee Year in Appendix 2 (<i>Figures for Calculation of Annual Franchise Payments</i>) to Schedule 8.1 (<i>Franchise Payments</i>); (b) the restated values of FPST, SPST and TPST to be specified for each Franchisee Year in paragraphs 1, 2 and 3 (respectively) of Appendix 1 (<i>Profit Share Thresholds</i>) to Schedule 8.2 (<i>Profit Share Mechanism</i>); and (c) the restated amounts of Target Revenue to be specified for each Franchisee Year in Appendix 1 (<i>Target Revenue</i>) to Schedule 8.6 (<i>Forecast Revenue Mechanism</i>);
"New Station"	means: <ul style="list-style-type: none"> (a) a station not served by railway passenger services as at February 2003, but which has since that time been, or is subsequently, served by railway passenger services which have been, or are subsequently to be, included in the Timetable or in another relevant Train Operator's timetable; and/or (b) if the Secretary of State requires, a station, other than a Station, at which, with the consent of the Secretary of State (whether by amendment to the Franchise Agreement or otherwise) railway passenger services operated by the Franchisee call other than a HEx Station;
"NJRP ROSCOs"	means the rolling stock leasing companies, participating in the National Joint ROSCO Project, being Eversholt Rail (UK) Limited, Porterbrook Leasing Company Limited and Angel Trains Limited;
"Nominee"	has the meaning given to it in paragraph 5.1 of Schedule 15.1 (<i>Reletting Provisions</i>);

"Non Fares Basket Fare"	means a Fare that is designated as such by the Secretary of State pursuant to paragraph 2.1 of Schedule 5.3 (<i>Allocation of Fares to Fares Baskets</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>);
"Notified Fault"	has the meaning given to it in paragraph 9.1 of Schedule 1.4 (<i>Passenger Facing Obligations</i>);
"NR Data Sharing and Confidentiality Agreement"	means the agreement in the agreed terms marked NDSCA (or such other form as may otherwise be approved by the Secretary of State);
"NRPS Action Plan"	has the meaning given to it in paragraph 1.1 of Schedule 7.2 (<i>Customer Experience and Engagement</i>);
"NRPS Benchmark"	has the meaning given to it in paragraph 1.1 of Schedule 7.2 (<i>Customer Experience and Engagement</i>);
"NRPS Benchmark Table"	has the meaning given to it in paragraph 1.1 of Schedule 7.2 (<i>Customer Experience and Engagement</i>);
"NRPS Measure"	has the meaning given to it in paragraph 1.1 of Schedule 7.2 (<i>Customer Experience and Engagement</i>);
"NRPS Service Group"	has the meaning given to it in paragraph 1.1 of Schedule 7.2 (<i>Customer Experience and Engagement</i>);
"Occasion of Tax Non-Compliance"	has the meaning given to it in paragraph 6.3 of Schedule 12 (<i>Financial Covenants and Bonds</i>);
"Off-Peak Passenger Service"	means a Passenger Service that is not a Morning Peak Service or an Evening Peak Service;
"Old Results"	means in relation to any Change, the following as produced in accordance with Schedule 9.1 (<i>Financial and Other Consequences of Change</i>) by or following the Run of the Financial Model in respect of the immediately preceding Change or, in relation to the first Change only, the following as at the date hereof: <ul style="list-style-type: none"> (a) the values of FXD, VCRPI, VCAWE, PRPI, ORRPI, PRRPI and VCCPI specified for each Franchisee Year in Appendix 2 (<i>Figures for Calculation of Annual Franchise Payments</i>) to Schedule 8.1 (<i>Franchise Payments</i>); (b) the values of FPST, SPST and TPST specified for each Franchisee Year in paragraphs 1, 2

and 3 of Appendix 1 (*Profit Share Threshold*) to Schedule 8.2 (*Profit Share Mechanism*); and

- (c) the amounts of Target Revenue to be specified for each Franchisee Year in Appendix 1 (*Target Revenue*) to Schedule 8.6 (*Forecast Revenue Mechanism*);

“On Time”

means the percentage of recorded station stops called at within 59 seconds of the planned time relating to the Franchise as produced and/or published by Network Rail;

“On Time Figures”

means the moving annual average percentage published by Network Rail in respect of On Time, rounded to one (2) decimal places;

“Operating Assets ”

means all assets (including any Intellectual Property Rights or intangible assets) employed by the Franchisee in the performance of the Franchisee’s obligations under the Franchise Agreement and the HEx Services Agreement;

“Operational Model” or “OM”

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

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

“Original Rolling Stock”

has the meaning given to it in paragraph 2.1(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;

“ORRPI”

has the meaning given to such term in Appendix 1 (*Annual Franchise Payments*) to Schedule 8.1 (*Franchise Payments*);

“Parent”

means:

- (a) in the context of Schedule 10.2 (Events of Default and Termination Events) and paragraph 1 of Schedule 11.1 (Franchise Performance Meetings) either FirstGroup plc (Company Number SC 157176) or First Rail

Holdings Limited (Company Number 05154485) (as the case may be); and

- (b) in the context of Schedule 13 (Rail Industry Initiatives and Innovation Obligations) both of these persons;

“Park Mark”

has the meaning given to it in paragraph 6.7 of Schedule 1.7 (*Stations*);

“Partial Cancellation”

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

- (a) misses a stop; or
- (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 each case, for reasons which are attributed to the Franchisee pursuant to its Track Access Agreement;

“Participating Employer”

has the meaning given to it in the Pension Trust;

“Passenger Assistance”

means the passenger assistance service provided by train operating companies and referred to by the ORR as **“Passenger Assist”**, as such service may be further described by the ORR from time to time at: <http://orr.gov.uk/info-for-passengers/passengers-with-disabilities> (or such other applicable web address that is adopted by the ORR for these purposes from time to time);

“Passenger Carrying Capacity”

means, in relation to a Passenger Service, the capacity of the vehicles (as stated in Schedule 1.6 (*The Rolling Stock*) or determined by the Secretary of State in accordance with paragraph 3.4 of Schedule 1.6 (*The Rolling Stock*)) from which the Passenger Service is formed;

“Passenger Change Date”

means a date upon which significant changes may be made to the Timetable in accordance with or by virtue of the Network Code;

“Passenger Services”

means the Franchisee's railway passenger services as specified in any Timetable and/or Plan of the Day including those railway passenger services which the Franchisee may delegate or subcontract or otherwise secure through any other person from time to time in accordance with the Franchise Agreement but, for the avoidance of doubt, excluding the HEx Services;

"Passenger Survey Methodology" or "PSM"	has the meaning given to it in paragraph 2.4 of Schedule 7.2 (<i>Customer Experience and Engagement</i>);
"Passenger's Charter" or "PC"	means the Franchisee's service commitments to its passengers in the agreed terms marked PC , as amended or replaced from time to time with the prior written consent of the Secretary of State in accordance with paragraph 4 of Schedule 1.4 (<i>Passenger Facing Obligations</i>), which shall not apply in respect of the HEx Services;
"Passengers' Council"	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 shall be generally known as "Transport Focus" from 30 March 2015;
"Passport"	means the confirmation awarded by the Secretary of State to a successful applicant that their application meets the requirements set out in the documentation relating to the OJEU Notice (reference no: 2015/S 189-34364);
"Passport Holder"	means, during the validity period of the relevant Passport, a successful applicant to whom a Passport has been awarded;
"Pay As You Go Agreement"	means an agreement dated 16 October 2009 between Transport Trading Limited and train operators operating in London enabling joint ticketing and the acceptance of each other's tickets using smart media technology under the name "Pay as You Go" ;
"PAYG Peak Fare"	means a Fare which is a Permanent Fare and which entitles the purchaser to make a single journey under the Pay As You Go Agreement in Standard Class Accommodation between and within the PAYG Zones for which the fare is valid, at any time;
"PAYG Off-Peak Fare"	means a Fare which is a Permanent Fare and which entitles the purchaser to make a single journey under the Pay As You Go Agreement in Standard Class Accommodation between and within the PAYG Zones for which the fare is valid, at any time on Saturdays and Sundays and at such times as the Franchisee may designate on Mondays to Fridays (where such Fare need not be valid between 06:30 and 09:30 or between 16.00 and 19.00 but must be valid at all other times) and which may take into account the different directions of travel;
"PAYG Zone"	means the Stations within the "PAYG Area" (as such is defined in the PAYG Agreement) or otherwise

included in part 1 (PAYG Acceptance) of schedule 3 (Operation of PAYG) of the Pay As You Go Agreement (as such is amended from time to time);

"Payment Date"	means the date for the payment of Franchise Payments in accordance with paragraph 2.3 of Schedule 8.1 (<i>Franchise Payments</i>);
"Peak"	means the Morning Peak and the Evening Peak;
"Peak Passenger Service"	means, as the case may be, a Morning Peak Service or an Evening Peak Service;
"Pension Trust"	means the pension trust governing the Railways Pension Scheme;
"Pensions Committee"	has the meaning given to it in the Railways Pension Scheme;
"Percentage Allocation"	has the meaning given to it in the Ticketing and Settlement Agreement (and references to "Percentage Allocations" shall be construed accordingly);
"Performance Bond"	means the Initial Performance Bond and any Replacement Performance Bond, which in each case, shall comply with the requirements of paragraph 4.2 of Schedule 12 (<i>Financial Covenants and Bonds</i>);
"Performance Calculation Year"	has the meaning given to it in paragraph 1.1 of Schedule 6.3 (<i>Contractual Incentive Mitigations</i>);
"Performance Strategy Plan"	means any joint plan, which the Franchisee 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 the Infrastructure Manager and the Franchisee);
"Performance Sum"	has the meaning given to it in paragraph 1.1 of Schedule 7.1 (<i>Operational Performance</i>);
"Permanent Fare"	has the meaning given to it in the Ticketing and Settlement Agreement;
"Permitted Aggregate Increase" or "PAI"	has the meaning given to it in paragraph 4.2 of Schedule 5.4 (<i>Regulation of Fares Basket Values</i>);
"Permitted Individual Increase" or "PII"	has the meaning given to it in paragraph 2.2 of Schedule 5.5 (<i>Regulation of Individual Fares</i>);
"Personal Data"	has the meaning given to it in the Data Protection Legislation;

“Personal Data Breach”

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

“Placed in Escrow”

means:

- (a) in respect of the Financial Model, delivery of the Financial Model:
 - (i) dated the date of the Franchise Agreement; and
 - (ii) adjusted to the extent necessary to reflect any time elapsed between the actual Start Date and the date assumed to be the Start Date in the Initial Business Plan; and
 - (iii) where Schedule 9.1 (*Financial and Other Consequences of Change*) and Schedule 9.2 (*Identity of the Financial Model (Escrow Documents)*) apply, the inputs to the Financial Model derived therefrom following an audit of a Run of the Financial Model; and
- (b) in respect of the Operational Model, delivery of:
 - (i) the Operational Model dated the date of the Franchise Agreement;
 - (ii) the Operational Model adjusted to the extent necessary to reflect any time elapsed between the actual Start Date and the date assumed to be the Start Date in the Initial Business Plan; and
 - (iii) where Schedule 9.1 (*Financial and Other Consequences of Change*) and Schedule 9.2 (*Identity of the Financial Model (Escrow Documents)*) apply, audited following a Run of the Financial Model and updated with any Revised Inputs; and
- (c) **NOT USED;**
- (d) in respect of the Record of Assumptions, delivery thereof,

each in accordance with Schedule 9.2 (*Identity of the Financial Model (Escrow Documents)*);

“Plan”	has the meaning given to it in paragraph 14.2(c) of Schedule 13.1 (<i>Rail Industry Initiatives and Co-operation</i>);
“Plan of the Day”	means, in relation to each day during the Franchise Term, the Passenger Services scheduled to be operated on that day through specification in the Timetable or as notified to the Franchisee by the Infrastructure Manager from time to time prior to 2200 on the previous day;
“Planned Train Mileage”	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);
“Power of Attorney” or “POA”	means the power of attorney granted by the Franchisee in favour of the Secretary of State in the agreed terms marked POA ;
“Preceding thirteen (13) Reporting Periods”	has the meaning given to it in paragraph 2.1 of Schedule 12 (<i>Financial Covenants and Bonds</i>);
“Preceding Year Ticket Price”	has the meaning given to it in paragraph 2.1 of Schedule 5.5 (<i>Regulation of Individual Fares</i>);
“Pre-condition”	has the meaning given to it in paragraph 8.1 of Schedule 6.2 (<i>Committed Obligations</i>);
“Preliminary Database”	means such database as may reasonably be put in place by the Secretary of State prior to making any RPC Database available to the Franchisee, as part of the development of the RPC Database;
“Previous Franchise Agreement”	means a franchise agreement dated 22 March 2015 under which services equivalent to the Franchise Services (or a material proportion thereof) were provided by the Franchisee on or about the day prior to the Start Date;
“Previous Passenger Services”	means: <ul style="list-style-type: none"> (a) any railway passenger services operated under a Previous Franchise Agreement that is the same or substantially the same as any Passenger Service in terms of departure and arrival times and stopping patterns; and (b) if no such railway passenger service is found under paragraph (a) such other railway passenger services operated under a Previous Franchise Agreement which is similar in terms of departure and arrival times and stopping patterns to the Passenger

Services as the Secretary of State may reasonably determine;

- “Previous Performance Level”** means the level of performance actually achieved in relation to the Previous Passenger Services;
- “Price”** means, in respect of any Fare, the price of such Fare before the deduction of any applicable discount to which a purchaser may be entitled, as notified to RSP in accordance with Schedule 5 (*Fares and Smart Ticketing*) to the Ticketing and Settlement Agreement;
- “Primary Franchise Assets”** means:
- (a) the property, rights and liabilities of the Franchisee listed in Appendix 1 (*List of Primary Franchise Assets*) to Schedule 14.4 (*Designation of Franchise Assets*); and
 - (b) any other property, rights and liabilities of the Franchisee which is or are designated as such pursuant to Schedule 14.4 (*Designation of Franchise Assets*),
- but excluding such property, rights or liabilities as may, in accordance with the terms of the Franchise Agreement, cease to be so designated;
- “Principles of Inclusive Design”** 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 **“The Principles of Inclusive Design”** (as revised from time to time”);
- “Prior Train Operator”** has the meaning given to it in paragraph 3.1 of Schedule 2.2 (*Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases*);
- “PRM TSI”** means the EU’s Regulation (EU) No 1300/2014 of 18 November 2014 (as amended from time to time) on the technical specifications for interoperability relating to accessibility of the European Union’s rail system for persons with disabilities and persons with reduced mobility;
- “Processor”** has the meaning given to it in the Data Protection Legislation;

"Profit Share Components"	has the meaning ascribed to it in paragraph 1.1(a) of Schedule 9.1 (<i>Financial and Other Consequences of Change</i>);
"Projected Revenue"	means the revenue in any Fare Year which is projected to be attributable to any Fare, determined in accordance with paragraph 3 of Schedule 5.4 (<i>Regulation of Fares Basket Values</i>);
"Property Lease"	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 Franchisee may enter into with a person who has an interest in a network or a railway facility which is to be used for or in connection with the provision or operation of the Franchise Services;
"Protected Fare"	means a Protected Return Fare or a Protected Weekly Season Ticket;
"Protected Fares Basket"	means the grouping of Protected Fares: <ul style="list-style-type: none"> (a) determined by the Secretary of State pursuant to Schedule 5.3 (<i>Allocation of Fares to Fares Baskets</i>); (b) for the purposes of regulating their aggregate Prices in accordance with Schedule 5.4 (<i>Regulation of Fares Basket Values</i>); (c) amended by the Secretary of State from time to time in accordance with Schedule 5.7 (<i>Changes to Fares and Fares Regulation</i>); and (d) set out in the Protected Fares Document;
"Protected Fares Document" or "PFD"	means the document in the agreed terms marked PFD , as the same may be amended from time to time in accordance with Schedule 5.7 (<i>Changes to Fares and Fares Regulation</i>);
"Protected Proposal"	has the meaning given to it in paragraph 2 of Schedule 9.3 (<i>Variations to the Franchise Agreement and Incentivising Beneficial Changes</i>);
"Protected Return Fare"	means in respect of a Fare for a Flow: <ul style="list-style-type: none"> (a) for which there was a Saver Return Fare in February 2003, a Return Fare for each such Flow in respect of which the Franchisee is entitled or obliged from time to time to set the Price 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

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

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

“Protected Weekly Season Ticket”

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

“PRPI”

has meaning given to it in Appendix 1 (*Annual Franchise Payments*) to Schedule 8.1 (*Franchise Payments*);

“PRRPI”

has the meaning given to it in Appendix 1 (*Annual Franchise Payments*) to Schedule 8.1 (*Franchise Payments*);

“Public Sector Operator”

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

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

“Qualifying Change”

means a Change which:

- (a) following a Run of the Financial Model (where Schedule 9.1 (*Financial and Other Consequences of Change*) applies) in accordance with Schedule 9 (*Changes and Variations*) results in adjustments in Franchise Payments over the remaining life of the Franchise Agreement that have a net present value as at the date of the Change in excess of the Threshold Amount for the Franchisee Year during which the relevant Change arises. For the purposes of ascertaining a net present value of the amount of any adjustment in any Franchise Payment, the amount of the adjustment shall be discounted at the prevailing discount rate per annum (in real terms) stated in HM Treasury’s **“Green Book Appraisal Guidelines”**, counting back from the date of receipt of that adjusted Franchise Payment to the date of the Change. As at the date of the Franchise Agreement that rate is three point five per cent (3.5%); or
- (b) the Franchise Agreement expressly provides shall be a Qualifying Change;

“Quality Percentage Performance Bonus”

has the meaning given in Schedule 5 of the HEx Services Agreement;

“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 Delivery Group” or “RDG”

means the Rail Delivery Group Limited (company number 08176197) (including any of its successors and assigns) whose principal place of business is at 2nd 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;

“Rail Franchise”

has the meaning given to it in clause 15.1(f) (*Competition*);

"Rail for London"	has the meaning given to such term in paragraph 1.1 of Part 3 of Schedule 6.1 (<i>Franchise Specific Obligations</i>);
"Rail Industry Sustainable Development Principles"	means the principles which were published by the Rail Safety and Standards Board in February 2009 as amended from time to time;
"Rail Product"	has the meaning given to it in the Ticketing and Settlement Agreement and references to "Rail Products" shall be construed accordingly;
"Rail Safety and Standards Board" or "RSSB"	means Rail Safety and Standards Board Limited, a company registered in England with registered number 04655675 whose registered office is at The Helicon, 4 th Floor, One South Place, London, EC2M 2RB;
"Rail Safety and Standards Board Sustainable Development Self-Assessment Framework"	means the online self-assessment framework against the Rail Industry Sustainable Development Principles published by the Rail Safety and Standards Board;
"Railway Group"	means the committee responsible for cross industry co-ordination in respect of rail safety legislation and industry safety standards chaired by the Rail Safety and Standards Board;
"Railway Operational Code"	has the meaning given to it in Condition H of the Network Code;
"Railway Passenger Services"	means, for the purposes of Schedule 5 (<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 Franchisee and any other Train Operator from time to time;
"Railways Pension Scheme"	means the pension scheme established by the Railways Pension Scheme Order 1994 (No. 1433);
"RDG Guidance on Emergency Planning, Knowledge, Understanding and Responsibilities"	has the meaning given to it in paragraph 16.1 of Schedule 13.1 (<i>Rail Industry Initiatives and Co-operation</i>);
"Reconciliation Amount"	has the meaning given to it in paragraph 10.9 Schedule 9.1 (<i>Financial and Other Consequences of Change</i>);
"Record of Assumptions" or "ROA"	means a document in the agreed terms marked ROA prepared by the Franchisee (and/or, where Schedule 9.1 (<i>Financial and Other Consequences of Change</i>) applies) as may be revised in accordance

with Schedule 9 (*Changes and Variations*) and Placed in Escrow providing:

- (a) detailed assumptions, explanations of assumptions and parameters underlying the Financial Model;
- (b) details of how Franchise Payments have been calculated (including by reference to a defined annual profit margin);
- (c) a description of the functionality, operation and structure of the Financial Model; and
- (d) a description of each input cell, its requirements and its inter-relationship with the Financial Model;

"Redactions"	has the meaning given to it in paragraph 10.1 of Schedule 17 (<i>Confidentiality, Freedom of Information and Data Protection</i>);
"Reference Fare"	has the meaning given to it in paragraph 6.1(a) of Schedule 5.7 (<i>Changes to Fares and Fares Regulation</i>);
"Reference Flow"	has the meaning given to it in paragraph 6.1(a) of Schedule 5.7 (<i>Changes to Fares and Fares Regulation</i>);
"Reference Revenue"	means the aggregate Gross Revenue recorded by RSP as attributable to sales of all Commuter Fares or Protected Fares for the period of twelve (12) months which ended 31 March 2010 or such other reference period as the Secretary of State may require pursuant to paragraph 3.1(a) of Schedule 5.7 (<i>Changes to Fares and Fares Regulation</i>);
"Regulated Child Price"	means the Child Price that is permitted to be charged by the Franchisee in respect of any Fare in any Fare Year as specified in paragraph 1.3 of Schedule 5.5 (<i>Regulation of Individual Fares</i>);
"Regulated Price"	means the Price that is permitted to be charged by the Franchisee in respect of any Fare in any Fare Year, determined in accordance with paragraph 2.1 of Schedule 5.5 (<i>Regulation of Individual Fares</i>);
"Regulated Qualifications Framework"	means the Regulated Qualifications Framework introduced by Ofqual on 1 October 2015 as located at the date of this Agreement at https://www.gov.uk/find-a-regulated-qualification;
"Regulated Value"	means the Value of any Fares Basket that is permitted in any Fare Year, determined in

accordance with paragraph 4.1 of Schedule 5.4 (*Regulation of Fares Basket Values*);

“Regulations”

has the meaning given to it in paragraph 1.2 of Schedule 2.5 (*Transport, Travel and Other Schemes*);

“Relevant Agreement”

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

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

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

“Relevant Contractor”

means an advisor, contractor or other third party who:

- (a) the Relevant Person has engaged for the purpose of advising the Relevant Person in respect of a Relevant Initiative; and
- (b) has entered into an agreement with the Relevant Person substantially in the same terms as:
 - (i) the Template Confidentiality Agreement; or
 - (ii) such alternative terms as may have been agreed between the Franchisee and the Relevant Person (as referred to in paragraph (b)(ii) of the definition of “Relevant Person”);

“Relevant Credit Rating”

means a credit rating of:

- (a) **A- (or better) (A minus or better)** by Standard and Poor’s Corporation or Fitch

Ratings Limited in respect of long term senior debt; or

- (b) **A3 (or better)** by Moody’s Investors Service Inc. in respect of long term senior debt; or
- (c) if any credit rating specified in paragraph (a) or (b) ceases to be published or made available or there is a material change in the basis of any such credit rating, such other rating or standard as the Secretary of State may, after consultation with the Franchisee, determine to be appropriate in the circumstances;

“Relevant Delay”

has the meaning given to it in paragraph 3.1 of Schedule 2.2 (*Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases*);

“Relevant Information”

means information (including (as the case may be) Confidential Information) which:

- (a) is held by the Franchisee;
- (b) does not comprise or contain Personal Data;
- (c) is not subject to a non-disclosure agreement that would prevent the Franchisee from disclosing it to the Relevant Person in question; and
- (d) is reasonably required by the Relevant Person in question for the purposes specified in paragraph (a) of the definition of “Relevant Person”,

and (without limiting the generality of the foregoing) shall include information about the numbers of passengers using particular stations and particular Passenger Services, and the revenues generated from those passengers, and information about operating costs;

“Relevant Initiative”

means a Rail Development Scheme or other initiative intended to improve or promote the railway;

“Relevant Person”

means a Stakeholder which:

- (a) reasonably requires information that is held by the Franchisee in order to:

- (i) inform or facilitate work being undertaken by such Stakeholder to develop, design or implement a Relevant Initiative; or
 - (ii) enable such Stakeholder to make informed comment on a Relevant Initiative that is being developed, designed or implemented by another person and that significantly affects the interests of that Stakeholder;
- (b) has entered into an agreement with the Franchisee substantially in the same terms as:
- (i) the Template Confidentiality Agreement; or
 - (ii) such alternative terms as the Franchisee and the relevant Stakeholder may agree; and
- (c) has not within the preceding three (3) years from the date on which the Relevant Information is requested breached the terms of any non-disclosure agreement previously entered into with the Franchisee (including, for the avoidance of doubt, any non-disclosure agreement entered into with the Franchisee prior to the Start Date);

“Relevant Profit” has the meaning given to it in paragraph 1.2 of Schedule 8.2 (*Profit Share Mechanism*);

“Relevant Profit Report” has the meaning given to it in paragraph 3.1 of Schedule 8.2 (*Profit Share Mechanism*);

“Relevant Reporting Period” has, for the purposes of paragraph 5.3 of Schedule 12 (*Financial Covenants and Bonds*) only, the meaning given to it in that paragraph;

“Relevant Rolling Stock” has the meaning given to it in paragraph 3.1 of Schedule 2.2 (*Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases*);

“Relevant Tax Authority” means HM Revenue & Customs, or, if applicable, a tax authority in the jurisdiction in which the Affected Party is established;

- “Relevant Term”** has the meaning given to it in paragraph 3.1(a) of Schedule 10.1 (*Procedure for remedying a Contravention of the Franchise Agreement*);
- “Remedial Agreement”** has the meaning given to it in paragraph 5.1 of Schedule 10.1 (*Procedure for remedying a Contravention of the Franchise Agreement*);
- “Remedial Plan”** has the meaning given to it in paragraph 3.1(b) of Schedule 10.1 (*Procedure for remedying a Contravention of the Franchise Agreement*);
- “Remedial Plan Notice”** has the meaning given to it in paragraph 2 of Schedule 10.1 (*Procedure for remedying a Contravention of the Franchise Agreement*);
- “Replacement Agreement”** means an agreement entered into as a replacement for any Relevant Agreement;
- “Replacement Copy”** has the meaning given to it in paragraph 2.2(b) of Schedule 9.2 (*Identity of the Financial Model (Escrow Documents)*);
- “Replacement Performance Bond”** means any performance bond issued or to be issued following the issue of the Initial Performance Bond by a Bond Provider to the Secretary of State which complies with the requirements of paragraph 4.2 of Schedule 12 (*Financial Covenants and Bonds*);
- “Reporting Period”** means:

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

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

"Reporting Year"	means a period normally commencing on 1 April in each calendar year, comprising thirteen (13) consecutive Reporting Periods;
"Request for Information"	means a request for information or an apparent request under the Freedom of Information Act or the Environmental Information Regulations;
"Request for Proposal" or "RfP"	means the request for proposal dated 4 July 2019 issued by the Secretary of State as part of the procurement process pursuant to which the Franchise Agreement was entered into;
"Required Improvement"	has the meaning given to it in paragraph 1.1 of Schedule 7.2 (<i>Customer Experience and Engagement</i>);
"Required Performance Improvement"	has the meaning given to it in paragraph 26.1 of Schedule 7.1 (<i>Operational Performance</i>);
"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;
"Revenue Share Adjustment"	has the meaning given to it in paragraph 2.1 of Schedule 8.6 (<i>Forecast Revenue Mechanism</i>);
"Revenue Share Reconciliation Amount"	has the meaning given to it in paragraph 2.1 of Schedule 8.6 (<i>Forecast Revenue Mechanism</i>);
"Revenue Share Reconciliation Date"	has the meaning given to it in paragraph 2.1 of Schedule 8.6 (<i>Forecast Revenue Mechanism</i>);
"Revenue Support Adjustment"	has the meaning given to it in paragraph 2.1 of Schedule 8.6 (<i>Forecast Revenue Mechanism</i>);
"Revenue Support Reconciliation Amount"	has the meaning given to it in paragraph 2.1 of Schedule 8.6 (<i>Forecast Revenue Mechanism</i>);
"Revenue Support Reconciliation Date"	has the meaning given to it in paragraph 2.1 of Schedule 8.6 (<i>Forecast Revenue Mechanism</i>);
"Review Procedures"	has the meaning given to it in paragraph 3.5 of Schedule 8.2 (<i>Profit Share Mechanism</i>);

"Revised Inputs"	has the meaning given to it in paragraph 4.2 of Schedule 9.1 (<i>Financial and Other Consequences of Change</i>);
"Rolling Stock Lease"	means any agreement for the leasing of rolling stock vehicles to which the Franchisee is a party as at the Start Date and any agreement of a similar or equivalent nature (including, any agreement or arrangement for the subleasing, hiring, licensing or other use of rolling stock vehicles) to which the Franchisee is a party from time to time during the Franchise Term whether in addition to, or replacement or substitution for, in whole or in part, any such agreement;
"Rolling Stock Related Contract"	means any Rolling Stock Lease, Maintenance Contract or Technical Support Contract;
"Rolling Stock Units"	has the meaning given to it in paragraph 1(c) of Schedule 10.3 (<i>Force Majeure and Business Continuity</i>);
"Route"	means any route specified in the Timetable over which the Franchisee has permission to operate the Passenger Services pursuant to any Track Access Agreement;
"RPC Database"	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;
"RPI"	has the meaning given to it in Appendix 1 (<i>Annual Franchise Payments</i>) to Schedule 8.1 (<i>Franchise Payments</i>);
"Retail Prices Index"	means the retail prices index for the whole economy of the United Kingdom and for all items as published from time to time by the Office for National Statistics as "RPI" or, if such index shall cease to be published or there is, in the reasonable opinion of the Secretary of State, a material change in the basis of the index or if, at any relevant time, there is a delay in the publication of the index, such other retail prices index as the Secretary of State may, after consultation with the Franchisee, determine to be appropriate in the circumstances;
"RPIX"	has the meaning given to it in paragraph 6.2 (a) of Schedule 7.2 (<i>Customer Experience and Engagement</i>);

"RSP"	means Rail Settlement Plan Limited;
"RSPS3002"	has the meaning given to it in paragraph 1.1 of Schedule 5.9 (<i>Smart Ticketing</i>);
"Run of the Financial Model"	means a run of the Financial Model with the Revised Inputs which complies with the requirements of Schedule 9.1 (<i>Financial and Other Consequences of Change</i>);
"Safeguarding on Rail Audit"	means the principles and measures to protect vulnerable children and adults at risk on rail transport, published by the British Transport Police against which the Franchisee will be assessed (as amended or replaced from time to time);
"Safeguarding Strategy"	means a safeguarding strategy to promote and enforce the principles and measures set out in the Safeguarding on Rail Audit and approved by the British Transport Police;
"Safety Authorisation"	means the authorisation issued by the ORR under the Safety Regulations authorising the Franchisee's safety management system (as defined in those regulations) and the provisions adopted by the Franchisee to meet the requirements that are necessary to ensure safe design, maintenance and operation of the relevant infrastructure on the Routes;
"Safety Certificate"	means the certificate issued by the ORR under the Safety Regulations, certifying its acceptance of the Franchisee's safety management system (as defined in those regulations) and the provisions adopted by the Franchisee to meet the requirements that are necessary to ensure safe operation on the Routes;
"Safety Regulations"	means the Railways and Other Guided Transport Systems (Safety) Regulations 2006 (as amended pursuant to the Railways and Other Guided Transport Systems (Safety) (Amendment) Regulations 2006);
"Saver Return Fare"	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;
"Scheduled Consist Data"	means information as to the type of individual vehicles of rolling stock that have been scheduled by the Franchisee to form a train in the Train Fleet for any particular Passenger Service and the manner in which they are scheduled to be configured;
"Season Ticket Bond"	means the season ticket bond to be provided to the Secretary of State in respect of the Franchisee's liabilities under certain Fares and Season Ticket Fares in the form set out in Appendix 2 (<i>Template Form of</i>

Season Ticket Bond) to Schedule 12 (*Financial Covenants and Bonds*) and such other bond as may replace it from time to time under Schedule 12 (*Financial Covenants and Bonds*);

"Season Ticket Fare"	means:
	(a) for the purposes of Schedule 12 (<i>Financial Covenants and Bonds</i>) and the definition of Season Ticket Bond only, a Fare which entitles the purchaser to make an unlimited number of journeys in any direction during the period for which, and between the stations and/or the zones for which, such Fare is valid; and
	(b) for all other purposes, a Fare which entitles the purchaser to make, without further restriction except as to class of accommodation, an unlimited number of journeys in any direction during the period for which, and between the stations and/or the zones for which, such Fare is valid;
"Second Profit Share Threshold" or "SPST"	has the meaning given to it in paragraph 1.1(b) of Schedule 8.2 (<i>Profit Share Mechanism</i>);
"Secretary of the Access Disputes Committee"	means the person appointed as the secretary of the Access Disputes Committee from time to time;
"Secretary of State Risk Assumptions"	means those assumptions set out in Schedule 9.4 (<i>Secretary of State Risk Assumptions</i>);
"Secure Stations Accreditation"	has the meaning given to it in paragraph 6.7 of Schedule 1.7 (<i>Stations</i>);
"Secure Stations Scheme"	has the meaning given to it in paragraph 6.7 of Schedule 1.7 (<i>Stations</i>);
"Security Interest"	means any mortgage, pledge, lien, hypothecation, security interest or other charge or encumbrance or any other agreement or arrangement having substantially the same economic effect;
"Security in the Design of Stations Guidance"	means the " <i>Security in Design of Stations (SIDOS)</i> " Guidance published by the Secretary of State, the British Transport Police and the Centre for the Protection of National Infrastructure dated July 2012 as amended, updated or replaced from time to time, and/or any other relevant security guidance as reasonably directed by the Secretary of State;
"Service Group"	has the meaning given to it in the Track Access Agreement or as specified by the Secretary of State from time to time;

“Service Recovery Plan”

means, in the event of a prevention or restriction of access to the track or a section of the track (howsoever caused) which results in any Cancellation, Partial Cancellation, and/or any Passenger Service being operated with less Passenger Carrying Capacity than the Passenger Carrying Capacity specified for such Passenger Service in the Train Plan, a plan implemented by the Franchisee:

- (a) to minimise the disruption arising from such prevention or restriction of access by operating, during such period of disruption, the best possible level of service given such disruption, including by:
 - (i) keeping service intervals to reasonable durations;
 - (ii) keeping extended journey times to reasonable durations; and
 - (iii) managing any resulting overcrowding;
- (b) to:
 - (i) return the level of service to that level specified in the Timetable as soon as reasonably practicable; and
 - (ii) prior to the attainment of the level of service specified in paragraph (b)(i) operate any reduced level of service agreed with the Infrastructure Manager for the purpose of minimising such disruption pursuant to paragraph (a);
- (c) in accordance with the principles of service recovery set out in the **“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 Franchisee, the Infrastructure Manager and any other affected Train Operator; and

- (ii) on each occasion, recorded in an official control log by the relevant Region Control Manager of the Infrastructure Manager,

and prevention or restriction of access to the track or a section of the track shall have the meaning given to that term in paragraph 1(a)(i) of Schedule 10.3 (*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 Franchisee and Network Rail carry out their respective activities concurrently;

"Short Formation Performance Sum"

means an amount determined in accordance with paragraph 22.5 of Schedule 7.1 (*Operational Performance*) to be incurred (other than in respect of the Final Franchisee Year, where the provisions of paragraph 29 of Schedule 7.1 (*Operational Performance*) shall apply) by the Franchisee;

"Short Formation Figures"

means the number of Passenger Services in any Reporting Period formed with less than the required Passenger Carrying Capacity specified in the Train Plan;

"SIF Accessibility Improvements Amount"

means a proportion of the SIF Amount for each Franchisee Year within a SIF Period which is equal to the amount for each such Franchisee Year as specified in Column 4 of the table at paragraph 23.1A of Part 3 of Schedule 6.1 (*Franchise Specific Obligations*);

"SIF Accessibility Improvements Scheme"

means a SIF Scheme which is intended to deliver improvements and/or enhancements to the SIF Focus Area referred to in paragraph 23.1(b) of Part 3 of Schedule 6.1 (*Franchise Specific Obligations*);

"SIF Amount"

means, in respect of a Franchisee Year, the amount specified in respect of that Franchisee Year in Column 2 of the table at paragraph 23.1A of Part 3 of Schedule 6.1 (*Franchise Specific Obligations*) (as such amount may be adjusted in accordance with paragraph 23.12(a) of Part 3 of Schedule 6.1 (*Franchise Specific Obligations*)), and incorporating, for the avoidance of doubt, the SIF Accessibility Improvements Amount;

"SIF Commercial Return"

means where the SIF Scheme Revenue equals or exceeds the aggregate of the SIF Scheme Costs and the SIF Scheme Margin;

"SIF Focus Areas"	has the meaning given to it in paragraph 23.1 of Part 3 of Schedule 6.1 (Franchise Specific Obligations);
"SIF Period"	means each of the following periods: <ul style="list-style-type: none"> (a) 1 April 2020 to 31 March 2023 (being the "Core SIF Period"); and (b) (if the Secretary of State exercises his right pursuant to Clause 5.2(a) to continue the Franchise Agreement beyond 01:59 on 1 April 2023) the period from 1 April 2023 to the end of the Franchise Term (being the "Extension SIF Period");
"SIF Scheme"	has the meaning given to it in paragraph 23.2(a)(i) of Part 3 of Schedule 6.1 (Franchise Specific Obligations);
"SIF Scheme Costs"	means in respect of any SIF Scheme (including, for the avoidance of doubt, a SIF Accessibility Improvements Scheme), the capital cost to the Franchisee of developing and implementing that SIF Scheme together with the direct operational costs incurred by the Franchisee in operating the completed SIF Scheme;
"SIF Scheme Margin"	means five per cent (5%) of the applicable SIF Scheme Costs;
"SIF Scheme Revenue"	means in respect of any SIF Scheme (including, for the avoidance of doubt, a SIF Accessibility Improvements Scheme), the revenue earned by the Franchisee from that SIF Scheme;
"SIF Scheme Shortfall"	means, in relation to a SIF Scheme (including, for the avoidance of doubt, a SIF Accessibility Improvements Scheme), the amount (if any) by which the SIF Scheme Revenue is less than the aggregate of the SIF Scheme Costs and the SIF Scheme Margin;
"SIF Scheme Underspend"	has the meaning given to it in paragraph 23.10 of Part 3 of Schedule 6.1 (Franchise Specific Obligations);
"Significant Alterations"	shall, in relation to any proposed new or amended Timetable, include alterations from the then current Timetable which result in, or are likely to result in: <ul style="list-style-type: none"> (a) the addition or removal of railway passenger services; (b) changes to stopping patterns or destinations or origin;

- (c) changes of timings for first/last trains by more than 10 minutes;
- (d) **NOT USED**; and/or
- (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 10 minutes;

“Single Fare”

means a Fare which entitles the purchaser to make, without further restrictions as to the time of day for which the Fare is valid, on any one (1) day, one (1) journey in Standard Class Accommodation between the stations and/or the zones for which the Fare is valid;

“SKA Rating Standard”

means the recognised environmental assessment tool known as **“SKA Rating”** for sustainable fit outs published by the Royal Institute of Chartered Surveyors;

“Small and Medium-sized Enterprises” or “SMEs”

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

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

The three categories are:

Company category	Employees	Turnover	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: <ul style="list-style-type: none"> (a) digital barcodes; (b) a barcode printed on paper either by customers (e.g. at home, office) or by franchisee staff at stations or on board trains; (c) ITSO Certified Smart Media; (d) contactless payment media (cEMVs); (e) Oyster (TfL’s smartcard); and (f) any of the above formats stored and presented on a portable electronic device;
“Smart Ticketing Scheme”	has the meaning given to it in paragraph 1.1 of Schedule 5.9 (<i>Smart Ticketing</i>);
“Smart Media Target”	has the meaning given to it in paragraph 1.1 of Schedule 5.9 (<i>Smart Ticketing</i>);
“Spares”	means parts and components of rolling stock vehicles which are available for the purpose of carrying out maintenance services on rolling stock vehicles;
“Special Categories of Personal Data”	has the meaning given to it in the Data Protection Legislation;
“Specifically Included Change of Law”	has the meaning given to it in the definition of Change of Law;
“Specified Additional Rolling Stock”	has the meaning given in paragraph 2.1(b) of Schedule 1.6 (<i>The Rolling Stock</i>);
“Stakeholder”	means the Passengers' Council and any relevant Local Authority and organisations who can reasonably be considered to have a legitimate and proper interest in the Passenger Services including Community Rail Partnerships representing Community Rail Routes designated as such by the Secretary of State;
“Standard Class Accommodation”	means, in respect of any train or service, accommodation which is available to the purchaser of any Fare which, taking into account any rights or restrictions relating to that Fare (other than restrictions relating to accommodation on that train or service), entitles such purchaser to make a journey on that train or service (provided that any accommodation on such train which may have been reserved by such purchaser shall be deemed to have been made so available if, had it not been so reserved, it would have been available for use by such purchaser);

“Standard Occupational Classification Codes”	means the codes published in the Standard Occupational Classification 2010 as provided by the Office for National Statistics which can be found at https://www.ons.gov.uk/methodology/classificationandstandards/standardoccupationalclassificationsoc/soc2010/soc2010volume2thestructureandcodingindex ;
“Start Date”	means the time and date on which the Franchisee is to commence operating the Franchise Services, which shall be 02:00 on 1 April 2020;
“Station”	means: <ul style="list-style-type: none"> (a) any station in respect of which the Franchisee has entered into a Station Lease other than a HEx Station; or (b) any New Station at which the Franchisee becomes the Facility Owner other than a HEx Station;
“Station Access Conditions”	has the meaning given to it in the relevant Access Agreement to which it relates;
“Station Asset Management Plan”	means the plan created by the Franchisee during the franchise term of the Previous Franchise Agreement as amended from time to time in accordance with the provisions of Schedule 1.7 (<i>Stations</i>);
“Station Asset Management Plan Accreditation”	means the certification of the Franchisee'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”	means a certificate of accreditation issued by an organisation accredited by the United Kingdom Accreditation System (UKAS) which is signed by a director of the Franchisee and which confirms that the Station Asset Management Plan Accreditation has been obtained;
“Station Change”	has the meaning given to the term “Proposal” under the Station Access Conditions;
“Station Charge Adjustment”	means any adjustment to payments under an Access Agreement determined in accordance with paragraph 2 of Schedule 8.3 (<i>Track Access Adjustments and Station Charge Adjustments</i>);
“Station Improvement Fund”	has the meaning given to it in paragraph 23.1 of Part 3 of Schedule 6.1 (Franchise Specific Obligations);

"Station Lease" or "SL"	means:
	(a) any lease of a station that the Franchisee is a party to as at the Start Date; or
	(b) a lease of any other station to which the Franchisee becomes the Facility Owner at any time during the Franchise Period;
"Station Service"	means any service specified in paragraph 2 of Part 1 (<i>Franchise Services</i>) of Schedule 1.1 (<i>Franchise Services and Service Development</i>) which may be provided by the Franchisee at the Stations;
"Station Social and Commercial Development Plan" or "SCDP"	means the Franchisee's station social and commercial development plan in the agreed terms marked SCDP , as such plan may be updated in accordance with the provisions of paragraph 3 of Schedule 1.7 (<i>Stations</i>);
"Station Sublease"	means a lease or sub lease of premises comprising part or parts of a Station exclusively occupied by another Train Operator;
"STNR System"	means collectively the IT systems (hardware and software) and collective functionality of the IT system to deliver a smart ticketing solution;
"Stored Credit Balance"	means any monetary amount held by the Franchisee which a passenger can apply at a future date to the purchase of a Fare (and stored in any medium);
"Subcontractor"	has the meaning given to it in paragraph 7.3 (b) of Schedule 1.5 (<i>Information about Passengers</i>);
"Subsequent Reporting Stage"	has the meaning given to it in paragraph 1.1 of Schedule 7.1 (<i>Operational Performance</i>);
"Suburban Station"	means any station which is not a London Station and which is listed below or is closer to London than (and on the same line as) the following stations: <ul style="list-style-type: none"> (a) Shoeburyness; (b) Southend Victoria; (c) Southminster; (d) Marks Tey (excluding Sudbury branch); (e) Audley End (excluding Stansted Airport); (f) Ashwell & Morden; (g) Arlesey; (h) Harlington; (i) Bletchley (excluding Bedford branch); (j) Aylesbury; (k) Haddenham & Thame Parkway; (l) Twyford (including Henley branch); (m) Windsor & Eton Riverside;

- (n) Earley;
- (o) Fleet;
- (p) Alton;
- (q) Witley;
- (r) Christ's Hospital;
- (s) Brighton (excluding Coastway);
- (t) East Grinstead;
- (u) Crowborough;
- (v) Wadhurst;
- (w) Paddock Wood (including the line between Strood and Paddock Wood);
- (x) Maidstone East;
- (y) Canterbury East; and
- (z) Margate;

"Successor Operator"

means a Train Operator succeeding or intended by the Secretary of State to succeed (and whose identity is notified to the Franchisee by the Secretary of State) the Franchisee in the provision or operation of all or any of the Franchise Services including, where the context so admits, the Franchisee where it is to continue to provide or operate the Franchise Services following termination of the Franchise Agreement;

"Successor Operator Timetable"

has the meaning given to it in paragraph 2.2(a) of Schedule 14.1 (*Maintenance of Franchise*);

"Suicide Prevention Strategy"

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;

"Suicide Prevention Duty Holders' Group's 9 Point Plan"

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);

"Supplemental Agreement"

means a supplemental agreement between the Franchisee and a Successor Operator to be entered into pursuant to a Transfer Scheme, being substantially in the form of Appendix 2 (*Template Form of Supplemental Agreement*) to Schedule 15.4 (*Provisions applying on and after Termination*), but subject to such amendments as the Secretary of State may reasonably make thereto as a result of any change of circumstances (including any Change of Law) affecting such supplemental agreement between the date of the Franchise Agreement and the date on which the relevant Transfer Scheme is made and subject further to paragraph 3.2 of Schedule 15.4 (*Provisions applying on and after Termination*);

"Sustainable Development Strategy"	means the Franchisee's strategy for sustainable development for the Franchise as agreed or determined pursuant to paragraph 10.1(b) of Schedule 13.1 (<i>Rail Industry Initiatives and Co-operation</i>) including as a minimum: the matters listed in paragraph 10.1(a) of Schedule 13.1 (<i>Rail Industry Initiatives and Co-operation</i>), key aims, resources, risks and details of how sustainable development will be embedded in the governance of the Franchise and investment decisions (as revised from time to time);
"T-3 Performance Sum"	means an amount determined in accordance with paragraph 22.7A of Schedule 7.1 (<i>Operational Performance</i>) payable by the Secretary of State to the Franchisee or to be incurred (other than in respect of the Final Franchisee Year where the provisions of paragraph 29 shall apply) by the Franchisee (as the case may be);
"T-15 Performance Sum"	means an amount determined in accordance with paragraph 22.7B of Schedule 7.1 (<i>Operational Performance</i>) payable by the Secretary of State to the Franchisee or to be incurred (other than in respect of the Final Franchisee Year where the provisions of paragraph 29 shall apply) by the Franchisee (as the case may be);
"Target Passenger Demand"	means the higher of Actual Passenger Demand and Forecast Passenger Demand or any other level of passenger demand specified by the Secretary of State not being greater than the higher of Actual Passenger Demand or Forecast Passenger Demand;
"Target Performance Level"	has the meaning given to it in paragraph 1.1 of Schedule 7.1 (<i>Operational Performance</i>);
"Target Revenue"	has the meaning given to it in paragraph 2.1 of Schedule 8.6 (<i>Forecast Revenue Mechanism</i>);
"Target Revenue Amounts"	means the amounts of Target Revenue for each Franchisee Year specified in the table set out in Appendix 1 (<i>Target Revenue</i>) to Schedule 8.6 (<i>Forecast Revenue Mechanism</i>);
"Target Ticketless Travel Benchmark"	has the meaning given to it in paragraph 1.1 of Schedule 6.3 (<i>Contractual Incentive Mitigations</i>);
"Taxation"	means any kind of tax, duty, levy or other charge whether or not similar to any in force at the date of the Franchise Agreement and whether imposed by a local, governmental or other competent authority in the United Kingdom or elsewhere;

"TDR Amendment"	has the meaning given to it in paragraph 12.8 of Part 2 (<i>Service Development</i>) of Schedule 1.1 (<i>Franchise Services and Service Development</i>);
"Technical Support Contract"	means a contract for technical support to which the Franchisee is a party, relating to the rolling stock vehicles used in the provision of the Passenger Services;
"Template Confidentiality Agreement"	means the agreement in the agreed terms marked TCA , as amended from time to time with the prior consent of the Secretary of State in accordance with paragraph 29.3 of Part 4 of Schedule 6.1;
"Tendering/Reletting Process"	means either of the processes described in paragraph 1.1 and 1.2 of Schedule 15.1 (<i>Reletting Provisions</i>);
"Termination Event"	has the meaning given to it in paragraph 2 of Schedule 10.2 (<i>Events of Default and Termination Events</i>);
"Termination Notice"	means a notice from the Secretary of State to the Franchisee terminating the Franchise Agreement following an Event of Default or a Termination Event in accordance with Schedule 10.2 (<i>Events of Default and Termination Events</i>);
"Third Party Data"	means any information, data and materials that may be provided to the Secretary of State by any third party that relates to the Franchisee and which the Secretary of State decides (in the Secretary of State's absolute discretion) to add to the RPC Database;
"Third Profit Share Threshold" or "TPST"	has the meaning given to it in paragraph 1.1(c) of Schedule 8.2 (<i>Profit Share Mechanism</i>);
"Threshold Amount"	has the meaning given to it in Appendix 1 (<i>Definition of Threshold Amount</i>) to Schedule 9.1 (<i>Financial and Other Consequences of Change</i>);
"Through Ticketing (Non-Travelcard) Agreement"	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>);
"Ticketing and Settlement Agreement"	means the Ticketing and Settlement Agreement dated 23 July 1995 between RSP, the Franchisee and the other Train Operators named therein, as amended from time to time with the approval of the Secretary of State;

“Ticketless Travel Benchmark”	has the meaning given to such term in paragraph 1.1 of Schedule 6.3 (Contractual Incentive Mitigations);
“Ticketless Travel Payment Adjustment”	has the meaning given to such term in paragraph 1.1 of Schedule 6.3 (Contractual Incentive Mitigations);
“Ticketless Travel Rate”	has the meaning given to such term in paragraph 1.1 of Schedule 6.3 (Contractual Incentive Mitigations);
“Ticketless Travel Survey”	means: <ul style="list-style-type: none"> (a) NOT USED; and (b) for the purposes of Schedule 6.3 (Contractual Incentive Mitigations), the survey carried out by or on behalf of the Secretary of State in each Ticketless Travel Survey Period for the purposes to determine the Ticketless Travel Rate for such period);
“Ticketless Travel Survey Methodology” or “TTSM”	means the document in the agreed terms marked TTSM;
“Ticketless Travel Survey Period”	means such day or days as are determined by the Secretary of State falling within each of the following periods: <ul style="list-style-type: none"> (a) for the purposes of Schedule 6.3 (Contractual Incentive Mitigations): <ul style="list-style-type: none"> (i) the first to the sixth Reporting Period (inclusive) to fall in any Performance Calculation Year; and (ii) the seventh to the thirteenth Reporting Period (inclusive) to fall in any Performance Calculation Year); and (b) NOT USED;
“Time to 3 Minutes” or “T-3” or “Time to 3”	means the percentage of recorded station stops called at within three (3) minutes of the planned time relating to the Franchise as produced and/or published by Network Rail;
“Time to 15 Minutes” or “T-15” or “Time to 15”	means the percentage of recorded station stops called at within fifteen (15) minutes of the planned time relating to the Franchise as produced and/or published by Network Rail;
“Time to 3 Minutes Figures”	means the moving annual average percentage published by Network Rail in respect of Time to 3 Minutes, rounded to two (2) decimal places;

“Time to 15 Minutes Figures” means the moving annual average percentage published by Network Rail in respect of Time to 15 Minutes, rounded to two (2) decimal places;

“Timetable” means the timetable which reflects the working timetable issued by Network Rail at the conclusion of its timetable development process, containing the departure and arrival times of:

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

“Timetable Development Rights” means all or any of the rights of the Franchisee under any Track Access Agreement to:

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

“Timetable Planning Rules” has the meaning given to it in the Network Code;

“Timetable Score Percentage Bonus” has the meaning given to it in Schedule 5 of the HEx Services Agreement;

“Timetabled Services” 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 11:57am

service departing London Paddington station to Penzance station on a Sunday etc.);

“Timetabling and Train Planning Compliance Investigation”

has the meaning set out in paragraph 2.1 of Schedule 1.2 (*Operating Obligations*);

“TOC Minute Delay Benchmark”

has the meaning given to it in paragraph 1.1 of Schedule 7.1 (*Operational Performance*);

“TOC Minute Delay Benchmark Table”

has the meaning given to it in paragraph 1.1 of Schedule 7.1 (*Operational Performance*);

“TOC Minute Delay Performance Sum”

means an amount determined in accordance with paragraph 22.4 of Schedule 7.1 (*Operational Performance*) payable by the Secretary of State to the Franchisee or to be incurred (other than in respect of the Final Franchisee Year, where the provisions of paragraph 29 of Schedule 7.1 (*Operational Performance*) shall apply) by the Franchisee (as the case may be);

“Total Actual Operating Costs”

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

“Total Forecast Modified Revenue”

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

“Total Forecast Operating Cost”

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

“Total Modified Revenue”

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

"Total SFE Cost"	has the meaning given to such term in paragraph 1.1 of Schedule 6.3 (Contractual Incentive Mitigations);
"Track Access Adjustment"	means any adjustment to payments under a Track Access Agreement determined in accordance with paragraph 1 of Schedule 8.3 (<i>Track Access Adjustments and Station Charge Adjustments</i>);
"Track Access Agreement"	means each Access Agreement between Infrastructure Manager and the Franchisee which permits the Franchisee to provide the Passenger Services on track operated by the Infrastructure Manager;
"Train Availability and Reliability Agreement" or "TARA"	means either: <ul style="list-style-type: none"> (a) the train availability and reliability agreement to be entered into by the Franchisee and the TSP in accordance with the provisions of paragraph 2.11(a)(i) of Schedule 6.7; or (b) the train availability and reliability agreement dated 31 January 2014 (as amended) to be amended pursuant to the provisions of paragraph 2.11(a)(ii) of Schedule 6.7;
"Train Fleet"	means: <ul style="list-style-type: none"> (a) the rolling stock vehicles described in or required by Schedule 1.6 (<i>The Rolling Stock</i>); and (b) any other rolling stock vehicles the Secretary of State consents to in accordance with paragraph 3 of Schedule 1.6 (<i>The Rolling Stock</i>);
"Train Operator"	means a franchisee or franchise operator, either of which operate railway passenger services pursuant to a franchise agreement or a Public Sector Operator;
"Train Plan" or "TP"	has the meaning given to it in paragraph 10 of Part 2 (<i>Service Development</i>) of Schedule 1.1 (<i>Franchise Services and Service Development</i>);
"Train Service Requirement" or "TSR"	means the train service requirement more particularly described in paragraph 9 of Part 2 (<i>Service Development</i>) of Schedule 1.1 (<i>Franchise Services and Service Development</i>) as such train service requirement may subsequently be amended or replaced in accordance with Schedule 1.1 (<i>Franchise Services and Service Development</i>) and, for the avoidance of doubt, does not relate to the HEx Outsourced Services;

"Service Payment"	has the meaning given in the HEx Services Agreement;
"Service Payment Adjustment"	has the meaning given in the HEx Services Agreement;
"Train Slots"	has the meaning given to it in the Network Code;
"Transaction"	has the meaning given to it in clause 15.1(g) (<i>Competition</i>);
"Transfer Scheme"	means a transfer scheme made by the Secretary of State under section 12 and Schedule 2 of the Railways Act 2005 (or equivalent statutory provision) pursuant to paragraph 3.1 of Schedule 15.4 (<i>Provisions applying on and after Termination</i>), being substantially in the form of Appendix 1 (<i>Template Form of Transfer Scheme</i>) to Schedule 15.4 (<i>Provisions applying on and after Termination</i>), but subject to such amendments as the Secretary of State may make thereto as a result of any change of Law affecting such transfer scheme or other change of circumstances between the date of the Franchise Agreement and the date on which such scheme is made;
"Transport Act"	means the Transport Act 2000;
"Transport for London" or "TfL"	means Transport for London as established under the Greater London Authority Act 1999;
"Transport for Wales"	means a company wholly owned by Welsh Ministers to deliver transport projects in Wales;
"Transport Infrastructure Skills Strategy"	means the document of that name launched by the Department for Transport on 28 January 2016 (as located at the date of this Agreement at: https://www.gov.uk/government/publications/transport-infrastructure-skills-strategy-building-sustainable-skills);
"Travelcard Agreement"	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>);
"Traveline"	means the website available at: http://www.traveline.info (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;

"TRH Score"	has the meaning given to it in paragraph 6.7 of Schedule 1.7 (<i>Stations</i>);
"Trustee"	has the meaning given to it in paragraph 4.1 of Schedule 16.1 (<i>Railways Pension Scheme</i>);
"TSI"	means any Technical Standard for Interoperability with which the Franchisee is required to comply pursuant to Directives EU 96/48 and EU 2001/16 and related legislation;
"Turnaround Time"	means the time specified in the Train Plan between the completion of a Passenger Service in accordance with the Timetable and the commencement of the next Passenger Service in accordance with the Timetable on the same day using some or all of the same rolling stock vehicles;
"Turnover"	means, in relation to any period, the aggregate revenue (excluding any applicable Value Added Tax) accruing to the Franchisee from the sale of Fares, other revenue and the receipt of Franchise Payments during such period;
"Underspend"	has the meaning given to it in paragraph 3(a) of Part 2 (<i>Special Terms related to the Committed Obligations</i>) of Schedule 6.2 (<i>Committed Obligations</i>);
"Undisputed Cancellation"	has the meaning given to it in paragraph 1.1 of Schedule 7.1 (<i>Operational Performance</i>);
"Undisputed Network Rail Cancellation"	has the meaning given to it in paragraph 1.1 of Schedule 7.1 (<i>Operational Performance</i>);
"Undisputed Network Rail Partial Cancellation"	has the meaning given to it in paragraph 1.1 of Schedule 7.1 (<i>Operational Performance</i>);
"Undisputed Partial Cancellation"	has the meaning given to it in paragraph 1.1 of Schedule 7.1 (<i>Operational Performance</i>);
"User"	has the meaning given to it in the Station Access Conditions;
"Value"	means at any time the aggregate of the Projected Revenue of each Fare in a Fares Basket at that time;
"Value Added Tax"	means value added tax as provided for in the Value Added Tax Act 1994;
"Variation"	means a variation to the terms of the Franchise Agreement pursuant to paragraph 1 of Schedule 9.3 (<i>Variations to the Franchise Agreement and Incentivising Beneficial Changes</i>);

"VCAWE"	has the meaning given to it in Appendix 1 (<i>Annual Franchise Payments</i>) to Schedule 8.1 (<i>Franchise Payments</i>);
"VCCPI"	has the meaning given to it in Appendix 1 (<i>Annual Franchise Payments</i>) to Schedule 8.1 (<i>Franchise Payments</i>);
"VCRPI"	has the meaning given to it in Appendix 1 (<i>Annual Franchise Payments</i>) to Schedule 8.1 (<i>Franchise Payments</i>);
"Weekday"	means any day other than a Saturday, a Sunday or a Bank Holiday;
"Weekly Season Ticket"	means a Season Ticket Fare which is valid in Standard Class Accommodation from (and including) the day it first comes into effect until (but excluding) the day which falls seven (7) days after such day;
"Welsh Ministers"	has the meaning given to it in paragraph 20.1 (<i>Co-operation with Welsh Ministers</i>) of Part 3 of Schedule 6.1 (<i>Franchise Specific Obligations</i>);
"Western Rail Link"	has the meaning given to it in paragraph 1.8(e)(ii)(B) of Part 3 of Schedule 6.1;
"Yield Management Data"	means data collected by or on behalf of the Franchisee for the purpose of or in connection with managing or setting the prices at which any tickets for travel on the Passenger Services are sold and/or any quotas and/or restrictions applying to such tickets including: <ul style="list-style-type: none"> (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. COMMENCEMENT

- 4.1 All the clauses of this Agreement and the following Schedules of this Agreement shall take effect and be binding upon each of the Secretary of State and the Franchisee immediately upon signature of this Agreement:
- (a) paragraph 8 (*Subcontracting any Passenger Services*) of Schedule 1.1 (*Franchise Services and Service Development*);
 - (b) paragraphs 9 (*Train Service Requirement - Purpose and Responsibility*), 10 (*Train Plan*), 11 (*Consultation on Significant Alterations to the Timetable*), 12 (*Timetable Development Rights*), 13 (*Certification and Notification by Franchisee of Exercising Timetable Development Rights*), 14 (*Planning to meet Target Passenger Demand*), 15 (*Capacity Mitigation Proposal*), 16 (*New or amended Train Service Requirement by the Secretary of State and Franchisee Informed Opinion*), 17 (*Procedural Arrangements and Timescales*), 18 (*Obligations in relation to other Train Operators*), 19 (*Provisions relating to Access Agreements and Property Leases*) and 20 (*The Timetable and Network Rail's Working Timetable*) of Schedule 1.1 (*Franchise Services and Service Development*);
 - (c) paragraph 14.4 (*Finalising the Train Plan*) of Schedule 1.1 (*Franchise Services and Service Development*);
 - (d) paragraph 4.3 (*Publishing the Passenger's Charter*) of Schedule 1.4 (*Passenger Facing Obligations*);
 - (e) paragraph 5 of Schedule 1.6 (*The Rolling Stock*);
 - (f) Schedule 2.1 (*Asset Vesting and Transfer*);
 - (g) paragraph 2 (*Rolling Stock Related Contracts and Insurance Arrangements*) and paragraph 3 (*Cascaded Rolling Stock and Delayed Cascade Mitigation Plan*) of Schedule 2.2 (*Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases*);
 - (h) paragraph 1 (*Other Franchisees*) of Schedule 2.3 (*Other Franchisees*);
 - (i) paragraph 4.3 (*Specific additional obligations relating to people with disabilities*) and paragraph 6 of Schedule 4 (*Accessibility and Inclusivity*);
 - (j) Schedule 5.1 (*Purpose, Structure and Construction*);
 - (k) Schedule 5.3 (*Allocation of Fares to Fares Baskets*);
 - (l) Schedule 5.7 (*Changes to Fares and Fares Regulation*);
 - (m) Schedule 5.9 (*Smart Ticketing*);
 - (n) paragraphs 1.7 (*Crossrail*) and 22 (*Depot Connection Agreements*) of Part 3 of Schedule 6.1;

- (o) paragraphs 14 (*People Strategy*), 21.3 (Preparation for Potential Outcomes of the Williams Rail Review), 25 (*Class 769 Units*), 30 (*Network Rail Data Sharing and Confidentiality Agreement*) and 31 (*Station Transfers*) of Part 4 of Schedule 6.1;
 - (p) paragraphs 5.1, 5.3, 5.4 and 5.5 of Schedule 6.3(*Contractual Incentive Mitigations*);
 - (q) Schedule 6.4 (*Alliances*);
 - (r) paragraphs 2.11, 3.2(a) and 6.3 of Schedule 6.7 (*The IEP Provisions*);
 - (s) paragraph 10 of Schedule 7.2 (*Customer Experience and Engagement*);
 - (t) Schedule 9 (*Changes and Variations*);
 - (u) Schedule 10 (*Remedies, Events of Default and Termination Events*);
 - (v) paragraphs 1 (*Corporate Information*), 3 (*Identification of Key Personnel and Provision of Organisation Chart*), 5 (*Maintenance of Records*), 6 (*Right to inspect*), 8 (*Periodic Update Reports*) and 15.1 (*Environmental Information Data Collection Plan*) of Schedule 11.2 (*Management Information*);
 - (w) paragraph 4 (*Performance Bond*) of Schedule 12 (*Financial Covenants and Bonds*);
 - (x) paragraphs 2.8 (*Community Rail Partnerships*), 10.1 and 10.2 of Schedule 13.1 (*Rail Industry Initiatives and Co-operation*);
 - (y) Schedule 14.3 (*Key Contracts*);
 - (z) Schedule 15.1 (*Reletting Provisions*);
 - (aa) paragraphs 1.1 (*Handover Package Status*) and 3 (*Key Contacts List*) of Schedule 15.3 (*Handover Package*); and
 - (bb) Schedule 17 (*Confidentiality, Freedom of Information and Data Protection*).
- 4.2 The other provisions of this Agreement shall take effect and become binding upon the Parties on the Start Date.

5. DURATION OF THE FRANCHISE AGREEMENT

5.1 This Agreement shall expire on the Expiry Date or pursuant to Schedule 10 (*Remedies, Events of Default and Termination Events*).

5.2 **Additional Reporting Periods**

(a) If the Secretary of State gives notice to the Franchisee not less than three (3) months before the date set out in limb (a) of the definition of Expiry Date, the Franchise Agreement shall continue after such date on the terms set out in the Franchise Agreement for not less than one (1) and not more than thirteen (13) Reporting Periods, as the Secretary of State may stipulate.

(b) **NOT USED.**

(c) **NOT USED.**

5.3 **NOT USED.**

6. GENERAL OBLIGATIONS

- 6.1 The Franchisee shall perform its obligations under the Franchise Agreement in accordance with its terms and with that degree of skill, diligence, prudence and foresight which would be exercised by a skilled and experienced Train Operator of the Franchise.
- 6.2 Any obligation on the part of the Franchisee to use "***all reasonable endeavours***" shall
- (a) extend to consequent obligations adequately to plan and resource its activities, and to implement those plans and resources, with all due efficiency and economy; and
 - (b) **NOT USED.**
- 6.3 The Franchisee shall co-operate with the Secretary of State and act reasonably and in good faith in and about the performance of its obligations and the exercise of its rights pursuant to the Franchise Agreement.
- 6.4 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 the Secretary of State's rights pursuant to the Franchise Agreement.
- 6.5 **NOT USED.**
- 6.6 Anything done or omitted to be done by the Franchisee under or in relation to or during the term of the Previous Franchise Agreement shall be regarded for the purpose of the Franchise Agreement as if it had been done or omitted to be done by the Franchisee under or in relation to and (only to the extent necessary to give effect to this clause) during the term of the Franchise Agreement. Without limiting the generality of this clause 6.6 any contravention of the Previous Franchise Agreement shall be a contravention of the Franchise Agreement, in so far as necessary to ensure that the Secretary of State shall have the same rights under and in respect of the Franchise Agreement in respect of that contravention as it would have had under or in respect of the Previous Franchise Agreement had the Previous Franchise Agreement continued in force. The Secretary of State agrees not to take any action to enforce or terminate the Franchise Agreement in respect of any Event of Default which may have existed or been alleged to exist at the Start Date.
- 6.7 **NOT USED.**

7. ASSIGNMENT

- 7.1 The Franchisee shall not without the prior written consent of the Secretary of State assign, hold in trust for any other person, or grant a Security Interest in or over, the Franchise Agreement or any part hereof or any benefit or interest or right herein or hereunder (other than any right of the Franchisee to receive monies under a Supplemental Agreement).

8. CHANGE OF CONTROL AND FACILITATION FEE

- 8.1 A "**Change of Control**" is a change occurring in the identity of any one person, or two (2) or more persons acting by agreement, who may Control the Franchisee on and from the date of the Franchise Agreement and during the Franchise Term, which shall include a person, or two (2) or more persons acting by agreement, ceasing to Control the Franchisee at any time during the Franchise Term, whether or not any other person Controls the Franchisee at the same time and for the purposes of this clause 8, two (2) or more persons shall be deemed to be acting by agreement in relation to the Franchisee if, assuming the Franchisee was a target company as defined in the Companies Act 2006 such persons would be under an obligation to disclose an interest in shares in such company by virtue of an agreement between such persons.

- 8.2 Otherwise than in accordance with the prior consent of the Secretary of State given pursuant to clause 8.3, a Change of Control shall constitute an Event of Default pursuant to paragraph 1.3 of Schedule 10.2 (*Events of Default and Termination Events*).
- 8.3 The Franchisee may, at any time, apply in writing to the Secretary of State for the Secretary of State's consent to a Change of Control (as such term is defined pursuant to clause 8.1).
- 8.4 The Secretary of State may require the Franchisee to pay a fee in consideration of the grant of such consent (the "**Facilitation Fee**").
- 8.5 The Secretary of State may require the Franchisee to pay an additional fee in respect of the staff, professional and other costs incurred by the Secretary of State in connection with the Franchisee's application (the "**Administration Fee**"). The Administration Fee shall be payable whether or not the Secretary of State consents to the proposed Change of Control.
- 8.6 On or after submitting such application to the Secretary of State, the Franchisee shall provide, and will procure that the seller and the buyer provide, the Secretary of State with such documentation and information as the Secretary of State may require to assess such application and the amount of the Facilitation Fee. Without limiting clauses 8.11 or 8.12, it shall be deemed to be reasonable for the Secretary of State to delay or withhold consent to the Change of Control where any such documentation is not provided.
- 8.7 The Facilitation Fee shall be a sum equal to the greater of:
- (a) one million pounds (£1,000,000); or
 - (b) where the Estimated Profit Stream is greater than the Bid Profit Stream five per cent (5%) of the difference between the Bid Profit Stream and the Estimated Profit Stream.
- 8.8 The Administration Fee shall be determined by the Secretary of State on the basis of:
- (a) the aggregate time spent by officials within the Secretary of State's Department on matters relating to such application;
 - (b) the Secretary of State's hourly scale rates for such officials, as varied from time to time; and
 - (c) the aggregate costs and disbursements, including where applicable VAT and professional costs, incurred by the Secretary of State in connection with such application.
- 8.9 Any determination by the Secretary of State for the purposes of clauses 8.7 or 8.8 shall in the absence of manifest error be final and binding as between the Secretary of State and the Franchisee (but without prejudice to the requirement of the Secretary of State to reasonably determine the Estimated Profit Stream).
- 8.10 Any consent by the Secretary of State to a Change of Control may be given subject to such conditions as the Secretary of State sees fit and the Franchisee shall, as applicable, comply with, and/or procure that the seller and/or the buyer comply with, any such conditions.
- 8.11 The Secretary of State shall have absolute discretion as to the grant of consent to any Change of Control and may accordingly refuse such consent for any reason that the Secretary of State sees fit.
- 8.12 The Secretary of State shall have no liability whatever to the Franchisee in respect of any refusal of consent to a Change of Control, any delay in providing such consent, or any condition of such consent.

8.13 NOT USED.**9. COMPLIANCE WITH LAWS**

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

10. CUMULATIVE RIGHTS AND REMEDIES

10.1 The rights and remedies of the Secretary of State under the Franchise Agreement are cumulative, may be exercised as often as the Secretary of State considers appropriate and are in addition to the Secretary of State's rights and remedies under the general Law. The exercise of such rights and remedies shall not limit the Secretary of State's right to make payment adjustments, claim damages in respect of contraventions of the Franchise Agreement or pursue any available remedies under general Law.

11. DISPUTE RESOLUTION PROCEDURE**11.1 *Disputes under the Franchise Agreement***

- (a) Wherever the Franchise Agreement provides that the Secretary of State may reasonably determine any matter, the Franchisee may, unless the Franchise Agreement expressly provides otherwise, dispute whether a determination made by the Secretary of State is reasonable, but the Secretary of State's determination shall prevail unless and until it is agreed or found to have been unreasonable.
- (b) Where either Party is entitled, pursuant to the terms of the Franchise Agreement, to refer a dispute arising out of or in connection with the Franchise Agreement for resolution or determination in accordance with the Dispute Resolution Rules, then such dispute shall, unless the Parties otherwise agree and subject to any duty of the Secretary of State under section 55 of the Act, be resolved or determined by arbitration pursuant to the Dispute Resolution Rules.
- (c) Where, in the absence of an express provision in the Franchise Agreement entitling it to do so, either Party wishes to refer a dispute arising out of or in connection with the Franchise Agreement to arbitration pursuant to the Dispute Resolution Rules, the following process shall apply:
- (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 17 (*Governing Law and Jurisdiction*);

- (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; and
- (vi) **NOT USED.**
- (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 Franchisee or, in default of agreement as to the arbitrator or as to such panel, selected on the application of any Party by the President of the Law Society or the President of the Institute of Chartered Accountants in England and Wales from time to time (or such other person to whom they may delegate such selection).

11.2 **Disputes under other agreements**

- (a) The Franchisee shall notify the Secretary of State of any disputes to which it is a party under any Inter-Operator Scheme, Access Agreement, Property Lease or Rolling Stock Related Contract, or under any other agreement in circumstances where the relevant dispute could have an adverse effect on the Franchisee's ability to comply with its obligations under the Franchise Agreement or on the provision of the Franchise Services and which have been submitted for resolution either to the courts or to any other procedure for dispute resolution provided for under such agreements.
- (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 Franchisee shall provide such further details of any dispute referred to in clause 11.1(d) (*Dispute Resolution Procedure*) as the Secretary of State may reasonably request from time to time.

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

The Parties shall comply with the terms of paragraph 4 of Schedule 8.1 (*Franchise Payments*) of this Agreement.

12. **NOTICES**

12.1 **Notices**

- (a) Any notice, notification or other communication under or in connection with the matters specified in Schedule 10.2 (*Events of Default and Termination Events*) or any dispute under or in connection with the Franchise Agreement shall be in writing and shall be delivered by hand or recorded delivery or sent by pre-paid first class post to the relevant Party at the address for service set out below, or to such other address in the United Kingdom as each Party may specify by notice in writing to the other Party:

Table 1	
Name:	The Department for Transport
Address:	33 Horseferry Road, London SW1P 4DR
Email:	franchise.notices@dft.gov.uk
Attention:	The Market Lead – Great Western Franchise

Table 2	
Name:	First Greater Western Limited
Address:	Milford House, 1 Milford Street, Swindon, Wiltshire, SN1 1HL
Email:	[REDACTED ⁶]
Attention:	Managing Director

- (b) Any other notice, notification or other communication including any Variations, derogations under or in connection with the Franchise Agreement shall be in writing and shall be delivered:
- (i) by email; or
 - (ii) through the Secretary of State's contract management system,

except that it shall be marked for the attention of the Contract Manager or the Franchise Manager:

Table 3	
Name:	The Department for Transport
Address:	33 Horseferry Road, London SW1P 4DR
Email:	franchise.notices@dft.gov.uk
Attention:	The Contract Manager - Great Western Franchise

Table 4	

⁶ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

Name:	First Greater Western Limited
Address:	Milford House, 1 Milford Street, Swindon, Wiltshire, SN1 1HL
Email:	GWRDFT.Correspondence@gwr.com
Attention:	Business Assurance Director

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. **SET-OFF**

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

13.2 Notwithstanding clause 13.1 the Secretary of State shall be entitled to set-off against any amounts payable by the Secretary of State under the Franchise Agreement:

- (a) any amount or liability payable or due to the Secretary of State under or in relation to the Franchise Agreement or the Previous Franchise Agreement (whether such amount or liability is present, contingent and/or future, liquidated or unliquidated); and
- (b) any monetary penalty payable under the Act.

13.3 Notwithstanding clause 13.1, the Secretary of State shall be entitled to set off any liability for payment under Schedule 7.1 (*Operational Performance*) against any sum owed to the Secretary of State by the Franchisee under Schedule 7.1 (*Operational Performance*).

14. **MISCELLANEOUS PROVISIONS**

14.1 **Waivers**

- (a) Any Party may at any time waive any obligation of any other Party owed to it under the Franchise Agreement 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 the Franchise Agreement shall operate or be construed as a waiver of any other or further such default, whether of a like or different character. A failure to exercise or delay in exercising a right or remedy under the Franchise Agreement shall not constitute a waiver of any right or remedy or a waiver of any other rights or remedies and no single or partial exercise of any right or remedy under the Franchise Agreement shall prevent any further exercise of such right or remedy or the exercise of any other right or remedy.
- (c) A waiver of any right or remedy under the Franchise Agreement or by law is only effective if given in writing by the Secretary of State.

14.2 Time Limits

Where in the Franchise Agreement any obligation of a Party is required to be performed within a specified time limit (including an obligation to use all reasonable endeavours or 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 the Franchise Agreement is held to be void, illegal, invalid or unenforceable, in whole or in part, under any enactment or rule of Law, such provision or part shall to that extent be deemed not to form part of the Franchise Agreement but the legality, validity and enforceability of the remainder of the Franchise Agreement shall not be affected.

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 the Franchise Agreement.

14.5 Rights of Third Parties

- (a) A person who is not a Party to the Franchise Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Franchise Agreement except to the extent set out in this clause 14.5.
- (b) Any Successor Operator or potential Successor Operator nominated by the Secretary of State and notified to the Franchisee and the Franchisee 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) The Franchise Agreement may be terminated, and any term may be amended or waived, in each case in accordance with the terms of the Franchise Agreement, without the consent of any person nominated under 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 Franchise Period and any such person shall not be entitled to enforce or rely on Schedule 15 (Obligations Associated with Termination) to the extent that it has consented to any particular act or omission of the Franchisee which may constitute a contravention of Schedule 15 (Obligations Associated with Termination) or has been afforded a reasonable opportunity to indicate to the Franchisee that it is not so consenting and has not so indicated (the extent of such reasonable opportunity to be determined by the Secretary of State unless otherwise agreed).

14.6 **Secretary of State's Consent or Approval**

Where any provision of the Franchise Agreement provides for any matter to be subject to the consent or approval of the Secretary of State, then (subject only to the express terms of that provision as to the basis on which that consent or approval may be given or withheld) the Secretary of State shall be entitled to give that consent or approval subject to any condition or conditions as the Secretary of State considers appropriate, which may include the adjustment of any of the terms of the Franchise Agreement.

14.7 **Enforcement Costs**

The Franchisee shall compensate the Secretary of State for all reasonable costs incurred by the Secretary of State as a result of the Franchisee failing to perform its obligations under the Franchise Agreement in accordance with their terms in the exercise of the Secretary of State's rights under Schedule 10 (*Remedies, Events of Default and Termination Events*).

14.8 **Arm's Length Dealings**

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

14.9 **Non-Discrimination**

The Franchisee shall not discriminate in seeking offers in relation to, or in awarding, a contract for the purchase or hire of goods on the grounds:

- (a) of nationality, against a person who is a national of and established in an EEA state; or
- (b) that the goods to be supplied under the contract originate in another EEA state.

For the purpose of this clause, "**EEA state**" means any state which is a party to the EEA agreement entered into on 2 May 1992 (as updated from time to time).

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

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

14.11 **NOT USED.**

14.12 **NOT USED.**

15. **COMPETITION**

15.1 For the purposes of this clause 15:

- (a) **"CMA"** means the Competition and Markets Authority;
- (b) **"Commitment"** means:
- (i) where the Transaction is within the jurisdiction of the CMA undertakings in lieu of reference for a second phase investigation offered by any Parent, the Franchisee or any Affiliate that the CMA is able to accept pursuant to section 73(2) of the Enterprise Act 2002 in relation to the Transaction; or
 - (ii) where the Transaction is notified to the European Commission under Council Regulation (EC) 139/2004 concerning the control of concentrations between undertakings as amended from time to time the giving by any Parent, the Franchisee or any Affiliate to the European Commission of commitments to enable the European Commission to conclude that the concentration arising out of the Transaction would not impede effective competition in the common market or a substantial part of it and declare it compatible with the common market pursuant to Article 6(1)(b) of the EU Merger Regulation;
- (c) **"Competition Authority"** means the European Commission or the CMA;
- (d) **"Competition Event"** means an Intervention by a Competition Authority or any Commitment which could prejudice the ability of:
- (i) the Franchisee to operate the Franchise in accordance with the Franchise Agreement; or
 - (ii) any Affiliate of the Franchisee to continue to operate any other Rail Franchise of which it is the franchisee;
- (e) **"Intervention"** means a determination following the completion of a second phase investigation that the merger resulting from the award of the Franchise to the Franchisee (i) in the case of the CMA has resulted or may be expected to result in a substantial lessening of competition in the UK market or (ii) in the case of the European Commission would significantly impede effective competition in the internal market and that in either case specified actions are required to be taken for the purposes of remedying those anticipated competition issues;
- (f) **"Rail Franchise"** means any passenger rail franchise awarded pursuant to the Act in respect of which a franchisee or its wholly owned subsidiary provides franchised services; and
- (g) **"Transaction"** means the entry into the Franchise Agreement by the Secretary of State and the Franchisee.

15.2 In so far as the Transaction is:

- (a) notified to the European Commission under Council Regulation (EC) 139/2004 concerning the control of concentrations between undertakings as amended from time to time (the **"EU Merger Regulation"**); or
- (b) within the jurisdiction of the CMA in the United Kingdom (including as a result of a referral under Article 4(4) or Article 9 of the EU Merger Regulation),

and the Transaction remains under consideration by a Competition Authority at the Start Date the Franchisee shall use all reasonable endeavours expeditiously to progress the consideration of the Transaction by the relevant Competition Authority.

- 15.3 Without prejudice to the generality of clause 15.2, the Franchisee shall respond in a timely manner to all requests for information and/or documents made by the Competition Authority, respond to any issues letter, issues statement or statement of objections, provide comments on any working papers on which the Competition Authority invites comments, attend any meeting (including issues meetings, state of play meetings or hearings), respond to any provisional findings and notice of possible remedies, respond to any provisional decision on remedies and attend any remedies hearing.
- 15.4 The Franchisee shall report to the Secretary of State on at least a weekly basis or as frequently as the Secretary of State shall require on the progress of the consideration of the Transaction by the Competition Authority and immediately concerning any material developments in the case. The Franchisee shall promptly provide to the Secretary of State copies of all material communications with the Competition Authority, including but not limited to requests for information and/or documents made by the Competition Authority, submissions and responses with supporting evidence, as well as hearing transcripts (provided always that the Franchisee may redact from such copies information which is confidential to the Franchisee and which may if disclosed to the Secretary of State prejudicially affect the Franchisee's legitimate business interests).
- 15.5 If at any time the Secretary of State (acting reasonably) determines that a Competition Event has arisen, the Secretary of State shall have the right to give written notice to the Franchisee informing it that such Competition Event has arisen ("**Competition Event Notice**") and the provisions of paragraph 2.5 of Schedule 10.2 (*Events of Default and Termination Events*) shall apply.
16. **ENTIRE AGREEMENT**
- 16.1 This Agreement contains the entire agreement between the Parties in relation to the subject matter of the Franchise Agreement and supersedes all prior agreements and arrangements between the Parties other than any confidentiality agreements or undertakings which the Franchisee may have entered into with the Secretary of State in connection with the Secretary of State's proposal to secure the provision of the Passenger Services under the Franchise Agreement.
- 16.2 The Franchisee hereby acknowledges that it is not entering into the Franchise Agreement in reliance on any warranties, representations or undertakings howsoever or to whomsoever made except in so far as such warranties, representations or undertakings are contained in the Franchise Agreement.
- 16.3 The Franchisee hereby acknowledges and agrees with the Secretary of State (for the Secretary of State and as trustee for each of the other persons referred to therein) to the disclaimers of liability which are contained in the Request for Proposal or in any document supplied by or on behalf of the Secretary of State in connection with the Franchise Agreement, the process leading to the entering into of the Franchise Agreement, or the Franchise Services (including any Request for Proposal issued in connection therewith).
- 16.4 The Franchisee irrevocably and unconditionally waives any right which it may otherwise have to claim damages in respect of and/or to rescind this Agreement on the basis of any warranty, representation (whether negligent or otherwise, and whether made prior to and/or in this Agreement or undertaking howsoever or to whomsoever made unless and to the extent that such warranty, representation or undertaking was made fraudulently).

17. **GOVERNING LAW AND JURISDICTION**

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

Withdrawn

SIGNATURE PAGE

This Agreement has been executed on the date stated at the beginning of it.

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

Print Name of Authorised Signatory:
Position:
Date:

SIGNED FOR AND ON BEHALF OF)
First Greater Western Limited)
)

Print Name of Authorised Signatory:
Position:
Date:

Withdrawn

SCHEDULE 1

PASSENGER SERVICE OBLIGATIONS

Schedule 1.1:	Franchise Services and Service Development
	Part 1 – Franchise Services
	Part 2 – Service Development
Schedule 1.2:	Operating Obligations
Schedule 1.3:	NOT USED
Schedule 1.4:	Passenger Facing Obligations
Schedule 1.5:	Information about Passengers
Schedule 1.6:	The Rolling Stock
	Appendix 1: The Composition of the Train Fleet
Schedule 1.7:	Stations
	Appendix 1: List of Stations and Car Parks with accreditation
	Appendix 2: Information about Station Improvement Measures
	Appendix 3: NOT USED
	Appendix 4: NOT USED

Withdrawn

Schedule 1.1

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

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

2. Station Services

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

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

3. **Light Maintenance Services**

3.1 Light Maintenance Services shall comprise:

- (a) the provision of access to any other person under an Access Agreement;
- (b) the carrying out of inspections of rolling stock vehicles;
- (c) the carrying out of maintenance work on rolling stock vehicles of a kind which is normally carried out at regular intervals of twelve (12) months or less;
- (d) 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.

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

4. **Ancillary Services**

4.1 The Franchisee may carry out the following Ancillary Services

- (a) the selling, lending or hiring of any goods or rights and the provision of any services (whether for a charge or not) on any train used in the provision of the Passenger Services where such goods or services are sold or provided principally for consumption or use on the relevant train, including the sale of any Fares, meals, light refreshments, newspapers, magazines, books, entertainment materials information or materials targeted at tourists and other leisure passengers (such as maps) or phone cards;
- (b) the provision of any service at any station which, if provided on a train used in the provision of the Passenger Services, would fall within paragraph 4.1(a) or which, if provided at a Station, would fall within paragraph 2 and which, in each case, is made available only or principally

to persons at such stations who either are about to travel or have recently travelled on a train used in the provision of the Passenger Services;

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

provided that this paragraph shall not apply to any employee lent, seconded, hired or contracted out under any of paragraphs 4.1(a) to 4(c) inclusive and paragraphs 4.1(e) to 4(p) inclusive, or engaged in any other activity which is permitted under this Schedule 1.1;

- (e) any heavy maintenance of rolling stock vehicles which does not fall within the Light Maintenance Services, carried out on behalf of any other person at the following Depot(s), subject to the number of persons engaged or employed in such activity not exceeding by more than ten per cent (10%) the number so engaged or employed on the Start Date:
 - (i) Bristol St. Philips Marsh;
 - (ii) Plymouth Laira;
 - (iii) Reading;
 - (iv) Exeter Depot; and
 - (v) Penzance Long Rock;
- (f) the selling at any location of any Fare which is valid, in whole or in part, on the Passenger Services and the selling of any other Fare at any location where such Fares may be purchased from the Franchisee on or before the date of the Franchise Agreement or at any other location, provided that the majority of Fares sold at any such other location shall be Fares which are valid, in whole or in part, on the Passenger Services;
- (g) the selling, in conjunction with any Fare, of any other rights which entitle the purchaser thereof to:
 - (i) travel on any other train or light rail service;
 - (ii) travel on any aircraft;

- (iii) travel on any shipping or ferry service;
- (iv) travel on any bus; or
- (v) attend any event or attraction or enter any location;
- (h) the lending, seconding, hiring or contracting out of Franchise Employees to other Train Operators in order to enable such Train Operators to provide services at the Stations to passengers travelling on any such operator's trains;
- (i) the provision of information relating to railway passenger services within Great Britain to passengers through telephone, internet, mobile data services or other appropriate means;
- (j) the supervision, management and training of train crew of other Train Operators provided such activity is necessarily incidental to the provision of the Passenger Services and could not reasonably be carried out by or through an Affiliate of the Franchisee;
- (k) the subleasing, hiring, licensing, lending, selling of any rolling stock vehicles or other assets of the Franchisee or the lending, hiring or contracting out of any employees of the Franchisee or the provision of any other services to Network Rail or any other Train Operator on an emergency basis;
- (l) the licensing or permitting of any other person (including an Affiliate of the Franchisee) to carry out any activity or business, in connection with the provision of the Franchise Services, or otherwise, on any rolling stock vehicle operated by the Franchisee, at any station served by the Passenger Services, at any Depot, or otherwise (including the letting, leasing or licensing (on an exclusive basis or otherwise) of any part or all of a Station or Depot to such other person);
- (m) such other activity or business as may be reasonably necessary for the purpose of providing any other Franchise Services or complying with the Franchise Agreement, provided that it could not reasonably be carried out by or through an Affiliate of the Franchisee;
- (n) NOT USED;
- (o) the provision or operation of Charter Services, subject to the Planned Train Mileage of such Charter Services not exceeding in any Reporting Period two per cent (2%) of the Planned Train Mileage of Passenger Services provided by the Franchisee in such Reporting Period;
- (p) the provision of consultancy services reasonably ancillary to the provision of the other Franchise Services; and
- (q) any services or activity not falling within paragraphs 2, 3, 4.1(a) to 4.1(p) above, subject to the gross value of any such services or activity (excluding any attribution of costs) not exceeding twenty five thousand pounds (£25,000) per annum in each Franchisee Year, per item and in aggregate, two hundred and fifty thousand pounds (£250,000) per annum in each Franchisee Year provided that in the second and each subsequent Franchisee Year, these amounts will be increased by RPI.

5. **Royal Train**

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

6. **Restrictions relating to Franchise Services**

- 6.1 The Franchisee shall not without the prior written consent of the Secretary of State operate Passenger Services other than on the following routes (and, in the event of disruption, any reasonable diversionary route):
- (a) between Bristol Temple Meads and Severn Beach;
 - (b) between Cardiff Central and Portsmouth Harbour via Bristol Temple Meads, Westbury, Salisbury and Southampton Central;
 - (c) between Crediton and Okehampton;
 - (d) between Exeter St David's and Barnstaple;
 - (e) between Exeter St David's and Exmouth;
 - (f) between Liskeard and Looe;
 - (g) between London Paddington and Bristol Temple Meads via Bath Spa;
 - (h) between London Paddington and Cheltenham Spa via Stroud and Gloucester;
 - (i) between London Paddington and Hereford via Oxford and Worcester Shrub Hill;
 - (j) between London Paddington and Pembroke Dock via Bristol Parkway, Swansea and Carmarthen;
 - (k) between London Paddington and Penzance via Bristol and via Newbury and Westbury;
 - (l) between Maidenhead and Marlow;
 - (m) between Newton Abbot and Paignton;
 - (n) between Par and Newquay;
 - (o) between Plymouth and Gunnislake;
 - (p) between Reading and Basingstoke;
 - (q) between Reading and Gatwick Airport via Guildford and Redhill;
 - (r) between Slough and Windsor & Eton Central;
 - (s) between Southampton Central and Brighton direct;
 - (t) between St. Erth to St. Ives;
 - (u) between Swindon and Westbury via Melksham;
 - (v) between Truro and Falmouth Docks;
 - (w) between Twyford and Henley-on-Thames;

- (x) between West Ealing and Greenford;
- (y) between Westbury and Weymouth via Frome and Castle Cary;
- (z) between Worcester Shrub Hill/Worcester Foregate Street and Stourbridge Junction via Kidderminster;
- (aa) between Worcester Shrub Hill and Taunton via Gloucester, Yate and Weston-super-Mare;
- (ab) between Didcot Parkway and Banbury via Oxford.
- (ac) between Pewsey and Trowbridge;
- (ad) between Fratton and Havant;
- (ae) between Southampton Central and Fareham via Eastleigh; and
- (af) between Filton Abbey Wood and Keynsham direct.

6.2 It is acknowledged that a Passenger Service to be operated by the Franchisee on the routes specified above in paragraph 6.1 may be operated throughout the route, on part of the route or any combination of the whole or part of any two or more of the routes specified above.

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

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

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

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

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

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

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

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

8. Subcontracting any Passenger Services

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

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

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

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

Part 2 – Service Development

9. Train Service Requirement - Purpose and Responsibility

- 9.1 This Part 2 of Schedule 1.1 sets out the obligations of the Franchisee in relation to the acquisition of timetable development rights required for the purposes of securing a Timetable that complies with the Train Service Requirement and preparing a Train Plan consistent with the obligations of the Franchisee and the provision of appropriate levels of passenger carrying capacity. It also provides for alteration of the Train Service Requirement by the Secretary of State. The Train Service Requirement does not in any way limit the Franchisee's obligations pursuant to paragraph 14 of this Schedule 1.1.
- 9.2 The Train Service Requirement is the minimum specification of the Passenger Services to be provided by the Franchisee during the Franchise Term.
- 9.3 The Train Service Requirement as at the date of the Franchise Agreement is comprised in the following, all in the agreed terms marked as follows:
- (a) TSR1 being the Train Service Requirement applicable from the Start Date until the Passenger Change Date in May 2021; and
 - (b) TSR2 being the Train Service Requirement applicable from the Passenger Change Date in May 2021 until the end of the Franchise Term.
- 9.4 The Secretary of State and the Franchisee agree that the replacement of TSR1 by TSR2 at the time and for the period specified in paragraph 9.3 shall not constitute a Change for the purposes of paragraph (d) of the definition of Change.
- 9.5 For the purposes of this Schedule 1.1, the Train Service Requirement shall remain in force unless and until amended or replaced pursuant to this Schedule 1.1.
- 9.6 The Train Service Requirement may be expressed in whole or in part at any level of generality or to any level of detail the Secretary of State considers appropriate.

10. Train Plan

- 10.1 Subject to paragraph 10.2, for the purposes of this Agreement, the "Train Plan" shall be the plan (including sub-plans) prepared by the Franchisee for the operation of trains and train formations under the Timetable that best matches available capacity to Forecast Passenger Demand as amended from time to time during the Franchise Period in accordance with this Agreement.
- 10.2 For the purposes of Schedule 7.1 (*Operational Performance*), references to "Train Plan" shall be construed as the latest version of the Train Plan which includes any amendments thereto pursuant to paragraphs 3, 4 and/or 5 of Schedule 1.2 (*Operating Obligations*):
- (a) where such amendments are required as a consequence of Network Rail exercising its rights pursuant to the Track Access Agreement;
 - (b) where such amendments proposed by the Franchisee have prior approval from the Secretary of State; or
 - (c) where such amendments are requested by the Secretary of State.

- 10.3 The Franchisee shall submit to the Secretary of State a Train Plan in respect of each Timetable in accordance with this Schedule 1.1.
- 10.4 In preparing any Train Plan, the Franchisee shall do so by reference to the Timetable that it envisages operating in order to comply with the Train Service Requirement and paragraph 14 of this Schedule 1.1.
- 10.5 Each Train Plan shall set out for each railway passenger service in the Timetable to which it relates:
- (a) its start point and departure time;
 - (b) its terminating point and arrival time;
 - (c) the number and class of rolling stock vehicles allocated to each such railway passenger service;
 - (d) the Passenger Carrying Capacity that each such railway passenger service, as formed, is to have; and
 - (e) its Forecast Passenger Demand and, where this has been requested by the Secretary of State and is capable of calculation, Actual Passenger Demand.
- 10.6 A Train Plan shall be in any format that the Secretary of State may reasonably specify for this purpose.
- 10.7 At the Start Date, Network Rail will have issued the applicable working timetable on which the Timetable is to be based. Accordingly the Franchisee shall confirm to the Secretary of State that it intends:
- (a) to adopt, from the Start Date until the next Passenger Change Date, the Train Plan prepared by the Train Operator under the Previous Franchise Agreement; or
 - (b) to prepare its own Train Plan in accordance with this Schedule 1.1,
- such Train Plan shall become the document in the agreed terms marked **TP** as at the Start Date. It is acknowledged that the Train Plan in the agreed terms marked **TP** shall be replaced from time to time during the Franchise Period in accordance with the provisions of paragraph 14.4.

11. Consultation on Significant Alterations to the Timetable

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

- (ii) the trading prospects of commercial enterprises located in any community in which a station served by the Passenger Services is located in consequence of it being more difficult for customers or employees to access such commercial enterprises through travel on the Passenger Services,

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

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

11.3 Accordingly the Franchisee shall where the circumstances described in paragraph 11.1 apply:

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

11.4 **NOT USED.**

12. **Timetable Development Rights**

12.1 The Franchisee shall use all reasonable endeavours to amend and/or enter into such Access Agreements as may be necessary or desirable from time to time to

obtain the timetable development rights that it requires to secure a Timetable that enables it to operate railway passenger services that comply with the Train Service Requirement and otherwise comply with its obligations under the Franchise Agreement (including under paragraph 14 of this Schedule 1.1).

- 12.2 Prior to exercising any Timetable Development Rights to secure a Timetable the Franchisee shall make an informed estimate of Forecast Passenger Demand and in doing so shall make reasonable assumptions based on available evidence (making proper use of recognised railway industry systems and forecasting tools as these may develop over the Franchise Period) with the estimate being in such format and to such level of disaggregation as the Secretary of State may reasonably require.
- 12.3 Subject to the remaining provisions of this paragraph 12, the Franchisee shall exercise its Timetable Development Rights so as to secure a Timetable that enables it to operate railway passenger services that comply with the Train Service Requirement and paragraph 14 of this Schedule 1.1 in accordance with its obligations under paragraph 17 of this Schedule 1.1.
- 12.4 Where the Franchisee proposes to exercise its Timetable Development Rights so that the Timetable in force after the relevant Passenger Change Date contains Significant Alterations to that in force prior to such Passenger Change Date the Franchisee shall (without prejudice to its obligation to consult pursuant to paragraph 11) act reasonably with the intention of obtaining a Timetable which enables:
- (a) paragraph 14.1(b); and
 - (b) paragraph 14.1(c),
- of this Schedule 1.1 to be achieved in relation to each Passenger Service in the Timetable to the greatest extent reasonably practicable.
- It is agreed that in acting reasonably the Franchisee shall take full and proper account of its informed estimate of the Forecast Passenger Demand made pursuant to paragraph 12.2 above.
- 12.5 Unless the Secretary of State otherwise directs, the Franchisee shall, for the purposes of securing a Timetable that complies with the Train Service Requirement and paragraph 14 of this Schedule 1.1, exercise its rights under the Track Access Agreement (including the Network Code) to object, to make representations and to withhold consent in respect of any actual or proposed act or omission by Network Rail in relation to such agreement in respect of its Timetable Development Rights.
- 12.6 If the Secretary of State does not consider that the Franchisee has taken sufficient steps under paragraph 12.5, the Secretary of State may require the Franchisee to exercise its rights in such manner as the Secretary of State reasonably considers appropriate in the circumstances, including:
- (a) disputing any actual or proposed act or omission by Network Rail in respect of any Timetable Development Rights; and
 - (b) submitting such dispute to any relevant dispute resolution arrangements or procedures and appealing against any award or determination under such arrangements or procedures, including to the ORR.

- 12.7 Subject to the Franchisee complying with its obligations under paragraph 12.5 above, it shall not be liable for any failure to secure a Timetable that enables the Franchisee to operate railway passenger services that comply with the Train Service Requirement and paragraph 14 of this Schedule 1.1, to the extent that such failure is caused by:
- (a) the Franchisee's Timetable Development Rights being inadequate to enable it to secure the requisite Train Slots, provided that the Franchisee has exercised and, unless otherwise agreed by the Secretary of State, is continuing to exercise all reasonable endeavours to obtain the requisite Timetable Development Rights in accordance with paragraph 12.1 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.

12.8 TDR Amendments

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

determines that the failure is due to such default of the Franchisee and the Franchisee may therefore be in contravention of the Franchise Agreement.

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

12.10 Any TDR Amendment issued pursuant to paragraph 12.8 shall:

- (a) unless otherwise required by the Secretary of State, cease to have effect on the date (if any) on which the first Timetable comes into effect after the Franchisee has obtained the Timetable Development Rights to secure a Timetable that enables it to operate railway passenger services that comply with the Train Service Requirement without any such TDR Amendment; and
- (b) amount to a Change, provided that if such TDR Amendment has been issued in consequence of Network Rail exercising the rights referred to in paragraphs 12.7(b) or 12.7(c) there shall be no Change.

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

- (a) the Train Service Requirement without such TDR Amendment shall thereafter apply; and
- (b) where there has been a Change which is a Qualifying Change pursuant to paragraph 12.10(b) there shall be a further Change (which shall be deemed to be a Qualifying Change) to the extent necessary so as, with effect from such date, to disapply the effect of any such Qualifying Change pursuant to paragraph 12.10(b) in respect of such TDR Amendment.

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

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

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

13.3 The Franchisee shall:

- (a) keep the Secretary of State fully informed of any discussions with Network Rail in relation to the matters referred to in this Schedule 1.1 which may, in the reasonable opinion of the Franchisee, have a material impact on the ability of the Franchisee to deliver the Train Service Requirement or meet the requirements of paragraph 14 of this Schedule 1.1 through the

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

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

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

14.1 **Capacity and Timetable Planning**

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

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

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

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

14.3 Preparation of Timetable and Train Plan

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

14.4 Finalising the Train Plan

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

15. Capacity Mitigation Proposal

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

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

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

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

in all such cases (unless the Secretary of State specifies to the contrary) taking into account both Actual Passenger Demand and Forecast Passenger Demand.

- 15.3 Where the Secretary of State reasonably believes that future circumstances may lead to the Franchisee being unable to prepare a Timetable and/or a Train Plan which meets the requirements of paragraph 14.1 at any time within the next four (4) years (including after the end of the Franchise Term) the Secretary of State shall have the right to serve notice on the Franchisee specifying those future circumstances and the date that the Franchisee should assume that they will arise from and requiring it to produce a Capacity Mitigation Proposal to remedy or mitigate such future circumstances on the basis of assumptions provided by the Secretary of State.
- 15.4 The Capacity Mitigation Proposal shall (unless the Secretary of State specifies to the contrary) include the Franchisee's informed estimate of Forecast Passenger Demand, in such format and to such level of disaggregation as the Secretary of State may reasonably require. Without limitation such specification may require the Franchisee to present options to address relevant issues through:
- (a) alterations to the Train Service Requirement;
 - (b) modification of rolling stock or the acquisition of additional or replacement rolling stock;
 - (c) alterations to Fares; and/or
 - (d) alterations or enhancements to any track, signalling, station, depot or other relevant railway infrastructure.
- 15.5 The Capacity Mitigation Proposal shall provide a comprehensive analysis backed by relevant data and assumptions of:
- (a) all cost and revenue and other financial implications of options contained within it including the potential implications for Franchise Payments;
 - (b) the implications (if any) for the Benchmarks and/or the Annual Benchmarks; and
 - (c) the likely impact of options within it for existing and future passenger journeys and journey opportunities.

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

- 16.3 On receipt of any such draft of a proposed amended or new Train Service Requirement the Franchisee shall provide to the Secretary of State (if so requested) its informed opinion:
- (a) with supporting reasons as to the impact of the proposed amended or new Train Service Requirement on the delivery of an optimal range of railway passenger services patterns relative to Target Passenger Demand and compliance with paragraph 14.1 of this Schedule 1.1;
 - (b) with supporting reasons as to the changes to resources and adjustment to Franchise Payments (if any) which would be required in consequence of the proposed amended or new Train Service Requirement;
 - (c) with supporting reasons as to changes (if any) to the Benchmarks and/or the Annual Benchmarks;
 - (d) of the process to be required to implement the proposed amendment to the Train Service Requirement together with a plan for the implementation of the amendment to the Train Service Requirement (including all steps required to ensure that the Franchisee can deliver a Timetable compliant with such amended or new Train Service Requirement) prepared in accordance with procedural arrangements specified by the Secretary of State pursuant to paragraph 17 of this Schedule 1.1; and
 - (e) with supporting reasons of the likely impact of the proposed amended or new Train Service Requirement on existing and future passenger journeys and journey opportunities,
- together with a draft of the Train Plan that it considers that the proposed amended or new Train Service Requirement would require.
- 16.4 There may be iterations of drafts of the proposed amended or new Train Service Requirement and the Franchisee shall to the extent required by the Secretary of State have the obligations described in this paragraph 16 in respect of all such iterations.
- 16.5 Processes contained in this paragraph 16 shall take place in accordance with procedural arrangements and timescales stipulated by the Secretary of State pursuant to paragraph 17.2 of this Schedule 1.1.
- 16.6 The Secretary of State may, in accordance with any stipulation made under paragraph 17.2, issue to the Franchisee any amended or new Train Service Requirement that the Secretary of State requires the Franchisee to operate and notice of the amendments (if any) to the Benchmarks and/or Annual Benchmarks. Such amended or new Train Service Requirement will be issued prior to the commencement of the timetable development process of Network Rail for the Timetable in respect of which it is proposed to implement the change to Passenger Services arising from the amended or new Train Service Requirement.
- 16.7 In the absence of the Secretary of State issuing any amended or new Train Service Requirement the existing Train Service Requirement will remain in full force and effect.
- 16.8 At the same time as the Secretary of State provides the Franchisee with a draft of any proposed amended or new Train Service Requirement pursuant to paragraph 16.1, the Secretary of State shall also provide to the Franchisee the

Secretary of State's opinion of any amendments (if any) that are required to the Benchmarks and/or the Annual Benchmarks.

- 16.9 The Secretary of State shall be permitted to carry out indicative Runs of the Financial Model for the purposes of considering the effects of the Secretary of State's proposed amended or new Train Service Requirement.

17. Procedural Arrangements and Timescales

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

- 17.2 The Franchisee agrees that the Secretary of State may stipulate any reasonable procedural arrangements and timescales that are to be followed by the Secretary of State and the Franchisee for these purposes (which shall be consistent with any relevant standard railway industry processes for the development of the Timetable and the resultant Train Plan) and that the Secretary of State may amend any such stipulation from time to time.

- 17.3 The Secretary of State agrees to consult the Franchisee as far as reasonably practicable prior to stipulating or amending any such procedural arrangements and timescales in accordance with paragraph 17.2.

- 17.4 Any stipulation by the Secretary of State pursuant to paragraph 17.2:

- (a) shall be at the reasonable discretion of the Secretary of State;
- (b) may contain procedural arrangements and timescales to be followed by the Franchisee in relation to other changes to the Franchise Services (pursuant to paragraph 1 of Schedule 9.3 (Variations to the Franchise Agreement and Incentivising Beneficial Changes)) in conjunction with the Train Service Requirement; and
- (c) may provide for iterations of drafts of any amended or new Train Service Requirement, Train Plan or Timetable and for indicative Runs of the Financial Model in relation thereto.

- 17.5 Any procedural arrangements and timescales stipulated by the Secretary of State pursuant to paragraph 17.2 shall have contractual effect between the Franchisee and the Secretary of State in accordance with the terms of such stipulation.

18. Obligations in relation to other Train Operators

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

- (a) the levels of overcrowding over the Routes or other relevant routes are minimised and not unduly concentrated on particular railway passenger services, Routes or other relevant routes;

- (b) the stopping patterns of such railway passenger services are placed at approximately evenly-spaced intervals throughout each relevant hour, taking into account the reasonable needs of passengers and the different types of railway passenger services provided by other Train Operators and the Franchisee; and
- (c) a reasonable pattern of railway passenger service is provided on the relevant route(s) to enable passengers to make Connections (particularly where low frequency railway passenger services are operated, first trains or last trains are involved, taking account of seasonal fluctuations in passenger demand and the time needed to make any such Connection).

19. Provisions relating to Access Agreements and Property Leases

19.1 Where the Secretary of State considers it requisite:

- (A) for the purposes of better securing the delivery of railway passenger services under the Franchise Agreement, or any other franchise agreement; or
- (B) for the better achievement by the Secretary of State of any of the Secretary of State's duties, functions and powers in relation to:
 - (i) railways;
 - (ii) the implementation of the Crossrail Programme and the operation of the Crossrail Services by the Crossrail Operator;
 - (iii) the delivery of the HS2 Project, and in particular the development of the new HS2 station at Old Oak Common;
 - (iv) the implementation of proposals for the East West Rail Scheme; and/or
 - (v) the implementation of proposals in respect of a Western Rail Link,

the Secretary of State may require the Franchisee:

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

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

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

- 19.3 The Franchisee shall comply with its obligations under any Access Agreement or any Property Lease to which it is a party from time to time:
- (a) to notify or consult with the Secretary of State on any matter or proposal relating to that Access Agreement or Property Lease; and
 - (b) which are contingent on a particular course of action being taken by the Secretary of State or which are otherwise expressly included in that Access Agreement or Property Lease for the benefit of the Secretary of State.
- 19.4 If and to the extent that:
- (a) the Secretary of State exercises the Secretary of State's rights pursuant to paragraph 19.1;
 - (b) the Franchisee's compliance with the Secretary of State's requirements pursuant to paragraph 19.1 would lead to the unavoidable consequence of the Franchisee contravening any other terms of the Franchise Agreement or the occurrence of an Event of Default; and
 - (c) the Franchisee duly complies with such requirements,
- no such contravention of the Franchise Agreement or Event of Default shall have occurred.
20. **The Timetable and Network Rail's Working Timetable**
- 20.1 Any specification of Passenger Services in the Train Service Requirement shall (unless the Secretary of State states to the contrary) be regarded as relating to how those Passenger Services are to be provided for in the National Rail Timetable that Network Rail publishes for passengers.
- 20.2 The Franchisee shall ensure, for each period between two (2) consecutive Passenger Change Dates during the Franchise Term that the Timetable for such period is, in its reasonable opinion, not materially different from the relevant working timetable issued by Network Rail.
21. **NOT USED.**

Schedule 1.2

Operating Obligations**1. Daily Operating Obligations**

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

2. Timetabling and Train Planning Compliance Investigation

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

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

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

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

2.3 **Contravention of the Franchise Agreement**

- (a) The Franchisee shall be in contravention of the Franchise Agreement if following the completion by the Secretary of State of the Timetabling and Train Planning Compliance Investigation the Secretary of State concludes that the Franchisee breached any of its obligations under any of paragraphs 12.1, 12.3, 12.4, 12.5, 14.1, 14.2 or 14.3 of Schedule 1.1 (*Franchise Services and Service Development*) and/or paragraph 1 of this Schedule 1.2 including where the Franchisee:
- (i) failed to act reasonably in calculating Forecast Passenger Demand because it unreasonably assumed that there would be differences between Forecast Passenger Demand and Actual Passenger Demand at the time that the Forecast Passenger Demand calculation was made; or
 - (ii) made unreasonable assumptions about the timetables likely to be operated by other Train Operators serving some or all of the same stations as the Franchisee.
- (b) Where the Secretary of State does conclude pursuant to paragraph 2.3(a) above that the Franchisee has breached any relevant obligation the Franchisee shall pay to the Secretary of State the costs incurred by the Secretary of State in undertaking any Timetabling and Train Planning Compliance Investigation (including any audit pursuant to paragraph 2.2(b)).
- (c) The Secretary of State shall notify the Franchisee if the Secretary of State concludes pursuant to paragraph 2.3(a) that the Franchisee is in contravention of the Franchise Agreement and the Secretary of State may at the Secretary of State's discretion, and entirely without prejudice to the Secretary of State's other rights consequent upon the relevant contravention, serve a Remedial Plan Notice pursuant to paragraph 2 of Schedule 10.1 (*Procedure for remedying a Contravention of the Franchise Agreement*).

3. Timetable changes proposed by Network Rail

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

4. Timetable changes proposed by the Franchisee

- 4.1 The Franchisee agrees, subject to paragraph 4.3, not to propose to Network Rail:
- (a) the addition to the Plan of the Day of any railway passenger services which are not included in the Timetable;
 - (b) the omission from the Plan of the Day of any Passenger Services included in the Timetable; or
 - (c) the rescheduling in the Plan of the Day of any Passenger Services from their scheduling in the Timetable,

without the Secretary of State's prior consent.

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

4.3 NOT USED.**4A Special Events**

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

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

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

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

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

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

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

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

- (a) without prejudice to any other provision of this Schedule 1.2, notify the Secretary of State promptly where such disruption would materially (having regard to both duration and scale) prejudice the Franchisee's ability to deliver the Timetable or deliver the Timetable in accordance with the Train Plan;
- (b) co-operate with Network Rail and other Train Operators to act in the overall interests of passengers using such railway passenger services, including using all reasonable endeavours to ensure that such disruption is not concentrated on a particular part of the network, except where such concentration either:
 - (i) would be in the overall interests of passengers using such Passenger Services or railway passenger services and would not result in disproportionate inconvenience to any group of passengers; or
 - (ii) is reasonably necessary as a result of the cause or the location of the disruption; and
- (c) use all reasonable endeavours to provide or secure the provision of alternative transport arrangements in accordance with paragraph 6.2.

6.2 The Franchisee shall use all reasonable endeavours to provide or secure the provision of alternative transport arrangements to enable passengers affected by any disruption referred to in paragraph 6.1 to complete their intended journeys in accordance with this paragraph 6.2. In particular, the Franchisee shall use all reasonable endeavours to:

- (a) ensure that such alternative transport arrangements are of reasonable quality, of a reasonably similar frequency to the Passenger Services included in the Timetable which such arrangements replace and reasonably fit for the purpose of the journey to be undertaken;
- (b) transport passengers to, or as near as reasonably practicable to, the end of their intended journey on such Passenger Services, having particular regard to the needs of any Disabled Persons and, where appropriate, making additional arrangements for such Disabled Persons to complete their intended journey;
- (c) provide adequate and prominent publicity of such alternative transport arrangements in advance, subject, in the case of unplanned disruption, to the Franchisee having sufficient notice of such disruption to enable it to provide such publicity;
- (d) provide sufficient alternative transport capacity for the reasonably foreseeable demand for the disrupted Passenger Services; and

- (e) ensure, if any planned disruption overruns, that there is a reasonable contingency arrangement for such alternative transport arrangements to continue for the duration of such overrun.

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

7.1 Any obligation in this Schedule 1.2 on the part of the Franchisee to use **"all reasonable endeavours"** shall (with the exception of paragraph 5 of this Schedule 1.2) include an obligation to:

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

7.2 The matters to which the Franchisee is to have regard pursuant to paragraph 7.1(b) shall include:

- (a) variations in weather and operating conditions (including Network Rail's infrastructure not being available for any reason), which may in either case include seasonal variations;
- (b) default by, or restrictions imposed by, suppliers to the Franchisee;
- (c) shortages of appropriately skilled or qualified Franchise Employees;
- (d) disputes with Franchise Employees;
- (e) the availability of the Train Fleet, having regard to maintenance requirements and any Mandatory Modifications;
- (f) establishing reasonable Turnaround Time allowances for enabling or disabling (as appropriate) any part of a train, the rostering of any train crew and the servicing or cleaning of any rolling stock vehicles; and
- (g) failures of rolling stock vehicles in service and contingency arrangements (including Hot Standbys and rescue traction).

7.3 For the purpose of taking measures in respect of any disruption to the Franchise Services in accordance with paragraph 7.1(b) and assessing the extent of any risk referred to in paragraph 7.1(b) and any such risk's reasonable foreseeability, regard shall be had both:

- (a) to the historical levels of incidence of disruption in the operation of:
 - (i) the Franchise Services;

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

7.4 The steps to which paragraph 7.1(c) refers include:

- (a) co-operating with Network Rail in the development, agreement and implementation of:
 - (i) a five (5) year (rolling) Performance Strategy Plan; and
 - (ii) recovery plans in response to failures to achieve the performance levels specified in any Performance Strategy Plan;
- (b) co-operating with Network Rail in adopting the principles set out in any Service Recovery Plans agreed between Network Rail and the Franchisee from time to time;
- (c) undertaking regular reviews of:
 - (i) the most common and most detrimental causes of delay to the Passenger Services; and
 - (ii) the causes of the ten (10) delays to the Passenger Services with the longest duration (to the extent not already reviewed in accordance with paragraph 7.4(c) (i)),
 which have occurred during a defined review period (e.g. weekly/four (4) weekly/quarterly) and which have been caused by the Franchisee, any other Train Operator, any other train operator licensed under the Act or Network Rail;
- (d) undertaking with Network Rail a review of the time taken to recover the Passenger Services following the occurrence of any of the events specified in paragraphs 7.4(c)(i) and 7.4(c)(ii) and seeking to identify and implement actions that reduce the delay effect of such events;
- (e) setting up and holding regular and effective performance review meetings with Network Rail, evidenced by meeting minutes and the closure of actions agreed between the Parties;
- (f) regularly monitoring (at least every Reporting Period) the delivery of local output commitments made by Network Rail in the Performance Strategy Plan and derived delivery plans and using reasonable endeavours to specify and develop such delivery plans;
- (g) as and when required by Network Rail, co-operating with Network Rail in improving the accuracy of future timetables by providing access to trains (and data collected from train systems), other facilities and/or information;
- (h) co-operating with Network Rail in other delay management initiatives and ongoing quarterly reviews of the Performance Strategy Plan;

- (i) regularly reviewing (at least every Reporting Period) the imposition and clearance of temporary speed restrictions;
 - (j) regularly reviewing (at least every Reporting Period) the timely and efficient handover and hand-back of possessions; and
 - (k) where appropriate and where Network Rail fails to perform its obligations under the Track Access Agreement, enforcing the Franchisee's rights under the Track Access Agreement.
- 7.5 The Franchisee undertakes to reasonably co-operate with Network Rail with regard to Network Rail's management of the network, including in relation to the establishment of up to date Timetable Planning Rules.
- 7.6 To the extent not already provided for in the Franchise Agreement, the Franchisee shall use all reasonable endeavours to ensure the performance by Network Rail of its obligations under any relevant agreement including, where appropriate or where requested by the Secretary of State, enforcing its rights against Network Rail under any such agreement.
- 7.7 When and to the extent reasonably requested by the Secretary of State, the Franchisee shall provide to the Secretary of State evidence of the steps taken by the Franchisee in order to comply with its obligations under this paragraph 7.

Withdrawn

Schedule 1.3

NOT USED

Withdrawn

Schedule 1.4

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

The Franchisee shall publish on the Start Date:

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

1.2 Timetable Revisions and Alterations

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

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

1.3 In addition, the Franchisee shall:

- (a) subject to paragraph 1.4, display posters at each Station advising passengers of all Significant Alterations between any two Passenger Change Dates to railway passenger services calling at that Station, no later than

four (4) weeks in advance of the date on which the alterations come into effect; and

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

1.4 Other Train Operators' Timetables

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

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

1.5 National Rail Timetable and National Rail Enquiry Scheme

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

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

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

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

2. Communicating Late Timetable Changes

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

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

3. **Fares Selling Restrictions**

3.1 ***Restrictions on Sales***

The Franchisee shall ensure that the purchaser of any Protected Fare or Commuter 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 Protected Fare or Commuter Fare (as the case may be) and, in relation to the issue of a Season Ticket Fare, the completion of an identity card as the Franchisee may reasonably require; and
- (c) shall not be required to pay an amount in respect of a seat reservation or other similar right which it may be compulsory for such purchaser to have in order to make a journey with such Protected Fare or Commuter Fare (as the case may be) on a Passenger Service.

3.2 The Franchisee shall procure that for any:

- (a) Protected Return Fare, Single Fare which is a Commuter Fare or Return Fare which is a Commuter Fare, each such Fare shall be offered for sale wherever and whenever any other Fare (not being a Season Ticket Fare) for a journey between the same origin and destination stations is offered for sale; and

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

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

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

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

- 3.4 The Franchisee shall not sell or offer to sell:

- (a) any Fare in respect of which the:
- (i) Prices are regulated under Schedule 5.4 (*Regulation of Fares Basket Values*) and Schedule 5.5 (*Regulation of Individual Fares*), at prices that are greater than the Prices set for such Fares from time to time in accordance with Schedule 5.4 and Schedule 5.5; and
- (ii) Child Prices are regulated under paragraph 1.3 of Schedule 5.5 (*Regulation of Individual Fares*) at prices that are 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 Franchisee**

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

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

3.6 **Additional Ancillary Services**

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

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

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

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

3.8 **NOT USED.**

4. **Passenger's Charter and Delay Repay Compensation**

4A.1 **Definitions**

In this paragraph 4 the following words and expressions shall have the following meanings:

- "**Bristol Charter Group Transfer**" has the meaning given to it in paragraph 4.17;
- "**Charter Compensation**" means compensation payable to holders of Passenger's Charter Discount Season Tickets applicable to their Season Ticket Charter Group in the form of a discount on the renewal of their Passenger's Charter Discount Season Ticket in circumstances where the Franchisee has not met

the Punctuality Target and/or Reliability Target applicable to their Season Ticket Charter Group;

“Delay Repay Compensation”

means compensation which is payable to passengers by the Franchisee in circumstances where the passenger’s journey in respect of which such passenger holds a valid ticket is delayed by 15 minutes or more as follows:

- (a) delay of between 15 and 29 minutes: 25% of the cost of a season ticket ‘journey’;
- (b) delay of between 30 and 59 minutes: 50% of the cost of a season ticket ‘journey’;
- (c) delay of between 60 and 119 minutes: 100% of the cost of a season ticket ‘journey’; and
- (d) delay of 120 minutes or longer: 100% of the cost of a return season ticket ‘journey’;

where the cost of a season ticket ‘journey’ for these purposes is:

- (i) in respect of an annual season ticket, the total season ticket price divided by 464;
- (ii) in respect of a quarterly season ticket, the total season ticket price divided by 120; and
- (iii) in respect of a monthly season ticket, the total season ticket price divided by 40,

and the cost of a return season ticket ‘journey’ for these purposes is double the cost of a season ticket ‘journey’;

“Passenger’s Charter Discount Season Tickets”

means Season Ticket Fares that are valid for a month or longer and which are valid for travel on a Season Ticket Charter Group;

“Post-Franchise Reporting Period”

has the meaning given to it in paragraph 15 of Part 4 of Schedule 6.1;

“Punctuality Trigger”

means, in respect of a Season Ticket Charter Group, the applicable “trigger” in respect of delay minutes performance of that Season Ticket

Charter Group as specified in the Passenger's Charter;

"Relevant Charter Group" has the meaning given to it in paragraph 4.10;

"Reliability Trigger" means, in respect of a Season Ticket Charter Group, the applicable "trigger" in respect of cancellations performance of that Season Ticket Charter Group as specified in the Passenger's Charter;

"Revised Draft Passenger's Charter" has the meaning given to it in paragraph 4.7;

"Season Ticket Charter Group" means any of the following groups of passenger services as categorised in the Passenger's Charter:

- (a) High Speed Services;
- (b) London Thames Valley Services;
- (c) Bristol Suburban Services;
- (d) Devon Services;
- (e) Plymouth and Cornwall Services;
- (f) South Wales – South Coast Services;

"Trigger Conditions" has the meaning given to it in paragraph 4.10;

"Trigger Notice" has the meaning given to it in paragraph 4.10; and

"Unconnected Changes" has the meaning given to it in paragraph 4.16.

4.1 **Content of the Passenger's Charter**

The Franchisee shall:

- (a) publish its Passenger's Charter:
 - (i) from the Start Date 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) **NOT USED**; and
- (c) state the date of publication clearly on the front cover of the Passenger's Charter.

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

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

The Franchisee shall publicise its Passenger's Charter by:

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

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

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

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

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

The Franchisee shall:

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

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

Process for agreement and implementation of a revised Passenger's Charter to move the High Speed Services, Devon Services and Plymouth and Cornwall Services Season Ticket Charter Groups to Delay Repay Compensation

4.7 The Franchisee shall, by no later than 30 April 2020, submit to the Secretary of State for approval in accordance with paragraph 4.2 a revised draft of the Passenger's Charter (the "**Revised Draft Passenger's Charter**") which is expressed to take effect from 28 June 2020 and which provides for holders of Passenger's Charter Discount Season Tickets for the following Season Ticket Charter Groups:

- (a) High Speed Services;
- (b) Devon Services; and
- (c) Plymouth and Cornwall Services,

to:

- (i) be eligible, with effect from 28 June 2020, for Delay Repay Compensation where their journey is delayed as a result of delay to, or cancellation of, one or more Passenger Services on which they were travelling or had intended to travel; and
- (ii) receive, where their Passenger's Charter Discount Season Tickets have a period of validity which began before 28 June 2020 and end on or after that date, compensation of an amount equivalent to the value of any discount they would have been entitled to receive if:
 - (A) they had chosen to renew their Passenger's Charter Discount Season Tickets at the end of the validity periods applicable to such Passenger's Charter Discount Season Tickets; and
 - (B) the Passenger's Charter in the form in force from the Start Date (as referred to in paragraph 4.1(a)(i)) had remained in force.

4.8 If the Secretary of State approves the Revised Draft Passenger's Charter in the form submitted to him pursuant to paragraph 4.7 by 1 June 2020 then the Franchisee shall comply with its obligations under paragraphs 4.1 to 4.6 (inclusive) of this Schedule 1.4 in respect of the publishing and implementation of such Revised Draft Passenger's Charter with effect from 28 June 2020. For the avoidance of doubt, the Secretary of State's approval of the Revised Draft Passenger's Charter shall not give rise to a Change.

- 4.9 If:
- (a) the Revised Draft Passenger's Charter submitted to the Secretary of State pursuant to paragraph 4.7 complies with the requirements of paragraph 4.7; but
 - (b) the Secretary of State declines to approve such Revised Draft Passenger's Charter,

then there shall be a Change.

Trigger Conditions – Relevant Charter Groups

- 4.10 In respect of each Season Ticket Charter Group in respect of which holders of Passenger's Charter Discount Season Tickets are not eligible for Delay Repay Compensation (each a "**Relevant Charter Group**"), the Franchisee shall from the Start Date review on a continuous basis performance of each such Relevant Charter Group against the applicable Punctuality Trigger and Reliability Trigger for that Relevant Charter Group and shall immediately notify the Secretary of State in writing (a "**Trigger Notice**") if the Franchisee (acting reasonably) considers that both of the conditions set out in paragraphs 4.11(a) and 4.11(b) (the "**Trigger Conditions**") are reasonably likely to be met in respect of any one or more Relevant Charter Groups within the next-following six (6) Reporting Periods or (as the case may be) an equivalent period comprising a mixture of both Reporting Periods and:
- (a) reporting periods falling within the franchise term of the Previous Franchise Agreement; or
 - (b) Post-Franchise Reporting Periods.
- 4.11 The Trigger Conditions referred to in paragraph 4.10 are that:
- (a) delay minutes performance for a Relevant Charter Group, on a moving annual average basis, will be better than the Punctuality Trigger for that Relevant Charter Group for a period of three (3) consecutive Reporting Periods (or, as the case may be, an equivalent period comprising consecutive Reporting Periods and Post-Franchise Reporting Periods); and
 - (b) cancellations performance for a Relevant Charter Group, on a moving annual average basis, will be better than the Reliability Trigger for that Relevant Charter Group for a period of three (3) consecutive Reporting Periods (or, as the case may be, an equivalent period comprising consecutive Reporting Periods and Post-Franchise Reporting Periods).
- 4.12 If:
- (a) the Franchisee has served a Trigger Notice on the Secretary of State pursuant to and in accordance with paragraph 4.10; or
 - (b) the Secretary of State (acting reasonably in the context of the prevailing circumstances at the relevant time) considers that the Franchisee should have served a Trigger Notice,

then the Secretary of State shall be entitled to require the Franchisee to:

- (i) meet with the Secretary of State to discuss the merits and practical implications associated with transferring holders of Passenger's Charter Discount Season Tickets for any or all of the Relevant Charter Group(s) from Charter Compensation to Delay Repay Compensation;
- (ii) consult such Stakeholders as the Secretary of State may reasonably specify;
- (iii) submit to the Secretary of State a plan and proposed timeframe for implementing such transfer(s);
- (iv) submit to the Secretary of State a revised draft Passenger's Charter which provides for such transfer(s);
- (v) set out proposals for how such transfer(s) would be communicated effectively to existing and prospective season ticket holders; and/or
- (vi) provide such other information, reports and analysis as the Secretary of State may reasonably require for the purposes of informing decisions about whether and if so when to implement such transfer(s).

4.13 The Parties acknowledge and agree that in determining whether to approve any revised draft of the Passenger's Charter submitted by the Franchisee pursuant to paragraph 4.12 the Secretary of State shall have regard to relevant considerations including:

- (a) the likelihood that the Trigger Conditions will be met at the time of the relevant transfer(s) and will continue to be met thereafter;
- (b) the proposed arrangements for ensuring that existing holders of Passenger's Charter Discount Season Tickets within the Relevant Charter Group(s) subject to transfer would receive the value of any discount to which they would otherwise have been entitled at first renewal of their Passenger's Charter Discount Season Ticket after the transfer (whether in the form of such discount at first renewal, or by payment of equivalent compensation to all existing holders of such Passenger's Charter Discount Season Tickets);
- (c) the need for the compensation arrangements set out in such revised draft Passenger's Charter to be clearly understandable to passengers, in particular having regard to the geographic overlap between the Bristol Suburban Services Season Ticket Charter Group and the South Wales – South Coast Services Season Ticket Charter Group; and
- (d) the views of Stakeholders.

4.14 If the Secretary of State approves the revised draft Passenger's Charter in the form submitted to him pursuant to paragraph 4.12 then the Franchisee shall comply with its obligations under paragraphs 4.1 to 4.6 (inclusive) of this Schedule 1.4 in respect of the publishing and implementation of such revised draft Passenger's Charter with effect from such date as the Parties may agree (or, in the absence of agreement, from such date as the Secretary of State may reasonably determine).

- 4.15 If the Secretary of State declines to approve the revised draft Passenger's Charter in the form submitted to him pursuant to paragraph 4.12 then the Secretary of State shall be entitled to require the Franchisee to:
- (a) make such amendments to the revised draft Passenger's Charter as the Secretary of State may reasonably require; and
 - (b) resubmit such revised draft Passenger's Charter (as amended in accordance with paragraph 4.15(a)) within such timescale as the Secretary of State may reasonably specify.

The provisions of this paragraph 4.15 shall apply *mutatis mutandis* until such time as the Franchisee has submitted a revised draft of the Passenger's Charter which is acceptable to the Secretary of State.

- 4.16 Subject always to paragraph 4.17, if the Secretary of State approves a revised draft of the Passenger's Charter submitted to him pursuant to paragraph 4.14 or paragraph 4.15 (as the case may be) and it is in consequence implemented there shall be a Change, it being acknowledged and agreed that:
- (a) any other amendments or alterations proposed by the Franchisee in the revised draft of the Passenger's Charter which is approved by the Secretary of State which are not directly related to the subject matter of paragraphs 4.10 to 4.13 (inclusive) ("**Unconnected Changes**") shall be disregarded for the purposes of determining whether such Change is a Qualifying Change; and
 - (b) if (having applied the provisions of paragraph 4.16(a)) any such Change is a Qualifying Change, for the purposes of determining applicable Revised Inputs any Unconnected Changes shall also be disregarded.

- 4.17 Notwithstanding any other provision of this paragraph 4:

- (a) approval by the Secretary of State of any amendments to the Passenger's Charter to provide for the transfer of holders of Passenger's Charter Discount Season Tickets for the Bristol Suburban Services Season Ticket Charter Group from Charter Compensation to Delay Repay Compensation (a "**Bristol Charter Group Transfer**") (and the implementation of such amended Passenger's Charter by the Franchisee) shall not give rise to a Change; and
- (b) if any revised draft of the Passenger's Charter referred to in paragraph 4.16 provides for both:
 - (i) a Bristol Charter Group Transfer; and
 - (ii) the transfer of holders of Passenger's Charter Discount Season Tickets for one or more other Relevant Charter Groups from Charter Compensation to Delay Repay Compensation,

then the amendments to the Passenger's Charter relating to the Bristol Charter Group Transfer shall constitute Unconnected Changes for the purposes of paragraph 4.16.

5. End to End Journeys and Cycles

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

6. Statutory Notices

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

7. Train and Station Cleaning

The Franchisee shall:

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

8. Publication of Performance Data

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

- (a) Cancellations Figures;
- (b) **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 Franchisee within ten (10) Weekdays of it becoming available to the Franchisee.

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

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

8.3 As part of each Customer Report to be provided by the Franchisee pursuant to paragraph 10.1 of Schedule 7.2 (*Customer Experience and Engagement*), the Franchisee shall publish (in such format as the Secretary of State may reasonably require):

- (a) the mean average of each of the Cancellations Figures and the Short Formation Figures for the Reporting Periods that have elapsed since the last Reporting Period reported on in the previous Customer Report (or, in the case of the first Customer Report, since the last reporting period reported

on in the final customer report published by the Franchisee pursuant to paragraph 3.2 of Schedule 7.2 of the Previous Franchise 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 (or, in the case of the first Customer Report, and where available, for the last reporting period occurring before publication of the first Customer Report (it being acknowledged that such reporting period will occur during the franchise term of the Previous Franchise Agreement));
- (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 same Reporting Period(s) in the previous Franchisee Year (or, in the case of the first and second Customer Report, the equivalent reporting periods in the previous franchisee year occurring pursuant to the Previous Franchise Agreement);
- (d) an update on the key activities undertaken by the Franchisee to improve its performance in relation to the measures referred to in paragraphs 8.3 (a) and 8.3 (b); and
- (e) a summary of the key activities planned to be undertaken by the Franchisee in the period in relation to which the next Customer Report will report to improve its performance in relation to the measures referred to in paragraphs 8.3 (a) and 8.3 (b).

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

9.1 As part of each Customer Report (excluding the first (1st) Customer Report) to be provided by the Franchisee pursuant to paragraph 10.1 of Schedule 7.2 (Customer Experience and Engagement), the Franchisee shall publish (in such format as the Secretary of State may reasonably require) in relation to the Reporting Periods that have elapsed since the last Reporting Period reported on in the previous Customer Report or, in the case of the second (2nd) Customer Report, since the Start Date):

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

and/or station users on its progress in seeking resolution of such Notified Faults; and

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

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

10. **NOT USED**

Withdrawn

Schedule 1.5

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

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

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

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

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

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

- (a) promptly following its collation and in any case within the following timescales:
 - (i) in the case of data collected automatically by the Count Equipment and capable of being transmitted directly and automatically to the RPC

Database or the Preliminary Database (as appropriate), within forty-eight (48) hours of its collation;

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

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

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

1.5 **NOT USED.**

2. **Manual Passenger Counts**

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

2.2 The Secretary of State shall be entitled to audit such counts (whether by specimen checks at the time of such counts, verification of proper compliance with the manner approved by the Secretary of State or otherwise). In the event that such audit reveals, in the reasonable opinion of the Secretary of State, a material error,

or a reasonable likelihood of material error, in such counts, the Secretary of State may require the counts to be repeated or the results adjusted as the Secretary of State considers appropriate, and in these circumstances the Franchisee shall pay to the Secretary of State the costs of any such audits.

3. Technology for Obtaining the Information referred to in paragraph 1.2

3.1 The technology to be used for the purposes of paragraph 1.2 shall be technology which counts the number of passengers passing through vehicle doorways or through load weigh equipment fitted to the vehicle suspension.

3.2 The technology to be used for the purposes of paragraph 1.2 shall be fitted to:

(a) in the case of any brand new rolling stock which is admitted to the Train Fleet, one hundred per cent (100%) of it from the date that such rolling stock is properly admitted; and

(b) in the case of all other rolling stock, by 30 September 2021, to every vehicle comprised within no less than thirty-five per cent (35%) of such rolling stock units included in each class of rolling stock comprised the Train Fleet from time to time. This requirement does not apply to Mk3 sleeper coach rolling stock vehicles comprised in the Train Fleet.

3.3 Without limiting the Secretary of State's rights under paragraph 1.1 of this Schedule 1.5, the technology specified in paragraph 3.1 above shall be used to provide counts in respect of, in any period of not less than twelve (12) weeks, at least two (2) of each of the Timetabled Services, and each count shall be carried out on each rolling stock unit comprising a particular train. The Franchisee may only use a method of extrapolation and use extrapolated data to provide a reliable estimate of a full train's count with the Secretary of State's prior written approval of the use of extrapolated data and the method of extrapolation (such approval not to be unreasonably withheld or delayed). The Franchisee shall comply with its obligation under this paragraph 3 from the date(s) such rolling stock is incorporated into the Train Fleet.

3.4 The Parties acknowledge that the information supplied under paragraph 1.1 above, and any product of it created by the RPC Database or the Preliminary Database (as appropriate), may constitute Confidential Information to which Schedule 17 (*Confidentiality, Freedom of Information and Data Protection*) applies.

4. Customer Relationship Management (CRM) Data

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

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

(b) the property of the Franchisee.

4.2 In relation to any CRM Data obtained by or on behalf of the Franchisee, the Franchisee shall:

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

5. Yield Management Data

- 5.1 The Franchisee shall ensure that any Yield Management Data and Yield Management System are the property of the Franchisee or are licensed to the

Franchisee on terms which have been approved by the Secretary of State (such approval not to be unreasonably withheld or delayed).

5.2 **NOT USED.**

5.3 The Franchisee shall notify the Secretary of State in writing of the full names and registered office addresses of the entities which from time to time are hosting or storing any of the Yield Management Data, or which are otherwise holding within their possession or control any of the Yield Management Data, together with the location(s) in which the Yield Management Data is hosted, stored or otherwise held. In cases where the hosting, storage or holding of the Yield Management Data occurs in location(s) which are outside of the United Kingdom the notification shall include details of the relevant country(ies) or territory(ies).

5.4 The Franchisee hereby acknowledges that the Secretary of State legitimately wishes to have knowledge of the locations in which the Yield Management Data is hosted, stored or otherwise held from time to time (whether inside or outside of the United Kingdom) given that all such information would be relevant in the event of any transfer of the Franchise to a Successor Operator.

6. **NOT USED.**

7. **Rail Passenger Counts Database**

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

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

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

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

- (c) any product of that Actual Passenger Demand information, Network Rail Data and/or Third Party Data.

7.3

- (a) The Secretary of State is not liable for:
- (i) any inaccuracy, incompleteness or other error in Actual Passenger Demand information, Network Rail Data, Third Party Data or product of the above provided to the Secretary of State by the Franchisee, NR or a third party; or
 - (ii) any failure of the RPC Database to achieve any particular business result for the Franchisee. For the avoidance of doubt, it is the responsibility of the Franchisee to decide the appropriateness of using the RPC Database to achieve its own business results; or
 - (iii) any loss, destruction, corruption, degradation, inaccuracy or damage of or to the Actual Passenger Demand information following its submission to the RPC Database; or
 - (iv) any loss or damage to the property or assets of the Franchisee (tangible or intangible) as a result of a contravention of paragraph 7.1 of this Schedule 1.5; or
 - (v) any indirect, special or consequential loss or damage.
- (b) The Secretary of State's total liability for the duration of the Franchise Agreement in respect of a contravention of its obligations under paragraph 7.1 of this Schedule 1.5 for all other heads of loss or damage which can lawfully be limited shall be limited to the extent to which the Secretary of State is successful in recovering the equivalent loss from such entity to whom the Secretary of State subcontracts its obligations under paragraph 7.1 of this Schedule 1.5 (the "**Subcontractor**"), subject to the following provisions:
- (i) if reasonably requested by the Franchisee within three (3) months of incurring such loss or damage, the Secretary of State shall use reasonable endeavours to recover the equivalent losses from the Subcontractor;
 - (ii) it shall not be reasonable for the Franchisee to make a request pursuant to paragraph 7.3(b)(i) above if the value of the Franchisee's losses does not exceed ten thousand pounds sterling (**£10,000**) x **RPI**;
 - (iii) prior to accounting to the Franchisee for any sums recovered from the Subcontractor pursuant to this paragraph 7.3(b), the Secretary of State shall be entitled to deduct and retain any reasonable costs and expenses incurred in pursuing such a claim which the Secretary of State does not successfully recover from the Subcontractor; and
 - (iv) the Secretary of State shall be entitled to deduct from any sums recovered from the Subcontractor pursuant to this paragraph 7.3(b)

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

- (c) The Franchisee shall use all reasonable endeavours to mitigate any losses incurred by the Franchisee as a result of a contravention by the Secretary of State of the Secretary of State's obligations contained in paragraph 7.1 of this Schedule 1.5.
- 7.4 The Parties acknowledge that it is intended that the RPC Database will also contain actual passenger demand information relating to franchisees other than the Franchisee but a franchisee shall have access only to information relating to its own franchise (in the case of the Franchisee, via the log on details provided pursuant to paragraph 7.1(c)). For the avoidance of doubt, the licence granted at paragraph 8.6 shall only permit the usage of the RPC Database, Derivative Output and Intellectual Property Rights related to the Actual Passenger Demand information supplied by the Franchisee.
- 7.5 Without prejudice to Schedule 14.4 (Designation of Franchise Assets), paragraphs 2.1 and 3 of Schedule 15.1 (Reletting Provisions), Schedule 15.4 (Provisions applying on and after Termination) or any other rights of the Secretary of State, the Franchisee agrees that, following the expiry or termination by whatever means of the Franchise Agreement and any Continuation Document, the Secretary of State shall be entitled to allow access to the Franchisee's Actual Passenger Demand information by way of granting access to that area of the RPC Database or otherwise to any future operator of the Passenger Services (whether or not in direct succession to the Franchisee) or to such part of the Actual Passenger Demand information as relates to the part of the franchise which is being taken over by such future operator.
- 8. Intellectual Property Rights and General Provisions**
- 8.1 All Intellectual Property Rights in the RPC Database and Derivative Output shall at all times remain owned by the Secretary of State and to the extent that any rights in the RPC Database vest in the Franchisee by operation of law, the Franchisee hereby assigns such rights to the Secretary of State.
- 8.2 Subject to Schedule 14.4 (Designation of Franchise Assets) and Schedule 15.4 (Provisions applying on and after Termination), all Intellectual Property Rights in the Actual Passenger Demand information will at all times remain owned by the Franchisee and (subject as previously stated) to the extent that any rights in the Actual Passenger Demand information vest in the Secretary of State by operation of law, the Secretary of State hereby assigns such rights to the Franchisee.
- 8.3 All Intellectual Property Rights in the Network Rail Data will at all times remain owned by the relevant NR entity and to the extent that any rights in the Network Rail Data vest in the Secretary of State or the Franchisee by operation of law, the Secretary of State and/or the Franchisee (as applicable) will enter into a separate agreement with the relevant Network Rail entity to assign such rights to it.
- 8.4 All Intellectual Property Rights in the Third Party Data will at all times remain owned by the third party from whom they have been obtained and to the extent that any

rights in the Third Party Data vest in the Secretary of State or the Franchisee by operation of law, the Secretary of State and/or the Franchisee (as applicable) will enter into a separate agreement with the relevant Third Party to assign such rights to it.

8.5 Subject to Schedule 14.4 (Designation of Franchise Assets) and Schedule 15.4 (Provisions applying on and after Termination), each Party:

- (a) acknowledges and agrees that it shall not acquire or claim any title to any of the other Party's Intellectual Property Rights (or those of the other Party's licensors) by virtue of the rights granted to it under this Agreement or through its use of such Intellectual Property Rights; and
- (b) agrees that it will not, at any time, do, or omit to do, anything which is likely to prejudice the other Party's ownership (or the other Party's licensors' ownership) of such Intellectual Property Rights.

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

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

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

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

- (a) by including them in the RPC Database; and/or
- (b) by including them in the Preliminary Database; and/or
- (c) whether included in the RPC Database, the Preliminary Database or in any other format for such purposes as the Secretary of State may reasonably require including for the purposes of assisting the Secretary of State'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 the Franchise Agreement to share, disclose, or publish the same and transfer and/or sub-licence and permit the use and sharing, disclosing or publishing for the purposes it is shared or disclosed; and/or
- (e) to allow a future operator of the Passenger Services (whether or not in direct succession to the Franchisee) to view and access such Actual Passenger

Demand information (whether via the RPC Database or otherwise) as directly relates to the services that it will be running,

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

- 8.8 Paragraphs 7.2, 7.3, 8.1, 8.2 and 8.7 of this Schedule 1.5 shall continue in force after expiry or termination of the Franchise Agreement or any Continuation Document, together with any other provisions which expressly or impliedly continue in force after the expiry or termination of the Franchise Agreement or any Continuation Document.
- 8.9 The Parties intend that the provisions of The Contract (Rights of Third Parties) Act 1999 will apply to allow the relevant NR entity to rely on and enforce against a third party the provisions of paragraph 8.3 of this Schedule 1.5.

Withdrawn

Schedule 1.6

The Rolling Stock**1. Purpose**

1.1 This Schedule records the rolling stock vehicles which shall be comprised in the Train Fleet from the Start Date (Original Rolling Stock shown in Table 1) and further additional rolling stock that will become part of the Train Fleet during the Franchise Term (Specified Additional Rolling Stock shown in Table 2) and key information in relation to it. It includes other requirements in relation to the Train Fleet including in relation to rolling stock testing and commissioning and compliance with the requirements of the Secretary of State in relation to the specification of the Train Fleet including in relation to baby changing facilities and Controlled Emission Toilets.

2. The Composition/Deployment of the Train Fleet

2.1 The Train Fleet consists of:

(a) from the Start Date until the lease expiry dates referred to in Column 6 of Table 1 in Appendix 1 to this Schedule 1.6 the rolling stock vehicles set out in Table 1 in Appendix 1 to this Schedule 1.6 ("**Original Rolling Stock**") with the Passenger Carrying Capacity per unit referred to in Column 3 and Column 4 of Table 1 in Appendix 1 to this Schedule 1.6;

(b) from the dates set out in Column 6 of Table 2 in Appendix 1 to this Schedule 1.6, until the lease expiry dates referred to in Column 7 of Table 2 in Appendix 1 to this Schedule 1.6 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;

(c) **NOT USED;** and

(d) **NOT USED.**

2.2 **NOT USED.**

2.3 **NOT USED.**

2.4 The Passenger Carrying Capacity of any rolling stock vehicles shall be as set out in Tables 1 or 2 in Appendix 1 to this Schedule 1.6 or as determined by the Secretary of State in accordance with paragraph 3.4 of this Schedule 1.6 (as applicable).

2.5 The Franchisee 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 Plan during the periods referred to therein.

2.6 The Franchisee shall ensure that any Specified Additional Rolling Stock which is new build rolling stock shall be fitted with the equipment necessary to enable such

rolling stock vehicles to be operated in Driver Controlled Operation in Passenger Mode without requiring station-based cameras or display screens.

3. **Changes to the Train Fleet**

3.1 The Franchisee shall maintain the composition of the Train Fleet during the Franchise Period, unless the Secretary of State otherwise agrees, such that there are no changes to the Train Fleet, including changes:

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

of any rolling stock vehicles specified in the Train Fleet.

3.2 **NOT USED.**

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

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

4. **Rolling Stock Testing and Commissioning**

4.1 The Franchisee shall, to the extent reasonably requested by the Secretary of State and subject to payment of the Franchisee's reasonable costs by the relevant third party, co-operate with any third party which the Secretary of State may specify (including a Successor Operator, a rolling stock vehicle manufacturer or Network Rail or the Secretary of State) in connection with the testing and commissioning of new rolling stock vehicles or any new equipment to be fitted to rolling stock vehicles (whether such rolling stock vehicles are new or otherwise).

4.2 The co-operation referred to in paragraph 4.1 shall not unreasonably disrupt the provision and operation of the Franchise Services and may include:

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

(e) the delivery of rolling stock vehicles to specific locations.

5. **Controlled Emission Toilets**

5.1 The Franchisee shall ensure that all rolling stock vehicles comprised in the Train Fleet used for the provision of the Passenger Services which have on board toilet facilities shall be fitted with Controlled Emission Toilets with a tank capacity sufficient for the requirements of the Passenger Services by no later than the Start Date so that for the remainder of the Franchise Term all rolling stock vehicles which have on board toilets are exclusively fitted with Controlled Emission Toilets.

5.2 The Franchisee shall ensure that the contents of the toilet retention tanks relating to each Controlled Emission Toilet fitted on rolling stock vehicles in accordance with the requirements of paragraph 5.1 are disposed of in a safe and hygienic manner at suitable facilities designed for these purposes including at Depots and stabling points.

5.3 **NOT USED.**

5.4 **NOT USED.**

5.5 The provisions of paragraphs 5.1 and 5.2 shall not apply in respect of the Class 143 rolling stock vehicles comprised in the Train Fleet from the date of this Agreement until 31 December 2020.

6. **Baby Changing Facilities**

6.1 The Franchisee shall ensure that as soon as reasonably practicable each train operated by the Franchisee 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 PRM TSI.

6.2 The provisions of paragraph 6.1 shall not apply in respect of the Class 143 rolling stock vehicles comprised in the Train Fleet from the date of this Agreement until 31 December 2020.

7. **Measurement of Traction Energy Usage**

7.1 The Franchisee shall ensure that all rolling stock units that form part of the Train Fleet are able to measure and monitor fuel use as soon as reasonably practicable, and in the case of rolling stock units powered by electric traction (including, for the avoidance of doubt, "bi - mode" rolling stock fitted with electric traction capability (whether 750v dc or 25kv ac or both in the case of "tri mode" rolling stock units) and diesel traction or any other non-electric traction capability), enable the Franchisee to be a "**Metered Train Operator**" as defined by Network Rail's Traction Electricity Rules.

7.2 The Franchisee shall be a Metered Train Operator throughout the Franchise Term.

8. **Monitoring of air quality on trains**

8.1 The Franchisee shall:

- (a) permit such access to rolling stock vehicles comprised in the Train Fleet by the Secretary of State (or his nominee) as the Secretary of State may reasonably require for the purposes of monitoring exhaust emissions from such rolling stock vehicles; and
- (b) provide to the Secretary of State such information and/or data as he may reasonably require for the purposes of obtaining data in relation to exhaust emissions from rolling stock vehicles comprised within the Train Fleet 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.

Withdrawn

APPENDIX 1 TO SCHEDULE 1.6

The Composition of the Train Fleet

1. Original Rolling Stock

Table 1 (Original Rolling Stock) [Note *]

Column 1 Class of vehicle/unit	Column 2 Number of vehicles in fleet and unit configuration	Column 3 Standard Class Passenger Carrying Capacity per unit			Column 4 First Class provision per unit		Column 5 Owner/Lessor	Column 6 Lease expiry date(s)	
		Seats	Wheelchair spaces	Standing	Seats	Wheelchair Spaces		Scheduled Lease Expiry Date	Early Redelivery Date (if any)
Class 800/3	189 (21 nine car)	576	2	273	71	2	Agility Trains West Limited	N/A	N/A
Class 802/0	110 (22 five car)	290	0	128	36	2	Eversholt Rail Leasing Ltd	Expiry Date	N/A
Class 802/1	126 (14 nine car)	576	2	273	71	2	Eversholt Rail Leasing Ltd	Expiry Date	N/A
Class 387/1	132 (33 four car)	224	2	230	0	0	Porterbrook	Expiry Date	N/A
Class 150/2	6 (3 two car)	136	2	48	0	0	Angel Trains	Expiry Date	N/A
Class 150/2	34 (17 two car)	122	2	43	0	0	Porterbrook	Expiry Date	N/A
Class 158	22 (11 two car)	130	2	46	0	0	Porterbrook	Expiry Date	N/A
Class 158	12 (4 three car)	198	4	70	0	0	Porterbrook	Expiry Date	N/A

Table 1 (Original Rolling Stock) [Note *]									
Column 1	Column 2	Column 3			Column 4		Column 5	Column 6	
Class of vehicle/unit	Number of vehicles in fleet and unit configuration	Standard Class Passenger Carrying Capacity per unit			First Class provision per unit		Owner/Lessor	Lease expiry date(s)	
		Seats	Wheelchair spaces	Standing	Seats	Wheelchair Spaces		Scheduled Lease Expiry Date	Early Redelivery Date (if any)
Class 158	9 (3 three car)	192	4	67	0	0	Porterbrook	Expiry Date	N/A
Class 165	40 (20 two car)	159	2	56	0	0	Angel Trains	Expiry Date	N/A
Class 165	48 (16 three car)	259	2	91	0	0	Angel Trains	Expiry Date	N/A
Class 166	63 (21 three car)	244	2	85	0	0	Angel Trains	Expiry Date	N/A
Mk3 Castle Class	27 vehicles (6 four car and 3 spare vehicles)	303	2	106	0	0	Angel Trains /	Expiry Date	N/A
Class 43	12 power cars	-	-	-	-	-	Angel Trains	Expiry Date	N/A
Mk3 Castle Class	21 (5 four car and 1 spare vehicle)	306	2	107	0	0	First Rail Holdings	Expiry Date	N/A
Class 43	12 power cars	-	-	-	-	-	First Rail Holdings	Expiry Date	N/A
Class 43	4 power cars	-	-	-	-	-	First Greater Western	N/A	N/A

Table 1 (Original Rolling Stock) [Note *]									
Column 1	Column 2	Column 3			Column 4		Column 5	Column 6	
Class of vehicle/unit	Number of vehicles in fleet and unit configuration	Standard Class Passenger Carrying Capacity per unit			First Class provision per unit		Owner/Lessor	Lease expiry date(s)	
		Seats	Wheelchair spaces	Standing	Seats	Wheelchair Spaces		Scheduled Lease Expiry Date	Early Redelivery Date (if any)
Mk3 Sleeper Note a Note e	11 vehicles	N/A	0	n/a	0	0	Porterbrook	Expiry Date	N/A
Mk3 Brake Note a	3 vehicles	56	0	n/a	0	0	Porterbrook	Expiry Date	N/A
Mk3 Day Note a	3 vehicles	65	1	n/a	0	0	Porterbrook	Expiry Date	N/A
MK3 Lounge Note b	3 vehicles	N/A	n/a	n/a	0	0	Porterbrook	Expiry Date	N/A
Class 57/3	1 locomotive	-	-	-	-	-	Direct Rail Services	Expiry Date	N/A
Class 57/6	4 locomotives	-	-	-	-	-	Porterbrook	Expiry Date	N/A
Class 08	5 locomotives	-	-	-	-	-	Primary Franchise Asset	N/A	N/A
Class 143 Note d	10 (5 two car)	104	0	36	0	0	Porterbrook	31 December 2020	N/A
Class 143	6 (3 two car)	104	0	36	0	0	Primary Franchise Asset	N/A	N/A

Table 1 (Original Rolling Stock) [Note *]									
Column 1	Column 2	Column 3			Column 4		Column 5	Column 6	
Class of vehicle/unit	Number of vehicles in fleet and unit configuration	Standard Class Passenger Carrying Capacity per unit			First Class provision per unit		Owner/Lessor	Lease expiry date(s)	
		Seats	Wheelchair spaces	Standing	Seats	Wheelchair Spaces		Scheduled Lease Expiry Date	Early Redelivery Date (if any)
Note c									
Note d									

Notes to Table 1:

Table 1 applies subject to the following notes:

- Note *:** The values for the seats, standing and wheelchair spaces are provisional and will be finalised with the Secretary of State within 6 months of the Start Date. This will not result in a Change.
- Note a:** Locomotive hauled coaches used to form Sleeper Services (as defined in Part 1 of Schedule 6.2) comprising 8 to 9 coaches in length.
- Note b:** RFM has occasional seating areas and is designated for use by Sleeper passengers using the sleeper berths.
- Note c:** In relation to Class 143 stock which are Primary Franchise Assets, it is acknowledged that this rolling stock is not to be used in passenger service beyond 31 December 2020 and it is expected that from that date the Franchisee would agree with the Secretary of State terms under which it may cease to be a Primary Franchise Asset and be disposed of, without additional substitute rolling stock being required in line with the provisions of paragraph 10 of Schedule 14.4.
- Note d:** The Class 143 vehicles are not planned to continue in the Train Fleet beyond 31 December 2020. It is acknowledged that the Specified Additional Rolling Stock is planned, amongst other things, as their replacement and accordingly the Franchisee is not required to procure any additional vehicles to replace the Class 143 vehicles.
- Note e:** Excludes the additional two sleeper vehicles leased by the Franchisee from Porterbrook, which do not form part of the Train Fleet.

2. Specified Additional Rolling Stock

Table 2 (Specified Additional Rolling Stock) [Note *]										
Column 1	Column 2	Column 3			Column 4		Column 5	Column 6	Column 7	Column 8
Class of vehicle /unit	Number of vehicles in fleet and unit configuration	Standard Class Passenger Carrying Capacity per unit			First Class provision per unit		Owner/Lessor	Lease start date(s)	Lease expiry date(s)	Identity of any unit in Table 1 (Original Rolling Stock) intended to be replaced by the Specified Additional Rolling Stock and the date of replacement
		Seats	Wheelchair spaces	Standing	Seats	Wheelchair spaces				
Class 769	76 (19 four car)	264	2	276	12	0	Porterbrook	As set out in paragraph 25 of Part 4 of Schedule 6.1	Expiry Date	n/a

Notes to Table 2:

Table 2 applies subject to the following note:

Note *: The values for the seats, standing and wheelchair spaces are provisional and will be finalised with the Secretary of State within 6 months of the Start Date. This will not result in a Change.

3. NOT USED.

Withdrawn

Schedule 1.7

Stations**1. Station Asset Management**

1.1A The Franchisee shall from the Start Date and throughout the Franchise Term maintain the Station Asset Management Plan.

1.1 **NOT USED**

1.2 **NOT USED**

1.3 **NOT USED**

1.4 **NOT USED**

1.5 The Station Asset Management Plan shall:

(a) include the information set out in paragraph 1.6; and

(b) meet the requirements of paragraph 1.7,

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

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

(a) the details of all maintenance, repair and renewal activity undertaken by the Franchisee since the Start Date;

(b) the details of any maintenance, repair and renewal activity which the Franchisee has not completed or not completed within the specified time frame set out in any Station Asset Management Plan together with reasons;

(c) the details of the maintenance, repair and renewal activity undertaken since the Start Date or planned by Network Rail, any Local Authority, any Community Rail Partnership and any other relevant stakeholder, which the Franchisee is aware of;

(d) the assumptions that the Franchisee has made about the current state and future degradation of assets at the Station at the Start Date or, if an asset becomes an asset at the Station on a later date, the assumptions of the Franchisee about the current state and future degradation of each relevant asset on the date that it becomes such an asset at the Station;

(e) the details of under and over provision of assets at the Station at the Start Date given current and projected future customer volumes and reasonable customer demands and planned enhancements or removals to accommodate changing customer volumes and reasonable customer demands;

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

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

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

1.8 Any amendments to the Station Asset Management Plan must be agreed by the Secretary of State (such consent not to be unreasonably withheld or delayed).

1.9 The Franchisee shall ensure that all renewal, enhancement and other building works at Stations are implemented in accordance with the Principles of Inclusive Design.

1.10 **Updating the Station Asset Management Plan**

(a) By the end of the first (1st) Franchisee Year and on each subsequent anniversary of such date the Franchisee shall have reviewed the Station Asset Management Plan and shall submit to the Secretary of State for approval (such approval not to be unreasonably withheld or delayed) a draft updated version of the Station Asset Management Plan.

(b) The updated draft Station Asset Management Plan shall include and reflect the following:

(i) a schedule of any revisions to the current Station Asset Management Plan and a brief summary of the rationale supporting any change for review and approval by the Secretary of State;

(ii) any changed and developing circumstances and the requirements of the Station Asset Management Plan Accreditation;

(iii) where relevant, the outcomes of, and the Franchisee's responses to the stakeholder consultation process described in paragraph 4; and

(iv) the information required in accordance with paragraphs 1.6 and 1.7 of this Schedule 1.7 save that the reference to the "**Start Date**" in paragraph 1.6(a) shall be read as the date on which the Station Asset Management Plan is reviewed and updated by the Franchisee in accordance with this paragraph 1.10 of this Schedule 1.7.

(c) If:

(i) the Secretary of State approves an updated draft Station Asset Management Plan submitted to it pursuant to paragraph 1.10 (a), such document shall become the then current Station Asset Management Plan; or

(ii) the Secretary of State does not approve an updated draft Station Asset Management Plan submitted to it pursuant to paragraph 1.10 (a), then the Franchisee shall make:

(A) such amendments to it as the Secretary of State shall reasonably direct; and

(B) provide such additional information as the Secretary of State may reasonably require.

(d) The Franchisee shall put in place such arrangements as are necessary (to the reasonable satisfaction of the Secretary of State) to ensure that the Station Asset Management Plan is (and continues to be maintained) in a format acceptable to the Secretary of State which is capable of being transferred to

a Successor Operator as part of the Handover Package so that the Successor Operator is able to access, use and amend the Station Asset Management Plan using the same format.

1.11 Station Asset Management Plan Accreditation

- (a) The Franchisee shall:
- (i) NOT USED;
 - (ii) NOT USED; and
 - (iii) maintain from the Start Date and throughout the Franchise Term the Station Asset Management Plan Accreditation obtained by it during the franchise term of the Previous Franchise Agreement (it being acknowledged that the Franchisee shall be entitled to procure the renewal of such Station Asset Management Plan Accreditation on one or more occasions during the Franchise Term provided that: (A) there is no gap in accreditation coverage as a result of any such renewal; and (B) promptly upon receipt by the Franchisee, the Franchisee shall provide to the Secretary of State the Station Asset Management Plan Accreditation Certificate associated with any such renewal of the then-current Station Asset Management Plan Accreditation).
- (b) If the Station Asset Management Plan Accreditation is at any time lost or the Franchisee fails to secure such then the Franchisee shall report that fact to the Secretary of State as soon as reasonably practicable and in any event within ten (10) Weekdays of the Franchisee becoming aware of such fact.
- (c) From the date upon which the Franchisee notified the Secretary of State pursuant to paragraph 1.11(b) (or should have notified the Secretary of State having complied with the provisions of this Agreement), the Franchisee shall:
- (i) re-secure such accreditation as soon as reasonably practicable and in any case within three (3) months; and
 - (ii) report to the Secretary of State every Reporting Period on the measures it is proposing to take, and is taking, to achieve such restoration of the Station Asset Management Plan Accreditation.
- (d) Where the Franchisee fails to secure the Station Asset Management Plan Accreditation pursuant to paragraph 1.11(c) within three (3) months of the date of such accreditation being lost or failed to be secured (as the case may be) such failure shall constitute a contravention of the Franchise Agreement and the Secretary of State may issue a Remedial Plan Notice pursuant to Schedule 10.1 (*Procedure for remedying a Contravention of the Franchise Agreement*) and the provisions of Schedule 10 (*Remedies, Events of Default and Termination Events*) shall apply.

2. NOT USED

3. Station Social and Commercial Development Plan

- 3.1 The Franchisee shall implement, resource and comply with the Station Social and Commercial Development Plan as it may be amended in accordance with this paragraph 3.
- 3.2 Any amendments to the Station Social and Commercial Development Plan must be agreed by the Secretary of State in accordance with this paragraph 3.
- 3.3 The Franchisee shall revise the Station Social and Commercial Development Plan by no later than the end of the first Franchisee Year (and on each subsequent anniversary of this date) and shall submit it to the Secretary of State for review and approval. The Franchisee shall ensure that each revised Station Social and Commercial Development Plan submitted to the Secretary of State shall comply with the following minimum requirements:
- (a) identify schemes to develop currently redundant or under-utilised station buildings and facilities for use by community groups and social enterprise organisation or for commercial development including schemes which sustain and enhance the viability of existing facilities at Stations or lead to the development of new facilities including through appropriate sub leasing of station buildings;
 - (b) appropriately reflect changed and developing circumstances to the extent relevant and appropriate
 - (c) appropriately reflect the outcome of the consultation which it is required to carry out pursuant to paragraph 4 below in relation to concerns, issues, opportunities and risks relating to the Stations and priorities for investment;
 - (d) effectively evaluate, prioritise and develop such schemes taking account of customer and community views expressed in the consultation carried out by the Franchisee;
 - (e) provide for the implementation of schemes specified pursuant to paragraph 3.3(a) above in accordance with a plan which allocates a priority between such schemes by reference to specified criteria and includes planned timescales for the delivery of relevant outputs; and
 - (f) be for a period of ten (10) years on the basis that it shall continue to be reviewed on a rolling annual basis.
- 3.4 Each updated version of the Station Social and Commercial Development Plan shall incorporate a schedule of revisions to the Station Social and Commercial Development Plan compared to the previous version and a brief summary of the rationale supporting each such revision.
- 3.5 The Franchisee shall ensure that the Station Social and Commercial Development Plan shall be updated so that following each update it continues to cover at least a period of ten (10) years from the date of the update.

- 3.6 If:
- (a) the Secretary of State approves an updated draft Station Social and Commercial Development Plan submitted to it pursuant to paragraph 3.3, such document shall become the then current Station Social and Commercial Development Plan; or
 - (b) the Secretary of State does not approve an updated draft Station Social and Commercial Development Plan submitted to it pursuant to paragraph 3.3, then the Franchisee shall:
 - (i) make such amendments to it as the Secretary of State shall reasonably direct; and
 - (ii) provide such additional information as the Secretary of State may reasonably require,

it being agreed that it will be unreasonable for the Secretary of State to make amendments that increase cost and risk to the Franchisee beyond parameters specified in the Record of Assumptions.

4. **Consultations**

- 4.1 On or before the annual submission of the Station Asset Management Plan or the Station Social and Commercial Development Plan pursuant to the provisions of this Schedule 1.7, the Franchisee shall conduct consultations with relevant Stakeholders (including ACoRP, passengers, users of Stations, 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 Franchisee shall act reasonably in determining the scope of the specification of such consultations including the Stations to be considered.

5. **NOT USED.**

6. **Security at Stations**

- 6.1 The Franchisee shall maintain for the duration of the Franchise Period the Secure Stations Accreditation for the Stations already achieved by the Train Operator under the Previous Franchise Agreement as set out in Appendix 1 to this Schedule 1.7.
- 6.2 The Franchisee shall maintain for the duration of the Franchise Period the Park Mark scheme for the Stations already achieved by the Train Operator under the Previous Franchise Agreement as set out in Appendix 1 to this Schedule 1.7.
- 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 Franchisee 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 Franchisee 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 Franchisee 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) **"BTP Methodology"** means the document in the agreed terms marked **BTP**;
- (b) **"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;
- (c) **"Secure Stations Accreditation"** means Stations which have achieved accreditation under the Secure Stations Scheme;
- (d) **"Secure Stations Scheme"** means the certification scheme which is managed by the Department for Transport and British Transport Police and sets station design and management safety standards for crime reduction at railway stations; and
- (e) **"TRH Score"** means the threat, risk harm score for each Station calculated by the British Transport Police in accordance with the BTP Methodology at railway stations.

7. **Information about Station Improvement Measures**

- 7.1 The Franchisee shall at all times during the Franchise Period maintain records in relation to the measures taken by it to improve the Station environment at each of the Stations.
- 7.2 **NOT USED.**

- 7.3 When so requested by the Secretary of State (acting reasonably), the Franchisee shall, within such reasonable period as the Secretary of State may specify, make such information available for review by the Secretary of State by reference to:
- (a) such level of disaggregation as is reasonably specified by the Secretary of State; and
 - (b) any particular Station as is reasonably specified by the Secretary of State.
- 7.4 **NOT USED.**
8. **NOT USED.**
9. **Station Investment**
- 9.1 The Franchisee shall at all times during the Franchise Term, co-operate with the Secretary of State and any third party nominated by the Secretary of State and notified to the Franchisee in developing opportunities for financing investment at Stations and Franchisee Access Stations in order to improve the station environment at such stations.
- 9.2 In co-operating with the Secretary of State and/or any nominated third party in developing any such financing opportunities, the Franchisee shall:
- (a) attend meetings with the Secretary of State and/or such third party to discuss such opportunities;
 - (b) provide the Franchisee's opinion on those opportunities;
 - (c) review and comment on implementation timetables and programmes for any such opportunities; and
 - (d) where requested by the Secretary of State to do so use all reasonable endeavours to engage with Network Rail for the purposes of ascertaining the feasibility and costs of making amendments to any Station Leases in order to facilitate the implementation of those opportunities.
10. **Station Toilet Access**
- 10.1 The Franchisee shall ensure that access to toilet facilities at all Stations is provided free of charge.

APPENDIX 1 TO SCHEDULE 1.7

List of Stations and Car Parks with accreditation

1. Stations

Aldermaston
Appleford
Ascott-Under-Wychwood
Ashchurch
Avoncliff
Avonmouth
Barnstaple
Bath Spa
Bedwyn
Bere Alston
Bere Ferrers
Betchworth
Blackwater
Bodmin Parkway
Bourne End
Bradford-on-Avon
Bridgwater
Bristol Parkway
Bugle
Calstock
Cam & Dursley
Camborne
Carbis Bay
Castle Bar Park
Causeland
Chapelton
Charlbury
Cheltenham Spa
Chetnole
Chilworth
Chippenham
Cholsey
Clifton Down
Combe
Combe Down
Cookham
Coombe Junction Halt
Coplestone

Crediton
Crowthorne
Culham
Dawlish
Dawlish Warren
Dean
Devonport (Dockyard)
Didcot Parkway
Digby & Sowton
Dilton Marsh
Dorchester West
Dorking Deepdene
Dorking West
Drayton Green
Eggesford
Evesham
Exeter Central
Exeter St David's
Exmouth
Exton
Falmouth Docks
Falmouth Town
Farnborough North
Filton Abbey Wood
Finstock
Freshford
Frome
Furze Platt
Gloucester
Gomshall
Goring & Streatley
Gunnislake
Hanborough
Hayle
Henley-on-Thames
Heyford
Highbridge & Burnham
Honeybourne
Hungerford
Ivybridge
Kemble
Keyham
Keynsham

Withdrawn

Kingham
King's Nympton
Kintbury
Lapford
Lawrence Hill
Lelant
Lelant Saltings
Liskeard
Looe
Lostwithiel
Luxulyan
Lympstone Commando
Lympstone Village
Maiden Newton
Maidenhead
Marlow
Melksham
Menheniot
Midgham
Morchard Road
Moreton In Marsh
Mortimer
Mottisfont and Dunbridge
Nailsea & Backwell
Newbury
Newbury
Newbury Racecourse
Newquay
Newton Abbot
Newton St Cyres
North Camp
Oldfield Park
Oxford
Paignton
Pangbourne
Par
Patchway
Penmere
Penryn
Penzance
Perranwell
Persore
Pewsey

Plymouth
Portsmouth Arms
Quintrell Downs
Radley
Redruth
Roche
Saltash
Sandhurst
Sandplace
Sea Mills
Severn Bridge
Severn Beach
Shalford
Shiplake
Shipton
Shirehampton
Slough
South Greenford
St Andrews Road
St Austell
St Budeaux Ferry Road
St Budeaux Victoria Road
St Columb Road
St Erth
St Germans
St Ives
St Keyne Wishing Well Halt
Starcross
Stone House
Stroud
Swindon
Tackley
Taunton
Teignmouth
Thatcham
Theale
Thornford
Tilehurst
Tiverton Parkway
Topsham
Torquay
Torre
Totnes

Trowbridge
Truro
Twyford
Umberleigh
Wargrave
Warminster
Westbury
Weston Milton
Weston-super-Mare
Windsor & Eton Central
Worle
Yate
Yatton
Yeoford
Yeovil Pen Mill
Yetminster

2. Car Parks

Aldermaston
Barnstaple
Bath Spa
Bedwyn
Bodmin Parkway
Bourne End
Bridgwater
Bristol Parkway
Castle Cary
Charlbury
Chippenham CP1
Chippenham CP2
Chippenham CP3
Cholsey
Clifton Down
Cookham
Crowthorne
Culham
Dawlish
Didcot East Park
Didcot Foxhall
Didcot West
Evesham
Exeter Central

Exeter St D Main
Exeter St D O'flow
Exeter St D Wards Yd
Exmouth
Frome
Gloucester
Gomshall
Goring & Streatley
Hanborough - Main
Hanborough - Overflow
Henley-on-Thames
Heyford
Hungerford
Kemble
Keynsham
Kingham
Kintbury
Liskeard
Looe
M'head Forecourt
M'head Station Forecourt (not Silco
Drive, Shop Rd)
Moreton in Marsh
Mortimer
Newbury
Newquay
Newton Abbot
North Camp
Oxford
Pangbourne
Penzance
Pewsey
Plymouth
Radley
Redruth
Romsey
Shalford
Shiplake
Slough East
Slough North
Slough West
Slough West App
St Austell
St Erth

Stonehouse
Stroud CP1
Stroud CP2
Swindon East CP
Swindon Main CP
Swindon West CP
Taunton
Teignmouth
Thatcham
Theale
Tilehurst
Tiverton Parkway
Tiverton Overflow
Torquay
Totnes
Trowbridge
Twyford main,
Twyford Permit Holders Only
Wargrave
Warminster
Westbury
Weston-Super-Mare
Yate
Yatton

Withdrawn

APPENDIX 2 TO SCHEDULE 1.7

NOT USED

Withdrawn

APPENDIX 3 TO SCHEDULE 1.7

NOT USED

Withdrawn

APPENDIX 4 TO SCHEDULE 1.7

NOT USED

Withdrawn

SCHEDULE 2

ASSETS, LEASES, OTHER FRANCHISEES 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

Withdrawn

Schedule 2.1

Asset Vesting and Transfer1. **NOT USED**2. **Vesting of Property Leases during the Franchise Term**

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

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

2.2 In respect of the new Property Leases specified in paragraph 2.3 or any other new Property Lease with Network Rail, the Franchisee shall enter into such Property Leases:

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

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

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

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

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

- 2.4 The Franchisee shall not be in contravention of paragraph 2.3 if and to the extent that Network Rail refuses to enter into any leases specified therein.
- 2.5 In respect of any assignment or amendment of any Property Lease to which section 31 of the Act applied on its grant, each of the Secretary of State and the Franchisee acknowledges that it is their intention that section 31 of the Act shall continue to apply to such assigned or amended lease.
- 2.6 The Franchisee 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.

Withdrawn

Schedule 2.2

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

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

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

novate its interest under any such relevant Access Agreement (and any related Network Rail 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 Network Rail Collateral Agreement and, to the extent applicable, the ORR.

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

- (a) that the Franchisee shall not be released from any accrued but unperformed obligation, the consequences of any breach of the relevant agreement which is the subject of arbitration or litigation between the Parties thereto or any liability in respect of any act or omission under or in relation to the relevant agreement prior to, or as at the date of, any such novation (except to the extent that the Secretary of State or 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 Franchisee otherwise agrees, be on terms which release any counterparty to the relevant agreement from any liability to the Franchisee arising prior to the date of such novation.

1.4 The Franchisee shall, on the occurrence of any of the circumstances specified in paragraph 1.1 in relation to any other Train Operator who is a party to an Access Agreement to which the Franchisee is also party, agree to the novation of the relevant Train Operator's interest under the relevant Access Agreement to the Secretary of State or as 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 Franchisee shall notify the Secretary of State on becoming aware of any circumstances which might lead to the Secretary of State being able to require the Franchisee to novate its interest or agree to the novation of another Train Operator's interest under this paragraph 1.

2. **Rolling Stock Related Contracts and Insurance Arrangements**

- 2.1 The Franchisee shall not:

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

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

- 2.2 The Franchisee 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 Franchisee (or an Affiliate of the Franchisee) 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 Franchisee's proposed maintenance strategy for the relevant rolling stock and/or the Franchisee's analysis of the whole life costs of the relevant rolling stock.

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

- 2.4 The Franchisee shall not, without the prior written consent of the Secretary of State:
- (a) amend the terms of any insurance arrangements which relate to rolling stock vehicles used by it in the provision of the Passenger Services to which it is a party on the Start Date; or
 - (b) enter into any new insurance arrangements after the Start Date which relate to rolling stock vehicles used or to be used by it in the provision of the Passenger Services ("**New Insurance Arrangements**").

2.5 The Franchisee shall, in addition, if it enters into any New Insurance Arrangements, use all reasonable endeavours to ensure that the relevant insurers waive their rights of subrogation against any Train Operator which may have equivalent insurance arrangements providing for a similar waiver of rights of subrogation against the Franchisee, whether on a reciprocal basis or otherwise.

3A **Train Maintenance**

3A.1 The Franchisee shall procure that heavy maintenance of Train Fleet is undertaken in accordance with the standard expected of a competent, skilled and experienced train operator.

3A.2 The Franchisee 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 Franchisee including the reduction of any lease payments for the relevant Rolling Stock (such approval not to be unreasonably withheld or delayed).

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

3.1 For the purpose of this paragraph 3:

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

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

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

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

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

- (a) as a condition of giving the Secretary of State's consent to the Franchisee executing such Rolling Stock Lease, require that such Rolling Stock Lease

- contains a provision whereby, in the event of a Relevant Delay, the Secretary of State may require that such Cascaded Rolling Stock can continue to be used by the Prior Train Operator during such period as the Secretary of State shall specify. Without limitation this may include the Franchisee subleasing the Cascaded Rolling Stock back to the Prior Train Operator and/or a delay to the date on which the Cascaded Rolling Stock is required to be delivered to the Franchisee under such Rolling Stock Lease; and
- (b) where the Secretary of State requires such a provision to be included in the relevant Rolling Stock Lease, if a Relevant Delay occurs, require the Franchisee to make the Cascaded Rolling Stock available for use by the Prior Train Operator during such period as the Secretary of State may require.
- 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 there shall be a Change and where this is a Qualifying Change, it shall be assumed that the period that the Prior Train Operator retains any Cascaded Rolling Stock shall not exceed ninety (90) days and the only Revised Inputs shall be in relation to the difference between each of the rolling stock lease costs and variable track usage charge for the Cascaded Rolling Stock and the rolling stock lease costs and variable track usage charge applicable in relation to whatever rolling stock is to be used by the Franchisee in place of the Cascaded Rolling Stock.
- 3.4 Where there is a Change pursuant to paragraph 3.3 and the period that the Prior Train Operator retains any Cascaded Rolling Stock is more than ninety (90) days there shall be a further Change. Where such Change is a Qualifying Change the modifications to the methodology for calculating Revised Inputs provided for in paragraph 3.2(a) shall not apply.
- 3.5 Where there is a Change pursuant to paragraphs 3.3 or 3.4 and any such Change is a Qualifying Change there shall be a further Change (which shall be a Qualifying Change irrespective of whether such Change meets the requirements of the definition of Qualifying Change) on the date that the last Cascaded Rolling Stock ceases to be retained by the Prior Train Operator.
- 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 Franchisee to make the Cascaded Rolling Stock available for use by the Prior Train Operator during a specified period, the Franchisee shall not be liable for any failure to comply with its obligations under the Franchise Agreement to the extent that:
- (a) such failure to comply arises directly as a result of the Franchisee being unable to use the Cascaded Rolling Stock; and
- (b) the Franchisee uses all reasonable endeavours to comply with the relevant obligations notwithstanding the unavailability of the Cascaded Rolling Stock.
- 3.8 The Franchisee shall notify the Secretary of State as soon as reasonably practicable if it becomes aware of any material risk that a Relevant Delay will occur. If a Relevant Delay does occur the Franchisee shall use all reasonable endeavours to mitigate the impact on the delivery of the Franchise Services of the unavailability

of the Cascaded Rolling Stock at the expected time including by identifying and proposing value for money alternative sources of replacement rolling stock.

- 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 Franchisee requiring it to produce a plan to a reasonable specification provided with the notice to remedy or mitigate the impact of the delayed availability of the Cascaded Rolling Stock ("**Delayed Cascade Mitigation Plan**"). Such specification may include measures to be implemented by the Franchisee to mitigate the direct or indirect impact of the Relevant Delay on the Prior Train Operator or any other affected Train Operator. The Delayed Cascade Mitigation Plan shall provide a comprehensive analysis backed by relevant data and assumptions of:
- (a) all cost and revenue and other financial implications of options contained within it including the potential implications for Franchise Payments;
 - (b) the implications (if any) for the Benchmarks; and
 - (c) the likely impact of options within it for existing and future passenger journeys and journey opportunities.
- 3.10 The Franchisee shall meet with the Secretary of State to discuss the Delayed Cascade Mitigation Plan and provide such further information or analysis and further iterations of the Delayed Cascade Mitigation Plan as the Secretary of State shall reasonably require.
- 3.11 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 Franchisee 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 Franchise Term**

- 4.1 The Franchisee shall (other than on termination of the Franchise Agreement, for which the provisions of paragraph 4.5 of Schedule 15.4 (Provisions applying on and after Termination) shall apply) following receipt of a notice purporting to terminate a Property Lease or on becoming aware of any proceedings or any other steps having or purporting to have similar effect, if requested by the Secretary of State, assign its interest under all or any Property Leases to the Secretary of State or as 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 Franchisee shall not be released from any accrued but unperformed obligation, the consequences of any antecedent breach of a covenant or obligation in the Property Leases or any liability in respect of any act or omission under or in relation to the Property Lease prior to, or as at the date of, any such assignment (except to the extent that the Secretary of State or the Secretary of State's 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 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 contravention referred to in paragraph 4.2(a), and the Franchisee shall indemnify the Secretary of State or the Secretary of State's 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 Franchisee 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 Franchisee is also party, agree to the assignment of such Train Operator's interest under the relevant Property Lease to the Secretary of State or as 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 Franchisee shall notify the Secretary of State on becoming aware of any circumstances which might lead to the Secretary of State being able to require the Franchisee to assign its interest or agree to the assignment of another Train Operator's interest under this paragraph 4.

5. **Station and Depot Leases**

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

- (c) sublet the whole or substantially the whole of the property comprised in any Station Lease or Depot Lease,

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

6. Station Subleases

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

- (a) (other than any subletting to an Affiliate which is a Train Operator) is terminable without compensation immediately upon the termination of the Franchise Agreement; and
- (b) is excluded from the provisions of Part II of the Landlord and Tenant Act 1954 and the Tenancy of Shops (Scotland) Act 1949.

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

- (a) extend each Station Sublease on the same terms for such period as the Secretary of State may request (including a period equivalent to the franchise term of the Train Operator who is the lessee under such Station Sublease); and
- (b) if such Station Sublease terminates (which for the purposes of this paragraph 6.2(b) shall include the termination, at or around the time of termination of the Previous Franchise Agreement, of a station sublease in respect of which the Franchisee was the lessor), grant a new Station Sublease on the same terms to such Train Operator and for such period as the Secretary of State may request (including a period equivalent to the franchise term of the Train Operator who is the lessee under such Station Sublease),

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

- 6.3 The Franchisee shall notify the Secretary of State immediately on it becoming aware of any event which might give the Franchisee a right to forfeit or terminate any Station Sublease. The Franchisee shall notify the Secretary of State if it wishes to forfeit or terminate any such Station Sublease but shall not (without the Secretary of State's prior written consent) effect such forfeiture or termination until the date which occurs three (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 Franchisee shall co-operate with any reasonable request of the Secretary of State to ensure:
- (a) that the services provided or operated by such other franchisee may continue to be provided or operated by any successor Train Operator or the railway administrator; and
 - (b) that the benefit of any arrangements between the Franchisee and such other franchisee which were designated as a key contract under such franchise agreement immediately prior to its termination or to a railway administration order being made will continue to be provided to any successor Train Operator or to the railway administrator.
- 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 Franchisee shall notify the Secretary of State of its intention to terminate any contract with any other Train Operator which is designated as a Key Contract under that Train Operator's franchise agreement and shall give that Train Operator sufficient notice to enable it to make suitable alternative arrangements for its passengers without causing disruption to the railway passenger services provided by such Train Operator.
- 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 Franchisee shall waive any event of default or other right it may have to terminate any agreement with such franchisee arising out of such termination, provided that the entry into or entry into effect of such new franchise agreement takes place.
- 1.5 References in this paragraph 1 to **"a franchisee"** include references to any franchise operator of that franchisee.

Schedule 2.4

NOT USED

Withdrawn

Schedule 2.5

Transport, Travel and Other Schemes**1. Local Authority Concessionary Travel Schemes**

1.1 The Franchisee shall:

- (a) subject to paragraph 1.2, 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 Franchisee is required to participate in during the Franchise Term pursuant to paragraph 1.1(b); and
- (b) subject to paragraph 1.3, if so requested by the Secretary of State, participate in and comply with its prospective obligations under:
 - (i) any concessionary travel scheme listed in the Franchise Agreement the terms of which have been amended since the date of the Franchise Agreement; and
 - (ii) such other concessionary travel schemes as any relevant Local Authority may require or request it to participate in.

1.2 Subject to the terms of the relevant concessionary travel scheme, the Franchisee shall be entitled to cease to participate in any scheme referred to in paragraph 1.1(a) where, in the reasonable opinion of the Secretary of State:

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

each pursuant to Part II of the Travel Concession Schemes Regulations 1986 (SI 1986/77) (the "**Regulations**"), would fail to leave the Franchisee financially no worse off (following consideration of the application of the reimbursement test in paragraph 5(2) of the Regulations) than it was immediately following the Start Date.

1.3 The Secretary of State shall not require the Franchisee to participate in any scheme referred to in paragraph 1.1(b) where the Secretary of State is reasonably satisfied that:

- (a) the reimbursement arrangements with respect to the Franchisee's participation in any such scheme; and/or
- (b) the obligations to be assumed by such Local Authority in connection therewith,

each pursuant to the Regulations would fail to leave the Franchisee financially no worse off (following consideration of the application of the reimbursement test in paragraph 5(2) of the Regulations) as a result of such participation.

- 1.4 The Secretary of State shall consult the Franchisee before making any request of the Franchisee to participate in any amended or new concessionary travel scheme pursuant to paragraph 1.1(b) and shall allow the Franchisee a reasonable opportunity to make representations to the Secretary of State with respect to any such participation.
- 1.5 The Franchisee 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 for the purposes of determining whether or not the Franchisee is or will be financially no worse off (following consideration of the application of the reimbursement test in paragraph 5(2) of the Regulations) as a consequence of its participation in any such scheme, and/or the obligations assumed by such Local Authority in connection therewith.
- 1.6 If the Secretary of State and the Franchisee are unable to agree whether the Franchisee will be financially no worse off (following consideration of the application of the reimbursement test in paragraph 5(2) of the Regulations), the Secretary of State and the Franchisee may resolve such dispute in accordance with the Dispute Resolution Rules.

2. Multi-modal Fares Schemes

2.1 The Franchisee shall:

- (a) subject to paragraph 2.2, 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 Franchisee is required to participate in during the Franchise Term pursuant to paragraph 2.1(b); and
- (b) subject to paragraph 2.3, if so requested by the Secretary of State, participate in and comply with its prospective obligations under:
- (i) any 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 Agreement; and
 - (ii) such other multi-modal fares schemes as any relevant Local Authority may require or request it to participate in.

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

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

- would fail, by way of distribution of income or otherwise, to render the Franchisee financially no worse off.
- 2.3 The Secretary of State shall not require the Franchisee to participate in any scheme referred to in paragraph 2.1(b) where the Secretary of State is reasonably satisfied that the Franchisee's participation in any such scheme and/or the obligations to be assumed by the relevant Local Authority in connection therewith, would fail, by way of distribution of income or otherwise, to render the Franchisee financially no worse off.
- 2.4 In determining whether the Franchisee shall, pursuant to paragraph 2.2, continue to participate or, pursuant to paragraph 2.3, participate in any multi-modal fares scheme, the Secretary of State shall construe the term "**financially no worse off**" to mean:
- (a) in respect of 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, that the Franchisee incurs no greater financial loss than the financial loss (if any) incurred by the Franchisee at the Start Date under that scheme, as adjusted by reference to any change in the level of prices according to the Retail Prices Index since such date;
 - (b) in respect of any multi-modal fares scheme which replaces and (in the Secretary of State's reasonable opinion) is reasonably similar to any such scheme as may be set out in paragraph 2 of Appendix 1 (List of Transport, Travel and Other Schemes) to this Schedule 2.5, that the Franchisee incurs no greater financial loss than the financial loss (if any) incurred by the Franchisee at the Start Date under the replaced scheme, as adjusted by reference to any change in the level of prices according to the Retail Prices Index since such date; and
 - (c) in respect of any multi-modal fares scheme which does not replace or which does replace but which is not (in the Secretary of State's reasonable opinion) reasonably similar to any such scheme or schemes as may be set out in paragraph 2 of Appendix 1 (List of Transport, Travel and Other Schemes) to this Schedule 2.5, such reimbursement arrangements as agreed by the relevant parties to such multi-modal fares schemes (or on failure to agree, as determined by the Secretary of State).
- 2.5 The Secretary of State shall consult the Franchisee before making any request of the Franchisee to participate in any amended or new multi-modal fares scheme pursuant to paragraph 2.1(b) and shall allow the Franchisee a reasonable opportunity to make representations to it with respect to any such participation.
- 2.6 The Franchisee 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 for the purposes of determining whether or not the Franchisee is or will be financially no worse off as a consequence of its participation in any such scheme and/or the obligations to be assumed by the relevant Local Authority in connection therewith.
- 2.7 If the Secretary of State and the Franchisee are unable to agree whether the Franchisee will be financially no worse off, the Secretary of State and the Franchisee may resolve such dispute in accordance with the Dispute Resolution Rules.

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,

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

3.2 The Secretary of State shall provide a reasonable opportunity to the Franchisee to make representations to the Secretary of State before amending, introducing or ceasing to approve a Discount Fare Scheme pursuant to paragraph 3.1.

3.3 The Franchisee 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 Franchisee 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 Franchisee agrees to be bound by Parts IV and V of Chapter 4 of the Ticketing and Settlement Agreement and shall not amend, or agree or propose to amend, the Ticketing and Settlement Agreement without the prior written consent of the Secretary of State.

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

4.4 The Franchisee shall:

- (a) provide reasonable notice to the Secretary of State of any proposal to amend any Inter-Operator Scheme which it intends to make or of which it receives notification and which, in its opinion, is reasonably likely to materially affect the provision of the Franchise 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 treated as a Change to the extent and only to the extent that the Franchisee makes a saving as a consequence of such amendment or proposed amendment.

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) London Concessionary Fare schemes; and
- (b) Welsh Government Concessionary Travel Pass.

1.2 Any other concessionary travel scheme which the Franchisee is required to participate in during the Franchise 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) Cotswolds Discoverer Fares;
- (b) Freedom Travelpass (Bristol, Bath, North Somerset and South Gloucestershire);
- (c) Great West Way Discoverer Fares;
- (d) Isles of Scilly Packaged Fares;
- (e) Ride Cornwall Fares;
- (f) Slough Post 16 Travel (but only in respect of tickets sold before December 2019 until such tickets expire in accordance with their terms);
- (g) Explore Wales;
- (h) First Bus & Rail Card;
- (i) London Travel Card add-on;
- (j) Rail Sail Fares; and
- (k) Plus Bus add-on.

2.2 Any other multi-modal fares travel scheme which the Franchisee is required to participate in during the Franchise 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) 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 Franchisee 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) the Pay As You Go Agreement;
- (h) the CPAY Agreement;
- (i) any other scheme, agreement and/or contract of a similar or equivalent nature as may from time to time during the Franchise Period amend, replace or substitute, in whole or in part, any of such schemes, agreements and/or contracts;
- (j) any Discount Fare Scheme; and
- (k) the 16-17 Saver railcard scheme introduced for use with effect from 2 September 2019 between the participants named therein.

SCHEDULE 3

NOT USED

Withdrawn

SCHEDULE 4
ACCESSIBILITY AND INCLUSIVITY

Schedule 4:	Accessibility and Inclusivity
	Appendix 1: NOT USED
	Appendix 2: Accessible Transport Arrangements

Withdrawn

Schedule 4

Accessibility and Inclusivity

1. **Relationship with other obligations relating to persons with disabilities**
 - 1.1 The Franchisee acknowledges that its obligations in this Schedule 4 are in addition to and do not limit its obligations to comply with:
 - (a) the EA and any regulations imposed by it;
 - (b) any applicable condition(s) in any of its Licences (including in respect of persons with disabilities); and
 - (c) any other requirements of the Franchise Agreement.
 - 1.2 This Schedule 4 sets out:
 - (a) specific arrangements which apply in respect of physical alterations to stations to facilitate accessibility and use by Disabled Persons; and
 - (b) specific obligations of the Franchisee directed at meeting the needs of persons with disabilities.
 - 1.3
 - (a) Subject to (b) below it is acknowledged that the Franchisee is subject to obligations regarding accessibility under the terms of its Licences (including under the form of its Accessible Travel Policy as from time to time approved by the ORR in connection with the requirements of its Licences) (the "Licence Obligations"). Where any matter included in this Schedule 4 is the subject of a Licence Obligation, it is agreed that compliance with the Licence Obligation shall take precedence over this Schedule 4 such that compliance with the Licence Obligation shall be deemed to fulfil the obligation of the Franchisee in respect of that matter under Schedule 4 and any failure by the Franchisee in respect of that matter shall be addressed under the Licence Obligation and not under this Franchise Agreement provided that this.
 - (b) 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 In respect of physical alteration works at stations to facilitate accessibility and use by Disabled Persons, it is acknowledged by the Franchisee that:
 - (a) there is limited funding available to the Secretary of State to assist franchisees and/or franchise operators with the carrying out of those works;
 - (b) consequently, there is a need for such works to be carried out over a period of time to reflect the availability of funding, and for such works to be prioritised with regard to where there is the greatest need and/or where physical alterations can have the greatest effect; and

- (c) the Secretary of State's national programme of works of physical alterations at stations addresses these issues in a structured way.

2.2 The Franchisee shall:

- (a) co-operate reasonably with and assist the Secretary of State in the development and furtherance by the Secretary of State of the programme described in paragraph 2.1(c) by providing to the Secretary of State:
 - (i) information concerning the usage of Stations (including, where and to the extent reasonably practicable, usage of Stations by Disabled Persons); and
 - (ii) advice as to the most economical way in which accessibility for Disabled Persons could, in the Franchisee's reasonable opinion, be improved at Stations;
- (b) co-operate reasonably with other Train Operators and/or Network Rail to seek to ensure that, where it would be advantageous to do so, having regard to the needs of Disabled Persons, any planned work on the Stations to facilitate accessibility and use by Disabled Persons is, so far as reasonably practicable, co-ordinated with other work to be carried out at the Stations and/or other parts of the network; and
- (c) use all reasonable endeavours to secure sources of grant funding (other than from itself or an Affiliate) for improving accessibility for Disabled Persons at Stations (in addition to any funding secured through the Secretary of State pursuant to paragraph 2.5), including from Local Authorities, local development agencies and the National Lottery Commission. The Franchisee shall notify the Secretary of State of:
 - (i) any such additional funding which it secures; and
 - (ii) the terms on which such additional funding has been granted.

2.3 In participating in any multi-modal fares scheme, the Franchisee shall use all reasonable endeavours to secure, through the planning and development of such scheme, improvements in disabled access to the entrances of any relevant station, including within and in the immediate proximity of such station.

2.4 If, during the Franchise Term:

- (a) the Franchisee has complied with its obligations in section 20(4) and section 20(9), as varied by paragraph 2(3) of Schedule 2 of the EA (to take such steps as are reasonable to provide a reasonable alternative method of making services at a Station accessible to a Disabled Person to avoid a Disabled Person being placed at a substantial disadvantage by a physical feature at a Station) and its obligations in paragraph 23 (*Station Improvement Fund*) of Part 3 of Schedule 6.1; and
- (b) notwithstanding such compliance, the Franchisee reasonably considers it is still required to carry out or procure physical works of alteration at a Station in order to comply with the EA Requirements in respect of that Station, and, in so carrying out or procuring, would incur expenditure which it would not otherwise have an obligation to incur,

the Franchisee may seek funding from the Secretary of State in respect of that expenditure.

2.5 If the Franchisee seeks funding from the Secretary of State under paragraph 2.4, and demonstrates to the Secretary of State's satisfaction that the criteria in paragraph 2.4 have been satisfied, then the Secretary of State may agree to adjust the amount of Franchise Payments in respect of some or all of the works and/or expenditure. In considering the Secretary of State's response to any such request, the Secretary of State shall have regard to the availability of funding and the priorities set out in the national programme described in paragraph 2.1(c), together with any other available sources of funding described in paragraph 2.2(c). If and to the extent the Secretary of State agrees to adjust Franchise Payments in accordance with this paragraph 2.5 in any Franchisee Year:

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

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

- (a) notifies the Secretary of State within seven (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 reasonable directions regarding the exercise of any rights the Franchisee may have in respect thereof,

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

2.7 The Franchisee shall as soon as reasonably practicable (and in any event within four (4) months) after the Start Date (and thereafter before the start of each further Franchisee Year):

- (a) develop a programme of work to improve the accessibility of Stations for those with additional accessibility requirements and consult with the relevant Accessibility Panel and relevant Passengers' Council in relation thereto;
- (b) implement or procure the implementation of the programme of work referred to at paragraph 2.7(a) in each relevant Franchisee Year with the intention that relevant works shall be delivered as SIF Accessibility Improvement Schemes funded by the full expenditure of the relevant SIF Accessibility Improvements Amount pursuant to the provisions of paragraph 23 of Part 3 of Schedule 6.1 (Franchise Specific Obligations).

- (c) report progress to the Secretary of State in determining and carrying out the programme of work relating to accessibility improvements no less than once every three (3) Reporting Periods; and
- (d) fully and effectively co-operate, as the Secretary of State may reasonably require, with Network Rail or any other person seeking to carry out or procure accessibility requirements at the Stations or any other stations.

3A. **NOT USED**

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

- 3.1 If the Franchisee receives notification of a claim under the EA in respect of any alleged non-compliance with the EA Requirements or otherwise in respect of any Station (an "**EA Claim**") then the Franchisee shall:
- (a) notify the Secretary of State within seven (7) days of receiving notification of the EA Claim. The Franchisee shall at the same time notify the Secretary of State of any reasonable alternative methods of making services at the Station accessible to Disabled Persons that it has considered and/or put in place pursuant to section 20(4) and section 20(9), as varied by paragraph 2(3) of Schedule 2 of the EA;
 - (b) if required by the Secretary of State, defend the EA Claim or any aspect of the EA Claim (which may include appealing the judgment). The Secretary of State shall, subject to paragraph 3.4, pay the Franchisee's reasonable costs of:
 - (i) any defence or appeal required by the Secretary of State; and/or
 - (ii) compliance with the Secretary of State's instructions in accordance with paragraph 3.1(c); and
 - (c) act in accordance with the reasonable instructions of the Secretary of State to defend the EA Claim (or any aspect of it) as required under paragraph 3.1(b) and shall not (without the prior consent of the Secretary of State) settle or enter into any compromise in relation to the EA Claim (or the relevant aspect of it), including by entering into mediation.
- 3.2 If, in the reasonable opinion of the Franchisee, it will be more cost effective to settle the EA Claim rather than act in accordance with the Secretary of State's requirement under paragraph 3.1, it shall produce for the Secretary of State's approval a settlement proposal, setting out the terms of the Franchisee's proposals to make an offer to the Disabled Person making the EA Claim and its reasons for making such offer (the "**Settlement Proposal**").
- 3.3 If the Secretary of State does not accept the Settlement Proposal and still requires the Franchisee to defend the EA Claim (or any aspect of it) then the Franchisee shall defend the EA Claim in accordance with paragraph 3.1.
- 3.4 If the Franchisee is required to defend an EA Claim where it has submitted a Settlement Proposal to the Secretary of State and an award is made in respect of the EA Claim in favour of the person bringing it which is higher than the figure set

out in the Settlement Proposal, then, subject to paragraph 3.5, the Secretary of State shall pay to the Franchisee:

- (a) the difference between such an award and the figure set out in the Settlement Proposal; and
- (b) the further reasonable costs incurred or payable by the Franchisee in defending the EA Claim, to the extent that such costs have not already been paid by the Secretary of State under paragraph 3.1(b).

3.5 The Secretary of State shall not have any obligation to make the payments described in paragraphs 3.1(b) or 3.4 where it is determined or, if no declaration or determination by the court on this point has been sought or made, the Secretary of State, in the Secretary of State's reasonable opinion, considers that the Franchisee has not taken such steps as it is reasonable, in all the circumstances of the case, for it to take to provide a reasonable alternative method of making services at the Station accessible to Disabled Persons.

4. **Specific additional obligations relating to persons with disabilities**

4.1 The Franchisee shall establish and implement procedures necessary to:

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

4.2 Any helpline established by the Franchisee for the purposes of making reservations for seating accommodation for and/or the provision of assistance to, persons with disabilities shall be provided free of charge.

4.3 Where the Franchisee's Accessible Travel Policy:

- (a) has been established before the date of the Franchise Agreement; and
- (b) has not been revised and approved by the ORR to take into account the ORR's most recent published guidance on Accessible Travel Policies as at the date of the Franchise Agreement,

the Franchisee shall within six (6) months of the date of the Franchise Agreement revise its Accessible Travel Policy such that it complies with that guidance, and obtain the ORR's approval of the revised version.

4.4 The Franchisee shall promptly send to the Secretary of State copies of:

(a) each set of results of the surveys of Passenger Assistance users that the Franchisee undertakes pursuant to its Accessible Travel Policy; and

(b) any reports that the Franchisee submits to ORR pertaining to the effectiveness of, and satisfaction with, the Passenger Assistance service.

4.5 [not used]

4.6 [not used]

4.7 The Franchisee shall comply with the requirements set out in Appendix 2 (Accessible Transport Arrangements) to this Schedule 4 in respect of the provision of accessible transport arrangements for persons with disabilities.

5. **Annual Accessibility Update**

5.1 The Parties acknowledge that the Franchisee, by virtue of its Licences, 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 Franchisee to improve accessibility to the Franchise Services; and
- (b) the approach that the Franchisee has taken to considering the accessibility requirements of passengers in line with the requirements of the EA for example when making decisions about operations, design and service improvements; and
- (c) how if the Franchisee or the ORR identifies any failure by the Franchisee to comply with the Franchisee's Accessible Travel Policy or any other accessibility related obligation arising by virtue of its Licences, the Franchisee will take action to remedy those failures,

and it is agreed by the Franchisee that it shall forward copies of any such report to the Secretary of State within seven days of it being submitted to ORR.

5.2 [not used]

5.3 [not used]

6. **Accessibility Director and Accessibility Manager**

6.1 By no later than the Start Date, the Franchisee shall nominate:

- (a) a director at board level; and
- (b) an operational manager,

each with specific responsibility for accessibility issues and the Franchisee shall ensure that such roles are appropriately filled throughout the Franchise Term.

6.2 The responsibilities of the operational manager to be appointed in accordance with paragraph 6.1(b) shall include being accountable for the Franchisee:

- (a) meeting its Accessible Travel Policy requirements; and
- (b) satisfying its obligations in respect of accessibility issues under the Franchise Agreement.

7. [Not used]

8. **Accessibility Panel**

8.1 [Not used]

8.2 The Franchisee shall:

- (a) consult the Accessibility Panel on infrastructure projects and operational and policy decisions that may have an impact on the needs of passengers with accessibility requirements;
- (b) invite and encourage the Accessibility Panel to participate in the design of the disability awareness training the Franchisee is required to provide by virtue of the Accessible Travel Policy Guidance and the co-design of physical assets, electronic services and applications, and other services and facilities relating to accessibility as appropriate; and
- (c) invite and encourage the Accessibility Panel to provide a report on its activities to the Board of the Franchisee at least once every quarter.

8.3 [Not used]

9. [Not used]

10. [Not used]

11. **Accessible Formats of Passenger Facing Information**

11.1 By no later than the date falling one (1) month after the Start Date and throughout the Franchise Period, the Franchisee shall ensure that all passenger facing information across a variety of media is presented in a range of accessible formats, taking into account the requirements of Disabled People in relation to communication (such as passengers who use British Sign Language or 'easy read').

11.2 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 11.1 above applies to the Relevant Documents, enforcement action is within the remit of the ORR and accordingly a failure to comply with paragraph 11.1 in respect of the Relevant Documents shall not be treated as a contravention of the Franchise Agreement (but the Franchisee nevertheless acknowledges that it will remedy any such failure as soon as practicable and in accordance with any directions as may be given by the ORR).

APPENDIX 1 TO SCHEDULE 4

NOT USED

Withdrawn

APPENDIX 2 TO SCHEDULE 4**Accessible Transport Arrangements**

1. References in this Appendix 2 to Schedule 4 (*Accessibility and Inclusivity*) to passengers are references to passengers with disabilities 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 Franchisee shall provide accessible transport arrangements for that passenger in accordance with paragraph 3.
3. The Franchisee 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 Franchisee may, having regard to the journey and the needs of the passenger, agree,and, in any case, at no cost additional to the price of the Fare which would otherwise be payable for the passenger's rail journey.
4. The Franchisee's obligations under this Appendix 2 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 Franchisee 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:	Franchisee’s Obligation to Create Fares
Schedule 5.3:	Allocation of Fares to Fares Baskets
Schedule 5.4:	Regulation of Fares Basket Values
Schedule 5.5:	Regulation of Individual Fares
Schedule 5.6:	Exceeding the Regulated Value, Regulated Price or Regulated Child Price
Schedule 5.7:	Changes to Fares and Fares Regulation
Schedule 5.8:	Fares Regulation Information and Monitoring
Schedule 5.9:	Smart Ticketing
	Appendix 1: STNR Project
Schedule 5.10:	Fares, Ticketing and Retail Trials

Withdrawn

Schedule 5.1

Purpose, Structure and Construction**1. Purpose of provisions relating to Creating Fares**

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

1.2 Purpose of Fares Regulation

- (a) The purpose of Schedule 5.3 (Allocation of Fares to Fares Baskets) 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 one of the following Fares Baskets:
- (i) the Commuter Fares Basket; or
 - (ii) the 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 a 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 a Fares Basket;
 - (B) the individual increase in the Price of each Fare in a 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 Fares Basket Values) and Schedule 5.5 (Regulation of Individual Fares):
- (i) the overall increase of the Prices of all Fares in a Fares Basket may not exceed the Retail Prices Index + k per cent per annum in respect of each Fare Year; and
 - (ii) the increase in the Price of any individual Fare in a 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 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 (Franchisee's Obligation to Create Fares) sets out or refers to the Franchisee's obligations to Create Fares.
- 2.2 Schedule 5.3 (Allocation of Fares to Fares Baskets) sets out the allocation of Fares to Fares Baskets.
- 2.3 Schedule 5.4 (Regulation of Fares Basket Values) sets out the limits applicable to the overall increase in Prices of all Fares in a Fares Basket.
- 2.4 Schedule 5.5 (Regulation of Individual Fares) sets out the limits applicable to the increase in the Price of any individual Fare in a 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 Franchisee exceeding:
- (a) the Regulated Value of any 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 (Franchisee'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 to Fares Baskets) 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 Franchisee has Created or can Create in respect of that Flow as the Secretary of State may specify.

4. Fares Documents

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 2010 or the 2010 Nominal Ticket Sales:

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

the relevant Fares Document shall prevail.

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 2010 or the 2010 Nominal Ticket Sales:

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

this Schedule 5 shall prevail.

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 Franchisee Creating either:

- (a) a Fare which is only valid for use by persons under the age of 16; or
- (b) a Fare which is valid for use:
 - (i) by any person at a price; and
 - (ii) by persons under the age of 16 at a discounted price relative to the price set pursuant to paragraph 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) Fares Basket;
- (b) Commuter 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 Franchisee, reasonably determine and references in this Schedule 5 to Fares Basket, Commuter Fare, Protected Fare and Fares and other relevant definitions shall be construed accordingly.

Schedule 5.2

Franchisee's Obligation to Create Fares**1. Creation of Commuter Fares and Protected Fare**

The Franchisee shall ensure that each Commuter Fare and Protected Fare has been Created, to the extent it is entitled or obliged to do so under the terms of the Ticketing and Settlement Agreement.

2. Restrictions on Creation of Fares

2.1 The Franchisee shall set the Child Price for any Fare that it Creates so that that Fare may be purchased by or for a person under the age of 16 for an amount which is no greater than fifty per cent (50%) of the Price of the relevant Fare.

2.2 The Franchisee 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).

Withdrawn

Schedule 5.3

Allocation of Fares to Fares Baskets**1. Allocation of Fares to Fares Baskets**

1.1 On or prior to the Start Date the Secretary of State shall allocate each Commuter Fare and Protected Fare to the relevant Fares Basket in accordance with this Schedule 5.3.

1.2 Subject to paragraph 2, every Commuter Fare shall be allocated by the Secretary of State to the Commuter Fares Basket and every Protected Fare shall be allocated by the Secretary of State to the Protected Fares Basket.

2. Designation of Non Fares Basket Fares

2.1 On or prior to the Start Date, the Secretary of State shall:

(a) separately (or in aggregate with other Fares of the same type in the opposite direction or for similar journeys that have the same Price) rank, in descending order according to their Gross Revenue for the period of twelve (12) months which ended 31 March 2010:

(i) all Commuter Fares; and

(ii) all Protected Fares;

(b) aggregate, following such ranking:

(i) those Commuter Fares with the lowest Gross Revenue, until the total of the aggregated Gross Revenue of such fares accounts for up to five per cent (5%) of the aggregate Reference Revenue of all Commuter 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 Commuter Fares referred to in paragraph 2.1(b)(i) as Non Fares Basket Fares; and

(ii) those Protected Fares referred to in paragraph 2.1(b)(ii) as Non Fares Basket Fares.

2.2 Without prejudice to the Secretary of State's right to require the content of a Fares Basket to change at any time prior to the Start Date, or, thereafter, prior to the commencement of any Fares Setting Round, pursuant to paragraph 1 of Schedule 5.7 (Changes to Fares and Fares Regulation), any Commuter Fare or Protected Fare that is also designated as a Non Fares Basket Fare shall not be allocated to the relevant Fares Basket.

2.3 The Secretary of State may de-designate any Non Fares Basket Fare pursuant to paragraph 1.1(d) (iii) of Schedule 5.7 (Changes to Fares and Fares Regulation).

Schedule 5.4

Regulation of Fares Basket Values

1. **Value of Fares Basket not to exceed Regulated Value**

Subject to paragraph 1.3 of Schedule 5.6 (*Exceeding the Regulated Value, Regulated Price or Regulated Child Price*) the Franchisee shall procure that the Value of a Fares Basket at any time in any Fare Year does not exceed its Regulated Value for that Fare Year.

2. **Value**

The Value of a Fares Basket at any time shall be the aggregate of the Projected Revenue of each Fare in that Fares Basket at that time.

3. **Projected Revenue**

The Projected Revenue of any Fare at any time shall be an amount equal to:

P x 2010 Nominal Ticket Sales	
where:	
P	is the Price of that Fare at that time; and
2010 Nominal Ticket Sales	is the number of nominal ticket sales of that Fare for 2010, ascertained as follows:
	$\frac{A}{B}$
	where:
A	is the aggregate Gross Revenue recorded by RSP as attributable to sales of that Fare and any other Fare with which it was aggregated under paragraph 2.1(a) of Schedule 5.3 (Allocation of Fares to Fares Baskets) for the period of twelve (12) months which ended 31 March 2010; and
B	is the Price for that Fare recorded by RSP in February 2010.

4. **Regulated Value**

4.1 The Regulated Value of a Fares Basket for any Fare Year shall be an amount equal to:

2010 Ticket Revenue x PPAI	
where:	
2010 Ticket Revenue	is the aggregate Gross Revenue recorded by RSP as attributable to sales of all Fares in that Fares Basket for the period of twelve (12) months which ended 31 March 2010;
PPAI	is:
	where:

	(a)	in respect of the Fare Year commencing 1 January 2011, the Permitted Aggregate Increase for that Fare Year; and
	(b)	in respect of each Fare Year commencing on or after 1 January 2012, the product of the Permitted Aggregate Increase for each Fare Year between that Fare Year and the Fare Year which begins on 1 January 2011 (inclusively).

4.2 The Permitted Aggregate Increase in any Fare Year shall be an amount equal to:

PAI =	$PAI = \frac{(100 \times RPI) + k}{100}$	
where:		
PAI	is the Permitted Aggregate Increase in that Fare Year;	
RPI	is an amount equal to:	
	$\frac{RPI - 1}{RPI - 2}$	
	where:	
RPI-1	is the Retail Prices Index for the July of the calendar year preceding that Fare Year; and	
RPI-2	is the Retail Prices Index for the July of the calendar year preceding the calendar year referred in the definition of RPI-1 ; and	
k	is equal to zero (0) for each Fare Year until the Fare Year commencing on 1 January 2021 where it will be equal to plus one (+ 1) per annum for any Fare Year thereafter.	

Schedule 5.5

Regulation of Individual Fares**1. Price not to exceed Regulated Price or Regulated Child Price**

1.1 The Franchisee shall procure that the Price of:

- (a) each Commuter Fare included in the Commuter Fares Basket;
- (b) each Protected Fare included in the Protected Fares Basket,

in any Fare Year does not exceed the Regulated Price for such Fare in that Fare Year.

1.2 The Franchisee shall procure that the Price of any Season Ticket Fare shall be the same in both directions.

1.3 The Franchisee 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 + £0.10p; and	
(b) ROUND (Preceding Year Ticket Price x PII)	
where:	
Preceding Year Ticket Price	for the Fare Year commencing 1 January 2011, is the maximum Price for that Fare recorded by RSP in 2010 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;
PII	is the Permitted Individual Increase in any Fare Year, as determined in accordance with paragraph 2.2; and
ROUND	If (Preceding Year Ticket Price x PII), when rounded to two decimal places, results in a value ending in five pence to nine pence (inclusive), then (Preceding Year Ticket Price x PII) shall be rounded up to the nearest whole multiple of £0.10; or If (Preceding Year Ticket Price x PII), when rounded to two decimal places, results in a value ending in one pence to four pence (inclusive), then (Preceding Year Ticket Price x PII) shall be rounded down to the nearest whole multiple of £0.10.

2.2 The Permitted Individual Increase in any Fare Year shall be an amount equal to:

PII =	$\frac{(100 \times RPI) + k + f}{100}$			
where:				
PII	is the Permitted Individual Increase in that Fare Year;			
RPI	is an amount equal to:			
	$\frac{RPI - 1}{RPI - 2}$			
	where:			
	<table border="1"> <tr> <td>RPI-1</td> <td>is the Retail Prices Index for the July of the calendar year preceding that Fare Year; and</td> </tr> <tr> <td>RPI-2</td> <td>is the Retail Prices Index for the July of the calendar year preceding the calendar year referred in the definition of RPI-1;</td> </tr> </table>	RPI-1	is the Retail Prices Index for the July of the calendar year preceding that Fare Year; and	RPI-2
RPI-1	is the Retail Prices Index for the July of the calendar year preceding that Fare Year; and			
RPI-2	is the Retail Prices Index for the July of the calendar year preceding the calendar year referred in the definition of RPI-1 ;			
k	is equal to zero (0) for each Fare Year until the Fare Year commencing on 1 January 2021 where it will be equal to plus one (+ 1) per annum for any Fare Year thereafter.			
f	is equal to zero (0).			

2.3 Where:

- (a) the Franchisee sets the Price of any Commuter Fare or Protected Fare in any Fare Year; and
- (b) the Secretary of State reasonably determines that the Price of such Commuter Fare or Protected Fare was set solely for the purpose of increasing the value of the Preceding Year Ticket Price in the next Fare Year,

the Preceding Year Ticket Price for the purposes of determining the Regulated Price 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. **Compulsory Inter-available Flows**

3.1 Where the Franchisee:

- (a) as Lead Operator for a Compulsory Inter-available Flow, is responsible for setting the Price of a Commuter Fare for that Flow; and
- (b) has notified the RSP of the Price of that Commuter Fare in any Fares Setting Round,

the Franchisee shall not increase the Price of that Commuter Fare in the same Fares Setting Round without the consent of either the Secretary of State or each other Train Operator which provides Railway Passenger Services for such Flow.

Schedule 5.6

Exceeding the Regulated Value, Regulated Price or Regulated Child Price**1. Exceeding the Regulated Value**

1.1 If the Franchisee is in contravention of paragraph 1 of Schedule 5.4 (Regulation of Fares Basket Values) in respect of either the Commuter Fares Basket or the Protected Fares Basket:

- (a) it shall reduce the Price of Fares in the relevant Fares Basket at the next available opportunity and, in any event, at the next Fares Setting Round, so as to comply with the requirements of paragraph 1 of Schedule 5.4 (Regulation of Fares Basket Values) from such date; and
- (b) the Secretary of State may adjust Franchise Payments by an amount equivalent in the Secretary of State's opinion to the sum of:
 - (i) any additional gross revenue accruing to the Franchisee or any person selling Fares on its behalf as a result of the Value of any Fares Basket exceeding its Regulated Value permitted under Schedule 5.4 (Regulation of Fares Basket Values); and
 - (ii) any costs incurred by the Secretary of State in determining the amount of such additional gross revenue.

1.2 Any adjustment to Franchise Payments by the Secretary of State pursuant to paragraph 1.1:

- (a) shall not be treated as a Change; and
- (b) shall be without prejudice to any other rights or remedies of the Secretary of State under the Act or the Franchise Agreement in respect of such contravention.

1.3 It shall not be a contravention of paragraph 1 of Schedule 5.4 (Regulation of Fares Basket Values) if and to the extent that:

- (a) the Value of the Commuter Fares Basket exceeds its Regulated Value in any Fare Year;
- (b) such excess is caused by the Price of any relevant Commuter Fare being set pursuant to the terms of the Ticketing and Settlement Agreement by another person (other than an Affiliate); and
- (c) the Franchisee does not have a reasonable opportunity, under any procedure for consulting or notifying Train Operators of alterations to the Prices of Fares under the Ticketing and Settlement Agreement or otherwise, to alter some or all of the other Commuter Fares in the Commuter Fares Basket so as to avoid the Value of the Commuter Fares Basket exceeding its Regulated Value.

1.4 If and to the extent that the circumstances described in paragraph 1.3 prevail in any Fare Year, the Franchisee shall not subsequently increase during that Fare Year, or any subsequent Fare Year, the Price of any Commuter Fare in the Commuter Fares Basket which it is entitled to set pursuant to the terms of the

Ticketing and Settlement Agreement, unless, following such increase, the Franchisee would, otherwise than under paragraph 1.3, comply with the provisions of paragraph 1 of Schedule 5.4 (Regulation of Fares Basket Values) in relation to the Commuter Fares Basket.

- 1.5 Where circumstances described in paragraph 1.3 prevail in any Fare Year, the Franchisee shall not be required to reduce the Price of any other Commuter 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 Franchisee 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 Franchise Payments by an amount equivalent in the Secretary of State's opinion to the sum of:

(i) any additional gross revenue accruing to the Franchisee or any person selling Fares on its behalf as a result of the sale of Fares at Prices and/or Child Prices in excess of the relevant amounts permitted under Schedule 5.5 (Regulation of Individual Fares); and

(ii) any costs incurred by the Secretary of State in determining the amount of such additional gross revenue.

- 2.2 Any adjustment to Franchise Payments by the Secretary of State pursuant to paragraph 2.1:

(a) shall not be a Change; and

(b) shall be without prejudice to any other rights or remedies of the Secretary of State under the Act or the Franchise Agreement in respect of such contravention.

Schedule 5.7

Changes to Fares and Fares Regulation**1. Changes to Fares Baskets**

1.1 The Secretary of State may require the content of the Commuter Fares Basket or Protected Fares Basket (as the case may be) to change in accordance with the following:

- (a) where the Secretary of State is not satisfied that the Price 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 relevant Fares Basket,

the Secretary of State may de-designate any Non Fares Basket Fare and include such Non Fares Basket Fare in the relevant Fares Basket;
- (b) where any Commuter Fare for a Flow has been included in the Commuter Fares Basket, the Secretary of State may require the inclusion in the Commuter Fares Basket of any Weekly Season Ticket, Monthly Season Ticket, Quarterly Season Ticket, Annual Season Ticket, unrestricted Single Fare or unrestricted Return Fare that existed on that Flow in February 2010;
- (c) where any Protected Fare for a Flow has been included in the Protected Fares Basket, the Secretary of State may require the inclusion in the Protected Fares Basket of any Protected Return Fare or Protected Weekly Season Ticket that existed on that Flow in February 2003; and/or
- (d) where the Secretary of State changes the Reference Revenue and/or the Gross Revenue of any Fare pursuant to paragraphs 3.1(a) and/or 3.1(b) then, in relation to the Fares Basket in which such Fare is or would be included, and without limiting paragraphs 1.1(a) to (c) inclusive, the Secretary of State may also:
 - (i) make any of the changes to such Fares Basket contemplated by this paragraph 1.1;
 - (ii) designate any Fare as a Non Fares Basket Fare in accordance with the provisions (other than the requirement that such designation occurs on or prior to the Start Date) of paragraph 2 of Schedule 5.3 (Allocation of Fares to Fares Baskets); and/or
 - (iii) de-designate any Non Fares Basket Fare and include such Non Fares Basket Fare in the relevant Fares Basket.

1.2 The Secretary of State shall serve notice in writing on the Franchisee:

- (a) at any time prior to the Start Date; and
- (b) thereafter, no later than the commencement of any Fares Setting Round,

to require any Fare to be included in a Fares Basket or to designate any Fare as a Non Fares Basket Fare pursuant to paragraph 1.1.

2. Changes to the 2010 Nominal Ticket Sales

2.1 The Franchisee may, in the event of any significant change to the pattern of travel on the Passenger Services during the Franchise Term, apply to the Secretary of State for the **value of factors A and/or B** in the formula for determining 2010 Nominal Ticket Sales in paragraph 3 of Schedule 5.4 (Regulation of Fares Basket Values) to be adjusted to take account of such changes, such that:

- (a) the **value of factor A** is re calculated by using the Gross Revenue in respect of the sales of the relevant Fares for the most recently completed period of twelve (12) months ending 31 March 2010; 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 relevant Fares Basket.

3. Changes to the Reference Revenue, Gross Revenue, 2010 Nominal Ticket Sales and/or 2010 Ticket Revenue

3.1 The Secretary of State may, by notice in writing served on the Franchisee no later than the date of commencement of any Fares Setting Round, require:

- (a) the Reference Revenue of any Fares Basket to be calculated by reference to a different reference period for the purpose of paragraph 2 of Schedule 5.3 (*Allocation of Fares to Fares Baskets*) than the period of twelve (12) months ended 31 March 2010; and/or
- (b) the Gross Revenue of all Commuter Fares and Protected Fares to be recalculated for the purpose of paragraph 2 of Schedule 5.3 (*Allocation of Fares to Fares Baskets*) by reference to a different reference period than the period of twelve (12) months ended 31 March 2010; and/or
- (c) **the value of factor A** in the formula for determining the 2010 Nominal Ticket Sales in paragraph 3 of Schedule 5.4 (*Regulation of Fares Basket Values*) to be recalculated in respect of any Fare by reference to a different reference period than the period of twelve (12) months ended 31 March 2010; and/or
- (d) **the value of factor B** in the formula for determining the 2010 Nominal Ticket Sales in paragraph 3 of Schedule 5.4 (*Regulation of Fares Basket Values*) to be re calculated in respect of any Fare by reference to a different reference date other than February 2010; and/or
- (e) the 2010 Ticket Revenue in respect of any Fares Basket to be re calculated for the purpose of paragraph 4 of Schedule 5.4 (*Regulation of Fares Basket Values*) by reference to a different reference period than the period of twelve (12) months ended 31 March 2010.

- 3.2 Where, in accordance with paragraph 3.1(e), the 2010 Ticket Revenue in respect of any Fares Basket is re calculated by reference to a different reference period, the value of **"PPAI"** in paragraph 4 of Schedule 5.4 (*Regulation of Fares Basket Values*) shall be determined solely by reference to the product of the Permitted Aggregate Increase for each Fare Year beginning after the end of such reference period.
- 3.3 Any revision pursuant to paragraph 3.1 or 3.2 shall take effect upon commencement of the next Fare Year to commence after the Fares Setting Round referred to in paragraph 3.1.

4. **Changes to Prices**

The Franchisee may request permission from the Secretary of State from time to time to increase any Prices beyond the levels permitted under Schedule 5.4 (*Regulation of 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 act reasonably in relation to any such request but shall not under any circumstances be obliged to accept any such request in whole or in part.

5. **Changes to Fares Regulation**

- 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 Franchise Term to alter the obligations of, and restrictions on, the Franchisee 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 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 The exercise by the Secretary of State of the Secretary of State's powers under paragraph 5.1 shall be a Change.

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 Commuter Fare or a Protected Fare (the **"Reference Fare"**); and
- (b) a Flow exists, which, in the Secretary of State's opinion, is substantially similar to the Reference Flow (the **"Equivalent Flow"**),

the Secretary of State may, as a condition of granting the Secretary of State's consent to the abolition of the Reference Flow, by written notice to the Franchisee, require any Fare Created in respect of the Equivalent Flow which has substantially the same characteristics as the Reference Fare to be included in a Fares Basket (**"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 Franchisee shall not without the Secretary of State's prior approval, agree to any request under the Ticketing and Settlement Agreement that it cease to be Lead Operator in respect of any Flow.

7.2 The Franchisee shall inform the Secretary of State if it becomes the Lead Operator in respect of any Flow. Upon the Franchisee becoming the Lead Operator in respect of any Flow, the Secretary of State may without limiting paragraph 3, exercise the Secretary of State's rights pursuant to paragraph 3 in relation to the relevant Fares Basket.

7.3 The Franchisee shall inform the Secretary of State if it ceases to be a Major Flow Operator in respect of any Flow.

8. **Changes to Fares Documents**

8.1 Following:

- (a) any allocation of Fares to any Fares Basket pursuant to Schedule 5.3 (Allocation of Fares to Fares Baskets); or
- (b) any subsequent adjustment thereof pursuant to this Schedule 5.7,

the Secretary of State shall set out in the Commuter Fares Document and/or Protected Fares Document (as the case may be) all Fares then included in the relevant Fares Basket and, as soon as reasonably practicable thereafter, the Secretary of State shall issue or reissue (as the case may be) such Fares Document(s) to the Franchisee.

Schedule 5.8

Fares Regulation Information and Monitoring**1. Information**

- 1.1 The Franchisee shall provide to the Secretary of State by no later than week 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 Commuter Fares or Protected Fares it is intending to set.
- 1.2 The Franchisee shall notify, or procure the notification to, the Secretary of State of any proposed increase to the Price of any Commuter 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 Franchisee shall make available, or procure that RSP makes available, to the Secretary of State, for any Fares Setting Round during the Franchise Term, such details (including the proposed Prices) of the Initial Permanent Fare of any Commuter Fare or Protected Fare for each such Fares Setting Round as the Secretary of State may reasonably request from time to time.

2. Monitoring

- 2.1 The Franchisee shall provide to the Secretary of State:
 - (a) such access as the Secretary of State may require to information pertaining to the Prices of Commuter Fares and Protected Fares from time to time; and
 - (b) such further information as the Secretary of State may require for the purpose of determining the Gross Revenue of the Franchisee in relation to any particular Fare or Fares or any particular period.
- 2.2 By no later than week seventeen (17) of each Fares Setting Round, the Franchisee shall provide to the Secretary of State written confirmation from a statutory director of the Franchisee of whether the Franchisee has complied with its obligations under this Schedule 5 (Fares and Smart Ticketing) during each such Fares Setting Round.
- 2.3 The Franchisee shall take such action as the Secretary of State may require following receipt of any details from the Franchisee pursuant to paragraph 1 in order to ensure that the Franchisee shall comply with the provisions of Schedule 5.2 (Franchisee's Obligation to Create Fares) to this Schedule 5.8 (inclusive).

3. NOT USED

Schedule 5.9

Smart Ticketing1. **Definitions**

1.1 For the purposes of this Schedule 5.9, the following words and expressions shall have the following meanings unless otherwise set out in clause 3 (*Definitions*):

"EMV" 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);

"ITSO Ltd" means the non-profit distributing organisation run by its members for the benefit of members and users of Smart Media;

"ITSO Certified Smartmedia" means the contactless smartcards, devices or other media designed to hold fare and travel information with the monetary or other value encoded which have been certified by ITSO Ltd;

"ITSO Operating Licence" 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;

"ITSO Smartmedia Ticketing Scheme" means a Smart Ticketing Scheme that utilises ITSO Certified Smart Media;

"Previous Franchise Agreement ITSO Smartmedia Ticketing Scheme" means any ITSO Smart Media Ticketing Scheme operated by the Franchisee prior to the Start Date;

"RSPS3002" means the RSP document with reference RSPS3002, version 3 (03-00)0 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;

"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; and

“Smart Media Target”

means targets proposed by the Franchisee or required by the Secretary of State for channel shift from magstripe tickets (orange paper tickets with a magnetic strip on the back) and journeys made on Passenger Services within the geographic boundary of the Franchise using Smart Media and contracted as a Committed Obligation in Schedule 6.2 (*Committed Obligations*).

2. Smart Ticketing

2.1 The Franchisee 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, TfL, other Train Operators, the Crossrail Operator, Welsh Ministers and relevant Local Authorities, including in relation to the provision of any required equipment, to implement and operate Smart Ticketing Schemes; and
- (c) fully and effectively co-operate with TfL, other Train Operators, the Crossrail Operator, Welsh Ministers and relevant Local Authorities in relation to proposals to apply Smart Ticketing Schemes to new or existing multi-modal fares schemes including in the implementation of any Smart Media technology pursuant to any multi-modal fares schemes that it may participate in pursuant to its obligations under paragraph 2.1 of Schedule 2.5 (*Transport, Travel and Other Schemes*); and
- (d) prepare and submit a report to the Secretary of State in advance of each Franchise Performance Meeting (in such form as the Secretary of State may reasonably 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 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 Franchise Term;
 - (ii) the Franchisee’s performance against the Smart Media Targets as set out in Schedule 6.2 (*Committed Obligations*);

- (iii) the steps that the Franchisee is taking, including other Train Operators, Network Rail, the Crossrail Operator, TfL, Welsh Ministers, Local Authorities or other organisations that it will be working with, to increase channel shift to Smart Ticketing Schemes operated by the Franchisee, or enabled by the Franchisee for other Smart Ticketing Schemes, and increase usage of Smart Ticketing Schemes by users of the Passenger Services; and
- (iv) such further information as the Secretary of State may reasonably require in connection with Smart Ticketing Schemes,

and the Franchisee shall present the report at the Franchise Performance Meeting.

2.2 The Franchisee shall ensure, with effect from the Start Date in relation to any Previous Franchise Agreement Smart Media Ticketing Scheme and from the date of commissioning in relation to any Smart Media Ticketing Scheme introduced by it, that from such relevant date until the end of the Franchise Term:

- (a) it continues to provide, make available and promote (and where applicable effectively maintain) such Smart Media Ticketing Scheme (including any associated infrastructure);
- (b) all components of the Smart Media Ticketing Scheme (and any amendment, extension or replacement thereof) inherited, used or introduced by the Franchisee (whether on a permanent or a trial basis) are at all times compliant with:
 - (i) version 2.1.4 of the ITSO Specification;
 - (ii) the ITSO Operating Licence; and
 - (iii) RSPS3002,
 or such subsequent versions as the Franchisee and the Secretary of State may agree;
- (c) any ITSO Certified Smart Media readers introduced by the Franchisee (whether on a permanent or temporary basis) shall conform to EMV level 1 certification (hardware) and be capable of being upgraded whilst in operation to EMV level 2 (application) and to EMV level 3 (end to end certification) where there is a contactless payment scheme in place or one is proposed;
- (d) it pays all costs of participating in the relevant ITSO Smart Media Scheme including the costs of maintaining all required scheme components to the standards specified in this Schedule 5.9;
- (e) both the RDG operated central back office and the RSP owned product set that is compliant with the ITSO Specification are used;
- (f) all available Fares on all Flows for which it is Lead Operator are capable of residing upon and being fulfilled as soon as reasonably practicable by the use of ITSO Certified Smart Media; and

- (g) if so requested in writing by another Train Operator the Franchisee shall as soon as reasonably 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 Franchisee was a participant in any RDG approved Smart Ticketing Scheme pursuant to the Previous Franchise Agreement, the Franchisee 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 this Schedule 5.9, the Franchisee shall undertake such further actions as the Secretary of State may reasonably require in connection with the introduction of Smart Ticketing Schemes.
- 2.5 **NOT USED.**
- 2.6 Either Party may propose, or the Secretary of State may reasonably determine, a change to the definition of "Smart Media" to include any new technology which enables the fulfilment of a Smart Ticketing Scheme.
3. **Costs**
- 3.1 The Secretary of State shall reimburse the reasonable costs incurred by the Franchisee in complying with any such requirement of the Secretary of State pursuant to paragraph 2.4 above subject to the Franchisee obtaining the prior written approval of the Secretary of State to the incurring of any such cost and provided that the Franchisee shall not have the right to be reimbursed any costs to the extent that:
- (a) it has already been reimbursed for such costs pursuant to any other provision of the Franchise Agreement or other arrangements with the Secretary of State; and/or
 - (b) it has the right or ability to recover such costs from any third party.
4. **STNR Project**
- The Franchisee shall comply with its obligations comprised in Appendix 1.

APPENDIX 1 TO SCHEDULE 5.9

STNR Project

1. Definitions

In this Appendix the words and expressions defined in this paragraph 1 shall (unless the context requires otherwise) have the meanings there given to them below:

"STNR Project" means the project for implementing and operating an interoperable smart ticketing solution on the National Rail Network allowing passengers to make complete journeys on the National Rail Network using a smartcard as a ticket. For the purpose of this definition, "National Rail Network" has the meaning given to it in the National Conditions of Travel; and

"Smart Ticket" means a ticket which is stored in or on any Smart Media.

2. The Franchisee shall use reasonable endeavours to support other train operators and RDG and TfL in the delivery of their respective obligations and activities with respect to the implementation of the STNR Project.
3. The Franchisee shall ensure that where relevant that it provides to passengers (travelling on Passenger Services on Smart Tickets issued by the Franchisee) seat reservations either integrated with that Smart Ticket or through separate media including e-mail or mobile app for the purposes of inspection by guards and ticket inspectors.

Withdrawn

Schedule 5.10

Fares, Ticketing and Retail Trials**1. Fares, Ticketing and Retail Trials**

- 1.1 In order to investigate improved fares and ticketing options for passengers, the Franchisee shall, in accordance with any request that may be made by the Secretary of State, co-operate with the Secretary of State in the planning, proposed implementation and evaluation by the Franchisee 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**").
- 1.2 The Parties shall agree or the Secretary of State may reasonably determine the form and scope of any Fares, Ticketing and Retail Trial and the period in respect of which it shall be conducted and the Franchisee shall implement that Fares, Ticketing and Retail Trial as agreed or determined.
- 1.3 The Secretary of State will reimburse the reasonable costs incurred by the Franchisee in implementing a Fares, Ticketing and Retail Trial provided that:
- (a) prior to incurring such costs, the Franchisee has obtained the Secretary of State's approval of the same; and
 - (b) the Franchisee has not already recovered (or is able to recover) such costs through any Franchise Payment, pursuant to any other provision of the Franchise Agreement or pursuant to any other agreement or arrangement between the Franchisee and the Secretary of State.
- 1.4 With regard to any net revenue losses potentially incurred by the Franchisee in consequence of the implementation of any Fares, Ticketing and Retail Trial in relation to which the Franchisee is not otherwise compensated pursuant to any other provision of the Franchise Agreement or pursuant to any other agreement or arrangement the Franchisee may propose that this is addressed by a pre agreed compensation methodology or amount (which may be subject to appropriate limits and caps) paid by the Secretary of State to the Franchisee. The Franchisee shall provide reasonable supporting evidence for its proposal and provide such additional relevant information as the Secretary of State may reasonably require. The Secretary of State shall not unreasonably withhold consent to such a proposal by the Franchisee.

SCHEDULE 6

FRANCHISE SPECIFIC OBLIGATIONS AND COMMITTED OBLIGATIONS

Schedule 6.1:	Franchise Specific Obligations
	Part 1: Previous Franchise Agreement Committed Obligations
	Part 2: Mandatory Franchise Specific Obligations
	Part 3: Franchise Specific Obligations
	Part 4: Bespoke Obligations
Schedule 6.2:	Committed Obligations
	Part 1: Committed Obligations
	Part 2: Special Terms related to the Committed Obligations
Schedule 6.3:	Contractual Incentive Mitigations
Schedule 6.4:	Alliances
Schedule 6.5:	NOT USED
Schedule 6.6:	NOT USED
Schedule 6.7	The IEP Provisions

Withdrawn

Schedule 6.1

Franchise Specific Obligations**PART 1 - PREVIOUS FRANCHISE AGREEMENT COMMITTED OBLIGATIONS****1. Application of Special Terms**

1.1 The provisions of Part 2 (*Special Terms related to the Committed Obligations*) of Schedule 6.2 (*Committed Obligations*) shall apply in respect of the obligations of the Franchisee specified in this Part 1 provided that references to a 'Committed Obligation' in Part 2 (*Special Terms related to the Committed Obligations*) of Schedule 6.2 (*Committed Obligations*) shall be construed as references to the Franchisee's obligations under this Part 1 (*Previous Franchise Agreement Committed Obligations*).

1.2 **NOT USED.**

1.3 **NOT USED.**

1.4 **NOT USED.**

2. Definitions

2.1 In this Part 1 (*Previous Franchise Agreement Committed Obligations*) except to the extent the context otherwise requires the following words and expressions have the following meanings:

"Additional HM Report" has the meaning given to it in paragraph 5.5(a);

"Assumed Heavy Maintenance Funding" has the meaning given to it in paragraph 5.7;

"DA2 CI Underspend" means any CI Underspend (as such term is defined in paragraph 45.2 of part 1 to Schedule 6.1 of the Previous Franchise Agreement) occurring as at the Expiry Date (as such term is defined in clause 2 of the Previous Franchise Agreement) of the Previous Franchise Agreement;

"DA2 CO Underspend" means any Underspend (as such term is defined in paragraph 3.4 of part 2 to Schedule 6.1 of the Previous Franchise Agreement) occurring as at the Expiry Date (as such term is defined in clause 2 of the Previous Franchise Agreement) of the Previous Franchise Agreement;

"Different Maintenance Activity" has the meaning given to it in paragraph 5.13;

"Expected HM Cost Saving Amount" has the meaning given to it in paragraph 5.13;

“Heavy Maintenance Cost Reimbursement Payment”

means a payment adjustment made to Franchise Payments pursuant to paragraph 5.9;

“Rolling Stock Adviser”

has the meaning given to it in paragraph 5.4;

“Rolling Stock Obligations”

has the meaning given to it in paragraph 5.4(a); and

“RS Adviser Agreement Date”

has the meaning given to it in paragraph 5.4.

3. Application

The Parties acknowledge and agree that the provisions of this Part 1 to Schedule 6.1 shall not apply to the HEx Outsourced Services.

4. Completion of committed obligations from the Previous Franchise Agreement

4.1 The Franchisee shall (to the extent that it has not already done so prior to the Start Date) procure that air cooling systems are fitted and operational throughout the passenger carrying spaces of each unit in its Class 165 rolling stock fleet at the same time as those units are subject to C6 or C6x overhauls and in any event by 30 June 2020.

4.2 ⁱⁱThe Franchisee shall (to the extent that it has not already done so prior to the Start Date) replace interior carpeting in the saloons, vestibules and luggage rack areas of each unit in its Class 166 rolling stock fleet as soon as reasonably practicable and in any event by 30 June 2020. To the extent that the Franchisee has incurred additional expenditure of less than [REDACTED⁷] in doing so (taking account of expenditure both during the franchise term of the Previous Franchise Agreement and during the Franchise Term), the Franchisee shall apply the balance for such purpose as the Secretary of State may determine.

4.3 The Franchisee shall (to the extent that it has not already done so prior to the Start Date) procure that modifications are made to all the Class 150, Class 158, Class 165 and Class 166 rolling stock which is identified in Schedule 1.6 (Train Fleet) so that at-seat power supplies are available at all passenger seats (excluding tip-up seats) as soon as reasonably practicable and in any event by 30 June 2020. It is acknowledged that such at seat power supplies may be by way of USB sockets where it is not reasonably practicable for the Franchisee to fit three-pin power sockets due to power supply limitations on particular classes of rolling stock.

5. Train Fleet Maintenance

5.1 The Franchisee shall ensure that the Train Fleet is examined, maintained and repaired in accordance with the requirements on the Franchisee under the relevant

⁷ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

Rolling Stock Leases (or where the Franchisee owns relevant rolling stock in a manner consistent with the proper maintenance of such rolling stock by reference to generally accepted industry standards for maintaining such rolling stock for the remainder of its assumed asset life) and otherwise in a manner consistent with the obligations of the Franchisee under the Franchise Agreement including paragraph 1 of Schedule 14.2 (Maintenance of Operating Assets and Branding).

Forecast maintenance

5.2 Without prejudice to paragraph 5.1 as at the date of the Franchise Agreement the Franchisee forecasts that:

- (a) Not used;
- (b) in relation to each of the vehicle types specified in Column A of Table 5.2 below, the Franchisee will carry out the maintenance and examination activities specified in Column B on the forecast number of vehicles specified in:
 - (i) Column C (where the Franchise Term is not extended under clause 5.2 (Additional Reporting Periods)); or
 - (ii) Column D (where the Franchise Period is extended for 13 Reporting Periods under clause 5.2 (Additional Reporting Periods)), which shall be subject to an adjustment (which must be consistent with the profile of heavy maintenance activities assumed in the Financial Model and described in the Record of Assumptions) where the Franchise Term is extended for less than 13 Reporting Periods.

Table 5.2

A	B	C	D
Vehicle type	Maintenance or exam activity	Forecast number of vehicles / exams (core)	Forecast number of vehicles / exams (core plus 13 Reporting Period extension)
Power cars	E exam	[REDACTED ⁸]	[REDACTED ⁹]
	F exam	[REDACTED]	[REDACTED]
	G exam	[REDACTED]	[REDACTED]
	QL4	[REDACTED]	[REDACTED]
Trailer cars	C4	[REDACTED]	[REDACTED]

⁸ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁹ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

A	B	C	D
Vehicle type	Maintenance or exam activity	Forecast number of vehicles / exams (core)	Forecast number of vehicles / exams (core plus 13 Reporting Period extension)
	C6	[REDACTED]	[REDACTED]
Sleeper/ day coaches	C4	[REDACTED]	[REDACTED]
	C6	[REDACTED]	[REDACTED]
Class 57	Overhaul	[REDACTED]	[REDACTED]
	Power unit	[REDACTED]	[REDACTED]
	Bogie change	[REDACTED]	[REDACTED]
	Paint	[REDACTED]	[REDACTED]
Class 150	Corrosion repairs identified as part of C6 overhauls	[REDACTED]	[REDACTED]

It is agreed and acknowledged that the actual volume of maintenance or exam activity is liable to change for a wide range of reasons and a failure to carry out the forecast number of works set out in Column C or Column D of Table 5.2 shall (without prejudice to the rights of the Secretary of State pursuant to paragraph 5.1) not be a contravention of the Franchise Agreement, subject to any relevant Heavy Maintenance Cost Reimbursement Payment required to be made under paragraph 5.7 being paid to the Secretary of State.

Reporting by the Franchisee

- 5.3 Without prejudice to paragraph 1.4 of Schedule 14.2 (Maintenance of Operating Assets and Branding), the Franchisee shall provide a report to the Secretary of State within three (3) months of the Start Date, and thereafter on a rolling basis every three (3) Reporting Periods. Such report shall provide a comprehensive update on the Franchisee's progress with undertaking the heavy maintenance exams and other maintenance activities set out in the table at paragraph 5.2. Such report shall include the number and type of relevant exam and other maintenance activities undertaken on rolling stock vehicles (identified by vehicle painted number). The Franchisee shall provide such additional or supporting information as the Secretary of State may reasonably require in relation to such report.

Expert reports

- 5.4 The Secretary of State shall be entitled to require by notice in writing to the Franchisee that, by such date as the Secretary of State may reasonably require (the "**RS Adviser Agreement Date**"), the Franchisee and the Secretary of State acting reasonably and in good faith shall agree and appoint an independent rolling stock adviser ("**Rolling Stock Adviser**") who shall be a Vehicle Acceptance Body (as defined in Railway Group Standards) or otherwise suitably qualified as an engineering adviser on rolling stock condition and rolling stock repair and maintenance strategies (it being acknowledged and agreed that, in the absence of such agreement by the RS Adviser Agreement Date, the Secretary of State shall

reasonably determine the identity of the Rolling Stock Adviser and direct that the Franchisee shall appoint that person at a reasonable fee). The Franchisee shall be responsible for paying the fees and reasonable disbursements of the Rolling Stock Adviser. In respect of any such appointment of the Rolling Stock Adviser:

- (a) the Rolling Stock Adviser shall be requested to provide a report jointly addressed to the Franchisee and the Secretary of State setting out an appropriate schedule of maintenance works (including both by volume and periodicity) that an efficient operator should undertake during such period as the Secretary of State may specify (such period to end no later than 01:59 on 1 April 2024), to meet its obligations in respect of the Train Fleet under the Rolling Stock Leases, this Franchise Agreement and otherwise (including safety related obligations in respect of the Train Fleet) (the "**Rolling Stock Obligations**"). The Rolling Stock Adviser shall take into account, inter alia, the report provided under paragraph 7.4 of Part 1 of Schedule 6.1 of the Previous Franchise Agreement, the status of the Train Fleet as at the Start Date and the requirements for fleet availability to fulfil other requirements of the Franchise Agreement;
- (b) the Rolling Stock Adviser's terms of engagement shall be reasonably agreed by both the Franchisee and the Secretary of State and shall require the Rolling Stock Adviser to produce a report of the Rolling Stock Adviser's findings and conclusions by such date as the Secretary of State shall reasonably specify (or such later date as the Rolling Stock Adviser may determine to allow sufficient time for the completion of the work required to provide such report);
- (c) the Franchisee shall act reasonably and in good faith and co-operate accordingly with the Rolling Stock Adviser for the purposes of fully and effectively facilitating the Rolling Stock Adviser in the carrying out of the work required to produce the report. Accordingly, the Franchisee shall give the Rolling Stock Adviser such access to rolling stock vehicles together with all relevant maintenance and repair records, maintenance strategies and plans and relevant Franchise Employees as he may reasonably require. Where any consents are required from rolling stock leasing companies the Franchisee shall procure such consents (where the rolling stock leasing company is First Rail Holdings Limited) or otherwise use all reasonable endeavours to obtain them. The Franchisee shall meet with the Rolling Stock Adviser to discuss such matters as the Rolling Stock Adviser may reasonably require; and
- (d) the Secretary of State acting reasonably and in good faith shall meet with the Franchisee to discuss the findings of the report with a view to agreeing by no later than two (2) months following the provision of such report by the Rolling Stock Adviser whether, taking into account such findings, there is a requirement to vary the terms of the Franchise Agreement to increase the forecast volume of any type of heavy maintenance exam or other heavy maintenance activity, or to add further heavy maintenance exams or other heavy maintenance activities, in addition to those set out in paragraph 5.2 at Table 5.2 and in paragraph 5.9, to meet the Franchisee's Rolling Stock Obligations. If such agreement cannot be reached the Secretary of State shall be entitled to reasonably determine amendments to the forecasts in the relevant table in paragraph 5.2 consistent with the Rolling Stock

Adviser's report and vary the Franchise Agreement accordingly. Table 5.2 shall only be amended to reflect increases in the forecast volume of heavy maintenance exams or other heavy maintenance activities or the forecast addition of new categories of heavy maintenance exams or other heavy maintenance activities. Paragraph 5.13 shall apply in relation to different activity types. Any such variation of the terms of the Franchise Agreement shall not constitute a Change. For the avoidance of doubt where the increased volume proposed for one type of activity to be applied to specified vehicles means a corresponding reduction in the required volume of another type of activity to be applied in relation to the same vehicles (for example, where an increase in the number of C6 full exams carried out on HSTs means a corresponding reduction in the requirement for C6 descoped exams because the C6 full exam supersedes the need for C6 descoped exams) the amendments made shall address both the increases and reductions.

- (e) The Franchisee and the Secretary of State acknowledge and agree that any report produced by the Rolling Stock Adviser (including any Additional HM Report) shall fall within the definition of "Data Site Information" pursuant to paragraph 3.1 of Schedule 15.1 (Reletting Provisions).

Additional HM Report

5.5

- (a) It is agreed that if the Secretary of State exercises his rights pursuant to clause 5.2 (Additional Reporting Periods) to extend the Franchise Term, the Secretary of State will, as soon as reasonably practicable, notify the Franchisee if he requires a further report to be provided by the Rolling Stock Adviser. If the Secretary of State so notifies the Franchisee, the Rolling Stock Adviser shall be requested to provide, by such date as the Secretary of State may specify, a report jointly addressed to the Franchisee and the Secretary of State setting out an appropriate schedule of maintenance works (including both by volume and periodicity) that an efficient operator should undertake during such period as the Secretary of State may specify (such period to end no later than 01:59 on 1 April 2024) (the "**Additional HM Report**").
- (b) The Rolling Stock Adviser shall be instructed to prepare the Additional HM Report on the same basis as the report provided pursuant to paragraph 5.4(a), except that in the preparation of the Additional HM Report he shall also take into account, inter alia, the findings of the report provided under paragraph 5.4(a). It is further acknowledged that paragraphs 5.4(c) and 5.4(d) shall apply *mutatis mutandis* in respect of the Additional HM Report.

Final HM Report

5.6

- (a) Three (3) Reporting Periods before the end of the Franchise Term, the Franchisee shall report to the Secretary of State with reasonable supporting evidence the number and type of exams and maintenance activities as identified in the table in paragraph 5.2 (as varied under paragraph 5.4(c) or 5.4(d), if relevant) which have actually then been

carried out during the Franchise Term, together with its forecast of the number of exams and activities which it expects to carry out by the end of the Franchise Term and its forecast of the amounts (if any) which may as a result be payable under paragraph 5.9.

- (b) By way of update to the report required under paragraph 5.6(a) or otherwise, the Franchisee shall provide a final report to the Secretary of State within 30 days of the end of the Franchise Term stating the number and type of exams and maintenance activities as identified in the table in paragraph 5.2 (as varied under paragraph 5.4(d), if relevant) which have actually been carried out during the Franchise Term, together with reasonable supporting evidence. The report shall separately identify those exams and maintenance activities (if any) carried out in consequence of a variation under paragraph 5.4(d) and (if those works are not covered by modelled costs per activity contained in paragraph 5.9) its calculation of the reasonably incurred costs of such works certified by a statutory director of the Franchisee as providing a true and fair view. The report shall provide the Franchisee's calculation of the final amounts (if any) payable by the Franchisee to the Secretary of State under paragraph 5.9.

Heavy Maintenance Cost Reimbursement Payment

5.7 In addition to any contravention of the Franchise Agreement pursuant to paragraph 5.1 a Heavy Maintenance Cost Reimbursement Payment may be payable if the modelled cost of the exams and other heavy maintenance activities set out in Column C or Column D of Table 5.2 actually delivered by the Franchisee during the Franchise Term is less than the amount of heavy maintenance funding provided for, being (subject to the application of paragraph 9.3(i) of Schedule 9.8):

- (a) **[REDACTED¹⁰]** where the Franchise Term is not extended under clause 5.2 (Additional Reporting Periods); and
- (b) **[REDACTED¹¹]** where the Franchise Term is extended under clause 5.2 (Additional Reporting Periods) for 13 Reporting Periods,

(the "**Assumed Heavy Maintenance Funding**"), subject to indexation by the Retail Prices Index (in the same way as variable costs are indexed in Appendix 1 to Schedule 8.1 (Annual Franchise Payments) so that the whole of such amount is subject to indexation at the point when the Heavy Maintenance Cost Reimbursement Payment is calculated under paragraph 5.9. The Assumed Heavy Maintenance Funding sum is subject to adjustment in order to align with any amendment to the level of such funding made as a result of Qualifying Change.

5.8 If (as the case may be):

¹⁰ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹¹ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

- (a) the Franchise Period ends before 01.59 on 1 April 2023; or
- (b) (where the Secretary of State exercises his rights under clause 5.2 to extend the Franchise Period beyond 1 April 2023) the Franchise Period ends otherwise than at 01:59 on 1 April 2024,

the value of the Assumed Heavy Maintenance Fund will in either case be subject to reduction to reflect the extent to which such funding is not provided to the Franchisee under the Financial Model as a result (as the case may be) of: (i) such early termination; or (ii) such extension of the Franchise Period for a total period which is for fewer than 13 Reporting Periods.

- 5.9 The Heavy Maintenance Cost Reimbursement Payment shall be payable by the Franchisee to the Secretary of State (as a debt) within 30 days of the report under paragraph 5.6(b) or (where paragraph 5.8 applies) determination of the relevant levels of exams and activities and otherwise in accordance with the terms of Schedule 8.1 (Franchise Payments).

The Heavy Maintenance Cost Reimbursement Payment shall be calculated on the basis of the following table and shall be an amount calculated as follows:

$$\text{HMCRP} = (\text{AHMF} - \text{HMCS}) - \text{SUMTOTAL}$$

where:

HMCRP is the amount of the Heavy Maintenance Cost Reimbursement Payment provided that no amount shall be payable where that figure is negative;

AHMF is the applicable Assumed Heavy Maintenance Funding under paragraph 5.7 subject to adjustment under paragraph 5.8 in the event of an early termination or an extension of the Franchise Term under clause 5.2 for a total period which is neither 13 nor 26 Reporting Periods (subject always to the application of paragraph 9.3(i) of Schedule 9.8);

HMCS is the amount of any Expected HM Cost Saving Amount repaid by the Franchisee (or not paid to the Franchisee or applied to alternative purposes) in consequence of paragraph 5.13 or any similar arrangements agreed between the Secretary of State and the Franchisee;

SUMTOTAL is the amount calculated on the basis of the table set out below, found by summing the product of the actual number of relevant exams or activities over the Franchise Period (A) and the modelled cost for each such exam or activity (C) as set out in that Table; and

Vehicle type	Maintenance or exam activity	Actual number of vehicles / exams or inputs over the Franchise Period – A	Modelled cost per activity – 20/21 prices £ C	SUMTOTAL= $\Sigma A \times C$
Power cars	E exam	Figure to be confirmed after the end of the Franchise Period	[REDACTED ¹²]	To be calculated
	F exam		[REDACTED]	
	G exam		[REDACTED]	
	QL4		[REDACTED]	
Trailer cars	C4		[REDACTED]	
	C6		[REDACTED]	
Sleeper/ day coaches	C4		[REDACTED]	
	C6		[REDACTED]	
Class 57	Overhaul		[REDACTED]	
	Power unit		[REDACTED]	
	Bogie change	[REDACTED]		
	Paint	[REDACTED]		
Class 150	Costs of corrosion repairs identified as part of C6 overhauls (to the extent only that the Franchisee is legally liable to fund such repairs under the terms of the relevant lease(s))	[REDACTED]		
		SUMTOTAL		

¹² 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

The modelled cost per activity shall be subject to indexation by the Retail Prices Index (in the same way as variable costs are indexed in Appendix 1 to Schedule 8.1 (Annual Franchise Payments)) so that the whole of the relevant amount is subject to indexation at the point when the heavy Maintenance Cost Reimbursement Payment is calculated under paragraph 5.9.

5.10 The Secretary of State may at his reasonable discretion decide to waive his rights to receive any Heavy Maintenance Cost Reimbursement Payment. In deciding whether to waive such rights the Secretary of State may, but shall not be obliged to, take into consideration the circumstances which led to the Franchisee's failure to carry out the required number of maintenance works and any additional or alternative rolling stock activities or works undertaken.

5.11 Not Used.

5.12 Not Used

Repayment of heavy maintenance funding and different activity types

5.13 Without prejudice to the other provisions of this paragraph 5, if as a result of the findings of any report produced by the Rolling Stock Adviser (or otherwise) the Franchisee becomes aware that either materially different maintenance activities to what are forecast are being carried out on the rolling stock vehicle types set out at Table 5.2 in Paragraph 5.2 of Part 1 of Schedule 6.1 or a materially lower amount of heavy maintenance work is required than forecast pursuant to paragraph 5.2, it shall notify the Secretary of State as soon as reasonably practicable providing (in such form as the Secretary of State may reasonably require) details of the different maintenance activity ("**Different Maintenance Activity**") and/or the cost saving expected to arise as a result of the reduced amount of required heavy maintenance work ("**Expected HM Cost Saving Amount**"). In such circumstances the Secretary of State shall be entitled to direct the Franchisee as follows:

- (a) in the case of a Different Maintenance Activity to establish an additional maintenance exam or activity for inclusion in the table in paragraph 5.9 with a modelled cost per activity in 2020/21 prices which is representative of the proper and reasonable average cost to the Franchisee of carrying out such exam or activity; and/or
- (b) in the case of an Expected HM Cost Saving Amount, to either:
 - (i) repay all or part of the Expected HM Cost Saving Amount to him; or
 - (ii) allow the Franchisee to apply an amount equal to some or all of the Expected HM Cost Saving Amount for such alternative purposes as the Secretary of State and the Franchisee may agree,

provided that such repayment or alternative application will not be applied except to the extent that that there is very high confidence that such sums will not be needed during the balance of the Franchise Term in any circumstances, so that the risk to the Franchisee in relation to the funding of the heavy maintenance which it will be required to carry out over the balance of the Franchise Term (as it may be extended) is not materially increased as a result,

and in each case the parties shall agree in good faith such amendments as may be required to this paragraph 5, including but not limited to the calculation of the Heavy Maintenance Cost Reimbursement Payment, to take account of such earlier repayment or reallocation of monies.

6. Treatment of DA2 CO Underspend and DA2 CI Underspend

6.1 The Franchisee shall, by no later than the Franchise Performance Meeting that is required (by virtue of paragraph 1 of Schedule 11.1) to be held in the second Reporting Period of the Franchise Term (or in the absence of any such Franchise Performance Meeting, by the end of the second Reporting Period), provide a statement (signed by a statutory director of the Franchisee) to the Secretary of State separately identifying any:

- (a) DA2 CO Underspend;
- (b) DA2 CI Underspend; and
- (c) any other amounts relating to the Previous Franchise Agreement which the Parties have agreed in writing be applied in accordance with this paragraph,

with the aggregate amount of these items (without any double counting) being the "**Continuity Fund**".

6.2 Within 30 days of the statement being provided by the Franchisee under paragraph 6.1, the Parties shall seek to agree the amount of the Continuity Fund and in the absence of agreement the amount of the Continuity Fund shall be as reasonably determined by the Secretary of State having regard to the matters identified in paragraph 6.1. It is acknowledged that as at the date of this Agreement the Continuity Fund is forecast to have a value of [REDACTED¹³] (not subject to indexation, and excluding any amounts identified and agreed in writing between the Parties as being for inclusion within the Continuity Fund but whose estimated value is identified as 'to be agreed' within such written agreement)), with the value to be agreed or determined under this paragraph 6.2 subject to adjustment to reflect verification of this amount and any movements over the period between the date of this Agreement and the Start Date. The Continuity Fund actual amount shall be indexed in the way expenditure commitments are indexed pursuant to paragraph 2.2 of Part 2 to Schedule 6.2.

6.3 The Franchisee shall apply the Continuity Fund towards its proper and reasonable costs and expenses incurred in delivering each of the following schemes (together the Continuity Fund Schemes) but so as to avoid double counting with any elements to the extent funded from other sources or elsewhere under this Agreement:

- (a) the schemes identified in column 1 of the table below, with the Franchisee to use all reasonable endeavours to deliver each of those

¹³ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

schemes by the date shown opposite that scheme in column 2 of the table below:

Continuity Fund Scheme	Delivery Date
Plymouth Station Masterplan Development	31 Mar-21
Taunton MSCP	31 Mar-21
Castle Cary Car Park	31 Mar-21
Bristol Hatchett Road – Traincrew Accommodation	31 Dec-20
Okehampton Feasibility	30 Sep-20
North Downs Line Level Crossing Work	30 Sep-21
Nailsea and Backwell – Improvement Fund	31 Dec-20
Class 143 – PRM Improvements	31 Jul-20
Contribution of [REDACTED ¹⁴] which notwithstanding the other terms of this Agreement shall when spent be counted towards the amount committed to be incurred by the Franchisee under paragraph 40.1 (b) (ii) (A) of Part 1 of Schedule 6.2, which such amount to be expended in connection with the refurbishment of Class 165 and Class 166 rolling stock	30 Jun-22
Contribution of [REDACTED ¹⁵] which notwithstanding the other terms of this Agreement shall when spent be counted towards the amount committed to be incurred by the Franchisee under paragraph 76.3 of Part 1 of Schedule 6.2, with such amount to be expended in connection with the installation of platform validators.	31 Oct-21
Contribution of [REDACTED ¹⁶] which notwithstanding the other terms of this Agreement shall when spent be counted towards the amount committed to be incurred by the Franchisee under paragraph 85.2 of Part 1 of Schedule 6.2, with such amount to be expended in connection with enhancements to the GWR App.	31 March 2022

¹⁴ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹⁵ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹⁶ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

- (b) such other schemes as may be agreed in writing between the Parties on or before the date of the Franchise Performance Meeting referred to in paragraph 6.1 (or such later date as the Parties may agree in writing).
- 6.4 The Franchisee shall report each Reporting Period to the Secretary of State regarding progress in the delivery of each Continuity Fund Scheme, together with an update on the costs and expenses reasonably and properly incurred in the delivery of that scheme. The Franchisee shall make available for inspection by the Secretary of State such information, records and evidence as the Secretary of State may reasonably require for the purposes of verifying that amounts drawn down by the Franchisee from the Continuity Fund have been reasonably and properly applied in respect of the delivery of relevant Continuity Fund Schemes.
- 6.5 If and to the extent any element of the Continuity Fund is not reasonably likely to be required in funding the delivery of the Continuity Fund Schemes (having regard to the requirement for prudent provisions in respect of risks and contingency), that amount shall be treated as Underspend for the purposes of this Agreement in respect of which paragraph 3 (Underspend) of Part 2 of Schedule 6.2 shall apply and it shall cease to be part of the Continuity Fund.
- 6.6 Where any transfer is made out of the Continuity Fund in accordance with paragraph 6.5 and it subsequently transpires that the provisions retained in the Continuity Fund have been insufficient, then the Franchisee may request any Underspend then uncommitted to be transferred back to the Continuity Fund to make up the shortfall and the Secretary of State shall give due consideration to such request.
- 6.7 If following the delivery of the Continuity Fund Schemes, there is an underspend of the Franchisee's proper and reasonable costs of delivering the Continuity Fund Schemes against the balance of the Continuity Fund after any transfers out of or into the fund under paragraph 6.5 or paragraph 6.6 are taken into account, then that amount shall be treated as Underspend for the purposes of this Agreement in respect of which paragraph 3 (Underspend) of Part 2 of Schedule 6.2 shall apply.
- 6.7A In the event that the Franchise terminates for any reason prior to the completion of one or more Continuity Fund Schemes the balance of the funds remaining in the Continuity Fund at the point of such termination shall be repaid to the Secretary of State as soon as reasonably practicable.
- 6.8 Paragraph 9 of Part 2 to Schedule 6.2 (Designation of Assets) comprised in COs as Primary Franchise Assets shall apply to assets acquired in consequence of the application of the Continuity Fund.

7. **Support for Transport Focus**

The Franchisee shall provide funding to Transport Focus of **[REDACTED¹⁷]** in each Franchisee Year, to be applied towards employing an independent passenger link manager who will work with the Franchisee.

Withdrawn

¹⁷ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

PART 2 – MANDATORY FRANCHISE SPECIFIC OBLIGATIONS

1. **NOT USED.**
2. **Boxing Day Services**
 - 2.1 At least six (6) months prior to each of the Passenger Change Dates occurring in December 2020 and December 2021 the Franchisee 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 Franchisee 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 Franchisee on 26 December in each Franchisee Year pursuant to the relevant Train Service Requirement (the "**Additional Boxing Day Services**"). Such report shall include:
 - (i) the Franchisee's view on whether or not the operation of the Additional Boxing Day Services will be commercially viable;
 - (ii) the impact on Franchise Payments (if any) if the Secretary of State (at the Secretary of State's sole discretion) elects to vary the Train Service Requirement to require the provision of the Additional Boxing Day Services thereby triggering a Change pursuant to paragraph (d) (*change to the Train Service Requirement in accordance with paragraph 16.6 of Schedule 1.1*) of the definition of Change.
 - 2.2 Following the submission of the report required pursuant to paragraph 2.1(b) the Franchisee shall:
 - (a) promptly respond to the Secretary of State's reasonable queries in relation to such report (including the provision of such assistance as the Secretary of State may reasonably 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 reasonably require for the purposes of discussing the contents of such report.
 - 2.3 The Franchisee shall have due regard to the outcomes and findings of the consultation referred to in paragraph 2.1(a) in proposing on which Routes, the Additional Boxing Day Services should operate if the Secretary of State (at the Secretary of State's sole discretion) elects to vary the Train Service Requirement to require the provision of the Additional Boxing Day Services.

PART 3 – FRANCHISE SPECIFIC OBLIGATIONS**1. Crossrail**

The following words and expressions shall have following meanings:

- “Crossrail Operator”** means any person who is appointed to provide railway passenger services on the railway transport system to be constructed and maintained as specified in the Crossrail Act 2008;
- “Crossrail Programme”** means the programme of planning, preparatory, construction, tunnelling, station building, rebuilding and enhancement and engineering activities and works and the procurement of rolling stock and other assets and equipment being undertaken for the purposes of building the east west cross London railway system specified in the Crossrail Act 2008 and the extension of that system to Reading;
- “Crossrail Services”** means the passenger services operated or to be operated by the Crossrail Operator;
- “Crossrail Stations”** means the following stations which are operated by the Crossrail Operator:
- (a) Acton Main Line;
 - (b) Burnham;
 - (c) Ealing Broadway;
 - (d) Hanwell;
 - (e) Hayes and Harlington;
 - (f) Iver;
 - (g) Langley;
 - (h) Southall;
 - (i) Taplow;
 - (j) West Drayton; and
 - (k) West Ealing;
- “Ex-GW Services”** has the meaning given to it in paragraph 1.7;
- “Rail for London”** means Rail for London Limited (registered number 05965930) whose ultimate holding company is Transport for London; and
- “Relevant Flows”** has the meaning given to it in paragraph 1.13(a).

- 1.1 As at the date of this Franchise Agreement, the Secretary of State requires that the Franchisee refrain from exercising any or all of its rights under any Access Agreement or any Property Lease to apply for access rights that would be inconsistent with ensuring that until the Crossrail Stage 5 Timetable Date the Crossrail Operator has unrestricted access to two platforms at London Paddington station of adequate length to accommodate a standard length train of the Crossrail Operator, to the extent necessary to allow Crossrail Services to operate. This direction shall not restrict any such exercise of rights being treated as a Change.
- 1.2 The Franchisee shall engage in such "shadow running" and testing of systems, services and operational plans as the Secretary of State may reasonably specify in advance of the commencement of operation of the Crossrail Services by the Crossrail Operator for the purposes of assisting the effective delivery of the Crossrail Programme.
- 1.3 The Franchisee shall fully and effectively co-operate with the Secretary of State in connection with the commencement of the operation of the Crossrail Services by the Crossrail Operator. Accordingly if so requested by the Secretary of State the Franchisee shall provide the Secretary of State (or any of his advisers, employees, representatives, nominees or agents) with such information, reports and analysis as the Secretary of State (or any of his advisers, employees, representatives, nominees or agents) may reasonably require. This may include:
- (a) operational and financial information, data, reports and analysis (including driver, other train crew and rolling stock diagrams, health and safety and environmental information, information about Franchise Employees employed in relation to the carrying out of the Franchise Services from the Crossrail Stations, information about relevant real property and Network Rail charges and performance data);
 - (b) terms and conditions of relevant Franchise Employees and human resources policies;
 - (c) upon reasonable notice, attending meetings with the Secretary of State (or any of his advisers, employees, representatives, nominees or agents) in relation to the commencement of operation of the Crossrail Services by the Crossrail Operator;
 - (d) reviewing and commenting on the implementation of timetables and programmes relating to the commencement of the operation of the Crossrail Services by the Crossrail Operator; and/or
 - (e) any other relevant information as the Secretary of State (or any of his advisers, employees, representatives, nominees or agents) may reasonably specify from time to time.
- 1.4 The Franchisee shall comply with the reasonable requirements of the Secretary of State in relation to:
- (a) the commencement of operation of the Crossrail Services by the Crossrail Operator; and
 - (b) the implementation of all aspects of the Crossrail Programme (including through co-operation with Network Rail, the Crossrail Operator, Crossrail

Limited and TfL as directed by the Secretary of State) where such implementation involves an interface with any railway infrastructure used in relation to the Franchise Services or is otherwise related to the Franchise Services.

The Franchisee's obligations pursuant to this paragraph 1.4 shall include:

- (i) upon reasonable notice, attending meetings with the Secretary of State, TfL, Network Rail, the Crossrail Operator and other relevant bodies specified by the Secretary of State to discuss and provide an opinion on any relevant issues;
- (ii) providing information, data, reports and analysis reasonably required by the Secretary of State in relation to assessing the implications of the commencement of the operation of Crossrail Services by the Crossrail Operator or relevant aspects of the implementation of the Crossrail Programme; and
- (iii) reviewing and commenting on implementation timetables and programmes for the commencement of the operation of the Crossrail Services by the Crossrail Operator or relevant aspects of the implementation of the Crossrail Programme.

1.5 The Franchisee shall fully and actively participate in good faith as a skilled and experienced train operator in risk reviews initiated by the Secretary of State or (if directed by the Secretary of State) TfL relating to the implementation of the Crossrail Programme in the manner directed by the Secretary of State. The Franchisee shall develop risk mitigation plans as reasonably required by the Secretary of State pursuant to such risk reviews.

1.6 The Franchisee shall permit train drivers employed by the Crossrail Operator to travel in the cabs of its trains for the purpose of route learning.

1.7 The Franchisee shall, if requested to do so in writing by the Secretary of State:

- (a) fully and effectively co-operate with such persons as the Secretary of State may specify in connection with, and shall support the development of, such mitigation plans as the Secretary of State considers may be required in order to secure the continued operation of affected passenger services (whether by the Franchisee, the Crossrail Operator or some other person) in the event that the Crossrail Operator is unable to take over full operation of the Ex-GW Services from the Passenger Change Date in December 2019; and
- (b) use all reasonable endeavours (as the case may be) to implement or support the implementation of such mitigation plan as may be reasonably determined by the Secretary of State further to the process described in paragraph 1.7(a), and shall (if applicable) engage with the Secretary of State to discuss in good faith the terms of any Variation to the Franchise Agreement that may be required to enable the Franchisee to continue to provide those of the Ex-GW Services as the Crossrail Operator is unable to provide from the Passenger Change Date in December 2019.

For the purposes of this paragraph 1.7, "**Ex-GW Services**" means those passenger services operated by the Franchisee pursuant to the Previous Franchise Agreement

as are intended, following the Passenger Change Date in December 2019, to be operated by the Crossrail Operator.

1.8 The Franchisee shall:

- (a) fully and effectively cooperate with Network Rail for the purposes of facilitating the efficient achievement of the enhancement and rebuilding programme at all relevant stations served by the Passenger Services and affected by the Crossrail Programme (including without limitation London Paddington) in accordance with the timescales for the Crossrail Programme as they might be varied from time to time and act reasonably in relation to Station Change and Network Change processes including through reasonable cooperation with TfL, Rail for London and/or the Crossrail Operator;
- (b) fully and effectively cooperate with the Secretary of State, TfL, Network Rail, Rail for London, the Crossrail Operator and other relevant bodies specified by the Secretary of State for the purpose of developing and implementing plans for the enhancement and rebuilding of relevant stations served by the Passenger Services (including without limitation London Paddington) in connection with the Crossrail Programme;
- (c) ensure that:
 - (i) all season ticket Fares on all Flows for which the Franchisee is Lead Operator are capable of residing upon and being fulfilled by the use of ITSO Certified Smart Media where these are provided for by the RSPS3002 standard;
 - (ii) CPAY is available and accepted as a means of payment for journeys made using the Passenger Services between: (A) any station on the route between London Paddington station and Reading station (inclusive); and (B) any other station covered by the PAYG Agreement; and
 - (iii) Oyster PAYG and Travelcards are available and accepted as a means of payment for journeys made using the Passenger Services between: (A) any station on the route between London Paddington station and West Drayton station (inclusive); and (B) any other station covered by the PAYG Agreement;
- (d) take no actions or steps which is or are designed, directly or indirectly to prevent, prejudice, or frustrate the implementation of the Crossrail Programme;
- (e) fully and effectively co-operate with the Crossrail Operator in relation to train planning, timetabling and platforming arrangements for the purpose of ensuring the efficient operation of passenger services by the Crossrail Operator both in respect of:
 - (i) the pattern of passenger services operated by the Crossrail Operator as at the Start Date; and
 - (ii) any future changes to the pattern of passenger services operated by the Crossrail Operator as at the Start Date, including in connection with:

- (A) proposals to increase the frequency of Crossrail Services to/from Heathrow Airport;
 - (B) proposals to invest in new infrastructure to allow direct services between Heathrow Airport and Reading ("**Western Rail Link**"); and
 - (C) the construction and opening of the new HS2 station at Old Oak Common;
- (f) fully and effectively cooperate with the Crossrail Operator for the purpose of ensuring, subject to the terms of the relevant station access agreements, that the passengers using trains operated by the Crossrail Operator receive throughout the remainder of the Franchise Term a consistently high level of customer service and experience at both the Crossrail Stations and Slough, Maidenhead, Twyford and Reading stations (in respect of Reading, to the extent it is reasonably able, recognising that the Franchisee is not the operator of Reading Station) and accordingly the Franchisee shall:
- (i) make Franchise Employees engaged in customer facing activities at Slough, Maidenhead, Twyford and Reading stations available as reasonably required by the Crossrail Operator for training and briefing in common customer service and experience standards specified by the Crossrail Operator; and
 - (ii) ensure (subject as provided in paragraph 1.2(b) of Part 2 to Schedule 6.2, as if this obligation was included in Part 1 to Schedule 6.2) that Slough, Maidenhead, Twyford and Reading stations are staffed with at least one (1) Franchisee Employee from the first train in each day to the last train in each day in order to support the provision of such customer service and experience standards.
- 1.9 The Franchisee shall fully and effectively co-operate with the Crossrail Operator, Network Rail and any other third parties which operate train services on the route between London Paddington station and Reading station in respect of operational issues, including:
- (a) monitoring the performance of all train services on the route, understanding the root causes of delay and identifying potential measures that could be implemented by any or all of the relevant parties to improve performance; and
 - (b) collaborating on emergency and contingency planning arrangements, including as regards:
 - (i) the provision of access to particular locations and facilities in the event of emergencies;
 - (ii) the sharing of train stabling facilities in the event of serious unplanned disruption or emergencies;
 - (iii) joint collaboration to ensure consistent messages to passengers (for example, but without limitation, in respect of alternative travel options in times of disruption); and

- (iv) the joint preparation of contingency timetables to be deployed in times of severe disruption.

1.10 The Secretary of State shall have the right to notify the Franchisee that specified rights of the Secretary of State pursuant to this paragraph 1 shall be exercisable by TfL on his behalf and the Franchisee shall be required to act and perform its obligations accordingly. In the event such notification has been given and the Franchisee believes that:

- (a) there is any conflict between instructions received from TfL and instructions received from the Secretary of State; or
- (b) instructions received from TfL are inconsistent with the terms of this Franchise Agreement,

the Franchisee shall notify the Secretary of State forthwith identifying the conflict or inconsistency. The Franchisee shall act in accordance with instructions received from the Secretary of State in relation to any such matter. The Franchisee shall not be liable for any failure to act in accordance with the instructions of TfL where such a conflict or inconsistency is established to the extent that such failure was a consequence of such conflict or inconsistency.

1.11 In connection with:

- (a) the installation and maintenance of certain equipment at Slough, Maidenhead, Twyford and Reading stations for the purposes of the operation of the Crossrail Services (including in relation to driver controlled operation); and/or
- (b) any other purpose in connection with the operation of the Crossrail Services which TfL, Rail for London or the Crossrail Operator may reasonably specify in respect of Slough, Maidenhead, Twyford and Reading stations,

the Franchisee shall (in respect of Reading, to the extent it is reasonably able, recognising that the Franchisee is not the operator of Reading Station) grant reasonable access to such stations to TfL, Rail for London or the Crossrail Operator and co-operate in relation to such installation and maintenance (or such other purpose as may be reasonably specified by TfL, Rail for London or the Crossrail Operator pursuant to paragraph 1.11(b)).

1.12 Not Used.

1.13 The Secretary of State shall consult with the Franchisee and consider any representations made to it by the Franchisee prior to approving:

- (a) any change to the Franchisee's position as lead operator under the Ticketing and Settlement Agreement in respect of the flows between Paddington Station and each of Reading, Twyford, Maidenhead and Slough Stations (the "**Relevant Flows**"); or
- (b) any material change to fares structures that affect such Relevant Flows,

in circumstances where the Secretary of State's prior consent is required to such change, provided always that any decision to provide consent shall in all cases remain at the Secretary of State's sole discretion.

2. **NOT USED.**

3. **Transferring Stations**

3.1 ***Transfer to the Franchisee***

- (a) The Franchisee shall use all reasonable endeavours to provide such assistance and information as the Secretary of State may reasonably require in relation to the potential transfer of any station (each such station being an **"Identified Station"**) to the Franchisee during the Franchise Term.
- (b) If, during the Franchise Term, agreement is reached in relation to the transfer of any Identified Station between the Secretary of State, the current facility owner in respect of any Identified Station and the Franchisee, then the Secretary of State may direct the Franchisee to take such actions as may be necessary to give effect to the transfer of any Identified Station to the Franchisee. Any such direction by the Secretary of State shall constitute a Variation under paragraph 1.1 of Schedule 9.3 (*Variations to the Franchise Agreement and Incentivising Beneficial Changes*). Where a Variation occurs as contemplated under this paragraph 3.1 (b), the Secretary of State shall be entitled to make such consequential changes to the terms of the Franchise Agreement as reasonably considered necessary by the Secretary of State in order to give effect to the transfer of such Identified Station.

3.2 ***Transfer from the Franchisee***

- (a) The Franchisee shall use all reasonable endeavours to provide such assistance and information as the Secretary of State may reasonably require during the Franchise Term in relation to the transfer of any Station in respect of which the Franchisee is Facility Owner to a third party.
- (b) If, during the Franchise Term, agreement is reached between the Secretary of State and any third party in relation to the transfer of a Station, then the Secretary of State may direct the Franchisee (including by exercising the Secretary of State's rights under paragraph 19 (Provisions relating to Access Agreements and Property Leases) of Schedule 1.1 (*Franchise Services and Service Development*)) to take such actions as may be necessary to give effect to the transfer of such Stations. Any such direction by the Secretary of State shall constitute a Variation under paragraph 1.1 of Schedule 9.3 (*Variations to the Franchise Agreement and Incentivising Beneficial Changes*).
- (c) Where a Variation occurs as contemplated under this paragraph 3.2, the Secretary of State shall be entitled to make such consequential changes to the terms of the Franchise Agreement as reasonably considered necessary by the Secretary of State in order to give effect to the transfer of such stations in order to ensure that such provisions will continue to apply in relation to any Network Rail Fixture Asset comprised in a transferring station in the same way as such provisions would have applied had the Franchisee remained the Facility Owner at such Station.

4. **NOT USED.**

5. **NOT USED.**

6. **NOT USED.**

7. Heathrow

7.1 Where instructed to do so by the Secretary of State the Franchisee shall fully and effectively co-operate with the Secretary of State and relevant interested parties identified by the Secretary of State including Network Rail, Transport for London and Heathrow Airport Limited in relation to development work in connection with the development and provision of a new rail access to Heathrow Airport from Routes over which the Passenger Services are operated and the integration of such new rail access with the network of Network Rail and the passenger services operating over it.

8. **NOT USED.**

9. **NOT USED**

10. **NOT USED**

11. **NOT USED**

12. **NOT USED**

13. **NOT USED**

14. Railway Heritage

14.1 The Franchisee shall:

- (a) engage constructively with the Railway Heritage Trust in order to maintain a register of listed buildings, those in conservation areas, and a list of designated artefacts and records (to ensure compliance with the Railway Heritage Act 1996);
- (b) engage constructively with the Railway Heritage Trust, Network Rail, and other relevant organisations to ensure that historic buildings and structures are conserved and promoted; and
- (c) maintain close and purposeful contact with heritage railway lines within the area of the Franchise, to identify and execute initiatives which will increase their usage and provide benefit to Passengers and the community.

15. **NOT USED.**

16. **NOT USED.**

17. **NOT USED**

18. East West Rail Scheme

18.1 The Franchisee shall from the Start Date until the completion of the East West Rail Scheme fully and effectively co-operate and engage constructively with all relevant third parties responsible for the delivery of the East West Rail Scheme with the intention of assisting in the timely, efficient and cost effective implementation and delivery of the East West Rail Scheme in a manner which provides the best overall solution for the network.

18.2 To the extent that the East West Rail Scheme leads to the Franchisee having rights under railway industry procedures including Network Change or Station Change the Franchisee shall not act in a way designed to directly or indirectly prevent, prejudice or frustrate the delivery of the East West Rail Scheme and the Franchisee shall not unreasonably raise any objection under any railway industry procedure including Network Change or Station Change.

18.3 It is acknowledged that the Franchisee may make reasonable objections with a view to mitigating the impact of the East West Rail Scheme and their implementation on passengers and the Franchise Services, while recognising the need for the East West Rail Scheme to be able to be undertaken in a reasonable manner.

18.4 The Franchisee shall provide such information in respect of the East West Rail Scheme as the Secretary of State may reasonably request from time to time.

19. **NOT USED.**

20. **Co-operation with Welsh Ministers**

20.1 The following words and expressions shall have following meanings:

“Welsh Ministers”

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.

20.2 The Franchisee shall at all times during the Franchise 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 Franchise 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 Franchisee's obligations under the Franchise Agreement.

21. **NOT USED.**

22. **Depot Connection Agreements**

22.1 For the purposes of this paragraph 22:

“Depot Connection Agreement”

means an access contract (having the meaning given in section 17(6) of the Act) between the Franchisee and Network Rail relating to the connection of a Depot to the relevant part of the network; and

“Target Date” means 30 September 2020.

22.2 The Franchisee shall:

- (a) fully and effectively co-operate and engage in good faith with Network Rail and use all reasonable endeavours to enter into a Depot Connection Agreement on reasonably appropriate terms in respect of each and every Depot by no later than the Target Date;
- (b) provide to the Secretary of State by no later than the date falling fourteen (14) days after the Target Date (as the case may be):
 - (i) a certificate signed by a statutory director of the Franchisee confirming that the Franchisee is a party to a Depot Connection Agreement in respect of each and every Depot; or
 - (ii) a statement signed by a statutory director of the Franchisee:
 - (A) confirming the list of Depots in respect of which the Franchisee is a party to a Depot Connection Agreement; and
 - (B) providing in respect of any other Depot which is not comprised in the list referred to in paragraph 22.2(b)(ii)(A):
 - (1) supporting explanations as to the reason(s) why the Franchisee has yet to become a party to a Depot Connection Agreement in respect of such Depot by reference to the obligations of the Franchisee under paragraph 22.2(a); and
 - (2) a statement of the further steps which the Franchisee is taking, or proposes to take, with a view to entering into a Depot Connection Agreement in respect of such Depot,

it being acknowledged and agreed that where the circumstances described in paragraph 22.2(b)(ii) apply the Franchisee shall be obliged to continue to fully and effectively co-operate and engage in good faith with Network Rail and use all reasonable endeavours to enter into a Depot Connection Agreement on reasonably appropriate terms in respect of the Depots identified pursuant to paragraph 22.2(b)(ii)(B) as soon as is reasonably practicable following the Target Date; and
- (c) provide such further information as the Secretary of State may reasonably require in connection with this paragraph 22.2.

23. Station Improvement Fund

- 23.1 By no later than the Start Date, the Franchisee shall establish a station improvement fund (the **“Station Improvement Fund”**) and shall invest into such Station Improvement Fund not less than the relevant SIF Amount in respect of each Franchisee Year during the relevant SIF Period for the purposes (subject

always to paragraph 23.1A) of meeting the SIF Scheme Costs of the Franchisee in developing and implementing Approved SIF Schemes in accordance with this paragraph 23 in order to deliver improvements and/or enhancements in some or all of the following focus areas in respect of Stations (together the "**SIF Focus Areas**"):

- (a) customers' physical comfort and protection from the elements;
- (b) measures to improve the accessibility and usability of stations for customers with disabilities;
- (c) customers' perceptions of safety and security;
- (d) real time rail and public transport information at Stations, with enhanced information during periods of disruption;
- (e) the ability for customers to purchase tickets;
- (f) measures to improve ease of interchange, both between train services and between train and other modes;
- (g) improving ease of access to and from stations (including for example (but without limitation) the provision of safe, well-signed walking and cycling routes);
- (h) provision of enhanced facilities for cycle or car parking;
- (i) initiatives that improve the environmental sustainability of stations (which, for the avoidance of doubt, may include the provision of electric charging points for vehicles);
- (j) provision and enhancement of wi-fi facilities;
- (k) other facilities of benefit to customers or specific groups of customers (for example, but without limitation, business travellers or families);
- (l) measures that improve customer flow and reduce congestion at stations;
- (m) supporting the delivery of initiatives identified by the Station Social and Commercial Development Plan;
- (n) any other category of improvements that the Secretary of State may specify,

it being acknowledged and agreed that (unless the Secretary of State otherwise agrees) the SIF Accessibility Improvements Amount may not be used for any purpose other than in respect of SIF Accessibility Improvement Schemes which are approved by the Secretary of State pursuant to paragraph 23.7 below.

23.1A The Parties acknowledge and agree that in each Franchisee Year not less than the amount set out opposite that Franchisee Year in Column 3 of the table below shall be allocated to meet SIF Scheme Costs which comprise capital expenditure, of which not less than the amount set out opposite that Franchisee Year in Column 4 of the table shall be allocated to meet SIF Scheme Costs in respect of SIF Accessibility Improvement Scheme(s) which comprise capital expenditure (it

being acknowledged that for the purposes of this paragraph 23.1A "capital expenditure" may include, where applicable, project management costs incurred by the Franchisee in connection with such capital expenditure). The Secretary of State shall at the Franchisee's request give due consideration to revising the levels of the SIF Amount required to be spent on capital expenditure, having regard to the expected requirements for additional operating expenditure resulting from the particular improvement schemes being implemented using the Station Improvement Fund, provided that only the amounts stated in Column 3 of the table below may be amended (and not for the avoidance of doubt the amounts stated in Columns 2 and 4). It is acknowledged that SIF Amounts allocated to meet SIF Scheme Costs in one Franchisee Year of a SIF Period may actually be expended in an earlier or later Franchisee Year in consequence of when the relevant SIF Scheme Costs actually fall due for payment but it is agreed that this shall not lead to any amendment to Column 2 of the table below and accordingly for the purposes of the calculation of SIF Scheme Underspend and the rights of the Secretary of State under paragraph 23.12 the SIF Amount for each Franchisee Year shall be the amount shown in Column 2 notwithstanding any such expenditure in different Franchisee Years.

Franchisee Year	Column 2 – SIF Amount (£)	Column 3 – Capital expenditure component (£)	Column 4 – SIF Accessibility Improvements Amount (£)
2020/21	[REDACTED ¹⁸]	[REDACTED ¹⁹]	[REDACTED ²⁰]
2021/22	[REDACTED]	[REDACTED]	[REDACTED]
2022/23	[REDACTED]	[REDACTED]	[REDACTED]
2023/24 (extension)	[REDACTED]	[REDACTED]	[REDACTED]

Notes:

Amounts shown in the table shall be reduced pro rata in respect of any Franchisee Year within a SIF Period of less than three hundred and sixty five (365) days.

Amounts shown in the table are subject to indexation by the Retail Prices Index in the same way as variable costs are indexed in Appendix 1 to Schedule 8.1 (Franchise Payments).

Amounts shown in Column 3 are a component of the amounts shown in Column 2 (and not incremental to Column 2). Amounts shown in Column 4 are a

¹⁸ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹⁹ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

²⁰ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

component of the amounts shown in Column 3 (and not incremental to Column 3).

23.2 The Franchisee shall (having regard to the matters referred to in paragraph 23.4):

(a) by no later than the date falling eight (8) weeks after the Start Date commence providing to the Secretary of State and as soon as reasonably practicable thereafter and in any event within six months after the Start Date complete providing to the Secretary of State:

(i) details of those initiatives, works or proposals (each a "**SIF Scheme**") which:

(A) the Franchisee proposes to undertake in the Core SIF Period in order to deliver improvements and/or enhancements to one or more of the SIF Focus Areas (which must include proposal(s) in respect of the SIF Focus Area referred to in paragraph 23.1(b)); and

(B) have an aggregate projected SIF Scheme Shortfall of not less than the aggregate of the SIF Amount for each Franchisee Year in the Core SIF Period; and

(ii) brief summary details of the prospective SIF Schemes which the Franchisee has identified but does not propose to take forward pursuant to paragraph 23.2(a)(i) (together with supporting reasons); and

(b) within eight (8) weeks of any exercise by the Secretary of State of his right pursuant to Clause 5.2(a) to continue the Franchise Agreement beyond 01:59 on 1 April 2023, provide to the Secretary of State:

(i) details of the SIF Schemes which:

(A) the Franchisee proposes to undertake in the Extension SIF Period in order to deliver improvements and/or enhancements to one or more of the SIF Focus Areas (which must include proposal(s) in respect of the SIF Focus Area referred to in paragraph 23.1(b)); and

(B) have an aggregate projected SIF Scheme Shortfall of not less than the aggregate of the SIF Amount for each Franchisee Year in the First Extension SIF Period; and

(ii) brief summary details of the prospective SIF Schemes which the Franchisee has identified but does not propose to take forward pursuant to paragraph 23.2(b)(i) (together with supporting reasons).

(c) **NOT USED.**

23.3 The Parties acknowledge and agree that if the Secretary of State exercises his right pursuant to Clause 5.2(a) to continue the Franchise Agreement beyond 01:59 on 1 April 2023 for a period of six (6) Reporting Periods or less then the Secretary of State shall be entitled to waive (by the service of notice in writing to

the Franchisee) the requirement on the Franchisee to comply with paragraph 23.2(b). If the Secretary of State serves such written notice on the Franchisee:

- (a) the Franchisee shall expend the SIF Amount (including, for the avoidance of doubt, the SIF Accessibility Improvements Amount) during the Extension SIF Period in such manner as the Secretary of State may direct; or
- (b) in the absence of any such direction by the Secretary of State, the SIF Amount (including, for the avoidance of doubt, the SIF Accessibility Improvements Amount) in respect of the Extension SIF Period shall be treated as SIF Underspend and the provisions of paragraph 23.12 shall apply.

23.4 The Franchisee shall (using the skill, care, prudence, diligence and foresight which would be expected of a skilled and experienced Train Operator) seek to develop proposals for SIF Schemes (which must include proposal(s) for SIF Accessibility Improvement Scheme(s)) for each applicable SIF Period which would deliver a reasonable balance between:

- (a) maximising overall benefits from any investments made pursuant to SIF Schemes, for example (but without limitation) by prioritising proposed SIF Schemes which involve a third party committing to contribute to the costs of implementation;
- (b) spreading the applicable SIF Amount(s) so as to deliver a range of initiatives across the SIF Focus Areas;
- (c) spreading the applicable SIF Amount(s) so as to achieve benefits across the routes and markets served by the Franchise;
- (d) spreading the applicable SIF Amount(s) so as to deliver benefits across a range of Station sizes from smallest to largest.
- (e) Spreading the applicable SIF Amount(s) so as to deliver benefits across a range of sizes of scheme from smallest to largest

23.5 In relation to each SIF Scheme (including, for the avoidance of doubt, each SIF Accessibility Improvement Scheme) proposed by the Franchisee pursuant to paragraph 23.2 the Franchisee shall provide:

- (a) details of the SIF Focus Areas which that SIF Scheme is intended to deliver improvements and/or enhancements to;
- (b) fully worked up details of the SIF Scheme sufficient to enable the Secretary of State to evaluate the same, including:
 - (i) a timetable for the implementation of that SIF Scheme, setting out the proposed commencement and completion date of such SIF Scheme and any other key dates and milestones;
 - (ii) details of the projected SIF Scheme Costs, SIF Scheme Revenue and SIF Scheme Shortfall;
 - (iii) NOT USED; and

- (iv) an explanation as to why the Franchisee considers that the proposed SIF Scheme can reasonably be expected to deliver sufficient benefits (over the lifetime of the asset created by the investment) to justify the projected SIF Scheme Costs.
- 23.6 The Franchisee shall provide the Secretary of State with such further information in relation to any SIF Scheme (including, for the avoidance of doubt, any SIF Accessibility Improvement Scheme) proposed by the Franchisee pursuant to paragraph 23.2 as the Secretary of State may reasonably require.
- 23.7 A SIF Scheme (including, for the avoidance of doubt, any SIF Accessibility Improvement Scheme) proposed by the Franchisee pursuant to paragraph 23.2 shall not be an Approved SIF Scheme unless and until approved by the Secretary of State pursuant to this paragraph 23.7. Without limitation, the Secretary of State may withhold the Secretary of State's approval to any proposed SIF Scheme (or, for the avoidance of doubt, SIF Accessibility Improvement Scheme) which:
- (a) has not been identified and/or developed in accordance with the Customer and Stakeholder Engagement Strategy;
 - (b) is not designed to deliver improvements and/or enhancements to any of the SIF Focus Areas;
 - (c) has a completion date falling later than the end of the relevant SIF Period (it being acknowledged, for the avoidance of doubt, that the Franchisee shall not be precluded from proposing (and the Secretary of State shall not be precluded from approving) SIF Schemes which have a completion date falling later than the end of the relevant SIF Period (including, for these purposes, a completion date falling later than the end of the Franchise Term));
 - (d) is projected to generate a SIF Commercial Return or in relation to which the Secretary of State considers the SIF Scheme Costs (or any part of them) to be too high or disproportionate to the benefits accruing from the SIF Scheme;
 - (e) the Franchisee is otherwise funded to undertake; or
 - (f) in the opinion of the Secretary of State, amounts to actions or steps which the Franchisee is otherwise obliged to take or which any competent train operator should be taking in relation to the operation of the Franchise.
- 23.8 If the Secretary of State approves an Approved SIF Scheme pursuant to paragraph 23.7 the Franchisee shall (without prejudice to paragraph 23.9):
- (a) proceed without delay to implement the Approved SIF Scheme; and
 - (b) provide regular progress reports to the Secretary of State in respect of the implementation of the Approved SIF Scheme in such format and at such frequency as the Secretary of State may reasonably request (including, as the case may be, at Franchise Performance Meetings),

it being acknowledged and agreed that:

- (c) the funds to be expended by the Franchisee in defraying the SIF Scheme Shortfall associated with Approved SIF Scheme in question shall (provided that the Franchisee has complied with its obligations under paragraph 23.1 and subject always to paragraph 23.8(d)) be drawn from the Station Improvement Fund; and
- (d) the Franchisee shall not be entitled to draw from the Station Improvement Fund any sums in excess of the projected SIF Scheme Shortfall notified to the Secretary of State in respect of the Approved SIF Scheme in question pursuant to paragraph 23.5.
- 23.9 Approved SIF Schemes shall be deemed to be, and treated for the purposes of this Agreement as, Committed Obligations and the provisions of Part 2 (Special Terms related to the Committed Obligations) of Schedule 6.2 (Committed Obligations) shall apply. The Franchisee shall ensure that any facilities which result from the delivery by the Franchisee of an Approved SIF Scheme shall be made available for use by customers free of any additional charge unless the Secretary of State agrees otherwise in writing in respect of any specific facility (it being acknowledged and agreed that where the facility which results from the delivery by the Franchisee of an Approved SIF Scheme is an expansion to an existing car parking facility, the Franchisee shall be entitled to apply the charges which apply in respect of the remainder of the car parking facility in question to the expanded areas of such car parking facility).
- 23.10 Paragraph 23.12 will apply if:
- (a) the aggregate projected SIF Scheme Shortfall in respect of all Approved SIF Schemes for any SIF Period is less than the aggregate of the SIF Amount for each Franchisee Year in that SIF Period; or
- (b) subject to paragraph 23.11 in any SIF Period, in the Secretary of State's reasonable opinion, the aggregate of the actual SIF Scheme Shortfall incurred by the Franchisee during that SIF Period upon Approved SIF Schemes is less than the aggregate of the SIF Amount for each Franchisee Year in that SIF Period,
- in each case the underspend against the aggregate SIF Amount being the **"SIF Scheme Underspend"**.
- 23.11 If:
- (a) the amount of the SIF Scheme Costs actually incurred by the Franchisee in relation to any Approved SIF Scheme exceed the projected SIF Scheme Costs notified to the Secretary of State pursuant to paragraph 23.5 for such Approved SIF Scheme, then the amount of the excess shall not amount to SIF Scheme Costs; or
- (b) in the Secretary of State's reasonable opinion, the amount of the SIF Scheme Revenue actually earned by the Franchisee in relation to any Approved SIF Scheme is less than the projected SIF Scheme Revenue notified to the Secretary of State pursuant to paragraph 23.5 for such Approved SIF Scheme then, for the purposes of paragraph 23.10(b) the actual SIF Scheme Revenue shall be deemed to be the projected SIF Scheme Revenue.
- 23.12 Where this paragraph 23.12 applies the Secretary of State may require:

- (a) all or part of the SIF Scheme Underspend to be added to the SIF Amount for the first Franchisee Year in any subsequent SIF Period (it being acknowledged that any part of the SIF Scheme Underspend which is comprised of the un-utilised element of a relevant SIF Accessibility Improvements Amount will (where this paragraph 23.12(a) applies) be added to the SIF Accessibility Improvements Amount for the first Franchisee Year in any subsequent SIF Period);
- (b) the Franchisee to propose further SIF Schemes using all or part of the SIF Scheme Underspend by such new deadline as the Secretary of State may specify;
- (c) the Franchisee to spend all or part of the SIF Scheme Underspend in such manner as the Secretary of State may direct (which may include application towards other Approved SIF Schemes where costs would otherwise exceed the projected SIF Scheme Costs); and/or
- (d) the Franchisee to pay all or part of the SIF Scheme Underspend to the Secretary of State,

provided that paragraph 23.12(d) shall automatically apply in respect of the last SIF Period unless the Secretary of State specifies otherwise.

- 23.13 Any Franchise Asset arising as a result of an Approved SIF Scheme shall be designated as a Primary Franchise Asset and shall not be de-designated as such. Any such Primary Franchise Asset which falls to be valued in accordance with the Supplemental Agreement shall be valued at nil.

24. Co-operation with West Midlands Rail

- 24.1 The following words and expressions shall have following meanings:

"West Midlands Rail" means West Midlands Rail Limited (No. 08991160) whose registered office is at 16 Summer Lane, Birmingham B19 3SD.

- 24.2 The Franchisee shall at all times during the Franchise Term fully and effectively co-operate with West Midlands Rail in relation to:

- (a) any scheme to reopen or divert any rail route;
- (b) any relevant Prospective Future Train Service Enhancement (as such term is defined in Part 4 of Schedule 6.1);
- (c) any proposal which may be promoted by (or on behalf of) West Midlands Rail during the Franchise 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 West Midlands Rail in respect of the implications of such proposals on the operation of the existing Passenger Services in the area covered by West Midlands Rail, costs and revenues and any other impact on the Franchisee's obligations under the Franchise Agreement.

Withdrawn

PART 4 – BESPOKE OBLIGATIONS**Definitions**

In this Part 4 (Bespoke Obligations) to Schedule 6.1 except to the extent the context otherwise requires the following words and expressions have the following meanings:

“Access Proposal”	has the meaning given to it in Part D of the Network Code;
“Additional Incremental Costs”	has the meaning given to it in paragraph 25.2(c) of this Part 4 of Schedule 6.1;
“Agreed Rolling Stock Options”	has the meaning given to it in paragraph 17.3 of this Part 4 of Schedule 6.1 (and references to “Agreed Rolling Stock Option” shall be construed accordingly);
“Agreed Rolling Stock Options Appraisal”	has the meaning given to it in paragraph 17.4 of this Part 4 of Schedule 6.1;
“Class 769 Units”	has the meaning given to it in Part 1 of Schedule 6.2;
“Class 769 Units Lease”	means a lease of the Class 769 Units entered into by the Franchisee and Porterbrook Leasing Company Limited being either a new lease replacing that entered into in relation to Class 769 Units for the purposes of the Previous Franchise Agreement or an extension of such lease for the purposes of ensuring that relevant Class 769 Units are included in the Train Fleet during the Franchise Term;
“Committed Scheme”	means a Rail Development Scheme which has received final approval from its promoter(s) and funder(s) to authorise its delivery;
“Control Period Five Network Rail Depot and Stabling Fund”	means the fund established by Network Rail in Control Period Five for enhancing depot and stabling capacity on the network;
“Enhancement Fund”	the meaning given to it in paragraph 2.2 of this Part 4 of Schedule 6.1;
“Exeter Depot Funded Works”	means the works to be undertaken and other equipment to be installed described in Part A of Appendix 1 to this Part 4 of Schedule 6.1;
“Exeter Depot Funded Works Anticipated Costs”	means the anticipated cost of the Exeter Depot Funded Works as at the date of this

Agreement of [REDACTED²¹] before taking into account any amount in respect of contingency and as such sum may be revised in accordance with paragraph 24.7 of this Part 4 of Schedule 6.1 and on the basis that the figure does not include [REDACTED²²] of costs which are to be met by Relevant Funding;

“Exeter Depot Funded Works Cap”

means the aggregate of the Exeter Depot Funded Works Anticipated Costs plus the Exeter Depot Funded Works Contingency Cap, being [REDACTED²³] as such sum may be revised in accordance with paragraph 24.3 of this Part 4 of Schedule 6.1;

“Exeter Depot Funded Works Contingency Cap”

means the amount in respect of contingency provision forecast to be required in relation to the project as at the date of this Agreement being [REDACTED²⁴] as such sum may be revised in accordance with paragraph 24.3 of this Part 4 of Schedule 6.1;

“Exeter Depot Funded Works Costs”

means:

- (a) the reasonable costs and disbursements incurred by the Franchisee directly in its delivery of the Exeter Depot Funded Works, such costs to be calculated on a time and materials basis; and
- (b) any reasonable third party costs and disbursements incurred directly by the Franchisee in carrying out the Exeter Depot Funded Works, as evidenced by the invoices or other evidence provided by the Franchisee to the Secretary of State pursuant to paragraph 24.5 of this Part 4 of Schedule 6.1,

²¹ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

²² 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

²³ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

²⁴ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

disregarding costs to the extent met by Relevant Funding;

“Exeter Depot Funded Works Franchisee Cap”

means the aggregate of the Exeter Depot Funded Works Anticipated Costs plus the Exeter Depot Funded Works Franchisee Contingency as such sums may be increased in accordance with paragraph 24.3 of this Part 4 of Schedule 6.1;

“Exeter Depot Funded Works Franchisee Contingency”

means such part of the Exeter Depot Funded Works Contingency Cap as is released to the Franchisee and available for use in connection with the Exeter Depot Funded Works, as at the date of this Agreement being [REDACTED²⁵], as such sum may be increased in accordance with paragraph 24.3 of this Part 4 of Schedule 6.1;

“Exeter Depot Funded Works Initial Payment”

means the payment of [REDACTED²⁶] made by the Secretary of State to the Franchisee pursuant to paragraph 27.4 of Schedule 6.2 (Great Western Franchise Specific Provisions) of the Previous Franchise Agreement;

“Exeter Depot Funded Works Payment”

has the meaning given to it in paragraph 24.7 of this Part 4 of Schedule 6.1;

“Exeter Depot Funded Works SoS Controlled Contingency”

means the amount of the Exeter Depot Funded Works Contingency Cap as it may be revised in accordance with paragraph 24.3 of this Part 4 of Schedule 6.1 less the Exeter Depot Funded Works Franchisee Contingency from time to time, being the part of the larger contingency amount from time to time released to the Franchisee and used or available for use by the Franchisee, with the value of the Exeter Depot Funded Works SoS Controlled Contingency as at the date the date of this Agreement being [REDACTED²⁷];

²⁵ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

²⁶ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

²⁷ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

“Exeter Depot Funded Works Work Plan”	means the work plan and timetable set out in Part B of Appendix 1 to this Part 4 of Schedule 6.1;
“Franchisee WRR Contact”	means a Franchise Employee with appropriate seniority to oversee and facilitate the Franchisee’s compliance with its obligations pursuant to paragraph 21 of this Part 4 of Schedule 6.1;
“Great Western Enhancement Programme”	means the programme of infrastructure works being implemented on the Great Western Main Line and related routes including partial electrification works;
“GWR Performance Report and Plan”	means the performance report and plan established by the Franchisee and agreed by the Secretary of State as referred to in paragraph 12 of Part 2 of Schedule 6.2 of the Previous Franchise Agreement (as updated from time to time);
“HLOS Process”	means the process pursuant to the Railways Act 2005 under which the Secretary of State issues a High Level Output Specification and Rail Development Schemes are subsequently developed pursuant to the “DfT Rail Network Enhancements Pipeline” to “Post Final Investment Decision Stage”;
“Identified Rolling Stock Options”	has the meaning given to it in paragraph 17.2 of this Part 4 of Schedule 6.1;
“Initial Committed Third Party Schemes”	means East West Rail, High Speed Two and Western Rail Link to Heathrow;
“Initial Prospective Future Train Service Enhancement”	means each of the following train service enhancements under consideration by the Secretary of State: <ul style="list-style-type: none"> (a) potential changes to the structure of the timetable for Passenger Services operating via the “Berks & Hants” route, with a view to: (i) providing faster journey opportunities between London and the South West peninsula; (ii) preserving or improving service levels at stations along the route; (iii) strengthening the role of Westbury as a “hub” for connections between rail passenger services; and (iv) improving journey opportunities from intermediate stations

- between Reading and Westbury to the West of England;
- (b) potential extension of passenger services to increase service levels on routes that receive only an occasional service (e.g. London-Torbay direct services) or to extend services to destinations not currently served (e.g. Stratford-upon-Avon or Kidderminster);
- (c) potential changes to the structure of the timetable for Passenger Services operating between Cardiff and Portsmouth, with a view to providing faster journey opportunities between the principal towns and cities along the route while also preserving or improving service levels at other intermediate stations;
- (d) potential changes to the structure of the timetable for Passenger Services operating between Cardiff and Bristol, with a view to providing faster journey opportunities between Cardiff, Newport and Bristol while also improving services for passengers travelling to or from other intermediate stations;
- (e) potential extension of Passenger Services that currently terminate at Cardiff to Swansea or points further west;
- (f) potential collaboration with the operator of the South Western franchise, including trading of train crew and rolling stock, to enhance the frequency of service between Bristol Temple Meads and Weymouth, ideally to provide a regular hourly all-day service but most particularly to provide journey opportunities at times to suit commuters and scholars travelling to and from places of work and education in the principal towns along the route;
- (g) potential provision of additional services, alongside the South

Western franchise services, between Exeter and Axminster to provide a broadly-regular two-train-per-hour service in each direction; and

- (h) changes to passenger services provided by the Franchisee and the franchisee of the West Midlands franchise between Worcester and Hereford in order to provide a more co-ordinated service to passengers between those stations;

“Lease Cost Savings”

has the meaning given to it in paragraph 25.2(a) of this Part 4 of Schedule 6.1;

“People Strategy”

has the meaning given to it in paragraph 14.1 of this Part 4 of Schedule 6.1, as such People Strategy is updated from time to time in accordance with paragraph 14.3 of this Part 4 of Schedule 6.1;

“Programme of Communication”

has the meaning given to it in paragraph 7.1 of this Part 4 of Schedule 6.1;

“Prospective Future Train Service Enhancement”

means each of the Initial Prospective Future Train Service Enhancement and such other train service enhancements as the Secretary of State may notify to the Franchisee from time to time;

“Prospective Future Train Service Enhancement Options”

has the meaning given to it in paragraph 4.1 of this Part 4 of Schedule 6.1;

“Proposed Scheme”

means a Rail Development Scheme which is not a Committed Scheme;

“Rail Development Partnership”

means a forum for joint working in relation to potential and actual Rail Development Schemes the members of which shall be Network Rail and the Franchisee;

“Rail Development Partnership Protocol”

means the document in the agreed terms marked **RDP** (or as otherwise approved by the Secretary of State), as amended from time to time with the prior consent of the Secretary of State in accordance with paragraph 1.4;

“Rail Development Scheme”

means any scheme or Proposed Scheme relevant to the Franchise identified as such by the Franchisee and Network Rail under the Rail Development Partnership protocol, or designated as such by the Secretary of State (with such designation to specify the

nature of the scheme) including schemes proposed or funded by the Secretary of State (through the HLOS Process or otherwise), by Network Rail or by any Third Party to:

- (a) improve the timetable offered to passengers using the services of any Train Operator;
- (b) enhance railway infrastructure for the benefit of any Train Operators or freight operators including through projects which (as the case may be) increase network capacity and/or reduce journey times;
- (c) improve facilities at any stations;
- (d) improve facilities for passenger interchange with buses or other modes of transport, or to improve the wider public realm in the vicinity of stations;
- (e) open new stations;
- (f) restore passenger services to existing freight-only routes, to reopen former railway routes or to open new railway routes; and
- (g) operate through services between the national rail network and heritage railway routes,

it being agreed that Crossrail, the new HS2 station at Old Oak Common, Western Rail Link to Heathrow Airport and East West Rail and any other schemes notified by the Secretary of State to the Franchisee shall not be Rail Development Schemes;

“Relevant Funding”

means funds made available to Network Rail for application to specified railway infrastructure projects;

“Relevant Period”

means, at the relevant point of calculation, the period of time remaining from the relevant date of calculation pursuant to the provisions of paragraph 15 of this Part 4 of Schedule 6.1 until and including the date falling two (2) years after the Expiry Date;

“Relevant Wi-Fi Stations”	means those Stations at which the Franchisee provided members of the public with free of charge access to Wi-Fi either: <ul style="list-style-type: none"> (a) immediately prior to the Start Date; or (b) at any time in the period of twenty four (24) months prior to the Start Date;
“Remapped Franchisee”	means a Successor Operator in relation to one part of the Franchise Services;
“Reporting Quarter”	means any of the following periods: <ul style="list-style-type: none"> (a) 1st April to 30th June; (b) 1st July to 30th September; (c) 1st October to 31st December; and (d) 1st January to 31st March;
“Required Establishment”	has the meaning given to it in paragraph 15.1 of this Part 4 of Schedule 6.1;
“Residual Diesel Fleets”	means, together, the following classes of diesel-powered rolling stock vehicle comprised within the Train Fleet: <ul style="list-style-type: none"> (a) Class 150; (b) Class 158; (c) Class 165; (d) Class 166; and (e) HST sets formed of Class 43 power cars and Mark III coaches;
“Rolling Stock Review Report”	has the meaning given to it in paragraph 17.6(a) of this Part 4 of Schedule 6.1;
“South Western Train Operator”	has the meaning given to it in paragraph 31.1 of this Part 4 of Schedule 6.1;
“Third Party”	means a party other than Network Rail, the Franchisee or the Secretary of State who is a promoter, funder or prospective funder of a Rail Development Scheme;
“Transfer Stations”	has the meaning given to it in paragraph 31.1 of this Part 4 of Schedule 6.1;
“Uncommitted HLOS Scheme”	means a Rail Development Scheme being developed and designed by the Secretary of State or Network Rail through the HLOS Process or pursuant to the Enhancement

Fund which has not yet received final approval to authorise its delivery;

“Uncommitted Third Party Scheme”

means a Rail Development Scheme being developed and designed by a Third Party but which has not yet received final approval to authorise its delivery;

“Unrestricted Passenger Carrying Service”

means the regular operation of relevant unit(s) of rolling stock vehicles in Passenger Service on the relevant Routes in each case without any restriction;

“WECA Funding Agreement”

means an agreement between the Franchisee and the West of England Combined Authority under which the latter agrees to make a contribution towards the Franchisee’s costs of operating certain enhancements to the Passenger Services (as specified more particularly in the TSR); and

“Williams Rail Review”

means the root and branch review of Britain’s railway, independently chaired by Keith Williams.

1. Rail Development Partnership

1.1 The Franchisee shall fully and effectively co-operate with Network Rail through the Rail Development Partnership with the intention that it shall meet its objectives of optimising the development and implementation of rail network enhancement projects on parts of the network of Network Rail over which the Passenger Services operate. The Franchisee shall in relation to relevant projects being considered by the Rail Development Partnership:

- (a) work with Network Rail (engaging appropriately with the Network Rail regional and route management structure) to identify and assess options for delivering the intended network enhancement outcomes in the most cost-effective manner, that takes full and proper account of both rail infrastructure and train operation issues in a manner that seeks to optimise the interaction between them;
- (b) contribute its operational experience including by working with Network Rail to assess relevant issues in relation to:
 - (i) timetable feasibility;
 - (ii) rolling stock, train crew and other relevant resourcing implications; and
 - (iii) wider operational experience such as in relation to station operations; and
 - (iv) the consideration of passengers needs and the passenger benefit likely to be provided;

- (c) share relevant information and data (subject to any confidentiality obligations) to inform a common assessment of the likely impacts of options under consideration; and
 - (d) work in close collaboration with Network Rail to identify and assess the feasibility and business case for specified potential future improvements to the Passenger Services.
- 1.2 The Franchisee shall engage with the Rail Development Partnership in a manner that ensures that the Rail Development Partnership provides to Third Party promoters of rail network enhancement projects on parts of the network of Network Rail over which the Passenger Services operate with a single focal point of contact and coherent and consistent advice to:
- (a) assist them in identifying options for delivering desired outcomes (taking account of both rail infrastructure and train operation options to deliver such outcomes);
 - (b) provide coherent and consistent advice to Third Party promoters to help them identify options for delivering their desired outcomes (taking account of both rail infrastructure and train operation issues in a manner that seeks to optimise the interaction between them), assess the feasibility and operational implications of those options and (if required) develop a relevant business case; and
 - (c) provide expert advice to inform any design scheme in relation to a potential enhancement scheme.
- 1.3 The Franchisee shall maintain a business development team of at least 18 full time equivalents from which it will deploy appropriate resource to support the delivery of its obligations in connection with the Rail Development Partnership. It is acknowledged that the business development team will also perform other functions, including in connection with stakeholder relations and securing third party funding, feasibility studies, Alliance Agreement activities, sponsoring schemes and delivering schemes.
- 1.4 The Franchisee shall report to the Secretary of State each Quarter on:
- (a) the progress of the Rail Development Partnership;
 - (b) Committed or Proposed Schemes identified by the Rail Development Partnership or designated by the Secretary of State
 - (c) the progress of each Committed or Proposed Scheme so identified or designated; and
 - (d) the resources deployed on Rail Development Partnership activities.
- 1.5 The Franchisee shall enter into the Rail Development Partnership Protocol with Network Rail by the Start Date.
- 1.6 The Franchisee shall comply with the terms of the Rail Development Partnership Protocol for the duration of the Franchise Period, save where the Rail Development Partnership Protocol is terminated by Network Rail or by the Franchisee in accordance with the provisions of this Part 4 of Schedule 6.1.

1.7 The Franchisee shall not amend the Rail Development Partnership Agreement without the approval of the Secretary of State (such approval not to be unreasonably withheld).

2. **Obligations in relation to Proposed Schemes**

2.1 The Franchisee shall fully and effectively co-operate with the Secretary of State, Network Rail (engaging appropriately with the Network Rail regional and route management structure, and any relevant Third Party (collectively the "**Relevant Parties**") to support the efficient and effective undertaking of development and design work in relation to each Proposed Scheme. Accordingly the Franchisee shall:

- (a) work with the Relevant Parties to identify and assess options for delivering the intended outcomes of the Proposed Scheme in the most cost-effective manner reasonably practicable, taking account of both rail infrastructure and train operation issues in a manner that seeks to optimise the interaction between them;
- (b) contribute its operational experience including by working with the Relevant Parties to assess relevant issues in relation to:
 - (i) timetable feasibility;
 - (ii) rolling stock, train crew and other relevant resourcing implications; and
 - (iii) wider operational issues such as in relation to station operations where there are proposals for new or enhanced stations;
- (c) share relevant information and data (subject to the Relevant Party entering into appropriate confidentiality obligations) to inform a common assessment of the likely operational, financial and other implications of options under consideration;
- (d) provide such other reasonable support, advice guidance or assistance to the Relevant Party as may reasonably be expected of a skilled and experienced train operator;
- (e) attend meetings with the Relevant Parties;
- (f) review and comment on the implementation and programme plans for the development of any proposed new station;
- (g) provide analysis and advice to any Relevant Party in relation to station location and design, timetabling, staffing, marketing, rolling stock and other relevant operational and practical issues;
- (h) if requested to do so by any Relevant Party, carry out analysis and provide advice to the Relevant Party with regard to:
 - (1) options for making changes to fares structures or levels on affected Routes, in conjunction with delivering the planned improvements to be delivered by the relevant Proposed Scheme

- (2) the impacts of implementing the Proposed Scheme on the revenues and costs of the Franchisee, and any other significant consequent impacts; and
 - (3) the extent to which additional revenues arising from the Proposed Scheme would offset the expected costs of delivering the planned improvements of the Proposed Scheme
- (i) maintain records of usage and financial performance in relation to Passenger Services calling at relevant stations or operating on the relevant Routes and make available those records to any Relevant Party; and
 - (j) co-operate with any reasonable request by any Relevant 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
 - (k) Negotiate in good faith with any Relevant Party with a view to reaching agreement with the Relevant Party in relation to the terms (including price) on which the Franchisee would implement any alterations to existing Passenger Services, provide any additional Passenger Services (including at any relevant new stations or on any new or re-opened rail route), and take such other actions as may be required of the Franchisee in order to achieve the intended benefits of the Proposed Scheme.
- 2.2 If during the Franchise Term, the Secretary of State or any other person sets up an Enhancement Fund the Franchisee shall develop plans for appropriate enhancements, apply for funding from such Enhancement Fund, and if such an application is successful, either deliver such enhancements if and to the extent that the Franchisee is able to undertake such delivery during the Franchise Term, or commence delivery and make arrangements consistent with transfer to a Successor Operator to complete after then end of the Franchise Term. The Franchisee shall liaise in good faith with the Secretary of State for the purposes of considering potential enhancements and their suitability for delivery by means of funding from an Enhancement Fund.
- In this paragraph "**Enhancement Fund**" means:
- (a) any existing or future rounds of "New Stations" funding (being funding to support the development and construction of new stations) or Access for All Programme funding (being funding to support improvements to station accessibility); or
 - (b) any other fund whose purpose is to support the creation or enhancement of any assets used in relation to the Franchise Services.
- 2.3 The obligations of co-operation pursuant to this paragraph 2 shall (where applicable) include the Franchisee 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) where the Proposed Scheme in question relates to the enhancement of one or more existing stations, is the Facility Owner at the relevant station(s);
 - (b) where the Proposed Scheme in question relates to:

- (i) the enhancement of one or more existing stations;
- (ii) the opening of one or more new stations;
- (iii) the opening of new rail routes, or re-opening of existing rail routes that are not currently used to operate regular passenger services; or
- (iv) the regeneration and/or redevelopment of the areas at or immediately surrounding stations,

is or is likely to be a provider of passenger services at the station or on the route in question.

3. **Obligations in relation to Committed Schemes**

3.1 The Franchisee shall engage effectively in good faith with all Relevant Parties responsible for the delivery of each Committed Scheme with the intention of assisting its timely, efficient and cost effective completion. With regard to each Committed Scheme the Franchisee shall:

- (a) fully and effectively co-operate with the Relevant Parties and (if applicable) their contractors to optimise the effective delivery of the Committed Scheme in accordance with its allocated budget and outputs specification;
- (b) support delivery of the Committed Scheme, including by fully and effectively co-operating with the Relevant Parties to develop plans for engineering access and possessions that strike a reasonably appropriate balance between allowing completion of the Committed Scheme as efficiently as possible and minimising disruption to the journeys of passengers; and
- (c) if requested by the Secretary of State to do so:
 - (1) in respect of a Committed Scheme being promoted by a Third Party, negotiate in good faith with that Third Party to agree contractual terms under which the Franchisee will amend or augment its timetables and resourcing plans, or take such other actions as are necessary, in order to deliver the intended benefits of the Committed Scheme;
 - (2) in respect of a Committed Scheme being promoted by the Secretary of State or by Network Rail, negotiate in good faith with the Secretary of State with a view to agreeing a Variation of the Franchise Agreement to impose relevant obligations on the Franchisee for the purposes of achieving the intended benefits of the Committed Scheme (which could involve amending the Train Service Requirement, securing additional rolling stock and/or train crew and amending timetables so that Passenger Services call at any new station).

3.2 The Franchisee shall in complying with its obligations under paragraph 3.1 ensure that the benefits of the Great Western Enhancement Programme and associated rolling stock changes are maintained to the greatest extent reasonably practicable.

- 3.3 The Franchisee shall use all reasonable endeavours to achieve any necessary amendments to any Station Lease or enter into new station leases where this is reasonably required for the purposes of delivering a Committed Scheme.
- 3.4 The Franchisee shall provide such information in respect of any Committed Scheme as the Secretary of State may reasonably request from time to time.
- 3.5 The obligations of co-operation pursuant to this paragraph 4 shall (where applicable) include the Franchisee 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) where the Committed Scheme in question relates to the enhancement of one or more existing stations, is the Facility Owner at the relevant station(s);
 - (b) where the Committed Scheme in question relates to:
 - (i) the enhancement of one or more existing stations;
 - (ii) the opening of one or more new stations;
 - (iii) the opening of new rail routes, or re-opening of existing rail routes that are not currently used to operate regular passenger services; or
 - (iv) the regeneration and/or redevelopment of the areas at or immediately surrounding stations,
 is or is likely to be a provider of passenger services at the station or on the route in question.

4. **Feasibility Studies into Prospective Future Train Service Enhancements**

- 4.1 In relation to each Prospective Future Train Service Enhancement the Franchisee shall undertake a feasibility study for the purposes of identifying options (the "**Prospective Future Train Service Enhancement 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 more efficient or effective maintenance arrangements; and/or
 - (c) implementing changes in service patterns of the Passenger Services.
- 4.2 The Franchisee shall, as part of the feasibility study required pursuant to paragraph 4.1 and as a minimum:
- (a) consult with passengers, other passenger and freight train operators licensed under the Act who operate along the affected Routes, relevant user groups and other relevant Stakeholders;
 - (b) closely collaborate with Network Rail (engaging appropriately with the Network Rail regional and route management structures)

- (c) in considering the feasibility of implementing any of the Prospective Future Train Service Enhancement Options where Network Rail input is required or where implementation of such Prospective Future Train Service Enhancement Options will require changes to railway infrastructure or the Timetable. The Franchisee shall robustly challenge Network Rail to identify efficient and cost-effective ways by which such Prospective Future Train Service Enhancement Options could be effectively implemented and provide evidence that it has complied with this requirement in the report to be submitted to the Secretary of State pursuant to paragraph 4.3;
- (d) prepare an initial assessment of the likely costs and benefits of implementing the Prospective Future Train Service Enhancement Options, a quantified assessment of the expected financial implications for the franchise (including cost and revenue implications, broken down year-by-year over a ten-year period) and of the economic benefits (also assessed over a ten-year period), as well as an initial assessment of the likely costs of implementing any changes to the infrastructure that might be required in order to deliver the timetable enhancements; and
- (e) engage with Third Party funders (including Local Authorities and local development agencies) to identify opportunities to secure grant funding for the purposes of implementing some or all of the Prospective Future Train Service Enhancement Options.

4.3 The Franchisee shall with regard to each:

- (a) Initial Prospective Future Train Service Enhancement submit to the Secretary of State a draft feasibility study within four months of the Start Date. The Franchisee shall have due and proper regard to any comments raised by the Secretary of State after submission of the draft and submit a final feasibility study (which sets out the outcomes of the feasibility study undertaken pursuant to paragraph 4.1, such report to include information relating to the matters set out in paragraphs 4.2(a) to 4.2(e)) within six months of the Start Date; and
- (b) Prospective Future Train Service Enhancement which is not an Initial Prospective Future Train Service Enhancement submit to the Secretary of State a draft feasibility study within four months of the date that such Prospective Future Train Service Enhancement is notified to the Franchisee. The Franchisee shall have due and proper regard to any comments raised by the Secretary of State after the submission of the draft and submit a final feasibility study (which sets out the outcomes of the feasibility study undertaken pursuant to paragraph 7.1, such report to include information relating to the matters set out in paragraphs 4.2(a) to 4.2(e)) within six months of the date that such Prospective Future Train Service Enhancement is notified to the Franchisee.

4.4 Following the submission of the report required pursuant to paragraph 4.3 the Franchisee shall:

- (a) promptly respond to the Secretary of State's reasonable queries in relation to such report (including the provision of such assistance as the Secretary of State may reasonably 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 reasonably require for the purposes of discussing the contents of such report.
- 4.5 The Franchisee shall, at the request of the Secretary of State, fully and effectively co-operate with Network Rail and other relevant Stakeholders to undertake further development and, if appropriate, implementation of any or all of the Prospective Future Train Service Enhancement Options.
- 4.6 The Secretary of State and the Franchisee acknowledge and agree that if any or all of the Prospective Future Train Service Enhancement Options are to be implemented, this will be by way of amendment to the Train Service Requirement and/or by the Secretary of State proposing a Variation pursuant to paragraph 1.1(a) of Schedule 9.3 (Variations to the Franchise Agreement and Incentivising Beneficial Changes).

5. **Committed Schemes and Industry Procedures**

- 5.1 To the extent that any Committed Scheme leads to the Franchisee having rights under railway industry procedures (including Network Change and Station Change) the Franchisee shall not act in a way designed to directly or indirectly prevent, prejudice or frustrate the delivery of such Committed Scheme and the Franchisee 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 Franchisee in accordance with the relevant railway industry procedures. It is acknowledged that the Franchisee may make reasonable objections with a view to mitigating the impact of any Committed Scheme and its implementation on passengers and the Franchise Services, while recognising the need for any Committed Scheme to be able to be undertaken in a reasonable manner.
- 5.2 The Franchisee shall provide (at such frequency and within such timescales as the Secretary of State, acting reasonably, may specify) detailed reports complying with the reasonable requirements of the Secretary of State describing progress in relation to matters relating to any Committed Scheme and identifying and quantifying so far as the Franchisee is reasonably able the emerging risk position in relation to each such Committed Scheme as it affects passengers and the Franchise Services. The Franchisee shall provide such additional information as the Secretary of State shall reasonably request and if requested by the Secretary of State it shall develop such alternative and contingency plans as the Secretary of State may reasonably require for the purpose of mitigating relevant risk and ensuring that the adverse impacts on passengers and the Franchise Services of any relevant risk arising is mitigated to the greatest extent reasonably practicable.

6. **Committed Schemes and Restriction of Use**

- 6.1 Where the Franchisee is required to make decisions in relation to how it exercises its rights under railway industry procedures where for the purpose of delivering any Committed Scheme Network Rail proposes to take restrictions of use or otherwise take steps that could have adverse impacts on the delivery of the Franchise Services the Franchisee shall:
- (a) act reasonably in all the circumstances (taking full account of the best interests of passengers and its obligations under this Part 4 of Schedule 6.1 and consistently with its duty under clause 6.1 of the Franchise Agreement;

- (b) in so acting, seek to achieve a reasonable balance between minimising inconvenience for users of the Passenger Services during the delivery of any Committed Scheme and ensuring that such Committed Scheme is delivered efficiently within the planned timescales and budgets; and
- (c) in so acting, seek to achieve a reasonable balance between the continued operation of through train services and the use of alternative transport modes (it being acknowledged that, as far as reasonably practicable, through train services are to be utilised in preference to alternative transport modes).
- 6.2 Where and to the extent the Franchisee is acting in accordance with its obligations pursuant to paragraph 6.1 above it shall (subject always to paragraphs 6.3, 6.4 and 6.5 below) be permitted to engage in discussions with Network Rail in relation to restrictions of use development and planning and accordingly in such discussions make informal proposals or counter proposals in relation to omissions, additions or rescheduling of Passenger Services within the Engineering Access Statement, the Timetable Planning Rules, Possession Strategy Proposals, the Timetable, the Train Plan or the Plan of the Day (as applicable) and to reflect the outcomes of such informal proposals and discussions in its Access Proposals provided that such proposals or counter proposals:
- (a) are consistent with the continued ability of passengers to make journeys in the Franchise area; and
- (b) would not if implemented alter, amend or impede the application of the established industry arrangements in relation to the payment of compensation to the Franchisee or a Successor Operator in relation to restrictions of use under any Access Agreement, Network Change or otherwise.
- 6.3 This paragraph 6 is entirely without prejudice to the provisions of paragraph 4 of Schedule 1.2 (Operating Obligations) and the Parties agree that following any discussion with Network Rail of the type referred to in paragraph 6.2 above it shall be the responsibility of Network Rail to propose the omission of any Passenger Services from the Plan of the Day or the rescheduling of any Passenger Service in the Plan of the Day so that the provisions of paragraph 3 of Schedule 1.2 (Operating Obligations) apply.
- 6.4 Acting in accordance with its obligations pursuant to paragraph 6.1 above the Franchisee may make proposals in writing to the Secretary of State as to how it believes that it should act for the purposes of complying with its obligations:
- (a) under paragraph 12 of Part 2 of Schedule 1.1 (Service Development) in relation to securing Timetable Development Rights, or the exercise of 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; or
- (b) under paragraph 2 of Schedule 14.1 (Maintenance of Franchise) in relation to a post-Franchise timetable.
- 6.5 The Franchisee may, through the submission of a proposal pursuant to paragraph 6.4, seek a derogation from certain specified obligations under Part 2 of Schedule 1.1 (Service Development) where the Franchisee believes this is reasonable and appropriate in the context of its obligations under paragraph 6.1 above. Any such proposal shall be as detailed and complete as is reasonably practicable in the

circumstances identifying the reasons for each aspect of the proposal and the forecast consequent costs and benefits for the Franchisee and the delivery of relevant Committed Schemes. The Franchisee shall discuss the proposal with the Secretary of State and provide such further information as the Secretary of State shall reasonably require. The Secretary of State acting reasonably shall give due consideration to the proposal of the Franchisee.

7. Programme of Communication in relation to Committed Schemes

- 7.1 The Franchisee shall fully and effectively co-operate with Network Rail (engaging appropriately with the Network Rail regional and route management structures and any relevant Third Party promoter of a Committed Scheme for the purpose of agreeing and delivering a comprehensive, accurate and readily understandable programme of communication to stakeholders and potential passengers in relation to the Committed Schemes ("**Programme of Communication**"), reflecting the state of knowledge of such matters at the time of publication and to a level of detail appropriate for stakeholders and passengers; and for incorporating the Programme of Communication into the management case for the relevant Committed Scheme. The Franchisee shall fully and effectively co-operate with Network Rail for the purpose of ensuring that the Programme of Communication is regularly updated as required to ensure it remains accurate as the delivery of Committed Schemes develops, with updates provided at the same time as the timetables published at each Passenger Change Date in or around May and September in each year. The Programme of Communication shall deal with matters of reasonable concern to stakeholders and passengers including through providing information in relation to:
- (a) short, medium and long term impacts on the Passenger Services of planned restrictions of use (including blockades), arrangements for bus substitution and diversion, cancellation and rescheduling of Passenger Services;
 - (b) arrangements for handling unplanned relevant alterations to the Passenger Services including as a result of overrunning restrictions of use;
 - (c) the purpose of relevant changes to the Passenger Services in the context of the works required to deliver the Committed Schemes; and
 - (d) the benefits to be delivered by the Committed Schemes and the dates from which such benefits are likely to be delivered.
- 7.2 The Programme of Communication shall use all reasonable channels of communication including notices at stations and on ticketing vending machine screens and passenger information screens, media advertising, announcements on stations and trains, briefings to Stakeholders, the circulation of leaflets and the use of appropriate social media platforms.
- 7.3 If so required by the Secretary of State the Franchisee shall consult with him in relation to the Programme of Communication and any amendments to it.
- 7.4 The Secretary of State and the Franchisee each acknowledge that no funding and compensation in respect of the Programme of Communication is included in the Financial Model. Accordingly:
- (a) the Secretary of State requires the Franchisee to use all reasonable endeavours to secure funding and compensation in relation to its

compliance with paragraphs 7.1 and 7.2 above in accordance with railway industry procedures, including Network Change and Station Change as applicable;

- (b) the Franchisee is not restricted or prevented from exercising its rights under those industry procedures to secure such funding and compensation; and
- (c) subject to the Franchisee's compliance with its obligation to exercise all reasonable endeavours under paragraph 7.4(a) above, it is recognised that the nature and extent of the Franchisee's cooperation in the Programme of Communication will depend on the funding and compensation which it is able to secure through the relevant railway industry procedures.

7.5 Without prejudice to the provisions of paragraph 7.1 above, where and to the extent the relevant resources are funded as contemplated by paragraph 7.4 above, the Franchisee shall throughout the Franchise Term allocate such relevant resource as is reasonably required for the purposes of complying with its obligations in relation to the Programme of Communication and related communication obligations pursuant to this paragraph 7 and railway industry procedures including Network Change and Station Change as applicable.

8. **NOT USED**

9. **NOT USED**

10. **NOT USED**

11. **NOT USED**

12. **NOT USED**

13. **NOT USED**

14. **People Strategy**

14.1 By no later than 30 June 2020 the Franchisee shall:

- (a) having undertaken appropriate consultation(s) of Franchise Employees and their representatives; and
- (b) having taken due and proper account of the outcomes of such consultation(s),

develop and finalise a strategy ("**People Strategy**") which covers, as a minimum, the following matters:

- (i) how the Franchisee will provide an appropriately skilled and trained workforce of Franchise Employees, taking into account the likely short, medium and long term requirements of the Franchisee and any Successor Operator including in the context of expected change to the Franchise Services (including as a result of technological change) and the age profile of Franchise Employees, based on a skills gap analysis which takes account of the Franchisee's plans to deliver the Apprenticeships specified in the Apprenticeships Data Collection Form;

- (ii) how the Franchisee will ensure that Franchise Employees have the right tools and are suitably motivated and engaged to deliver a high-quality service to passengers, and how Franchisee Employees will share in the success of the business in delivering for passengers, including establishing:
- (A) arrangements for Franchise Employees to participate in decisions affecting their jobs and working arrangements that complement, but do not undermine, existing formal collective bargaining structures and that provide outlets for strengthening employee voices; and
 - (B) arrangements that give Franchise Employees the potential to share in the success of the Franchise in delivering the outcomes that matter most to passengers;
- (iii) how the Franchisee will support and improve the health and wellbeing of its workforce;
- (iv) how the Franchisee will safeguard the safety and security of its front-line Franchise Employees and establishing measures to reduce the incidence and fear of crime and anti-social behaviour against Franchise Employees at stations and on trains, including by:
- (A) implementing staff training and other systems to minimise and control crime and security incidents; and
 - (B) assessing and reviewing regularly the security and crime risk to Franchise Employees across the Franchise,
in each case having due and proper regard to the principles of community safety set out in "*Delivering Safer Communities: a guide to effective partnership working*" published by the Home Office (or any other guidance document that might supplement or replace it from time to time);
- (v) how the Franchisee will support wider industry initiatives relating to diversity, employability and transferable skills development (including through collaboration with industry partners) and shall include the Franchisee's plans for:
- (A) attracting more young people to work in the rail sector and improve diversity;
 - (B) increasing female and BAME participation in Apprenticeships; and
 - (C) supporting the delivery of the Transport Infrastructure Skills Strategy and the "Rail Sector Skills Delivery Plan" as published by "National Skills Academy - Rail" (as such plan may amended, supplemented or replaced from time to time).

- (vi) how the Franchisee will deliver a fair reward package for Franchise Employees which:
 - (A) is aligned with the cost of living;
 - (B) shares the benefits of demonstrable productivity improvements;
 - (C) rewards the behaviours and outcomes that matter most to passengers (for example, but without limitation, as may be highlighted in passenger responses to National Rail Passenger Surveys); and
 - (D) if necessary, is able to respond to wider labour market conditions;
- (vii) how the Franchisee will target and improve investment in developing leadership and management (including the provision of a management/leadership maturity model in respect of the same);
- (viii) NOT USED;
- (ix) how the Franchisee will monitor progress and performance against each of the matters referred to in paragraphs (i) to (vii) (inclusive) above, and how it will act on the results derived from such monitoring of progress and performance.

14.2 The Franchisee shall:

- (a) provide a copy of the People Strategy (including the Apprenticeships Data Collection Form) to the Secretary of State by no later than 30 June 2020 (and as soon as reasonably practicable following each occasion on which the People Strategy (including the Apprenticeships Data Collection Form) is updated by the Franchisee pursuant to paragraph 14.3);
- (b)
 - (i) undertake and complete a review of:
 - (A) the People Strategy; and
 - (B) compliance with the Apprenticeships Data Collection Form,
 at least once in each Franchisee Year;
 - (ii) in conducting and completing each such review as referred to in paragraph 14.2(b)(i):
 - (A) provide appropriate opportunities for Franchise Employees and their representatives to participate in each such review process (it being acknowledged and agreed that the Franchisee shall be entitled to withhold disclosure to Franchise Employees of any matters associated with such review process which

the Franchisee, acting reasonably, considers to be commercially sensitive); and

- (B) check compliance with the targets contained in the Apprenticeships Data Collection Form and if they have not been met shall propose robust and effective strategies and methodologies to be contained in the revised People Strategy to ensure delivery in future (it being acknowledged that the review may propose amendments to the Apprenticeships Data Collection Form that are consistent with any proposed revisions to the People Strategy); and
- (c) provide the Secretary of State with any proposed revisions to the People Strategy and the Apprenticeships Data Collection Form arising out of each such review as referred to in paragraph 14.2(b) by no later than the end of the relevant Franchisee Year.
- 14.3 Any revisions to the People Strategy (including the Apprenticeships Data Collection Form) shall require the consent of the Secretary of State (such consent not to be unreasonably withheld or delayed).
- 14.4 The Franchisee shall:
- (a) from the Start Date implement the People Strategy in accordance with its terms; and
- (b) implement any revised People Strategy in accordance with its terms from the date that the Secretary of State consents to the relevant revisions.
15. **Train Crew Establishment**
- 15.1 The Franchisee shall at regular intervals during the Franchise Term (and in any event not less than once in every consecutive three (3) month period following the Start Date) in accordance with the requirements of this paragraph 15 calculate how many Drivers and Guards it reasonably expects to require at each train crew depot to enable it to operate the Passenger Services in accordance with the relevant Timetable without reliance on rest day working or overtime in each Reporting Period and Post-Franchise Reporting Period during the Relevant Period (in each case taking account of the Franchisee's latest expectation as to when it will implement SDWR Driver Contracts for all Drivers in accordance with paragraph 3 of Schedule 9.4) (the "**Required Establishment**"). For the avoidance of doubt, this paragraph 15.1 is not intended to preclude the Franchisee from utilising rest day working and overtime in the performance of the Franchise Services.
- 15.2 The Franchisee shall in respect of each and every calculation of the Required Establishment pursuant to paragraph 15.1:
- (a) calculate such Required Establishment in accordance with:
- (i) as regards Drivers, the Rail Delivery Group's "*Guidance Note on Driver Establishment Calculation (December 2013)*"; and
- (ii) as regards Guards, a methodology which is equivalent to that referred to in paragraph 15.2(a)(i); and

- (b) provide to the Secretary of State a statement signed by a statutory director of the Franchisee confirming that the Franchisee's calculation of such Required Establishment is consistent with the requirements of paragraph 15.2(a).
- 15.3 The Franchisee shall use all reasonable endeavours to recruit and train drivers and on-board train managers (taking proper account of the time that this should reasonably be expected to take) to ensure that its actual establishment of Drivers and Guards in each Reporting Period and Post-Franchise Reporting Period within the Relevant Period will be no less than the Required Establishment.
- 15.4 Prior to each Franchise Performance Meeting the Franchisee shall (together with such other information as the Secretary of State may reasonably request) submit to the Secretary of State a report (the "**Periodic Required Establishment Report**") setting out:
- (a) in respect of each Reporting Period and each reporting period pursuant to the Previous Franchise Agreement which has elapsed since 1 April 2019, the proportion of total Driver and Guard working hours that were resourced through rest-day working and overtime;
- (b) the Franchisee's:
- (i) forecast of the actual number of Drivers and Guards who will be employed at each train crew depot in each Reporting Period and Post-Franchise Reporting Period within the Relevant Period (the "Forecast Establishment"), together with the Franchisee's forecast of the actual number of trainee drivers, conductors, train managers and on-board train managers who will be employed at each train crew depot in each Reporting Period and Post-Franchise Reporting Period within the Relevant Period;
- (ii) latest assessment of the Required Establishment for each Reporting Period and Post-Franchise Reporting Period within the Relevant Period; and
- (iii) forecast for the proportion of total Driver and Guard working hours that will need to be resourced through rest-day working and overtime in each Reporting Period and Post-Franchise Reporting Period within the Relevant Period;
- (c) the assumptions (for example, but without limitation, as regards recruitment plans, retirements and resignations, rates of sickness and training requirements) that underpin the Forecast Establishment;
- (d) the reasons for:
- (i) any shortfall between the Forecast Establishment and the Required Establishment in respect of any Reporting Period(s) and/or Post-Franchise Reporting Period(s) falling during the Relevant Period; and

- (ii) any excess of actual rest-day working and overtime compared to the rates that the Franchisee had previously forecast,

it being acknowledged and agreed that the Secretary of State shall be entitled to take account of any such reasons referred to in paragraph 15.4(d)(i) for the purposes of assessing the Franchisee's compliance with its obligations under paragraph 1 (*Daily Operating Obligations*) of Schedule 1.2 (*Operating Obligations*); and

- (e) the:

- (i) further steps that the Franchisee will take to remedy any identified shortfall between the Forecast Establishment and the Required Establishment (as referred to in paragraph 15.4(d) above); and

- (ii) timescales within which it will take those steps,

together with an explanation as to why the Franchisee considers that those steps will be sufficient to remedy the identified shortfall as quickly as is reasonably practicable.

15.5

- (a) Subject to paragraph 15.4(b), the Franchisee shall implement the remedial actions identified in the relevant Periodic Required Establishment Report (as referred to in paragraph 15.4(e)(i) within the associated timescales identified in the relevant Periodic Required Establishment Report (as referred to in paragraph 15.4(e)(ii)) (or within such other timescales as the Secretary of State may reasonably determine).
- (b) If, following provision of a Periodic Required Establishment Report to the Secretary of State (and following consultation with the Franchisee), the Secretary of State considers that the remedial actions identified in such Periodic Required Establishment Report (as referred to in paragraph 15.4(e)(i)) are not sufficient to remedy the identified shortfall between the Forecast Establishment and the Required Establishment in respect of relevant Reporting Period(s) and/or Post-Franchise Reporting Period(s) falling during the Relevant Period, then:
 - (i) the Secretary of State may reasonably determine the remedial actions to be implemented by the Franchisee; and
 - (ii) the Franchisee shall implement the remedial actions reasonably determined by the Secretary of State pursuant to paragraph 15.4(b)(i) in accordance with the timescales identified in the relevant Periodic Required Establishment

Report (as referred to in paragraph 15.4(e)(ii)) or as otherwise reasonably determined by the Secretary of State.

- (c) The Parties acknowledge and agree that no contravention of this Agreement will occur if, despite the Franchisee having implemented (as the case may be):
- (i) the remedial actions identified in the relevant Periodic Required Establishment Report (as referred to in paragraph 15.4(e)(i)); or
 - (ii) such other remedial actions as may be reasonably determined by the Secretary of State pursuant to paragraph 15.4(b),

in accordance with the timescales identified in the relevant Periodic Required Establishment Report (as referred to in paragraph 15.4(e)(ii)) or as otherwise reasonably determined by the Secretary of State, a shortfall continues to exist between the Forecast Establishment and the Required Establishment in respect of relevant Reporting Period(s) and/or Post-Franchise Reporting Period(s) falling during the Relevant Period.

15.6 For the purposes of this paragraph 15:

- (a) **"Driver"** means a qualified train driver within either the 'HSS' or 'GWR' grades (which includes for these purposes a driver who is at 'QD1' or 'QD2' grade), excluding:
- (i) depot train drivers; and
 - (ii) trainee train drivers,
- and any reference to a number of **"Drivers"** shall be construed as a reference to full-time equivalents disregarding (in respect of any Driver who operates a mix of HEx Services and Passenger Services) such proportion of that Driver's working time as is allocated to the operation of the HEx Services; and
- (b) **"Guard"** means a qualified conductor, train manager or on-board train manager (excluding trainee conductors, trainee train managers and trainee on-board train managers), and any reference to a number of **"Guards"** shall be construed as a reference to full-time equivalents;
- (c) **"Post-Franchise Reporting Period"** means a period of twenty eight (28) days provided that:
- (i) the first such period shall:
 - (1) exclude any days up to and including the Expiry Date; and
 - (2) commence immediately following the Expiry Date;
 - (ii) each such period shall start on the day following the last day of the preceding period; and

- (iii) the last such period shall end on the date falling two (2) years after the Expiry Date; and
- (d) “**Relevant Period**” means, at the relevant point of calculation, the period of time remaining from the relevant date of calculation pursuant to paragraph 15.1 until and including the date falling two (2) years after the Expiry Date.
16. **NOT USED**
17. **Study into longer-term future options for the Residual Diesel Fleets**
- 17.1 The Franchisee shall conduct and complete a comprehensive review of the longer-term options for upgrading or replacing the Residual Diesel Fleets in accordance with the following provisions of this paragraph 17.
- 17.2 The Franchisee shall identify a range of options for upgrading or replacing the Residual Diesel Fleets which (unless otherwise agreed by the Secretary of State) shall include:
- (a) an option to retain the Residual Diesel Fleets but to invest in substantially enhancing the on-train facilities and environment, and substantially improve the reliability and environmental performance (including in relation to exhaust emissions) of the Residual Diesel Fleets;
 - (b) one or more options to cascade more modern diesel-powered trains into the Franchise;
 - (c) one or more options to cascade rolling stock which does not rely on diesel engines as the sole means of propulsion (for example (but without limitation) electric/diesel bi-mode, battery hybrid or hydrogen-fuelled trains) into the Franchise; and
 - (d) options that involve replacement of the Residual Diesel Fleets with new-build rolling stock (which shall include at least one option for the introduction of new-build rolling stock which does not rely on diesel engines as the sole means of propulsion (for example (but without limitation) electric/diesel bi-mode, battery hybrid or hydrogen-fuelled trains), provided that that this shall not limit the Franchisee’s ability to propose additional alternative options for the introduction of diesel-powered new build rolling stock),
- (the “**Identified Rolling Stock Options**”), and shall provide a report to the Secretary of State summarising such Identified Rolling Stock Options (together with such additional information as the Secretary of State may reasonably require) by no later than 31 March 2021.
- 17.3 Following submission of the report referred to in paragraph 17.2, the Parties shall meet to discuss in good faith and use all reasonable endeavours to seek to agree either:
- (a) the Identified Rolling Stock Options as proposed by the Franchisee without amendment or adjustment; or
 - (b) an amended or adjusted version of the Identified Rolling Stock Options as proposed by the Franchisee.

If agreement is not reached by the Parties within one (1) month of the date on which the report was submitted to him pursuant to paragraph 17.2, the Secretary of State shall be permitted to reasonably determine the Identified Rolling Stock Options. The agreed (or determined) Identified Rolling Stock Options shall be referred to in the following provisions of this paragraph 17 as the “**Agreed Rolling Stock Options**”.

17.4 The Franchisee shall without delay following agreement or determination of the Agreed Rolling Stock Options by the Secretary of State conduct a comprehensive appraisal of each Agreed Rolling Stock Option:

(a) using the skill, care, prudence, diligence and foresight which would be expected of a skilled and experienced Train Operator; and

(b) in accordance with paragraph 17.5,

(the “**Agreed Rolling Stock Options Appraisal**”).

17.5 The Franchisee shall ensure that in conducting the Agreed Rolling Stock Options Appraisal it:

(a) assesses each of the Agreed Rolling Stock Options against a ‘baseline’ comparator option which assumes that:

(i) the Residual Diesel Fleets will be retained within the Great Western franchise until at least 31 December 2029; and

(ii) there will be no enhancement to the Residual Diesel Fleets other than essential life-extension works to enable them to continue in operation until the date specified in paragraph 17.5(a)(i);

(b) assesses the costs and benefits associated with each Agreed Rolling Stock Option and, so far as is reasonably practicable, seeks to monetise those costs and benefits in an economic appraisal which complies with the “webTAG” guidance published by the Department for Transport from time to time;

(c) analyses the extent to which the approach to rolling stock deployment proposed in each Agreed Rolling Stock Option would enable timetable changes or increases in passenger-carrying capacity which can be expected to increase passenger demand, revenue and/or economic benefits;

(d) consults with Network Rail and any other relevant Infrastructure Manager (including to ensure that any infrastructure-related implications and costs (for example, but without limitation, the costs associated with gauge clearance and/or any infrastructure modifications required to accommodate the deployment of different rolling stock types) are duly factored into the Franchisee’s analysis of the Agreed Rolling Stock Options; and

(e) provides regular progress reports to the Secretary of State in such format and at such frequency as the Secretary of State may reasonably request (including, as the case may be, at Franchise Performance Meetings).

- 17.6 The Franchisee shall:
- (a) submit its final report on the outcomes of the Agreed Rolling Stock Options Appraisal (the "**Rolling Stock Review Report**") to the Secretary of State by no later than 31 March 2021; and
 - (b) as soon as reasonably practicable following submission to the Secretary of State of the Rolling Stock Review Report meet with the Secretary of State to explain and discuss the conclusions reached in the Rolling Stock Review Report; and
 - (c) provide such information and other support as the Secretary of State may reasonably require in order to satisfy himself as to the accuracy and robustness of the analysis contained in the Rolling Stock Review Report and its compliance with the "webTAG" guidance published by the Department for Transport from time to time and any other relevant industry methodologies or practices.

17.7 The Parties acknowledge and agree that the Secretary of State shall be entitled to make available subject to the imposition of reasonably appropriate obligations of confidentiality on the recipient the Rolling Stock Review Report (or parts of it selected by the Secretary of State) to potential Successor Operators (including any operator which has expressed an interest in tendering for the right and obligation to operate any or all of the Franchise Services) in connection with any Tendering/Reletting Process.

18. **Wi-Fi at Stations**

Throughout the Franchise Term the Franchisee shall maintain and operate Wi-Fi at Relevant Wi-Fi Stations for access, on a free of charge basis, by members of the public and such that it provides a service to members of the public of a standard consistent with the specification of the applicable Wi-Fi system which is (or was) used at such Relevant Wi-Fi Station and in any event no worse than the standard generally provided by the Franchisee prior to the Start Date at the Relevant Wi-Fi Stations or (if higher) the standard that the Franchisee was required to provide in accordance with the requirements of the Previous Franchise Agreement.

19. **Continued provision of the Mobile Connectivity Service**

19.1 The Franchisee shall from the Start Date continue to operate on-train wi-fi on all rolling stock comprised in the Train Fleet in accordance with this paragraph 19 (the "**Mobile Connectivity Service**").

19.2 The Franchisee will provide access to the Mobile Connectivity Service (subject to the coverage available and bandwidth restrictions) free of charge to both standard and first class passengers.

20. **Long term planning for mitigation of adverse weather conditions**

20.1 The Franchisee shall fully and effectively co-operate with Network Rail, Local Authorities and the Environment Agency, and shall co-operate as reasonably appropriate with other relevant third parties, for the purpose of mitigating the impact on the delivery of the Passenger Services of adverse weather conditions including storms, precipitation, high seas and flooding.

20.2 Pursuant to its obligations under paragraph 20.1, the Franchisee shall engage throughout the Franchise Period in sensible and prudent contingency and long term risk mitigation planning in consultation with Network Rail, Local Authorities, the Environment Agency and all other relevant third parties.

21. Preparation for Potential Outcomes of the Williams Rail Review

21.1 The Parties acknowledge and agree that as at the date of this Agreement, the implications of the Williams Rail Review (including in respect of the Franchise) are unknown.

21.2 The Franchisee 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 Franchise.

21.3 In consultation with the Secretary of State, the Franchisee shall assign a Franchisee WRR Contact and shall confirm the identity of such Franchisee WRR Contact to the Secretary of State by no later than the Start Date.

21.4 The Franchisee WRR Contact will act as the Franchisee's primary point of contact with the Secretary of State in relation to all matters contemplated by this paragraph 21.

21.5 The Franchisee shall procure that the Franchisee WRR Contact shall be supported from time to time by such other Franchisee Employees as shall be reasonably required to ensure the Franchisee's compliance with this paragraph 21.

21.6 The Franchisee's obligations pursuant to this paragraph 21 shall include:

- (a) upon reasonable notice, attending meetings with the Secretary of State to discuss and provide an opinion on any relevant issues;
- (b) 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
- (c) (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.

22. Anticipated Variations and other changes

22.1 Pursuant to the rights of the Secretary of State under the Franchise Agreement including paragraph 1.1 of Schedule 9.3 (*Variations to the Franchise Agreement and Incentivising Beneficial Changes*) and otherwise the Franchisee acknowledges that the following matters may require amendment to the Franchise Agreement during the Franchise Term:

- (a) Fares, Ticketing and Retail Trials;

- (b) the implementation of remapping, changes to the allocation of responsibilities as between Network Rail and Franchisee or such other reforms as may be required as a result of or in connection with the conclusions of the Williams Rail Review (as referred to in paragraph 21 above);
- (c) the introduction and operation of "Elizabeth Line" services (to the extent that plans for such services may differ from those assumed as at the date of the Franchise Agreement);
- (d) the construction of HS2 and the proposed new station at Old Oak Common (including associated rail-borne transport of spoil and materials);
- (e) the construction of a new Western Rail Link to Heathrow;
- (f) the construction of the East West Rail Scheme and associated changes to the pattern of Passenger Services and / or passenger services operated by other operators;
- (g) changes to fares regulation policy;
- (h) delivery of future infrastructure enhancement schemes and associated changes to the pattern of Passenger Services;
- (i) changes to rolling stock fleet, including (but not limited to) as a result of the study into longer-term future options for the residual diesel fleet required pursuant to paragraph 17 of this Part 4 of Schedule 6.1;
- (j) changes to patterns of passenger services, including (but not limited to) as a result of the feasibility studies into prospective future train service enhancements or the Boxing Day study as required pursuant to paragraph 6 of Part 4 of Schedule 6.1 and paragraph 1 of Part 2 of Schedule 6.1;
- (k) the implementation of any Short Form HSTs proposal as referred to in paragraph 25A.1(d) of Part 4 of Schedule 6.1;
- (l) any implementation of HyDrive Conversion pursuant to paragraph 49.3 of Part 1 of Schedule 6.2.

22.2 The Parties acknowledge and agree, for the avoidance of doubt, that the list of matters set out in paragraphs 22.1(a) to (l) (inclusive) shall not:

- (b) be construed as exhaustive; and
- (c) shall not limit the generality of Schedule 9.3.

23. **Not Used**

24. **Exeter Depot Funded Works**

24.1 The Franchisee shall:

- (a) continue to maintain a project team to lead and procure the delivery of the Exeter Depot Funded Works through to completion of that package; and

- (b) use all reasonable endeavours to complete the Exeter Depot Funded Works in accordance with the Exeter Depot Funded Works Work Plan.

24.1A The Parties acknowledge and agree that the Franchisee is delivering the Exeter Depot Funded Works as a single commercial project under the Previous Franchise Agreement and this Agreement on the same commercial basis and in consequence it is agreed that the transition from the Previous Franchise Agreement to this Agreement in relation to the delivery of Exeter Depot Funded Works shall not lead to any "double recovery", alter the agreed risk allocation between the Parties or lead to the Franchisee being paid any additional amounts.

24.1B The Parties further acknowledge and agree that:

- (a) paragraph 27.6(c) of Schedule 6.2 of the Previous Franchise Agreement provides that any part of the Exeter Depot Funded Works Initial Payment which is not during the franchise period of the Previous Franchise Agreement:

- (i) drawn down by the Franchisee under paragraph 27.6(b) of Schedule 6.2 of the Previous Franchise Agreement; or
- (ii) utilised by the Franchisee in funding Exeter Depot Funded Works Costs but not replaced by payments of 'EDFWP' (as such term is defined in paragraph 1.1 of Schedule 8.1 of the Previous Franchise Agreement),

shall be repaid to the Secretary of State via adjustment to the final instalment of 'EDFWP' (as such term is defined in paragraph 1.1 of Schedule 8.1 of the Previous Franchise Agreement); and

- (b) as a consequence of the entry by the Parties into this Agreement:
 - (i) paragraph 27.6(c) of Schedule 6.2 of the Previous Franchise Agreement shall not apply; and
 - (ii) the Franchisee shall:
 - (A) continue to retain the remaining balance of the Exeter Depot Funded Works Initial Payment upon and following the Start Date; and
 - (B) utilise the remaining balance of the Exeter Depot Funded Works Initial Payment in accordance with, and in the manner described in, this paragraph 24 of Part 4 of Schedule 6.1.

24.2 Every Reporting Quarter which occurs from the Start Date up until the last Reporting Quarter or (if earlier) the Reporting Quarter following completion of the Exeter Depot Funded Works, the Franchisee shall report to the Secretary of State (to the extent that it has not already done so) on progress with the Exeter Depot Funded Works, including an account of:

- (a) the progress being made towards meeting the milestones set out in the Exeter Depot Funded Works Work Plan and completion of the Exeter Depot Funded Works;
- (b) the Exeter Depot Funded Works Costs incurred by it;

- (c) its forecast of the Exeter Depot Funded Works Costs expected to be incurred by it in completing the Exeter Depot Funded Works;
- (d) the extent to which the Exeter Depot Funded Works Costs incurred or forecast to be incurred by it are part of the Exeter Depot Funded Works Anticipated Costs or part of the Exeter Depot Funded Works Contingency;
- (e) having regard to the risk register maintained by the Franchisee in respect of the Exeter Depot Funded Works, the forecast requirement for the Exeter Depot Funded Works Franchisee Contingency over the next two reporting quarters; and
- (f) if the Franchise terminates or expires before completion of the Exeter Depot Funded Works, any liability the Franchisee may have in relation to the Exeter Depot Funded Works.

The Secretary of State shall be entitled to request such further information and evidence in relation to the Exeter Depot Funded Works as he may reasonably require.

24.3 The Franchisee shall notify the Secretary of State if it forms the view that the costs that it will incur in performing its obligations under this paragraph 24 are in aggregate reasonably likely:

- (a) to require an increase in the Exeter Depot Funded Works Franchisee Contingency over the next two reporting quarters in order to maintain a prudent level of contingency for the project; and/or
- (b) exceed the aggregate of the Exeter Depot Funded Works Franchisee Cap; and/or
- (c) exceed the Exeter Depot Funded Works Cap; and/or
- (d) if there are any other emerging issues which significantly affect the delivery of the Exeter Depot Funded Works.

In such circumstances, the Secretary of State shall meet with the Franchisee in good faith to discuss whether:

- (i) the Exeter Depot Funded Works Franchisee Contingency should be increased to maintain a prudent level of contingency in relation to the project; or
- (ii) the Exeter Depot Funded works should be re-scoped to eliminate or reduce the amount by which the Exeter Depot Funded Works Costs exceed the Exeter Depot Funded Works Franchisee Cap (including taking into account prudent contingencies and activities and reasonable costs related any such re-scoping and any costs of termination and making good and also taking into account the wider impacts of any re-scoping on the Franchise Services (including any further Change which may result));
- (iii) the Franchisee should stop carrying out the Exeter Depot Funded Works when the aggregate is reached of the Exeter Depot Funded Works Franchisee Cap (including taking into

account prudent contingencies and activities and reasonable costs related to termination and making good); or

- (iv) the Exeter Depot Funded Works Cap should be increased or removed (with associated adjustments to the Exeter Depot Funded Works Contingency Cap and the Exeter Depot Funded Works Franchisee Contingency).

It is acknowledged that it is expected that the Secretary of State would not unreasonably delay or withhold consent to an increase in the Exeter Depot Funded Works Franchisee Contingency and the Exeter Depot Funded Works Franchisee Contingency Cap which did not require an increase in the Exeter Depot Funded Works Cap in circumstances where the increase was associated with contingencies arising in the proper performance by the Franchisee of its role in connection with the Exeter Depot Funded Works. Where the Parties cannot agree to increase the Exeter Depot Funded Works Franchisee Contingency and Cap and (where also required) to increase or remove the Exeter Depot Funded Works Cap or to limit the Exeter Depot Funded Works to what can be delivered within the aggregate of the Exeter Depot Funded Works Franchisee Cap, the Franchisee shall be under no obligation to continue to perform its obligations under this paragraph 24 to the extent this would involve activities or expenditure in excess of the aggregate of the Exeter Depot Funded Works Franchisee Cap (including taking into account prudent contingencies and activities and reasonable costs related to termination and making good). The Franchisee shall prepare a report detailing the activities that have been completed or partially completed or are expected to be completed by the date the Exeter Depot Funded Works Franchisee Cap is reached, taking into account prudent contingencies and the costs reasonably expected to be incurred in terminating any contracts or commitments properly and reasonably entered into in contemplation of the Exeter Depot Funded Works activities and reasonable costs associated with making good the sites where the Exeter Depot Funded Works are being carried out. The reasonable costs of such re-scoping, termination and making good which are properly incurred by the Franchisee shall be recoverable as Exeter Depot Funded Works Costs under this paragraph 24.

24.4 Not Used.

24.5 As soon as reasonably practicable following the end of each Reporting Period, the Franchisee shall provide to the Secretary of State a report setting out the actual Exeter Depot Funded Works Costs that it has incurred in or before that Reporting Period in carrying out the Exeter Depot Funded Works which have not previously been recovered (including costs incurred prior to the date of amendment of the Franchise Agreement to include this paragraph) and any supporting evidence that the Secretary of State may reasonably require that such Exeter Depot Funded Works Costs have been properly incurred by the Franchisee, including as applicable timesheets in respect of the Franchisee's internal management costs and invoices for any third party costs. In respect of time costs incurred directly by the Franchisee the charge rates set out in Part C of Appendix 1 to this Part 4 of Schedule 6.1 shall be applied. The Secretary of State shall review the report and within five Weekdays of receipt advise the Franchisee of any Exeter Depot Funded Works Costs which it disputes. Following the expiry of the five Weekdays the Franchisee may present a payment request to the Secretary of State for the undisputed amounts included in the report and the parties shall discuss together with a view to settling any disputed amounts. Any unresolved disputed amounts may be referred to dispute in accordance with Clause 11 (*Dispute Resolution Procedure*). Disputed amounts when and to the extent agreed, settled or determined may be included in a further payment request to the Secretary of

State. If required by the Secretary of State, the Franchisee shall meet with the Secretary of State once each Reporting Period to review the costs report provided under this paragraph and the costs of this meeting shall be recoverable as Exeter Depot Funded Works Costs, except insofar as Exeter Depot Funded Works Costs are disputed which are unreasonable or clearly unsubstantiated. This is without prejudice to the regular programme of reporting which will be undertaken between the parties under paragraph 24.2.

24.6

- (a) After the expiry of the five Weekdays after the submission of its report under paragraph 24.5 in respect of any Reporting Period, the Franchisee shall provide to the Secretary of State a payment request subject to paragraphs 24.6(b) and 24.6(c) setting out the Exeter Depot Funded Works Costs that it has incurred in or before that Reporting Period in line with its relevant report under paragraph 24.5, but excluding any amounts disputed by the Secretary of State and not agreed, settled or determined.
- (b) Where and to the extent the aggregate of the actual Exeter Depot Funded Works Costs incurred by the Franchisee fall between (i) the Exeter Depot Funded Works Franchisee Cap and (ii) the Exeter Depot Funded Works Franchisee Cap minus the Exeter Depot Funded Works Initial Payment the Franchisee shall draw down against the Exeter Depot Funded Works Initial Payment and not make a payment request (so avoiding any double recovery for the Franchisee).
- (c) Where following completion of the Exeter Depot Funded Works or (if earlier) termination or expiry of the Franchise, the aggregate of the Exeter Depot Funded Works Costs incurred by the Franchisee is less than the Exeter Depot Funded Works Franchisee Cap, an adjustment will be made to the final instalment of EDFWP in favour of the Secretary of State equal to the amount of that part of the Exeter Depot Funded Works Initial Payment not drawn down by the Franchisee under paragraph 24.6(b) or utilised by the Franchisee in funding Exeter Depot Funded Works Costs but not replaced by payments of EDFWP.

24.7 On the first Payment Date to occur seven days or more after the date on which the Franchisee provides to the Secretary of State a payment request under paragraph 24.6 (or where there is no such Payment Date, within 30 days of the date on which the relevant payment request is received), the Secretary of State shall pay to the Franchisee by way of adjustment to the relevant Franchise Payment an amount in respect of the Exeter Depot Funded Works as set out in that payment request (such amount being referenced as the component "EDFWP" in paragraph 1.1 of Schedule 8.1 (Franchise Payments) and each such payment being an "**Exeter Depot Funded Works Payment**"), provided that:

- (a) NOT USED; and
- (b) such payment to the Franchisee in respect of the Exeter Depot Funded Works shall not when aggregated with:
 - (i) all other such Exeter Depot Funded Works Payments made to the Franchisee as referred to in this paragraph 24 (including the Exeter Depot Funded Works Initial Payment); and

- (ii) all other payments of EDFWP (as such term is defined in paragraph 1.1 of Schedule 8.1 of the Previous Franchise Agreement) made to the Franchisee as referred to in paragraph 27.7 of Schedule 6.2 of the Previous Franchise Agreement,

exceed the Exeter Depot Funded Works Franchisee Cap.

24.8 It is acknowledged that in making forecasts for paragraphs 24.2 and 24.3 and calculating actual Exeter Depot Funded Works Costs:

- (a) no account shall be taken of any liquidated damages or warranty or other damages payments which may be payable to or by the Franchisee in connection with the Exeter Depot Funded Works or of any costs incurred or payments received by the Franchisee otherwise than in connection with the Exeter Depot Funded Works (without prejudice to how such costs or payments may be taken into account as part of any Change);
- (b) there shall be taken into account any liability which the Franchisee may have in connection with the Exeter Depot Funded Works, subject to the Franchisee using all reasonable endeavours to mitigate any such costs or liabilities;
- (c) there shall be taken into account any funds actually received by the Franchisee from the Control Period Five Network Rail Depot and Stabling Fund in relation to the Exeter Depot Funded Works, which the Franchisee will use reasonable endeavours to claim and which (if received after the relevant costs have been funded by the Secretary of State and not otherwise been taken into account in the calculation of the Exeter Depot Funded Works Costs) shall be applied to fund such other element of the Exeter Depot Funded Works Costs or other improvements as the Secretary of State may agree in writing and (in the absence of such agreement, including where the Secretary of State requests otherwise) shall be accounted for by the Franchisee to the Secretary of State by way of refund of the funding by the Secretary of State of the relevant part of the Exeter Depot Funded Works Costs to which such funds relate (so that the Franchisee does not make any double recovery and such funds which are refunded remain available to be drawn down again under this paragraph 24); and
- (d) calculations shall treat contractual retentions as actually incurred by the Franchisee and as qualifying to be taken into account as part of EDFWP notwithstanding that the date for payment has not yet fallen due.

24.9 Not Used.

24.10 The Franchisee undertakes that in determining its management costs for the Exeter Depot Funded Works activities, it shall ensure that such recovery is determined in a way that ensures that the Franchisee does not receive multiple payments for the same time of any particular individual or contractor (including legal and accounting advisers) spent on different activities required to be undertaken by the Franchisee under this Franchise Agreement, and that the Franchisee will act reasonably in allocating or apportioning costs as between different activities. The Secretary of State shall be entitled to request such evidence as he reasonably requires to verify that the Franchisee has complied with this paragraph 24.10.

- 24.11 It is acknowledged that the works which are undertaken, made or constructed as part of the Exeter Depot Funded Works will become the property of Network Rail as lessor of the relevant Depots.
- 24.12 The Franchisee shall ensure that any and all contracts entered into in support of its obligations under paragraph 24.1 (or contracts that are extended, amended or under which options are exercised in support of meeting such obligations, as the case may be) can be freely transferred (by way of Transfer Scheme or otherwise) to a Successor Operator without the relevant counterparty having the right to terminate such contract or change any fee or other amount in respect of such transfer, so that outstanding works can be completed following the end of the Franchise Period. For the avoidance of doubt, this shall include that the Successor Operator is entitled to receive goods, services and information that have already been paid for by the Franchisee prior to the date of such transfer.
- 24.13 The Secretary of State shall at the Franchisee's request not unreasonably withhold his consent to the designation as Primary Franchise Assets subject to a commitment not to de-designate of such contracts as the Franchisee may reasonably propose to enter into in connection with the undertaking of the Exeter Depot Funded Works, with a view to ensuring that a Successor Operator would take over the Exeter Depot Funded Works if the Franchise Term were to end prior to their completion.
- 24.14 Not Used.

25. **Class 769 Units**

- 25.1 In accordance with its obligations in Schedule 1.6 (The Rolling Stock) the Franchisee shall:
- (a) enter into the Class 769 Units Lease by no later than the Start Date;
 - (b) use all reasonable endeavours to ensure that each Class 769 Unit specified in Column A of the table below is accepted by no later than the target date applicable to that Class 769 Unit specified in the corresponding row in Column B of the table below (each a "**Class 769 Unit Target Acceptance Date**"); and
 - (c) use all reasonable endeavours to ensure that each Class 769 Unit specified in Column A of the table below enters into Unrestricted Passenger Carrying Service by no later than the target date applicable to that Class 769 Unit specified in the corresponding row in Column C of the table below (each a "**Class 769 Unit Entry Into Passenger Service Target Date**")

Column A Class 769 Unit Number	Column B Class 769 Unit Target Acceptance Date	Column C Class 769 entry into Passenger Service Target Date
1	06/04/2020	28/09/2020
2	27/04/2020	28/09/2020
3	10/08/2020	28/09/2020
4	24/08/2020	28/09/2020
5	07/09/2020	12/10/2020

6	21/09/2020	26/10/2020
7	05/10/2020	09/11/2020
8	19/10/2020	23/11/2020
9	02/11/2020	07/12/2020
10	16/11/2020	21/12/2020
11	30/11/2020	11/01/2021
12	14/12/2020	25/01/2021
13	04/01/2021	08/02/2021
14	18/01/2021	22/02/2021
15	01/02/2021	08/03/2021
16	15/02/2021	22/03/2021
17	01/03/2021	05/04/2021
18	15/03/2021	10/05/2021
19	29/03/2021	10/05/2021

25.2 The Financial Model assumes that in respect of each Class 769 Unit:

- (a) from the Class 769 Unit Target Acceptance Date specified in Column B of the table for that Class 769 Unit until the corresponding Class 769 Entry Into Passenger Service Target Date specified in Column C of the table the Franchisee shall incur rolling stock leasing charges in respect of the Class 769 Unit together with costs consistent with ensuring that there is no deterioration in the condition of the relevant Class 769 Unit prior to the Class 769 Entry Into Passenger Service Target Date for such Class 769 Unit; and
- (b) from the Class 769 Unit Entry Into Passenger Service Target Date specified in Column C of the table for that Class 769 Unit until the end of the Franchise Term the Franchisee shall (i) incur rolling stock leasing charges in respect of such Class 769 Unit together with operational and maintenance costs consistent with its use in unrestricted operational passenger service and (ii) receive specified revenue from the use of such Class 769 Unit in unrestricted operational passenger service.

25.3 If in respect of any Class 769 Units the actual acceptance date is later than the Class 769 Unit Target Acceptance Date or the actual date of entry into unrestricted service delivering Passenger Services is later than the Class 769 Entry Into Passenger Service Target Date then, the net financial effect of all such circumstances on the Franchisee shall be agreed by the Secretary of State and the Franchisee or, in default of agreement within a timescale regarded as reasonable by the Secretary of State, the Secretary of State shall reasonably determine such net financial effect. The Franchisee shall provide all information that the Secretary of State shall reasonably require for the purposes of identifying such net financial effect. The assessment of such net financial effect shall take into account:

- (a) any liquidated damages payable to the Franchisee in relation to any such delay;
- (b) the lease, maintenance and other operating costs avoided or deferred by the Franchisee in consequence of the delay (including costs relating to the provision of depot facilities in relation to the Class 769 rolling stock which are not incurred as a result);

- (c) any additional lease, maintenance and other operating costs reasonably incurred by the Franchisee as a result of extending the leases on other rolling stock within the Train Fleet beyond the lease expiry dates specified in Schedule 1.6 (*The Rolling Stock*) of the Franchise Agreement or the leasing or hiring of other rolling stock vehicles to substitute for delayed Class 769 vehicles;
- (d) any reasonably anticipated loss of revenue suffered by the Franchisee as a consequence of delay; and
- (e) any other cost savings made by the Franchisee as a consequence of the delay.

No account shall be taken of any impacts of any Class 769 Units actually entering into unrestricted service delivering Passenger Services by a date later than the relevant Class 769 Unit Entry Into Passenger Service Target Date on amounts to be incurred by the Franchisee under Schedule 7.1 (*Operational Performance*) and Schedule 7.2 (*Customer Experience and Engagement*) or amounts payable by the Franchisee under Schedule 7.3 (*Service Quality Regime*). The Franchisee shall use all reasonable endeavours to minimise increased costs incurred and revenue foregone as a result of the actual entry into unrestricted service delivering Passenger Services of any Class 769 Unit being a date later than the relevant Class 769 Unit Entry Into Passenger Service Target Date and, if the Secretary of State reasonably determines it has not done so, the Secretary of State shall be entitled to substitute a lower cost and/or a higher revenue based on his reasonable determination of what the cost incurred and/or revenue foregone by the Franchisee should have been if it had exercised all reasonable endeavours.

- 25.4 If it is agreed or reasonably determined that the net financial effect of the actual acceptance dates of Class 769 Units being later than the relevant Class 769 Unit Target Acceptance Dates and/or the actual dates of entry into unrestricted service delivering Passenger Services of Class 769 Units being later than the relevant Class 769 Entry Into Passenger Service Target Dates and the overall impact is a positive one for the Franchisee, so that it is financially better off than it would have been had any such delays not occurred, then (without prejudice to any other remedies that might be available to the Secretary of State) an amount shall be payable by the Franchisee to the Secretary of State of the amount required to pass such net financial benefit of the delay to the Secretary of State (a "**Delayed Rolling Stock Franchise Payment Adjustment**"). The Delayed Rolling Stock Franchise Payment Adjustment shall be calculated and paid on a Reporting Period by Reporting Period basis (or at such alternative frequency as the Secretary of State may specify) as reasonably determined by the Secretary of State and paid by way of adjustment to Franchise Payments. Each such amount shall be payable on the first Payment Date falling no less than seven (7) days after such determination. If the net financial effect of relevant delay to any Class 769 Units is a negative one for the Franchisee, so that its net financial position is worse than it would have been had relevant delay not occurred, no adjustment shall be made to Franchise Payments.
- 25.4A Subject to the Franchisee having complied with its obligations under paragraph 25.1 above and paragraph 25.5 below, and under Part 2 of Schedule 1.1 (Service Development), a failure of the Franchisee to secure an Access Agreement, timetable development rights or a Timetable consistent with the TSR as a result of the entry of any of the Class 769 Units into Unrestricted Passenger Carrying Service being (or being expected to be) later than the Passenger Change Date in or around May 2021 shall not be a contravention of this Agreement.

25.5 **Delayed Class 769 Mitigation Plan**

- (a) For the purposes of this paragraph 25.5, "**Relevant Class 769 Delay**" means, in respect of a Class 769 Unit, its actual entry into Unrestricted Passenger Carrying Service being a date later than the relevant Class 769 Unit Entry Into Passenger Service Target Date.
- (b) The Franchisee shall notify the Secretary of State as soon as reasonably practicable if it becomes aware of any material risk that a Relevant Class 769 Delay will occur. If a Relevant Class 769 Delay does occur the Franchisee shall use all reasonable endeavours to mitigate the impact on the delivery of the Franchise Services of the unavailability of the relevant Class 769 Unit(s) at the expected time including by identifying and proposing value for money alternative sources of replacement rolling stock.
- (c) If a Relevant Class 769 Delay has occurred or the Secretary of State believes that there is a material risk that a Relevant Class 769 Delay will occur the Secretary of State may serve a notice on the Franchisee requiring it to produce a plan to a reasonable specification provided with the notice to remedy or mitigate the impact of the delayed availability of the relevant Class 769 Unit(s) ("**Delayed Class 769 Mitigation Plan**"). Such specification may include measures to be implemented by the Franchisee to mitigate the direct or indirect impact of the Relevant Class 769 Delay on any affected Train Operator. The Delayed Class 769 Mitigation Plan shall provide a comprehensive analysis backed by relevant data and assumptions of:
- (i) all cost and revenue and other financial implications of options contained within it including the potential implications for Franchise Payments;
 - (ii) the implications (if any) for the Benchmarks; and
 - (iii) the likely impact of options within it for existing and future passenger journeys and journey opportunities.
- (d) The Franchisee shall meet with the Secretary of State to discuss the Delayed Class 769 Mitigation Plan and provide such further information or analysis and further iterations of the Delayed Class 769 Mitigation Plan as the Secretary of State shall reasonably require.

The Secretary of State shall have the right to direct the Franchisee to use all reasonable endeavours to implement a Delayed Class 769 Mitigation Plan (either in the form submitted by the Franchisee or with such amendments as the Secretary of State may, following consultation with the Franchisee, direct). Any such direction by the Secretary of State shall be a Change, provided that the Secretary of State shall have the right to direct that there should not be a Change in circumstances where the Relevant Class 769 Delay to which the Delayed Class 769 Mitigation Plan relates is caused by or results from any event or circumstance which is within the reasonable control of the Franchisee.

25A. **Short Form HSTs Proposal**

25A.1 The Parties acknowledge and agree that:

- (a) at the date of this Agreement, the Parties are considering a proposal which involves:

- (i) the conversion of further sets of HST rolling stock vehicles configured in "2+4" formation (the "**Short Form HSTs**"); and
 - (ii) the leasing of such Short Form HSTs by the Franchisee, the "**Short Form HSTs Proposal**";
- (b) the Franchisee shall provide such information as the Secretary of State may reasonably require in connection with the Secretary of State's continued consideration of the Short Form HSTs Proposal, and shall, at the Secretary of State's request, meet with the Secretary of State to discuss the Short Form HSTs Proposal;
- (c) at the date of this Agreement the Financial Model and Record of Assumptions assume that no costs will be incurred by the Franchisee in respect of the implementation of the Short Form HSTs Proposal; and

the Franchisee shall, at the Secretary of State's direction, enter into good faith negotiations with the Secretary of State with a view to agreeing the terms of a Variation to effect the implementation of the Short Form HSTs Proposal such that the Short Form HSTs will be converted and brought into Unrestricted Passenger Carrying Service by the Franchisee.

26. **GWR Performance Report and Plan**

- 26.1 The Franchisee has established and agreed with the Secretary of State the GWR Performance Report and Plan.
- 26.2 The purpose of the GWR Performance Report and Plan is to provide analysis of the performance of the Passenger Services, identify reasons for any shortcomings and identify short, medium and long term actions and initiatives to improve performance on a basis consistent with the obligations of the Franchisee under the Franchise Agreement and having regard to available resources and funding and other relevant circumstances applying at the time. In preparing its actions and initiatives, the Franchisee shall place an emphasis on improving performance on the routes performing worst.
- 26.3 The Franchisee shall review and update the GWR Performance Report and Plan every two weeks with effect from the Start Date (or at such other frequency as the Secretary of State may agree and recognising that meetings may be conducted by telephone conference call) and supply a copy of the updated version to the Secretary of State. The updated plans shall be prepared on a basis consistent in terms of coverage and detail with the initial GWR Performance Report and Plan, unless otherwise agreed with the Secretary of State.
- 26.4 Representatives of the Franchisee and the Secretary of State shall meet every two weeks with effect from the Start Date (or at such other frequency as the Secretary of State may agree and recognising that meetings may be conducted by telephone conference call) in order to review the latest version of the GWR Performance Report and Plan.
- 26.5 The Franchisee shall take into account reasonable written comments and recommendations of the Secretary of State with regard to the GWR Performance Report and Plan.

26.6 The Franchisee shall use all reasonable endeavours to implement the actions and initiatives set out as to be performed on the part of the Franchisee in the GWR Performance Report and Plan, as revised and updated from time to time, but subject to any applicable dependencies or other terms set out in it and having regard to any extenuating circumstances.

26.7 Without prejudice to other obligations on the Franchisee under the Franchise Agreement, if there is any failure on the part of the Franchisee to deliver any element of the GWR Performance Report and Plan then this shall be addressed through the process of review and revision of the GWR Performance Report and Plan and, in the absence of a persistent failure of its obligations under paragraph 26.6, such failure shall not be treated as a contravention.

27. **Not Used**

28. **Not Used**

29. **Disclosure by the Franchisee of Relevant Information to Relevant Persons**

29.1 The Franchisee shall, within a reasonable period following a request submitted to the Franchisee in writing by a Relevant Person:

- (a) disclose to the Relevant Person such Relevant Information as is specified in the request; and
- (b) permit the Relevant Person to disclose such Relevant Information to any Relevant Contractor.

29.2 The Franchisee shall provide a copy of the Template Confidentiality Agreement to any Stakeholder falling within the scope of sub-paragraph (a) of the definition of "Relevant Person" who requests it.

29.3 The Franchisee shall not amend the Template Confidentiality Agreement without the approval of the Secretary of State (such approval not to be unreasonably withheld).

29.4 Nothing in this paragraph 29 shall render the Secretary of State liable to the Franchisee (or any other person) for any breach of confidence or unauthorised disclosure of Relevant Information by a Relevant Person (or a Relevant Contractor) following the disclosure of such Relevant Information to the Relevant Person by the Franchisee pursuant to paragraph 29.1.

30. **Network Rail Data Sharing and Confidentiality Agreement**

30.1 The Franchisee shall:

- (a) use all reasonable endeavours to enter into the NR Data Sharing and Confidentiality Agreement (in the agreed terms marked NDSCA or such other form as may otherwise be approved by the Secretary of State) with Network Rail by the Start Date; and
- (b) if it has entered into the NR Data Sharing and Confidentiality Agreement with Network Rail pursuant to paragraph 30.1(a) above, comply with the terms of the NR Data Sharing and Confidentiality Agreement throughout the Franchise Term (it being acknowledged and agreed that nothing in this paragraph 30 shall render the Secretary of State liable to the Franchisee (or any other person) for any breach of the NR Data Sharing and Confidentiality Agreement by Network Rail).

30.2 The Franchisee shall not amend the NR Data Sharing and Confidentiality Agreement without the approval of the Secretary of State (such approval not to be unreasonably withheld).

31. **Station Transfers**

31.1 The Franchisee shall use all reasonable endeavours to enter into reasonably required agreements and arrangements with the Train Operator of the South Western passenger rail franchise (the "**South Western Train Operator**") so that the South Western Train Operator becomes the Facility Owner of the following Stations in place of the Franchisee on, or as soon as reasonably practicable after, the Start Date:

- (a) Romsey;
- (b) Mottisfont and Dunbridge; and
- (c) Dean,

(the "**Transfer Stations**").

31.2 Accordingly the Franchisee shall agree to:

- (a) surrender its rights in respect of each station lease to which it is a party in relation to a Transfer Station from the date that it ceases to be the Facility Owner in relation to such Transfer Station; or
- (b) novate each station lease to which it is a party in relation to a Transfer Station to the South Western Train Operator from the date that it ceases to be the Facility Owner in relation to such Transfer Station.

31.3 It is acknowledged that the agreement of Network Rail will be required to relevant matters referred to in paragraph 31.2 and the Franchisee shall use all reasonable endeavours to obtain such agreement.

31.4 The Franchisee shall:

- (a) fully and effectively co-operate with the South Western Train Operator with the intention of ensuring an efficient and effective transfer of the Transfer Stations to it including by providing all information reasonably required by the South Western Train Operator for such purposes; and
- (b) comply with all its obligations under Law in relation to the any required transfers of the employment of Franchise Employees to the South Western Train Operator.

32. **Mobile Ticketing Information System Obligations**

32.1 Pursuant to a letter agreement dated 24 October 2019 ("**MTIS Letter Agreement**") the Franchisee and the Secretary of State agreed that the Franchisee would proceed with the procurement and implementation of a new Mobile Ticketing Information System ("**New MTIS**") to be operational from the Start Date being the date on which the previous contract for the provision of a mobile ticketing information system terminates. The MTIS Letter Agreement provides for a "Change" under the provisions of the Previous Franchise Agreement and accordingly the Franchisee shall not be provided with any funding in relation to New MTIS under the provisions of this Agreement. The Franchisee entered into an agreement dated 20 December 2019 with The Ticket Keeper Limited in relation

to the delivery of New MTIS ("**New MTIS Contract**"). The Franchisee agrees that it shall:

- (a) complete the training and other implementation activities required for the implementation of New MTIS to the extent that this has not occurred prior to the Start Date; and
- (b) use all reasonable endeavours to ensure that, if New MTIS is not available for use from the Start Date, it shall be available for use as soon as reasonably practicable thereafter including by taking appropriate action to enforce its rights under the New MTIS Contract.

32.2 All assets relating to New MTIS shall transfer to the Successor Operator at a value of "nil".

33. **WECA Funding Agreement**

The Franchisee shall use all reasonable endeavours to enter into a WECA Funding Agreement by no later than 30 June 2020.

Withdrawn

APPENDIX 1**MATTERS ASSOCIATED WITH PARAGRAPH 24 OF PART 4 OF SCHEDULE 6.1
(EXETER DEPOT FUNDED WORKS)****Part A**

The Exeter Depot Funded Works comprise the following, together with reasonably necessary ancillary or associated works:

- Extension of the maintenance depot boundary onto land known as the Wessex Estate adjacent to the eastern boundary of the existing depot, and onto the Waggoners Way site immediately to the north of the existing depot on the other side of Station Road;
- Construction of new 3-road maintenance depot facilities on the Wessex Estate land (2 no. 5-car service roads in shed and 1 no. 3-car heavy maintenance road with jacking capability);
- New drivers' footbridge connection into St Davids Station;
- New Carriage Wash Plant;
- New CET plant;
- Modification to existing Under Frame Cleaning facility (roof installation);
- Construction of new staff accommodation for train crew and maintenance staff;
- Telecoms (non-operational and operational), including removal of legacy telecom assets and re-routing into new system;
- Construction of a new fluids farm and delivery facility to serve the new maintenance depot facilities on the Waggoners' Way site;
- Alterations / enhancements / works to existing facilities within the existing maintenance depot boundary, including decamping of existing accommodations.

Part B**Exeter Depot Funded Works Work Plan**

Task	Start	End
GRIP 6 Construction Phase	01/03/2018	31/07/2020 or as soon as practical thereafter
Commissioning	01/05/2019	30/09/2020 or as soon as practical thereafter
Taking into Use	31/08/2020 or as soon as practical thereafter	-
Completion	30/09/2020 or as soon as practical thereafter	-

Part C

1. The costs of the works required pursuant to paragraph 24 of Part 4 of Schedule 6.1 in respect of any Reporting Period in respect of time spent by employees of the Franchisee or any of its Affiliates shall be recoverable at the following day rates:

Level	Day Rate (exc VAT)
Director (Affiliate)	[REDACTED ²⁸]
Director (FGW)	[REDACTED]
Senior Manager	[REDACTED]
Middle Manager	[REDACTED]

The day rates in this paragraph 1:

- a) are exclusive of any out of pocket expenses incurred by the Franchisee. Any reasonable out of pocket expenses incurred by the Franchisee shall be recoverable at cost, and
- b) shall be indexed in accordance with the Retail Price Index ("RPI") on 1 April 2016 and on 1 April of each subsequent year (the "adjustment date"), such indexation to be determined by multiplying the relevant cost rate (where applicable, as it has previously been indexed) by the percentage increase in RPI published for the 12 month period with the November immediately preceding the relevant adjustment date.
2. Costs and expenses incurred by the Franchisee in respect of persons who are not employees of the Franchisee or its Affiliates working on the works required pursuant to paragraph 24 of Part 4 of Schedule 6.1 shall be recoverable at the cost properly and reasonably incurred by the Franchisee.
3. All the other costs and expenses not covered by paragraphs 1 or 2 above, incurred by the Franchisee in respect of the works required pursuant to paragraph 24 of Part 4 of Schedule 6.1 shall be recovered at the proper and reasonable cost incurred by the Franchisee.

²⁸ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

APPENDIX 2

NOT USED

Withdrawn

Schedule 6.2

Committed Obligations**PART 1 – COMMITTED OBLIGATIONS****1. Definitions**

In this Part 1 (Committed Obligations) to Schedule 6.2 (Committed Obligations) except to the extent the context otherwise requires the following words and expressions have the following meanings:

“Accessibility Audit”	has the meaning given to it in paragraph 28.2;
“Accessibility Programme Board”	means a board responsible for reviewing information from different customer groups, reviewing ideas and plans and recommending the spending for accessibility improvements through business cases to the GWR Executive, chaired by the Business Assurance Director and including the Mobility and Inclusion Manager, and representatives from properties, stations, on-board teams and customer experience;
“Actual Market Research and External Communications Spend”	has the meaning given to it in paragraph 61.4(b)(iii);
“Adblue Fuelling Equipment”	means such equipment as is necessary to facilitate the addition of “Adblue” additive to diesel fuel prior to re-fuelling of relevant rolling stock;
“Airport Junction”	means the junction at which the spur to Heathrow Airport diverges from the Great Western Main Line, approximately 11 miles from London Paddington station;
“Angel 2+4 HST Power Cars”	means the 2+4 HST Power Cars which are leased to the Franchisee by Angel Trains Limited (and reference to an “Angel 2+4 HST Power Car” shall be construed accordingly);
“Angel Class 150/2 Units”	means the six (6) Class 150 rolling stock vehicles formed into three (3) two car units as referred to in row 7 of the table at paragraph 1 (<i>Original Rolling Stock</i>) of Schedule 1.6 which are leased to the Franchisee by Angel Trains Limited (and references to an “Angel Class 150/2 Unit” shall be construed accordingly);

"APC Equipment"	has the meaning given to it in paragraph 46.1(a);
"Automatic Selective Door Opening"	means a system (and associated equipment) which is compliant with all relevant standards and regulations applicable in the UK which operates such that when a train formed of vehicles fitted with the system calls at a platform the operational length of which is shorter than the length of the train passenger doors that cannot be safely opened are automatically prevented from doing so;
"Bristol PAYG Scheme"	has the meaning given to it in paragraph 78.1;
"BWV Equipment"	has the meaning given to it in paragraph 19.1 of Schedule 13.1;
"C-DAS"	means connected driver advisory system, which takes information from relevant infrastructure and provides advice to drivers of trains to help to minimise energy consumption and maintain schedules;
"C-DAS Junction Optimiser"	means functionality within C-DAS to provide information to the driver about the speed at which to approach a junction so as to smooth the flow of trains through the junction;
"Chiltern HyDrive Trial"	means the trial (which, as at the date of this Agreement, has not been completed) by the Chiltern franchisee of a Class 165 rolling stock unit which has been converted such that it is powered by batteries charged through efficient modern diesel engines;
"CI Report Date"	means the date falling five (5) Weekdays prior to each Franchise Performance Meeting;
"Class 769 Cab Refresh"	has the meaning given to it in paragraph 43.1(a)(i);
"Class 769 Units"	means the seventy six (76) Class 769 rolling stock vehicles formed into nineteen (19) four car units as referred to in row 1 of the table at paragraph 2 (<i>Specified Additional Rolling Stock</i>) of Schedule 1.6 (and references to a "Class 769 Unit" shall be construed accordingly);

"Class 802 Maintenance Provider"	means the counterparty to the Maintenance Contract in respect of the Class 802 Units;
"Class 802 Units"	<p>means (together):</p> <p>(a) the one hundred and ten (110) Class 802 rolling stock vehicles formed into twenty two (22) five car units as referred to in row 3 of the table at paragraph 2 (<i>Specified Additional Rolling Stock</i>) of Schedule 1.6; and</p> <p>(b) the one hundred and twenty six (126) Class 802 rolling stock vehicles formed into fourteen (14) nine car units as referred to in row 4 of the table at paragraph 2 (<i>Specified Additional Rolling Stock</i>) of Schedule 1.6,</p> <p>and references to a "Class 802 Unit" shall be construed accordingly;</p>
"Committed Investments"	<p>means the investment obligations on the Franchisee contemplated by:</p> <p>(a) paragraph 92 (<i>Additional Car Parking Spaces</i>) of this Part 1 of Schedule 6.2; and</p> <p>(b) paragraph 23 (<i>Station Improvement Fund</i>) of Part 3 of Schedule 6.1;</p> <p>and references to a "Committed Investment" shall be construed accordingly;</p>
"Communication Disability Improvement Review"	has the meaning given to it in paragraph 29.1(a);
"Control Function"	means the respective teams within the Franchisee, Network Rail and the TSP with responsibility for day-to-day operational control of the railway;
"Control Function Review"	means the review of the Control Function undertaken by the Franchisee, Network Rail and the TSP which is ongoing as at the Start Date;
"Customer Experience During Disruption Plan"	has the meaning given to it in paragraph 88.1;

"Delay Repay Compensation"	means compensation payable to a holder of a ticket pursuant to a delay repay compensation scheme described in the Passenger's Charter;
"Eminox Equipment"	means equipment manufactured by Eminox Limited which operates to reduce particulate and nitrous oxide emissions from the exhaust emissions of diesel powered rolling stock vehicles;
"Employee Panel"	has the meaning given to it in paragraph 4;
"Ethnographic Surveys"	has the meaning given to it in paragraph 37;
"Family and Friends Railcard"	means the fares discount scheme known at the Start Date as the "Family and Friends Railcard" and which offers discounts from the cost of Fares for users of the Passenger Services who meet the applicability requirements of the railcard;
"Fleet Status Reporting and Monitoring System"	has the meaning given to it in paragraph 54;
"Flexi Season Ticket Scheme"	has the meaning given to it in paragraph 62.1;
"Franchise Region"	has the meaning given to it in paragraph 2.1;
"GWR App"	has the meaning given to it in paragraph 85.1;
"2+4 HST Power Car"	means each HST power car comprised in each 2+4 HST Set;
"2+4 HST Sets"	means the sets of HST rolling stock vehicles configured in "2 power car+4 trailer vehicle" formation as referred to in rows 16 to 19 (inclusive) of the table at paragraph 1 (<i>Original Rolling Stock</i>) of Schedule 1.6 (and references to a " 2+4 HST Set " shall be construed accordingly);
"HyDrive Conversion"	means the conversion, as proposed by Angel Trains Limited, of the Class 165 and Class 166 rolling stock units comprised within the Train Fleet such that those rolling stock units are powered by batteries charged through efficient modern diesel engines;

“HyDrive Lease Option”	has the meaning given to it in paragraph 49.1;
“HyDrive Proposal”	has the meaning given to it in paragraph 49.3(a);
“Improved Station Wayfinding Trial”	has the meaning given to it in paragraph 32;
“Inclusion Action Group”	means an employee group overseeing inclusion and diversity;
“Inclusion and Diversity Strategy”	means the strategy of the Franchisee with this title existing at the Start Date as it may be amended from time to time during the Franchise Term;
“Integrated Fleet Management System”	means the asset management system used by the Franchisee as at the date of this Agreement to manage material supply and stock holding at maintenance depots;
“Jobcentre Plus Travel Discount Card”	<p>means the fares discount scheme known at the Start Date as the “Jobcentre Plus Travel Discount Card” and which offers discounts from the cost of Fares for users of the Passenger Services who:</p> <p>(a) if aged between eighteen (18) to twenty four (24), have been claiming Universal Credit or Jobseeker’s Allowance for a period of between three (3) and nine (9) months; or</p> <p>(b) if aged twenty five (25) or over, have been claiming Universal Credit or Jobseeker’s Allowance for a period of between three (3) and twelve (12) months;</p>
“Learning Management System”	means a system designed to monitor and assess the learning and development of Franchise Employees including for the purposes of assisting succession planning and management competence assessments;
“Living Wage”	means an hourly wage which is calculated independently (and updated annually) by the Living Wage Foundation according to the basic cost of living in the United Kingdom, and which is, at the date of this Agreement, £9.30 per hour for people employed outside London and £10.75 per hour for people employed in London, in

	each case, prior to deductions at source and any voluntary salary sacrifice;
"Local Transport Forum"	has the meaning given to it in paragraph 90.1;
"Meeting Points"	has the meaning given to it in paragraph 30.1;
"Minimum Market Research, External Communications and Other Marketing Spend"	has the meaning given to it in paragraph 61.4(a);
"New TVMs"	has the meaning given to it in paragraph 70.1;
"Passenger Assist App"	means the 'app' being developed by the Rail Delivery Group and known as "Passenger Assist";
"Passenger Awareness Monitors"	means screens that are visible to passengers with a live CCTV feed of the area in which they are placed;
"Pre-Boarding Service"	means a pre-boarding service enabling families travelling with children or other passengers requiring additional support to board Passenger Services in advance of other passengers;
"Pre-Boarding Service Trial"	has the meaning given to it in paragraph 87.1;
"Priority Seat Signage Review"	has the meaning given to it in paragraph 31;
"Prospective Joint Tasks"	has the meaning given to it in paragraph 17.2;
"Pulse Kiosk"	means a touch screen customer feedback kiosk;
"RDG Customer Promises"	means the customer promises set out in the Wavelength Programme;
"RDG Design Guidelines"	means the guidelines entitled "Ticket Vending Machines: Design Guidelines", published by the Rail Delivery Group as they may be amended or replaced from time to time;
"RDG Station Accessibility Map"	means the map issued by the Rail Delivery Group and available, as at the Start Date, at http://accessmap.nationalrail.co.uk/

"Regional Management Forum"	has the meaning given to it in paragraph 2.1;
"Responsible Director"	has the meaning given to it in paragraph 2.2(a);
"Safe Place"	means designation as a "Safe Place" as part of the Safe Places National Network administered by Safe Places Organisation CIC;
"Safe Places Organisation CIC"	means the community interest company known as "Safe Places Organisation" with company number 09267948;
"Sand Dispensing Equipment"	has the meaning given to it in paragraph 41.1(a);
"Scheidt & Bachmann TVMs"	means TVMs manufactured by Scheidt & Bachmann GmbH;
"Sets"	has the meaning given to it in Schedule 6.7 (<i>The IEP Provisions</i>);
"Sleeper Service"	a Passenger Service in relation to which the Franchisee provides sleeping accommodation for passengers in sleeper coaches in accordance with the requirements of the TSR;
"SOROS®"	means the operations and maintenance management web application system provided by Danburykline Limited;
"Specialist Customer Panel"	has the meaning given to it in paragraph 81.1;
"Standard Anytime Day Return"	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 zones for which it is valid and which expires no earlier than 04:29 on the day after the day of the outward journey or, if later, the time the relevant journey may be completed if commenced before 04:29;
"Standard Anytime Return"	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 zones for which it is valid except that the outward journey must be

made within five (5) days up to 04:29 after the last date shown on such Fare and the return journey must be made within one (1) calendar month and up to 04:29 after the last date shown on such Fare;

“Tenant Green Commitment”

means a clause in relevant leases requiring the tenant to adopt sustainable practices and guiding it to reduce its energy consumption;

“Three Day Season Ticket”

means a Fare costing no more than two thirds of the price of a Weekly Season Ticket which entitles a passenger who has purchased it to:

- (a) travel on the Passenger Services for one return journey on each of three (3) separate Weekdays during a consecutive period of seven (7) days commencing on the day that the customer first uses the Passenger Services during the period; and
- (b) travel on the Passenger Services for one return journey on one day which is not a Weekday and falls within the consecutive period of seven (7) days referred to at (a) above and may either be delivered via ITSO Certified Smartmedia or alternatively through other fulfilment channels;

“Three Day Season Ticket Trial”

has the meaning given to it in paragraph 63.1;

“Training Needs Analysis”

means:

- (a) an analysis of the skills and competencies of Franchise Employees in different functions across the business required to enable them to perform their roles effectively;
- (b) an assessment of the extent to which existing Franchise Employees in each function are equipped with those skills and competencies at an overall level, not at the level of identified individuals; and

- (c) a training and development programmes designed in the context of (a) and (b) above to identify priorities for training in subsequent discussions about training requirements between Franchise Employees and their managers;

“Transport Mentors”	has the meaning given to it in paragraph 25.1;
“TSP”	has the meaning given to it in Schedule 6.7 (<i>The IEP Provisions</i>);
“TVM”	means ticket vending machine;
“Wavelength Programme”	means the programme of work being developed by the rail industry which aims to collect a wider range of information about the customer experience, tracking performance against journey touchpoints (described as the “Heartbeat”) and a series of key commitments based on core passenger priorities (described as “Customer Promises”);
“Wavelength Survey”	means the weekly survey, relating to the Franchise, which is undertaken as part of the Wavelength Programme (including tracking performance against journey touchpoints (described as the “Heartbeat”) and a series of key commitments based on core passenger priorities (described as “Customer Promises”));
“Worldline TVMs”	means TVMs manufactured by Worldline SA; and
“WSP Equipment”	has the meaning given to it in paragraph 40.1(a).

1A. **Application**

The Parties acknowledge and agree that the provisions of this Part 1 to Schedule 6.2 shall not apply to the HEx Outsourced Services.

1B. **Treatment of Unallocated Financial Model Costs Amount as Underspend**

1B.1 The Parties acknowledge and agree that on the date of this Agreement the Financial Model contains costs with a value equal to [REDACTED²⁹] which are not allocated to the Franchisee's performance of any specified obligations contained in this Agreement (the "**Unallocated Financial Model Costs Amount**").

1B.2 Accordingly an amount equal to the Unallocated Financial Model Costs Amount shall be treated as if it were Underspend occurring on the first date of the Franchise Term and the provisions of paragraph 3 of Part 2 of Schedule 6.2 shall apply in respect of such amount.

2. **Devolved Decision Making**

2.1 The Franchisee shall, on not less than three (3) occasions in each Franchisee Year, hold regional management forums (each a "**Regional Management Forum**") in each of four (4) regions in the Franchisee's network (each a "**Franchise Region**"), and which together constitute the whole area covered by the Franchisee's network), with each such Regional Management Forum to be facilitated by the relevant Responsible Director for the Franchise Region in which the Regional Management Forum is to be held.

2.2 The Franchisee shall:

(a) use all reasonable endeavours to by no later than 30 April 2020, and in any event by no later than 31 July 2020, allocate responsible executive directors (each a "**Responsible Director**") to each Franchise Region; and

(b) ensure that each Responsible Director is responsible to the board of directors of the Franchisee for the delivery of the Franchise Services in the relevant Franchise Region.

3. **Living Wage Accreditation**

3.1 The Franchisee shall, by no later than 31 March 2021, ensure that all Franchise Employees (including those undertaking an Apprenticeship) are paid at least the Living Wage and thereafter shall ensure that throughout the remainder of the Franchise Term all Franchise Employees (including those undertaking an Apprenticeship) continue to be paid at least the Living Wage.

3.2 The Franchisee shall use all reasonable endeavours to procure that the suppliers of goods and services relating to the delivery of the Franchise Services adopt in relation to their employees whose work primarily relates to the provision of the Franchise Services the requirements specified in paragraph 3.1.

4. **Employee Panel**

The Franchisee shall, by no later than 31 January 2021 establish and implement an employee panel (the "**Employee Panel**") with the objective of encouraging greater employee participation in the operation of the Franchisee's business. The panel shall be comprised of Franchise Employees who together represent a broad

²⁹ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

range of staff grades, locations and functions. The Employee Panel shall meet regularly throughout the Franchise Term and, among other things, shall provide opportunities for Franchise Employee members of the Employee Panel to express views about the operation of the Franchise Services.

5. Improving Staff Accommodation

The Franchisee shall incur expenditure of not less than [REDACTED³⁰] in each Franchisee Year (reduced pro-rata in respect of any Franchisee Year of less than 365 days (or less than 366 days in a leap year)) in delivering improvements to accommodation for Franchise Employees.

6. Mobile Occupational Health Unit and Healthcare Professional

6.1 The Franchisee shall by no later than 31 March 2021:

- (a) establish a mobile occupational health unit (which will be in addition to the number of occupational health centres established by the Franchisee and existing as at the Start Date); and
- (b) (and thereafter throughout the Franchise Term) employ at least one (1) additional occupational health professional whose role will be to operate the mobile occupational health unit.

7. Training Needs Analysis

7.1 The Franchisee shall:

- (a) at least once in each Franchisee Year, conduct a Training Needs Analysis based on a representative sample of Franchise Employees; and
- (b) by no later than 31 March 2021, implement a commissioned and operational Learning Management System.

7.2 The Franchisee shall take such steps as it considers appropriate (acting reasonably) in light of the conclusions of the Training Needs Analysis, with the intention that the taking of such steps will benefit the delivery of the Franchise Services.

8. Diversity Outreach Programme

8.1 The Franchisee shall incur expenditure of not less than [REDACTED³¹] in each Franchisee Year (reduced pro-rata in respect of any Franchisee Year of less than 365 days (or less than 366 days in a leap year)) in:

- (a) undertaking activities with the objective of improving the visibility of the Franchisee amongst groups who are typically under-represented in

³⁰ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

³¹ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

the rail industry workforce (for example, but without limitation, women and those from a BAME background); and

- (b) promoting careers in the rail industry to individuals in the social groups referred to in paragraph 8.1(a).

9. **Inclusion and Diversity Strategy**

9.1 The Franchisee shall, by no later than 30 June 2020 update and thereafter maintain the Inclusion and Diversity Strategy and act in accordance with it.

9.2 From the completion of the update referred to in paragraph 9.1 and throughout the remainder of the Franchise Term, the Franchisee shall ensure that the Inclusion and Diversity Strategy shall include (amongst other things) a description of the Franchisee's approach to becoming a more inclusive employer by engaging with appropriate external organisations that promote inclusivity in the workplace and of the specific steps it intends to take in light of such engagement.

9.3 The Franchisee shall review (and, as appropriate, update) the Inclusion and Diversity Strategy at least annually in conjunction with the Franchisee's review of the People Strategy pursuant to paragraph 14.2 of Part 4 of Schedule 6.1.

10. **NOT USED**

11. **Working Groups for Under-represented Franchise Employees and Inclusion Action Group**

11.1 The Franchisee shall, by no later than 30 September 2020, implement specialist working groups for those who are typically under-represented in the rail industry workforce (for example women and those from a BAME background) and shall thereafter maintain and convene meetings of such working groups on a reasonably regular basis (the frequency of such meetings to be determined by the Franchisee acting reasonably).

11.2 The Franchisee shall, by no later than the Start Date implement an Inclusion Action Group and shall maintain the Inclusion Action Group throughout the Franchise Term.

12. **Passenger Awareness Monitors and BWV Equipment**

12.1 The Franchisee shall, by no later than 30 April 2021, procure the installation of commissioned and operational Passenger Awareness Monitors at no fewer than ten (10) Stations.

12.2 The Franchisee shall use all reasonable endeavours to by no later than 30 April 2021, and in any event by no later than 31 July 2021, equip all Franchise Employees undertaking the roles of "Revenue Protection Inspector", "Ticket Examiner", and "Gateline Staff" with commissioned and operational BWV Equipment for use whilst involved in revenue protection activities and shall ensure that such BWV Equipment (and any system associated with it) complies at all times with the CCTV Guidance in accordance with paragraph 19.1 of Schedule 13.1.

13. **Training on Sustainable Development**

The Franchisee shall, by no later than 30 June 2021, organise and deliver a one (1) day training course on the topic of sustainable development for the purposes of expanding Franchise Employees' knowledge of the Franchisee's environment management system and shall ensure that such training course is attended by not less than two hundred (200) Franchise Employees who are employed in leadership and management roles within the Franchisee's business.

14. **Tenant Green Commitment**

The Franchisee shall, from 30 June 2020 and throughout the Franchise Term, use all reasonable endeavours to include a Tenant Green Commitment in all new or renewed leases entered into with all existing or new commercial tenants of any part of a Station.

15. **Investors in People**

15.1 The Franchisee shall maintain for the Franchise Term the Investors in People "Gold" status that it has achieved as of the date of the Franchise Agreement.

15.2 If the Franchisee's Investors in People status is lost or downgraded during the Franchise Term the consequence shall be that the Franchisee shall analyse the reasons for the loss or downgrade and implement a plan to re-establish the required Investors in People status as soon as reasonably practicable.

16. **Energy Consumption in Depots**

16.1 The Franchisee shall incur expenditure of not less than [REDACTED³²] in procuring the installation of intelligent heating and lighting controls at the Depots in the table below for the purpose of reducing energy consumption.

16.2 The Franchisee shall ensure that the intelligent heating and lighting controls referred to in paragraph 16.1 shall be fully operational at each Depot specified in the table below by no later than 30 June 2021, provided that: (a) the Franchisee's obligation pursuant to this paragraph 16.2 shall be subject to Network Rail providing the necessary consents to enable the Franchisee to comply with such obligation; and (b) the Franchisee shall use all reasonable endeavours to procure that Network Rail provides such necessary consents in a timely manner.

West Ealing
St Philips Marsh
Exeter
Plymouth Laira
Penzance Long Rock
Reading

16.3 The Parties acknowledge and agree that any underspend against the minimum expenditure commitment specified in paragraph 16.1 which arises as a result of any inability of the Franchisee to obtain the necessary consents referred to in paragraph 16.2 shall be treated as Underspend.

³² 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

16.4 Notwithstanding paragraph 4.1 of Part 2 of this Schedule 6.2, any reduction in energy consumption achieved by the Franchisee as a result of expenditure pursuant to this paragraph 16 shall count towards the environmental targets set out in Appendix 1 to Schedule 11.2.

17. **Head of Alliance and Alliance Tasks**

17.1 The Franchisee shall, from the Start Date and throughout the Franchise Term, fund the role of a 'Head of Alliance' jointly with Network Rail (with the Franchisee and Network Rail each contributing such funding on an equal 50:50 basis).

17.2 The Franchisee shall incur expenditure of not less than [REDACTED³³] in each Franchisee Year (reduced pro-rata in respect of any Franchisee Year of less than 365 days (or less than 366 days in a leap year)) in developing, agreeing with Network Rail and implementing new Joint Tasks (having the meaning given in the Alliance Agreement) which are not included within the scope of the Alliance Agreement at the date of this Agreement ("**Prospective Joint Tasks**"). The Parties acknowledge and agree that the purpose and intention of this Committed Obligation is to establish the minimum amount of expenditure to be incurred by the Franchisee in developing, agreeing with Network Rail and implementing such Prospective Joint Tasks, and, accordingly, shall not give rise to any duplicated expenditure commitment as between this Agreement and the Alliance Agreement.

18. **Development of Digital Railway Initiatives**

The Franchisee shall incur expenditure of not less than [REDACTED³⁴] in each Franchisee Year (reduced pro-rata in respect of any Franchisee Year of less than 365 days (or less than 366 days in a leap year)) on supporting the evaluation and development of initiatives that contribute to the objectives of Network Rail's digital railway initiative, as amended from time to time.

19. **Major Schemes and Possessions Team**

19.1 The Franchisee shall continue to employ, throughout the Franchise Term, a "Major Schemes and Possessions Team" (being roles that existed within the Franchisee's organisational structure as at the date of this Agreement) consisting of not fewer than twenty four (24) Franchise Employees for the purposes of managing work in connection with major infrastructure schemes and associated restrictions of use of relevant parts of the railway network, including by:

- (a) working with Network Rail to develop plans as to the proposed location and timing of restrictions of use of relevant parts of the railway network which are associated with the implementation of major schemes (and ensuring that the needs of passengers are taken into account in the development and content of such plans as far as is reasonably possible in the circumstances); and

³³ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

³⁴ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

- (b) developing and overseeing the implementation of the plans referred to in paragraph 19.1(a) so as to minimise and mitigate the impact of the identified restrictions of use on passengers.

20. Community Rail Partnership Appointments

20.1 The Franchisee shall, use all reasonable endeavours to by no later than 30 June 2020, and in any event by no later than 30 September 2020, and thereafter throughout the Franchise Term, employ three (3) Franchise Employees to carry out the following dedicated, full time roles:

- (a) "Community Rail Partnership Relationship Manager";
- (b) "Community Rail Partnership Marketing Manager"; and
- (c) "Community Rail Partnership Project Development and Delivery Manager",

with each such role having the overarching objective of providing greater support to Community Rail Partnerships.

20.2 The individuals employed in the roles referred to in paragraph 20.1 may be deployed by the Franchisee in order to:

- (a) fulfil its obligations under paragraph 2 of Schedule 13.1 (Rail Industry Initiatives and Co-operation) and accordingly shall not give rise to any duplicated commitment; and
- (b) assist in the delivery of the Community Rail Partnerships, in accordance with the Franchisee's obligations under Schedule 13.1 (Rail Industry Initiatives and Co-operation).

21. Regional Stakeholder Surveys

The Franchisee shall incur expenditure of not less than [REDACTED³⁵] in each Franchisee Year (reduced pro-rata in respect of any Franchisee Year of less than 365 days (or less than 366 days in a leap year)) on targeted surveys of Stakeholders in specific parts of the geographic area serviced by the Passenger Services, for the purposes of gathering information and insight into the issues applicable to those parts of the geographic area served by the Passenger Services. The surveys will focus on issues that may have affected Stakeholders in the previous six months, or changes that are under consideration, in each case, in the relevant part of the geographic area served by the Passenger Services.

22. Supporting Schools, Colleges and Community Organisations

³⁵ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

The Franchisee shall establish a Communities and Education Fund of not less than **[REDACTED³⁶]** in each Franchisee Year (reduced pro-rata in respect of any Franchisee Year of less than 365 days (or less than 366 days in a leap year)) on:

- (a) supporting schools, colleges and community and/or other not for profit organisations;
- (b) educating persons studying at or otherwise connected with such organisations about the railway in general, the Franchise Services in particular, and the benefits they bring to the community;
- (c) promoting the rail industry as a positive career choice; and
- (d) helping young people (for example through schemes such as the Prince's Trust "Get Into" programme) to access job opportunities by providing vocational skills training and work experience and, where consistent with the needs of the business and the competencies of the individuals, the opportunity to access permanent employment.

23. **Supporting Community Cohesion**

The Franchisee shall incur expenditure of not less than **[REDACTED³⁷]** in each Franchisee Year (reduced pro-rata in respect of any Franchisee Year of less than 365 days (or less than 366 days in a leap year)) on supporting and providing seed funding for small community charities, enterprises and station adopters.

24. **Work Experience**

The Franchisee shall, by no later than 31 January 2021, implement a process to enable young people to apply for work experience in the Franchisee's business in their preferred areas of interest and locations.

25. **Transport Mentors**

25.1 The Franchisee shall use all reasonable endeavours to by no later than 30 September 2020 (and in any event by no later than 31 January 2021) and thereafter for the remainder of the Franchise Term employ at least three (3) transport mentors (the "**Transport Mentors**") whose roles will be in addition to the number of transport mentors (or similar roles) employed by the Franchisee as at the Start Date. The objectives of the role of a Transport Mentor will be to:

- (a) build confidence and familiarity of rail travel for users of the Passenger Services who have disabilities; and
- (b) recruit and support a team of "accessibility volunteers" (being Franchise Employees who are given time away from their substantive role (where possible without adversely impacting the provision of the

³⁶ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

³⁷ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

Franchise Services) to travel with disabled customers to build their confidence and familiarity).

- 25.2 The Franchisee shall throughout the Franchise Term maintain reasonably suitable arrangements to ensure that accessibility-related information published on the Franchisee's website is consistent with the equivalent information as it appears on the National Rail Enquiries website.

26. **Promotion of Passenger Assistance**

The Franchisee shall by 31 March 2021 incur expenditure of not less than [REDACTED³⁸] in fulfilling its obligations under its Accessible Transport Policy to promote and market Passenger Assistance, including through appropriate campaigns at stations and on trains. The Franchisee acknowledges that this obligation does not in any way detract from the Franchisee's ongoing duty under its Accessible Transport Policy to promote Passenger Assistance throughout the Franchise Term.

27. **Accessibility Improvements**

- 27.1 The Franchisee shall, throughout the Franchise Term, consult with the Accessibility Panel on the allocation of the SIF Accessibility Improvements Amount in each Franchisee Year pursuant to paragraphs 23.1 and 23.1A of Part 3 of Schedule 6.1.

- 27.2 The Franchisee (acting in consultation with the Accessibility Panel) shall, by no later than 30 September 2020:

- (a) undertake reviews of:
- (i) the impacts of upcoming planned engineering works on passengers with disabilities and other specific accessibility needs; and
 - (ii) the effectiveness of the Franchisee's contingency plans for unplanned disruption in meeting the needs of such passengers; and
- (b) in light of the conclusions of that review, create and implement a strategy to improve the quality and effectiveness of the Franchisee's social media communications in providing relevant information (including in relation to the availability and accessibility of rail replacement bus services) to such passengers when the Franchise Services are affected by planned engineering works and unplanned disruption.

27.3

- (a) The Franchisee shall throughout the Franchise Term provide a link on its customer facing website to the RDG Station Accessibility Map.

³⁸ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

- (b) To the extent that it has not already done so by the Start Date the Franchisee shall provide to the Rail Delivery Group such information as is necessary to enable the Rail Delivery Group to update the RDG Station Accessibility Map in light of the accessibility audit undertaken by the Franchisee prior to the Start Date (with a view to such update being completed by the Rail Delivery Group by 30 April 2020).
- (c) The Franchisee shall provide to the Rail Delivery Group such information as is necessary to enable the Rail Delivery Group to update the RDG Station Accessibility Map whenever any relevant change is made at any Station. In addition, prior to each anniversary of the Start Date, the Franchisee shall review the accuracy of all information provided on the RDG Station Accessibility Map in respect of the Stations and shall provide details of any inaccuracies to the Rail Delivery Group.
- 27.4 Subject to paragraph 27.5 the Franchisee shall by 31 March 2021 undertake a review (in consultation with the Accessibility Panel) of whether it would be appropriate to implement the sending of 'push' notifications to users of the GWR App with specific accessibility requirements informing them of changes to the availability of facilities (such as lifts or accessible toilets) that may be of particular relevance to them. The Franchisee shall take such steps as it considers appropriate (acting reasonably) in light of that review.
- 27.5 The obligation under paragraph 27.4, shall not apply if similar functionality becomes available to passengers via the Passenger Assist App prior to 31 March 2021.
- 27.6 The Franchisee shall by no later than 30 September 2020 design (and thereafter implement) arrangements by which it will liaise from time to time with relevant Local Authorities, and with NHS facilities which people with accessibility needs are likely to wish to access by means of the Passenger Services, with the objective of addressing accessibility issues in the wider area around such Stations.
28. **Disability Impact Assessments and Accessibility Audits**
- 28.1 The Franchisee shall, from the Start Date and throughout the Franchise Term, ensure that it conducts a disability impact assessment on all projects and significant policy and operational decisions with the potential to affect disabled persons carried out or made by the Franchisee. The Franchisee shall take such steps as it considers appropriate (acting reasonably) in light of the conclusions of the disability impact assessment, to ensure that disability issues are properly addressed in the context of its duties under Law.
- 28.2 The Franchisee shall by no later than 30 April 2021 procure that an accessibility audit of the Franchise Assets (both physical and non-physical) is carried out by external auditors (the "**Accessibility Audit**"). The Franchisee shall provide a report describing in reasonable detail the outcomes of the Accessibility Audit to the Accessibility Programme Board.
- 28.3 The Franchisee shall take such steps as it reasonably considers appropriate in light of the Accessibility Audit, including having regard to its findings when considering potential SIF Accessibility Improvement Schemes.

29. **Communications Tool**

29.1 The Franchisee shall, by no later than 30 September 2021:

- (a) carry out a review of the different applications or tools available to improve the way in which Franchise Employees interact with users of the Passenger Services who have communication-related disabilities, such as sign language apps or live streaming translation (the "**Communication Disability Improvement Review**"); and
- (b) implement for all passenger facing Franchise Employees the commissioned and operational solution which is identified as the preferable option through the Communication Disability Improvement Review.

29.2 In carrying out the review and deciding what steps to take pursuant to paragraph 29.1 the Franchisee may take into account the development of other industry systems which serve to fulfil this requirement (for example, the Passenger Assist App) and also have regard to any outcomes of the reviews referred to in paragraph 27.

30. **Meeting Points - Signage and Locations**

30.1 The Franchisee shall, by no later than 31 October 2021, install and commission twenty (20) signposted and visible meeting points at not less than twenty (20) staffed Stations to assist users of the Passenger Services in finding assistance if required (the "**Meeting Points**").

30.2 The Franchisee shall, from the Start Date and throughout the Franchise Term, ensure that all users of the Passenger Services who book Passenger Assistance at a Station with a Meeting Point are informed of the location of the Meeting Point at the relevant Station at the time of booking Passenger Assistance, or as soon as reasonably practicable thereafter.

31. **Review of Priority Seat Signage**

31.1 The Franchisee shall, by no later than 31 October 2020 carry out a review of the size and location of priority seat signage on the Train Fleet (the "**Priority Seat Signage Review**"), starting with the older rolling stock within the Train Fleet.

31.2 In the context of the findings of the Priority Seat Signage Review the Franchisee shall implement such changes to priority seat signage on the Train Fleet as the Franchisee (acting reasonably) considers appropriate to improve signage provided in respect of priority seating (recognising that, in respect of the Sets, implementing any such changes may be dependent on upon securing necessary variations to the TARA and/or MARA and associated consents from the Secretary of State and the TSP).

32. **Trial of Improved Wayfinding at Stations**

The Franchisee shall, by no later than 30 September 2021 carry out a trial using 'bluetooth' beacons to improve navigation around a Station (as chosen for the purposes of the trial by the Franchisee) for visually impaired passengers (the "**Improved Station Wayfinding Trial**"). The Franchisee (acting reasonably) shall take appropriate steps in the context of the outcome of the Improved Station Wayfinding Trial, which may involve the use of other committed funds (for

example, the SIF Accessibility Improvements Amount) where it is appropriate to do so and subject always to any applicable requirement(s) for the Franchisee to obtain the Secretary of State's prior approval to the use of such other committed funds in accordance with the terms of this Agreement.

33. **Travel Assistance Card**

The Franchisee shall, by no later than 30 April 2021 introduce and implement (and thereafter for the remainder of the Franchise Term maintain) a 'Travel Assistance Card' to allow users of the Passenger Services with additional accessibility requirements or communication-related difficulties to communicate with Franchise Employees.

34. **Passenger Assist App**

34.1 The Franchisee shall, as soon as is reasonably practicable after the date of the introduction of the Passenger Assist App by the Rail Delivery Group, ensure that:

- (a) all relevant Franchise Employees are provided with access to, and training in the use of, the Passenger Assist App; and
- (b) Franchise Employees use the Passenger Assist App where appropriate when providing assistance to users of the Passenger Services who have requested it.

35. **Station Safe Place Accreditation**

The Franchisee shall, by no later 30 June 2021, achieve accreditation for twenty (20) Stations as Safe Places, as accredited by the Safe Places Organisation CIC and thereafter ensure that such accreditations are maintained throughout the remainder of the Franchise Term.

36. **Disabled Passenger Mystery Shopping Surveys**

In addition and without prejudice to the Franchisee's obligations under Schedule 7.3 (*Service Quality Regime*), the Franchisee shall, in each Reporting Period conduct not less than five (5) disabled passenger mystery shopping surveys which shall include the mystery shopper using the Franchise Services and requesting appropriate assistance (each a "**Disabled Passenger Mystery Shopping Survey**") in accordance with a specification designed by the Franchisee with a view to testing the quality of a range of different aspects of the Franchise Services. The Franchisee (acting reasonably) shall take appropriate steps to address issues and problems identified by each Disabled Passenger Mystery Shopping Survey.

37. **Ethnographic Surveys**

The Franchisee shall, by no later than 31 March 2021 carry out not less than thirty (30) ethnographic surveys of accompanied passengers who have booked Passenger Assistance (the "**Ethnographic Surveys**") and it shall carry out a further thirty (30) Ethnographic Surveys by 30 September 2022. The Franchisee (acting reasonably) shall use the information provided by Ethnographic Surveys to improve the effective delivery of Passenger Assistance.

38. **Accessible Shuttle Bus at St Erth**

The Franchisee shall, until such time as the Access for All Programme footbridge works at St. Erth Station are certified as complete and available for use by users of the Passenger Services, provide an accessible shuttle bus service between both sides of St. Erth Station at no cost to users during a total of sixteen (16) weeks in each Franchisee Year classified by the Franchisee as times of peak passenger demand for Passenger Services at St Erth Station.

39. Mental Health First Aiders

The Franchisee shall, by no later than 31 March 2021, have delivered training to at least one hundred (100) Franchise Employees so that such Franchise Employees become trained mental health first aiders.

40. Refurbishment of Class 165 and 166 fleets

40.1 The Franchisee shall:

- (a) by no later than 30 June 2022, procure the implementation and completion of a programme of refurbishment works to each and every:
 - (i) Class 165 rolling stock vehicle comprised in the Train Fleet; and
 - (ii) Class 166 rolling stock vehicle comprised in the Train Fleet,
 to the specification set out in paragraph 40.2; and
- (b) ensure that:
 - (i) (subject to paragraph 40.1(b)(ii)) not less than **[REDACTED³⁹]** is invested in procuring the implementation and delivery of the refurbishment works referred to in paragraph 40.1(a); and
 - (ii) if the Franchisee secures compliance with its obligation under paragraph 40.1(b)(i) by:
 - (A) itself incurring expenditure of not less than **[REDACTED⁴⁰]** in the first Franchisee Year by way of direct contribution to the costs of the refurbishment works referred to in paragraph 40.1(a); and
 - (B) procuring that the relevant lessor of the Class 165 and Class 166 rolling stock vehicles referred to in paragraph 40.1(a):
 - (1) itself incurs an amount equal to the difference between the sum specified in paragraph 40.1(b)(i) and the amount of

³⁹ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁴⁰ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

expenditure incurred by the Franchisee pursuant to paragraph 40.1(b)(ii)(A); and

- (2) re-charges some or all of such sum through the enhancement rental amounts charged to the Franchisee under the relevant Rolling Stock Leases for such Class 165 and Class 166 rolling stock vehicles,

the total aggregate enhancement rental charge payable by the Franchisee in each Franchisee Year in respect of the refurbishment works to each of the Class 165 and Class 166 rolling stock vehicles referred to in paragraph 40.1(a) shall be no lower than the relevant amount specified in Column 2 of the table below (it being acknowledged and agreed that if the Franchise terminates part way through a Franchisee Year such amount shall be reduced on a pro rata basis to reflect the number of days by which that Franchisee Year was less than 365 days (or less than 366 days in a leap year)):

Column 1	Column 2
Type of rolling stock	Minimum aggregate annual enhancement rental charge (Refurbishment works)
Class 165 and Class 166	[REDACTED⁴¹]

The Parties acknowledge and agree that, consistent with paragraph 4.1 of Part 2 of this Schedule 6.2, the expenditure commitment set out in paragraph 40.1(b)(i) is in addition to the obligations of the Franchisee as set out in paragraph 4 of Part 1 of Schedule 6.1.

- 40.2 The internal refurbishment works to the rolling stock vehicles referred to in paragraph 40.1(a) shall comprise not less than:
- (a) the replacement of all existing seat covers with new seat covers;
 - (b) to the extent not undertaken prior to the Start Date, the replacement of all existing carpets with new carpets;
 - (c) the replacement of all existing floor coverings with new floor coverings;
 - (d) refresh works in respect of all existing toilets that are not PRM TSI compliant toilets to an equivalent standard to the recently installed PRM TSI compliant toilets;

⁴¹ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

- (e) the external repainting of and the application of the Great Western Railway Brand to any rolling stock vehicle which the Great Western Railway Brand has not been applied to; and
- (f) painting of the seat-back handles and grab rails.

40.3 The Parties acknowledge that paragraph 47A shall apply in respect of the assessment of any Underspend arising in respect of this paragraph 40.

41. Fitment of wheel slip protection equipment and internal refurbishment of the Angel Class 150/2 Units

41.1 The Franchisee shall:

- (a) by no later than 31 August 2021, procure the fitment of commissioned and operational wheel slip protection equipment ("**WSP Equipment**") to each of the Angel Class 150/2 Units; and
- (b) ensure that:
 - (i) (subject to paragraph 41.1(b)(ii)) not less than **[REDACTED⁴²]** is invested in procuring the fitment of the WSP Equipment; and
 - (ii) if the Franchisee secures compliance with its obligation under paragraph 41.1(b)(i) by procuring that the relevant lessor of the Angel Class 150/2 Units:
 - (A) itself incurs an amount not less than the sum specified in paragraph 41.1(b)(i); and
 - (B) re-charges some or all of such sum through the enhancement rental amount charged to the Franchisee under the relevant Rolling Stock Lease for such Angel Class 150/2 Units,

the total enhancement rental charge payable by the Franchisee in each Franchisee Year in respect of the fitment of the WSP Equipment to each of the rolling stock vehicles comprised in the Angel Class 150/2 Units shall be no lower than the amount specified in Column 2 of the table below (it being acknowledged and agreed that if the Franchise terminates part way through a Franchisee Year such amount shall be reduced on a pro rata basis to reflect the number of days by which that Franchisee Year was less than 365 days (or less than 366 days in a leap year)):

Column 1	Column 2
----------	----------

⁴² 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

Type of rolling stock	Minimum annual enhancement rental charge (WSP Equipment)
Angel Class 150/2 Units	[REDACTED ⁴³]

41.2 The Franchisee shall:

(a) procure that:

(i) to the extent that the Great Western Railway Brand has not already been applied to the exterior of the Angel Class 150/2 Units, the Great Western Railway Brand is applied to the exterior of the Angel Class 150/2 Units; and

(ii) the Angel Class 150/2 Units are the subject of a programme of internal refurbishment works to bring the interior standard of the Angel Class 150/2 Units in line with the other Class 150 rolling stock vehicles comprised in the Train Fleet,

as part of the next scheduled C6 overhaul following the Start Date (and in any event shall ensure that such repainting and programme of internal refurbishment works are completed by no later than 31 March 2023);

(b) ensure that:

(i) (subject to paragraph 41.2(b)(ii)) not less than [REDACTED⁴⁴] is invested in procuring the implementation and delivery of the internal refurbishment works referred to in paragraph 41.2(ii); and

(ii) if the Franchisee secures compliance with its obligation under paragraph 41.2(b)(i) by procuring that the relevant lessor of the Angel Class 150/2 Units:

(A) itself incurs an amount not less than the sum specified in paragraph 41.2(b)(i); and

(B) re-charges some or all of such sum through the enhancement rental amount charged to the Franchisee under the relevant Rolling Stock Lease for such Angel Class 150/2 Units,

the total enhancement rental charge payable by the Franchisee in each Franchisee Year in respect of the internal refurbishment

⁴³ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁴⁴ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

works to each of the rolling stock vehicles comprised in the Angel Class 150/2 Units referred to in paragraph 41.2(b)(ii) shall be no lower than the amount specified in Column 2 of the table below (it being acknowledged and agreed that if the Franchise terminates part way through a Franchisee Year such amount shall be reduced on a pro rata basis to reflect the number of days by which that Franchisee Year was less than 365 days (or less than 366 days in a leap year)):

Column 1	Column 2
Type of rolling stock	Minimum annual enhancement rental charge <i>(Internal refurbishment works)</i>
Angel Class 150/2 Units	[REDACTED ⁴⁵]

41.3 The Parties acknowledge that paragraph 47A shall apply in respect of the assessment of any Underspend arising in respect of this paragraph 41.

42. **Fitment of Sand Dispensing Equipment to the 2+4 HST Power Cars**

42.1 The Franchisee shall:

- (a) by no later than 31 August 2021, procure the fitment of commissioned and operational sand dispensing equipment ("**Sand Dispensing Equipment**") to each 2+4 HST Power Car listed in rows 17 and 19 of the table at paragraph 1 (Original Rolling Stock) of Schedule 1.6;
- (b) incur expenditure of not less than [REDACTED⁴⁶] in procuring the fitment of the Sand Dispensing Equipment to the 2+4 HST Power Cars comprised in the Train Fleet which are not Angel 2+4 HST Power Cars; and
- (c) ensure that:
 - (i) (subject to paragraph 42.1(c)(ii)) not less than [REDACTED⁴⁷] is invested in procuring the fitment of the Sand Dispensing Equipment to the Angel 2+4 HST Power Cars; and

⁴⁵ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁴⁶ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁴⁷ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

- (ii) if the Franchisee secures compliance with its obligation under paragraph 42.1(c)(i) by procuring that the relevant lessor of the Angel 2+4 HST Power Cars:
 - (A) itself incurs an amount not less than the sum specified in paragraph 42.1(c)(i); and
 - (B) re-charges some or all of such sum through the enhancement rental amount charged to the Franchisee under the relevant Rolling Stock Lease for such Angel 2+4 HST Power Cars,

the total enhancement rental charge payable by the Franchisee in each Franchisee Year in respect of the fitment of the Sand Dispensing Equipment to each Angel 2+4 HST Power Car shall be no lower than the amount specified in Column 2 of the table below (it being acknowledged and agreed that if the Franchise terminates part way through a Franchisee Year such amount shall be reduced on a pro rata basis to reflect the number of days by which that Franchisee Year was less than 365 days (or less than 366 days in a leap year)):

Column 1	Column 2
Type of rolling stock	Minimum annual enhancement rental charge (Sand Dispensing Equipment)
Angel 2+4 HST Power Cars	[REDACTED⁴⁸]

42.2 The Parties acknowledge that paragraph 47A shall apply in respect of the assessment of any Underspend arising in respect of this paragraph 42.

43. Enhancements to the Class 769 Units

43.1 The Franchisee shall:

- (a) procure the:
 - (i) refurbishment of each driver’s cab in each Class 769 Unit as a minimum to:
 - (A) replace the existing driver’s seat with a new driver’s seat; and

⁴⁸ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

- (B) install a commissioned and operational in-cab air cooling system,

such refurbishment altogether comprising the “**Class 769 Cab Refresh**”;

- (ii) fitment of commissioned and operational Automatic Selective Door Opening to each rolling stock vehicle comprised in each Class 769 Unit; and
- (iii) fitment of commissioned and operational remote condition monitoring equipment to each Class 769 Unit,

in each case if reasonably practicable to do so (having regard to the need to safeguard the consistent delivery of Passenger Services), by no later than the date on which each Class 769 Unit enters into regular unrestricted passenger service and otherwise as soon as reasonably practicable thereafter; and

(b) ensure that:

- (i) (subject to paragraph 43.1(b)(ii) and paragraph 43.3) not less than **[REDACTED⁴⁹]** is invested in aggregate in procuring the implementation of the enhancements referred to in paragraph 43.1(a); and
- (ii) if the Franchisee secures compliance with its obligation under paragraph 43.1(b)(i) by procuring that the relevant lessor of the Class 769 Units:
 - (A) itself incurs an amount not less than the aggregate sum specified in paragraph 43.1(b)(i); and
 - (B) re-charges some or all of such aggregate sum through the enhancement rental amount charged to the Franchisee under the relevant Rolling Stock Lease for such Class 769 Units,

the total aggregate enhancement rental charge payable by the Franchisee in each Franchisee Year in respect of the implementation of the enhancements referred to in paragraph 43.1(a) shall be no lower than the amount specified in Column 2 of the table below (such amount to be subject to pro-rata reduction in accordance with, and in the circumstances described in, paragraph 43.2):

Column 1	Column 2
----------	----------

⁴⁹ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

Type of rolling stock	Minimum aggregate annual enhancement rental charge <i>(Class 769 Cab Refresh, ASDO and remote condition monitoring)</i>
Class 769 Units	[REDACTED⁵⁰]

- 43.2 The amount specified in Column 2 of the table in paragraph 43.1 shall:
- (a) be subject to pro-rata reduction in each Franchisee Year up to and including the Franchisee Year in which each and every Class 769 Unit has become part of the Train Fleet, such pro-rata reduction to be calculated by reference to the proportion of the Franchisee Year in question in which each Class 769 Unit has been part of the Train Fleet; and
 - (b) if the Franchise terminates part way through a Franchisee Year, be reduced on a pro rata basis to reflect the number of days by which that Franchisee Year was less than 365 days (or less than 366 days in a leap year)).
- 43.3 The Parties acknowledge and agree that, to the extent any additional trackside equipment is required to be installed in order to make Automatic Selective Door Opening fully operational on the Class 769 Units on the routes where it is intended to be used, the costs associated with the installation of such additional trackside equipment shall be borne by the Franchisee and the incurring of such cost by the Franchisee shall not count towards the obligation to invest the sum of money specified in paragraph 43.1(b)(i).
- 43.4 The Parties further acknowledge that paragraph 47A shall apply in respect of the assessment of any Underspend arising in respect of this paragraph 43.
- 44. Refurbishment of Class 387 fleet**
- 44.1 The Franchisee shall:
- (a) by no later than 31 March 2023, procure the implementation and completion of a programme of refurbishment works to each and every Class 387 rolling stock vehicle comprised in the Train Fleet to such specification as may be agreed between the Parties (it being acknowledged that, if no such agreement is reached by 31 March 2022, the obligations comprised in this paragraph 44.1 shall cease to apply and the provisions of paragraph 3 of Part 2 to Schedule 6.2 shall apply in respect of the amount specified in paragraph 44.1(b) below); and

⁵⁰ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

- (b) incur expenditure of not less than [REDACTED⁵¹] in procuring the implementation of the refurbishment works referred to in paragraph 44.1(a).

45. **Fitment of Remote Condition Monitoring**

45.1 The Franchisee shall, by no later than 30 June 2022, procure the fitment of commissioned and operational remote condition monitoring equipment (comprising an on-train monitoring recorder, door header monitoring and bluetooth node or such other equivalent equipment as the Secretary of State may approve (acting reasonably)) providing real-time / near real-time remote access to diagnostic data on train systems to each and every:

- (a) Class 165 rolling stock vehicle comprised in the Train Fleet; and
 (b) Class 166 rolling stock vehicle comprised in the Train Fleet.

46. **Fitment of Automatic Passenger Counting Equipment**

46.1 The Franchisee shall:

- (a) to the extent not already fitted prior to the Start Date, procure that, by no later than 30 June 2022, commissioned and operational automatic passenger counting equipment ("**APC Equipment**") is fitted to no less than thirty five per cent (35%) of the rolling stock units included in each class of rolling stock comprised in the Train Fleet (excluding the Mk3 sleeper coach rolling stock vehicles comprised in the Train Fleet); and
- (b) ensure that:
- (i) (subject to paragraph 46.1(b)(ii)) not less than [REDACTED⁵²] is invested in procuring the fitment of the APC Equipment; and
- (ii) if the Franchisee secures compliance with its obligation under paragraph 46.1(b)(i) by:
- (A) itself incurring expenditure of not less than [REDACTED⁵³] in the first Franchisee Year by way of direct contribution to the costs of in procuring the fitment of the APC Equipment as referred to in paragraph 46.1(a);
- (B) procuring that the relevant lessors of the applicable rolling stock:

⁵¹ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁵² 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁵³ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

- (1) themselves incur an aggregate amount of not less than the difference between the sum specified in paragraph 46.1(b)(i) and the amount of expenditure required to be incurred by the Franchisee pursuant to paragraph 46.1(b)(ii)(A); and
- (2) re-charge some or all of such aggregate sum through the enhancement rental amount charged to the Franchisee under the relevant Rolling Stock Leases for such rolling stock vehicles,

the:

- (x) total aggregate enhancement rental charge payable by the Franchisee in each Franchisee Year in respect of the fitment of the APC Equipment to each rolling stock vehicle type referred to in paragraph 46.1(a) (excluding the Mk3 sleeper coach rolling stock vehicles and Class 769 Units) shall be no lower than the amount specified in row 1 of Column 2 of the table below; and
- (y) the total rental charge payable by the Franchisee in each Franchisee Year in respect of the fitment of the APC Equipment to Class 769 Units as referred to in paragraph 46.1(a) shall be no lower than the amount specified in row 2 of Column 2 of the table below (such amount to be subject to pro-rata reduction in accordance with, and in the circumstances described in, paragraph 46.2):

Column 1	Column 2
Type of rolling stock	Minimum annual enhancement rental charge (APC Equipment)
1. All rolling stock vehicle types comprised in the Train Fleet (excluding Mk3 sleeper	[REDACTED⁵⁴]

⁵⁴ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

coach rolling stock vehicles and Class 769 Units)	
2. Class 769 Units	[REDACTED ⁵⁵]

46.2 The amounts specified in row 2 of Column 2 of the table in paragraph 46.1 shall:

- (a) be subject to pro-rata reduction in each Franchisee Year up to and including the Franchisee Year in which each and every Class 769 Unit has become part of the Train Fleet, such pro-rata reduction to be calculated by reference to the proportion of the Franchisee Year in question in which each Class 769 Unit has been part of the Train Fleet; and
- (b) if the Franchise terminates part way through a Franchisee Year, be reduced on a pro rata basis to reflect the number of days by which that Franchisee Year was less than 365 days (or less than 366 days in a leap year)).

46.3 The Parties acknowledge that paragraph 47A shall apply in respect of the assessment of any Underspend arising in respect of this paragraph 46.

47A. Assessment of Underspend associated with enhancement rentals

Where the Franchisee secures compliance with its obligations in paragraphs 40, 41, 42, 43, and 46 by procuring that the relevant lessor or owner of the rolling stock incurs expenditure and having complied with those provisions there is an Underspend, such Underspend shall be calculated by reference to the difference between the actual enhancement rentals payable by the Franchisee and the applicable minimum annual enhancement rental charge set out (as applicable) in paragraphs 40, 41, 42, 43, and 46.

47. Installation of Adblue Fuelling Equipment and installation of Eminox Equipment to Class 158 fleet

47.1 The Franchisee shall:

- (a) by no later than 30 September 2021, procure the installation of commissioned and operational Adblue Fuelling Equipment at as many locations at Bristol St. Philip's Marsh Depot as the Franchisee (acting reasonably) considers are necessary to enable the Franchisee to add Adblue to the Class 158 rolling stock vehicles during re-fuelling; and
- (b) by no later than 31 March 2022, procure the fitment of commissioned and operational Eminox Equipment to all Class 158 rolling stock vehicles comprised in the Train Fleet.

⁵⁵ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

48. Aqueous coating to exterior of rolling stock

48.1 The Franchisee shall:

- (a) by no later than 30 June 2022, in respect of rolling stock vehicles that are not required to have external livery works pursuant to paragraph 40.2(e);
- (b) in respect of those rolling stock vehicles that are required to have external livery works pursuant to paragraph 40.2(e) by the later of 30 June 2022 or as soon as practicable following completion of such works, procure the application of an aqueous coating for the purposes of minimising the accumulation of dirt and other residue on the exteriors of such rolling stock vehicles to:
 - (i) all of the rolling stock vehicles comprised in each of the following rolling stock classes within the Train Fleet:
 - (A) Class 150;
 - (B) Class 158;
 - (C) Class 165;
 - (D) Class 166; and
 - (E) HST rolling stock vehicles configured in "2+4" formation as referred to in rows 16 to 19 (inclusive) of the table at paragraph 1 (*Original Rolling Stock*) of Schedule 1.6 (being both the Angel 2+4 HST Sets and the sets of HST rolling stock vehicles configured in "2+4" formation which are owned by First Rail Holdings Limited); and
 - (ii) as soon as is reasonably practicable following the completion of the enhancements to each Class 769 Unit pursuant to paragraph 42.2, each rolling stock vehicle comprised in that Class 769 Unit; and
- (c) by no later than 31 March 2022, procure the installation of a commissioned and operational steam cleaning wash plant at West Ealing Light Maintenance Depot.

49. HyDrive Proposal

49.1 The Franchisee shall, as soon as reasonably practicable following the conclusion of the Chiltern HyDrive Trial (and in any case by no later than 31 March 2021), report to the Secretary of State on the outcomes of the Chiltern HyDrive Trial and shall inform the Secretary of State of whether, in light of the outcomes of the Chiltern HyDrive Trial, Angel Trains Limited and the Franchisee intend to proceed with the HyDrive Conversion in accordance with the terms of the option contained in the applicable rolling stock lease(s) in respect of the Class 165 and Class 166 rolling stock units comprised in the Train Fleet (the "**HyDrive Lease Option**").

49.2 If Angel Trains Limited and the Franchisee do intend to proceed on that basis that Angel Trains Limited will exercise the HyDrive Lease Option, the Franchisee acknowledges that:

- (a) paragraph 2.1 of Schedule 2.2 shall apply in respect of any such proposal to exercise the HyDrive Lease Option; and
 - (b) any decision of the Franchisee to proceed with HyDrive Conversion by virtue of the exercise of the HyDrive Lease Option shall not give rise to a Change.
- 49.3 If Angel Trains Limited and the Franchisee do not intend to exercise the HyDrive Lease Option, but the Secretary of State nevertheless considers in his unfettered discretion that it may be advantageous to proceed with HyDrive Conversion, then:
- (a) if requested by the Secretary of State, the Franchisee shall prepare and submit to the Secretary of State a fully-costed proposal for the implementation of HyDrive Conversion, which shall also include a comparison between the outputs of the Chiltern HyDrive Trial and the original efficiencies expected as a result of the HyDrive Conversion (the "**HyDrive Proposal**"); and
 - (b) if requested to do so by the Secretary of State, the Franchisee shall:
 - (i) meet with the Secretary of State to discuss the HyDrive Proposal;
 - (ii) provide such further information as the Secretary of State may reasonably request;
 - (iii) revise and resubmit the HyDrive Proposal to take account of such comments as the Secretary of State may make; and
 - (iv) fully and effectively co-operate and negotiate in good faith with the Secretary of State with a view to agreeing the terms of any Variation pursuant to which the Franchisee would implement the HyDrive Conversion. The Secretary of State shall have an unfettered discretion as to whether or not to request a Variation under which the Franchisee would procure the implementation of the HyDrive Conversion.
50. **Study into the longer term traction options for haulage of Sleeper Services**
- 50.1 The Franchisee shall, by no later than 31 March 2021:
- (a) conduct a study into longer term options for the optimal future provision of locomotive haulage for the Sleeper Services, such study to include analysis as to:
 - (v) the financial and operational implications and any infrastructure requirements (such as gauging) that may result from each option considered; and
 - (vi) the potential scope for taking a greater trailing load over the Devon Banks section of the route over which the Sleeper Services operate;

- (b) provide an appropriately detailed and evidenced report to the Secretary of State setting out the conclusions of the study conducted pursuant to paragraph 50.1(a); and
 - (c) if so requested by the Secretary of State, meet with the Secretary of State to discuss the conclusions of the study and possible next steps, including the potential to secure third party funding to support the implementation of options considered within the study.
- 50.2 The Parties acknowledge and agree that nothing in paragraph 50.1 shall oblige the Franchisee to implement any of the options considered in the study otherwise than by virtue of a Variation.

51. **Class 165, 166 and short form HST on-board Wi-Fi improvements**

51.1 The Franchisee shall incur expenditure of not less than [REDACTED⁵⁶] in delivering commissioned and operational hardware and software improvements, which may include improvements to modems, backbones, access points, switches and internal and external antennae which are associated with the provision of on-board Wi-Fi on:

- (a) the HST rolling stock vehicles configured in "2+4" formation comprised in the Train Fleet as of the Start Date, by no later than 31 December 2021; and
- (b) the Class 165 and Class 166 rolling stock vehicles comprised in the Train Fleet, by no later than 30 June 2022,

such that the on-board Wi-Fi provided on such rolling stock vehicles performs to a reasonably comparable standard as is provided on or around the Start Date on the Class 800 and Class 802 rolling stock vehicles comprised in the Train Fleet when operating over the same routes.

52. **Sleeper Fleet Modifications**

52.1 The Franchisee shall, as soon as is reasonably practicable consistent with the Franchisee's use of the sleeper fleet in the provision of the Franchise Services and in any event by no later than 31 January 2023, incur expenditure of not less than [REDACTED⁵⁷] on the implementation of commissioned and operational:

- (a) safety modifications to the droplight windows in the doors of all of the MK3 sleeper coach rolling stock vehicles comprised in the Train Fleet, with these modifications to be carried out no later than 31 December 2020; and

⁵⁶ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁵⁷ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

- (b) reliability and resilience improvements to the Class 57 locomotives mentioned in Table 1 to Appendix 1 to Schedule 1.6.

53. **Integrated Fleet Monitoring System**

The Franchisee shall, by no later than 31 March 2022, incur expenditure of not less than [REDACTED⁵⁸] in delivering commissioned and operational upgrades to the Integrated Fleet Management System.

54. **Fleet Status Reporting and Monitoring System**

The Franchisee shall, by no later than 31 March 2022, incur expenditure of not less than [REDACTED⁵⁹] in implementing a commissioned and operational fleet status planning and monitoring system ("**Fleet Status Reporting and Monitoring System**"), such Fleet Status Reporting and Monitoring System to comprise of SOROS® (or an alternative system with broadly comparable purpose and functionality).

55. **Installation of fume extraction technology at Reading Traincare Depot**

The Franchisee shall, by no later than 31 July 2021, incur expenditure of not less than [REDACTED⁶⁰] in procuring the installation at Reading Traincare Depot of commissioned and operational enhanced equipment for the extraction of fumes generated by trains operating using diesel engines.

56. **C-DAS Optimiser**

56.1 The Franchisee:

- (a) shall as soon as reasonably practicable following the Start Date and in any event by no later than 30 June 2020, use all reasonable endeavours to procure the installation of commissioned and operational C-DAS equipment on all Class 387 rolling stock vehicles comprised in the Train Fleet; and
- (b) shall as soon as reasonably practicable following the Start Date (and in any event by no later than 30 June 2020) use all reasonable endeavours to procure that such licence agreements as are necessary to enable the use of C-DAS functionality on the Class 802 rolling stock vehicles comprised in the Train Fleet for the duration of the Franchise Term have been entered into.

56.2 The Franchisee shall:

⁵⁸ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁵⁹ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁶⁰ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

- (a) by no later than 28 February 2021, procure the installation of commissioned and operational C-DAS Junction Optimiser at Airport Junction; and
- (b) by no later than 28 February 2022, procure the installation of commissioned and operational C-DAS Junction Optimiser at two (2) additional junctions,

including, in each case, such trackside infrastructure as may be required to enable the operation of the C-DAS Junction Optimiser.

56.3 The Franchisee shall, by no later than 31 January 2023, provide a report to the Secretary of State, on a per fleet basis, setting out in reasonable detail the benefits arising as a result of:

- (a) the implementation of C-DAS equipment on the Class 387 rolling stock vehicles comprised in the Train Fleet; and
- (b) the enabling of C-DAS functionality on the Class 802 rolling stock vehicles comprised in the Train Fleet,

(in conjunction with the associated implementation of C-DAS Junction Optimiser at relevant junctions pursuant to paragraph 56.2 above), and whether such benefits would be reasonably expected to also arise if C-DAS functionality was to be enabled on the fleet of Class 800 rolling stock vehicles comprised in the Train Fleet (the "**C-DAS Optimisation Report**").

56.4 Following provision by the Franchisee of the C-DAS Optimisation Report, the Franchisee shall (if requested by the Secretary of State) fully and effectively co-operate with the Secretary of State in negotiating with the TSP in order to enable the commencement of C-DAS functionality on the fleet of Class 800 rolling stock vehicles comprised in the Train Fleet.

56.5 The Franchisee shall incur expenditure of not less than **[REDACTED⁶¹]** in aggregate in meeting its obligations as set out in paragraphs 56.1, 56.2, 56.3 and 56.4 above.

57. **NOT USED**

58. **NOT USED**

59. **NOT USED**

60. **Implementation of enhancements to the Control Function**

60.1 Subject where applicable to the agreement of Network Rail (which the Franchisee shall use all reasonable endeavours to secure), the Franchisee shall, by no later than 31 March 2022, or as otherwise agreed with the Secretary of State, incur

⁶¹ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

expenditure of not less than [REDACTED⁶²] through co-operation with Network Rail with a view to implementing improvements to the Control Function as identified through the Control Function Review.

60.2 The Parties acknowledge and agree that any underspend against the minimum expenditure commitment specified in paragraph 60.1 which arises as a result of any inability of the Franchisee to obtain the agreement of Network Rail referred to in paragraph 60.1 shall be treated as Underspend

61. **Marketing Activity**

61.1 Without prejudice to paragraph 5 (*Marketing Plan*) of Schedule 6.3 (*Contractual Incentive Mitigations*), the Franchisee shall ensure that:

- (a) each Draft Marketing Plan to be proposed by the Franchisee pursuant to paragraph 5.1 of Schedule 6.3 (*Contractual Incentive Mitigations*); and
- (b) each Marketing Plan to be implemented by the Franchisee pursuant to paragraph 5.6 of Schedule 6.3 (*Contractual Incentive Mitigations*) subject to any requirements of the Secretary of State pursuant to paragraph 5.5 of Schedule 6.3 (*Contractual Incentive Mitigations*),

where relevant incorporates and identifies each of the individual marketing initiatives specified in paragraph 61.2.

61.2 The marketing initiatives referred to in paragraph 61.1 are as follows:

- (a) marketing activity by the Franchisee to promote the benefits to passengers of the Passenger Service enhancements introduced in December 2019 and planned to be introduced during the Franchise Term;
- (b) from the date on which the Crossrail Stage 5b Timetable Date is known, marketing activity by the Franchisee to promote the benefits to passengers using longer-distance Passenger Services of the introduction from such Crossrail Stage 5b Timetable Date of the full Crossrail service between Reading, Maidenhead and the Crossrail central operating section;
- (c) marketing activity by the Franchisee to raise awareness amongst passengers and prospective passengers of material improvements to the service provided, including the availability of new or improved fares and ticketing products;
- (d) marketing activity by the Franchisee to support initiatives and activities being carried out by relevant Community Rail Partnerships;
- (e) partnerships with tourism bodies to increase awareness of the potential use of the Passenger Services to access tourist destinations that they promote;

⁶² 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

- (f) marketing activity by the Franchisee (in collaboration with appropriate tour operators, tourism bodies and airlines) in support of the development and creation of marketing campaigns promoting the Passenger Services for overseas distribution;
- (g) marketing activity by the Franchisee (in collaboration with appropriate airlines) to promote and develop opportunities for combined air and rail tickets; and
- (h) marketing of combined rail, bus and tourist attraction tickets.

61.3 The Parties acknowledge and agree that costs incurred by the Franchisee which are attributable to the Franchisee’s implementation and/or delivery of the marketing initiatives specified in paragraph 61.2 in a Franchisee Year shall count towards the Minimum Marketing Spend for that Franchisee Year.

61.4 **Minimum Market Research, External Communications and Other Marketing Spend**

- (a) In addition, and without prejudice, to the Franchisee’s obligations under paragraph 61.1 above and paragraph 5 of Schedule 6.3 (Contractual Incentive Mitigations), in each Franchisee Year the Franchisee shall incur no less than the amount specified in Column 2 of the following table (the “**Minimum Market Research, External Communications and Other Marketing Spend**”) for that Franchisee Year in undertaking activities relating to market research, external communications and other marketing-related activities which are in each case outside the scope of the activities specified in paragraph 5.12 of Schedule 6.3 (Contractual Incentive Mitigations):

Franchisee Year	Minimum Market Research and External Communications Spend
1	[REDACTED ⁶³]
2	[REDACTED]
3	[REDACTED]
Up to 13 Reporting Periods Extension	
4 (extension)	[REDACTED]

- (b) The Parties acknowledge and agree that:
 - (i) costs incurred by the Franchisee which are attributable to performance by the Franchisee of its obligations under paragraph 61.4(a) shall not also count towards either the

⁶³ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

Minimum Marketing Spend or the Minimum Marketing Team Spend in any Franchisee Year;

- (ii) if the Franchise terminates part way through a Franchisee Year, the required Minimum Market Research, External Communications and Other Marketing Spend for that Franchisee Year shall be reduced on a pro rata basis to reflect the number of days by which the Franchisee Year was less than 365 days (or less than 366 days in a leap year);
- (iii) within fifteen (15) Weekdays of the end of each Franchisee Year a statutory director of the Franchisee shall certify the amount of expenditure actually incurred by the Franchisee in respect of that Franchisee Year pursuant to paragraph 61.4(a) ("**Actual Market Research, External Communications and Other Marketing Spend**");
- (iv) the Franchisee shall provide such information as the Secretary of State shall reasonably require for the purposes of verifying the information contained in each certificate provided by the Franchisee pursuant to paragraph 61.4(b)(iii); and
- (v) if the Secretary of State reasonably determines that the expenditure actually incurred by the Franchisee in respect of a Franchisee Year pursuant to paragraph 61.4(a) is less than the Actual Market Research, External Communications and Other Marketing Spend for that Franchisee Year, then the amount of expenditure reasonably determined by the Secretary of State pursuant to this paragraph 61.4(b)(v) shall constitute the Actual Market, External Communications and Other Marketing Spend for that Franchisee Year (including, for the avoidance of doubt, for the purposes of assessing the amount of resulting Underspend and such difference shall be dealt with as an Underspend).

62. Introduction of 'Flexi Season Ticket Scheme'

62.1 The Franchisee shall, by no later than the date of completion of the Fares Setting Round which is to be carried out in January 2021, introduce and maintain for the remainder of the Franchise Term, a ticketing scheme (the "**Flexi Season Ticket Scheme**") which shall create and offer for sale carnet fares (being fares available at a multi-ticket buy discount) which:

- (a) allow users of the Passenger Services to purchase a minimum of ten (10) return journeys for any Passenger Services and the passenger services of other Train Operators in relation to relevant flows such journeys to be taken over a period of not more than three (3) months;
- (b) cost no more than 90% of the aggregate Price of the same number of individually purchased 'Standard Anytime Day Return' (or Standard Anytime Return if a Standard Anytime Day Return Fare is not offered at the Start Date) between the same stations for which the carnet fare is valid;
- (c) are available for purchase by users of the Passenger Services using the Franchisee's ITSO Certified Smartmedia;

- (d) are offered for sale by the Franchisee; and
- (e) are offered for sale by the Franchisee at all staffed ticket offices and through the Franchisee's Smartmedia ticket sales channels in each case where products are retailed by the Franchisee onto Smartmedia;
- (f) are available on the following flows:
 - i) London – Bath Spa;
 - ii) London – Bristol Temple Meads;
 - iii) London – Bristol Parkway;
 - iv) London – Cardiff Central;
 - v) London – Cheltenham Spa;
 - vi) London – Exeter;
 - vii) London – Newport (South Wales);
 - viii) London – Oxford;
 - ix) London – Plymouth;
 - x) London – Reading;
 - xi) London – Swansea;
 - xii) London – Swindon;
 - xiii) London – Taunton; and
 - xiv) London – Truro

62.2 The Franchisee shall have the option with the consent of the Secretary of State (acting reasonably) to substitute one or more of the flows listed in paragraph 62.1 with alternative flows.

62.3 The Franchisee shall ensure that the Flexi Season Ticket Scheme is marketed to potential users of the Passenger Services in accordance with the requirements of the Marketing Plan with the costs of such marketing included within the Minimum Marketing Spend.

62.4 The Franchisee shall, by no later than the date falling twelve (12) months after the introduction of the Flexi Season Ticket Scheme, provide to the Secretary of State a report setting out in reasonable detail to a specification to be agreed by both Parties (acting reasonably) (or, in the absence of agreement, to a specification reasonably determined by the Secretary of State):

- (a) the impact of the Flexi Season Ticket Scheme as implemented;
- (b) following consultation with the Secretary of State and having regard to any guidance as the Secretary of State may (acting reasonably)

provide, options to extend the geographical availability of the Flexi Season Ticket Scheme on the Franchisee's network;

- (c) following consultation with the Secretary of State and having regard to any guidance as the Secretary of State may (acting reasonably) provide, options to amend the level of discount offered by the Flexi Season Ticket Scheme; and
- (d) a fully costed proposal in relation to the Franchisee's preferred option (with alternative options where the Franchisee considers appropriate) in relation to the matters specified in paragraphs (a) to (c) above and the proposal shall include an assessment of wider impacts of the proposal on the Franchise Services including with regard to crowding issues.

62.5 It is acknowledged that if the Secretary of State requires the implementation of a proposal made by the Franchisee pursuant to paragraph 62.4(d) this would be done by way of a Variation.

63. **Trial of Three Day Season Ticket Product**

63.1 The Franchisee shall for a period of twelve (12) months commencing from the date of completion of the Fares Setting Round which is to be carried out in May 2021, conduct a trial (the "**Three Day Season Ticket Trial**") through the offering for sale of the Three Day Season Tickets for return journeys for such Passenger Services and the passenger services of other Train Operators whose origin and destination stations are both between Didcot and Banbury (inclusive) where either the origin or destination station is gated.

63.2 Within nine months after the start date of the Three Day Season Ticket Trial, the Franchisee shall provide to the Secretary of State an initial report setting out in reasonable detail to a specification to be agreed by both Parties (acting reasonably) (or, in the absence of agreement, to a specification reasonably determined by the Secretary of State):

- (a) the results of, and lessons learned from, the Three Day Season Ticket Trial (including the number of tickets sold and the impact on the revenue and profitability of the Franchisee); and
- (b) following consultation with the Secretary of State and having regard to any guidance as the Secretary of State may (acting reasonably) provide to the Franchisee, a reasonable proposal for the wider implementation of the Three Day Season Ticket as a result of the lessons learned from the Three Day Season Ticket Trial,

and if required by the Secretary of State, the Franchisee will update the initial report following the conclusion of the Three Day Season Ticket Trial.

63.3 It is acknowledged that if the Secretary of State required the implementation of a proposal provided pursuant to paragraph 63.2(b) this would be done by way of a Variation.

64. **Jobcentre Plus Travel Discount Card**

The Franchisee shall throughout the Franchise Term continue to recognise the Jobcentre Plus Travel Discount Card with the same eligibility, discount rates,

application process, terms of use and duration of validity as were applicable prior to the Start Date.

65. Extension of Family and Friends Railcard

65.1 The Franchisee shall, from the date of completion of the Fares Setting Round which is to be carried out in May 2021 and thereafter maintain throughout the Franchise Term, extended applicability of the Friends and Family Railcard so that it offers holders of the Family and Friends Railcard a discount on Fares for travel in first class accommodation on the Passenger Services of at least 33% such discounted fares to be valid after 09:30 on Weekdays and at all times on other days.

65.2 The Franchisee's obligations under paragraph 65.1 are conditional upon the continued availability of the Family and Friends Railcard scheme from the Rail Delivery Group.

66. Fares, Ticketing & Retailing Trial: Split ticketing

66.1 Pursuant to its obligations under paragraph 1.1 of Schedule 5.10, the Franchisee shall, by no later than 30 April 2021, submit a proposal to the Secretary of State specifying in reasonable detail the proposed form and scope of a Fares, Ticketing and Retail Trial relating to split ticketing including the Franchisee's assessment of the likely financial implications for the Franchisee.

66.2 The provisions of paragraphs 1.2 to 1.4 (inclusive) of Schedule 5.10 shall apply in respect of the Fares, Ticketing and Retail Trial proposed by the Franchisee pursuant to paragraph 66.1 above and the Franchisee acknowledges and agrees that the provisions of this paragraph 66 are without prejudice to the right of the Secretary of State to request the Franchisee's cooperation in respect of further Fares, Ticketing and Retail Trials in pursuant to Schedule 5.10.

67. Annual review of information for fares & ticketing

The Franchisee shall, in each Franchisee Year, undertake a review of fares and ticketing information across all channels offering tickets for the Passenger Services. This review will include information on ticket restrictions and fulfilment methods and is for the purpose of identifying significant inconsistencies across these channels (the "**Annual Ticketing Review**"). The Franchisee shall take such steps as it considers appropriate (acting reasonably) considering the conclusions of the Annual Ticketing Review, for the purpose of improving the consistency of fare and ticketing information across the Franchisee's channels and significant third party channels. The Franchisee shall provide the Annual Ticketing Review to the Secretary of State if requested.

68. Multi Modal Ticketing Products

68.1 The Franchisee shall by no later than 31 March 2021 consult with Cornwall Council, West of England Combined Authority, Oxfordshire County Council and Reading Borough Council to determine the feasibility and appetite for developing a multi-modal ticketing product that would allow travel on different transport modes with a single ticketing product, within the area covered by the relevant local authority or bus company.

68.2 Following the carrying out of a relevant consultation pursuant to paragraph 68.1 the Franchisee shall, if requested by a party to such consultation to do so,

negotiate with such party in good faith with a view to agreeing terms upon which such a multi-modal ticketing product might be introduced or existing schemes extended.

69. **Car Park Add-on for Fares**

The Franchisee shall, by no later than 31 March 2022 implement and offer for sale an 'add on' ticketing product through the Franchisee's website, which allows users of the Passenger Services at not less than three (3) different Stations to purchase a reserved parking space from an allocated quota, which shall be not less than ten (10) parking spaces at the relevant Station.

70. **Ticket Vending Machines**

70.1 The Franchisee shall, by no later than 31 January 2022, incur expenditure of not less than [REDACTED⁶⁴] to procure the installation of commissioned and operational TVMs at the following Stations (the "New TVMs"):

- (a) Highbridge & Burnham;
- (b) Stapleton Road;
- (c) Lawrence Hill;
- (d) Parson Street;
- (e) Weston Milton;
- (f) Bedminster;
- (g) Filton Abbey Wood;
- (h) Redland;
- (i) Montpelier;
- (j) Kintbury;
- (k) Aldermaston;
- (l) Newbury Racecourse;
- (m) Midgham;
- (n) Thatcham;
- (o) Wargrave;
- (p) Sandhurst;

⁶⁴ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

- (q) Mortimer;
- (r) Shiplake;
- (s) Bramley (Hampshire);
- (t) Furze Platt;
- (u) Penryn;
- (v) Falmouth Town;
- (w) Penmere;
- (x) Falmouth Docks;
- (y) Totnes;
- (z) Tiverton Parkway;
- (aa) Newquay;
- (bb) Polsloe Bridge;
- (cc) Lympstone Village;
- (dd) Yeovil Pen Mill; and
- (ee) Ashchurch for Tewkesbury.

70.2 The Franchisee shall have the option with the consent of the Secretary of State to substitute one or more of the stations listed in paragraph 70.1 with alternative station(s) (or by increasing the provision of New TVMs at the stations already listed), such consent not to be unreasonably withheld.

70.3 The Franchisee shall ensure that all New TVMs provide for the collection of pre-purchased ITSO Smart Media ticketing products from the first day of their operation. At any station where New TVMs do not include functionality to accept cash payments (and no other facilities to purchase tickets using cash), the Franchisee shall:

- (a) allow passengers wishing to pay by cash to purchase their desired ticket on board the train, on the same terms as would have applied if no ticket retailing facilities had been present at the station in question; and
- (b) take reasonable steps to make passengers at such stations who may wish to pay for their ticket using cash aware of their right to do so.

- 70.4 70.4 The Franchisee shall incur expenditure of not less than [REDACTED⁶⁵] (with such expenditure being separate to the expenditure to be made by the Franchisee in accordance with the obligation at paragraph 70.1):
- (a) on implementing, by no later than 31 January 2021, enhancements to TVMs in order to:
 - (i) in the case of the Franchisee's Worldline TVMs:
 - (A) introduce Ticket Wizard (or similar functionality) to guide passengers through a series of questions to ensure they buy an appropriate ticket for their journey; and
 - (B) enable the Franchisee's Worldline TVMs to retail Advance Purchase Train-specific Fares; and
 - (ii) in the case of the Franchisee's Scheidt & Bachmann TVMs:
 - (A) retail tickets up to three (3) days before the day of travel; and
 - (B) introduce "Anywhere to Anywhere" (or similar functionality) which will allow users to purchase tickets departing from another station where retail facilities are not available. The Franchisee shall make the decision whether to turn on such functionality at any station(s), with due consideration to the Franchisee's assessment of any fare evasion risks that may be created; and
 - (b) on providing, by no later than 30 September 2021, an operational and commissioned remote customer support system on all TVMs to the extent it is technically feasible to upgrade such TVMs, which will allow users of the TVMs to speak directly to a support operator at the following hours:
 - (i) 06:00 and 22:00 on from Monday to Saturday; and
 - (ii) 08:00 and 22:00 on Sunday.

71. **Compliance with RDG guidelines for TVM design**

The Franchisee shall, from the Start Date and throughout the Franchise Term, ensure that all TVMs and all upgrades and updates to TVMs, will conform to the RDG Design Guidelines for TVMs.

72. **Sleeper Booking Process Enhancements**

⁶⁵ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

The Franchisee shall, by no later than 30 September 2021, incur expenditure of not less than [REDACTED⁶⁶] on updating the Sleeper Service online booking process, including providing the functionality to offer users of the Sleeper Service the ability to book specific cabins (including accessible cabins).

73. Tablet Based Retailing

The Franchisee shall, by no later than 31 January 2021 provide tablet devices to staff at a minimum of ten (10) stations, for use by those staff to sell tickets and ensure that such tablet devices are effectively utilised for such purpose.

74. Franchise Website Enhancements

74.1 The Franchisee shall, by no later than 30 September 2021, incur expenditure of not less than [REDACTED⁶⁷] to implement improvements to the website of the Franchisee, including by:

- (a) enhancing pre-journey information including regarding the availability of upgrades for users of the Passenger Services to travel in first class accommodation on the Passenger Services;
- (b) providing the functionality to allow users to request a refund from within their dedicated user account on the website;
- (c) identifying steps to improve the ability for users of the Passenger Services who have opted to register their relevant personal data on the website, to claim Delay Repay Compensation without the need for the user to re-input all of their data (and thereafter implement those steps);
- (d) enhancing notifications provided to users of the Passenger Services regarding disruption to the Passenger Services;
- (e) enhancing information provided to users of the Passenger Services regarding busy carriages on Passenger Services;
- (f) providing the functionality to allow users of the Passenger Services to purchase car parking at the same time as when purchasing Fares;
- (g) providing functionality to permit individuals to report faults on trains or with facilities;
- (h) providing functionality to enable users to report incidents of crime or antisocial behaviour directly to the British Transport Police using an online form; and

⁶⁶ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁶⁷ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

- (i) providing functionality to enable passengers to report faults at stations and on Passenger Services.

75. Digital Assistance

The Franchisee shall, no later than 30 September 2021 procure the installation of a commissioned and operational on line digital assistant 'voicebot' with the functionality of allowing voice recognition communication with customers via their mobile phone, tablet or other compatible electronic device for the purpose of providing information or retailing Fares and shall maintain such voicebot system for the remainder of the Franchise Term, unless replaced or discontinued with the consent of the Secretary of State.

76. ITSO and CPAY Products

76.1 The Franchisee shall, by no later than 30 April 2021 introduce a Smart Media ticketing product to be retailed through the GWR App and the Franchisee's ticket offices for the bus services of the principal bus operator between:

- (a) Bristol Temple Meads and Bristol Airport; and
 (b) Reading and Heathrow Airport.

76.2 The Franchisee's obligations under paragraph 76.1 are conditional upon the relevant bus operators accepting Smart Media ticketing functionality on the relevant buses.

76.3 The Franchisee shall, by no later than 31 October 2021, incur expenditure of not less than **[REDACTED⁶⁸]** on providing upgraded systems at each Station on the following Routes:

- (a) Slough – Windsor & Eton Central;
 (b) Maidenhead – Marlow; and
 (c) Twyford – Henley-on-Thames,

in order to enable users of the Passenger Services to pay for their journey using CPAY between any station on routes (a) to (c) above and any other CPAY enabled station.

76.4 The Franchisee's obligations under paragraph 76.3 are conditional upon necessary agreements being in place with TfL (including under the CPAY Agreement) and consent from the Secretary of State in connection with necessary fares policy changes, as well as any necessary planning, station change and landlord consents in relation to station upgrades, which the Franchisee shall in each case use all reasonable endeavours to obtain.

⁶⁸ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

77. Smart Media Targets and Enhancements

77.1 The Franchisee shall use all reasonable endeavours to ensure that, by the end of each Franchisee Year referred to in column (1) of the table below:

- (a) at least the proportion of season ticket journeys specified in the corresponding row of column (2);
- (b) at least the proportion of single and return journeys specified in the corresponding row of column (3); and
- (c) at least the proportion of all customer journeys specified in the corresponding row of column (4),

which are made on the Passenger Services are made using Smart Media ticket products.

Column (1)	Column (2)	Column (3)	Column (4)
Franchisee Year	Season tickets	Single and return journeys	All journeys
2020-21	44%	35%	37%
2021-22	53%	45%	47%
2022-23	63%	56%	58%
2023-24 (Extension Year)	74%	58%	63%

77.2 The Franchisee shall, by no later than 31 March 2021, implement a system under which a purchaser can purchase monthly season tickets by monthly direct debit on the basis that there would be no charge for every twelfth monthly season ticket purchased.

77.3 The Franchisee shall, from the Start Date and throughout the Franchise Term, ensure that:

- (a) for the flows that are set by the Franchisee and for other flows that have been enabled by the relevant operator, all Season Ticket Fares with a duration of one (1) week or longer are retailed as Smart Media tickets by default at Smart Media enabled retail points (but with the opportunity for passengers who do not wish to use Smart Media Season Tickets to request or opt for an alternative); and
- (b) for flows where barcodes are accepted, all Single Fares and Return Fares which are retailed via the Franchisee's digital channels, are retailed by default as tickets with a barcode that can be presented by the passenger on their mobile device (but with the opportunity for passengers who do not wish to use tickets on their mobile devices to request or opt for an alternative).

78. Regional Pay as You Go Schemes

- 78.1 The Franchisee shall, by no later than 31 January 2022 implement a pay as you go scheme and infrastructure allowing users of the Passenger Services to pay for Fares using ITSO Certified Smartmedia at all Stations and along all Routes in the area bounded by the following Stations: Ashchurch for Tewkesbury, Patchway, Severn Beach, Weston-super-Mare, Bath Spa and Chippenham (the "**Bristol PAYG Scheme**"). The Franchisee shall ensure that the Bristol PAYG Scheme shall incorporate the following features:
- (a) single leg pricing;
 - (b) a cap on the pricing of consecutive Fares at the rate of a Weekly Season Fare where the rate of a Weekly Season Fare is more economical than the rate of the individual Fares (or alternative capping approach as appropriate); and
 - (c) users of the Bristol PAYG Scheme being charged the most appropriate Fare depending on the time of travel.
- 78.2 The Franchisee shall, by no later than the date falling six (6) months following the completion of the implementation of the Bristol PAYG Scheme, provide to the Secretary of State a costed proposal with appropriate supporting information setting out in reasonable detail how the Franchisee would propose to implement a pay as you go scheme and infrastructure allowing users of the Passenger Services to pay for Fares using ITSO Certified Smartmedia at all Stations on the following routes:
- (a) Plymouth – Penzance;
 - (b) Plymouth – Gunnislake;
 - (c) Liskeard – Looe;
 - (d) Par – Newquay;
 - (e) Truro – Falmouth Docks; and
 - (f) St. Erth – St. Ives,
- (the "**Devon and Cornwall PAYG Scheme**").
- 78.3 The proposal referred to in paragraph 78.2 shall include an assessment of the prospects of securing appropriate funding from third parties.

79. **Paddington Platform Ticket Gates**

The Franchisee shall use all reasonable endeavours to procure by no later than 31 March 2021 (and in any event by no later than 31 October 2022) the installation of commissioned and operational automatic ticket gates at platforms 8 and 9 at London Paddington station. The Franchisee shall ensure that such ticket gates are staffed for eight (8) hours during any Weekday and four (4) hours during any day that is not a Weekday from the date of completion of installation and commissioning for the remainder of the Franchise Term. The Franchisee's obligations under this paragraph 79 are conditional on all applicable consents (including listed building and other planning consents, Network Rail consent, and station change at London Paddington station), which the Franchisee shall in each case use all reasonable endeavours to obtain.

80. Customer and Stakeholder Engagement

80.1 The Franchisee shall incur expenditure of not less than [REDACTED⁶⁹] in each Franchisee Year (reduced pro-rata in respect of any Franchisee Year of less than 365 days (or less than 366 days in a leap year)) in holding not less than:

- (a) three (3) regional customer experience forums in each Franchisee Year, for customer facing Franchise Employees and representatives from the Passengers' Council and appropriate Stakeholders, such customer experience forums to be held at different locations each covering a representative part of the Franchise area;
- (b) two (2) 'meet the manager' sessions in each Franchisee Year at each of twenty (20) stations, such stations to be selected by the Franchisee with a view to maximising the opportunity for users of at which the Passenger Services and users of the Stations to participate; and
- (c) one (1) 'meet the manager' session in each consecutive period of three (3) months in each Franchisee Year, each such 'meet the manager' session to be held on-board one or more Passenger Services in each Franchise Region.

80.2 The Franchisee shall take such steps as it considers appropriate (acting reasonably) in light of the feedback arising out of the regional customer experience forums and 'meet the manager' sessions referred to in paragraph 80.1, with the intention that the taking of such steps will benefit the delivery of the Franchise Services.

81. Specialist Customer Panels

81.1 The Franchisee shall, by no later than 30 September 2020, establish customer panels (each a "**Specialist Customer Panel**") for groups who may have particular needs or may face particular issues or challenges when travelling by rail (for example but without limitation, women, LGBT+ passengers and those from a BAME background). The Franchisee shall provide for at least one (1) meeting of each Specialist Customer Panel to be held in each Franchisee Year.

81.2 The Franchisee shall take such steps as it considers appropriate (acting reasonably) in light of the feedback arising out of each meeting of each Specialist Customer Panel, with the intention that the taking of such steps will benefit the delivery of the Franchise Services.

81.3 Subject always to paragraph 11 (*Data Protection*) of Schedule 17, the Franchisee shall, by no later than the date falling four (4) weeks after each Specialist Customer Panel meeting is held, publish on the Franchisee's website a summary of the discussions and answers provided to questions raised at each such Specialist Customer Panel meeting.

82. Customer Experience Insights Analyst

⁶⁹ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

82.1 The Franchisee shall use all reasonable endeavours to by 30 September 2020 (and in any event by no later than 31 January 2021) recruit and thereafter employ for the remainder of the Franchise Term, a Franchise Employee whose role shall be:

- (a) in addition to any similar existing role(s) within the Franchisee's business as at the Start Date; and
- (b) to:
 - (i) collate and review data collected by the Franchisee for the purposes of understanding customers' satisfaction with, and perceptions of, the Franchise Services; and
 - (ii) analyse and recognise trends in the data referred to in paragraph 82.1(b)(i), to support the Franchisee's business decision making with the intention that this will benefit the delivery of the Franchise Services.

83. **Pulse Kiosks**

83.1 The Franchisee:

- (a) shall, by no later than 31 March 2021, procure the installation of commissioned and operational Pulse Kiosks at not less than five (5) stations;
- (b) shall procure the maintenance of such Pulse Kiosks for a trial period of not less than twelve (12) months;
- (c) may move the Pulse Kiosks from one station to another throughout the trial period; and
- (d) may, notwithstanding paragraph 1.1 of Part 2 of Schedule 6.2, procure the removal of such Pulse Kiosks at the end of the trial period referred to in paragraph 83.1(b) above.

84. **Customer Experience Training Courses**

84.1 The Franchisee shall:

- (a) from and including 1 October 2020 until and including 30 September 2022, hold one (1) day customer experience training courses (being courses to train Franchise Employees on the provision of a high standard of customer service) to be attended by no fewer than 90% of Franchise Employees; and
- (b) from and including 1 April 2022 until and including 28 February 2023, hold further one (1) day customer experience training courses (having the meaning given in paragraph 84.1(a) to be attended by no fewer than 90% of Franchise Employees who are in customer-facing roles (who may, as applicable, be Franchise Employees who have previously attended a customer experience' training course pursuant to paragraph 84.1(a)).

84.2 The Franchisee shall invite and encourage Network Rail employees in appropriate roles (including at London Paddington station) to attend the customer experience training courses held by the Franchisee pursuant to paragraph 84.1.

85. Reporting Faults and Enhancement of the GWR App

- 85.1 The Franchisee shall, by no later than 30 April 2021, ensure that passengers are able to report faults at stations and on Passenger Services via the Franchisee's mobile 'app' (the "**GWR App**").
- 85.2 The Franchisee shall, by no later than 31 March 2022, incur expenditure of not less than [REDACTED⁷⁰] on the implementation of commissioned and operational enhancements to the GWR App which shall as a minimum include enabling passengers to:
- (a) report issues directly to the British Transport Police through the GWR App; and
 - (b) view information on the GWR App about busy trains and reservations based on historic data;
 - (c) in relation to the Sets and the Class 802 Units, view relevant and up to date information on the GWR App regarding reservations and how busy Passenger Services are in real time.
- 85.3 The Franchisee's obligations in paragraph 85.2 are contingent on the TSP in the case of the Sets, and the Class 802 Maintenance Provider in the case of the Class 802 Units, providing fully functioning and accurate automated passenger counts on Sets and Class 802 Units used in the provision of the Passenger Services which have a reasonably appropriate level of functionality and accuracy by reference to prevailing industry standards. The Franchisee shall use all reasonable endeavours to work with the TSP and the Class 802 Maintenance Provider in the context of its contractual relationship with them with the intention of ensuring that automated passenger counts become functional as soon as is reasonably practicable.
- 85.4 The Parties acknowledge and agree that:
- (a) subject to paragraph 85.4(b) nothing in paragraph 85.3 shall limit the Franchisee's obligation to incur the minimum expenditure specified in paragraph 85.2 in delivering the enhancements to the GWR App as specified in, and in accordance with, paragraph 85.2; and
 - (b) notwithstanding the Franchisee's compliance with its obligations under paragraph 85.3 the Franchisee may not be able to procure the delivery of automated passenger count functionality on the Sets and/or the Class 802 Units following engagement with the TSP and the Class 802 Maintenance Provider and that this may result in an underspend by the Franchisee as against the minimum expenditure commitment specified in paragraph 85.2 (and that, accordingly, any underspend against the minimum expenditure commitment specified in paragraph 85.2 which arises as a result of the Franchisee being unable to procure the delivery

⁷⁰ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

of automated passenger count functionality on the Sets and/or the Class 802 Units shall be treated as Underspend).

86. On-board seasonal cleaning

86.1 The Franchisee shall incur expenditure of not less than [REDACTED⁷¹] in each Franchisee Year (reduced pro-rata in respect of any Franchisee Year of less than 365 days (or less than 366 days in a leap year)) on:

- (a) delivering improved on-board cleaning; and
- (b) recruiting additional on-board staff to assist with on-board cleaning and the stowage of passengers' luggage,

during a total of sixteen (16) weeks in each Franchisee Year classified by the Franchisee as times of peak passenger demand for Passenger Services on key leisure routes.

87. Pre-Boarding Service Trial at London Paddington station

87.1 The Franchisee shall, from 31 July 2020 and for a period of 12 (twelve) months thereafter, provide a Pre-Boarding Service at London Paddington station (the "**Pre-Boarding Service Trial**").

87.2 The Franchisee shall review the outcomes of the Pre-Boarding Service Trial and decide (with confirmation of such decision being provided to the Secretary of State), by no later than 31 March 2021, whether the Franchisee intends to continue to operate a Pre-Boarding Service at London Paddington station (either in the form which was the subject of the Pre-Boarding Service Trial or a modified form of the same).

88. Customer Experience During Disruption Plans

88.1 The Franchisee shall, by no later than 31 January 2021, develop a "customer experience during disruption plan" (each a "**Customer Experience During Disruption Plan**") for each of the top fifteen (15) Stations at which the Franchisee (acting reasonably) considers that the development of a Customer Experience During Disruption Plan will deliver the greatest benefit to users of the Passenger Services.

88.2 The Franchisee shall (acting reasonably) review each Customer Experience During Disruption Plan from time to time during the Franchise Term and shall, as applicable, make appropriate updates to each Customer Experience During Disruption Plan in light of each such review.

88.3 The Franchisee shall use all reasonable endeavours to implement each of the Customer Experience During Disruption Plans developed by it pursuant to paragraph 88.1 above upon and following the occurrence of the relevant

⁷¹ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

circumstances to which each such Customer Experience During Disruption Plan relates.

89. **Wavelength Programme**

89.1 The Franchisee shall (subject to the relevant information being made available to the Franchisee via the Wavelength portal):

- (a) fully and effectively engage with the Wavelength Programme;
- (b) provide to the Secretary of State by no later than seven (7) Weekdays following the end of each Reporting Period, a report setting out in reasonable detail the results of the Wavelength Surveys undertaken during that Reporting Period (which, for the avoidance of doubt, shall include the Franchisee's "Heartbeat" and "Customer Promises" performance), such results to be presented in such aggregated or disaggregated format as the Secretary of State may specify from time to time; and
- (c) provide, on a quarterly basis, a report to the Secretary of State setting out in reasonable detail:
 - (i) how the Franchisee has used the full range of Wavelength Programme insights (including the analysis of data received through Wavelength Surveys) 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 89.1(c)(i) have:
 - (A) resulted in any improvement in the Wavelength Survey scores collected to date; and/or
 - (B) any other improvement or benefits to the Franchisee.

90. **Local Transport Forums**

90.1 The Franchisee shall, use all reasonable endeavours to, by no later than 31 July 2020, and in any event by no later than 31 October 2020, establish and implement two (2) local transport forums (each to involve and encourage attendance by representatives of relevant Local Authorities, bus operators, other Train Operators and relevant passenger groups) aimed at improving connectivity between transport modes in the following areas:

- (a) Bristol; and
- (b) Devon and Cornwall,

(each a "**Local Transport Forum**") which shall focus specifically on:

- (i) improving the coordination of timetabling;
- (ii) multi-modal ticketing;

- (iii) information provision; and
- (iv) improvement of access to stations for walking and cycling.

90.2 The Franchisee shall:

- (a) ensure that not less than two (2) meetings of each Local Transport Forum are held in each Franchisee Year; and
- (b) take such steps as it considers appropriate (acting reasonably) in light of the outcomes of each meeting of each of the Local Transport Forums, with the intention that the taking of such steps will benefit the delivery of the Franchise Services.

91. Combined rail, bus and attraction tickets

The Franchisee shall develop and offer for purchase and thereafter maintain not less than two (2) combined rail, bus and tourist attraction tickets in each Franchisee Year. If the applicable third party with which the Franchisee is working to provide such combined tickets withdraws its own tickets from these arrangements the Franchisee shall thereafter develop and offer for purchase a further combined rail, bus and tourist attraction ticket, with an alternative third party, so that the aggregate number of such tickets is maintained.

92. Additional Car Parking Spaces

92.1 The Franchisee shall, by no later than the 31 March 2022, incur expenditure of not less than [REDACTED⁷²] in delivering not less than five hundred and eighty (580) additional car parking spaces at Stations.

92.2 The obligations on the Franchisee under paragraph 92.1 are conditional upon all necessary consents being obtained from Network Rail and relevant planning authorities, and (if applicable) the procurement of necessary additional land it being acknowledged and agreed that the Franchisee shall use all reasonable endeavours to secure such consents and (if applicable) to procure such land in a timely manner.

92.3 The Parties acknowledge and agree that:

- (a) the provisions of paragraph 97 shall apply in relation to any Committed Investment made by the Franchisee pursuant to paragraph 92.1; and
- (b) any underspend against the minimum expenditure commitment specified in paragraph 92.1 which arises as a result of any inability of the Franchisee to obtain the necessary consents referred to in paragraph 92.2 shall be treated as Underspend.

92.4 The Franchisee shall provide regular progress reports to the Secretary of State in respect of the provision of the additional car parking spaces referred to in paragraph 92.1 above. Except insofar as the Secretary of State may otherwise

⁷² 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

direct, the Franchisee shall provide such reports in the same format and at the same frequency as the reports provided in respect of Approved SIF Schemes pursuant to paragraph 23.8(b) of Part 3 of Schedule 6.1 of this Agreement.

93. **'One Team' approach at London Paddington station**

The Franchisee shall by no later than 30th September 2020, work with Network Rail to promote a 'one team' working culture at London Paddington station which shall include all Franchise Employees and Network Rail employees wearing a common form of tabard (or similar) identifying them all as part of one team at London Paddington station.

94. **Adherence to Ticket Office Opening Hours**

94.1 The Franchisee shall publish data on its website showing the rate of adherence to published ticket office opening hours in respect of each Station at which there is a ticket office, and update such data at least quarterly.

94.2 The Franchisee shall publish within each Customer Report pursuant to paragraph 12.1(a) of Schedule 7.2:

- (a) summary statistics showing the rate of adherence to published ticket office opening hours in respect of each Station at which there is a ticket office, disaggregated at least to a regional level; and
- (b) a link to the website where the data referred to in paragraph 94.1 can be found.

95. **On Board Food and Drink**

95.1 Consistent with the Franchisee's proposal, the Franchisee shall throughout the Franchise Term diagram and use all reasonable endeavours to provide an on train food and drink service in accordance with the following specification:

- (a) a food and drink service:
 - (i) on all Passenger Services departing Cardiff, Exeter or Bristol for a timetabled arrival at London Paddington in the Morning Peak; and
 - (ii) all Passenger Services departing London Paddington in the Evening Peak and timetabled to call at Cardiff, Exeter or Bristol, in each case in respect of that portion of their journey between London Paddington and Cardiff, Exeter and Bristol (as the case may be);
- (b) an at seat first class "Pullman" dining service to be provided on at least two (2) Passenger Services in each direction each Weekday on either or both of the routes between London Paddington and Plymouth and between London Paddington and Cardiff;
- (c) a trolley-based catering service for standard and first class passengers on each Passenger Service operated by the Sets (as defined in Schedule 6.3) or Class 802 units on the services referenced A1 to A4 (Inter City Great Western Main Line), B (Inter City West of England), D1 (Oxford fasts) and D4 (Oxford-Worcester-Hereford) in the Train Service

Requirement. This shall not require trolley services to be provided throughout the duration of each service, but shall require trolley services to be provided in both portions of any service worked by two (2) separate Half Sets or Class 802 units;

- (d) using all reasonable endeavours to by no later than 30 June 2020, and in any event by no later than 30 September 2020, offer complimentary hot food in for passengers travelling with first class tickets on a minimum of thirty six (36) services serving London Paddington per Weekday; and
- (e) a hot and cold food and drink service on all Sleeper Services.

95.2 For the avoidance of doubt, all catering trolleys and crockery acquired by the Franchisee for the purpose of the delivery of its obligations in this paragraph 95 (or other food and drink services) during the Franchise Term which are transferred to a Successor Operator at the end of the Franchise Period are subject to the nil value transfer provisions of paragraph 9.2 of Part 2 of Schedule 6.2.

96. **WAN Capability at Stations**

ⁱⁱⁱThe Franchisee shall, by no later than three (3) periods after the Start Date, develop and submit to the Secretary of State a proposal in relation to the upgrade of the wide area network capability at Stations selected by the Franchisee by reference to the impact that such upgrades are likely to have on the provision of the Franchise Services. It is envisaged that the implementation of any such proposal agreed by the Franchisee and the Secretary of State would involve the use of external funding sources (including funding generally aimed at increasing connectivity) or other committed funds (for example, the Station Improvement Fund) (subject always to any applicable requirement(s) for the Franchisee to obtain the Secretary of State's prior approval to the use of such other committed funds in accordance with the terms of this Agreement).

97. **Committed Investments – general provisions**

97.1 The Franchisee shall on each CI Report Date during the Franchise Term provide to the Secretary of State a report (a "**CI Report**") certified by a statutory director of the Franchisee as being true and accurate identifying:

- (a) with regard to each Committed Investment and in relation to the period since the Start Date in relation to the first CI Report and since the last CI Report in relation to all subsequent CI Reports the amount of expenditure incurred by the Franchisee together with details of:
 - (i) how much of such monies have been received from third party match funding; and
 - (ii) how such monies were applied and details of any variances from the CI Expenditure Assumptions;
- (b) in relation to each Committed Investment whether:
 - (i) the Franchisee considers that the anticipated allocated expenditure will not be required or is unlikely to be required, for example because any identified dependency on a third party whether for consents, third party funding or

otherwise cannot be obtained or is unlikely to be obtained for any reason; or

- (ii) the Franchisee is able (whether because of cost savings, additional match funding or otherwise), in respect of such Committed Investment, to achieve the stated objective of the Committed Investment without incurring the full amount of proposed expenditure identified,

together with in relation to any Committed Investment identified pursuant to paragraph 97.1(b)(i) or (ii), details of the costs it has incurred (excluding any third party funding) in complying with its obligations in relation to such Committed Investment and a reconciliation against the amount it had proposed to allocate (excluding any third party funding) so that there is identified in relation to each Committed Investment the amount of funding capable of being allocated to alternative schemes or repaid to the Secretary of State ("**CI Underspend**"); and

- (c) in the second CI Report (and each subsequent CI Report thereafter), how the expenditure position in relation to Committed Investments and actual expenditure compared with the CI Expenditure Assumptions has changed in comparison to the position summarised in the immediately preceding CI Report.

97.2 The Franchisee shall provide such additional information as the Secretary of State shall reasonably require for the purposes of verifying that the CI Report is true and accurate.

97.3 At each Franchise Performance Meeting the Franchisee shall report on variances from the CI Expenditure Assumptions, the status of the Committed Investments, and shall provide an update to the Secretary of State on any Committed Investments identified pursuant to paragraph 97.1(b) which have been identified as giving rise to a CI Underspend.

97.4 Any CI Underspend shall be treated as:

- (a) Underspend in accordance with paragraph 92.3 of this Part 1 of Schedule 6.2; or
- (b) SIF Scheme Underspend in accordance with paragraph 23.12 of Part 3 of Schedule 6.1,

as the case may be.

PART 2 - SPECIAL TERMS RELATED TO THE COMMITTED OBLIGATIONS

This Part 2 of Schedule 6.2 sets out further provisions which shall apply to the Committed Obligations contained in the Franchise Agreement and these provisions shall be construed as supplemental to the related provisions set out in Part 1 of this Schedule 6.2 and elsewhere in the Franchise Agreement.

1. Continuation of Availability

1.1 Where the Franchisee is obliged under this Schedule 6.2 to provide, implement or install something (whether a service, facility or otherwise) the Franchisee 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 Franchise Period unless the contrary is expressly stated.

1.2 Where Part 1 to Schedule 6.2 (Committed Obligations) includes a commitment:

(a) regarding the maintenance of certain facilities or activities or other similar analogous matters which are the subject of the Committed Obligations, the Franchisee 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

(b) regarding staffing requirements or particular appointments the Franchisee is required to make and maintain, the obligation of the Franchisee shall not be regarded as being contravened by:

(i) temporary absences (for example for sickness or holiday); or

(ii) temporary non-fulfilment of a relevant post whilst the Franchisee is recruiting for that post

providing always that the Franchisee is using all reasonable endeavours to keep the duration of any (x) non-availability of a facility or activity or (y) vacant or unfulfilled post or appointment (as the case may be) as short as reasonably practicable.

2. Expenditure Commitments

2.1 Annual Expenditure

Where Part 1 to Schedule 6.2 (Committed Obligations) provides for the expenditure of an annual amount (or an amount over some other period) by the Franchisee, that amount:

(a) is assessed net of Value Added Tax; and

(b) is the amount required to be expended by the Franchisee itself or procured by the Franchisee to be expended.

2.2 Expenditure Commitments in real amounts

All expenditure commitments set out in Part 1 to Schedule 6.2 (Committed Obligations), to the extent they have not already been incurred by the Franchisee,

shall be indexed by the Retail Prices Index (in the same way as variable costs are indexed in Appendix 1 (Annual Franchise Payments) to Schedule 8.1 (Franchise Payments)).

2.3 Expenditure by Network Rail

All amounts which the Franchisee has committed (whether unconditionally or otherwise) pursuant to Part 1 to Schedule 6.2 (Committed Obligations) to expend in connection with improvements to track or Stations shall be in addition to any expenditure made by Network Rail as part of its infrastructure improvements or maintenance programme to the extent such expenditure is not directly funded or reimbursed by the Franchisee.

3. Underspend

- (a) Where in relation to any Committed Obligation that is expressed in terms of a requirement to spend not less than a specified sum in fulfilling its stated objective, the Franchisee is able to achieve that stated objective without incurring the full amount referred to in that Committed Obligation, whether because of cost savings or otherwise, the Franchisee shall notify the Secretary of State, together with a statement of the costs it has incurred (excluding any third party funding) in delivering the relevant obligations and a reconciliation against the amount it had committed to spend (excluding any third party funding) ("**Underspend**").
- (b) The Parties shall, acting reasonably, seek to agree an additional scheme or schemes which would give rise to benefits to passengers using the Passenger Services to be funded using one or more Underspends and, once agreed, the Franchisee shall apply such relevant Underspend in the delivery of the agreed scheme(s). In circumstances only where, despite having used reasonable endeavours the Parties fail to agree an additional scheme in relation to which relevant Underspend will be applied, the aggregate amount of unallocated Underspend shall be repaid to the Secretary of State as soon as reasonably practicable.

4. Nature of Commitment

- 4.1 Any commitment in terms of Part 1 to Schedule 6.2 (Committed Obligations) shall be in addition to any obligation of the Franchisee elsewhere in this Agreement and nothing in this Schedule 6.2 (Committed Obligations) shall limit or restrict an obligation imposed on the Franchisee elsewhere in this Agreement.
- 4.2 Save as expressly provided in Part 1 to Schedule 6.2 (Committed Obligations), each Committed Obligation is a separate obligation from any other Committed Obligation and satisfaction of or steps taken towards the satisfaction of one Committed Obligation will not amount to or contribute towards satisfaction of any other Committed Obligation.
- 4.3 Where in Part 1 to Schedule 6.2 (Committed Obligations), references are made to particular:
- (a) manufacturers or suppliers of equipment or services, the Franchisee may fulfil its relevant commitment by using reasonable equivalents; or

- (b) stakeholders, the Franchisee may fulfil its relevant commitment with reference to reasonable successor bodies to the relevant stakeholder.

5. Review of Compliance

- 5.1 Progress with Committed Obligations shall be considered and discussed at Franchise Performance Meetings.
- 5.2 In addition to its obligation under paragraph 5.1, the Franchisee shall from time to time promptly provide such evidence of its compliance with any Committed Obligation as the Secretary of State may reasonably request.

6. Consequences of Late Completion or Non-Delivery of Committed Obligations

If the Franchisee fails to deliver in full a Committed Obligation in accordance with and by the timeframe specified for its delivery in this Schedule 6.2 (Committed Obligations), such late, partial or non-delivery shall constitute a contravention of the Franchise Agreement.

7. NOT USED.

8. Third Party Consents, Agreement and Conditions

- 8.1 A Committed Obligation may be expressed to be conditional upon the satisfaction of any condition (including the occurrence of any event or the obtaining of any third party consent and/or entering into any agreement or arrangement with a third party) ("**Pre-condition**"). Where a Committed Obligation is subject to a Pre-condition and, despite having used all reasonable endeavours, the Franchisee is not able to satisfy such Pre-condition within such timescales (if any) as are required to enable the Franchisee to deliver such Committed Obligation in accordance with its terms then the Secretary of State and the Franchisee shall agree (or on failure to agree, the Secretary of State shall reasonably determine) such modifications to such Committed Obligation as may be necessary to allow the Franchisee to deliver a scheme which would give rise to benefits to passengers using the Passenger Services similar to (but not necessarily the same as) those benefits which would have arisen if the Franchisee had delivered such Committed Obligation.
- 8.2 If the Franchisee and the Secretary of State agree (or on failure to agree, the Secretary of State reasonably determines) a modification to a Committed Obligation pursuant to paragraph 8.1 then to the extent that the Franchisee delivers such modified Committed Obligation by the date agreed by the Parties (or, on failure to agree reasonably determined by the Secretary of State) then the Franchisee shall not be in breach of the Franchise Agreement.

9. Designation of Assets comprised in COs as Primary Franchise Assets

- 9.1 The Secretary of State may at any time designate as a Primary Franchise Asset any asset introduced by the Franchisee by way of a Committed Obligation (the "**Designated CO Primary Franchise Assets**"). Such designation shall take effect from the date on which the Secretary of State delivers to the Franchisee a notice designating the relevant asset as a Designated CO Primary Franchise Asset.
- 9.2 The transfer value in relation to any Designated CO Primary Franchise Asset, which at the end of the Franchise Period is:

- (a) not de-designated as a Primary Franchise Asset pursuant to paragraph 10 of Schedule 14.4 (Designation of Franchise Assets); and
- (b) transferred to a Successor Operator (whether pursuant to the Transfer Scheme or otherwise),

shall (unless otherwise agreed by the Secretary of State) be nil.

10. **Obligations on Delivery of a Committed Obligation**

By no later than thirty (30) days after the date of delivery of a Committed Obligation the Franchisee 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 Franchisee confirming that such Committed Obligation has been delivered in full and in accordance with its terms, together with such supporting information as may be requested by the Secretary of State from time to time.

11. **Liaison and Co-Operation**

Without prejudice to Clause 1.2 of the Franchise Agreement, where the Franchisee is committed to liaison and co-operation under any of Parts 1 to 4 (inclusive) of Schedule 6.1 or Part 1 (Committed Obligations) to this Schedule 6.2, it shall participate actively in the relevant measures including through the application of management time and internal resources, correspondence and attendance at meetings, in each case as the Franchisee reasonably considers in all the circumstances to be an appropriate use of its resources and effective to help achieve the relevant objective.

Schedule 6.3

CONTRACTUAL INCENTIVE MITIGATIONS**1. Definitions**

1.1 For the purposes of this Schedule 6.3 only, the following words and expressions shall have the following meanings unless otherwise set out in clause 3 (*Definitions*):

"Actual Marketing Spend"	has the meaning given to it in paragraph 5.7(b)(ii)(A) of this Schedule 6.3;
"Actual Marketing Team Spend"	has the meaning given to it in paragraph 5.7(b)(ii)(B) of this Schedule 6.3;
"Alternative Fare"	has the meaning given to it in paragraph 11.1(a)(ii) of this Schedule 6.3;
"Annual Floor Ticketless Travel Benchmark"	means, in relation to a Performance Calculation Year, the benchmark for that Performance Calculation Year as specified in Column 3 of the table in Part 2 of Appendix 2 to this Schedule 6.3;
"Annual Target Ticketless Travel Benchmark"	means, in relation to a Performance Calculation Year, the benchmark for that Performance Calculation Year as specified in Column 2 of the table in Part 2 of Appendix 2 to this Schedule 6.3;
"Annual Ticketless Travel Benchmark"	means any of the Annual Breach Ticketless Travel Benchmark and Annual Target Ticketless Travel Benchmark;
"Bespoke Revenue Initiative Proposal"	has the meaning given to it in paragraph 4.1 of this Schedule 6.3;
"Breach Ticketless Travel Benchmark"	means, in relation to a Ticketless Travel Survey Period, the benchmark relevant for that Ticketless Travel Survey Period in that Performance Calculation Year as specified in Column 3 of the table in Part 4 of Appendix 2 to this Schedule 6.3;
"Cleaning and Presentation Contracts"	has the meaning given to it in paragraph 13.1 of this Schedule 6.3;
"CIM Performance Sum"	has the meaning given to it in paragraph 7.1 of this Schedule 6.3;
"Draft Marketing Plan"	means a draft marketing plan produced pursuant to paragraph 5.1 of this Schedule 6.3;
"Floor Ticketless Travel Benchmark"	means, in relation to a Ticketless Travel Survey Period, the benchmark relevant for the Ticketless Travel Survey Period in that Performance Calculation

	Year as specified in Column 3 of the table in Part 1 of Appendix 2 to this Schedule 6.3;
“Marketing Plan”	has the meaning given to it in paragraph 5.5 of this Schedule 6.3;
“Marketing Team”	means a team of not less than twenty (20) people or the full time equivalent to such number of people whose role is largely concerned with the organisation and delivery of marketing activities for the Franchise in accordance with paragraph 5 of this Schedule 6.3;
“Minimum Marketing Spend”	has the meaning given to it in paragraph 5.7(a) of this Schedule 6.3;
“Minimum Marketing Team Spend”	has the meaning given to it in paragraph 5.7(b) of this Schedule 6.3;
“Performance Calculation Year”	means: <ul style="list-style-type: none"> (a) the period of 13 Reporting Periods starting on the Start Date (that day inclusive); or (b) each subsequent period of 13 Reporting Periods during the Franchise Term commencing the day after the last day of the preceding Performance Calculation Year, <p>(as applicable) provided that the last such period may be shorter than 13 Reporting Periods and shall end on the last day of the Franchise Period;</p>
“Specified Franchise Employees”	means persons falling within limbs (a) and (c) but not (b) of the definition Franchise Employee;
“Target Ticketless Travel Benchmark”	means, in relation to a Ticketless Travel Survey Period, the benchmark for that Performance Calculation Year as specified in Column 2 of the table in Part 1 of Appendix 2 to this Schedule 6.3;
“Ticketless Travel Benchmark”	means any of the Target Ticketless Travel Benchmark or the Breach Ticketless Travel Benchmark;
“Ticketless Travel Payment Adjustment”	means an adjustment made to Franchise Payments as determined in accordance with paragraph 6.3 of this Schedule 6.3; and
“Ticketless Travel Rate”	means, for any Ticketless Travel Survey Period, that proportion (expressed as a percentage to three decimal places) of revenue estimated by the Ticketless Travel Survey for 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.

“Total SFE Cost ” means in relation to a Specified Franchise Employee the total actual cost of employing such person in relation to a specified period, taking account of the costs of their basic salary, any rest day working, overtime and other pay and pension costs and National Insurance Contributions (these being the same categories of costs as have been taken into account in populating Appendix 4 of this Schedule 6.3;

2. **Application of Contractual Incentive Mitigations**

2.1 The provisions of this Schedule 6.3 shall apply from and including the Start Date and thereafter throughout the remainder of the Franchise Term. All costs incurred by the Franchisee in consequence of the provisions of Schedule 6.3 applying shall be borne by the Franchisee.

3. **General Obligation of the Franchisee when the provisions of Schedule 6.3 (Contractual Incentive Mitigations) apply**

3.1

(a) The Franchisee shall at all times, in addition to complying with the other provisions of this Schedule 6.3, use all reasonable endeavours, consistent with a Train Operator bearing revenue risk in relation to its franchise and acting in an economical and efficient manner, to maximise revenue and minimise or mitigate the impacts of any factors leading to revenue being reduced or increasing less quickly than the Franchisee had forecast including maximising revenue collections, growing Peak Passenger Service revenues and Off-Peak Passenger Service revenues and driving performance.

(b) It is acknowledged that this Schedule 6.3 imposes obligations on the Franchisee to make payments to the Secretary of State under specified circumstances but it does not impose any obligation on the Secretary of State to make any payment to the Franchisee.

3.2 The Franchisee shall proactively consider and implement actions to meet its obligations pursuant to paragraph 3.1 above, provided that where the consent of the Secretary of State is required to any action pursuant to the terms of the Franchise Agreement, the Franchisee shall seek the Secretary of State’s consent as soon as reasonably practicable and shall only pursue such action once consent has been provided.

3.3 The Secretary of State shall have the right to propose to the Franchisee measures that the Franchisee 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 Franchisee had forecast, such measures being consistent with a Train Operator bearing revenue risk in relation to its franchise and acting in an economical and efficient manner. The Franchisee 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.

4. **Bespoke Revenue Initiative Proposal**

4.1 Notwithstanding the provisions of Schedule 8.6 (*Forecast Revenue Mechanism*), the Franchisee shall be permitted to make a proposal ("**Bespoke Revenue Initiative Proposal**") to the Secretary of State that revenue identifiable as being derived from a specified initiative of the Franchisee not already included under the terms of the Franchise Agreement shall be subject to an alternative division of the revenue arising from its implementation during periods that Net Revenue Share or Net Revenue Support is payable or where it is reasonably likely that Net Revenue Share or Net Revenue Support shall become payable in the next twenty-four (24) months.

4.2 Any Bespoke Revenue Initiative Proposal shall:

- (a) identify what the proposed initiative is and the capital and operational costs that are likely to be incurred delivering it;
- (b) provide an estimate of the financial value that the Franchisee reasonably considers the initiative is likely to deliver for the Secretary of State; and
- (c) make an appropriate proposal in relation to the interaction between revenue expected to be derived from the initiative and the operation of Schedule 8.6 (*Forecast Revenue Mechanism*) supported by reasonably appropriate data and analysis. Such proposal may involve either or both of:
 - (i) a proposal for an appropriate division of revenue between the Franchisee and the Secretary of State when the Franchisee is paying Net Revenue Share or receiving Net Revenue Support proposing how the revenue derived from the initiative can be separately identified and the purpose of the Franchisee's proposed revenue allocation;
 - (ii) a proposal to amend Target Revenue amounts to take into account anticipated changes in revenue expected to result from the Bespoke Revenue Initiative in a reasonable manner.

4.3 The Secretary of State may also require the Franchisee in any Bespoke Revenue Initiative Proposal to include:

- (a) a business case with a financial cost benefit analysis by reference to criteria specified by the Secretary of State; and
- (b) proposed drafting to be included into the Franchise Agreement in connection with the Bespoke Revenue Initiative Proposal.

4.4 The Franchisee shall meet with the Secretary of State to discuss the Bespoke Revenue Initiative Proposal and provide such additional information as the Secretary of State shall reasonably require. The Secretary of State shall be permitted to propose alterations to the Bespoke Revenue Initiative Proposal and the Franchise Agreement drafting proposed by the Franchisee. The Secretary of State shall have an unfettered discretion to accept or reject any Bespoke Revenue Initiative Proposal. If the Secretary of State accepts a Bespoke Revenue Initiative

Proposal, the Franchise Agreement shall be amended on terms agreed between the Parties for the purposes of implementing it. Amendments to the Franchise Agreement may, in accordance with the terms of the agreed Bespoke Revenue Initiative Proposal, include (i) provisions in relation to the identification, measurement and division of revenue between the Franchisee and the Secretary of State in the context of the Franchisee's potential obligation to pay Net Revenue Share and its potential right to receive Net Revenue Support; and/or (ii) the amendment of FRM Revenue and/or (iii) the amendment of Target Revenue amounts specified in Appendix 1 to Schedule 8.6 to take into account anticipated changes in revenue expected to result from the Bespoke Revenue Initiative.

5. Marketing Plan

5.1 The Franchisee shall produce and submit to the Secretary of State a Draft Marketing Plan by no later than:

- (a) in respect of the first Draft Marketing Plan 30 June 2020; and
- (b) in respect of each subsequent Draft Marketing Plan, two (2) Reporting Periods prior to each anniversary of the Start Date during the Franchise Term.

5.2 No account shall be taken for the purposes of this paragraph 5 of any marketing activities or expenditure relating to the HEx Services and the obligations and other provisions in it shall be interpreted accordingly.

5.3 The Draft Marketing Plan shall as a minimum set out:

- (a) the proposed marketing initiatives to be undertaken in the upcoming Franchisee Year, the proposed spend in respect of such initiatives and the estimated return in respect of the same;
- (b) the structure, focus and utilisation of the members of the Marketing Team;
- (c) a three-year rolling marketing strategy; and
- (d) if applicable, the performance of the initiatives implemented in the previous Franchisee Year, taking into account the cost of the same.

5.4 The Franchisee shall provide to the Secretary of State such further analysis or iterations of the Draft Marketing Plan as the Secretary of State reasonably requires and shall, if required by the Secretary of State, meet with the Secretary of State to discuss the Draft Marketing Plan.

5.5 The Secretary of State shall (acting reasonably):

- (a) by the Start Date (in the case of the Draft Marketing Plan for the first Franchisee Year); or
- (b) within one (1) Reporting Period of receipt of the Draft Marketing Plan for any subsequent Franchisee Year pursuant to paragraph 5.1(b),

approve or reject the Draft Marketing Plan. Where the Secretary of State rejects the Draft Marketing Plan, the Franchisee shall make such amendments necessary to the Secretary of State's reasonable satisfaction. This document, as either

approved or amended to the Secretary of State's reasonable satisfaction, shall become the form of the Franchisee's marketing plan (the "**Marketing Plan**").

5.6 The Franchisee shall comply with the Marketing Plan.

5.7 In each Franchisee Year the Franchisee shall:

(a) spend no less than the amount specified in Column 2 of the table in set out in Appendix 1 (*Minimum Marketing Spend*) to this Schedule 6.3 for that Franchisee Year ("**Minimum Marketing Spend**"):

- (i) on such marketing activities as specified in paragraph 5.12; or
- (ii) as otherwise agreed by the Franchisee and the Secretary of State (or in the event of any failure to agree, as reasonably determined by the Secretary of State),

and such activities shall be identified in the Marketing Plan; and

(b) spend no less than the amount specified in Column 3 of the table set out in Appendix 1 to this Schedule 6.3 for that Franchisee Year ("**Minimum Marketing Team Spend**") on remuneration of the Marketing Team (including, for the avoidance of doubt, any and all pension contributions made by the Franchisee in respect of the Marketing Team),

provided that:

- (i) if the Franchise terminates part way through a Franchisee Year, the required Minimum Marketing Spend and Minimum Marketing Team Spend shall each be reduced on a pro rata basis to reflect the number of days by which the Franchisee Year was less than 365 days (or less than 366 days in a leap year);
- (ii) within fifteen (15) Weekdays of the end of each Franchisee Year a statutory director of the Franchisee shall certify:
 - (A) the amount of marketing expenditure actually incurred by the Franchisee in respect of that Franchisee Year (excluding in respect of remuneration of the Marketing Team) ("**Actual Marketing Spend**"); and
 - (B) the amount of the marketing expenditure actually incurred by the Franchisee in respect of remuneration of the Marketing Team in respect of that Franchisee Year ("**Actual Marketing Team Spend**").

5.8 If the Actual Marketing Spend is less than the Minimum Marketing Spend then the difference between the Actual Marketing Spend and the Minimum Marketing Spend shall be treated as Underspend for the purpose of Part 2 (*Special Terms related to the Committed Obligations*) of Schedule 6.2 (*Committed Obligations*).

5.9 If the Actual Marketing Team Spend is less than the Minimum Marketing Team Spend then the difference between the Actual Marketing Team Spend and the

Minimum Marketing Team Spend shall also be treated as Underspend for the purpose of Part 2 (*Special Terms related to the Committed Obligations*) of Schedule 6.2 (*Committed Obligations*).

- 5.10 The Franchisee shall provide such information as the Secretary of State shall reasonably require for the purposes of verifying the information contained in the certificate provided and if the Secretary of State reasonably determines that the marketing expenditure (excluding in respect of remuneration of the Marketing Team) made by the Franchisee was less than the Actual Marketing Spend then the difference between the expenditure as determined by the Secretary of State (rather than the Actual Marketing Spend certified by the Franchisee) and the Minimum Marketing Spend shall be treated as Underspend for the purpose of Part 2 (*Special Terms related to the Committed Obligations*) of Schedule 6.2 (*Committed Obligations*) and if the Secretary of State reasonably determines that the marketing expenditure made by the Franchisee in respect of remuneration of the Marketing Team was less than the Actual Marketing Team Spend then such difference between the expenditure as determined by the Secretary of State (rather than the Actual Marketing Team Spend certified by the Franchisee) and the Minimum Marketing Team Spend shall also be treated as an Underspend for the purpose of Part 2 (*Special Terms related to the Committed Obligations*) of Schedule 6.2 (*Committed Obligations*).
- 5.11 The Minimum Marketing Spend and Minimum Marketing Team Spend in respect of each Franchisee Year (other than the first Franchisee Year) shall be subject to indexation by the Retail Prices Index in the same way as the component of RPI is indexed in Schedule 8.1 (*Franchise Payments*) of the Franchise Agreement.
- 5.12 Any costs attributable to:
- (a) initiatives that advertise and promote passenger services in order to drive growth in passenger volumes and revenues;
 - (b) promotional material including but not limited to timetable printing and posters;
 - (c) digital marketing; and
 - (d) marketing activities relating to franchise specific areas including but not limited to infrastructure or rolling stock changes,
- shall count towards the Minimum Marketing Spend.
- 5.13 As part of each Business Plan to be submitted during the Franchise Term in accordance with paragraph 10 (*Business Plans*) of Schedule 11.2 (*Management Information*) the Franchisee shall deliver to the Secretary of State for the Secretary of State's approval an updated version of the Marketing Plan in respect of the remainder of the Franchise Term:
- (a) in substantially the same form as the preceding Marketing Plan delivered to the Secretary of State in accordance with the Franchise Agreement;
 - (b) which shall be revised to:
 - (i) describe the Franchisee's planned expenditure and activities to advertise, market and promote the Passenger Services for each

Franchisee Year (or part Franchisee Year) during the remainder of the Franchise Term (such description being in detail for the next Franchisee Year and in outline for subsequent Franchisee Years);

- (ii) include details of the Franchisee's planned arrangements to measure the effectiveness of such expenditure and activities; and
 - (iii) confirm how the Franchisee shall improve the Marketing Plan and increase the effectiveness of its expenditure and activities; and
- (c) containing a statement of the differences between such updated Marketing Plan and the preceding Marketing Plan delivered to the Secretary of State in accordance with the Franchise Agreement, together with an explanation of such differences.
- 5.14 The Franchisee may also apply to the Secretary of State to make interim revisions to the Marketing Plan in the course of any Franchisee Year.
- 5.15 The Marketing Plan shall be reviewed by the Franchisee and the Secretary of State every three (3) months or more frequently and/or at a meeting in person upon the Secretary of State's request, and as soon as reasonably practicable following each such review, the Franchisee shall:
- (a) produce evidence to the Secretary of State's satisfaction that it has incurred the expenditure and carried out the activities shown in the Marketing Plan for the period under review;
 - (b) report on the effectiveness of such expenditure and activities based on reasonably available evidence, and areas for improvement which the Franchisee has identified and the actions it plans to take; and
 - (c) confirm how the effectiveness of the expenditure and activities could be further improved by explaining the successes and failures of such Marketing Plan and how the Franchisee plans to build on successes and address and rectify failures going forward.

6A. Ticketless Travel Surveys

- 6A.1 The Franchisee 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. The provisions of this paragraph 6A and paragraph 6 have no application to the provision of the HEx Services.
- 6A.2 It is acknowledged and agreed by the Franchisee that:
- (a) a Ticketless Travel Survey can only be carried out during a Ticketless Travel Survey Period except that for the purposes of establishing baseline results by reference to which the Target Ticketless Travel Benchmark and the Annual Ticketless Travel Benchmark will be agreed or determined in accordance with paragraph 6A.8 the Franchisee shall carry out the first two Ticketless Travel Surveys in the first Franchisee Year in the period between the start of the second and the end of the seventh Reporting Periods; and

- (b) nothing in this paragraph 6A 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 6A).
- 6A.3 Within thirty (30) days of the completion of each Ticketless Travel Survey the Franchisee 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.
- 6A.4 By the end of the eighth Reporting Period in the first Franchisee Year, the Franchisee shall compile and report to the Secretary of State the results of the Ticketless Travel Surveys carried out by the Franchisee in accordance with paragraph 6A.2(a) (the "**TT Benchmarking Report**") in respect of the second to the seventh (inclusive) Reporting Periods of the first Franchisee Year, together with the results of the ticketless travel survey conducted on behalf of the Secretary of State in relation to the Franchise in autumn 2019 as reported by the Secretary of State to the Franchisee (together the "**TT Reference Period**").
- 6A.5 The Franchisee shall include in the TT Benchmarking Report its proposal for:
- (a) the Target Ticketless Travel Benchmark, reflecting the performance of the Franchisee with regard to ticketless travel during the TT Reference Period;
 - (b) the Floor Ticketless Travel Benchmark, reflecting the performance of the Franchisee with regard to ticketless travel plus 0.6% worse than the performance during the TT Reference Period;
 - (c) the Annual Ticketless Travel Benchmark, reflecting the performance of the Franchisee with regard to ticketless travel during the TT Reference Period; and
 - (d) the Annual Floor Ticketless Travel Benchmark, reflecting the performance of the Franchisee with regard to ticketless travel plus 0.6% worse than the performance during the TT Reference Period,
- based on the aggregate results from the TT Reference Period without amendment. By way of example, in establishing the Floor Ticketless Travel Benchmark and the Annual Floor Ticketless Travel Benchmark, where the corresponding Target Ticketless Travel Benchmark or Target Annual Ticketless Travel Benchmark is 2.4% the addition of a 0.6% margin will result in a Floor Ticketless Travel Benchmark and an Annual Floor Ticketless Travel Benchmark of 3%.
- The resultant Ticketless Travel Benchmarks and Annual Ticketless Travel Benchmarks shall be applied at the same rate for each Franchisee Year without any allowance for deviation up or down from the baseline.
- 6A.6 The Franchisee shall use all reasonable endeavours to ensure that the manner of conduct of the Ticketless Travel Surveys by or on behalf of the Franchisee and the manner of its provision of services measured by the Ticketless Travel Surveys are in accordance with the Ticketless Travel Survey Methodology and not such as to distort the overall representative nature of the reference period as a benchmark of performance in relation to ticketless travel.

- 6A.7 The Franchisee may include in narrative form in the TT Benchmarking Report any material circumstances in relation to the TT Reference Period or the conduct of any of the surveys which it considers may materially affect the representative nature of the TT Reference Period results, together with proposals for correcting those results to provide a more accurate benchmark.
- 6A.8 Following provision of the TT Benchmarking Report, the Parties shall seek to agree the Ticketless Travel Benchmarks and the Annual Ticketless Travel Benchmarks. The Franchisee shall provide such further information in relation to the TT Benchmarking Report as the Secretary of State may reasonably request. In the absence of agreement of the Ticketless Travel Benchmarks and the Annual Ticketless Travel Benchmarks within 30 days of submission of the TT Benchmarking Report (or such longer period as the Parties may agree), the Secretary of State may reasonably determine the level of any of the benchmarks not then agreed, having regard to the results of the Ticketless Travel Surveys in the TT Reference Period and the specification for the benchmarks in paragraph 6A.5.
- 6A.9 Following the agreement or determination of the Ticketless Travel Benchmarks and the Annual Ticketless Travel Benchmarks under paragraph 6A.8, each of the Tables in Appendix 2 to this Schedule shall be completed with the relevant details.

6. Ticketless Travel Payments

6.1 Ticketless Travel Survey Periods Calculations

(a) Ticketless Travel Survey Periods

At the end of each Ticketless Travel Survey Period the Secretary of State shall use the Ticketless Travel Rate for such Ticketless Travel Survey Period to calculate the Franchisee's performance against the relevant Ticketless Travel Benchmark in accordance with the following formula:

$$[TT \text{ Deemed}] = \frac{A + B}{2}$$

where:

- TT Deemed** is the Franchisee's deemed performance against the relevant Ticketless Travel Benchmark;
- 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.

6.2 Consequences of Poor Performance

- (a) Without limiting paragraph 6.3, if for any Ticketless Travel Survey Period the TT Deemed as calculated pursuant to paragraph 6.1 above is:

- (i) more than (that is, **worse than**) the relevant Target Ticketless Travel Benchmark report that fact to the Secretary of State together with the Franchisee's assessment of the reasons for any shortfall from the Target Ticketless Travel Benchmark;
 - (ii) at least 0.2% more than (that is, is **worse than**) the relevant Target Ticketless Travel Benchmark the Franchisee shall produce a plan intended to ensure that the Ticketless Travel Rates will be equal to or below (that is, **better than**) the Target Ticketless Travel Benchmark ("**TT Action Plan**"); and
- (b) The Franchisee shall (i) produce, (ii) obtain the Secretary of State's approval of, and (iii) commence the implementation of the TT Action Plan within three (3) months after the TT Deemed is calculated as being at least 0.2% more than (that is, is **worse than**) the relevant Target Ticketless Travel Benchmark.
- (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 Target Ticketless Travel Benchmark;
 - (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;
 - (iv) how performance of the action is to be measured.

The Franchisee shall, except to the extent otherwise agreed by the Secretary of State in advance, use all reasonable endeavours to implement each TT Action Plan in accordance with its terms.

It is acknowledged by the Franchisee that the approval or lack of approval by the Secretary of State of each TT Action Plan as contemplated in this paragraph shall not relieve the Franchisee of its obligations in relation to this paragraph 6 or any other provisions of the Franchise Agreement.

6.3 Ticketless Travel Payment Adjustment

- (a) At the end of each Performance Calculation Year the Secretary of State shall use the Ticketless Travel Rates for that Performance Calculation Year to calculate the Franchisee's performance against the Annual Ticketless Travel Benchmark in accordance with the following formula:

$$ACTUAL = \frac{\sum A}{Y}$$

where:

ACTUAL	is the average of the Ticketless Travel Rates for each of the Ticketless Travel Survey Periods in that Performance Calculation Year; and
ΣA	is the sum of the values of the Ticketless Travel Rates for the Ticketless Travel Survey Periods in that Performance Calculation Year; and
Y	is the number of Ticketless Travel Survey Periods in that Performance Calculation Year;

- (b) If the value of ACTUAL for a Performance Calculation Year as calculated pursuant to paragraph 6.3(a) is:
- (i) more than (that is, **worse than**) the Annual Target Ticketless Travel Benchmark for that Performance Calculation Year but less than (that is, better than) the Annual Floor Ticketless Travel Benchmark for that Performance Calculation Year then the Ticketless Travel Payment Adjustment payable by the Franchisee to the Secretary of State shall be an amount calculated as follows, noting that any such amount shall be a negative number which represents a payment by the Franchisee to the Secretary of State:

$$(\text{TARGET} - \text{ACTUAL}) \times 100 \times \text{TTPY}$$

where:

ACTUAL has the meaning given to it in paragraph 6.3(a);

TARGET is the Annual Target Ticketless Travel Benchmark for that Performance Calculation Year; and

TTPY is:

$$TTP \times RPI \times TTSPn/2$$

where:

TTP is the amount that is equal to the amount specified in the table in Part 3 of Appendix 2 to this Schedule 6.3;

RPI has the meaning given to it in Appendix 1 to Schedule 8.1 (*Franchise Payments*) of the Franchise Agreement; and

TTSP_n is the number of full Ticketless Travel Survey Periods in that Performance Calculation Year.

- (ii) more than (that is, is **worse than**) the Annual Floor Ticketless Travel Benchmark for that Performance Calculation Year then the Ticketless Travel Payment Adjustment payable by the Franchisee to the Secretary of State shall be an amount calculated as follows, noting that any such amount shall be a negative number which represents a payment by the Franchisee to the Secretary of State:

(TARGET – FLOOR) x 100 x TTPY

where:

FLOOR is the Annual Floor Ticketless Travel Benchmark for that Performance Calculation Year;

TARGET is the Annual Target Ticketless Travel Benchmark for that Performance Calculation Year; and

TTPY is:

$$TTP \times RPI \times TTSP_n / 2$$

where:

TTP is the amount that is equal to the amount specified in the table in Part 3 of Appendix 2 to this Schedule 6.3;

RPI has the meaning given to it in Appendix 1 to Schedule 8.1 (*Franchise Payments*) of the Franchise Agreement; and

TTSP_n is the number of full Ticketless Travel Survey Periods in that Performance Calculation Year.

- (c) Any amount payable by the Franchisee to the Secretary of State pursuant to paragraph 6.3(b)(i) or paragraph 6.3(b)(ii) shall (subject to paragraph 6.3(d)) be paid by way of adjustment to Franchise Payments payable on the next Payment Date falling no less than seven (7) days after the date on which the Secretary of State notifies the Franchisee in writing of his determination of the sum that is payable in respect of the Performance Calculation Year.
- (d) Any Ticketless Travel Payment Adjustment which is payable:
- (i) in respect of the Final Franchisee Year; and
 - (ii) has not been made by way of adjustment to a Franchise Payment during the Franchise Period,

shall be determined in accordance with paragraph 6.3 above, but shall be paid within thirty (30) days of the Secretary of State giving written notice to the Franchisee of the amount of such Ticketless Travel Payment Adjustment.

- 6.3A If a Performance Calculation Year does not include one (1) or more full Ticketless Travel Survey Periods, then no Ticketless Travel Payment Adjustment shall be payable.
- 6.3B This paragraph 6.3 is subject to paragraph 9 (*Capping of Franchisee's liability in respect of the Incentive Regimes*) of Schedule 8.1 (Franchise Payments).

6.4 **Calculations**

For the purposes of the calculations referred to in paragraphs 6.1 and 6.3, the Ticketless Travel Benchmarks and Ticketless Travel Rate shall be specified as an absolute number not as a percentage and rounded to four decimal places, with the mid-point rounded up (for example 2.341% is rounded to 0.0234, 2.345% or 2.346% are rounded to 0.0235).

7. **Operational Performance**

- 7.1 Following the end of each Franchisee Year the Secretary of State shall, in addition to calculating any performance deduction payment payable in respect of the Annual Benchmarks in accordance with Schedule 7.1 (*Operational Performance*) using the values set out in the tables in the appendices to the same, separately calculate a CIM Performance Sum in accordance with the formula for calculating the relevant performance deduction payment in respect of the Annual Benchmarks as set out in paragraph 22 of Schedule 7.1 (*Operational Performance*) respectively, except that:
- (a) the value of **PDP_{CCIM}** in the table at Part 1 of Appendix 3 to this Schedule 6.3 shall be used in place of the value of **PDP_c** in the table at Part 2B of Appendix 1 to Schedule 7.1 (*Operational Performance*);

- (b) the value of **PDP_{MDCIM}** in the table at Part 2 of Appendix 3 to this Schedule 6.3 shall be used in place of the value of **PDP_{MD}** in the table at Part 2B of Appendix 2 to Schedule 7.1 (*Operational Performance*);
- (c) the values of **BPR_{SFCIM}** and **IPR_{SFCIM}** in the table at Part 3 of Appendix 3 to this Schedule 6.3 shall be used in place of the values of **BPR_{SF}** and **IPR_{SF}** in the table at Part 2B of Appendix 3 to Schedule 7.1 (*Operational Performance*),

together (a) to (c) being the "**CIM Performance Sum**". The CIM Performance Sum only being calculated and payable in accordance with paragraph 7.2 in circumstances where a performance deduction payment would be payable by the Franchisee to the Secretary of State under Schedule 7.1 (*Operational Performance*) it is acknowledged that a CIM Performance Sum is (in accordance with the principle set out at paragraph 3.1(b)) only capable of being a payment from the Franchisee to the Secretary of State.

7.2 In the event that, in respect of the relevant Franchisee Year, Net Revenue Support or Net Revenue Share is payable pursuant to Schedule 8.6 (*Forecast Revenue Mechanism*) (but not otherwise) then (subject to paragraph 7.3) the CIM Performance Sum shall be paid by the Franchisee to the Secretary of State by way of adjustment to Franchise Payments payable on the next Payment Date falling no less than seven (7) days after the determination of whether there is a Net Revenue Support or Net Revenue Share (as applicable).

7.3 Any CIM Performance Sum which is payable:

- (a) in respect of the Final Franchisee Year; and
- (b) has not been made not been made by way of adjustment to a Franchise Payment during the Franchise Period,

shall be determined in accordance with paragraph 7.1 above, but shall be paid within thirty (30) days of the Secretary of State giving written notice to the Franchisee of the amount of such CIM Performance Sum.

7.4

- (a) Any obligation of the Franchisee to make payments under this paragraph 7 shall be separate from and additional to any obligations arising under Schedule 7.1 for the Franchisee to make payments to the Secretary of State or the Secretary of State to make payments to the Franchisee or for the Franchisee to expend specified sums on measures to improve operational performance.
- (b) No account shall be taken of HEx Services for the purposes of paragraph 7.

8. **Changes in Numbers and Total Cost of Employees**

8.1 The Franchisee shall use all reasonable endeavours to ensure that the number of Specified Franchise Employees (calculated on a "full time equivalent basis") whose role wholly or mainly relates to each of the following categories:

- (i) ticket inspection and other revenue protection activities (excluding staffing of station ticket gatelines);

- (ii) the staffing of station ticket gatelines; and
 - (iii) the retailing of tickets at ticket offices,
- (each of which being a "**Specified Employment Category**"),

is not decreased by more than one per cent (1%) in any Franchisee Year by reference to the target numbers shown in respect of each Specified Employment Category in the table at Appendix 4 (such amounts being assessed on a mean full time equivalent basis by reference to the number of Specified Franchise Employees employed at the end of each Reporting Period).

8.2 The Franchisee shall provide to the Secretary of State a report within fourteen (14) Weekdays of the end of each Reporting Period which sets out:

- (a) the numbers of Specified Franchise Employees engaged in each Specified Employment Category on the last day of such Reporting Period (calculated on a full time equivalent basis); and
- (b) in outline, the Franchisee's plan for recruitment to fill any vacancies where the vacant role wholly or partially relates to any Specified Employment Category.

8.3

(a) The table at Appendix 4 shows in relation to each Specified Employment Category on a whole Franchisee Year, full time equivalent basis the number of Specified Franchise Employees planned to be engaged in such Franchisee Year and the mean aggregate employment cost of such Specified Franchise Employees by reference to the assumptions contained in the Record of Assumptions. Within fifteen (15) Weekdays of the end of each Franchisee Year the Franchisee shall provide a report to the Secretary of State showing in respect of each Specified Employment Category:

- (i) whether over the Franchisee Year the number of Specified Franchise Employees engaged in each Specified Employment Category is less than the planned level assessed on a mean full time equivalent basis by reference to the number of Specified Franchise Employees employed at the end of each Reporting Period of the Franchisee Year and the total number of Specified Franchise Employees who constitute any shortfall from the planned level (the "**Specified Franchise Employee Shortfall Number**")
- (ii) the actual employment cost amount of all Specified Franchise Employees engaged in each Specified Employment Category during the Franchisee Year in question (calculated by aggregating the Total SFE Cost of each relevant Specified Franchise Employee) and whether this is less than the assumed such cost shown in the Table at Appendix 4 and, if so, specify the amount by which it is less than such assumed cost (a "**Specified Employment Category Cost Saving**").

(b) In relation to any Specified Employment Category the report shall also:

- (i) in circumstances where there is a Specified Franchise Employee Shortfall Number calculate a sum which is the Specified Franchise Employee Shortfall Number multiplied by the deemed cost of each Specified Franchise Employee shown in the Table at Appendix 4 (such amount in the Table to be indexed in the same way that in the same way that the component of Annual Franchise Payments "VCRPI" is indexed at Appendix 1 to Schedule 8.1 (Annual Franchise Payments) (the "**Deemed Franchisee Cost Saving**");
- (ii) in circumstances where there is a Specified Employment Category Cost Saving calculate a sum which is the deemed cost of all relevant Specified Franchise Employees shown in the Table at Appendix 4 (such amount in the Table to be indexed in the same way that in the same way that the component of Annual Franchise Payments "VCRPI" is indexed at Appendix 1 to Schedule 8.1 (Annual Franchise Payments) minus aggregate Total SFE Cost of all Specified Franchise Employees engaged in that Specified Employment Category (the "**Actual Franchisee Cost Saving**").

The Franchisee shall provide such additional information as the Secretary of State may reasonably require for the purposes of verifying the amounts shown in the report and if there is any dispute that cannot be resolved within fifteen (15) Weekdays in relation to the Deemed Franchisee Cost Saving and Actual Franchisee Cost Saving and related matters he shall be entitled to reasonably determine it.

- (c) The Franchisee shall pay to the Secretary of State the greater of the Deemed Franchisee Cost Saving and the Actual Franchisee Cost Saving. The relevant payment shall be made by way of adjustment to Franchise Payments payable on the next Payment Date falling at least ten (10) Weekdays after the last such relevant amount has been agreed or reasonably determined provided that if there is no further Franchise Payment due at such date the Franchisee shall pay the relevant amount to the Secretary of State within (30) Weekdays after the last such relevant amount has been agreed or reasonably determined.

8.4

- (a) The Franchisee shall be entitled to request a variation to the number of full time equivalent Specified Franchise Employees in one or more Specified Employment Categories as set out in Appendix 4 (a "**Specified Employment Category Table Variation**") provided that such proposed Specified Employment Category Table Variation meets each of the conditions specified in paragraph 8.4(b).
- (b) The conditions referred to in paragraph 8.4(a) (the "**Relevant Conditions**") are that:
 - (i) the aggregate number of full time equivalent Specified Franchise Employees across all three (3) Specified Employment Categories set out in Appendix 4 will not be reduced;
 - (ii) for any Specified Employment Category where the number of full time equivalent Specified Franchise Employees is proposed to be varied, the total mean employment cost set out in Appendix 4 for

that Specified Employment Category will be amended on a pro rata basis; and

- (iii) the aggregate total mean employment cost across all three (3) Specified Employment Categories set out in Appendix 4 will not be reduced.
- (c) If a Specified Employment Category Table Variation proposed by the Franchisee pursuant to paragraph 8.4(a) meets each of the Relevant Conditions then:
 - (i) the Secretary of State shall act reasonably in considering such proposed Specified Employment Category Table Variation; and
 - (ii) if the Secretary of State (acting reasonably) provides his written consent to the proposed Specified Employment Category Table Variation in the terms proposed by the Franchisee pursuant to paragraph 8.4(a), no Change shall occur.
- (d) Paragraphs 8.4(a), (b) and (c) shall be without prejudice to the Franchisee's ability to seek the agreement of the Secretary of State to a Variation pursuant to paragraph 1.1(b) of Schedule 9.3 (*Variations to the Franchise Agreement and Incentivising Beneficial Changes*) in circumstances where the Relevant Conditions are not met by any proposed Specified Employment Category Table Variation.

9. Percentage Allocations

- 9.1 The Franchisee shall monitor on an on-going basis the Percentage Allocations in relation to Rail Products.
- 9.2 The Franchisee shall ensure that it manages and requests changes (including by disputing Percentage Allocations under the Ticketing and Settlement Agreement) to the Percentage Allocations in relation to Rail Products in such manner as would reasonably be expected from a skilled and experienced Train Operator bearing farebox revenue risk in relation to its franchise and seeking to maximise its profit consistent with its other obligations under its franchise agreement.
- 9.3 Except to the extent that the Secretary of State may consent from time to time the Franchisee shall not take any action or step which may result in its Percentage Allocation in respect of any Rail Product being reduced.
- 9.4 The Franchisee shall notify the Secretary of State before taking any such action or step and upon becoming aware of any other person proposing to take any action or step which may have the same effect. The Franchisee shall take such action as the Secretary of State may reasonably request in order to prevent any such reduction, including submitting any dispute to any relevant dispute resolution procedures. If the Secretary of State does not respond to the Franchisee's notification within one (1) month of the date of receipt of such notification, the Franchisee shall be entitled to take the action or step so notified.

10. The Bid Fares Strategy

10.1 Subject to paragraph 10.2 and paragraph 11, for each Fares Setting Round during the Franchise Term, the Franchisee shall Create such Fares as are specified in the Bid Fares Strategy.

10.2 The Franchisee shall, in advance of every Fares Setting Round during the Franchise Term review:

- (a) whether changes are necessary to the Bid Fares Strategy or the price or terms of any Fare specified in the Bid Fares Strategy; and
- (b) if so, what the changes to the Bid Fares Strategy or any such Fare should be,

and in doing so the Franchisee shall act in a reasonable and proper manner and to a Good Operator Standard.

11. Changes to the Bid Fares Strategy

11.1 By no later than week 4 of each Fares Setting Round, the Franchisee shall provide to the Secretary of State:

- (a) details (including supporting documentation) of any Fare specified in the Bid Fares Strategy where, in the reasonable opinion of the Franchisee, the Creation of such Fare would require the Franchisee to act other than to a Good Operator Standard, together with:
 - (i) a detailed explanation of the reasons for the Franchisee's opinion pursuant to paragraph 11.1(a) and, if applicable, an explanation of the changes that would need to be made to the Bid Fares Strategy to ensure that the Creation of any Fares specified in such amended Bid Fares Strategy in any subsequent Fares Setting Rounds would not require the Franchisee to act other than to a Good Operator Standard;
 - (ii) the details of such alternative Fare (including the Price or Child Price (as the case may be) and the terms of such alternative Fare) that it wishes to Create in place of the relevant Fare contained in the Bid Fares Strategy (plus supporting documentation to evidence that Creation of such Fare would not require the Franchisee to act other than to a Good Operator Standard) ("**Alternative Fare**"); and
 - (iii) written confirmation from a statutory director of the Franchisee which confirms that Creation of the Alternative Fare would not require the Franchisee to act other than to a Good Operator Standard.

11.2 On receipt of the information required by paragraph 11.1, the Secretary of State may, by no later than week 9 of each Fares Setting Round, by notice to the Franchisee:

- (a) confirm the Secretary of State's agreement to the modification of the Bid Fares Strategy as proposed by the Franchisee pursuant to paragraph 11.1 and the Bid Fares Strategy as so modified shall apply indefinitely (in

accordance with the terms of this paragraph 11.2) or for such alternative period as the Secretary of State may specify; or

- (b) decline to agree the modification, in which case the provisions of paragraph 11.3 shall apply.

If the Secretary of State does not notify the Franchisee within the time specified, the Secretary of State shall be deemed to have declined to agree.

11.3 Where the Secretary of State declines (or is deemed to have declined) to agree a modification to the Bid Fares Strategy the Franchisee may refer the question on whether:

- (a) the Creation of the relevant Fare as specified in the Bid Fares Strategy would require the Franchisee to act other than to a Good Operator Standard; and/or
- (b) the Creation of the proposed Alternative Fare and associated modification of the Bid Fares Strategy would require the Franchisee to act other than to a Good Operator Standard,

in each case, to an independent expert at its own expense. Provided that the expert's opinion is received within thirty (30) Weekdays after the Franchisee received notice of the Secretary of State's decision in paragraph 11.2(b), the Secretary of State shall be required to take such expert's opinion into consideration when determining whether to uphold or change the Secretary of State's decision to decline to agree the modification. Until the determination of any such dispute the Franchisee shall Create such relevant Fare(s) as specified in the Bid Fares Strategy. Following determination of any such dispute the Secretary of State and the Franchisee shall take such steps as are required to give effect to such determination (including, if applicable, by making the required modification to the Bid Fares Strategy and by the Franchisee Creating the Alternative Fare at the next available opportunity and, in any event, at the next Fares Setting Round).

12. **Industrial Action**

12.1 During the Franchise Term the occurrence of Industrial Action shall, at the sole discretion of the Secretary of State constitute a Qualifying Change where, and to the extent that, the Secretary of State reasonably determines that the Franchisee has experienced (or would otherwise in the absence of a Change have experienced) an increase in profit before tax or a reduction in losses before tax that is attributable to the Industrial Action (including as a consequence of any adjustments to Franchise Payments pursuant to Schedule 8.6 (*Forecast Revenue Mechanism*) being different from what they would have been if the Industrial Action had not occurred).

12.2 When making the determination in paragraph 12.1 the Secretary of State shall be entitled to disregard any increase in costs or reduction in revenue which in his reasonable opinion was incurred or brought about by the Franchisee primarily for the purpose of circumventing the operation of paragraph 12.1.

13. **Cleaning and Presentation Contracts.**

13.1 The Franchisee shall (subject to paragraphs 13.2 and 13.3) throughout the Franchise Term be a party to one or more contracts for the cleaning of Stations and the presentation of rolling stock (other than the Sets (as defined in Schedule 6.7))

forming the Passenger Services ("**Cleaning and Presentation Contracts**") which contain output specifications, performance regimes and contractual enforcement rights materially the same or better than those contained in equivalent contracts applicable in the last twelve months of the franchise term of the Previous Franchise Agreement and a statutory director of the Franchisee shall certify that the Franchisee is a party to Cleaning and Presentation Contract(s) which comply with this paragraph 13.1 on or before the Start Date.

13.2 During the Franchise Term the Franchisee:

- (a) shall not without the prior consent of the Secretary of State make any change to a Cleaning and Presentation Contract which (either by itself or taken together with other changes to such Cleaning and Presentation Contract) has the effect of materially de-specifying or otherwise reducing the output specification required to be delivered under such Cleaning and Presentation Contract; and
- (b) shall (without prejudice to the generality of paragraph 3.1) take all such steps as a competent and efficient Train Operator bearing revenue risk in relation to its franchise would take (and acting at all times in a manner consistent with the Franchisee's obligations under clause 6 of this Agreement) to enforce its rights under any Cleaning and Presentation Contract in circumstances where the contractual counterparty of the Franchisee is materially failing to deliver the output specification provided for under such Cleaning and Presentation Contract.

13.3 If any Cleaning and Presentation Contract terminates for any reason during the Franchise Term the Franchisee shall replace it with one or more replacement contracts with materially the same or better output specification(s), performance regime(s) and contractual enforcement rights. A statutory director of the Franchisee shall certify compliance of the Franchisee with this paragraph 13.3 on each occasion that a Cleaning and Presentation Contract terminates during the Franchise Term.

14. **Additions to the Annual Business Plan**

14.1 The Franchisee shall include, in each Annual Business Plan delivered to the Secretary of State in accordance with paragraph 10.2 (*Annual Business Plans*) of Schedule 11.2 (*Management Information*):

- (a) proposals for measures that the Franchisee 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 Franchisee had forecast; and
- (b) notwithstanding the Franchisee's obligations pursuant to paragraph 10.2 (*Bid Fares Strategy*) of this Schedule 6.3, proposals for any changes to the Bid Fares Strategy or the price or terms of any Fare specified in the same that the Franchisee (acting in a reasonable and proper manner and to a Good Operator Standard) considers necessary.

14.2 Within one (1) month of the provision of the Annual Business Plan by the Franchisee to the Secretary of State in accordance with paragraph 10.2 of Schedule 11.2 (*Management Information*), the Secretary of State shall raise in writing to the Franchisee any reasonable objections regarding the content of such Annual Business Plan.

- 14.3 Within one (1) month of the receipt of any objections pursuant to paragraph 14.2 of this Schedule 6.3 the Franchisee shall:
 - (a) amend the Annual Business Plan to address such objections; or
 - (b) provide reasons in writing to the Secretary of State as to why the Franchisee reasonably considers that no amendment to the Annual Business Plan is required.

- 15. **NOT USED**

- 16. **NOT USED**

- 17. **NOT USED**

- 18. **NOT USED**

Withdrawn

Appendix 1

Minimum Marketing Spend

Column 1	Column 2	Column 3
Franchisee Year	Minimum Marketing Spend	Minimum Marketing Team Spend
Year 1	[REDACTED ⁷³]	[REDACTED ⁷⁴]
Year 2	[REDACTED]	[REDACTED]
Year 3	[REDACTED]	[REDACTED]
Up to 13 Reporting Periods Extension		
Year 4 (extension)	[REDACTED]	[REDACTED]

Appendix 2

Ticketless Travel Payments

Part 1 - Ticketless Travel Benchmark

Column 1	Column 2	Column 3	Column 4
Performance Calculation Year	Ticketless Travel Survey Periods	Target Ticketless Travel Benchmark (%)*	Floor Ticketless Travel Benchmark (%)*
Year 1	2020/21 P01 to 2020/21 P07	[]	[]
Year 1	2020/21 P08 to 2020/21 P13	[]	[]
Year 2	2021/22 P01 to 2021/22 P07	[]	[]
Year 2	2021/22 P08 to 2021/22 P13	[]	[]
Year 3	2022/23 P01 to 2022/23 P07	[]	[]
Year 3	2022/23 P08 to 2022/23 P13	[]	[]
Up to 13 Reporting Periods Extension			

⁷³ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁷⁴ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

Column 1	Column 2	Column 3	Column 4
Performance Calculation Year	Ticketless Travel Survey Periods	Target Ticketless Travel Benchmark (%)*	Floor Ticketless Travel Benchmark (%)*
Year 4 (extension)	2023/24 P01 to 2023/24 P07	[]	[]
Year 4 (extension)	2023/24 P08 to 2023/24 P13	[]	[]

Part 2 - Annual Ticketless Travel Benchmark

Column 1	Column 2	Column 3
Performance Calculation Year	Annual Target Ticketless Travel Benchmark (%)*	Annual Floor Ticketless Travel Benchmark (%)*
Year 1	[]	[]
Year 2	[]	[]
Year 3	[]	[]
Up to 13 Reporting Periods Extension		
Year 4 (extension)	[]	[]

Part 3 - Payment Table

Definitions	Amount (£)
TTP	[REDACTED ⁷⁵]

Part 4 – Breach Ticketless Travel Benchmarks

Column 1	Column 2	Column 3
Performance Calculation Year	Ticketless Travel Survey Periods	Breach Ticketless Travel Benchmark (%)*
Year 1	2020/21 P01 to 2020/21 P07	[]

⁷⁵ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

Column 1	Column 2	Column 3
Performance Calculation Year	Ticketless Travel Survey Periods	Breach Ticketless Travel Benchmark (%)*
Year 1	2020/21 P08 to 2020/21 P13	[]
Year 2	2021/22 P01 to 2021/22 P07	[]
Year 2	2021/22 P08 to 2021/22 P13	[]
Year 3	2022/23 P01 to 2022/23 P07	[]
Year 3	2022/23 P08 to 2022/23 P13	[]
Up to 13 Reporting Periods Extension		
Year 4 (extension)	2023/24 P01 to 2023/24 P07	[]
Year 4 (extension)	2023/24 P08 to 2023/24 P13	[]

* Line items shown as "[]" to be populated with the amounts that are agreed or determined pursuant to paragraph 6A.8 of this Schedule 6.3.

Withdrawn

Appendix 3

CIM Performance Sum Tables

Part 1

Column 1	Column 2			
Payment	Amount (£)			
	Core		Extension	
	Year 1	Year 2	Year 3	Year 4
PDP_{CCIM}	[REDACTED ⁷⁶]	[REDACTED]	[REDACTED]	[REDACTED]

Part 2

Column 1	Column 2
Payment	Amount (£)
PDP_{MDCIM}	[REDACTED ⁷⁷]

Part 3

Column 1	Column 2
Payment	Amount (£)
BPR_{sFCIM}	[REDACTED ⁷⁸]
IPR_{sFCIM}	[REDACTED ⁷⁹]

⁷⁶ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁷⁷ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁷⁸ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁷⁹ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

Appendix 4

Specified Employment Category Table

Specified Employment Category		Revenue protection inspectors	Gateline staff	Ticket retail staff at ticket offices (<i>Note 1</i>)
Paragraph reference (in Schedule 6.3)		Paragraph 8.1(i)	Paragraph 8.1(ii)	Paragraph 8.1(iii)
Number of Specified Franchise Employees (FTE, average across Franchisee Year)	2020-21	[REDACTED ⁸⁰]	[REDACTED ⁸¹]	[REDACTED ⁸²]
	2021-22	[REDACTED]	[REDACTED]	[REDACTED]
	2022-23	[REDACTED]	[REDACTED]	[REDACTED]
	2023-24	[REDACTED]	[REDACTED]	[REDACTED]
Total SFE Cost (£ thousands, 2020-21 prices)	2020-21	[REDACTED]	[REDACTED]	[REDACTED]
	2021-22	[REDACTED]	[REDACTED]	[REDACTED]
	2022-23	[REDACTED]	[REDACTED]	[REDACTED]
	2023-24	[REDACTED]	[REDACTED]	[REDACTED]

Note 1: excludes staff categorised by the Franchisee and in the Record of Assumptions as 'ticket office' staff but whose primary role does not involve the retailing of tickets.

⁸⁰ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁸¹ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁸² 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

Schedule 6.4**Alliances****1. Co-operation with Network Rail****1.1 General Co-operation**

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

1.2 Sharing of information with Network Rail

The Franchisee 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. Compliance with the Alliance Agreement

2.1 The Franchisee shall enter into the Alliance Agreement with Network Rail (in the agreed terms marked AA or as otherwise approved by the Secretary of State) by the Start Date.

2.2 The Franchisee shall comply with the terms of the Alliance Agreement (and any Joint Task Agreement developed pursuant to the Alliance Agreement) for the duration of the Franchise Period, save where the Alliance Agreement is terminated by Network Rail or by the Franchisee in accordance with the provisions of this Schedule 6.4.

2.3 The Franchisee shall not amend the Alliance Agreement without the approval of the Secretary of State (such approval not to be unreasonably withheld).

3. Termination of the Alliance Agreement

3.1 The Franchisee shall not terminate the Alliance Agreement without the consent of the Secretary of State (such approval not to be unreasonably withheld).

3.2 The Franchisee shall notify the Secretary of State if:

(a) it receives a termination notice from Network Rail under the Alliance Agreement within one (1) Weekday of the date of receipt of such termination notice;

(b) Network Rail takes any steps to terminate the Alliance Agreement or warned in writing to terminate the Alliance Agreement within one (1) Weekday of becoming aware such steps have been taken or receipt of any notice threatening to terminate the Alliance Agreement;

- (c) the Franchisee considers (acting reasonably) that it may have taken an action or omitted to take an action which could constitute a material or persistent breach of the Alliance Agreement.

4. **Reporting on the Alliance Agreement**

4.1 The Franchisee shall report to the Secretary of State in writing each quarter on activities undertaken pursuant to the Alliance Agreement including:

- (a) progress on the Joint Tasks;
- (b) reasons for any delay or obstacles to implementing the Joint Tasks and actions being taken to mitigate such delay or obstacle, where appropriate;
- (c) a report on performance against any key performance indicators agreed between Network Rail and the Franchisee to monitor the performance of the Alliance Agreement,

and each report shall include written confirmation from Network Rail that it agrees with the content of such report.

Withdrawn

Schedule 6.5

NOT USED

Withdrawn

Schedule 6.6

NOT USED

Withdrawn

Schedule 6.7

The IEP Provisions**1. Definitions and Interpretation**

- 1.1 In this Schedule 6.7, except where the context otherwise requires words and expressions defined in the Train Availability and Reliability Agreement shall have the same meaning when used herein.
- 1.2 In this Schedule 6.7, except where the context otherwise requires, the following words and expressions shall have the following meanings:

"Additional Obligations"	has the meaning given to it in paragraph 2.9 of this Schedule 6.7;
"Ancillary Variation"	means any merely technical or administrative change to the MARA and/or Train Availability and Reliability Agreement that does not have any material adverse effect on the costs, revenues or overall risk profile of the Franchisee;
"Compliance Audit"	has the meaning given to it in paragraph 3.4(d) of this Schedule 6.7;
"Dispute Resolution Agreement"	means the dispute resolution agreement (in the form set out in Schedule 14 of the Train Availability and Reliability Agreement) to be acceded to by the Franchisee;
"East Coast Operator"	means London North Eastern Railway Company Limited (Company Number 04659712) or any successor operator from time to time in relation to some or to all of the railway passenger services operated by it;
"East Coast Sets"	has the meaning given to it in paragraph 2.4 of this Schedule 6.7;
"Fleet"	means the fleet of Sets described in Appendix C to Part A of Schedule 2 of the MARA;
"Full Set"	means any Set consisting of more than seven Vehicles but fewer than or equal to twelve Vehicles to be delivered by the TSP pursuant to the MARA and identified in Appendix C to Part A of Schedule 2 of the MARA, including any

	replacement ordered pursuant to Part I of Schedule 6 of the MARA;
"Great Western IEP Network"	means the sections of the IEP Network set out in the table in Part 1 of Appendix F of Schedule 1 of the MARA;
"Half Set"	means any Set consisting of fewer than eight Vehicles to be delivered by the TSP pursuant to the MARA and identified in Appendix C to Part A of Schedule 2 of the MARA, including any replacement ordered pursuant to Part I of Schedule 6 of the MARA;
"IEP Network"	means the routes specified in Appendix F to Schedule 1 of the MARA;
"MARA Variation"	has the meaning given to the term "Variation" under the MARA;
"Relevant Operator"	has the meaning given to such term in the MARA;
"Relevant Operator Direct Agreement" or "RODA"	means the agreement in the agreed terms marked RODA ;
"Set"	means a Half Set or a Full Set;
"Set Retention Amount"	has the meaning given to it in the MARA (and references to " Set Retention Amounts " shall be construed accordingly); and
"Unpaid TARA Payments"	has the meaning given to it in paragraph 4.2 of this Schedule 6.7.

2. The MARA Provisions

- 2.1 By an agreement dated 24 July 2012 (as amended from time to time including by a deed of amendment and restatement dated 4 October 2017) (the "**MARA**") the Secretary of State appointed the TSP to design, build, own and maintain the Sets to be operated by the Franchisee on the Great Western IEP Network for the purposes of providing certain of the Passenger Services. The TSP shall make the Sets available to the Franchisee in accordance with the terms of the Train Availability and Reliability Agreement.
- 2.2 The Franchisee acknowledges that the MARA provides for certain rights which are expressed to be exercised, and certain obligations which are expressed to be performed, by the Franchisee in its capacity as Relevant Operator. Accordingly the Franchisee shall:
- (a) exercise such rights and perform such obligations promptly with all reasonable skill, care, diligence and safety, in accordance with good industry practice and in compliance with Applicable Laws and Standards;

- (b) where the Secretary of State has agreed under the terms of the MARA to procure that certain steps are taken or obligations performed by the Relevant Operator, take those steps and perform those obligations promptly upon request by the Secretary of State; and
- (c) co-operate with the Secretary of State and the TSP and act reasonably and in good faith in and about the exercise of such rights and the performance of such obligations.

The performance by the Franchisee of its obligations under this paragraph 2 shall not amount to a Change.

2.3 The Franchisee acknowledges that the relationship between the Secretary of State and the Relevant Operator under the MARA is not one of principal and agent and that nothing in the MARA nor any other Project Document (as defined in the MARA) shall create, or be construed as creating, a relationship of principal and agent between the Secretary of State and the Franchisee in its capacity as Relevant Operator respectively.

2.4 **Co-operation with the East Coast Operator**

It is acknowledged by the Franchisee that the design for the Sets will also be used for the purposes of the supply and construction of new fleet of high speed trains for operation by the East Coast Operator (the "**East Coast Sets**"). The Franchisee hereby:

- (a) confirms its agreement to any aspect of the design of the Sets that have been approved or agreed by the Secretary of State or any person acting on his behalf prior to the date of the Franchise Agreement; and
- (b) agrees to co-operate with the East Coast Operator in the carrying out of its obligations and the exercise of its rights as provided for under the master availability and reliability agreement entered into between the Secretary of State and the TSP in relation to the East Coast Sets.

2.5 **Co-operation with Future Changes to the Sets**

- (a) The Franchisee shall co-operate in good faith with the Secretary of State, the TSP and other relevant third parties in relation to the assessment, development and, subject to paragraph 3.2(a) where applicable, the implementation of any variation to the MARA to give effect to future changes to the Sets including:
 - (i) any proposed modifications to the Sets whether or not required by law (including any modification to reduce the traction power output delivered when the Sets are operating in diesel power mode);
 - (ii) any other engineering changes that arise out of matters identified through the use of the Sets by the Franchisee in the delivery of the Passenger Services.
- (b) For the Purposes of this paragraph 2.5 co-operation in good faith shall include:

- (i) the provision, within such reasonable timescales as the Secretary of State may stipulate, of such information, advice, reports and analysis (including estimate of costs, benefits to be realised and any other impacts of any proposed modifications or other changes to the Sets) as the Secretary of State may reasonably require from time to time;
- (ii) carrying out of such activities that are necessary for the purposes of obtaining such approvals, consents and derogations which as a matter of law or industry standard only an operator of rolling stock may apply carry out or apply for and obtain (including obtaining from Network Rail all documents and information in respect of the Great Western IEP Network as are reasonably required by the TSP); and
- (iii) if relevant, amendment of its Safety Management System (in so far as it relates to the maintenance and operation of the Sets) as required by law or industry standard to allow for the operation of the Sets in passenger service and the maintenance of the Sets and to the extent required, obtain a revised Safety Certificate to reflect the revised Safety Management.

2.6 At the request of the Secretary of State or the TSP (as the case may be) from time to time, the Franchisee shall:

- (a) review and provide comments to the Secretary of State, within such timescales as may be stipulated by the Secretary of State, in respect of any matter (including documents, reports and minutes of meeting) arising under or in connection with the MARA including the matters referred to in paragraph 2.5;
- (b) upon receipt of reasonable notice by the Secretary of State or the TSP attend all meetings arranged by the Secretary of State or the TSP for the discussion of matters connected with the MARA including the matters referred to in paragraph 2.5; and
- (c) provide such materials and information in the possession and control of the Franchisee as the Secretary of State may consider reasonably necessary for the purposes of complying with his obligations or exercising his rights under the MARA or for the purposes set out in paragraph 2.5.

2.7 Indemnity

Subject to paragraph 2.8, the Franchisee shall be responsible for and shall release, indemnify and hold harmless the Secretary of State from and against all losses suffered or incurred by the Secretary of State arising under or in connection with:

- (a) any failure by the Franchisee to comply with the provisions of paragraph 2.2 or, to the extent that the provisions of paragraph 6 continue to apply, the provisions of paragraph 6.3 (as the case may be);

- (b) any claim by the TSP against the Secretary of State under the MARA to the extent that the Secretary of State reasonably determines that such claim is (in whole or in part) attributable to any negligent or improper act or omission by the Franchisee in or about the exercise of its rights or any negligent or improper performance of its obligations and/or those rights expressed to be exercised and obligations expressed to be performed by the Franchisee under the MARA and/or to the extent that the provisions of paragraph 6 continue to apply, the Relevant Operator Direct Agreement.

2.8 Without prejudice to the Secretary of State's right under the Act and Schedule 10 (Remedies, Termination and Expiry), the Franchisee's total liability (whether in contract, tort (including negligence), breach of statutory duty or otherwise) to the Secretary of State under paragraph 2.7 shall in no circumstances exceed [REDACTED⁸³] x RPI. The Secretary of State hereby agrees that if he exercises his rights under:

- (a) Section 57A of the Act to impose a penalty; or
- (b) Section 55 to require that a sum not exceeding 10 percent of turnover is paid by the Franchisee;

in each case, in respect of any contravention by the Franchisee of the provisions of paragraph 2.2, the amount of such penalty or sum (as the case may be) shall be reduced to take account of any amounts already paid by the Franchisee to the Secretary of State under paragraph 2.7 such that the aggregate amount payable by the Franchisee for a breach of paragraph 2.2 whether in contract, tort (including negligence) breach of statutory duty or otherwise and under any of Section 55 or Section 57A (as the case may be) of the Act for any breach of paragraph 2.2 shall not at any time during the Franchise Period exceed [REDACTED⁸⁴] x RPI. For the purposes of this paragraph 2.8 RPI shall have the meaning given to such term in the Appendix 1 to Schedule 8.1(Annual Franchise Payments).

2.9 The Secretary of State shall notify the Franchisee of any amendment to the MARA which has the effect of requiring the Franchisee to perform or incur any liability in respect of any obligations in excess of the obligations assumed by the Franchisee in its capacity as Relevant Operator under the MARA (as at the date of the Franchise Agreement) and, if applicable, under the Relevant Operator Direct Agreement (the "**Additional Obligations**"). At the direction of the Secretary of State, the Franchisee shall make such amendments to the Train Availability and Reliability Agreement (and, where the provisions of paragraph 6 continue to apply, under the Relevant Operator Direct Agreement) as may be required for the purposes of the Franchisee assuming the Additional Obligations. Any such direction by the Secretary of State shall be deemed to be a Change but only to the extent that such assumption of the Additional Obligations would result in the Franchisee incurring additional costs or liabilities (that is, over and above the costs

⁸³ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁸⁴ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

and liabilities it would have incurred had the amendment to the MARA not been made).

2.10 Set Retention Amounts

- (a) The Parties acknowledge and agree that:
- (i) as at the date of this Agreement, the Secretary of State is holding Set Retention Amounts in an account in the name of the Secretary of State in accordance with paragraph 8.2 of Part A of Schedule 2 of the MARA (such Set Retention Amounts held by the Secretary of State together being the "**Aggregate Set Retention Amount**"); and
 - (ii) the Franchisee and the Secretary of State have agreed with the TSP that if any obligation on the Secretary of State to transfer any portion of the Aggregate Set Retention Amount to the TSP is triggered pursuant to paragraph 9.3 of Part A of Schedule 2 of the MARA (and notwithstanding anything to the contrary in such paragraph 9.3 of Part A of Schedule 2 of the MARA) then:
 - (A) the Secretary of State shall transfer the relevant portion of the Aggregate Set Retention Amount to the Franchisee; and
 - (B) the Franchisee shall, following receipt by it of a TARA invoice from the TSP that includes such portion of the Aggregate Set Retention Amount received by the Franchisee pursuant to paragraph 2.10(a)(ii)(A) above, pay an amount equal to such portion of the Aggregate Set Retention Amount to the TSP in accordance with the TARA payment mechanisms set out in Schedule 6 of the TARA.

2.11 Entry into the Relevant IEP Documents

The Franchisee shall on or before the Start Date:

- (a) as directed by the Secretary of State either:
- (i) execute the Train Availability and Reliability Agreement with the TSP in the same form as the train availability and reliability agreement between the Franchisee and the TSP dated 31 January 2014 (as amended), as such agreement exists at the date of execution of the replacement Train Availability and Reliability Agreement; or
 - (ii) execute a deed of amendment to the train availability and reliability agreement between the Franchisee and the TSP dated 31 January 2014 (as amended) extending the term and otherwise amending it as required by the Secretary of State and in such circumstances the Franchisee shall be

responsible for ensuring that all required TSP approvals and consents are obtained; and

- (b) (where paragraph 2.11(a)(i) applies) accede to the Dispute Resolution Agreement by executing the form of the Relevant Operator Deed of Adherence attached to Appendix D of the form of Dispute Resolution Agreement set out in Schedule 13 of the MARA.

3. TARA Provisions

3.1 The Franchisee agrees and undertakes to:

- (a) enforce its rights under the Train Availability and Reliability Agreement;
- (b) observe and comply with all the conditions and obligations which are expressed to apply to it under the Train Availability and Reliability Agreement;
- (c) agree and take all steps which may be required to implement any amendment to the Train Availability and Reliability Agreement as the Secretary of State may direct from time to time (including any amendments consequential upon the implementation of a MARA Variation required by the Secretary of State), within such period as the Secretary of State shall specify;
- (d) take all steps as may be required to terminate the Train Availability and Reliability Agreement in accordance with its terms as the Secretary of State may direct from time to time; and
- (e) except as permitted by Schedule 12 of the Train Availability and Reliability Agreement or as may otherwise be permitted by the Secretary of State, not vary, agree to vary, waive performance of, terminate or in any way deal with or change the terms of the Train Availability and Reliability Agreement without the prior consent of the Secretary of State.

3.2 Subject to paragraph 3.3, it shall be a Qualifying Change if:

- (a) in accordance with a direction of the Secretary of State, the Franchisee implements an amendment to, or terminates, the Train Availability and Reliability Agreement pursuant to paragraphs 3.1(c) or 3.1(d) of this Schedule 6.7;
- (b) the Train Availability and Reliability Agreement automatically terminates on the date of termination of the MARA as contemplated by paragraph 1(b) of Part D of Schedule 10 of the Train Availability and Reliability Agreement; or
- (c) the Franchisee enters into a new Train Availability and Reliability Agreement in the circumstances contemplated by paragraph 1.1(a)(ii) of Appendix A to Part D of Schedule 6 to the MARA,

save where the amendment to the Train Availability and Reliability Agreement was contemplated by the Franchisee prior to the Start Date and is referred to in Schedule 6.1 (Committed Obligations).

- 3.3 The parties acknowledge and agree that it shall not be a Change if any Ancillary Variation is made to the Train Availability and Reliability Agreement during the Franchise Term.
- 3.4 Without prejudice to any other requirement in the Franchise Agreement (including the provisions of Schedule 11 (Franchise Performance Meetings and Management Information) and Schedule 13 (Rail Industry Initiatives and Innovation Obligations)) the Franchisee shall:
- (a) immediately notify the Secretary of State as soon as it becomes aware of the likely occurrence or occurrence (as the case may be) of a TSP Default;
 - (b) provide promptly to the Secretary of State such information as may be requested by the Secretary of State in connection with the Train Availability and Reliability Agreement;
 - (c) at the same time as it receives the same from the TSP, provide copies to the Secretary of State of any Performance Reports and minutes in respect of any Performance Review Meeting; and
 - (d) where the Franchisee exercises its rights under Paragraph 7 of Part A of Schedule 4 of the Train Availability and Reliability Agreement to monitor the compliance by the TSP with its obligations thereunder (the "**Compliance Audit**"), as soon as reasonably practicable after undertaking any such Compliance Audit provide an update to the Secretary of State of its findings in relation to such Compliance Audit.
- 3.5 Notwithstanding the Secretary of State's rights under the MARA, if the Secretary of State suffers a loss in respect of which the Franchisee is indemnified in respect of the same loss by the TSP under Schedule 8 of the Train Reliability and Availability Agreement, the Franchisee shall, at the request of the Secretary of State, make a claim against the TSP for such loss and to the extent that the Franchisee recovers such amount (or any part of such amount) from the TSP, the Franchisee shall pay that amount to the Secretary of State within 5 Business Days of receipt of such amount (or such longer period as the Secretary of State may specify).

4. **Step-in/Step-out Processes**

- 4.1 If with the consent of the Secretary of State the Franchisee exercises its rights of step-in, in accordance with the provisions of Paragraph 1 of Schedule 11 of the Train Availability and Reliability Agreement then such exercise of its step-in rights shall constitute a Change. If a Qualifying Change as contemplated in this paragraph 4.1 occurs then in agreeing or determining the Revised Inputs in respect of such Change it shall be assumed, in circumstances where the provisions of 1.9 of Schedule 11 of the Train Availability and Reliability Agreement applies, that any payments to be made by the Franchisee to the TSP in respect of the period of such step-in shall be an amount that is equal to the TARA Payments that the TSP would receive if the TSP was providing the Services that are affected by the Required Action less an amount that is equal to the reasonable and proper costs incurred by the Franchisee as a result of taking the Required Action.
- 4.2 Unless otherwise directed by the Secretary of State, the Franchisee shall exercise its rights under Paragraph 1.8 of Schedule 11 of the Train Availability and Reliability Agreement to withhold payment to the TSP of the portion of the TARA

Payments relating to the Services that are affected by any Required Actions (the "**Unpaid TARA Payments**") during any Step-In Period if at any time during such Step-In Period it is entitled to do so because the TSP has not complied with its obligations to provide reasonable assistance to the Franchisee in accordance with Paragraph 1.7 of Schedule 11 of the Train Availability and Reliability Agreement. The Franchisee shall on the next Payment Date following any exercise of such rights reimburse to the Secretary of State an amount that is equal to the Unpaid TARA Payments.

- 4.3 If a Qualifying Change contemplated in paragraph 4.1 occurs and the Franchisee and the Secretary of State agree (or the Secretary of State reasonably determines) at any time following the exercise by the Franchisee of its step-in rights pursuant to Paragraph 1 of Schedule 11 of the Train Availability and Reliability Agreement that a Step-Out Notice should be served on the TSP then there shall be a further Change (which for these purposes shall be a Qualifying Change irrespective of whether such Change meets the requirements of the definition of Qualifying Change) on the date that such Step-Out Notice is so served on the TSP.
- 4.4 The Franchisee shall consult the Secretary of State prior to issuing any notification pursuant to paragraph 2.2 of Schedule 11 to the Train Availability and Reliability Agreement in relation to the cessation of any Required Action thereunder, and the Franchisee shall not issue any such notification without the Secretary of State's prior written consent.
5. **TARA Business Rates**
- 5.1 The Secretary of State shall on the Payment Date in respect of each Reporting Period pay to the Franchisee an amount equal to the amount of the Business Rates required to be paid by the Franchisee to the TSP during that Reporting Period pursuant to paragraph 3.1 of Part D (Reimbursable Charges) of Schedule 6 (Performance Regime) of the Train Availability and Reliability Agreement.
- 5.2 The Franchisee shall promptly inform the Secretary of State of any notification of Business Rates which it receives under paragraph 3.2 of that Schedule 6 of the Train Availability and Reliability Agreement, together with details or copies of such further records, information and/or documents as it may be provided under paragraph 3.3 of that Schedule 6.
- 5.3 If the amount of Business Rates in respect of any Reporting Period is not known at least 7 days prior to the Payment Date for the Reporting Period to which it relates, then that amount shall be paid as part of the Franchise Payment on the next Payment Date which first occurs at least seven days after the amount of those Business Rates is known by the Franchisee and notified to the Secretary of State (or where there is no such date, within 30 days of the amount being so notified).
- 5.4 The Franchisee shall:
- (a) use all reasonable endeavours in accordance with the terms of the Train Availability and Reliability Agreement to obtain any available rebate of Business Rates payable by the Franchisee to the TSP pursuant to paragraph 3.1 of Part D (Reimbursable Charges) of Schedule 6 (Performance Regime) of the Train Availability and Reliability Agreement; and

- (b) pay any rebate obtained by it pursuant to paragraph 5.4(a) above to the Secretary of State on the next Payment Date (or on such other date as the Secretary of State may reasonably require).

6. Fleet Acceptance Provisions

6.1 The provisions of this paragraph 6 shall cease to apply on date that the Fleet Acceptance Certificate is issued in respect of all the Sets.

6.2 In this paragraph 6, except where the context otherwise requires, the following words and expressions shall have the following meanings:

"Final Acceptance" means the final acceptance of any Set pursuant to Paragraph 5 of Part A of Schedule 2 of the MARA; and

"Final Acceptance Conditions" means the conditions in respect of Final Acceptance set out in Paragraph 5.2 of Part A of Schedule 2 of the MARA.

6.3 Relevant Operator Direct Agreement

(a) The Franchisee shall on or before the Start Date enter into the Relevant Operator Direct Agreement in substantially the same terms as the Relevant Operator Direct Agreement in the agreed terms marked RODA.

(b) The Franchisee agrees and undertakes to:

- (i) observe and comply with all the conditions and obligations on its part as set out in the Relevant Operator Direct Agreement;
- (ii) properly perform all the obligations on its part as set out in the Relevant Operator Direct Agreement; and
- (iii) act reasonably and in good faith in and about the performance of its obligations and the exercise of its rights under the Relevant Operator Direct Agreement.

6.4 Final Acceptance

The Franchisee shall immediately notify the Secretary of State if in respect of any Set it is of the view that such Set has not satisfied the Final Acceptance Conditions. In these circumstances the Franchisee shall provide a copy to the Secretary of State (at the same time as such written statement is issued to the TSP) of any written statement it provides to the TSP and which sets out the reasons why it believes that such Set has not satisfied any of the Final Acceptance Conditions.

7. Fitment of electro-magnetic interference reduction filters

7.1 The Parties acknowledge and agree that:

- (a) filters for the reduction of electromagnetic interference are in the

process of being fitted to each Set comprised in the Fleet and that this may give rise to a recalibration of the Type Weight Adjustment Factor applicable to the Full Sets and/or the Half Sets;

(b) the Financial Model and Record of Assumptions assume that the fitment of the filters referred to in paragraph 7.1(a) to the:

(i) Full Sets; and

(ii) Half Sets,

will not give rise to a recalculation of the Type Weight Adjustment Factor applicable to either the Full Sets or the Half Sets; and

(c) there shall be a Change (which will be deemed to be a Qualifying Change) if the fitment of the filters referred to in paragraph 7.1(a):

(i) to the Full Sets gives rise to a recalculation of the Type Weight Adjustment Factor applicable to the Full Sets; and/or

(ii) to the Half Sets gives rise to a recalculation of the Type Weight Adjustment Factor applicable to the Half Sets,

provided that in either case the only Revised Inputs in respect of such Qualifying Change shall be to take account of the fact that the recalculated Weight Adjustment applicable (as the case may be) to the Full Sets and/or the Half Sets is different from that assumed in the then-current Financial Model and Record of Assumptions.

8. **Shore Supply Electricity Charges**

8.1 The Secretary of State shall on the Payment Date in respect of each Reporting Period pay to the Franchisee an amount equal to the amount of the Shore Supply Electricity Charges required to be paid by the Franchisee to the TSP during that Reporting Period pursuant to paragraph 2.2 of Part D of Schedule 6 of the Train Availability and Reliability Agreement.

8.2 The Franchisee shall promptly inform the Secretary of State of any notification of Shore Supply Electricity Charges which it receives under paragraph 2.4 of Part D of Schedule 6 of the Train Availability and Reliability Agreement, together with details or copies of such further records, information and/or documents as it may be provided under paragraph 2.5 of Part D of Schedule 6 of the Train Availability and Reliability Agreement.

8.3 If the amount of Shore Supply Electricity Charges in respect of any Reporting Period is not known at least 7 days prior to the Payment Date for the Reporting Period to which it relates, then that amount shall be paid as part of the Franchise Payment on the next Payment Date which first occurs at least seven days after the amount of those Shore Supply Electricity Charges is known by the Franchisee and notified to the Secretary of State (or where there is no such date, within 30 days of the amount being so notified).

8.4 The Franchisee shall take all such steps as a competent and efficient Train Operator would take, in the absence of the reimbursement arrangements provided

for in paragraph 8.1 (and acting at all times in a manner consistent with the Franchisee's obligations under clause 6 of this Agreement), to minimise the Shore Supply Electricity Charges payable by the Franchisee to the TSP (and, accordingly, the amounts payable by the Secretary of State to the Franchisee pursuant to paragraph 8.1). The Franchisee's obligation under this paragraph 8.4 shall include the Franchisee exercising its rights, where applicable, under paragraph 2.6 of Part D of Schedule 6 of the Train Availability and Reliability Agreement to contest the Shore Supply Electricity Charges charged by the relevant authorities.

Withdrawn

SCHEDULE 7

PERFORMANCE BENCHMARKS

Schedule 7.1:	Operational Performance
	1. Definitions, Charging Review, Track Access Agreement, Changes to Benchmarks and Annual Benchmarks and Notice of Performance Results
	2. Reporting Requirements
	Part 1 - Non-Financial Enforcement Regime
	Part 2 - Financial Regime
	Part 3 - Miscellaneous Provisions
	Appendix 1: Cancellations Benchmarks and Annual Cancellations Benchmarks
	Part 1 - Cancellations Benchmark Table (Enforcement Regime)
	Part 2(A) - Annual Cancellations Benchmark Table (Financial Regime)
	Part 2(B) - Annual Cancellations Payment Table(Financial Regime)
Appendix 2: TOC Minute Delay Benchmarks and Annual TOC Minute Delay Benchmarks	
Part 1 - TOC Minute Delay Benchmark Table (Enforcement Regime)	
Part 2(A) - Annual TOC Minute Delay Benchmark Table (Financial Regime)	
Part 2(B) - Annual TOC Minute Delay Payment Table (Financial Regime)	
Appendix 3: Annual Short Formation Benchmarks	
Part 1 - NOT USED	
Part 2(A) - Annual Short Formation Benchmark Table (Financial Regime)	
Part 2(B) - Annual Short Formation Payment Table (Financial Regime)	
Appendix 4: NOT USED	
Appendix 5: NOT USED	
Appendix 6: T-3 Measures (Financial Regime)	
Part 1 - NOT USED	
Part 2(A) - Annual T-3 Table (Financial Regime)	
Part 2(B) - Annual T-3 Payment Table (Financial Regime)	
Appendix 7: T-15 Measures (Financial Regime)	
Part 1 - NOT USED	
Part 2(A) - Annual T-15 Table (Financial Regime)	
Part 2(B) - Annual T-15 Payment Table (Financial Regime)	
Appendix 8: All Cancellations Measures (Financial Regime)	
Part 1 - NOT USED	
Part 2(A) - Annual All Cancellations Table (Financial Regime)	
Part 2(B) - Annual All Cancellations Payment Table (Financial Regime)	
Schedule 7.2:	Customer Experience and Engagement
	Appendix 1: NRPS Benchmark Table
	Appendix 2: Calculation of Additional Expenditure
Schedule 7.3:	NOT USED

Schedule 7.1

Operational Performance1. **Definitions, Charging Review, Track Access Agreement, Changes to Benchmarks and Annual Benchmarks and Notice of Performance Results**

1.1 For the purposes of this Schedule 7.1 (*Operational Performance*) only, the following words and expressions shall have the following meanings unless otherwise set out in clause 3 (*Definitions*):

"Actual All Cancellations Performance Level"

means, in respect of a Franchisee Year, the All Cancellations Figures most recently published by Network Rail for that Franchisee Year in relation to the Franchisee provided that where a Franchisee Year is less than thirteen (13) Reporting periods but six (6) Reporting Periods or more, then the Actual All Cancellations Performance Level for that Franchisee Year shall be as determined pursuant to paragraph 24.2 of this Schedule 7.1;

"Actual T-3 Performance Level"

means, in respect of a Franchisee Year, the T-3 Figures most recently published by Network Rail for that Franchisee Year in relation to the Franchisee provided that where a Franchisee Year is less than thirteen (13) Reporting Periods but six (6) Reporting Periods or more, then the Actual T-3 Performance Level for that Franchisee Year shall be as determined pursuant to paragraph 24.2 of this Schedule 7.1;

"Actual T-15 Performance Level"

means, in respect of a Franchisee Year, the T-15 Figures most recently published by Network Rail for that Franchisee Year in relation to the Franchisee provided that where a Franchisee Year is less than thirteen (13) Reporting Periods but six (6) Reporting Periods or more, then the Actual T-15 Performance Level for that Franchisee Year shall be as determined pursuant to paragraph 24.2 of this Schedule 7.1;

"Annual All Cancellations Measure"

means, for each Franchisee Year each of the benchmarks specified in the Annual All Cancellations Table for that Franchisee Year, provided that where a Franchisee Year is less than thirteen (13) Reporting Periods but six (6) Reporting Periods or more then the Annual All Cancellations Measure for that Franchisee Year shall be as determined pursuant to paragraph 23.1(h) of this Schedule 7.1;

"Annual All Cancellations Payment Table"

means the table set out in Part 2(B) of Appendix 8 (*Annual All Cancellations Measures*) of this Schedule 7.1;

"Annual All Cancellations Table"

means, the table set out in Part 2(A) of Appendix 8 (*Annual All Cancellations Measures*) of this Schedule 7.1;

- “Annual Cancellations Benchmark”** means for each Franchisee Year, each of the benchmarks specified in the Annual Cancellations Benchmark Table for that Franchisee Year, provided that where a Franchisee Year is less than thirteen (13) Reporting Periods but six (6) Reporting Periods or more, then the Annual Cancellations Benchmark for that Franchisee Year shall be as determined pursuant to paragraph 23.1(a) of this Schedule 7.1;
- “Annual Cancellations Benchmark Table”** means the table set out in Part 2(A) of Appendix 1 (*Cancellations Benchmarks and Annual Cancellations Benchmarks*) of this Schedule 7.1;
- “Annual Cancellations Payment Table”** means the table set out in Part 2(B) of Appendix 1 (*Cancellations Benchmarks and Annual Cancellations Benchmarks*) of this Schedule 7.1;
- “Annual Cap Performance Level”** means in relation to:
- (a) an Annual Cancellations Benchmark for any Franchisee Year, the number set out in Column 2 (*Annual Cap Performance Level*) of the Annual Cancellations Benchmark Table for that Franchisee Year;
 - (b) an Annual TOC Minute Delay Benchmark for any Franchisee Year, the number set out in Column 2 (*Annual Cap Performance Level*) of the Annual TOC Minute Delay Benchmark Table for that Franchisee Year;
 - (c) **NOT USED**;
 - (d) **NOT USED**; or
 - (e) an Annual T-3 Table, Annual T-15 Table and/or Annual All Cancellations Measure for any Franchisee Year, the number set out in Column 2 (*Annual Cap Performance Level*) of the Annual T-3 Table, Annual T-15 Table or Annual All Cancellations Table for that Franchisee Year;
- “Annual Floor Performance Level”** means, in relation to:
- (a) an Annual Cancellations Benchmark for any Franchisee Year, the number set out in Column 4 (*Annual Floor Performance Level*) of the Annual Cancellations Benchmark Table for that Franchisee Year;
 - (b) an Annual TOC Minute Delay Benchmark for any Franchisee Year the number set out in Column 4 (*Annual Floor Performance Level*)

of the Annual TOC Minute Delay Benchmark Table for that Franchisee Year;

- (c) an Annual Short Formation Benchmark for any Franchisee Year the number set out in Column 4 (*Annual Floor Performance Level*) of the Annual Short Formation Benchmark Table for that Franchisee Year;
- (d) **NOT USED**;
- (e) **NOT USED**; or
- (f) an Annual T-3 Measure, Annual T-15 Measure and/or Annual All Cancellations Measure for any Franchisee Year, the number set out in Column 4 (*Annual Floor Performance Level*) of the Annual T-3 Table, Annual T-15 Table or Annual All Cancellations Table for that Franchisee Year;

“Annual Intermediate Performance Level”

means, in relation to the Annual Short Formation Benchmark for any Franchisee Year the number set out in Column 3 (*Annual Intermediate Performance Level*) of the Annual Short Formation Benchmark Table for that Franchisee Year;

“Annual Short Formation Benchmark”

means, for each Franchisee Year, each of the benchmarks specified in the Annual Short Formation Benchmark Table for that Franchisee Year, provided that where a Franchisee Year is less than thirteen (13) Reporting Periods but six (6) Reporting Periods or more, then the Annual Short Formation Benchmark for that Franchisee Year shall be as determined pursuant to paragraph 23.1(c) of this Schedule 7.1;

“Annual Short Formation Benchmark Table”

means the table set out in Part 2(A) of Appendix 3 (*Annual Short Formation Benchmarks*) of this Schedule 7.1;

“Annual Short Formation Payment Table”

means the table set out in Part 2(B) of Appendix 3 (*Annual Short Formation Benchmarks*) of this Schedule 7.1;

“Annual T-3 Measure”

means, for each Franchisee Year each of the benchmarks specified in the Annual T-3 Table for that Franchisee Year, provided that where a Franchisee Year is less than thirteen (13) Reporting Periods but six (6) Reporting Periods or more then the Annual T-3 Measure for that Franchisee Year shall be as determined pursuant to paragraph 23.1 (f) of this Schedule 7.1;

- “Annual T-3 Payment Table”** means the table set out in Part 2(B) of Appendix 6 (*Annual T-3 Measures*) of this Schedule 7.1;
- “Annual T-3 Table”** means the table set out in Part 2(A) of Appendix 6 (*Annual T-3 Measures*) of this Schedule 7.1;
- “Annual T-15 Measure”** means, for each Franchisee Year each of the benchmarks specified in the Annual T-15 Table for that Franchisee Year, provided that where a Franchisee Year is less than thirteen (13) Reporting Periods but six (6) Reporting Periods or more then the Annual T-15 Measure for that Franchisee Year shall be as determined pursuant to paragraph 23.1 (g) of this Schedule 7.1;
- “Annual T-15 Payment Table”** means the table set out in Part 2(B) of Appendix 7 (*Annual T-15 Measures*) of this Schedule 7.1;
- “Annual T-15 Table”** means, the table set out in Part 2(A) of Appendix 7 (*Annual T-15 Measures*) of this Schedule 7.1;
- “Annual Target Performance Level”** means, in relation to:
- (a) an Annual Cancellations Benchmark for any Franchisee Year, the number set out in Column 3 (*Annual Target Performance Level*) of the Annual Cancellations Benchmark Table for that Franchisee Year;
 - (b) an Annual TOC Minute Delay Benchmark for any Franchisee Year, the number set out in Column 3 (*Annual Target Performance Level*) of the Annual TOC Minute Delay Benchmark Table for that Franchisee Year;
 - (c) an Annual Short Formation Benchmark for any Franchisee Year, the number set out in Column 2 (*Annual Target Performance Level*) of the Annual Short Formation Benchmark Table for that Franchisee Year;
 - (d) **NOT USED**;
 - (e) **NOT USED**; or
 - (f) an Annual T-3 Measure, Annual T-15 Measure and/or Annual All Cancellations Measure for any Franchisee Year, the number set out in Column 4 (*Annual Floor Performance Level*) of the Annual T-3 Table, Annual T-15 Table or Annual All Cancellations Table for that Franchisee Year;
- “Annual TOC Minute Delay Benchmark”** means, for each Franchisee Year, each of the benchmarks specified in the Annual TOC Minute Delay Benchmark Table for that Franchisee Year,

provided that where a Franchisee Year is less than thirteen (13) Reporting Periods but six (6) Reporting Periods or more, then the Annual TOC Minute Delay Benchmark for that Franchisee Year shall be as determined pursuant to paragraph 23.1(b) of this Schedule 7.1;

- “Annual TOC Minute Delay Benchmark Table”** means the table set out in Part 2(A) of Appendix 2 (*TOC Minute Delay Benchmarks and Annual TOC Minute Delay Benchmarks*) of this Schedule 7.1;
- “Annual TOC Minute Delay Payment Table”** means the table set out in Part 2(B) of Appendix 2 (*TOC Minute Delay Benchmarks and Annual TOC Minute Delay Benchmarks*) to this Schedule 7.1;
- “Benchmark”** means any of the Cancellations Benchmark or the TOC Minute Delay Benchmark (as the context may require);
- “Breach Performance Level”** means, in relation to a Benchmark for any Reporting Period, the number set out in the relevant column of the Cancellations Benchmark Table and the TOC Minute Delay Benchmark Table (as the case may be) and in the row of the applicable table for that Reporting Period;
- “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 Franchisee pursuant to the 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 Franchisee pursuant to the Track Access Agreement;
- “Cancellations Benchmark”** means any of the performance levels in respect of Cancellations and Partial Cancellations set out in the Cancellations Benchmark Table;
- “Cancellations Benchmark Table”** means the table set out in Part 1 (*Cancellations Benchmark Table*) of Appendix 1 (*Cancellations Benchmarks and Annual Cancellations Benchmarks*) of this Schedule 7.1;
- “Maximum Aggregate Performance Sum”** is the maximum amount of the expenditure to be incurred by the Franchisee by way of Cancellations Performance Sum, TOC Minute Delay Performance Sum, Short Formation Performance Sum, T-3 Performance Sum, T-15 Performance Sum and/or All

Cancellations Performance Sum in respect of any Franchisee Year, as such amount is calculated pursuant to paragraph 28.1(b);

“Performance Sum”

means each of the Cancellations Performance Sum, the TOC Minute Delay Performance Sum, the Short Formation Performance Sum, T-3 Performance Sum, T-15 Performance Sum and/or All Cancellations Performance Sum as determined pursuant to paragraph 22 of this Schedule 7.1;

“Required Performance Improvement”

has the meaning given to it in paragraph 26.1 of this Schedule 7.1;

“Target Performance Level”

means, in relation to a Benchmark for any Reporting Period, the number set out in the relevant column of the Cancellations Benchmark Table and the TOC Minute Delay Benchmark Table (as the case may be) and in the row of the applicable table for that Reporting Period;

“TOC Minute Delay Benchmark”

means any of the performance levels in respect of Minutes Delay attributable to the Franchisee set out in the TOC Minute Delay Benchmark Table;

“TOC Minute Delay Benchmark Table”

means the table set out in Part 1 (*TOC Minute Delay Benchmark Table*) of Appendix 2 (*TOC Minute Delay Benchmarks and Annual TOC Minute Delay Benchmarks*) to this Schedule 7.1;

“Undisputed Cancellation”

means a Cancellation that is not a Disputed Cancellation;

“Undisputed Network Rail Cancellation”

means a Network Rail Cancellation that is not a Disputed Cancellation;

“Undisputed Network Rail Partial Cancellation”

means a Network Rail Partial Cancellation that is not a Disputed Partial Cancellation; and

“Undisputed Partial Cancellation”

means a Partial Cancellation that is not a Disputed Partial Cancellation.

1.2 **NOT USED.**

1.3 The Cancellations Benchmarks are set out in the table in Part 1 of Appendix 1 (*Cancellations Benchmarks and Annual Cancellations Benchmarks*) to this Schedule 7.1.

1.4 The Annual Cancellations Benchmarks are set out in the table in Part 2(A) of Appendix 1 (*Cancellations Benchmarks and Annual Cancellations Benchmarks*) of this Schedule 7.1.

- 1.5 The TOC Minute Delay Benchmarks are set out in the table in Part 1 of Appendix 2 (*TOC Minute Delay Benchmarks and Annual TOC Minute Delay Benchmarks*) to this Schedule 7.1.
- 1.6 The Annual TOC Minute Delay Benchmarks are set out in the table in Part 2(A) of Appendix 2 (*TOC Minute Delay Benchmarks and Annual TOC Minute Delay Benchmarks*) to this Schedule 7.1.
- 1.7 **NOT USED.**
- 1.8 The Annual Short Formation Benchmarks are set out in the table in Part 2(A) of Appendix 3 (*Annual Short Formation Benchmarks*) to this Schedule 7.1.
- 1.9 **NOT USED.**
- 1.10 **NOT USED.**
- 1.10A The Annual T-3 Measures are set out in the table in Part 2(A) of Appendix 6 (*Annual T-3 Measures*) to this Schedule 7.1.
- 1.10B The Annual T-15 Measures are set out in the table in Part 2(A) of Appendix 7 (*Annual T-15 Measures*) to this Schedule 7.1.
- 1.10C The Annual All Cancellations Measures are set out in the table in Part 2(A) of Appendix 8 (*Annual All Cancellations Measures*) to this Schedule 7.1.
- 1.11 **Charging Review**

The Secretary of State may at any time after a Charging Review vary, on giving not less than three (3) months' notice in writing, any of the Cancellations Benchmarks, Annual Cancellations Benchmarks, TOC Minute Delay Benchmarks, the Annual TOC Minute Delay Benchmarks, Annual T-3 Measure, Annual T-15 Measure and/or Annual All Cancellations Measure (as the case may be) to reflect the Secretary of State's reasonable view of the performance trajectory set as part of such Charging Review. Where the Secretary of State exercises the Secretary of State's right pursuant to this paragraph 1.11, the relevant Cancellations Benchmark Table, Annual Cancellations Benchmark Table, TOC Minute Delay Benchmark Table, Annual TOC Minute Delay Benchmark Table, Annual T-3 Table, Annual T-15 Table and/or Annual All Cancellations Table shall be deemed to have been amended accordingly. The exercise by the Secretary of State of the Secretary of State's rights pursuant to this paragraph 1.11 shall be a Change as specified in paragraph (k) of the definition of Change.

1.12 **Track Access Agreement**

The Franchisee agrees with the Secretary of State to comply with the requirements of the Track Access Agreement in respect of cancellations attribution (Cancellations, Partial Cancellations, Network Rail Cancellations and Network Rail Partial Cancellations) and Minutes Delay attribution.

1.13 **Changes to Benchmarks and Annual Benchmarks on the occurrence of a Change**

Paragraph 5 of Schedule 9.1 (*Financial and Other Consequences of Change*) sets out the circumstances and the process by which any adjustments to Benchmarks

and Annual Benchmarks consequent upon the occurrence of a Change will be determined and effected.

1.14 Notice of Performance Results

As soon as reasonably practicable after the end of each Reporting Period and each Franchisee Year, the Secretary of State shall notify the Franchisee of the results of the calculations performed pursuant to this Schedule 7.1.

2. Reporting Requirements

The Franchisee shall at the end of each Reporting Period and in accordance with the relevant requirements of Appendix 2 (Operational Performance Information) of Schedule 11.2 (Management Information) report to the Secretary of State the operational information as specified in Appendix 2 (Operational Performance Information) of Schedule 11.2 (Management Information) and required for the purposes of the Secretary of State undertaking any the calculations required to be performed by the Secretary of State pursuant to this Schedule 7.1.

Withdrawn

PART 1 – NON-FINANCIAL ENFORCEMENT REGIME

3. Cancellation Calculation: Value of A

Table 1		
A	=	$\frac{B}{C} \times 100$
where:		
	B	<p>is the total number of Cancellations or Partial Cancellations of Passenger Services scheduled to be operated in the Enforcement Plan of the Day for that Reporting Period, on the basis that:</p> <ul style="list-style-type: none"> (a) a Cancellation shall count as 1; (b) a Partial Cancellation shall count as 0.5; and (c) any Cancellations or Partial Cancellations during that Reporting Period which were caused by: <ul style="list-style-type: none"> (i) the Franchisee's implementation of a Service Recovery Plan during that Reporting Period; or (ii) the occurrence or continuing effect of a Force Majeure Event; or <p>shall, if the Franchisee has complied with paragraph 17.1 (<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;</p>
	C	<p>is the total number of Passenger Services scheduled to be operated in the Enforcement Plan of the Day for that Reporting Period, disregarding, if the Franchisee has complied with paragraph 17.1 (<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:</p> <ul style="list-style-type: none"> (a) the Franchisee's implementation of a Service Recovery Plan during that Reporting Period; or (b) the occurrence or continuing effect of a Force Majeure Event.

- 4. **NOT USED**
- 5. **NOT USED.**
- 6. **Periodic Cancellation Calculations**

For each Reporting Period during the Franchise Period, the Secretary of State shall calculate a moving annual average of the Franchisee's performance against the Cancellations Benchmark in accordance with the following formula:

Table 4	
$\frac{A+E}{13}$	
where:	
A	has the meaning given to it in paragraph 3 in respect of that Reporting Period; and
E	is the sum of the values of A in each of the twelve (12) Reporting Periods preceding that Reporting Period.

- 7. **NOT USED.**
- 8. **NOT USED.**
- 9. **NOT USED.**
- 10. **NOT USED.**
- 11. **NOT USED.**
- 12. **Periodic TOC Minute Delay Calculations**

For each Reporting Period during the Franchise Period, the Secretary of State shall calculate a moving annual average of the Franchisee's performance against the TOC Minute Delay Benchmark in accordance with the following formula:

Table 7	
$\frac{MD_{SRP}}{H_{SRP}}$	
where:	
MD_{SRP}	is the sum of Minutes Delay that are attributable to the Franchisee:
	(a) in that Reporting Period; and
	(b) in each of the twelve (12) Reporting Periods immediately preceding that Reporting Period;
H_{SRP}	is ascertained as follows:
	$\frac{V}{1000}$
	where:
	V is the sum of Actual Train Mileage:

		(a) in that Reporting Period; and
		(b) in each of the twelve (12) Reporting Periods immediately preceding that Reporting Period.

13. NOT USED.

14. NOT USED

15. Short Formations

15.1 NOT USED.

15.2 Short Formation Calculation: Value of A_{SF}

Table A	
A_{SF}	= $\frac{B_{SF}}{C_{SF}} \times 100$
where:	
B_{SF}	is the sum of the calculation: 1 - (actual passenger carrying capacity/planned passenger carrying capacity) applied to each Passenger Service in the Train Plan in that Reporting Period, and if an individual calculation is negative this will be regarded as 0 (zero), disregarding if the Franchisee has complied with paragraph 17.1 (<i>Service Recovery Plans and Force Majeure</i>) of this Schedule 7.1, any such Passenger Services which were operated in that way as a result of: (a) the Franchisee's implementation of a Service Recovery Plan during that Reporting Period; or (b) the occurrence or continuing effect of a Force Majeure Event; and where: <i>actual passenger carrying capacity</i> is, subject to paragraph 15.7 of this Schedule 7.1, in respect of a Passenger Service the actual Passenger Carrying Capacity of that Passenger Service as operated; and <i>planned passenger carrying capacity</i> is in respect of a Passenger Service the Passenger Carrying Capacity specified for such Passenger Service in the Train Plan; and where:
C_{SF}	is the total number of Passenger Services scheduled to be operated in that Reporting Period disregarding, if the Franchisee has complied with paragraph 17.1 (<i>Service Recovery Plans and Force Majeure</i>) of this Schedule 7.1, any such Passenger Service operated with less Passenger Carrying Capacity than that specified for each such Passenger Service in the Train Plan as a result of: (a) the Franchisee's implementation of a Service Recovery Plan during that Reporting Period; or (b) the occurrence or continuing effect of a Force Majeure Event.

15.3 **NOT USED.**

15.4 **NOT USED.**

15.5 **NOT USED.**

15.6 **NOT USED.**

16A. ⁸⁵**Items Disregarded for the Calculation of Short Formations**

16A.1 **For the purposes of the calculations to be undertaken by the Secretary of State pursuant to paragraph 15.2 above:**

(a) **if and to the extent that any Passenger Service is operated in excess of the Passenger Carrying Capacity specified for that Passenger Service in the Train Plan, the excess capacity shall be disregarded; and**

(b) **any Passenger Service that is the subject of a Cancellation or a Partial Cancellation shall be disregarded.**

16. **Calculations**

16.1 The Secretary of State shall perform the calculations referred to in paragraphs 6 and 12 rounded to two (2) decimal places with the midpoint (that is, 11.115) rounded upwards (that is, 11.12).

16.2 **NOT USED.**

16.3 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 performing the calculations referred to in paragraphs 6 and 12 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.

17. **Service Recovery Plans and Force Majeure**

17.1 The Franchisee shall, within eight (8) weeks of the end of each Reporting Period for which a Service Recovery Plan has been implemented (or such other period as may be agreed by the Secretary of State), submit to the Secretary of State all the comprehensive records (as more particularly described in the "*Approved Code of Practice 2013*" or any document of a similar equivalent nature) which relate to the implementation of such Service Recovery Plan during that Reporting Period.

17.2 In performing the calculation pursuant to paragraph 12 the Secretary of State shall disregard any Minutes Delay that are caused by the occurrence or continuing effect of a Force Majeure Event.

⁸⁵ 19 June 2020 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

18. Consequences for Poor Performance – Benchmarks

- 18.1 The Franchisee shall ensure that its performance in each Reporting Period as calculated by the Secretary of State in accordance with the requirements of this Schedule 7.1, is **not equal to or worse than** each Breach Performance Level in respect of each such Reporting Period.
- 18.2 **NOT USED.**
- 18.3 Without limiting the provisions of paragraph 18.5 below and paragraph 22 (*Performance Sum Payments*) below, if in any Reporting Period the Franchisee's performance, as calculated by the Secretary of State in accordance with the requirements of this Schedule 7.1, is **equal to or worse than** any Breach Performance Level relating to a Benchmark in respect of that Reporting Period, then a contravention of the Franchise Agreement shall occur and the Secretary of State may serve a Remedial Plan Notice in accordance with the provisions of paragraph 2 (*Remedies for Contraventions of the Franchise Agreement*) of Schedule 10.1 (*Procedure for remedying a Contravention of the Franchise Agreement*).
- 18.4 For the purposes of paragraph 4.2(c) (*Remedial Plans*) of Schedule 10.1 (*Procedure for remedying a Contravention of the Franchise Agreement*) the steps to be proposed by the Franchisee pursuant to that paragraph are those which ensure that the Franchisee's performance against the relevant Benchmark will be **equal to or better than** the Target Performance Level relating to such Benchmark.
- 18.5 Certain consequences of the Franchisee's performance being **equal to or worse than** the Breach Performance Levels and Default Performance Levels relating to each Benchmark are set out in Schedule 10 (*Remedies, Events of Default and Termination Events*).

PART 2 – FINANCIAL REGIME

19. Annual Cancellations Calculations

At the end of each Franchisee Year the Secretary of State shall calculate the Franchisee's performance against the Annual Cancellations Benchmark in accordance with the following formula:

Table 8		
ACTUAL_c	=	$\frac{\Sigma A}{X}$
where:		
ΣA	is the sum of the values of A (A being as defined in paragraph 3 above) for each of the Reporting Periods in that Franchisee Year; and	
X	(a) in respect of a Franchisee Year consisting of thirteen (13) Reporting Periods equals, 13; or (b) in respect of a Franchisee Year consisting of less than thirteen (13) Reporting Periods, the number of Reporting Periods in such Franchisee Year.	

20. Annual TOC Minute Delay Calculations

20.1 At the end of each Franchisee Year the Secretary of State shall calculate the Franchisee's performance against the Annual TOC Minute Delay Benchmark in accordance with the following formula:

Table 9		
ACTUAL_{MD}	=	$\frac{AA}{AD}$
where:		
AA	is the sum of the number of Minutes Delay that are attributable to the Franchisee in each Reporting Period in that Franchisee Year; and	
AD	is ascertained as follows:	
	$\frac{AB}{1000}$	
	where:	
AB	is the sum of the Actual Train Mileage in each Reporting Period in that Franchisee Year.	

20.2 In performing the calculations pursuant to paragraph 20, the Secretary of State shall disregard any Minutes Delay that are caused by the occurrence or continuing effect of a Force Majeure Event.

21. Annual Short Formation Calculations

21.1 At the end of each Franchisee Year the Secretary of State shall calculate the Franchisee's performance against the Annual Short Formation Benchmark in accordance with the following formula:

Table E		
ACTUAL_{SF}	=	$\frac{\sum A_{SF}}{X}$
where:		
$\sum A_{SF}$		is the sum of the values of A_{SF} (A_{SF} being as defined in paragraph 15.2 above) for each of the Reporting Periods in that Franchisee Year; and
X		(a) in respect of a Franchisee Year consisting of thirteen (13) Reporting Periods equals, 13; or (b) in respect of a Franchisee Year consisting of less than thirteen (13) Reporting Periods, the number of Reporting Periods in such Franchisee Year.

21.2 For the purposes of the calculations to be undertaken by the Secretary of State pursuant to paragraph 21.1:

- (a) if and to the extent that any Passenger Service is operated in excess of the Passenger Carrying Capacity specified for that Passenger Service in the Train Plan, the excess capacity shall be disregarded; and
- (b) any Passenger Service that is the subject of a Cancellation or a Partial Cancellation shall be disregarded.

22. Performance Sum Payments

22.1 **NOT USED.**

22.2 At the end of each Franchisee Year the Secretary of State shall, in accordance with this paragraph 22, calculate:

- (a) the Cancellations Performance Sum, the TOC Minute Delay Performance Sum, T-3 Performance Sum, T-15 Performance Sum and All Cancellations Performance Sum payable by the Secretary of State to the Franchisee or required to be incurred (or in respect of the Final Franchisee Year to be paid) by the Franchisee to the Secretary of State (as the case may be); and
- (b) the Short Formation Performance Sum required to be incurred (or in respect of the Final Franchisee Year to be paid) by the Franchisee.

22.2A **NOT USED.**

22.3 Cancellations Performance Sum

For any Franchisee Year the Cancellations Performance Sum shall be calculated as follows:

Table 10	
ACTUAL_c	is the Franchisee’s performance for that Franchisee Year as calculated pursuant to paragraph 19 above;
TARGET_c	is the Annual Target Performance Level relating to that Annual Cancellations Benchmark for that Franchisee Year;
CAP_c	is the Annual Cap Performance Level relating to that Annual Cancellations Benchmark for that Franchisee Year; and
FLOOR_c	is the Annual Floor Performance Level relating to that Annual Cancellations Benchmark for that Franchisee Year.

Table 11			
	Column 1	Column 2	Column 3
	Value of ACTUAL_c is	Cancellations Performance Sum payable by the Secretary of State to the Franchisee shall be an amount calculated by the following Table	Cancellations Performance Sum to be incurred or to be paid by the Franchisee to Secretary of State shall be an amount calculated by the following Table
1	$\leq CAP_c$	Table 12	
2	$> CAP_c \text{ and } < TARGET_c$	Table 13	
3	$\geq TARGET_c \text{ and } < FLOOR_c$		Table 14
4	$\geq FLOOR_c$		Table 15

Table 12	
(TARGET_c – CAP_c) x PB_c	
where:	
TARGET_c	has the meaning given to it in this paragraph 22.3 (Table 10);
CAP_c	has the meaning given to it in this paragraph 22.3 (Table 10); and
PB_c	is, in respect of that Franchisee Year, an amount calculated as follows:
(performance bonus payment)	PB _c x RPI
	where:
PB _c	the amount in respect of the relevant Franchisee Year as specified in row 1 (PB _c) of Column 2 of the Annual Cancellation Payment Table; and
RPI	has the meaning given to it in Appendix 1 (<i>Annual Franchise Payments</i>) to Schedule 8.1 (<i>Franchise Payments</i>).

Table 13	
(TARGET_c - ACTUAL_c) x PB_c	
where:	
TARGET_c	has the meaning given to it in this paragraph 22.3 (Table 10);
ACTUAL_c	has the meaning given to it in this paragraph 22.3 (Table 10); and
PB_c	is, in respect of that Franchisee Year, an amount calculated as follows:
(performance bonus payment)	PB _c x RPI
	where:
PB _c	the amount in respect of the relevant Franchisee Year as specified in row 1 (PB _c) of Column 2 of the Annual Cancellation Payment Table; and
RPI	has the meaning given to it in Appendix 1 (<i>Annual Franchise Payments</i>) to Schedule 8.1 (<i>Franchise Payments</i>).

Table 14	
(ACTUAL_c - TARGET_c) x PD_c	
where:	
ACTUAL_c	has the meaning given to it in this paragraph 22.3 (Table 10);
TARGET_c	has the meaning given to it in this paragraph 22.3 (Table 10); and
PD_c	is, in respect of that Franchisee Year, an amount calculated as follows:
(performance deduction payment)	PDP _c x RPI
	where:
PDP _c	the amount in respect of the relevant Franchisee Year as specified in row 2 (PDP _c) of Column 2 of the Annual Cancellations Payment Table; and
RPI	has the meaning given to it in Appendix 1 (<i>Annual Franchise Payments</i>) to Schedule 8.1 (<i>Franchise Payments</i>).

Table 15	
(FLOOR_c - TARGET_c) x PD_c	
where:	
FLOOR_c	has the meaning given to it in this paragraph 22.3 (Table 10);
TARGET_c	has the meaning given to it in this paragraph 22.3 (Table 10); and
PD_c	is, in respect of that Franchisee Year, an amount calculated as follows:
(performance deduction payment)	PDP _c x RPI
	where:
PDP _c	the amount in respect of the relevant Franchisee Year as specified in row 2 (PDP _c) of Column 2 of the Annual Cancellations Payment Table; and
RPI	has the meaning given to it in Appendix 1 (<i>Annual Franchise Payments</i>) to Schedule 8.1 (<i>Franchise Payments</i>).

22.4 TOC Minute Delay Performance Sum

For any Franchisee Year the TOC Minute Delay Performance Sum is calculated as follows:

Table 16	
ACTUAL_{MD}	is the Franchisee’s performance for that Franchisee Year as calculated pursuant to paragraph 20 above;
TARGET_{MD}	is the Annual Target Performance Level relating to that Annual TOC Minute Delay Benchmark for that Franchisee Year;
CAP_{MD}	is the Annual Cap Performance Level relating to that Annual TOC Minute Delay Benchmark for that Franchisee Year; and
FLOOR_{MD}	is the Annual Floor Performance Level relating to that Annual TOC Minute Delay Benchmark for that Franchisee Year.

Table 17			
	Column 1	Column 2	Column 3
	Value of ACTUAL_{MD} is	TOC Minute Delay Performance Sum payable by the Secretary of State to the Franchisee shall be an amount calculated by the following Table	TOC Minute Delay Performance Sum to be incurred or to be paid by the Franchisee to Secretary of State shall be an amount calculated by the following Table
1	$\leq CAP_{MD}$	Table 18	
2	$> CAP_{MD}$ and $< TARGET_{MD}$	Table 19	
3	$\geq TARGET_{MD}$ and $< FLOOR_{MD}$		Table 20
4	$\geq FLOOR_{MD}$		Table 21

Table 18	
(TARGET_{MD} – CAP_{MD}) x PB_{MD}	
where:	
TARGET_{MD}	has the meaning given to it in this paragraph 22.4 (Table 16);
CAP_{MD}	has the meaning given to it in this paragraph 22.4 (Table 16); and
PB_{MD}	is, in respect of that Franchisee Year, an amount calculated as follows:
(performance bonus payment)	PBP _{MD} x RPI
	where:
PBP _{MD}	the amount specified in row 1 (PBP _{MD}) of Column 2 of the Annual TOC Minute Delay Payment Table; and
RPI	has the meaning given to it in Appendix 1 (<i>Annual Franchise Payments</i>) to Schedule 8.1 (<i>Franchise Payments</i>).

Table 19	
(TARGET_{MD} – ACTUAL_{MD}) x PB_{MD}	
where:	
TARGET_{MD}	has the meaning given to it in this paragraph 22.4 (Table 16);
ACTUAL_{MD}	has the meaning given to it in paragraph 20 above; and
PB_{MD} (performance bonus payment)	is, in respect of that Franchisee Year, an amount calculated as follows:
	PBP _{MD} x RPI
	where:
	PBP _{MD} the amount specified in row 1 (PBP _{MD}) of Column 2 of the Annual TOC Minute Delay Payment Table; and
RPI	has the meaning given to it in Appendix 1 (<i>Annual Franchise Payments</i>) to Schedule 8.1 (<i>Franchise Payments</i>).

Table 20	
(ACTUAL_{MD} – TARGET_{MD}) x PD_{MD}	
where:	
ACTUAL_{MD}	has the meaning given to it in paragraph 20 above;
TARGET_{MD}	has the meaning given to it in this paragraph 22.4 (Table 16); and
PD_{MD} (performance deduction payment)	is, in respect of that Franchisee Year, an amount calculated as follows:
	PDP _{MD} x RPI
	where:
	PDP _{MD} the amount specified in row 2 (PDP _{MD}) of Column 2 of the Annual TOC Minute Delay Payment Table; and
RPI	has the meaning given to it in Appendix 1 (<i>Annual Franchise Payments</i>) to Schedule 8.1 (<i>Franchise Payments</i>).

Table 21	
(FLOOR_{MD} – TARGET_{MD}) x PD_{MD}	
where:	
FLOOR_{MD}	has the meaning given to it in this paragraph 22.4 (Table 16);
TARGET_{MD}	has the meaning given to it in paragraph 22.4 (Table 16); and
PD_{MD} (performance deduction payment)	is, in respect of that Franchisee Year, an amount calculated as follows:
	PDP _{MD} x RPI
	where:
	PDP _{MD} the amount specified in row 2 (PDP _{MD}) of Column 2 of the Annual TOC Minute Delay Payment Table; and
RPI	has the meaning given to it in Appendix 1 (<i>Annual Franchise Payments</i>) to Schedule 8.1 (<i>Franchise Payments</i>).

22.5 Short Formation Performance Sum

For any Franchisee Year the Short Formation Performance Sum is calculated as follows:

Table F01	
ACTUAL_{SF}	has the meaning given to it in paragraph 21;

TARGET_{SF}	is the Annual Target Performance Level relating to the Annual Short Formation Benchmark for that Franchisee Year;
AIL_{SF}	is the Annual Intermediate Performance Level relating to the Annual Short Formation Benchmark for that Franchisee Year; and
FLOOR_{SF}	is the Annual Floor Performance Level relating to that Annual Short Formation Benchmark for that Franchisee Year.

Table G01		
	Column 1	Column 2
	Value of ACTUAL_{SF} is	Short Formation Performance Sum to be incurred or to be paid by the Franchisee to the Secretary of State shall be an amount calculated by the following Table
1	$\geq TARGET_{SF} < AIL_{SF}$	Table H01
2	$\geq AIL_{SF} < FLOOR_{SF}$	Table I01
3	$\geq FLOOR_{SF}$	Table J01

Table H01	
(ACTUAL_{SF} – TARGET_{SF}) x IPLR_{SF}	
where:	
ACTUAL_{SF}	has the meaning given to it in paragraph 21;
TARGET_{SF}	has the meaning given to it in paragraph 22.5 (Table F01); and
IPLR_{SF}	is, in respect of that Franchisee Year, an amount calculated as follows:
	$IPLR_{SF} \times RPI$
	where:
IPLR_{SF}	is the amount specified in row 2 (IPLR _{SF}) of the Annual Short Formation Payment Table;
RPI	has the meaning given to it in Appendix 1 (<i>Annual Franchise Payments</i>) to Schedule 8.1 (<i>Franchise Payments</i>).

Table I01	
((AIL_{SF} – TARGET_{SF}) x IPLR_{SF}) + ((ACTUAL_{SF} – AIL_{SF}) x BPLR_{SF})	
where:	
AIL_{SF}	has the meaning given to it in paragraph 22.5 (Table F01);
TARGET_{SF}	has the meaning given to it in paragraph 22.5 (Table F01);
IPLR_{SF}	has the meaning given to it in paragraph 22.5 (Table H01);
ACTUAL_{SF}	has the meaning given to it in paragraph 21; and

Table I01				
$((\text{AII}_{\text{SF}} - \text{TARGET}_{\text{SF}}) \times \text{IPLR}_{\text{SF}}) + ((\text{ACTUAL}_{\text{SF}} - \text{AII}_{\text{SF}}) \times \text{BPLR}_{\text{SF}})$				
BPLR_{SF}	is, in respect of that Franchisee Year, an amount calculated as follows:			
	$\text{BPR}_{\text{SF}} \times \text{RPI}$			
	where:			
	<table border="1"> <tr> <td>BPR_{SF}</td> <td>is the amount specified in row 1 (BPR_{SF}) of the Annual Short Formation Payment Table;</td> </tr> <tr> <td>RPI</td> <td>has the meaning given to it in Appendix 1 (<i>Annual Franchise Payments</i>) to Schedule 8.1 (<i>Franchise Payments</i>).</td> </tr> </table>	BPR_{SF}	is the amount specified in row 1 (BPR _{SF}) of the Annual Short Formation Payment Table;	RPI
BPR_{SF}	is the amount specified in row 1 (BPR _{SF}) of the Annual Short Formation Payment Table;			
RPI	has the meaning given to it in Appendix 1 (<i>Annual Franchise Payments</i>) to Schedule 8.1 (<i>Franchise Payments</i>).			

Table J01	
$((\text{AII}_{\text{SF}} - \text{TARGET}_{\text{SF}}) \times \text{IPLR}_{\text{SF}}) + ((\text{FLOOR}_{\text{SF}} - \text{AII}_{\text{SF}}) \times \text{BPLR}_{\text{SF}})$	
where:	
AII_{SF}	has the meaning given to it in paragraph 22.5 (Table F01);
TARGET_{SF}	has the meaning given to it in paragraph 22.5 (Table F01);
IPLR_{SF}	has the meaning given to it in paragraph 22.5 (Table H01);
FLOOR_{SF}	has the meaning given to it in paragraph 22.5 (Table F01); and
BPLR_{SF}	has the meaning given to it in paragraph 22.5 (Table I01).

22.6 NOT USED.

22.7 NOT USED.

22.7A **T-3 Performance Sum**

For any Franchisee Year the T-3 Performance Sum is calculated as follows:

Table UT3-A	
ACTUAL_{T-3}	is the Actual T-3 Performance Level for that Franchisee Year;
TARGET_{T-3}	is the Annual Target Performance Level relating to that Annual T-3 Measure for that Franchisee Year;
CAP_{T-3}	is the Annual Cap Performance Level relating to that Annual T-3 Measure for that Franchisee Year; and
FLOOR_{T-3}	is the Annual Floor Performance Level relating to that Annual T-3 Measure for that Franchisee Year.

Table UT3-B			
	Column 1	Column 2	Column 2
	Value of ACTUAL_{T-3} is	T-3 Performance Sum payable by the Secretary of State to the Franchisee shall be an amount calculated by the following Table	T-3 Performance Sum payable by the Franchisee to Secretary of State shall be an amount calculated by the following Table
1.	$\geq CAP_{T-3}$	Table UT3-C	
2.	$< CAP_{T-3}$ and $> TARGET_{T-3}$	Table UT3-D	
3.	$\leq TARGET_{T-3}$ and $> FLOOR_{T-3}$		Table UT3-E
4.	$\leq FLOOR_{T-3}$		Table UT3-F

Table UT3-C	
(CAP_{T-3} - TARGET_{T-3}) x PB_{T-3}	
where:	
CAP_{T-3}	has the meaning given to it in paragraph 22.7A (Table UT3-A);
TARGET_{T-3}	has the meaning given to it in paragraph 22.7A (Table UT3-A); and
PB_{T-3}	is, in respect of that Franchisee Year, an amount calculated as follows:
(performance bonus payment)	$PBP_{T-3} \times RPI$
	where:
PBP_{T-3}	the amount specified in row 1 (PBP _{T-3}) of Column 2 of the Annual T-3 Payment Table; and
RPI	has the meaning given to it in Appendix 1 (<i>Annual Franchise Payments</i>) to Schedule 8.1 (<i>Franchise Payments</i>).

Table UT3-D	
(ACTUAL_{T-3} - TARGET_{T-3}) x PB_{T-3}	
where:	
ACTUAL_{T-3}	means the Actual T-3 Performance Level for that Franchisee Year;
TARGET_{T-3}	has the meaning given to it in paragraph 22.7A (Table UT3-A); and
PB_{T-3}	is, in respect of that Franchisee Year, an amount calculated as follows:
(performance bonus payment)	$PBP_{T-3} \times RPI$
	where:
PBP_{T-3}	the amount specified in row 1 (PBP _{T-3}) of Column 2 of the Annual T-3 Payment Table; and
RPI	has the meaning given to it in Appendix 1 (<i>Annual Franchise Payments</i>) to Schedule 8.1 (<i>Franchise Payments</i>).

Table UT3-E	
(TARGET_{T-3} – ACTUAL_{T-3}) x PD_{T-3}	
where:	
TARGET_{T-3}	has the meaning given to it in paragraph 22.7A (Table UT3-A);
ACTUAL_{T-3}	means the Actual T-3 Performance Level for that Franchisee Year; and
PD_{T-3}	is, in respect of that Franchisee Year, an amount calculated as follows:
(performance deduction payment)	PDP _{T-3} x RPI
	where:
PDP _{T-3}	the amount specified in row 2 (PDP _{T-3}) of Column 3 of the Annual T-3 Payment Table; and
RPI	has the meaning given to it in Appendix 1 (<i>Annual Franchise Payments</i>) to Schedule 8.1 (<i>Franchise Payments</i>).

Table UT3-F	
(TARGET_{T-3} – FLOOR_{T-3}) x PD_{T-3}	
where:	
TARGET_{T-3}	has the meaning given to it in paragraph 22.7A (Table UT3-A);
FLOOR_{T-3}	has the meaning given to it in paragraph 22.7A (Table UT3-A); and
PD_{T-3}	is, in respect of that Franchisee Year, an amount calculated as follows:
(performance deduction payment)	PDP _{T-3} x RPI
	where:
PDP _{T-3}	the amount specified in row 2 (PDP _{T-3}) of Column 3 of the Annual T-3 Payment Table; and
RPI	has the meaning given to it in Appendix 1 (<i>Annual Franchise Payments</i>) to Schedule 8.1 (<i>Franchise Payments</i>).

22.7B T-15 Performance Sum

For any Franchisee Year the T-15 Performance Sum is calculated as follows:

Table UT15-A	
ACTUAL_{T-15}	is the Actual T-15 Performance Level for that Franchisee Year;
TARGET_{T-15}	is the Annual Target Performance Level relating to that Annual T-15 Measure for that Franchisee Year;
CAP_{T-15}	is the Annual Cap Performance Level relating to that Annual T-15 Measure for that Franchisee Year; and
FLOOR_{T-15}	is the Annual Floor Performance Level relating to that Annual T-15 Measure for that Franchisee Year.

Table UT15-B			
	Column 1	Column 2	Column 2
	Value of ACTUAL_{T-15} is	T-15 Performance Sum payable by the Secretary of State to the Franchisee shall be an amount calculated by the following Table	T-15 Performance Sum payable by the Franchisee to Secretary of State shall be an amount calculated by the following Table
1.	$\geq CAP_{T-15}$	Table UT15-C	
2.	$< CAP_{T-15}$ and $> TARGET_{T-15}$	Table UT15-D	
3.	$\leq TARGET_{T-15}$ and $> FLOOR_{T-15}$		Table UT15-E
4.	$\leq FLOOR_{T-15}$		Table UT15-F

Table UT15-C	
(CAP_{T-15} – TARGET_{T-15}) x PB_{T-15}	
where:	
CAP_{T-15}	has the meaning given to it in paragraph 22.7B (Table UT15-A);
TARGET_{T-15}	has the meaning given to it in paragraph 22.7B (Table UT15-A); and
PB_{T-15}	is, in respect of that Franchisee Year, an amount calculated as follows:
(performance bonus payment)	$PBP_{T-15} \times RPI$
	where:
PBP_{T-15}	the amount specified in row 1 (PBP _{T-15}) of Column 2 of the Annual T-15 Payment Table; and
RPI	has the meaning given to it in Appendix 1 (<i>Annual Franchise Payments</i>) to Schedule 8.1 (<i>Franchise Payments</i>).

Table UT15-D	
(ACTUAL_{T-15} – TARGET_{T-15}) x PB_{T-15}	
where:	
ACTUAL_{T-15}	means the Actual T-15 Performance Level for that Franchisee Year;
TARGET_{T-15}	has the meaning given to it in paragraph 22.7B (Table UT15-A); and
PB_{T-15}	is, in respect of that Franchisee Year, an amount calculated as follows:
(performance bonus payment)	$PBP_{T-15} \times RPI$
	where:
PBP_{T-15}	the amount specified in row 1 (PBP _{T-15}) of Column 2 of the Annual T-15 Payment Table; and

Table UT15-D		
(ACTUAL_{T-15} – TARGET_{T-15}) x PB_{T-15}		
	RPI	has the meaning given to it in Appendix 1 (<i>Annual Franchise Payments</i>) to Schedule 8.1 (<i>Franchise Payments</i>).

Table UT15-E		
(TARGET_{T-15} – ACTUAL_{T-15}) x PD_{T-15}		
where:		
TARGET_{T-15}	has the meaning given to it in paragraph 22.7B (Table UT15-A);	
ACTUAL_{T-15}	means the Actual T-15 Performance Level for that Franchisee Year; and	
PD_{T-15} (performance deduction payment)	is, in respect of that Franchisee Year, an amount calculated as follows:	
	PDP _{T-15} x RPI	
	where:	
	PDP _{T-15}	the amount specified in row 2 (PDP _{T-15}) of Column 3 of the Annual T-15 Payment Table; and
	RPI	has the meaning given to it in Appendix 1 (<i>Annual Franchise Payments</i>) to Schedule 8.1 (<i>Franchise Payments</i>).

Table UT15-F		
(TARGET_{T-15} – FLOOR_{T-15}) x PD_{T-15}		
where:		
TARGET_{T-15}	has the meaning given to it in paragraph 22.7B (Table UT15-A);	
FLOOR_{T-15}	has the meaning given to it in paragraph 22.7B (Table UT15-A)); and.	
	22.7B (Table UT15-A)	
PD_{T-15} (performance deduction payment)	is, in respect of that Franchisee Year, an amount calculated as follows:	
	PDP _{T-15} x RPI	
	where:	
	PDP _{T-15}	the amount specified in row 2 (PDP _{T-15}) of Column 3 of the Annual T-15 Payment Table; and
	RPI	has the meaning given to it in Appendix 1 (<i>Annual Franchise Payments</i>) to Schedule 8.1 (<i>Franchise Payments</i>).

22.7C All Cancellations Performance Sum

For any Franchisee Year the All Cancellations Performance Sum is calculated as follows:

Table UAC-A	
ACTUAL_{AC}	is the Actual All Cancellations Performance Level for that Franchisee Year;
TARGET_{AC}	is the Annual Target Performance Level relating to that Annual All Cancellations Measure for that Franchisee Year;
CAP_{AC}	is the Annual Cap Performance Level relating to that Annual All Cancellations Measure for that Franchisee Year; and
FLOOR_{AC}	is the Annual Floor Performance Level relating to that Annual All Cancellations Measure for that Franchisee Year.

Table UAC-B			
	Column 1	Column 2	Column 2
	Value of ACTUAL_{AC} is	All Cancellations Performance Sum payable by the Secretary of State to the Franchisee shall be an amount calculated by the following Table	All Cancellations Performance Sum payable by the Franchisee to Secretary of State shall be an amount calculated by the following Table
1.	$\leq CAP_{AC}$	Table UAC-C	
2.	$> CAP_{AC}$ and $< TARGET_{AC}$	Table UAC-D	
3.	$\geq TARGET_{AC}$ and $< FLOOR_{AC}$		Table UAC-E
4.	$\geq FLOOR_{AC}$		Table UAC-F

Table UAC-C				
(TARGET_{AC} - CAP_{AC}) x PB_{AC}				
where:				
TARGET_{AC}	has the meaning given to it in paragraph 22.7C (Table UAC-A);			
CAP_{AC}	has the meaning given to it in paragraph 22.7C (Table UAC-A); and			
PB_{AC} (performance bonus payment)	is, in respect of that Franchisee Year, an amount calculated as follows:			
	$PBP_{AC} \times RPI$			
	where:			
	<table border="1"> <tr> <td>PBP_{AC}</td> <td>the amount specified in row 1 (PBP_{AC}) of Column 2 of the Annual All Cancellations Payment Table; and</td> </tr> <tr> <td>RPI</td> <td>has the meaning given to it in Appendix 1 (<i>Annual Franchise Payments</i>) to Schedule 8.1 (<i>Franchise Payments</i>).</td> </tr> </table>	PBP_{AC}	the amount specified in row 1 (PBP _{AC}) of Column 2 of the Annual All Cancellations Payment Table; and	RPI
PBP_{AC}	the amount specified in row 1 (PBP _{AC}) of Column 2 of the Annual All Cancellations Payment Table; and			
RPI	has the meaning given to it in Appendix 1 (<i>Annual Franchise Payments</i>) to Schedule 8.1 (<i>Franchise Payments</i>).			

Table UAC-D	
(TARGET_{AC} – ACTUAL_{AC}) x PB_{AC}	
where:	
TARGET_{AC}	has the meaning given to it in paragraph 22.7C (Table UAC-A);
ACTUAL_{AC}	means the Actual All Cancellations Performance Level for that Franchisee Year; and
PB_{AC} (performance bonus payment)	is, in respect of that Franchisee Year, an amount calculated as follows:
	PB _{AC} x RPI
	where:
PB _{AC}	the amount specified in row 1 (PB _{AC}) of Column 2 of the Annual All Cancellations Payment Table; and
RPI	has the meaning given to it in Appendix 1 (<i>Annual Franchise Payments</i>) to Schedule 8.1 (<i>Franchise Payments</i>).

Table UAC-E	
(ACTUAL_{AC} – TARGET_{AC}) x PD_{AC}	
where:	
ACTUAL_{AC}	means the Actual All Cancellations Performance Level for that Franchisee Year;
TARGET_{AC}	has the meaning given to it in paragraph 22.7D (Table UAC-A); and
PD_{AC} (performance deduction payment)	is, in respect of that Franchisee Year, an amount calculated as follows:
	PDP _{AC} x RPI
	where:
PDP _{AC}	the amount specified in row 2 (PDP _{AC}) of Column 2 of the Annual All Cancellations Payment Table; and
RPI	has the meaning given to it in Appendix 1 (<i>Annual Franchise Payments</i>) to Schedule 8.1 (<i>Franchise Payments</i>).

Table UAC-F	
(FLOOR_{AC} – TARGET_{AC}) x PD_{AC}	
where:	
FLOOR_{AC}	has the meaning given to it in paragraph 22.7D (Table UAC-A);
TARGET_{AC}	has the meaning given to it in paragraph 22.7D (Table UAC-A); and
PD_{AC} (performance deduction payment)	is, in respect of that Franchisee Year, an amount calculated as follows:
	PDP _{AC} x RPI
	where:
PDP _{AC}	the amount specified in row 2 (PDP _{AC}) of Column 2 of the Annual All Cancellations Payment Table; and

Table UAC-F		
(FLOOR _{AC} – TARGET _{AC}) x PD _{AC}		
	RPI	has the meaning given to it in Appendix 1 (<i>Annual Franchise Payments</i>) to Schedule 8.1 (<i>Franchise Payments</i>).

22.8 For the purpose of the calculations referred to in this paragraph 22, each of the Annual Cap Performance Level, the Annual Target Performance Level and the Annual Floor Performance Level will be specified as an absolute number not as a percentage (i.e. one point five per cent (1.5%) equals 1.5).

22.9 **NOT USED.**

23. **Determination for Franchisee Years that are less than thirteen (13) Reporting Periods but are six (6) Reporting Periods or more**

23.1 Where a Franchisee Year is less than thirteen (13) Reporting Periods but six (6) Reporting Periods or more, the Secretary of State shall perform the following calculations for the purposes of determining the Annual Cancellations Benchmark, the Annual TOC Minute Delay Benchmark, the Annual Short Formation Benchmark, Annual T-3 Measure, Annual T-15 Measure and Annual All Cancellations Measure relating to that Franchisee Year:

(a) in respect of the Annual Cancellations Benchmark for that Franchisee Year:

Table 22	
$\frac{\sum A_c}{XY}$	
where:	
$\sum A_c$	is ascertained as follows: (i) for the Annual Cap Performance Level, the sum of the data relevant for each of the Reporting Periods in that Franchisee Year, such data being the data which was used for the purposes of determining the Annual Cap Performance Level in respect of a full Franchisee Year as more particularly set out in the document in the agreed terms marked ABD ; or (ii) for the Annual Target Performance Level, the sum of the data relevant for each of the Reporting Periods in that Franchisee Year, such data being the data which was used for the purposes of determining the Annual Target Performance Level in respect of a full Franchisee Year as more particularly set out in the document in the agreed terms marked ABD ; or (iii) for the Annual Floor Performance Level, the sum of the data relevant for each of the Reporting Periods in that Franchisee Year, such data being the data which was used for the purposes of determining the Annual Floor Performance Level in respect of a full Franchisee Year as more particularly set out in the document in the agreed terms marked ABD ; and
XY	is the number of Reporting Periods in that Franchisee Year.

(b) in respect of the Annual TOC Minute Delay Benchmark for that Franchisee Year:

Table 23	
$\frac{\sum A_{MD}}{AB_{MD}}$	
where:	
$\sum A_{MD}$	is ascertained as follows: <ul style="list-style-type: none"> (i) for the Annual Cap Performance Level, the sum of the Minutes Delay attributable to the Franchisee as comprised in the data relevant for each of the Reporting Periods in that Franchisee Year, such Minutes Delay data being the data which was used for the purposes of determining the Annual Cap Performance Level in respect of a full Franchisee Year as more particularly set out in the document in the agreed terms marked ABD; or (ii) for the Annual Target Performance Level, the sum of the Minutes Delay attributable to the Franchisee as comprised in the data relevant for each of the Reporting Periods in that Franchisee Year, such Minutes Delay data being the data which was used for the purposes of determining the Annual Target Performance Level in respect of a full Franchisee Year as more particularly set out in the document in the agreed terms marked ABD; or (iii) for the Annual Floor Performance Level, the sum of the Minutes Delay attributable to the Franchisee as comprised in the data relevant for each of the Reporting Periods in that Franchisee Year, such Minutes Delay data being the data which was used for the purposes of determining the Annual Floor Performance Level in respect of a full Franchisee Year as more particularly set out in the document in the agreed terms marked ABD; and
AB_{MD}	is ascertained as follows: $\frac{B}{1000}$ <p>where: B is:</p> <ul style="list-style-type: none"> (i) for the Annual Cap Performance Level, the sum of the Actual Train Mileage as comprised in the data relevant for each of the Reporting Periods in that Franchisee Year, such Actual Train Mileage data being the data which was used for the purposes of determining the Annual Cap Performance Level in respect of a full Franchisee Year as more particularly set out in the document in the agreed terms marked ABD; or (ii) for the Annual Target Performance Level, the sum of the Actual Train Mileage as comprised in the data relevant for each of the Reporting Periods in that Franchisee Year, such Actual Train Mileage data being the data which was used for the purposes of determining the Annual Target Performance Level in respect of a full Franchisee Year as more particularly set out in the document in the agreed terms marked ABD; or (iii) for the Annual Floor Performance Level, the sum of the Actual Train Mileage as comprised in the data relevant for each of the Reporting Periods in that Franchisee Year, such Actual Train Mileage data being the data which was used for the purposes of determining the Annual Floor Performance Level in respect of a full Franchisee Year as more particularly set out in the document in the agreed terms marked ABD.

- (c) in respect of the Annual Short Formation Benchmark for that Franchisee Year:

Table V	
$\frac{\sum A_{SF}}{XY}$	
where:	
$\sum A_{SF}$	is ascertained as follows: (i) for the Annual Target Performance Level, the sum of the data relevant for each of the Reporting Periods in that Franchisee Year, such data being the data which was used for the purposes of determining the Annual Target Performance Level in respect of a full Franchisee Year as more particularly set out in the document in the agreed terms marked ABD ; or (ii) ⁸⁶ for the Annual Intermediate Performance Level, the sum of the data relevant for each of the Reporting Periods in that Franchisee Year, such data being the data which was used for the purposes of determining the Annual Target Performance Level in respect of a full Franchisee Year as more particularly set out in the document in the agreed terms marked ABD; or (iii) for the Annual Floor Performance Level, the sum of the data relevant for each of the Reporting Periods in that Franchisee Year, such data being the data which was used for the purposes of determining the Annual Floor Performance Level in respect of a full Franchisee Year as more particularly set out in the document in the agreed terms marked ABD ; and
XY	is the number of Reporting Periods in that Franchisee Year.

- (d) **NOT USED;**
 (e) **NOT USED;**
 (f) in respect of the Annual T-3 Measure for that Franchisee Year:

Table X3	
$\frac{\sum A_{XT3}}{XY}$	
Where:	
$\sum A_{XT3}$	is ascertained as follows: (i) for the Annual Cap Performance Level, the sum of the data relevant for each of the Reporting Periods in that Franchisee Year, such data being the data which was used for the purposes of determining the Annual Cap Performance Level in respect of a full Franchisee Year as

⁸⁶ 19 June 2020 (Date of Contract Change Letter) – Contract insertion agreed by the Secretary of State and Franchisee.

	<p>more particularly set out in the document in the agreed terms marked ABD; or</p> <p>(ii) for the Annual Target Performance Level, the sum of the data relevant for each of the Reporting Periods in that Franchisee Year, such data being the data which was used for the purposes of determining the Annual Target Performance Level in respect of a full Franchisee Year as more particularly set out in the document in the agreed terms marked ABD;</p> <p>(iii) for the Annual Floor Performance Level, the sum of the data relevant for each of the Reporting Periods in that Franchisee Year, such data being the data which was used for the purposes of determining the Annual Floor Performance Level in respect of a full Franchisee Year as more particularly set out in the document in the agreed terms marked ABD; and</p>
XY	is the number of Reporting Periods in that Franchisee Year.

(g) in respect of the Annual T-15 Measure for that Franchisee Year:

Table X15	
$\frac{\sum A_{XT15}}{XY}$	
Where:	
$\sum A_{XT15}$	<p>is ascertained as follows:</p> <p>(i) for the Annual Cap Performance Level, the sum of the data relevant for each of the Reporting Periods in that Franchisee Year, such data being the data which was used for the purposes of determining the Annual Cap Performance Level in respect of a full Franchisee Year as more particularly set out in the document in the agreed terms marked ABD; or</p> <p>(ii) for the Annual Target Performance Level, the sum of the data relevant for each of the Reporting Periods in that Franchisee Year, such data being the data which was used for the purposes of determining the Annual Target Performance Level in respect of a full Franchisee Year as more particularly set out in the document in the agreed terms marked ABD;</p> <p>(iii) for the Annual Floor Performance Level, the sum of the data relevant for each of the Reporting Periods in that Franchisee Year, such data being the data which was used for the purposes of determining the Annual Floor Performance Level in respect of a full Franchisee Year as more particularly set out in the document in the agreed terms marked ABD; and</p>
XY	is the number of Reporting Periods in that Franchisee Year.

(h) in respect of the Annual All Cancellations Measure for that Franchisee Year:

Table XAC	
$\frac{\sum A_{XAC}}{XY}$	
Where:	
$\sum A_{XAC}$	is ascertained as follows: <ul style="list-style-type: none"> (i) for the Annual Cap Performance Level, the sum of the data relevant for each of the Reporting Periods in that Franchisee Year, such data being the data which was used for the purposes of determining the Annual Cap Performance Level in respect of a full Franchisee Year as more particularly set out in the document in the agreed terms marked ABD; or (ii) for the Annual Target Performance Level, the sum of the data relevant for each of the Reporting Periods in that Franchisee Year, such data being the data which was used for the purposes of determining the Annual Target Performance Level in respect of a full Franchisee Year as more particularly set out in the document in the agreed terms marked ABD; (iii) for the Annual Floor Performance Level, the sum of the data relevant for each of the Reporting Periods in that Franchisee Year, such data being the data which was used for the purposes of determining the Annual Floor Performance Level in respect of a full Franchisee Year as more particularly set out in the document in the agreed terms marked ABD; and
XY	is the number of Reporting Periods in that Franchisee Year.

24. Determination for Franchisee Years that are less than thirteen (13) Reporting Periods but are six (6) Reporting Periods or more

24.1 NOT USED.

24.2 Where a Franchisee Year is less than thirteen (13) Reporting Periods but six (6) Reporting Periods or more, the Secretary of State shall perform the following calculations for the purposes of determining the Actual T-3 Performance Level, Actual T-15 Performance Level and Actual All Cancellations Performance Level relating to that Franchisee Year:

(a) in respect of the Actual T-3 Performance Level for that Franchisee Year:

Table Z3	
$\frac{\sum A_{ZT3}}{XY}$	
where:	
$\sum A_{ZT3}$	is the sum of the figures published by Network Rail in respect of Time to 3 Minutes in respect of the Franchisee for each Reporting Period in that Franchisee Year; and
XY	is the number of Reporting Periods in that Franchisee Year.

(b) in respect of the Actual T-15 Performance Level for that Franchisee Year:

Table Z15	
$\frac{\sum A_{ZT15}}{XY}$	
where:	
$\sum A_{ZT15}$	is the sum of the figures published by Network Rail in respect of Time to 15 Minutes in respect of the Franchisee for each Reporting Period in that Franchisee Year; and
XY	is the number of Reporting Periods in that Franchisee Year.

(c) in respect of the Actual All Cancellations Performance Level for that Franchisee Year:

Table ZAC	
$\frac{\sum A_{ZAC}}{XY}$	
where:	
$\sum A_{ZAC}$	is the sum of the figures published by Network Rail in respect of All Cancellations in respect of the Franchisee for each Reporting Period in that Franchisee Year; and
XY	is the number of Reporting Periods in that Franchisee Year.

25. Network Rail Claims

25.1 For the purposes of this paragraph 25, **"T-3/T-15/All Cancellation Loss"** means any loss suffered or costs incurred by the Franchisee as a result of the Franchisee:

- (a) being required to incur or pay any T-3 Performance Sum or T-15 Performance Sum or All Cancellations Performance Sum (as the case may be); or
- (b) not being entitled to receive from the Secretary of State any T-3 Performance Sum or T-15 Performance Sum or All Cancellations Performance Sum (as the case may be),

in each case in accordance with paragraph 22 (*Performance Sum Payments*).

25.2 The Franchisee shall not include in any claim for compensation from Network Rail, whether under Schedule 8 of the Track Access Agreement or otherwise, any amounts to compensate the Franchisee for a T-3/T-15/All Cancellation Loss.

25.3 Without prejudice to the Secretary of State's rights under Schedule 10 (*Remedies, Events of Default and Termination Events*), if the Franchisee receives compensation from Network Rail in respect of a T-3/T-15/All Cancellation Loss, the Franchisee shall pay such compensation received to the Secretary of State within five (5) Weekdays of receipt.

26. Consequences for Poor Performance

- 26.1 Where in any Franchisee Year a relevant Performance Sum is due from the Franchisee, the Franchisee shall, subject to paragraph 28 (*Maximum Amount Of Performance Sum Payments*) and 29 (*Payments in respect of the Final Franchisee Year*), incur expenditure **equal to the amount** of the relevant Performance Sum in order to secure an improvement in the Franchisee's performance against:
- (a) the Annual Cancellations Benchmark so that such level is **better than or equal to** the Annual Target Performance Level for that Annual Cancellations Benchmark; and/or
 - (b) the Annual TOC Minute Delay Benchmark so that such level is **better than or equal to** the Annual Target Performance Level for that Annual TOC Minute Delay Benchmark; and/or
 - (c) the Annual Short Formation Benchmark so that such level is **equal to** the Annual Target Performance Level for the Annual Short Formation Benchmark; and/or
 - (d) **NOT USED;**
 - (e) **NOT USED;**
 - (f) the Annual T-3 Measure so that such level is **better than or equal to** the Annual Target Performance Level for that Annual T-3 Measure; and/or
 - (g) the Annual T-15 Measure so that such level is **better than or equal to** the Annual Target Performance Level for that Annual T-15 Measure; and/or
 - (h) the Annual All Cancellations Measure so that such level is **better than or equal to** the Annual Target Performance Level for that Annual All Cancellation Measure,
- or, in each case, as the Secretary of State may otherwise direct (the "**Required Performance Improvement**").

26.2 Action Plans

- (a) Without limiting paragraph 26.1, on each occasion that the Franchisee becomes obliged to incur expenditure under paragraph 26.1 for the purposes of securing a Required Performance Improvement the Franchisee shall produce a plan which is consistent with its obligations under paragraph 26.1 (the "**Action Plan**").
- (b) The Franchisee shall (i) produce, (ii) obtain the Secretary of State's approval of, and (iii) commence the implementation of the Action Plan within three (3) months after the notification of the results of calculations in accordance with paragraph 1.14 (*Notice of Performance Results*).
- (c) The 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;
 - (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 Action Plan shall include specific review dates;
 - (iv) how performance of the action is to be measured;
 - (v) identify the amount of the Cancellations Performance Sum, the TOC Minute Delay Performance Sum, the Short Formation Performance Sum, the T-3 Performance Sum, T-15 Performance Sum and/or the All Cancellations Performance Sum associated with each such action.
- (d) The Franchisee shall, except to the extent otherwise agreed by the Secretary of State in advance, implement each Action Plan referred to in this paragraph 26.2 in accordance with its terms.
- (e) It is acknowledged by the Franchisee that the approval or lack of approval by the Secretary of State of each Action Plan as contemplated in this paragraph 26.2 shall not relieve the Franchisee of its obligations under this Schedule 7.1 or any other provisions of the Franchise Agreement.

27. Payments made by the Secretary of State during the Franchise Term

27.1 Each Cancellations Performance Sum, TOC Minute Delay Performance Sum, T-3 Performance Sum, T-15 Performance Sum and the All Cancellations Performance Sum calculated pursuant to paragraph 22 (*Performance Sum Payments*) (respectively) in respect of any Franchisee Year payable by the Secretary of State to the Franchisee shall, subject to paragraph 28 (*Maximum Amount of Performance Sum Payments*) and paragraph 29 (*Payments in respect of the Final Franchisee Year*), be paid by way of adjustment to the Franchise Payments in accordance with paragraph 2.6 of Schedule 8.1 (*Payments*).

27.2 **NOT USED.**

27.3 **NOT USED.**

28. Maximum Amount Of Performance Sum Payments

28.1 The maximum amount:

- (a) payable by the Secretary of State to the Franchisee by way of Cancellations Performance Sum, TOC Minute Delay Performance Sum, T-3 Performance Sum, T-15 Performance Sum and/or the All Cancellations Performance Sum shall, in respect of any Franchisee Year, be limited to an aggregate amount calculated as follows:

MAP_{SoS}	=	[REDACTED⁸⁷] x RPI x (X/13)
where:		

⁸⁷ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

	MAP_{Sos}	is the maximum amount payable by the Secretary of State to the Franchisee by way of Cancellations Performance Sum, TOC Minute Delay Performance Sum, T-3 Performance Sum, T-15 Performance Sum and/or the All Cancellations Performance Sum;
	RPI	has the meaning given to it in Appendix 1 (<i>Annual Franchise Payments</i>) to Schedule 8.1 (Franchise Payments); and
	X	is the number of Reporting Periods in the Relevant Franchisee Year.

(b) to be incurred as expenditure by the Franchisee by way of Cancellations Performance Sum, TOC Minute Delay Performance Sum, Short Formation Performance Sum, T-3 Performance Sum, T-15 Performance Sum and/or All Cancellations Performance Sum, shall, in respect of any Franchisee Year, be limited to an aggregate amount calculated as follows:

MAPS	=	([REDACTED⁸⁸] + ABP) x RPI x (X/13)
where:		
	MAPS	is the Maximum Aggregate Performance Sum;
	ABP	is the aggregate amount of any of the Cancellations Performance Sum, TOC Minute Delay Performance Sum, T-3 Performance Sum, T-15 Performance Sum and/or the All Cancellations Performance Sum payable by the Secretary of State to the Franchisee in that Franchisee Year as required pursuant to paragraph 27.1;
	RPI	has the meaning given to it in Appendix 1 (<i>Annual Franchise Payments</i>) to Schedule 8.1 (Franchise Payments); and
	X	is the number of Reporting Periods in the Relevant Franchisee Year

28.2 Where in relation to any Franchisee Year the aggregate of the Performance Sums calculated pursuant to paragraph 22 as being due to be incurred by the Franchisee in that Franchisee Year for the purposes of securing the Required Performance Improvements exceed the Maximum Aggregate Performance Sum the

⁸⁸ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

Franchisee shall, for that Franchisee Year, incur expenditure that is equal to the amount calculated as follows:

RPS	=	PS x $\frac{\text{MAPS}}{\text{APS}}$
where:		
RPS		is the amount of the expenditure to be incurred by the Franchisee in securing each of the relevant Required Performance Improvements for that Franchisee Year;
PS		is the Performance Sum due from the Franchisee in that Franchisee Year as calculated pursuant to paragraph 22;
MAPS		has the meaning given to it in paragraph 28.1(b); and
APS		is the aggregate of each of the Performance Sums due from the Franchisee in that Franchisee Year, as each sum Performance Sum is calculated pursuant to paragraph 22.

29. **Payments in respect of the Final Franchisee Year**

29.1 Any Cancellations Performance Sum, TOC Minute Delay Performance Sum, Short Formation Performance Sum, T-3 Performance Sum, T-15 Performance Sum and/or All Cancellations Performance Sum:

- (a) to be made in respect of the Final Franchisee Year shall be calculated in accordance with the provisions of paragraphs 22 and 28; and/or
- (b) relating to any Franchisee Year preceding the Final Franchisee Year and which has not been incurred by the Franchisee prior to the end of the Final Franchisee Year for the purposes of securing the Required Performance Improvements,

in each case, shall be paid (by the Secretary of State or the Franchisee as the case may be) within thirty (30) days of the Secretary of State giving written notice to the Franchisee of the amount of such Cancellations Performance Sum, TOC Minute Delay Performance Sum, Short Formation Performance Sum, T-3 Performance Sum, T-15 Performance Sum and/or All Cancellations Performance Sum.

PART 3 – MISCELLANEOUS PROVISIONS

30. Allocation of Disputed Cancellations/Disputed Partial Cancellations

For the purpose of performing the calculations referred to in paragraphs 6 and/or 19 the Secretary of State shall allocate any Disputed Cancellations and/or Disputed Partial Cancellations between the Franchisee and Network Rail at the end of a Reporting Period and/or a Franchisee Year (as applicable) in the following ratio of:

Table 24	
F : G	
where:	
F	is the total number of Undisputed Cancellations and/or Undisputed Partial Cancellations from the twelve (12) preceding Reporting Periods including any Disputed Cancellations or Disputed Partial Cancellations which were resolved or determined (and attributed to the Franchisee) during such twelve (12) preceding Reporting Periods; and
G	is the total number of Undisputed Network Rail Cancellations and/or Undisputed Network Rail Partial Cancellations from the twelve (12) preceding Reporting Periods including any Disputed Cancellations or Disputed Partial Cancellations which were resolved or determined (and attributed to Network Rail) during such twelve (12) preceding Reporting Periods.

31. Allocation of Disputed Minutes Delay

Where the attribution of any Minutes Delay is in dispute between Network Rail and the Franchisee at the end of a Reporting Period and/or a Franchisee Year (as applicable) the Secretary of State shall, for the purpose of performing the calculations referred to in paragraphs 12 and/or 20, allocate any disputed Minutes Delay between the Franchisee and Network Rail in the ratio of:

Table 25	
FF: GG	
where:	
FF	is the total number of undisputed Minutes Delay, in each case, from the twelve (12) preceding Reporting Periods that are attributable to the Franchisee including any disputed attributions which were resolved or determined (and attributed to the Franchisee) during such twelve (12) preceding Reporting Periods; and
GG	is the total number of undisputed Minutes Delay, in each case from the twelve (12) preceding Reporting Periods that are attributable to Network Rail including any disputed attributions which were resolved or determined (and attributed to Network Rail) during such twelve (12) preceding Reporting Periods.

Appendix 1 to Schedule 7.1 - Cancellations Benchmarks and Annual Cancellations Benchmarks

Part 1 - Cancellations Benchmark Table (ENFORCEMENT REGIME)

1. Start of the Franchise

The Reporting Period in the cells entitled "Year 1, Reporting Period 1" shall be the first Reporting Period of the first Franchisee Year of the Franchise Period.

Column 1		Column 2		Column 3	Column 4	Column 5
Year		Franchisee Year	Reporting Period	Target Performance Level	Breach Performance Level	Default Performance Level
From	To			(% Cancelled)	(% Cancelled)	(% Cancelled)
2020	2021	Year 1	1	0.60	1.39	1.78
2020	2021	Year 1	2	0.61	1.38	1.76
2020	2021	Year 1	3	0.63	1.36	1.74
2020	2021	Year 1	4	0.64	1.35	1.72
2020	2021	Year 1	5	0.65	1.33	1.70
2020	2021	Year 1	6	0.64	1.31	1.68
2020	2021	Year 1	7	0.65	1.30	1.65
2020	2021	Year 1	8	0.66	1.28	1.63
2020	2021	Year 1	9	0.65	1.26	1.61
2020	2021	Year 1	10	0.64	1.25	1.59
2020	2021	Year 1	11	0.64	1.23	1.57
2020	2021	Year 1	12	0.63	1.22	1.55
2020	2021	Year 1	13	0.62	1.20	1.53
2021	2022	Year 2	1	0.62	1.18	1.51
2021	2022	Year 2	2	0.62	1.16	1.49
2021	2022	Year 2	3	0.62	1.14	1.46
2021	2022	Year 2	4	0.61	1.13	1.44
2021	2022	Year 2	5	0.61	1.11	1.42
2021	2022	Year 2	6	0.61	1.09	1.40
2021	2022	Year 2	7	0.60	1.07	1.37
2021	2022	Year 2	8	0.59	1.05	1.35
2021	2022	Year 2	9	0.59	1.03	1.33
2021	2022	Year 2	10	0.58	1.02	1.31
2021	2022	Year 2	11	0.57	1.00	1.28
2021	2022	Year 2	12	0.55	0.98	1.26
2021	2022	Year 2	13	0.53	0.96	1.24
2022	2023	Year 3	1	0.52	0.94	1.22

Column 1		Column 2		Column 3	Column 4	Column 5
Year		Franchisee Year	Reporting Period	Target Performance Level	Breach Performance Level	Default Performance Level
From	To			(% Cancelled)	(% Cancelled)	(% Cancelled)
2022	2023	Year 3	2	0.49	0.92	1.19
2022	2023	Year 3	3	0.46	0.91	1.17
2022	2023	Year 3	4	0.44	0.89	1.15
2022	2023	Year 3	5	0.43	0.87	1.12
2022	2023	Year 3	6	0.42	0.85	1.10
2022	2023	Year 3	7	0.41	0.84	1.08
2022	2023	Year 3	8	0.41	0.82	1.06
2022	2023	Year 3	9	0.40	0.80	1.03
2022	2023	Year 3	10	0.40	0.78	1.01
2022	2023	Year 3	11	0.39	0.77	0.99
2022	2023	Year 3	12	0.39	0.75	0.96
2022	2023	Year 3	13	0.39	0.73	0.94
Up to 13 Reporting Periods Extension						
2023	2024	Year 4	1	0.39	0.71	0.92
2023	2024	Year 4	2	0.38	0.69	0.90
2023	2024	Year 4	3	0.38	0.68	0.87
2023	2024	Year 4	4	0.38	0.66	0.85
2023	2024	Year 4	5	0.38	0.64	0.83
2023	2024	Year 4	6	0.37	0.62	0.81
2023	2024	Year 4	7	0.37	0.61	0.78
2023	2024	Year 4	8	0.37	0.59	0.76
2023	2024	Year 4	9	0.37	0.57	0.74
2023	2024	Year 4	10	0.37	0.55	0.72
2023	2024	Year 4	11	0.37	0.54	0.69
2023	2024	Year 4	12	0.36	0.52	0.67
2023	2024	Year 4	13	0.36	0.50	0.65

Part 2(a) - Annual Cancellations Benchmark Table (financial regime)

Year		Column 1	Column 2	Column 3	Column 4
		Franchisee Year	Annual Cap Performance Level (% Cancelled)	Annual Target Performance Level (% Cancelled)	Annual Floor Performance Level (% Cancelled)
2020	2021	Year 1	0.39	0.62	0.85
2021	2022	Year 2	0.38	0.53	0.68
2022	2023	Year 3	0.31	0.39	0.47
Up to 13 Reporting Periods Extension					
2023	2024	Year 4 (extension)	0.28	0.36	0.44

Withdrawn

Part 2(b) - Payment Tables (financial regime)

Annual Cancellations Payment Table

Column 1	Column 2			
Payment	Amount (£)			
	Core			Extension
	Year 1	Year 2	Year 3	Year 4
PBPC	[REDACTED ⁸⁹]	[REDACTED]	[REDACTED]	[REDACTED]
PDPC	[REDACTED ⁹⁰]	[REDACTED]	[REDACTED]	[REDACTED]

Provided that in respect of any Franchisee Year of less than thirteen (13) Reporting Periods but six (6) Reporting Periods or more, then PBPC and/or PDPC (as applicable) shall be multiplied by the number of whole Reporting Periods in the relevant Franchisee Year and then divided by thirteen (13).

Withdrawn

⁸⁹ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁹⁰ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

Appendix 2 to Schedule 7.1 - TOC Minute Delay Benchmarks and Annual TOC Minute Delay Benchmarks

Part 1 - TOC Minute Delay Benchmark Table (ENFORCEMENT REGIME)

1. Start of the Franchise

The Reporting Period in the cells entitled "Year 1, Reporting Period 1" shall be the first Reporting Period of the first Franchisee Year of the Franchise Period.

Column 1		Column 2		Target Performance Level	Breach Performance Level	Default Performance Level
Year		Franchisee Year	Reporting Period	(relevant Minutes Delay/1000 Actual Train Miles)	(relevant Minutes Delay/1000 Actual Train Miles)	(relevant Minutes Delay/1000 Actual Train Miles)
From	To					
2020	2021	Year 1	1	11.90	16.66	21.42
2020	2021	Year 1	2	12.16	17.02	21.89
2020	2021	Year 1	3	12.55	17.57	22.59
2020	2021	Year 1	4	12.80	17.92	23.04
2020	2021	Year 1	5	13.10	18.34	23.58
2020	2021	Year 1	6	13.11	18.35	23.60
2020	2021	Year 1	7	13.37	18.72	24.07
2020	2021	Year 1	8	13.38	18.73	24.08
2020	2021	Year 1	9	13.31	18.63	23.96
2020	2021	Year 1	10	13.23	18.52	23.81
2020	2021	Year 1	11	13.15	18.41	23.67
2020	2021	Year 1	12	13.07	18.30	23.53
2020	2021	Year 1	13	13.01	18.21	23.42
2021	2022	Year 2	1	13.01	18.21	23.42
2021	2022	Year 2	2	13.01	18.21	23.42
2021	2022	Year 2	3	13.01	18.21	23.42
2021	2022	Year 2	4	13.01	18.21	23.42
2021	2022	Year 2	5	12.94	18.12	23.29
2021	2022	Year 2	6	12.93	18.10	23.27
2021	2022	Year 2	7	12.80	17.92	23.04
2021	2022	Year 2	8	12.79	17.91	23.02
2021	2022	Year 2	9	12.79	17.91	23.02
2021	2022	Year 2	10	12.57	17.60	22.63
2021	2022	Year 2	11	12.32	17.25	22.18
2021	2022	Year 2	12	12.03	16.84	21.65
2021	2022	Year 2	13	11.74	16.44	21.13
2022	2023	Year 3	1	11.39	15.95	20.50

Column 1		Column 2		Target Performance Level	Breach Performance Level	Default Performance Level
Year		Franchisee Year	Reporting Period	(relevant Minutes Delay/1000 Actual Train Miles)	(relevant Minutes Delay/1000 Actual Train Miles)	(relevant Minutes Delay/1000 Actual Train Miles)
From	To					
2022	2023	Year 3	2	11.06	15.48	19.91
2022	2023	Year 3	3	10.63	14.88	19.13
2022	2023	Year 3	4	10.32	14.45	18.58
2022	2023	Year 3	5	10.03	14.04	18.05
2022	2023	Year 3	6	9.94	13.92	17.89
2022	2023	Year 3	7	9.73	13.62	17.51
2022	2023	Year 3	8	9.65	13.51	17.37
2022	2023	Year 3	9	9.65	13.51	17.37
2022	2023	Year 3	10	9.56	13.38	17.21
2022	2023	Year 3	11	9.50	13.30	17.10
2022	2023	Year 3	12	9.47	13.26	17.05
2022	2023	Year 3	13	9.47	13.26	17.05
Up to 13 Reporting Periods Extension						
2023	2024	Year 4	1	9.47	13.26	17.05
2023	2024	Year 4	2	9.47	13.26	17.05
2023	2024	Year 4	3	9.47	13.26	17.05
2023	2024	Year 4	4	9.47	13.26	17.05
2023	2024	Year 4	5	9.48	13.27	17.06
2023	2024	Year 4	6	9.48	13.27	17.06
2023	2024	Year 4	7	9.48	13.27	17.06
2023	2024	Year 4	8	9.48	13.27	17.06
2023	2024	Year 4	9	9.48	13.27	17.06
2023	2024	Year 4	10	9.48	13.27	17.06
2023	2024	Year 4	11	9.48	13.27	17.06
2023	2024	Year 4	12	9.48	13.27	17.06
2023	2024	Year 4	13	9.49	13.29	17.08

Part 2(A) - Annual TOC Minute Delay Benchmark Table (financial regime)

Year		Column 1	Column 2	Column 3	Column 4
		Franchisee Year	Annual Cap Performance Level (relevant Minutes Delay per 1000 Actual Train Miles)	Annual Target Performance Level (relevant Minutes Delay per 1000 Actual Train Miles)	Annual Floor Performance Level (relevant Minutes Delay per 1000 Actual Train Miles)
2020	2021	Year 1	11.51	13.01	14.51
2021	2022	Year 2	10.24	11.74	13.24
2022	2023	Year 3	7.97	9.47	10.97
Up to 13 Reporting Periods Extension					
2023	2024	Year 4 (extension)	7.99	9.49	10.99

Withdrawn

Part 2(b) - Payment Tables (financial regime)

Annual TOC Minute Delay Payment Table

Column 1	Column 2
Payment	Amount (£)
PBPMD	[REDACTED ⁹¹]
PDPMD	[REDACTED ⁹²]

Provided that in respect of any Franchisee Year of less than thirteen (13) Reporting Periods but six (6) Reporting Periods or more, then PBPMD and/or PDPMD shall be multiplied by the number of whole Reporting Periods in the relevant Franchisee Year and then divided by thirteen (13).

Withdrawn

⁹¹ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁹² 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

Appendix 3 to Schedule 7.1 - Annual Short Formation Benchmarks

PART 1 – NOT USED.

Withdrawn

PART 2(A) - ANNUAL SHORT FORMATION BENCHMARK TABLE (FINANCIAL REGIME)

Year		Column 1	Column 2	Column 3	Column 4
Franchisee Year		Annual Target Performance Level (%)	Annual Intermediate Performance Level (%)	Annual Floor Performance Level (%)	
2020	2021	Year 1	0.00	0.50	1.00
2021	2022	Year 2	0.00	0.50	1.00
2022	2023	Year 3	0.00	0.50	1.00
Up to 13 Reporting Periods Extension					
2023	2024	Year 4 (extension)	0.00	0.50	1.00

Withdrawn

PART 2(B) - PAYMENT TABLES (FINANCIAL REGIME)

Column 1	Column 2
	Amount (£)
BPR_{SF}	[REDACTED ⁹³]
IPR_{SF}	[REDACTED ⁹⁴]

Provided that in respect of any Franchisee Year of less than thirteen (13) Reporting Periods, then **BPR_{SF}** and **IPR_{SF}** (as applicable) shall be multiplied by the number of whole Reporting Periods in the relevant Franchisee Year and then divided by thirteen (13).

Withdrawn

⁹³ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁹⁴ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

Appendix 4 to Schedule 7.1 - NOT USED

Withdrawn

Appendix 5 to Schedule 7.1 - NOT USED

Withdrawn

Appendix 6 to Schedule 7.1 - Annual T-3 Measure

PART 1 – NOT USED

PART 2(A) – ANNUAL T-3 TABLE (FINANCIAL REGIME)

	Column 1	Column 2	Column 3	Column 4
Year	Franchisee Year	Annual Cap Performance Level (% T-3)	Annual Target Performance Level (% T-3)	Annual Floor Performance Level (% T-3)
2020-2021	Year 1	80.07	78.07	76.07
2021-2022	Year 2	80.91	78.91	76.91
2022-2023	Year 3	81.76	79.76	77.76
Up to 13 Reporting Periods Extension				
2023-2024	Year 4 (extension)	82.61	80.61	78.61

Withdrawn

PART 2(B) – PAYMENT TABLES (FINANCIAL REGIME)

Column 1	Column 2
Payment	Amount (£)
PBP_{T-3}	[REDACTED ⁹⁵]
PDP_{T-3}	[REDACTED ⁹⁶]

Provided that in respect of any Franchisee Year of less than thirteen (13) Reporting Periods but six (6) Reporting Periods or more, then **PBP_{T-3}** and/or **PDP_{T-3}** shall be multiplied by the number of whole Reporting Periods in the relevant Franchisee Year and then divided by thirteen (13).

Withdrawn

⁹⁵ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁹⁶ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

Appendix 7 to Schedule 7.1 - Annual T-15 Measure

PART 1 – NOT USED

PART 2(A) – ANNUAL T-15 TABLE (FINANCIAL REGIME)

Year	Column 1 Franchisee Year	Column 2 Annual Cap Performance Level (% T-15)	Column 3 Annual Target Performance Level (% T-15)	Column 4 Annual Floor Performance Level (% T-15)
2020-2021	Year 1	97.42	97.17	96.92
2021-2022	Year 2	97.68	97.43	97.18
2022-2023	Year 3	97.93	97.68	97.43
Up to 13 Reporting Periods Extension				
2023-2024	Year 4 (extension)	98.18	97.93	97.68

Withdrawn

PART 2(B) – PAYMENT TABLES (FINANCIAL REGIME)

Column 1	Column 2
Payment	Amount (£)
PBP _{T-15}	[REDACTED ⁹⁷]
PDP _{T-15}	[REDACTED ⁹⁸]

Provided that in respect of any Franchisee Year of less than thirteen (13) Reporting Periods but six (6) Reporting Periods or more, then **PBP_{T-15}** and/or **PDP_{T-15}** shall be multiplied by the number of whole Reporting Periods in the relevant Franchisee Year and then divided by thirteen (13).

Withdrawn

⁹⁷ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁹⁸ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

Appendix 8 to Schedule 7.1 - All Cancellations Measures

PART 1 – NOT USED

PART 2(A) – ANNUAL ALL CANCELLATIONS TABLE (FINANCIAL REGIME)

	Column 1	Column 2	Column 3	Column 4
Year	Franchisee Year	Annual Cap Performance Level (% All Cancelled)	Annual Target Performance Level (% All Cancelled)	Annual Floor Performance Level (% All Cancelled)
2020-2021	Year 1	1.77	2.07	2.37
2021-2022	Year 2	1.63	1.93	2.23
2022-2023	Year 3	1.49	1.79	2.09
Up to 13 Reporting Periods Extension				
2023-2024	Year 4 (extension)	1.34	1.64	1.94

Withdrawn

PART 2(B) – PAYMENT TABLES (FINANCIAL REGIME)

Column 1	Column 2
Payment	Amount (£)
PBP_{AC}	[REDACTED ⁹⁹]
PDP_{AC}	[REDACTED ¹⁰⁰]

Provided that in respect of any Franchisee Year of less than thirteen (13) Reporting Periods but six (6) Reporting Periods or more, then **PBP_{AC}** and/or **PDP_{AC}** shall be multiplied by the number of whole Reporting Periods in the relevant Franchisee Year and then divided by thirteen (13).

Withdrawn

⁹⁹ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹⁰⁰ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

Schedule 7.2

Customer Experience and Engagement**1. Definitions**

- 1.1 For the purposes of this Schedule 7.2 (*Customer Experience and Engagement*) only, the following words and expressions shall have the following meanings unless otherwise set out in clause 3 (*Definitions*):

"Additional Expenditure" or "AD" has the meaning given to it in paragraph 6.1 of this Schedule 7.2 (Customer Experience and Engagement);

"Alternative NRPS" has the meaning given to it in paragraph 2.6 of this Schedule 7.2 (Customer Experience and Engagement);

"CCI Programme" means a document accumulating and describing the Franchisee's Approved CCI Schemes for each CCI Period (as amended from time to time as permitted by paragraph 11.5A of Schedule 7.2 (Customer Experience and Engagement));

"Existing Expenditure" has the meaning given to it in paragraph 6.2 (a) of this Schedule 7.2 (Customer Experience and Engagement);

"First Additional Expenditure Year" has the meaning given to it in paragraph 6.2 (a) of this Schedule 7.2 (Customer Experience and Engagement);

"NRPS Action Plan" has the meaning given to it in paragraph 5.1 of this Schedule 7.2 (Customer Experience and Engagement);

"NRPS Benchmark" means, in respect of a relevant Franchisee Year, the benchmark for each NRPS Measure and for each NRPS Service Group as set out in the NRPS Benchmark Table;

"NRPS Benchmark Table" means each of tables 1, 2 and 3 in Appendix 1 to this Schedule 7.2 (Customer Experience and Engagement);

"NRPS Measure" 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)";

"NRPS Service Group" means each of the service groups set out in the Passenger Survey Methodology and more particularly described as:

- (a) Long Distance ("*journeys on long distance services*");
- (b) London Thames Valley ("*journeys on relatively short distance services in and around the Thames Valley*"); and
- (c) West ("*journeys on (generally) short distance rural rail lines in the West of England*");

"Required Improvement" 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 equal to or higher than the related NRPS Benchmark; and

"RPIX" has the meaning given to it in paragraph 6.2(a) of this Schedule 7.2 (Customer Experience and Engagement).

2. Conduct of National Rail Passenger Surveys

2.1 The Franchisee agrees with the Secretary of State that:

- (a) the Passengers' Council may measure the level of passenger satisfaction with the Franchise Services through National Rail Passenger Surveys;
- (b) the Passengers' Council shall determine how, when (normally twice per annum) and where National Rail Passenger Surveys are to be carried out;
- (c) the Franchisee shall grant access on trains or at stations to the Passengers' Council (or its representatives and agents) to carry out National Rail Passenger Surveys;
- (d) the Franchisee shall co-operate with the Passengers' Council (in such manner as the Passengers' Council may reasonably request or as the Secretary of State may reasonably direct) in order to enable the Passengers' Council to carry out National Rail Passenger Surveys; and
- (e) the Passengers' Council and/or the Secretary of State may, from time to time, publish the results of each National Rail Passenger Survey.

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 Franchisee within a reasonable period of time after the completion of each such survey and shall use all reasonable endeavours to procure that those findings are made available in a timely manner to enable the Franchisee to comply with its obligations under paragraph 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 Franchisee shall, as soon as reasonably practicable after such information is made available to the Franchisee in accordance with paragraph 2.2, publicise its performance against the NRPS 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 Franchisee 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 Franchise 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 Franchisee 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 the Passengers' Council ceases to undertake National Rail Passenger Surveys then the relevant National Rail Passenger Survey for the purposes of this Schedule 7.2 shall be such other passenger survey as the Secretary of State may, after consultation with the Franchisee, reasonably determine to be appropriate in the circumstances (the "**Alternative NRPS**"). The provisions of this Schedule 7.2 shall apply in respect of any Alternative NRPS and for these purposes Passengers' Council shall be replaced with such other entity that is responsible for conducting such Alternative NRPS.

3. **NRPS Benchmarks**

- 3.1 It is agreed by the Secretary of State and the Franchisee that, subject to paragraph 2.6, the results of the National Rail Passenger Survey(s) published by the Passengers' Council in any Franchisee Year (other than the results of any National Rail Passenger survey carried out in respect of the HEx Services) should be used to determine the Franchisee's performance against the NRPS Benchmarks for that Franchisee Year. Any passenger survey carried out in respect of the HEx Services shall be disregarded for the purposes on this Schedule 7.2. If in any Franchisee Year the Passengers' Council has published:

- (a) only one (1) National Rail Passenger Survey in that Franchisee Year then the performance of the Franchisee against the NRPS Benchmarks shall be measured against the results of such National Rail Passenger Survey; or
- (b) more than one (1) National Rail Passenger Survey in that Franchisee Year then the performance of the Franchisee against the NRPS Benchmarks shall be measured against the average of the results of all of the National Rail Passenger Surveys published by the Passengers' Council in that Franchisee Year.

4. **Performance Review**

- 4.1 For each Franchisee Year the Secretary of State shall determine the Franchisee's performance against each NRPS Benchmark by comparing:

- (a) if only one (1) National Rail Passenger Survey has been published by Passengers' Council in that Franchisee Year, the results of such National Rail Passenger Survey against the NRPS Benchmarks applicable in respect of that Franchisee Year; or
- (b) if more than one (1) National Rail Passenger Survey has been published by Passengers' Council in that Franchisee Year, the average of the results of all of the National Rail Passenger Surveys published by the Passengers' Council in that Franchisee Year against the NRPS Benchmarks applicable in respect of that Franchisee Year.

- 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 Franchisee shall, unless the Secretary of State shall otherwise direct, incur Additional Expenditure:

- (a) in order to secure the Required Improvement;
- (b) **NOT USED;**
- (c) **NOT USED.**

5. **Required Improvement and NRPS Action Plans**

5.1 Without limiting paragraph 4.3, on each occasion that the Franchisee becomes obliged to incur Additional Expenditure to secure a Required Improvement, the Franchisee shall produce a plan (the "**NRPS Action Plan**") which is consistent with its obligations under paragraph 4.3 and in compliance with the following provisions:

- (a) the Franchisee shall (i) produce; (ii) obtain the Secretary of State's approval of; and (iii) commence the implementation of the NRPS Action Plan within three (3) months after the date on which the results of such National Rail Passenger Survey which triggered the requirement for the Required Improvement were published or otherwise made available to the Franchisee pursuant to paragraph 2.2;
- (b) the NRPS Action Plan will contain specific tangible action points and indicate in the case of each action point:
 - (i) how that action will contribute to meeting the NRPS Measure;
 - (ii) where the action is to be implemented;
 - (iii) when the action is to be commenced and by when it is to be implemented provided always that where any action is expressed to be ongoing the plan shall include specific review dates; and
 - (iv) how performance of the action is to be measured; and
- (c) the NRPS Action Plan will identify the Additional Expenditure associated with each action.

5.2 The Franchisee shall, except to the extent otherwise agreed by the Secretary of State in advance, implement each NRPS Action Plan referred to in paragraph 5.1 in accordance with its terms.

5.3 It is acknowledged by the Franchisee that the approval or lack of approval by the Secretary of State of each NRPS Action Plan as contemplated in paragraph 5.1(a) shall not relieve the Franchisee of its obligations under this Schedule 7.2 or any other provisions of the Franchise Agreement.

6. Additional Expenditure

6.1 For the purposes of paragraphs 4, 5 and 7 of this Schedule 7.2 **"Additional Expenditure" or "AD"** means the amount calculated in accordance with Appendix 2 to this Schedule 7.2 for each NRPS Service Group and in respect of a single NRPS Measure.

6.2 For the purposes of paragraph 4.3, the Additional Expenditure shall be:

- (a) in addition to any sums provided for expenditure in respect of the same or similar commitments as those to be specified in an NRPS Action Plan in the Business Plan for the Franchisee Year (the **"First Additional Expenditure Year"**) in which the obligation to incur Additional Expenditure under paragraph 4.3 first arises (the **"Existing Expenditure"**) and, in respect of any subsequent Franchisee Year, shall be in addition to the Existing Expenditure increased by an amount equivalent to RPIX. For the purpose of this paragraph 6.2(a) **"RPIX"** means the increase in the Retail Prices Index between the beginning of the First Additional Expenditure Year and the beginning of that subsequent Franchisee Year; and
- (b) in addition to and without limiting paragraph 6.2(a), any expenditure made, or to be made, by the Franchisee for the purposes of complying with the provisions of Schedule 1 (Passenger Service Obligations), Schedule 4 (Accessibility and Inclusivity), Part 1 (Committed Obligations) of Schedule 6.2 (Committed Obligations) and Schedule 7 (Performance Benchmarks).

6.3 **NOT USED.**

7. Payments on Termination or Expiry

Upon the termination or expiry of this Agreement the Franchisee shall pay to the Secretary of State, an amount equivalent to the amount of any Additional Expenditure that the Franchisee is committed to incur such payment to be made by way of adjustment to Franchise Payments (or, where no Franchise Payment(s) remain due and payable as at the date of expiry or termination of this Agreement, such payment to be made to the Secretary of State within thirty (30) days of the end of the Franchise Period).

8. Consultations

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

- (a) passengers, potential passengers, Stakeholders and other users of the rail network; and
- (b) persons who are protected by an Accessible Travel Policy; and
- (c) persons with other protected characteristics within the meaning of the EA,

for the purposes of the Customer and Stakeholder Engagement Strategy, the Customer Report and the CCI Scheme. Such consultations shall exclude the HEx Services.

9. Customer and Stakeholder Engagement Strategy

- 9.1 The Franchisee shall comply with the Customer and Stakeholder Engagement Strategy from the Start Date.
- 9.2 The Franchisee shall:
- (a) undertake and complete a review of the Customer and Stakeholder Engagement Strategy by no later than each anniversary of the Start Date for the remainder of the Franchise Term; and
 - (b) provide the Secretary of State with any proposed revisions to the Customer and Stakeholder Engagement Strategy arising out of such review by no later than the end of each such Franchisee Year.
- 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 Franchisee 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 reasonably require (including in booklet or other similar hard copy formats, in electronic formats (such as on the Franchisee's website, through social media channels and by email)), in each case in accordance with the Customer and Stakeholder Engagement Strategy and the provisions of paragraph 8 (*Publication of Performance Data*) and paragraph 9 (*Publication of Complaints and Faults Handling Data*) of Schedule 1.4 (*Passenger Facing Obligations*) and paragraph 16 of Schedule 11.2 (*Management Information*).
- 10.2 The Franchisee shall publish a Customer Report as follows:
- (a) in respect of the first (1st) Franchisee Year:
 - (i) where such Franchisee Year is less than seven (7) Reporting Periods, the Franchisee shall only be required to publish a Customer Report for that Franchisee Year by no later than the Start Date; or
 - (ii) where such Franchisee Year is less than thirteen (13) Reporting Periods but equal to or more than seven (7) Reporting Periods, the Franchisee shall be required to publish two (2) Customer Reports in that Franchisee Year, the first Customer Report to be published by no later than the Start Date and the second Customer Report to be published before the end of that first Franchisee Year; and
 - (b) in respect of each subsequent Franchisee Year, the Franchisee shall be required to publish a Customer Report at least twice in that Franchisee Year provided that where any such subsequent Franchisee Year is less than thirteen (13) Reporting Periods the Franchisee shall be required to publish a Customer Report only once in respect of that Franchisee Year.

10.3 Without prejudice to the obligations of the Franchisee as specified in each of paragraphs 12.1 and 12.3 of this Schedule 7.2, paragraphs 8.3 and 9 of Schedule 1.4 (*Passenger Facing Obligations*) and paragraph 16 of Schedule 11.2 (*Management Information*), the Secretary of State and the Franchisee acknowledge and agree that in respect of each Franchisee Year to which the provisions of paragraph 10.2(b) apply, the first Customer Report to be published for that Franchisee Year shall be prepared in respect of the first six (6) Reporting Periods of that Franchisee Year and the second Customer Report to be published for that Franchisee Year shall be prepared in respect of the last seven (7) Reporting Periods of that Franchisee Year.

11. **Customer and Communities Investment (CCI) Scheme**

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

11.2 In relation to each CCI Scheme proposed by the Franchisee pursuant to paragraph 11.1 the Franchisee shall provide:

- (a) details of the specific issues which that CCI Scheme is intended to resolve or mitigate (including how those issues have been identified) and how that CCI Scheme will resolve or mitigate those issues; and
- (b) fully worked up details of the CCI Scheme sufficient to enable the Secretary of State to evaluate the same, including:
 - (i) a timetable for the implementation of that CCI Scheme, setting out the proposed commencement and completion date of such CCI Scheme and any other key dates and milestones;
 - (ii) details of the projected CCI Scheme Cost; and
 - (iii) details of the projected CCI Scheme Revenue.

11.3 The Franchisee shall provide the Secretary of State with such further information in relation to any CCI Scheme proposed by the Franchisee pursuant to paragraph 11.1 as the Secretary of State may reasonably require.

11.4 A CCI Scheme proposed by the Franchisee pursuant to paragraph 11.1 shall not be an Approved CCI Scheme unless and until approved by the Secretary of State pursuant to this paragraph 11.4 (such consent not to be unreasonably withheld or delayed) after which it will be included in the CCI Programme for that CCI Period. Without limitation, the Secretary of State may withhold the Secretary of State's approval to any proposed CCI Scheme which:

- (a) has not been identified and/or developed in accordance with the Customer and Stakeholder Engagement Strategy;

- (b) is not designed to resolve or mitigate issues raised with the Franchisee through the consultations referred to in paragraph 8;
 - (c) has a completion date falling later than the end of the relevant CCI Period;
 - (d) is projected to generate a Commercial Return or in relation to which the Secretary of State considers the CCI Scheme Costs (or any part of them) to be too high or disproportionate to the benefits accruing from the CCI Scheme;
 - (e) the Franchisee is otherwise funded to undertake; or
 - (f) in the opinion of the Secretary of State, amounts to actions or steps which the Franchisee is otherwise obliged to take or which any competent train operator should be taking in relation to the operation of the Franchise.
- 11.5 The Franchisee shall undertake the Approved CCI Schemes described in the CCI Programme for each CCI Period.
- 11.5A No later than the start of each CCI Period, the Franchisee shall produce a CCI Programme which includes all the Approved CCI Schemes which it plans to undertake in the following CCI Period and provide the CCI Programme to the Secretary of State.
- 11.5B The CCI Programme may be varied at any time in writing between the Parties, provided that paragraphs 11.6 to 11.8 shall continue to apply.
- 11.6 Paragraph 11.8 will apply if:
- (a) the aggregate projected CCI Scheme Shortfall in respect of all Approved CCI Schemes for any CCI Period is less than the aggregate of the CCI Amount for each Franchisee Year in that CCI Period; or
 - (b) subject to paragraph 11.7 in any CCI Period, in the Secretary of State's reasonable opinion, the aggregate of the actual CCI Scheme Shortfall incurred by the Franchisee during that CCI Period upon Approved CCI Schemes is less than the aggregate of the CCI Amount for each Franchisee Year in that CCI Period,
- in each case the underspend against the aggregate CCI Amount being the "**CCI Scheme Underspend**".
- 11.7 If:
- (a) the amount of the CCI Scheme Costs actually incurred by the Franchisee in relation to any Approved CCI Scheme exceed the projected CCI Scheme Costs notified to the Secretary of State pursuant to paragraph 11.2 for such Approved CCI Scheme, then the amount of the excess shall not amount to CCI Scheme Cost; or
 - (b) in the Secretary of State's reasonable opinion, the amount of the CCI Scheme Revenue actually earned by the Franchisee in relation to any Approved CCI Scheme is less than the projected CCI Scheme Revenue notified to the Secretary of State pursuant to paragraph 11.2 for such Approved CCI Scheme then, for the purposes of paragraph 11.6(b) the actual CCI Scheme Revenue shall be deemed to be the projected CCI Scheme Revenue.

- 11.8 Where this paragraph 11.8 applies the Secretary of State may require:
- (a) all or part of the CCI Scheme Underspend to be added to the CCI Amount for the first Franchisee Year in the subsequent CCI Period;
 - (b) the Franchisee to propose further CCI Schemes using all or part of the CCI Scheme Underspend by such new deadline as the Secretary of State may specify;
 - (c) the Franchisee to spend all or part of the CCI Scheme Underspend in such manner as the Secretary of State may direct; and/or
 - (d) the Franchisee to pay all or part of the CCI Scheme Underspend to the Secretary of State,

provided that paragraph 11.8(d) shall automatically apply in respect of the last CCI Period unless the Secretary of State specifies otherwise.

- 11.9 Any Franchise Asset arising as a result of an Approved CCI Scheme shall be designated as a Primary Franchise Asset and shall not be de-designated as such. Any such Primary Franchise Asset which falls to be valued in accordance with the Supplemental Agreement shall be valued at nil.

12. Customer Service and Satisfaction Data

- 12.1 As part of each Customer Report to be provided by the Franchisee pursuant to paragraph 10.1 of this Schedule 7.2, the Franchisee shall publish (in such format as the Secretary of State may reasonably require) details of the Franchisee'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 Franchisee and the ORR as part of an Accessible Travel Policy in respect of the Passenger Assistance service operated by the Franchisee,

in each case in relation to the Reporting Periods that have elapsed:

- (i) since the last Reporting Period reported on in the previous Customer Report; or
- (ii) in the case of the first Customer Report, since the last reporting period reported on in the final customer report published by the Franchisee pursuant to paragraph 3.2 of Schedule 7.2 of the Previous Franchise Agreement,

along with a comparison with the relevant statistics or results (as applicable) provided for the same Reporting Periods in the previous Franchisee Year (or, in the case of the first and second Customer Report, the equivalent reporting periods in the previous franchisee year occurring pursuant to the Previous Franchise Agreement).

- 12.2 The Franchisee shall publish on its website (in such format as the Secretary of State may reasonably require):

- (a) within twenty (20) Weekdays of the publication of each National Rail Passenger Survey carried out by the Passengers' Council during the Franchise Term, details of the scores achieved by the Franchisee 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 Franchisee Year, details of the scores achieved by the Franchisee in respect of each NRPS Benchmark, as calculated in accordance with paragraph 4 of this Schedule 7.2.
- 12.3 The Franchisee shall ensure that the scores achieved in relation to the NRPS Benchmarks, published by it pursuant to paragraph 12.2, are also recorded in the subsequent Customer Report which relates to the Reporting Periods during which the applicable NRPS Benchmarks were achieved, along with:
- (a) a comparison with the scores that were achieved against the NRPS Benchmarks for the same Reporting Periods in the previous Franchisee Year (or, in the case of the first and second Customer Report, the equivalent reporting periods in the previous franchisee year occurring pursuant to the Previous Franchise Agreement), accompanied by a supporting narrative describing the outcomes and implications of the results of such comparison exercise;
- (b) details of any remedial work either:
- (i) planned by the Franchisee to occur in the period in relation to which the next Customer Report will report to improve the Franchisee's performance in relation to achieving and exceeding the NRPS Benchmarks (for instance, the planned application of Additional Expenditure); or
- (ii) undertaken by the Franchisee during the Reporting Periods that have elapsed since the last Reporting Period reported on in the previous Customer Report or, in the case of the first (1st) Customer Report, since the last reporting period reported on in the final customer report published by the Franchisee pursuant to paragraph 3.2 of Schedule 7.2 of the Previous Franchise Agreement, for the purposes of improving the Franchisee'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 Franchisee to improve passenger experience.
- 12.4 The Franchisee shall ensure that a summary of the then current Customer Report is made available at all staffed Stations (in such format as the Secretary of State may reasonably require) and that such summary includes instructions to enable passengers to locate and obtain a full copy of the applicable Customer Report.

**APPENDIX 1 TO SCHEDULE 7.2
NRPS Benchmark Table**

Table 1						
NRPS SERVICE GROUP – LONG DISTANCE						
Year		Franchisee Year	NRPS BENCHMARKS			
From	To		NRPS MEASURE STATION (S) (%)	NRPS MEASURE TRAINS (T) (%)	NRPS MEASURE CUSTOMER SERVICES (C)(%)	NRPS MEASURE DEALING WITH DELAYS (D)(%)
2020	2021	Year 1	77.0	79.2	74.6	54.5
2021	2022	Year 2	77.6	81.1	75.1	57.0
2022	2023	Year 3	78.3	83.0	75.5	59.5
Up to 13 Reporting Periods Extension						
2023	2024	Year 4 (Extension)	79.0	83.0	76.0	62.0

Table 2						
NRPS SERVICE GROUP – LONDON THAMES VALLEY						
Year		Franchisee Year	NRPS BENCHMARKS			
From	To		NRPS MEASURE STATION (S) (%)	NRPS MEASURE TRAINS (T) (%)	NRPS MEASURE CUSTOMER SERVICES (C)(%)	NRPS MEASURE DEALING WITH DELAYS (D)(%)
2020	2021	Year 1	71.3	71.8	69.7	42.8
2021	2022	Year 2	72.5	72.9	70.1	45.2
2022	2023	Year 3	73.8	73.9	70.6	47.6
Up to 13 Reporting Periods Extension						
2023	2024	Year 4 (extension)	75.0	75.0	71.0	50.0

Table 3						
NRPS SERVICE GROUP - WEST						
Year		Franchisee Year	NRPS BENCHMARKS			
From	To		NRPS MEASURE STATION (S) (%)	NRPS MEASURE TRAINS (T) (%)	NRPS MEASURE CUSTOMER SERVICES (C)(%)	NRPS MEASURE DEALING WITH DELAYS (D)(%)
2020	2021	Year 1	73.7	69.3	72.6	49.5
2021	2022	Year 2	74.5	71.2	73.0	52.3
2022	2023	Year 3	75.2	73.1	73.5	55.2
Up to 13 Reporting Periods Extension						
2023	2024	Year 4 (extension)	76.0	75.0	74.0	58.0

Withdrawn

**APPENDIX 2 TO SCHEDULE 7.2
Calculation of the Additional Expenditure**

The Additional Expenditure shall be calculated in accordance with this Appendix 2:

1. Core Amount

- (i) The Core Amount shall be specified in Tables 1, 2, 3 and 4 as set out in this Appendix 2.
- (ii) The Core Amount shall be adjusted at the beginning of each Franchisee Year in accordance with the following formula:

Core Amount x RPI	
where:	
Core Amount	has the meaning given to it in this Appendix 2; and
RPI	has the meaning given to it in Appendix 1 (Annual Franchise Payments) to Schedule 8.1 (Franchise Payments).

- (iii) For any Franchisee Year which is shorter than thirteen (13) Reporting Periods, Additional Expenditure for that Franchisee Year shall be reduced pro rata.

2. Table 1 - NRPS Measure – Stations

“Core Amount” means [REDACTED¹⁰¹]

Column A	Column B
Percentage points below NRPS Benchmark in relation to NRPS Measure and for each NRPS Service Group – Stations	Additional Expenditure
0.1 to 0.9	Core Amount x 1
1.0 to 1.9	Core Amount x 2
2.0 to 2.9	Core Amount x 3
3.0 or more	Core Amount x 4

3. Table 2 - NRPS Measure – Trains

¹⁰¹ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

“Core Amount” means [REDACTED¹⁰²]

Column A	Column B
Percentage points below NRPS Benchmark in relation to NRPS Measure and for each NRPS Service Group – Trains	Additional Expenditure
0.1 to 1.4	Core Amount x 1
1.5 to 2.9	Core Amount x 2
3.0 to 4.4	Core Amount x 3
4.5 or more	Core Amount x 4

4. **Table 3 - NRPS Measure – Customer Services**

“Core Amount” means [REDACTED¹⁰³]

Column A	Column B
Percentage points below NRPS Benchmark in relation to NRPS Measure and for each NRPS Service Group – Customer Services	Additional Expenditure
0.1 to 0.9	Core Amount x 1
1.0 to 1.9	Core Amount x 2
2.0 to 2.9	Core Amount x 3
3.0 or more	Core Amount x 4

5. **Table 4 - NRPS Measure – Dealing with Delays**

“Core Amount” means [REDACTED¹⁰⁴]

¹⁰² 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹⁰³ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹⁰⁴ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

Column A	Column B
Percentage points below NRPS Benchmark in relation to NRPS Measure and for each NRPS Service Group - Dealing with Delays	Additional Expenditure
0.1 to 1.9	Core Amount x 1
2.0 to 3.9	Core Amount x 2
4.0 to 5.9	Core Amount x 3
6.0 or more	Core Amount x 4

Withdrawn

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 and Service Quality Payments;
- (d) Part D – Publication and Reporting Requirements;
- (e) Part E – Remedies; and
- (f) Part F – **NOT USED.**

2. **Definitions**

2.1 For the purposes of this Schedule 7.3 (*Service Quality Regime*) only, the following words and expressions shall have the following meanings unless otherwise set out in clause 3 (*Definitions*):

- "Affected Service Quality Indicator"** has the meaning given to such term in paragraph 20.1 of this Schedule 7.3;
- "Affected Service Quality Area"** has the meaning given to such term in paragraph 20.1(c) of this Schedule 7.3;
- "Audit Questionnaire"** has the meaning given to such term in paragraph 3.1A(b) of this Schedule 7.3;
- "Ceased Services"** has the meaning given to such term in paragraph 3.3(c) of this Schedule 7.3;
- "Customer Service Quality Inspection"** means an inspection (and provision of reports as specified) of the Franchisee's customer facing systems and procedures against each Service Quality Indicator in the manner specified in the Service Quality Schedules and in accordance with the requirements of this Schedule 7.3;
- "Customer Service SQR Stations"** means (together):
 - (a) the SQR Stations;
 - (b) London Paddington station;
 - (c) Reading station; and
 - (d) Bristol Temple Meads station;
- "Facilities Guide"** means the document in the agreed terms marked **"FG"**, as such document is updated from time to time in accordance with paragraph 3.2(b) of this Schedule 7.3 (which comprises the "GWR Rolling Stock Guide" and the "GWR Stations Guide");
- "Independent Service Quality Audits"** has the meaning given to such term in paragraph 7.1 of

this Schedule 7.3;

“Material Discrepancies”

has the meaning given to such term in paragraph 18.1 of this Schedule 7.3;

“Micro-stations”

means (together) the following Stations:

- (a) Coombe Junction Halt;
- (b) Lelant Saltings;
- (c) Pilning;
- (d) Combe;
- (e) Finstock;
- (f) Shipton;
- (g) Ascot-under-Wychwood; and
- (h) Portsmouth Arms,

and reference to a **“Micro-station”** shall be construed accordingly;

“New Facilities”

has the meaning given to such term in paragraph 3.3(a)(ii) of this Schedule 7.3;

“New Services”

has the meaning given to such term in paragraph 3.3(a)(i) of this Schedule 7.3;

“Pass Rate”

means:

- (a) in respect of a Reporting Period and for each Service Quality Schedule, the pass rate (*i.e. the number of Service Quality Indicators that have passed rather than failed*) for a Service Quality Area comprised in such Service Quality Schedule as calculated in accordance with paragraph 10 of this Schedule 7.3; and
- (b) in respect of each Service Quality Schedule and for each Franchisee Year, the pass rate (*i.e. the number of Service Quality Indicators that have passed rather than failed*) for a Service Quality Area comprised in such Service Quality Schedule calculated in accordance with paragraph 10 of this Schedule 7.3,

both expressed as a percentage;

“Re-inspection Failure”

has the meaning given to such term in paragraph 6.3 of this Schedule 7.3;

“Rectification Evidence Failure”

has the meaning given to such term in paragraph 6.3(b) of this Schedule 7.3;

“Reference Period”	means the period commencing on the first day of the second Reporting Period in the first Franchisee Year and ending on the last day of the seventh Reporting Period in the first Franchisee Year;
“Relevant Rectification Period”	has the meaning given to such term in paragraph 6.1(b) of this Schedule 7.3;
“Revised Proposal”	has the meaning given to such term in paragraph 20.2 of this Schedule 7.3;
“Service Quality Area”	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 this Schedule 7.3;
“Service Quality Failure”	has the meaning given to such term in paragraph 6.1 of this Schedule 7.3;
“Service Quality Indicator”	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 this Schedule 7.3;
“Service Quality Inspection”	has the meaning given to such term in paragraph 4.1 of this Schedule 7.3;
“Service Quality Payment”	means the payment to be made by the Franchisee to the Secretary of State as such payment is calculated pursuant to paragraph 11 (<i>Calculation of the Service Quality Payment</i>) of this Schedule 7.3;
“Service Quality Regime” or “SQR”	means the regime for the measurement of standards at SQR Stations, on SQR Trains and SQR Customer Service as set out in this Schedule 7.3;
“Service Quality Re-inspection”	has the meaning given to such term in paragraph 6.1(a) of this Schedule 7.3;
“Service Quality Schedules”	means each of the service schedules for SQR Trains, SQR Stations and SQR Customer Service contained in Appendix 1 of Schedule 7.3;
“Service Quality Trains Rectification Evidence”	means evidence and/or documentation demonstrating (as the case may be) that the Franchisee: <ul style="list-style-type: none"> (a) has rectified a relevant Service Quality Failure in relation to SQR Trains; or (b) has (where the Service Quality Failure in question relates to one or more Sets (as such term is defined in Schedule 6.7)) agreed with the TSP the rectification actions which will be implemented by the TSP in order to rectify the relevant Service Quality Failure;

"SoS Audits"	has the meaning given to such term in paragraph 8.1 of this Schedule 7.3;
"SoS Nominee"	has the meaning given to such term in paragraph 7.6 of this Schedule 7.3;
"SoS Service Quality Inspection"	means inspections undertaken by the Secretary of State or the Secretary of State's agents in place of the Franchisee;
"SoS Service Quality Inspection Period"	has the meaning given to such term in paragraph 17.2(b)(iii) of this Schedule 7.3;
"SQR Benchmark"	means any SQR Train Benchmark, SQR Station Benchmark, or SQR Customer Service Benchmark (as the context may require);
"SQR Benchmarking Report"	has the meaning given to it in paragraph 10A.3;
"SQR Customer Service"	means the services measured by the indicators set out in Part 3 of Appendix 1 to this Schedule 7.3;
"SQR Customer Service Benchmark"	means the benchmark for each Service Quality Area relating to SQR Customer Service as set out in Column 2 of the table in Part 3 of Appendix 2 to this Schedule 7.3;
"SQR Management System"	has the meaning given to such term in paragraph 3.1 of this Schedule 7.3;
"SQR Station"	means a Station;
"SQR Station Benchmark"	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 this Schedule 7.3;
"SQR Train"	means a train engaged in the provision of Passenger Services;
"SQR Train Benchmark"	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 this Schedule 7.3;
"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 this Schedule 7.3;
"Train Service Quality Inspection"	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 this Schedule 7.3; and
"TSP"	has the meaning given to it in Schedule 6.7.

Part A - Service Quality Management Process

3. Service Quality Management

3.1A Service Quality Baseline Exercise

- (a) The Franchisee shall conduct Service Quality Inspections during the Reference Period by engaging external contractors to carry out such Service Quality Inspections (using the Audit Questionnaire) for the purpose of establishing baseline results by reference to which the SQR Train Benchmark, SQR Station Benchmark and SQR Customer Services Benchmark will be agreed or determined in accordance with paragraph 10A (*Calibration of SQR Station Benchmark, SQR Train Benchmark and SQR Customer Service Benchmark*).
- (b) The Secretary of State shall by the end of the first Reporting Period occurring during the first Franchisee Year provide to the Franchisee the form of audit questionnaire to be used by the applicable third party contractors in carrying out Service Quality Inspections during the Reference Period in accordance with paragraph 3.1A(a) (the "**Audit Questionnaire**").

3.1 SQR Management System

- (a) The Franchisee 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 Franchisee's performance against each Service Quality Indicator comprised in a Service Quality Area;
 - (ii) be capable of recording and retaining Service Quality Trains Rectification Evidence; and
 - (iii) set out procedures for:
 - (A) ensuring compliance with the requirements of this 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 in accordance with the timescales set out in Parts 1, 2 and 3 of Appendix 1 to this Schedule 7.3),

(the "**SQR Management System**").
- (b) The SQR Management System shall be:
 - (i) implemented as soon as reasonably practicable following the Start Date; and
 - (ii) operational by no later than the first day of the second Reporting Period in the first Franchisee Year; and
 - (iii) fully operational by no later than the last day of the seventh Reporting Period in the first Franchisee Year.

3.2 Maintenance and updating of the Facilities Guide

- (a) The Franchisee shall:
 - (i) maintain the Facilities Guide at all times during the Franchise Term;

- (ii) ensure that the Facilities Guide is updated as soon as reasonably practicable so as to correct any errors and to maintain conformity with the information published by the Franchisee in relation to the corresponding data sets as part of the Franchisee's Accessible Travel Plan; and
 - (iii) at the direction of the Secretary of State, make such amendments and/or updates to the content of the then-current Facilities Guide as the Secretary of State may specify (for example, but without limitation, to remove obsolete or outdated information contained in the Facilities Guide and to replace it with relevant or up-to-date information), it being acknowledged that the Facilities Guide should be maintained in all material respects in alignment with the corresponding data sets which form part of the Franchisee's Accessible Travel Plan.
- (b) The Franchisee shall provide an up to date copy of the Facilities Guide 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.

3.3 Changes to Franchise Services

- (a) If at any time during the Franchise Term, the Franchisee:
- (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 at 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:
- (A) update its SQR Management System 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 Franchisee begins to operate such New Services or such New Facilities are introduced (as the case may be); and
 - (B) (where applicable in the context of the content of the Facilities Guide) update the Facilities Guide to include such New Services and New Facilities as part of the next update to the Facilities Guide in accordance with paragraph 3.2(a)(ii).
- (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 Franchisee commences the operation of such New Services or New Facilities are introduced (as the case may be).
- (c) If at any time during the Franchise Term, the Secretary of State directs the Franchisee to 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 ("**Ceased Services**"), then the Franchisee shall update the SQR Management System and (as the case may be) the Facilities Guide 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 Franchisee stopped operating such Ceased Services.

- (d) The requirements of this Schedule 7.3 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 Franchisee stops the operation of such Ceased Services are introduced.
- (e) On each occasion (as applicable) where the total number of SQR Stations increases or decreases following the date of this Agreement the number of Station Service Quality Inspections specified in paragraph 4.3(e)(ii) below shall be adjusted by the Secretary of State to reflect the change in SQR Stations on the Franchise.

Part B – Inspections and Audits

4. Franchisee Service Quality Inspections

4.1A NOT USED.

4.1 In the second Reporting Period in the first Franchisee Year (and in each subsequent Reporting Period thereafter), the Franchisee shall, in accordance with the requirements of paragraph 4.3, undertake or procure the undertaking of Station Service Quality Inspections, and Train Service Quality Inspections and Customer Service Quality Inspections (together to be known as the **“Service Quality Inspections”**).

4.2 NOT USED.

4.3 The Franchisee 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 (except in relation to the Customer Service Quality Inspections, where the principles of paragraph 5 apply) is carried out accurately and impartially by independent persons (who for the purposes of this paragraph 4.3 only can with effect from the eighth Reporting Period in the first Franchisee Year be Franchise Employees dedicated to delivering the Service Quality Regime);
- (c) if the Franchisee elects for Service Quality Inspections to be carried out by Franchise Employees then any such Franchise Employees must not be persons:
 - (i) who are responsible for customer service or the management or operation of any of the SQR Stations (or, as the case may be, London Paddington station, Reading station or Bristol Temple Meads station) or SQR Trains which are the subject of the 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 Service Quality Inspection;
- (d) ensure that any Franchise Employee who is a member of the customer relations team or who is involved in the operation of any SQR Stations (or, as the case may be, London Paddington station, Reading station or Bristol Temple Meads station) 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 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:

- (A) SQR Station (other than the Micro-stations) is the subject of a Station Service Quality Inspection at least four (4) times in each Franchisee Year; and
- (B) Micro-station is the subject of a Station Service Quality Inspection at least two (2) times in each Franchisee Year; and
- (ii) subject to paragraph 3.3(e), a Station Service Quality Inspection is carried out in respect of each Reporting Period at fifty nine (59) SQR 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) **NOT USED**; and
- (f) ensure that:
 - (i) in respect of each Reporting Period, one hundred and eighty two (182) 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 a representative spread of Routes across the geography of the Franchise once every Reporting Period. Such Train Service Quality Inspections shall not be unduly concentrated on vehicles that operate on a particular Route; and
 - (iii) of the inspections referred to in paragraph 4.3(f)(i), one hundred and seventy two (172) Train Service Quality Inspections are carried out on standard class vehicles and ten (10) Train Service Quality Inspections are carried out on first class vehicles just comprising first class accommodation in each Reporting Period (it being acknowledged and agreed that where a vehicle is divided into part standard and part first class such vehicle shall be considered for the purposes of this paragraph (f) as being a standard class vehicle); and
- (g) ensure that:
 - (i) at least one hundred (100) Customer Service Quality Inspections are conducted in each Reporting Period;
 - (ii) Customer Service Quality Inspections relating to Customer Service SQR Stations are apportioned across the day and between the days of the week in proportion to typical passenger use of the Customer Service SQR Station across the day and the days of the week in each such Reporting Period; and
 - (iii) Customer Service Quality Inspections relating to SQR Trains are carried out on a representative spread of Routes across the geography of the Franchise Route once every Reporting Period. Such Customer Service Quality Inspections shall be reasonably apportioned so that they are undertaken on SQR Trains across the different Routes,

it being acknowledged and agreed that Customer Service Quality Inspections will only be carried out in respect of Franchise Employees who are engaged in the performance of

customer-facing operational roles (provided that, in the case of London Paddington station, this will be limited to ticket office, helpdesk, gateline and dispatch staff).

- 4.4 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); and
 - (c) Customer Service Quality Inspections as specified in paragraph 4.3(g),
- shall be increased or reduced pro rata based on a normal Reporting Period of twenty-eight (28) days.

- 4.5 For any Franchisee 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); and
 - (c) Customer Service Quality Inspections as specified in paragraph 4.3(g),
- shall be reduced pro rata based on a normal Franchisee Year of thirteen (13) Reporting Periods.

5. **Mystery Shopper Inspection**

- 5.1 The Franchisee shall (at its cost) procure the carrying out of the Customer Service Quality Inspections by an independent person ("**Mystery Shopper Inspection**").
- 5.2 The Franchisee shall agree the terms of reference for the procurement of any Mystery Shopper Inspection and the identity of any independent person proposed to undertake such Mystery Shopper Inspection with the Secretary of State prior to any procurement by the Franchisee of any such Mystery Shopper Inspection.

6. **Service Quality Re-inspection and Service Quality Trains Rectification Evidence**

- 6.1 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 Franchisee shall within the relevant time period specified in the Service Quality Schedule, 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 ("**Service Quality Re-inspection**") and the requirements of paragraphs 4.3(b) to 4.3(d) shall apply to any such Service Quality Re-inspection; and
 - (b) in relation to SQR Trains the Franchisee shall within the relevant time period specified in the Service Quality Schedule (the "**Relevant Rectification Period**"), ensure that relevant Service Quality Trains Rectification Evidence is recorded and retained in the Service Quality Management System, it being acknowledged and agreed that if no Service Quality Trains Rectification Evidence is recorded in the Service Quality Management System within the Relevant Rectification Period then a further Service Quality Failure shall occur.
- 6.2 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 Franchisee has recorded relevant Service Quality Trains Rectification Evidence within the Relevant Rectification Period and accordingly a Service Quality Failure has not occurred.

6.3 If following two (2):

- (a) Service Quality Re-inspections a Service Quality Failure is recorded against the same facility or service which resulted in the occurrence of a Service Quality Failure ("**Re-inspection Failure**"); or
- (b) previous failures by the Franchisee to record relevant Service Quality Trains Rectification Evidence within the Relevant Rectification Period pursuant to paragraph 6.1(b) a Service Quality Failure is recorded against the same facility or service which resulted in the occurrence of a Service Quality Failure ("**Rectification Evidence Failure**"),

then the Franchisee 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.

6.4 The Franchisee shall prepare and submit to the Secretary of State together with such notice a plan which sets out the steps the Franchisee 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 Franchisee shall use all reasonable endeavours to implement such plan in accordance with its terms.

6.5 Where (as the case may be) a Service Quality Re-inspection or Rectification Evidence Failure results in a Service Quality Failure being recorded against a facility or service, the:

- (a) scores for that Service Quality Re-inspection; or
- (b) the Service Quality Failure arising as a result of that Rectification Evidence Failure,

shall be included in the calculation of the Pass Rates for the Reporting Period in which the Service Quality Re-inspection is conducted or in which the Rectification Evidence Failure occurred, in accordance with the provisions of paragraph 10 (*Calculation of Pass Rates*) and paragraph 20 (*Consequences of Performance falling below the SQR Benchmark*) and determining the Service Quality Payment under paragraph 11 (*Calculation of the Service Quality Payments*).

6.6 The provisions of this paragraph 6 shall:

- (a) apply from the first day of the eighth Reporting Period in the first Franchisee Year and for the remainder of the Franchise Term; and
- (b) not apply to Customer Service Quality Inspections.

7. **Independent Service Quality Audit**

7.1 In respect of each Franchisee Year, the Franchisee shall (at its cost) procure the carrying out of an independent audit ("**Independent Service Quality Audit**").

7.2 The Franchisee 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 Franchisee of any such Independent Service Quality Audit.

7.3 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 Trains 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 Franchisee Year comply with the requirements of paragraph 4.3 (*Franchisee Service Quality Inspections*);
 - (c) Facilities Guide has been maintained and updated as required pursuant to paragraph 3.2 (*Maintenance and updating of the Facilities Guide*);
 - (d) Pass Rates reported by the Franchisee for Reporting Periods within that Franchisee Year have been calculated in accordance with the requirements of paragraph 10.1 (*Calculation of Pass Rates*);
 - (e) Pass Rates reported by the Franchisee for that Franchisee Year have been calculated in accordance with paragraph 10.2 (*Calculation of Pass Rates*).
- 7.4 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 Franchisee for that Reporting Periods within that Franchisee Year and/or for that Franchisee Year are a fair, accurate and impartial reflection of the Franchisee'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.
- 7.5 Any Independent Service Quality Audit carried out on behalf of the Franchisee as required under this paragraph 7 shall be for the benefit of the Secretary of State.
- 7.6 The Secretary of State (and any of the Secretary of State's employees, agents, representatives and/or advisers, 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.
- 7.7 The Franchisee 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.
- 7.8 The Franchisee shall provide the report together with all data produced as a consequence of any Independent Service Quality Audit to the Secretary of State as soon as reasonably practicable after the completion of the Independent Service Quality Audit to which it relates and in any event by no later than the date that is three (3) Reporting Periods after the completion of the Independent Service Quality Audit.
- 7.9 To the extent that the confirmation specified in paragraph 7.4(b) cannot be provided in respect of any Independent Service Quality Audit, the Franchisee 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 Franchisee 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 Franchisee)).

8. Secretary of State's Right of Audit

8.1 Without prejudice to any other audit rights the Secretary of State may have under the Franchise Agreement, 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 (*Franchisee Service Quality Inspections*).

8.2 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 Franchisee Year to which the SoS Audit relates.

9. Access Rights

9.1 The Franchisee shall grant such access to information, individuals and facilities including:

- (a) access to the SQR Trains and SQR Stations (and, where applicable, London Paddington station, Reading station and Bristol Temple Meads station);
- (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 Franchise Employees, records and information (including access to relevant third parties and information, records and other materials kept by such third parties on behalf of the Franchisee); and
- (d) access to any and all Service Quality Trains 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.

9.2 The Franchisee shall ensure that it has necessary arrangements in place with any relevant third parties for the purposes of ensuring that it can comply with its obligations under this paragraph 9.

9.3 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.

9.4 The Secretary of State shall use reasonable endeavours to notify the Franchisee of the result of any SoS Service Quality Inspection or SoS Audit that is undertaken.

9.5 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.

9.6 The Franchisee shall provide reasonable prior notice from time to time of current location-specific

access, security and safety rules and regulations to the Secretary of State for the purpose of ensuring that the Secretary of State (and 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 and Service Quality Payments

10A. Calibration of SQR Station Benchmark, SQR Train Benchmark and SQR Customer Service Benchmark

10A.1 This paragraph 10A sets out the process by which the SQR Train Benchmark, SQR Station Benchmark and SQR Customer Services Benchmark will be agreed or determined by the Secretary of State.

10A.2 Within fourteen (14) days after the end of each Reporting Period which occurs during the Reference Period, the Franchisee shall provide to the Secretary of State a statement (disaggregated to separately show the total number of Train Service Quality Inspections, Station Service Quality Inspections and Customer Service Quality Inspections carried out in that Reporting Period) setting out the following:

- (a) the raw data produced by any Service Quality Inspection including the reports provided as part of the Mystery Shopper Inspections;
- (b) the number of Service Quality Inspections carried out in respect of each Service Quality Schedule in that Reporting Period;
- (c) the number of Service Quality Inspections where a "fail" was recorded in respect of a Service Quality Indicator in that Reporting Period in each case setting out (to the extent known) the reasons why such failures occurred for each Service Quality Schedule;
- (d) the number of Service Quality Inspections where a "pass" was recorded in respect of a Service Quality Indicator in that Reporting Period for each Service Quality Schedule;
- (e) 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.

10A.3 By no later than the end of the eighth Reporting Period in the first Franchisee Year, the Franchisee shall compile and report to the Secretary of State the:

- (a) results of the Service Quality Inspections for the Reference Period carried out by external contractors as required by paragraph 3.1A, such Service Quality Inspections having been completed in accordance with paragraph 4; and
- (b) number of such Service Quality Inspections where a "fail" was recorded, in respect of each Service Quality Indicator for the Reference Period.

10A.4 The Franchisee shall include in the report provided under paragraph 10A.3 (the "**SQR Benchmarking Report**") its proposal for an SQR Train Benchmark, an SQR Station Benchmark and an SQR Customer Services Benchmark, based on the aggregate results from the Reference Period without amendment. The resultant benchmarks shall be applied at the same rate for each Franchisee Year, without any allowance for deviation up or down from the baseline.

10A.5 The Franchisee shall use all reasonable endeavours to ensure that the manner of conduct of the Service Quality Inspections and the manner of its provision of services measured by the Service

Quality Inspections are not such as to distort the overall representative nature of the Reference Period as a benchmark.

- 10A.6 The Franchisee shall include in narrative form in the SQR Benchmarking Report any material circumstances in relation to the Reference Period which it considers may materially affect the representative nature of the Reference Period results, together with proposals for correcting those results to provide a more accurate benchmark.
- 10A.7 Following provision of the SQR Benchmarking Report, the Parties shall seek to agree the SQR Train Benchmark, SQR Station Benchmark and SQR Customer Services Benchmark. The Franchisee shall provide such further information in relation to the SQR Benchmarking Report as the Secretary of State may reasonably request. In the absence of agreement of the SQR Train Benchmark, SQR Station Benchmark and SQR Customer Services Benchmark within 30 days of submission of the SQR Benchmarking Report (or such longer period as the Parties may agree), the Secretary of State may reasonably determine the level of any of the benchmarks not then agreed, having regard to the results of the Service Quality Inspections for the Reference Period.
- 10A.8 Following the agreement or determination of the SQR Train Benchmark, the SQR Station Benchmark and the SQR Customer Services Benchmark under paragraph 10A.7, each of the Tables in Appendix 2 to this Schedule shall be completed with the relevant details.

10. **Calculation of Pass Rates**

- 10.1 The Franchisee shall calculate the Pass Rates for the Train Service Quality Inspections, the Station Service Quality Inspections and the Customer Service Quality Inspections for the relevant Reporting Period as follows:

Table 1	
$SQA_{rp} = \sum IPR_{rp}$	
where:	
SQA_{rp}	is the Pass Rate for each Service Quality Area comprised in such Service Quality Schedule for that Reporting Period;
IPR_{rp}	is ascertained as follows:
	$p \times w$
	where:
	p is ascertained as follows:
	$P = \left(\frac{SQi - SQf}{SQi} \right) \times 100$

Table 1		
	where:	
	SQ _i	is, in respect of each Service Quality Indicator relevant to a Service Quality Area, the total number of: (a) Service Quality Inspections carried out; (b) Service Quality Re-inspections carried out; and (c) occasions on which the Franchisee was required to record Service Quality Trains Rectification Evidence in the Service Quality Management System within the Relevant Rectification Period pursuant to paragraph 6.1(b), in respect of that Service Quality Indicator for that Reporting Period;
	SQ _f	is, in respect of each Service Quality Indicator relevant to a Service Quality Area, the total number of: (a) Service Quality Inspections where a "fail" was recorded; (b) Service Quality Re-inspections where a "fail" was recorded; and (c) occasions on which the Franchisee failed to record Service Quality Trains Rectification Evidence in the Service Quality Management System within the Relevant Rectification Period pursuant to paragraph 6.1(b), in respect of that Service Quality Indicator for that Reporting Period; and
	w	is the weighting as specified in Column 4 of the table(s) in Appendix 2 of this Schedule 7.3 in respect of the relevant Service Quality Indicator comprised in that Service Quality Area.

10.2 Within fourteen (14) days after the end of each Franchisee Year, the Franchisee shall provide to the Secretary of State its calculation of the Pass Rate for the relevant Franchisee 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 carried out in that Franchisee Year as follows, provided that in the first Franchisee Year only results from the start of the eighth Reporting Period to the end of the first Franchisee Year shall be taken into account:

Table 2
$SQA_{yr} = \sum IPR_{yr}$

Table 2		
where:		
SQA_{yr}	is the Pass Rate for each Service Quality Area comprised in such Service Quality Schedule for that Franchisee Year;	
IPR_{yr}	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 _i	is, in respect of each Service Quality Indicator relevant to a Service Quality Area, the total number of: <ul style="list-style-type: none"> (a) Service Quality Inspections carried out; (b) Service Quality Re-inspections carried out; and (c) occasions on which the Franchisee was required to record Service Quality Trains Rectification Evidence in the Service Quality Management System within the Relevant Rectification Period pursuant to paragraph 6.1(b), in respect of that Service Quality Indicator for that Franchisee Year;
	SQ _f	is, in respect of each Service Quality Indicator relevant to a Service Quality Area, the total number of: <ul style="list-style-type: none"> (a) Service Quality Inspections where a "fail" was recorded; (b) Service Quality Re-inspections where a "fail" was recorded; and (c) occasions on which the Franchisee failed to record Service Quality Trains Rectification Evidence in the Service Quality Management System within the Relevant Rectification Period pursuant to paragraph 6.1(b), in respect of that Service Quality Indicator for that Franchisee Year; and
w	is the weighting as specified in Column 4 of the table(s) in Appendix 2 of this Schedule 7.3 in respect of the Service Quality Indicator comprised in that Service Quality Area.	

10.3 The Franchisee 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).

11. **Calculation of the Service Quality Payments**

11.1 For each Franchisee Year the Franchisee shall calculate the sum of the Franchisee's performance payments in respect of each Service Quality Area and for each Service Quality Schedule as follows, provided that the first Franchisee Year shall be deemed to comprise a shortened period commencing on the first day of the eighth Reporting Period and ending on the last day of the thirteenth Reporting Period in such first Franchisee Year (so that the pro rata provisions in Table 3 below in respect of a Franchisee Year of less than 13 Reporting Periods apply):

Table 3	
SQP = TSQP + SSQP + SQA_{LD} + CSQP	
where:	
SQP	is the Service Quality Payment payable by the Franchisee to the Secretary of State for that Franchisee Year;
TSQP	= $\sum SAP_T$
	where:
SAP_T	is the amount which is payable by the Franchisee in respect of a Service Quality Area relating to SQR Trains (save that the maximum amount which the Franchisee shall be liable to pay in respect of any such Service Quality Area in any Franchisee Year shall not exceed [REDACTED ¹⁰⁵] x RPI) and which is calculated as follows:
	$(TBM - SQAT_{yr}) \times 100 \times \text{EPR}$
	where:
TBM	is the SQR Train Benchmark for each Service Quality Area;
SQAT_{yr}	is the value for SQA _{yr} ascertained as specified in paragraph 10.2 (<i>Calculation of Pass Rates</i>) but only in so far as such value relates to the Train Service Quality Inspections carried out in that Franchisee Year; and
	EPR is:
	(i) in respect of the first Franchisee Year, [REDACTED ¹⁰⁶]; and

¹⁰⁵ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹⁰⁶ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

Table 3					
	<p>(ii) in respect of any subsequent Franchisee Year, [REDACTED^{107]} x RPI, provided that in the event that a Franchisee Year has fewer than 13 Reporting Periods or this Schedule 7.3 applies to fewer than 13 Reporting Periods in a Franchisee Year, the value of £PR shall be reduced pro rata based on a normal Franchisee Year of thirteen (13) Reporting Periods.</p>				
SSQP	= \sum SAPs				
	where:				
	SAPs	<p>is the amount payable by the Franchisee in respect of a Service Quality Area relating to SQR Stations (save that the maximum amount which the Franchisee shall be liable to pay in respect of such Service Quality Area shall not exceed [REDACTED^{108]} x RPI) and which is calculated as follows:</p>			
		$(SBM - SQAS_{yr}) \times 100 \times \text{£PR}$			
		where:			
		<table border="1"> <tr> <td>SBM</td> <td>is the SQR Station Benchmark for each Service Quality Area;</td> </tr> <tr> <td>SQAS_{yr}</td> <td>is the value for SQAYr ascertained as specified in paragraph 10.2 (<i>Calculation of Pass Rates</i>) but only in so far as such value relates to the Station Service Quality Inspections carried out in that Franchisee Year; and</td> </tr> </table>	SBM	is the SQR Station Benchmark for each Service Quality Area;	SQAS _{yr}
SBM	is the SQR Station Benchmark for each Service Quality Area;				
SQAS _{yr}	is the value for SQAYr ascertained as specified in paragraph 10.2 (<i>Calculation of Pass Rates</i>) but only in so far as such value relates to the Station Service Quality Inspections carried out in that Franchisee Year; and				
	<p>£PR is:</p> <p>(i) in respect of the first Franchisee Year, [REDACTED^{109]}; and</p> <p>(ii) in respect of any subsequent Franchisee Year, [REDACTED^{110]} x RPI, provided that in the event that a Franchisee Year has fewer than 13 Reporting Periods or this Schedule 7.3 applies to fewer than 13 Reporting Periods in a Franchisee Year, the value of £PR shall be reduced</p>				

¹⁰⁷ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹⁰⁸ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹⁰⁹ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹¹⁰ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

Table 3	
	pro rata based on a normal Franchisee Year of thirteen (13) Reporting Periods.
SQAL_d	is the amount determined pursuant to paragraph 18 (<i>Material Discrepancies</i>) and payable by the Franchisee in that Franchisee Year; and
CSQP	= $\sum SAP_{CS}$
	where:
SAP_{CS}	is the amount payable by the Franchisee in respect of a Service Quality Area relating to SQR Customer Service (save that the maximum amount which the Franchisee shall be liable to pay in respect of such Service Quality Area shall not exceed [REDACTED¹¹¹] x RPI) and which is calculated as follows: (CBM - SQAC _{yr}) x 100 x £PR
	where:
CBM	is the SQR Customer Services Benchmark for each Service Quality Area;
SQAC_{yr}	is the value for SQAYr ascertained as specified in paragraph 10.2 (<i>Calculation of Pass Rates</i>) but only in so far as such value relates to the Customer Service Quality Inspections carried out in that Franchisee Year; and
	£PR is: (i) in respect of the first Franchisee Year, [REDACTED¹¹²] ; and (ii) in respect of any subsequent Franchisee Year, [REDACTED¹¹³] x RPI, provided that in the event that a Franchisee Year has fewer than 13 Reporting Periods or this Schedule 7.3 applies to fewer than 13 Reporting Periods in a Franchisee Year, the value of £PR shall be reduced pro rata based on a normal Franchisee Year of thirteen (13) Reporting Periods.
RPI	has the meaning given to it in Appendix 1 (Annual Franchise Payments) to Schedule 8.1 (Franchise Payments).

¹¹¹ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹¹² 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹¹³ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

For the avoidance of doubt, no performance payments shall be calculated under this paragraph 11.1 in respect of the Franchisee's performance in the first seven Reporting Periods of the first Franchisee Year.

- 11.1A When conducting any calculation under this Schedule 7.3, any amounts expressed as a percentage shall be construed as a decimal, such that 4.5% is equal to 0.045.
- 11.2 For each Franchisee Year, the Franchisee shall by the date that is no later than twenty-eight (28) days after the end of that Franchisee Year calculate and notify to the Secretary of State the value of SQA_{yr} (as determined pursuant to paragraph 11.3 and disaggregated by reference to the Train Service Quality Inspections, the Station Service Quality Inspections and the Customer Service Quality Inspection undertaken in that Franchisee Year) and the Service Quality Payment (calculated in accordance with this paragraph 11) for that Franchisee Year.
- 11.3 On the later of receipt of the:
- (a) notification referred to in paragraph 11.2 by the Secretary of State in respect of a Franchisee 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 Franchisee Year:

the Secretary of State shall:

- (i) confirm to the Franchisee that the Secretary of State agrees with the calculation of SQA_{yr} and the Service Quality Payment for that Franchisee Year, in which case, the Service Quality Payment for that Franchisee Year shall be paid in accordance with paragraph 12 (*Payment of Service Quality Payments*); and
- (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 (and so the Service Quality Payment) in favour of the Franchisee for that Franchisee 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 Franchisee of that fact and the provisions of paragraph 18 (*Material Discrepancies*) shall apply.

12. Payment of Service Quality Payments

- 12.1 Any Service Quality Payment to be made in respect of any Franchisee Year shall be made by way of adjustment to Franchise Payments on the next Payment Date which falls more than seven (7) days following the receipt of the confirmation pursuant to paragraph 11.3(b)(i) (*Calculation of the Service Quality Payments*) and, where applicable, notification from the Secretary of State pursuant to paragraph 11.3(b)(ii) provided that any Service Quality Payment to be made in respect of the Final Franchisee Year shall be calculated in accordance with paragraph 11 but shall be paid by the Franchisee to the Secretary of State within thirty (30) days of the receipt of the confirmation from the Secretary of State pursuant to paragraph 11.3(b)(i) and, where applicable, notification from the Secretary of State pursuant to paragraph 11.3(b)(ii).
- 12.2 This paragraph 12 is subject to paragraph 9 (*Capping of Franchisee's liability in respect of the Incentive Regimes*) of Schedule 8.1 (Franchise Payments).

Part D – Publication and Reporting Requirements

13. Publication of Pass Rates

- 13.1 The Franchisee shall publish (as a minimum) on its web site (in such format as the Secretary of State may reasonably require) details of:

Great Western Direct Award Franchise Agreement	Page 544 of 907	Schedule 7.3
--	-----------------	--------------

- (a) within one (1) week of the end of each Reporting Period, the Pass Rate for SQR Stations, SQR Trains and SQR Customer Service 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) (*Calculation of the Service Quality Payments*), the Pass Rate for each Service Quality Area for each Franchisee Year alongside the applicable SQR Benchmark for such Service Quality Area.
- 13.2 The Franchisee 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 for the same Reporting Periods in the previous Franchisee Year accompanied by a supporting narrative describing the outcomes and implications of the results of such comparison exercise from the third Customer Report to be published after the commencement of the Service Quality Inspections onwards;
 - (b) details of any remedial work either:
 - (i) planned by the Franchisee to occur in the period in relation to which the next Customer Report will report to improve the Franchisee's performance in relation to achieving and exceeding the SQR Benchmarks in respect of any Service Quality Area where performance is below the applicable SQR Benchmark; or
 - (ii) undertaken by the Franchisee 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 Franchisee'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 Franchisee to improve the Franchisee's performance against the SQR Benchmarks.

14. Reporting Requirements

- 14.1 Within fourteen (14) days after the end of each Reporting Period, the Franchisee shall provide to the Secretary of State:
- (a) a statement (disaggregated to separately show the total number of Train Service Quality Inspections, Station Service Quality Inspections and 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 Service Quality Re-inspection and/or the recording of Service Quality Trains Rectification Evidence in the Service Quality Management System within the Relevant Rectification Period pursuant to paragraph 6.1(b) (where applicable) including the reports provided as part of the Mystery Shopper Inspections;
 - (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 Franchisee was required to record Service Quality Trains Rectification Evidence in the Service Quality 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,

in each case setting out (to the extent known) the reasons why such failures occurred for each Service Quality Schedule;
- (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 Franchisee was required to record Service Quality Trains Rectification Evidence in the Service Quality 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);
- (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 Franchisee's calculation of the Pass Rate for each Service Quality Area comprised in the relevant Service Quality Schedule.

14.2 The Pass Rate shall be separately calculated for the Train Service Quality Inspections, the Station Service Quality Inspections and the Customer Service Quality Inspections in that Reporting Period determined as set out in paragraph 10 (*Calculation of Pass Rates*).

15. **Additional Information Requirements for Service Quality Re-inspections and Service Quality Trains Rectification Evidence**

15.1 In addition to the information to be provided by the Franchisee pursuant to paragraph 14 (*Reporting Requirements*), the Franchise shall at the end of each Reporting Period provide to the Secretary of State a list of each facility or service or train comprised in a SQR Train and SQR Station, London Paddington station, Reading station or Bristol Temple Meads 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).

16. **Maintenance of Records**

16.1 Without limiting the obligations of the Franchisee pursuant to paragraph 5 (*Maintenance of Records*) of Schedule 11.2 (*Management Information*), the Franchisee 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 Mystery Shopper Inspection.

- 16.2 The Franchisee shall, promptly 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

17. Consequences of a Failed Audit

17.1 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 Franchisee fails to:
 - (i) carry out a Service Quality Inspection as required by paragraph 4.1 (*Franchisee 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.

17.2 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 Franchisee 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 Franchisee to carry out additional Service Quality Inspections at the Franchisee's cost (that is, in excess of those required pursuant to paragraph 4.1 (*Franchisee Service Quality Inspections*));
 - (ii) require the Franchisee to procure a further Independent Service Quality Audit (or the Secretary of State may carry out a further SoS Audit) for the purposes of verifying whether any deficiencies in the SQR Management System have led or contributed to the failure of any Independent Service Quality Audit or SoS Audit or to confirm or verify whether any of the matters referred to in paragraph 7 (*Independent Service Quality Audits*) have been subsequently rectified by the Franchisee; or
 - (iii) elect to step in and carry out SoS Service Quality Inspections in place of the Service Quality Inspections for the remainder of the Franchise Term or such period as the Secretary of State may specify (the "**SoS Service Quality Inspection Period**") and in these circumstances:

- (A) the results of each SoS Service Quality Inspection shall be used for the purposes of calculating the Pass Rates and the Service Quality Payments in accordance with paragraph 10 (*Calculation of Pass Rates*) and paragraph 11 (*Calculation of the Service Quality Payments*) (respectively);
- (B) the Franchisee's obligations to undertake Service Quality Inspections and procure an Independent Service Quality Audit shall cease to apply for the duration of the SoS Service Quality Inspection Period; and
- (C) the Secretary of State may require the Franchisee to reimburse to the Secretary of State the reasonable and proper costs incurred by the Secretary of State in undertaking any such SoS Service Quality Inspection during the SoS Service Quality Inspection Period.

18. **Material Discrepancies**

18.1 For the purposes of this Schedule 7.3, "**Material Discrepancies**" means:

- (a) discrepancies in the Franchisee'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 Franchisee had complied with the requirements of paragraph 7.3 (*Independent Service Quality Audits*).

18.2 On the first occasion that any Independent Service Quality Audit or SoS Audit (as the case may be) reveals that any such Material Discrepancies have resulted in the Franchisee paying less Service Quality Payment than it should have done had the Material Discrepancies not occurred, then the Franchisee shall include in the calculation of the Service Quality Payment that it makes for that Franchisee Year pursuant to paragraph 6 (*Service Quality Re-inspections and Service Quality Trains Rectification Evidence*) and paragraph 20 (*Consequences of Performance falling behind the SQR Benchmark*) an amount determined as follows:

Table 4	
SQA_{LD} = (SQA_{actual} - SQA_{paid}) x 2	
where:	
SQA_{LD}	means the amount to be added to the Service Quality Payment where the circumstances contemplated in this paragraph 18 apply;
SQA_{actual}	means the Service Quality Payment that should have been made in that Franchisee Year but for the Material Discrepancies in the Franchisee's calculation of the Pass Rate; and
SQA_{paid}	means the actual Service Quality Payment made in that Franchisee Year.

19. **Contravention of the Franchise Agreement in respect of Material Discrepancies**

19.1 On the second occasion that 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 Franchise Agreement in addition to the provisions of paragraph 18.2 of this Schedule 7.3 applying.

20. Consequences of Performance falling below the SQR Benchmark

20.1 If:

- (a) the Pass Rate of any individual Service Quality Indicator falls below the SQR Benchmark for the applicable Service Quality Area ("**Affected Service Quality Indicator**") 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
- (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 Franchisee Year,

then the Franchisee shall immediately notify the Secretary of State of such fact and, if requested to do so by the Secretary of State, within twenty-eight (28) days (or such longer period as the Secretary of State may specify) of such request submit to the Secretary of State (for the Secretary of State's approval) the Franchisee's proposals (including proposed timescales for the implementation of any such proposals) for ensuring that the Affected 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 or above the SQR Benchmark.

20.2 If the Secretary of State is not reasonably satisfied that any proposal submitted to the Secretary of State by the Franchisee pursuant to paragraph 20.1 will ensure 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 or above the SQR Benchmark for each such Affected Service Quality Area or Affected Service Quality Indicator then the Secretary of State shall notify the Franchisee of such fact (including the Secretary of State's reasons for not being so reasonably satisfied) and the Franchisee shall within two (2) weeks (or such longer period as the Secretary of State may specify) from receipt of any such notice from the Secretary of State submit a revised proposal which seeks to address any of the Secretary of State's concerns as notified to the Franchisee (the "**Revised Proposal**").

20.3 Following receipt of any proposal pursuant to paragraph 20.1 or (where applicable) receipt of a Revised Proposal the Secretary of State may require the Franchisee to implement any such proposal within such timescales as the Secretary of State may reasonably determine having regard to any timescales proposed by the Franchisee in any such Revised Proposal.

20.4 If following receipt of any Revised Proposal the Secretary of State is still not satisfied that such Revised Proposal will ensure that the Franchisee's performance in relation to the Affected Service Quality Area or Affected Service Quality Indicator will, as soon as reasonably practicable be provided at a level that is equal to or above the SQR Benchmark then the Secretary of State may require the Franchisee to implement such alternative proposals or measures as the Secretary of State may reasonably determine, within such timescales as the Secretary of State may reasonably determine having regard to any timescales proposed by the Franchisee in such Revised Proposal.

20.5 If:

- (a) the Franchisee fails to use all reasonable endeavours to implement any proposal as required pursuant to this paragraph 20 within the required timescales; or
- (b) NOT USED,

then this shall constitute a contravention of the Franchise Agreement the Secretary of State may (except as the Secretary of State may otherwise agree including by agreeing a variation pursuant to paragraph 21 (*Variations to the Service Quality Regime*), and without prejudice to the Secretary of State’s other rights consequent upon the relevant contravention, serve a Remedial Plan Notice pursuant to paragraph 2 (*Remedies for Contraventions of the Franchise Agreement*) of Schedule 10.1 (*Procedure for Remediating a Contravention of the Franchise Agreement*).

21. Variations to the Service Quality Regime

21.1 Without prejudice to paragraph 21.2, the Secretary of State and the Franchisee may from time to time agree to vary the contents of the Service Quality Schedules, any SQR Benchmark and/or any of the payment rates in respect of any Service Quality Area as specified in paragraph 11.1 (*Calculation of the Service Quality Payments*) (including by reducing the SQR Benchmark in respect of certain Service Quality Areas and at the same time increasing others). Any variation agreed by the Secretary of State and the Franchisee pursuant to this paragraph 21.1 shall be effective from the date agreed by the parties for this purpose. Any such variation as agreed by the Secretary of State and the Franchisee shall not constitute a Change.

21.2 The Parties agree that the Secretary of State shall have the right at any time to vary the provisions of this Schedule 7.3 (including in respect of any of the matters referred to in paragraph 21.1) without the approval of the Franchisee. The exercise by the Secretary of State of the Secretary of State’s rights under this paragraph 21.2 shall be a Change.

Part F – NOT USED

22. NOT USED

23. NOT USED

24. NOT USED

25. NOT USED

26. NOT USED

Withdrawn

**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:

- (a) if the relevant facility or service is included in the Facilities Guide for that SQR Station; or
- (b) where paragraph (a) above does not apply, if the relevant facility or service actually exists or is actually provided at that SQR Station.

Table 1			
Column 1	Column 2	Column 3	Column 4
Service Quality Area	Service Quality Indicator	Failure Criteria	Rectification Timescales
Station Facilities & Cleanliness	Lifts & Escalators	(a) Any lift or escalator is not working.	Within 96 hours
	General Cleanliness	(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). (b) There is staining to the floor or walls, or fluid on the floor. (c) There is evidence of bird roosting which is not being managed. (d) There is noticeable dirt on glass surfaces. (e) Any area has a prolonged/lingering bad smell (which is not perceived to be temporary). (f) There is evidence of unhygienic substances e.g. vomit. (g) No appropriate facilities are provided for waste disposal. (h) There is no space in litter bins to place items.	(a), (b), (d),(e), (f), (h) within 48 hours (c) within 14 days (g) within 28 days

Table 1			
Column 1	Column 2	Column 3	Column 4
Service Quality Area	Service Quality Indicator	Failure Criteria	Rectification Timescales
	Litter	<p>(a) There are more than ten items of litter each item being equivalent to or larger than the size of a credit card found within any public area of the station (including any station car park).</p> <p>(b) There is evidence of fly tipping within the station area.</p> <p>(c) There is litter on the track with evidence that it has been swept from the platforms (e.g. accumulations are present in close proximity to the platform).</p> <p>(d) There is evidence of fly posting/unauthorised posters or fliers.</p>	<p>(a), (b), (d) within 48 hours (c) within 5 days* following granting of Track Possession by Network Rail</p> <p><i>* Franchisee to inform auditors when possession for litter removal granted for re-inspection to be conducted</i></p>
	Graffiti & Etching	<p>(a) Any offensive graffiti/etching of any size or type.</p> <p>(b) Any single piece or item of non-offensive graffiti/etching at the station which is greater than an area than can be covered by an A4 sheet of paper that would be immediately evident to a customer (excluding graffiti/etching which is ingrained and cannot be cleaned off/removed without replacing the item on which the graffiti/etching is administered/without undertaking constructional work), unless the graffiti/etching is on something which 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 area within the station extending to 100 square metres, regardless of the size or area of these items individually or collectively that would</p>	<p>Offensive graffiti – within 24 hours. Non-offensive graffiti – within 28 days</p> <p>Offensive etching - within 7 days. Non-offensive etching – within 28 days</p>

Table 1			
Column 1	Column 2	Column 3	Column 4
Service Quality Area	Service Quality Indicator	Failure Criteria	Rectification Timescales
		be immediately evident to a customer (excluding graffiti/etching which is ingrained and cannot be cleaned off/removed without replacing the item on which the graffiti/etching is administered/without undertaking constructional work), unless the graffiti/etching is on something which is easily replaceable e.g. a Perspex panel.	
	Toilets & Toilet Operation	<p>(a) The toilet is not open per the hours specified in the Facilities Guide under ticket office opening hours, or as advertised at the stations outside of ticket office opening hours.</p> <p>(b) Any of the facilities referred to in the following criteria are found to be unclean and/or soiled.</p> <p>(c) Any cubicles are out of use.</p> <p>(d) Any lavatories or urinals are blocked.</p> <p>(e) Any flush system is not functioning correctly.</p> <p>(f) Any lavatory seats are missing or broken.</p> <p>(g) Disabled toilet facilities are not operational.</p> <p>(h) Baby change facilities are not operational.</p> <p>(i) Hand wash facilities are not operational.</p> <p>(j) Any door locks are not operational.</p> <p>(k) There is no toilet paper available.</p> <p>(l) Soap is not available.</p> <p>(m) Facilities to dry hands are not operational or available i.e. hand dryers should be present and working and/or paper towels provided.</p>	All failure criteria apart from (d) within 24 hours, (d) within 48 hours

Table 1			
Column 1	Column 2	Column 3	Column 4
Service Quality Area	Service Quality Indicator	Failure Criteria	Rectification Timescales
Information	Customer Information Screens	(a) Any customer information screen is not present as specified in the Facilities Guide. (b) Any customer information screen is not functioning correctly. (c) Any customer information screen is functional but displaying illegible information. (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. (e) Any additional information messages are out of date.	(a) within 14 weeks (b), (c), (d), (e) where spares are not required within 48 hours. Where spares are required and readily available to the Franchisee, within 48 hours, otherwise to be provided with a notice of ongoing work and delivery expectation
	Posters/Frames	(a) Any poster frame is damaged, rusting or unsecure. (b) Any information on the poster is not fully visible or legible or any poster is torn, damaged or slipped such that information is illegible. (c) Any poster is showing incorrect or out of date information.	(a) within 7 days (b) and (c) within 48 hours
	Public Address System	(a) A public address system is not present or not operational where intended to be. (b) Any public address system is not operational where intended to be. (c) The public address system is inaudible or unclear. (d) Information is not provided in a timely way or is incorrect at time of audit (e.g. on approach of the arrival of services and during disruption).	(a),(b) within 15 weeks (c), (d) and (e) where spares are not required within 48 hours. Where spares are required and readily available to the TOC, within 48 hours, otherwise to be provided with a notice of ongoing work and delivery expectation

Table 1			
Column 1	Column 2	Column 3	Column 4
Service Quality Area	Service Quality Indicator	Failure Criteria	Rectification Timescales
		(e) Induction loop is not working if present.	
	Signage & Information (including running in boards)	(a) Any station name signs or wayfaring signs are not easy to read from 4m. (b) Any signs are damaged, defaced or illegible. (c) Any signs provide incorrect information. (d) A map or poster is not available showing up to date information on the location and times of onward transport services. (e) Timetables are not available for connecting trains and local bus services. (f) Any out of date leaflets are present. (g) At staffed Stations up to date "Delay Repay" forms, timetables relevant to the station and customer complaint forms are not available. (h) At unstaffed Stations, there is no information on where or how to find "Delay Repay" forms, timetables relevant to the station and customer complaint forms. (i) Leaflets are kept in an untidy manner.	(a),(b) within 14 days (c)-(i) inclusive within 7 days
Ticketing & Staffing	Ticket Vending Machines	(a) Any ticket machines are not present as specified in the Facilities Guide. (b) Any ticket machines are not operational. (c) The full functionality of any ticket machine is not available. (d) Does not display the correct ORR mandated TVM information.	(a) Within 4 months (b)-(d) where spares are not required within 48 hours. Where spares are required and readily available to the TOC, within 48 hours, otherwise to be provided with a notice of ongoing work and delivery expectations

Table 1			
Column 1	Column 2	Column 3	Column 4
Service Quality Area	Service Quality Indicator	Failure Criteria	Rectification Timescales
	Ticket Office	The ticket office is not open when it is advertised to be so in the Facilities Guide.	Within 48 hours (where a re-inspection 'pass' would not address underlying issue, then the re-inspection shall be conducted on the same day of the week and time of the initial failure)
	Staff Presence	(a) Staff are not available at the station as required in the Franchise Agreement (b) Staff are not well presented and in operator's uniform. (c) A member of staff cannot be contacted (either face to face or remotely) by passengers of any train service using that station (regardless of train operator).	Within 48 hours
	Ticket Gates	(a) Any ticket gates are out of use due to a fault or are not functioning correctly or are unstaffed (directly or indirectly). (b) Where an excess fares window is available at a station, the excess fares window is not open whilst ticket barriers are in use.	Within 14 days

PART 2 – SQR TRAINS

Please note that a Service Quality Indicator should only be subject to a Service Quality Inspection:

- (a) if the relevant facility or service is included in the Facilities Guide for that SQR Train; or
- (b) where paragraph (a) above does not apply, if the relevant facility or service actually exists or is actually provided at or on that SQR Train.

Table 2			
Column 1	Column 2	Column 3	Column 4
Service Quality Area	Service Quality Indicator	Failure Criteria	Rectification Timescales
Train Facilities & Cleanliness	Interior	(a) Any surface in the interior of the vehicle is subject to excessive dust, dirt (such that a letter can be written in the dirt or dust and is legible), staining or recent chewing gum. (b) The floor is dirty, excepting recent tracked dirt from people's shoes. (c) There is any fly posting (d) There are fluids on the floor (not mild splashing). (e) The windows are evidently dirty.	(a)-(d) inclusive within 24 hours (e) within 7 days except where the temperature is below 4 degrees centigrade for prolonged periods
	Graffiti & Etching	(a) Any offensive graffiti/etching of any size or any type. (b) Any single piece or item of non-offensive graffiti/etching in the interior of the vehicle is greater than an area than can be covered by an A4 sheet of paper that would be immediately evident to a customer. (c) There are more than 10 individual pieces or items of non-offensive graffiti/etching, within any area within the vehicle, regardless of the size or	Offensive graffiti – within 24 hours. Non-offensive graffiti – within 28 days Offensive etching – within 7 days. Non-offensive etching – within 28 days

Table 2			
Column 1	Column 2	Column 3	Column 4
Service Quality Area	Service Quality Indicator	Failure Criteria	Rectification Timescales
		area of these items individually or collectively, that would be immediately evident to a customer.	
	Litter	(a) There are more than ten items of litter each the same or greater in size than a credit card in the interior of the vehicle. (b) There is no space to place rubbish in the bins.	Within 24 hours
	Toilets & Toilet Operation	(a) If any of the facilities referred to in the following criteria are unclean and/or soiled. (b) Any general toilet is out of use. (c) Any disabled toilet is out of use. (d) The door handle or locking mechanism is not operating correctly. (e) Any lavatory seat is not in place. (f) Any lavatory is blocked. (g) Any lavatory flush system is not in working order. (h) The hand wash system is not operating correctly, including water and soap dispensers. (i) The baby change facilities (if present) are not in working order. (j) The disabled access facilities (if present) are not in working order. (k) There is no toilet tissue available. (l) There is no room in litter or disposal bins for additional items. (m) A mirror is not provided.	(k), (l), (n) within 24 hours (a), (b), (d), (e), (f), (g), (h), (i), (m), (o) within 72 hours (c) and (j) within 6 days

Table 2			
Column 1	Column 2	Column 3	Column 4
Service Quality Area	Service Quality Indicator	Failure Criteria	Rectification Timescales
		(n) There is no means of hand drying available i.e. the hand dryer is not operational/there are no paper towels. (o) There are prolonged, lingering smells that are not perceived to be temporary.	
Information	Customer Information Screens	(a) Any customer information display is not working. (b) Any customer information display is working but not legible. (c) Any customer information display is showing incorrect information. (d) Any customer information display is not showing next stop information (internal) and major/final destinations (internal and external).	Within 6 days
	Public Announcement	(a) Any announcement is not audible or capable of being understood. <i>Automated announcements to be regarded as expected primary source of announcements with manual announcements to be regarded as fall back only.</i> (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. (c) An announcement of the next station is not made between one and five minutes before arrival at the next station.	Within 6 days

Table 2			
Column 1	Column 2	Column 3	Column 4
Service Quality Area	Service Quality Indicator	Failure Criteria	Rectification Timescales
		(d) An announcement is not made requesting passengers to move down the train or free up seats from bags, etc. during peak hours. (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.	
	Wi-Fi	(a) The On-Train Wi-Fi equipment is faulty and a connection to the internet is not possible despite mobile signal being available.	Within 7 days
	Catering	(a) The facility is unavailable when it should be available in accordance with the on-board information or published in the Facilities Guide and/or as publicised on the Timetable. (b) There is no announcement advising of on-board catering and what is offered.	Within 14 days

PART 3 – SQR CUSTOMER SERVICE

Please note that a Service Quality Indicator should only be subject to a Service Quality Inspection:

- (a) if the relevant facility or service is included in the Facilities Guide for that Customer Service SQR Station or SQR Train; or
- (b) where paragraph (a) above does not apply, if the relevant facility or service actually exists or is actually provided at that Customer Service SQR Station or on that SQR Train.

Table 3		
Column 1	Column 2	Column 3
Service Quality Area	Service Quality Indicator	Failure Criteria
Information & Contact	Social Media Mystery Shopper Question	(a) No response within 30 minutes. (b) The response did not answer the question or advise to where additional information could be found.
	Helpfulness of Staff at Stations	(a) Staff member does not provide a friendly interaction with the mystery shopper. (b) Staff member does not have the correct information to hand when responding to a mystery shopper question. (c) Staff member gives incorrect information in response to a Mystery Shopper Inspection. (d) The staff member's behaviour and/or body language reflects poorly on the Franchisee.
	Helpfulness of Staff On Trains	(a) Staff member does not provide a friendly interaction with the mystery shopper. (b) Staff member does not have the correct information to hand when responding to a mystery shopper question. (c) Staff member gives incorrect information in response to a Mystery Shopper Inspection. (d) The staff member's behaviour and/or body language reflects poorly on the Franchisee.

**Appendix 2 to Schedule 7.3
Service Quality Areas/SQR Benchmarks/Service Quality Indicators/Weightings**

PART 1 – SQR STATIONS

Table 1						
Column 1	Column 2				Column 3	Column 4
	SQR Station Benchmarks					
Service Quality Area	Franchisee Years				Service Quality Indicators	Weighting
	Year 1 (Core)	Year 2 (Core)	Year 3 (Core)	Year 4 (Extension)		
Station Facilities & Cleanliness	[]%	[]%	[]%	[]%	Lifts & Escalators	20%
					General Cleanliness	20%
					Litter	20%
					Graffiti & Etching	20%
					Toilets & Toilet Operation	20%
Information	[]%	[]%	[]%	[]%	Customer Information Screens	25%

					Posters/Frames	25%
					Public Address System	25%
					Signage & Information (including running in boards)	25%
Ticketing & Staffing	[]%	[]%	[]%	[]%	Ticket Vending Machines	25%
					Ticket Office	25%
					Staff Presence	25%
					Ticket Gates	25%

Withdrawn

PART 2 – SQR TRAINS

Table 2						
Column 1	Column 2				Column 3	Column 4
	SQR Train Benchmarks					
Service Quality Area	Franchisee Years				Service Quality Indicators	Weighting
	Year 1 (Core)	Year 2 (Core)	Year 3 (Core)	Year 4 (Extension)		
Train Facilities & Cleanliness	[]%	[]%	[]%	[]%	Interior	25%
					Graffiti & Etching	25%
					Litter	25%
					Toilets & Toilet Operation	25%
Information	[]%	[]%	[]%	[]%	Customer Information Screens	25%
					Public Announcement	25%
					Wi-Fi	25%
					Catering	25%

PART 3 – SQR CUSTOMER SERVICE

Table 3						
Column 1	Column 2				Column 3	Column 4
	SQR Customer Service Benchmarks					
Service Quality Area	Franchisee Years				Service Quality Indicators	Weighting
	Year 1 (Core)	Year 2 (Core)	Year 3 (Core)	Year 4 (Extension)		
Information & Contact	[]%	[]%	[]%	[]%	Social Media Mystery Shopper Question	20%
					Helpfulness of Staff at Stations	40%
					Helpfulness of Staff On Trains	40%

Withdrawn

SCHEDULE 8

PAYMENTS

Schedule 8.1:	Franchise Payments
	Appendix 1: Annual Franchise Payments
	Appendix 2: Figures for Calculation of Annual Franchise Payments
Schedule 8.2:	Profit Share Mechanism
	Appendix 1: Profit Share Thresholds
	Appendix 2: Components of AFA and DFR
Schedule 8.3:	Track Access Adjustments and Station Charge Adjustments
Schedule 8.4:	NOT USED
	Appendix 1: NOT USED
	Appendix 2: NOT USED
Schedule 8.5:	NOT USED
Schedule 8.6:	Forecast Revenue Mechanism

Withdrawn

Schedule 8.1

Franchise Payments

1. **Franchise Payments**

1.1 The Franchise Payment for any Reporting Period shall be an amount equal to:

£FP =	PFP + TAA + SCA + CPS + TMDPS + T-3PS + T-15PS + ACPS + SFPS + RShA + RShRA + RSuA + RSuRA + EDFWP + TBR + DCTU + DCRA + SQP + SSEC + FTAC + PS
--------------	---

where:

PFP (Periodic Franchise Payment)	means that part of the Annual Franchise Payment which is to be made on that Reporting Period's Payment Date being calculated in accordance with the following formula: $\left(\frac{RPD}{FYD} \times AFP \right)$ <p>PFP may be a positive or negative number. PFP may be payable by the Secretary of State or the Franchisee;</p>	
	where:	
	RPD	means the number of days in that Reporting Period;
	FYD₁	is equal to three hundred and sixty five (365), or if February 29 falls during the Franchisee Year in which that Reporting Period falls, three hundred and sixty six (366); and
	AFP	means the Annual Franchise Payment for the Franchisee Year in which that Reporting Period occurs, as determined in accordance with Appendix 1 (<i>Annual Franchise Payments</i>) to Schedule 8.1 (<i>Franchise Payments</i>).

TAA	means any Track Access Adjustment to be made on that Reporting Period's Payment Date. TAA may be a positive or negative number. TAA may be payable by the Secretary of State or the Franchisee;
SCA	means any Station Charge Adjustment to be made on that Reporting Period's Payment Date. SCA may be a positive or negative number. SCA may be payable by the Secretary of State or the Franchisee;
CPS	means any Cancellations Performance Sum to be made on that Reporting Period's Payment Date. CPS will be a positive number except in respect of the Final Franchisee Year when it may be positive or negative or when due pursuant to paragraph 29.1 of Schedule 7.1 (<i>Operational Performance</i>) when it will be negative.

	CPS will be payable by the Secretary of State except in respect of the Final Franchisee Year when it may be payable by the Secretary of State or the Franchisee or when due pursuant to paragraph 29.1 of Schedule 7.1 (<i>Operational Performance</i>) when it will be payable by the Franchisee;
TMDPS	means any TOC Minute Delay Performance Sum to be made on that Reporting Period's Payment Date. TMDPS will be a positive number except in respect of the Final Franchisee Year when it may be positive or negative or when due pursuant to paragraph 29.1 of Schedule 7.1 (<i>Operational Performance</i>) when it will be negative. TMDPS will be payable by the Secretary of State except in respect of the Final Franchisee Year when it may be payable by the Secretary of State or the Franchisee or when due pursuant to paragraph 29.1 of Schedule 7.1 (<i>Operational Performance</i>) when it will be payable by the Franchisee;
T-3PS	means any Time to 3 Minutes Performance Sum to be made on that Reporting Period's Payment Date. T-3PS will be a positive number except in respect of the Final Franchisee Year when it may be positive or negative or when due pursuant to paragraph 29.1 of Schedule 7.1 (<i>Operational Performance</i>) when it will be negative. T-3PS will be payable by the Secretary of State except in respect of the Final Franchisee Year when it may be payable by the Secretary of State or the Franchisee or when due pursuant to paragraph 29.1 of Schedule 7.1 (<i>Operational Performance</i>) when it will be payable by the Franchisee;
T-15PS	means any Time to 15 Minutes Performance Sum to be made on that Reporting Period's Payment Date. T-15PS will be a positive number except in respect of the Final Franchisee Year when it may be positive or negative or when due pursuant to paragraph 29.1 of Schedule 7.1 (<i>Operational Performance</i>) when it will be negative. T-15PS will be payable by the Secretary of State except in respect of the Final Franchisee Year when it may be payable by the Secretary of State or the Franchisee or when due pursuant to paragraph 29.1 of Schedule 7.1 (<i>Operational Performance</i>) when it will be payable by the Franchisee;
ACPS	means any All Cancellations Performance Sum to be made on that Reporting Period's Payment Date. ACPS will be a positive number except in respect of the Final Franchisee Year when it may be positive or negative or when due pursuant to paragraph 29.1 of Schedule 7.1 (<i>Operational Performance</i>) when it will be negative. ACPS will be payable by the Secretary of State except in respect of the Final Franchisee Year when it may be payable by the Secretary of State or the Franchisee or when due pursuant to paragraph 29.1 of Schedule 7.1 (<i>Operational Performance</i>) when it will be payable by the Franchisee;
SFPS	means any Short Formation Performance Sum to be made on that Reporting Period's Payment Date in respect of the Final Franchisee Year and/or when due pursuant to paragraph 29.1 of Schedule 7.1 (<i>Operational Performance</i>). SFPS will be a negative number. SFPS will be payable by the Franchisee;

RS_hA	means any Revenue Share Adjustment determined in accordance with paragraph 3.7 (<i>Amount of Revenue Share Adjustments</i>) of Schedule 8.6 to be made on that Reporting Period's Payment Date. RS _h A may be a positive or negative number. RS _h A may be payable by the Secretary of State or the Franchisee;
RS_hRA	means the amount of any Revenue Share Reconciliation Amount to be paid on that Reporting Period's Payment Date in accordance with paragraph 4.1 (<i>Revenue Share Reconciliation Amount</i>) of Schedule 8.6. RS _h RA may be a positive or negative number. RS _h RA may be payable by the Secretary of State or the Franchisee;
RS_uA	means the amount of any Revenue Support Adjustment determined in accordance with paragraph 5.4 (<i>Amount of Revenue Support Adjustments</i>) of Schedule 8.6 to be made on that Reporting Period's Payment Date. RS _u A may be a positive or negative number. RS _u A may be payable by the Secretary of State or the Franchisee;
RS_uRA	means the amount of any Revenue Support Reconciliation Amount to be paid on that Reporting Period's Payment Date in accordance with paragraph 6.1 (<i>Revenue Support Reconciliation Amount</i>) of Schedule 8.6. RS _u RA may be a positive or negative number. RS _u RA may be payable by the Secretary of State or the Franchisee;
EDFWP	means the Exeter Depot Funded Works Payment (if any) to be made to the Franchisee on that Reporting Period's Payment Date;
TBR	means the amount of the Business Rates to be made by the Secretary of State to the Franchisee pursuant to paragraph 5.1 of Schedule 6.7 (<i>The IEP Provisions</i>) on that Reporting Period's Payment Date. TBR will be a positive number. TBR is payable by the Secretary of State;
DCTU	means any Deficit Contribution Top-Up to be made on that Reporting Period's Payment Date pursuant to paragraph 7.3 of Schedule 16.2. DCTU will be a positive number. DCTU will be payable by the Secretary of State;
DCRA	means any Deficit Contribution Return Amount to be made on that Reporting Period's Payment Date pursuant to paragraph 9.1 of Schedule 16.2. DCRA will be a negative number. DCRA will be payable by the Franchisee;
SQP	means the amount of any Service Quality Payment determined in accordance with paragraph 11.1 of Schedule 7.3 (<i>Service Quality Regime</i>). SQP shall be a negative number for the purposes of this formula notwithstanding that paragraph 11.1 of Schedule 7.3 (<i>Service Quality Regime Regime</i>) generates a positive number. SQP is payable by the Franchisee;

SSEC	means the amount of the Shore Supply Electricity Charges to be paid by the Secretary of State to the Franchisee pursuant to paragraph 8.1 of Schedule 6.7 (<i>The IEP Provisions</i>) on that Reporting Period's Payment Date. SSEC will be a positive number. SSEC is paid by the Secretary of State;
FTAC	means the amount of the Fixed Track Charge Wash-Up Payment (if any) to be paid (as the case may be): (i) by the Secretary of State to the Franchisee pursuant to paragraph 8.3(a) of Schedule 8.1; or (ii) by the Franchisee to the Secretary of State pursuant to paragraph 8.3(b) of Schedule 8.1, on that Reporting Period's Payment Date. FTAC may be a positive or a negative number. FTAC may be paid by the Secretary of State or the Franchisee; and
PS	means the amount of any payment determined in accordance with paragraph 1.5 of Schedule 8.2 (<i>Profit Share Mechanism</i>) to be made on that Reporting Period's Payment Date. PS shall be a negative number for the purposes of this formula notwithstanding that paragraph 1.5 of Schedule 8.2 (<i>Profit Share Mechanism</i>) generates a positive number. PS is payable by the Franchisee.

1.2 **NOT USED.**

1.3 The Parties agree that:

- (a) where **£FP is a positive number**, the Secretary of State shall pay that amount to the Franchisee on the Payment Date for that Reporting Period;
- (b) where **£FP is a negative number**, the Franchisee shall pay the corresponding positive amount to the Secretary of State on the Payment Date for that Reporting Period;
- (c) the following components of the formula at paragraph 1.1 of this Schedule 8.1 shall, for the purposes of that formula, be expressed as a negative number notwithstanding that Schedule 7.1 (*Operational Performance*) calculates the same as a positive number:
 - (i) any Cancellations Performance Sum calculated by reference to **Table 14 or Table 15** of paragraph 22.3 of Schedule 7.1 (*Operational Performance*);
 - (ii) any TOC Minute Delay Performance Sum calculated by reference to **Table 20 or Table 21** of paragraph 22.4 of Schedule 7.1 (*Operational Performance*);
 - (iii) any Short Formation Performance Sum calculated by reference to paragraph 22.5 of Schedule 7.1 (*Operational Performance*);
 - (iv) **NOT USED**;
 - (v) **NOT USED**;
 - (vi) any T-3 Performance Sum calculated by reference to **Table UT3-E or Table UT3-F** of paragraph 22.7A of Schedule 7.1 (*Operational Performance*);

- (vii) any T-15 Performance Sum calculated by reference to **Table UT15-E or Table UT15-F** of paragraph 22.7B of Schedule 7.1 (*Operational Performance*); and
 - (viii) any All Cancellations Performance Sum calculated by reference to **Table UAC-E or Table UAC-F** of paragraph 22.7C of Schedule 7.1 (*Operational Performance*);
- (d) paragraph 26.1 of Schedule 7.1 (*Operational Performance*) applies in respect of the Cancellations Performance Sum, TOC Minute Delay Performance Sum, Short Formation Performance Sum, T-3 Performance Sum, T-15 Performance Sum and All Cancellations Performance Sum and which accordingly shall only be payable to the Secretary of State as part of the Franchise Payments in the circumstances set out in paragraph 29 of Schedule 7.1 (*Operational Performance*).
- 2. Payment of Franchise Payments**
- 2.1 The Secretary of State shall notify the Franchisee, no less than seven (7) Weekdays prior to the end of each Reporting Period, of the amount of the Franchise Payment payable in respect of that Reporting Period.
- 2.2 Each such notification shall set out in reasonable detail how the Franchise Payment has been calculated.
- 2.3 The Payment Date for a Reporting Period shall be the last Weekday of that Reporting Period.
- 2.4 Each Franchise Payment shall be payable by the Franchisee or, as the case may be, the Secretary of State in the amount notified by the Secretary of State in accordance with paragraph 2.1 on the Payment Date of the Reporting Period to which it relates.
- 2.5 Each Franchise Payment shall be made:
- (a) by automatic electronic funds transfer in pounds sterling to such bank account in the United Kingdom as the payee of such payment may have previously specified to the payer in writing; and
 - (b) so that cleared funds are received in that account on or before the due date for payment.
- 2.6 Each Cancellations Performance Sum, TOC Minute Delay Performance Sum, T-3 Performance Sum, T-15 Performance Sum and All Cancellations Performance Sum calculated pursuant to paragraphs 22.3, 22.4, 22.7A, 22.7B and 22.7C (*Performance Sum Payments*) of Schedule 7.1 (*Operational Performance*) (respectively) in respect of any Franchisee Year and payable by the Secretary of State to the Franchisee shall, subject to paragraph 29 (*Payments in respect of the Final Franchisee Year*) of Schedule 7.1 (*Operational Performance*), be paid by way of adjustment to the Franchise Payment due on the second Payment Date following the notification of the results in accordance with paragraph 1.14 (*Notice of Performance Results*) of Schedule 7.1 (*Operational Performance*).

3. Interest

- 3.1 If either Party fails to pay any amount to the other Party on its due date, it shall in addition pay interest on such amount at the Interest Rate, calculated on a daily basis, from the due date for payment to the date on which payment is made.
- 3.2 If the amount of any Franchise Payment is agreed or determined to be incorrect and:
- (a) either Party has made a payment to the other Party which is greater than it would have made if the amount of the Franchise Payment had been correct, then the recipient shall repay the excess within three (3) Weekdays of the agreement or determination; or
 - (b) either Party has made a payment to the other Party which is less than it would have made if the amount of the Franchise Payment had been correct, then the payer shall pay the amount of any shortfall to the payee within three (3) Weekdays of the agreement or determination,

together, in each case, with interest on the amount payable at the Interest Rate, calculated on a daily basis from the date on which the Franchise Payment was paid until the date on which such excess amount or shortfall is paid.

4. Disputes under Schedule 8

If either Party disputes the amount of a Franchise Payment, the dispute shall, unless the Parties otherwise agree, be resolved in accordance with the provisions of clause 17 (*Governing Law and Jurisdiction*) of the Franchise Agreement. Any such dispute shall not affect the obligation of either Party to pay a Franchise Payment notified in accordance with this Schedule 8.1.

5. Industrial Action

The Secretary of State, in the Secretary of State's discretion, may at any time decide to reimburse or ameliorate net losses of the Franchisee arising from Industrial Action (however caused and of whatever nature) in circumstances where the Franchisee has demonstrated to the satisfaction of the Secretary of State that it has taken all reasonable steps to avoid the Industrial Action and that, Industrial Action having nevertheless occurred, the Franchisee has taken all reasonable steps to mitigate its effects.

6. No Double Recovery

The Franchisee shall not be entitled to recover (by way of a Change or otherwise) more than once in respect of the same loss suffered by it.

7. Force Majeure and Payments

Following the occurrence of a Force Majeure Event, the payment of Franchise Payments shall continue unaffected.

8. Fixed Track Charge Wash-Up Payments

- 8.1 The Franchisee shall promptly inform the Secretary of State of any notification of the Fixed Track Charge Wash-Up (if any) applicable to any Franchisee Year

pursuant to the Track Access Agreement, together with details or copies of such further records, information and/or documents as the Secretary of State may reasonably request.

8.2 The Franchisee shall take all such steps as a competent and efficient Train Operator would take, in the absence of paragraph 8.3 (and acting at all times in a manner consistent with the Franchisee's obligations under clause 6 of this Agreement), to:

(a) minimise any Fixed Track Charge Wash-Up payable by the Franchisee to Network Rail in a Franchisee Year (and, accordingly, the amounts payable by the Secretary of State to the Franchisee pursuant to paragraph 8.3(a)). The Franchisee's obligation under this paragraph 8.2(a) shall include the Franchisee:

- (i) using all reasonable endeavours to verify that any Fixed Track Charge Wash-Up charged to the Franchisee by Network Rail pursuant to the Track Access Agreement is not overstated; and
- (ii) challenging any Fixed Track Charge Wash-Up charged by Network Rail pursuant to the Track Access Agreement which the Franchisee (acting reasonably) considers to be overstated; and

(b) maximise any Fixed Track Charge Wash-Up payable by Network Rail to the Franchisee in a Franchisee Year (and, accordingly, the amounts payable by the Franchisee to the Secretary of State pursuant to paragraph 8.3(b)). The Franchisee's obligation under this paragraph 8.2(b) shall include the Franchisee:

- (i) using all reasonable endeavours to verify that any Fixed Track Charge Wash-Up payable to the Franchisee by Network Rail pursuant to the Track Access Agreement is not understated; and
- (ii) challenging any Fixed Track Charge Wash-Up payable by Network Rail pursuant to the Track Access Agreement which the Franchisee (acting reasonably) considers to be understated.

8.3 On the Payment Date which first occurs at least seven (7) days after the Fixed Track Charge Wash-Up (if any) applicable to any Franchisee Year is (as the case may be) paid by the Franchisee to Network Rail or by Network Rail to the Franchisee (or where there is no such date, within thirty (30) days of payment by either the Franchisee or Network Rail of such Fixed Track Charge Wash-Up):

- (a) if such Fixed Track Charge Wash-Up constitutes a payment by the Franchisee to Network Rail then the Secretary of State shall pay to the Franchisee an amount equal to such Fixed Track Charge Wash-Up; or
- (b) if such Fixed Track Charge Wash-Up constitutes a payment by Network Rail to the Franchisee then the Franchisee shall pay to the Secretary of State an amount equal to such Fixed Track Charge Wash-Up,

(being, in either case, a "**Fixed Track Charge Wash-Up Payment**").

8.5 In this paragraph 8, "**Fixed Track Charge Wash-Up**" shall have the same meaning as in the Track Access Agreement.

9. **Capping of Franchisee's liability in respect of the Incentive Regimes**

- 9.1 The purpose of this paragraph 9 is to establish an upper limit on the Franchisee's total liability to expend specified sums on delivering improvements and to remit specified sums to the Secretary of State under Schedules 7.1, 7.2 and 7.3 and paragraph 6 of Schedule 6.3 (together the "**Incentive Regimes**").
- 9.2 Within fourteen days of all of the amounts required to calculate the Net Performance Sum having been determined in respect of any Franchisee Year (the "**Relevant Year**") the Franchisee shall calculate the Net Performance Sum in respect of the Relevant Year. If the Franchisee has calculated the Net Performance Sum to be greater than the Applicable Cap in respect of the Relevant Year, then the Franchisee shall also:
- (a) calculate the Scaling Factor and each of the Rescaled Liabilities in respect of the Relevant Year; and
 - (b) submit a report to the Secretary of State setting out the Franchisee's calculations of the Net Performance Sum, the Applicable Cap, the Scaling Factor and each of the Rescaled Liabilities, with reasonably appropriate supporting information.
- 9.3 If there is any dispute in relation to any matter connected with the operation of this paragraph 9, including in relation to any calculation and the values needed to make any calculation, the Secretary of State shall be entitled to reasonably determine the matter in dispute.
- 9.4 Following agreement or reasonable determination of the calculations referred to in 9.2 above in respect of each obligation to expend sums or make payments to the Secretary of State under each of the Incentive Regimes the relevant Rescaled Liability shall, subject to paragraph 9.5, be substituted in place of the amount originally calculated under the relevant Incentive Regime.
- 9.5 The Parties acknowledge that the Franchisee's obligations to expend sums or make payments to the Secretary of State under each of the Incentive Regimes may arise before it is possible to complete the process described in paragraphs 9.2 to 9.4 above. Accordingly:
- (a) if the Franchisee makes any payment to the Secretary of State under any of the Incentive Regimes before the process described in paragraphs 9.2 to 9.4 above is completed and it is subsequently determined that the Net Performance Sum exceeded the Applicable Cap in respect of the Relevant Year, then on the first Payment Date falling no fewer than seven days after the completion of the process described in paragraphs 9.2 to 9.4 above the Secretary of State shall reimburse to the Franchisee a sum equal to the difference between the payment made and the Rescaled Liability in respect of that payment by way of adjustment to Franchise Payments (or if the last Payment Date has occurred the Secretary of State shall pay the relevant amount to the Franchisee within thirty days of the completion of the process);
 - (b) if, before the process described in paragraphs 9.2 to 9.4 above is completed, the Franchisee is required to expend any sum in delivering an Action Plan under Schedule 7.1 or to incur Additional Expenditure under Schedule 7.2 then, if the Franchisee so requests, the Franchisee shall initially be required to expend only 75 per cent of each sum originally calculated under Schedule 7.1 or (as the case may be) Schedule 7.2 (in place of the full sum) (the "**75% Amount**") and

following completion of the process described in paragraphs 9.2 to 9.4 above, the Franchisee shall additionally be required to expend:

- (i) in a case where the Net Performance Sum exceeds the Applicable Cap in respect of the Relevant Year, the difference between the 75% Amount and the respective Rescaled Liability (such that the Franchisee’s total liability shall be equal to the relevant Rescaled Liability); or
- (ii) in a case where the Net Performance Sum does not exceed the Applicable Cap, the difference between the 75% Amount and the respective sum originally calculated under Schedule 7.1 or (as the case may be) Schedule 7.2 (such that the Franchisee’s total liability shall be equal to the sum originally calculated).

For the purposes of this paragraph 9:

“Net Performance Sum” means the sum calculated in accordance with the following table:

Net Performance Sum	=	TAP_f - TAP_{SoS}
where:		
	TAP_{SoS}	is the sum of all amounts payable by the Secretary of State to the Franchisee by way of Cancellations Performance Sum, TOC Minute Delay Performance Sum, T-3 Performance Sum, T-15 Performance Sum and/or the All Cancellations Performance Sum pursuant to Schedule 7.1 (Operational Performance) in relation to the Relevant Year;
	TAP_f	is the sum of all amounts: <ul style="list-style-type: none"> (a) by way of Cancellations Performance Sum, TOC Minute Delay Performance Sum, T-3 Performance Sum, T-15 Performance Sum, Short Formation Performance Sum and/or the All Cancellations Performance Sum pursuant to Schedule 7.1 (Operational Performance) payable by the Franchisee to the Secretary of State in relation to the Relevant Year or incurred by the Franchisee for purposes of securing Required Performance Improvements pursuant to Schedule 7.1 in relation to the Relevant Year; (b) of Additional Expenditure incurred by the Franchisee or paid by the Franchisee to the Secretary of State pursuant to Schedule 7.2 (Customer Experience and Engagement) in relation to the Relevant Year; (c) of Service Quality Payments required to be paid by the Franchisee to the Secretary of State pursuant to Schedule 7.3 (Service Quality Regime) in relation to the Relevant Year; and

		(d) of any Ticketless Travel Payment Adjustment required to be paid by the Franchisee to the Secretary of State pursuant to Schedule 6.3 (Contractual Incentive Mitigations) in relation to the Relevant Year.
--	--	--

“**Applicable Cap**” means the sum calculated in accordance with the following table:

Applicable Cap	=	[REDACTED ¹¹⁴] * RPI _{RY+1} * P / 13
where:		
RPI_{RY+1}	=	RPI calculated in accordance with the Appendix to Schedule 8.1 in relation to the Franchisee Year following the Relevant Year.
p	=	is the number of Reporting Periods comprised within the Relevant Year

“**Scaling Factor**” means the Applicable Cap / Net Performance Sum calculated in respect of the Relevant Year;

“**Rescaled Liabilities**” means in respect of any amount required to be expended on improvements or paid to the Secretary of State in respect of a Relevant Year, the product of that amount multiplied by the Scaling Factor in respect of that Relevant Year (with the result that the sum of all of the Rescaled Liabilities shall be equal to the Applicable Cap in respect of the Relevant Year).

Withdrawn

¹¹⁴ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

APPENDIX 1 TO SCHEDULE 8.1**Annual Franchise Payments**

The Annual Franchise Payment for any Franchisee Year is an amount equal to:

£AFP =	$FXD + (VCRPI \times RPI) + (VCAWE \times AWE) + (PRPI \times RPI) + (ORRPI \times RPI) + (PRRPI \times RPI) + (VCCPI \times CPI)$
---------------	--

where:

"FXD"	means the Franchisee's costs which are not to be subject to indexation for the purpose of calculating AFP being the figure shown in respect of the relevant Franchisee Year in Column 2 of Table 1 set out in Appendix 2 (<i>Figures for Calculation of Annual Franchise Payments</i>) to this Schedule 8.1 (<i>Franchise Payments</i>) (and which shall always be expressed as a positive number);
"VCRPI"	means the Franchisee's costs which are to be subject to indexation by reference to the Retail Prices Index for the purpose of calculating AFP being the figure shown in respect of the relevant Franchisee Year in Column 3 of Table 1 set out in Appendix 2 (<i>Figures for Calculation of Annual Franchise Payments</i>) to this Schedule 8.1 (<i>Franchise Payments</i>) (and which shall always be expressed as a positive number);
"RPI"	is the quotient of the Retail Prices Index for the January which immediately precedes the commencement of the relevant Franchisee Year divided by the Retail Prices Index for January 2020 provided that, for the first Franchisee Year, RPI shall be one;
"VCAWE"	means the Franchisee's costs which are to be subject to indexation by reference to the Average Weekly Earnings for the purpose of calculating AFP being the figure shown in respect of the relevant Franchisee Year in Column 4 of Table 1 set out in Appendix 2 (<i>Figures for Calculation of Annual Franchise Payments</i>) to this Schedule 8.1 (<i>Franchise Payments</i>) (and which shall always be expressed as a positive number);
"AWE"	is the quotient of the Average Weekly Earnings for the January which immediately precedes the commencement of the relevant Franchisee Year divided by the Average Weekly Earnings for January 2020 provided that, for the first Franchisee Year, AWE shall be one;
"PRPI"	means the Franchisee's profit figure before tax which is to be subject to indexation by reference to the Retail Prices Index for the purpose of calculating AFP being the figure shown in respect of the relevant Franchisee Year in Column 5 of Table 1 set out in Appendix 2 (<i>Figures for Calculation of Annual Franchise Payments</i>) to this Schedule 8.1 (<i>Franchise Payments</i>) (and which shall always be expressed as a positive number);
"ORRPI"	means the Franchisee's non passenger revenue which is to be subject to indexation by reference to the Retail Prices Index for the purpose of calculating AFP being the figure shown in respect of the relevant Franchisee Year in Column 6 of Table 1 set out in Appendix 2 (<i>Figures for Calculation of Annual Franchise Payments</i>) to this Schedule 8.1 (<i>Franchise Payments</i>) (and which shall always be expressed as a negative number);
"PRRPI"	means the Franchisee's passenger fares revenue (including other fares revenue) which is to be subject to indexation by reference to the Retail Prices Index for the purpose of calculating AFP being the figure shown in respect of the relevant Franchisee Year in Column 7 of Table 1 set out in Appendix 2 (<i>Figures for Calculation of Annual Franchise Payments</i>) to this Schedule 8.1 (<i>Franchise Payments</i>) (and which shall always be expressed as a negative number);

<p>"VCCPI"</p>	<p>means the Franchisee's costs which are to be subject to indexation by reference to the Consumer Prices Index for the purpose of calculating AFP being the figure shown in respect of the relevant Franchisee Year in Column 8 of Table 1 set out in Appendix 2 (Figures for Calculation of Annual Franchise Payments) to this Schedule 8.1 (Franchise Payments) (and which shall always be expressed as a positive number); and</p>
<p>"CPI"</p>	<p>is the quotient of the Consumer Prices Index for the January which immediately precedes the commencement of the relevant Franchisee Year divided by the Consumer Prices Index for January 2020 provided that, for the first Franchisee Year, CPI shall be one.</p>

Withdrawn

APPENDIX 2 TO SCHEDULE 8.1

Figures for Calculation of Annual Franchise Payments

Year		Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7	Column 8
From	To	Franchisee Year	FXD (£)	VCRPI (£)	VCAWE (£)	PRPI (£)	ORRPI (£)	PRRPI (£)	VCCPI (£)
01 April 2020	31 March 2021	Year 1	[REDACTED ¹¹⁵]	[REDACTED ¹¹⁶]	[REDACTED ¹¹⁷]	[REDACTED ¹¹⁸]	[REDACTED ¹¹⁹]	[REDACTED ¹²⁰]	[REDACTED ¹²¹]
01 April 2021	31 March 2022	Year 2	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
01 April 2022	31 March 2023	Year 3	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Up to 13 Reporting Periods Extension									
01 April 2023	31 March 2024	Year 4 (extension)	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

¹¹⁵ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹¹⁶ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹¹⁷ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹¹⁸ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹¹⁹ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹²⁰ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹²¹ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

Withdrawn

Schedule 8.2

Profit Share Mechanism

1. **Profit Share**

1.1 For the purposes of this Schedule 8.2:

(a) **First Profit Share Threshold**

“First Profit Share Threshold” means an amount in respect of any Franchisee Year determined as follows:

$$(FPST \times RPI + HP) \times (FYD_A / FYD)$$

where:

FPST	is (as the case may be): (a) if no Net Revenue Support is payable in respect of the relevant Franchisee Year, the amount prescribed for these purposes in column 4 of the table set out at paragraph 1 of Appendix 1 (<i>Profit Share Thresholds</i>) to this Schedule 8.2 in respect of the relevant Franchisee Year; or (b) if Net Revenue Support is payable in respect of the relevant Franchisee Year, the amount prescribed for these purposes in column 5 of the table set out at paragraph 1 of Appendix 1 (<i>Profit Share Thresholds</i>) to this Schedule 8.2 in respect of the relevant Franchisee Year;
RPI	has the meaning given to it in Appendix 1 (<i>Annual Franchise Payments</i>) to Schedule 8.1 (<i>Franchise Payments</i>);
HP	means HEx Profit in respect of the relevant Franchisee Year;
FYD_A	means the number of days in that Franchisee Year; and
FYD	is equal to three hundred and sixty five (365), or if February 29 falls during that Franchisee Year, three hundred and sixty six (366);

(b) **Second Profit Share Threshold**

“Second Profit Share Threshold” means an amount in respect of any Franchisee Year determined as follows:

$$(SPST \times RPI + HP) \times (FYD_A / FYD)$$

where:

SPST	is (as the case may be): (a) if no Net Revenue Support is payable in respect of the relevant Franchisee Year, the amount prescribed for these purposes in column 4 of the table set out at paragraph 2 of Appendix 1
-------------	---

	<p>(Profit Share Thresholds) to this Schedule 8.2 in respect of the relevant Franchisee Year; or</p> <p>(b) if Net Revenue Support is payable in respect of the relevant Franchisee Year, the amount prescribed for these purposes in column 5 of the table set out at paragraph 2 of Appendix 1 (Profit Share Thresholds) to this Schedule 8.2 in respect of the relevant Franchisee Year;</p>
RPI	has the meaning given to it in Appendix 1 (Annual Franchise Payments) to Schedule 8.1 (Franchise Payments);
HP	means HEx Profit in respect of the relevant Franchisee Year;
FYDA	means the number of days in that Franchisee Year; and
FYD	is equal to three hundred and sixty five (365), or if February 29 falls during that Franchisee Year, three hundred and sixty six (366);

(c) **Third Profit Share Threshold**

“Third Profit Share Threshold” means an amount in respect of any Franchisee Year determined as follows:

(TPST x RPI + HP) x (FYDA/FYD)

where:

TPST	<p>is (as the case may be):</p> <p>(a) if no Net Revenue Support is payable in respect of the relevant Franchisee Year, the amount prescribed for these purposes in column 4 of the table set out at paragraph 3 of Appendix 1 (Profit Share Thresholds) to this Schedule 8.2 in respect of the relevant Franchisee Year;</p> <p>(b) if Net Revenue Support is payable in respect of the relevant Franchisee Year, the amount prescribed for these purposes in column 5 of the table set out at paragraph 3 of Appendix 1 (Profit Share Thresholds) to this Schedule 8.2 in respect of the relevant Franchisee Year;</p>
RPI	has the meaning given to it in Appendix 1 (Annual Franchise Payments) to Schedule 8.1 (Franchise Payments);
HP	means HEx Profit in respect of the relevant Franchisee Year;
FYDA	means the number of days in that Franchisee Year; and
FYD	is equal to three hundred and sixty five (365), or if February 29 falls during that Franchisee Year, three hundred and sixty six (366).

(d) **Other Definition**

“HEx Profit” means, in respect of any Franchisee Year, the amount calculated in accordance with paragraph 1.2A of this Schedule 8.2.

1.2 Relevant Profit

“Relevant Profit” means, subject to paragraph 2, in respect of any Franchisee Year, the total profit of the Franchisee for that Franchisee Year calculated by applying the accounting policies and standards set out in the Record of Assumptions and applied through the Financial Model (including, for the avoidance of doubt, the HEx Profit);

- (a) after taking into account in respect of that Franchisee Year:
- (i) interest, finance income and finance charges (other than finance items recognised in respect of retirement benefits);
 - (ii) Franchise Payments including:
 - (A) true and fair estimates of RShA, RShRA, RSuA or RSuRA payable or receivable pursuant to Schedule 8.6 (Forecast Revenue Mechanism) (as the case may be) calculated in accordance with the accounting policies and standards set out in the Record of Assumptions and applied through the Financial Model; and
 - (B) true and fair estimates of DCTU and DCRA payable or receivable pursuant to Schedule 16.2 (*Deficit Contribution Risk Sharing*);
 - (iii) all extraordinary and exceptional items, as defined under the accounting policies and standards set out in the Record of Assumptions and applied through the Financial Model;
 - (iv) contributions payable by the Franchisee into (i) the Franchise Sections; and (ii) any other pension scheme(s) to the extent connected with the Franchise, in each case as required under such schemes’ rules and schedule of contributions;
 - (v) any payments to Affiliates of the Franchisee (including management fees and royalty fees but excluding net payments (meaning the aggregate payments payable from the Franchisee to Affiliates in the relevant Franchisee Year, less the aggregate receipts receivable to the Franchisee from Affiliates in the relevant Franchisee Year) which the Secretary of State reasonably considers have been made in good faith on an arm’s length basis to any Affiliate in connection with fuel hedging instruments to help manage the exposure of the Franchisee to diesel fuels costs) except to the extent that such payments exceed an amount to be determined as set out in paragraph 1.3;
 - (vi) any sums payable by or to the Franchisee pursuant to the terms of the Supplemental Agreement; and
 - (vii) any capital expenditure to the extent that it is recognised as an operating cost in the Annual Audited Accounts and any depreciation on capital expenditure that is recognised as an expense in the Annual Audited Accounts, unless the depreciation policy and assumptions

used in the Annual Audited Accounts are different to those set out in the Record of Assumptions and applied through the Financial Model, in which case an adjustment should be made to take account of the depreciation which would have been charged had the policy and assumptions set out in the Record of Assumptions been applied for the relevant Franchisee Year; and

- (b) before taking into account in respect of that Franchisee Year:
- (i) any taxation on profits including corporation tax;
 - (ii) shares of the profit of any Affiliate of the Franchisee, except dividends received in cash;
 - (iii) non cash entries in respect of the Franchise Sections and any other pension scheme(s) to the extent connected with the Franchise (excluding accruals or prepayments of any contributions payable by the Franchisee into (i) the Franchise Sections; and (ii) any other pension scheme(s) to the extent connected with the Franchise, in each case as required under such schemes' rules and schedule of contributions);
 - (iv) any payment made by the Franchisee consequent upon any contravention of the Franchise Agreement and/or its Licences (including as a consequence of any penalty payment paid or payable pursuant to section 57A of the Railways Act 1993);
 - (v) any profit share payments payable to the Secretary of State in relation to any Franchisee Year; and
 - (vi) fees, remuneration and pension contributions in respect of any director and officer of the Franchisee in excess of an amount to be determined as set out in paragraph 1.4.

1.2A HEx Profit

HEx Profit in respect of any relevant Franchisee Year shall be calculated in accordance with the following formula:

HMF – HMFD	
where:	
HMF	means the Management Fee, any Quality Percentage Performance Bonus, any Timetable Score Percentage Bonus and any amount payable to the Franchisee pursuant to clause 23.1 of the HEx Services Agreement for the relevant Franchisee Year; and
HMFD	means any Service Payment Adjustments, IR Excluded Event Refunds and any amount payable by the Franchisee pursuant to clause 25.1 of the HEx Services Agreement in respect of the relevant Franchisee Year.

1.3 **Payments to Affiliates**

AFA x RPI x (FYD_A/FYD)	
where:	
AFA	is the amount prescribed for these purposes in the table set out in paragraph 1 of Appendix 2 (<i>Components of AFA and DFR</i>) to this Schedule 8.2 in respect of the relevant Franchisee Year;
RPI	has the meaning given to it in Appendix 1 (<i>Annual Franchise Payments</i>) of Schedule 8.1 (<i>Franchise Payments</i>);
FYD_A	means the number of days in that Franchisee Year; and
FYD	is equal to three hundred and sixty five (365), or if February 29 falls during that Franchisee Year, three hundred and sixty six (366).

1.4 **Payments to Directors and Officers**

DFR x RPI x (FYD_A/FYD)	
where:	
DFR	is the amount prescribed for these purposes in the table set out in paragraph 2 of Appendix 2 (<i>Components of AFA and DFR</i>) to this Schedule 8.2 in respect of the relevant Franchisee Year;
FYD_A	means the number of days in that Franchisee Year; and
FYD	is equal to three hundred and sixty five (365), or if February 29 falls during that Franchisee Year, three hundred and sixty six (366);
RPI	has the meaning given to it in Appendix 1 (<i>Annual Franchise Payments</i>) of Schedule 8.1 (<i>Franchise Payments</i>).

1.5 **Payment Obligations**

- (a) If the Annual Audited Accounts in respect of any Franchisee Year show that the Relevant Profit for that Franchisee Year exceeds the First Profit Share Threshold then, subject to paragraph 2 (*Additional Compensation or Settlement Payments*), the Franchisee shall pay to the Secretary of State:
- (i) 40% of Relevant Profit in excess of the First Profit Share Threshold but less than or equal to the Second Profit Share Threshold;
 - (ii) 80% of Relevant Profit in excess of the Second Profit Share Threshold but less than or equal to the Third Profit Share Threshold; and
 - (iii) 100% of Relevant Profit in excess of the Third Profit Share Threshold.
- (b) Subject to paragraphs 3 and 4 below, payments due under paragraph 1.5(a) shall be paid as part of the Franchise Payment for the first Reporting Period that falls thirty (30) or more days after delivery of the Annual Audited Accounts by the Franchisee to the Secretary of State under paragraph 9.4 of Schedule 11.2 (*Management Information*) or if there is no such Reporting Period, within thirty (30) days of the date of such delivery.

2. Additional Compensation or Settlement Payments

- 2.1 If in any Franchisee Year (or any period of twelve (12) consecutive months after the end of the Franchise Period) (the "**Current Franchisee Year**") the Franchisee receives a compensation or other settlement payment of at least:

[REDACTED¹²²] x RPI

arising from a single claim or series of related claims which relate wholly or partly to costs, losses or expenses (including loss of revenue) arising in any other Franchisee Year or Franchisee Years, then the Franchisee shall notify the Secretary of State of such payment as soon as reasonably practicable and for the purposes of paragraphs 1 and 2 and notwithstanding its other terms:

- (a) the payment which relates to such other Franchisee Year shall be attributed to that other Franchisee Year and not treated as received in the Current Franchisee Year;
 - (b) where and to the extent any payments under paragraphs 1 and 2 in respect of any other Franchisee Year would have been made or would have been higher had that amount actually been received in that other Franchisee Year, the Franchisee shall pay a reconciliation amount to the Secretary of State within thirty (30) days after delivery of the Annual Audited Accounts that relate to the Current Franchisee Year by the Franchisee to the Secretary of State under paragraph 9.4 of Schedule 11.2 (*Management Information*) or, if there is no further requirement on the Franchisee to deliver Annual Audited Accounts following the end of the Franchise Period, within thirty (30) days of the Franchisee receiving the relevant payment; and
 - (c) **RPI** has the meaning given to it in Appendix 1 (*Annual Franchise Payments*) of Schedule 8.1 (*Franchise Payments*).
- 2.2 Where the Secretary of State reasonably considers that in calculating Relevant Profit any particular item or transaction has not been accounted for on a reasonable basis (including where the accounting treatment looks to the form rather than the substance, of the item or transaction) the Secretary of State shall be entitled to require it to be accounted for on such other basis as the Secretary of State may reasonably determine and notify to the Franchisee provided that the Secretary of State shall not be entitled pursuant to this paragraph to alter the accounting policies of the Franchisee from those set out in the Record of Assumptions and applied through the Financial Model.
- 2.3 Without prejudice to paragraph 2.1 where the Annual Audited Accounts in relation to any previous Franchisee Year are subject to adjustment or restatement the Secretary of State shall have a discretion to require the recalculation of Relevant Profit for the relevant Franchisee Year and to require that the Franchisee shall pay to the Secretary of State the amount which is the difference between the profit share actually paid to the Secretary of State pursuant to paragraph 1.5(a) and the amount that would have been paid had the Relevant Profit been originally

¹²² 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

calculated on the basis that such adjustment or revision was included in the Annual Audited Accounts.

- 2.4 Any payment due to the Secretary of State shall be paid by the Franchisee within thirty (30) days of the Secretary of State notifying the Franchisee that the Secretary of State requires a payment to be made pursuant to this paragraph.

3. **Relevant Profit Report**

- 3.1 The Franchisee shall, at the same time as the Annual Audited Accounts are delivered under paragraph 9.4 of Schedule 11.2 (*Management Information*), deliver to the Secretary of State a report (the "**Relevant Profit Report**") identifying:

- (a) the amount of total profit and the adjustments made in the calculation of Relevant Profit pursuant to paragraphs 1 and 2;
- (b) any items falling under paragraph 2.1, including details of the allocation across Franchisee Years of such items;
- (c) any adjustments or restatements made in relation to the Annual Audited Accounts in respect of any previous Franchisee Year; and
- (d) the amount of the HEx Profit,

and shall provide such additional information, records or documents as the Secretary of State may reasonably require in relation to such matters.

- 3.2 The Franchisee and/or the Franchisee's auditors shall include a statement referring to the Relevant Profit in the Annual Audited Accounts. The format of such statement shall be agreed with the Secretary of State.

- 3.3 If required, the Franchisee's auditors shall provide additional written confirmation to the Secretary of State that the Relevant Profit Report gives a true and fair view of the matters contained within it including the amount of total profit and the adjustments made in the calculation of Relevant Profit.

- 3.4 The Franchisee and/or the Franchisee's auditors shall provide a reconciliation between:

- (a) profit as set out in its Annual Audited Accounts determined by applying GAAP applicable to the accounting period for which the accounts are prepared; and
- (b) Relevant Profit determined by applying the accounting policies, as set out in the Record of Assumptions at the time of bidding.

- 3.5 The Franchisee's auditors shall provide a statement in a format to be agreed with the Secretary of State, confirming that the Franchisee's auditors have undertaken review procedures on the Relevant Profit figures and associated accounting policies ("**Review Procedures**"). The nature and scope of the Review Procedures shall be agreed between the Secretary of State, the Franchisee and the Franchisee's auditor.

- 3.6 The statement referred to in paragraph 3.5 may be used by the Secretary of State in considering whether the Relevant Profit has been determined consistent

with the requirements of this Agreement and the accounting policies as set out in the Record of Assumptions.

4. Payment of Profit Share and Determination by the Secretary of State

4.1 Any profit share payment pursuant to paragraph 1.5(a) to be made in respect of the Final Franchisee Year shall be determined in accordance with paragraphs 1 and 2 but shall be paid within thirty (30) days of the Secretary of State giving written notice to the Franchisee of the amount of such profit share payment.

4.2 If the Franchisee fails to provide the Annual Audited Accounts for the Final Franchisee Year within four (4) Reporting Periods of the expiry of the Final Franchisee Year pursuant to paragraph 9.4 of Schedule 11.2 (*Management Information*), the Secretary of State shall be entitled (but not obliged) to determine any Profit Share Adjustment in accordance with paragraphs 1 and 2 but by reference to any relevant information available to the Secretary of State at the time of such determination, including any information contained in the latest cumulative, year-to-date Management Accounts or in the Annual Management Accounts.

Withdrawn

APPENDIX 1 TO SCHEDULE 8.2

Profit Share Thresholds

1. First Profit Share Threshold

The prescribed amounts for the component of FPST for the relevant Franchisee Year and for the purposes of the definition of First Profit Share Threshold are as set out in the table below:

Table 1				
Column 1	Column 2	Column 3	Column 4	Column 5
Year		Franchisee Year	First Profit Share Threshold Amount or FPST (if no Net Revenue Support payable)	First Profit Share Threshold Amount or FPST (if Net Revenue Support payable)
From	To			
2020	2021	Year 1	[REDACTED ¹²³]	[REDACTED ¹²⁴]
2021	2022	Year 2	[REDACTED]	[REDACTED]
2022	2023	Year 3	[REDACTED]	[REDACTED]
Up to 13 Reporting Periods Extension				
2023	2024	Year 4 (extension)	[REDACTED]	[REDACTED]

¹²³ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹²⁴ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

2. **Second Profit Share Threshold**

The prescribed amounts for the component of SPST for the relevant Franchisee Year and for the purposes of the definition of Second Profit Share Threshold are as set out in the table below:

Table 2				
Column 1	Column 2	Column 3	Column 4	Column 5
Year		Franchisee Year	Second Profit Share Threshold Amount or SPST (if no Net Revenue Support payable)	Second Profit Share Threshold Amount or SPST (if Net Revenue Support payable)
From	To			
2020	2021	Year 1	[REDACTED ¹²⁵]	[REDACTED ¹²⁶]
2021	2022	Year 2	[REDACTED]	[REDACTED]
2022	2023	Year 3	[REDACTED]	[REDACTED]
Up to 13 Reporting Periods Extension				
2023	2024	Year 4 (extension)	[REDACTED]	[REDACTED]

¹²⁵ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹²⁶ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

3. **Third Profit Share Threshold**

The prescribed amounts for the component of TPST for the relevant Franchisee Year and for the purposes of the definition of Third Profit Share Threshold are as set out in the table below:

Table 3				
Column 1	Column 2	Column 3	Column 4	Column 5
Year		Franchisee Year	Third Profit Share Threshold Amount or TPST (if no Net Revenue Support payable)	Third Profit Share Threshold Amount or TPST (if Net Revenue Support payable)
From	To			
2020	2021	Year 1	[REDACTED ¹²⁷]	[REDACTED ¹²⁸]
2021	2022	Year 2	[REDACTED]	[REDACTED]
2022	2023	Year 3	[REDACTED]	[REDACTED]
Up to 13 Reporting Periods Extension				
2023	2024	Year 4 (extension)	[REDACTED]	[REDACTED]

¹²⁷ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹²⁸ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

APPENDIX 2 TO SCHEDULE 8.2

Components of AFA and DFR

1. **AFA**

The amounts for the purposes of the component of AFA in paragraph 1.3 of Schedule 8.2 are set out in the table below:

Table 1			
Year		Franchisee Year	Component of AFA
From	To		
2020	2021	Year 1	[REDACTED ¹²⁹]
2021	2022	Year 2	[REDACTED]
2022	2023	Year 3	[REDACTED]
Up to 13 Reporting Periods Extension			
2023	2024	Year 4 (extension)	[REDACTED]

Withdrawn

¹²⁹ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

2. **DFR**

The amounts for the purposes of the component of DFR in paragraph 1.4 of Schedule 8.2 are set out in the table below:

Table 2			
Year		Franchisee Year	Component of DFR
From	To		
2020	2021	Year 1	[REDACTED ¹³⁰]
2021	2022	Year 2	[REDACTED]
2022	2023	Year 3	[REDACTED]
Up to 13 Reporting Periods Extension			
2023	2024	Year 4 (extension)	[REDACTED]

Withdrawn

¹³⁰ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

Schedule 8.3

Track Access Adjustments and Station Charge Adjustments

1. Track Access Adjustments

1.1 The Track Access Adjustment to be made in respect of any Reporting Period shall be determined in accordance with the following formula:

$TAA = (GCA - W) \times \frac{RPD}{FYD}$	
Where:	
TAA	means the Track Access Adjustment to be made in that Reporting Period;
GCA	is the value of " GC " for the Franchisee Year in which the Reporting Period falls under Part 3A of Schedule 7 of the Track Access Agreement;
W	is the value of " Wt " for the Franchisee Year in which the Reporting Period falls under Part 2 of Schedule 7 of the Track Access Agreement;
RPD	means the number of days in that Reporting Period; and
FYD	means the number of days in the Franchisee Year in which that Reporting Period falls,
	except that, where a Reporting Period falls during two (2) Franchisee Years, TAA shall be determined as if the references to Reporting Period were to each of the two periods within such Reporting Period which fall wholly within one (1) of such Franchisee Years and the Track Access Adjustment to be made in that Reporting Period shall reflect the sum of TAA as determined for each such period.

1.2 The Franchisee shall notify the Secretary of State upon becoming aware that any Track Access Adjustment is to be made and shall supply such information as the Secretary of State may require in relation thereto. The Franchisee shall exercise its rights under the Track Access Agreement in such manner and take such other action as the Secretary of State may reasonably require in connection with any related payment thereunder (including in relation to any agreement of the amount of any such payment and including submitting any relevant dispute to any relevant dispute resolution procedures). The Franchisee shall not, without the consent of the Secretary of State, agree or propose to agree a value for "**Wt**" or "**GC**" under Parts 2 or 3A of Schedule 7 of the Track Access Agreement.

1.2A No Track Access Adjustment calculated in respect of any Track Access Agreement to the extent relating to the HEx Outsourced Services shall result in an amendment to the Franchise Payment.

1.3 The Franchisee shall provide such evidence of payment as the Secretary of State may require (including any certificates) for the purpose of determining the value of **W** and **GCA** under paragraph 1.1.

1.4 If no value is ascertained for **W** or **GCA** prior to the date on which the Franchise Payment for the relevant Reporting Period is determined, then a Track Access Adjustment shall only be determined to the extent such values can be ascertained at such time and, when such values are subsequently ascertained, adjustment shall be made to reflect the full Track Access Adjustment for such Reporting Period.

1.5 The values of **W** and **GCA** when used in the computation in paragraph 1.1 shall be taken to exclude any input Value Added Tax which is recoverable in respect of the payments they represent by the Franchisee under sections 24 to 26 of the Value Added Tax Act 1994.

1.6 References in this paragraph 1 to "**Wt**" and "**GC**" and Parts 2 and 3A of Schedule 7 of the Track Access Agreement shall be deemed also to be references to such other provisions, and such other algebra under any such other provisions, of the Track Access Agreement as the Secretary of State may reasonably consider have an equivalent effect, or are intended to fulfil the same function, as "**Wt**" or "**GC**" and Parts 2 or 3A of Schedule 7 of the Track Access Agreement to which the Franchisee is a party on the Start Date.

2. **Station Charge Adjustment**

2.1 **NOT USED.**

2.2 The Station Charge Adjustment to be made in respect of any Reporting Period shall be the aggregate of the Individual Station Charge Adjustments as determined in accordance with the following formula for each Station and each other Franchisee Access Station:

$ISCA = L \times \frac{RPD}{FYD}$	
where:	
ISCA	means the Individual Station Charge Adjustment for the relevant station for that Reporting Period;
L	is the value of " Lt " for the Franchisee Year in which the Reporting Period falls under:
	<p>(a) if the relevant station is not an Independent Station, Condition F11.2 of the Station Access Conditions entitled "National Station Access Conditions 2013 (England and Wales) (incorporating amendments with effect from 1 April 2014)" relating to such station; or</p> <p>(b) if the relevant station is an Independent Station, Condition 42.3 of the Independent Station Access Conditions relating to that Independent Station,</p> <p>in each case, to the extent that value represents an amount payable to or by Network Rail or any other relevant Facility Owner by or to the Franchisee on its own behalf under the relevant Access Agreement (excluding any amount payable to Network Rail by the Franchisee in its capacity as Facility Owner of a station on behalf of a beneficiary which is party to an Access Agreement in respect of a Station);</p>
RPD	means the number of days in that Reporting Period; and
FYD	means the number of days in the Franchisee Year in which that Reporting Period falls except that, where a Reporting Period falls during two (2) Franchisee Years, the Station Charge Adjustment shall be determined as if the references to Reporting Period were to each of the two (2) periods within such Reporting Period which fall wholly within one of such Franchisee Years and the Station Charge Adjustment for such Reporting Period shall be the sum of the Station Charge Adjustment as determined for each such period.

- 2.2A No Station Charge Adjustment calculated in respect of any HEx Station shall result in an amendment to the Franchise Payment.
- 2.3 The Franchisee shall notify the Secretary of State upon becoming aware that any Station Charge Adjustment is to be made and shall supply such information as the Secretary of State may require in relation thereto. The Franchisee shall exercise such rights as it may have under any Access Agreement in such manner and take such other action as the Secretary of State may reasonably require in connection with any related payment thereunder (including in relation to any agreement of the amount of any such payment and including submitting any relevant dispute to any relevant dispute resolution procedures). The Franchisee shall not, without the consent of the Secretary of State, agree or propose to agree a value for "Lt" under any relevant Access Agreement.
- 2.4 The Franchisee shall provide such evidence of payment as the Secretary of State may require (including any certificates) for the purpose of determining the **value of L** under paragraph 2.2.
- 2.5 If no value is ascertained for "L" prior to the date on which the Franchise Payment for the relevant Reporting Period is determined, then a Station Charge Adjustment shall only be determined to the extent such values can be ascertained at such time and, when such values are subsequently ascertained, an adjustment shall be made to reflect the full Station Charge Adjustment for such Reporting Period.
- 2.6 The value of "L" when used in the computation in paragraph 2.2 shall be taken to exclude any input Value Added Tax which is recoverable in respect of the payments they represent by the Franchisee under sections 24 to 26 of the Value Added Tax Act 1994.
- 2.7 For the purposes of this paragraph 2, "**Independent Station**" shall mean, at any time, any station of which Network Rail (or any other person other than a Train Operator) is the Facility Owner at that time.
- 2.8 References in this paragraph 2 to "Lt", Condition F11.2 of the Station Access Conditions entitled "**National Station Access Conditions 2013 (England and Wales) (incorporating amendments with effect from 1 April 2014)**" and Condition 42.3 of the Independent Station Access Conditions shall be deemed also to be references to such other provisions, and such other algebra under any such other provisions, of any relevant station access conditions as the Secretary of State may reasonably consider have an equivalent effect, or are intended to fulfil the same function as, "Lt" and Condition F11.2 of the Station Access Conditions entitled "*National Station Access Conditions 2013 (England and Wales) (incorporating amendments with effect from 1 April 2014)*" and Condition 42.3 of the Independent Station Access Conditions which are in effect on the Start Date.

Schedule 8.4

NOT USED

Withdrawn

Schedule 8.5

NOT USED

Withdrawn

Schedule 8.6

Forecast Revenue Mechanism**1. Purpose and Application**

- 1.1 This Schedule 8.6 sets out the basis of calculation of the components **RShA**, **RShRA**, **RSuA**, and **RSuRA** for the purposes of paragraph 1 of Schedule 8.1 (Franchise Payments).
- 1.2 The provisions of this Schedule 8.6 shall survive the expiry or earlier termination of the Franchise Agreement, in the case of an early termination irrespective of the reason for such termination.

2. Definitions

- 2.1 For the purposes of this Schedule 8.6 (*Forecast Revenue Mechanism*) only, the following words and expressions shall have the following meanings unless otherwise set out in clause 3 (*Definitions*):

"First FRM Franchisee Year" means the Franchisee Year beginning on the Start Date;

"FRM Revenue" means the gross revenue (without any deduction for operating costs or charges except for commission charged to revenue in the normal course of business in respect of credit card and other payment processing methods) of the Franchisee, as stated in the FRM Revenue Report submitted to the Secretary of State in accordance with paragraph 9.1 of this Schedule 8.6 or Management Accounts submitted to the Secretary of State in accordance with Schedule 11.2 (Management Information), relating to:

- (a) the sale of tickets of any type for the carriage of passengers by railway or otherwise arising out of the Franchisee permitting any person to be carried on the Passenger Services (including revenue allocated to the Franchisee through the Ticketing and Settlement Agreement and pursuant to any multi-modal fares scheme, local authority concessionary travel scheme, inter operator scheme, discount fares scheme, the Pay As You Go Agreement, the CPAY Agreement or otherwise but excluding any revenue relating to the HEx Services);
- (b) any compensation for loss of revenue payable to the Franchisee by Network Rail under schedule 4 (Engineering

Access Statement, Timetable Planning Rules and Restrictions of Use) to the Track Access Agreement (where any such amount of compensation is yet to be agreed or is subject to any dispute the amount of relevant compensation shall be calculated on the accruals basis in accordance with GAAP);

- (c) any compensation for loss of revenue:
- (i) **payable to the Franchisee:**
by Network Rail pursuant to paragraph 9 (Network Rail Performance Sum) (Performance Regime) and/or paragraph 18 (Compensation for Sustained Poor Performance) of schedule 8 to the Track Access Agreement (as the case may be); and
 - (ii) **payments from the Franchisee:**
to Network Rail pursuant to paragraph 9 (Network Rail Performance Sum) of schedule 8 to the Track Access Agreement,
in both cases where any relevant amount is yet to be agreed or is subject to any dispute the amount of relevant compensation shall be calculated on the accruals basis in accordance with GAAP);
- (d) the revenue element of any payments to the Franchisee by Network Rail under Condition G (Network Change) of the Network Code relating to the sale of tickets of any type for the carriage of passengers by railway (including revenue allocated to the Franchisee through the Ticketing and Settlement Agreement or otherwise);
- (e) the sale of any Discount Card;
- (f) the revenue received by the Franchisee in relation to the parking of any vehicle at stations;
- (g) the imposition of any penalty upon any person making a journey on the Passenger Services without a ticket which is valid for such journey,

but shall not include any Franchise Payment.

Where during the Franchise Period the Franchisee obtains gross revenue from sources not referred to in this definition of FRM Revenue and such revenue was derived from business activities in relation to the Franchise Services which were not provided by the Train Operator which provided the Passenger Services immediately prior to the Start Date, the Secretary of State may determine (acting reasonably) that such revenue will be included within the definition of FRM Revenue if it would have been included in limbs (a) to (g) of this definition of FRM Revenue had such business activities been provided by the Train Operator which provided the Passenger Services immediately prior to the Start Date;

"FRM Revenue Report"	has the meaning given to it in paragraph 9.1 of this Schedule 8.6;
"FRM Review Procedures"	has the meaning given to it in paragraph 9.3 of this Schedule 8.6;
"Net Revenue Share"	means in relation to any Franchisee Year the net amount of Revenue Share Adjustments payable to the Secretary of State adjusted to reflect the amount of any Revenue Share Reconciliation Amount in respect of such Franchisee Year to give the net amount that may be payable to the Secretary of State;
"Net Revenue Support"	means in relation to any Franchisee Year the net amount of Revenue Support Adjustments payable to the Franchisee adjusted to reflect the amount of any Revenue Support Reconciliation Amount in respect of such Franchisee Year to give the net amount that may be payable to the Franchisee;
"Revenue Share Adjustment"	means an adjustment to a Franchise Payment determined pursuant to paragraph 3.7 of this Schedule 8.6;
"Revenue Share Reconciliation Amount"	means an amount determined pursuant to paragraph 4.1 of this Schedule 8.6;
"Revenue Share Reconciliation Date"	means either: <ul style="list-style-type: none"> (a) in the case of a Revenue Share Reconciliation Amount calculated pursuant to paragraph 4.1 of this Schedule 8.6, the first Payment Date

falling no less than seven (7) days after the relevant determination; or

- (b) in the case of any Revenue Share Reconciliation Amount falling due in respect of the Final Franchisee Year and which has not been made during the Franchise Period, the date determined in accordance with paragraph 7.1 of this Schedule 8.6;

“Revenue Support Adjustment”

means an adjustment to a Franchise Payment determined pursuant to paragraph 5.4 of this Schedule 8.6;

“Revenue Support Reconciliation Amount”

means an amount determined pursuant to paragraph 6.1 of this Schedule 8.6;

“Revenue Support Reconciliation Date”

means either:

- (a) in the case of a Revenue Support Reconciliation Amount calculated pursuant to paragraph 6.1 of this Schedule 8.6, the first Payment Date falling no less than seven (7) days after the relevant determination; or
- (b) in the case of any Revenue Support Reconciliation Amount falling due in respect of the Final Franchisee Year and which has not been made during the Franchise Period, the date determined in accordance with paragraph 7.2 of this Schedule 8.6;

“Target Revenue”

means, in relation to:

- (a) any Franchisee Year, an amount equal to:

TR x RPI

where:

TR is the amount specified as Target Revenue in Appendix 1 (*Target Revenue*) to this Schedule 8.6 prepared consistently with the definition of FRM Revenue. If the Secretary of State reasonably determines that it has not been prepared consistently with the definition of FRM Revenue the Secretary of State shall have the right to rectify such amount so that it is consistent but the Secretary of State

shall be under no obligation to so rectify; and

RPI has the meaning given to it in Appendix 1 to Schedule 8.1 (Annual Franchise Payments);

- (b) any Reporting Period wholly within a Franchisee Year other than the first Franchisee Year and the Final Franchisee Year, one thirteenth of the amount determined pursuant to paragraph (a) for that Franchisee Year;
- (c) any Reporting Period wholly within the first Franchisee Year or the Final Franchisee Year, the amount determined pursuant to paragraph (a) for that Franchisee Year divided by the number of Reporting Periods within that Franchisee Year.

3. Revenue Share

3.1 Not Used.

3.2 Not Used.

3.3 Not Used.

3.4 Not Used.

3.5 Not Used.

3.6 Entitlement to Revenue Share Adjustments

A Revenue Share Adjustment shall be made in accordance with paragraphs 3.7 and 3.9 below in respect of each Reporting Period falling within the First FRM Franchisee Year or any subsequent Franchisee Year in respect of which the Management Accounts for that Reporting Period report that the cumulative year-to-date FRM Revenue for the period commencing on the first day of the Franchisee Year within which that Reporting Period starts and ending on the final day of that Reporting Period is more than 101.5% of Target Revenue for that same period. Where a Revenue Share Adjustment is paid for a Reporting Period in a Franchisee Year, a Revenue Share Adjustment calculation shall also be carried out for each subsequent Reporting Period in such Franchisee Year to confirm whether any further Revenue Share Adjustments shall be made.

3.7 Amount of Revenue Share Adjustments

- (a) Any Revenue Share Adjustment under this paragraph 3 in respect of a Reporting Period shall be paid in accordance with paragraph 3.9 below

and shall be an amount calculated in accordance with the following formula:

RS_hA = RS_hE - PRS_hA	
where:	
RS _h A	is the Revenue Share Adjustment for that Reporting Period;
RS _h E	is the cumulative Revenue Share Adjustment entitlement for the Franchisee Year to date, determined by reference to the following formula:
	RS _h E = (A multiplied by 90%)
	where:
A	is the amount by which the cumulative year-to-date FRM Revenue for the period commencing on the first day of the Franchisee Year within which that Reporting Period starts and ending on the final day of that Reporting Period, as reported in the Management Accounts for that Reporting Period and prior Reporting Periods, is more than 101.5% of Target Revenue for the Franchisee Year to date. Where such cumulative year-to-date FRM Revenue is not more than 101.5% of Target Revenue for the Franchisee Year to date, A shall equal zero. Where it is not zero the value of A shall be a positive number; and
PRS _h A	is the sum of the Revenue Share Adjustments (if any) made in respect of each previous Reporting Periods (if any) in the same Franchisee Year as such Reporting Period.

3.8 If RShA is:

- (a) a positive number, RShA will be a negative number for the purposes of Schedule 8.1 (*Franchise Payments*); or
- (b) a negative number, RShA will be a positive number for the purpose of Schedule 8.1 (*Franchise Payments*),

and shall be payable on the date specified in paragraph 3.9.

3.9 Payment

A Revenue Share Adjustment in respect of any Reporting Period shall be payable by the Franchisee or the Secretary of State (as the case may be) on the next Payment Date or, in the case of any Revenue Share Adjustment falling due in

respect of the Final Franchisee Year and which has not been made during the Franchise Period, the date determined in accordance with paragraph 7 of this Schedule 8.6.

4. Revenue Share Reconciliation Amount

4.1 Where any Revenue Share Adjustment has been made in respect of a Franchisee Year pursuant to paragraph 3 above, the Secretary of State shall, following receipt by the Secretary of State of the Annual Audited Accounts and FRM Revenue Report in respect of that Franchisee Year, calculate the Revenue Share Reconciliation Amount in respect of that Franchisee Year in accordance with the following formula:

RS_hRA = RS_hA(FS) - PRS_hA	
where:	
RS _h RA	is the Revenue Share Reconciliation Amount for that Franchisee Year;
RS _h A(FS)	is the Revenue Share Adjustment for that Franchisee Year determined in accordance with the following formula:
	RS _h A(FS) = (A multiplied by 90%)
	where:
A	is the amount by which FRM Revenue for that Franchisee Year as reported in the FRM Revenue Report is more than 101.5% of Target Revenue for that Franchisee Year. Where FRM Revenue for that Franchisee Year as reported in the FRM Revenue Report is not more than 101.5% of Target Revenue for that Franchisee Year, A shall equal zero. Where it is not zero the value of A shall be a positive number; and
PRS _h A	is the sum of the Revenue Share Adjustment (if any) determined pursuant to paragraph 3.7 in respect of each Reporting Period in that Franchisee Year.

4.2 If RS_hRA is:

- (a) a positive number, RS_hRA will be a negative number for the purposes of Schedule 8.1 (Franchise Payments); or
- (b) a negative number, RS_hRA will be a positive number for the purpose of Schedule 8.1 (Franchise Payments),

and shall be payable on the Revenue Share Reconciliation Date.

5. Revenue Support

5.1 **Not Used.**

5.2 **Not Used.**

5.3 Entitlement to Revenue Support Adjustments

A Revenue Support Adjustment shall be made in accordance with paragraphs 5.4 and 5.6 in respect of any Reporting Period falling within a Franchisee Year if the Management Accounts for that Reporting Period report that the cumulative year-to-date FRM Revenue for the period commencing on the first day of the Franchisee Year within which that Reporting Period starts and ending on the final day of that Reporting Period is less than 98.5% of Target Revenue for that same period. Where a Revenue Support Adjustment is paid for a Reporting Period in a Franchisee Year a Revenue Support Adjustment calculation shall also be carried out for each subsequent Reporting Period in such Franchisee Year to confirm whether any further Revenue Support Adjustments shall be made. If Net Revenue Support is payable in relation to any Franchisee Year, Profit Share Thresholds specified in Appendix 1 to Schedule 8.2 (*Profit Share Mechanism*) shall be subject to the adjustments provided for in the relevant tables.

5.4 Amount of Revenue Support Adjustments

Any Revenue Support Adjustment under this paragraph 5 in respect of a Reporting Period shall be paid in accordance with paragraph 5.6 and calculated in accordance with the following formula:

RS_uA = RS_uE - PRS_uA	
where:	
RS _u A	is the Revenue Support Adjustment for that Reporting Period;
RS _u E	is the cumulative Revenue Support Adjustment entitlement for the Franchisee Year to date, determined by reference to the following formula:
RS _u E	= (A multiplied by 90%)
where:	
A	is the amount by which the cumulative year-to-date FRM Revenue for the period commencing on the first day of the Franchisee Year within which that Reporting Period starts and ending on the final day of that Reporting Period, as reported in the Management Accounts for that Reporting Period and prior Reporting Periods, is less than 98.5% of Target Revenue for the Franchisee Year to date. Where such cumulative year-to-date FRM Revenue is not less than 98.5% of Target Revenue for the Franchisee Year to date, A shall equal zero. Where it is not zero the value of A shall be a positive number; and
PRS _u A	is the sum of the Revenue Support Adjustments (if any) made in respect of each previous Reporting Period (if any) in the same Franchisee Year as such Reporting Period.

5.5 If RS_uA is:

- (a) a positive number, RS_uA will be a positive number for the purposes of Schedule 8.1 (*Franchise Payments*); or
- (b) a negative number, RS_uA will be a negative number for the purpose of Schedule 8.1 (*Franchise Payments*),

and shall be payable on the date specified in paragraph 5.6.

5.6 **Payment**

A Revenue Support Adjustment in respect of any Reporting Period shall be payable by the Franchisee or the Secretary of State (as the case may be) on the next Payment Date or in the case of any Revenue Support Adjustment falling due in respect of the Final Franchisee Year and which has not been made during the Franchise Period, the date determined in accordance with paragraph 7.2 of this Schedule 8.6.

6. **Revenue Support Reconciliation Amount**

6.1 Where any Revenue Support Adjustment has been made in respect of a Franchisee Year pursuant to paragraph 5 above, the Secretary of State shall, following receipt by the Secretary of State of the Annual Audited Accounts and FRM Revenue Report in respect of that Franchisee Year, calculate the Revenue Support Reconciliation Amount in respect of that Franchisee Year in accordance with the following formula:

RS_uRA = RS_uA(FS) - PRS_uA	
where:	
RS _u RA	is the Revenue Support Reconciliation Amount for that Franchisee Year;
RS _u A(FS)	is the Revenue Support Adjustment for that Franchisee Year determined in accordance with the following formula:
	RS _u A(FS) = (A multiplied by 90%)
	where:
A	is the amount by which FRM Revenue for that Franchisee Year as reported in the FRM Revenue Report is less than 98.5% of Target Revenue for that Franchisee Year. Where the FRM Revenue for that Franchisee Year as reported in the FRM Revenue Report is not less than 98.5% of Target Revenue for that Franchisee Year, A shall equal zero. Where it is not zero the value of A shall be a positive number; and
PRS _u A	is the sum of the Revenue Support Adjustment (if any) determined pursuant to paragraph 5.4 in respect of each Reporting Period in that Franchisee Year.

6.2 If RS_uRA is:

- (a) a positive number, RS_uRA will be a positive number for the purposes of Schedule 8.1 (*Franchise Payments*); or
- (b) a negative number, RS_uRA will be a negative number for the purpose of Schedule 8.1 (*Franchise Payments*),

and shall be payable on the Revenue Support Reconciliation Date.

7. **Final Franchisee Year**

7.1 **Revenue Share**

Any Revenue Share Adjustment and/or Revenue Share Reconciliation Amount which:

- (a) is to be made in respect of the Final Franchisee Year; and
- (b) has not been made during the Franchise Period,

shall be determined in accordance with paragraphs 3.7 and 4.1 above respectively, but shall be paid within thirty (30) days of the Secretary of State giving written notice to the Franchisee of the amount of such Revenue Share Adjustment and/or Revenue Share Reconciliation Amount.

7.2 Revenue Support

Any Revenue Support Adjustment and/or Revenue Support Reconciliation Amount which:

- (a) is to be made in respect of the Final Franchisee Year; and
- (b) has not been made during the Franchise Period,

shall be determined in accordance with paragraphs 5.4 and 6.1 above respectively, but shall be paid within thirty (30) days of the Secretary of State giving written notice to the Franchisee of the amount of such Revenue Support Adjustment and/or Revenue Support Reconciliation Amount.

7.3 Failure to Provide Annual Audited Accounts and/or FRM Revenue Report

If the Franchisee fails to provide the Annual Audited Accounts and/or the FRM Revenue Report for the Final Franchisee Year within four (4) Reporting Periods of the expiry of the Final Franchisee Year pursuant to paragraph 9.4(b) of Schedule 11.2 (*Management Information*), the Secretary of State shall be entitled (but not obliged) to determine any of:

- (a) any Revenue Share Adjustment in accordance with paragraph 3.7;
- (b) any Revenue Share Reconciliation Amount in accordance with paragraph 4.1;
- (c) any Revenue Support Adjustment in accordance with paragraph 5.4; and
- (d) any Revenue Support Reconciliation Amount in accordance with paragraph 6.1,

notwithstanding references to amounts reported in the Annual Audited Accounts, FRM Revenue Report or Management Accounts, by reference to any relevant information available to the Secretary of State at the time of such determination, including any information contained in the latest cumulative, year-to-date Management Accounts or in the Annual Management Accounts.

8. Pro-rata Adjustment to Target Revenue at the end of the Franchise Period

- 8.1 At the end of the Franchise Period, Target Revenue shall be adjusted on a pro rata basis to reflect the number of days (if any) by which the Final Franchisee Year was less than 365 days (or less than 366 days in a leap year) and the Secretary

of State shall have the right to reasonably determine all final calculations and payments pursuant to this Schedule 8.6 by reference to such pro rating.

9. **FRM Revenue Report**

9.1 The Franchisee shall, at the same time as the Annual Audited Accounts are delivered under paragraph 9.4 of Schedule 11.2 (*Management Information*), deliver to the Secretary of State a report (the "**FRM Revenue Report**"):

- (a) identifying the total amount of FRM Revenue earned by the Franchisee during the relevant Franchisee Year and the amount of revenue earned in relation to each sub category of revenue included within the definition of FRM Revenue;
- (b) identifying any adjustments or restatements made in relation to the Annual Audited Accounts in respect of any previous Franchisee Year which affect the amount of FRM Revenue in such Franchisee Year; and
- (c) providing a reconciliation between:
 - (i) revenue as set out in its Audited Annual Accounts; and
 - (ii) FRM Revenue.

9.2 The Franchisee shall provide such additional information, records or documents as the Secretary of State may reasonably require in relation to such matters.

9.3 The Franchisee's auditors shall provide a statement in a format to be agreed with the Secretary of State, confirming that the Franchisee's auditors have undertaken review procedures on the FRM Revenue figures ("**FRM Review Procedures**"). The nature and scope of the FRM Review Procedures shall be agreed between the Secretary of State, the Franchisee and the Franchisee's auditor.

9.4 The statement referred to in paragraph 9.3 may be used by the Secretary of State in considering whether FRM Revenue has been determined in a manner consistent with the requirements of this Agreement and the accounting policies as set out in the Record of Assumptions.

9.5 Where the FRM Revenue Report identifies adjustments or restatements pursuant to paragraph 9.1(b) and materially different amounts would have been payable either to the Franchisee or to the Secretary of State pursuant to this Schedule 8.6 had such adjustments or restatements been included in the Annual Audited Accounts and been reflected in the relevant FRM Revenue Report for the relevant previous Franchisee Year, the Secretary of State shall seek to agree the amount of an appropriate payment to reflect the adjusted and restated position with the Franchisee. If the amount of such a payment cannot be agreed within forty (40) days of the Secretary of State receiving the relevant FRM Revenue Report from the Franchisee, the Secretary of State shall have the right to reasonably determine it. Any payment shall be made within forty (40) days of the date of agreement or determination of the amount. Where such agreement or determination occurs during the Franchise Term and another Franchise Payment is payable the Secretary of State may require that a payment is made by way of adjustment to a Franchise Payment which has a Payment Date within such forty (40) day period.

10. **Affiliates and Forecast Revenue Mechanism**

10.1 The Franchisee shall not at any time, without prejudice to any other provision of the Franchise Agreement and its obligations under Law, manage its business of providing the Franchise Services in a way that is intended to, or may reasonably be expected to, result in reducing the FRM Revenue of the Franchisee and increasing the revenue of another Affiliate of the Franchisee.

10.2 Where an Affiliate of the Franchisee is a Train Operator with a franchise agreement containing provisions equivalent to those in paragraph 10.1 above, the Franchisee shall act in a way consistent with such Train Operator complying with those obligations.

11. **NOT USED**

Withdrawn

APPENDIX 1 TO SCHEDULE 8.6

Target Revenue

Table 1			
Year		Franchisee Year	Target Revenue
From	To		
2020	2021	Year 1	[REDACTED ¹³¹]
2021	2022	Year 2	[REDACTED]
2022	2023	Year 3	[REDACTED]
Up to 13 Reporting Periods Extension			
2023	2024	Year 4 (extension)	[REDACTED]

Withdrawn

¹³¹ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

SCHEDULE 9
CHANGES AND VARIATIONS

Schedule 9.1:	Financial and Other Consequences of Change
	Appendix 1: Definition of Threshold Amount
	Appendix 2: Agreement or Determination of Revised Inputs
Schedule 9.2:	Identity of the Financial Model (Escrow Documents)
Schedule 9.3:	Variations to the Franchise Agreement and Incentivising Beneficial Changes
Schedule 9.4:	Secretary of State Risk Assumptions
Schedule 9.5:	Infrastructure and Rolling Stock Related Change
Schedule 9.6	Franchising of the Heathrow Express Services
Schedule 9.7:	Split Ticketing Impact Model Adjustment Mechanism and Mitigations
Schedule 9.8:	Emergency Measures

Withdrawn

Schedule 9.1

Financial and Other Consequences of Change**1. Purpose and Application of Schedule**

1.1 This Schedule 9.1 sets out:

- (a) the circumstances in which the occurrence of a Change will result in an adjustment to the Franchise Payments, the Benchmarks, and/or the Annual Benchmarks and/or the Target Revenue Amounts and/or Ticketless Travel Benchmarks and/or Annual Ticketless Travel Benchmarks and wherever in Schedule 9 reference is made to **"adjustment to Franchise Payments"** such reference shall be construed to include (unless the context otherwise requires) the restatement of the values of FPST, SPST and TPST as specified in respect of each Franchisee Year in paragraphs 1, 2 and 3 (respectively) of Appendix 1 (Profit Share Thresholds) to Schedule 8.2 (*Profit Share Mechanism*) (**"Profit Share Components"**);
- (b) the process by which that adjustment to the Franchise Payments, the Benchmarks, and/or the Annual Benchmarks and/or the Target Revenue Amounts will be determined and effected; and
- (c) the provisions dealing with the responsibility for costs incurred by the Franchisee in connection with any audit of the Run of the Financial Model and its results.

1.2 Schedule 9.2 (*Identity of the Financial Model (Escrow Documents)*) contains provisions dealing with the Financial Model which are relevant to the operation of this Schedule 9.1.

1.3 This Schedule 9.1 shall apply in relation to a Change where:

- (a) there are good reasons for considering that that Change will be a Qualifying Change or, with other Changes, part of an Aggregated Qualifying Change; and
- (b) the required notice(s) has/have been given in accordance with paragraph 1.4 (or the Parties have agreed that this Schedule 9.1 will apply and there should be a Run of the Financial Model and/or a review of the Benchmarks and/or the Annual Benchmarks and/or the Ticketless Travel Benchmarks and/or the Annual Ticketless Travel Benchmarks even though the required notices have not been given).

1.4 The notice requirements are that:

- (a) subject to paragraph 1.4(b), a Party must have notified the other that it considers that the Change will be a Qualifying Change and that it requires a Run of the Financial Model and/or a review of the Benchmarks and/or the Annual Benchmarks in respect of that Change:
 - (i) within six (6) months of the notification or agreement of that Change if it is a Variation pursuant to paragraph 1.1 of Schedule 9.3 (Variations to the Franchise Agreement and Incentivising Beneficial Changes); or

- (ii) within six (6) months of becoming aware of it, if it is any other type of Change; and
 - (b) in the case of an Aggregated Qualifying Change, a Party must have notified the other:
 - (i) after an individual Change occurs, within the time limits stated in paragraphs 1.4(a)(i) or 1.4(a)(ii), that it reserves the right to count that Change towards an Aggregated Qualifying Change; and
 - (ii) within six (6) months of the occurrence of the last Change which that Party considers will trigger an Aggregated Qualifying Change, that the Party requires a Run of the Financial Model and/or a review of the Benchmarks and/or the Annual Benchmarks and/or the Ticketless Travel Benchmarks and/or the Annual Ticketless Travel Benchmarks in respect of the Changes comprised in that Aggregated Qualifying Change. The notice must identify each of the Changes included in the Aggregated Qualifying Change.
- 1.5 References in the remainder of this Schedule 9.1 and in Schedule 9.2 (Identity of the Financial Model (Escrow Documents)) to a "Change" are to a Change in respect of which the requirements in paragraph 1.3 have been satisfied.
- 2. Timescales**
- 2.1 Where this Schedule 9.1 applies, any resulting restatement of the Annual Franchise Payment Components, the Profit Share Components, the Benchmarks and/or the Annual Benchmarks, the Ticketless Travel Benchmarks, and/or the Annual Ticketless Travel Benchmarks and/or the Target Revenue Amounts (as applicable) shall be made in accordance with this Schedule 9.1:
- (a) where it is reasonably practicable to do so, at least three (3) Reporting Periods prior to the Change; or
 - (b) where the timescale in paragraph 2.1(a) is not reasonably practicable, as soon as reasonably practicable after that.
- 2.2 If paragraph 2.1(b) applies and it is not reasonably practicable for the restatement of the Annual Franchise Payment Components and the Profit Share Components and/or the Target Revenue Amounts to be made before the Change occurs, then paragraph 10 (Estimated Revisions) shall apply.
- 3. How any adjustments to Franchise Payments will be established**
- 3.1 The adjustments, if any, to the Franchise Payments, the Profit Share Components and the Target Revenue Amounts to be made in respect of any Change shall be established by:
- (a) establishing those Model Changes and/or Revised Inputs required to take account of the Change; then
 - (b) applying those Model Changes and/or Revised Inputs to the Financial Model before performing a Run of the Financial Model to generate the New Results; then

- (c) restating the Annual Franchise Payment Components and the Profit Share Components and/or the Target Revenue Amounts, by substituting the New Results for the Old Results (so that, to the extent that the New Results and the Old Results are different, this will result in an adjustment to the Franchise Payments),

in each case, subject to and in accordance with the terms more particularly described in this Schedule 9.1.

- 3.2 The impact of any Change on the HEx Outsourced Services shall not be taken into account in determining any adjustments to the Franchise Payments. Where any Change may affect the provision of the HEx Outsourced Services by the Franchisee, it shall be reasonable for the responses to the Change in relation to the Franchise Services to be on the basis that the provision of the HEx Outsourced Services continues in accordance with the HEx Services Agreement, while recognising that the Change will not include adjustments in respect of impacts of the Change on the HEx Outsourced Services themselves.

4. How Model Changes and/or Revised Inputs will be established

- 4.1 The Parties shall agree or the Secretary of State shall reasonably determine the Revised Inputs and (if any) the Model Changes.

4.2 **"Revised Inputs"** means:

- (a) the data that the Financial Model utilised in order to produce the Old Results, as such data is recorded in the Financial Model released by the Secretary of State pursuant to either of paragraphs 2.1(d) or 2.2 of Schedule 9.2 (*Identity of the Financial Model (Escrow Documents)*) for the purposes of the Run of the Financial Model; but
- (b) amended, whether by way of increase, reduction or other alterations to such data, (if at all) only as the Parties may agree or the Secretary of State may reasonably determine is required by the provisions of Appendix 2 (Agreement or Determination of Revised Inputs) to this Schedule 9.1 in respect of a Change.

- 4.3 **"Model Changes"** means any changes that the Parties may agree or the Secretary of State may reasonably determine are required to the Financial Model and/or the Operational Model, as released by the Secretary of State pursuant to either of paragraphs 2.1(d) or 2.2 of Schedule 9.2 (*Identity of the Financial Model (Escrow Documents)*), for the purposes of the Run of the Financial Model, as a consequence of and in order to give effect to the Revised Inputs.

- 4.4 The Secretary of State shall provide a written statement of the Revised Inputs and any Model Changes to the Franchisee for the purposes of paragraph 7 promptly after they have been agreed or determined.

5. Changes to Benchmarks and/or Annual Benchmarks and/or Ticketless Travel Benchmark and/or Annual Ticketless Travel Benchmark

- 5.1 This paragraph 5 shall apply if either Party has given notice to the other that it considers that a Change has or will have, in that Party's reasonable opinion, a material effect on the risk of the Franchisee failing to satisfy the requirements of any Benchmarks, and/or Annual Benchmarks, Ticketless Travel Benchmarks and/or

Annual Ticketless Travel Benchmarks (whether in terms of increasing or reducing that risk).

- 5.2 Any notice referred to in paragraph 5.1 shall be given as soon as reasonably practicable and in any event before the Parties have agreed or the Secretary of State has reasonably determined the Revised Inputs in respect of the Change.
- 5.3 Where this paragraph 5 applies, the relevant Benchmarks, and/or Annual Benchmarks, Ticketless Travel Benchmarks and/or Annual Ticketless Travel Benchmarks shall be revised to the extent that such revision is reasonably considered to be necessary to hold constant the risk of the Franchisee failing to satisfy the requirements of that Benchmark, and/or Annual Benchmark, Ticketless Travel Benchmark and/or Annual Ticketless Travel Benchmark. The Parties shall agree or the Secretary of State shall reasonably determine any such revision(s).
- 5.4 For the purposes of any revision to the Benchmarks, and/or Annual Benchmarks, Ticketless Travel Benchmarks and/or Annual Ticketless Travel Benchmarks under this paragraph 5, regard may be had to:
- (a) any relevant assumptions in the Record of Assumptions (as proposed to be updated to reflect the relevant Change) and the contents of an Operational Model; and/or
 - (b) any other information,

to the extent they are relevant to the consideration of whether a revision is reasonably considered to be appropriate to take account of the Change.

6. Run of the Financial Model following agreement or determination of the Revised Inputs and Model Changes

- 6.1 When the Revised Inputs and Model Changes (if any) are agreed or determined there shall be a Run of the Financial Model.
- 6.2 The Run of the Financial Model shall be performed after making any Model Changes and utilising the Revised Inputs and shall be performed by:
- (a) the Franchisee promptly on receiving notification of the Revised Inputs and any Model Changes from the Secretary of State pursuant to paragraph 4.4 or within such period of time as the Secretary of State shall reasonably determine; or
 - (b) the Secretary of State if the Franchisee fails to do so. In these circumstances, the Franchisee shall reimburse to the Secretary of State the Secretary of State's costs of performing the Run of the Financial Model.
- 6.3 The Party that performs the Run of the Financial Model pursuant to paragraph 6.2 shall provide the non performing Party with a reasonable opportunity to be in attendance and shall promptly notify such other Party of the New Results.
- 6.4 Where there is more than one Change, Runs of the Financial Model in respect of such Changes shall (unless otherwise agreed or the Secretary of State reasonably determines) be undertaken in the order in which such Changes occur. For this purpose, the order of occurrence will be determined by reference to the earliest date from which the Franchise Payments are reasonably expected to require adjustment as a result of the restatement of the Annual Franchise Payment

Components and the Profit Share Components and the Target Revenue Amounts triggered by a Change. This will be as agreed between the Parties or in the absence of agreement be reasonably determined by the Secretary of State.

7. Certification or Audit of the New Results

7.1 The Secretary of State, as soon as reasonably practicable after receiving or generating the New Results pursuant to paragraphs 6.2 and 6.3, shall either:

- (a) certify to the Franchisee the Secretary of State's approval of the New Results; or
- (b) notify the Franchisee that the Secretary of State requires the Run of the Financial Model and its results to be audited by an independent auditor appointed by the Secretary of State with the approval (not to be unreasonably withheld) of the Franchisee.

7.2 For the purposes of paragraph 7.1(b), the requirement for an audit is one that requires the auditor either to certify:

- (a) that the New Results have been produced by applying the Revised Inputs (as provided to the Franchisee by the Secretary of State pursuant to paragraph 4.4) to the Financial Model after making the Model Changes (as provided to the Franchisee by the Secretary of State pursuant to paragraph 4.4); or
- (b) the New Results themselves, by itself applying the Revised Inputs (as provided to the Franchisee by the Secretary of State pursuant to paragraph 4.4) to the Financial Model after making the Model Changes (as provided to the Franchisee by the Secretary of State pursuant to paragraph 4.4).

7.3 The Parties shall procure that any auditor is, as soon as reasonably practicable after the Secretary of State's appointment, able to discharge the audit requirements.

7.4 The results as certified by the Secretary of State pursuant to paragraph 7.1 or by the auditor pursuant to paragraph 7.2 shall be final and binding on the Parties, except in the case of manifest error.

7.5 The Secretary of State may stipulate (on or before the date on which the Secretary of State approves or the auditor certifies the results of the Run of the Financial Model) in respect of a Change that the restated Annual Franchise Payment Components and the Profit Share Components and/or the Target Revenue Amounts are to apply for a limited period of time only (the "**Initial Period**"), with provision thereafter, if appropriate, for a further Run of the Financial Model with new Revised Inputs and/or Model Changes based on information available at that time.

8. Costs of Audit

8.1 This paragraph deals with the costs incurred by the Franchisee in connection with any audit required by the Secretary of State pursuant to paragraph 7.

8.2 The costs of any audit required under paragraph 7.1(b) shall be met by the Secretary of State subject to the following:

- (a) the costs of the audit shall be met entirely by the Franchisee in the case of a Change falling within any of the following sub-paragraphs within the definition of Change:
 - (i) a Charge Variation;
 - (ii) an event set out in any Secretary of State Risk Assumptions specified in Schedule 9.4 (*Secretary of State Risk Assumptions*); and
- (b) the costs of the audit shall be met entirely by the Franchisee:
 - (i) where,
 - (A) the New Results produced by applying the Revised Inputs to the Financial Model after making the Model Changes (if any); or
 - (B) the New Results themselves,

were incorrect as a result of manifest error by the Franchisee; and
 - (c) where paragraphs 8.2(a) and/or 8.2(b) do not apply, the Secretary of State shall only be responsible for the reasonable costs reasonably incurred of the Franchisee in connection with the audit, and the Franchisee shall comply with the Secretary of State's reasonable directions in connection with the audit which may include a requirement for a competitive tender for the appointment of the auditor.

9. **Restatement of Annual Franchise Payment Components, Benchmarks, Annual Benchmarks, Ticketless Travel Benchmarks and/or Annual Ticketless Travel Benchmarks, and/or Profit Share Components and/or the Target Revenue Amounts**

9.1 When the New Results have been certified by the Secretary of State or the auditor in accordance with paragraph 7 then:

- (a) if:
 - (i) there is any difference between the Old Results and the New Results; and
 - (ii) the New Results are such that the Change:
 - (A) meets the criteria for a Qualifying Change; or
 - (B) with other Changes meets the criteria for an Aggregated Qualifying Change,

the Annual Franchise Payment Components and the Profit Share Components and the Target Revenue Amounts shall be restated in the amounts of the New Results; and
- (b) if any changes to the Benchmarks, Annual Benchmarks, Ticketless Travel Benchmarks and/or Annual Ticketless Travel Benchmarks have been agreed or determined in accordance with paragraph 5, the Benchmarks, Annual

Benchmarks, Ticketless Travel Benchmarks and/or Annual Ticketless Travel Benchmarks shall be restated to give effect to those changes.

9.2 Subject to paragraph 9.3, the restatement of the Annual Franchise Payment Components and the Profit Share Components and the Target Revenue Amounts shall have effect on and from the date on which the Secretary of State or the auditor certifies the results of the Run of the Financial Model.

9.3 If and to the extent that:

- (a) the application of the New Results in respect of the then current or any earlier Franchisee Year would result in any change to the amount of any payments already made between the Secretary of State and the Franchisee; and
- (b) that change in payments is not already taken into account in any Reconciliation Amount payable pursuant to paragraph 10.11,

then a reconciliation payment shall be paid by the Franchisee or the Secretary of State (as the case may be). The payment shall be made on the first Payment Date which falls more than seven (7) days after agreement or determination of the amount of the reconciliation payment required (or if there is no such Payment Date, within fourteen (14) days after such agreement or determination).

9.4 **NOT USED**

9.5 **NOT USED.**

10. **Estimated Revisions**

10.1 This paragraph 10 applies where there is or is to be a Change before there is a Run of the Financial Model in respect of it. It provides a mechanism for interim adjustments in the Franchise Payments and the Profit Share Components and the Target Revenue Amounts pending the final agreement or determination of those adjustments under this Schedule 9.1.

10.2 Where this paragraph 10 applies, the Secretary of State shall make the Estimated Revisions described in paragraph 10.3:

- (a) if the Franchisee requests the Secretary of State to do so at the same time as requesting a Run of the Financial Model in respect of the Change under paragraph 1.4; or
- (b) if the Secretary of State otherwise agrees or chooses (in the Secretary of State's discretion) to do so.

10.3 The estimated revisions are the Secretary of State's estimates of the New Results which will apply once the process in paragraphs 4 to 9 of this Schedule 9.1 has been completed in respect of the Change (the "**Estimated Revisions**"). For the avoidance of doubt, Revised Inputs are not made in order to generate or take account of the Estimated Revisions.

10.4 The estimates referred to in paragraph 10.3 will be such estimates as the Secretary of State, acting reasonably, makes having regard to the time and the information available to the Secretary of State at the time the estimates fall to be made, provided always that it is acknowledged that:

- (a) the purpose of the estimates is to enable provision to be made in respect of adjustments to the Annual Franchise Payment Components and the Profit Share Components and/or the Target Revenue Amounts before full information about the Change is available and/or full consideration of the nature and extent of Revised Inputs and/or Model Changes has been undertaken;
 - (b) it may not be reasonably practicable in all circumstances for the Secretary of State to take into account in such an estimate all actual or potential impacts of a Change. Where the Secretary of State is aware that there are any such actual or potential impacts which the Secretary of State has not taken into account, the Secretary of State shall notify the Franchisee of them when notifying the Estimated Revisions pursuant to paragraph 10.2; and
 - (c) the Secretary of State shall be entitled to adjust any Estimated Revision notified pursuant to paragraph 10.2 to the extent the Secretary of State reasonably considers appropriate if at any time:
 - (i) the Secretary of State becomes aware of any new or revised information which would, if it had been available to the Secretary of State at the time the Secretary of State made the Secretary of State's original estimate, have resulted in the Secretary of State making a different Estimated Revision; and
 - (ii) it is reasonable to revise the Estimated Revision having regard to the likely period of delay prior to the Run of the Financial Model in respect of the relevant Change.
- 10.5 In the circumstances described in paragraph 10.2 and paragraph 10.4(c), the Annual Franchise Payment Components and the Profit Share Components and/or the Target Revenue Amounts shall be restated in the amounts and values of the Estimated Revisions, and Franchise Payments shall be paid accordingly until the Run of the Financial Model has taken place and its results have been put into effect.
- 10.6 The Secretary of State shall use all reasonable endeavours to notify the Franchisee of the Estimated Revisions required by paragraph 10.2 at least two (2) Reporting Periods before the Secretary of State considers the Change is likely to occur. If, having exercised all reasonable endeavours, the Secretary of State cannot provide two (2) Reporting Periods' notice, the Secretary of State shall provide such notification as soon as reasonably practicable afterwards.
- 10.7 The restatement of the Annual Franchise Payment Components and the Profit Share Components and/or the Target Revenue Amounts referred to in paragraph 10.5 shall have effect on and from:
- (a) the date on which the Secretary of State notifies the Franchisee of the Estimated Revisions; or
 - (b) such other date as the Secretary of State, acting reasonably, may notify the Franchisee as the date on which the Secretary of State considers the Estimated Revisions should reasonably take effect, consistent with the matters taken into account by the Secretary of State in estimating the Estimated Revisions.

- 10.8 No estimate made by the Secretary of State pursuant to this paragraph 10 shall prejudice the Secretary of State's subsequent determination of any Revised Input or Model Change pursuant to paragraph 4.
- 10.9 Subject to paragraph 10.10, where adjustments to Franchise Payments have resulted from the operation of paragraph 10.5 then, as soon as reasonably practicable after the certification of the New Results following the related Run of the Financial Model, the Parties shall agree or the Secretary of State shall reasonably determine the difference (the "**Reconciliation Amount**") between:
- (a) the total amount of Franchise Payments paid or to be paid to which adjustments have been made pursuant to the operation of paragraph 10.5; and
 - (b) the total amount of the Franchise Payments, as determined by that Run of the Financial Model, in respect of the same period as the period over which the adjusted Franchise Payments referred to in paragraph 10.9(a) have been paid or are to be paid.
- 10.10 If a Change is agreed or determined not to be a Qualifying Change or not to be part of an Aggregated Qualifying Change with or without any Run of the Financial Model having been performed, the Reconciliation Amount shall be the total amount of the adjustments to Franchise Payments which have resulted from the operation of paragraph 10.5.
- 10.11 The Reconciliation Amount shall be paid:
- (a) by the Franchisee to the Secretary of State where the Estimated Revisions resulted in an overpayment of Franchise Payments by the Secretary of State to the Franchisee or an underpayment of Franchise Payments by the Franchisee to the Secretary of State compared with:
 - (i) the amount of the Franchise Payments described in paragraph 10.9(b); or
 - (ii) where paragraph 10.10 applies, the amount of the unrestated Franchise Payments over the same period; and
 - (b) by the Secretary of State to the Franchisee where the Estimated Revisions resulted in an underpayment of Franchise Payments by the Secretary of State to the Franchisee or an overpayment of Franchise Payments by the Franchisee to the Secretary of State compared with:
 - (i) the amount of the Franchise Payments described in paragraph 10.9(b); or
 - (ii) where paragraph 10.10 applies, the amount of the unrestated Franchise Payments over the same period.
- In either case, such payment shall be made on the first Payment Date which falls more than seven (7) days after agreement or determination (or if none, within fourteen (14) days after such agreement or determination).
- 10.12 For the purposes of paragraphs 10.9, 10.10 and 10.11, references to Franchise Payments shall include any profit share payments made under Schedule 8.2 (Profit Share Mechanism).

11. **Information**

The Franchisee shall promptly, having regard to the other timescales anticipated in this Schedule 9.1, provide to the Secretary of State such information as the Secretary of State may request for the purpose of enabling the Secretary of State to exercise the Secretary of State's rights and comply with the Secretary of State's obligations pursuant to this Schedule 9.1.

Withdrawn

APPENDIX 1 TO SCHEDULE 9.1

Definition of Threshold Amount

“Threshold Amount” means [REDACTED¹³²] subject to indexation as follows:

Threshold Amount x RPI	
where:	
RPI	has the meaning given to it in Appendix 1 (Annual Franchise Payments) of Schedule 8.1 (Franchise Payments).

Withdrawn

¹³² 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

APPENDIX 2 TO SCHEDULE 9.1**Agreement or Determination of Revised Inputs**

1. The Parties shall agree or the Secretary of State shall reasonably determine the Revised Inputs that are required in respect of a Change:
 - (a) on the basis of the general adjustments and/or assumptions referred to in paragraph 2;
 - (b) on the basis of the assumptions in the Record of Assumptions as added to and/or amended (if at all) in accordance with paragraph 3;
 - (c) so as to provide for Traction Electricity Charges in accordance with paragraph 4;
 - (d) so as to provide for profit in accordance with paragraph 5;
 - (e) so as to give effect to the provisions of paragraph 6 in relation to indexation;
 - (f) so as to give effect to the provisions of paragraph 8 in relation to the Cancellations Performance Sum, the TOC Minute Delay Performance Sum, the T-3 Performance Sum, the T-15 Performance Sum and the All Cancellations Performance Sum,

provided that if there is any inconsistency between the assumptions in the Record of Assumptions described in paragraph (b) above and any other of the requirements of this paragraph 1, those other requirements shall prevail, unless the Secretary of State (acting reasonably) otherwise elects.

2. **General Adjustments/Assumptions**

- 2.1 Revised Inputs are to be agreed between the Parties or reasonably determined by the Secretary of State on the basis that:

- (a) any increase in costs relating to a Change; and/or
- (b) any reduction in revenues relating to a Change,

that is attributable to any activities, actions or omissions of the Franchisee which are not permitted under, or would otherwise constitute a contravention of, the terms of the Franchise Agreement, is to be disregarded.

- 2.2 Revised Inputs are to be agreed between the Parties or reasonably determined by the Secretary of State on the basis that:

- (a) any reduction in costs relating to a Change; and/or
- (b) any increase in revenues relating to a Change,

that is attributable to any activities, actions or omissions of the Franchisee which are not permitted under, or would otherwise constitute a contravention of, the terms of the Franchise Agreement, is to be taken into account.

- 2.3 Revised Inputs are also to be agreed between the Parties or reasonably determined by the Secretary of State on the basis that:
- (a) the Franchisee shall use all reasonable endeavours to:
 - (i) reduce any costs that may arise or income that may be foregone; and
 - (ii) increase any revenue that may arise and avoid any cost that may be avoided,as a consequence of a Change; and
 - (b) any requirement for borrowing in respect of Capital Expenditure by the Franchisee is dealt with in accordance with paragraph 3 of Schedule 9.3 (*Variations to the Franchise Agreement and Incentivising Beneficial Changes*).

- 2.4 Where and as directed to do so by the Secretary of State (acting reasonably) the Franchisee shall undertake one or more competitive tendering exercises for the purposes of ascertaining the likely level of any costs relating to a Change which are relevant to a Revised Input.

3. Assumptions in the Record of Assumptions

- 3.1 The Parties shall (unless to do so would be contrary to paragraph 2) agree or the Secretary of State shall reasonably determine Revised Inputs that are in accordance with the assumptions that are contained in the Record of Assumptions, as added to or modified pursuant to paragraph 3.2 or paragraph 3.3.

- 3.2 Where the Secretary of State reasonably considers that the assumptions contained in the Record of Assumptions are ambiguous or that additional assumptions are required in relation to circumstances not dealt with by the assumptions in the Record of Assumptions, the Parties shall agree or the Secretary of State shall reasonably determine the assumptions or additional assumptions to be utilised for this purpose.

- 3.3 Where the Secretary of State reasonably considers that:

- (a) a Change is likely to result in an increase or reduction in either or both of the costs of the Franchisee and the revenues of the Franchisee; and
- (b) an assumption relevant to the Change contained in the Record of Assumptions does not accord with what would be achievable by, or experienced by, an economic and efficient franchisee,

then the Parties shall agree or the Secretary of State shall reasonably determine a modification to the assumption so that, as modified, it does accord with what would be achievable by, or experienced by, an economic and efficient franchisee.

4. Traction Electricity Charges

- 4.1 This paragraph 4 applies only in relation to Charge Variations.
- 4.2 In agreeing or determining Revised Inputs, no adjustment shall be made in respect of a Charge Variation to the extent that Charge Variation relates, directly or

indirectly and however it may be effected, to the Traction Electricity Charge payable by the Franchisee pursuant to any Track Access Agreement.

- 4.3 For the purpose of this paragraph 4 (and subject to clause 1.1(k) of this Agreement), the "*Traction Electricity Charge*" is the component of the "*Track Charges*" (as defined in the Track Access Agreement) identified as such in any Track Access Agreement or any similar arrangement under which the Franchisee pays for traction current consumed by rolling stock vehicles operated by or on behalf of the Franchisee.

5. Revised Input for Profit

5.1

- (a) Where a Change is forecast to result in an increase to the Franchisee's revenue in a Franchisee Year, the Parties shall agree or the Secretary of State shall reasonably determine Revised Inputs in relation to profit that provide for an increase in the amount of profit in any Franchisee Year equal to [REDACTED¹³³] of the forecast increase in revenue for that Franchisee Year; and/or
- (b) Where a Change is forecast to result in a reduction in the Franchisee's revenue in a Franchisee Year, the Parties shall agree or the Secretary of State shall reasonably determine Revised Inputs in relation to profit that provide for a decrease in the amount of profit in any Franchisee Year equal to the lower of:
- (i) the percentage specified in paragraph 5.1(a); or
 - (ii) the average profit margin in the current Business Plan for the remaining Franchise Term,
- of the forecast reduction in revenue for that Franchisee Year.

- 5.2 In agreeing or determining Revised Inputs in relation to profit in respect of any Change, the Parties or the Secretary of State shall effect such change (if any) in the amount attributable to profit in paragraph 5.1 as they agree or the Secretary of State reasonably determines to reflect:

- (a) the risk for the Franchisee in continuing to operate the Franchise on the terms of the Franchise Agreement after and as a result of the Change; and
- (b) the likelihood of:
- (i) material benefit from such Change arising after expiry of the Franchise Term; and
 - (ii) material detriment from such Change arising prior to the expiry of the Franchise Term.

¹³³ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

5.3 In agreeing or determining Revised Inputs for the purposes of any Protected Proposal, the Parties or the Secretary of State shall effect such change (if any) to the amount attributable to profit as they agree or the Secretary of State reasonably determines:

- (a) fairly rewards the Franchisee for proposing the Protected Proposal; and
- (b) reasonably incentivises the Franchisee to propose further Protected Proposals,

by sharing with the Franchisee a reasonable amount of the additional profit that is expected to arise from implementing the Protected Proposal.

5.4 Schedule 14.7 (Incentivising Long Term Investment) sets out the Secretary of State's guidance on how the Secretary of State approaches incentivising long term investment during the Franchise Term.

6. **Indexation**

6.1 In agreeing or determining Revised Inputs, the Parties shall apply the following principles in connection with indexation. For each relevant item of data in the Financial Model in respect of which a Revised Input is agreed or determined to be required:

- (a) the Parties shall agree or the Secretary of State shall reasonably determine, having regard to the particular facts of the Change, the base date at which that item is priced; and
- (b) that item shall be deflated by reference to the original base date and index (if any) relevant to that item in the Financial Model.

7. **NOT USED.**

8. **Cancellations Performance Sum, TOC Minute Delay Performance Sum, T-3 Performance Sum, T-15 Performance Sum and All Cancellations Performance Sum**

8.1 In agreeing or determining Revised Inputs, no adjustment shall be made to the Financial Model to reflect any change in the amount of the Cancellations Performance Sum, the TOC Minute Delay Performance Sum, the T-3 Performance Sum, the T-15 Performance Sum and/or the All Cancellations Performance Sum payable either by the Secretary of State or the Franchisee and arising from the exercise by the Secretary of State of the Secretary of State's rights pursuant to paragraph 1.11 (*Charging Review*) of Schedule 7.1 (Operational Performance). *For example if prior to such exercise the Franchisee would have been entitled to receive a Cancellations Performance Sum of one hundred pounds (£100) for a particular level of performance against the Annual Cancellations Benchmark and after such exercise the Franchisee would only be entitled to receive a Cancellations Performance Sum of fifty pounds (£50) for achieving the same level of performance, no adjustment shall be made to the Financial Model to reflect this.*

Schedule 9.2

Identity of the Financial Model (Escrow Documents)**1. Franchisee's Obligations**

- 1.1 The Franchisee shall deliver two (2) copies of each of the Financial Model, the Operational Model and the Record of Assumptions (each such copy in electronic format on non-rewritable password protected CD-ROM or other appropriate electronic medium) together with hard format copies of the output template of the Financial Model in the format set out in the document in the agreed terms marked **FF** (the "**Escrow Documents**") to the Secretary of State in the agreed form, accompanied by a notice that the Escrow Documents are to be Placed in Escrow.
- 1.2 The Franchisee shall deliver the Escrow Documents to the Secretary of State in accordance with paragraph 1.1:
- (a) on the date of the Franchise Agreement;
 - (b) within seven (7) days of the Start Date, but updated only as strictly necessary for any elapsed time between the actual Start Date and the date assumed to be the Start Date in the Initial Business Plan; and
 - (c) within seven (7) days of any approval or audit of a Run of the Financial Model as provided for in paragraph 7 of Schedule 9.1 (Financial and Other Consequences of Change), but updated with the Revised Inputs and any Model Changes together with an updated Record of Assumptions and copies of both the modified and unmodified Financial Model.
- 1.3 The Franchisee shall deliver with each such deposit of the Escrow Documents all of the following information to the extent that it is relevant:
- (a) details of the Escrow Documents deposited (including full filename and version details, any details required to access the Escrow Documents including media type, backup command/software used, compression used, archive hardware and operating system details);
 - (b) the names and contact details of persons who are able to provide support in relation to accessing and interpreting the Escrow Documents; and
 - (c) if required by the Secretary of State, a certificate from independent auditors approved by the Secretary of State, confirming that the deposited version of the Escrow Documents is in the agreed form in accordance with paragraph 1.1 or (as the case may be) is in accordance with paragraphs 1.2(a), 1.2 (b) or 1.2(c).

2. Secretary of State's Obligations

- 2.1 The Secretary of State shall:
- (a) within three (3) days following receipt, acknowledge receipt to the Franchisee of any version of the Escrow Documents delivered to the Secretary of State for the purposes of being Placed in Escrow;
 - (b) save as provided under paragraph 2.1(c), store each copy of the Escrow Documents in a different physical location from any other copy of each such

document and use all reasonable endeavours to ensure that each copy of the Escrow Documents is at all times kept in a safe and secure environment. In so doing the Secretary of State shall be deemed to have Placed in Escrow the Escrow Documents for the purposes of the Franchise Agreement;

- (c) notify the Franchisee if the Secretary of State becomes aware at any time during the Franchise Period that any copy of the Escrow Documents or part thereof stored in a particular location has been lost, damaged or destroyed. In such an event, the Secretary of State shall be permitted to create a new copy of the Escrow Documents or part thereof from the other copy Placed in Escrow and shall within seven (7) days notify the Franchisee accordingly and afford it the right to make reasonable inspections in order to satisfy itself that a "complete and accurate" copy has been made. Following the making of such a new copy of the Escrow Documents, the Secretary of State shall retain all copies of the Escrow Documents in accordance with paragraph 2.1(b);
 - (d) within seven (7) days of receipt of a notice from the Franchisee stating that the Escrow Documents are required for the purposes of a Run of the Financial Model in relation to any Change, or should the Secretary of State so decide that the Escrow Documents are required by the Franchisee or by the Secretary of State for such purposes release one (1) copy of the Escrow Documents accordingly and retain one (1) copy of the Escrow Documents in escrow in accordance with paragraph 2.1(b);
 - (e) maintain a record of any release of any copy of any version of the Escrow Documents made, including details of any version released and the date of release as well as the identity of the person to whom the Escrow Documents are released;
 - (f) have no obligation or responsibility to any person whatsoever to determine the existence, relevance, completeness, accuracy, effectiveness or any other aspect of the Escrow Documents; and
 - (g) not be liable for any loss, damage or destruction caused to the Franchisee arising from any loss of, damage to or destruction of the Escrow Documents.
- 2.2 If the Franchisee fails to perform a Run of the Financial Model pursuant to paragraph 6.2(a) of Schedule 9.1 (Financial and Other Consequences of Change) or fails to return the copy of the Escrow Documents released pursuant to paragraph 2.1(d):
- (a) such failure to perform or to return the released copy to the Secretary of State shall be a contravention of the Franchise Agreement;
 - (b) the Secretary of State may release the other copy of the Escrow Documents Placed in Escrow and take a copy thereof (the "**Replacement Copy**") in order that the Secretary of State may perform a Run of the Financial Model pursuant to paragraph 6.2(a) of Schedule 9.1 (Financial and Other Consequences of Change);
 - (c) once copied, the second copy of the Escrow Documents released pursuant to this paragraph 2.2 shall be Placed in Escrow; and
 - (d) once the Run of the Financial Model has been approved or audited as provided for in paragraph 7 of Schedule 9.1 (Financial and Other

Consequences of Change), two (2) copies of the Replacement Copy shall also be Placed in Escrow.

- 2.3 Nothing in this Schedule 9.2 shall prevent the Secretary of State or the Franchisee each retaining for their working use one or more copies of any of the Escrow Documents Placed in Escrow provided that no such working copy shall (unless otherwise explicitly agreed by the Parties) be regarded as a copy released from Escrow for the purposes of this Schedule 9.2 or any Run of the Financial Model.

3. **Errors in Escrow Documents**

- 3.1 Any feature of the Escrow Documents which is in the reasonable opinion of the Secretary of State an error will be addressed as follows:

- (a) if rectification of such an error would (as the case may be) over the Franchise Term result in a net increase in the amount of Franchise Payments payable by the Secretary of State to the Franchisee or a net decrease in the amount of Franchise Payments payable by the Franchisee to the Secretary of State then such error shall be rectified provided that there shall not be a restatement of the values of the Annual Franchise Payment Components and the Profit Share Components and the Target Revenue Amounts;
- (b) if rectification of such an error would (as the case may be) over the Franchise Term result in a net decrease in the amount of Franchise Payments payable by the Secretary of State to the Franchisee or a net increase in the amount of Franchise Payments payable by the Franchisee to the Secretary of State then such error shall be rectified and the values of the Annual Franchise Payment Components and the Profit Share Components and the Target Revenue Amounts shall be restated where appropriate;
- (c) a record of the error shall be noted in the Record of Assumptions and, if applicable, the Financial Model; and

as soon as reasonably practicable after the date of the rectification of the error, the Franchisee shall (unless otherwise agreed by the Secretary of State) deliver to the Secretary of State a certificate from independent auditors approved by the Secretary of State confirming that the error has been rectified as required by this paragraph 3 and is now in the agreed form in accordance with paragraphs 1.1, 1.2(a), 1.2(b) or 1.2(c) as the case may be.

Schedule 9.3

Variations to the Franchise Agreement and Incentivising Beneficial Changes**1. Variations**

1.1 The terms of the Franchise Agreement may be varied as follows but not otherwise:

(a) by the Secretary of State (as contemplated where relevant in the Request for Proposal) in relation to:

(i) any aspect of the Franchise Services; and/or

(ii) any provision of the Franchise Agreement other than those provisions specified in paragraph 1.2,

by service of a notice on the Franchisee referring to this paragraph 1.1(a) and setting out the variation to the terms of the Franchise Agreement; and

(b) in relation to any other provision of the Franchise Agreement, by agreement in writing between the Parties to that effect,

(each a "**Variation**").

1.2 Without prejudice to the Secretary of State's rights under paragraph 1.1(a), the terms of each of:

(a) clauses 5 (*Duration of the Franchise Agreement*), 7 (*Assignment*), 10 (*Cumulative Rights and Remedies*), 11 (*Dispute Resolution*), 12 (*Notices*), 13 (*Set-Off*) and 14 (*Miscellaneous Provisions*) of this Agreement;

(b) Schedules 8 (*Payments*), 9 (*Changes and Variations*), 10 (*Remedies, Events of Default and Termination Events*), 12 (*Financial Covenants and Bonds*) and 14 (*Preservation of Assets*) of this Agreement; and

(c) the definitions set out at clause 3 (*Definitions*) of this Agreement insofar as such affect the respective rights and obligations of the Secretary of State and the Franchisee pursuant to the provisions referred to at (a) and (b) above,

shall not be varied at any time other than in accordance with the terms of the Franchise Agreement or with the agreement of the Parties.

1.3 The Secretary of State shall, to the extent reasonably practicable, allow the Franchisee a reasonable opportunity to make representations to the Secretary of State concerning any Variation to be made in accordance with paragraph 1.1(a), prior to making any such Variation.

1.4 The Secretary of State may:

(a) issue, revise and withdraw from time to time procedures that the Secretary of State requires to be followed for the purposes of orderly consideration of Variations. This will include for the purpose of establishing in relation to any Change whether it is a Qualifying Change; and

- (b) require the Franchisee to provide any information that the Secretary of State reasonably requires for this purpose (including in relation to prospective change to profit, costs and revenue as a consequence of proceeding with the Variation).
- 1.5 Procedures issued pursuant to paragraph 1.4 may provide for indicative iterations of Runs of the Financial Model in relation to one or more Changes that the Secretary of State is considering and may also provide for any number of Changes to be grouped together as a single Change for the purposes of agreeing or determining Revised Inputs and then performing a Run of the Financial Model.
- 1.6 Procedures issued pursuant to paragraph 1.4 shall have contractual effect between the Parties in accordance with their terms.
- 1.7 The Franchisee may notify the Secretary of State of any proposal for a Variation by notice setting out the proposed method of implementing such Variation including:
- (a) the timescale for doing so;
 - (b) the effect (if any) on the timing of the performance of its other obligations under the Franchise Agreement;
 - (c) the impact of effecting the proposed Variation on the provision of the Franchise Services and the Franchisee's proposals as to how to minimise such impact; and
 - (d) the financial consequences of implementing the Variation proposed by the Franchisee in terms of the Revised Inputs that the Franchisee considers the Variation would require.
2. **Protected Proposals**
- 2.1 Where the Franchisee proposes a Variation in sufficient detail for it to be apparent that its implementation is likely to result in an increase in the overall profitability of the Franchisee through costs saving measures (a "**Protected Proposal**"), the Secretary of State may not proceed with the Protected Proposal or seek to implement the substance of it by proposing a Variation of the Secretary of State's own without complying with the provisions of paragraph 2 (*General Adjustments/Assumptions*), and paragraph 5 (*Revised Input for Profit*) of Appendix 2 (*Agreement or Determination of Revised Inputs*) to Schedule 9.1 (*Financial and Other Consequences of Change*).
- 2.2 The Franchisee and the Secretary of State acknowledge that the Franchisee may during the Franchise Term identify actions that could be taken by the Franchisee to achieve savings and improved financial performance and that such actions may if implemented give rise to a Change under the terms of this Agreement which, if it is a Qualifying Change, will give a financial benefit to the Secretary of State. It is further acknowledged that it is appropriate for the Franchisee to seek to identify such actions for the purposes of improving the cost effective delivery of railway passenger services.
- 2.3 To incentivise the Franchisee to seek to identify such actions it is agreed that the Franchisee may approach the Secretary of State with a proposal to take an action that would constitute a Change on the basis that if such a Change occurred and was a Qualifying Change in agreeing or determining Revised Inputs the Parties or

the Secretary of State would effect such change (if any) to the amount attributable to profit as they agree or the Secretary of State reasonably determines:

- (a) fairly rewards the Franchisee for proposing the Change; and
- (b) reasonably incentivises the Franchisee to propose further Changes that achieve savings and/or improved financial performance by sharing with the Franchisee a reasonable amount of the additional profit that is expected to arise from implementing the relevant Change.

2.4 The Secretary of State shall have an unfettered discretion as to whether or not to agree such a proposal but if the Secretary of State does so agree and a Qualifying Change in consequence occurs then in agreeing or determining Revised Inputs the provisions referred to in paragraph 2.3 above shall apply.

3. Capital Expenditure

3.1 Capital Expenditure Threshold

The Franchisee shall notify the Secretary of State promptly if it reasonably expects that a Change to which paragraph 1 or 2 relates would require it to incur, singly or in aggregate with other Changes from time to time, Capital Expenditure in excess of one per cent (1%) of its annual Turnover as disclosed by its latest available Annual Audited Accounts and, when so notified, the Secretary of State shall either:

- (a) withdraw (or direct the Franchisee to withdraw) the Change;
- (b) undertake to meet the excess through additional funding as and when such Capital Expenditure is incurred; or
- (c) direct the Franchisee to use all reasonable endeavours to borrow or otherwise raise the money required to fund any Change on commercial terms and at rates which are consistent with market conditions at the time, unless borrowing or otherwise raising such money would result in the Franchisee failing to comply with the financial covenants contained in Schedule 12 (*Financial Covenants and Bonds*).

3.2 Franchisee to Seek Finance

If the Secretary of State elects to require the Franchisee to use all reasonable endeavours as described in paragraph 3.1(c) then the Franchisee shall:

- (a) seek finance from a representative range of lending institutions and other financial institutions including those which at that time provide finance to the Franchisee, the Guarantor and the Parent or any other Affiliate;
- (b) if it is unable to raise funding, provide the Secretary of State with all information the Secretary of State may reasonably require in relation to the efforts made by the Franchisee and the reasons for a failure to raise additional finance;
- (c) so far as it is able (having used all reasonable efforts to do so), the Franchisee shall provide to the Secretary of State letters from lenders and financiers it has approached for finance stating their reasons for refusing to provide it and if the Secretary of State so requires, arrange and attend meetings with them for the Secretary of State to discuss those reasons; and

- (d) if funding is not available, or is not available on terms that the Secretary of State considers to be commercial terms or at rates which are consistent with market conditions at that time the Secretary of State may:
 - (i) withdraw the Change; or
 - (ii) undertake to fund the Capital Expenditure as and when such Capital Expenditure is incurred.

3.3 **Treatment of Borrowings in Revised Inputs**

In calculating the Revised Inputs for the purposes of any Change referred to in this paragraph 3, the Franchisee shall account for the Capital Expenditure in accordance with GAAP, taking into account the basis on which such Capital Expenditure has been financed.

3.4 **Meaning of Capital Expenditure**

The expression "**Capital Expenditure**" when used in this Schedule 9.3 refers to the nature of the expenditure incurred by the Franchisee and, accordingly, does not include expenditure incurred under operating leases.

Withdrawn

Schedule 9.4

Secretary of State Risk Assumptions**1. London Paddington to Cardiff and/or Swansea and/or Llanelli Open Access Operation**

1.1 It shall be a Change if:

- (a) a non-franchised "open access" passenger train operator which is not an Affiliate of the Franchisee begins running regular timetabled passenger services between London Paddington and Cardiff and/or Swansea and/or Llanelli;
- (b) after a non-franchised "open access" passenger train operator which is not an Affiliate of the Franchisee has begun to run regular timetabled passenger services between London Paddington and Cardiff and/or Swansea and/or Llanelli the specification of such passenger service is materially changed (which shall include any withdrawal of such passenger services).

1.2 If any Change pursuant to paragraph 1.1 is a Qualifying Change:

- (a) the only Revised Inputs shall be those necessary to take into account the revenue abstraction impacts of the passenger services of the open access operator as modelled by comparison with revenue forecasts in MOIRA in scenarios "with and without" the open access services being operated (including the reduced revenue abstraction impacts where there is a second or subsequent Change consequent upon the specification of the passenger services being materially reduced or such passenger services being withdrawn);
- (b) there will be no adjustment to Benchmarks or Annual Benchmarks pursuant to paragraph 5 of Schedule 9.1.

1.3 It is acknowledged that the commencement of open access services between London Paddington and Cardiff and/or Swansea and/or Llanelli could adversely impact the ability of the Franchisee 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 because relevant timetable development rights have been awarded to the open access operator and accordingly that this could, in accordance with the provisions of paragraph 12.8 of Schedule 1.1 (Franchise Services and Service Development), lead to the issue of a TDR Amendment. If it does so, the provisions of paragraph 1.2(a) are not intended to limit the operation of any consequent Qualifying Change under paragraph 12.10 of Schedule 1.1.

2. Crossrail: Amendment to Percentage Allocation Adjustment Mechanism

2.1 The following words and expressions shall have the following meanings:

"Crossrail Flow"	means any Flow in respect of which both the Franchisee and the Crossrail Operator have a
-------------------------	--

	Percentage Allocation, whether or not together with any other person;
"Crossrail revenue allocation amendment"	means an amendment to any version of ORCATS and CAPRI/Lennon made after the date of this Franchise Agreement which may affect the allocation of revenue in respect of any Crossrail Flow between the Franchisee and the Crossrail Operator and which takes into account the prospect for services operated by the Crossrail Operator to arrive at London Paddington (Low Level) Station from the east or depart from London Paddington (Low Level) Station to the east;
"Matrix Control System"	means the system operated by TfL to allocate CPAY and PAYG transaction revenue to operators;
"ORCATS" and "CAPRI/Lennon"	have the meaning given to them in the TSA and include any successor arrangement for the allocation of revenue on Flows between operators;
"PAYG"	means the Pay as You Go smart media technology for the payment of fares operated pursuant to the Pay As You Go Agreement;
"standard ORCATS revenue allocation principles"	means the version of ORCATS and CAPRI/Lennon current at the date of this Franchise Agreement, as it may be amended from time to time but excluding any Crossrail revenue allocation amendment;

- 2.2 This paragraph 2 establishes a mechanism to make adjustments to maintain alignment of the Financial Model with (i) any departure from the standard ORCATS revenue allocation principles or (ii) any impact of the Matrix Control System revenue allocations on the assumed allocations of revenue in the Financial Model, which in either case is relevant to, or affected by, the allocation of revenue on Crossrail Flows following commencement of through services by the Crossrail Operator using the London Paddington (Low Level) Station. This paragraph 2 does not provide for any adjustment in relation to the overall levels of revenue on the Crossrail Flows forecast in the Financial Model or other matters covered by the standard ORCATS revenue allocation principles.
- 2.3 Subject to paragraph 2.4, it shall be a Change if the allocation of revenue between the Franchisee and the Crossrail Operator in respect of any Crossrail Flow is agreed or determined otherwise than in accordance with the TSA and on the basis of the standard ORCATS revenue allocation principles, including where any allocation of revenue to the Franchisee made using the Matrix Control System is otherwise than in accordance with the standard ORCATS revenue allocation principles. It shall be a Change of this type including (subject to paragraph 2.4)

where a Manual Allocation applies or there is a Crossrail revenue allocation amendment.

- 2.4 A Change shall not apply under paragraph 2.3 if and to the extent:
- (a) it relates to revenue in a period before the Crossrail Operator commences through service operations using the London Paddington (Low Level) Station; or
 - (b) it is the result of the Franchisee agreeing to a Manual Allocation or Crossrail revenue allocation amendment in either case without the consent of the Secretary of State (such consent not to be unreasonably withheld); or
 - (c) it is not in connection with a change in allocation to take account of actual or assumed changes in propensity to travel on services in connection with the prospect for services operated by the Crossrail Operator to arrive at London Paddington (Low Level) station from the east or depart from London Paddington (Low Level) station to the east (which for these purposes may include an allocation based on surveys of passengers travelling or with reference to analyses of ticketing, gateline or similar data to determine passengers travelling).
- 2.5 The Franchisee shall notify the Secretary of State if it receives notice of a revenue allocation dispute, a proposal for a Manual Allocation or a proposal for a Crossrail revenue allocation amendment, or there is any impact of the Matrix Control System on revenue allocations, which in either case may affect allocations of revenue in respect of the Crossrail Flows on or following commencement of through service operations by the Crossrail Operator using the London Paddington (Low Level) Station.
- 2.6 The Franchisee shall:
- (a) act reasonably in the conduct of any dispute or engagement with any proposal required to be notified in accordance with paragraph 2.5, including where applicable by taking reasonable steps to defend the dispute before the Income Allocation Disputes Sub-Committee;
 - (b) keep the Secretary of State regularly informed of progress, including by providing on reasonable request its calculation based on available information at the relevant time of the Revised Inputs to which the altered allocation is expected to give rise; and
 - (c) not settle any such dispute or make or agree to any such proposal without the consent of the Secretary of State (such consent not to be unreasonably withheld).
- 2.7 In calculating the Revised Inputs in respect of any Change under paragraph 1.3 there shall be taken into account the impact of the changed allocation percentage (or other adjustment amount agreed or determined to be payable) as applied to the level of overall revenue to be apportioned as assumed for the relevant Crossrail Flows in the Financial Model. There shall be disregarded any variations in the actual level of overall revenue to be apportioned as compared with the

levels assumed in the Financial Model and any changes in apportionment to the extent in accordance with the standard ORCATS revenue allocation principles.

2.8 It is acknowledged that where there is a Change under paragraph 2.3 which is a Qualifying Change this will be addressed (unless the parties otherwise agree) in accordance with Schedule 9.1 (Financial and Other Consequences of Change), including by way of Estimated Revision (where Runs of the Financial Model are not able to be made before the relevant Change applies) and Runs of the Financial Model addressing the period to the end of the Franchise Term.

3. **[REDACTED¹³⁴]**

4. **HEx Services platform usage at London Paddington**

4.1 The Parties acknowledge that:

- (a) an agreement has been entered into between the Secretary of State and HAL such that, with effect from the Passenger Change Date in December 2019, all HEx Services are required to operate by using a single platform at London Paddington station (in place of the two platforms which had been used by the HEx Services prior to that date) (the "**Paddington Platform Agreement**");
- (b) the Paddington Platform Agreement has a scheduled expiry date of the Passenger Change Date occurring in May 2021; and
- (c) as at the date of this Agreement, negotiations remain ongoing between the Secretary of State and HAL to secure HAL's agreement to a variation to the Paddington Platform Agreement to provide for such Paddington Platform Agreement to remain in full force and effect until the Crossrail Stage 5b Transfer Date.

4.2 It shall be a Change if at any time during the period commencing on the Passenger Change Date occurring in May 2021 and ending on the Crossrail Stage 5b Timetable Date:

- (a) the Paddington Platform Agreement ceases to have full force and effect;
- (b) the circumstances described in paragraph 4.2(a) are not a direct consequence of any act or omission by the Franchisee (other than an act or omission that was required of the Franchisee pursuant to this Agreement); and
- (c) as a direct result of the circumstances described in paragraph 4.2(a), the Franchisee is unable to operate the Passenger Services in accordance with the Train Service Requirement.

4.3 It is acknowledged that prior to the Crossrail Stage 5b Transfer Date:

¹³⁴ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

- (a) the circumstances described collectively in paragraphs 4.2(a), (b) and (c) could cease to apply following the occurrence of a Change pursuant to paragraph 4.2, and accordingly a further Change shall occur on the date on which the Franchisee is again able to operate the Passenger Services in accordance with the Train Service Requirement; and
- (b) the circumstances described in collectively in paragraphs 4.2(a), (b) and (c) could occur again following the occurrence of a Change pursuant to paragraph 4.3(a), and accordingly the provisions of paragraph 4.2 (and, where relevant, paragraph 4.3(a)) shall apply in such circumstances.

5. **Class 802 capital lease costs**

5.1 The Parties acknowledge and agree that as a consequence of discussions between the Parties and Eversholt the capital lease costs of the Class 802 Units will be different to the amount assumed by the Financial Model. Accordingly on the Start Date there shall be a Qualifying Change the only Revised Inputs in respect of such Qualifying Change being in respect of the figures specified in sheet "I_RS Charges" in cells M4635:P4635 (*AT300 5 car Electric*) and M4643:P4643 (*AT300 9 car Electric*) such Revised Inputs to be consistent with the capital rent being **[REDACTED¹³⁵]** per vehicle comprised within the Class 802 Units per month.

5.2 In this paragraph 5:

- (a) "**Class 802 Units**" means each and every unit of Class 802 rolling stock comprised in the Train Fleet (as set out in Table 1 to Schedule 1.6); and
- (b) "**Eversholt**" means Eversholt Rail Leasing Limited (company number: 02720809).

¹³⁵ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

Schedule 9.5

Infrastructure and Rolling Stock Related Change**1. Definitions**

In this Schedule 9.5 unless the context otherwise requires, the following words and expression have the following meanings:

- Additional Electrification Project** means any project of Network Rail to electrify any Relevant Route so that Passenger Services operated by electrically powered rolling stock can operate in both directions over it electrically powered from the new electrification infrastructure;
- “Bristol Parkway – Cardiff Electrification Completion Date”** means the date from which Network Rail permits Passenger Services operated by electrically powered rolling stock to operate between Bristol Parkway and Cardiff Central in both directions, electrically powered throughout from overhead line equipment;
- “Chippenham Electrification Project”** means the project of Network Rail to extend electrification of the Great Western Main Line westwards to Chippenham station so that Passenger Services operated by electrically powered rolling stock can operate in both directions over the route from Wootton Bassett Junction to (and including) Chippenham station electrically powered throughout from overhead line equipment;
- “Crossrail Stage 3 Timetable Date”** means the date from which the Crossrail Operator commences the operation of passenger services between Abbey Wood station and London Paddington station;
- “Crossrail Stage 5b Timetable Date”** the date from which more than 50% of the Crossrail Operator’s passenger services operating between the Great Western Main Line and London Paddington operate through the Crossrail tunnels serving Paddington (Low Level) station as a through station rather than terminating at Paddington (High Level) station;
- “Infrastructure Timetable and Rolling Stock Related Changes”** means the following limbs of the definition of Change:
- (a) the circumstances set out in paragraph 1.1 (London Paddington to

Cardiff and/or Swansea and/or Llanelli Open Access Operation) of Schedule 9.4 (Secretary of State Risk Assumptions) and the circumstances set out in paragraph 4 (HEX Services platform usage at London Paddington) of Schedule 9.4 (Secretary of State Risk Assumptions);

- (d) (change to the Train Service Requirement);
- (e) (paragraph 19.1 of Schedule 1.1);
- (o) Variations, but only to the extent any such Variation relates to the Timetable, Train Service Requirement or the Train Fleet;
- (v)(i) (issue of a TDR Amendment);
- (v)(ii) (cessation of effect of a TDR Amendment);
- (za) the circumstance set out in paragraph 6A.3 (Severn Tunnel Electrification) of Schedule 9.5 (Infrastructure and Rolling Stock Related Change);
- (zc) the circumstance set out in paragraph 6.3 (Chippenham Electrification Project) of Schedule 9.5 (Infrastructure and Rolling Stock Related Change);
- (zd) the circumstance set out in paragraph 7.3 (Additional Electrification Projects) of Schedule 9.5 (Infrastructure and Rolling Stock Related Change);
- (ze) the circumstance set out in paragraph 8.4 (Use of Class 769 Units in electric mode on the North Downs Route) of Schedule 9.5 (Infrastructure and Rolling Stock Related Change);
- (zf) the circumstances set out in paragraph 9.1, 9.2, 9.3 and 9.4 (Crossrail) of Schedule 9.5

(Infrastructure and Rolling Stock Related Change); and

- (zh) any of the circumstances set out in paragraphs 2.9, 3.2, 4.1, 4.3 or 7.1(c) (as the case may be) of Schedule 6.7 (*The IEP Provisions*);
- (zk) the circumstances set out in paragraph 7.1 of Schedule 9.8, but only to the extent that such circumstances relate to the Timetable, Train Service Requirement or the Train Fleet;
- (zl) the exercise of the Secretary of State’s right to direct the Franchisee to use all reasonable endeavours to implement a Delayed Class 769 Mitigation Plan pursuant to paragraph 25.5 of Part 4 of Schedule 6.1;

“North Downs Route”

means the Route connecting Reading, Redhill and Gatwick Airport;

“Relevant Routes”

means any Routes other than (i) London Paddington to Cardiff Central via Bristol Parkway; (ii) London Paddington to Chippenham station; (iii) London Paddington to Newbury; and (iii) those sections of the North Downs Route that were electrified at the Start Date; and

“Severn Tunnel Electrification”

means the project of Network Rail to complete the commissioning of operational overhead line equipment between Patchway and Severn Tunnel Junction so that Passenger Services operated by electrically powered rolling stock can operate in both directions over such section of route electrically powered throughout from overhead line equipment;

2. **NOT USED**

3. **NOT USED**

4. **Use of rail industry compensation mechanisms and rights of the Secretary of State in relation to multiple or excessive compensation in relation to relevant losses**

4.1 The Secretary of State and the Franchisee acknowledge that railway industry procedures including Station Change and Network Change are designed to compensate train operators fairly in relation to rail infrastructure disruption and changes and agree that the Franchisee should pursue any relevant rights to obtain compensation in a reasonable way so that, where relevant, any Qualifying Change

in relation to any Infrastructure Timetable and Rolling Stock Related Changes shall assume that the Franchisee has been or will be paid such compensation.

- 4.2 The Franchisee shall notify the Secretary of State as soon as reasonably practicable if it becomes aware of circumstances which mean that it has been, may have been or is likely to be compensated more than once or excessively in relation to the same adverse financial impact in connection with any matter pertaining to any Infrastructure Timetable and Rolling Stock Related Changes. For these purposes a compensation claim properly made under railway industry procedures including Station Change and Network Change shall not be regarded as excessive but without prejudice to the rights of the Secretary of State if the Franchisee has in consequence of such a claim received multiple compensation with regard to the same loss. Such notification shall identify the relevant circumstances and quantify the potential excess compensation. If requested by the Secretary of State the Franchisee shall provide such further information in relation to relevant circumstances as the Secretary of State may reasonably require.
- 4.3 Where the Secretary of State believes that the Franchisee has been or may be compensated more than once or excessively in relation to the same adverse financial impact in respect of any matter pertaining to any Infrastructure Timetable and Rolling Stock Related Changes the Secretary of State shall, except where the circumstances have been notified to the Secretary of State by the Franchisee pursuant to paragraph 4.1 above, identify the relevant circumstances and quantify the potential excess compensation. Where the circumstances have been notified to the Secretary of State by the Franchisee pursuant to paragraph 4.1 above, the Secretary of State shall confirm that he agrees with the Franchisee's view of the circumstances and the amount of the potential excess compensation or notify the Franchisee of any different view that he may have with reasons.
- 4.4 The Franchisee shall be entitled to make representations to the Secretary of State in relation to any Secretary of State notification pursuant to paragraph 4.3 above. The Parties shall discuss any representations made in good faith with the intention of agreeing whether or not there has been any excess compensation of the Franchisee and, if so, how much the relevant amount is. In the event that agreement cannot be reached within twenty Weekdays the Secretary of State shall have the right to reasonably determine whether there has been excess compensation and, if so, the amount of such excess compensation.
- 4.5 Where the amount of any excess compensation of the Franchisee is agreed or reasonably determined there shall be an adjustment to the Franchise Payment due in relation to the Reporting Period after that in which relevant agreement was reached or the Secretary of State made his determination or, where agreement or determination occurs after the end of the Franchise Period, by way of a direct payment from the Franchisee to the Secretary of State. Such adjustment shall be of an amount equal to the amount of excess compensation received by the Franchisee as agreed or reasonably determined by the Secretary of State and not otherwise repaid by the Franchisee.

5. **Related Infrastructure Timetable and Rolling Stock Related Changes**

Where there are Qualifying Changes in relation to any Infrastructure Timetable and Rolling Stock Related Changes and these Qualifying Changes are reasonably regarded by the Secretary of State as being related or if an Infrastructure and

Rolling Stock Related Change gives rise to any other Change (for example in consequence of a change to the Train Service Requirement) leading to there being more than one Qualifying Change then the Secretary of State shall have the right to require that Model Changes and Revised Inputs shall be established and applied to the Financial Model and Runs of the Financial Model shall be performed in a co-ordinated way to take proper account of relevant interdependencies.

6A. **Severn Tunnel Electrification**

6A.1 In the event that Severn Tunnel Electrification is completed during the Franchise Term the Franchisee shall use all reasonable endeavours to:

- (a) secure reasonably appropriate reductions in Sectional Running Times to apply from the earliest feasible Passenger Change Date after completion of Severn Tunnel Electrification; and
- (b) secure a Timetable that takes full advantage of such reduced sectional running times to reduce timetabled journey times to the greatest extent reasonably practicable without materially increasing the risk to the Franchisee of achieving any Benchmarks.

6A.2 The Franchisee shall provide an update to the Secretary of State within each periodic report required pursuant to paragraph 8 of Schedule 11.2 (Management Information) on progress in relation to Severn Tunnel Electrification and the compliance of the Franchisee with its obligations under paragraph 2.1.

6A.3 There shall be a Change on completion of Severn Tunnel Electrification. Where the Franchisee has not complied with its obligations under paragraph 2.1 the Secretary of State shall be entitled to reasonably determine the Revised Inputs that the Secretary of State believes would have been applicable had the Franchisee complied with such obligations and obtained the Sectional Running Times and Timetable that it should have obtained.

6. **Chippenham Electrification Project**

6.1 In the event that the Chippenham Electrification Project is completed during the Franchise Term the Franchisee shall use all reasonable endeavours to:

- (a) secure reasonably appropriate reductions in Sectional Running Times to apply from the earliest feasible Passenger Change Date after completion of the Chippenham Electrification Project; and
- (b) secure a Timetable that takes full advantage of such reduced sectional running times to reduce timetabled journey times to the greatest extent reasonably practicable without materially increasing the risk to the Franchisee of achieving any Benchmarks.

6.2 The Franchisee shall provide an update to the Secretary of State within each periodic report required pursuant to paragraph 8 of Schedule 11.2 (Management Information) updating on progress in relation to the Chippenham Electrification Project and the compliance of the Franchisee with its obligations under paragraph 6.1.

6.3 There shall be a Change on completion of the Chippenham Electrification Project. Where the Franchisee has not complied with its obligations under paragraph 6.1

the Secretary of State shall be entitled to reasonably determine the Revised Inputs that he believes would have been applicable had the Franchisee complied with such obligations and obtained the Sectional Running Times and Timetable that it should have obtained.

7. Additional Electrification Projects

7.1 In the event that an Additional Electrification Project is to be completed during the Franchise Term the Franchisee shall use all reasonable endeavours to:

- (a) secure reasonably appropriate reductions in Sectional Running Times to apply from the earliest feasible Passenger Change Date after completion of the Additional Electrification Project; and
- (b) use all reasonable endeavours to secure a Timetable that takes full advantage of such reduced sectional running times to reduce timetabled journey times to the greatest extent reasonably practicable without materially adversely increase the risk to the Franchisee of achieving any Benchmarks.

7.2 The Franchisee shall provide a report to the Secretary of State with each periodic report required pursuant to paragraph 8 of Schedule 11.2 (Management Information) updating on progress in relation to any Additional Electrification Project and the compliance of the Franchisee with its obligations under paragraph 7.1.

7.3 There shall be a Change on the first Passenger Change Date to occur after any Additional Electrification Project has been completed. Where the Franchisee has not complied with its obligations under paragraph 7.1 the Secretary of State shall be entitled to reasonably determine the Revised Inputs that he believes would have been applicable had the Franchisee complied with such obligations and obtained the Sectional Running Times and Timetable that it should have obtained.

8. Use of Class 769 Units in electric mode on the North Downs Route

8.1 The Franchisee shall use all reasonable endeavours to obtain the agreement of Network Rail that Class 769 Units can be used on electrified sections of the North Downs Route in electrically powered mode drawing power from the 750v third rail electrification infrastructure installed on such electrified sections. Where Network Rail does not agree to the use of the Class 769 Units in electrically powered mode on the whole of the North Downs Route the Franchisee shall use all reasonable endeavours to ensure that the Class 769 Units can be used in electrically powered mode on as much of the North Downs Route as possible it being recognised that this might involve the use of Class 769 Units on the North Downs Route in electrically powered mode occurring in a number of incremental stages.

8.2 In the event that the Franchisee is permitted by Network Rail to use Class 769 Units in electrically powered mode on any section, or additional section, of the North Downs Route the Franchisee shall use all reasonable endeavours to:

- (a) secure reasonably appropriate reductions in Sectional Running Times to apply from the earliest feasible Passenger Change Date after such permission is given; and

- (b) use all reasonable endeavours to secure a Timetable that takes full advantage of such reduced sectional running times to reduce timetabled journey times to the extent reasonably practicable without materially adversely increase the risk to the Franchisee of achieving any Benchmarks.
- 8.3 The Franchisee shall provide a report to the Secretary of State with each periodic report required pursuant to paragraph 8 of Schedule 11.2 (Management Information) updating on progress in relation to the compliance of the Franchisee with its obligations under paragraph 8.1 and 8.2.
- 8.4 There shall be a Change on the first Passenger Change Date to occur after each occasion on which Network Rail consents to the use of Class 769 Units in electrically powered mode on any section, or additional section, of the North Downs Route. Where the Franchisee has not complied with its obligations under Clause 8.1 the Secretary of State shall be entitled to reasonably determine the Revised Inputs that he believes would have been applicable had the Franchisee complied with such obligations and obtained the Sectional Running Times and Timetable that it should have obtained.
9. **Crossrail**
- 9.1 It shall be a Change if the Crossrail Stage 3 Timetable Date is not the Passenger Change Date occurring in December 2021. If there is such a Change and it is a Qualifying Change:
- (a) NOT USED; and
- (b) there will be no adjustment to Benchmarks or Annual Benchmarks pursuant to paragraph 5 of Schedule 9.1.
- 9.2 It shall be a Change if the Crossrail Stage 5b Timetable Date is not the Passenger Change Date occurring in December 2022. If there is such a Change and it is a Qualifying Change:
- (a) NOT USED; and
- (b) there will be no adjustment to Benchmarks or Annual Benchmarks pursuant to paragraph 5 of Schedule 9.1.
- 9.3 It shall be a Change if at any time prior to the Crossrail Stage 5b Timetable Date the number of Crossrail Services scheduled to operate between the station pairs given in the table below, on a Weekday and within the time bands specified, is less than the specified minimum or more than the specified maximum shown in such table.

From	To	Time range	Minimum	Maximum
Reading	Paddington (High Level)	0600-2259 (arrival at Paddington High Level)	40	50
Maidenhead			44	54
Paddington (High Level)	Reading	0600-2259 (departure	38	48

	Maidenhead	from Paddington High Level)	40	50
--	------------	-----------------------------------	----	----

Note: numbers at Maidenhead include all calls by Crossrail services, not just those originating / terminating at Maidenhead.

- 9.4 It shall be a Change if at any time on or after the Crossrail Stage 5b Timetable Date the number of Crossrail Services scheduled to operate between the station pairs given in the table below, on a Weekday and within the time bands specified, is less than the specified minimum or more than the specified maximum shown in such table.

From	To	Time range	Minimum	Maximum
Reading	Paddington (Low Level)	0600-2259 (arrival at Paddington Low Level)	40	48
Maidenhead			66	80
Paddington (Low Level)	Reading	0600-2259 (departure from Paddington Low Level)	40	48
	Maidenhead		66	80

Note: numbers at Maidenhead include all calls by Crossrail services, not just those originating / terminating at Maidenhead.

- 9.5 In considering whether there is a Change pursuant to paragraphs 9.3 and 9.4 no account shall be taken of variations from the specification of Crossrail Services in relation to any day which is not a Weekday. If there is a Qualifying Change pursuant to paragraphs 9.3 or 9.4 then: (a) Revised Inputs shall take into account variations from the specification of Crossrail Services in relation to all days on which Crossrail Services are operated and not just Weekdays; and (b) there will be no adjustment to Benchmarks or Annual Benchmarks pursuant to paragraph 5 of Schedule 9.1.

Schedule 9.6

Franchising of the Heathrow Express Services

1. SECRETARY OF STATE INSTRUCTION

1.1 The Secretary of State may, subject to paragraph 1.3, at any time instruct that the Franchisee operates the HEx Services as part of the Passenger Services (the "**HEx Services Change**"). The Secretary of State's request will include, as a minimum:

- (a) the date from which the HEx Services are to run;
- (b) the amendments required to the Train Service Requirement;
- (c) changes to the Fleet Tables to make provision for any additional rolling stock required to accommodate a Change to the Train Service Requirement,

and may include any other provision that the Secretary of State may reasonably require for the purposes of effecting the HEx Services Change.

1.2 Subject to paragraph 2.6 below, the HEx Services Change shall be a Qualifying Change.

1.3 The Franchisee shall not be required to start operating the HEx Services unless:

- (a) the Railways (Heathrow Express) (Exemptions) Order 1994 has been repealed; and
- (b) the HEx Services Agreement has been terminated.

1.4 The Parties agree that the HEx Services Change shall be processed in accordance with the principles set out in paragraph 2 of Schedule 9.6.

2. PROCESS FOR AGREEING THE HEATHROW EXPRESS SERVICES QUALIFYING CHANGE

2.1 The provisions of Schedule 9 (Changes and Variations) of this Agreement shall apply to the HEx Services Change, except to the extent amended by the principles set out in this paragraph 2.

2.2 The Parties shall for a period of 12 weeks from the date of the Secretary of State's instruction in paragraph 1.1 (the "**Initial Period**") seek to agree whether or not the HEx Services Change should be made on the basis that the Franchisee will assume the revenue risk associated with the HEx Services without any form of revenue protection from the Secretary of State (the "**Revenue Risk Option**"). The Parties agree to negotiate in good faith for the Initial Period and to devote reasonable, appropriately senior resources to such negotiation.

2.3 By no later than the end of the Initial Period either Party may notify the other that it is no longer prepared to continue negotiation on the Revenue Risk Option in which case paragraph 2.5 shall apply.

2.4 Without prejudice to paragraph 2.5, the Parties will seek to process the HEx Services Change on the following principles:

- (a) The HEx Services will, subject to the principles below, become fully integrated Franchise Services and the rights and obligations of the Secretary of State and the Franchisee under this Agreement shall apply to the HEx Services on the same basis as they apply to any other Franchise Services.
- (b) To the extent the HEx Services Change includes services or elements of services which were previously performed under the HEx Services Agreement, the Revised Input and/or Model Changes related to those services shall be the cost charged or to be charged for future Reporting Periods under the HEx Services Agreement in relation to those services or elements of services, as appropriate, adjusted as may be applicable to the extent that there are fewer services.
- (c) To the extent the HEx Services Change includes services or elements of services which were not previously performed under the HEx Services Agreement (the "**New Services**"), the Parties shall agree or the Secretary of State shall reasonably determine the Revised Inputs and/or Model Change related to those services or elements of services.

2.5 If the Parties cease to negotiate the Revenue Risk Option pursuant to paragraph 2.3, the Parties will seek to process the HEx Services Change on the following principles (in addition to the principles set out in paragraph 2.4):

- (a) The Parties will agree or the Secretary of State will reasonably determine new committed obligations to ensure the Franchise is obliged to perform services for which it is receiving remuneration pursuant to the HEx Services Change.
- (b) The Parties will agree or the Secretary of State will determine new bespoke Annual Benchmarks for the HEx Services which will operate independently of the Annual Benchmarks for the rest of the Franchise Services.
- (c) The HEx Services Fare Revenue shall be payable directly to the Secretary of State as part of the Franchise Payment and consequential amendments to Schedule 8.1 (Franchise Payments) will be made to effect this.
- (d) The Franchisee shall:
 - (i) set the price of Fares related to the HEx Services in accordance with such directions as the Secretary of State may provide from time to time; or
 - (ii) in the absence of any such directions, shall increase the Fares related to the HEx Services by the Retail Prices Index + k per cent per annum in respect of each Fare Year.

For the purposes of this paragraph, "**k**" shall have the meaning given to it in paragraph 2.2 of Schedule 5.5 (Regulation of Individual Fares).

- (e) The Franchisee will be entitled to a profit margin in respect of the HEx Services at the percentage rate for the Management Fee applying under the HEx Services Agreement which shall be applied to the costs base for the HEx Services with effect from the HEx Services Change taking effect.

- 2.6 The Revised Inputs for the HEx Services Change will take into account the position on revenue risk as agreed between the Parties or determined by the Secretary of State pursuant to paragraphs 2.1 – 2.4 above.

Withdrawn

Schedule 9.7

[REDACTED¹³⁶]

Withdrawn

¹³⁶ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

Schedule 9.8

Emergency Measures

Definitions

“Aggregate Funding Requirement Difference”	means the sum total of the Funding Requirement Differences arising in respect of each and every Relevant Funding Obligation (recognising that this may result in a positive or a negative number);
“Base Franchise Terms”	the provisions of the Franchise Agreement other than the Emergency Measures Provisions and subject to the amendments referred to in paragraph 9;
“COVID 19 Impacts”	means changes to the revenues and costs of the Franchisee and other impacts on the Franchise Services caused by the COVID 19 pandemic;
“Emergency Measures Provisions”	amendments to the Franchise Agreement pursuant to an Emergency Measures Agreement in relation to COVID 19 issues made between the Secretary of State and the Franchisee on the date of the Franchise Agreement;
“Emergency Measures End Date”	means 01:59 on 20 September 2020 as such date may be amended pursuant to this Schedule 9.8;
“Expenditure Commitment”	means an obligation which requires the Franchisee to expend no less than a specified sum to deliver a specified output or outcome, or in pursuit of a specified objective or purpose;
“Funding Requirement Difference”	means, in respect of a Relevant Funded Obligation, the Expected Post-EMA Expenditure <i>minus</i> the Assumed Post-EMA Expenditure (recognising that this may result in a positive or a negative number);
“Relevant Funded Obligation”	means any Expenditure Commitment or other obligation contained in the Franchise Agreement in respect of which the Parties agree (or in the absence of agreement the Secretary of State reasonably determines) that: <ul style="list-style-type: none"> (a) an assumed amount of incremental expenditure required in each Franchisee Year to deliver

the obligation can be separately identified within the Record of Assumptions, such that (by making an appropriate *pro rata* adjustment in respect of the Franchisee Year in which the Emergency Measures End Date falls) it is possible objectively to identify:

i. the amount of incremental expenditure assumed in the Financial Model to be associated with delivery of the obligation prior to the Emergency Measures End Date ("**the Assumed EMA Expenditure**"); and

ii. the amount of incremental expenditure assumed in the Financial Model to be associated with delivery of the obligation after the Emergency Measures End Date ("**the Assumed Post-EMA Expenditure**"), AND

(b) by virtue of the Franchisee's actual expenditure in pursuit of the obligation during the EMA period ("**the Actual EMA Expenditure**") being less than (or more than) the Assumed EMA Expenditure in respect of that obligation prior to the Emergency Measures End Date (but not for any other reason), it is reasonable to expect that the actual amount the Franchisee will be required to expend in pursuit of that obligation ("**the Expected Post-EMA Expenditure**") will be more than (or less than) the Assumed Post-EMA Expenditure in respect of that obligation.

Emergency Measures Provisions

1. The Emergency Measures Provisions shall be in force from the Start Date until the Emergency Measures End Date.

Emergency Measures End Date

2. The Secretary of State shall on or before **25 July 2020**¹³⁷ serve notice on the Franchisee stating that either:
- (a) the Emergency Measures End Date shall be changed to a date specified by the Secretary of State in the notice such date to be at least six months and two weeks after the date of the notice unless the Franchisee agrees to a shorter period; or
 - (b) there will be no change to the Emergency Measures End Date and accordingly (and subject to the provisions of paragraphs 4 and 8) the Emergency Measures Provisions shall cease to apply from 01:59 on 20 September 2020 from which date the Base Franchise Terms shall apply.
3. In the event that the Secretary of State does not serve a notice pursuant to paragraph 2 on or before **25 July 2020**¹³⁸ (subject to the rights of the Franchisee pursuant to paragraph 4.1(b)(ii)) there will be no amendment to the Emergency Measures End Date and accordingly the Emergency Measures Provisions shall (subject to the provisions of paragraphs 4 and 8) cease to apply from 01:59 on 20 September 2020.
- 4.
- 4.1
- If the Emergency Measures End Date is not extended pursuant to paragraph 2 then the Franchisee shall have the right to serve a notice on the Secretary of State:
- (a) within 14 days of the service of a notice pursuant to paragraph 2(a); or
 - (b) by no later than 11 July 2020 where the Secretary of State does not serve a notice pursuant to paragraph 2(a),
such notice to specify that either:
 - (i) the Franchisee requires that the Agreement terminates (subject to paragraph 4.4) on the Emergency Measures End Date; or
 - (ii) the Franchisee requires the Secretary of State to amend the Emergency Measures End Date to 01:59 on 13 December 2020 in which case the provisions of paragraph 7 shall apply.
- 4.2 Where a notice is served in accordance with paragraph 4.1(b)(ii) and the agreement of the Franchisee and the Secretary of State for the Franchise Agreement to continue referred to in paragraph 7.4 is not reached by the date referred to in paragraph 7.4 then (subject to

¹³⁷ 19 June 2020 (Date of Contract Change Letter) - Contract variation agreed by the Secretary of State and Franchisee.

¹³⁸ 19 June 2020 (Date of Contract Change Letter) - Contract variation agreed by the Secretary of State and Franchisee.

paragraph 4.4) termination of this Agreement shall occur on the amended Emergency Measures End Date.

- 4.3 If the Emergency Measures End Date is not extended pursuant to paragraph 2 but the Franchisee serves no notice within the relevant time periods specified at paragraph 4.1 then the Franchisee's right to terminate this Agreement shall end and from the Emergency Measures End Date the Emergency Measures Provisions shall cease to apply and the terms of this Agreement shall be the Base Franchise Terms (without any Change pursuant to paragraph 7.1) unless the Secretary of State exercises his right pursuant to paragraph 8 to extend the Emergency Measures End Date in which case paragraph 4.5 shall apply.
- 4.4 Termination of the Franchise Agreement shall not occur under paragraph 4.1 or paragraph 4.2 if the Secretary of State exercises the right to extend the Emergency Measures End Date pursuant to paragraph 8 and where this occurs paragraph 4.5 shall apply.
- 4.5 Where this paragraph applies by virtue of paragraph 4.3 or 4.4 above, the Franchisee shall retain its rights under paragraph 4.1(b)(i) (but not 4.1(b)(ii)) in relation to the amended Emergency Measures End Date with the relevant dates for service of notice by the Franchisee amended by reference to the amended Emergency Measures End Date.
5. The Franchisee shall have the right at any time until the date that is 56 days prior to the Emergency Measures End Date to require that the Emergency Measures End Date is amended to an earlier date specified by the Franchisee such date to be:
- 5.1 01:59 on the last day of a Reporting Period;
- 5.2 not sooner than 28 days after the date of service of the notice.
- The Franchisee shall only be permitted to exercise its rights under this paragraph once.
6. If the Franchisee serves a notice pursuant to paragraph 5 then:
- 6.1 the Secretary of State's right pursuant to paragraphs 2 and 8 to alter the Emergency Measures End Date shall lapse;
- 6.2 with effect from the amended Emergency Measures End Date the Base Franchise Terms shall apply in accordance with paragraph 9; and
- 6.3 the Franchisee shall have no rights pursuant to paragraph 7 to seek a Variation with associated Change.

COVID 19 Change and Variation

- 7.
- 7.1 Subject to paragraph 7.5 at any time before the date six months prior to the Emergency Measures End Date the Franchisee may serve notice on the Secretary of State stating that it does not believe that it is commercially appropriate for the Base Franchise Terms to apply from the Emergency Measures End Date unless

there is a Change to take into account COVID Impacts arising after the Emergency Measures End Date and accordingly if such a notice is served a Change shall occur immediately after the Emergency Measures End Date. There shall also be a Change immediately after the Emergency Measures End Date if the Franchisee exercises its right under paragraph 4.1(b)(ii) to require an amendment to the Emergency Measures End Date. Where a Change under this paragraph 7.1 is a Qualifying Change the Revised Inputs will take account of:

- (a) COVID 19 Impacts on the revenue of the Franchisee;
- (b) COVID 19 Impacts on the costs of the Franchisee;
- (c) Variations and other Changes occurring during the period in which the Emergency Measures Provisions were in force if they continue to have an impact after the Emergency Measures End Date and constitute Qualifying Changes,

but will not take into account any matter occurring during the period in which the Emergency Measures Provisions were in force and which is not a COVID 19 Impact and which does not itself properly trigger a Change which is a Qualifying Change.

7.2 If a notice is served pursuant to paragraph 7.1 the parties shall discuss if there should be a Variation for the purposes of making appropriate revisions to the terms of the Franchise Agreement to take reasonable account of COVID 19 Impacts arising after the Emergency Measures End Date including to defer the dates for delivering Committed Obligations or other contracted outputs or to remove or amend the scope of such obligations if they are no longer reasonably appropriate including in the context of the adverse impacts of the COVID epidemic on public finances and the Secretary of State shall have an unfettered right in accordance with paragraph 1 of Schedule 9.3 of Schedule to require such a Variation.

If the Change consequent upon any such Variation is a Qualifying Change the process of agreeing Revised Inputs and carrying out a Run of the Financial Model shall be carried out on a basis that is appropriately co-ordinated with the same process in relation to any Change which is a Qualifying Change pursuant to paragraph 7.1. It is acknowledged that it may also be appropriately coordinated with any other Qualifying Changes to be taken into account after the end of Emergency Measures End Date, whether in relation to circumstances arising before or after the Emergency Measures End Date.

7.3 Where a Change pursuant to paragraph 7.1 and/or consequent upon a Variation pursuant to paragraph 7.2 is a Qualifying Change and relevant Revised Inputs have been agreed or reasonably determined by the Secretary of State the Parties may undertake (either individually or jointly) an indicative Run of the Financial Model.

7.4 The Franchisee and the Secretary of State shall each consider the impacts the implementation of any Variation and any Qualifying Change consequent upon the provisions of paragraphs 7.1 and 7.2 and whether taken together they achieve a commercial outcome that such Party thinks is in its own interests (and in the case of the Secretary of State is consistent with his duties and policy). In this context the Parties shall seek to agree if the Franchise Agreement should continue beyond the Emergency Measures End Date. If they do not so agree by the date that is 84 days before the Emergency Measures End Date (or such later date as the Parties

may agree), the Franchise Agreement shall terminate on the Emergency Measures End Date or such later date as the Secretary of State may notify to the Franchisee (it being acknowledged that the Emergency Measures Provisions shall continue to apply until that date).

- 7.5 If the Franchisee has served notice pursuant to paragraph 5: (i) the Franchisee shall not be permitted to serve a notice pursuant to paragraph 7.1, and accordingly (ii) none of paragraphs 7.1 to 7.4, or paragraph 9.1, shall apply.

Secretary of State right to extend the Emergency Measures End Date

8. The Secretary of State may at any time until the end of the date that is one month prior to the Emergency Measures End Date have the right to extend it to a later date specified by the Secretary of State by service of a notice on the Franchisee. The revised Emergency Measures End Date shall be no less than six months and two weeks after service of the notice and occur at 01:59 on the last day of a Reporting Period except in circumstances where (i) the extension is exercised in the circumstances set out in paragraph 7.4 in which case the period of the extension shall be at the discretion of the Secretary of State; (ii) where the extension is pursuant to paragraph 4.1(b)(ii) where the extension will be for the period specified in such sub paragraph; and (iii) where the Secretary of State and the Franchisee otherwise agree a shorter period of extension to the Emergency Measures End Date. The Secretary of State shall be permitted to exercise this right on an unlimited number of occasions.

Post Emergency Measures End Date Position

9. If the Agreement does not terminate on the Emergency Measures End Date:
- 9.1 any Qualifying Change and Variation pursuant to paragraph 7 shall be implemented (except in circumstances where the Franchisee has served notice pursuant to paragraph 5, in which case the Franchisee has no right to serve a notice pursuant to paragraph 7.1 triggering a relevant Change or Variation);
- 9.2 any Qualifying Change triggered during the period when the Emergency Measures Provisions were in force (including in consequence of a Variation) with an impact beyond the Emergency Measures End Date shall be implemented including where the Franchisee has exercised its right to amend the Emergency Measures End Date pursuant to paragraph 5.
- 9.3 The Franchisee and the Secretary of State shall seek to agree the matters set out at (i) – (vi) below and if they have not so agreed by a date 20 days prior to the Emergency Measures End Date the Secretary of State shall have the ability to reasonably determine any matter that has not been agreed:
- (i) amendments to the Franchise Agreement necessary to offset the financial effect on the Franchisee of any Aggregate Funding Requirement Difference that the Parties may agree (or in the absence of agreement the Secretary of State may reasonably determine) exists as at the Emergency Measures End Date. The Parties acknowledge that such amendments might involve:
- (a) if the Aggregate Funding Requirement Difference is a positive amount, adjustments to Franchise Payments (spread as appropriate over the remaining term of the Franchise) in favour of the Franchisee to reflect

the unfunded costs of fulfilling the Relevant Funded Obligations and / or amendments to reduce the scope of the Relevant Funded Obligations; and

- (b) if the Aggregate Funding Requirement Difference is a negative amount, adjustments to Franchise Payments (spread as appropriate over the remaining term of the Franchise) in favour of the Secretary of State to avoid double-recovery by the Franchisee of the costs of fulfilling the Relevant Funded Obligations and / or amendments to increase the scope of the Relevant Funded Obligations;
- (ii) revised provisions in this Agreement in relation to timescales for the carrying out of SQR and ticketless travel baselining surveys and the consequent commencement of related financial incentive regimes;
- (iii) any necessary amendments to Schedules 7.1, Schedule 7.2 and Schedule 7.3 to ensure that such Schedules work as commercially intended when they come into effect it being acknowledged that (without prejudice to paragraph 9.3(i) which shall apply in relation to relevant expenditure commitments) where the Franchise Agreement provides for a financial amount to be adjusted in the final Franchisee Year pro rata to the number of days or Reporting Periods in that final Franchisee Year the Secretary of State (acting reasonably) may require similar appropriate adjustments to be made in respect of the Franchisee Year in respect of which the Emergency Measures End Date occurs;
- (iv) any necessary amendments to Schedule 6.3 (Contractual Incentive Mitigations) to ensure that relevant provisions work as commercially intended when they come into effect it being acknowledged that (without prejudice to paragraph 9.3(i) which shall apply in relation to relevant expenditure commitments) where the Franchise Agreement provides for a financial amount to be adjusted in the final Franchisee Year pro rata to the number of days or Reporting Periods in that final Franchisee Year the Secretary of State (acting reasonably) may require similar appropriate adjustments to be made in respect of the Franchisee Year in respect of which the Emergency Measures End Date occurs;
- (v) any necessary mechanistic amendments to other Franchise Agreement provisions as required to ensure that "part year issues" (for example any apportionments that may be required to "AFA", "DFR", each of the Profit Share Thresholds, Target Revenue, Minimum Marketing Spend and Minimum Marketing Team Spend) are properly addressed it being acknowledged that (without prejudice to paragraph 9.3(i) which shall apply in relation to relevant expenditure commitments) where the Franchise Agreement provides for a financial amount to be adjusted in the final Franchisee Year pro rata to the number of days or Reporting Periods in that final Franchisee Year the Secretary of State (acting reasonably) may require similar appropriate adjustments to be made in respect of the Franchisee Year during which the Emergency Measures End Date occurs;
- (vi) such other matters as may require amendment in order to give proper effect to the commercial intention of this Schedule 9.8.

9.4 For the purposes of the operation of paragraph 9.3 (i) the Franchisee shall:

- (a) keep reasonable records of the Actual EMA Expenditure in respect of each Relevant Funded Obligation,
- (b) make those records and appropriate supporting evidence available to the Secretary of State for inspection if requested to do so, and
- (c) report the amount of Actual EMA Expenditure in respect of each Relevant Funded Obligation to the Secretary of State on reasonable request and in any case following the Emergency Measures End Date.

Relevant Contracts

10.

- 10.1 The Secretary of State shall ensure that where an early termination right is exercised pursuant to the provisions of this Schedule 9.8 (but not in any other circumstances of early termination) contracts of the Franchisee with a term extending beyond the date of Franchise Agreement termination are transferred to a Successor Operator whether by exercising his powers to designate Primary Franchise Assets and include them in a Transfer Scheme or otherwise provided that the Secretary of State shall have no such obligations with regard to any contracts that the Secretary of State reasonably determines would not have been entered into by a franchisee acting in accordance with clause 6 of, and paragraph 3 of Schedule 6.3 to, the Franchise Agreement.
- 10.2 The Franchisee shall provide all such assistance and support as the Secretary of State reasonably requires for the purpose of complying with paragraph 10.1

Franchise Term Extension

- 11. Where the Emergency Measures End Date is 31 March 2023 and the Secretary of State notifies the Franchisee that he is to exercise his right pursuant to clause 5 of the Agreement to extend the Franchise Term and such notice is served on or after 17 September 2022 the Emergency Measures End Date shall (unless the Parties each acting in their sole discretion agree otherwise) be the earlier of the end of the extended Franchise Term and 01:59 on the last date of the seventh Reporting Period of the extended period of the Franchise Term.

SCHEDULE 10

REMEDIES, EVENTS OF DEFAULT AND TERMINATION EVENTS

Schedule 10.1:	Procedure for remedying a Contravention of the Franchise Agreement
Schedule 10.2:	Events of Default and Termination Events
Schedule 10.3:	Force Majeure and Business Continuity
Schedule 10.4:	Liability

Withdrawn

Schedule 10.1

Procedure for remedying a Contravention of the Franchise Agreement**1. Contraventions of the Franchise Agreement**

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

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

2. Remedies for Contraventions of the Franchise Agreement

If the Secretary of State is satisfied that the Franchisee is contravening or is likely to contravene any term of the Franchise Agreement, the Secretary of State may serve a notice on the Franchisee requiring it to propose such steps as the Franchisee considers appropriate for the purpose of securing or facilitating compliance with the term in question (a "**Remedial Plan Notice**").

3. Remedial Plan Notices

3.1 Each Remedial Plan Notice shall specify the following:

- (a) the term or terms of the Franchise Agreement that the Secretary of State is satisfied that the Franchisee is contravening or is likely to contravene (each a "**Relevant Term**"); and
- (b) the time period ("**Remedial Plan Period**") within which the Secretary of State requires the Franchisee to provide an appropriate plan for the purpose of facilitating or securing compliance with such Relevant Term (a "**Remedial Plan**").

4. Remedial Plans

4.1 If the Secretary of State issues a Remedial Plan Notice, the Franchisee shall submit (at its own cost) a Remedial Plan to the Secretary of State within the Remedial Plan Period.

4.2 Each Remedial Plan shall set out:

- (a) the Relevant Term which has caused such Remedial Plan to be required;
- (b) an explanation of the reasons for the contravention or likely contravention of the Relevant Term;
- (c) the steps proposed for the purposes of securing or facilitating compliance with the Relevant Term; and

- (d) the time period within which the Franchisee proposes to implement those steps.

5. Remedial Agreements

- 5.1 If the Secretary of State is satisfied that the matters within such Remedial Plan referred to in paragraphs 4.2(c) and (d) are appropriate (with or without further modification as the Parties may agree) the Secretary of State may require the Franchisee to enter into a supplemental agreement (the "**Remedial Agreement**") with the Secretary of State to implement those matters.
- 5.2 It is a term of the Franchise Agreement that the Franchisee (at its own cost) complies with each Remedial Agreement in accordance with its terms.

6. Effect of Force Majeure Event on a Remedial Agreement

- 6.1 Without prejudice to the operation of paragraph 2.1 of Schedule 10.2 (Events of Default and Termination Events), the following provisions shall apply in relation to Force Majeure Events affecting the Franchisee's performance of their obligations pursuant to a Remedial Agreement:
 - (a) the Franchisee shall give written notice to the Secretary of State promptly after the Franchisee becomes aware (and in any event within twenty-four (24) hours after becoming aware) of the occurrence or likely occurrence of a Force Majeure Event which will or is likely to affect the Franchisee's ability to comply with a Remedial Agreement within the period specified therein;
 - (b) each notice submitted in accordance with paragraph 6.1(a) shall state the extent or likely extent of the relevant Force Majeure Event and in the case of a Force Majeure Event which has not occurred at such time, the reasons why the Franchisee considers it likely to occur;
 - (c) the Franchisee shall use, and shall continue to use, all reasonable endeavours to avoid or reduce the effect or likely effect of any Force Majeure Event on its ability to comply with any Remedial Agreement; and
 - (d) subject to the Franchisee having complied with its obligations under paragraphs 6.1(a) to 6.1(c) (inclusive) the Franchisee shall be entitled to a reasonable extension of the remedial period applicable to a Remedial Agreement in order to take account of the effect of a Force Majeure Event which has occurred on the Franchisee's ability to comply with that Remedial Agreement.

7. Enhanced Monitoring by the Secretary of State

- 7.1 Following the occurrence of a contravention of the Franchise Agreement, the Secretary of State may at the Secretary of State's option (but shall not be obliged to) commence or increase the level and/or frequency of monitoring (whether by inspection, audit or otherwise) of the Franchisee's performance of any relevant obligations until such time as the Franchisee demonstrates, to the Secretary of State's reasonable satisfaction, that it is capable of performing and will perform such obligations as required by the Franchise Agreement.
- 7.2 The Franchisee shall co-operate fully with the Secretary of State in relation to the monitoring referred to in paragraph 7.1.

- 7.3 The results of such monitoring will be reviewed at each Franchise Performance Meeting held pursuant to Schedule 11.1 (Franchise Performance Meetings).
- 7.4 The Franchisee shall compensate the Secretary of State for all reasonable costs incurred by the Secretary of State in carrying out such monitoring.

Withdrawn

Schedule 10.2

Events of Default and Termination Events**1. Definition of Events of Default**

Each of the following is an **"Event of Default"**:

1.1 Insolvency

- (a) **Administration:** Any step being taken by any person with a view to the appointment of an administrator to the Franchisee, the Parent, any Bond Provider or the Guarantor;
- (b) **Insolvency:** Any of the Franchisee, the Parent, any Bond Provider or the Guarantor stopping or suspending or threatening to stop or suspend payment of all or, in the reasonable opinion of the Secretary of State, a material part of (or of a particular type of) its debts, or being unable to pay its debts, or being deemed unable to pay its debts under section 123(1) or (2) of the Insolvency Act 1986 except that in the interpretation of this paragraph the words "it is proved to the satisfaction of the court that" in sub-section (1)(e) and sub-section (2) of section 123 shall be deemed to be deleted;
- (c) **Arrangements with Creditors:** The directors of the Franchisee, the Parent, any Bond Provider or the Guarantor making any proposal under section 1 of the Insolvency Act 1986, or any of the Franchisee, the Parent, any Bond Provider or the Guarantor proposing or making any agreement for the deferral, rescheduling or other readjustment (or proposing or making a general assignment or an arrangement or composition with or for the benefit of creditors) of all or, in the reasonable opinion of the Secretary of State, a material part of (or of a particular type of) its debts, or a moratorium being agreed or declared in respect of or affecting all or, in the reasonable opinion of the Secretary of State, a material part of (or of a particular type of) its debts;
- (d) **Security Enforceable:** Any expropriation, attachment, sequestration, execution or other enforcement action or other similar process affecting any property of the Franchisee or the whole or a substantial part of the assets or undertaking of the Franchisee, the Parent, any Bond Provider or the Guarantor, including the appointment of a receiver, administrative receiver, manager or similar person to enforce that security;
- (e) **Stopping Business/Winding-Up:** Any step being taken by the Franchisee, the Parent, any Bond Provider or Guarantor with a view to its winding-up or any person presenting a winding-up petition or any of the Franchisee, the Parent, any Bond Provider or Guarantor ceasing or threatening to cease to carry on all or, in the reasonable opinion of the Secretary of State, a material part of its business, except for the purpose of and followed by a reconstruction, amalgamation, reorganisation, merger or consolidation on terms approved by the Secretary of State before that step is taken;
- (f) **Railway Administration Order:** A railway administration order being made in relation to the Franchisee under sections 60 to 62 of the Act; and

- (g) **Analogous Events:** Any event occurring which, under the Law of any relevant jurisdiction, has an analogous or equivalent effect to any of the events listed in this paragraph 1.1,

subject, in the case of any relevant event occurring in relation to a Bond Provider where no such other Event of Default has occurred and is unremedied or continuing at such time, to a period of twenty (20) Weekdays having elapsed in order to allow the Franchisee to replace the relevant Bond Provider.

1.2 **Non-payment**

The Franchisee failing to pay to the Secretary of State any amount due under the Franchise Agreement within twenty eight (28) days of the due date for such payment.

1.3 **Change of Control**

A Change of Control other than in accordance with the prior consent of the Secretary of State pursuant to clause 8 (Change of Control and Facilitation Fee).

1.4 **Revocation of Licence**

Revocation of any Licence required to be held by the Franchisee in order to comply with its obligations under the Franchise Agreement.

1.5 **Safety Certificate and Safety Authorisation**

The Safety Certificate and/or Safety Authorisation of the Franchisee being withdrawn or terminated.

1.6 **Passenger Service Performance**

The Franchisee's performance in relation to any Benchmark is **equal to or worse than** the Default Performance Level for that Benchmark for:

- (a) any three (3) consecutive Reporting Periods;
- (b) any four (4) Reporting Periods within a period of thirteen (13) consecutive Reporting Periods; or
- (c) any five (5) Reporting Periods within a period of twenty six (26) consecutive Reporting Periods.

1.7 **Non-compliance with Remedial Agreements and Orders under the Act**

- (a) Non-compliance by the Franchisee with a Remedial Agreement, where such non-compliance is reasonably considered by the Secretary of State to be material.
- (b) Non-compliance by the Franchisee with:
 - (i) a provisional order;
 - (ii) a final order;
 - (iii) a penalty; or

- (iv) any other order made relating to contravention of either a relevant condition or requirement (as defined in section 55 of the Act) or another order,

in each case made by the Secretary of State under the Act.

- (c) Non-compliance by the Franchisee with any enforcement notice issued to it by the Secretary of State pursuant to section 120 of the Act.
- (d) **NOT USED.**

1.8 **Financial Ratios**

Breach by the Franchisee of either or both of the Financial Ratios specified in paragraph 2 of Schedule 12 (Financial Covenants and Bonds).

1.9 **Breach of Law**

- (a) It becoming unlawful for the Franchisee to provide all or, in the reasonable opinion of the Secretary of State, a material part of the Passenger Services or to operate all or, in the reasonable opinion of the Secretary of State, a material number of the Stations or Depots (except to the extent not required under the Franchise Agreement);
- (b) The Franchisee or any of the directors or senior managers of the Franchisee being convicted of manslaughter, fraud or any other indictable criminal offence in each case relating directly to the provision and operation of the Franchise Services; or
- (c) The Franchisee being, in the reasonable opinion of the Secretary of State, in material non-compliance with a prohibition or enforcement order (or the equivalent thereof) issued by the ORR pursuant to its safety functions. If the Franchisee makes an appeal against such prohibition or enforcement order (or such equivalent thereof) in accordance with its terms, no Event of Default shall have occurred under this paragraph 1.9(c) until such appeal has been determined to be unsuccessful.

1.10 **Contravention of Other Obligations**

The occurrence of the following:

- (a) the Franchisee contravening to an extent which is reasonably considered by the Secretary of State to be material any one or more of its obligations under the Franchise Agreement (other than such non-performance or non-compliance as may constitute an Event of Default under the provisions of this Schedule 10.2 other than this paragraph 1.10);
- (b) the service by the Secretary of State on the Franchisee of a written notice specifying:
 - (i) such contravention; and
 - (ii) to the extent the contravention is capable of being remedied, the reasonable period within which the Franchisee is required to so remedy; and

- (c) the Franchisee:
- (i) contravening such obligation or obligations again to an extent which is reasonably considered by the Secretary of State to be material; or
 - (ii) permitting the contravention to continue; or
 - (iii) if the contravention is capable of remedy, failing to remedy such contravention within such period as the Secretary of State has specified in the notice served pursuant to paragraph 1.10(b)(ii).

1.11 Non-membership of Inter-Operator Schemes

The Franchisee ceasing to be a member of, or ceasing to participate in or to be party to, any of the Inter-Operator Schemes, or having its membership or participation therein suspended.

1.12 Bonds

- (a) Any Performance Bond or Season Ticket Bond ceasing to be a legal, valid and binding obligation on the relevant Bond Provider (other than in accordance with its terms) or it otherwise becoming unlawful or impossible for such Bond Provider to perform its obligations thereunder;
- (b) A failure by the Franchisee to procure the provision to the Secretary of State of a Performance Bond (or Performance Bonds) required to be provided pursuant to paragraph 4 of Schedule 12 (Financial Covenants and Bonds) which individually or in aggregate fulfil the requirements of Schedule 12 (Financial Covenants and Bonds); or
- (c) A failure by the Franchisee to procure the provision to the Secretary of State of a Season Ticket Bond (or Season Ticket Bonds) required to be provided pursuant to paragraph 5 of Schedule 12 (Financial Covenants and Bonds) which individually or in aggregate fulfil the requirements of Schedule 12 (Financial Covenants and Bonds).

1.13 Key Contracts

Termination of any Key Contract, or the failure by the Franchisee to take all reasonable steps to enter into an appropriate replacement contract prior to the scheduled expiry date of any Key Contract, except where requested by the Secretary of State or to the extent that the Franchisee has demonstrated to the reasonable satisfaction of the Secretary of State that for the duration of the Franchise Term:

- (a) it is no longer necessary for it to be party to such Key Contract; or
- (b) it has made adequate alternative arrangements in order to be able to continue to provide and operate the Franchise Services.

1.14 Funding Deed

A failure by the Franchisee or the Guarantor to comply with their respective obligations under the Funding Deed.

1.15 **NOT USED.**

1.16 **NOT USED.**

2. **Definition of Termination Events**

Each of the following is a **"Termination Event"**:

- 2.1 any Force Majeure Event continues with the effect of preventing the Franchisee from delivering, wholly or mainly, the Passenger Services for more than six (6) consecutive months; or
- 2.2 the warranty given by the Franchisee pursuant to paragraph 6.1 (Tax Compliance) of Schedule 12 (Financial Covenants and Bonds) is materially untrue; or
- 2.3 the Franchisee commits a material breach of its obligation to notify the Secretary of State of any Occasion of Tax Non-Compliance in respect of any Affected Party (as defined in paragraph 6.3 of Schedule 12 (Financial Covenants and Bonds)) as required by paragraph 6.2(a) of Schedule 12 (Financial Covenants and Bonds); or
- 2.4 the Franchisee fails to provide details of proposed mitigating factors as required by paragraph 6.2(b) of Schedule 12 (Financial Covenants and Bonds) which in the reasonable opinion of the Secretary of State, are acceptable; or
- 2.5 the Secretary of State serves a Competition Event Notice on the Franchisee pursuant to clause 15.5 (*Competition*).

3. **Consequences of Events of Default**

The occurrence of an Event of Default shall constitute a contravention of the Franchise Agreement by the Franchisee. On the occurrence of an Event of Default, the provisions of Schedule 10.1 (*Procedure for remedying a Contravention of the Franchise Agreement*) shall apply.

4. **Notification of Event of Default**

The Franchisee shall notify the Secretary of State as soon as reasonably practicable on, and in any event within twenty four (24) hours of, it becoming aware of the occurrence of an Event of Default or an event which is likely to result in the occurrence of an Event of Default. The Franchisee shall take such action or steps as the Secretary of State may require to remedy any Event of Default or potential Event of Default.

5. **Termination Notices**

- 5.1 The Secretary of State may, on and at any time after the occurrence of:
- (a) (subject to paragraphs 5.2 and 5.3) an Event of Default which:
 - (i) is unremedied or continuing; and
 - (ii) the Secretary of State considers to be material; or
 - (b) a Termination Event specified in paragraph 2.1 of this Schedule 10.2 which is unremedied or continuing; or

- (c) a Termination Event specified in paragraphs 2.2, 2.3, 2.4 and 2.5 of this Schedule 10.2,

terminate the Franchise Agreement by serving a Termination Notice on the Franchisee. The Franchise Agreement shall terminate with effect from the date specified in any such Termination Notice.

- 5.2 The Secretary of State may not serve a Termination Notice in respect of an Event of Default in relation to which a Remedial Plan Notice has been issued until the Remedial Plan Period has expired.
- 5.3 The Secretary of State may not serve a Termination Notice in respect of an Event of Default for which the Franchisee is implementing a Remedial Agreement in accordance with its terms.

6. Consequences of Termination or Expiry

- 6.1 Upon termination of the Franchise Agreement (whether through default or effluxion of time or otherwise) the obligations of the Parties shall cease except for:
- (a) any obligations arising as a result of any antecedent contravention of the Franchise Agreement;
 - (b) any obligations which are expressed to continue in accordance with the terms of the Franchise Agreement; and
 - (c) any other obligations which give effect to such termination or to the consequences of such termination or which otherwise apply (expressly or impliedly) on or after such termination.
- 6.2 Nothing in this paragraph 6 shall prevent the Secretary of State from bringing an action against the Franchisee in connection with the termination of the Franchise Agreement prior to the expiry of the Franchise Term.

Schedule 10.3

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 Franchisee or any of its agents or subcontractors is prevented or restricted by the Infrastructure Manager (including by virtue of the implementation of any Contingency Plan) from gaining access to any section or part of track (including any track running into, through or out of a station) but excluding any track which is required to deliver the HEx Outsourced Services but which is not required to deliver the Franchise Services. For the purposes of this paragraph 1:
 - (i) references to a party being prevented or restricted from gaining access to any section or part of track shall mean that such party is not permitted to operate any trains on the relevant section or part of track, or is only permitted to operate a reduced number of trains from that which it was scheduled to operate;
 - (ii) the period of such prevention or restriction shall be deemed to commence with effect from the first occasion on which the Franchisee is prevented or restricted from operating a train on such section or part of track;
 - (iii) references in paragraphs 1(a)(i) and 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 the Infrastructure Manager, or such other contingency or recovery plan as the Secretary of State may agree from time to time;
- (b) the Franchisee or any of its agents or subcontractors is prevented or restricted by the Infrastructure Manager or any Facility Owner (other than a Facility Owner which is an Affiliate of the Franchisee) from entering or leaving:
 - (i) any station or part thereof (excluding any prevention or restriction from gaining access to any section or part of track running into, through or out of a station) other than any HEx 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 per cent (10%) of all rolling stock vehicles used by the Franchisee in the provision of the Passenger Services in relation to any Service Group are unavailable for use in the provision of the Passenger Services as a result of the occurrence of such event.

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 Franchisee in the provision of the Passenger Services;

- (d) the Franchisee prevents or restricts the operation of any train (other than HEx Rolling Stock) on safety grounds provided that:
 - (i) the Franchisee has, either before or as soon as reasonably practicable after initiating such prevention or restriction, sought the confirmation of the ORR in exercise of its safety functions, or any relevant other body with statutory responsibility for safety in the circumstances, of the necessity of such prevention or restriction; and
 - (ii) if and to the extent that the ORR, or other relevant body with statutory responsibility for safety in the circumstances, in exercise of its safety functions indicates that such prevention or restriction is not necessary, then no Force Majeure Event under this paragraph 1(d) shall continue in respect of that restriction or prevention after the receipt of such indication from the ORR or other relevant body;
- (e) act of God, war damage, enemy action, terrorism or suspected terrorism, riot, civil commotion or rebellion (together **"Emergency Events"**) or the act of any government instrumentality (including the ORR but excluding the Secretary of State) in so far as the act of government instrumentality directly relates to any of the Emergency Events, provided that there shall be no Force Majeure Event under this paragraph 1(e) by reason of:
 - (i) the suicide or attempted suicide of any person that does not constitute an act of terrorism;
 - (ii) the activities of the police, fire service, ambulance service or other equivalent emergency service that are not in response to acts of terrorism or suspected terrorism; or
 - (iii) an act of God which results in the Franchisee or its agents or subcontractors being prevented or restricted by the Infrastructure Manager from gaining access to any relevant section or part of track; and
- (f) any strike or other Industrial Action (other than any strike or Industrial Action to the extent in connection with the HEx Services Agreement and/or

the HEx Outsourced Services) by any or all of the employees of the Franchisee or any or all of the employees of:

- (i) the Infrastructure Manager;
- (ii) the operator of any other railway facility; or
- (iii) any person with whom the Franchisee has a contract or arrangement for the lending, seconding, hiring, contracting out or supervision by that person of train drivers, conductors, other train crew or station or depot staff used by the Franchisee in the provision of the Franchise Services,

or of the agents or 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 Franchisee 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 Franchisee's performance of the Passenger Services;
- (c) at the same time as the Franchisee serves notification on the Secretary of State under paragraph 2.1(b), it informs the Secretary of State of the steps taken and/or proposed to be taken by the Franchisee to prevent the occurrence of, and/or to mitigate and minimise the effects of, the relevant event and to restore the provision of the Passenger Services;
- (d) the relevant event did not occur as a result of:
 - (i) any act or omission to act by the Franchisee or its agents or subcontractors, save that in respect of the occurrence of Industrial Action in accordance with paragraph 1(f), the provisions of paragraph 2.2 apply; or
 - (ii) the Franchisee's own contravention of, or default under, the Franchise Agreement, any Access Agreement, Rolling Stock Related Contract, Property Lease or any other agreement;
- (e) the Franchisee used and continues to use all reasonable endeavours to avert or prevent the occurrence of the relevant event and/or to mitigate and minimise the effects of such event on its performance of the Passenger Services and to restore the provision of the Passenger Services as soon as reasonably practicable after the onset of the occurrence of such event; and

- (f) the Franchisee shall, to the extent reasonably so requested by the Secretary of State, exercise its rights and remedies under any relevant agreement to prevent the occurrence or recurrence of any such event and to obtain appropriate redress and/or compensation from any relevant person.

2.2 Where:

- (a) Industrial Action in accordance with paragraph 1(f) occurs as a result of an act or omission to act by the Franchisee or its agents or subcontractors;
- (b) the Secretary of State reasonably believes that it was reasonable for the Franchisee, its agents or subcontractors (as the case may be) so to act or omit to act; and
- (c) the other conditions specified in paragraph 2.1 have been satisfied,

such occurrence shall be a Force Majeure Event.

- 2.3 This Schedule 10.3 shall not apply in respect of any failure by the Franchisee to comply with its obligations in the HEx Services Agreement.

3. **Consequences of Force Majeure Events**

- 3.1 The Franchisee shall not be responsible for any failure to perform any of its obligations under the Franchise Agreement, nor shall there be any contravention of the Franchise Agreement if and to the extent that such failure is caused by any Force Majeure Event.

- 3.2 If any Force Majeure Event continues, with the effect of preventing the Franchisee from delivering, wholly or mainly, the Passenger Services for more than six (6) consecutive months, it shall be a Termination Event in accordance with paragraph 2.1 (*Definition of Termination Events*) of Schedule 10.2 (*Events of Default and Termination Events*).

4. **Business Continuity**

4.1 **Obligation to Produce a BCP**

- (a) Within one (1) month following the Start Date the Franchisee shall produce and provide to the Secretary of State a written Business Continuity Plan in respect of the Franchise Services and the people, facilities and assets used to provide them which is consistent with the requirements of ISO 22301:2012.
- (b) Within one (1) month of the end of each Franchisee Year the Franchisee shall provide to the Secretary of State a certificate addressed to the Secretary of State and signed by a statutory director of the Franchisee confirming that the Business Continuity Plan is consistent with the requirements of the ISO 22301:2012.

4.2 **No Relief under Force Majeure**

- (a) Nothing in paragraph 3 (Consequences of Force Majeure Events) will relieve the Franchisee from its obligations under the Franchise Agreement to create, implement and operate the Business Continuity Plan.

- (b) If a Force Majeure Event affecting the Franchisee occurs which is an event or circumstance that is within the scope of the Business Continuity Plan, 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 Franchisee 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.

Withdrawn

Schedule 10.4

Liability**1. Exclusion of Liability****1.1 Liability with respect to Passengers and Third Parties**

- (a) The Franchisee hereby acknowledges that the Secretary of State shall not be responsible for the actions of the Franchisee or any Affiliate of the Franchisee and that, except as expressly provided in the Franchise Agreement, the Franchisee shall provide and operate the Franchise Services at its own cost and risk without recourse to the Secretary of State or government funds or guarantees.
- (b) The Franchisee, on demand, shall hold the Secretary of State fully protected and indemnified in respect of all losses, liabilities, costs, charges, expenses, actions, proceedings, claims or demands incurred by or made on the Secretary of State in connection with any death, personal injury, loss or damage suffered by passengers or by any third party using or affected by the Franchise Services and/or the HEx Outsourced Services which is caused or contributed to by the Franchisee, any Affiliate of the Franchisee, or any employee, agent, contractor or sub-contractor of the Franchisee or of any Affiliate of the Franchisee. For the avoidance of doubt this indemnity does not include any specific liability which the Secretary of State has to the Franchisee or which the Secretary of State has to HAL or HEOC in connection with the HEx Outsourced Services.

1.2 Liability of the Secretary of State

Neither the Secretary of State nor any of the Secretary of State's officers, agents or employees shall in any circumstances be liable to the Franchisee for any loss or damage caused by the negligent exercise of any powers reserved to the Secretary of State under the Franchise Agreement, except to the extent that such negligence also constitutes a contravention of an obligation of the Secretary of State under the Franchise Agreement. The Franchisee may not recover from the Secretary of State or any of the Secretary of State's officers, agents, or employees any amount in respect of loss of profit or consequential loss.

2. Review or Monitoring by the Secretary of State

- 2.1 The Secretary of State may for the Secretary of State's own purposes (whether under the Franchise Agreement or under any other arrangement or otherwise and whether before or after the date of the Franchise Agreement) monitor or review any proposals, plans or projects (or any aspect thereof) of the Franchisee under the Franchise Agreement, but no review, enquiry, comment, statement, report or undertaking, made or given by or on behalf of the Secretary of State during such review or monitoring (and no failure to undertake, make or give any review, enquiry, comment or statement) shall operate to exclude or relieve either Party from or reduce or otherwise affect the obligations of such Party under the Franchise Agreement.
- 2.2 The exercise by or on behalf of the Secretary of State of (or, as the case may be, any failure to exercise) any of the Secretary of State's functions, rights or obligations in respect of any review or monitoring process shall not in any way impose any liability, express or implied, on the Secretary of State to any other

Party save to the extent that the exercise (or failure to exercise) of any of such functions, rights or obligations results in a contravention by the Secretary of State of an express provision of the Franchise Agreement and the Secretary of State does not make or give any representation or warranty, either express or implied, as to whether any proposal, plan or project will enable either Party to comply with its obligations under the Franchise Agreement.

Withdrawn

SCHEDULE 11

FRANCHISE PERFORMANCE MEETINGS AND MANAGEMENT INFORMATION

Schedule 11.1:	Franchise Performance Meetings
Schedule 11.2:	Management Information
	Appendix 1: Environmental Information
	Appendix 2: Operational Performance Information
	Appendix 3: Summary of Reporting and Other Requirements

Withdrawn

Schedule 11.1

Franchise Performance Meetings**1. Franchise Performance Meetings**

- 1.1 The Parties shall hold a Franchise Performance Meeting (which shall, if requested by the Secretary of State, also relate to the HEx Outsourced Services) at least once in every Reporting Period (or such other interval as the Secretary of State may notify to the Franchisee in writing) at a time and location notified to the Franchisee by the Secretary of State.
- 1.2 The Franchisee shall ensure that:
- (a) the representatives of the Franchisee at a Franchise Performance Meeting shall include such directors and/or senior managers of the Franchisee as the Secretary of State may require; and
 - (b) representatives of the Parent (which shall include such directors and/or senior managers of the Parent as the Secretary of State may require) attend a Franchise Performance Meeting at least once every quarter.
- 1.3 The Franchisee shall prepare and present such reports to each Franchise Performance Meeting as the Secretary of State may reasonably request, including, if requested by the Secretary of State, in relation to the HEx Outsourced Services. The Franchisee's obligations under this paragraph 1.3 are subject to the Franchisee receiving at least twenty eight (28) days' notice of the requirement to prepare and present any such report.
- 1.4 No comment or failure to comment nor any agreement or approval, implicit or explicit by either Party at a Franchise Performance Meeting will relieve a party of its obligations, constitute a waiver of an obligation or otherwise vary the terms of the Franchise Agreement or the HEx Services Agreement. The terms of the Franchise Agreement shall only be capable of waiver or variation in writing in accordance with clause 14.1 (Waivers) and paragraph 1 of Schedule 9.3 (Variations to the Franchise Agreement and Incentivising Beneficial Changes) (respectively).

2. Contract Management System

- 2.1 The Franchisee shall, no later than the Start Date and thereafter throughout the Franchise Term:
- (a) use the contract management system which the Secretary of State uses to manage the delivery of the obligations under the Franchise Agreement; and
 - (b) use the contract management system to administer any variations to the Franchise Agreement after the Start Date.

Schedule 11.2

Management Information**1. Corporate Information**

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

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

1.2 The Franchisee shall inform the Secretary of State of any:

- (a) material change or proposed material change in its business;
- (b) material change in or restructuring of the capitalisation or financing of the Franchisee, the Parent or the Guarantor; and
- (c) litigation or other dispute which may have a material effect on its business.

For the purposes of paragraph 1.2(a), a material change or proposed material change shall include the employment or the termination of employment of any Key Personnel or the termination of any Key Contract.

2. Information about Assets used in the Franchise

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

- (a) for each Primary Franchise Asset or other asset which is the subject of, or operated under, a Key Contract:
 - (i) the progress and completion of all work described in the maintenance schedules and manuals; and
 - (ii) all operating manuals (including any safety related regulations); and
 - (iii) all permits, licences, certificates or other documents required to operate such asset; and

- (iv) a printed or electronic list of all assets owned by the Franchisee from time to time (excluding, unless otherwise requested by the Secretary of State, any office furniture and consumable items).

3. Identification of Key Personnel and Provision of Organisation Chart

3.1 The Franchisee shall identify and provide to the Secretary of State a schedule of Key Personnel who shall be employed by the Franchisee in the performance of the Franchise Agreement. This shall include but not be limited to the following persons:

- (a) a managing director whose role will include the overall management of the operation of the Franchise Services;
- (b) a train service delivery director, whose role will include responsibility for ensuring compliance by the Franchisee with Schedule 7.1 (*Operational Performance*);
- (c) a safety director, whose role will include responsibility for ensuring that the Franchisee complies with its legal obligations in relation to the Franchise Services including the Safety Certificate; and
- (d) a finance director, whose role will include responsibility in relation to the Financial Model.

3.2 The Franchisee shall nominate a board level director of the Franchisee (or at the Secretary of State's discretion, a board level director of the Parent or any appropriate Affiliate) within fourteen (14) Weekdays of the date of this Agreement. Such board level director's responsibilities shall include overseeing, at a strategic level, the Franchisee's interface with the Secretary of State in relation to sections 119 to 121 (inclusive) of the Act and co-ordinating relevant activities and delivery of counter terrorist security on behalf of the Franchisee in connection with the Franchisee's compliance with relevant instructions issued by the Secretary of State under section 119 of the Act from time to time. Such board level director shall be identified by job title in the organisation chart referred to in paragraph 3.3 and shall be deemed part of the Key Personnel.

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

4. Operational Performance Information

4.1 The Franchisee shall provide to the Secretary of State the information specified in Appendix 2 (*Operational Performance Information*) to this Schedule 11.2 at the times specified therein.

5. Maintenance of Records

5.1 The Franchisee shall 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 Franchise Assets;
- (b) operation of the Franchise Services; and

(c) financial performance of the Franchise,

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 the Franchise Agreement including in relation to maintenance of the Franchise as a going concern in accordance with paragraph 1 of Schedule 14.1 (*Maintenance of Franchise*).

5.2A The Franchisee shall maintain true, up to date and complete records of all of the information required to be provided by the Franchisee under the HEx Services Agreement.

5.2 Unless otherwise agreed by the Secretary of State, all records, books and materials required to be maintained by the Franchisee in accordance with this Schedule 11.2 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 Agreement.

5.3 References to records, books and materials in this Schedule 11.2 shall include records, books and materials maintained under any Previous Franchise Agreement to the extent that such records relate to services equivalent to the Franchise Services and the Franchisee has access to them (which it shall use all reasonable endeavours to secure). Notwithstanding the requirements of paragraphs 5.2 and 5.4, the Franchisee shall only be required to hold such records, books and materials created under any Previous Franchise Agreement for a period of six (6) years following the date of this Agreement.

5.4 The Franchisee shall not be responsible for any records, books or materials maintained under any Previous Franchise Agreement, as referred to in paragraph 5.3, being true, complete and up to date. As soon as reasonably practicable after becoming aware that any such records, books or materials are not true, complete and up to date, the Franchisee shall take all reasonable steps to remedy any such deficiency, and shall thereafter maintain such records, books or materials in accordance with paragraph 5.1.

6. **Right to Inspect**

6.1 The Franchisee shall, if requested by the Secretary of State, allow the Secretary of State and the Secretary of State's representatives and advisers:

(a) to inspect and copy any records referred to in this Schedule 11.2 and the Secretary of State may verify any such records; and/or

(b) to inspect and copy at any reasonable time any books, records and any other material kept by or on behalf of the Franchisee and/or its auditors and any assets (including the Franchise Assets) used by the Franchisee in connection with the Franchise Services and/or the HEx Outsourced Services.

6.2 The Franchisee shall make available to the Secretary of State, the Secretary of State's representatives and advisers the information referred to in paragraph 6.1 and grant or procure the grant of such access (including to or from third parties) as the Secretary of State, the Secretary of State's representatives and advisers shall reasonably require in connection therewith. The obligation of the Franchisee under this paragraph 6.2 shall include an obligation on the Franchisee to grant or procure the grant of such access to premises (including third party premises) where

the information referred to in paragraph 6.1 is kept by or on behalf of the Franchisee.

6.3 The Secretary of State, the Secretary of State's representatives and advisers shall be permitted to take photographs, film or make a video recording, or make any other kind of record of any such inspection.

6.4 If any inspection reveals that information previously supplied to the Secretary of State was, in the reasonable opinion of the Secretary of State, inaccurate in any material respect or if such inspection reveals any other contravention of the Franchisee's obligations under the Franchise Agreement which the Secretary of State considers to be material, the costs of any such inspection shall be borne by the Franchisee.

7. **Information to the Passengers' Council and Local Authorities**

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

8. **Periodic Update Reports**

8.1 The Franchisee shall prepare and submit to the Secretary of State a periodic report in each Reporting Period which shall:

- (a) contain updates on the Franchisee's progress in complying with its Committed Obligations together with any other information as the Secretary of State may specify from time to time;
- (b) relate to the period preceding the date of the report, unless another period is reasonably required by the Secretary of State; and
- (c) be disaggregated to the extent required by the Secretary of State.

8.2 Where, as part of the periodic report referred to in paragraph 8.1, the Secretary of State requires the Franchisee to provide information and/or details in addition to those required pursuant to paragraph 8.1, the Franchisee shall ensure that the periodic report includes such additional information and/or details subject to the Franchisee having received at least twenty eight (28) days' notice of the additional information and/or details required by the Secretary of State.

9. **Financial Information**

9.1 **Accounting Records**

The Franchisee shall prepare and at all times during the Franchise Term maintain true, up to date and complete accounting records as are required to be kept under section 386 of the Companies Act 2006. Such records shall be prepared on a consistent basis for each Reporting Period.

9.2 **Reporting Period Financial Information**

- (a) The Franchisee shall deliver to the Secretary of State, within ten (10) Weekdays of the end of each Reporting Period:

- (i) Management Accounts for such Reporting Period, setting out a cash flow statement, profit and loss account and balance sheet for that Reporting Period and cumulatively for the Franchisee Year to date together with a statement, in a format to be agreed with the Secretary of State, identifying in respect of the HEx Outsourced Services the Service Payments receivable (identifying the Management Fee element) and any Service Payment Adjustment or IR Excluded Event Refunds for the period (provided that where details of Service Payment Adjustments or IR Excluded Event Refunds are not then available, they shall be reported once the relevant details become available);
 - (ii) written confirmation that the Management Accounts, to the best of the knowledge, information and belief of the board of directors of the Franchisee, contain a true and accurate reflection of the current revenues, costs, assets and liabilities of the Franchisee (including contingent assets or liabilities and known business risks and opportunities) and, to the extent that they do not, identify in a written report relevant issues in reasonable detail and provide such further information that the Secretary of State shall reasonably require in relation; and
 - (iii) in circumstances where the Franchisee was in a Lock-up Period during such Reporting Period, written confirmation from a statutory director of the Franchisee that the Franchisee has complied with the restrictions applicable during a Lock-up Period pursuant to paragraph 3 of Schedule 12 (*Financial Covenants and Bonds*);
 - (iv) **NOT USED.**
- (b) The Management Accounts shall also set out:
- (i) sufficient information to enable the Secretary of State to calculate Actual Operating Costs and Modified Revenue on a cumulative basis for the previous thirteen (13) Reporting Periods in accordance with paragraph 2.1 of Schedule 12 (*Financial Covenants and Bonds*);
 - (ii) the ratio of the Franchisee's:
 - (A) Total Modified Revenue to its Total Actual Operating Costs; and
 - (B) Total Forecast Modified Revenue to its Total Forecast Operating Costs,

together with supporting information showing how the Franchisee has calculated such ratios including a breakdown of the Modified Revenue, Forecast Modified Revenue, Actual Operating Costs and Forecast Operating Costs for each of the Reporting Periods used for the purposes of the calculation of the ratios pursuant to this paragraph 9.2(b);
 - (iii) a comparison of the Franchisee's financial performance during such period against the forecast provided by the Franchisee; in the then current Business Plan;

- (iv) a comparison of the Franchisee's cumulative financial performance during the Franchisee Year in which such period occurs against the forecast referred to in paragraph 9.2(b)(iii);
 - (v) a detailed statement and a detailed and comprehensive written explanation of any material differences between such Management Accounts and the forecast referred to in paragraph 9.2(b)(iii);
 - (vi) where the level of financial performance reported in the Management Accounts is, in the reasonable opinion of the Secretary of State, materially worse than forecast by the Franchisee in its current Business Plan, the Secretary of State may require the Franchisee to prepare and submit to the Secretary of State, as soon as reasonably practicable, a Financial Action Plan to ensure that the level of financial performance forecast in its current Business Plan for the remainder of the currency of that Business Plan is achieved and the Franchisee shall use all reasonable endeavours to implement such Financial Action Plan;
 - (vii) a detailed statement and explanation of any Agreed Funding Commitment and PCS Advances (each as defined in the Funding Deed) provided during such Reporting Period and any repayments made during such Reporting Period in respect of (i) previously provided Agreed Funding Commitments as against the AFC Plan (as defined in the Funding Deed) and (ii) PCS Advances; and
 - (viii) separate identification of payments to or from any Affiliate of the Franchisee;
 - (ix) **NOT USED;**
 - (xi) **NOT USED.**
- (c) Within five (5) Weekdays after receipt of the Management Accounts for each Reporting Period in accordance with paragraphs (a) and (b) above, the Secretary of State shall notify the Franchisee of any further information, explanation or analysis which the Secretary of State requires in relation to the Management Accounts (including information in relation to the calculation of the Franchise Payment under the provisions of Schedule 8.1 (*Franchise Payments*)) and the Franchisee shall promptly provide such further information or analysis.

9.3 Quarterly Financial Information

- (a) Within twenty (20) Weekdays after the end of the third (3rd), sixth (6th) and ninth (9th) Reporting Periods in each Franchisee Year, the Franchisee shall deliver to the Secretary of State the following information:
 - (i) an updated version of the profit and loss forecast, cash flow forecast and forecast balance sheet provided in accordance with paragraph 10.1(iv) together with a detailed and comprehensive written explanation as to any changes in such forecast from the previous forecast provided pursuant to the provisions of this Schedule 11.2, for each of the following thirteen (13) Reporting Periods; and

- (ii) a statement of calculation demonstrating the Franchisee's performance against each of the financial covenants in paragraph 2 of Schedule 12 (Financial Covenants and Bonds) at the beginning of each Reporting Period and a forecast of performance against such covenants for each of the following thirteen (13) Reporting Periods.
- (b) Where any Reporting Period falls partly within one Franchisee Year and partly within another, the results for each section of such Reporting Period falling either side of such Franchisee Year end shall be prepared on an accruals basis for each such section of such Reporting Period.

9.4 Annual Financial Information

- (a) Within fifteen (15) Weekdays of the end of each Franchisee Year, the Franchisee shall deliver to the Secretary of State its Annual Management Accounts for that Franchisee Year.
- (b) Within four (4) Reporting Periods after the end of each Franchisee Year, the Franchisee shall deliver to the Secretary of State the following information:
 - (i) its Annual Management Accounts for that Franchisee Year;
 - (ii) certified true copies of its annual report and Annual Audited Accounts for that Franchisee Year, together with copies of all related directors' and auditors' reports;
 - (iii) a reconciliation to the Management Accounts for the same period in a format to be agreed with the Secretary of State;
 - (iv) a reconciliation of the costs and revenues in the Annual Management Accounts to the Annual Audited Accounts;
 - (v) **NOT USED**;
 - (vi) a statement from the Franchisee's auditors confirming compliance with the financial covenants in paragraph 2 of Schedule 12 (Financial Covenants and Bonds);
 - (vii) a statement from the Franchisee (signed by a statutory director of the Franchisee) confirming compliance with the reporting requirements of paragraph 9.2(b)(vii) of this Schedule 11.2; and
 - (viii) a statement, in a format to be agreed with the Secretary of State, identifying, in respect of the HEx Outsourced Services, Service Payments receivable (identifying the Management Fee element) and any Service Payment Adjustment and IR Excluded Event Refunds for the period.

9.5 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 may reasonably specify from time to time;

- (ii) be prepared consistently in accordance with the Franchisee's normal accounting policies, details of which shall be supplied on request to the Secretary of State; and
 - (iii) identify to the reasonable satisfaction of the Secretary of State, any changes in such accounting policies from those policies that were applied in preparing each of the profit and loss account, the cashflow projection and the balance sheet contained in the Financial Model Placed in Escrow on the date of the Franchise Agreement.
- (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 Franchisee for the period covered by such accounts;
 - (B) NOT USED; and
 - (C) NOT USED.

9.6 Parent and Guarantor Accounts

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

9.7 Secretary of State Audit of calculations provided pursuant to paragraphs 9.2 and 9.4

- (a) Without prejudice to paragraph 2.2 of Schedule 12 (*Financial Covenants and Bonds*) or to any other rights of the Secretary of State under the Franchise Agreement, the Secretary of State and the Secretary of State's representatives shall be permitted to inspect at any time the books, records and any other material kept by or on behalf of the Franchisee in order to check or audit any item contained in or relating to the Management Accounts in so far as they relate to:
- (i) the statement of calculations required by paragraph 9.2(b)(ii) of this Schedule 11.2 and any other matter in connection with the Franchisee's obligations under paragraph 2 of Schedule 12 (*Financial Covenants and Bonds*);
 - (ii) **NOT USED**;
 - (iii) **NOT USED**;
 - (iv) **NOT USED**; and

- (v) any other information required pursuant to the provisions of paragraphs 9.2 or 9.4.
- (b) The Franchisee shall make available to the Secretary of State and the Secretary of State's representatives such information and grant such access or procure the grant of such access (including to or from third parties) as they shall reasonably require in connection with any audit to be carried out pursuant to paragraph 9.7(a).
- (c) If any audit carried out pursuant to paragraph 9.7(a) reveals, in the reasonable opinion of the Secretary of State, any material inaccuracy in the Management Accounts, the Annual Management Accounts and/or the Annual Audited Accounts (*but only in so far as such accounts relate to the statement of calculations required by paragraph 9.2(b)(ii)*), then the Secretary of State may exercise the Secretary of State's rights as described in paragraphs 2.2(i) or 2.2(ii) of Schedule 12 (*Financial Covenants and Bonds*) and the Franchisee shall pay all reasonable costs of any such audit as a monitoring cost pursuant to paragraph 7.4 of Schedule 10.1 (*Procedure for remedying a Contravention of the Franchise Agreement*).

10. Business Plans

10.1 Initial Business Plan

- (a) Within three (3) Reporting Periods of the Start Date, the Franchisee shall deliver to the Secretary of State its Initial Business Plan, describing its planned activities for each Franchisee Year during the Franchise Term, which shall include:
 - (i) a description as to how the Franchisee shall meet its obligations under the Franchise Agreement for the Franchise Term, supported by operational plans demonstrating this;
 - (ii) details of any investments proposed to be made or procured by the Franchisee in relation to the Franchise Services during the Franchise Term;
 - (iii) a summary of the Franchisee's plans for marketing and developing the Franchise Services;
 - (iv) a profit and loss forecast, cash flow forecast and forecast balance sheet for each of first thirteen (13) Reporting Periods following the Start Date and each subsequent Franchisee Year of the Franchise Period, together with a list of assumptions on the basis of which each such forecast has been prepared; and
- (v) **NOT USED.**

10.2 Annual Business Plans

- (a) Within twenty (20) Weekdays of the start of the twelfth Reporting Period in each Franchisee Year, the Franchisee shall deliver to the Secretary of State the Franchisee's business plan for the forthcoming Franchisee Year (the "**Annual Business Plan**"). The Annual Business Plan shall be a detailed and comprehensive description of the Franchisee's planned activities for such Franchisee Year and the manner in which the Franchisee shall meet its

obligations under the Franchise Agreement in respect of that Franchisee Year and include:

- (i) a revised profit and loss forecast, cash flow forecast and forecast balance sheet for each of the thirteen (13) Reporting Periods in the relevant Franchisee Year and each subsequent Franchisee Year of the Franchise Period;
 - (ii) a statement of calculation demonstrating the Franchisee's performance against each of the financial covenants in paragraph 2 of Schedule 12 (*Financial Covenants and Bonds*) at the beginning of each of the Reporting Periods in the then current Franchisee Year preceding the relevant Franchisee Year;
 - (iii) a forecast of the Franchisee's performance against the financial covenants in paragraph 2 of Schedule 12 (*Financial Covenants and Bonds*) for each of the following thirteen (13) Reporting Periods; and
 - (iv) an annual improvement plan providing:
 - (A) details of any new technologies, processes, developments and/or proposals which could improve the provision of the Franchise Services, reduce the cost of providing the Franchise Services or enable the Franchise Services to be provided more efficiently;
 - (B) an analysis of the impact of any technologies, processes, developments and/or proposals that are proposed in relation to the Franchise Services, including analyses of the costs of and timescale for effecting such changes and the impact on the provision of the Franchise Services;
 - (C) details of those technologies, processes, developments and/or proposals which the Franchisee proposes to implement during the relevant Franchisee Year; and
 - (D) an analysis of the technologies, processes, developments and/or proposals which the Franchisee implemented in the previous Franchisee Year including details of any cost reductions and/or efficiency gains arising from the same and a reconciliation to the annual improvement plan for that previous Franchisee Year;
 - (v) a statement from each of, a statutory director of the Franchisee and, a statutory director of the Parent confirming that the Annual Business Plan has been provided to, considered and endorsed by the board of directors of the Parent and that the board of directors of the Parent 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.
- (b) If at any time during a Franchisee Year the Franchisee produces any other annual business plan or periodic plan which is delivered to its Parent it shall at the same time as delivering such plan to its Parent notify the Secretary

of State of all such plans and shall explain to the Secretary of State how (if at all) such further plan alters, amends or otherwise varies or impacts on the applicable Annual Business Plan or Initial Business Plan. The Secretary of State shall be entitled to copies of such further plans as the Secretary of State shall reasonably determine.

10.3 Business Action Plan

- (a) The Secretary of State may at any time require the Franchisee to produce a Business Action Plan in respect of any aspect of the Business Plan. Such Business Action Plan may include steps relating to:
 - (i) timetable and service pattern development;
 - (ii) Station facility improvement;
 - (iii) performance management improvement;
 - (iv) customer service improvement; and
 - (v) improvements in the quality of service delivery or the efficiency of delivery of the Franchise Services.
- (b) The Franchisee shall comply with any guidance issued by the Secretary of State about how and with whom any consultation on the content of a Business Action Plan is to take place.
- (c) Any proposal in a Business Action Plan shall only be implemented if and to the extent that the Secretary of State decides it is appropriate to do so and subject to any conditions which the Secretary of State may impose.

11. Safety Information

11.1 Safety

- (a) The Franchisee shall co-operate with any request from any relevant competent authority for provision of information and/or preparation and submission of reports detailing or identifying compliance with safety obligations set out in the Safety Regulations including any breaches of the Safety Regulations.
- (b) The Franchisee shall notify the Secretary of State as soon as practicable of the receipt and contents of any formal notification relating to safety or any improvement or prohibition notice received from the ORR (including in respect of the HEx Outsourced Services). Immediately upon receipt of such notification or notice, the Franchisee shall provide the Secretary of State with a copy of such notification or notice.
- (c) The Franchisee shall participate in industry groups and committees addressing the domestic and European safety agenda of the Railway Group.

12. Further Information

12.1 The Franchisee shall:

- (a) deliver to the Secretary of State, or procure the delivery to the Secretary of State of, such information, records or documents as the Secretary of State may request within such period as the Secretary of State may reasonably require and which relate to or are connected with the Franchisee's performance of the Franchise Agreement; and
- (b) procure that each Affiliate of the Franchisee complies with paragraph 12.1(a) in respect of any information, records or documents that relate to its dealings with the Franchisee in connection with the Franchisee's performance of its obligations under the Franchise Agreement.

12.2 The information referred to in paragraph 12.1 shall include:

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

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

- (a) the information required to be provided under this Schedule 11.2 more frequently than set out in this Schedule 11.2;
- (b) the information required to be provided under this Schedule 11.2, or, in the Secretary of State's discretion, more detailed financial information, at any time in connection with the re-letting of the Franchise; and
- (c) such unaudited accounts under such accounting policies as may be prescribed by the Secretary of State, acting reasonably, from time to time.

13. Information from Third Parties

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

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

13.3 The obligations of the Franchisee under this Schedule 11.2 to provide information to the Secretary of State shall not apply if the Secretary of State notifies the Franchisee that the Secretary of State has received the relevant information

directly from any other person (including the Infrastructure Manager or RSP). The Franchisee shall, if the Secretary of State so requests, confirm or validate any such information which is received from any such other person.

- 13.4 The Franchisee shall promptly advise the Secretary of State of any changes that are to be made to its systems or processes or the systems and processes of the RSP that will, in the reasonable opinion of the Franchisee, materially affect the continuity of any of the records that are provided pursuant to this Schedule 11.2. Any such advice shall include an assessment of the materiality of the relevant change.

14. **Compatibility of Information**

- 14.1 All financial, operational or other information, and any data and records required to be provided to the Secretary of State under the Franchise Agreement shall be provided, if so requested by the Secretary of State, in a form compatible with the Secretary of State's electronic data and records systems on the Start Date, as modified from time to time in accordance with paragraph 3 of Schedule 13.1 (Rail Industry Initiatives and Co-operation).

- 14.2 The Franchisee shall ensure that the interconnection of such systems or the provision of such information, data and records to the Secretary of State under the Franchise Agreement will not result in any infringement of any third party Intellectual Property Rights to which its systems or such information, data or records may be subject.

15. **Environmental Information**

15.1 **Environmental Information Data Collection Plan**

- (a) The Franchisee shall, by no later than three (3) months prior to the Start Date (or, if this Agreement is not signed by the Parties by the date falling three (3) months prior to the Start Date, as soon as reasonably practicable following the Start Date), provide a report to the Secretary of State setting out:
- (i) which measures included in the Dataset the Franchisee is unable to provide, despite using reasonable endeavours to do so ("**Excluded Data**");
 - (ii) for each item of Excluded Data, the technical, operational or commercial reason why the Franchisee is unable to provide the Excluded Data; and
 - (iii) a plan ("**Environmental Data Collection Plan**") detailing, in relation to each item of Excluded Data, the actions which the Franchisee would need to take in order to be able to provide such Excluded Data, the Franchisee's best estimate of the cost of taking such action and the date by which, if such actions were taken, the Franchisee would be able to begin providing such Excluded Data to the Secretary of State.
- (b) The Dataset, excluding any measures which the Secretary of State agrees, acting reasonably, that the Franchisee is, despite using reasonable endeavours, unable to provide, shall be referred to as the "**Initial Dataset**".

- (c) The Secretary of State may require:
- (i) the Franchisee to implement the Environmental Data Collection Plan in whole or in part; and/or
 - (ii) the Franchisee to take such other actions as, in the reasonable opinion of the Secretary of State, would enable the Franchisee to provide any item of Excluded Data,

following which the relevant item of Excluded Data will form part of the Initial Dataset.

- (d) Where the Franchisee is:
- (i) undertaking works, whether at a Station or Depot or in respect of rolling stock;
 - (ii) procuring rolling stock; or
 - (iii) taking any other action which could enable the Franchisee to provide any items of Excluded Data in a cost effective manner,

the Franchisee shall use reasonable endeavours to do so in a manner which would enable the Franchisee to provide any relevant item of Excluded Data (and any item of Excluded Data which the Franchisee becomes able to provide as a result will, with effect from the date on which the Franchisee becomes able to provide the same, form part of the Initial Dataset).

- (e) With effect from the Start Date, the Franchisee shall measure and collect and provide to the Secretary of State in accordance with this paragraph 15, that data included in the Initial Dataset so as to allow the Secretary of State and the Franchisee to understand the current environmental performance of the Franchisee and any potential for improvement in terms of environmental impact.
- (f) The Franchisee may, in its discretion, measure and collect additional data provided that the minimum required under the Initial Dataset is adhered to and the Franchisee shall co-operate with the Secretary of State to seek to identify improvements in the efficiency and/or cost effectiveness of the collection of the data in the Dataset.
- (g) The Franchisee shall ensure that the form of measurement of the Initial Dataset enables it to report a consolidated periodic or annual usage figure to the Secretary of State as specified for each measure in paragraph 1 of Appendix 1 (Environmental Information) to this Schedule 11.2.

15.2 Environmental Impact Monitoring Report and Environmental Impact Monitoring Audit

- (a) The Franchisee shall submit to the Secretary of State a report setting out the result of the data collection of the Initial Dataset required by this paragraph 15 in accordance with the applicable granularity and regularity specified in paragraph 1 of Appendix 1 (Environmental Information) to this Schedule 11.2 (the "**Environmental Impact Monitoring Report**") within three (3) months following the end of each Franchisee Year.

- (b) The Franchisee shall procure a suitably qualified independent body (such independent body to be appointed only with the prior written approval of the Secretary of State) to undertake an annual independent written audit of the data provided in the Environmental Impact Monitoring Report and the collection methodology of the Initial Dataset in respect of each Franchisee Year (the "**Environmental Impact Monitoring Audit**").
- (c) The Franchisee shall procure that the independent body appointed pursuant to paragraph 15.2(b) includes in the Environmental Impact Monitoring Audit:
- (i) a retrospective assessment (covering the Franchisee Year to which the audit relates) of the Franchisee's data collection methodology and level of data granularity carried out in accordance with this paragraph 15.2 and any recommendations by the independent body in respect of such methodology;
 - (ii) a verification of the accuracy of past data submissions made in respect of the Initial Dataset and as summarised in the Environmental Impact Monitoring Report; and
 - (iii) an assessment of the Franchisee's proposed data collection methodology and level of data granularity for the following Franchisee Year's data collection; and
 - (iv) where the independent body has identified as part of its audit any errors, discrepancies or concerns with any of the items described in paragraphs 15.2(c)(i) to (iii) above, whether these are, in the reasonable opinion of the independent body undertaking the audit material or minor errors, discrepancies or concerns.
- (d) The Franchisee shall submit a copy of the Environmental Impact Monitoring Audit to the Secretary of State at the same time as the Environmental Impact Monitoring Report is submitted in accordance with paragraph 15.2(a) above.
- (e) Where the Environmental Impact Monitoring Audit highlights errors, discrepancies or concerns with any of the items described in paragraphs 15.2(c)(i) to (iii) above, the Franchisee shall, at the Franchisee's cost:
- (i) **in the case of minor errors, discrepancies or concerns which are capable of rectification without material additional expenditure** - rectify such minor errors, discrepancies or concerns and resubmit the relevant Environmental Impact Monitoring Report updated to address these to the Secretary of State as soon as reasonably practicable, and in any event within ten (10) Weekdays, following the date of the submission of the Environmental Impact Monitoring Audit to the Secretary of State so that there is a complete and accurate record of the data in question;
 - (ii) **in the case of material errors, discrepancies or concerns which are capable of rectification** - rectify such material errors, discrepancies or concerns and resubmit the relevant Environmental Impact Monitoring Report updated to address these to the Secretary of State as soon as reasonably practicable, and in any event within ten (10) Weekdays, following the date of the submission of the

Environmental Impact Monitoring Audit to the Secretary of State so that there is a complete and accurate record of the data in question; and

- (iii) **in the case of concerns in relation to the Franchisee's data collection methodology and level of data granularity for the forthcoming Franchisee Year's data collection** – make such amendments to such methodology as recommended in the Environmental Impact Monitoring Audit so as to address those concerns.

16. Environmental Impact Targets

16.1 Environmental Impact Targets set by the Secretary of State

The Secretary of State sets out in paragraph 2 of Appendix 1 (Environmental Information) of this Schedule 11.2 the targets for improving the environmental performance of the Franchise (the "**Environmental Impact Targets**"), and the Franchisee shall meet such Environmental Impact Targets during the Franchise Period.

16.2 Performance against the Environmental Impact Targets

- (a) For each Franchisee Year the Secretary of State shall determine the Franchisee's performance against each Environmental Impact Target on an annual basis (within two (2) Reporting Periods of receipt of the Environmental Impact Monitoring Report) by comparing:
 - (i) **for traction carbon emissions:** the Franchisee's performance set out in the Environmental Impact Monitoring Report (as updated following the Environmental Impact Monitoring Audit) against the relevant Environmental Impact Target for the relevant Franchisee Year, in accordance with the annual trajectory specified in the Sustainable Development Strategy;
 - (ii) **for non-traction energy use:** the Franchisee's performance as set out in the Environmental Impact Monitoring Report (as updated following the Environmental Impact Monitoring Audit) against the relevant Environmental Impact Targets;
 - (iii) **for waste:** the Franchisee's performance as set out in the Environmental Impact Monitoring Report (as updated following the Environmental Impact Monitoring Audit) against the relevant Environmental Impact Targets;
 - (iv) **for mains water:** the Franchisee's performance as set out in the Environmental Impact Monitoring Report (as updated following the Environmental Impact Monitoring Audit) against the relevant Environmental Impact Targets.
- (b) For the purposes of undertaking the comparison pursuant to paragraph 16.2(a), the results referred to in paragraphs 16.2(a)(i) to (iii) (as the case may be) shall be rounded up to one (1) decimal place with the midpoint (that is, 4.45) rounded upwards (that is, 4.5).

- (c) As soon as reasonably practicable following the Start Date and in any event within six (6) months of the Start Date, the Franchisee shall produce and provide to the Secretary of State for approval an implementation plan for the duration of the Franchise Period which is capable of achieving each of the Environmental Impact Targets each Franchisee Year (as such implementation plan may be revised in accordance with paragraph 16.3 (the "**Environmental Impact Targets Plan**")).
- (d) Following the Secretary of State's approval, the Franchisee shall use all reasonable endeavours to implement the Environmental Impact Targets Plan in order to achieve the Environmental Impact Targets.
- (e) **NOT USED.**

16.3 Remedial Actions

- (a) In the event that an Environmental Impact Target is not met in any Franchisee Year, the Franchisee shall as soon as reasonably practicable produce and provide to the Secretary of State a revised Environmental Impact Targets Plan which, in the reasonable opinion of the Secretary of State, is capable of achieving the Environmental Impact Targets.
- (b) The Franchisee shall use all reasonable endeavours to implement the revised Environmental Impact Targets Plan, which shall be the Environmental Impact Targets Plan for the purposes of the Franchise Agreement.
- (c) **NOT USED.**

16.4 Publication

The Franchisee shall publish (in such format as the Secretary of State may reasonably 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).

17. Mobile Connectivity Reporting Requirements

17.1 The Franchisee shall monitor the performance of the Mobile Connectivity Service during the first Franchisee Year for the purposes of providing to the Secretary of State a report on the performance of such Mobile Connectivity Service in relation to the first Franchisee Year. Such report shall be submitted to the Secretary of State one (1) month after the end of the first Franchisee Year and without prejudice to the ability of the Parties to agree more frequent reporting (the "**Mobile Connectivity Service Report**").

17.2 The Mobile Connectivity Service Report shall include information on the:

- (a) delivery of the Mobile Connectivity Service during the first Franchisee Year;
- (b) progress against delivery milestones (such as, but not limited to, the fitment of trains with the appropriate equipment to deliver the Mobile Connectivity Service and/or progress on the delivery of external connectivity to trains);
- (c) availability of the Mobile Connectivity Service and associated equipment, including the duration of any significant periods of time during which the

Mobile Connectivity Service and/or associated equipment were not available, the reason for such unavailability and the action taken by the Franchisee in respect of such unavailability; and

- (d) actual average demand by Reporting Period using customer usage statistics to demonstrate:
 - (i) the number of passengers using the Mobile Connectivity Service;
 - (ii) the average duration (in minutes and seconds) of connections to the Mobile Connectivity Service;
 - (iii) the average data (in MBytes) received and transmitted by the Mobile Connectivity Service;
 - (iv) information on the average internet speed (in Mbps) provided by the Mobile Connectivity Service; and
 - (v) information on the average latency figures (in milliseconds) experienced by passengers.
- 17.3 The Franchisee shall also undertake a signal-strength and capacity survey of its Routes ("**Route Signal and Capacity Survey**") to determine the Mobile Connectivity Service coverage, bandwidth and availability of data services to trains on each Route to establish a non-binding baseline for determining the likely:
- (a) per passenger data connection speeds; and
 - (b) the number of connected passengers that can be supported by the Mobile Connectivity Service.
- 17.4 The Route Signal and Capacity Survey shall record the time, date, latitude and longitude information of each measurement point to permit the signal-strength and capacity information of Routes.
- 17.5 The Route Signal and Capacity Survey shall be:
- (a) undertaken as part of the activities associated with the provision of the Mobile Connectivity Service Report; and
 - (b) NOT USED.
- 17.6 The Mobile Connectivity Service Report and the Route Signal Strength and Capacity Survey including any associated data or information shall be shared with the Secretary of State by the Franchisee in an appropriate format that will not require the Secretary of State to acquire any specialist software to access or interpret the information.
- 17.7 The Franchisee shall grant to the Secretary of State a perpetual, non-exclusive, irrevocable, world-wide, paid-up, royalty-free licence to use, copy, modify, transmit, distribute and publish the Mobile Connectivity Service Report and the Route Signal Strength and Capacity Survey for any purpose, and such licence shall be transferrable and/or capable of being sub-licensed.
- 17.8 Without prejudice to any other obligations of the Franchisee including pursuant to Schedule 15.1 (Reletting Provisions) the Franchisee shall make the Mobile

Connectivity Service Report and the Route Signal Strength and Capacity Survey available to potential Successor Operators (including any operator which has expressed an interest in tendering for the right and obligation to operate any or all of the Franchise Services) in connection with any Tendering/Reletting Process.

Withdrawn

APPENDIX 1 TO SCHEDULE 11.2

Environmental Information

1. Environmental Impact Monitoring Dataset

Table 1			
Subject	Unit	Granularity	Regularity
TRACTION	EC4T (kWh)	Breakdown per distinct fleet - metered	Four (4) week period
	EC4T (kWh)	Breakdown per distinct fleet - unmetered	Four (4) week period
	Gas-oil (litres)	Breakdown per distinct fleet	Four (4) week period
NONTRACTION	Electricity (kWh)	Total	Four (4) week period or monthly
	Gas (kWh)	Total	Four (4) week period or monthly
	Gas-oil (litres)	Total	Four (4) week period or monthly
CARBON	Scope 1 emissions (tonnes)	Total	Annual
	Scope 2 emissions (tonnes)	Total	Annual
	Embodied carbon in new infrastructure projects over the amount set out in paragraph 10.3 (b) (Sustainable Construction) of Schedule 13.1 (Rail Industry Initiatives and Co-operation)	Total	Per project
WATER	Mains Water consumption (m ³)	Total	Annual
	Water recycling initiatives	Narrative	Annual
WASTE	Waste generated (tonnes)	Total	Annual
	Waste recycled (tonnes)	Total	Annual
	Waste subject to other recovery (tonnes)	Total	Annual
	Waste to landfill (tonnes)	Total	Annual
	Hazardous waste	Total	Annual
ENVIRONMENTAL MANAGEMENT SYSTEM (EMS)	Enforcement/information Notices	Total	Annual
	Environmental fines or prosecutions	Total	Annual
	Environmental incidents reported through the EMS	Total	Annual
	Environmental training records % personnel briefed/trained	Total	Annual

2. Environmental Impact Targets

Table 2			
Traction Carbon Emissions	Non-Traction Energy Use	Waste	Mains Water
<p>A reduction of:</p> <p>(i) 48% in kg CO2E per vehicle km against the baseline figure of 1.61 CO2E per vehicle km during the first Franchisee Year;</p> <p>(ii) 49% in kg CO2E per vehicle km against the baseline figure of 1.61 CO2E per vehicle km during the second Franchisee Year;</p> <p>(iii) 50% in kg CO2E per vehicle km against the baseline figure of 1.61 CO2E per vehicle km during the third Franchisee Year</p> <p>(iv) (if the Secretary of State exercises his right under clause 5.2 to extend the Franchise Agreement beyond 01:59 on 1 April 2023) 51% in kg CO2E per vehicle km against the baseline figure of 1.61 CO2E per vehicle km during the fourth Franchisee Year; and</p> <p>in each case such reduction to be achieved in accordance with the Sustainable Development Strategy referred to in paragraph 10.2 (Sustainable Development Strategy) of Schedule 13.1 (Rail Industry Initiatives and Co-operation), which will contain a target for each Franchisee Year for this purpose.</p>	<p>A reduction in non-traction energy use by the Franchisee of:</p> <p>(i) 2.5% in kilowatt hours (kWh) against the Baseline kWh Amount during the first Franchisee Year;</p> <p>(ii) 5% in kilowatt hours (kWh) against the Baseline kWh Amount during the second Franchisee Year;</p> <p>(iii) 7.5% in kilowatt hours (kWh) against the Baseline kWh Amount during the third Franchisee Year; and</p> <p>(iv) (if the Secretary of State exercises his right under clause 5.2 to extend the Franchise Agreement beyond 01:59 on 1 April 2023) 10% in kilowatt hours (kWh) against the Baseline kWh Amount during the fourth Franchisee Year.</p> <p>For the purposes of this Part 2 of Appendix 1, "Baseline kWh Amount" shall mean the non-traction energy used by the Franchisee during the period</p>	<p>The Franchisee must send zero non-hazardous waste direct to landfill.</p> <p>The Franchisee must recycle or prepare for re-use 78% of waste (by weight) during the first Franchisee Year (the "Year 1 Recycling/Re-use Level").</p> <p>The Franchisee must increase (on a year-on-year basis) the percentage of waste (by weight) which is recycled or prepared for re-use in the second and every subsequent Franchisee Year by reference to the Year 1 Recycling/Re-use Level.</p>	<p>A reduction of:</p> <p>(i) 4% in mains water consumption against the Baseline Mains Water Amount during the first Franchisee Year;</p> <p>(ii) 8% in mains water consumption against the Baseline Mains Water Amount during the second Franchisee Year;</p> <p>(iii) 10% in mains water consumption against the Baseline Mains Water Amount during the third Franchisee Year; and</p> <p>(iv) (if the Secretary of State exercises his right under clause 5.2 to extend the Franchise Agreement beyond 01:59 on 1 April 2023) 12% in mains water consumption against the Baseline Mains Water Amount during the fourth Franchisee Year.</p> <p>For the purposes of this Part 2 of Appendix 1, "Baseline Mains Water Amount" shall mean the mains water consumed by the Franchisee during the period commencing on 1 April 2019 and ending on 31 March 2020, being the aggregate of the periodic amounts for that period reported by the Franchisee to</p>

Table 2			
Traction Carbon Emissions	Non-Traction Energy Use	Waste	Mains Water
	commencing on 1 April 2019 and ending on 31 March 2020, being the aggregate of the periodic amounts for that period reported by the Franchisee to the Secretary of State pursuant to Appendix 1 of Schedule 13 of the Previous Franchise Agreement.		the Secretary of State pursuant to Appendix 1 of Schedule 13 of the Previous Franchise Agreement.

Withdrawn

APPENDIX 2 TO SCHEDULE 11.2

Operational Performance Information

1. Information about the operational performance of the Franchisee

- 1.1 The Franchisee shall at all times during the Franchise Term maintain records in relation to its operational performance under the Franchise Agreement, covering the areas and the information described in this Appendix 2. Such information shall include details as to whether or not any curtailment, diversion, delay or failure to attain any connection is attributable, in the Franchisee's opinion, to either a Force Majeure Event or the implementation of a Service Recovery Plan.
- 1.2 The Franchisee shall, subject to paragraph 1.3, provide to the Secretary of State the information set out in the following tables at the frequency specified in the Column of each such table headed **"When information to be provided"**.
- 1.3 When so requested by the Secretary of State, the Franchisee shall, within such reasonable period as the Secretary of State may specify, make such information available for review by the Secretary of State by reference to:
 - (a) such level of disaggregation (including by Route or Service Group) as is reasonably specified by the Secretary of State; and
 - (b) any particular day, week or other longer period as is reasonably specified by the Secretary of State.
- 1.4 The following key shall apply to the table in this Appendix 2:

A =	Information to be provided on or before any Passenger Change Date;
B =	Information to be provided for every Reporting Period within ten (10) 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 Franchisee Year.

- 1.5 This Appendix 2 shall be interpreted in accordance with any guidance issued by the Secretary of State from time to time for that purpose.

Table 1 - Operational Performance Information		
Information to be provided	Information (format)	When information to be provided
Number of Passenger Services		
Number of Passenger Services in the Timetable	[number]	B
Number of Passenger Services in the Enforcement Plan of the Day	[number]	B
Number of Cancellations and Partial Cancellations		
Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Cancellation	[number]	B

Table 1 - Operational Performance Information		
Information to be provided	Information (format)	When information to be provided
Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Partial Cancellation	[number]	B
Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Cancellation attributable to the Franchisee's implementation of a Service Recovery Plan	[number]	B
Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Partial Cancellation attributable to the Franchisee's implementation of a Service Recovery Plan	[number]	B
Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Network Rail Cancellation	[number]	B
Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Network Rail Partial Cancellation	[number]	B
Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Disputed Cancellation	[number]	B
Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Disputed Partial Cancellation	[number]	B
Number of Disputed Cancellations and Disputed Partial Cancellations for the twelve (12) preceding Reporting Periods for which the attribution remains in dispute between Network Rail and the Franchisee	[number]	B
Number of Disputed Cancellations and Disputed Partial Cancellations from the twelve (12) preceding Reporting Periods for which disputed attribution has been resolved or determined since the Franchisee's previous report including whether each relevant Disputed Cancellation and/or Disputed Partial Cancellation was attributed to Network Rail or to the Franchisee	[number]	B
Where there is a difference between the Timetable and the Plan of the Day on any day the following: (a) the fact of such difference; and (b) the number of: (i) Passenger Services affected; and (ii) Cancellations or Partial Cancellations which would have arisen if the Timetable on that day had been the same as the Plan of the Day	[number]	B

Table 1 - Operational Performance Information		
Information to be provided	Information (format)	When information to be provided
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
¹³⁹ Number of Short Formations		
Graduated Short Formations		
All Day and Peak		
Number of Peak Passenger Services that have less than the required Passenger Carrying Capacity specified in the Train Plan	[number]	B
Number of Peak Passenger Services that have less than the required Passenger Carrying Capacity specified in the Train Plan attributable to the Franchisee's implementation of a Service Recovery Plan	[number]	B
Number of Peak Passenger Services that have less than the required Passenger Carrying Capacity specified in the Train Plan attributable to the occurrence of a Force Majeure Event	[number]	B
Number of Peak Passenger Services scheduled (excluding Cancellations or Partial Cancellations).	[number]	B
Minutes Delay		
Number of Minutes Delay attributable to the Franchisee	[number]	B
Number of Minutes Delay attributable to Network Rail;	[number]	B
Number of Minutes Delay attributable to any other Train Operator	[number]	B

¹³⁹ 19 June 2020 (Date of Contract Change Letter) – Contract variation agreed by the Secretary of State and Franchisee.

Table 1 - Operational Performance Information		
Information to be provided	Information (format)	When information to be provided
Number of Minutes Delay for such Reporting Period for which the attribution is in dispute between Network Rail and the Franchisee	[number]	B
Number of Minutes Delay for the twelve (12) preceding Reporting Periods for which the attribution remains in dispute between Network Rail and the Franchisee	[number]	B
Number of Minutes Delay from the twelve (12) preceding Reporting Periods for which disputed attribution has been resolved or determined since the Franchisee's previous report and the number of such Minutes Delay attributed to each of the Franchisee and Network Rail as a result of such resolution or determination	[number]	B
Number of Minutes Delay attributed to the occurrence of a Force Majeure Event	[number]	B
T-3, T-15 and On Time		
Time to 3 Minutes percentage published by Network Rail, rounded to two (2) decimal places	[number]	B
Time to 15 Minutes percentage published by Network Rail, rounded to two (2) decimal places	[number]	B
On Time percentage published by Network Rail, rounded to two (2) decimal places	[number]	B
Train Mileage		
Planned Train Mileage	[mileage]	A
Actual Train Mileage	[mileage]	B

APPENDIX 3 TO SCHEDULE 11.2**Summary of Reporting and Other Requirements**

This Appendix contains a non-exhaustive summary of the obligations on the Franchisee throughout this Agreement in respect of the provision of information to the Secretary of State which are not set out in this Schedule 11.2. This summary is for guidance only. If there are any inconsistencies with the other contents of the Schedules mentioned below (including any Appendices), those other contents shall apply.

Reference	Summary of Obligation
Schedule 1.1 (Franchise Services and Service Development), paragraph 11.3(a) (Consultation on Significant Alterations to the Timetable)	Requirement for Franchisee to provide a comprehensive summary of the proposed changes from the Timetable then in force.
Schedule 1.1 (Franchise Services and Service Development), paragraphs 11.3(e) and 11.3(f) (Consultation on Significant Alterations to the Timetable)	Requirement for Franchisee to publish a report containing a summary of the main issues raised by respondents to the consultation.
Schedule 1.1 (Franchise Services and Service Development), paragraph 13.1 (Certification and Notification by Franchisee of Exercising Timetable Development Rights)	Requirement for Franchisee to provide a certificate addressed to the Secretary of State signed by a statutory director in respect of the exercise of timetable development rights.
Schedule 1.1 (Franchise Services and Service Development), paragraph 13.3(a) (Certification and Notification by Franchisee of Exercising Timetable Development Rights)	Requirement for Franchisee to provide copies to the Secretary of State of correspondence in respect of discussions with Network Rail.
Schedule 1.1 (Franchise Services and Service Development), paragraph 14.4 (Finalising the Train Plan)	Requirement for Franchisee to provide the Train Plan certified as true and accurate by a statutory director.
Schedule 1.1 (Franchise Services and Service Development), paragraph 15.1 (Capacity Mitigation Proposal)	Requirement for Franchisee to provide a Capacity Mitigation Proposal if required by the Secretary of State.
Schedule 1.1 (Franchise Services and Service Development), paragraph 16.1 (New or amended Train Service Requirement by Secretary of State and Franchisee's Informed Opinion)	Requirement for Franchisee to provide informed opinion in respect of a new or amended Train Service Requirement.
Schedule 1.2 (Operating Obligations), paragraph 7.7	Provide evidence to the Secretary of State of the steps taken under Paragraph 7 (Obligation to use all reasonable endeavours under this Schedule 1.2).

Reference	Summary of Obligation
Schedule 1.4 (Passenger Facing Obligations), paragraph 4.12 (vi) (reporting of relevant analysis of transfers)	Requirement to provide Secretary of State information to inform transfer decisions.
Schedule 1.4 (Passenger Facing Obligations), paragraph 8 (Publication of Performance Data)	Requirements to publish performance data.
Schedule 1.4 (Passenger Facing Obligations), paragraph 9 (Publication of Complaints and Faults Handling Data)	Requirements to publish complaints and fault handling data.
Schedule 1.5 (Information about Passengers), paragraph 1 (Passenger Numbers Information)	Requirement to provide Secretary of State information about the use by passengers of the Passenger Services.
Schedule 1.5 (Information about Passengers) Paragraph 5.3 (Yield Management Data)	Requirement to notify the Secretary of State in writing of the full names and registered office addresses of the entities which from to time are hosting or storing 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 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).
Schedule 1.6 (The Rolling Stock), paragraph 4 (Rolling Stock Testing and Commissioning)	Requirement to provide information on the Routes for the testing and commissioning of new rolling stock vehicles and new equipment.
Schedule 1.7 (Stations), paragraph 1.11 (Information about Station Asset Management Plan Accreditation)	Where a Station Asset Management Plan Accreditation is lost, the Franchisee will inform the Secretary of State of this fact and the measures it is taking to restore the Accreditation.
Schedule 1.7 (Stations), paragraph 6.5 (Security at Stations)	Requirement to provide notification that Secure Station Accreditation has been achieved.
Schedule 1.7 (Stations), paragraph 7 (Information about Station Improvement Measures)	Requirement to maintain and provide records regarding Station improvement measures and measures taken to improve Station environments.
Schedule 2.2 (Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases), paragraph 2.2 (Rolling Stock Related Contracts and Insurance Arrangements)	Obligation to provide a copy of all draft Rolling Stock Related Contracts and all executed Rolling Stock Related Contracts and any agreements amending the Rolling Stock Related Contracts including such

Reference	Summary of Obligation
	other information as required by the Secretary of State together with a justification of the Franchisee's proposed rolling stock maintenance strategy and provision of analysis of whole life costs.
Schedule 2.2 (Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases), paragraph 3.9(b) (Cascaded Rolling Stock and Delayed Cascade Mitigation Plan)	Requirement to produce a Delayed Cascade Mitigation Plan.
Schedule 2.5 (Transport, Travel and Other Schemes), paragraph 1.5 (Local Authority Concessionary Travel Schemes)	Requirement to provide information about Local Authority Concessionary Travel Schemes.
Schedule 2.5 (Transport, Travel and Other Schemes), paragraph 2.6 (Multi-Modal Fares Schemes)	Requirement to provide information about multi-modal fares schemes.
Schedule 2.5 (Transport, Travel and Other Schemes), paragraph 3.3 (Discount Fares Schemes)	Requirement to provide information about Discount Fares Schemes.
Schedule 2.5 (Transport, Travel and Other Schemes), paragraph 4.4 (Inter-Operator Schemes)	Requirement to provide information about Inter-Operator Schemes.
Schedule 4 (Accessibility and Inclusivity), paragraph 2.7 (obligations for physical alterations at stations relating to persons with disabilities)	Reporting on the progress of accessibility improvements to the Secretary of State.
Schedule 4 (Accessibility and Inclusivity), paragraph 4 (Specific additional obligations relating to persons with disabilities)	Recording of obligations relating to persons with disabilities.
Schedule 4 (Accessibility and Inclusivity), paragraph 5 (Accessibility updates to the ORR)	Provide the Secretary of State with copies of any reports made to the ORR in respect of accessibility matters.
Schedule 5.8 (Fares Regulation Information and Monitoring), paragraph 1 (Information)	Requirement to provide a summary of the Prices of Commuter Fares and Protected Fares to the Secretary of State no later than week twelve (12) of each Fares Setting Round.
Schedule 5.8 (Fares Regulation Information and Monitoring), paragraph 2.1 (Monitoring)	Requirement to provide information relating to the Prices of Commuter Fares and Protected Fares to the Secretary of State and information relating to the Gross Revenue of the Franchisee in relation to the

Reference	Summary of Obligation
	any particular Fare or Fares or any particular period.
Schedule 5.8 (Fares Regulation Information and Monitoring), paragraph 2.2 (Monitoring)	Requirement to provide written confirmation to the Secretary of State from a statutory director whether the Franchisee has complied with the obligations under Schedule 5 (Fares and Smart Ticketing) during each Fares Setting Round.
Schedule 5.9 (Smart Ticketing), paragraph 2.1 (Smart Ticketing)	Prepare and submit a report to the Secretary of State in advance of each Franchise Performance Meeting (in such form as the Secretary of State may reasonably require).
Schedule 6.1 (Franchise Specific Obligations), Part 1, paragraph 5.3 and 5.6 (reporting by the Franchisee)	Reporting on the progress of any heavy maintenance exams and other maintenance activities.
Schedule 6.1 (Franchise Specific Obligations), Part 1, paragraph 6.1 (DA2 CO Underspend and DA2 CI Underspend statements)	Requirement to provide a statement outlining any DA2 CO Underspend or DA2 CI Underspend.
Schedule 6.1 (Franchise Specific Obligations), Part 1, paragraph 6.4 (Continuity Fund Scheme)	Requirement to report on the progress of delivery of each Continuity Fund Scheme
Schedule 6.1 (Franchise Specific Obligations), Part 2, paragraph 2.1 (Boxing Day Services)	Requirement to provide reports setting out proposals for operation of Additional Boxing Day Services.
Schedule 6.1 (Franchise Specific Obligations), Part 3, paragraph 1.3 and 1.4 (cooperation with Crossrail Services)	Where requested provide information to the Secretary of State evidencing the cooperation with Crossrail Services.
Schedule 6.1 (Franchise Specific Obligations), Part 3, paragraph 18 (East West Rail Scheme)	Requirement to provide such information in respect of the East West Rail Scheme as the Secretary of State may reasonably request from time to time.
Schedule 6.1 (Franchise Specific Obligations), Part 3, paragraph 23.8 (approved SIF Scheme reporting)	Requirement to provide regular progress reports in respect of the implementation of any Approved SIF Scheme.
Schedule 6.1 (Franchise Specific Obligations), Part 4, paragraph 1.4 (Rail Development Partnership)	Quarterly reporting on the Rail Development Partnership
Schedule 6.1 (Franchise Specific Obligations), Part 4, paragraph 4 (Future Train Service Enhancement studies)	Requirement to provide a feasibility study on the Future Train Service Enhancements

Reference	Summary of Obligation
Schedule 6.1 (Franchise Specific Obligations), Part 4, paragraph 5 (Committed Schemes)	Requirement to provide detailed reports in relation to any Committed Scheme
Schedule 6.1 (Franchise Specific Obligations), Part 4, paragraph 15.4 (Periodic Required Establishment Report)	Requirement to provide a report prior to each Franchise Performance Meeting
Schedule 6.1 (Franchise Specific Obligations), Part 4, paragraph 17 (Identified Rolling Stock Options and Agreed Rolling Stock Options Appraisals)	Requirement to provide a report summarising any Identified Rolling Stock Options and following an assessment of each option, providing regular progress reports on the Agreed Rolling Stock Options before providing the finalised Rolling Stock Review Report.
Schedule 6.1 (Franchise Specific Obligations), Part 4, paragraph 21 (Preparation for Potential Outcomes of the Williams Rail Review)	Requirement for Franchisee to provide 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).
Schedule 6.1 (Franchise Specific Obligations), Part 4, paragraph 24 (Exeter Depot Funded Works)	Requirement to report on the progress of the Exeter Depot Funded Works
Schedule 6.1 (Franchise Specific Obligations), Part 4, paragraph 26 (GWR Performance Report and Plan)	Requirement to provide the Secretary of State with the updated GWR Performance Report and Plan every two weeks.
Schedule 6.2 (Special Terms related to the Committed Obligations), Part 1, paragraph 49 (Chiltern HyDrive Trials)	Requirement to report on the outcomes of the Chiltern Hydrive Trial undertaken and whether the Franchisee is to proceed with the HyDrive Conversion.
Schedule 6.2 (Special Terms related to the Committed Obligations), Part 1, paragraph 50 (Studies into the longer term traction options for haulage of Sleeper Services)	Requirement to provide the outcomes of studies conducted into longer term options for locomotive haulage of Sleeper Services.
Schedule 6.2 (Special Terms related to the Committed Obligations), Part 1, paragraph 56 (C-DAS optimiser)	Requirement to report on the benefits on the implementation of C-DAS functionality for rolling stock vehicles within the Train Fleet, contained within the C-DAS Optimisation Report.
Schedule 6.2 (Special Terms related to the Committed Obligations), Part 1, paragraph 62 (Flexi Season Ticket Scheme)	Requirement to report to the Secretary of State on the options and assessments of the introduction of the Flexi Season Ticket Scheme.

Reference	Summary of Obligation
Schedule 6.2 (Special Terms related to the Committed Obligations), Part 1, paragraph 89 (Wavelength Programme)	Requirement to report to the Secretary of State the results of the Wavelength Surveys undertaken in each Reporting Period.
Schedule 6.2 (Special Terms related to the Committed Obligations), Part 1, paragraph 92 (Additional Car Parking Spaces)	Requirement to provide progress reports on the additional car parking spaces being provided at Stations.
Schedule 6.2 (Special Terms related to the Committed Obligations), Part 1, paragraph 97 (CI Report data)	Requirement to provide a CI Report identifying the Committed Investments which the Franchisee has invested in.
Part 2 to Schedule 6.2 (Special Terms related to the Committed Obligations), paragraph 5 (Review of Compliance)	Requirement to provide such evidence of compliance with Committed Obligations as the Secretary of State may request.
Schedule 6.3 (Contractual Incentive Mitigations), paragraph 5.3 (Marketing Plan)	Requirement to provide a Draft Marketing Plan.
Schedule 6.3 (Contractual Incentive Mitigations), paragraph 5.5 (Marketing Plan)	Requirement to provide the Marketing Plan.
Schedule 6.3 (Contractual Incentive Mitigations), paragraph 5.10 (Marketing Plan)	Requirement to produce evidence setting out the expenditure incurred and showing that the activities shown in the Marketing Plan for the period under review have been carried out. Reporting requirements and requirement to confirm how further improvements could be made.
Schedule 6.3 (Contractual Incentive Mitigations), paragraph 5.15 (Marketing Plan)	Requirement to report on the effectiveness of the expenditure and activities undertaken as part of the Marketing Plan.
Schedule 6.3 (Contractual Incentive Mitigations), paragraph 6A (Ticketless Travel Surveys)	Requirement to provide a report setting out the results of any Ticketless Travel Surveys and how such surveys were conducted. This is subsequently reported on in the TT Benchmarking Report reflecting the Franchisee's performance in relation to ticketless travel.
Schedule 6.3 (Contractual Incentive Mitigations), paragraph 8 (Changes in numbers and total cost of Employees)	Requirement to provide a report on the number of Employees engaged in employment during each Reporting Period and the Franchisee's plans for recruitment.
Schedule 6.3 (Contractual Incentive Mitigations), paragraph 11 (Changes to the Bid Fares Strategy)	Requirement to provide details, information and supporting documentation relating to changes to the Bid Fares Strategy.

Reference	Summary of Obligation
Schedule 6.3 (Contractual Incentive Mitigations), paragraph 14 (Additions to Annual Business Plan)	Requirement to provide proposals to maximise revenue and minimise or mitigate the impacts of any factors leading to revenue being reduced or increasing less quickly than the Franchisee had forecast.
Schedule 6.4 (Alliances), paragraph 3 (Alliance Agreement with Network Rail)	Requirement to notify the Secretary of State if it receives a termination notice from Network Rail relating to the Alliance Agreement or if Network Rail takes any steps to terminate the Alliance Agreement or warns the Franchisee in writing of termination.
Schedule 6.4 (Alliances), paragraph 4 (Reporting on the Alliance Agreement)	Requirement to report in writing each quarter on activities undertaken pursuant to the Alliance Agreement.
Schedule 6.7 (The IEP Provisions), paragraph 2 (Co-operation with Future Changes to the Sets)	Requirement to provide information as requested by the Secretary of State in order to implement any changes to the Sets, including the provision of copies of Performance Reports and other information received from the TSP.
Schedule 7.1 (Operational Performance), paragraph 2 (Reporting Requirements)	Reporting requirements relating to the operational performance information set out in Appendix 2 (<i>Operational Performance Information</i>) of Schedule 11.2 (<i>Management Information</i>).
Schedule 7.1 (Operational Performance), paragraph 17 (Service Recovery Plans and Force Majeure)	Requirement to provide comprehensive records relating to the implementation of a Service Recovery Plan.
Schedule 7.1 (Operational Performance), paragraph 26.2 (Action Plans)	Requirement to produce an Action Plan to secure a Required Performance Improvement.
Schedule 7.2 (Customer Experience and Engagement), paragraph 5 (Required Improvement and NRPS Action Plans)	Requirement to produce a NRPS Action Plan to secure any Required Improvement for submission to the Secretary of State.
Schedule 7.2 (Customer Experience and Engagement), paragraph 9 (Customer and Stakeholder Engagement Strategy)	Requirement to provide to the Secretary of State any proposed revisions to the Customer and Stakeholder Engagement Strategy.
Schedule 7.2 (Customer Experience and Engagement), paragraph 10 (Customer Report)	Requirement to produce and publish a Customer Report.

Reference	Summary of Obligation
Schedule 7.2 (Customer Experience and Engagement), paragraph 11 (CCI Scheme)	Requirement to provide details of any CCI Scheme proposed by the Franchisee.
Schedule 7.2 (Customer Experience and Engagement), paragraph 12.1 (Customer Service and Satisfaction Data)	Requirement to publish details of the Franchisee's level of adherence to scheduled ticket office opening hours and performance in respect of Passenger Assistance service.
Schedule 7.2 (Customer Experience and Engagement), paragraphs 12.2 and 12.3 (Customer Service and Satisfaction Data)	Requirement to publish NRPS scores achieved by the Franchisee.
Schedule 7.3 (Service Quality Regime) paragraph 7.8 (Independent Service Quality Audit)	Requirement to provide a report together with data produced as a consequence of any Independent Service Quality Audit.
Schedule 7.3 (Service Quality Regime) paragraph 10A (Calibration of SQR Station Benchmark, SQR Train Benchmark and SQR Customer Service Benchmark)	Requirement to provide a statement setting out the data from the Service Quality Inspections and reports provided following such inspections outlining the results, known as the SQR Benchmarking Report.
Schedule 7.3 (Service Quality Regime) paragraph 14 (Reporting Requirements)	Requirement to provide a statement for the information set out in paragraph 14.
Schedule 7.3 (Service Quality Regime) paragraph 15 (Additional Information Requirements)	Requirement to provide a list of each facility or service or train comprised in a SQR Train and SQR Station, London Paddington station or Guildford station (on a Station by Station basis) against which a "fail" was recorded at the end of each Reporting Period.
Schedule 7.3 (Service Quality Regime) paragraph 16 (Maintenance of Records)	Requirement to maintain true, up to date and complete records of the results of each Service Quality Inspections.
Schedule 7.3 (Service Quality Regime) paragraph 17 (Consequences of a Failed Audit)	Requirement to provide a report of the Pass Rates following the Service Quality Inspections in accordance with the audit reports.
Schedule 7.3 (Service Quality Regime) paragraph 20.2 (Consequences of Performance falling below the SQR Benchmark)	Requirement to submit proposals if requested by the Secretary of State within twenty-eight (28) days.
Schedule 8.1 (Franchise Payments) paragraph 9.2 (Net Performance calculations)	Requirement to submit a report setting out the calculations of the Net Performance Sum, the Applicable Cap, the Scaling Factor and each of the Rescaled Liabilities.
Schedule 8.2 (Profit Share Mechanism), paragraph 2 (Relevant Profit Report)	Reporting requirements relating to Relevant Profit Reports.

Reference	Summary of Obligation
Schedule 8.6 (Forecast Revenue Mechanism), paragraph 9.1 (FRM Revenue Report)	Reporting requirements relating to FRM Revenue Report.
Schedule 9.1 (Financial and Other Consequences of Change), paragraph 11 (Information)	Requirement to provide information in respect of obligations under Schedule 9.1 as the Secretary of State may request.
Schedule 9.2 (Identity of the Financial Model (Escrow Documents)), paragraph 1 (Franchisee’s Obligations)	Requirement to provide the Financial Model and the Escrow Documents.
Schedule 9.4 (Secretary of State Risk Assumptions), paragraph 3.4 (Franchise Performance Meetings)	[REDACTED ¹⁴⁰]
[REDACTED ¹⁴¹]	[REDACTED]
[REDACTED ¹⁴²]	[REDACTED]
[REDACTED ¹⁴³]	[REDACTED]
Schedule 10.1 (Procedure for remedying a Contravention of the Franchise Agreement), paragraphs 3 (Remedial Plan Notices) and 4 (Remedial Plans)	Obligation to provide certain information in a Remedial Plan Notices/Remedial Plans.
Schedule 10.3 (Force Majeure and Business Continuity), paragraph 4 (Business Continuity)	Requirement to provide a Business Continuity Plan.

Withdrawn

¹⁴⁰ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹⁴¹ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹⁴² 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹⁴³ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

Reference	Summary of Obligation
Schedule 11.1 (Franchise Performance Meetings), paragraph 1.3 (Franchise Performance Meetings)	Requirement to prepare and present such reports to each Franchise Performance Meeting as the Secretary of State may reasonably requests.
Schedule 13.1 (Rail Industry Initiatives and Co-operation), paragraph 2 (Community Rail Partnerships)	Requirement to provide a Community Rail Report.
Schedule 13.1 (Rail Industry Initiatives and Co-operation), paragraph 8 (Small and Medium-sized Enterprises)	Requirement to provide breakdown of Small and Medium-sized Enterprises.
Schedule 13.1 (Rail Industry Initiatives and Co-operation), paragraph 9 (Apprenticeships)	Requirement to provide the information relating to Apprenticeships as set out in paragraphs 9.1 and 9.2.
Schedule 13.1 (Rail Industry Initiatives and Co-operation), paragraphs 9.2/9.3 (Apprenticeships)	Requirement to submit the Apprenticeships Data Collection Form to the Rail Delivery Group.
Schedule 13.1 (Rail Industry Initiatives and Co-operation), paragraph 10.1(h)	Obligation to provide a report identifying progress in respect of delivering a sustainable franchise and revisions to the Sustainable Development Strategy.
Schedule 13.1 (Rail Industry Initiatives and Co-operation), paragraph 10.1(j)	Requirement on the Franchisee to publish its Sustainable Development Strategy on the request of the Secretary of State.
Schedule 13.1 (Rail Industry Initiatives and Co-operation), paragraph 10.2	Requirement to provide copies of the certification audit reports and a copy of the ISO50001 Energy Review.
Schedule 13.1, paragraph 15 (Safeguarding Strategy)	The Franchisee shall submit a completed safeguarding strategy and plan to the Secretary of State together with written confirmation from the British Transport Police that the safeguarding strategy and plan comply with the requirements of the Safeguarding on Rail Audit as soon as reasonably practicable following such approval and in any event within twelve months of the Start Date.
Schedule 13.1, paragraph 16 (Incident Response Plan)	By no later than six months following the Start Date the Franchisee shall prepare and provide to the Secretary of State for approval the Incident Response Plan.
Schedule 13.1 - paragraph 17 (Cyber Security Information Sharing Strategy)	By no later than six months following the Start Date the Franchisee shall prepare and provide to the Secretary of State for approval the Cyber Security Information Sharing Strategy.

Reference	Summary of Obligation
Schedule 14.4 (Designation of Franchise Assets), paragraph 9 (Provision of Information to the Secretary of State)	Obligation to provide such information as the Secretary of State requires in respect of Primary Franchise Assets including details of Security Interests.
Schedule 14.5 (Dealing with Franchise Assets), paragraph 5 (Miscellaneous)	Obligation to provide such information as the Secretary of State requires in respect of Security Interests.
Schedule 15.1 (Reletting Provisions), paragraphs 2 (Preparation for Reletting) and 3 (Data Site Information)	Obligation to provide certain information to the Secretary of State in respect of a reletting of the Franchise.
Schedule 15.3 (Handover Package), paragraph 1 (Handover Package Status)	Requirement to produce and maintain the Handover Package.
Schedule 15.3 (Handover Package), paragraph 2 (Statutory Director's Certificate)	Requirement to provide a statutory director's certificate in each Franchisee Year.
Schedule 15.3 (Handover Pack) paragraph 3 (Key Contacts List)	Requirement to provide to the Secretary of State the Key Contacts List in accordance with the guidance issued to the Franchisee.
Schedule 15.4 (Provisions applying on and after Termination), paragraph 9 (Information about Passengers)	Requirement to provide passenger numbers information, CRM Data and Yield Management Data on expiry of the Franchise Period.
Appendix 2 (Template Form of Supplemental Agreement) to Schedule 15.4 (Provisions applying on and after Termination), paragraph 2.2 (Net Asset Statement)	Obligation to prepare and provide a net asset statement under the supplemental agreement.
Schedule 16.1 (Railways Pension Scheme), paragraph 6 (Discharge of Obligations)	Obligation to provide a certificate signed by the Trustee in relation to the Franchise Sections stating that the Franchisee has fully complied with its obligations under the Railways Pensions Scheme.
Schedule 17 (Confidentiality, Freedom of Information and Data Protection), paragraph 10 (Redactions)	Obligation to provide details of provisions of the Franchise Documents or any such variations which the Franchisee believes are exempt from the Freedom of Information Act, Environmental Information Regulations or the Act.
Schedule 17 (Confidentiality, Freedom of Information and Data Protection) paragraph 11.2 (Data Protection)	Requirement to notify the Secretary of State of any Franchise Data Breach upon the Franchisee's awareness of the same, including all relevant details, whether the

Reference	Summary of Obligation
	Franchise Data Breach is by itself or by a Franchise Data Processor.
Schedule 17 (Confidentiality, Freedom of Information and Data Protection) paragraph 11.3 (Data Protection)	Requirement to notify (in the case of Franchisee) the Secretary of State and (in the case of any Franchise Data Processor) the Franchisee 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 Franchise Employees, together with the storage, hosting and/or other processing location(s); and 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).

Withdrawn

SCHEDULE 12

FINANCIAL COVENANTS AND BONDS

Schedule 12:	Financial Covenants and Bonds
	Appendix 1: Template Form of Performance Bond
	Appendix 2: Template Form of Season Ticket Bond

Withdrawn

Financial Covenants and Bonds

1. Obligations

- 1.1 Except to the extent that the Secretary of State may otherwise agree from time to time, the Franchisee shall not:
- (a) incur any liability or financial indebtedness except in the ordinary course of providing and operating the Franchise Services;
 - (b) make any loan or grant any credit, or have or permit to subsist any loan or any credit, to any person (other than the deposit of cash with a Bank as permitted under paragraph 1.1(d) or to an employee in the ordinary course of its business);
 - (c) create or permit to subsist any Security Interest over any of its assets or property or give any guarantee or indemnity to or for the benefit of any person or otherwise assume liability or become obliged (actually or contingently) in respect of any obligation of any other person, in each case other than in the ordinary course of the business of providing and operating the Franchise Services; or
 - (d) create or acquire any subsidiary or make or have any investment in any other entity, except for the deposit of cash with a Bank.

2. Financial Ratios

- 2.1 The Franchisee covenants that as at the end of each Reporting Period during the Franchise Term:
- (a) the ratio of its Modified Revenue to its Actual Operating Costs during the Preceding thirteen (13) Reporting Periods of the Franchise Term (or, prior to the end of the thirteenth such Reporting Period, during all preceding Reporting Periods) will **equal or exceed the ratio of 1.050:1**; and
 - (b) the ratio of its Forecast Modified Revenue to its Forecast Operating Costs for the next thirteen (13) Reporting Periods (or, where there are less than thirteen (13) Reporting Periods remaining in the Franchise Term, for all such remaining Reporting Periods) will **equal or exceed the ratio of 1.050:1**; and

for the purposes of this paragraph 2 "**Preceding thirteen (13) Reporting Periods**" means the Reporting Period just ended and the preceding twelve (12) Reporting Periods of the Franchise Term.

2.2 If:

- (a) in respect of any Reporting Period, the Franchisee fails pursuant to paragraph 9.2(b) of Schedule 11.2 (*Management Information*) to provide a statement of calculation of performance against the covenants set out in paragraph 2.1(b) for each of the next thirteen (13) Reporting Periods (or, where there are less than thirteen (13) Reporting Periods remaining in the Franchise Term, for all such remaining Reporting Periods) following any such Reporting Period; or

- (b) the Secretary of State reasonably considers that any particular item of Forecast Modified Revenue or Forecast Operating Cost used for the purposes of determining the Franchisee's performance against the covenants set out in paragraph 2.1(b) has not been accounted for on a reasonable basis (including where the accounting treatment looks to the form rather than the substance),

then the Secretary of State may:

- (i) in the circumstances referred to in paragraph 2.2(a) above reasonably determine the ratio of the Forecast Modified Revenue and Forecast Operating Cost on the basis of information available to the Secretary of State; or
- (ii) in the circumstances referred to in paragraph 2.2(b) above require any such particular item of Forecast Modified Revenue or Forecast Operating Cost to be adjusted in a manner which is fair and reasonable and, so far as reasonably determinable, on the basis on which such particular item of Forecast Modified Revenue or Forecast Operating Cost should have been accounted for by the Franchisee as reasonably determined by the Secretary of State,

in either case after having exercised the Secretary of State's rights under paragraph 9.7 (Secretary of State Audit of calculations provided pursuant to paragraph 9.2(b) (ii)) of Schedule 11.2 (*Management Information*) to the extent that the Secretary of State considers appropriate in the circumstances for the purpose of making any such reasonable determination.

3. **Breach of Financial Ratios**

3.1 The Franchisee shall not during any Lock-up Period, do any of the following without the Secretary of State's consent:

- (a) declare or pay any dividend (equity or preference) or make any other distribution including surrendering any taxable losses to any of its Affiliates or pay any of its Affiliates in respect of taxable losses that they wish to surrender to the Franchisee, without the prior written consent of the Secretary of State;
- (b) pay management charges to any of its Affiliates in excess of those specified in the Initial Business Plan; or
- (c) make payment under any intra-group borrowings,

provided that, during the Lock-up Period, the Franchisee may repay any borrowing and/or make any payment in respect of interest accrued on such borrowing, in each case relating to the Agreed Funding Commitment in accordance with the AFC Plan (each as defined in the Funding Deed).

3.2 "**Lock-up Period**" means any period from the time when either of the ratios referred to in paragraphs 2.1(a) and 2.1(b) falls below the ratio of **1.070:1** until the time at which the Secretary of State is satisfied that the relevant ratio is again above the ratio of **1.070:1**.

3.3 Failure by the Franchisee at any time to comply with either of the ratios referred to in paragraph 2.1 shall be an Event of Default under paragraph 1.8 of Schedule 10.2 (*Events of Default and Termination Events*).

4. **Performance Bond**

4.1 The Franchisee shall procure that there shall be a valid and effective Performance Bond in place with effect from the date of the Franchise Agreement, and the Franchisee shall procure that there shall be a valid and effective Performance Bond in place:

- (a) throughout the Franchise Period; and
- (b) for a further period that is the later of the date:
 - (i) falling one (1) month after the determination of the Purchase Price (as defined in any Supplemental Agreement) under the Supplemental Agreement; and
 - (ii) that is seven (7) Reporting Periods after the end of the Franchise Period.

The provisions of this paragraph 4.1 shall survive the termination of the Franchise Agreement.

4.2 Each Performance Bond shall:

- (a) be substantially in the form set out in Appendix 1 Part A or Appendix 1 Part B (*Template Form of Performance Bond*) to this Schedule 12 the relevant form being determined in accordance with paragraph 4.2A;
- (b) be issued by a Bond Provider;
- (c) in the case of the Initial Performance Bond have a value of [REDACTED¹⁴⁴], and in the case of any Replacement Performance Bond, have a value equal to the amount determined under paragraph 4.4; and
- (d) have a minimum duration of three (3) years.

4.2A The form of Performance Bond set out in Appendix 1 Part A is drafted to satisfy obligations of the Franchisee under this Agreement and the Previous Franchise Agreement. The Initial Performance Bond and any replacement Performance Bond required to be provided whilst there is still an obligation to provide a performance bond under the provisions of the Previous Franchise Agreement shall be in the form set out in Appendix 1 Part A. Any other Performance Bond shall be in the form set out in Appendix 1 Part B.

4.3 **Provision of Replacement Performance Bond**

¹⁴⁴ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

- (a) The Franchisee may replace the then current Performance Bond at any time.
- (b) The Franchisee shall replace each Performance Bond at least six (6) months prior to its scheduled expiry with a Replacement Performance Bond.
- (c) If at any time the Secretary of State reasonably considers the Bond Provider under the then current Performance Bond to be unacceptable, the Secretary of State may require the Franchisee within twenty (20) Weekdays to procure the execution and delivery of a new Performance Bond by a Bond Provider acceptable to the Secretary of State.

4.4 Amount of Replacement Performance Bond

- (a) The value of any Replacement Performance Bond shall be as follows:
 - (i) in relation to the first (1st) Replacement Performance Bond, an amount which is [REDACTED¹⁴⁵] x RPI; and
 - (ii) in relation to each subsequent Replacement Performance Bond an amount which is the amount of the Replacement Performance Bond that it is replacing x RPI.
- (b) For the purpose of this paragraph 4.4, "RPI" shall be the quotient of the Retail Prices Index for the month for which the Retail Prices Index has most recently been determined on the date on which the Franchisee is to replace the Performance Bond divided by the Retail Prices Index for the month in which the Performance Bond that is being replaced was required to be delivered to the Secretary of State.

4.5 Demands under the Performance Bond

- (a) The Performance Bond shall be on terms that it is payable without further enquiry by the Bond Provider to the Secretary of State in full in London on first written demand by the Secretary of State on the Bond Provider, certifying as to any one or more of the following:
 - (i) that the Franchise Agreement has:
 - (A) either terminated or expired and, in either case, in circumstances where there are liabilities or obligations outstanding from the Franchisee to the Secretary of State; and/or
 - (B) terminated solely as a consequence of the occurrence of one or more Events of Default or a Termination Event of a type described in paragraphs 2.2, 2.3, 2.4 and 2.5 of Schedule 10.2 (*Events of Default and Termination Events*) in circumstances where the Secretary of State has incurred or

¹⁴⁵ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

expects to incur losses, liabilities, costs or expenses in connection with early termination of the Franchise;

- (ii) that a railway administration order has been made in relation to the Franchisee pursuant to sections 60 to 62 of the Act;
- (iii) the occurrence of an Event of Default:
 - (A) under paragraph 1.12(a) (*Bonds*) of Schedule 10.2 (*Events of Default and Termination Events*) in relation to the Performance Bond; or
 - (B) under paragraph 1.12(b) (*Bonds*) of Schedule 10.2 (*Events of Default and Termination Events*),

whether or not the Franchise Agreement is, or is to be, terminated as a result thereof;

- (iv) that the Franchisee has failed to perform or comply with its obligations under any Supplemental Agreement;
 - (v) that the Franchisee has failed to provide a Replacement Performance Bond complying with this paragraph 4 at least six (6) months prior to the scheduled expiry of the existing Performance Bond; or
 - (vi) that the Franchisee has failed to procure the execution and delivery of a new Performance Bond by a Bond Provider acceptable to the Secretary of State when required to do so in accordance with paragraph 4.3(c).
- (b) If the Secretary of State makes a demand under the Performance Bond, the Secretary of State shall, within a reasonable period, account to the Franchisee for the proceeds of such Performance Bond **less** the amount of the losses, liabilities costs or expenses which, in the reasonable opinion of the Secretary of State, the Secretary of State or a Successor Operator has incurred or suffered or may be reasonably likely to incur or suffer including as a result of:
- (i) early termination of the Franchise Agreement; and/or
 - (ii) any failure by the Franchisee to perform or comply with any of its obligations to the Secretary of State under the Franchise Agreement or to a Successor Operator under the Supplemental Agreement,

and which are not otherwise recovered by the Secretary of State (including pursuant to Clause 7.3 of the Funding Deed).

- (c) It is agreed that for the purposes of paragraph 4.5(b) losses, liabilities, costs or expenses which the Secretary of State or a Successor Operator has incurred or suffered or may be reasonably likely to incur or suffer shall include any losses, liabilities costs or expenses consequent upon the fact that the Successor Operator and any Train Operators that might succeed the Franchisee in providing all or any of the Franchise Services during the remainder of the Franchise Term may do so on a different financial basis with regard to amounts equivalent to the Franchise Payments and/or other amounts payable pursuant to Schedule 8 of the Franchise Agreement than

the financial basis on which the Franchisee provided the Franchise Services pursuant to the Franchise Agreement.

- (d) Nothing in paragraphs 4.5(b) and 4.5(c) shall oblige the Secretary of State to account to the Franchisee for any proceeds of such Performance Bond in the circumstances described in paragraphs 4.5(a)(iii), 4.5(a)(v) or 4.5(a)(vi) until such time as the Franchisee has procured a Replacement Performance Bond which complies with the requirements of paragraph 4.
- (e) **NOT USED.**

4.6 **Characteristics of Performance Bond Provider**

- (a) In determining whether a Bond Provider under any Replacement Performance Bond is acceptable, the Secretary of State may exercise the Secretary of State's discretion and shall not be obliged to accept a Bond Provider accepted under any previous Performance Bond.
- (b) The Franchisee shall provide such information relating to any Bond Provider or proposed Bond Provider as the Secretary of State may require from time to time.

4.7 **Provision of more than one Performance Bond**

The Franchisee shall be permitted subject to the prior consent of the Secretary of State (such consent not to be unreasonably withheld or delayed) to meet its obligations to provide a valid and effective Performance Bond by providing up to three (3) valid and effective Performance Bonds, the aggregate value of which at all times is equal to the value determined under paragraph 4.4. With the exception of the value of each individual Performance Bond the provisions of the Franchise Agreement in relation to the Performance Bond shall be deemed to apply separately in relation to each such Performance Bond. Where more than one (1) Performance Bond is provided the Secretary of State shall have a discretion as to whether to make a demand under one or more of such Performance Bonds and the extent to which the Secretary of State accounts to the Franchisee for the proceeds of each such Performance Bond in accordance with the provisions of paragraph 4.5(b).

5. **Season Ticket Bond**

5.1 **Provision of Season Ticket Bond**

The Franchisee shall procure that, for each Franchisee Year throughout the Franchise Term and during the relevant call period specified in Clauses 4 and 5 of the Season Ticket Bond, there shall be in place a valid and effective Season Ticket Bond substantially in the form of Appendix 2 (*Template Form of Season Ticket Bond*) to this Schedule 12.

5.2 **Provision of Replacement Season Ticket Bond**

No later than one (1) Reporting Period before the expiry of each Bond Year, the Franchisee shall provide to the Secretary of State (or procure that the Secretary of State receives) a Season Ticket Bond for the following Bond Year:

- (a) substantially in the form of Appendix 2 (*Template Form of Season Ticket Bond*) to this Schedule 12 (or in any other form acceptable to the Secretary of State in the Secretary of State's discretion);

- (b) duly executed and delivered by a Bond Provider acceptable to the Secretary of State; and
- (c) in an amount determined in accordance with paragraph 5.3.

5.3 Amount of Season Ticket Bond

The amount of any Season Ticket Bond shall vary for each Reporting Period during the Bond Year to which the Season Ticket Bond relates in accordance with the following formula:

$$STBA = STL \times \frac{(RPI \times 100) + k}{100} \times Z$$

where:

STBA equals the amount of the Season Ticket Bond in the relevant Reporting Period;

STL equals in respect of such Reporting Period:

- (a) the maximum amount which would be payable by the Franchisee in respect of Season Ticket Fares under and in accordance with a Supplemental Agreement and paragraph 3.3 of Schedule 15.4 (Provisions applying on and after Termination) and the rights and liabilities of the Franchisee relating to an obligation of carriage under the terms of any Season Ticket Fares which were transferred under a Transfer Scheme relating to that Supplemental Agreement to a Successor Operator at that time; and
- (b) the Stored Credit Balance which would be held by the Franchisee,

if the Franchise Agreement were to terminate on any day during the Reporting Period (the "**Relevant Reporting Period**") falling thirteen (13) Reporting Periods before such Reporting Period,

provided that for these purposes only:

- (i) Season Ticket Fares shall mean any Season Ticket Fare which expires more than seven (7) days after it first comes into effect;
- (ii) the Start Date shall be assumed, where relevant, to have occurred before the commencement of the Relevant Reporting Period; and
- (iii) if STL cannot reasonably be determined at the time at which the Franchisee is required under paragraph 5.4 to provide its estimate of the amount of the relevant Season Ticket Bond (including because the Relevant Reporting Period has not yet occurred), the Relevant Reporting Period shall be the Reporting Period falling twenty six (26) Reporting Periods before the Reporting Period in the relevant Bond Year;

RPI equals the quotient of the Retail Prices Index for the month for which the Retail Prices Index has most recently been determined at the time the Franchisee is required under paragraph 5.4 to provide its estimate of the amount of the relevant

Season Ticket Bond divided by the Retail Prices Index for the month falling twelve (12) months before such month;

k has the value attributed to it in Schedule 5 (Fares and Smart Ticketing) for the Fare Year in which the Reporting Period in the relevant Bond Year falls; and

Z equals **+1 or**, if the Relevant Reporting Period falls twenty six (26) Reporting Periods before such Reporting Period, an amount equal to:

$$\frac{(\text{RPI} \times 100) + k}{100}$$

where **RPI** and **k** are determined for the twelve (12) months and the Fare Year preceding the twelve (12) months and the Fare Year for which **RPI** and **k** are respectively determined above.

- 5.4 The Franchisee shall supply to the Secretary of State, not later than three (3) Reporting Periods before the end of each Bond Year, its estimate of the amount of the Season Ticket Bond for each Reporting Period during the following Bond Year and shall supply such details as the Secretary of State may request in connection therewith.
- 5.5 The Franchisee and the Secretary of State shall endeavour to agree the amount of such Season Ticket Bond by no later than two (2) Reporting Periods before the end of each Bond Year. If the Parties are unable to agree the amount of the Season Ticket Bond in respect of any Reporting Period during the following Bond Year, the matter shall be resolved in accordance with the Dispute Resolution Rules.
- 5.6 If the amount of the Season Ticket Bond for each Reporting Period during a Bond Year has not been agreed two (2) Reporting Periods before the end of the preceding Bond Year, then, until the amount is agreed or determined in accordance with the Dispute Resolution Rules, the amount thereof shall be the amount determined by the Secretary of State.
- 5.7 The Secretary of State and the Franchisee may agree to increase or reduce the amount covered or required to be covered under a Season Ticket Bond from time to time.
- 5.8 **Demands under the Season Ticket Bond**
- (a) The Season Ticket Bond shall be on terms that it is payable without further enquiry by the Bond Provider to the Secretary of State in full in London on first written demand by the Secretary of State on the Bond Provider, certifying as to any one or more of the following:
- (i) that the Franchise Agreement has terminated or expired;
 - (ii) that a railway administration order has been made in relation to the Franchisee pursuant to sections 60 to 62 of the Act; or
 - (iii) that an Event of Default:
 - (A) under paragraph 1.12(a) (*Bonds*) of Schedule 10.2 (*Events of Default and Termination Events*) in relation to the Season Ticket Bond; or

(B) under paragraph 1.12(c) (*Bonds*) of Schedule 10.2 (*Events of Default and Termination Events*),

has occurred (whether or not the Franchise Agreement is, or is to be, terminated as a result thereof).

- (b) If the Secretary of State makes a demand under the Season Ticket Bond, the Secretary of State shall account to the Franchisee for the proceeds of such Season Ticket Bond remaining following settlement of all liabilities or obligations of the Franchisee in respect of any Season Ticket Fares and/or Stored Credit Balance that may be transferred or is transferred whether under a Transfer Scheme (or otherwise) to a Successor Operator.
- (c) **NOT USED.**

5.9 **Characteristics of Season Ticket Bond Provider**

- (a) In determining whether a Bond Provider under any replacement Season Ticket Bond is acceptable, the Secretary of State may exercise the Secretary of State's discretion and shall not be obliged to accept a Bond Provider accepted under any previous Season Ticket Bond.
- (b) The Franchisee shall provide such information relating to any Bond Provider or proposed Bond Provider as the Secretary of State may require from time to time.
- (c) The Secretary of State agrees that, subject to receipt of a Season Ticket Bond in an amount determined in accordance with paragraph 5.3 in respect of any Bond Year, the Secretary of State shall release the relevant Bond Provider from any liability under the Season Ticket Bond provided in relation to the preceding Bond Year on the expiry of such Bond Year, provided that no Event of Default has occurred and is unremedied or continuing.

5.9A **Provision of more than one Season Ticket Bond**

The Franchisee shall be permitted subject to the prior consent of the Secretary of State (such consent not to be unreasonably withheld or delayed) to meet its obligations to provide a valid and effective Season Ticket Bond by providing up to three (3) valid and effective Season Ticket Bonds, the aggregate value of which at all times is equal to the value determined under paragraph 5.3. With the exception of the value of each individual Season Ticket Bond the provisions of the Franchise Agreement in relation to the Season Ticket Bond shall be deemed to apply separately in relation to each such Season Ticket Bond. Where more than one (1) Season Ticket Bond is provided the Secretary of State shall have a discretion as to whether to make a demand under one or more of such Season Ticket Bonds and the extent to which the Secretary of State accounts to the Franchisee for the proceeds of each such Season Ticket Bond in accordance with the provisions of paragraph 5.8(b).

5.10 **Meaning of "Reporting Period"**

References in this paragraph 5 to a "**Reporting Period**" shall be construed, where the Franchisee so requests and the Secretary of State consents (such consent not to be unreasonably withheld), to be references to each consecutive seven (7) day period (or such other period as may be agreed) during such Reporting Period. The Franchisee may only make such a request in respect of a maximum of two

(2) Reporting Periods in each Bond Year and only where the amount of the Season Ticket Bond over any such period would, in the reasonable opinion of the Franchisee, differ materially if determined by reference to such seven (7) day periods.

6. Tax Compliance

6.1 The Franchisee represents and warrants that as at the Start Date, it has notified the Secretary of State in writing of any Occasions of Tax Non-Compliance where the Franchisee (including where the Franchisee is an unincorporated joint venture or consortium, the members of that unincorporated joint venture or consortium) is the Affected Party (as defined in paragraph 6.3 below) or any litigation that it is involved in that is in connection with any Occasions of Tax Non Compliance where the Franchisee (including where the Franchisee is a joint venture or consortium, the members of that joint venture or consortium) is the Affected Party.

6.2 If, at any point during the Franchise Term, an Occasion of Tax Non-Compliance occurs in relation to any Affected Party, the Franchisee shall:

- (a) notify the Secretary of State in writing of such fact within five (5) Weekdays of its occurrence; and
- (b) promptly provide to the Secretary of State:
 - (i) details of the steps which the Affected Party is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
 - (ii) such other information in relation to the Occasion of Tax Non-Compliance as the Secretary of State may reasonably require.

6.3 For the purposes of this paragraph 6, the following defined terms shall have the following meanings:

"Affected Party" has the meaning given to it in the definition of Occasion of Tax Non Compliance;

"DOTAS" means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HM Revenue & Customs of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under s.132A Social Security Administration Act 1992;

"General Anti-Abuse Rule" means:

- (a) the legislation in Part 5 of the Finance Act 2013; and

- (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;

“Halifax Abuse Principles”

means the principle explained in the CJEU Case C-255/02 Halifax and others; and

“Occasion of Tax Non-Compliance”

means, in respect of the Franchisee (including where Franchisee is an unincorporated joint venture or consortium, the members of that unincorporated joint venture or consortium) or the Franchisee (such party being the **“Affected Party”**):

- (a) any tax return of the Affected Party submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of:
 - (i) a Relevant Tax Authority successfully challenging the Affected Party under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;
 - (ii) the failure of an avoidance scheme which the Affected Party was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or
- (b) any tax return of the Affected Party submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Start Date or to a civil penalty for fraud or evasion.

APPENDIX 1 TO SCHEDULE 12

Part A

Template Form of Performance Bond

[DOCUMENT "PB" - PERFORMANCE BOND]

Dated [INSERT DATE]

[INSERT NAME OF BOND PROVIDER]

[Template] Performance Bond

*Secretary of State for Transport
33 Horseferry Road
London SW1P 4DR*

To: Secretary of State for Transport
33 Horseferry Road
London
SW1P 4DR
(The "**Secretary of State**")

PERFORMANCE BOND

Whereas:

We are informed that you have entered into:

- (a) a franchise agreement dated 22 March 2015 (the "**Previous Franchise Agreement**") with First Greater Western Limited (company number 05113733) (the "**Franchisee**") relating to the provision of certain railway passenger services and which is due to expire on 1 April 2020 at 01:59; and
- (b) a franchise agreement dated [INSERT DATE] (the "**Franchise Agreement**") with the Franchisee under which the Franchisee will continue to provide certain railway passenger services from 02:00 on 1 April 2020 and which is due to expire at 01:59 on 1 April 2023 or such later date to which it is extended in accordance with its terms,

together the "**Franchise Agreements**".

We are further informed that the Franchise Agreements require that the Secretary of State receives a duly executed performance bond in the amount of the Bond Value (having the meaning given to it in the paragraph below) to secure the performance by the Franchisee of and its compliance with its respective obligations under the Franchise Agreements (and any Supplemental Agreements under either of the Franchise Agreements).

For the purposes of this Bond, references to "**Bond Value**" shall mean (as the case may be):

- (a) in respect of our liability as regards the Call Events described in Clause 2(h) of this Bond, an amount of [REDACTED¹⁴⁶] and
- (b) in respect of our liability as regards the Call Events described in Clauses 2(a) to (g) (inclusive) of this Bond, an amount of [REDACTED¹⁴⁷]

¹⁴⁶ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹⁴⁷ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

provided always that our maximum aggregate liability under the Bond shall not exceed an amount of [REDACTED¹⁴⁸]

Accordingly:

We hereby unconditionally and irrevocably undertake to pay to you in full in London, immediately upon receipt of your first written demand on us in the form set out in the Schedule and, without further enquiry, the sum specified therein. Such written demand shall state:

- (a) the Call Event (as defined in Clause 2 hereof) that has occurred; and
- (b) the date of occurrence of such Call Event.

You may call on us for the whole or part of the amount of our liability hereunder and you may make any number of calls on us up to a maximum aggregate amount of the Bond Value. All sums payable hereunder shall be paid free of any restriction or condition and free and clear of and (except to the extent required by law) without any deduction or withholding, whether for or on account of tax, by way of set-off or otherwise.

1. The undertaking given by us above shall operate provided that:
 - (a) our maximum liability shall be limited to a sum or sums not exceeding in the aggregate the amount of the Bond Value or such lesser amount as you may notify us of from time to time in writing, separately from any demand, shall constitute the Bond Value of this Bond; and
 - (b) notwithstanding anything contained herein, our liability hereunder shall expire on the earliest of:
 - (i) the date falling six (6) months after the date on which any railway administration order is made in relation to the Franchisee pursuant to sections 60 to 62 of the Railways Act 1993; and
 - (ii) where the Previous Franchise Agreement has been terminated or expires and the Franchise Agreement has either not been entered into or has been terminated prior to the Start Date (as defined in the Franchise Agreement) the later of:
 - (A) the date falling one (1) month after the determination of the Purchase Price (as defined in any Supplemental Agreement under the Previous Franchise Agreement) under the Supplemental Agreement under the Previous Franchise Agreement; and
 - (B) the date falling seven (7) Reporting Periods after the end of the Franchise Period (as defined in the Previous Franchise Agreement); and

¹⁴⁸ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

- (iii) where the Previous Franchise Agreement has been terminated or expires and the Franchise Agreement has been entered into and remains in force as at the Start Date (as defined in the Franchise Agreement) the later of:
 - (A) the date falling one (1) month after the determination of the Purchase Price (as defined in any Supplemental Agreement under the Franchise Agreement) under each relevant Supplemental Agreement under the Franchise Agreement; and
 - (B) the date falling seven (7) Reporting Periods after the end of the Franchise Period (as defined in the Franchise Agreement); and
 - (C) the end of the Franchise Term (as defined in the Franchise Agreement); and
- (iv) [INSERT DATE],

except in respect of any written demand for payment complying with all the requirements hereof which is received by us on or before such date for either the Bond Value, or for such lesser amount which, when aggregated with any previous demands, amounts to the Bond Value or less, after which date this undertaking shall be void whether returned to us or not.

2. **"Call Event"** means, in this Bond, any of:

- (a) the termination or expiry of the Franchise Agreement in circumstances where there are liabilities or obligations outstanding from the Franchisee to the Secretary of State;
- (b) the termination of the Franchise Agreement solely as a consequence of the occurrence of one or more Events of Default or a Termination Event of a type described in paragraphs 2.2, 2.3, 2.4 and 2.5 of Schedule 10.2 (*Events of Default and Termination Events*) in circumstances where the Secretary of State has incurred or expects to incur losses, liabilities, costs or expenses in connection with early termination of the Great Western franchise;
- (c) the making of a railway administration order in relation to the Franchisee pursuant to sections 60 to 62 of the Railways Act 1993;
- (d) the occurrence of an Event of Default under the Franchise Agreement in respect of:
 - (i) paragraph 1.12(a) (*Bonds*) of Schedule 10.2 (*Events of Default and Termination Events*) of the Franchise Agreement in relation to the Performance Bond; or
 - (ii) paragraph 1.12(b) (*Bonds*) of Schedule 10.2 (*Events of Default and Termination Events*) of the Franchise Agreement,

whether or not the Franchise Agreement is, or is to be, terminated as a result thereof;

- (e) the failure by the Franchisee to perform or comply with its obligations under any Supplemental Agreement under the Franchise Agreement;
- (f) the failure by the Franchisee to provide the Secretary of State with a Replacement Performance Bond which complies with paragraph 4 of Schedule 12 (*Financial Covenants and Bonds*) of the Franchise Agreement at least six (6) months prior to the scheduled expiry of the existing Performance Bond;
- (g) the failure by the Franchisee to procure the execution and delivery of a new Performance Bond by a Bond Provider in favour of and acceptable to the Secretary of State when required to do so in accordance with paragraph 4.3(c) of Schedule 12 (*Financial Covenants and Bonds*) of the Franchise Agreement; or
- (h) in the period commencing on the date of this Bond and ending on the earlier of: (1) the event described in Clause 1(b)(i); and (2) the later of the events described in Clause 1(b)(ii)(A) and (B):
 - (i) the early termination or expiry of the Previous Franchise Agreement in circumstances where there are liabilities or obligations outstanding from the Franchisee to the Secretary of State;
 - (ii) the early termination of the Previous Franchise Agreement (solely as a consequence of the occurrence of one or more Events of Default (as defined in the Previous Franchise Agreement) or a Termination Event as described in any of paragraphs 3.1(b), 3.1(c) or 3.1(d) of Schedule 10.3 (Events of Default and Termination Events) of the Previous Franchise Agreement) in circumstances where the Secretary of State has incurred or expects to incur additional costs in connection with termination of the Great Western franchise;
 - (iii) the occurrence of an Event of Default under the Previous Franchise Agreement in respect of:
 - (A) paragraph 2.13(a) of Schedule 10.3 (Events of Default and Termination Event) of the Previous Franchise Agreement in relation to the Performance Bond (as defined under the Previous Franchise Agreement); or
 - (B) paragraph 2.13(b) of Schedule 10.3 (Events of Default and Termination Event) of the Previous Franchise Agreement, whether or not the Previous Franchise Agreement is, or is to be, terminated as a result thereof;
 - (iv) the failure by the Franchisee to perform or comply with its obligations under any Supplemental Agreement in relation to the Previous Franchise Agreement;
 - (v) the failure by the Franchisee to provide the Secretary of State with a replacement Performance Bond which complies with paragraph 4 of Schedule 12 (*Financial Obligations and Covenants*) of the Previous Franchise Agreement at least six (6) months prior to the scheduled expiry of the existing Performance Bond; or

(vi) the failure by the Franchisee to procure the execution and delivery of a new Performance Bond by a Bond Provider in favour of and acceptable to the Secretary of State when required to do so in accordance with paragraph 4.3(c) of Schedule 12 (Financial Obligations and Covenants) of the Previous Franchise Agreement.

3. This undertaking is made to you, your successors and your assigns.
4. This undertaking shall not be discharged or released by time, indulgence, waiver, alteration or release of, or in respect to, the obligations of the Franchisee under the Franchise Agreement, the Previous Franchise Agreement or any applicable Supplemental Agreement or any other circumstances that might operate as a release of a guarantor at law or in equity.
5. You may make demand or give notice to us under this Bond in writing by hand or via email transmission to us as follows:

Address: [INSERT BOND PROVIDER'S ADDRESS]

Email Address: [INSERT BOND PROVIDER'S EMAIL ADDRESS]
6. References in this Bond to the Franchise Agreement, the Previous Franchise Agreement and the Supplemental Agreement are to the Franchise Agreement, the Previous Franchise Agreement and any Supplemental Agreement as amended from time to time.
7. Where used in this Bond, capitalised terms have the same meanings as in the Franchise Agreement.
8. This Bond shall be governed by and construed in accordance with the laws of England and Wales.

Executed as a deed this [INSERT DAY AND MONTH] of [INSERT YEAR].

SCHEDULE TO THE PERFORMANCE BOND

SPECIMEN DEMAND NOTICE

To: [INSERT NAME AND ADDRESS OF BOND PROVIDER]

[INSERT DATE OF DEMAND NOTICE]

We refer to the performance bond issued by you on [INSERT DATE OF BOND] (the "**Performance Bond**") in connection with the franchise agreement (the "**Franchise Agreement**") entered into between the Secretary of State for Transport (the "**Secretary of State**") and [INSERT NAME OF FRANCHISEE] (the "**Franchisee**") on [INSERT FRANCHISE AGREEMENT SIGNATURE DATE].

We hereby notify you that the following Call Event (as defined in the Performance Bond) occurred on [INSERT DATE OF OCCURRENCE OF CALL EVENT]: **[DRAFTING NOTE: DELETE AS APPROPRIATE]**

- [The [Previous] Franchise Agreement has **[terminated/expired]** on [INSERT DATE OF TERMINATION/EXPIRY] in circumstances where there are liabilities or obligations outstanding from the Franchisee to the Secretary of State.]
- The [Previous] Franchise Agreement has terminated [early] solely as a consequence of the occurrence of one or more Events of Default or a Termination Event [of a type described in paragraphs 2.2, 2.3, 2.4 and 2.5 of Schedule 10.2 (*Events of Default and Termination Events*)] [of a type described in any of paragraphs 3.1(b), 3.1(c) or 3.1(d) of Schedule 10.3 (*Events of Default and Termination Events*) of the Previous Franchise Agreement] on [INSERT DATE OF TERMINATION] in circumstances where the Secretary of State has incurred or expects to incur [losses, liabilities, costs or expenses][additional costs] in connection with early termination of the [INSERT NAME OF THE FRANCHISE] franchise.
- [A railway administration order has been made in relation to the Franchisee pursuant to sections 60 to 62 of the Railways Act 1993.]
- [That an Event of Default under the [Previous] Franchise Agreement has occurred under:
 - [(a) paragraph [2.13(a) of Schedule 10.3 (*Events of Default and Termination Events*) of the Previous Franchise Agreement in relation to the Performance Bond] 1.12(a) (*Bonds*) of Schedule 10.2 (*Events of Default and Termination Events*) of the Franchise Agreement in relation to the Performance Bond; or]
 - [(b) paragraph [2.13(b) of Schedule 10.3 (*Events of Default and Termination Events*) of the Previous Franchise Agreement] 1.12(b) (*Bonds*) of Schedule 10.2 (*Events of Default and Termination Events*) of the Franchise Agreement.]]
- [The Franchise Agreement has terminated in circumstances where the Secretary of State has incurred or expects to incur additional costs in connection with early termination of the [INSERT NAME OF FRANCHISE] franchise.]
- [The Franchisee has failed to perform or comply with its obligations under any Supplemental Agreement relating to the [Previous] Franchise Agreement.]

- [The Franchisee has failed to provide a Replacement Performance Bond (as described in the [Previous] Franchise Agreement) complying with paragraph 4 of Schedule 12 (*Financial Covenants and Bonds*) of the [Previous] Franchise Agreement at least six (6) months prior to the scheduled expiry of the existing Performance Bond.]
- [The Franchisee has failed to procure the execution and delivery of a new Performance Bond by a Bond Provider acceptable to the Secretary of State when required to do so in accordance with paragraph 4.3(c) of Schedule 12 (*Financial Covenants and Bonds*) of the [Previous] Franchise Agreement.]

We hereby demand immediate payment from you of [SPECIFY ALTERNATIVE AMOUNT IF NOT BOND VALUE] or the Bond Value, whichever is smaller.

Please arrange for immediate payment of the relevant amount as follows:

[INSERT ACCOUNT DETAILS TO WHICH BOND MONIES TO BE PAID INTO]

Where used in this Notice, capitalised terms have the same meanings as in the Franchise Agreement.

For and on behalf of **Secretary of State for Transport**

.....

Withdrawn

Part B

Template Form of Performance Bond

[DOCUMENT "PB" - PERFORMANCE BOND]

Dated [INSERT DATE]

[INSERT NAME OF BOND PROVIDER]

[Template] Performance Bond

*Secretary of State for Transport
33 Horseferry Road
London SW1P 4DR*

To: Secretary of State for Transport
33 Horseferry Road
London
SW1P 4DR
(The "**Secretary of State**")

PERFORMANCE BOND

Whereas:

We are informed that you have entered into a franchise agreement dated [INSERT DATE] (the "**Franchise Agreement**") with [INSERT NAME OF FRANCHISEE] (the "**Franchisee**"). Pursuant to the Franchise Agreement the Franchisee shall provide certain railway passenger services.

We are further informed that the Franchise Agreement requires that the Secretary of State receives a duly executed performance bond in the amount of [£INSERT AMOUNT IN NUMBERS (INSERT AMOUNT IN WORDS)] (the "**Bond Value**") to secure the performance by the Franchisee of and its compliance with their respective obligations under the Franchise Agreement and any Supplemental Agreement.

Accordingly:

We hereby unconditionally and irrevocably undertake to pay to you in full in London, immediately upon receipt of your first written demand on us in the form set out in the Schedule and, without further enquiry, the sum specified therein. Such written demand shall state:

- (a) the Call Event (as defined in Clause 2 hereof) that has occurred; and
- (b) the date of occurrence of such Call Event.

You may call on us for the whole or part of the amount of our liability hereunder and you may make any number of calls on us up to a maximum aggregate amount of the Bond Value. All sums payable hereunder shall be paid free of any restriction or condition and free and clear of and (except to the extent required by law) without any deduction or withholding, whether for or on account of tax, by way of set-off or otherwise.

1. The undertaking given by us above shall operate provided that:

- (a) our maximum liability shall be limited to a sum or sums not exceeding in the aggregate the amount of the Bond Value or such lesser amount as you may notify us of from time to time in writing, separately from any demand, shall constitute the Bond Value of this Bond; and
- (b) notwithstanding anything contained herein, our liability hereunder shall expire on the earliest of:
 - (i) the date falling six (6) months after the date on which any railway administration order is made in relation to the Franchisee pursuant to sections 60 to 62 of the Railways Act 1993; and
 - (ii) the latest of:

- (A) the date falling one (1) month after the determination of the Purchase Price (as defined in any Supplemental Agreement) under each relevant Supplemental Agreement; and
- (B) the date falling seven (7) Reporting Periods after the end of the Franchise Period; and
- (C) the end of the Franchise Term; and

(iii) [INSERT DATE],

except in respect of any written demand for payment complying with all the requirements hereof which is received by us on or before such date for either the Bond Value, or for such lesser amount which, when aggregated with any previous demands, amounts to the Bond Value or less, after which date this undertaking shall be void whether returned to us or not.

2. **“Call Event”** means, in this Bond, any of:

- (a) the termination or expiry of the Franchise Agreement in circumstances where there are liabilities or obligations outstanding from the Franchisee to the Secretary of State;
- (b) the termination of the Franchise Agreement solely as a consequence of the occurrence of one or more Events of Default or a Termination Event of a type described in paragraphs 2.2, 2.3, 2.4 and 2.5 of Schedule 10.2 (*Events of Default and Termination Events*) in circumstances where the Secretary of State has incurred or expects to incur losses, liabilities, costs or expenses in connection with early termination of the [INSERT NAME OF FRANCHISE] franchise;
- (c) the making of a railway administration order in relation to the Franchisee pursuant to sections 60 to 62 of the Railways Act 1993;
- (d) the occurrence of an Event of Default under the Franchise Agreement in respect of:
 - (i) paragraph 1.12(a) (*Bonds*) of Schedule 10.2 (*Events of Default and Termination Events*) of the Franchise Agreement in relation to the Performance Bond; or
 - (ii) paragraph 1.12(b) (*Bonds*) of Schedule 10.2 (*Events of Default and Termination Events*) of the Franchise Agreement,
 whether or not the Franchise Agreement is, or is to be, terminated as a result thereof;
- (e) the failure by the Franchisee to perform or comply with its obligations under any Supplemental Agreement;
- (f) the failure by the Franchisee to provide the Secretary of State with a Replacement Performance Bond which complies with paragraph 4 of Schedule 12 (*Financial Covenants and Bonds*) of the Franchise Agreement at least six (6) months prior the scheduled expiry of the existing Performance Bond; or

- (g) the failure by the Franchisee to procure the execution and delivery of a new Performance Bond by a Bond Provider in favour of and acceptable to the Secretary of State when required to do so in accordance with paragraph 4.3(c) of Schedule 12 (*Financial Covenants and Bonds*) of the Franchise Agreement.
3. This undertaking is made to you, your successors and your assigns.
 4. This undertaking shall not be discharged or released by time, indulgence, waiver, alteration or release of, or in respect to, the obligations of the Franchisee under the Franchise Agreement or any Supplemental Agreement or any other circumstances that might operate as a release of a guarantor at law or in equity.
 5. You may make demand or give notice to us under this Bond in writing by hand or via email transmission to us as follows:

Address: [INSERT BOND PROVIDER'S ADDRESS]

Email Address: [INSERT BOND PROVIDER'S EMAIL ADDRESS]
 6. References in this Bond to the Franchise Agreement and the Supplemental Agreement are to the Franchise Agreement and any Supplemental Agreement as amended from time to time.
 7. Where used in this Bond, capitalised terms have the same meanings as in the Franchise Agreement.
 8. This Bond shall be governed by and construed in accordance with the laws of England and Wales.

Executed as a deed this [INSERT DAY AND MONTH] of [INSERT YEAR].

SCHEDULE TO THE PERFORMANCE BOND

SPECIMEN DEMAND NOTICE

To: [INSERT NAME AND ADDRESS OF BOND PROVIDER]

[INSERT DATE OF DEMAND NOTICE]

We refer to the performance bond issued by you on [INSERT DATE OF BOND] (the "**Performance Bond**") in connection with the franchise agreement (the "**Franchise Agreement**") entered into between the Secretary of State for Transport (the "**Secretary of State**") and [INSERT NAME OF FRANCHISEE] (the "**Franchisee**") on [INSERT FRANCHISE AGREEMENT SIGNATURE DATE].

We hereby notify you that the following Call Event (as defined in the Performance Bond) occurred on [INSERT DATE OF OCCURRENCE OF CALL EVENT]: **[DRAFTING NOTE: DELETE AS APPROPRIATE]**

- [The Franchise Agreement has **[terminated/expired]** on [INSERT DATE OF TERMINATION/EXPIRY] in circumstances where there are liabilities or obligations outstanding from the Franchisee to the Secretary of State.]
- The Franchise Agreement has terminated solely as a consequence of the occurrence of one or more Events of Default or a Termination Event of a type described in paragraphs 2.2, 2.3, 2.4 and 2.5 of Schedule 10.2 (*Events of Default and Termination Events*) on [INSERT DATE OF TERMINATION] in circumstances where the Secretary of State has incurred or expects to incur losses, liabilities, costs or expenses in connection with early termination of the [INSERT NAME OF THE FRANCHISE] franchise.
- [A railway administration order has been made in relation to the Franchisee pursuant to sections 60 to 62 of the Railways Act 1993.]
- [That an Event of Default under the Franchise Agreement has occurred under:
[(a) paragraph 1.12(a) (*Bonds*) of Schedule 10.2 (*Events of Default and Termination Events*) of the Franchise Agreement in relation to the Performance Bond; or]
[(b) paragraph 1.12(b) (*Bonds*) of Schedule 10.2 (*Events of Default and Termination Events*) of the Franchise Agreement.]]
- [The Franchise Agreement has terminated in circumstances where the Secretary of State has incurred or expects to incur additional costs in connection with early termination of the [INSERT NAME OF FRANCHISE] franchise.]
- [The Franchisee has failed to perform or comply with its obligations under any Supplemental Agreement.]
- [The Franchisee has failed to provide a Replacement Performance Bond (as described in the Franchise Agreement) complying with paragraph 4 of Schedule 12 (*Financial Covenants and Bonds*) of the Franchise Agreement at least six (6) months prior to the scheduled expiry of the existing Performance Bond.]
- [The Franchisee has failed to procure the execution and delivery of a new Performance Bond by a Bond Provider acceptable to the Secretary of State when

required to do so in accordance with paragraph 4.3(c) of Schedule 12 (*Financial Covenants and Bonds*) of the Franchise Agreement.]

We hereby demand immediate payment from you of [SPECIFY ALTERNATIVE AMOUNT IF NOT BOND VALUE] or the Bond Value, whichever is smaller.

Please arrange for immediate payment of the relevant amount as follows:

[INSERT ACCOUNT DETAILS TO WHICH BOND MONIES TO BE PAID INTO]

Where used in this Notice, capitalised terms have the same meanings as in the Franchise Agreement.

For and on behalf of **Secretary of State for Transport**

.....

Withdrawn

APPENDIX 2 TO SCHEDULE 12
Template Form of Season Ticket Bond

DOCUMENT "STB" - SEASON TICKET BOND

Dated [INSERT DATE]

[INSERT NAME OF BOND PROVIDER]

[Template] Season Ticket Bond

*Secretary of State for Transport
33 Horseferry Road
London SW1P 4DR*

To: Secretary of State for Transport
33 Horseferry Road
London
SW1P 4DR
(The "**Secretary of State**")

SEASON TICKET BOND

Whereas

We are informed that you have entered into a franchise agreement dated [INSERT DATE] (the "**Franchise Agreement**") with [INSERT NAME OF FRANCHISEE] (the "**Franchisee**") under which the Franchisee shall provide certain railway passenger services.

We are further informed that the Franchise Agreement requires that the Secretary of State receives a duly executed season ticket bond to secure the performance by the Franchisee of and its compliance with its obligations under the Franchise Agreement and any Supplemental Agreement.

Accordingly:

We hereby unconditionally and irrevocably undertake to pay to you in full in London, immediately upon receipt of your first written demand on us in the form set out in Schedule 1 (Specimen Demand Notice) and, without further enquiry, the sum specified therein. Such written demand shall state:

- (a) the Call Event (as defined in Clause 2) that has occurred; and
- (b) the date of occurrence of such Call Event.

You may call on us for the whole or part of the amount of our liability hereunder and you may make any number of calls on us up to a maximum aggregate amount of the Bond Value (as defined in Clause 3). All sums payable hereunder shall be paid free and clear of any restriction or condition and free and (except to the extent required by law) without any deduction or withholding, whether for or on account of tax, by way of set-off or otherwise.

1. The undertaking given by us above shall operate provided that:
 - (a) our maximum liability shall be limited to a sum or sums not exceeding in the aggregate the amount of the Bond Value on the date of occurrence of the Call Event stated in your written demand on us; and
 - (b) you may only call on us (whether on one or more occasions) in relation to one Call Event, such Call Event to be determined by reference to the first written demand which is received by us in the form set out in Schedule 1 (Specimen Demand Notice).
2. "**Call Event**" means, in this Bond, any of:
 - (a) the termination or expiry of the Franchise Agreement;
 - (b) the making of a railway administration order in relation to the Franchisee pursuant to sections 60 to 62 of the Railways Act 1993; or

- (c) the occurrence of an Event of Default under paragraph 1.12(a) (in relation to a Season Ticket Bond) or paragraph 1.12(c) of Schedule 10.2 (*Events of Default and Termination Events*) of the Franchise Agreement (whether or not the Franchise Agreement is, or is to be, terminated as a result thereof).
3. Bond Value shall mean, in respect of any date, the amount specified in Schedule 2 (Bond Value) as being the value of this Bond for such date (provided that for these purposes the date of occurrence of the Call Event specified in Clause 2(c) shall be deemed to be the last date for which a Bond Value is assigned under Schedule 2 (Bond Value) of this Bond).
4. Notwithstanding anything contained herein, but subject to Clause 5, our liability hereunder in respect of any Call Event shall expire no later than the end of the Franchise Term and:
- 4.1 in relation to a Call Event specified in Clauses 2(a) and 2(b), at noon (London time) on the date falling three (3) business days after the date of occurrence of such Call Event (business day being a day on which banks are open for business in the City of London); and
- 4.2 in relation to any other Call Event, on the day falling one (1) month after the last date for which a Bond Value is assigned under Schedule 2 of this Bond unless you notify us in writing prior to the relevant expiry time that the relevant Call Event has occurred (whether or not you call on us at the same time under this Bond).
5. If you do notify us under Clause 4 our liability shall expire on:
- 5.1 if the Call Event in respect of which you may call on us under this Bond is the termination of the Franchise Agreement, the date falling one (1) month after the determination of the Purchase Price (as defined in the Supplemental Agreement) under each relevant Supplemental Agreement;
- 5.2 if the Call Event in respect of which you may call on us under this Bond is the making of a railway administration order in relation to the Franchisee pursuant to sections 60 to 62 of the Railways Act 1993, the date falling three (3) months after the making of such railway administration order; or
- 5.3 if the Call Event in respect of which you may call on us under this Bond is the occurrence of an Event of Default under paragraph 1.12(a) (in relation to a Season Ticket Bond) or paragraph 1.12(c) of Schedule 10.2 (*Events of Default and Termination Events*) of the Franchise Agreement (whether or not the Franchise Agreement is, or is to be, terminated as a result thereof), the date falling one (1) month after your notification to us under Clause 4,
- except, in each case, in respect of any written demand for payment complying with all the requirements hereof which is received by us on or before the relevant date, after which date this undertaking shall be void whether returned to us or not.
6. This undertaking is made to you, your successors and your assigns.
7. This undertaking shall not be discharged or released by time, indulgence, waiver, alteration or release of, or in respect to, the obligations of the Franchisee under the Franchise Agreement or any Supplemental Agreement or any other circumstances that might operate as a release of a guarantor at law or in equity.

8. You may make demand or give notice to us under this Bond in writing by hand or via email transmission to us as follows:

Address: [INSERT BOND PROVIDER'S ADDRESS]

Email Address: [INSERT BOND PROVIDER'S EMAIL ADDRESS]

9. References in this Bond to the Franchise Agreement and the Supplemental Agreement are to the Franchise Agreement and the Supplemental Agreement as amended from time to time and terms defined therein shall have the same meaning in this Bond.

10. Where used in this Bond, capitalised terms have the same meanings as in the Franchise Agreement.

11. This Bond shall be governed by and construed in accordance with the laws of England and Wales.

Executed as a deed this [INSERT DAY AND MONTH] of [INSERT YEAR].

Withdrawn

SCHEDULE 1 TO THE SEASON TICKET BOND

SPECIMEN DEMAND NOTICE

To: [INSERT NAME AND ADDRESS OF BOND PROVIDER]

[INSERT DATE OF DEMAND NOTICE]

We refer to the season ticket bond issued by you on [INSERT DATE OF BOND] (the "Season Ticket Bond") in connection with the franchise agreement (the "Franchise Agreement") entered into between the Secretary of State for Transport (the "Secretary of State") and [INSERT NAME OF FRANCHISEE] (the "Franchisee") on [INSERT FRANCHISE AGREEMENT SIGNATURE DATE].

We hereby notify you that the following Call Event (as defined in the Season Ticket Bond) occurred on [INSERT DATE OF OCCURRENCE OF CALL EVENT]: **[DRAFTING NOTE: DELETE AS APPROPRIATE]**

- [The Franchise Agreement **[terminated/expired]** on [INSERT DATE OF TERMINATION/EXPIRY].
- [A railway administration order has been made in relation to the Franchisee pursuant to sections 60 to 62 of the Railways Act 1993.]
- [An Event of Default occurred under paragraph 1.12(a) (in relation to a Season Ticket Bond) or paragraph 1.12(c) of Schedule 10.2 (*Events of Default and Termination Events*) of the Franchise Agreement.]

We hereby demand immediate payment from you of [SPECIFY ALTERNATIVE AMOUNT IF NOT BOND VALUE] or the Bond Value, whichever is smaller.

Please arrange for immediate payment of the relevant amount as follows:

[INSERT ACCOUNT DETAILS TO WHICH BOND MONIES TO BE PAID INTO]

Where used in this Notice, capitalised terms have the same meanings as in the Franchise Agreement.

For and on behalf of **Secretary of State for Transport**

.....

SCHEDULE 2 TO THE SEASON TICKET BOND

Bond Value

Call Event occurring in Reporting Period	Bond Value £
1	[INSERT AMOUNT]
2	[INSERT AMOUNT]
3	[INSERT AMOUNT]
4	[INSERT AMOUNT]
5	[INSERT AMOUNT]
6	[INSERT AMOUNT]
7	[INSERT AMOUNT]
8	[INSERT AMOUNT]
9	[INSERT AMOUNT]
10	[INSERT AMOUNT]
11	[INSERT AMOUNT]
12	[INSERT AMOUNT]
13	[INSERT AMOUNT]

SCHEDULE 13

RAIL INDUSTRY INITIATIVES AND INNOVATION OBLIGATIONS

Schedule 13.1:	Rail Industry Initiatives and Co-operation
	Appendix 1: Community Rail Partnerships
Schedule 13.2:	NOT USED
	Appendix 1: NOT USED
Schedule 13.3:	NOT USED

Withdrawn

Schedule 13.1

Rail Industry Initiatives and Co-operation

1. British Transport Police

1.1 The Franchisee shall give due consideration to any request by the British Transport Police to provide suitable accommodation (including additional or alternative accommodation) or facilities at Stations to enable the British Transport Police to effectively perform the services owed to the Franchisee under any contract or arrangement entered into between the British Transport Police and the Franchisee.

1.2 The Franchisee shall:

(a) work with the British Transport Police to:

(i) reduce crime and anti-social behaviour on the railway;

(ii) reduce minutes lost to police-related disruption;

(iii) increase passenger confidence with personal security on train and on station;

(b) work in partnership with the British Transport Police and conduct an annual assessment of the security and crime risk at all Stations and across the Franchise generally;

(c) co-operate with the British Transport Police to provide it with access to records and/or systems maintained by the Franchisee which relate to lost property to enable the British Transport Police to have access to such information when dealing with items reported to them as lost; and

(d) consult with the British Transport Police as to its requirements in relation to records and/or systems and shall ensure that the British Transport Police has access to such records and/or systems from 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 Franchisee shall consult with the British Transport Police in relation to plans to develop any part of the land within a Property Lease which could affect staff or customers and give the British Transport Police an opportunity to advise on and/or provide comments on any opportunities for the enhancement of safety and reduction in crime.

2. Community Rail Partnerships

2.1 The Franchisee shall become a member of and shall continue to participate in the Community Rail Partnerships relevant to the Passenger Services, including but not limited to the Community Rail Partnerships listed in the table in Appendix 1 to this Schedule 13.1 (and any successor Community Rail Partnerships). As part of such participation the Franchisee shall identify a senior Franchise Employee whose duties shall include:

(a) supporting the Community Rail Partnerships;

- (b) ensuring managerial focus within the Franchisee's organisation to enable the Franchisee to meet its Community Rail Partnership obligations; and
 - (c) leading on the Franchisee's development of community rail projects.
- 2.2 The Franchisee shall, at the request of the Secretary of State:
- (a) co-operate with the Secretary of State, Network Rail, ACoRP, local transport authorities and/or any other person as the Secretary of State may nominate for the purposes of developing and furthering the success of 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 Franchise Employees, reducing rolling stock lease costs and maximising opportunities for obtaining local funding of development at relevant stations and developing new ways of maintaining and renewing relevant railway infrastructure); and
 - (ii) the actual costs incurred in operating, maintaining and renewing the infrastructure relevant for such Community Rail Route.
- 2.3 The Franchisee shall use 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 paragraph 1.1(a) of Schedule 9.3 (Variations to the Franchise Agreement and Incentivising Beneficial Changes), require the Franchisee to develop and/or implement any changes to the Franchise Services and/or the transfer of any Franchise Services to another Train Operator in order to deliver either of the initiatives that were examined pursuant to paragraph 2.2(d).
- 2.5 The Franchisee shall:
- (a) become a member and shall continue to participate in the National Community Rail Steering Group;
 - (b) **NOT USED.**
- 2.6 ^{iv} Within three (3) months of the Start Date in respect of the first Franchisee Year and no later than three (3) months before the start of each subsequent Franchisee Year, the Franchisee shall provide to the Secretary of State a report ("**Community**

Rail Report") setting out the distribution of the CRP Amount in full amongst the Community Rail Partnerships identified in paragraphs 2.1 and 2.2.

- 2.7 The Community Rail Report shall contain the following information:
- (a) a statement confirming that the Franchisee's distribution of funds to the Community Rail Partnerships takes account of the Secretary of State's then current published Community Rail Strategy;
 - (b) a statement confirming that the Franchisee has discussed the funding of the Community Rail Partnerships with ACoRP and has taken sufficient account of ACoRP's views;
 - (c) confirmation that the Franchisee has discussed with all Community Rail Partnerships the aims and needs of such partnerships and the funding required to achieve these;
 - (d) a table setting out the relevant portions of the CRP Amount which are to be paid to each Community Rail Partnership (on a non-indexed basis) over the remainder of the Franchise Term (it being acknowledged that these amounts are likely to be different for each Community Rail Partnership);
 - (e) the activities undertaken by the Franchise pursuant to paragraph 2.3 of this Schedule 13.1;
 - (f) from the second (2nd) CRP 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 CRP Report was submitted; and
 - (g) such further information as the Secretary of State may from time to time request.
- 2.8 The Franchisee shall within thirty (30) days of the commencement of each Franchisee Year, make the relevant payments totalling the CRP Amount to each of the Community Rail Partnerships identified in the Community Rail Report for that year.
- 2.9 The Franchisee shall by the end of each Franchisee Year pay the CRP Project Sum to the Community Rail Partnerships for the sole purpose of funding projects proposed by the Community Rail Partnerships.
- 2.10 If and to the extent that at the end of any Franchisee Year the Franchisee has spent less than CRP Project Sum in that Franchisee Year, the Franchisee may on notice to the Secretary of State carry forward the unspent amount (excluding any unspent amount previously carried forward to that Franchisee Year) to the following Franchisee Year, and any unspent amount in the Final Franchisee Year shall be returned to the Secretary of State.
- 2.11 The Franchisee shall hold an annual conference for the Community Rail Partnerships' officers and station adopters in conjunction with ACoRP to encourage the spread of best practice and to communicate plans for franchise development. The first such conference shall be held within six (6) months of the Start Date.
- 2.12 The Franchisee 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.

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

2.14 In collaboration with the relevant Community Rail Partnership and other Stakeholders the Franchisee shall use reasonable endeavours to identify sources of third party funding for the Community Rail Partnerships and encourage such third parties to make funding commitments.

2.15 **NOT USED.**

3. **Development of Industry Systems**

The Franchisee shall fully and effectively co-operate (in a manner consistent with it being a responsible Train Operator of the Franchise) 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 Franchisee shall co-operate (in good faith) with the Secretary of State, the relevant Local Authority and/or any other affected railway industry parties in the development and the implementation of initiatives relating to its participation in multi-modal fares schemes and Traveline (the **“Industry Schemes”**), where such Industry Schemes relate to the Franchise.

5. **Co-operation with Local Authorities**

5.1 **General co-operation with Local Authority in respect of schemes**

- (a) The Franchisee 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 Franchisee to incur any cost in the actual provision of the revised Passenger Services.

6. **NOT USED.**

7. **NOT USED.**

8. **Small and Medium-sized Enterprises**

8.1 The Franchisee shall at all times keep accurate and complete records of its use of and interaction with SMEs in delivering the Franchise Services.

8.2 By no later than 31 January in each year (and within one (1) month of the end of the Franchise Period) the Franchisee shall deliver to the Secretary of State a breakdown of the number of SMEs used by the Franchisee in providing the Franchise Services during the calendar year (or part thereof) which ended on the immediately preceding 31 December or at the end of the Franchise Period (as applicable).

9. **Apprenticeships**

9.1 The Franchisee shall at all times keep accurate and complete records of the Apprenticeships (and the training provided to apprentices) offered by the Franchisee and (if applicable) its immediate UK based supply chain in delivering the Franchise Services on a basis which is at all times compliant with Data Protection Legislation. In particular, in relation to each Reporting Period the Franchisee 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 Franchise 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 Franchise Employee;
 - (iv) the current occupation of that Franchise Employee;
 - (v) the gender of that Franchise Employee (except in relation to those Franchise Employees who do not permit disclosure);
 - (vi) whether that Franchise Employee is of BAME origin (except in relation to those Franchise Employees who do not permit disclosure);

- (vii) the postcode of the location at which that Franchise Employee is principally employed at (e.g. the relevant train crew depot of train crew); and
- (viii) the first half of that Franchise Employee's residential postcode.

9.2 Subject to paragraph 9.2A, the Franchisee shall provide an Apprenticeships Data Collection Form to the Rail Delivery Group containing the information set out in paragraph 9.1 for the 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.

9.2A In respect of information relating to each Franchisee Employee who commences an Apprenticeship and which is included in the Apprenticeships Data Collection Form:

- (a) the Franchisee shall not cause or permit any Personal Data whatsoever which relates to any Franchisee 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 Franchisee 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 9.2 (and the Franchisee hereby acknowledges and agrees that if it should be possible in any way to identify any Franchise Employee from the anonymised aggregated data there would be a disclosure of Personal Data by the Franchisee and, accordingly, the Franchisee would be in contravention of this paragraph 9.2A(a) in that event); and
- (b) the Parties acknowledge that, notwithstanding the requirements of paragraph 9.2A(a) including the absolute obligation that is imposed on the Franchisee to effect the anonymised aggregation of the Personal Data comprised in information relating to each Franchisee Employee who commences an Apprenticeship, it may still be possible from time to time to identify the Franchise Employee from the Apprenticeships Data Collection Form and that there will be processing of Personal Data inherent in that circumstance, and accordingly, the Franchisee shall in preparation for that possibility ensure that:
 - (i) the Franchise 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 9.2;
 - (ii) the Personal Data is collected and processed by or on behalf of the Franchisee 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 Franchisee, and for the disclosure to and subsequent processing by the Rail Delivery Group (and the Secretary of State) for the purpose described in paragraph 9.2;

- (iv) there is a lawful basis for the collection and processing of the Personal Data by the Franchisee, and for the disclosure to and subsequent processing by the Rail Delivery Group (and the Secretary of State) for the purpose described in paragraph 9.2; and
- (v) the Franchise 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.

9.2B Nothing in paragraph 9.2A(b) is intended by the Parties to absolve the Franchisee from its obligations under paragraph 9.2A(a)).

9.3 By no later than 31 January each year (and within one (1) month of the end of the Franchise Period) the Franchisee shall deliver to the Rail Delivery Group the breakdown of the information recorded pursuant to paragraph 9.1, and (subject to the requirements of paragraphs 9.2) it shall do this during the calendar year (or part thereof) which ended on the immediately preceding 31 December or at the end of the Franchise Period (as applicable), 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.

9.4 The Franchisee shall ensure that the number of Franchise Employees who begin an Apprenticeship in any Franchisee Year shall constitute two and half per cent (2.5%) of the total number of Franchise Employees (the "**Apprenticeships Requirement**"), provided that:

- (a) the Apprenticeships Requirement shall be subject to a pro rata reduction in relation to the first Franchisee Year, it being acknowledged that for such purposes the first Franchisee Year shall be treated as commencing on the date on which the People Strategy is adopted by the Franchisee pursuant to paragraph 14 of Part 4 of Schedule 6.1; and
- (b) the Apprenticeships Requirement shall be subject to a pro rata reduction in respect of the Final Franchisee Year in the event that the Final Franchisee Year consists of less than thirteen (13) Reporting Periods,

and the Franchisee shall provide evidence of the satisfaction of the Apprenticeships Requirement to the Secretary of State within ten (10) days of the end of each Franchisee Year.

9.5 **NOT USED.**

9.6 **NOT USED.**

9.7 **NOT USED.**

9.8 **NOT USED.**

10. **Sustainability and other related initiatives**

10.1 **Sustainable Development Strategy**

- (a) By no later than three (3) months prior to the Start Date, the Franchisee shall consult with the RSSB and such other Stakeholders as agreed between the Secretary of State and the Franchisee (or, in the absence of agreement,

such Stakeholders as the Secretary of State shall determine) in order to agree:

- (i) key priority sustainable development areas that should be covered in the Sustainable Development Strategy, it being acknowledged and agreed that the Sustainable Development Strategy shall be required to:
 - (A) cover the maximum potential duration of the Franchise Term (including, for the avoidance of doubt, any period of extension arising as a result of the exercise by the Secretary of State of his rights under clause 5.2); and
 - (B) substantially update and/or refresh the sustainable development areas covered by the sustainable development strategy applicable pursuant to the Previous Franchise Agreement; and
 - (ii) annual target measures and levels associated with each of the key priority sustainable development areas referred to in paragraph 10.1(a)(i) above, drawing upon the Rail Safety and Standards Board Sustainable Development Self-Assessment Framework.
- (b) The Franchisee shall develop the Sustainable Development Strategy to reflect such consultation and the Franchisee shall propose and agree a final version of the Sustainable Development Strategy with the RSSB and the Secretary of State by no later than the Start Date for the purposes of the Franchise Agreement. Such agreed strategy shall be the Sustainable Development Strategy for the purposes of the Franchise Agreement, provided that in the absence of agreement between the Parties the Sustainable Development Strategy shall be the strategy determined by the Secretary of State (acting reasonably).
- (c) The Franchisee shall at all times comply with the Sustainable Development Strategy. Any amendments to the Sustainable Development Strategy must be agreed by the Secretary of State.
- (d) **NOT USED.**
- (e) **NOT USED.**
- (f) **NOT USED.**
- (g) **NOT USED.**
- (h) The Franchisee shall, within three (3) months following the end of each Franchisee Year, provide to the Secretary of State a report showing:
 - (i) progress against the outcomes in key priority sustainable development areas;
 - (ii) progress on development of Franchise Employees to ensure they have the skills and knowledge required to deliver a sustainable franchise; and

- (iii) proposed revisions to the Sustainable Development Strategy (including to reflect the Franchisee's plans for the rectification of any failure(s) by it to meet any of the annual target measures and levels associated with each of the key priority sustainable development areas comprised in the Sustainable Development Strategy in the Franchisee Year which has just ended), such revisions to include those revisions reflecting feedback and advice from Stakeholders, and which have been consulted on with RSSB.
- (i) The Franchisee shall obtain the Secretary of State's consent to any amendments to the Sustainable Development Strategy proposed pursuant to paragraph 10.1(h)(iii) before such amendments are adopted and the Sustainable Development Strategy updated.
- (j) On request by the Secretary of State, the Franchisee shall publish (in such form as the Secretary of State may reasonably determine):
 - (i) all or any part of its Sustainable Development Strategy; and/or
 - (ii) all or any of the information described in paragraphs 10.1(h)(i) to (h)(iii).

10.2 Environmental Management and Sustainability Accreditation

- (a) The Franchisee shall by no later than:
 - (i) the Start Date, attain and, at all times thereafter, maintain certification pursuant to ISO14001:2015 and ISO50001:2011 or equivalent standards; and
 - (ii) 30 November 2020, attain and, at all times thereafter, maintain certification pursuant to ISO20400 or an equivalent standard.
- (b) The Franchisee shall provide the Secretary of State with copies of the certification audit reports and a copy of their ISO50001 Energy Review within four (4) weeks of their certification and each subsequent recertification during the Franchise Period.

10.3 Sustainable Construction

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

- (a) which are either being funded by the Franchisee or in respect of which the Franchisee has design responsibility; and
- (b) in respect of which the total capital cost exceeds £1,000,000 (pounds sterling one million) (indexed by the Retail Prices Index in the same way as variable costs are indexed in Appendix 1 (Annual Franchise Payments) to Schedule 8.1 (Franchise Payments)),

the Franchisee shall use 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 (acting reasonably) agrees that the relevant project is not of a suitable scale or type to be so assessed and the Franchisee shall provide to the

Secretary of State such information in relation to any construction project as the Secretary of State may reasonably request.

11. National Joint ROSCO Project

11.1 National Joint ROSCO Project

- (a) The Franchisee shall co-operate in good faith with the relevant third parties involved in the implementation of the National Joint ROSCO Project (including Network Rail and the relevant NJRP ROSCOs) with the intention of ensuring the timely, efficient and cost effective implementation of the National Joint ROSCO Project and, in particular assisting in the development, installation, testing, commissioning and implementation of the relevant ERTMS equipment on the first in class units for which the Franchisee is identified as the "**Lead TOC**" under the National Joint ROSCO Project.
- (b) **NOT USED.**
- (c) If requested by the Secretary of State, the Franchisee shall provide an update on their engagement with the National Joint ROSCO Project at the Franchise Performance Meetings.

11.2 NOT USED

11.3 NOT USED

12. NOT USED.

13. HS2 Project

13.1 The Franchisee 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 Franchisee having rights under railway industry procedures including Network Change or Station Change the Franchisee shall not act in a way designed to directly or indirectly prevent, prejudice or frustrate the delivery of the HS2 Project and the Franchisee shall not unreasonably raise any objection under any railway industry procedure including Network Change or Station Change. It is acknowledged that the Franchisee may make reasonable objections with a view to mitigating the impact of the HS2 Project and their implementation on passengers and the Franchise Services, while recognising the need for the HS2 Project to be able to be undertaken in a reasonable manner.

13.2 The Franchisee shall provide such information in respect of the HS2 Project as the Secretary of State may reasonably request from time to time.

13.3 In order to facilitate commencement of the HS2 High Speed Services, and notwithstanding the Franchisee's general obligations under Paragraphs 13.1 and 13.2 above, the Franchisee shall also co-operate with the HS2 Shadow Operator specifically as follows:

- (a) co-operate with the HS2 Shadow Operator in its development of a report on the optimisation of the train services specification for conventional and high

speed train services operated post the introduction of the HS2 High Speed Services ("**HS2 TSS Options Report**"), such co-operation to include responding to all consultations requested by the HS2 Shadow Operator on this matter in a timely manner, participating in working groups, and any other associated activities reasonably required by the Secretary of State; and

- (b) further to the completion of the HS2 TSS Options Report, if during the Franchise Term the Secretary of State issues one or more draft Integrated Service TSRs to the HS2 Shadow Operator, the Franchisee shall, on request by the HS2 Shadow Operator or the Secretary of State, review the proposed train service requirements relating to the operation of HS2 High Speed Services and share its views on whether the Franchisee considers, from the perspective of the Franchise Services it operates, that either of these cannot be delivered due to:
 - (i) rolling stock availability, capability and/or capacity;
 - (ii) capacity constraints and planning rules on the HS2 Network and/or any affected Route;
 - (iii) capacity constraints at Depots and/or stations; and
 - (iv) the interaction with any train service requirements being operated or to be operated by the Franchisee.

14. **Suicide Prevention Strategy**

14.1

- (a) As soon as reasonably practicable after the Start Date the Franchisee shall, in consultation with the British Transport Police and the wider cross-industry suicide prevention group, develop a draft suicide prevention plan that fully delivers and complies with the Suicide Prevention Strategy and the Suicide Prevention Duty Holders' Group's 9 Point Plan and submit it to the Suicide Prevention Duty Holders Group (or such other group as may replace the Suicide Prevention Duty Holders Group from time to time) for approval.
- (b) The Franchisee shall make such amendments to the draft suicide prevention plan as:
 - (i) the British Transport Police shall require for the purposes of ensuring that it fully delivers and complies with the Suicide Prevention Strategy; and
 - (ii) the Suicide Prevention Duty Holders Group (or such other group as may replace the Suicide Prevention Duty Holders Group from time to time) shall require for the purposes of ensuring that it fully delivers and complies with the Suicide Prevention Duty Holders' Group's 9 Point Plan.
- (c) The Franchisee shall submit a completed suicide prevention plan (the "**Plan**") to the Secretary of State together with written confirmation from the British Transport Police that the Plan complies with the requirements of the Suicide Prevention Strategy and from the Suicide Prevention Duty Holders Group (or such other group as may replace the Suicide Prevention

Duty Holders Group from time to time) that the Plan complies with the Suicide Prevention Duty Holders' Group's 9 Point Plan as reasonably practicable and in any event within twelve (12) months of the Start Date.

- (d) The Franchisee shall review and update the Plan:
 - (i) at least every twelve (12) months; and
 - (ii) immediately following any amendment to, or replacement of, the Suicide Prevention Strategy and/or the Suicide Prevention Duty Holders' Group's 9 Point Plan.

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 reasonably possible. The Franchisee 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 Plan. The Franchisee shall deliver a copy of any revised and/or updated Plan to the Secretary of State as soon as is reasonably 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.

14.2 The Franchisee shall implement the Plan as it may be revised and/or updated pursuant to paragraph 14.1 in accordance with its then prevailing provisions.

15. **Safeguarding Strategy**

15.1 As soon as reasonably practicable after the Start Date, the Franchisee shall, in consultation with the British Transport Police and such other relevant groups as the Franchisee and/or the British Transport Police consider appropriate, develop a draft safeguarding strategy.

15.2 The draft safeguarding strategy shall be submitted to the British Transport Police for its approval that the Safeguarding Strategy complies with the requirements of the Safeguarding on Rail Audit and the Franchisee shall take into account any comments or amendments proposed by:

- (a) the British Transport Police; and
- (b) such other relevant groups as the Franchisee and/or the British Transport Police consider appropriate,

as are required to ensure that such draft safeguarding strategy complies with the Safeguarding on Rail Audit.

15.3 The Franchisee shall deliver a copy of the Safeguarding Strategy to the Secretary of State together with written confirmation of the approval issued by the British Transport Police that the Safeguarding Strategy complies with the requirements of the Safeguarding on Rail Audit as soon as reasonably practicable following such approval and in any event within twelve (12) months of the Start Date.

15.4 The Franchisee shall review and, as necessary, update the Safeguarding Strategy:

- (a) at least every (twelve) 12 months; and
 - (b) within one (1) month following the publication of any amendment to, or replacement of the Safeguarding on Rail Audit.
- 15.5 Any review and necessary updates to the Safeguarding Strategy in accordance with paragraph 15.4 shall take into account any changes to, or replacement of the Safeguarding on Rail Audit and any other relevant circumstances that would reasonably be considered to impact the objectives contained in the Safeguarding on Rail Audit and shall ensure that the Safeguarding Strategy remains up-to-date and appropriate for delivering the objectives contained in the Safeguarding on Rail Audit.
- 15.6 The Franchisee shall undertake any review and necessary updates to the Safeguarding Strategy in accordance with paragraph 15.4 in consultation with the British Transport Police and such other relevant groups as the Franchisee and/or the British Transport Police consider appropriate. The Franchisee 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 Audit and the Franchisee shall take into account any comments or amendments proposed by:
- (a) the British Transport Police; and
 - (b) such other relevant groups as the Franchisee 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 Audit.
- 15.7 The Franchisee 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 reasonably practicable following such approval.
- 15.8 The Franchisee shall implement the approved Safeguarding Strategy as it may be revised and/or updated pursuant to this paragraph 15 from time to time.

16. Incident Response Plan

16.1 For the purposes of this paragraph 16, the following definitions shall the following meanings unless the context requires otherwise:

“Incident Response Plan” means the plan created by the Franchisee pursuant to this paragraph 16 of Schedule 13.1 (*Rail Industry Initiatives and Co-operation*) which contains (as a minimum) the information set out in paragraph 16.3 of Schedule 13.1;

“RDG Guidance on Emergency Planning, Knowledge, Understanding and Responsibilities” 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 reasonably specified by the Secretary of State during the Franchise Term.

16.2 By no later than six (6) months following the Start Date the Franchisee shall prepare and provide to the Secretary of State for approval (such approval not to be unreasonably withheld or delayed) the Incident Response Plan.

16.3 The Incident Response Plan shall:

(a) detail how the Franchisee 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.

16.4 Where the Secretary of State does not approve the draft Incident Response Plan submitted to it, the Franchisee shall make:

(a) such amendments to it as the Secretary of State shall reasonably direct; and

(b) provide such additional information as the Secretary of State may reasonably require.

16.5 From the date of approval, the Franchisee shall implement and comply with the Incident Response Plan.

16.6 The Incident Response Plan shall be updated by the Franchisee on an annual basis and submitted to the Secretary of State for approval (such approval not to be unreasonably withheld or delayed).

16.7 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.

16.7 If:

(a) the Secretary of State approves an updated draft Incident Response Plan submitted to it pursuant to paragraph 16.6, 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 16.6, the provisions of paragraph 16.4 shall apply.

17. **Cyber Security Information Sharing Strategy**

17.1 For the purposes of this paragraph 17, the following definitions shall have the following meanings unless the context requires otherwise:

“Cyber Information Sharing Platform” 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;

“Cyber Security Information Sharing Strategy” or “CSISS” means the strategy created by the Franchisee pursuant to this paragraph 17 of Schedule 13.1 which contains (as a minimum) the information set out in paragraph 17.3 of Schedule 13.1;

“National Cyber Security Centre” 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.

17.2 By no later than six (6) months following the Start Date the Franchisee shall prepare and provide to the Secretary of State for approval (such approval not to be unreasonably withheld or delayed) the Cyber Security Information Sharing Strategy.

17.3 The Cyber Security Information Sharing Strategy shall:

- (a) detail how the Franchisee shall share 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) reflect the latest Secretary of State’s cyber incident reporting guidance including detailing how the Franchisee shall use the Cyber Information Sharing Platform,

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.

17.4 Where the Secretary of State does not approve the draft Cyber Security Information Sharing Strategy submitted to it, the Franchisee shall make:

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

17.5 From the date of approval, the Franchisee shall implement and comply with the Cyber Security Information Sharing Strategy.

17.6 The Cyber Security Information Sharing Strategy shall be updated by the Franchisee on an annual basis and submitted to the Secretary of State for approval (such approval not to be unreasonably withheld or delayed).

17.7 Each updated version of the Cyber Security Information Sharing Strategy shall incorporate a schedule of revisions to the Cyber Security Information Sharing

Strategy compared to the previous version and a brief summary of the rationale supporting each such revision.

17.8 If:

- (a) the Secretary of State approves an updated draft Cyber Security Information Sharing Strategy submitted to it pursuant to paragraph 17.6, such document shall become the then current Cyber Security Information Sharing Strategy; or
- (b) the Secretary of State does not approve an updated draft Cyber Security Information Sharing Strategy submitted to it pursuant to paragraph 17.6, the provisions of paragraph 17.4 shall apply.

18. **CCTV**

18.1 The Franchisee shall ensure that any installation of, or upgrade to CCTV at any Station shall be undertaken in accordance with the CCTV Guidance.

18.2 The Franchisee 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.

19. **Body Worn Video**

19.1 If the Franchisee implements a policy of requiring some or all of its staff to wear 'body worn video' recording equipment (the "**BWV Equipment**"), such BWV Equipment (and any system associated with it) will at all times meet the requirements set out in the CCTV Guidance. The Franchisee shall ensure that any installation of, or upgrade to, BWV Equipment (and/or any system associated with it) will be undertaken in accordance with the CCTV Guidance.

Withdrawn

APPENDIX 1 TO SCHEDULE 13.1

Community Rail Partnerships

	Community Rail Partnership	Community Rail Route
1.	Devon & Cornwall CRP	Exeter St. Davids – Barnstaple Exeter St. Davids – Exmouth Exeter St. Davids – Axminster Exeter St. Davids – Paignton Plymouth – Gunnislake Liskeard – Looe Par - Newquay Truro – Falmouth Docks St. Erth – St. Ives
2.	Heart of Wessex CRP	Bristol Temple Meads – Westbury – Yeovil Pen Mill – Weymouth
3.	Sevenside CRP	Bristol Temple Meads - Severn Beach Bristol Temple Meads – Bath Spa – Bradford on Avon Bristol Temple Meads – Weston SM – Taunton Bristol Temple Meads – Bristol Parkway – Gloucester Bristol Temple Meads – Filton Abbey Wood – Patchway
4.	TransWilts CRP	Swindon - Westbury
5.	Worcestershire CRP	Honeybourne - Worcester Shrub Hill Worcester Foregate Street - Great Malvern
6.	Sussex CRP	Reading – Guildford – Gatwick Airport
(and any successor Community Rail Partnerships)		

Schedule 13.2

NOT USED

Withdrawn

APPENDIX 1 TO SCHEDULE 13.2

NOT USED

Withdrawn

Schedule 13.3

NOT USED

Withdrawn

SCHEDULE 14

PRESERVATION OF ASSETS

Schedule 14.1:	Maintenance of Franchise
Schedule 14.2:	Maintenance of Operating Assets and Branding
	Appendix 1: List of Trade Marks
	Appendix 2: Great Western Railways Brand Sample
Schedule 14.3:	Key Contracts
	Appendix 1: List of Key Contracts
Schedule 14.4:	Designation of Franchise Assets
	Appendix 1: List of Primary Franchise Assets
Schedule 14.5:	Dealing with Franchise Assets
Schedule 14.6:	NOT USED
	NOT USED
Schedule 14.7:	NOT USED

Withdrawn

Schedule 14.1

Maintenance of Franchise

1. Maintenance as a going concern

- 1.1 The Franchisee shall maintain and manage the business of providing the Franchise Services and the HEx Outsourced Services so that, to the greatest extent possible and practicable:
- (a) the Franchisee is able to perform its obligations under the Franchise Agreement and the HEx Services Agreement; and
 - (b) a Successor Operator would be able to take over the business of providing the Franchise Services and the HEx Outsourced Services immediately at any time.
- 1.2 The Franchisee's obligation under paragraph 1.1 shall include an obligation to ensure that any computer and information technology systems of the Franchisee shared in whole or in part with Affiliates or third parties can be operated by a Successor Operator as a stand alone system without continued reliance on such Affiliates or other third parties immediately from the date of termination of the Franchise Agreement without any reduction in functionality or any increase in maintenance or support costs to the Successor Operator (this obligation being without prejudice to any requirement for the Franchisee to obtain consent to such arrangements relating to sharing computer and information technology systems from the Secretary of State). This obligation does not apply in relation to computer and information technology systems of, or provided by, HAL and/or HEOC which are shared or made available to the Franchisee in connection with its performance of the HEx Services Agreement.
- 1.3 The Franchisee shall use all reasonable endeavours to ensure that such Successor Operator would have immediate access to all Franchise Employees and Primary Franchise Assets for such purpose.
- 1.4 The Franchisee shall maintain and manage the business of providing the Franchise Services and the HEx Outsourced Services on the basis that such business will be transferred, in the manner contemplated under the Franchise Agreement, as a going concern at the end of the Franchise Period to, and continued immediately thereafter by, a Successor Operator.
- 1.5 The Franchisee shall use all reasonable endeavours to ensure that an appropriate number of employees (having sufficient skills, qualifications and experience) will transfer by operation of Law to any Successor Operator following the expiry of the Franchise Period and in so doing shall plan for the recruitment and training of Franchise Employees to continue up until the end of the Franchise Term.
- 1.6 The Franchisee shall comply with all reasonable requirements of the Secretary of State to obtain or maintain the property and rights that a Successor Operator would require, or that it would be convenient for it to have, on the basis that the same will transfer by operation of Law to any Successor Operator following the expiry of the Franchise Term.

2. **Post-Franchise Timetables**

- 2.1 Both prior to and following the selection of a Successor Operator (whether a franchisee or otherwise and whether or not subject to the satisfaction of any conditions), the Franchisee shall:
- (a) co-operate with, where a Successor Operator has been appointed, that Successor Operator, or where not, the Secretary of State; and
 - (b) take such steps as may reasonably be requested by the Secretary of State, so as to ensure the continuity of, and orderly handover of control over of the Franchise Services and the HEx Outsourced Services.
- 2.2 The steps that the Secretary of State may reasonably request the Franchisee to take pursuant to paragraph 2.1 include:
- (a) participating in any timetable development process that takes place during the Franchise Period, but which relates to any timetable period applying wholly or partly after the expiry of the Franchise Term ("**Successor Operator Timetable**"), including bidding for and securing any Successor Operator Timetable, whether or not:
 - (i) the Successor Operator has been identified; or
 - (ii) there is in place an Access Agreement relating to the period over which that Successor Operator Timetable is intended to be operated;
 - (b) using reasonable endeavours to seek amendments to and/or extensions of Access Agreements which can be transferred to the Successor Operator on expiry of the Franchise Period;
 - (c) assisting the Secretary of State or the Successor Operator (as the case may be) in the preparation and negotiation of any new Access Agreement relating to any Successor Operator Timetable; and/or
 - (d) entering into that Access Agreement in order to secure the relevant priority bidding rights required by the Successor Operator to operate that Successor Operator Timetable, provided that the Franchisee shall not be required to enter into any such Access Agreement unless the Secretary of State has first provided to it confirmation in writing that the Secretary of State shall include that Access Agreement in any Transfer Scheme pursuant to paragraph 3.1 of Schedule 15.4 (*Provisions applying on and after Termination*).

Schedule 14.2

Maintenance of Operating Assets and Branding

1. Operating Assets

- 1.1 The Franchisee shall maintain, protect and preserve the Operating Assets in good standing or good working order, subject to fair wear and tear.
- 1.2 The Franchisee shall carry out its obligations under paragraph 1.1 so that the Operating Assets may be transferred at the end of the Franchise Period to a Successor Operator (including, in the case of Operating Assets used in the HEx Outsourced Services and not otherwise transferred under the Transfer Scheme) under the HEx Business Transfer Agreement) and used by such Successor Operator in the provision or operation of similar services to the Franchise Services and the HEx Outsourced Services (as relevant).
- 1.3 Where any Operating Asset is lost, destroyed or otherwise beyond repair, the Franchisee shall replace the Operating Asset with property, rights or liabilities in modern equivalent form to the Operating Asset to be replaced. The Franchisee shall at all times maintain an appropriate volume of Spares, and/or an appropriate level of access to Spares from a third party, to enable it to perform its obligations under the Franchise Agreement.
- 1.4 The Secretary of State may at any time require the Franchisee to provide to the Secretary of State a schedule specifying the condition of any asset or class of assets that 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 Franchisee shall comply with the Secretary of State's requirements in respect of such schedule of condition.

2. Spares

The obligation of the Franchisee 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 has been designated as a Primary Franchise Asset, which subsequent to its designation ceases to be part of the stock of Spares available to the Franchisee for use in the provision of the Franchise Services, with an equivalent Spare of equal or better quality than the Spare so replaced.

3. Brand Licence and Branding

3.1 Brand Licences

The Franchisee shall comply with its obligations under the Brand Licence.

3.2 Branding

Subject to any applicable obligations or restrictions on the Franchisee (including the terms of the Rolling Stock Leases), the Franchisee shall apply the relevant registered 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 Franchisee in the operation and provision of the Franchise 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 The following words and expressions shall have following meanings unless otherwise set out in clause 3 (*Definitions*):

“Enduring Branding”	means:
	(a) branding which does not:
	(i) bear any brand image or symbol;
	(ii) display any distinctive trademarks;
	(iii) (subject to paragraph 4.2) make any reference to the name of the company or entity which owns the branding, the Franchisee or an Affiliate; or
(iv) use any colour combinations, livery or other elements,	
	that are specific to the Franchisee, an Affiliate or any other company and shall incorporate no other visual link to the Franchisee, an Affiliate or any other company; and
	(b) such trade marks as:
	(i) the Franchisee applies to any Primary Franchise Asset or other asset used by it under a Key Contract that encapsulate the heritage, regional and passenger

	<p>perception of railway routes served by its train services; and</p> <p>(ii) are under the proprietorship of the Secretary of State and licensed to the Franchisee in accordance with the Brand Licence under paragraph 3.1 of Schedule 14.2 that encapsulate the heritage, regional and passenger perception of railway routes served by its train services;</p>
"Great Western Railway Brand"	means the Enduring Branding created by the Franchisee having the colour scheme and design as illustrated by the sample set out in Appendix 2 to this Schedule 14.2 and incorporating (as applicable) the GWR Trade Mark; and
"GWR Trade Mark"	means the UK registered trade mark with registration number 00003064468 filed on 16 July 2014.

4.2A The Parties acknowledge and agree that:

- (a) as at the date of this Agreement the Great Western Railway Brand has been applied to some (but not all) of the assets owned or used by the Franchisee in the operation and provision of the Franchise Services;
- (b) as at the date of this Agreement the words "*A First Group company*" are displayed on rolling stock vehicles comprised in the Train Fleet which have been branded with the Great Western Railway Brand; and
- (c) without prejudice to paragraph 4.3, nothing in this paragraph 4 shall be construed as requiring the Franchisee to apply the Great Western Railway Brand to assets owned or used by the Franchisee in the operation and provision of the Franchise Services to which, at the date of this Agreement, the Franchisee has yet to apply the Great Western Railway Brand.

4.2 The Franchisee shall, where it has already been applied to assets owned or used by the Franchisee in the operation and provision of the Franchise Services, continue to maintain as Enduring Branding and use the Great Western Railway Brand (including, for the avoidance of doubt, the GWR Trade Mark) throughout the Franchise Term, it being acknowledged and agreed that, subject always to paragraph 4.3 and paragraph 5 (*Branding Guidance*) and the terms of the relevant Rolling Stock Leases, the Franchisee shall be entitled to display during the Franchise Period the words "*A First Group company*" in conjunction with the Enduring Branding of relevant rolling stock comprised in the Train Fleet.

4.3 If the Franchisee wishes to apply branding to (or refresh the existing branding of) assets owned or used by the Franchisee in the operation and provision of the Franchise Services which as at the date of this Agreement were not branded with the Great Western Railway Brand it shall (subject to any applicable obligations or

restrictions on the Franchisee (including the terms of the Rolling Stock Leases where applicable)) ensure that the branding which it applies to such assets is the Great Western Railway Brand (incorporating, as applicable, the GWR Trade Mark) provided that the Franchisee shall not be permitted to display the words "A *First Group company*" in conjunction with the Great Western Railway Brand which is applied to any relevant assets pursuant to this paragraph 4.3).

4.4 The Franchisee shall use and maintain throughout the Franchise Term the GWR Trade Mark.

4.5 The Franchisee shall ensure that all rights in the Great Western Railway Brand and the GWR Trade Mark (each as may be modified from time to time) are capable of being designated as Primary Franchise Assets and accordingly transferred to the Successor Operator and, if the Secretary of State so designates rights in relation to the Great Western Railway Brand and/or the GWR Trade Mark and does not de-designate them pursuant to paragraph 10 (*De-Designation of Franchise Assets and Primary Franchise Assets*) of Schedule 14.4 (*Designation of Franchise Assets*), the transfer value shall (unless otherwise agreed by the Secretary of State) be nil.

5. Branding Guidance

5.1 Subject to paragraph 4.3 and any applicable obligations or restrictions on the Franchisee (including the terms of the Rolling Stock Leases), the Franchisee may continue to maintain during the Franchise Period the application of registered or unregistered trade marks (including livery and other distinctive get-up) to any assets which are owned or used by the Franchisee in the operation and provision of the Franchise Services which as at the date of this Agreement were not branded with the Great Western Railway Brand. For the avoidance of doubt, the following provisions of this paragraph 5 shall not apply in respect of the Great Western Railway Brand (but shall apply in respect of the treatment of the words "A *First Group company*" which have been applied to assets which are branded with the Great Western Railway Brand).

(a) Subject to paragraphs 5.2(c) and (g), the Franchisee may:

- (i) in respect of unregistered Marks, provide or procure the provision of an irrevocable undertaking to any relevant Successor Operator to the effect that neither it nor the owner of the Marks will enforce such rights as it may have or may in the future have in respect of such Marks against such Successor Operator and its successors; and
- (ii) in respect of registered Marks, grant or procure the grant of an irrevocable licence to use such Marks to such Successor Operator and its successors.

(b) Any such licence or undertaking under paragraph 5.2(a) shall be in such form as the Secretary of State shall reasonably require except that the terms of any such licence and, to the extent appropriate, any such undertaking shall accord with the provisions of paragraph 8.3 of Schedule 15.4 (*Provisions Applying on and after Termination*).

(c) Subject to paragraph 5.2(g), to the extent that:

- (i) the Franchisee does not provide a relevant undertaking or licence in accordance with paragraph 5.2(a);

- (ii) the Secretary of State considers the relevant Marks to be so distinctive or otherwise such that a Successor Operator could not reasonably be asked to use the relevant assets to which the Marks are applied; or
- (iii) the Franchisee has not otherwise removed or covered such Marks in such a way as may be reasonably acceptable to the Secretary of State prior to the expiry of the Franchise Period,

then the Franchisee shall pay to the relevant Successor Operator such amount as may be agreed between the Franchisee and such Successor Operator, as being the reasonable cost (including any Value Added Tax for which credit is not available under sections 25 and 26 of the Value Added Tax Act 1994) of covering such Marks or otherwise removing all indications of or reference to the Marks in a manner reasonably acceptable to the Secretary of State. Such amount shall not in any event exceed the cost to the Successor Operator of replacing such Marks with its own. If the Franchisee and the relevant Successor Operator fail to agree such cost within twenty eight (28) days of the expiry of the Franchise Period, the Franchisee shall submit such dispute for resolution in accordance with such dispute resolution procedures as the Secretary of State may require.

- (d) The amount to be paid to a Successor Operator under paragraph 5.2(c) may include the reasonable cost of:
 - (i) removing or covering Marks from the exterior of any rolling stock vehicle;
 - (ii) removing or covering interior indications of the Marks including upholstery and carpets;
 - (iii) replacing or covering all station or other signs including bill boards; and
 - (iv) otherwise ensuring that such removal, covering or replacement is effected with all reasonable care and in such manner that the relevant assets may reasonably continue to be used by a Successor Operator in the provision of the Franchise Services.
- (e) The Franchisee shall, in addition to making a payment under paragraph 5.2(c) grant or procure the grant of a licence or undertaking complying with paragraphs 5.2(a) and (b) except that such licence shall only be for such period as may be agreed between the Franchisee and the Successor Operator as being reasonably required by the Successor Operator to remove the Marks from all relevant assets without causing excessive disruption to the operation of services similar to the Franchise Services provided by such Successor Operator. If such period cannot be agreed, the Franchisee shall submit such dispute for resolution in accordance with such dispute resolution procedures as the Secretary of State may require.
- (f) The Secretary of State shall determine at or around the end of the Franchise Period, and after consultation with the Franchisee, the maximum liability of the Franchisee under paragraph 5.2(c) and the maximum length of licence or undertaking under paragraph 5.2(e).


- (g) The provisions of paragraphs 5.2(a) to 5.2(f) shall not apply to the extent that the relevant asset is not to be used by a Successor Operator in the provision of services similar to the Franchise Services. The Secretary of State shall notify the Franchisee as soon as the Secretary of State becomes aware of whether or not any such asset is to be so used.

Withdrawn

Appendix 1

List of Trade Marks

1. Registered Trade Marks

Trade Mark	Registration No	Classes	Date of Filing
Double Arrows Symbol	2107832 	16, 35, 37, 39, 41, 42	16 August 1996
Pullman	550690	12	26 April 1934
The Golden Hind	1275601	39	1 October 1986
Pullman	1275684	39, 43	1 October 1986
The Red Dragon	1483239	39	22 November 1991
Great Western	1517034	39	29 October 1992
The Cornish Riviera	1527422	39	20 February 1993
Business Direct	1532967	39	16 April 1993
Pullman	1537902	32	9 June 1993
The Bristolian	1587595	39	12 October 1994
The Capitals United	1587644	39	12 October 1994
The Devon Belle	1587645	39	12 October 1994
The Cotswold Venturer	1587647	39	12 October 1994
Great Western	1587721 <i>Great Western</i> <i>Great Western</i> Great Western	16, 29, 30, 35, 37, 43	12 October 1994
The Mayflower	1587739	39	12 October 1994
The Merchant Venturer	1587747	39	12 October 1994
The Cornishman	1275686	39	1 October 1986
The Armada	1497174	39	3 April 1992

Appendix 2

Great Western Railway Brand Sample

Main logo suite colours

How to use colour when displaying GWR's main logos

Logos from the standard logo suite can be either GWR Corporate Green, black or white. The various corresponding background colours are demonstrated on the right.

For any other queries regarding colour values please contact GWR.Brand@GWR.com



Colour values

GWR Corporate Green

Print:	Digital:
CMYK - 84/53/68/69	RGB - 24/48/41
PANTONE 5535	HEX - #0B2D27

Black

Print:	Digital:
CMYK - 70/50/30/100	RGB - 0/0/0
PANTONE - Black C	HEX - #000000

White

Print:	Digital:
CMYK - 0/0/0/0	RGB - 255/255/255
PANTONE - N/A	HEX - #FFFFFF

White on GWR Green

This is the preferred choice of colours when using the white logo.

GWR Green on white

This is the preferred choice of colours when using a white background.

Black on white

When there is no colour printing option and the background is white.

White on black

When there is no colour printing option and the background is black.

Withdrawn

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 Franchise Services by a Successor Operator on expiry of the Franchise Period; and
- (b) in accordance with paragraph 5, require the Franchisee 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 the Franchise Agreement are set out in Appendix 1 (List of Key Contracts) to this Schedule 14.3.
- (b) The Franchisee shall enter into any and all Key Contracts which are necessary for the Franchise Agreement to continue in accordance with clause 5 (Duration of the Franchise Agreement).
- (c) Where at any time after the date of the Franchise Agreement the Franchisee 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 Franchisee 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 Franchisee is (or may become) a party or a beneficiary pursuant to paragraph 2 of this Schedule 14.3; or
- (b) de-designation by the Secretary of State of any Key Contract pursuant to paragraph 3 of this Schedule 14.3; or

- (c) re-designation by the Secretary of State pursuant to paragraph 4 of this Schedule 14.3.

2. **Designation of Key Contracts**

- 2.1 Where the Secretary of State considers that it is reasonably necessary for securing the continued provision of the Franchise Services or the provision of services similar to the Franchise Services by a Successor Operator in accordance with the Franchise Agreement, 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 Franchisee, designate as a Key Contract:
 - (a) any actual or prospective agreement, contract, licence or other arrangement; and/or
 - (b) any category of agreement, contract, licence or other arrangement, to which or under which the Franchisee is (or may become) a party or a beneficiary, with effect from the date specified in such notice.
- 2.3 Key Contracts may include any agreement, contract, licence or other arrangement whether in written, oral or other form, whether formal or informal and whether with an Affiliate of the Franchisee or any other person and may include any arrangement for the storage of assets (including electronic systems or Computer Systems) or accommodation of employees.

3. **De-designation of Key Contracts**

The Secretary of State may at any time, by serving a notice on the Franchisee, de-designate any Key Contract from continuing to be a Key Contract with effect from the date specified in such notice.

4. **Re-designation of Key Contracts**

The Secretary of State may at any time, by serving notice on the Franchisee, re-designate as a Key Contract anything which has ceased to be designated as a Key Contract in accordance with paragraph 3 with effect from the date specified in such notice.

5. **Direct Agreements**

- 5.1 Unless the Secretary of State otherwise agrees, or unless directed to do so by the ORR, the Franchisee shall not enter into any prospective Key Contract unless the counterparty to that prospective Key Contract:
 - (a) is a Train Operator; or
 - (b) has entered into a Direct Agreement with the Secretary of State in respect of that prospective Key Contract, providing on a basis acceptable to the Secretary of State, amongst other things, for the continued provision of the Passenger Services and/or the continued operation of the Stations and Depots in the event of:
 - (i) breach, termination or expiry of such Key Contract;

- (ii) termination or expiry of the Franchise Agreement; or
- (iii) the making of a railway administration order in respect of the Franchisee.

5.2 Where the Secretary of State designates or re-designates as a Key Contract:

- (a) any agreement, contract, licence or other arrangement to which the Franchisee is already a party; or
- (b) any category of agreement, contract, licence or other arrangement where the Franchisee is already a party to a contract, licence or other arrangement which, by virtue of the Secretary of State's designation or re-designation, is classified in such category,

the Franchisee shall use all reasonable endeavours to assist the Secretary of State in entering into a Direct Agreement as envisaged by paragraph 5.1(b).

5.3 The Franchisee shall pay to the Secretary of State an amount equal to any losses, costs, liabilities, charges or expenses which may be suffered or incurred by the Secretary of State under the provisions of any Direct Agreement and which may be notified to the Franchisee as a result of, or in connection with:

- (a) any breach by the Franchisee of the terms of the Key Contract to which the relevant Direct Agreement relates; or
- (b) any unsuccessful claim being brought by the Franchisee against the counterparty of any such Key Contract in relation to the termination of such Key Contract.

6. **Emergencies**

6.1 Where any emergency may arise in connection with the provision and operation of the Franchise Services, the Franchisee:

- (a) may enter into on a short-term basis such contracts, licences or other arrangements as it considers necessary or appropriate to deal with the emergency;
- (b) need not procure that the relevant counterparty enters into a Direct Agreement in respect of such contracts or use all reasonable endeavours to assist the Secretary of State in entering into the same;
- (c) shall promptly inform the Secretary of State of any such emergency and contracts, licences or other arrangements which it proposes to enter into; and
- (d) shall take such action in relation to such emergency, contracts, licences or other arrangements as the Secretary of State may request.

7. **No Amendment**

The Franchisee shall not without the prior consent of the Secretary of State (which shall not be unreasonably withheld) vary, or purport to vary, the terms or conditions of any Key Contract at any time, unless directed to do so by the ORR.

8. Replacement of Key Contracts

The Franchisee 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 Franchisee shall, to the extent so requested by the Secretary of State, exercise its right to terminate any Key Contract on the Expiry Date.

Withdrawn

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 the Franchise Agreement been agreed between the Parties to be Key Contracts:

1. any Access Agreement to which the Franchisee is a party other than in its capacity as a Facility Owner;
2. any Property Lease 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*) of Appendix 1 (*The Composition of the Train Fleet*) to Schedule 1.6 (*The 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 Franchisee 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 8 (*Subcontracting any Passenger Services*) of Schedule 1.1 (Franchise Services and 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 Franchisee of train dispatch, performance or supervision of platform duties, security activities, evacuation procedures, advice or assistance to customers, assistance to disabled customers, operation of customer information systems, cash management or ticket issuing systems administration;
8. any contract or arrangement with a Train Operator 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 Franchisee;
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 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 Franchise Services;

15. 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;
16. **NOT USED;**
17. any contract or arrangement for the procurement, implementation, processing and/or operation of the STNR System (including Intellectual Property Rights (or licence to use the same) relating to the STNR System; and
18. any contract or arrangement for the procurement, implementation, processing and/or operation of DR Compensation (including Intellectual Property Rights (or licence to use the same) relating to DR Compensation). In this paragraph 18 "**DR Compensation**" 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.

Withdrawn

Schedule 14.4

Designation of Franchise Assets

1. Franchise Assets

1.1 Subject to paragraph 1.2, all property, rights and liabilities of the Franchisee from time to time during the Franchise Period shall be designated as Franchise Assets and shall constitute Franchise Assets for the purposes of section 27(11) of the Act.

1.2 The rights and liabilities of the Franchisee in respect of the following items shall not be designated as Franchise Assets and shall not constitute franchise assets for the purposes of section 27(11) of the Act:

- (a) any contracts of employment;
- (b) the Franchise Agreement and any Transfer Scheme or Supplemental Agreement;
- (c) the Ticketing and Settlement Agreement;
- (d) any sums placed on deposit with a bank or other financial institution;
- (e) such other property, rights and liabilities as the Franchisee and the Secretary of State may agree from time to time or as the Secretary of State may de-designate as Franchise Assets under paragraph 10.2; and
- (f) any Rolling Stock Leases.

1.3 The Franchisee shall keep vested in it at all times during the Franchise Period all Franchise Assets designated as such pursuant to Schedule 14.4 (*Designation of Franchise Assets*) as it may require in order to comply with:

- (a) the Licences;
- (b) any contracts of employment with Franchise Employees;
- (c) any relevant Fares;
- (d) any Key Contracts; and
- (e) any applicable safety legislation regulations or safety standards and the Safety Certificate,

in order to ensure that the Secretary of State may designate such assets as Primary Franchise Assets.

2. Primary Franchise Assets

2.1 The following property, rights and liabilities shall (to the extent that they constitute Franchise Assets) be designated as Primary Franchise Assets with effect from the following dates:

- (a) the property, rights and liabilities listed as such in the table in Appendix 1 (*List of Primary Franchise Assets*) to this Schedule 14.4 (which constitute

Primary Franchise Assets agreed between the Parties as at the date of the Franchise Agreement), on the Start Date;

- (b) any additional property, rights and liabilities designated under paragraph 3 during the Franchise Period, on the date of such designation;
- (c) any property or right which is vested in the Franchisee and used for the purpose of maintaining, replacing, repairing or renewing any property designated as Primary Franchise Assets and which forms or replaces part or all of such designated property on completion of such maintenance, replacement, repair or renewal, on the date of its use for such purpose;
- (d) the rights and liabilities of the Franchisee under any Key Contract designated under paragraph 5, on the date of such designation;
- (e) the rights and liabilities of the Franchisee in respect of the terms of any Fare or Discount Card designated under paragraph 6, on the date of such designation;
- (f) any CRM Data and/or Yield Management Data and, to the extent that any CRM System and/or Yield Management System is the property of the Franchisee, such CRM System and/or Yield Management System on the later of the Start Date and:
 - (i) in relation to CRM Data or Yield Management Data, the date on which such CRM Data or Yield Management Data (as applicable) is collected; or
 - (ii) in relation to any such CRM System or Yield Management System, the date on which such CRM System or Yield Management System is created,save, in relation to CRM Data and Yield Management Data, any data in respect of which the Data Subject has not consented to such data being disclosed and processed by any Successor Operator and/or the Secretary of State;
- (g) any licence of any CRM System and/or Yield Management System, on the date of such licence;
- (h) NOT USED;
- (i) any Actual Passenger Demand information (and all Intellectual Property Rights in respect of the same), on the date such information is supplied to the Secretary of State pursuant to paragraph 1.1 of Schedule 1.5 (*Information about Passengers*); and
- (j) any property and rights comprised in Committed Obligations and designated by the Secretary of State as Primary Franchise Assets pursuant to paragraph 9 (*Designation of Assets comprised in COs as Primary Franchise Assets*) of Schedule 6.2 (*Special Terms related to the Committed Obligations*), on the date of such designation.

2.2 **NOT USED.**

3. **Designation of Additional Primary Franchise Assets**

3.1 The Secretary of State may at any time and from time to time, by serving notice on the Franchisee, designate any or all of the Franchise Assets as Primary Franchise Assets.

3.2 Such designation shall take effect from the delivery of such notice and may refer to all or certain categories of property, rights or liabilities. Any such notice shall specify the reasons for such designation.

3.3 On or before designation of any Franchise Asset as a Primary Franchise Asset, the Secretary of State may agree not to subsequently de-designate such Primary Franchise Asset without the prior written consent of the Franchisee. If the Secretary of State so agrees, the notice designating the relevant Franchise Asset as a Primary Franchise Asset shall state the commitment not to de-designate.

4. **Designation during last twelve (12) months of Franchise Period**

4.1 If the Secretary of State designates a Franchise Asset as a Primary Franchise Asset under paragraph 3 at any time during the last twelve (12) months of the Franchise Period then, within twenty eight (28) days of such designation, the Secretary of State may, subject to paragraph 4.2, de-designate such Primary Franchise Asset by serving notice on the Franchisee. Such de-designation shall take effect upon delivery of such notice.

4.2 Where, the Secretary of State has given a commitment not to de-designate a Primary Franchise Asset pursuant to paragraph 3.3, the Secretary of State shall not de-designate such Primary Franchise Asset pursuant to paragraph 4.1 without first obtaining the prior written consent of the Franchisee.

5. **Designation of Key Contracts as Primary Franchise Assets**

The Secretary of State shall, subject to paragraphs 1.2(b) and 7, be entitled to designate any Key Contract as a Primary Franchise Asset at any time during the Franchise Period by serving notice on the Franchisee. Such designation shall take effect from delivery of such notice.

6. **Designation of Fares and Discount Cards**

The Secretary of State may designate any Fare or Discount Card as a Primary Franchise Asset at any time during the Franchise Period by serving a notice on the Franchisee. Such designation shall take effect from delivery of such notice.

7. **Rights and Liabilities**

The Secretary of State, in designating the rights and liabilities of the Franchisee (whether under a particular contract or other arrangement) as a Primary Franchise Asset may, in the Secretary of State's discretion, elect to designate some but not all of the rights and liabilities under a particular contract or other arrangement, or to designate only those rights and liabilities arising after or otherwise relating to a period after a particular time (including the period after the expiry of the Franchise Period) or to those relating only to the Franchise Services or a particular part thereof.

8. Disputes over Designation

- 8.1 The Franchisee may object in writing to the Secretary of State to any designation pursuant to paragraph 3 or 4.
- 8.2 Such objection may be made solely on the grounds that the designation of the relevant property, rights or liabilities specified in the objection is not, in the Franchisee's opinion, reasonably necessary to secure the continued provision of the Franchise Services by a Successor Operator on the expiry of the Franchise Period on a basis reasonably acceptable to the Secretary of State or to facilitate the transfer to such Successor Operator of the provision of the Franchise Services at such time.
- 8.3 Any such objection may only be made within twenty eight (28) days of a designation made more than twelve (12) months prior to the end of the Franchise Period or fourteen (14) days of a designation made during the last twelve (12) months of the Franchise Period.
- 8.4 The Secretary of State shall respond to any such objection as soon as reasonably practicable and shall take account of any representations made by the Franchisee regarding the use of the relevant Primary Franchise Asset otherwise than in the provision and operation of the Franchise Services.
- 8.5 If the Franchisee's objection cannot be resolved by agreement within a period of fourteen (14) days from the date of submission of that objection, the Franchisee may refer the dispute for resolution in accordance with the Dispute Resolution Rules.
- 8.6 Any body duly appointed to resolve such dispute shall determine whether or not the designation of the relevant property, rights or liabilities was reasonably necessary for securing that the Franchise Services may continue to be provided by a Successor Operator on the expiry of the Franchise Period on a basis reasonably acceptable to the Secretary of State or otherwise facilitating the transfer of the provision of the Franchise Services at such time, and accordingly whether or not they should cease to be so designated.
- 8.7 If any dispute as to any designation pursuant to paragraph 3 remains outstanding on the expiry of the Franchise Period, then such dispute shall be deemed to cease immediately before the expiry of the Franchise Period and the relevant Franchise Assets shall continue to be designated as Primary Franchise Assets on and after the expiry of the Franchise Period.

9. Provision of Information to the Secretary of State

- 9.1 The Franchisee shall provide such information as the Secretary of State may reasonably require in order to satisfy the Secretary of State that any Franchise Assets which are to be designated as Primary Franchise Assets after the Start Date under this Schedule 14.4 will at the time of such designation be vested in the Franchisee. Such information may include details of any Security Interests over such property, rights and liabilities.
- 9.2 The Franchisee shall further provide such information as to the property, rights and liabilities of the Franchisee as the Secretary of State may reasonably require in connection with the designation of Primary Franchise Assets. Such information shall be supplied to the Secretary of State within such timescale as the Secretary of State may reasonably require.

10. **De-Designation of Franchise Assets and Primary Franchise Assets**

10.1 The Secretary of State and the Franchisee may agree in writing at any time that a:

- (a) Franchise Asset shall cease to be designated as a Franchise Asset; or
- (b) Primary Franchise Asset shall cease to be designated as a Primary Franchise Asset,

and the relevant Franchise Asset or Primary Franchise Asset (as the case may be) shall cease to be designated upon such agreement coming into effect.

10.2 The Secretary of State may, in addition at any time during the Franchise Period, by serving notice on the Franchisee:

- (a) cause a Franchise Asset which is not a Primary Franchise Asset to cease to be designated as a Franchise Asset. Such Franchise Asset shall cease to be designated on the date specified in such notice; or
- (b) subject to paragraph 10.3, cause a particular Primary Franchise Asset to cease to be designated as such. Such Primary Franchise Asset shall cease to be designated on the date specified in such notice.

10.3 Where, the Secretary of State has given a commitment not to de-designate a Primary Franchise Asset pursuant to paragraph 3.3, or pursuant to any provision of the Franchise Agreement giving that commitment, the Secretary of State shall not de-designate such Primary Franchise Asset pursuant to paragraph 10.2(b) without first obtaining the prior written consent of the Franchisee.

10.4 The Secretary of State's rights pursuant to paragraph 10.2(b) may be exercised, in respect of any rights and liabilities in respect of a Fare or Discount Card, at any time and, in respect of any other Primary Franchise Asset, no later than one (1) year prior to the expiry of the Franchise Term.

11. **Amendment of the List of Primary Franchise Assets**

The table in Appendix 1 (List of Primary Franchise Assets) to this Schedule 14.4 shall be amended as the Secretary of State considers necessary or desirable from time to time to take account of designation and de-designation of Primary Franchise Assets pursuant to this Schedule 14.4.

APPENDIX 1 TO SCHEDULE 14.4

List of Primary Franchise Assets

Description of Primary Franchise Asset*	Commitment not to de-designate	To Transfer to Successor Operator at Nil Value**
<p>Two Class 80X full cab train simulators, located at:</p> <p>(a) The Driver Training Development Centre at Holybrook Court, Cow Lane, Reading RG1 8NA; and</p> <p>(b) the Driver Training Development Centre, Marsh Junction Depot, Albert Road, St Phillips, Bristol BS2 0YG.</p>	No	Yes
<p>The following Shunting Locomotives:</p> <p>(a) Class 08: 08836;</p> <p>(b) Class 08: 08822;</p> <p>(c) Class 08: 08641;</p> <p>(d) Class 08: 08644; and</p> <p>(e) Class 08: 08645.</p>	No	Yes
<p>The following railway vehicles:</p> <p>(a) ADB 787 133 4 Wheeled Wagon – Power Units Plymouth Laira Depot;</p> <p>(b) Class 143 unit: 143617;</p> <p>(c) Class 143 unit: 143618; and</p> <p>(d) Class 143 unit: 143619.</p>	No	Yes
<p>The rights and liabilities of the Franchisee under:</p> <p>(i) an agreement in respect of the Managed Stations Light services model provided at Reading Station made between Network Rail (1) and the Franchisee (2); and</p> <p>(ii) an agreement in respect of the Managed Stations Light services model provided at Bristol Temple Meads Station made between Network Rail (1) and the Franchisee (2), dated 1 April 2014.</p>	Yes	Yes
<p>The rights and liabilities of the Franchisee under the Enhanced Service Support Agreement between the</p>	No	Yes

Franchisee (1) and Wiltshire Council (2) dated 21 November 2013.		
Cornwall Rail Improvements Package Umbrella Agreement between the Secretary of State (1), Cornwall Council (2), and First Greater Western Limited (3), dated 18 September 2014.	Yes	Yes
Long Rock Grant Funding Agreement between Cornwall Council (1), and First Greater Western Limited (2), dated 18 September 2014, in respect of funding by Cornwall Council for elements of the Long Rock Depot upgrade.	Yes	Yes
Night Riviera Grant Funding Agreement between Cornwall Council (1), and First Greater Western Limited (2), dated 18 September 2014, in respect of funding the Sleeper modernisation.	Yes	Yes
The contract between Knorr-Bremse RailService (UK) Limited and the Franchisee dated 27 June 2014 for the Baseline Sleeper Works, which includes a priced option that has been exercised by the Franchisee in respect of the Night Riviera Upgrade.	Yes	Yes
Land Lease in respect of Kingham Station car park extension between James Paul Ambler (1) and First Greater Western Limited (2), dated 30 April 2015.	Yes	Yes
Those elements of the Reading Wheel Lathe Facility which are not the property of Network Rail, including the wheel lathe machine, swarf extractor tool and battery powered mule.	Yes	Yes
All the rights, liabilities, title and interest of the Franchisee in: (a) Agreement for Lease relating to land on the south western side of Great Western Road, Gloucester between (1) the Council of the City of Gloucester and (2) the Franchisee (the "Gloucester Car Park Agreement for Lease"); and, once the Lease has been entered into, (b) Lease relating to land on the south western side of Great Western Road, Gloucester between (1) the Council of the City of Gloucester and (2) the Franchisee; and, once	Yes	[REDACTED ¹⁴⁹]

¹⁴⁹ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

<p>the Option under the Agreement for Lease to purchase the land has been exercised,</p> <p>(c) the freehold land on the south western side of Great Western Road, Gloucester which has been acquired by the Franchisee and is subject to the provisions of:</p> <p>(i) a Planning Clawback Deed between (1) The Secretary of State for Communities and Local Government and (2) The Council of the City of Gloucester; and</p> <p>(ii) a Turning Overage Deed between (1) The Secretary of State for Communities and Local Government and (2) The Council of the City of Gloucester,</p> <p>(all together the "Gloucester Car Park Documents").</p>		
<p>Bristol Temple Meads station cycle parking:</p> <p>(a) Brompton Dock - situated in main station car park; and</p> <p>(b) Public Pumps – two pumps on platform 3 alongside the main cycle racks toward the British Transport Police offices.</p>	No	Yes
<p>Oxford station cycle parking:</p> <p>(a) Brompton Dock – adjacent to main cycle park at front of station concourse to the left on the station approach road;</p> <p>(b) Bike Repair & Hire Point – adjacent to main cycle park at front of station concourse near the access ramp; and</p> <p>(c) Public Pump – adjacent to main cycle park at front of station concourse to the left on the station approach road.</p>	No	Yes
<p>Reading station cycle parking: Brompton Dock – adjacent to Rail Air lounge at front of station in Blagrove Street</p>	No	Yes
<p>Exeter St David’s station cycle parking:</p> <p>(a) Public Pump – situated on platform 1 (north end).</p> <p>(b) Cycle Parking (double deck) – situated under the canopy on platform 1 (southern end);</p>	No	Yes

(c) Cycle Parking (double deck) and shelter – situated in the staff enclosure behind platform 1; and (d) Brompton Dock – situated in the main car park at the front of station just off Bonhay Road/ Isambard Parade.		
Exeter Central station cycle parking: cycle parking and shelter – situated on platform 1.	No	Yes
Digby & Sowton station cycle parking: cycle parking and shelter (two bays) – situated in the station car park.	No	Yes
Hayle Railway station cycle parking: (a) cycle parking and shelter (two bays)- situated in station car park next to Platform 1 and main cycle shelter next to Platform 2.	No	Yes
Exmouth Railway station cycle parking: (a) cycle parking and shelter (double deck) - situated on the single platform; and (b) cycle hire point (Brompton Dock) – situated on the single platform	No	Yes
Henley-on-Thames Railway station cycle parking: (a) cycle parking and shelter (double deck) – situated outside of the single platform, next to the station buildings near the station car park on Station road; and (b) cycle hire point (Brompton Dock) – situated at the exit of the single platform, near the single deck cycle racks next to the station platform near the station car park on Station road	No	Yes
Charlbury station cycle parking: (a) cycle parking and shelter – situated in the main station car park by the footbridge access ramp near platform 2. (b) information board – situated in the main station car park by the footbridge access ramp near platform 2.	No	Yes
Chetnole station: information board – situated on the approach path to the platform.	No	Yes
Clifton Down station cycle parking:	No	Yes

(a) toastrack cycle parking – five hoop cycle rack located on platform 1 and ten hoop cycle rack located on platform 2; and (b) repair station – situated on platform 2.		
Dorchester West station cycle parking: toastrack Cycle Parking – four hoop rack located on platform 1 by the footbridge, and six hoop rack located on platform 2 in between the platform benches.	No	Yes
Evesham station cycle parking: (a) cycle parking and shelter – situated in the car park near the station side entrance; (b) toastrack cycle parking – situated on platform 2; and (c) information board – situated on platform 2.	No	Yes
Hanborough station cycle parking: cycle parking and shelter – positioned on the station approach road to the right of the platform entrance.	No	Yes
Honeybourne station cycle parking: (a) toastrack cycle parking & shelter – situated in the car park behind the waiting shelter on platform 1; and (b) information board – situated in the car park behind the waiting shelter on platform 1.	No	Yes
Kingham station cycle parking: (a) cycle parking & shelter – situated in the car park next to the ticket office on platform 1; and (b) information board – situated in the car park next to the ticket office on platform 1.	No	Yes
Lawrence Hill station cycle parking: (a) toastrack Cycle Parking & Shelter – situated on platform 1 near the station entrance and exit; and (b) Information Board – situated on platform 1 near the station entrance and exit.	No	Yes
Maiden Newton station cycle parking: toastrack cycle parking & shelter – situated on platform 1.	No	Yes
Newbury station cycle parking: (a) cycle parking & shelter – situated on platform 2.	No	Yes

(b) information board – situated on platform 2.		
Stapleton Road station cycle parking: (a) toastrack cycle parking & shelter – located on platform 1 in between the platform entrance and the waiting shelter.	No	Yes
Thatcham cycle parking: (a) two tier cycle parking & shelter – located on platform 2 in between the ticket office and waiting shelter; and (b) information board – located on platform 2 in between the ticket office and waiting shelter.	No	Yes
Thornford station: information board – located at the bottom of the steps leading to the platform.	No	Yes
Tiverton station cycle parking: (a) Cycle parking - two tier cycle rack located under the footbridge ramp on platform 2 side of the station; (b) toastrack style hoops located on platform 1 side of the station; (c) Lighting – located under the footbridge ramp on platform 2 side of the station; and (d) Repair Station – situated next to toastrack style hoops on platform 1 side of the station.	No	Yes
Weston-Super-Mare cycle parking: two tier cycle parking & shelter – situated at the Highbridge end of platform 2.	No	Yes
Worle station cycle parking: toastrack cycle parking & shelter – situated on platform 2 side of the station, under the ramp to the footbridge alongside the car park drop off/pick up point.	No	Yes
Yatton station cycle parking: (a) heritage railings – situated on Bristol end of platform 2 by the footbridge; and (b) toastrack cycle parking & shelter – situated on Bristol end of platform 2 by the footbridge.	No	Yes
Yetminster cycle parking: toastrack parking & shelter – situated along the platform near the car park entrance on either side of the waiting shelter.	No	Yes
The following Leases in respect of additional car parking spaces at Kemble Station:	Yes	Yes

<ol style="list-style-type: none"> 1. Lease relating to land adjoining Station Road, Kemble, Gloucestershire with Kemble Farms Limited; and 2. Lease relating to land for use as a footpath at Tavern Inn, Station road, Kemble, Gloucestershire with Arkell's Brewery Limited. 		
<p>The following Leases and Deed of Easement in respect of additional car parking spaces at Tiverton Parkway Station:</p> <ol style="list-style-type: none"> 1. Lease relating to railway station car park, Jersey Farm, Sampford Peverell, Tiverton, Devon; 2. Lease relating to railway station car park, Morrells Farm, Sampford Peverell, Tiverton, Devon; and 3. deed of Easement relating to land at Tiverton Parkway, Tiverton, Devon. 	Yes	Yes
<p>The following Lease in respect of additional car parking spaces at Hanborough Station:</p> <ol style="list-style-type: none"> 1. Lease relating to land on the south side of Main Road, Long Hanborough. West Oxfordshire. 	Yes	Yes
<p>The following agreements in relation to Exeter LMD:</p> <ol style="list-style-type: none"> 1. The Basic Asset Protection Agreement dated 17th January 2017 between Network Rail (1) and the Franchisee (2), relating to Exeter LMD Expansion (GRIP stage 4 and Early Contractor Involvement); 2. The Asset Protection Agreement dated 19th December 2017 between Network Rail (1), and the Franchisee (2) (the "APA"); and 3. Agreement for lease relating to land at and adjoining Exeter Depot dated 19th December 2017 between Network Rail (1), and the Franchisee (2). 	Yes	Yes
<p>All the rights, liabilities, title and interest of the Franchisee in the freehold land to the east of Castle Cary Station registered with HM Land Registry under Title No ST118370 (all together the "Castle Cary Additional Car Park Land")</p>	Yes	[REDACTED ¹⁵⁰]

¹⁵⁰ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

<p>All the rights and liabilities of the Franchisee in:</p> <p>(a) those parts of the STNR System funded by the Secretary of State as part of the STNR Project, as set out below:</p> <p>(i) 30 Platform Validators (plus three maintenance spares) located at the following stations: Bedminster; Cam & Dursley; Filton Abbey Wood; Keynsham; Nailsea & Backwell; Oldfield Park; Parson Street; Worle; Yate; Yatton; Weston Milton; Stonehouse; Stroud; and Kemble; and</p> <p>(ii) 12 Queue Busters located at the following stations: Bath Spa; Bristol Temple Meads; Didcot Parkway; Gloucester; Maidenhead; Newbury; Oxford; Paddington; Plymouth; Reading; Slough; and Truro;</p> <p>(b) any Intellectual Property Rights (or licence to use the same) associated with those parts of the STNR System; and</p> <p>(c) all data processed or generated by the STNR System (it being acknowledged that pursuant to the Supplemental Agreement set out in Appendix 2 of Schedule 15.4 all such assets shall be valued at nil).</p>	No	Yes
<p>All the rights, liabilities, title and interest of the Franchisee in the Lease relating to the car park to the south of Westbury station approach Westbury between Linden Wates (Westbury) Limited and First Greater Western Limited dated 28 February 2019.</p>	Yes	Yes
<p>The title, interest, and all the rights and liabilities of the Franchisee in:</p> <ol style="list-style-type: none"> 1. Supplemental Agreement relating to Newbury Multi Storey Carpark, between Network Rail Infrastructure Limited, and First Greater Western Limited, and West Berkshire District Council, dated 29 March 2019; 2. Agreement for the management of Newbury Station Car Park, between Network Rail Infrastructure Limited, and First Greater Western Limited, and West Berkshire District Council, dated 29 March 2019 	Yes	Yes

(all together the "Newbury Station Car Park Documents")		
<p>The title, interest, and all the rights and liabilities of the Franchisee in:</p> <ol style="list-style-type: none"> 1. Umbrella Agreement relating to the St. Erth Multi Modal Transport Hub, Cornwall between Network Rail Infrastructure Limited and the Cornwall Council and First Greater Western Limited, dated 11 November 2018; 2. Northern Car Park Lease relating to the St. Erth Multi Modal Transport Hub, Cornwall between the Cornwall Council and First Greater Western Limited, dated 11 November 2018; and 3. Southern Car Park Lease relating to the St. Erth Multi Modal Transport Hub, Cornwall between the Cornwall Council and First Greater Western Limited, dated 11 November 2018. <p>(all together the "St. Erth Multi Modal Transport Hub Documents")</p>	Yes	Yes
<p>The title, interest, and all the rights and liabilities of the Franchisee in the agreement between First Greater Western Limited and Taunton Deane Borough Council dated 11 March 2019 relating to an unsecured term loan facility not exceeding [REDACTED¹⁵¹], for redevelopment works at Taunton Railway Station.</p>	Yes	Yes
<p>The title, interest, and all the rights and liabilities of the Franchisee in any Computer System, other system or asset owned or used by the Franchisee procurement, implementation, processing and/or operation of Delay Repay Compensation (including any Intellectual Property Rights (or licence to use the same) relating to such Computer System, other system or asset) and all data whatsoever relating to Delay Repay Compensation processed or generated by such Computer System, such other system or otherwise (it being acknowledged that pursuant to the Supplemental Agreement set out in Appendix 2 of Schedule 15.4 all right, title and interest shall be valued at nil).</p>		

¹⁵¹ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

Any unregistered trademark rights (if any) which the Franchisee may have in relation to the GWR External Livery Specification (or any similar external livery, including as may be applied to Liveried Sets) but excluding any marks associated with the Parent (such as "FirstGroup" or the "flying f" logo or the "a FirstGroup company" decals which are part of the GWR External Livery Specification).	No	Yes
Registered trade mark number UK00003064468 and any unregistered trademark rights (if any) which the Franchisee may have in relation to the GWR / Great Western Railway brand as applied to rolling stock vehicles, including without limitation stations, depots, equipment and fittings at stations / depots, staff uniforms, timetables / publicity / marketing material (whether physical or in IT format), novelties, souvenirs and road vehicles, but excluding any marks associated with the Parent (such as "FirstGroup" or the "flying f" logo or the "a FirstGroup company" decals which are part of the GWR External Livery Specification).	No	Yes
The title, interest, and all the rights and liabilities of the Franchisee in respect of the Taunton Station Temporary Car Park lease: 1. Lease relating to property at land at Obridge Yard, adjoining Taunton Station between Network Rail Infrastructure Limited and First Greater Western Limited, dated 28 February 2020.	No	Yes
The following contract relating to the redevelopment and expansion of Exeter Railway Depot: 1. Contract for Works under NEC3 Engineering and Construction Contract (April 2013), between HOCHTIEF (UK) Construction Limited (1), and First Greater Western Limited (2), dated 20 December 2017.	No	Yes
The title, interest, and all the rights and liabilities of the Franchisee The following lease relating to the Occupational Health Centre in Reading: 1. Lease relating to Part Fifth Floor, One Valpy, 20 Valpy Street, Reading, RG1 1AR, between RBS Pension Trustee Limited (1), and First Greater Western Limited (2), dated 14 February 2020	Yes	Yes
All the rights and liabilities of the Franchisee in the agreement relating to the provision of the Mobile Ticketing Information System (MTIS), between The	Yes	Yes

Ticket Keeper Limited (1), and First Greater Western Limited (2), dated 20 December 2019.		
<p>The title, interest, and all the rights and liabilities of the Franchisee in:</p> <p>(a) Lease relating to land adjacent to Worcestershire Parkway Railway Station, Worcester, between Worcestershire County Council (1), and First Greater Western Limited (2), dated 21 February 2020;</p> <p>(b) Payment Deed relating to Worcestershire Parkway Station, between Worcestershire County Council (1), and First Greater Western Limited (2), dated 21 February 2020; and</p> <p>(c) Indemnity Deed relating to Worcestershire Parkway Station, between Worcestershire County Council, Network Rail Infrastructure Limited and First Greater Western Limited, dated 21 February 2020.</p> <p>(All together the "Worcestershire Parkway Station Documents")</p>	Yes	Yes
<p>The following Agreement for lease relating to Bristol Parkway Traincrew Accommodation at Hatchet Road Maintenance Depot:</p> <p>1. Agreement for lease relating to land at Hatchet Road Maintenance Depot, Stoke Gifford, Bristol, between Network Rail Infrastructure Limited and First Greater Western Limited, dated 03 February 2020.</p>	Yes	Yes
The Yield Management Data shall (to the extent that they constitute Franchise Assets) be designated as Primary Franchise Assets with effect from the date on which such Yield Management Data is collected.	No	Yes
Blackwater Station - Steel 'coil' style cycle parking stands	No	Yes
Farnborough North Station - Steel 'coil' style cycle parking stands.	No	Yes
St James' Park (Exeter) station – Two Refurbished waiting shelters (one on each platform.).	No	Yes
Tackley Station - Two-bay Macemain waiting shelter on Down platform.	No	Yes
Lympstone Village Station - Two illuminated timetable boards at the bottom of the approach road.	No	Yes

St James Park (Exeter) Station - Two illuminated timetable boards at the top of the access path to platform 2.	No	Yes
Goring & Streatley station - Eight galvanised Sheffield cycle parking loops along the access path parallel to platform 1.	No	Yes
Hungerford station - Macemain passenger waiting shelter located on platform 1.	No	Yes
Twyford station - Sheffield cycle parking loops located at the southern entrance to the station	No	Yes

** Note that the Secretary of State may elect to designate under Schedule 14.4 as Primary Franchise Assets any assets delivered by the Franchisee as part of a Committed Obligation under Schedule 6.2 (Committed Obligations).*

*** Where a Primary Franchise Asset listed in this Appendix 1 to Schedule 14.4 is both: (i) a contract, lease, licence or other equivalent arrangement conferring rights and liabilities; and (ii) specified in column 3 of this table as transferring at "nil value", the valuation of such Primary Franchise Asset will be subject to paragraph 5 of the Schedule (Net Asset Statement) to the Supplemental Agreement.*

Withdrawn

Dealing with Franchise Assets

1. Assets not Designated as Primary Franchise Assets

- 1.1 This paragraph 1 relates to any Franchise Assets that are property or rights and are not designated as Primary Franchise Assets.
- 1.2 For the purposes of section 27(3) of the Act, the Secretary of State consents to the Franchisee:
- (a) transferring or agreeing to transfer any such Franchise Assets or any interests in, or right over, any such Franchise Assets; and
 - (b) creating or extinguishing, or agreeing to create or extinguish, any interest in, or right over, any such Franchise Assets.

2. Liabilities not Designated as Primary Franchise Assets

- 2.1 This paragraph 2 relates to any liabilities which are not designated as Primary Franchise Assets.
- 2.2 For the purposes of section 27(3) of the Act, the Secretary of State consents to the Franchisee entering into any agreement under which any such liability is released or discharged, or transferred to another person.

3. Franchise Assets and Primary Franchise Assets

- 3.1 This paragraph 3 relates to Franchise Assets (whether or not designated as Primary Franchise Assets) which are property or rights.
- 3.2 The Secretary of State hereby consents to the installation of Spares which have been designated as Primary Franchise Assets on any rolling stock vehicles. Any Spare which is so installed shall cease to be so designated on such installation.
- 3.3 For the purposes of section 27(3) of the Act, the Secretary of State hereby consents to the Franchisee creating or agreeing to create any Security Interest over any of these Franchise Assets to the extent that the terms of any such Security Interest provided that:
- (a) if the relevant Franchise Asset becomes the subject of a transfer scheme made under section 12 and Schedule 2 of the Railways Act 2005, it shall be fully and automatically released from the relevant Security Interest immediately before the coming into force of such transfer scheme;
 - (b) if the relevant Franchise Asset is assigned, novated or otherwise transferred to another person pursuant to and in accordance with the Franchise Agreement, it shall be fully and automatically released from the relevant Security Interest immediately before such assignment, novation or transfer; and
 - (c) such Security Interest shall not be enforced or enforceable until the date on which such Franchise Asset ceases to be designated as a Franchise Asset.

4. **Prohibition on Other Security Interests**

The Franchisee shall not create or agree to create a Security Interest over any Franchise Asset except on the terms permitted under paragraph 3.3.

5. **Miscellaneous**

The Franchisee shall promptly inform the Secretary of State of any Security Interest arising at any time over any of its property or rights and shall provide the Secretary of State with such information in relation thereto as the Secretary of State may reasonably require.

Withdrawn

Schedule 14.6

Not used

Withdrawn

APPENDIX 1 TO SCHEDULE 14.6

NOT USED

Withdrawn

Schedule 14.7

NOT USED

Withdrawn

SCHEDULE 15

OBLIGATIONS ASSOCIATED WITH TERMINATION

Schedule 15.1:	Reletting Provisions
Schedule 15.2:	Last Twelve (12) or Thirteen (13) months of Franchise Period and other conduct of business provisions
Schedule 15.3:	Handover Package
	Appendix 1: Form of Handover Package
Schedule 15.4:	Provisions applying on and after Termination
	Appendix 1: Template Form of Transfer Scheme
	Appendix 2: Template Form of Supplemental Agreement
	Appendix 3: Form of HEx Business Transfer Agreement

Withdrawn

Reletting Provisions

1. Reletting of Franchise

- 1.1 The Franchisee acknowledges that the Secretary of State may wish, at or before the expiry of the Franchise Period, either to invite persons to tender for the right to provide all or some of the Passenger Services under a franchise agreement and/or the HEx Outsourced Services or alternatively to enter into a franchise agreement in respect of all or some of the Passenger Services and/or the HEx Outsourced Services without having gone through a tendering process.
- 1.2 The Franchisee further acknowledges that the Secretary of State has in certain circumstances a duty under section 30 of the Act to secure the continued provision of services equivalent to the Passenger Services on expiry or termination of the Franchise Agreement. The Franchisee accordingly accepts and agrees to the restrictions and obligations imposed on it under Part 1 (Franchise Services) of Schedule 1.1 (Franchise Services and Service Development), Schedule 14 (Preservation of Assets) and this Schedule 15 (Obligations Associated with Termination).

2. Preparation for Reletting

- 2.1 The Franchisee 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, the Franchise Employees and all books, records and other materials kept by or on behalf of the Franchisee in connection with the Franchise Services and/or the HEx Outsourced 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 Franchise Services and/or the HEx Outsourced Services;
 - (b) to prepare invitations to other potential franchisees to tender for the right and obligation to provide any other railway passenger services or operate any other additional railway asset; or
 - (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 Franchise Services and/or the HEx Outsourced 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 Franchise Services and/or the HEx Outsourced Services by the Franchisee.

3. **Data Site Information**

3.1 The Franchisee 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 Franchise 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 Franchisee 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 Franchisee 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 Franchisee 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 Franchisee 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 Franchisee shall ensure that such staff are trained in the use of such data site (such training to be at the expense of the Secretary of State).

3.6 The Franchisee 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 Franchisee by notice in writing to comply;
- (b) where the Secretary of State raises with the Franchisee any query in relation to any Data Site Information, make a full and substantive response to such query within five (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 Franchisee 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 Franchise Services and the HEx Outsourced Services (whether or not together with other railway passenger services) at or following the end of the Franchise Period, the Franchisee agrees and acknowledges that the Secretary of State may require:

- (a) that the Franchisee provides the Secretary of State with additional information and reports and analysis in respect of such Service Groups as the Secretary of State may specify. This may include:
 - (i) information relating to the operational and financial performance of the Franchisee in relation to such Service Groups; and
 - (ii) identification of those employees, assets and liabilities which relate to such Service Groups together with an indication of the extent to which the same are shared between the operation of different Service Groups; and
- (b) subject to paragraph 3.8, that the Franchisee reorganises the business of providing services equivalent to the Franchise Services and/or the HEx Outsourced Services in order to facilitate the transfer anticipated by this Schedule 15.1 on an ongoing basis of the business of providing the Franchise Services and/or the HEx Outsourced Services within each of such Service Groups to separate Successor Operators. This may include, to the extent reasonably practicable:
 - (i) the re-organisation of personnel such that an appropriate number of employees (having sufficient skills, qualifications and experience) will transfer by operation of Law to each Successor Operator of each such Service Group; and/or
 - (ii) entering into additional or clarificatory contractual or other arrangements so that the Successor Operator of each such Service Group will have the necessary assets and rights to operate the Franchise Services and/or the HEx Outsourced Services within that Service Group; and
- (c) that the Franchisee 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 Franchisee 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 the Franchise Agreement or otherwise) in respect of any contravention by the Franchisee of its obligations under this paragraph 3, if the Secretary of State is of the reasonable opinion that the Franchisee does not have sufficient resources to enable its compliance with its obligations under this paragraph 3 the Secretary of State may:

- (a) require the Franchisee (at its own cost) to employ; or
- (b) after notification to the Franchisee, employ,

such suitable additional resource as may be required to ensure that the Franchisee can comply with its obligations under this paragraph 3. The Franchisee shall reimburse to the Secretary of State, by way of adjustment to Franchise 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 Franchisee 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 Franchisee shall take no action or steps which is or are designed, directly or indirectly:

- (a) to prevent, prejudice or frustrate the transfer as a going concern of the business of providing the Franchise Services and/or the HEx Outsourced Services at the end of the Franchise Period to a Successor Operator (provided that this shall not restrict or prevent the Franchisee from exercising its rights or fulfilling its obligations under the HEx Services Agreement in relation to the termination of the HEx Services Agreement); or
- (b) to avoid, frustrate or circumvent any provision of the Franchise Agreement (including in particular the provisions of Schedule 14 (*Preservation of Assets*) and this Schedule 15) which is included in whole or in part for the purpose of preventing any such preventive, prejudicial or frustrating action or steps.

4.2 Subject to the restrictions set out in paragraph 4.1 and the other provisions of the Franchise Agreement, the Franchisee may take such action as it may require for the purposes of bidding to become, or becoming, a Successor Operator.

5. **Inspection Rights during the Tendering/Reletting Process**

5.1 Without limiting any other rights of the Secretary of State under the Franchise Agreement and subject to paragraph 5.3, the Franchisee 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 Franchisee or any of its Affiliates or used in connection with the provision of the Franchise Services and/or the HEx Outsourced Services by the Franchisee 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 Franchise Services and/or the HEx Outsourced 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 Franchisee 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 Franchise Services and/or the HEx Outsourced Services by the Franchisee.

Schedule 15.2

Last Twelve (12) or Thirteen (13) Months of Franchise Period and Other Conduct of Business Provisions

1. Last Twelve (12) or Thirteen (13) Month Period

1.1 Where reference is made in the Franchise Agreement to the last twelve (12) or thirteen (13) months of the Franchise Period, such period shall be deemed to commence on the earliest of the following dates:

- (a) the date which is twelve (12) or thirteen (13) months, as the case may be, prior to the Expiry Date or if the actual date of expiry of the Franchise Period is known the date which is twelve (12) or thirteen (13) months prior to that date;
- (b) the date on which the Secretary of State notifies the Franchisee that such period of twelve (12) or thirteen (13) months shall be deemed to commence on the grounds that the Secretary of State reasonably considers that an Event of Default may occur within the following twelve (12) months; or
- (c) the date on which the Secretary of State notifies the Franchisee that such period of twelve (12) or thirteen (13) months shall be deemed to commence on the grounds that the Secretary of State considers it reasonably likely that the Franchise Agreement will be terminated by agreement between the Parties within such period.

1.1A **NOT USED.**

1.2 Any such period (which may be longer or shorter than twelve (12) or thirteen (13) months, as the case may be) shall expire on the Expiry Date or, if earlier:

- (a) in the case of periods commencing under paragraph 1.1(b) or 1.1(c), the date falling twelve (12) or thirteen (13) months after the date of any notice under paragraph 1.1(b) or 1.1(c); or
- (b) such earlier date as the Secretary of State may determine.

1.2A **NOT USED.**

2. Terms of Employment of Existing Employees

2.1 The Franchisee shall not, and shall secure that each other relevant employer shall not, without the prior consent of the Secretary of State (which shall not be unreasonably withheld), vary or purport or promise to vary the terms or conditions of employment of any Franchise Employee (in particular, the Franchisee shall not promise to make any additional payment or provide any additional benefit or vary any term or condition relating to holiday, leave or hours to be worked) where such variation or addition:

- (a) takes effect in the last twelve (12) months of the Franchise Period unless it is in the ordinary course of business and, when aggregated with any other variation or addition which takes effect during such period, represents an increase in the remuneration of a Franchise Employee of no more than the amount determined in accordance with the following formula:

$\frac{MAWE + JAW E + SAWE + DAWE}{4}$	
where:	
MAWE	is the change in the Average Weekly Earnings between March in the preceding twelve (12) months and the corresponding March one (1) year before, expressed as a percentage;
JAW E	is the change in the Average Weekly Earnings between June in the preceding twelve (12) months and the corresponding June one (1) year before, expressed as a percentage;
SAWE	is the change in the Average Weekly Earnings between September in the preceding twelve (12) months and the corresponding September one year before, expressed as a percentage; and
DAWE	is the change in the Average Weekly Earnings between December in the preceding twelve (12) months and the corresponding December one (1) year before, expressed as a percentage;

- (b) wholly or partly first takes effect after the end of the Franchise Period;
- (c) results in any such employment not being terminable by the Franchisee or other relevant employer within six (6) months of the expiry of the Franchise Period;
- (d) relates to a payment or the provision of a benefit triggered by termination of employment;
- (e) relates to the provision of a benefit (excluding base salary) which any such employee will or may have a contractual right to receive after the expiry of the Franchise Period; or
- (f) prevents, restricts or hinders any such employee from working for a Successor Operator or from performing the duties which such employee performed for the Franchisee.

It is agreed that the Franchisee shall be permitted to make a decrease in the remuneration of any Franchise Employee that takes effect in the last twelve (12) months of the Franchise Period without first obtaining the consent of the Secretary of State in circumstances where such decrease is in the ordinary course of business and when aggregated with any other variation which takes effect during such period, represents a decrease in the remuneration of a Franchise Employee of no more than the amount determined in accordance with the formula contained in paragraph 2.1(a) where a calculation pursuant to such formula gives rise to a negative percentage. In any other circumstances the prior consent of the Secretary

of State shall be required to any decrease in the remuneration of a Franchise Employee in the last twelve (12) months of the Franchise Period.

2.2 Without limiting the foregoing, the Franchisee shall consult the Secretary of State as soon as reasonably practicable in any circumstances in which the Secretary of State's consent under paragraph 2.1 may be required. Further, it shall always be deemed to be reasonable for the Secretary of State to withhold the Secretary of State's consent to a variation or addition which is prohibited without such consent under paragraph 2.1(a) provided the Secretary of State:

- (a) makes an overall increase in Franchise Payments equal to the amount of the direct net losses suffered by the Franchisee on the days when the Passenger Services are affected by Industrial Action taken by the Franchise Employees which is a consequence of a refusal by the Secretary of State to agree to the variation or addition; and
- (b) agrees that, to the extent that the Franchisee would otherwise be in contravention of the Franchise Agreement as a consequence of the Industrial Action referred to in this paragraph 2.2, no such contravention shall have occurred, save where such contravention relates to safety requirements.

2.3 The expression "**promise to vary**" when used in paragraph 2.2 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).

3. **Terms of Employment of New Employees**

3.1 The Franchisee shall not, and shall secure that each other relevant employer shall not, without the prior consent of the Secretary of State (which shall not be unreasonably withheld), create or grant, or promise to create or grant, terms or conditions of employment for any Franchise Employee where the employment of such Franchise Employee by the Franchisee or such other relevant employer may commence on or after the Start Date if and to the extent that:

- (a) such terms or conditions are, in the reasonable opinion of the Franchisee, materially different from the terms or conditions of employment of equivalent or nearest equivalent Franchise Employees at the date on which such employment is scheduled to commence; and
- (b) if such terms or conditions were granted to such equivalent Franchise Employees already employed by the Franchisee by way of variation to their terms or conditions of employment, the Franchisee would be in contravention of paragraph 2.1.

4. **Changes in Numbers and Total Cost of Employees**

4.1 Subject to and excluding any increase in the remuneration of Franchise Employees permitted under paragraph 2.1, the Franchisee shall not, and shall secure that each other relevant employer shall not, without the prior written consent of the Secretary of State (which shall not be unreasonably withheld) increase or decrease in the last twelve (12) months of the Franchise Period the number of Franchise Employees such that:

- (a) the total number of Franchise Employees or the total cost per annum to the Franchisee and each other relevant employer of employing all Franchise Employees is increased; or
- (b) the total number of Franchise Employees is decreased,

in each case, by more than five per cent (5%) during such period of twelve (12) months provided that where the last twelve (12) or thirteen (13) months of the Franchise Period has been deemed to have commenced under paragraph 1.1 and the period of the restriction contemplated by this paragraph 4 lasts longer than twelve (12) months such restriction shall apply in respect of the longer period.

5. **Fares**

5.1 **Reduction in Prices of Fares**

- (a) During the last thirteen (13) months of the Franchise Period the Franchisee shall not, without the prior written consent of the Secretary of State (not to be unreasonably withheld), set the Price or Child Price of or sell (except to the extent required to do so under the terms of the Ticketing and Settlement Agreement as a result of the Price or Child Price of a Fare being set by another person) any Fare which would entitle the purchaser of such Fare to travel on all or any of the Passenger Services after the Franchise Period for an amount which is less than the Price or the Child Price of that Fare immediately before the commencement of such thirteen (13) month period or, in the case of a new Fare, the Price of its nearest equivalent immediately before the commencement of such period.
- (b) Paragraph 5.1(a) shall not prevent the Franchisee from giving any discount or reduction to which the purchaser of a Fare may be entitled by virtue of:
 - (i) presenting a Discount Card (or any equivalent replacement thereof) issued by the Franchisee before the commencement of such thirteen (13) month period and to which the purchaser would have been entitled before the commencement of such period;
 - (ii) presenting a Discount Card issued by another train operator;
 - (iii) the Passenger's Charter or the passenger's charter of any other train operator; or
 - (iv) any relevant conditions of carriage.
- (c) The Franchisee shall procure that persons acting as its agent (except persons acting in such capacity by virtue of having been appointed under Parts II to VI of Chapter 9 of the Ticketing and Settlement Agreement or by being party to the Ticketing and Settlement Agreement) shall comply with the provisions of paragraph 5.1(a) to the extent that such provisions apply to the selling of Fares by the Franchisee.

5.2 **Percentage Allocations**

- (a) Except to the extent that the Secretary of State may consent from time to time (such consent not to be unreasonably withheld), the Franchisee shall not, in the last thirteen (13) Reporting Periods of the Franchise Period, take

any action or step which may result in its Percentage Allocation in respect of any Rail Product being reduced.

- (b) The Franchisee shall notify the Secretary of State before taking any such action or step in the last thirteen (13) Reporting Periods of the Franchise Period and upon becoming aware of any other person proposing to take any action or step which may have the same effect. The Franchisee shall take such action as the Secretary of State may reasonably request in order to prevent any such reduction, including submitting any dispute to any relevant dispute resolution procedures.

5.3 **Restrictions in respect of Sale of Advance Purchase Train-specific Fares**

- (a) It is acknowledged that the Franchisee shall make available for sale prior to the end of the Franchise Period Advance Purchase Train-specific Fares which are valid for travel after the end of the Franchise Period.
- (b) In making such Advance Purchase Train-specific Fares available for purchase the Franchisee shall not change its commercial practice in terms of the number of such Advance Purchase Train-specific Fares made available or the Passenger Services on which they are valid for use when compared with its previous commercial practice in respect of Advance Purchase Train-specific Fares valid for travel prior to the end of the Franchise Period.
- (c) The Franchisee shall be permitted to take into account reasonable seasonal factors in determining its previous commercial practice. In assessing reasonableness, account will be taken of the Franchisee's practice in addressing such seasonal factors in the corresponding period in the previous year.

6. **Voting on Scheme Councils**

6.1 Subject to paragraph 7.4, during the last twelve (12) months of the Franchise Period the Franchisee shall give the Secretary of State reasonable notice of:

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

6.2 Subject to paragraph 7, the Franchisee shall vote at any such meeting in the manner required by the Secretary of State.

7. Successor Operator

- 7.1 Where the Franchisee has been notified by the Secretary of State that a Successor Operator has been selected (whether a franchisee or otherwise and whether or not such selection is conditional), the Franchisee shall give such Successor Operator reasonable notice of:
- (a) any meeting referred to in paragraph 6.1(a);
 - (b) any resolutions to be voted upon at any such meeting where such resolutions might reasonably be considered to affect the interests of such Successor Operator; and
 - (c) the Franchisee's voting intentions.
- 7.2 The Franchisee shall discuss with the Successor Operator in good faith with a view to agreeing the way the Franchisee should vote on the resolutions referred to in paragraph 7.1(b). In the absence of any agreement, the Franchisee shall, as soon as reasonably practicable thereafter, having regard to the deadline for voting on such resolutions, refer the matter to the Secretary of State for determination.
- 7.3 The Secretary of State shall reasonably determine the way the Franchisee should vote on any resolutions referred to the Secretary of State in accordance with paragraph 7.2, having regard to the transfer of the Franchise Services as a going concern at the end of the Franchise Period.
- 7.4 Where paragraph 7 applies, the Franchisee shall vote at any meeting referred to in paragraph 6.1(a) in accordance with any agreement pursuant to paragraph 7.2 or determination pursuant paragraph 7.3.

Withdrawn

Schedule 15.3

Handover Package

1. **Handover Package Status**

1.1 The Franchisee shall:

- (a) on or before the Start Date, provide to the Secretary of State:
 - (i) the package which contains the information specified in Appendix 1 (Form of Handover Package) to this Schedule 15.3 and such other information as the Secretary of State may reasonably specify from time to time (the "**Handover Package**"); and
 - (ii) a letter in a form approved by and addressed to the Secretary of State confirming the details of any insurer providing insurance to the Franchisee and authorising the insurer (and any relevant broker) to release any insurance-related information to any of the Secretary of State, a Successor Operator or its agent on demand;
- (b) maintain the Handover Package and update it at least every three (3) Reporting Periods; and
- (c) in respect of the information required pursuant to paragraph 1.1(a)(ii), supply revised information and/or letters to the Secretary of State as and when required in order to ensure that such information and letters remain accurate and up to date.

1.2 The Franchisee shall ensure that any Successor Operator will have immediate access to the Handover Package on the expiry of the Franchise Period.

1.3 **NOT USED.**

1.4 **NOT USED.**

2. **Statutory Director's Certificate**

2.1 At the same time as the Franchisee is required to provide the Annual Business Plan to the Secretary of State as required by paragraph 10.2 of Schedule 11.2 (*Management Information*), the Franchisee shall provide to the Secretary of State the latest version of the Handover Package (updated as required pursuant to paragraph 1.1(b) of this Schedule 15.3) together with:

- (a) a certificate signed by a statutory director of the Franchisee, addressed to the Secretary of State, which confirms that:
 - (i) the Handover Package contains the information specified in Appendix 1 (*Form of Handover Package*) to this Schedule 15.3 (and such other information specified from time to time by the Secretary of State); and
 - (ii) such information is accurate as at the date of the certificate; and

- (b) a document setting out all the changes that have been made to the Handover Package since the last version of the Handover Package provided to the Secretary of State pursuant to this paragraph 2.1.

3. Key Contacts List

- 3.1 The Franchisee shall on or before the Start Date, provide to the Secretary of State the Key Contacts List by following the guidance issued by the Secretary of State from time to time. The Key Contacts List shall be stored in an encrypted server with password protected access.
- 3.2 The Franchisee shall ensure that the Key Contacts List is maintained in an accurate and up to date form. In the event of any change(s) to the Key Contacts List the Franchisee shall supply the revised Key Contacts List to the Secretary of State pursuant to the guidance mentioned in paragraph 3.1 above and as soon as reasonably practicable (and in any event within the timeframes set out in paragraph 3.4) after the change(s) is/are made.
- 3.3 The Franchisee shall make the relevant Franchise Employee listed in the Key Contacts List aware that their Personal Data shall be shared with:
- (a) the Secretary of State and retained by the Secretary of State during the Franchise Term (until such time as the Personal Data is replaced in the Key Contacts List by way of the change(s) described in paragraph 3.2) and for a period of twelve (12) months after the Expiry Date; and
- (b) the Successor Operator during the mobilisation period,
- including by ensuring that the fairness principle of the Data Protection Legislation is satisfied in respect of the same by issuing all relevant privacy notices.
- 3.4 The Franchisee shall be responsible for informing the Secretary of State if details in the Key Contacts List are incorrect or need to be deleted by the Secretary of State within five (5) Weekdays of notice from the relevant Franchise Employee. The Secretary of State shall delete or amend the details within five (5) Weekdays of notice from the Franchisee.
- 3.5 The Franchisee shall also ensure that the Key Contacts List is provided to the Secretary of State within twenty four (24) hours of the receipt of any Termination Notice.

APPENDIX 1 TO SCHEDULE 15.3

Form of Handover Package

1. All information in the Handover Package must be provided electronically in a form that is acceptable to the Secretary of State.

2. **Property**

A list of all property owned, leased, operated or occupied by the Franchisee which shall include the address and contact telephone number of each property. Where applicable, the list will also include the name, office address and telephone number of the lessor and/or the party which has granted authority to use or occupy the property, and any relevant reference numbers applicable to that lease or occupation.

2. **Contracts**

A list of all contracts (sales, purchases or otherwise including leases and licences) between the Franchisee and the counterparty or counterparties to each such contract, showing the name, office address and telephone number of each counterparty; the contract reference number of the Franchisee and each counterparty (if any); and the contract price/value, term and expiry date. This requirement shall apply to all contracts unless otherwise agreed by the Secretary of State.

3. **Systems**

A list of the electronic systems in use by the Franchisee, together with the name, office address and telephone number of the Franchisee's Information Technology Manager (or the holder of any equivalent post) who is responsible for administration of each such system.

4. **Asset Register**

A list of all assets owned or operated by the Franchisee, together with their location.

5. **Insurance**

A list of the names, office addresses and telephone numbers of all insurers and any relevant broker providing insurance to the Franchisee, together with the relevant policy numbers and other references and details of any outstanding claims or unresolved disputes.

6. **Safety Certificate/Safety Authorisation**

- (a) A complete copy of the Safety Certificate, an electronic copy of the Franchisee's application for the Safety Certificate and full details of the Franchisee's safety management system in place to support the Safety Certificate.

- (b) A complete copy of the Safety Authorisation, an electronic copy of the Franchisee's application for the Safety Authorisation and full details of the Franchisee's safety management system in place to support the Safety Authorisation.

7. NOT USED.

Withdrawn

Provisions applying on and after Termination

1. Novation of Access Agreements on Termination of the Franchise Agreement

1.1 The Franchisee shall, to the extent so requested by the Secretary of State on termination of the Franchise Agreement, in relation to any Access Agreement to which it is a party, novate its interest under any relevant Access Agreement (and any related Network Rail 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 Network Rail Collateral Agreement and, to the extent applicable, the ORR.

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

(a) that the Franchisee shall not be released from any accrued but unperformed obligation, the consequences of any breach of the relevant agreement which is the subject of arbitration or litigation between the Parties or any liability in respect of any act or omission under or in relation to the relevant agreement prior to, or as at the date of, any such novation (except to the extent that the Secretary of State or 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 Franchisee otherwise agrees, be on terms which release any counterparty to the relevant agreement from any liability to the Franchisee arising prior to the date of such novation.

1.4 The Franchisee shall, on the occurrence of the circumstances specified in paragraph 1.1 in relation to any other Train Operator who is a party to an Access Agreement to which the Franchisee is also party, agree to the novation of the relevant Train Operator's interest under the relevant Access Agreement to the Secretary of State or as 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 Franchisee shall notify the Secretary of State on becoming aware of any circumstances which might lead to the Secretary of State being able to require the Franchisee to novate its interest or agree to the novation of another Train Operator's interest under this paragraph 1.

2. **Co-operation with Successor Operator**

2.1 In order to ensure the continuity of, and an orderly handover of control over, the Franchise Services, the Franchisee shall co-operate with:

- (a) where a Successor Operator has been appointed, such Successor Operator; or
- (b) 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 Franchisee shall make appropriately skilled and qualified Franchise Employees reasonably available to attend such meetings with the Secretary of State, any Successor Operator, the Infrastructure Manager, 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:

- (a) 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:
 - (i) Access Agreements;
 - (ii) Property Leases;
 - (iii) agreements in relation to Shared Facilities;
 - (iv) Rolling Stock Leases;
 - (v) Rolling Stock Related Contracts;
 - (vi) any other Key Contract; and
- (b) without prejudice to the Secretary of State's rights under this Schedule 15.4, those rights and liabilities as may be specified in any Transfer Scheme.

3. **Transfer of Primary Franchise Assets**

3.1 **Option Arrangements**

- (a) The Secretary of State hereby grants to the Franchisee the right to require the Secretary of State to make, and the Franchisee hereby grants to the Secretary of State the right to make, a Transfer Scheme in accordance with section 12 and Schedule 2 of the Railways Act 2005 for the transfer of any or all Primary Franchise Assets on the expiry of the Franchise Period.
- (b) On or within fourteen (14) days before the expiry of the Franchise Period:
 - (i) either Party may serve notice on the other Party specifying the Primary Franchise Assets to be transferred; and

- (ii) the other Party may (within such timescale) serve a subsequent notice specifying any additional Primary Franchise Assets to be transferred.
- (c) The Secretary of State may (and shall if required by the Franchisee) make one or more such Transfer Schemes for the transfer of the Primary Franchise Assets specified in any such notice within fourteen (14) days after service of such notice (except in relation to any such Primary Franchise Assets which are, in accordance with Schedule 14.4 (*Designation of Franchise Assets*), de-designated as such prior to the end of the Franchise Period).
- (d) Any Franchise Assets or Primary Franchise Assets which are not so transferred shall cease to be designated as such fourteen (14) days after service of such notice.

3.2 Supplemental Agreement

Without prejudice to the duties, powers, rights and obligations of the Secretary of State under the Railways Act 2005 in respect of any Transfer Scheme, any Transfer Scheme shall impose on the Franchisee and the transferee an obligation to enter into an agreement substantially in the form of the Supplemental Agreement which shall provide for the determination of amounts to be paid in respect of the property, rights and liabilities which are transferred under such Transfer Scheme. The Franchisee shall enter into any such Supplemental Agreement and shall comply with its obligations thereunder.

3.2A At or around the time that a Transfer Scheme is made and the Supplemental Agreement is entered into and, unless the HEx Services Agreement has then already come to an end without being replaced by a replacement HEx Services Agreement to which the Successor Operator is a party:

- (a) the Franchisee shall enter into an agreement substantially in the form of the HEx Business Transfer Agreement which is to take effect at the end of the Franchise Period and shall comply with its obligations thereunder; and
- (b) the Secretary of State shall procure that the Successor Operator shall also enter into the HEx Business Transfer Agreement.

3.2B At or around the time that a Transfer Scheme is made and the Supplemental Agreement is entered into and, unless the HEx Services Agreement has then already come to an end in advance of the termination or expiry of the Franchise Agreement, the Secretary of State shall, subject to clause 3.2C, procure that any Successor Operator enters into an agreement with HEOC, which shall be on substantially the same terms as the HEx Services Agreement, subject to any necessary amendments relating to the Successor Operator's:

- (a) track access rights;
- (b) employment strategies;
- (c) rolling stock strategies; and
- (d) depot strategies,

provided that such strategies are designed to deliver the same level of service which is required under the HEx Services Agreement and the fees payable by HEOC

shall remain the same under the replacement agreement including that they shall continue to be subject to indexation.

- 3.2C For the avoidance of doubt, where the Successor Operator is the same entity as the Franchisee, the Management Agreement will continue in full force and effect in accordance with its terms.

3.3 **Payment of Estimated Transfer Price**

- (a) The Secretary of State may require the Franchisee to pay to any transferee under a Transfer Scheme, or may require any such transferee to pay to the Franchisee, on the day on which the Transfer Scheme comes into force such sum as the Secretary of State may determine should be so paid having regard to:
- (i) the Secretary of State's estimate of the sum likely to be paid under the relevant Supplemental Agreement in respect of the Primary Franchise Assets being transferred under the relevant Transfer Scheme;
 - (ii) the Secretary of State's estimate of any other sums likely to be paid thereunder;
 - (iii) the financial condition of the Franchisee and the transferee and whether any estimate so paid would be likely to be repaid, if in excess of the sums eventually payable thereunder; and
 - (iv) such other matters as the Secretary of State may consider appropriate.
- (b) The Franchisee shall pay to any such transferee the sum determined by the Secretary of State in accordance with paragraph 3.3(a) on the day on which the relevant Transfer Scheme comes into force.

3.4 **Possession of Franchise Assets**

On the coming into force of a Transfer Scheme, the Franchisee shall deliver up to the Secretary of State (or the Secretary of State's nominee) possession of the Primary Franchise Assets transferred under such Transfer Scheme.

4. **Associated Obligations on Termination**

4.1 **Assistance in Securing Continuity**

- (a) In order to facilitate the continuity of the Franchise Services on expiry of the Franchise Period, the Franchisee shall take such steps, both before and after the expiry of the Franchise Period, as the Secretary of State may reasonably require, to assist and advise any Successor Operator in providing and operating the Franchise Services.
- (b) In particular, the Franchisee shall provide any Successor Operator with such records and information relating to or connected with the Franchise Services as the Secretary of State may reasonably require (other than confidential financial information but including all records relating to the Franchise Employees).

4.2 Access

On the expiry of the Franchise Period, the Franchisee 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 Franchisee at such time, for the purpose of facilitating the continued provision of the Franchise Services.

4.3 Key Contracts

- (a) The Franchisee shall provide such assistance to any Successor Operator as the Secretary of State may reasonably require in ensuring that, pursuant to any Direct Agreements, such Successor Operator may enter into (or enjoy the benefit of) contracts equivalent to the relevant Key Contracts (or part thereof).
- (b) In satisfaction of its obligations under paragraph 4.3(a), the Franchisee shall terminate, surrender, cancel or undertake not to enforce its rights under any Key Contract (or part thereof) provided that nothing in this paragraph shall require the Franchisee to undertake not to enforce any rights under a Key Contract relating to the period prior to the expiry of the Franchise Period.

4.4 Change of Name

The Franchisee shall cease to use any trademarks which are licensed to the Franchisee under any of the Brand Licences forthwith upon expiry of the Franchise Period and shall take all necessary steps to change any company name which incorporates any such marks as soon as practicable.

4.5 Property Leases

- (a) The Franchisee shall, on the expiry of the Franchise Period, if requested by the Secretary of State, assign its interest under all or any Property Leases to the Secretary of State or as 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 Franchisee shall not be released from any accrued but unperformed obligation, the consequences of any antecedent breach of a covenant or obligation in the Property Leases or any liability in respect of any act or omission under or in relation to the Property Lease prior to, or as at the date of, any such assignment (except to the extent that the Secretary of State or 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 Franchisee 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 Franchisee shall, on the occurrence of any of the circumstances specified in paragraph 4.5(a) in relation to any other Train Operator who is a party to a Property Lease to which the Franchisee is also party, agree to the assignment of such Train Operator's interest under the relevant Property Lease to the Secretary of State or as the Secretary of State may direct, subject, where applicable, to the consent of the Infrastructure Manager. The provisions of paragraph 4.5(b) shall apply to any such assignment.
- (d) The Franchisee shall notify the Secretary of State on becoming aware of any circumstances which might lead to the Secretary of State being able to require the Franchisee to assign its interest or agree to the assignment of another Train Operator's interest under this paragraph 4.

5. **Actions required immediately on Handover**

5.1 The Franchisee shall immediately on the expiry of the Franchise Period make available to the Secretary of State:

- (a) information as to the status of each purchase order or contract, including its award date, anticipated delivery date, confirmation of receipt of goods or services and the payment records for each purchase order, together with any matters in dispute with the appointed subcontractor and, to the extent that the Franchisee is a subcontractor to another Train Operator, equivalent information in respect of that Train Operator; and
- (b) information concerning any contract necessary for the continued operation of the Franchise where a procurement or bidding process has been initiated.

5.2 The Franchisee agrees that the Secretary of State or 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 Franchise Services).

6. **Maintenance Records**

6.1 The Franchisee shall immediately on expiry of the Franchise Period provide to the Secretary of State:

- (a) records of the status of the maintenance of the rolling stock vehicles used in the provision of the Passenger Services;
- (b) records of the status of the maintenance of any lifting equipment;
- (c) a list of any deferred maintenance; and
- (d) records of the status of the maintenance of any depot or station which is a Franchise Asset,

including the extent of completion of examinations and the modification status of each such rolling stock vehicle.

7. Ticketing Arrangements

- 7.1 The Franchisee shall provide immediately on expiry of the Franchise Period a statement certifying:
- (a) all ticketing transactions with the public or credit card agencies that are in process and not yet complete, together with any allocations on multi-modal travel with other agencies or local authorities;
 - (b) the extent of any outstanding claims with ticketing settlement agencies;
 - (c) refund arrangements (whether under the Passenger's Charter or not) with members of the public or other Train Operators or ticketing settlement agencies that are in process and not yet complete; and
 - (d) commissions owed and/or due.

8. Franchisee's Intellectual Property

- 8.1 On the expiry of the Franchise Period, the Franchisee shall grant to any Successor Operator licences of any Intellectual Property Rights which:
- (a) are owned by or licensed to the Franchisee;
 - (b) were not owned by or licensed to it immediately prior to the Start Date;
 - (c) have not been designated as a Primary Franchise Asset;
 - (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 Franchise Services on an efficient and economic basis after the expiry of the Franchise Period.
- 8.2 When agreeing the terms on which Intellectual Property Rights are to be licensed to it, the Franchisee shall use all reasonable endeavours to ensure that such terms include the right to sub-license such Intellectual Property Rights in accordance with this paragraph 8. The Franchisee shall not enter into a licence that does not include such a provision without first obtaining the Secretary of State's prior written consent (such consent not to be unreasonably withheld).
- 8.3 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 Franchise 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 Franchise Period) on the basis of a willing licensor and licensee entering into a licence on comparable terms to similar licences of such Intellectual Property Rights. If the Franchisee and the relevant Successor Operator are unable to agree such royalty, the Franchisee shall submit such dispute for resolution in accordance with such dispute resolution rules as the Secretary of State may require.

- 8.5 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 Franchise 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 Franchisee 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 Franchisee provided that it shall not be reasonable for the Franchisee to require any such trade mark to be used in a manner materially different from its use during the Franchise Period.

9. **Information about Passengers**

- 9.1 The Franchisee shall immediately on the expiry of the Franchise Period make available to the Secretary of State and/or the Secretary of State's nominee:
- (a) passenger numbers information specified in paragraph 1 of Schedule 1.5 (*Information about Passengers*) in such format and to such level of disaggregation (as the Secretary of State and/or the Secretary of State's nominee may reasonably require);
 - (b) the CRM Data; and
 - (c) the Yield Management Data.

APPENDIX 1 TO SCHEDULE 15.4
Template Form of Transfer Scheme

Dated [INSERT DATE]

[Template] TRANSFER SCHEME
OF
THE SECRETARY OF STATE FOR TRANSPORT
MADE PURSUANT TO SCHEDULE 2 OF THE RAILWAYS ACT 2005

IN FAVOUR OF
[INSERT NAME OF SUCCESSOR OPERATOR]
IN RESPECT OF
CERTAIN PROPERTY, RIGHTS AND LIABILITIES
OF
[INSERT NAME OF FRANCHISEE]

Secretary of State for Transport
33 Horseferry Road
London SW1P 4DR

TRANSFER SCHEME

Whereas:

- (A) [INSERT NAME OF FRANCHISEE] (the "Transferor") has been providing certain services for the carriage of passengers by railway and operating certain stations and light maintenance depots pursuant to a franchise agreement with the Secretary of State for Transport (the "Secretary of State") dated [INSERT DATE] (the "Franchise Agreement").
- (B) The Franchise Agreement terminated or is to terminate on [INSERT DATE] and [INSERT NAME OF SUCCESSOR OPERATOR] (the "Transferee") is to continue the provision of all or part of such services or the operation of all or some of such stations and light maintenance depots under a new franchise agreement or in connection with the performance or exercise of the duties and powers of the Secretary of State to secure the provision of such services or the operation of such stations or light maintenance depots.
- (C) Certain property, rights and liabilities of the Transferor which were designated as franchise assets for the purpose of the Franchise Agreement are to be transferred to the Transferee under a transfer scheme made by the Secretary of State under section 12 and Schedule 2 of the Railways Act 2005.

The Secretary of State, in exercise of the powers conferred on the Secretary of State by Schedule 2 of the Railways Act 2005, hereby makes the following scheme:

1. Definitions and Interpretation

In this Transfer Scheme functions has the meaning ascribed to it in the Railways Act 2005 and relevant enactment has the meaning ascribed to it in paragraph 6 of Schedule 2 of the Railways Act 2005.

2. Transfer of Property, Rights and Liabilities

With effect from [INSERT DATE] the property, rights and liabilities of the Transferor specified or described in the Schedule shall be transferred to, and vest in, the Transferee.

3. Statutory Functions

Subject to any amendment to the relevant enactment which comes into force on or after the date on which this Transfer Scheme is made, there shall be transferred to the Transferee all the functions of the Transferor under any relevant enactments if and to the extent that any such relevant enactment:

- (a) relates to any property which is to be transferred by this Transfer Scheme; or
- (b) authorises the carrying out of works designed to be used in connection with any such property or the acquisition of land for the purpose of carrying out any such works.

4. **Supplemental Agreement**

Each of the Transferor and the Transferee shall enter into the Supplemental Agreement (as defined in the Franchise Agreement) on the coming into force of this Transfer Scheme.

This Transfer Scheme is made by the Secretary of State on [INSERT DATE].

SEAL REF NO:

THE CORPORATE SEAL OF
THE SECRETARY OF STATE
FOR TRANSPORT IS
HEREUNTO AFFIXED:



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

Withdrawn

SCHEDULE TO THE TRANSFER SCHEME

[LIST RELEVANT FRANCHISE ASSETS TO BE TRANSFERRED TO SUCCESSOR OPERATOR]

Withdrawn

APPENDIX 2 TO SCHEDULE 15.4
Template Form of Supplemental Agreement

Dated [INSERT DATE]

[INSERT NAME OF OUTGOING FRANCHISEE]

- and -

[INSERT NAME OF SUCCESSOR OPERATOR]

[Template] SUPPLEMENTAL AGREEMENT

to the transfer scheme dated [INSERT DATE] made
by the Secretary of State for Transport in respect of
certain property rights and liabilities of
[INSERT NAME OF OUTGOING FRANCHISEE]

Secretary of State for Transport
33 Horseferry Road
London SW1P 4DR

THIS SUPPLEMENTAL AGREEMENT is made on [INSERT DAY] [INSERT YEAR]

BETWEEN:

- (1) [INSERT NAME OF OUTGOING FRANCHISEE] whose registered office is at [INSERT ADDRESS OF REGISTERED OFFICE] (the "Transferor"); and
- (2) [INSERT NAME OF SUCCESSOR OPERATOR] whose registered office is at [INSERT ADDRESS OF REGISTERED OFFICE] (the "Transferee").

WHEREAS

- (A) The Transferor has been providing certain services and the carriage of passengers by railway and operating certain stations and light maintenance depots pursuant to a franchise agreement with the Secretary of State for Transport (the "Secretary of State") dated [INSERT DATE] (the "Franchise Agreement").
- (B) The Franchise Agreement terminated or is to terminate on [INSERT DATE] and the Transferee has been selected by the Secretary of State to continue the provision of all or part of such services pursuant either to a franchise agreement with the Secretary of State or arrangements made with the Secretary of State in connection with the Secretary of State's duties and powers.
- (C) Certain property, rights and liabilities of the Transferor are to be transferred to the Transferee pursuant to a transfer scheme made by the Secretary of State on [INSERT DATE] under section 12 and Schedule 2 of the Railways Act 2005 (the "Transfer Scheme").
- (D) This Agreement is supplemental to the Transfer Scheme and sets out certain terms between the Transferor and the Transferee in relation to the transfer of such property, rights and liabilities under the Transfer Scheme and the transfer of certain other property, rights and liabilities at the same time.

IT IS AGREED THAT:

1. DEFINITIONS AND INTERPRETATION

Definitions

- 1.1 The following words and expressions shall have the following meaning:

"Business" means such of the undertaking or part of the undertaking of the Transferor prior to the Transfer Date as may be continued by the Transferee after the Transfer Date;

"Credit" has the meaning assigned to that term under the Ticketing and Settlement Agreement;

"Debit" has the meaning assigned to that term under the Ticketing and Settlement Agreement;

"DfT Funded Assets" means those property, rights and liabilities that are legally or beneficially owned by the Franchisee and which are funded through the following schemes, funds or budgets:

- (a) **NOT USED;**

- (b) **NOT USED**;
- (c) an Approved CCI Scheme;
- (d) the STNR Project;
- (e) an Approved SIF Scheme; or
- (e) [INSERT ANY OTHER RELEVANT FRANCHISE SPECIFIC SCHEME, FUND OR BUDGET/NOT USED].

"Estimated Completion Payment" has the meaning ascribed to that term in Clause 2.1;

"Net Asset Statement" means the statement to be drawn up pursuant to Clause 2.2;

"Net Asset Value" means the aggregate of the amounts of the Relevant Franchise Assets, the Relevant Contract Liabilities, the Relevant Debits and Credits and the Relevant Employee Liabilities as shown in the Net Asset Statement agreed or determined pursuant to Clause 2.2;

"Purchase Price" has the meaning ascribed to that term in Clause 2.1;

"Relevant Contract Liabilities" means such rights and liabilities of the Transferor as may be transferred to the Transferee on the expiry of the Franchise Period in relation to any Licence, Access Agreement or Property Lease under paragraphs 1 and 4.5 of Schedule 15.4 (Provisions applying on and after Termination) of the Franchise Agreement;

"Relevant Debits and Credits" means such Debits and Credits of the Transferor which relate to Fares sold before the Transfer Date and which may be received by the Transferee as a result of Clause 11-33 of the Ticketing and Settlement Agreement;

"Relevant Employee Liabilities" means such rights and liabilities of the Transferor (or any other relevant employer or person) under any contracts of employment relating to the Relevant Employees which have been or are to be transferred to the Transferee by virtue of the operation of Law (including the Transfer Regulations);

"Relevant Employees" means all persons employed in the Business immediately before the Transfer Date (whether employed by the Transferor or otherwise) whose contract of employment has been or is to be transferred to the Transferee by virtue of the operation of Law (including the Transfer Regulations) or any other person employed at any time in the Business in respect of whom liabilities arising from a contract of employment or employment relationship have or will be transferred by virtue of the operation of Law (including the Transfer Regulations);

"Relevant Franchise Assets" means such of the property, rights and liabilities that are legally or beneficially owned by the Transferor and which are or are to be transferred to the Transferee under the Transfer Scheme;

"Reporting Accountants" means such firm of accountants as may be selected by agreement between the Parties within four (4) weeks of the preparation of the Net

Asset Statement or, in the absence of such agreement, selected by the Secretary of State upon the request of either party;

"Season Ticket Fare" means a Fare which entitles the purchaser to make an unlimited number of journeys in any direction during the period for which, and between the stations and/or the zones for which, such Fare is valid;

"Stored Credit Balance" means any monetary amount held by the Franchisee which a passenger can apply at a future date to the purchase of a Fare (stored in any medium);

"Taxation" comprises all forms of taxation, duties, contributions and levies of the United Kingdom whenever imposed and (except in so far as attributable to the unreasonable delay or default of the Transferee) all penalties and interest relating thereto;

"TOGC" has the meaning assigned to that term in Clause 6.2;

"Transfer Date" means the date and, where relevant, the time on or at which the Transfer Scheme comes into force;

"Transfer Regulations" means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended, replaced or substituted from time to time);

"Transferring Assets and Liabilities" has the meaning assigned to that term in Clause 2.1; and

"Undisclosed Employee" has the meaning assigned to that term in Clause 7.1(d).

Construction and Interpretation

1.2 In this Agreement terms and expressions defined in the Franchise Agreement shall have the same meaning and the terms **"contract of employment"**, **"collective agreement"**, **"employee representatives"** and **"trade union"** shall have the same meanings respectively as in the Transfer Regulations.

2. **TRANSFER PRICE**

2.1 **Amount and Payment**

The price for the transfer of:

- (a) the Relevant Franchise Assets;
- (b) the Relevant Contract Liabilities;
- (c) the Relevant Debits and Credits; and
- (d) the Relevant Employee Liabilities,

(together the **"Transferring Assets and Liabilities"**) shall (subject to adjustment as expressly provided in this Agreement) be an amount equal to the Net Asset Value (the **"Purchase Price"**). The sum of [£INSERT AMOUNT IN NUMBERS (INSERT AMOUNT IN WORDS)], as determined under paragraph 3.3 of

Schedule 15.4 (*Provisions applying on and after Termination*) of the Franchise Agreement (the "**Estimated Completion Payment**") shall be paid in immediately available funds by the Transferor to the Transferee, or by the Transferee to the Transferor, as determined under paragraph 3.3 of Schedule 15.4 (*Provisions applying on and after Termination*) of the Franchise Agreement, on the Transfer Date. On determination of the Purchase Price a balancing payment (if any) shall be made by the Transferor to the Transferee or the Transferee to the Transferor (as the case may be) in accordance with Clause 2.1.

2.2 **Net Asset Statement**

The Transferee shall procure that, as soon as practicable and in any event not later than two (2) months following the Transfer Date, there shall be drawn up a statement showing a true and fair view of the aggregate of the amount of each separate asset and liability of the Transferring Assets and Liabilities as at the Transfer Date.

2.3 The Net Asset Statement shall be:

- (a) drawn up in the manner described in the Schedule;
- (b) prepared on such basis as would enable the Transferee's auditors, if so requested, to give an unqualified audit report thereon to the effect that it had been drawn up in accordance with the schedule; and
- (c) presented, initially as a draft, to the Transferor immediately following its preparation for review in conjunction with its auditors.

2.4 If the Transferor and the Transferee have failed to agree the Net Asset Statement within four (4) 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.

2.5 **Adjustment of Price**

If the Purchase Price exceeds or is less than the Estimated Completion Payment, the Transferee shall pay to the Transferor or, as the case may be, the Transferor shall pay to the Transferee, in either case within fourteen (14) days of the agreement or determination of the Net Asset Value, an amount equal to such excess or deficiency together in either case with interest thereon calculated from the Transfer Date at the Interest Rate.

3. **REFERENCES TO THE REPORTING ACCOUNTANTS**

Whenever any matter is referred under this Agreement to the decision of the Reporting Accountants:

- (a) the Reporting Accountants shall be engaged jointly by the parties on the terms set out in this Agreement and otherwise on such terms as shall be agreed, provided that neither party shall unreasonably (having regard, amongst other things, to the provisions of this Agreement) refuse its agreement to terms proposed by the Reporting Accountants or by the other party. If the terms of engagement of the Reporting Accountants have not been settled within fourteen (14) days of their appointment having been determined (or such longer period as the Parties may agree) then, unless

one party is unreasonably refusing its agreement to those terms, such accountants shall be deemed never to have been appointed as Reporting Accountants, save that the accountants shall be entitled to their reasonable expenses under Clause 3(d), and new Reporting Accountants shall be selected in accordance with the provisions of this Agreement;

- (b) if Reporting Accountants acting or appointed to act under this Agreement resign, withdraw, refuse to act, or are disqualified for any reason from performing their duties then, except as may be agreed between the Parties, the parties shall appoint a replacement in accordance with the definition of Reporting Accountants;
- (c) the Reporting Accountants shall be deemed to act as experts and not as arbitrators;
- (d) the Reporting Accountants shall have power to allocate their fees and expenses for payment in whole or in part by any party at their discretion. If not otherwise allocated they shall be paid as to half by the Transferor and as to half by the Transferee;
- (e) each of the parties shall promptly on request supply to the Reporting Accountants all such documents and information as they may require for the purpose of the reference;
- (f) the decision of the Reporting Accountants shall (in the absence of objection on the grounds of any manifest error discovered within fourteen (14) days of the issue of their decision) be conclusive and binding (and in accordance with Clause 3(g) below) and shall not be the subject of any appeal by way of legal proceeding or arbitration or otherwise; and
- (g) without prejudice to Clauses 3(a) to 3(f) above, either party may, prior to or during the course of the reference to the Reporting Accountants, seek a declaration from the court on a relevant point of law, including but not limited to a point of legal interpretation. Upon such application for a declaration being issued and served all applicable time limits relative to the reference to the Reporting Accountant shall be stayed pending the outcome of such application (including any appeal). The Reporting Accountants are bound to make their determination in a manner consistent with the findings of the Court.

4. **WARRANTY**

The Transferor warrants and represents to the Transferee that the Relevant Contract Liabilities and the Relevant Franchise Assets are, to the extent they are property or rights, transferring to the Transferee free and clear of all Security Interests.

5. **INTEREST**

If the Transferor or the Transferee defaults in the payment when due of any sum payable under this Agreement (whether determined by agreement or pursuant to an order of a court or otherwise) the liability of the Transferor or the Transferee (as the case may be) shall be increased to include interest on such sum from the date when such payment is due until the date of actual payment (after as well as before judgement) at a rate equal to the Interest Rate. Such interest shall accrue from day to day.

6. VALUE ADDED TAX

- 6.1 All amounts under this Agreement are expressed as exclusive of Value Added Tax where Value Added Tax is applicable.
- 6.2 The Transferor and the Transferee shall use all reasonable endeavours to secure that the transfer of the Transferring Assets and Liabilities is treated for Value Added Tax purposes as the transfer of a business as a going concern ("**TOGC**") and accordingly as neither a supply of goods nor a supply of services for the purposes of Value Added Tax.
- 6.3 If HM Revenue & Customs direct that the transfer of the Transferring Assets and Liabilities cannot be treated as a TOGC, the Transferor shall provide the Transferee with a copy of such direction within five (5) days of receipt thereof by the Transferor.
- 6.4 The Transferee shall thereafter pay upon the receipt of a valid tax invoice the amount of any Value Added Tax which as a result of that direction may be chargeable on the transfer of the Transferring Assets and Liabilities. If the aforementioned direction was issued as a result of any action or inaction of the Transferee then the Transferee shall in addition to the Value Added Tax indemnify the Transferor for any penalties and interest that may be incurred upon receipt of such evidence from HM Revenue & Customs.
- 6.5 If the Transferee considers the direction issued by HM Revenue & Customs referred to in Clause 6.3 to be incorrect then, without prejudice to the Transferee's obligation under Clause 6.4 to pay to the Transferor the amount of any Value Added Tax which as a result such direction may be chargeable on the transfer of the Transferring Assets and Liabilities, the Transferee may, within thirty (30) days of receipt of such direction by the Transferor, give notice to the Transferor that it requires the Transferor to appeal such direction. Upon requesting such an appeal the Transferee agrees to indemnify the Transferor for all reasonable costs that the Transferor may incur in taking such action upon receipt of evidence of those costs. If such an appeal is successful the Transferor agrees to reimburse the Transferee for such reasonable costs and penalties and interest to the extent that those costs have been reimbursed by HM Revenue & Customs.
- 6.6 If any amount paid by the Transferee to the Transferor in respect of Value Added Tax pursuant to this Agreement is subsequently found to have been paid in error the Transferor shall issue a valid tax credit note for the appropriate sum to the Transferee and promptly repay such amount to the Transferee.
- 6.7 If any amount is payable by the Transferor to the Transferee in respect of the transfer of the Relevant Franchise Assets, Relevant Contract Liabilities, Relevant Debits and Credits and Relevant Employee Liabilities pursuant to this Agreement, Clauses 6.3 to 6.6 inclusive shall apply mutatis mutandis to such payment substituting Transferor for Transferee and vice versa.
- 6.8 All of the records referred to in section 49 of the Value Added Tax Act 1994 relating to the Business (being the purchase records) shall be retained by the Transferor and the Transferor shall undertake to the Transferee to:
- (a) preserve those records in such manner and for such periods as may be required by law; and

- (b) give the Transferee as from the Transfer Date reasonable access during normal business hours to such records and to take copies of such records.

7. EMPLOYEES

7.1 Transfer Regulations

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 or any Relevant Employee, which is deemed by the Transfer Regulations to have been done or omitted by or in relation to the Transferee save where the thing done or omitted to be done before the Transfer Date relates to the Transferee's failure to comply with its obligations referred to in Clause 7.4;
- (d) if any contract of employment or collective agreement which is neither disclosed in writing to the Transferee by the Transferor prior to the Transfer Date nor made available to the Secretary of State under Schedule 15.3 (Handover Package) of the Franchise Agreement prior to the Transfer Date shall have effect as if originally made between the Transferee and any employee (the "**Undisclosed Employee**") or a trade union or employee representatives as a result of the provisions of the Transfer Regulations (without prejudice to any other right or remedy which may be available to the Transferee):
 - (i) the Transferee may, upon becoming aware of the application of the Transfer Regulations to any such contract of employment or collective agreement terminate such contract or agreement forthwith;
 - (ii) the Transferor shall indemnify the Transferee against each and every action, proceeding, cost, claim, liability (including, without limitation, any Taxation), expense (including, without limitation, reasonable legal fees) or demand relating to or arising out of such termination and reimburse the Transferee for all costs and expenses (including, without limitation, any Taxation) incurred in employing such employee in respect of the Secretary of State's employment following the Transfer Date; and
 - (iii) the Transferor shall indemnify the Transferee in respect of any Undisclosed Employee on the same terms mutatis mutandis as the Transferor has indemnified the Transferee in respect of a Relevant Employee pursuant to the terms of Clauses 7.1(b) and 7.1(c); and
- (e) the Transferor shall indemnify the Transferee and keep the Transferee indemnified against each and every action, proceeding, cost, claim, liability (including without limitation, any Taxation) expense (including, without limitation, reasonable legal fees) or demand which relates to or arises out of any dismissal (including, without limitation, constructive dismissal) by the Transferor of any employee (not being a Relevant Employee) and which the Transferee may incur pursuant to the provisions of the Transfer Regulations.

7.2 Transferee's Indemnities

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 the Secretary of State's or her detriment or any of them occurring on or after the Transfer Date;

- (b) the change of employer occurring by virtue of the Transfer Regulations and/or the Franchise Agreement being significant and detrimental to any of the Relevant Employees;
- (c) the employment by the Transferee on or after the Transfer Date of any of the Relevant Employees other than on terms (including terms relating to any occupational pension scheme) at least as good as those enjoyed prior to the Transfer Date or the termination of the employment of any of them on or after the Transfer Date; or
- (d) any claim by any Relevant Employee (whether in contract or in tort or under statute (including the Treaty of the European Community or European Union and any Directives made under any such Treaty or any successor thereof)) for any remedy (including, without limitation, for unfair dismissal, redundancy, statutory redundancy, equal pay, sex or race discrimination) as a result of any act or omission by the Transferee after the Transfer Date.

7.3 The Transferee shall indemnify the Transferor and keep the Transferor indemnified against each and every action, proceeding, liability, cost, claim, loss, expense (including reasonable legal fees) and demand which arises as a result of it not providing or not having provided, in accordance with its obligations under the Transfer Regulations, the Transferor in writing with such information and at such time as will enable the Transferor to carry out its duties under Regulation 13(2)(d) and 13(6) of the Transfer Regulations concerning measures envisaged by the Transferee in relation to the Relevant Employees.

7.4 **Details of Relevant Employees**

Without prejudice to the Transferor's duties under the Transfer Regulations, the Transferor warrants to the Transferee that it has (to the extent not made available to the Secretary of State under Schedule 15.4 (Provisions applying on and after Termination) of the Franchise Agreement prior to the Transfer Date) provided the Transferee prior to the Transfer Date with full particulars of:

- (a) each Relevant Employee, including name, sex, and the date on which continuity of employment began for each Relevant Employee for statutory purposes;
- (b) terms and conditions of employment of each such person;
- (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 twelve (12) months prior to the Transfer Date including the Transfer Date;
- (e) all agreements or arrangements entered into in relation to the Relevant Employees between the Transferor, any Affiliate of the Transferor or any other relevant employer and any trade union or association of trade unions or organisation or body of employees including employee representatives and elected representatives; and
- (f) all strikes or other Industrial Action taken by any Relevant Employee within twelve (12) months prior to the Transfer Date including the Transfer Date.

7.5 The Transferor and Transferee shall deliver to each of the Relevant Employees letters in an agreed form from the Transferor and Transferee as soon as is practicable after the execution of this Agreement (to the extent not already delivered prior to the Transfer Date).

8. MISCELLANEOUS PROVISIONS

8.1 Variations in Writing

No variation of this Agreement shall be effective unless in writing and signed by duly authorised representatives of the parties.

8.2 Partial Invalidity

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.

8.3 Further Assurance

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.

8.4 Notices

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 [INSERT NAME OF TRANSFEROR] at:

Address: [INSERT ADDRESS]

Email Address: [INSERT EMAIL ADDRESS]

Attention: [INSERT NAME]

(b) in the case of the Transferee to [INSERT NAME OF TRANSFEE] at:

Address: [INSERT ADDRESS]

Email Address: [INSERT EMAIL ADDRESS]

Attention: [INSERT NAME]

Any such notice or other communication shall be delivered by email transmission, by hand or sent by courier or prepaid first class post. If sent by courier 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 (2) Weekdays from the time of posting.

8.5 Counterparts

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.

8.6 Third Parties

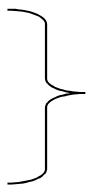
This Agreement does not create any rights under the Contracts (Rights of Third Parties) Act 1999 which is enforceable by any person who is not a party to it.

8.7 Governing Law and Jurisdiction

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

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

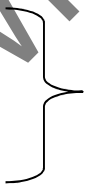
SIGNED FOR AND ON
BEHALF OF THE **[INSERT
NAME OF TRANSFEROR]:**



DIRECTOR:

DIRECTOR/SECRETARY:

SIGNED FOR AND ON
BEHALF OF THE **[INSERT
NAME OF TRANSFEREE]:**



DIRECTOR:

DIRECTOR/SECRETARY:

Withdrawn

SCHEDULE TO THE SUPPLEMENTAL AGREEMENT

Net Asset Statement

The Net Asset Statement shall be drawn up (except to the extent otherwise agreed by the Transferor and the Transferee) in accordance with accounting principles generally accepted in the United Kingdom and such that the Transferring Assets and Liabilities are valued on the following basis:

1. Rights and liabilities relating to an obligation of carriage under the terms of any Fare shall be valued in accordance with the following formula:

$$(C - D) \times \frac{A}{B} + E$$

where:

C	equals the Credit (exclusive of any Valued Added Tax) received by the Transferor in respect of the Fare provided that:
	(a) such Credit shall be deemed not to include any reduction in respect of a discount allowed to the purchaser of the Fare pursuant to the Passenger's Charter or any other passenger's charter of the Transferor;
	(b) if the Fare is a Season Ticket Fare, such Credit shall be the New Credit (as defined in the Ticketing and Settlement Agreement) relating to that Season Ticket Fare on the Transfer Date if different to the Credit that was in fact received by the Transferor in respect of such Season Ticket Fare;
	(c) such Credit shall be net of any Private Settlement Credit (as defined in the Ticketing and Settlement Agreement) arising in respect of that Fare; and
	(d) such Credit shall be deemed to exclude any Credit received by the Transferor in respect of any commission due to it in respect of the sale of such Fare (provided that for these purposes the amount of such commission shall not exceed the National Standard Rate of Commission (as defined in the Ticketing and Settlement Agreement) in respect of the Fare);
D	equals the Debit (exclusive of any Value Added Tax) received by the Transferor in respect of the commission due in respect of the sale of the Fare (provided that for these purposes the amount of

	such commission shall not exceed the National Standard Rate of Commission (as defined in the Ticketing and Settlement Agreement) in respect of the Fare);
--	---

$\frac{A}{B}$ equals:	(a) in the case of a Season Ticket Fare, the number of journeys which the purchaser of the Fare is estimated to make from (and including) the Transfer Date to (and including) the last day on which the Fare is valid (including any extensions to its original period of validity) divided by the total number of journeys which the purchaser of the Fare is estimated to make with that Fare (as determined in each case in accordance with Schedule 28 of the Ticketing and Settlement Agreement);
	(b) in the case of any other Fare which entitles the holder thereof to make more than two journeys, the number of days for which the Fare continues to be valid after the Transfer Date (including any extensions to its original period of validity) divided by the total number of days for which such Fare is valid on issue (except to the extent that it can reasonably be estimated what proportion of the journeys which could be made on issue of the Fare have not been made prior to the Transfer Date); or
	(c) in the case of any other Fare, zero; and

E	<p>equals, if $\frac{A}{B}$ is greater than zero:</p> <p>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,</p>
----------	---

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:

C	equals the Credit (exclusive of any Value Added Tax) received by the Transferor in respect of the Discount Card;
D	equals the Debit (exclusive of any Value Added Tax) received by the Transferor in respect of the commission due in respect of the sale of the Discount Card (provided that for these purposes the amount of such commission shall not exceed the National Standard Rate of Commission (as defined in the Ticketing and Settlement Agreement) in respect of the Discount Card); and
$\frac{A}{B}$	equals the number of days for which the Discount Card continues to be valid after the Transfer Date (including any extensions to its original period of validity) divided by the total number of days for which such Discount Card is valid on issue, or in the case of any Discount Card listed in Schedules 12 or 39 of the Ticketing and Settlement Agreement on the Start Date, zero,
and for these purposes a Credit or Debit shall be deemed to be received when the relevant Discount Card is Accepted for Clearing (as defined in the Ticketing and Settlement Agreement).	

4. Relevant Debits and Credits shall be valued at the full amount of such Debits and Credits (inclusive of any Value Added Tax) but excluding any Debits and Credits arising in respect of Adjustment Amounts (as defined in the Ticketing and Settlement Agreement) which are received by the Transferee in respect of a change to the Credit which is used to value any relevant Season Ticket Fare under paragraph 1 of this Schedule to the extent such Adjustment Amounts (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 and in paragraphs 11 and 12) 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
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

Rights and Liabilities	Value
<p>All the right, liabilities, title and interest of the Franchisee in the agreement between the First Greater Western Limited and Taunton Deane Borough Council dated 11 March 2019 relating to an unsecured term loan facility not exceeding [REDACTED¹⁵²], for redevelopment works at Taunton Railway Station.</p>	<p>Nil (so that the Transferor remains liable for repayments due for payment in respect of the period up to the Transfer Date, the Transferee assumes liability for any repayments due for payment in respect of the period from the Transfer Date and the Transferor makes no payment to the Transferee in respect of the assumption of the liability to make repayments by the Transferee).</p>

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 Franchisee 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 franchise assets that:
 - (a) are stated in the Previous Franchise Agreement as being assets that should transfer at nil value; or
 - (b) are stated in the Franchise Agreement as being assets that should transfer at nil value,
 shall be valued at nil.
11. All the rights, liabilities, title and interest of the Franchisee in the Castle Cary Additional Car Park Land (as defined in Appendix 1 to Schedule 14.4 of the Franchise Agreement) shall be valued at [REDACTED¹⁵³].

¹⁵² 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹⁵³ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

12. All the rights, liabilities, title and interest of the Franchisee in the Gloucester Car Park Documents (as defined in Appendix 1 to Schedule 14.4 of the Franchise Agreement) shall be valued at **[REDACTED¹⁵⁴]**.
13. 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.

Withdrawn

¹⁵⁴ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

APPENDIX 3 TO SCHEDULE 15.4

Form of HEx Business Transfer Agreement

Withdrawn

Dated

20[•]

(1) [GREAT WESTERN FRANCHISEE]

(2) [SUCCESSOR OPERATOR]

BUSINESS TRANSFER AGREEMENT

Regarding the HEx Outsourced Services

THIS AGREEMENT is made on

20[•]

BETWEEN:

- (1) **[GREAT WESTERN FRANCHISEE]**, (company registration no. [•]) whose registered office is at [•] ("**Transferor**"); and
- (2) **[SUCCESSOR OPERATOR]**, (company registration no. [•]) whose registered office is at [•] ("**Transferee**").

BACKGROUND

- (A) The Transferor has been providing train crew, rolling stock and certain management services to Heathrow Airport Limited ("**HAL**") and Heathrow Express Operating Company Limited ("**HEOC**") in accordance with an agreement dated [**insert date**] between the Transferor, HAL and HEOC (the "**HEx Services Agreement**").
- (B) The HEx Services Agreement terminated or is to terminate on [**insert date**] and the Transferee has been appointed by the Secretary of State as the Successor Operator of the Franchise and will enter into a services agreement relating to the HEx Outsourced Services on substantially the same terms as the HEx Services Agreement.
- (C) The Transferor has agreed to transfer all Tangible Assets, Business Contracts and Records required by the Transferee for the purposes of delivering the HEx Outsourced Services to the extent that such Tangible Assets, Business Contracts and Records have not or will not transfer to the Transferee pursuant to the Transfer Scheme (the "**Transfer**").
- (D) This Agreement sets out the terms on which the Transfer is to take place.

OPERATIVE CLAUSES

1. **INTERPRETATION**

In this Agreement:

- 1.1 the following expressions have the following meanings unless inconsistent with the context:

"Bank Holiday" means any day other than a Saturday or Sunday on which banks in the City of London are not open for business;

"Business"	the operation of the HEx Outsourced Services and all associated activities;
"Business Assets"	all property, rights and assets of the Business to be sold to the Transferee pursuant to this Agreement including those described in clause 2.1 but excluding the Excluded Assets;
"Business Contracts"	all Contracts entered into by or on behalf of the Transferor which are unperformed (wholly or partly) as at the Transfer Date as listed in Schedule 3 ;
"CA 2006"	the Companies Act 2006, as amended;
"Confidential Information"	all know how and information (howsoever stored) in relation to the Business which is not publicly known;
"Consideration"	the aggregate consideration for the sale of the Business Assets as provided in clause 3 ;
"Consultation Regulations"	means the Collective Redundancies and Transfer of Undertaking (Protection of Employment) (Amendment) Regulations 1995, the Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 1999 and the Information and Consultation of Employees Regulations 2004;
"Customer Advances"	all amounts paid to the Transferor before the Transfer Date in respect of goods or services to be supplied by the Business to a customer under any Contract after the Transfer Date;
"Employees"	the persons employed in the Business immediately before the Transfer Date, as listed in Schedule 1, whose contracts of employment after the Transfer Date will be or are deemed effected between the Transferee and such persons under regulation 4 of the Regulations, which shall not include those persons whose contracts of employment have transferred to the Franchisee as a result of the operation of the Transfer Scheme;
"Employment Costs"	all salaries, wages, commissions, bonuses, all statutory contributions, holiday pay (including payment for accrued but untaken holiday), national insurance contributions, pension contributions made to or on behalf of an employee, taxation (including all income tax deductible under PAYE) and all other employment costs of the Employees;

"Encumbrance"	any mortgage, charge, pledge, lien, assignment by way of security, option, restriction, claim, right of pre-emption, right of first refusal, third party right or interest, other encumbrance or security interest of any kind, or other preferential arrangement having similar effect;
"Estimated Purchase Price"	has the meaning ascribed to it in clause 3.1 ;
"Excluded Assets"	any and all assets of the Transferor other than the Business Assets;
"HEX Outsourced Services"	means the provision of train crew, rolling stock and certain management services provided or to be provided by the Franchisee pursuant to the HEX Services Agreement;
"Liabilities"	all costs, expenses, losses, damages, claims, proceedings, awards, fines, orders and other liabilities (including reasonable legal and other professional fees and expenses) whenever arising or brought;
"Net Asset Statement"	means the statement to be drawn up pursuant to clause 3.2 ;
"Net Asset Value"	means the aggregate of the amounts of the Business Assets as shown in the Net Asset Statement;
"Network Rail"	means Network Rail Infrastructure Limited a company registered in England with registered number 02904587 whose registered office is at Kings Place, 90 York Way, London N1 9AG;
"ORR"	Office of Rail Regulation;
"Records"	all the Transferor's books and records relating to the Business, the Business Assets and the Employees (including personnel files) as listed in Schedule 4 excluding those relating to the Excluded Assets and any records that the Transferor is required by law to retain
"the Regulations"	the Transfer of Undertakings (Protection of Employment) Regulations 2006;
"Tangible Assets"	those items listed in Schedule 2 ;
"Transfer Date"	01:59 on <i>[insert date]</i> ;
"Transferee's Group"	any of the following from time to time: the Transferee, its subsidiary undertakings and any parent undertaking of the Transferee and all other subsidiary undertakings of any parent

undertaking of the Transferee and "**member of Transferee's Group**" will be construed accordingly;

"Transferor's Group"

any of the following from time to time: the Transferor, its subsidiary undertakings, any parent undertaking of the Transferor and all other subsidiary undertakings of any parent undertaking of the Transferor and "**a member of the Transferor's Group**" will be construed accordingly;

"Transferor Prepayments"

all amounts paid by the Transferor before the Transfer Date in respect of goods or services to be supplied to the Transferee under any Contract with a supplier after the Transfer Date;

"VAT"

Value Added Tax;

"VATA"

Value Added Tax Act 1994;

"Weekday"

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

- 1.2 references to any statute or statutory provision include, unless the context otherwise requires, a reference to the statute or statutory provision as modified, replaced, re-enacted or consolidated and in force from time to time prior to Transfer Date and any subordinate legislation made under the relevant statute or statutory provision (as so modified, replaced, re-enacted or consolidated) in force prior to the Transfer Date;
- 1.3 references to a person includes a reference to any individual, firm, company, corporation or other body corporate, government, state or agency of a state or any unincorporated association, joint venture or partnership (whether or not having a separate legal personality);
- 1.4 references to the masculine, feminine or neuter gender respectively include the other genders and references to the singular include the plural and vice versa;
- 1.5 references to clauses and Schedules are to clauses of and Schedules to this Agreement, and references to paragraphs are to paragraphs in the Schedule in which such references appear;
- 1.6 the Schedules form part of this Agreement and will have the same force and effect as if expressly set out in the body of this Agreement;
- 1.7 the headings in this Agreement will not affect its interpretation;
- 1.8 any phrase introduced by the term "**include**", "**including**", "**in particular**" or any similar expression will be construed as illustrative and will not limit the sense of the words preceding that term;
- 1.9 references to a "**subsidiary undertaking**" or "**parent undertaking**" are to be construed in accordance with section 1162 CA 2006;

1.10 references to documents **"in the agreed terms"** are references to documents initialled by or on behalf of the Transferor and the Transferee; and

1.11 **"Party"** means party to this Agreement.

2. **SALE AND PURCHASE**

2.1 The Transferor will sell and transfer, or procure the sale and transfer, with full title guarantee (unless otherwise specified in this Agreement) to the Transferee and the Transferee will buy as at the Transfer Date the following assets (to the extent that they have not already transferred or will not transfer to the Transferee pursuant to the Transfer Scheme):

- (a) the Tangible Assets;
- (b) the benefit (subject to the burden) of the Business Contracts; and
- (c) the Records.

2.2 Each of the Business Assets will be sold and bought free from any Encumbrance and with all rights attached to it unless otherwise specified in this Agreement.

2.3 Subject to the matters fairly disclosed to the Transferee, the Transferor warrants that each of the Business Assets is legally and beneficially owned by the Transferor, free from any Encumbrance or any claim to, or contract to grant, any Encumbrance.

2.4 Except as otherwise provided in this Agreement:

- (a) beneficial ownership and risk in each of the Business Assets in respect of which beneficial ownership is to pass to the Transferee will pass to the Transferee on the Transfer Date;
- (b) title to all Business Assets in respect of which beneficial ownership is to pass to the Transferee which can be transferred by delivery will pass on delivery and such delivery will be deemed to take place on the Transfer Date; and
- (c) the Transferor will be a trustee for the Transferee in respect of the Business Assets until they have been actually delivered and/or, in the case of Business Assets not capable of transfer by delivery, transferred or assigned to the Transferor.

2.5 Notwithstanding any other provision of this Agreement, the Excluded Assets are excluded from the sale and purchase under this Agreement.

3. **CONSIDERATION**

3.1 The consideration for the sale of the Business Assets will be the sum of £[●] as determined by the Secretary of State (in consultation with the Transferor and the Transferee) on or before the date of this Agreement (the **"Estimated Purchase Price"**) which shall be paid in immediately available funds by the Transferee to the Transferor on the Transfer Date. On determination of the Purchase Price a balancing payment (if any) shall be made by the Transferor to the Transferee or

the Transferee to the Transferor (as the case may be in accordance with **clause 3.3**).

3.2 Determination of the Purchase Price

- (a) The Transferor shall procure that, as soon as reasonable practicable and in any event no later than [two] calendar months following the Transfer Date, there shall be drawn up a statement showing a true and fair view of the amount of each Business Asset as at the Transfer Date.
- (b) The Net Asset Statement shall be :
 - (i) drawn up on the basis that the Tangible Assets and any other Business Assets shall be valued on the basis of a willing vendor and purchaser and ongoing usage within the railway industry;
 - (ii) prepared on such basis as would enable the Transferor's auditors, if so requested, to give an unqualified audit report thereon to the effect that it had been drawn up in accordance with the provisions of this **clause 3.2(b)**; and
 - (iii) presented, initially as a draft, to the Transferee immediately following its preparation for review in conjunction with its auditors.
- (c) If the Transferor and the Transferee have failed to agree the Net Asset Statement within [four] weeks following presentation of the initial draft as required in **clause 3.2(b)(iii)**, then either party may refer the matter to be settled in accordance with **clause 9**.

3.3 If the Purchase Price exceeds or is less than the Estimated Purchase Price, the Transferor shall pay to the Transferee or the Transferee shall pay to the Transferor (as the case may be), in either case within [fourteen] 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.

3.4 All amounts expressed in this Agreement as being payable by the Transferee are expressed exclusive of any VAT which may be chargeable.

4. VALUE ADDED TAX

4.1 In this **clause 5**:

"Special Provisions Order" means the Value Added Tax (Special Provisions) Order 1995

"HMRC" means HM Revenue & Customs.

4.2 All amounts expressed in this Agreement as being payable by the Transferee are expressed to be exclusive of VAT which may be chargeable and the Transferee agrees to pay to the Transferor in addition to such amounts, any VAT for which

the Transferor is liable to account to HMRC in respect of any supply made by the Transferor to the Transferee under or in connection with this Agreement within five Weekdays of production of a valid VAT invoice by the Transferor.

- 4.3 The Parties intend that section 49 VATA and Article 5 Special Provisions Order will apply to the transfer of the Business Assets and the Transferor and the Transferee will each use all reasonable endeavours to secure that pursuant to the provisions referred to above the sale of the Business Assets is treated as neither a supply of goods nor a supply of services for the purposes of VAT but as the transfer of a business as a going concern. Provided always that nothing in this **clause 4.3** shall require the Transferor to request a review of any determination by HMRC or any notification by HMRC that section 49 VATA and Article 5 Special Provisions Order does not apply to the transfer of Business Assets in whole or in part.
- 4.4 The Transferor represents, warrants and undertakes to the Transferee that it is duly and properly registered for the purposes of VAT.
- 4.5 The Transferee represents, warrants and undertakes to the Transferor that;
- (a) it is duly and properly registered for the purposes of VAT; and
 - (b) that it will use the Business Assets to carry on the same kind of business as that carried on with those assets by the Transferor (whether or not as part of any existing business of the Transferee).
- 4.6 The Transferor will preserve the VAT records relating to the Business Assets required to be maintained in accordance with paragraph 6(1) Schedule 11 VATA and any regulations made under that section. The Transferee will indemnify the Transferor against the Transferor's proper and reasonable costs incurred in complying with the Transferor's obligations under section 49(5) VATA.
- 4.7 If HMRC notify the Transferor in writing that they do not agree that the sale of the Business Assets (or any part of them) pursuant to this Agreement falls within section 49 VATA and Article 5 Special Provisions Order, the Transferor will forthwith on receipt of such notification or on the Transfer Date (whichever is the later) issue to the Transferee a valid VAT invoice in respect of the sale of the Business Assets (or the relevant part of them). The Transferee will within five Weekdays of receipt of such invoice pay to the Transferor the VAT charged on the sale of the Business Assets (or the relevant part of them) in addition to the Consideration.
- 4.8 The Transferee undertakes to indemnify the Transferor in respect of any liability of the Transferor to pay HMRC any interest, penalty or surcharge by reason of the late payment of any VAT charged on the sale of the Business Assets (or any part of them) pursuant to the provisions of this Agreement provided that the Transferee shall only be liable to indemnify the Transferor in respect of such interest, penalty or surcharge where the VAT charged on the sale of the Business Assets (or any part of them) arises as a result of the breach by the Transferee of its warranties in **clause 4.5**.

5. LIABILITIES AND APPORTIONMENTS

- 5.1 All expenditure, overheads and outgoings in respect of the Business or Business Assets and all payments received in respect of the Business or Business Assets which, in each case, cover a period both before and after the Transfer Date will

be apportioned on a time basis so that such part of the relevant expenditure or payment received attributable to a period up to and including the Transfer Date will be borne by, or for the benefit of, the Transferor and such part of the relevant expenditure or payment received attributable to the period after the Transfer Date will be borne by, or for the benefit of, the Transferee.

- 5.2 The Transferor will pay to the Transferee an amount equal to all the Customer Advances and the Transferee will pay to the Transferor an amount equal to all the Transferor Prepayments.
- 5.3 The Transferor will prepare a statement of adjustments setting out the net balance payable by either the Transferee or the Transferor to the other in accordance with **clauses 5.1** and **5.2** and will submit such statement to the Transferee within 14 days of the Transfer Date. The Transferee and the Transferor will then seek to agree such statement and the net balance payable pursuant to this clause will be paid within 14 days of this statement being agreed or determined or on such other date as the Transferee and the Transferor agree. Any payments pursuant to **clause 5.1** not included in such statement of adjustments but subsequently made or received by the Transferor or the Transferee will be apportioned in accordance with **clause 5.1** and any claim for reimbursement will be made by notice in writing supported by copy documentation evidencing the amount of the same and the calculation of the apportionment. All sums due will be paid within ten Weekdays of a receipt of a notice of apportionment save where there is a dispute as to the amount to be paid in which case the matter may be dealt with in accordance with **clause 9**.
- 5.4 To the extent that any payment is made to the Transferor after the Transfer Date in respect of the performance by the Transferee of any Contract with a customer or generally in relation to the carrying on of the Business by the Transferee after the Transfer Date, the Transferor will receive the same as trustee for the Transferee and will account to the Transferee for the same as soon as reasonably practicable and in any event within seven Weekdays following receipt.
- 5.5 The Transferor shall indemnify and keep indemnified the Transferee against all Liabilities (save for any Liability which the Transferee has expressly agreed to assume pursuant to this Agreement) which may arise:
- (a) as a result of any breach by the Transferor of any Contract prior to the Transfer Date; and
 - (b) otherwise in connection with the ownership of the Business Assets or the carrying on of the Business prior to the Transfer Date.
- 5.6 The Transferee shall indemnify and keep indemnified the Transferor against all Liabilities (save for any Liability which the Transferor has expressly agreed to retain pursuant to this Agreement) which may arise:
- (a) as a result of any breach by the Transferee of any Contract after the Transfer Date; and
 - (b) otherwise in connection with the ownership of the Business Assets or the carrying on of the Business on or after the Transfer Date.
- 5.7 In respect of any claim arising prior to the Transfer Date under any policy of insurance maintained by the Transferor in relation to the Business:

- (a) it is agreed that the Transferor or its insurers shall be responsible for the resolution of such claims without liability for the Transferee; and
- (b) the Transferor undertakes that it has taken reasonable measures to address the root cause of any incident giving rise to such a claim.

6. **BUSINESS CONTRACTS**

6.1 Subject to the provisions of **clause 5** and the other provisions of this **clause 6**, the Transferee will with effect from the Transfer Date assume the obligations of the Transferor, and become entitled to the benefits of the Transferor, under the Business Contracts.

6.2 The Transferor hereby assigns to the Transferee with effect from the Transfer Date all its rights, title and interest under or pursuant to all the Business Contracts which are capable of assignment without the consent of other parties.

6.3 In so far as a Business Contract cannot be transferred without the consent of a third party or a novation agreement:

- (a) this Agreement does not constitute an assignment or an attempted assignment of the Business Contract if such assignment or attempted assignment would constitute a breach of the Business Contract;
- (b) the Transferor will, as requested by the Transferee, use its reasonable endeavours (with the co-operation of the Transferee) to procure such consent or novation.

6.4 Subject to **clause 6.5**, unless and until such consent or novation is obtained:

- (a) the Transferor will hold the benefit of such Business Contracts upon trust for the Transferee absolutely and will account to the Transferee for any sums received by the Transferor in relation thereto without any deduction or withholding of any kind; and
- (b) the Transferee will, as the Transferor's agent, perform all the obligations of the Transferor under such Business Contract for the period from the Transfer Date; and
- (c) the Transferor will do each act or thing reasonably requested of it by the Transferee to enable performance of the Business Contract by the Transferee and to provide for the Transferee the benefits of the Business Contract (including its rights of enforcement) provided that the Transferee indemnifies the Transferor in full against all costs (including legal costs) and expenses incurred.

6.5 If any consent or novation is not obtained within sixty days after the Transfer Date and the provisions set out in this **clause 6** do not enable the full benefit of a Business Contract to be enjoyed by the Transferee then the Transferor will be entitled by notice in writing to the Transferee to inform the Transferee of the Transferor's intent to terminate the relevant Business Contract or to exclude the same from the Business Assets. **[Delete if not applicable]**.

7. **EMPLOYEES**

7.1 The Transferor shall perform and discharge its obligations in relation to the Employees which arise up to and including the Transfer Date.

7.2 The Transferor and the Transferee acknowledge that, to the extent that the undertaking or part of the undertaking of the Transferor is continued by the Transferee after the Transfer Date, pursuant to the Regulations the contracts of employment between the Transferor and the Employees (except in so far as such contracts relate to any occupational pension scheme as defined in Regulation 10 of the Regulations) will have effect from and including the Transfer Date, which shall be the "time of transfer" under the Regulations, as if originally made between the Transferee and the Employees.

7.3 All Employment Costs in respect of the period:

(a) up to the Transfer Date (whether or not due for payment at that date) will be borne by the Transferor;

(b) on and from the Transfer Date will be borne by the Transferee,

and will if necessary be apportioned on a time basis between the Transferee and the Transferor.

7.4 The Transferor shall indemnify the Transferee against all Liabilities arising out of or in connection with:

(a) any claim by any Employee arising from his employment with the Transferor or the termination of that employment (howsoever arising) prior to the Transfer Date;

(b) the non-payment or underpayment of Employment Costs in respect of any period prior to the Transfer Date; and

(c) any claim by any Employee, trade union, elected employee representative or staff association in respect of all or any of the Employees arising from any failure by the Transferor to comply with any legal obligation to any such Employee, trade union, representative or staff association or with regulations 13 or 14 of the Regulations or with any provision of the Consultation Regulations.

7.5 The Transferee shall indemnify the Transferor against Liabilities arising out of or in connection with:

(a) any claim by any Employee arising from his employment with the Transferee or the termination of that employment (howsoever arising) after the Transfer Date;

(b) the non-payment or under-payment of Employment Costs in respect of the period commencing after the Transfer Date;

(c) any claim arising as a result of the Transferee's failure to comply with section 258 of the Pensions Act 2004 as transferee;

- (d) any claim by any Employee arising from a change or anticipated change to that Employee's terms and conditions of employment by the Transferee, whether such claim is brought before, on or after the Transfer Date, including any claim pursuant to regulation 4(9) of the Regulations; and
- (e) any claim by any Employee or representative of any Employee pursuant to regulation 13 of the Regulations, to the extent that such claim arises out of any failure by the Transferee to comply with its obligations under regulation 13(4) of the Regulations.

7.6 The Transferee shall make such pension provisions in respect of the Employees as comply with its obligations under sections 257 and 258 Pensions Act 2004 and the Regulations and, for the avoidance of doubt, shall have no other Liability to the Transferor in respect of the provision of pension benefits to any Employee.

7.7 The Transferor shall provide such information and co-operation as may be necessary to enable the Transferee to establish a section under the Shared Cost Arrangement of the Railways Pension Scheme in which Employees who are protected employees may participate immediately following the Transfer Date in order that the Transferee may comply with its obligations to such protected employees under the Railways Pensions (Protection and Designation of Schemes) Order 1994.

7.8 Where either Party (the "**Indemnifying Party**") is obliged to indemnify the other (the "**Indemnified Party**") under this clause, the Parties will co-operate fully with each other in relation to the Liability and save as required by law, the Indemnified Party will not settle a claim without the prior written consent of the Indemnifying Party, such consent not to be unreasonably withheld or delayed.

8. **RECORDS AND ACCESS**

8.1 Without prejudice to any other provision of this Agreement, the Transferee and its agents will be entitled for a period of three years from the date of this Agreement on giving reasonable notice to the Transferor to have access during normal business hours and to take copies (at its own expense) of any books, documents or other records (including computer records) in the Transferor's possession relating exclusively to the Business or the Business Assets and which have not been delivered to the Transferee.

8.2 The Transferor and its agents will, where necessary for the completion of its accounts or tax returns or for dealing with any claims or disputes relating to the use of the Business Assets or the carrying on of the Business up to the Transfer Date, be entitled for a period of six years from the Transfer Date on giving reasonable notice to the Transferee to have access during normal business hours and to take copies of (at its own expense) any of the Records which were delivered to the Transferee pursuant to this Agreement.

9. **DISPUTES**

9.1 In the event of any dispute, either Party shall be entitled to call an extraordinary meeting of the Parties designated representatives who are responsible for the administration of this Agreement, which, in the case of the Transferee, shall be [X] and in the case of the Transferor shall be [X], (the "**Designated Representatives**") for any purpose including resolving a dispute, by service of

five Weekdays' written notice on the other Party. The Parties shall negotiate in good faith to resolve such dispute. If the dispute cannot be resolved by the Designated Representatives at or within ten Weekdays of such meeting, either Party may refer the matter for resolution to the *[Managing Director of the Transferee]* and *[Managing Director of the Transferor]* who shall discuss the matter in good faith with the intention of settling the dispute as soon as reasonably possible.

- 9.2 If any dispute cannot be settled by negotiation in accordance with **clause 9.1** above, the Parties, in good faith, may, by agreement, seek to resolve that dispute through mediation under the auspices of a mediator. The mediator shall be selected by mutual agreement and, in the case of any dispute relating to financial matters (including, without limitation, any dispute relating to apportionment pursuant to **clause 5** (a "Financial Dispute") shall be a qualified accountant of good standing. Failing agreement within fourteen days after a request by one Party to the other, a mediator shall be chosen at the request of either Party by the President for the time being of the Law Society or, in the case of a Financial Dispute, by the President of the Institute of Chartered Accountants in England and Wales, who in each case shall be requested to choose a suitably qualified and experienced mediator for the dispute in question. If the dispute is not resolved by mediation within thirty days of the appointment of the mediator (or such other period as the Parties may agree), or if one of the Parties will not participate in the mediation, the dispute shall be resolved in accordance with the Rail Industry Dispute Resolution Rules.

10. CONFIDENTIALITY

- 10.1 This Agreement and any Confidential Information disclosed by one Party to the other hereunder shall be confidential to the Party both before and after the Transfer Date and neither Party shall make any disclosure in relation to or permit any announcement or publication to be made concerning this Agreement or its terms, either in whole or in part, or any comment or statement relating to this Agreement except:

- (a) to the ORR, [Network Rail,] the Department for Transport or Transport for London; or
- (b) with the prior written consent of the other as to the form and content of any such announcement, publication, statement or comment, such consent not to be unreasonably withheld or delayed; or
- (c) as far as may be necessary for the prompt performance of its obligations under this Agreement; or
- (d) in connection with any dealing or proposed dealing with its interest; or
- (e) without prejudice to **clause 10.1(a)** above, for the purposes of obtaining any regulatory or government authorisation, approval or consent; or
- (f) as required by law or any relevant stock exchange or if ordered to do so by a court of competent jurisdiction, HM Revenue and Customs; or
- (g) to a member of the Transferor's Group or the Transferee's Group upon obtaining from such Party an undertaking of confidentiality equivalent to that contained in this **clause 10.1**; or

- (h) 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 this **clause 10.1**; or
- (i) to any lenders, security trustee, bank or other financial institution (and their advisers) from which such party is seeking or obtaining finance upon obtaining from each such person an undertaking of confidentiality equivalent to that contained in this **clause 10.1**; or
- (j) to the directors, officers and employees of such Party.

10.2 If either Party seeking to disclose a document or information can demonstrate to the reasonable satisfaction of the other that any such document, material or information is in the public domain through no breach of **clause 10.1** then to the extent that it is in the public domain this obligation shall cease but without prejudice to any claim by either party in respect of any prior breach.

11. **COSTS**

Except where expressly stated otherwise, each Party will bear such Party's own costs and expenses relating to the negotiation, preparation and implementation of this Agreement.

12. **INTEREST**

If any Party becomes liable to pay (the "**Paying Party**") any sum pursuant to this Agreement, whether a liquidated sum or by way of damages or otherwise, the Paying Party will be liable to pay interest on such sum from the due date for payment at the annual rate of four per cent above the base lending rate from time to time of *[name of Bank]*, accruing on a daily basis until payment is made, whether before or after any judgment.

13. **NOTICES**

13.1 Any notice or other communication given in connection with this Agreement will be in writing and will be delivered personally or sent by pre-paid first class post (or air mail if overseas) or by fax to the recipient's address set out at **clause 12.3** in this Agreement or to any other address which the recipient has notified in writing to the sender received not less than seven (7) Weekdays before the notice was despatched.

13.2 A notice or other communication is deemed given:

- (a) if delivered personally, upon delivery at the address provided for in this clause; or
- (b) if sent by pre-paid first class post, on the second Weekday after posting it; or
- (c) if sent by email, when confirmation of its transmission has been received by the sender,

provided that, if it is delivered personally or sent by fax on a day which is not a Weekday or after 4 p.m. on a Weekday, it will instead be deemed to have been given or made on the next Weekday.

13.3 The addresses referred to in **clause 13.1** are:

Transferor

To: [NAME]
Address: [DETAILS]
For the attention of: [NAME]
Email: [NUMBER]
[Copy to:] []

Transferee

To: [NAME]
Address: [DETAILS]
For the attention of: [NAME]
Email: [NUMBER]
[Copy to:] []

14. **ASSIGNMENT**

14.1 Save as provided in **clause 14.2**, neither Party may assign the benefit of, and/or any of its rights under, this Agreement without the prior consent of the other Party.

14.2 The Transferee may assign the benefit of, and any of its rights under, this Agreement to another member of the Transferee Group and the Transferor may assign the benefit of, and any of its rights under, this Agreement to another member of the Transferor Group.

15. **FURTHER ASSURANCE**

15.1 Each Party will (at their own cost) do, or procure the doing of, all acts and things and execute, or procure the execution of, all documents as the other party reasonably considers necessary to give full effect to the terms of this Agreement.

16. **RIGHTS OF THIRD PARTIES**

The Parties do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it.

17. **ENTIRE AGREEMENT**

- 17.1 This Agreement and the documents referred to in it constitute the entire agreement between the Parties and supersede and replace any previous agreement, understanding, undertaking, representation, warranty or arrangement of any nature whatsoever between the parties relating to the subject matter of this Agreement.
- 17.2 The Parties acknowledge and agree that in entering into this Agreement, and the documents referred to in it, they have not relied on, and will have no remedy in equity, contract, tort, under the Misrepresentation Act 1967 or otherwise in respect of, any representation other than as set out in this Agreement and each document referred to in it.
- 17.3 The only remedy available to the Parties in respect of this Agreement and the documents referred to in it is for breach of contract and, for the avoidance of doubt, neither party will have the right to rescind this Agreement or the documents referred to in it for breach of contract, negligent or innocent misrepresentation or otherwise.
- 17.4 Nothing in this clause will have the effect of limiting or restricting any liability of the Parties arising as a result of any fraudulent misrepresentation.

18. **GENERAL**

- 18.1 Failure or delay by any Party in exercising any right or remedy under this Agreement will not in any circumstances operate as a waiver of it, nor will any single or partial exercise of any right or remedy in any circumstances preclude any other or further exercise of it or the exercise of any other right or remedy.
- 18.2 Any waiver of any breach of, or any default under, any of the terms of this Agreement will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of this Agreement.
- 18.3 No variation of this Agreement will be valid unless it is in writing and signed by or on behalf of each party to this Agreement.
- 18.4 Nothing in this Agreement will have the effect of limiting or restricting any liability of the Transferor in respect of a claim arising as a result of any fraud by or on behalf of Transferor.

19. **GOVERNING LAW AND JURISDICTION**

- 19.1 This Agreement and any non-contractual obligations arising out of or in connection with it will be governed by English law.
- 19.2 The courts of England and Wales will have exclusive jurisdiction to settle any dispute which arises out of or in connection with this Agreement (including (without limitation) in relation to any non-contractual obligations). The Parties irrevocably agree to submit to that jurisdiction.

20. **COUNTERPARTS**

This Agreement may be executed in any number of counterparts and by the parties to it on separate counterparts, each of which when executed and delivered will be an original.

Withdrawn

SCHEDULE 1

The Employees

[To be inserted, as they relate to the HEx Outsourced Services and are not otherwise transferred under or in connection with the Transfer Scheme]

Withdrawn

SCHEDULE 2

Tangible Assets

[To be inserted, as they relate to the HEx Outsourced Services and are not otherwise transferred under or in connection with the Transfer Scheme]

Withdrawn

SCHEDULE 3

The Business Contracts

[To be inserted, as they relate to the HEx Outsourced Services and are not otherwise transferred under or in connection with the Transfer Scheme]

Withdrawn

SCHEDULE 4

Records

[To be inserted, as they relate to the HEx Outsourced Services and are not otherwise transferred under or in connection with the Transfer Scheme]

Withdrawn

SCHEDULE 16

PENSIONS

Schedule 16.1:	Railways Pension Scheme
	Appendix 1: List of Shared Cost Sections
Schedule 16.2:	Deficit Contribution Risk Sharing
	Appendix 1: Deficit Contribution Thresholds

Withdrawn

Schedule 16.1

Railways Pension Scheme

1. Definitions

Unless otherwise defined in the Franchise Agreement, terms used in this Schedule 16.1 shall have the meanings given to them in the Railways Pension Scheme.

2. Franchise Sections

The Franchisee 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 "**Franchise Sections**") in respect of the Franchise Services. Subject to paragraphs 3 and 4.2(d) membership of a Franchise Section will be offered to each employee of a Franchisee only.

3. Closed Schemes

3.1 Subject to any requirements of Her Majesty's Revenue and Customs, the Franchisee shall take any necessary steps (including entering into any relevant deed of participation) to allow Closed Scheme Employees to continue in membership of the British Railways Superannuation Fund or the BR (1974) Pension Fund in accordance with their terms during the Franchise Period.

3.2 For the purposes of this paragraph 3, "**Closed Scheme Employees**" means such of the employees of the Franchisee who were, immediately prior to the commencement of their employment with the Franchisee, members of either of the British Railways Superannuation Fund or the BR (1974) Pension Fund.

4. Variations in benefits, contributions and investment

4.1 If a Franchisee 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 Franchise Section, the Trustee of the Railways Pension Scheme (the "**Trustee**"), or to any trade union. The Franchisee must otherwise consult in good time with the Secretary of State in relation to any proposal falling within the scope of paragraphs 4.2(a) to 4.2(g) inclusive.

4.2 Separately and in addition to complying with its obligations under paragraph 4.1, the Franchisee shall not, without the prior written consent of the Secretary of State (which may be given on such terms and subject to such conditions as the Secretary of State thinks fit):

(a) restructure or change the composition of the earnings of employees of the Franchisee in such a way as to increase the part of those earnings which qualifies as pensionable earnings under the rules of the Railways Pension Scheme applicable to any Franchise Section (the "**Franchise Section Rules**") or take any action (or consent to the taking of any action) which could detrimentally affect the funding of any Franchise Section, including varying or providing different or additional benefits under that Franchise Section or promising to do so, unless this change:

(i) is required by Law; or

- (ii) only affects benefits payable in respect of past service of members of that Franchise Section and on or prior to the effective date of the change the Franchisee pays an additional cash payment to the Trustee which, in the opinion of the Actuary, meets in full the additional funding cost imposed on that Franchise Section; or
 - (iii) would not lead to substantial changes in the funding of any Franchise Section and is the result of the normal application of the Franchise Section Rules in the ordinary day to day running of the business of the Franchise, for example, where individual employees are, from time to time promoted or transferred to higher paid or different employment which has a different composition of earnings;
- (b) make or consent to any proposal to change any of the provisions of the Pension Trust in respect of the Franchise Sections unless the change is required by Law;
 - (c) provide retirement, death or life assurance benefits in respect of any of its employees other than under any Franchise Section or as provided in paragraph 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 Franchisee shall not under this Schedule 16.1 be obliged for the purposes of the Franchise Agreement 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 Franchise Section, including exercising any discretion allowed to the Franchisee as Designated Employer arising out of any actuarial valuation of a Franchise Section, and varying or providing different or additional benefits under the Franchise Sections in respect of future service, unless such action is required by Law;
 - (f) close a Franchise Section to new members; or
 - (g) take (or omit to take) any action which could result in any Franchise Section being wound up, in whole or in part.

4.3 The Franchisee shall consult with the Secretary of State on:

- (a) any proposal made by the Trustee to change the statement of investment principles applicable to any Franchise Section; and
- (b) any proposal to alter the rate of contributions payable by the Franchisee or its employees under a new schedule of contributions for the Franchise Section.

4.4 With respect to any proposal falling within the scope of paragraph 4.3(a) or 4.3(b), the Franchisee shall also consult with the Trustee on the basis of any response it receives from the Secretary of State in relation to any such proposal.

5. **Funding Liabilities**

- 5.1 The Franchisee shall pay the employer contributions required under the schedule of contributions applicable to each Franchise Section (or either of the British Railways Superannuation Fund or the BR (1974) Pension Fund in which it participates) in respect of the Franchise Term subject to the provisions of paragraph 5.2 below.
- 5.2 Where, during the Franchise Term, Franchise Services are aggregated or disaggregated by the Secretary of State (for example, as a result of remapping) and, as a consequence, a Franchise Section of which the Franchisee is the Designated Employer is required to accept a transfer in or to make a transfer out of members, the Secretary of State shall ensure that the Franchisee has no liability for any resulting deterioration immediately arising in the funding level of the Franchise Section measured in accordance with the Franchise Sections' technical provisions in Part 3 of the Pensions Act 2004, or for any amount arising under Article 7(4) of the Railway Pensions (Protection and Designation of Schemes) Order 1994. Notwithstanding the above the Secretary of State shall have no liability for any future deterioration in the funding levels of the Franchise Section linked to such transfer in or out of members.

6. **Discharge of Obligations**

- 6.1 The Secretary of State may at any time during the Franchise Term seek information from the Trustee with a view to satisfying himself that the Franchisee and the other Participating Employers (if any) have fully discharged their respective obligations under the Railways Pension Scheme, including their obligations in respect of the payment of contributions to any Franchise Section.
- 6.2 The Franchisee shall, at its expense, promptly provide such information in relation to any Franchise Section, including actuarial advice and information, as the Secretary of State may from time to time request and shall authorise and consent to the Trustee doing so.
- 6.3 The Franchisee shall, in respect of the Franchise Term, use all reasonable endeavours to provide to the Secretary of State:
- (a) within one (1) month of the expiry of each Franchisee Year; and
 - (b) at other times as soon as practicable following a request by the Secretary of State,

a certificate signed by the Trustee in relation to the Franchise Sections stating either that the Franchisee has fully complied with its obligations under the Railways Pension Scheme, including its obligation to contribute to the Franchise Sections or, if it has not so complied, stating the extent to which it has not done so. Where the certificate is given pursuant to paragraph 6.3(a), it shall cover the relevant Franchisee 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.

- 6.4 If the Trustee does not certify under paragraph 6.3 in relation to the Franchise Sections that the Franchisee has fully complied with its obligations under the Railways Pension Scheme or if the Secretary of State otherwise reasonably considers that the Franchisee has not complied with such obligations, the Secretary of State may adjust Franchise Payments payable under Schedule 8 (Payments) by an amount which is, in his opinion, no greater than the amount of any contribution that the Franchisee has thereby failed to make or avoided making.

6.5 The Secretary of State may, under paragraph 6.4, continue to make such adjustments to Franchise Payments payable under Schedule 8 (Payments) until such time as he reasonably determines that the relevant contributions have been made in full by the Franchisee. Following that determination, any amounts so withheld by the Secretary of State shall become payable (without interest) on the next day on which a Franchise Payment becomes payable under Schedule 8 (Payments), being a day which falls no less than seven (7) days after such determination or, if there is no such day, fourteen (14) days after the date of such determination. To the extent that the Secretary of State has not so determined within four (4) weeks after the expiry of the Franchise Period, the Franchisee's right to receive the amount so withheld under the Franchise Agreement shall lapse and the Secretary of State shall not be obliged to pay such amount.

7. Termination of Franchise

The Secretary of State shall at the end of the Franchise Period ensure that the Franchisee has no liability for any deficit in the Franchise Sections (other than for contributions due and payable by the Franchisee to the Franchise Sections for any period prior to the end of the Franchise Term) and shall have no right to benefit from any surplus which may exist in the Franchise Sections. For the avoidance of doubt, this paragraph 7 shall apply where the Franchise Services are either aggregated or disaggregated (for example, as a result of remapping).

Withdrawn

APPENDIX 1 TO SCHEDULE 16.1

List of Shared Costs Sections

Shared Costs Sections	
section	employer
First Great Western Shared Cost Section	The Franchisee

Withdrawn

Schedule 16.2

Deficit Contribution Risk Sharing

Part 1 – General

1. Definitions

1.1 Unless otherwise specified in Part 4 of this Schedule 16.2 (*Deficit Contribution Risk Sharing*), defined terms used in this Schedule 16.2 have the same meaning as set out in clause 3 (*Definitions*).

2. Deficit Contribution Protection subject to overriding conditions

2.1 The protection afforded to the Franchisee in this Schedule 16.2 in respect of the Franchise Sections is subject, at all times, to the Secretary of State being satisfied that:

- (a) the Franchisee has acted in a Reasonable Commercial Manner in its decision making and in its dealings with the Trustee insofar as they relate to matters which may directly or indirectly affect the contributions payable by the Franchisee and its employees to the Franchise Sections;
- (b) neither the Trustee nor the actuary of the Railways Pension Scheme has taken into account the Deficit Contribution Protection in assessing the covenant of the Franchisee or for the purposes of determining the affordability of the contributions payable by the Franchisee or its employees to the Franchise Sections;
- (c) in imposing any schedule of contributions or recovery plan on the Franchisee under its statutory powers, the Pensions Regulator has not taken into account the Deficit Contribution Protection in assessing the affordability of contributions by the Franchisee;
- (d) the Franchisee has complied with its obligations as set out in paragraph 5 of this Schedule 16.2 (*Franchisee obligations to participate in any Investigation and reform*); and
- (e) the Franchisee has, at all times, complied with its obligations:
 - (i) under this Schedule 16.2; and
 - (ii) to and in respect of the Franchise Sections.

2.2 In assessing whether the conditions set out in paragraph 2.1 of this Schedule 16.2 have been met, the Secretary of State will act reasonably (including taking into account whether or not matters were within the reasonable control of the Franchisee). For the avoidance of doubt, the Secretary of State may exercise his Information Powers for the purposes of assessing whether the Franchisee has met any condition set out in paragraph 2.1.

3. Application of Parts 2 and 3

3.1 To the extent there is more than one Franchise Section in relation to the Franchise, Parts 2 and 3 of this Schedule 16.2 take effect and apply separately to each Franchise Section.

4. Termination or suspension of Deficit Contribution Protection

4.1 If, at any time, the Secretary of State is not satisfied (or ceases to be satisfied) that any of the conditions in paragraph 2.1 of this Schedule 16.2 have been met in full, the Secretary of State may:

- (a) notify the Franchisee that the Deficit Contribution Protection has been suspended; or
- (b) notify the Franchisee that the Deficit Contribution Protection has been terminated.

4.2 In determining whether to exercise the power to suspend or terminate the Deficit Contribution Protection under paragraph 4.1 of this Schedule 16.2, the Secretary of State will act reasonably (including taking into account the reasons why any of the conditions in paragraph 2.1 of this Schedule 16.2 were not met and whether or not the breach or non-compliance is capable of remedy in a manner consistent with the Secretary of State continuing to offer Deficit Contribution Protection to the Franchisee).

4.3 Where the Deficit Contribution Protection is suspended or terminated in accordance with this paragraph, the Secretary of State will have no further obligation to make any Deficit Contribution Top-Up from the date the suspension or termination takes effect and, in the case of a suspension, until such time as the suspension is lifted.

4.4 Any notification for the purposes of paragraph 4.1(a) of this Schedule 16.2 will include:

- (a) the reasons why the Deficit Contribution Protection has been suspended;
- (b) the date on which the suspension of the Deficit Contribution Protection takes effect (which may be before or after the date of the notice, but will not be before the date the Secretary of State ceased to be satisfied that any condition set out in paragraph 2.1 had been met);
- (c) the period of suspension (if known); and
- (d) the terms (if any) on which the Secretary of State may be prepared to reinstate the Deficit Contribution Protection.

4.5 Any notification for the purposes of paragraph 4.1(b) of this Schedule 16.2 will include:

- (a) the reasons why the Deficit Contribution Protection has been terminated; and
- (b) the date on which the termination of the Deficit Contribution Protection takes effect (which may be before or after the date of the notice, but will not be

before the date the Secretary of State ceased to be satisfied that any condition set out paragraph 2.1 had been met).

- 4.6 On receipt of a written request from the Franchisee, the Secretary of State shall reconsider a decision, taken under paragraph 4.1 of this Schedule 16.2, to suspend or terminate the Deficit Contribution Protection. Such suspension or termination shall continue whilst the Secretary of State is undertaking a reconsideration. The Franchisee may only exercise the right to request a reconsideration once in respect of any given decision to suspend or terminate the Deficit Contribution Protection. On a reconsideration, the Secretary of State may confirm, vary or revoke his original decision and the Secretary of State shall be obliged to notify the Franchisee of the outcome.

5. **Franchisee obligations to participate in any Investigation and reform**

- 5.1 The Franchisee 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 5.2 of this Schedule 16.2.

- 5.2 The Franchisee shall take all reasonable steps to participate in:

- (a) the development and implementation of the RDG's response to the current 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 Franchise Sections, in which case the Franchisee shall use all reasonable endeavours to achieve an outcome from that Investigation with which a reasonable franchisee, who was in the position of the Franchisee and acting in a Reasonable Commercial Manner, would be satisfied; and
- (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.

6. **Information Powers**

- 6.1 The Secretary of State may, at any time and on reasonable notice to the Franchisee, require the Franchisee to provide information to the Secretary of State for the purposes of assessing whether the Franchisee has met its obligations under this Schedule 16.2 or whether the actions of the Trustee or the Pensions Regulator are consistent with providing Deficit Contribution Protection including, but not limited to:

- (a) whether any condition in paragraph 2.1 of this Schedule 16.2 has been met;

- (b) the use of any Deficit Contribution Top-Up and the payment of Deficit Contributions to the Franchise Sections generally; and
 - (c) the payment of Deficit Contribution Return Amounts.
- 6.2 The Franchisee must comply with the Secretary of State's requirements under paragraph 6.1 of this Schedule 16.2. In addition, where required by the Secretary of State, the Franchisee agrees to allow the Secretary of State or its representatives to attend any meeting between the Franchisee and the Trustee and/or the Pensions Regulator where the meeting in whole or part relates to matters to which this Schedule 16.2 applies.
- 6.3 The Franchisee shall promptly notify the Secretary of State if, in respect of a Franchise Section, the Franchisee becomes aware that a funding shortfall has (or is reasonably expected to) come into existence or there has been (or there is reasonably expected to be) an increase or decrease in an existing funding shortfall (save where and to the extent that such funding shortfall, increase or decrease is provided for in the current Recovery Plan), where that awareness arises:
- (a) following receipt by the Trustee of an Actuarial Report;
 - (b) as part of the discussions with the Trustee in relation to or leading up to the preparation of an Actuarial Valuation; or
 - (c) in any other circumstances where the Franchisee believes that the Secretary of State ought reasonably to be notified, taking into account the materiality of the change in the funding shortfall.

Withdrawn

Part 2 – Deficit Contribution Protection

7. Deficit Contribution Protection

7.1 Where, in respect of a Franchise Section, an Automatic Trigger Event occurs in connection with the 2019 Actuarial Valuation and the 2019 Deficit Contributions payable in respect of any Contribution Calculation Period exceed the Upper Threshold Amount, paragraph 7.3 of this Schedule 16.2 shall apply to that Franchise Section.

7.2 Where in respect of a Franchise Section:

- (a) a Requested Trigger Event occurs in connection with the 2019 Actuarial Valuation;
- (b) the 2019 Deficit Contributions payable in respect of any Contribution Calculation Period exceed the Upper Threshold Amount;
- (c) the Franchisee makes a request in writing to the Secretary of State that Deficit Contribution Protection should apply in respect of that Requested Trigger Event; and
- (d) the Secretary of State acting reasonably agrees that the Deficit Contribution Protection should apply,

paragraph 7.3 of this Schedule 16.2 will apply to that Franchise Section.

7.3 Where this paragraph applies, the Secretary of State shall pay a Deficit Contribution Top-Up in accordance with paragraph 8 of this Schedule 16.2 to the Franchisee in respect of any Contribution Calculation Period covered by the 2019 Recovery Plan, for which the 2019 Deficit Contributions exceed the Upper Threshold Amount.

7.4 Deficit Contribution Protection will cease to apply in respect of a Franchise Section on the earlier of:

- (a) the end of the Contribution Calculation Period in which the last Deficit Contribution is stated to be due to that Franchise Section under the 2019 Recovery Plan (regardless of whether the 2019 Recovery Plan has been replaced or revoked following an Actuarial Valuation which post-dates the 2019 Actuarial Valuation);
- (b) the end of the Franchise Period; or
- (c) the date on which the suspension or termination of the Deficit Contribution Protection takes effect in the event that the Secretary of State exercises his powers under (and subject to) paragraph 4 of this Schedule 16.2.

7.5 It may be that a Franchise Section has an Actuarial Valuation following the 2019 Actuarial Valuation and, as a result, the Deficit Contributions actually payable (if any) during the remainder of the Franchise Period are greater or lower than the 2019 Deficit Contributions that would otherwise have been payable to the Franchise Section for that period. If so, the Secretary of State will pay the Deficit Contribution Top-Up to the Franchisee in respect of each applicable Contribution Calculation

Period calculated by reference to the 2019 Deficit Contributions and not the Deficit Contributions actually payable (if any) for that period.

8. Payment of Deficit Contribution Top-Up

8.1 For the purposes of paying any Deficit Contribution Top-Up which has become due pursuant to paragraph 7.3 of this Schedule 16.2, the following sub-paragraphs will apply:

- (a) the Deficit Contribution Top-Up shall be payable as a single payment on the first Payment Date to occur following such date as falls 30 days after the end of the relevant Contribution Calculation Period;
- (b) the Secretary of State shall be under no obligation to pre-fund or pre-pay any Deficit Contribution Top-Up to or in respect of the Franchisee;
- (c) the Secretary of State shall be under no obligation to make a payment in respect of a Deficit Contribution Top-Up to the Franchisee until after the passage of the corresponding Contribution Calculation Period;
- (d) the Secretary of State shall be under no obligation to make any payments to the Franchisee in respect of a Deficit Contribution Top-Up prior to the 2019 Actuarial Valuation Finalisation Date; and
- (e) the Secretary of State shall be under no obligation to the Trustee or the Railways Pension Scheme to make payments directly to the Railways Pension Scheme as a result of the Deficit Contribution Protection.

Withdrawn

Part 3 –Deficit Contribution Return Amounts

9. Deficit Contribution Return Amounts

- 9.1 The Franchisee must pay a Deficit Contribution Return Amount to the Secretary of State in respect of any Contribution Calculation Period where:
- (a) the 2019 Deficit Contributions payable in respect of that Contribution Calculation Period are less than the Lower Threshold Amount; or
 - (b) the Franchisee is not required to pay a 2019 Deficit Contribution in respect of that Contribution Calculation Period.
- 9.2 If paragraph 9.1(b) of this Schedule 16.2 applies then, for the purposes of calculating the Deficit Contribution Return Amount due in respect of the relevant Contribution Calculation Period, the 2019 Deficit Contributions payable for such Contribution Calculation Period shall be deemed to be £0.
- 9.3 Subject to paragraph 9.4 of this Schedule 16.2, the obligation of the Franchisee under paragraph 9.1 of this Schedule 16.2 in respect of a Franchise Section will continue until the end of the Franchise Period.
- 9.4 It may be that a Franchise Section has an Actuarial Valuation following the 2019 Actuarial Valuation and, as a result, the Deficit Contributions actually payable (if any) during the remainder of the Franchise Period are less than or greater than the 2019 Deficit Contributions that would otherwise have been payable to the Franchise Section for that period. If so, the Franchisee will pay the Deficit Contribution Return Amount to the Secretary of State in respect of each applicable Contribution Calculation Period calculated by reference to the 2019 Deficit Contributions and not the Deficit Contributions actually payable (if any) for that period.

10. Payment of Deficit Contribution Return Amounts

- 10.1 For the purposes of paying a Deficit Contribution Return Amount to the Secretary of State which has become due pursuant to paragraph 9.1 of this Schedule 16.2, the Deficit Contribution Return Amount shall be payable as a single payment on the first Payment Date to occur following such date as falls 30 days after the end of the relevant Contribution Calculation Period.

Part 4 – Definitions

11. Definitions

11.1 In this Schedule 16.2, except to the extent the context otherwise requires, the following words and expressions have the following meanings:

- “2019 Actuarial Valuation”** means, in respect of a Franchise Section, an Actuarial Valuation with an effective date within the period beginning on 1 January 2019 and ending on 31 December 2019;
- “2019 Actuarial Valuation Finalisation Date”** means the date on which the 2019 Actuarial Valuation, in respect of a Franchise Section, is received by the Trustee as required by section 224 of the Pensions Act 2004;
- “2019 Deficit Contributions”** means the Deficit Contributions described in the 2019 Recovery Plan, excluding any Deficit Contributions which are payable at a particular rate or amount because it reflects the rate or amount of contributions otherwise payable in accordance with the Preceding Schedule of Contributions;
- “2019 Deficit Contributions Payment Start Date”** means the date from which the 2019 Deficit Contributions are payable;
- “2019 Recovery Plan”** means, in respect of a Franchise Section:
- (a) a Recovery Plan put in place (or imposed) as part of the 2019 Actuarial Valuation and includes, for the purposes of this Schedule 16.2, the 2019 Schedule of Contributions; and
 - (b) in the event of the Recovery Plan and Schedule of Contributions referred to in paragraph (a) being amended then, provided the Secretary of State (in his absolute discretion) consents, this defined term shall include that Recovery Plan and Schedule of Contributions as amended;
- “2019 Schedule of Contributions”** means, in respect of a Franchise Section, the Schedule of Contributions put in place (or imposed) as part of the 2019 Actuarial Valuation and, in the event of that Schedule of Contributions being amended, then, provided the Secretary of State (in his absolute discretion) consents, this defined term shall include that Schedule of Contributions as amended;

"Actuarial Report"	means, in respect of a Franchise Section, an "actuarial report" for the purposes of Part 3 of the Pensions Act 2004;
"Actuarial Valuation"	means, in respect of a Franchise Section, an "actuarial valuation" for the purposes of Part 3 of the Pensions Act 2004;
"Automatic Trigger Event"	<p>means any of the following events:</p> <p>(a) the Pensions Regulator exercising its statutory powers to impose a schedule of contributions (and/or a recovery plan) on the Franchisee;</p> <p>(b) the Trustee imposing a minimum contribution on the Franchisee (including as a result of the actuary of the Railways Pension Scheme certifying the minimum contributions he would set) through a schedule of contributions or recovery plan which has not been agreed by the Franchisee; or</p> <p>(c) any other event which the Secretary of State, acting reasonably, agrees in writing with the Franchisee as being an Automatic Trigger Event,</p> <p>but excluding any event which falls within the paragraphs (a) to (e) of the definition of a Requested Trigger Event;</p>
"Contribution Calculation Period"	<p>means, in respect of a Franchise Section:</p> <p>(a) the First Contribution Calculation Period;</p> <p>(b) a Standard Contribution Calculation Period; or</p> <p>(c) the Final Contribution Calculation Period;</p>
"Deficit Contributions"	means contributions payable in respect of a Franchise Section which relate to a funding deficit described in an Actuarial Valuation and, for the avoidance of doubt, excluding contributions in respect of future service in that Franchise Section;
"Deficit Contribution Protection"	means the protection set out in Part 2 of this Schedule 16.2;
"Deficit Contribution Return Amount"	means:

- (a) the amount by which any 2019 Deficit Contributions payable in respect of a Contribution Calculation Period are less than the Lower Threshold Amount; less
- (b) the Discretionary Retention;

“Deficit Contribution Top-Up” means the sum of:

- (a) 60% of the amount by which any 2019 Deficit Contribution payable in respect of a Contribution Calculation Period exceeds the Upper Threshold Amount; and
- (b) the Discretionary Top-Up;

“Discretionary Retention” means an amount, not exceeding 40% of the amount by which any 2019 Deficit Contributions payable in respect of a Contribution Calculation Period are less than the Lower Threshold Amount, as determined by the Secretary of State acting reasonably and taking into account the Discretionary Retention Principles;

“Discretionary Retention Principles” means the principles put in place by the Secretary of State from time to time relating to the exercise of his discretion to reduce the Deficit Contribution Return Amount by the Discretionary Retention, including but not limited to:

- (a) the extent to which Deficit Contributions are met by employees of the Franchisee through member contributions to the relevant Franchise Section;
- (b) the extent to which the Franchisee has maintained the Shared Cost Percentage in respect of the relevant Franchise Section;
- (c) any agreement reached with any applicable trade unions and/or the Trustee in relation to the member contributions payable by employees of the Franchisee to the relevant Franchise Section; and
- (d) the effect of reducing the Deficit Contribution Return Amount by the Discretionary Retention on the need to ensure that the Railways Pension Scheme remains affordable in the long term;

“Discretionary Top-Up” means an amount, not exceeding 40% of the amount by which any 2019 Deficit Contribution for a

Contribution Calculation Period exceeds the Upper Threshold Amount, as determined by the Secretary of State, acting reasonably and taking into account the Discretionary Top-Up Principles;

“Discretionary Top-Up Principles”

means the principles put in place by the Secretary of State from time to time relating to the exercise of his discretion to provide all or part of the Discretionary Top-Up to this Franchisee including, but not limited to:

- (a) the extent to which Deficit Contributions are met by employees of the Franchisee through member contributions to the relevant Franchise Section;
- (b) the extent to which the Franchisee has maintained the Shared Cost Percentage in respect of the relevant Franchise Section;
- (c) any agreement reached with any applicable trade unions and/or the Trustee in relation to the member contributions payable by employees of the Franchisee to the relevant Franchise Section; and
- (d) the effect of providing a Discretionary Top-Up on the need to ensure that the Railways Pension Scheme remains affordable in the long term;

“Final Contribution Calculation Period”

means the period ending on the last day of the Franchise Period and beginning on 1 January of that same calendar year;

“First Contribution Calculation Period”

means, in respect of a Franchise Section:

- (a) the period beginning on the 2019 Deficit Contributions Payment Start Date and ending on 31 December in the same calendar year; or
- (b) in circumstances where a 2019 Recovery Plan is not put in place (or imposed), because the statutory funding objective (as defined by section 222 of the Pensions Act 2004) was met on the effective date of the 2019 Actuarial Valuation, the period:
 - (i) beginning on the 2019 Actuarial Valuation Finalisation Date or, if later, the date on which the Franchisee

ceases to pay Deficit Contributions as a result of the 2019 Actuarial Valuation revealing that the statutory funding objective is met; and

- (ii) ending on 31 December in the same calendar year;

“Information Powers”	means the powers of the Secretary of State set out in paragraph 5 of this Schedule 16.2;
“Investigation”	means an investigation by the Pensions Regulator into the possible use of its powers under Section 231 of the Pensions Act 2004 in relation to a section of the Railways Pension Scheme which has as its designated employer the Franchisee or another Train Operator;
“Lower Threshold Amount”	means in respect of the relevant Contribution Calculation Period the amount set out in the column labelled “Lower Threshold Amount” in the table in Appendix 1 to this Schedule 16.2;
“The Pensions Regulator”	means “the Regulator” as established and described in the Pensions Act 2004;
“Preceding Schedule of Contributions”	means the Schedule of Contributions which immediately precedes the 2019 Schedule of Contributions;
“Reasonable Commercial Manner”	means acting in the long-term interests of the Franchise taking into account the long-term affordability, sustainability and financial robustness of the Franchise Section(s) as if the Franchisee and its employees (as appropriate) were solely responsible for the funding of the Franchise Section(s) and, at all times, disregarding the Deficit Contribution Protection;
“Recovery Plan”	means a “recovery plan” as defined by section 226 of the Pensions Act 2004;
“Requested Trigger Event”	means any of the following events: <ul style="list-style-type: none">(a) the Franchisee agreeing to a schedule of contributions (and/or recovery plan) with the Trustee;(b) the Franchisee requesting or agreeing to a recovery period in respect of a recovery plan which is shorter than 7 years or, where the Franchise Term has fewer than 7 years left to

run before its expiry, the remainder of the Franchise Term;

- (c) the Franchisee requesting or agreeing a change to the Shared Cost Percentage in respect of Deficit Contributions from the Shared Cost Percentage used in the previous Actuarial Valuation;
- (d) the Franchisee requesting or agreeing to pay Deficit Contributions on a non-linear basis (for example, front loading or back loading payments in the recovery plan);
- (e) the Franchisee requesting a change to the investment strategy of the Franchise Section; and
- (f) any other event which is not an Automatic Trigger Event;

“Schedule of Contributions”	means a “schedule of contributions” as defined in section 227 of the Pensions Act 2004;
“Shared Cost Percentage”	means 60% of the total contributions, which are due to a Franchise Section under a schedule of contributions, being payable by the Franchisee;
“Standard Contribution Calculation Period”	means, in respect of a Franchise Section, any period beginning on 1 January and ending on 31 December, which occurs after the First Contribution Calculation Period but before the Final Contribution Calculation Period; and
“Upper Threshold Amount”	means in respect of the relevant Contribution Calculation Period the amount set out in the column labelled “Upper Threshold Amount” in the table in Appendix 1 to this Schedule 16.2.

APPENDIX 1 TO SCHEDULE 16.2

Deficit Contribution Thresholds

First Great Western Shared Cost Section

Contribution Calculation Period	Baseline Deficit Contributions	Lower Threshold Amount	Upper Threshold Amount
First Contribution Calculation Period	The annual sum of [REDACTED¹⁵⁵] , to be reduced on a pro rata basis by reference to the number of calendar days in the First Contribution Calculation Period.	The annual sum of [REDACTED¹⁵⁶] , to be reduced on a pro rata basis by reference to the number of calendar days in the First Contribution Calculation Period.	The annual sum of [REDACTED¹⁵⁷] , to be reduced on a pro rata basis by reference to the number of calendar days in the First Contribution Calculation Period.
Standard Contribution Calculation Period	The annual sum of [REDACTED¹⁵⁸] .	The annual sum of [REDACTED¹⁵⁹] .	The annual sum of [REDACTED¹⁶⁰] .

Withdrawn

¹⁵⁵ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹⁵⁶ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹⁵⁷ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹⁵⁸ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹⁵⁹ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹⁶⁰ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

Final Contribution Calculation Period	The annual sum of [REDACTED¹⁶¹] , to be reduced on a pro rata basis by reference to the number of calendar days in the Final Contribution Calculation Period.	The annual sum of [REDACTED¹⁶²] , to be reduced on a pro rata basis by reference to the number of calendar days in the Final Contribution Calculation Period.	The annual sum of [REDACTED¹⁶³] , to be reduced on a pro rata basis by reference to the number of calendar days in the Final Contribution Calculation Period.
---------------------------------------	---	---	---

Withdrawn

¹⁶¹ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹⁶² 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹⁶³ 17 August 2020 (Date of Redactions Approval) - Where text has been omitted from the document, this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

SCHEDULE 17

CONFIDENTIALITY, FREEDOM OF INFORMATION AND DATA PROTECTION

Schedule 17:	Confidentiality, Freedom of Information and Data Protection
--------------	---

Withdrawn

Confidentiality, Freedom of Information and Data Protection

1. Confidentiality

Subject to the provisions of the Act, the Environmental Information Regulations, the Freedom of Information Act (and any code of practice or other guidance related to the same) and paragraphs 2 to 8 and 10 inclusive of this Schedule 17, each Party shall hold in confidence all documents, materials and other information, whether technical or commercial, supplied by or on behalf of the other Party (including all documents and information supplied in the course of proceedings under the Dispute Resolution Rules or the rules of any other dispute resolution procedures to which a dispute is referred in accordance with the Franchise Agreement) (all together the **"Confidential Information"**) and shall not, except with the other Party's prior written authority, publish or otherwise disclose any Confidential Information otherwise than as expressly provided for in the Franchise Agreement unless or until the recipient Party can demonstrate that any such document, material or information is in the public domain through no fault of its own and through no contravention of the Franchise Agreement, whereupon to the extent that it is in the public domain this obligation shall cease.

2. Disclosure of Confidential Information

2.1 Each Party may disclose any data or information acquired by it under or pursuant to the Franchise Agreement or information relating to a dispute arising under the Franchise Agreement without the prior written consent of the other Party if such disclosure is made in good faith:

- (a) to any Affiliate of such Party or outside consultants or advisers of such Affiliate, upon obtaining from such Affiliate and/or such outside consultants or advisers of such Affiliate an undertaking of confidentiality equivalent to that contained in paragraph 1 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 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 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 the Franchise Agreement or the rules of a recognised stock exchange or a formal or informal request of any taxation authority;
- (e) to any insurer, upon obtaining from such insurer an undertaking of confidentiality equivalent to that contained in paragraph 1 above;

- (f) to any director, employee or officer of such Party, to the extent necessary to enable such Party to perform its obligations under the Franchise Agreement or to protect or enforce its rights under the Franchise Agreement;
- (g) by the Franchisee, to the ORR, the Passengers' Council or a Local Authority; or
- (h) by the Secretary of State (with the consent of the Franchisee (such consent not to be unreasonably withheld or delayed)) to HS2 Limited, Network Rail or Welsh Ministers and their consultants and advisors, upon obtaining from HS2 Limited, Network Rail or Welsh Ministers and its relevant consultant or advisor (as the case may be) an undertaking of confidentiality equivalent to that contained in paragraph 1 above.

2.2 The Secretary of State may disclose the Confidential Information of the Franchisee:

- (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 Franchise;
- (e) on a confidential basis for the purpose of the exercise of its rights under this Agreement, including but not limited to its right of audit, assessment or inspection pursuant to paragraph 6 of Schedule 11.2 (*Management Information*) 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 Franchise; or
- (g) on a confidential basis to a proposed successor, transferee or assignee of the Secretary of State in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Agreement,

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, the Secretary of State may publish (whether to the press, the public or to one or more individuals, companies or other bodies, including to any prospective Successor Operator) in such form and at such times as the Secretary of State sees fit, the following (irrespective of whether the same was provided to the Secretary of State by the Franchisee or a third party):

- (a) any or all of the Franchise Documents provided that the Secretary of State shall, prior to publishing the same, redact from any Franchise Document any information contained therein which the Secretary of State and the Franchisee agree or failing which the Secretary of State determines, in the Secretary of State's absolute discretion, is exempt from disclosure in accordance with the provisions of the Freedom of Information Act and/or the Environmental Information Regulations;
- (b) the amount of any Franchise Payments payable under the Franchise Agreement and the aggregate amount of Franchise Payments paid in each year under the Franchise Agreement;
- (c) such information as the Secretary of State may consider reasonably necessary to publish in connection with the performance of the Secretary of State's functions in relation to any Closure or proposed Closure;
- (d) the amount of any payments by the Franchisee under the Passenger's Charter;
- (e) such information (including CRM Data and Yield Management Data) as may reasonably be required in connection with any Tendering/Reletting Process or the retendering or reletting of any other railway passenger services, provided that such information may only be published during the period of, or during the period leading up to, such retendering or reletting;
- (f) any reports and accounts delivered to the Secretary of State under Schedule 13 (*Rail Industry Initiatives and Innovation Obligations*) including any analyses, statistics and other information derived from such reports and accounts;
- (g) the results of any monitoring or measurement of the performance of the Franchisee in the provision of the Franchise Services (including any information provided under Schedule 11 (*Franchise Performance Meetings and Management Information*));
- (h) the results, on a Service Group, Route, station or other comparable basis, of any calculation of passenger numbers under Schedule 1.5 (*Information about Passengers*);
- (i) the results of any survey under Schedule 7.2 (*Customer Experience and Engagement*);

- (j) the results of any assessment or inspection under Schedule 11.2 (*Management Information*);
- (k) details of the Franchisee's plans and performance in respect of safety;
- (l) such information as the Secretary of State may reasonably require to include in the Secretary of State's annual report in respect of the Franchisee provided that, in preparing that report, the Secretary of State shall have regard to the need for excluding, so far as is practicable, the matters specified in paragraphs (a) and (b) of section 71(2) of the Act for this purpose, taking references in those paragraphs to the ORR as references to the Secretary of State;
- (m) such information as the Secretary of State may reasonably require to publish at or around the expiry or possible termination of the Franchise Period in order to secure continuity of the provision and operation of the Franchise Services; and
- (n) **NOT USED.**

3.2 Without prejudice to any other provision of this Schedule 17, the Secretary of State may publish any other information relating to the Franchisee if the Secretary of State has previously notified the Franchisee and the Franchisee does not demonstrate to the reasonable 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 Franchisee, have a material adverse effect on its business. If the Franchisee 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, HS2 Limited, Welsh Ministers, other Train Operators, any operators of services for the carriage of goods by rail, the Passengers' Council and/or any Local Authority of any information relating to the development of the Train Service Requirement in accordance with Schedule 1.1 (*Franchise Services and 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 Franchisee hereby authorises the Secretary of State to provide to the ORR, to the extent so requested by the ORR, such information as may be provided to the Secretary of State in relation to the Franchisee under the Franchise Agreement.

7. Disclosure by Comptroller and Auditor General

The Parties recognise that the Comptroller and Auditor General may, in pursuance of the Secretary of State's 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 the Franchise Agreement would not be able to disclose otherwise than under this Schedule 17.

8. Continuing Obligation

This Schedule 17 (and any other provisions necessary to give effect hereto) shall survive the termination of the Franchise Agreement, irrespective of the reason for termination.

9. Freedom of Information - General Provisions

9.1 The Franchisee acknowledges and shall procure that its agents and subcontractors acknowledge that the Secretary of State is subject to the requirements of the Freedom of Information Act and the Environmental Information Regulations and accordingly the Franchisee shall (and shall procure that its agents and subcontractors shall) assist and co-operate with the Secretary of State to enable the Secretary of State to comply with the Secretary of State's information disclosure obligations under the Freedom of Information Act and/or the Environmental Information Regulations.

9.2 Notwithstanding paragraph 10 (*Redactions*), the Franchisee shall (and shall procure that its agents and subcontractors shall):

- (a) transfer to the Secretary of State any Requests for Information received by the Franchisee (or its agents or subcontractors) as soon as practicable and in any event within two (2) Weekdays of receiving any such Request for Information;
- (b) provide the Secretary of State with a copy of all information in its (or their) possession or power in the form that the Secretary of State requires within five (5) Weekdays of the Secretary of State's request (or within such other period as the Secretary of State may specify); and
- (c) provide all necessary assistance as reasonably requested by the Secretary of State to enable the Secretary of State to respond to any Request for Information within the time for compliance set out in section 10 of the Freedom of Information Act or Regulation 5 of the Environmental Information Regulations as applicable.

9.3 The Secretary of State shall be responsible for determining in the Secretary of State's absolute discretion, and notwithstanding any other provision in the Franchise Agreement or any other agreement, whether Confidential Information

(as such term is defined in paragraph 1 of this Schedule 17) and/or any other information is exempt from disclosure in accordance with the provisions of the Freedom of Information Act and/or the Environmental Information Regulations.

9.4 The Franchisee shall not (and shall procure that its agents and subcontractors shall not) respond directly to any Request for Information unless expressly authorised to do so by the Secretary of State.

9.5 The Franchisee acknowledges and shall procure that its agents and subcontractors acknowledge that notwithstanding any provision to the contrary in the Franchise Agreement the Secretary of State may be obliged under the Freedom of Information Act and/or the Environmental Information Regulations and any related Code of Practice or other guidance to disclose information concerning the Franchisee and/or its agents and subcontractors:

- (a) in certain circumstances without consulting the Franchisee (or its agents and/or subcontractors where applicable); or
- (b) following consultation with the Franchisee and having taken its views into account (and the views of its agents and/or subcontractors where applicable),

provided always that where applicable the Secretary of State shall in accordance with the provisions of the Freedom of Information Act and/or the Environmental Information Regulations take reasonable steps where appropriate to give the Franchisee advance notice or failing that to draw the disclosure to the Franchisee's attention after any such disclosure.

10. Redactions

10.1 Subject to paragraph 9 (*Freedom of Information - General Provisions*), by no later than the date which is:

- (a) thirty (30) Weekdays after the date of this Agreement (in respect of the Franchise Documents referred to in paragraph (a) of the definition thereof);
- (b) thirty (30) Weekdays after the date of notification by the Secretary of State to the Franchisee of another agreement that is required for publication (in respect of the Franchise Documents referred to in paragraph (e) of the definition thereof; and
- (c) thirty (30) Weekdays after the date of any document varying the terms of any Franchise Document,

the Franchisee shall provide to the Secretary of State details of any provisions of the Franchise Documents or any such variation which the Franchisee believes are exempt from disclosure in accordance with the provisions of the Freedom of Information Act, the Environmental Information Regulations and/or section 73(3) of the Act (the "**Redactions**").

10.2 For each such Redaction the Franchisee should specify:

- (a) the exact text of the Franchise Document or variation that the Franchisee proposes is redacted using the template table(s) provided by the Secretary of State from time to time;
 - (b) whether the Franchisee proposes that the Redaction applies in relation to the publication of the relevant Franchise Document or variation on the website of the Department for Transport, on the register required to be maintained by the Secretary of State pursuant to section 73 of the Act or on both such website and such register; and
 - (c) the reasons why the Franchisee believes that the proposed Redaction is justified in accordance with the Freedom of Information Act, the Environmental Information Regulations and/or section 73(3) of the Act. 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 Franchisee in relation to the Franchisee's proposed Redactions (provided that the same are provided to the Secretary of State in accordance with paragraph 10.1).
- 10.4 If the Secretary of State and the Franchisee are unable to agree upon any proposed Redaction, the Secretary of State shall be entitled to determine, in the Secretary of State's absolute discretion, whether or not to make such proposed Redaction.
- 10.5 If the Franchisee does not provide its proposed Redactions to the Secretary of State in accordance with paragraph 10.1, the Franchisee shall be deemed to have consented to publication of the relevant document without any Redactions.
- 11. Data Protection**
- 11.1 In respect of any Personal Data processed by the Franchisee, including CRM Data and Personal Data relating to Franchise Employees, the Franchisee agrees that it shall:
- (a) comply with the Data Protection Legislation; and
 - (b) procure that its agents and sub-contractors, including the Franchise Data Processors, shall comply with the Data Protection Legislation.
- 11.2 The Franchisee shall at its own cost promptly:
- (a) notify the Secretary of State of any Franchise Data Breach, upon the Franchisee's awareness of the same, including all relevant details, whether the Franchise Data Breach is by itself or by a Franchise 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 Franchise Employees, and procure that any Franchise Data Processor which it appoints shall provide the Franchisee with all reasonable information, assistance and co-operation in relation to the processing of the CRM Data and the Personal Data relating to Franchise Employees by the Franchise Data Processor, in each case in order to permit the Secretary of State to make an accurate and complete assessment of compliance by the Franchisee 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 Franchisee in relation to its processing of the CRM Data and the Personal Data relating to Franchise Employees, and procure that any Franchise Data Processor which it appoints shall submit itself to audits by the Franchisee of the Franchise Data Processor (whether those audits are by the Franchisee 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 Franchisee with this paragraph 11.

11.3 The Franchisee shall and shall procure that any Franchise Data Processor which it appoints shall:

- (a) notify (in the case of Franchisee) the Secretary of State and (in the case of any Franchise Data Processor) the Franchisee 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 Franchise Employees, together with the storage, hosting and/or other processing location(s);
- (b) 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
- (c) 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 European Commission decision that the country or territory to which the transfer is made ensures an adequate level of protection for processing of Personal Data, that there is in place the standard contractual clauses approved by the European Commission decision for the transfer of personal data to processors established in third countries, or that the transfer is to the United States of America and there exists a current and appropriate certification under the EU-US Privacy Shield framework (or such other framework as may replace the EU-US Privacy Shield framework during the Franchise Term) in each case in relation to the transfer.

11.4 With reference to paragraphs 11.1 to 11.3 inclusive, the Franchisee hereby acknowledges that whilst the Secretary of State is not the Controller in respect of the CRM Data or Personal Data relating to Franchise 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 Franchise Employees, or in the event of any Franchise Data Breach. In addition, the Franchisee 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 Franchise 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 Franchise to a Successor Operator.

DEROGATIONS (WAIVERS) - POST CONTRACT SIGNATURE DATE

This page is intentionally blank.

- i 18 June 2020 (Date of Derogation Letter) - The Secretary of State has granted the Franchisee a derogation against the requirements of Paragraph 4.7(i) of Schedule 1.4 in order to give longer to address the policy questions raised by COVID-19.

Original Due Date: 28/06/2020

Revised Due Date: 16/11/2020

- ii 30 June 2020 (Date of Derogation Letter) - The Secretary of State has granted the Franchisee a derogation against the requirements of Paragraph 4.2 of Schedule 6.1 (Completion of committed obligations from the Previous Franchise Agreement).

Original Due Date: 30/06/2020

Revised Due Date: 30/09/2020

- iii 30 June 2020 (Date of Derogation Letter) - The Secretary of State has granted the Franchisee a derogation against the requirements of Paragraph 96 of Schedule 6.2 (WAN Capability at Stations).

Original Due Date: 30/06/2020

Revised Due Date: 30/09/2020

- iv 30 June 2020 (Date of Derogation Letter) - The Secretary of State has granted the Franchisee a derogation against the requirements of Paragraph 2.6 of Schedule 13.1 (Community Rail Partnerships).

Original Due Date: 30/06/2020

Revised Due Date: 30/09/2020