

**RAIL PUBLIC REGISTER COPY
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- (1) The Secretary of State for Transport
- (2) First Trenitalia West Coast Rail Limited

National Rail Contract

West Coast Partnership

TABLE OF CONTENTS

PARTIES	15
BACKGROUND	15
OBJECTIVES.....	15
1. COMMENCEMENT.....	16
2. DURATION OF THIS CONTRACT	16
3. GENERAL OBLIGATIONS.....	16
4. RAIL SERVICES	17
5. NOTICES	17
6. ENTIRE AGREEMENT.....	19
CHAPTER 1 – LEADERSHIP AND MANAGEMENT	22
CHAPTER 1.1 - ORGANISATION AND MANAGEMENT	23
1. CORPORATE INFORMATION.....	23
2. CHANGE OF CONTROL AND FACILITATION FEE	23
3. MAINTENANCE OF RECORDS	24
4. RIGHT TO INSPECT.....	25
5. PERIODIC UPDATE REPORTS.....	25
6. CONTRACT MANAGEMENT SYSTEM.....	26
7. IDENTIFICATION OF KEY PERSONNEL AND PROVISION OF ORGANISATION CHART	26
8. CONTRACT PERFORMANCE MEETINGS	26
9. BUSINESS EMPLOYEES AND SECONDMENTS INFORMATION	27
CHAPTER 1.2 - STRATEGIES AND PLANS	28
1. SMALL AND MEDIUM-SIZED ENTERPRISES.....	28
2. BUSINESS CONTINUITY PLAN.....	28
3. SUICIDE PREVENTION PLAN	28
4. SAFEGUARDING STRATEGY	28
5. INCIDENT RESPONSE PLAN	29
6. CYBER SECURITY INFORMATION SHARING.....	30
7. MODERN SLAVERY, CHILD LABOUR AND INHUMANE TREATMENT	30
CHAPTER 1.3 – APPROVAL PROCESS	31
1. APPROVAL.....	31
2. APPROVAL PROCESS.....	31
3. DEEMED APPROVAL	32
4. DELAY TO APPROVAL.....	33
5. WITHDRAWAL OF APPROVAL.....	33
6. SHADOW OPERATOR SERVICES	34
CHAPTER 2 -PEOPLE.....	36
CHAPTER 2.1 – DIVERSITY AND INCLUSION AND TRAINING AND DEVELOPMENT	37
1. DIVERSITY AND INCLUSION.....	37
2. APPRENTICESHIPS	39
CHAPTER 2.2– RAIL WORKFORCE	40
1 NOTIFICATION OF THE SECRETARY OF STATE.....	40
2. REWARD AND PEOPLE PRINCIPLES	41
3. TERMS OF EMPLOYMENT	41
4. IN-SCOPE MATTERS	42

5. INDUSTRIAL ACTION 43

6. REFORM 44

7. DUTIES OF THE OPERATOR..... 44

8. COOPERATION WITH SECRETARY OF STATE AND RELEVANT EMPLOYER 45

9. DISALLOWABLE COSTS 45

10. WORKERS..... 45

11. CHANGES IN NUMBERS AND TOTAL COST OF EMPLOYEES..... 45

CHAPTER 3 – COLLABORATION 48

1. DUTY OF COOPERATION..... 49

2. NR DATA SHARING STRATEGY 49

3. SHARING FURTHER DATA WITH NETWORK RAIL..... 50

4. SAFETY INFORMATION 50

5. BRITISH TRANSPORT POLICE 50

6. CO-OPERATION WITH WELSH MINISTERS 51

7. CO-OPERATION WITH SCOTTISH MINISTERS 51

CHAPTER 4 – RAIL SERVICES 53

CHAPTER 4.1 –SERVICE DEVELOPMENT 54

1. TRAIN SERVICE REQUIREMENT..... 54

2. TRAIN FORMATION CAPACITY PLAN 54

3. CONSULTATION ON ALTERATIONS TO THE TIMETABLE 55

4. TIMETABLE DEVELOPMENT RIGHTS 55

5. CERTIFICATION AND NOTIFICATION BY OPERATOR OF EXERCISING TIMETABLE DEVELOPMENT RIGHTS 56

6. PLANNING TO MEET TARGET PASSENGER DEMAND 57

7. RESTRICTIONS RELATING TO RAIL SERVICES 58

8. DEVELOPMENT OF PROPOSALS FOR PASSENGER SERVICE ENHANCEMENTS 58

9. PROCEDURAL ARRANGEMENTS AND TIMESCALES..... 59

10. OBLIGATIONS IN RELATION TO OTHER TRAIN OPERATORS 60

11. PROVISIONS RELATING TO ACCESS AGREEMENTS AND PROPERTY LEASES 60

12. THE TIMETABLE AND THE INFRASTRUCTURE MANAGER’S WORKING TIMETABLE 61

13. SUBCONTRACTING ANY PASSENGER SERVICES 61

14. BOXING DAY SERVICES 61

15. PASSENGER NUMBERS INFORMATION 62

16. MANUAL PASSENGER COUNTS 63

17. TECHNOLOGY FOR OBTAINING THE INFORMATION REFERRED TO IN PARAGRAPH 15.2..... 63

CHAPTER 4.2 - OPERATING OBLIGATIONS 65

1. DAILY OPERATING OBLIGATIONS 65

2. TIMETABLING AND TRAIN PLANNING COMPLIANCE INVESTIGATION AND CONTRAVENTION 65

3. TIMETABLE CHANGES PROPOSED BY THE INFRASTRUCTURE MANAGER 65

4. TIMETABLE CHANGES PROPOSED BY THE OPERATOR 66

5. TIMETABLE CHANGES AND TRAIN FORMATION CAPACITY PLAN CHANGES REQUESTED BY THE SECRETARY OF STATE 67

6. OBLIGATIONS OF THE OPERATOR IN THE EVENT OF DISRUPTION TO RAILWAY PASSENGER SERVICES 67

7. OBLIGATION TO USE ALL REASONABLE ENDEAVOURS UNDER CHAPTER 4.2 68

8. OBLIGATIONS RELATING TO OPERATING PERFORMANCE MANAGEMENT 69

9. IMPROVING ACCURACY OF FUTURE TIMETABLES AND OPERATIONAL PLANNING . 70

10. ROYAL TRAIN 70

11. ANCILLARY SERVICES 71

12. RESTRICTIONS ON CLOSURES OF RAILWAY PASSENGER SERVICES OR RAILWAY FACILITIES 72

CHAPTER 4.3 – THE ROLLING STOCK 73

1. THE COMPOSITION/DEPLOYMENT OF THE TRAIN FLEET 73

2. CHANGES TO THE TRAIN FLEET 73

3. TRAIN MAINTENANCE 74

APPENDIX 1 TO CHAPTER 4.3 - THE COMPOSITION OF THE TRAIN FLEET 75

CHAPTER 4.4 - OPERATIONAL PERFORMANCE..... 77

1. DEFINITIONS, TRACK ACCESS AGREEMENT, AMENDMENTS TO OPERATIONAL PERFORMANCE TARGETS AND NOTICE OF PERFORMANCE RESULTS 77

2. REPORTING REQUIREMENTS 77

3. TOC ON SELF CANCELLATION CALCULATION 78

4. TOC MINUTES DELAY CALCULATIONS 78

5. NOT USED 79

6. CALCULATIONS 79

7. SERVICE RECOVERY PLANS AND FORCE MAJEURE..... 79

8. CONSEQUENCES FOR POOR PERFORMANCE – ENFORCEMENT BENCHMARKS 79

9. CONSEQUENCES FOR POOR PERFORMANCE 80

10. ALLOCATION OF DISPUTED CANCELLATIONS/DISPUTED PARTIAL CANCELLATIONS 81

11. ALLOCATION OF DISPUTED MINUTES DELAY 82

12. OPERATIONAL PERFORMANCE INFORMATION 82

CHAPTER 5 – THE CUSTOMER 88

CHAPTER 5.1 – CUSTOMER INFORMATION 89

1. CUSTOMER REPORT 89

2. CUSTOMER SERVICE AND SATISFACTION DATA 90

3. PUBLICATION OF PERFORMANCE DATA 91

4. PUBLICATION OF COMPLAINTS AND FAULTS HANDLING DATA 92

5. PASSENGER’S CHARTER 93

6. COMPENSATION 94

7. PUBLISHING THE TIMETABLE 94

8. ROUTE MAPS..... 95

CHAPTER 5.2 – CUSTOMER SCHEMES 97

1. CONSULTATIONS 97

2. COMMUNITY RAIL PARTNERSHIPS..... 97

APPENDIX 1 TO CHAPTER 5.2 – COMMUNITY RAIL PARTNERSHIPS..... 100

CHAPTER 5.3 - ACCESSIBILITY AND INCLUSIVITY 101

1. RELATIONSHIP WITH OTHER OBLIGATIONS RELATING TO DISABLED PERSONS .. 101

2. PHYSICAL ALTERATIONS AND ACCESSIBILITY OF STATIONS 101

3. DEALING WITH CLAIMS RELATING TO STATIONS 102

4. SPECIFIC ADDITIONAL OBLIGATIONS RELATING TO DISABLED PERSONS.....103

5. ANNUAL ACCESSIBILITY UPDATE.....104

6. ACCESSIBILITY DIRECTOR AND ACCESSIBILITY MANAGER104

7. ACCESSIBILITY PANEL104

8. ENHANCED DISABILITY AWARENESS TRAINING105

9. ACCESSIBLE FORMATS OF PASSENGER FACING INFORMATION106

10. DIVERSITY IMPACT ASSESSMENTS106

11. STATION ACCESSIBILITY DATA COLLECTION.....106

APPENDIX 1 TO CHAPTER 5.3 - ACCESSIBLE TRANSPORT ARRANGEMENTS107

CHAPTER 5.4 – CUSTOMER BENEFITS108

1. SMART TICKETING108

2. RETAIL109

3. CYCLES110

4. BABY CHANGING FACILITIES110

5. STATION TOILET ACCESS.....110

6. SECURITY AT STATIONS110

7. CCTV111

APPENDIX 1 TO CHAPTER 5.4- LIST OF STATIONS AND CAR PARKS WITH ACCREDITATION
.....112

CHAPTER 5.5 – CUSTOMER EXPERIENCE PERFORMANCE113

PART 1: SERVICE QUALITY REGIME113

1. PURPOSE.....113

PART 1A - SERVICE QUALITY MANAGEMENT PROCESS113

2. SERVICE QUALITY MANAGEMENT.....113

PART 1B – INSPECTIONS AND AUDITS114

3. OPERATOR SERVICE QUALITY INSPECTIONS.....114

4. SERVICE QUALITY RE-INSPECTION AND SERVICE QUALITY RECTIFICATION
EVIDENCE116

5. INDEPENDENT SERVICE QUALITY AUDIT117

6. SECRETARY OF STATE’S RIGHT OF AUDIT119

7. ACCESS RIGHTS119

PART 1C - CALCULATIONS OF PASS RATES AND CALCULATIONS RELATED TO THE SERVICE
QUALITY REGIME119

8. CALCULATION OF PASS RATES120

9. CALCULATIONS RELATED TO THE SERVICE QUALITY REGIME121

PART 1D - PUBLICATION AND REPORTING REQUIREMENTS122

10. PUBLICATION OF PASS RATES122

11. REPORTING REQUIREMENTS122

12. ADDITIONAL INFORMATION REQUIREMENTS FOR SERVICE QUALITY RE-
INSPECTIONS AND SERVICE QUALITY RECTIFICATION EVIDENCE123

13. MAINTENANCE OF RECORDS123

PART 1E - REMEDIES.....123

14. CONSEQUENCES OF A FAILED AUDIT.....123

15. MATERIAL DISCREPANCIES124

16. CONTRAVENTION OF THE NATIONAL RAIL CONTRACT IN RESPECT OF MATERIAL
DISCREPANCIES124

17. CONSEQUENCES OF PERFORMANCE FALLING BELOW THE SQR BENCHMARK125

18. VARIATIONS TO THE SERVICE QUALITY REGIME126

APPENDIX 1 TO PART 1 OF CHAPTER 5.5 - SERVICE QUALITY AREAS/SERVICE QUALITY INDICATORS/WEIGHTINGS.....127

PART 1 – SQR STATIONS127

PART 2 – SQR TRAINS128

PART 3 – SQR CUSTOMER SERVICE.....129

PART 2: - RCIS130

19. CONDUCT OF RAIL CUSTOMER INSIGHT SURVEYS130

20. PERFORMANCE REVIEW130

21. RCIS IMPROVEMENT PROPOSALS131

22. RAIL CUSTOMER INSIGHT PROGRAMME AND OTHER INITIATIVES132

CHAPTER 6 – ENVIRONMENT AND SUSTAINABILITY135

1. ENVIRONMENTAL INFORMATION.....135

2. AIR QUALITY MONITORING AND IMPROVEMENT.....136

3. SUSTAINABILITY.....137

4. MEASUREMENT OF TRACTION ENERGY USAGE137

APPENDIX 1 TO CHAPTER 6 - ENVIRONMENTAL INFORMATION.....138

1. ENVIRONMENTAL IMPACT MONITORING DATASET138

CHAPTER 7 – FINANCIAL OBLIGATIONS, INCENTIVES AND SCORECARDS140

CHAPTER 7.1 - CONTRACT PAYMENTS141

1. CONTRACT PAYMENTS141

2. PAYMENT OF CONTRACT PAYMENTS142

3. INTEREST.....143

4. CONTRACT PAYMENT ADJUSTMENTS AND DISPUTES143

5. NO DOUBLE RECOVERY144

6. FORCE MAJEURE AND PAYMENTS.....144

7. FORMAT AND CONTENT OF THE COST BUDGET AND FORECAST REVENUE144

8. PERIODIC FINANCE REVIEW MEETINGS.....145

9. WORKING CAPITAL PAYMENTS.....151

10. WORKING CAPITAL REPAYMENT152

11. FINAL WORKING CAPITAL ADJUSTMENT.....152

12. FIXED FEE AND PERFORMANCE BASED FEE AND SHADOW OPERATOR PERFORMANCE BASED FEE153

12A. FIRST HS MILESTONE AMOUNT154

12B. SECOND HS MILESTONE AMOUNT156

13. STS AMOUNT.....158

14. FURTHER SECRETARY OF STATE’S RIGHTS IN RELATION TO ACCOUNTING MATTERS159

15. INDEXATION.....160

16. FURTHER OBLIGATIONS OF THE OPERATOR.....160

17. RELEVANT CONTRACTS161

17A. INDEMNITY FOR EARLY TERMINATION OF CONTRACTS161

18. CLOSING ADJUSTMENTS163

APPENDIX 1 TO CHAPTER 7.1 - CALCULATION OF PERIODIC CONTRACT PAYMENTS (PCP) .165

APPENDIX 2 TO CHAPTER 7.1 - DISALLOWABLE COSTS170

CHAPTER 7.2 – PERFORMANCE BASED FEE AND SHADOW OPERATOR PERFORMANCE BASED FEE174

1. MAXIMUM FEE174

2. CALCULATION OF THE PERFORMANCE BASED FEE175

3. FINANCIAL TARGETS183

4. TARGET AMENDMENTS.....187

5. EFFECT OF ALTERATIONS TO THE PBF ASSESSMENT PERIOD.....187

6 EXCEPTIONAL EVENTS188

7. INCENTIVE REGIMES.....189

APPENDIX 1 TO CHAPTER 7.2 – PBF ASSESSMENT REVIEW191

APPENDIX 2 TO CHAPTER 7.2 – PBF ASSESSMENT REVIEW CHECKLIST198

APPENDIX 3 TO CHAPTER 7.2 – SCORECARD CRITERIA.....209

APPENDIX 4 TO CHAPTER 7.2 – SCORECARD METHODOLOGY.....223

APPENDIX 5 TO CHAPTER 7.2 – QUANTIFIED TARGET METHODOLOGY225

PART 1: - THE OPERATIONAL PERFORMANCE FEE, SERVICE QUALITY STANDARDS FEE AND FP TT SUB-COMPONENT225

PART 2: - THE FP COST SUB-COMPONENT, FP REVENUE SUB-COMPONENT AND FP PROFIT SUB-COMPONENT232

APPENDIX 6 TO CHAPTER 7.2 – SHADOW OPERATOR METHODOLOGY236

CHAPTER 7.3 – MANAGEMENT INFORMATION238

1 FINANCIAL INFORMATION238

1.1 ACCOUNTING RECORDS238

1.3 REPORTING PERIOD FINANCIAL INFORMATION239

1.4 QUARTERLY FINANCIAL INFORMATION243

1.5 ANNUAL FINANCIAL INFORMATION244

1.6 ACCOUNTING STANDARDS AND PRACTICES247

1.7 CHANGES TO ACCOUNTING POLICIES247

1.8 PARENT AND AFFILIATE ACCOUNTS AND AFFILIATE TRADING247

1.9 SECRETARY OF STATE AUDIT OF CALCULATIONS AND DATA PROVIDED PURSUANT TO PARAGRAPHS 1.3, 1.4 AND 1.5248

1.10 ADJUSTMENT AND RESTATEMENT OF THE ANNUAL AUDITED ACCOUNTS249

1.11 ACCESS TO FINANCIAL INFORMATION249

CHAPTER 7.4 - FINANCIAL COVENANTS AND BONDS250

1. OBLIGATIONS250

2. LOCK-UP RESTRICTION250

CHAPTER 7.5 – VARIATIONS, CHANGES AND AMENDMENTS254

1. PURPOSE AND APPLICATION OF CHAPTER254

2. HOW ANY ADJUSTMENTS TO THE COST BUDGET, RECORD OF ASSUMPTIONS, AMENDABLE FINANCIAL TARGET(S) AND OPERATIONAL PERFORMANCE TARGET(S) WILL BE ESTABLISHED254

3. OTHER IMPACTS OF TRIGGER EVENTS AND AGREED UPDATES258

4. INFORMATION258

5. OPERATOR’S ESCROW OBLIGATIONS258

6. SECRETARY OF STATE’S ESCROW OBLIGATIONS260

7. ERRORS IN ESCROW DOCUMENTS OR SHADOW OPERATOR PROGRAMMES260

8. VARIATIONS260

9. INCREASED LEVEL OF SERVICES261

10. RAIL REFORM CHANGE OF LAW261

APPENDIX 1 TO CHAPTER 7.5 – TRIGGER EVENTS.....263

CHAPTER 7.6 – RAILWAYS PENSION SCHEME.....272

1. DEFINITIONS272

2. OPERATOR PENSION SECTIONS.....272

3. CLOSED SCHEMES272

4. VARIATIONS IN BENEFITS, CONTRIBUTIONS AND INVESTMENT.....272

5. FUNDING LIABILITIES273

6. DISCHARGE OF OBLIGATIONS273

7. TERMINATION OF NATIONAL RAIL CONTRACT274

8. OPERATOR OBLIGATIONS TO PARTICIPATE IN ANY INVESTIGATION AND REFORM
.....274

9. INFORMATION POWERS.....274

10. PENSION DIRECTIONS BY THE SECRETARY OF STATE274

APPENDIX 1 TO CHAPTER 7.6- LIST OF SHARED COSTS SECTIONS.....276

CHAPTER 7.7 – BUSINESS PLAN277

1 CONTENTS OF THE BUSINESS PLAN277

2 INITIAL BUSINESS PLAN.....280

3 ANNUAL BUSINESS PLAN PROCESS280

4 BUSINESS PLAN COMMITMENTS.....281

5 BUSINESS PLAN KPIS283

6 BUSINESS PLAN REVISIONS284

7. INDUSTRY CHANGE PROJECTS285

8. CONFLICTS BETWEEN THIS CONTRACT AND THE BUSINESS PLAN286

9. BUSINESS PLAN INTELLECTUAL PROPERTY RIGHTS.....286

10. INDUSTRY CHANGE PROJECTS INTELLECTUAL RIGHTS287

11 ACCESS TO IP MATERIALS AND RESOURCES288

12 EXTENDED TERM CONTRACTS AND EXTENDED TERM DESIGNATABLE CONTRACTS
.....288

APPENDIX 1 TO CHAPTER 7.7 –SHADOW OPERATOR PROGRAMMES292

1 INITIAL SHADOW OPERATOR PROGRAMMES292

1 ONGOING UPDATE PROCESS292

1 ANNUAL UPDATE PROCESS.....292

CHAPTER 8 – FARES AND REVENUE295

CHAPTER 8.1 – MARKETING AND REVENUE GROWTH.....296

PART A – MARKETING AND REVENUE GROWTH296

1. TICKETLESS TRAVEL SURVEYS296

2. TICKETLESS TRAVEL PERFORMANCE296

3. PERCENTAGE ALLOCATIONS.....297

4. YIELD MANAGEMENT DATA.....297

CHAPTER 8.2 – FARES.....299

CHAPTER 8.2.1 – PURPOSE, STRUCTURE AND CONSTRUCTION299

1 PURPOSE OF PROVISIONS RELATING TO CREATING FARES.....299

2. STRUCTURE OF CHAPTER 8299

3. REFERENCES TO ‘FARE’300

4. FARES DOCUMENTS300

5. SETTING OF CHILD PRICES300

6. NEW STATIONS301

CHAPTER 8.2.2 – OPERATOR’S OBLIGATION TO CREATE FARES302

1. CREATION OF COMMUTER FARES AND PROTECTED FARE302

2. RESTRICTIONS ON CREATION OF FARES302

3. FLEXIBLE TICKET PRODUCT302

CHAPTER 8.2.3 – ALLOCATION OF FARES TO FARES BASKETS.....305

1. ALLOCATION OF FARES TO FARES BASKETS305

2. DESIGNATION OF NON FARES BASKET FARES305

CHAPTER 8.2.4 – REGULATION OF FARES BASKET VALUES AND INDIVIDUAL FARES306

PART A – REGULATION OF FARES BASKET VALUES306

1. VALUE OF FARES BASKET NOT TO EXCEED REGULATED VALUE306

2. VALUE306

3. PROJECTED REVENUE306

4. REGULATED VALUE.....306

PART B – REGULATION OF INDIVIDUAL FARES.....308

1. PRICE NOT TO EXCEED REGULATED PRICE OR REGULATED CHILD PRICE.....308

2. REGULATED PRICE308

3. COMPULSORY INTER-AVAILABLE FLOWS309

CHAPTER 8.2.5 – EXCEEDING THE REGULATED VALUE, REGULATED PRICE OR REGULATED CHILD PRICE, AND CHANGES TO FARES AND FARES REGULATION310

PART A – EXCEEDING THE REGULATED VALUE, REGULATED PRICE OR REGULATED CHILD PRICE310

1. EXCEEDING THE REGULATED VALUE310

2. EXCEEDING THE REGULATED PRICE OR REGULATED CHILD PRICE.....310

PART B – CHANGES TO FARES AND FARES REGULATION311

1. CHANGES TO FARES BASKETS311

2. CHANGES TO THE 2017 NOMINAL TICKET SALES.....311

3. CHANGES TO THE REFERENCE REVENUE, GROSS REVENUE, 2017 NOMINAL TICKET SALES AND/OR 2017 TICKET REVENUE.....312

4. CHANGES TO PRICES312

5. CHANGES TO FARES REGULATION312

6. CHANGES TO COMPULSORY INTER-AVAILABLE FLOWS.....313

7. CHANGE OF LEAD OPERATOR/MAJOR FLOW OPERATOR.....313

8. CHANGES TO FARES DOCUMENTS.....313

9. CHANGES TO APPLICABLE FARES PLANS313

CHAPTER 8.2.6 – FARES REGULATION INFORMATION AND MONITORING314

1. INFORMATION314

2. MONITORING.....314

CHAPTER 8.2.7 – FARES SELLING RESTRICTIONS315

1. FARES SELLING RESTRICTIONS315

2. REDUCTION IN PRICES OF FARES DURING THE LAST THIRTEEN (13) MONTH PERIOD316

3. RESTRICTIONS IN RESPECT OF SALE OF ADVANCE PURCHASE TRAIN-SPECIFIC FARES.....317

CHAPTER 8.2.8 – TRANSPORT, TRAVEL AND OTHER SCHEMES318

1. LOCAL AUTHORITY CONCESSIONARY TRAVEL SCHEMES.....318

2. MULTI-MODAL FARES SCHEMES318

3. DISCOUNT FARE SCHEMES318

4. INTER-OPERATOR SCHEMES.....318

5. VOTING ON SCHEME COUNCILS319

APPENDIX 1 TO CHAPTER 8.2.8 – LIST OF TRANSPORT, TRAVEL AND OTHER SCHEMES....320

CHAPTER 9 – STANDARD PROVISIONS323

CHAPTER 9.1 – FIXED ASSETS324

1. STATION ASSET MANAGEMENT324

2. INFORMATION ABOUT STATION IMPROVEMENT MEASURES325

3. VESTING OF PROPERTY LEASES AT THE START DATE326

4. NOVATION OF ACCESS AGREEMENTS DURING THE CONTRACT TERM326

5. ASSIGNMENT OF PROPERTY LEASES DURING THE CONTRACT TERM.....327

6. SUB-LEASING ARRANGEMENTS327

7. STATION AND DEPOT LEASES.....328

8. STATION SUBLEASES328

9. ROLLING STOCK RELATED CONTRACTS AND INSURANCE ARRANGEMENTS329

10. CASCADED ROLLING STOCK AND DELAYED CASCADE MITIGATION PLAN329

APPENDIX 1 TO CHAPTER 9.1- INFORMATION ABOUT STATION IMPROVEMENT MEASURES332

CHAPTER 9.2 – KEY CONTRACTS AND KEY ASSETS333

CHAPTER 9.2.1 – KEY CONTRACTS334

1. KEY CONTRACTS.....334

2. DESIGNATION OF KEY CONTRACTS334

3. DE-DESIGNATION OF KEY CONTRACTS335

4. RE-DESIGNATION OF KEY CONTRACTS335

5. DIRECT AGREEMENTS335

6. EMERGENCIES335

7. NO AMENDMENT335

8. REPLACEMENT OF KEY CONTRACTS336

9. TERMINATION OF KEY CONTRACTS.....336

APPENDIX 1 TO CHAPTER 9.2.1 – LIST OF KEY CONTRACTS.....337

APPENDIX 2 TO CHAPTER 9.2.1 – CATEGORIES OF KEY CONTRACTS.....338

CHAPTER 9.2.2 – KEY ASSETS – DESIGNATION OF ASSETS340

1. OPERATING ASSETS340

2. ASSETS340

3. SPARES341

4. PRIMARY ASSETS341

5. DESIGNATION OF ADDITIONAL PRIMARY ASSETS342

6. DESIGNATION DURING LAST TWELVE (12) MONTHS OF CONTRACT PERIOD342

7. DESIGNATION OF KEY CONTRACTS AS PRIMARY ASSETS342

8. DESIGNATION OF FARES AND DISCOUNT CARDS343

9. RIGHTS AND LIABILITIES343

10. DISPUTES OVER DESIGNATION344

11. PROVISION OF INFORMATION TO THE SECRETARY OF STATE344

12. DE-DESIGNATION OF ASSETS AND PRIMARY ASSETS344

13. AMENDMENT OF THE LIST OF PRIMARY ASSETS.....344

14. ASSETS NOT DESIGNATED AS PRIMARY ASSETS344

15. LIABILITIES NOT DESIGNATED AS PRIMARY ASSETS345

16. ASSETS AND PRIMARY ASSETS345

17. OTHER SECURITY INTERESTS345

18. INFORMATION ABOUT ASSETS USED IN RESPECT OF THE RAIL SERVICES345

19. DESIGNATION OF ASSETS COMPRISED IN BUSINESS PLAN COMMITMENTS AS
PRIMARY ASSETS346

APPENDIX 1 TO CHAPTER 9.2.2 – LIST OF PRIMARY ASSETS347

CHAPTER 9.3 – BRANDING AND INTELLECTUAL PROPERTY348

1. BRANDING AND BRAND LICENCE348

2. REMOVAL OF BRANDING.....350

3. DESIGNATION AS PRIMARY ASSETS.....350

4. LICENCE TO OPERATOR’S INTELLECTUAL PROPERTY350

5. CUSTOMER RELATIONSHIP MANAGEMENT (CRM) DATA351

6. RAIL PASSENGER COUNTS DATABASE.....352

7. INTELLECTUAL PROPERTY RIGHTS AND GENERAL PROVISIONS.....353

APPENDIX 1 TO CHAPTER 9.3 – LIST OF OPERATOR TRADE MARKS.....356

1. REGISTERED TRADE MARKS356

2. UNREGISTERED TRADE MARKS356

CHAPTER 9.4 – REMEDIES AND DISPUTE RESOLUTION357

CHAPTER 9.4.1 – EVENTS OF DEFAULT AND TERMINATION EVENTS358

1. DEFINITION OF EVENTS OF DEFAULT.....358

2. DEFINITION OF TERMINATION EVENTS361

3. CONSEQUENCES OF EVENTS OF DEFAULT361

4. NOTIFICATION OF EVENT OF DEFAULT.....361

5. TERMINATION NOTICES.....362

6. CONSEQUENCES OF TERMINATION OR EXPIRY362

CHAPTER 9.4.2 –DISPUTE RESOLUTION PROCEDURES364

1. DISPUTES UNDER THE NATIONAL RAIL CONTRACT.....364

2. DISPUTES UNDER OTHER AGREEMENTS.....366

3. DISPUTES UNDER CHAPTER 7 (FINANCIAL OBLIGATIONS, INCENTIVES AND
SCORECARDS) OF THIS CONTRACT366

4. CUMULATIVE RIGHTS AND REMEDIES.....366

CHAPTER 9.4.3 – PROCEDURE FOR REMEDYING A CONTRAVENTION OF THE NATIONAL RAIL
CONTRACT.....367

1. CONTRAVENTIONS OF THE NATIONAL RAIL CONTRACT.....367

2. REMEDIES FOR CONTRAVENTIONS OF THE NATIONAL RAIL CONTRACT367

3. REMEDIAL PLAN NOTICES367

4. REMEDIAL PLANS368

5. REMEDIAL AGREEMENTS.....368

6. ENHANCED MONITORING BY THE SECRETARY OF STATE369

7. STATUTORY NOTICES369

CHAPTER 9.4.4 – FORCE MAJEURE370

1. DEFINITION OF FORCE MAJEURE EVENTS.....370

2. CONDITIONS TO FORCE MAJEURE EVENTS.....371

3. CONSEQUENCES OF FORCE MAJEURE EVENTS372

4. EFFECT OF FORCE MAJEURE EVENT ON A REMEDIAL AGREEMENT373

5. NO RELIEF UNDER FORCE MAJEURE.....373

6. FORCE MAJEURE AND PAYMENTS.....373

CHAPTER 9.4.5 – LIABILITY374

1. LIABILITY WITH RESPECT TO PASSENGERS AND THIRD PARTIES374

2. LIABILITY OF THE SECRETARY OF STATE374

3. NO RELIEF DUE TO THE SECRETARY OF STATE374

CHAPTER 9.5 – EXIT MANAGEMENT375

CHAPTER 9.5.1 – HANDOVER PACKAGE376

1. HANDOVER PACKAGE STATUS.....376

2. DIRECTOR’S CERTIFICATE377

3. KEY PERSONNEL LIST377

APPENDIX 1 TO CHAPTER 9.5.1 – FORM OF HANDOVER PACKAGE.....379

APPENDIX 2 TO CHAPTER 9.5.1 – FORM OF SHADOW OPERATOR HANDOVER PACKAGE ...381

CHAPTER 9.5.2 – RELETING PROVISIONS AND MAINTENANCE AS A GOING CONCERN....382

1. RELETING OF RAIL SERVICES382

2. PREPARATION FOR RELETING.....382

3. DATA SITE INFORMATION382

4. NON-FRUSTRATION OF TRANSFER TO SUCCESSOR OPERATOR.....384

5. INSPECTION RIGHTS DURING THE TENDERING/RELETING PROCESS384

6. MAINTENANCE AS A GOING CONCERN.....385

CHAPTER 9.5.3 – PROVISIONS APPLYING ON AND AFTER TERMINATION387

1. NOVATION OF ACCESS AGREEMENTS ON TERMINATION OR EXPIRY OF THE NATIONAL RAIL CONTRACT387

2. CO-OPERATION WITH SUCCESSOR OPERATOR387

3. TRANSFER OF PRIMARY ASSETS388

4. ASSOCIATED OBLIGATIONS ON TERMINATION.....389

5. ACTIONS REQUIRED IMMEDIATELY ON HANDOVER.....391

6. MAINTENANCE RECORDS IN RELATION TO ROLLING STOCK391

7. TICKETING ARRANGEMENTS391

8. INFORMATION ABOUT PASSENGERS391

9. SUCCESSOR OPERATOR TIMETABLES392

10. OTHER TRAIN OPERATING COMPANIES392

CHAPTER 9.6 – CONFIDENTIALITY AND DATA PROTECTION394

1. CONFIDENTIALITY394

2. DISCLOSURE OF CONFIDENTIAL INFORMATION.....394

3. PUBLICATION OF CERTAIN INFORMATION395

4. SERVICE DEVELOPMENT INFORMATION.....397

5. PUBLICATION BY SECRETARY OF STATE.....397

6. PROVISION OF INFORMATION TO THE ORR397

7. DISCLOSURE BY COMPTROLLER AND AUDITOR GENERAL397

8. CONTINUING OBLIGATION397

9. FREEDOM OF INFORMATION – GENERAL PROVISIONS397

10. REDACTIONS398

11. DATA PROTECTION399

12. DATA PROTECTION – APPRENTICESHIPS400

13. FURTHER INFORMATION401

14. REQUEST FOR DATA401

15. INFORMATION FROM THIRD PARTIES402

16. COMPATIBILITY OF INFORMATION403

CHAPTER 9.7 – MISCELLANEOUS LEGAL TERMS404

1. ALL REASONABLE ENDEAVOURS404

2. ASSIGNMENT404

3. COMPLIANCE WITH LAWS404

4. SET-OFF404

5. MISCELLANEOUS PROVISIONS405

6. COMPETITION408

7. SUBSIDY CONTROL, STATE AID AND PROCUREMENT REGULATIONS408

8. GOVERNING LAW AND JURISDICTION409

CHAPTER 10 -DEFINITIONS AND INTERPRETATION411

1. INTERPRETATION412

2. AGREED DOCUMENTS414

3. DEFINITIONS415

CHAPTER 11 –SHADOW OPERATOR.....544

CHAPTER 11.1 – SHADOW OPERATIONS545

1. SHADOW OPERATOR SERVICES545

2. UPDATES TO THE IO MODELLING SUITE545

3. THE COLLABORATION AGREEMENT546

4. THE OPERATOR’S ROLE AS CRITICAL FRIEND546

5. ANTICIPATED HIGH SPEED START DATE & UPLIFT NOTIFICATION546

6. LIABILITY547

7. INTELLECTUAL PROPERTY RIGHTS549

8. OBLIGATIONS ON TERMINATION OF THE SHADOW OPERATOR SERVICES549

9. EMPLOYEES549

10. CONSEQUENCES OF EXPIRY OR TERMINATION OF THE SHADOW OPERATOR552

11. ENTRY INTO THIRD PARTY CONTRACTS552

12. OVERARCHING REQUIREMENTS.....553

13. THE ROLE OF THE OPERATOR’S REPRESENTATIVE555

14. CUSTOMER555

APPENDIX 1 TO CHAPTER 11.1 – REQUIRED OUTPUTS557

1. SCOPING DOCUMENT557

2. INITIAL OUTPUT REPORT558

3. FINAL OUTPUT REPORT559

4. HS2 OUTPUTS AND HS2 OUTPUT REPORTS560

5. OPERATOR’S HS2 REPORT561

6. AGREEMENT ON FUNCTIONAL REQUIREMENTS562

7. DELIVERING THE FUNCTIONAL REQUIREMENT563

8. FUNCTIONAL REQUIREMENT ASSET564

APPENDIX 1 TO CHAPTER 11.1 - FORM OF NOVATION AGREEMENT FOR FUNCTIONAL
REQUIREMENT ASSET565

DEROGATIONS (WAIVERS) - POST CONTRACT SIGNATURE DATE569

THIS CONTRACT is dated **18 September 2023**

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 TRENITALIA WEST COAST RAIL LIMITED** (Company Number: 10349442), whose registered office is at 8th Floor The Point, 37 North Wharf Road, London, W2 1AF (the “**Operator**”).

BACKGROUND:

- (A) National Rail Contracts are the successors to the previous Franchise Agreements, enabling the Secretary of State to appoint private sector operators to run rail services in line with its statutory duties.
- (B) National Rail Contracts represent a new approach to the delivery of rail services, with operators providing their leadership, operating and management expertise, in return for management fees, and the inclusion of incentives for operators to act in the best interests of passengers, taxpayers and the wider community and excel in the delivery of their services. The contracts will reward agile and responsive operators who act in the best interests of passengers, taxpayers and the wider community in the delivery of their services.
- (C) National Rail Contracts are designed to be flexible and responsive over the life of the contract, and are structured around an annual Business Plan process. The Secretary of State will set out detailed objectives and priorities each year in a Request for Business Plan. The Operator will then prepare the Business Plan on a basis that seeks to achieve these objectives and priorities, in collaboration with rail industry partners to deliver in the best interests of passengers and taxpayers.
- (D) The National Rail Contract should therefore be read alongside the Business Plan which sets out the Business Plan Commitments, targets and performance measures that the operator is contracted to deliver.
- (E) In addition to providing standard railway passenger services, the Operator will, under this National Rail Contract, provide consulting, testing, mobilisation and shadow operator services in relation to the mobilisation and commencement of high speed railway passenger services on the HS2 Network.

OBJECTIVES:

The Secretary of State has the following objectives for the delivery of rail services under the National Rail Contract:

- To improve the passenger experience on the railway, by providing a modern and reliable means of transport accessible to all;
- To meet the needs of the wider community through working collaboratively with stakeholders and all rail industry partners;
- To meet the challenge of improving the railway’s contribution to the Government’s wider sustainability aims; and
- The Secretary of State also wishes to ensure that the railway is operated efficiently and is affordable for the taxpayer.

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

1. **COMMENCEMENT**

- 1.1 All the clauses of this Contract and the Immediately Effective Chapter Provisions shall take effect and be binding upon each of the Secretary of State and the Operator immediately upon signature of this Contract.
- 1.2 The other provisions of this Contract shall take effect and become binding upon the Parties on the Start Date.

2. **DURATION OF THIS CONTRACT**

- 2.1 This Contract shall expire on the Expiry Date or pursuant to Chapter 9.4 (*Remedies and Dispute Resolution*).
- 2.2 ***Expiry on or after the Core Term Expiry Date***
- (a) If the Secretary of State gives at least three (3) Reporting Periods' notice to the Operator pursuant to this clause 2.2 (an "**Expiry Notice**"), this Contract shall expire on such date as the Secretary of State may stipulate in the Expiry Notice, provided that such date shall be:
- (i) no earlier than the Core Term Expiry Date;
 - (ii) no later than the date set out in limb (a)(i) of the definition of "Expiry Date"; and
 - (iii) 01:59 on the first day of a Reporting Period.
- (b) Where the Secretary of State exercises the Secretary of State's rights to issue an Expiry Notice pursuant to clause 2.2(a):
- (i) the duration of the final PBF Assessment Period shall be determined in accordance with paragraph 5.1(a) (*Effect of alterations to the PBF Assessment Period*) of Chapter 7.2 (*Performance Based Fee and Shadow Operator Performance Based Fee*);
 - (ii) if the Business Plan in respect of the relevant Business Plan Year in which such Expiry Date falls has previously been agreed or determined in accordance with paragraph 3 (*Annual Business Plan Process*) of Chapter 7.7 (*Business Plan*), a Business Plan Revision to address the impact of such earlier Expiry Date may be agreed by the Parties or determined by the Secretary of State in accordance with paragraph 6 (*Business Plan Revisions*) of Chapter 7.7 (*Business Plan*); and
 - (iii) the Secretary of State shall be entitled to make such other amendments to the terms of this Contract as are reasonably consequential upon the specification in an Expiry Notice pursuant to clause 2.2(a) of the date on which this Contract shall expire.

2.3 NOT USED

3. **GENERAL OBLIGATIONS**

- 3.1 The Operator shall perform its obligations under the National Rail Contract in accordance with its terms and with that degree of skill, diligence, prudence and foresight which would be exercised by a skilled and experienced Train Operator of the Rail Services.
- 3.2 The Operator agrees to co-operate with the Secretary of State in an open and transparent manner, which shall include an obligation on the Operator to disclose to the Secretary of State anything which the Secretary of State would reasonably expect notice of in connection with the matters arising under the National Rail Contract.
- 3.3 The Operator shall act reasonably and in good faith in and about the performance of its obligations and the exercise of its rights pursuant to the National Rail Contract.
- 3.4 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 National Rail Contract.

4. RAIL SERVICES

- 4.1 The Operator shall at all times during the Contract Term:
 - (a) provide and operate the Passenger Services specified in this Contract;
 - (b) carry out the Station Services and the Light Maintenance Services;
 - (c) subject to clauses 4.5 and 4.6 below, be permitted to carry out the Ancillary Services; and
 - (d) subject to any early termination of the Shadow Operator Services, provide the Shadow Operator Services in accordance with the provisions of Chapter 11 (*Shadow Operations*).
- 4.2 The Operator 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 Rail Services.
- 4.3 Nothing in this Contract shall restrict any Affiliate of the Operator from having an interest in or participating in any business or activity.
- 4.4 The Operator shall not engage any Business Employee in any activity or business which it may not conduct or engage in under this Contract.
- 4.5 The Operator shall at all times during the Contract Term;
 - (a) continue to provide any Continuing Ancillary Service; and
 - (b) not vary the terms of or stop providing any Continuing Ancillary Service without the Secretary of State’s prior Approval.
- 4.6 The Parties may agree from time to time, or the Secretary of State may determine:
 - (a) to amend, remove or include additional Continuing Ancillary Services; and/or
 - (b) to amend the then current Business Plan (in accordance with a Business Plan Revision pursuant to paragraph 6 of Chapter 7.7 (*Business Plan*)) to include any additional service and/or activity (including any Ancillary Service) to be carried out by the Operator,

and any changes pursuant to paragraphs 4.6(a) or (b) above shall be a Cost Budget Change Event and a Financial Target Amendment Event.

5. NOTICES

5.1 Notices

- (a) Any notice, notification or other communication under or in connection with the matters specified in Chapter 9.4 (*Remedies and Dispute Resolution*) or any dispute under or in connection with this Contract 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:	[REDACTED ¹]
Attention:	The Market Lead – West Coast Partnership

¹ 11 January 2024 (Date of Redactions Approval) 3636793 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 2	
Name:	First Trenitalia West Coast Rail Limited
Address:	8 th Floor The Point, 37 North Wharf Road, London, United Kingdom, W2 1AF
Email:	[REDACTED ²]
Attention:	[REDACTED ³]

(b) Any other notice, notification or other communication including any Variations, derogations or Request for Approval under or in connection with this Contract 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 Operator Relationship Manager or the Secretary of State Relationship Manager:

Table 3	
Name:	The Department for Transport
Address:	33 Horseferry Road, London SW1P 4DR
Email:	[REDACTED ⁴]
Attention:	The Commercial Manager – West Coast Partnership

Table 4	
Name:	First Trenitalia West Coast Rail Limited
Address:	8 th Floor The Point, 37 North Wharf Road, London, United Kingdom, W2 1AF
Email:	[REDACTED ⁵]
Attention:	[REDACTED ⁶], Executive Director Finance – The Secretary of State Manager

5.2 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:

² 11 January 2024 (Date of Redactions Approval) 3636793 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 11 January 2024 (Date of Redactions Approval) 3636793 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.

⁴ 11 January 2024 (Date of Redactions Approval) 3636793 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 11 January 2024 (Date of Redactions Approval) 3636793 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.

⁶ 11 January 2024 (Date of Redactions Approval) 3636793 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) 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.

6. ENTIRE AGREEMENT

- 6.1 The National Rail Contract contains the entire agreement between the Parties in relation to the subject matter of the National Rail Contract and supersede all prior agreements and arrangements between the Parties other than any confidentiality agreements or undertakings which the Operator 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 and Shadow Operator Services under this Contract.
- 6.2 The Operator hereby acknowledges that it is not entering into the National Rail Contract 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 National Rail Contract.
- 6.3 The Operator 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 Business Plan, the Invitation to Negotiate or in any document supplied by or on behalf of the Secretary of State in connection with the National Rail Contract, the process leading to the entering into of the National Rail Contract, or the Rail Services (including Request for Business Plan and/or Invitation to Negotiate issued in connection therewith).
- 6.4 The Operator irrevocably and unconditionally waives any right which it may otherwise have to claim damages in respect of and/or to rescind the National Rail Contract on the basis of any warranty, representation (whether negligent or otherwise, and whether made prior to and/or in the National Rail Contract) or undertaking howsoever or to whomsoever made unless and to the extent that such warranty, representation or undertaking was made fraudulently.

Chapter 1 – Leadership and Management



Chapter 1.1 - Organisation and Management



Chapter 1.2 - Strategies and Plans



Chapter 1.3 - Approval Process

Chapter 1**LEADERSHIP AND MANAGEMENT**

Chapter 1.1	Organisation and Management
Chapter 1.2	Strategies and Plans
Chapter 1.3	Approval Process

Chapter 1.1

Organisation and Management

1. Corporate Information

- 1.1 The Operator shall provide the following information to the Secretary of State no later than the Start Date and shall notify the Secretary of State of any change to such information within twenty one (21) days of such change:
- (a) its name;
 - (b) its business address and registered office;
 - (c) its directors and company secretary;
 - (d) its auditors;
 - (e) its trading name or names; and
 - (f) to the best of the Operator'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 Operator.
- 1.2 The Operator shall inform the Secretary of State of any material change or proposed material change in its business (including the employment or the termination of employment of any Key Personnel and/or Key Shadow Operator Personnel, the termination of any Key Contract and any litigation or other dispute which may have a material effect on its business) and any material change in or restructuring of the capitalisation or financing of the Operator, any Parent, Guarantor or ETIA Counterparty.
- 1.3 The Operator shall provide the Secretary of State any information the Secretary of State may reasonably require for the purpose of complying with its obligations under Article 4.7, Chapter 4 of Title XI of Part Two of the Trade and Cooperation Agreement.

2. Change Of Control and Facilitation Fee

- 2.1 A "**Change of Control**" is a change occurring in the identity of any one (1) person, or two (2) or more persons acting by agreement, who may Control the Operator on and from the date of this Contract and during the Contract Term, which shall include a person, or two (2) or more persons acting by agreement, ceasing to Control the Operator at any time during the Contract Term, whether or not any other person Controls the Operator at the same time and for the purposes of this paragraph 2, two (2) or more persons shall be deemed to be acting by agreement in relation to the Operator if, assuming the Operator 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.
- 2.2 Otherwise than in accordance with the prior consent of the Secretary of State given pursuant to paragraph 2.3, a Change of Control shall constitute an Event of Default pursuant to paragraph 1.3 (*Change of Control*) of Chapter 9.4.1 (*Events of Default and Termination Events*).
- 2.3 The Operator 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 paragraph 2.1).
- 2.4 The Secretary of State may require the Operator to pay a fee in consideration of the grant of such consent (the "**Facilitation Fee**").
- 2.5 The Secretary of State may require the Operator to pay an additional fee in respect of the staff, professional and other costs incurred by the Secretary of State in connection with the Operator'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.
- 2.6 On or after submitting such application to the Secretary of State, the Operator 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 paragraph 2.11 or 2.12, 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.

- 2.7 The Facilitation Fee shall be a sum equal to one million pounds (£1,000,000).
- 2.8 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.
- 2.9 Any determination by the Secretary of State for the purposes of paragraph 2.8 shall in the absence of manifest error be final and binding as between the Secretary of State and the Operator.
- 2.10 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 Operator shall, as applicable, comply with, and/or procure that the seller and/or the buyer comply with, any such conditions.
- 2.11 The Secretary of State shall have 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.
- 2.12 The Secretary of State shall have no liability whatever to the Operator in respect of any refusal of consent to a Change of Control, any delay in providing such consent, or any condition of such consent.
- 2.13 The Parties acknowledge and agree that the Operator shall under no circumstances be entitled to reimbursement, pursuant to Chapter 7.1 (*Contract Payments*) or otherwise, of any Facilitation Fee or Administration Fee paid by it under the terms of this paragraph 2.

3. Maintenance of Records

- 3.1 The Operator shall at all times create and maintain true, up to date and complete records, books and other materials relating to the:
- (a) operation and maintenance of Assets;
 - (b) operation of the Rail Services; and
 - (c) financial performance of the Rail Services,

in each case, in exercising that degree of care, skill, diligence, prudence, efficiency, foresight and timeliness which would reasonably be expected from a prudent and leading Train Operator and in order to fulfil the requirements of the National Rail Contract including in relation to maintenance of the Rail Services as a going concern in accordance with paragraph 6 (*Maintenance as a going concern*) of Chapter 9.5.2 (*Reletting Provisions and Maintenance as a Going Concern*).

- 3.2 Unless otherwise agreed by the Secretary of State, all records, books and materials required to be maintained by the Operator in accordance with this Contract, shall be held in a form that is capable of audit for a period of not less than six (6) years following the Expiry Date or the date of any earlier termination of this Contract.
- 3.3 References to records, books and materials in this Chapter 1.1 shall include records, books and materials maintained under any Previous Agreement to the extent that such records relate to services equivalent to the Rail Services and the Operator has access to them (which it shall use all reasonable endeavours to secure). Notwithstanding the requirements of paragraphs 3.2 and 3.4, the Operator shall only be required to hold such records, books and materials created under any Previous Agreement for a period of six (6) years following the date of this Contract.

3.4 Without prejudice to the reporting obligations of the Operator under the Previous Agreement and for the purposes of this paragraph 3 only, the Operator shall not be responsible for any records, books or materials maintained under any Previous Agreement, as referred to in paragraph 3.3, being true, complete and up to date. As soon as practicable after becoming aware that any such records, books or materials are not true, complete and up to date, the Operator shall use all reasonable endeavours to remedy any such deficiency, and shall thereafter maintain such records, books or materials in accordance with paragraph 3.1.

4. **Right to Inspect**

4.1 The Operator shall, if requested by the Secretary of State, allow the Secretary of State and the Secretary of State's representatives and advisers:

- (a) to inspect and copy any records referred to in this Chapter 1 (*Leadership and Management*), Chapter 3 (*Collaboration*), Chapter 4 (*Rail Services*), Chapter 7 (*Financial Obligations, Incentives and Scorecards*) or Chapter 9 (*Standard Provisions*) and the Secretary of State may verify any such records; and/or
- (b) to inspect and copy at any reasonable time any books, records and any other material kept by or on behalf of the Operator and/or its auditors and any assets (including the Assets) used by the Operator in connection with the Rail Services.

4.2 The Operator shall make available to the Secretary of State, the Secretary of State's representatives and advisers the information referred to in paragraph 4.1 and grant or procure the grant of such access (including to or from third parties) as the Secretary of State, the Secretary of State's representatives and advisers shall reasonably require in connection therewith. The obligation of the Operator under this paragraph 4.2 shall include an obligation on the Operator to grant or procure the grant of such access to premises (including third party premises) where the information referred to in paragraph 4.1 is kept by or on behalf of the Operator.

4.3 The Secretary of State, the Secretary of State's representatives and advisers shall be permitted to take photographs, film or make a video recording, or make any other kind of record of any such inspection.

4.4 If any inspection reveals that information previously supplied to the Secretary of State was, in the opinion of the Secretary of State, inaccurate in any material respect or if such inspection reveals any other contravention of the Operator's obligations under this Contract which the Secretary of State considers to be material, the costs of any such inspection shall be borne by the Operator and which, shall be Disallowable Costs pursuant to Appendix 2 (*Disallowable Costs*) to Chapter 7.1 (*Contract Payments*).

5. **Periodic Update Reports**

5.1 The Operator shall prepare and submit to the Secretary of State, a periodic report in each Reporting Period, not later than five (5) days prior to each Contract Performance Meeting held in accordance with paragraph 8 (*Contract Performance Meetings*), which shall:

- (a) contain updates on the Operator's progress in complying with its Business Plan Commitments, the Operator's performance against its Business Plan KPIs and the Operator's compliance with its other obligations under this Contract, together with any other information as the Secretary of State may specify from time to time;
- (b) relate to the previous Reporting Period, unless another period is reasonably required by the Secretary of State; and
- (c) be disaggregated to the extent required by the Secretary of State.

5.2 The Operator shall submit to the Secretary of State a copy of the Handover Package and/or Shadow Operator Handover Package each time it is updated in accordance with paragraph 1.1(b) (Handover Package Status) of Chapter 9.5.1 (Handover Package), not later than five (5) days prior to the next Contract Performance Meeting held immediately following such update having been made in accordance with paragraph 8 (Contract Performance Meetings).

5.3 Where, as part of the periodic report referred to in paragraph 5.1, the Secretary of State requires the Operator to provide information and/or details in addition to those required

pursuant to paragraph 5.1, the Operator shall ensure that the periodic report includes such additional information and/or details subject to the Operator having received at least twenty eight (28) days' notice of the additional information and/or details required by the Secretary of State.

- 5.4 Without prejudice to any other reporting obligations of the Operator, the Operator shall, at the end of each Reporting Period, provide a separate and standalone progress update to the Secretary of State in respect of:
- (a) the matters included in schedule 2 (*Termination of the Franchise Agreement*) to the ERMA; and
 - (b) such other related information as the Secretary of State may request.

6. **Contract Management System**

- 6.1 The Operator shall, no later than the Start Date and thereafter throughout the Contract Term:
- (a) use the contract management system which the Secretary of State uses to manage the delivery of the obligations under the National Rail Contract; and
 - (b) use the contract management system to administer any variations and/or derogations to the National Rail Contract after the Start Date.

7. **Identification of Key Personnel and Provision of Organisation Chart**

- 7.1 The Operator shall identify and provide to the Secretary of State a schedule of Key Personnel who shall be employed by the Operator in the performance of the National Rail Contract. This shall include the following persons:

- (a) a managing director whose role will include the overall management of the operation of the Rail Services
- (b) a train service delivery director, whose role will include responsibility for ensuring compliance by the Operator with Chapter 4.4 (*Operational Performance*);
- (c) safety director(s), whose role will include responsibility for ensuring that the Operator complies with its legal obligations in relation to the Rail Services including the Safety Certificate; and
- (d) finance director(s), whose role will include responsibility in relation to the Cost Budget, the Management Accounts, the Annual Management Accounts, the Annual Audited Accounts, the Audited Accounts Reconciliation, the Modelling Suite, the IO Modelling Suite and the provision of other financial data to Secretary of State.

- 7.2 The Operator shall nominate a board level director of the Operator (or at the Secretary of State's discretion, a board level director of any Parent or any appropriate Affiliate of the Operator) within seven (7) days of the date of this Contract. Such board level director's responsibilities shall include overseeing, at a strategic level, the Operator's interface with the Secretary of State in relation to sections 119 to 121 (inclusive) of the Act and co-ordinating relevant activities and delivery of counter terrorist security on behalf of the Operator in connection with the Operator's compliance with relevant instructions issued by the Secretary of State under section 119 of the Act from time to time. Such board level director shall be identified by job title in the organisation chart referred to in paragraph 7.3 and shall be deemed part of the Key Personnel.

8. **Contract Performance Meetings**

- 8.1 The Parties shall hold a Contract Performance Meeting at least once in every Reporting Period (or such other interval as the Secretary of State may notify to the Operator in writing) at a time and location notified to the Operator by the Secretary of State.
- 8.2 The Operator shall ensure that:
- (a) the representatives of the Operator at a Contract Performance Meeting shall include such directors and/or senior managers of the Operator as the Secretary of State may require; and

- (b) representatives of each Parent (which shall include such directors and/or senior managers of each Parent as the Secretary of State may require) attend a Contract Performance Meeting at least once every quarter.
- 8.3 The Operator shall prepare and present the up-to-date Handover Package and Shadow Operator Handover Package and such reports to each Contract Performance Meeting as the Secretary of State may reasonably request. The Operator's obligations under this paragraph 8.3 in respect of the preparation and presentation of reports are subject to the Operator receiving at least twenty eight (28) days' notice of the requirement to prepare and present any such report.
- 8.4 No comment or failure to comment nor any agreement or approval, implicit or explicit by either Party at a Contract Performance Meeting will relieve a Party of its obligations, constitute a waiver of an obligation or otherwise vary the terms of the National Rail Contract.
9. **Business Employees and Secondments Information**
- 9.1 The Operator shall provide the following information to the Secretary of State no later than the Start Date and shall notify the Secretary of State of any change to such information within twenty one (21) days of such change:
- (a) a full organisation chart for the Operator's business detailing the responsibilities and reporting lines (anonymised and with job titles for Business Employees specified only);
 - (b) details of all secondment arrangements (including their duration) applicable to the Operator's business (anonymised and with job titles for secondees specified only);
 - (c) list of pension schemes (including the Operator Pension Sections) applicable to the Operator's business (including details of contribution rates);
 - (d) details of employee benefits offered by grade to Business Employees directly employed by the Operator or by any Affiliate of the Operator (including whether such benefits are contractual or non-contractual, and any reciprocal travel agreements);
 - (e) details of employee bonus schemes (including the applicable rules, criteria determining which Business Employees directly employed by the Operator or by any Affiliate of the Operator can join such bonus schemes and any applicable employee attendance bonus scheme);
 - (f) details of any deductions that are allowed from the payroll of Business Employees directly employed by the Operator or by any Affiliate of the Operator (including details of deductions linked to purchasing leave and credit unions); and
 - (g) details of any material industrial relations risks (including a risk of Industrial Action) relating to the Operator's business.

CHAPTER 1.2
Strategies and Plans

1. Small and Medium-sized Enterprises

- 1.1 The Operator shall at all times keep accurate and complete records of its use of and interaction with SMEs and VCSEs in delivering the Rail Services.
- 1.2 By no later than 31 January in each year (and within one (1) month of the end of the Contract Period) the Operator shall deliver to the Secretary of State:
- (a) a breakdown of the number of SMEs and VCSEs used by the Operator in providing the Rail Services;
 - (b) the total value of expenditure on all subcontracts; and
 - (c) the value of expenditure on (i) SMEs and (ii) VCSEs (as proportions of the figure referred to in paragraph 1.2(b) above),
- during the calendar year (or part thereof) which ended on the immediately preceding 31 December or at the end of the Contract Period (as applicable).

2. Business Continuity Plan

- 2.1 Within one (1) month following the Start Date the Operator shall produce and provide to the Secretary of State a written Business Continuity Plan in respect of the Rail Services and the people, facilities and assets used to provide them which is consistent with the requirements of ISO 22301:2019.
- 2.2 Within one (1) month of the end of each Contract Year the Operator shall provide to the Secretary of State a certificate addressed to the Secretary of State and signed by a statutory director of the Operator confirming that the Business Continuity Plan is consistent with the requirements of the ISO 22301:2019.

3. Suicide Prevention Plan

- 3.1 The Operator shall review and update the Suicide Prevention Plan:
- (a) immediately following any amendment to, or replacement of, the Suicide Prevention Strategy and/or the Suicide Prevention Duty Holders' Group's 9 Point Plan; and
 - (b) as requested by the Secretary of State or the British Transport Police from time to time.

Any such review and any updating shall be by reference to changing circumstances, new relevant information and any amended or replaced Suicide Prevention Strategy and/or the Suicide Prevention Duty Holders' Group's 9 Point Plan with the intention that it is kept as up to date and effective as practicable. The Operator shall consult with the British Transport Police and wider cross-industry suicide prevention group (as appropriate) in relation to any such review and update of the Suicide Prevention Plan. The Operator shall deliver a copy of any revised and/or updated Suicide Prevention Plan to the Secretary of State as soon as is practicable together with written confirmation from the British Transport Police that the Plan complies with the requirements of the Suicide Prevention Strategy and the Suicide Prevention Duty Holders' Group's 9 Point Plan and accordingly remains approved by it.

- 3.2 The Operator shall implement the Suicide Prevention Plan as it may be revised and/or updated pursuant to paragraph 3.1 in accordance with its then prevailing provisions.

4. Safeguarding Strategy

- 4.1 The Operator shall review and, as necessary, update the Safeguarding Strategy:
- (a) within one (1) month following the publication of any amendment to, or replacement of the Safeguarding on Rail Scheme; and
 - (b) as requested by the Secretary of State.
- 4.2 Any review and necessary updates to the Safeguarding Strategy in accordance with paragraph 4.1 shall take into account any changes to, or replacement of the Safeguarding on Rail Scheme

and any other relevant circumstances that would reasonably be considered to impact the objectives contained in the Safeguarding on Rail Scheme and shall ensure that the Safeguarding Strategy remains up-to-date and appropriate for delivering the objectives contained in the Safeguarding on Rail Scheme.

- 4.3 The Operator shall undertake any review and necessary updates to the Safeguarding Strategy in accordance with paragraph 4.1 in consultation with the British Transport Police and such other relevant groups as the Operator and/or the British Transport Police consider appropriate. The Operator shall submit such updated Safeguarding Strategy to the British Transport Police within one (1) month of such review for its approval that the Safeguarding Strategy complies with the requirements of the Safeguarding on Rail Scheme and the Operator shall take into account any comments or amendments proposed by:

- (a) the British Transport Police; and
- (b) such other relevant groups as the Operator and/or the British Transport Police consider appropriate,

as are required to ensure that the Safeguarding Strategy remains up-to-date and appropriate for delivering the objectives contained in the Safeguarding on Rail Scheme.

- 4.4 The Operator shall deliver a copy of any updated Safeguarding Strategy to the Secretary of State together with written confirmation of the approval issued by the British Transport Police as soon as practicable following such approval.
- 4.5 The Operator shall implement the approved Safeguarding Strategy as it may be revised and/or updated pursuant to this paragraph 4 from time to time.
- 4.6 The Operator shall, as soon as practicable, obtain and thereafter maintain for the duration of the Contract Period, the Safeguarding on Rail Scheme accreditation standard, provided that if at any time the Operator receives a “working towards accreditation” award, the Operator shall achieve the full accreditation standard as soon as practicable.

5. **Incident Response Plan**

- 5.1 By no later than six (6) months following the Start Date the Operator shall prepare and provide to the Secretary of State for Approval the Incident Response Plan.

- 5.2 The Incident Response Plan shall:

- (a) detail how the Operator would respond to an incident or emergency (including cyber security incidents); and
- (b) reflect the RDG Guidance on Emergency Planning, Knowledge, Understanding and Responsibilities,

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

- 5.3 Where the Secretary of State does not Approve the draft Incident Response Plan submitted to it, the Operator shall make:

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

- 5.4 From the date of Approval, the Operator shall implement and comply with the Incident Response Plan.

- 5.5 The Incident Response Plan shall be updated by the Operator on an annual basis and submitted to the Secretary of State for Approval.

- 5.6 Each updated version of the Incident Response Plan shall incorporate a schedule of revisions to the Incident Response Plan compared to the previous version and a brief summary of the rationale supporting each such revision.

- 5.7 If:
- (a) the Secretary of State Approves an updated draft Incident Response Plan submitted to it pursuant to paragraph 5.5, such document shall become the then current Incident Response Plan; or
 - (b) the Secretary of State does not Approve an updated draft Incident Response Plan submitted to it pursuant to paragraph 5.5, the provisions of paragraph 5.3 shall apply.

6. **Cyber Security Information Sharing**

6.1 The Operator shall:

- (a) share, as soon as practicable, information regarding cyber security threats and incidents with the Department for Transport, British Transport Police, Police Scotland (where relevant), the National Cyber Security Centre and other industry partners; and
- (b) comply at all times with the latest Secretary of State's cyber incident reporting guidance including use of the NCSC Cyber-Security Information Sharing Partnership (CISP).

7. **Modern Slavery, Child Labour and Inhumane Treatment**

7.1 The Operator:

- (a) shall not use, or allow its subcontractors to use, forced, bonded or involuntary prison labour;
- (b) shall not require any Operator or subcontractor staff to lodge deposits or identity papers with the relevant employer or deny Operator staff freedom to leave their employer after reasonable notice;
- (c) warrants and represents that neither it nor its Parent or Affiliates has been convicted of any slavery or human trafficking offences anywhere around the world.
- (d) warrants that to the best of its knowledge neither it nor its Parent or Affiliates is currently under investigation, inquiry or enforcement proceedings in relation to any allegation of slavery or human trafficking offences anywhere around the world.
- (e) shall make reasonable enquiries to ascertain that its officers and subcontractors have not been convicted of slavery or human trafficking offences anywhere around the world.
- (f) shall have and maintain throughout the term of the Contract its own policies and procedures to ensure its compliance with the Modern Slavery Act 2015 and shall include in its contracts with its subcontractors anti-slavery and human trafficking provisions;
- (g) shall implement appropriate due diligence procedures to ascertain any non-compliance by its subcontractors with the anti-slavery and human trafficking procedures required by this paragraph;
- (h) if requested to do so by the Secretary of State, shall prepare and deliver to the Secretary of State a slavery and human trafficking report setting out the steps it has taken to ensure that slavery and human trafficking is not taking place in any of its supply chains or in any part of its business;
- (i) shall not use, or allow its employees or subcontractors to use, physical abuse or discipline, the threat of physical abuse, sexual or other harassment and verbal abuse or other forms of intimidation of its employees or subcontractors;
- (j) shall not use, or allow its subcontractors to use, child or slave labour; and
- (k) shall report the discovery or suspicion of any slavery or trafficking by it or its subcontractors to the Secretary of State and Modern Slavery Helpline.

CHAPTER 1.3
Approval Process

1. Approval

- 1.1 Where any item or matter in this Contract is subject to the Approval of the Secretary of State the Operator shall give notice to the Secretary of State that it requests:
- (a) the Secretary of State's consent in respect of such item or matter, citing this paragraph 1.1(a); or
 - (b) the Secretary of State's Approval in respect of such item or matter, citing this paragraph 1.1(b) (a "**Request for Approval**").
- 1.2 Where the Operator gives notice under paragraph 1.1(a) above, the consent of the Secretary of State in respect of the relevant item or matter shall only be granted by the Secretary of State consenting in writing.
- 1.3 Where the Operator gives notice under paragraph 1.1(b) above, such Approval shall only be granted (or deemed to have been granted) in accordance with the process set out in paragraphs 2 to 5 of this Chapter 1.3, unless otherwise agreed with the Secretary of State.

2. Approval Process

- 2.1 Each Request for Approval shall be submitted by the Operator:
- (a) not less than twenty (20) Weekdays prior to the date on which the Operator requires such Approval; and
 - (b) otherwise in accordance with all relevant notice requirements pursuant to this Contract.
- 2.2 Together with each Request for Approval submitted pursuant to paragraph 2.1, the Operator shall provide the following information to the Secretary of State:
- (a) a statement that the Request for Approval is submitted pursuant to paragraph 1.1(b) of this Chapter 1.3 (*Approval Process*) of this Contract;
 - (b) a reference to the relevant provision(s) of this Contract and/or the Business Plan pursuant to which the requested Approval is required;
 - (c) all accompanying information and evidence as may be required pursuant to the relevant provision(s) referenced under paragraph 2.2(b) above;
 - (d) details of any budgetary implications associated with Approval of the item or matter in respect of which Approval is requested (including the associated impacts on the Operator's costs and revenues, and (where relevant) the Operator's assessment of any cost and revenue impacts for other Train Operators and/or any Infrastructure Manager);
 - (e) details of the extent of, and justification for, any derogation or variation from any existing requirements of this Contract and/or any Business Plan Commitment which would or may be consequential on such Approval being granted;
 - (f) detail of any novel, contentious and/or precedent setting (within the rail industry or for public bodies more generally) aspects associated with the Approval sought; and
 - (g) references to any previous guidance or requirements issued by the Secretary of State which are applicable or related to the item or matter in respect of which Approval is sought.
- 2.3 At any time following receipt of a Request for Approval, the Secretary of State may notify the Operator that the Secretary of State:
- (a) grants the relevant Approval;
 - (b) refuses the relevant Approval;
 - (c) requires further information or evidence (in addition to the information required pursuant to paragraph 2.2) in relation to such Request for Approval;

- (d) otherwise requires more time to consider the Secretary of State's response to the Request for Approval (in which case the Secretary of State shall provide the Operator with an estimated timescale for the Secretary of State's determination); or
 - (e) does not consider that the information specified in paragraph 2.2 has been provided in respect of such Request for Approval.
- 2.4 If the Secretary of State notifies the Operator pursuant to paragraph 2.3(e) that any Request for Approval does not include all information specified in paragraph 2.2, the date of such Request for Approval (for the purposes of paragraphs 3 and 4) shall be the date on which all of such information is subsequently received by the Secretary of State.
- 2.5 If the Secretary of State notifies the Operator that it requires further information or evidence in relation to any Request for Approval pursuant to paragraph 2.3(c) (including following deemed Approval having been triggered pursuant to paragraph 3 below), the Operator shall provide such information or evidence as soon as practicable, and in any event within ten (10) Weekdays from receipt of such notification from the Secretary of State.
- 2.6 For the purposes of this Contract, the relevant item or matter which is the subject of a Request for Approval shall be Approved when:
- (a) the Secretary of State notifies the Operator that Approval is granted pursuant to paragraph 2.3(a) above; or
 - (b) Approval is deemed to have been granted in accordance with paragraph 3 below.

3. Deemed Approval

- 3.1 Provided that a Request for Approval is submitted by the Operator in accordance with the requirements of paragraphs 2.1, if:
- (a) the Secretary of State does not provide the Operator with any response to a Request for Approval in accordance with paragraphs 2.3(a) to (e) above within fifteen (15) Weekdays of its receipt from the Operator; or
 - (b) the Operator has provided all additional information as may have been requested by the Secretary of State pursuant to paragraph 2.3(c), and the Secretary of State has not issued the Operator with a response pursuant to paragraph 2.3(a), (b), (d) or (e) by the later of:
 - (i) the date falling five (5) Weekdays after receipt of all of such additional information from the Operator; and
 - (ii) the date falling fifteen (15) Weekdays after receipt of the relevant Request for Approval;

the Operator may serve a further notice on the Secretary of State stating that (pending any such response from the Secretary of State to the relevant Request for Approval), the relevant item or matter in respect of which Approval is sought would be deemed to be Approved pursuant to paragraph 3.2 on the expiry of five (5) Weekdays from receipt of such further notice by the Secretary of State.

- 3.2 Provided that the Operator has served a further notice on the Secretary of State in accordance with paragraph 3.1, if:
- (a) the Secretary of State has not provided any response to the relevant Request for Approval in accordance with paragraphs 2.3(a) to (e) by the later of:
 - (i) the date falling twenty (20) Weekdays after receipt of the Request for Approval from the Operator; and
 - (ii) the date falling five (5) Weekdays after receipt of the Operator's further notice pursuant to paragraph 3.1; or
 - (b) the Operator has provided all additional information as may have been requested by the Secretary of State pursuant to paragraph 2.3(c), and the Secretary of State has not issued the Operator with a response pursuant to paragraph 2.3(a), (b), (d) or (e) by the latest of:

- (i) the date falling ten (10) Weekdays after receipt of all of such additional information from the Operator;
- (ii) the date falling twenty (20) Weekdays after receipt of the relevant Request for Approval; and
- (iii) the date falling five (5) Weekdays after receipt of the Operator's further notice pursuant to paragraph 3.1;

then the relevant item or matter shall be deemed to be Approved for the purposes of this Contract.

4. **Delay to Approval**

4.1 Provided that a Request for Approval is submitted by the Operator in accordance with the requirements of paragraphs 2.1 and 2.2, in the event that:

- (a) the Secretary of State notifies the Operator that the Secretary of State requires more than twenty (20) Weekdays to consider its response to the Request for Approval pursuant to paragraph 2.3(d); or
- (b) the Secretary of State requires the Operator to provide additional information in respect of such Request for Approval pursuant to paragraph 2.3(c),

the Secretary of State shall grant the Operator a derogation in respect of any non-compliance with the requirements of this Contract and/or the Business Plan caused by the delay to the grant of Approval of the relevant item or matter, but only in respect of the period from the expiry of twenty (20) Weekdays following receipt of the Request for Approval until the date on which the relevant item or matter is Approved (or if earlier, the date on which the Secretary of State notifies the Operator that Approval is refused pursuant to paragraph 2.3(b)).

5. **Withdrawal of Approval**

5.1 Where any item or matter has been deemed to have been Approved pursuant to paragraph 3, the Secretary of State may at any time subsequently notify the Operator that such deemed Approval is withdrawn with effect from the date of receipt of such notice by the Operator (or such later date as the Secretary of State may specify) (the "**Withdrawal of Approval Date**").

5.2 With effect from the Withdrawal of Approval Date, any costs incurred by the Operator in relation to any item or matter which is no longer compliant with the requirements of this Contract and/or the Business Plan as a result of withdrawal of the relevant Approval shall be Disallowable Costs, provided that:

- (a) costs or liabilities incurred by the Operator (which are consistent with those expected to be incurred by a Good and Efficient Operator) which directly result from the withdrawal of the relevant Approval, including any costs or liabilities relating to the termination of any unavoidable contractual commitments which the Operator had entered into on the basis of the deemed grant of the relevant Approval (including pursuant to any Extended Term Contract or Extended Term Designatable Contract, provided that the Operator has complied with the requirements of paragraph 12 of Chapter 7.7 (*Business Plan*) in respect of such Extended Term Contract or Extended Term Designatable Contract), shall not be Disallowable Costs; and
- (b) if the Operator reasonably considers that termination of any contractual commitments as may be required as a result of withdrawal of the relevant Approval would adversely impact the performance by the Operator of any of its other obligations under this Contract and/or the Business Plan, the Operator may, by no later than ten (10) Weekdays following receipt of the Secretary of State's notice of withdrawal of the relevant Approval pursuant to paragraph 5.1, provide the Secretary of State with alternative solutions to termination of such contractual commitments, and if the Operator so provides such alternative solutions:
 - (i) the Secretary of State and the Operator may agree, or the Secretary of State may determine any such alternative solution, or the Secretary of State may notify the Operator that it rejects such alternative solution (in which case the

Operator shall promptly terminate the relevant contractual commitments);
and

- (ii) any costs incurred by the Operator as a result of such unavoidable contractual commitments (which are consistent with those expected to be incurred by a Good and Efficient Operator) in the period from the Withdrawal of Approval Date to the date on which the Secretary of State either rejects or agrees to any such alternative solution shall not be Disallowable Costs.

5.3 With effect from the Withdrawal of Approval Date in respect of any Extended Term Designatable Contract, the Secretary of State's agreement to designate such Extended Term Designatable Contract as a Primary Asset on the Expiry Date shall also be withdrawn.

6. **Shadow Operator Services**

6.1 Save to the extent specifically referred to in paragraphs 12.6(b) and 12.7(b) of Chapter 11.1 (*Shadow Operations*), the provisions of this Chapter 1.3 do not apply to any approval or consent requested by the Operator of the Secretary of State in accordance with Chapter 11 (*Shadow Operator*) or any other request for approval or consent by the Operator relating to the Shadow Operator Services.

Chapter 2 – People



Chapter 2.1 - Diversity and Inclusion and Training and Development



Chapter 2.2 - Rail Workforce

CHAPTER 2

PEOPLE

Chapter 2.1:	Diversity and Inclusion and Training and Development
Chapter 2.2:	Rail Workforce

Chapter 2.1

Diversity and Inclusion and Training and Development

1 Diversity and Inclusion

1.1 Diversity and Inclusion Strategy

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

1.2 Diversity Accreditation

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

1.3 Performance Reporting

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

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

1.4 Diversity and Inclusion Champion

- (a) As soon as practicable and by no later than the Start Date, the Operator shall (to the extent that the Operator has not already done so) nominate a board director of the Operator or a member of the senior executive team of the Operator to act as D&I Champion.
- (b) The Operator shall ensure that the D&I Champion role is filled as soon as practicable after such role becomes vacant throughout the term of this Contract.

1.5 Recruitment Targets and Objectives

- (a) The Operator shall use all reasonable endeavours to:
 - (i) be objective, transparent and fair in its recruitment processes;
 - (ii) meet Recruitment Targets; and

- (iii) improve retention rates of underrepresented groups (together, the “**Recruitment Objectives**”).
- (b) The Operator shall report on its performance against its Recruitment Objectives as part of its D&I Annual Report, together with relevant supporting evidence. Such supporting evidence may include details of Operator policies and procedures such as: advertising across a variety of channels to reach a broad range of candidates; blind sifting applications; engaging in CV blind interviewing; engaging in outreach programmes; establishing a returners policy; and/or establishing mentoring schemes.
- (c) Nothing in this paragraph 1.5 or this Chapter 2.1 is intended to impose or require any quota.

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

- (a) During the Contract Term, the Operator shall monitor the diversity profile of its workforce and collect Workforce Diversity Data.
- (b) Within six (6) weeks of the Start Date, the Secretary of State may notify the Operator of any further data requirements it may have, including:
 - (i) any additions to the scope of the Workforce Diversity Data the Operator is required to monitor and collect;
 - (ii) the frequency in which it shall be measured or collected; and
 - (iii) the form in which the Operator is required to deliver this to the Secretary of State via such data hub as the Secretary of State may direct.
- (c) The Operator shall use all reasonable endeavours to collect and submit this data in accordance with the Secretary of State’s data requirements.
- (d) The Operator acknowledges and agrees that the Secretary of State may use any data provided to it by the Operator pursuant to this Chapter 2.1 for analytical and policy development purposes.
- (e) The Operator shall provide a detailed report to the Secretary of State of its Workforce Diversity Data by no later than 31 March 2024 and each anniversary thereof.
- (f) The Operator shall organise the detailed report in accordance with the characteristics listed in the definition of Workforce Diversity Data.

1.7 **Improvement and Remedial Plans**

- (a) If and to the extent that the Secretary of State considers that the Operator has not adequately:
 - (i) delivered its D&I Strategy;
 - (ii) achieved accreditation in accordance with its D&I Strategy or has otherwise lost its accreditation;
 - (iii) used all reasonable endeavours to deliver against its Recruitment Objectives; or
 - (iv) collected, monitored and reported on data pursuant to paragraph 1.6 (*Data – Collecting, Monitoring and Reporting*),

it may notify the Operator that it requires it to deliver a plan for how it will improve its performance in the relevant area (a “**D&I Improvement Plan**”) for the Secretary of State’s review and consent. The D&I Improvement Plan shall include the Operator’s proposed timeline for implementing any changes or actions.

- (b) If the Parties cannot agree the D&I Improvement Plan within twenty (20) Weekdays from the Secretary of State’s notification pursuant to paragraph 1.7(a), the Secretary of State may impose such D&I Improvement Plan as it considers reasonable.
- (c) If the Operator fails to implement the D&I Improvement Plan, then the Secretary of State may serve a Remedial Plan Notice on the Operator in accordance with

paragraph 2 (*Remedies for Contraventions of the National Rail Contract*) of Chapter 9.4.3 (*Procedure for remedying a contravention of the National Rail Contract*).

2. Apprenticeships

- 2.1 The Operator shall at all times keep accurate and complete records of the Apprenticeships (and the training provided to apprentices) offered by the Operator and (if applicable) its immediate UK based supply chain in delivering the Rail Services on a basis which is at all times compliant with Data Protection Legislation. In particular, in relation to each Reporting Period the Operator shall record:
- (a) the number of new Apprenticeships created, continuing and concluding in that Reporting Period;
 - (b) the date of commencement and conclusion of each Apprenticeship; and
 - (c) in relation to each Business Employee that commences an Apprenticeship in such Reporting Period:
 - (i) the level of such Apprenticeship as described in the Regulated Qualifications Framework;
 - (ii) the skills category (as described in the Standard Occupational Classification Codes) within which Apprenticeship falls;
 - (iii) the month and year of birth of that Business Employee;
 - (iv) the current occupation of that Business Employee;
 - (v) the gender of that Business Employee (except in relation to those Business Employees who do not permit disclosure);
 - (vi) the Business Employee's ethnic background (except in relation to those Business Employees who do not permit disclosure); and
 - (vii) the first half of that Business Employee's residential postcode district.
- 2.2 Subject to paragraph 12.1 (*Data Protection – Apprenticeships*) of Chapter 9.6 (*Confidentiality and Data Protection*), the Operator shall provide an Apprenticeships Data Collection Form to the Rail Delivery Group containing the information set out in paragraph 2.1 for the purpose of enabling the Secretary of State to monitor the achievement of the apprenticeship targets set out in the Transport Infrastructure Skills Strategy and check for any duplication of records.
- 2.3 By no later than 31 January each year (and within one (1) month of the end of the Contract Period) the Operator shall deliver to the Rail Delivery Group the breakdown of the information recorded pursuant to paragraph 2.1, and (subject to the requirements of paragraph 2.2) it shall record this during the calendar year (or part thereof) which ended on the immediately preceding 31 December or at the end of the Contract Period (as applicable), and that information is to be transmitted via the completed Apprenticeships Data Collection Form and submitted to the Rail Delivery Group for onward transmission to the Secretary of State on an annual basis or at such other time as the Secretary of State may specify.
- 2.4 The Operator shall ensure that the number of Business Employees who begin an Apprenticeship in any Contract Year shall constitute no fewer than the proportion of Business Employees specified in the Business Plan in relation to that Contract Year, such proportion to be no less than 2.5% of Business Employees directly employed by the Operator (the “**Apprenticeships Requirement**”) provided that:
- (a) the Apprenticeships Requirement shall be subject to a pro rata reduction in relation to the first Contract Year; and
 - (b) the Apprenticeships Requirement shall be subject to a pro rata reduction in respect of the Final Contract Year in the event that the Final Contract Year consists of less than thirteen (13) Reporting Periods,
- and the Operator shall provide evidence of the satisfaction of the Apprenticeships Requirement to the Secretary of State within ten (10) days of the end of each Contract Year.

Chapter 2.2
Rail Workforce

1. Notification of the Secretary of State

1.1 The Operator shall, and shall procure that each other Relevant Employer, shall:

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

and where practicable in each case in good time to allow for proper engagement with the Secretary of State, inform the Secretary of State of all relevant information relating to any such matters and any other information the Secretary of State may request from time to time in relation to such matters. Where there is any doubt as to whether a matter requires notification in accordance with this paragraph 1.1, the Operator shall, and shall procure that each other Relevant Employer shall, make a notification in any event. In determining whether to make a notification and/or what information must be provided to the Secretary of State by the Operator, the Operator shall have regard to its obligations under paragraph 7.1 (*Duties of the Operator*) of this Chapter 2.2.

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

1.3 If:

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

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

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

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

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

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

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

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

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

- (a) any issue which would require notification in paragraphs 1.1(a) and 1.1 (b) in relation to an In-Scope Matter shall require notification if the issue arises in respect of any group of more than one such unrepresented Business Employees (“**Unrepresented Employees**”); and
- (b) when paragraph 1.6(a) applies, once a Mandate is required, the provisions of this Chapter 2.2 shall apply in full in respect of the relevant Unrepresented Employees.

2. **Reward and People Principles**

2.1 In relation to any In-Scope Matter (and whether or not a Mandate has been agreed in respect of that matter), the Parties acknowledge the applicable principles for reward and working arrangements are set out in Reward and People Principles established in accordance with the Previous Agreement, subject to the remainder of this paragraph 2.1. Specifically:

- (a) the Operator agrees that the Reward and People Principles and any other policies, high level instructions or guidance that the Secretary of State may introduce or direct from time to time (including in accordance with the provisions of paragraph 6 (*Reform*) below) (together, the “**Employment Policy Framework**”), shall, in the case of any conflict or inconsistency, take precedence over any arrangements which form the substance of an In-Scope Matter between the Secretary of State and the Operator which are in place immediately prior to the Start Date, including:
 - (i) any multi-year pay awards;
 - (ii) staffing budgets (whether pre-approved or otherwise, and including where any assumptions relating to pay growth may have been made); and
 - (iii) any other agreement or arrangement relating to any In-Scope Matters, in each case which may take effect following the Start Date; however
- (b) without prejudice to paragraph 2.2, the Employment Policy Framework shall not take precedence over any such In-Scope Matters which, prior to the Start Date, have become legally binding on the Operator or Relevant Employer (whether by reason of individual contract of employment, collective agreement or by custom and practice) and including agreements made which have not yet taken effect at the Start Date or any changes which the Operator or Relevant Employer is required to make by law.

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

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

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

3. **Terms of Employment**

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

3.2 Without limiting paragraph 3.1, subject to paragraph 3.4, the Operator shall not, and shall procure that each Relevant Employer shall not, without the prior consent of the Secretary of State, vary, or purport or promise to vary the terms or conditions of employment with any Business Employee (in particular, the Operator shall not, and shall procure that each Relevant

Employer shall not, promise to make any additional payment or provide any additional benefit or vary any term or condition relating to holiday, leave or hours to be worked) where the revised terms of employment of any existing Business Employee may take effect on or after the Start Date if and to the extent that such terms or conditions are more favourable than the standard terms or conditions of employment of the equivalent or nearest equivalent Business Employee role at the date on which such revised terms and conditions are scheduled to take effect.

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

4. **In-Scope Matters**

- 4.1 The Secretary of State may at any time, in the Secretary of State's discretion, determine that a matter is, or is not, an In-Scope Matter. Save where either paragraph 4.4 or 4.5 applies, a determination that a matter is an In-Scope Matter will be final and conclusive but will not prevent the Parties agreeing that a matter is no longer an In-Scope Matter.
- 4.2 Without prejudice to paragraphs 4.3 and 4.4, if a matter is not an In-Scope Matter, no Mandate is required. For these purposes, matters in respect of which a Mandate is not required will include changes to working practices made in the ordinary course of business in accordance with human resources policies (in relation to the day to day management of the Operator's or Relevant Employer's business) which exist prior to the Start Date which:
- (a) are not likely to give rise to material industrial relations risks (including a risk of Industrial Action); and/or
 - (b) will not have a material negative impact on productivity; and/or
 - (c) are not contrary to train passengers' interests.
- 4.3 Where the Operator (or a Relevant Employer) is in any doubt as to whether any matter is an In-Scope Matter requiring a Mandate, it must, or must procure that the Relevant Employer shall, inform the Secretary of State in good time prior to steps being taken to implement such matter or change and the Operator must, or must procure that the Relevant Employer shall, if requested by the Secretary of State, provide an explanation of why it believes the proposed matter or change is not an In-Scope Matter requiring a Mandate. Thereafter, the Secretary of State may make a determination in accordance with paragraph 4.1. Provided the Secretary of State is satisfied that the Operator complied with its obligations under this paragraph 4.3 and paragraph 7.1 (*Duties of the Operator*), the Secretary of State's determination shall, subject to paragraph 4.5, be final and conclusive. Where the Secretary of State has determined that a

matter is an In-Scope Matter, nothing will prevent the Parties subsequently agreeing that the matter is no longer an In-Scope Matter.

- 4.4 Where a matter is not an In-Scope Matter, the Parties acknowledge and agree that further developments in relation to, and/or escalation of, that matter may be such that it could result in (a) material industrial relations risks (including a risk of Industrial Action); and/or (b) a material negative impact on productivity; and/or (c) be contrary to train passengers' interests. In any such event, the Operator will make a notification to the Secretary of State in accordance with paragraph 4.3 with a view to seeking a determination from the Secretary of State as to whether the matter has become an In-Scope Matter.
- 4.5 Any determination by the Secretary of State that any matter is an In-Scope Matter is conditional on the Secretary of State being and remaining satisfied that the Operator and, where relevant, the Relevant Employer have disclosed all relevant information relating to such matter and complying and continuing to comply with the duty in paragraph 7.1 (*Duties of the Operator*). If, in the Secretary of State's opinion there is or has been any material non-disclosure of relevant information or a material breach of paragraph 7.1 (*Duties of the Operator*) by the Operator or Relevant Employer, the Secretary of State may determine that the Mandate is void in which case for the purposes of this Chapter 2.2 costs, losses and revenues shall be treated as if that Mandate had never been agreed and paragraph 1.3(a) (*Notification of the Secretary of State*) of this Chapter 2.2 shall apply in respect of any acts or omissions of the Operator, or the Relevant Employer, in relation to that matter. The Parties acknowledge and agree that where this paragraph 4.5 applies, the Secretary of State may take such action and/or instruct such changes as it considers necessary to correct the apportionment of costs, losses and revenues between the Parties and designate the Operator's costs, losses and revenues as Disallowable Costs and/or Revenue Foregone.

5. Industrial Action

- 5.1 The Operator shall, and shall procure that each Relevant Employer shall, comply with the Dispute Handling Policy. Without prejudice to any obligations under the Dispute Handling Policy, to the extent the Operator believes that Industrial Action is likely to occur as a result of its (or any Relevant Employer's) compliance with any aspect of this Chapter 2.2 (including any Mandate agreed pursuant to it), or for any other reason, it shall promptly notify the Secretary of State of its reason for that belief and the effect, or the anticipated effect, of such event on the performance of the Rail Services and provide the Secretary of State with such further information as the Secretary of State may request.
- 5.2 As soon as practicable following a notification set out in paragraph 5.1 above, and in any event within three (3) Weekdays following such notification, the Operator shall propose a process it intends to adopt to deal with the relevant Industrial Action in accordance with and subject to the Dispute Handling Policy. The Operator and the Secretary of State shall use all reasonable endeavours to agree how the relevant Industrial Action shall be handled, bearing in mind the Dispute Handling Policy, provided however that the Operator's handling of such Industrial Action will be subject always to the Secretary of State's direction, such agreement and/or direction being the "**Dispute Handling Plan**". The Operator shall, and shall procure that each Relevant Employer shall, act in accordance with the Dispute Handling Plan.
- 5.3 If:
- (a) agreement is not reached regarding how relevant Industrial Action is to be handled; or
 - (b) in the event that Industrial Action occurs which the Secretary of State determines (at the Secretary of State's discretion, acting reasonably), has arisen as a result of the Operator or any Relevant Employer not complying with its or their obligations under this Chapter 2.2 (including any Mandate agreed pursuant to it, any failure to act in accordance with the Dispute Handling Plan, to make a notification required by paragraph 1.1 (*Notification of the Secretary of State*) or to provide all relevant information in relation to such notification and/or to comply with paragraphs 7.1 (*Duties of the Operator*) and 7.3 (*Duties of the Operator*)),

either of which has resulted in a loss of revenue, an increase or decrease in costs, or a combination of the foregoing, as a consequence (direct or otherwise) of the disruption to

Passenger Services (however so related), the Secretary of State may in the Secretary of State's discretion:

- (c) determine that this shall be a Financial Target Amendment Event (as applicable) and/or a Cost Budget Change Event;
- (d) direct that any such increase in costs shall be treated as Disallowable Costs and the Operator shall not, in any circumstances, be entitled to claim back such costs from the Secretary of State whether pursuant to Chapter 7.1 (*Contract Payments*) or otherwise; and/or
- (e) direct that any such lost revenue shall be treated as Revenue Foregone.

5.4 To the extent that the Operator:

- (a) has complied with this Chapter 2.2 (including any applicable Mandate); and
- (b) has complied with the Dispute Handling Plan,

then:

- (c) the Secretary of State, will not treat any increase in costs or loss of revenue of the Operator arising from the relevant Industrial Action (however caused and of whatever nature) as a Disallowable Cost or Revenue Foregone (respectively); and
- (d) a Financial Target Amendment Event (as applicable) shall occur and a Cost Budget Change Event shall occur;

in circumstances where the Secretary of State is satisfied that the Operator has used all reasonable endeavours (and procuring that any Relevant Employer has used all reasonable endeavours) to avoid the Industrial Action and that, Industrial Action having nevertheless occurred, the Operator has used all reasonable endeavours (and has procured that any Relevant Employer used all reasonable endeavours) to mitigate its effects.

6. Reform

6.1 The Operator shall, and shall procure that each Relevant Employer shall:

- (a) co-operate with the Secretary of State as may be required by the Secretary of State from time to time in respect of the planning, development and/or implementation (as applicable) of industry reform with respect to the Employment Policy Framework and the Dispute Handling Policy, including co-operating and collaborating with other Train Operators and other organisations in respect of planning, developing and implementing such reforms to the extent permitted by applicable laws; and
- (b) provide to the Secretary of State, such information and data in relation to the Employment Policy Framework and/or the Dispute Handling Policy (or any aspect of it/them) as the Secretary of State may require from time to time.

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

6.3 During the Contract Term, the Operator shall not, and shall procure that each Relevant Employer shall not, enter into any new Employment Agreements otherwise than in accordance with the terms of this Chapter 2.2 (including any applicable Mandate) and the Employment Policy Framework without the prior written consent of the Secretary of State.

7. Duties of the Operator

7.1 In relation to any matters dealt with in this Chapter 2.2, the Operator shall, and shall procure that each Relevant Employer shall, deal with the Secretary of State in an open and cooperative way, and must disclose to the Secretary of State on an ongoing basis anything relating to the Business Employees (and any Trade Union or other employee representative body

representing any such employees) of which the Secretary of State would expect notice in respect of anything which might be relevant to an In-Scope Matter.

7.2 The Operator shall (and shall procure that each Relevant Employer shall) act within the spirit of this Chapter 2.2 in its communications and dealings with any Trade Union, employee representative body or any Business Employee, both locally and nationally.

7.3 The Operator's duty to act as a Good and Efficient Operator shall apply to the discharge of its obligations under this Chapter 2.2.

8. Cooperation with Secretary of State and Relevant Employer

8.1 Where the Operator or Relevant Employer reasonably considers that complying with any aspect of this Chapter 2.2, including any aspect of the Employment Policy Framework or any Mandate, will cause it to breach any legal obligation of the Operator or Relevant Employer in their capacity as employer (whether arising under legislation or at common law) including breaches of legislation relating to unlawful discrimination or equal pay, the Secretary of State and Operator shall work in cooperation (and/or, as appropriate, the Secretary of State shall, and the Operator shall use all reasonable endeavours to procure that the Relevant Employer shall, work in cooperation) with a view to agreeing an approach to, as the case may be, compliance with such obligations under this Chapter 2.2 or avoidance or mitigation of the risk of such breach by the Operator or Relevant Employer. Once such an approach is agreed, the Operator shall, and will procure that the Relevant Employer shall, implement it on its terms.

9. Disallowable Costs

9.1 Save as provided in this Chapter 2.2 or as expressly agreed with the Secretary of State, any losses and liabilities (including costs, charges, penalties, compensation or similar payments) incurred as result of termination of a contract of employment of, or reaching any settlement or compromise with a Business Employee shall be Disallowable Costs.

10. Workers

10.1 To the extent that the Operator or any Relevant Employer engages individuals to work on the Rail Services as workers (howsoever "workers" is defined in relevant English employment legislation from time to time, but excluding "agency workers" as defined in the Agency Worker Regulations 2010, as amended from time to time) ("**Workers**") rather than employees, the provisions in this Chapter 2.2 shall be deemed to cover such Workers. In such circumstances, the engaging party shall be the Operator or the Relevant Employer, as applicable, and references to terms and conditions of employment shall be construed as references to terms and conditions of engagement and references to Business Employees shall include such workers.

11. Changes in Numbers and Total Cost of Employees

11.1 Subject to and excluding any increase in the remuneration of Business Employees permitted under this Chapter 2.2 (*Rail Workforce*) the Operator shall not, and shall secure that each other Relevant Employer shall not, without the prior Approval of the Secretary of State increase or decrease the number of Business Employees such that:

(a) the total number of Business Employees or the total cost per annum to the Operator and each other Relevant Employer of employing all Business Employees is increased by more than five per cent (5%); or

(b) the total number of Business Employees is decreased by more than five per cent (5%),

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

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

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

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

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

- 11.3 Paragraph 11.2 above shall not apply in respect of any Business Employee Change which is:
- (a) caused by a change of fewer than three (3) full-time Business Employees or full-time equivalent Business Employees; or
- (b) clearly articulated in the Business Plan and the Operator's Cost Budget most recently Placed in Escrow.
- 11.4 Following receipt of any notice issued by the Operator pursuant to paragraph 11.2 above, the Secretary of State may direct the Operator to take all reasonable endeavours to reverse the Business Employee Change (either in whole or in part) and such direction shall not be a Cost Budget Change Event or a Financial Target Amendment Event, unless the relevant Business Employee Change is clearly articulated in the Business Plan and the Operator's Cost Budget most recently Placed in Escrow. The Operator shall use all reasonable endeavours to comply with any direction provided under this paragraph 11.4.
- 11.5 The Operator shall provide to the Secretary of State a report at the end of each Reporting Period which sets out:
- (a) the numbers of Business Employees that fall into the categories of (a) revenue protection, (b) ticket office staff; (c) the sale of tickets or (d) any other category notified by the Secretary of State to the Operator; and
- (b) in outline, the Operator's plan for recruitment to fill any vacancies where the vacant role wholly or partially relates to the categories noted at (a), (b), (c) or (d) in paragraph 11.5(a) above.

Chapter 3 – Collaboration



Chapter 3 - Collaboration

Chapter 3
COLLABORATION

1	Duty of Cooperation
2	NR Data Sharing Strategy
3	Sharing Further Data with Network Rail
4	Safety Information
5	British Transport Police
6	Co-operation with Welsh Ministers
7	Co-operation with Scottish Ministers

Chapter 3

COLLABORATION

1. **Duty of Cooperation**

- 1.1 The Operator shall fully and effectively cooperate with each of the Specified Persons, to the extent applicable, in respect of each of the Specified Matters. This cooperation shall include such of the Specified Actions as are relevant or applicable to the particular Specified Matter. These Specified Actions shall be undertaken by the Operator in collaboration with such of the Specified Persons (if any) as may be appropriate in the particular circumstances.
- 1.2 At any time the Secretary of State may specify, by notice to the Operator, any additional Specified Persons, Specified Matter and/or Specified Action as the Secretary of State may determine. The Operator's obligations pursuant to paragraph 1.1 above in relation to any such additional Specified Persons, Specified Matter and/or Specified Action determined by the Secretary of State shall take effect from the date of the Operator's receipt of such notice.
- 1.3 If in the course of the cooperation required pursuant to paragraph 1.1 above, a Specified Person seeks to require the Operator to implement:
- (a) any Specified Action; or
 - (b) any initiative or action that is not a Specified Action,
- and such implementation would necessitate additional staff headcount or other material out-of-pocket expenses that are not to be fully funded by a third party and that were not provided for within the Cost Budget most recently Placed in Escrow, the Operator shall discuss the matter with the Secretary of State and paragraph 1.1 above shall not require the Operator to implement that initiative or action unless the Parties agree or the Secretary of State instructs to the contrary.
- 1.4 Notwithstanding any other terms of this paragraph 1, the Operator shall not be required to do anything which would put it in breach of any obligation on the Operator arising under applicable Law (including competition law under the Competition Act 1998) or the terms of its Licences.
- 1.5 Without prejudice to the generality of paragraph 1 (*Duty of Cooperation*), if, pursuant to the Plan for Rail or otherwise in furtherance of rail reform in Great Britain, the Secretary of State requires the Operator to transfer, prior to the Expiry Date or date of earlier termination of this Contract, any Primary Asset to the Secretary of State or to such other party as directed by the Secretary of State, the Operator shall fully and effectively cooperate with the Secretary of State to determine the terms of and the process for such transfer provided that:
- (a) the relevant Primary Asset shall be valued in accordance with the principles set out in the Schedule (*Net Asset Statement*) to the form of the Supplemental Agreement; and
 - (b) following the transfer, the Secretary of State shall permit, or procure that such other relevant party permits, the Operator continued use of the relevant Primary Asset or procure provision of a replacement asset in order to allow the Operator to continue to comply with its obligations under this Contract.
- 1.6 The Parties acknowledge that the government has published the Plan for Rail. If, pursuant to the Plan for Rail or otherwise in furtherance of rail reform in Great Britain, the Secretary of State wishes to amend any of the provisions of this Contract (including by way of removal of certain obligations), the Parties acknowledge and agree that any such amendment may be undertaken in accordance with paragraph 8 (Variations) of Chapter 7.5 (Variations, Changes and Amendments), paragraph 6 (Business Plan Revisions) of Chapter 7.7 (Business Plan) and/or through the annual Business Plan process set out in paragraph 3 (Annual Business Plan Process) of Chapter 7.7 (Business Plan).
- #### 2. **NR Data Sharing Strategy**
- 2.1 The Operator shall continue to use all reasonable endeavours to implement the NR Data Sharing Strategy in accordance with its terms, and shall continue to consult, collaborate and

co-operate with Network Rail to agree any reasonable amendments or updates to the NR Data Sharing Strategy from time to time.

- 2.2 The Operator shall propose and use all reasonable endeavours to agree with Network Rail suitable amendments to the NR Data Sharing Strategy to ensure compliance with any guidance or instructions issued or provided by the Secretary of State from time to time.
- 2.3 The Operator shall not unreasonably withhold or delay its consent to any amendments which Network Rail may reasonably propose to the NR Data Sharing Strategy, provided that the Operator shall not agree to any amendments which would not be in compliance with any guidance the Secretary of State may provide or issue from time to time.
- 2.4 Notwithstanding any other term of this paragraph 2, the Operator shall not be required to do anything which would put it in breach of any obligation on the Operator arising under applicable Law (including competition law under the Competition Act 1998) or the terms of its Licences.

3. **Sharing further data with Network Rail**

- 3.1 The Operator shall, to the extent reasonably requested by Network Rail, share with Network Rail all relevant data including GPS data and data derived from geometry measurement systems, forward facing CCTV, driver advisory systems and train condition monitoring systems fitted to any rolling stock within the Train Fleet. Any such data provided to Network Rail shall be provided in an open standard format as Network Rail may reasonably request as soon as practicable and without charge.
- 3.2 The Operator shall, if so requested by Network Rail, provide advice to Network Rail on the feasibility, costs and associated practicalities of providing Network Rail with real-time access to live replay footage from on-train forward-facing CCTV systems.
- 3.3 The Operator shall, as soon as practicable following any request, provide Network Rail with such information as it may reasonably request, including:
- (a) information in relation to current and projected future numbers of train crew employed, in aggregate and in respect of each individual train crew depot or link, and distinguishing in each case between different types of train crew and between fully qualified individuals and trainees (the “**Train Crew Numbers Data**”); and
 - (b) a comparison of the Train Crew Numbers Data against the Operator’s most recent assessment of the current and expected future Required Establishment in each case.

4. **Safety information**

- 4.1 The Operator shall co-operate with any request from any relevant competent authority for provision of information and/or preparation and submission of reports detailing or identifying compliance with safety obligations set out in the Safety Regulations including any breaches of the Safety Regulations.
- 4.2 The Operator shall notify the Secretary of State as soon as practicable of the receipt and contents of any formal notification relating to safety or any improvement or prohibition notice received from the ORR. Immediately upon receipt of such notification or notice, the Operator shall provide the Secretary of State with a copy of such notification or notice.
- 4.3 The Operator shall participate in industry groups and committees addressing the domestic and European safety agenda of the Railway Group.

5. **British Transport Police**

- 5.1 The Operator shall give due consideration to any request by the British Transport Police to provide suitable accommodation (including additional or alternative accommodation) or facilities at Stations to enable the British Transport Police to effectively perform the services owed to the Operator under any contract or arrangement entered into between the British Transport Police and the Operator.
- 5.2 The Operator shall:
- (a) work with the British Transport Police to:

- (i) reduce crime and anti-social behaviour on the railway;
 - (ii) reduce minutes lost to police-related disruption;
 - (iii) increase passenger confidence with personal security on train and on station;
- (b) work in partnership with the British Transport Police and conduct an annual assessment of the security and crime risk at all Stations and across the Rail Services area generally;
- (c) co-operate with the British Transport Police to provide it with access to records and/or systems maintained by the Operator which relate to lost property to enable the British Transport Police to have access to such information when dealing with items reported to them as lost; and
- (d) consult with the British Transport Police as to its requirements in relation to records and/or systems and shall ensure that within fifteen (15) Weekdays of the Start Date, processes are in place expeditiously, and in any event within five (5) Weekdays, to provide the British Transport Police with access to such records and/or systems upon notification of a crime.
- 5.3 The Operator shall consult with the British Transport Police in relation to plans to develop any part of the land within a Property Lease which could affect staff or customers and give the British Transport Police an opportunity to advise on and/or provide comments on any opportunities for the enhancement of safety and reduction in crime.

6. **Co-operation with Welsh Ministers**

- 6.1 The Operator shall at all times during the Contract Term fully and effectively co-operate with Welsh Ministers in relation to:
- (a) any scheme to reopen or divert any rail route; and
 - (b) any proposal which may be promoted by (or on behalf of) Welsh Ministers during the Contract Term for the provision of additional, varied or extended Passenger Services to and from destinations in Wales, such co-operation to:

include the provision of information to Welsh Ministers in respect of the implications of such proposals on the operation of the existing Passenger Services in Wales, costs and revenues and any other impact on the Operator's obligations under this Contract.

7. **Co-operation with Scottish Ministers**

- 7.1 The Operator shall at all times during the Contract Term fully and effectively co-operate with Scottish Ministers in relation to:
- (a) any scheme to reopen or divert any rail route; and
 - (b) any proposal which may be promoted by (or on behalf of) Scottish Ministers during the Contract Term for the provision of additional, varied or extended Passenger Services to and from destinations in Scotland, such co-operation to:

include the provision of information to Scottish Ministers in respect of the implications of such proposals on the operation of the existing Passenger Services in Scotland, costs and revenues and any other impact on the Operator's obligations under this Contract.

Chapter 4 – Rail Services



Chapter 4.1 - Service Development



Chapter 4.2 - Operating Obligations



Chapter 4.3 - The Rolling Stock



Chapter 4.4 - Operational Performance

CHAPTER 4
RAIL SERVICES

Chapter 4.1:	Service Development
Chapter 4.2:	Operating Obligations
Chapter 4.3	The Rolling Stock
	Appendix 1: The Composition of the Train Fleet
Chapter 4.4:	Operational Performance

Chapter 4.1

Service Development

1. Train Service Requirement

- 1.1 The Train Service Requirement is the specification of the Passenger Services to be provided by the Operator during the Contract Term.
- 1.2 The Train Service Requirement shall remain in force unless and until amended or replaced pursuant to this Chapter 4.1.

2. Train Formation Capacity Plan

- 2.1 Subject to paragraph 2.2, for the purposes of this Contract, the “**Train Formation Capacity Plan**” shall be the plan (including sub-plans) prepared by the Operator for the operation of trains and train formations under the Timetable that best matches available capacity to Forecast Passenger Demand as amended from time to time during the Contract Period in accordance with this Contract.
- 2.2 For the purposes of Chapter 4.4 (*Operational Performance*) references to “**Train Formation Capacity Plan**” shall be construed as the latest version of the Train Formation Capacity Plan which includes any amendments thereto pursuant to paragraphs 3 (*Timetable changes proposed by the Infrastructure Manager*), 4 (*Timetable changes proposed by the Operator*) and/or 5 (*Timetable changes and Train Formation Capacity Plan changes requested by the Secretary of State*) of Chapter 4.2 (*Operating Obligations*):
- (a) where such amendments are required as a consequence of the Infrastructure Manager exercising its rights pursuant to the Track Access Agreement;
 - (b) where such amendments proposed by the Operator have prior Approval from the Secretary of State; or
 - (c) where such amendments are requested by the Secretary of State.
- 2.3 The Operator shall submit to the Secretary of State a Train Formation Capacity Plan in respect of each Timetable in accordance with this Contract.
- 2.4 In preparing any Train Formation Capacity Plan, the Operator shall do so by reference to the Timetable that it envisages operating in order to comply with the Train Service Requirement and paragraph 6 of this Chapter 4.1.
- 2.5 Each Train Formation Capacity Plan shall set out for each railway passenger service in the Timetable to which it relates:
- (a) its start point and departure time;
 - (b) its terminating point and arrival time;
 - (c) the number and class of rolling stock vehicles allocated to each such railway passenger service;
 - (d) the Passenger Carrying Capacity that each such railway passenger service, as formed, is to have; and
 - (e) its Forecast Passenger Demand and, where this has been requested by the Secretary of State and is capable of calculation, Actual Passenger Demand.
- 2.6 A Train Formation Capacity Plan shall be in any format that the Secretary of State may specify for this purpose.
- 2.7 From the Start Date until the next Passenger Change Date, the Operator shall adopt as the Train Formation Capacity Plan the document in the agreed terms marked **TFCP**. It is acknowledged that the Train Formation Capacity Plan in the agreed terms marked **TFCP** shall be replaced from time to time during the Contract Period in accordance with the provisions of paragraph 6.4 of this Chapter 4.1 or, in relation to the Integrated Services, a Shadow Operator Business Plan Commitment.

3. **Consultation on Alterations to the Timetable**

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

4. **Timetable Development Rights**

- 4.1 The Operator shall use all reasonable endeavours to amend and/or enter into such Access Agreements as may be necessary or desirable from time to time to obtain the timetable development rights that it requires to secure a Timetable that enables it to operate railway passenger services that comply with the Train Service Requirement or such service amendments as may be agreed by the Secretary of State and the Infrastructure Manager, pursuant to paragraph 8 and otherwise comply with its obligations under the National Rail Contract (including under paragraph 6 of this Chapter 4.1).
- 4.2 Subject to the remaining provisions of this paragraph 4, the Operator shall exercise its Timetable Development Rights so as to secure a Timetable that enables it to operate railway passenger services that comply with the Train Service Requirement and paragraph 6 of this Chapter 4.1 in accordance with its obligations under paragraph 9 of this Chapter 4.1.
- 4.3 The Operator shall work with the Infrastructure Manager, for the purposes of securing a Timetable that complies with the Train Service Requirement. In so doing the Operator may, in such a manner as can be reasonably considered appropriate in the circumstances, exercise its rights under the Track Access Agreement (including the Network Code) to object, to make representations and to withhold consent in respect of any actual or proposed act or omission by the Infrastructure Manager in relation to such agreement in respect of its Timetable Development Rights, and shall inform the Secretary of State of the circumstances providing any supporting evidence from the Infrastructure Manager.
- 4.4 If the Secretary of State does not consider that the Operator has taken sufficient steps under paragraph 4.3, the Secretary of State may require the Operator to exercise its rights in such manner as the Secretary of State considers appropriate in the circumstances, including:
- (a) disputing any actual or proposed act or omission by the Infrastructure Manager in respect of any Timetable Development Rights; and
 - (b) submitting such dispute to any relevant dispute resolution arrangements or procedures and appealing against any award or determination under such arrangements or procedures, including to the ORR.
- 4.5 Subject to the Operator complying with its obligations under paragraph 4.3 above, it shall not be liable for any failure to secure a Timetable that enables the Operator to operate railway passenger services that comply with the Train Service Requirement and paragraph 6 of this Chapter 4.1, to the extent that such failure is caused by:
- (a) the Operator's Timetable Development Rights being inadequate to enable it to secure the requisite Train Slots, provided that the Operator has exercised all reasonable endeavours to obtain the requisite Timetable Development Rights in accordance with paragraph 4.1 above;
 - (b) the Infrastructure Manager exercising its flexing rights from time to time under the Track Access Agreement or the Network Code in respect of such Train Slots;
 - (c) the Infrastructure Manager exercising its other rights from time to time under the Track Access Agreement or the Network Code; or
 - (d) the exercise by the ORR of its powers pursuant to section 22C of the Act.
- 4.6 **TDR Amendments**
- (a) If and to the extent that the Operator is not able to secure a Timetable that enables it to operate railway passenger services that comply with the Train Service Requirement as a result of it not being able to obtain the Timetable Development Rights that it requires for that purpose, the Secretary of State shall (subject to paragraphs 4.6(b)

and 4.6(c) below) issue to the Operator amendments to the Train Service Requirement (“**TDR Amendment**”). The amendments to the Train Service Requirement contained in the TDR Amendment shall be those that the Secretary of State considers necessary for the purposes of enabling the Operator to secure a Timetable that is compliant with the Train Service Requirement by exercise of the Timetable Development Rights that the Operator does have.

- (b) The Secretary of State shall have a discretion as to whether or not to issue a TDR Amendment in circumstances where the Operator:
- (i) has failed to exercise all reasonable endeavours to obtain the requisite Timetable Development Rights in accordance with paragraph 4.1; and
 - (ii) is not relieved by paragraph 4.5 above from liability for such failure to secure a Timetable that enables the Operator to operate railway passenger services that comply with the Train Service Requirement.
- (c) The Operator shall not be relieved from its obligations to obtain a Timetable that enables the Operator to operate the Train Service Requirement by the issue of any TDR Amendment where the Secretary of State considers that such failure to secure a Timetable that enables the Operator to operate the Train Service Requirement is partly due to the default of the Operator in not properly complying with its obligations under this Contract in relation to securing timetable development rights. Accordingly any TDR Amendment may be drafted so that it does not relieve the Operator of the obligation to comply with the Train Service Requirement to the extent that the Secretary of State determines that the failure is due to such default of the Operator and the Operator may therefore be in contravention of this Contract.
- 4.7 Following issue of any TDR Amendment pursuant to paragraph 4.6 the Operator shall, unless otherwise agreed by the Secretary of State, continue to use all reasonable endeavours to amend and/or enter into such Access Agreements as may be necessary or desirable from time to time to obtain the timetable development rights that it requires to secure a Timetable that enables it to operate railway passenger services that comply with the Train Service Requirement without such TDR Amendment.
- 4.8 Any TDR Amendment issued pursuant to paragraph 4.6 shall:
- (a) unless otherwise required by the Secretary of State, cease to have effect on the date (if any) on which the first Timetable comes into effect after the Operator has obtained the Timetable Development Rights to secure a Timetable that enables it to operate railway passenger services that comply with the Train Service Requirement without any such TDR Amendment; and
 - (b) amount to a Financial Target Amendment Event (as applicable), a Cost Budget Change Event and an Operational Performance Target Amendment Event but if such TDR Amendment has been issued in consequence of the Infrastructure Manager exercising the rights referred to in paragraphs 4.5(b) or 4.5(c) there shall be no Trigger Event.
- 4.9 With effect from the date on which any TDR Amendment ceases to have effect in accordance with paragraph 4.8:
- (a) the Train Service Requirement without such TDR Amendment shall thereafter apply; and
 - (b) where a TDR Amendment resulted in a Trigger Event pursuant to paragraph 4.8 (b), the cessation of such TDR Amendment shall be further Financial Target Amendment Event (as applicable), a Cost Budget Change Event and an Operational Performance Target Amendment Event.
5. **Certification and Notification by Operator of Exercising Timetable Development Rights**
- 5.1 Before exercising any Timetable Development Right to bid for Train Slots, the Operator shall provide a certificate addressed to the Secretary of State and signed by a statutory director of

the Operator confirming that its proposed exercise of that Timetable Development Right will be compliant with its obligation specified in paragraph 4.2.

- 5.2 The Operator shall also provide a statement of the agreed approach with, and response from, the “*Industry Timetable Change Assurance Programme Management Office*” (or any similar independently minded timetable improvement and assurance cooperative function, as may be identified by the Secretary of State).
- 5.3 If requested by the Secretary of State, the Operator agrees to demonstrate to the satisfaction of the Secretary of State that the Operator’s certificate referred to in paragraph 5.1 is a true and accurate confirmation of compliance with its obligation specified in paragraph 4.2.
- 5.4 The Operator shall:
- (a) keep the Secretary of State fully informed of any discussions with the Infrastructure Manager in relation to the matters referred to in this Chapter 4.1 which may, in the reasonable opinion of the Operator, have a material impact on the ability of the Operator to deliver the Train Service Requirement or meet the requirements of paragraph 6 of this Chapter 4.1 through the Timetable and shall, if required to do so by the Secretary of State, supply copies of any related correspondence to the Secretary of State; and
 - (b) update any notification under this paragraph 5.4 and/or certification under paragraph 5.1 as soon as practicable, if at any time it elects or is required to modify any aspect of its exercise of its Timetable Development Rights following the Infrastructure Manager’s proposed or actual rejection or modification of its bid or any part of it or for any other reason.

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

6.1 **Capacity and Timetable Planning**

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

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

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

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

6.3 **Preparation of Timetable and Train Formation Capacity Plan**

- (a) Subject to paragraph 6.3(b), the Operator shall in preparing its Timetable and its Train Formation Capacity Plan take full and proper account of its calculation of Forecast Passenger Demand and use all reasonable endeavours to ensure that the Train Fleet is deployed in an optimal manner for the purposes of complying with its obligations under paragraphs 6.1 and 6.2 above.
- (b) The Operator shall in preparing its Timetable and Train Formation Capacity Plan deploy the entire Train Fleet (excluding reasonable planning requirements for the allocation of Hot Standbys or other rolling stock vehicles to be out of service due to maintenance requirements, Mandatory Modifications or any other reason agreed with the Secretary of State (such agreement not to be unreasonably withheld or delayed)) in delivering the Passenger Services at all such times where such deployment of the entire Train Fleet is reasonably required to meet the Operator's obligations pursuant to paragraphs 6.1 and 6.2 above.

6.4 **Finalising the Train Formation Capacity Plan**

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

7. **Restrictions Relating to Rail Services**

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

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

- 8.1 In delivering improvements to Passenger Services (which may include service decrements), the Operator shall co-operate with the Infrastructure Manager, the Secretary of State and where appropriate, other operators to identify options (the "**Passenger Services Enhancement Options**").
- 8.2 The Passenger Services Enhancement Options shall:
 - (a) respond to changes in travel patterns and increases and decreases in demand;
 - (b) improve network performance;
 - (c) propose/take advantage of changes to the existing infrastructure;
 - (d) propose/take advantage of changes in rolling stock capability or reliability as a result of changes in the Train Fleet;
 - (e) improve overall industry cost efficiency and/or reduce in costs in relation to any or all parts of the railway network;
 - (f) promote decarbonisation and other environmental improvements (in addition to the Secretary of State's goals and ambitions on decarbonisation for rolling stock as set out in the rolling stock part of the Business Plan);

- (g) propose the reopening of disused, freight-only or new railway routes to passenger services; or
- (h) support any government policy objective,
- including for this purpose any such options which arise after the expiry of the Contract Term.
- 8.3 Processes contained in this paragraph 8 shall take place in accordance with procedural arrangements and timescales stipulated by the Secretary of State pursuant to paragraph 9.2 of this Chapter 4.1.
- 8.4 The Secretary of State may, in accordance with any stipulation made under paragraph 9.2, issue to the Operator any amended or new Train Service Requirement that the Secretary of State requires the Operator to operate and notice of the amendments (if any) to the Enforcement Benchmarks. Such amended or new Train Service Requirement will be issued prior to the commencement of the timetable development process of the Infrastructure Manager for the Timetable in respect of which it is proposed to implement the change to Passenger Services arising from the amended or new Train Service Requirement.
- 8.5 Where the Operator is required by the Secretary of State to produce a report pursuant to paragraph 8.6, the Operator shall undertake a feasibility study for the purposes of identifying options for delivering enhanced Passenger Services on Routes where such improvements can be delivered, including by:
- (a) implementing changes to the existing infrastructure;
- (b) improving rolling stock capability or reliability including through the modification of rolling stock or employing efficient maintenance arrangements; and/or
- (c) implementing changes in service patterns.
- 8.6 At the request of the Secretary of State, the Operator shall submit to the Secretary of State within the timescales specified in any such request (or such other timescales as may be agreed by the Secretary of State and the Operator) a report which sets out the outcomes of the feasibility study undertaken pursuant to paragraph 8.5.
- 9. Procedural Arrangements and Timescales**
- 9.1 The Operator agrees that the effective operation of the provisions of this Chapter 4.1 (and of provisions addressing the same or similar matters in other franchise agreements) will require certain procedural arrangements and timescales to be followed to a common timescale by the Secretary of State, the Operator, the Infrastructure Manager and others.
- 9.2 The Operator agrees that the Secretary of State may stipulate any reasonable procedural arrangements and timescales that are to be followed by the Secretary of State and the Operator for these purposes (which shall be consistent with any relevant standard railway industry processes for the development of the Timetable and the resultant Train Formation Capacity Plan) and that the Secretary of State may amend any such stipulation from time to time.
- 9.3 The Secretary of State agrees to consult the Operator as far as practicable prior to stipulating or amending any such procedural arrangements and timescales in accordance with paragraph 9.2.
- 9.4 Any stipulation by the Secretary of State pursuant to paragraph 9.2:
- (a) shall be at the reasonable discretion of the Secretary of State;
- (b) may contain procedural arrangements and timescales to be followed by the Operator in relation to other changes to the Rail Services (pursuant to Chapter 7.5 (*Variations, Changes and Amendments*)) in conjunction with the Train Service Requirement; and
- (c) may provide for iterations of drafts of any amended or new Train Service Requirement, Train Formation Capacity Plan or Timetable.
- 9.5 Any procedural arrangements and timescales stipulated by the Secretary of State pursuant to paragraph 9.2 shall have contractual effect between the Operator and the Secretary of State in accordance with the terms of such stipulation.

10. Obligations in relation to other Train Operators

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

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

11. Provisions relating to Access Agreements and Property Leases

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

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

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

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

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

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

11.4 If and to the extent that:

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

no such contravention of the National Rail Contract or Event of Default shall have occurred.

12. **The Timetable and the Infrastructure Manager’s Working Timetable**

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

12.2 The Operator shall ensure, for each period between two (2) consecutive Passenger Change Dates during the Contract Term that the Timetable for such period is, in its reasonable opinion, not materially different from the relevant working timetable issued by the Infrastructure Manager.

13. **Subcontracting any Passenger Services**

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

13.2 The Operator may subcontract or delegate the provision of the Passenger Services, provided that:

- (a) the Secretary of State receives prior written notice of any such subcontracting or delegation;
- (b) the Operator continues to be party to all Access Agreements and Property Leases necessary to provide such Passenger Services and to enjoy all relevant access and operational rights thereunder;
- (c) the Operator continues to specify and control the terms and conditions (subject to the requirements of the Inter-Operator Schemes) on which such Passenger Services are to be provided, including the determination of the Price or Child Price (as the case may be) of any Fares;
- (d) the Planned Train Mileage of the Passenger Services so delegated or subcontracted does not exceed five per cent (5%) of the Planned Train Mileage of the Operator in any Reporting Period; and
- (e) the Operator continues to perform its obligations under this Chapter 4.1 in respect of any subcontracted or delegated services.

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

14. **Boxing Day Services**

14.1 At least six (6) months prior to the Passenger Change Date occurring in December 2024 the Operator shall:

- (a) consult with passengers, user groups, Network Rail, other train operators licensed under the Act and who operate along the affected Routes and other relevant Stakeholders on the potential demand for passenger services on 26 December in each Contract Year (“**Boxing Day Services**”); and
- (b) prepare and submit a report to the Secretary of State which sets out its proposals for operating Boxing Day Services which are additional to those Passenger Services to be operated by the Operator on 26 December in each Contract Year pursuant to the relevant Train Service Requirement (the “**Additional Boxing Day Services**”). Such report shall include:
 - (i) the Operator’s view on whether or not the operation of the Additional Boxing Day Services will be commercially viable;
 - (ii) the anticipated impact on Actual Costs and/or Actual Revenue (if any) if the Secretary of State (at the Secretary of State’s discretion) elects to vary the Train Service Requirement in accordance with paragraph 8.4 of this Chapter 4.1 to require the provision of the Additional Boxing Day Services.

- 14.2 Following the submission of the report required pursuant to paragraph 14.1(b) the Operator shall:
- (a) promptly respond to the Secretary of State's queries in relation to such report (including the provision of such assistance as the Secretary of State may require in connection with the verification of any information contained in such report); and
 - (b) upon reasonable notice, attend any such meeting as the Secretary of State may require for the purposes of discussing the contents of such report.
- 14.3 The Operator shall have due regard to the outcomes and findings of the consultation referred to in paragraph 14.1(b) in proposing on which Routes the Additional Boxing Day Services should operate if the Secretary of State (at the Secretary of State's discretion) elects to vary the Train Service Requirement to require the provision of the Additional Boxing Day Services.
15. **Passenger Numbers Information**
- 15.1 The Operator shall provide information to the Secretary of State on the extent of the use by passengers of the Passenger Services twice yearly or as otherwise requested by the Secretary of State. In particular and when so requested, the Operator shall provide information relating to:
- (a) the number of passengers travelling in each class of accommodation:
 - (i) on each Passenger Service;
 - (ii) on each Route; and/or
 - (iii) at any station or between any stations;
 - (b) the times of the day, week or year at which passengers travel; and
 - (c) the Actual Consist Data and the Scheduled Consist Data,
(the information referred to in the whole of paragraph 15.1 being referred to together as "**Actual Passenger Demand**").
- 15.2 The Operator shall obtain and collate the information specified in paragraph 15.1 by using the technology specified in paragraph 17. The Operator shall ensure that any technology for determining the number of passengers travelling in each class of accommodation that is fitted on the Train Fleet (other than the Class 221 Voyagers) remains operational and in good working order from the date that it is fitted throughout the Contract Period. The Operator shall also ensure that, if such technology is not fitted to one hundred per cent (100%) of the Train Fleet (other than the Class 221 Voyagers), the individual rolling stock vehicles that have been fitted with such technology shall be rotated around the Routes as necessary to satisfy such request for data as is made by the Secretary of State pursuant to paragraph 15.1. The Secretary of State shall have the right to obtain such other information that the Operator has, ought properly to have or could reasonably obtain which may provide a more detailed or accurate view of the extent of use by passengers of the Passenger Services including information about ingress and egress of passengers at ticket gates at Stations.
- 15.3 The Operator shall provide to the Secretary of State all of the information generated by the technology specified in paragraph 17 and/or by using manual counts pursuant to paragraph 16 including the information specified in paragraph 15.1:
- (a) promptly following its collation and in any case within the following timescales:
 - (i) in the case of data collected automatically by the Count Equipment and capable of being transmitted directly and automatically to the RPC Database, within forty-eight (48) hours of its collation;
 - (ii) in the case of data collected automatically by the Count Equipment but not capable of direct and automatic transmission to the RPC Database, within one (1) calendar month of its collation; and
 - (iii) in the case of data collected by manual count, within one (1) calendar month of its collation;

- (b) using such systems, in such a format and to such level of disaggregation as the Secretary of State may require, and in a format which is capable of being read by the RPC Database (which shall include providing data which is not encrypted);
 - (c) either by transmitting such data directly to the RPC Database or by ensuring that the database provider can pull and transmit such data to the RPC Database, as appropriate according to the nature of the Operator's Count Equipment from time to time or by providing such data to the Secretary of State by such other means as the Secretary of State notifies to the Operator from time to time; and
 - (d) to the extent required by the Secretary of State, by providing the Secretary of State with direct remote access to the system used by the Operator to collect such information such that the Secretary of State is able to download such information, and such information may be used by the Secretary of State for such purposes as the Secretary of State may require including for the purposes of assisting the Secretary of State's decision making on train service requirements, infrastructure, station and rolling stock investment, the best use of the network and the alleviation of overcrowding.
- 15.4 The Operator shall use any flagging system contained within the RPC Database to highlight such events and occurrences as the Secretary of State may specify in writing from time to time.
- 16. Manual Passenger Counts**
- 16.1 The Secretary of State shall have the right to require the Operator to carry out manual counts in relation to some or all of the Passenger Services at such times as may be required and in such manner (including as to levels of accuracy and the number of days) as may be specified from time to time by the Secretary of State including if, exceptionally, the Operator is unable to comply with its obligations to provide data generated by the technology specified in paragraph 17.
- 16.2 The Secretary of State shall be entitled to audit such counts (whether by specimen checks at the time of such counts, verification of proper compliance with the manner approved by the Secretary of State or otherwise). In the event that such audit reveals, in the opinion of the Secretary of State, a material error, or a reasonable likelihood of material error, in such counts, the Secretary of State may require the counts to be repeated or the results adjusted as the Secretary of State considers appropriate, and in these circumstances the Operator shall pay to the Secretary of State the costs of any such audits (and such payment shall be a Disallowable Cost).
- 17. Technology for Obtaining the Information referred to in paragraph 15.2**
- 17.1 The technology to be used for the purpose of paragraph 15.2 shall be:
- (a) for all rolling stock included in the Train Fleet (other than the Class 221 Voyagers) as at the Start Date, loadweigh; and
 - (b) for new rolling stock which is admitted to the Train Fleet, doorway infrared sensing or spectroscopic CCTV or such other technology as agreed by the Secretary of State for such rolling stock.
- 17.2 The technology to be used for the purposes of paragraph 15.2 shall be fitted to:
- (a) in the case of any brand new rolling stock which is admitted to the Train Fleet (including the High Speed Rolling Stock), one hundred per cent (100%) of it from the date that such rolling stock is properly admitted;
 - (b) in the case of all other rolling stock included in the Train Fleet (other than the Class 221 Voyagers), by the Start Date.
- 17.3 Without limiting the Secretary of State's rights under paragraph 15.1 of this Chapter 4.1, the technology specified in paragraph 17.1 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 Operator may only use a method of extrapolation and use extrapolated data to

provide a reliable estimate of a full train's count with the Secretary of State's prior Approval of the use of extrapolated data and the method of extrapolation. The Operator shall comply with its obligation under this paragraph 17 from the date(s) such rolling stock is incorporated into the Train Fleet.

- 17.4 The Parties acknowledge that the information supplied under paragraph 15.1 above, and any product of it created by the RPC Database, may constitute Confidential Information to which Chapter 9.6 (*Confidentiality and Data Protection*) applies.

Chapter 4.2

Operating Obligations

1. Daily Operating Obligations

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

2. Timetabling and Train Planning Compliance Investigation and Contravention

2.1 The Secretary of State shall have the right, by serving notice on the Operator, to instigate an investigation of the Operator's compliance with its obligations of Chapter 4.1 (*Service Development*) regarding creation of the Timetable and Train Formation Capacity Plan, and paragraph 1 of this Chapter 4.2 (*Timetabling and Train Planning Compliance Investigation*).

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

- (a) the steps taken by the Operator regarding Access Agreements, and exercise of its rights under the Track Access Agreements;
- (b) the extent to which the Operator has operated on each day of the relevant Reporting Period each of its Passenger Services as are set out in the Plan of the Day for that day and with at least the Passenger Carrying Capacity specified in the Train Formation Capacity Plan for that Passenger Service;
- (c) the means of Forecast Passenger Demand calculation and assessment;
- (d) any assumptions about the timetables likely to be operated by other Train Operators made by the Operator; and
- (e) the alternative solutions considered by the Operator before finalising the Timetable and Train Formation Capacity Plan and the reasons why any such alternative solutions were not adopted.

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

2.4 The Secretary of State shall notify the Operator if the Secretary of State concludes the Operator is in contravention of the National Rail Contract and the Secretary of State may at the Secretary of State's discretion, and entirely without prejudice to the Secretary of State's other rights consequent upon the relevant contravention, serve a Remedial Plan Notice pursuant to paragraph 2 of Chapter 9.4.3 (*Procedure for remedying a Contravention of the National Rail Contract*).

3. Timetable changes proposed by the Infrastructure Manager

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

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

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

- 3.2 To the extent that any such decision or proposal may, in the reasonable opinion of the Operator, materially (having regard to both duration and scale) prejudice the Operator's ability to deliver the Timetable with the Passenger Carrying Capacity stipulated in the Train Formation Capacity Plan the Operator shall (unless the Secretary of State specifically agrees otherwise), and in such a manner as can be reasonably considered appropriate in the circumstances, exercise its rights under the Track Access Agreement (including the Network Code) on a basis that seeks to limit the impact on the Operator whilst accommodating as far as possible the requirements of the Infrastructure Manager.
- 3.3 The Operator agrees to supply to the Secretary of State from time to time, in the format required by the Secretary of State, such details of any actual or proposed omission or rescheduling of Passenger Services by the Infrastructure Manager as the Secretary of State may require, including details of the steps which the Operator reasonably considered appropriate in the circumstances, to exercise its rights under the Track Access Agreement (including the Network Code) to reach agreement of the changes on a basis that seeks to limit the impact on the Operator whilst accommodating as far as possible the requirements of the Infrastructure Manager.
- 3.4 The Operator shall explain in such submission the way in which, in its reasonable opinion, such omission or rescheduling may materially (having regard to both duration and scale) prejudice the Operator's ability to deliver the Timetable with the Passenger Carrying Capacity stipulated in the Train Formation Capacity Plan.
- 3.5 The provisions of this paragraph 3 shall apply to any actual or proposed omission or rescheduling of Passenger Services that originates from any person other than the Infrastructure Manager or the Secretary of State, as those provisions apply to the Infrastructure Manager.

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

- 4.1 The Operator agrees, (with the exception of paragraph 4.3 of this Chapter 4.2), not to implement any:
- (a) addition to the Plan of the Day of any railway passenger services which are not included in the Timetable;
 - (b) omission from the Plan of the Day of any Passenger Services included in the Timetable; or
 - (c) rescheduling in the Plan of the Day of any Passenger Services from their scheduling in the Timetable,

without the Secretary of State's prior consent, and wherever possible, the prior agreement of the relevant Infrastructure Manager.

- 4.2 The Operator shall (with the exception of paragraph 4.3 of this Chapter 4.2) submit to the Secretary of State an amended Train Formation Capacity Plan in respect of each Timetable change proposal.
- 4.3 Notwithstanding the provisions of paragraph 7 (*Restrictions Relating to Rail Services*) of Chapter 4.1 (*Service Development*), the Operator shall use all reasonable endeavours to operate adequate railway passenger services to or from any special events which are not already provided for in the Plan of the Day to meet the passenger demand that is reasonably likely to arise from such special events and to ensure that the railway passenger services provided have an appropriate amount of passenger carrying capacity. The Operator shall in meeting its obligations pursuant to this paragraph 4.3:
- (a) if so requested by the Secretary of State, each quarter, submit to the Secretary of State their list of identified special events to which the Operator shall consider application of this paragraph 4.3 (the list is not exhaustive and does not obligate the Operator to amend the Plan of the Day);

- (b) consider amending the Plan of the Day through the omission, addition or rescheduling of Passenger Services;
 - (c) NOT USED; and
 - (d) seek to optimise the effective delivery of the Passenger Services as a whole with the provision of appropriate capacity in the context of the additional demand consequent upon a relevant special event.
5. **Timetable changes and Train Formation Capacity Plan changes requested by the Secretary of State**
- 5.1 The Operator agrees, as and when requested by the Secretary of State, to use all reasonable endeavours to seek and to obtain:
- (a) the addition to the Plan of the Day of any railway passenger services that are not included in the Timetable;
 - (b) the omission from the Plan of the Day of any Passenger Services that are included in the Timetable; and/or
 - (c) the rescheduling in the Plan of the Day of any Passenger Services from their scheduling in the Timetable.
- 5.2 The Secretary of State may request that the Operator shall submit to the Secretary of State an amendment to the Train Formation Capacity Plan at any time.
6. **Obligations of the Operator in the event of disruption to railway passenger services**
- 6.1 In the event of any planned or unplanned disruption to railway passenger services operated on the Routes, or on other parts of the network which are local to the Routes, the Operator shall:
- (a) without prejudice to any other provision of this Chapter 4.2, notify the Secretary of State promptly where such disruption would materially (having regard to both duration and scale) prejudice the Operator's ability to deliver the Timetable or deliver the Timetable in accordance with the Train Formation Capacity Plan;
 - (b) co-operate with the Infrastructure Manager and other Train Operators to act in the overall interests of passengers using such railway passenger services, including using all reasonable endeavours to ensure that such disruption is not concentrated on a particular part of the network, except where such concentration either:
 - (i) would be in the overall interests of passengers using such Passenger Services or railway passenger services and would not result in disproportionate inconvenience to any group of passengers; or
 - (ii) is reasonably necessary as a result of the cause or the location of the disruption; and
 - (c) use all reasonable endeavours to provide or secure the provision of alternative transport arrangements in accordance with paragraph 6.2.
- 6.2 The Operator shall use all reasonable endeavours to provide or secure the provision of alternative transport arrangements to enable passengers affected by any disruption referred to in paragraph 6.1 to complete their intended journeys in accordance with this paragraph 6.2. In particular, the Operator shall use all reasonable endeavours to:
- (a) ensure that such alternative transport arrangements are of reasonable quality, of a reasonably similar frequency to the Passenger Services included in the Timetable which such arrangements replace and fit for the purpose of the journey to be undertaken;
 - (b) transport passengers to, or as near as practicable to, the end of their intended journey on such Passenger Services, having particular regard to the needs of any Disabled Persons and, where appropriate, making additional arrangements for such Disabled Persons to complete their intended journey;

- (c) provide adequate and prominent publicity of such alternative transport arrangements in advance, subject, in the case of unplanned disruption, to the Operator having sufficient notice of such disruption to enable it to provide such publicity;
- (d) provide sufficient alternative transport capacity for the reasonably foreseeable demand for the disrupted Passenger Services; and
- (e) ensure, if any planned disruption overruns, that there is a reasonable contingency arrangement for such alternative transport arrangements to continue for the duration of such overrun.

7. **Obligation to use “all reasonable endeavours” under Chapter 4.2**

7.1 Any obligation in this Chapter 4.2 on the part of the Operator to use “**all reasonable endeavours**” shall (with the exception of paragraph 5 of this Chapter 4.2) include an obligation to:

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

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

- (a) variations in weather and operating conditions (including the Infrastructure Manager’s infrastructure not being available for any reason), which may in either case include seasonal variations;
- (b) default by, or restrictions imposed by, suppliers to the Operator;
- (c) shortages of appropriately skilled or qualified Business Employees;
- (d) disputes with Business Employees;
- (e) the availability of the Train Fleet, having regard to maintenance requirements and any Mandatory Modifications;
- (f) establishing reasonable Turnaround Time allowances for enabling or disabling (as appropriate) any part of a train, the rostering of any train crew and the servicing or cleaning of any rolling stock vehicles;
- (g) failures of rolling stock vehicles in service and contingency arrangements (including Hot Standbys and rescue traction); and
- (h) the impact, and emerging projections relating to the likely or potential impact, from time to time, of COVID-19 on the Operator’s ability to provide the Passenger Services and/or the level of passenger demand or reasonably expected passenger demand for the Passenger Services.

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

- (a) to the historical levels of incidence of disruption in the operation of:
 - (i) the Rail Services;
 - (ii) similar services both by the Operator and/or its predecessors; and
 - (iii) other services of a type similar to the Rail Services; and

- (b) to potential changes in circumstances which may affect those levels.
- 7.4 To the extent not already provided for in the National Rail Contract, the Operator shall use all reasonable endeavours to ensure the performance by the Infrastructure Manager of its obligations under any relevant agreement including, where appropriate or where requested by the Secretary of State, enforcing its rights against the Infrastructure Manager under any such agreement.
- 7.5 When and to the extent requested by the Secretary of State, the Operator shall provide to the Secretary of State evidence of the steps taken by the Operator in order to comply with its obligations under this paragraph 7.

8. Obligations relating to operating performance management

- 8.1 The Operator shall actively manage operating performance, in doing so shall consult, co-ordinate and co-operate with the Infrastructure Manager (or as may be required by the Secretary of State) from time to time in respect of devising a structured framework for continuous improvement in operating performance.
- 8.2 The steps to which paragraph 8.1 refers include:
- (a) co-operating with the relevant Infrastructure Manager in the development, agreement and implementation of:
- (i) a five (5) year (rolling) Performance Strategy Plan;
 - (ii) effective recovery plans in response to failures to achieve the performance levels specified in any Performance Strategy Plan;
 - (iii) analysis of “Reactionary Delay” (as defined by the Delay Attribution Principles and Rules) and below/sub threshold delay, to develop and deliver performance improvement plans to address areas of underperformance, focusing on improving Timetable robustness and contingency planning; and
 - (iv) review and identification of opportunities to improve the delay attribution process set out in the Delay Attribution Principles and Rules;
- (b) co-operating with the relevant Infrastructure Manager in adopting the principles set out in any industry good practice regarding:
- (i) Service Recovery Plans agreed between the Infrastructure Manager and the Operator from time to time, including appropriate diversionary route availability;
 - (ii) jointly developed train regulation policies; and
 - (iii) approaches to improving performance systems, including, if requested by the Secretary of State, the deployment of the RM3P and the Performance Improvement Management System;
- (c) undertaking recording, monitoring and regular reviews of:
- (i) the most common and most detrimental causes of delay to the Passenger Services; and
 - (ii) the causes of the ten (10) delays to the Passenger Services with the longest duration (to the extent not already reviewed in accordance with paragraph 8.2(c)(i)),
which have occurred during a defined review period (e.g. weekly/four (4) weekly/quarterly) and which have been caused by the Operator, any other Train Operator, any other train operator licensed under the Act or the Infrastructure Manager;
- (d) undertaking with the relevant Infrastructure Manager a review of the time taken to recover the Passenger Services following the occurrence of any of the events specified in paragraphs 8.2(c)(i) and 8.2(c)(ii) and seeking to identify and implement actions that reduce the delay effect of such events;

- (e) setting up and holding regular and effective performance review meetings with the relevant Infrastructure Manager, evidenced by meeting minutes and the closure of actions agreed between the Parties;
 - (f) regularly monitoring (at least every Reporting Period) the delivery of local output commitments made by the relevant Infrastructure Manager in the Performance Strategy Plan and derived delivery plans and using all reasonable endeavours to specify and develop such delivery plans;
 - (g) co-operating with the relevant Infrastructure Manager in other delay management initiatives and ongoing quarterly reviews of the Performance Strategy Plan;
 - (h) regularly reviewing (at least every Reporting Period) the imposition and clearance of temporary speed restrictions;
 - (i) regularly reviewing (at least every Reporting Period) the timely and efficient handover and hand-back of possessions; and
 - (j) where appropriate and where the relevant Infrastructure Manager fails to perform its obligations under the Track Access Agreement, enforcing the Operator's rights under the Track Access Agreement.
- 8.3 The Operator undertakes to reasonably co-operate with the Infrastructure Manager with regard to the Infrastructure Manager's management of the network, including in relation to:
- (a) Contingency Plans, as defined in Chapter 9.4.4;
 - (b) weather resilience and seasonal preparedness;
 - (c) prevention of trespass and vandalism;
 - (d) effects of climate change on the railway; and
 - (e) improvements in railway control structure and functions.
9. **Improving accuracy of future Timetables and operational planning**
- 9.1 The Operator shall consult, co-ordinate and co-operate with the Infrastructure Managers and any relevant Train Operators in respect of the planning, development and implementation of proposals to support the continuous improvement of train timetabling and train planning functions, including:
- (a) collaborative working between the Operator's and the Infrastructure Managers' or other Train Operators' train planning teams;
 - (b) establishment of up to date Timetable Planning Rules;
 - (c) robust and resilient traincrew flexibility, including for diversionary routes;
 - (d) disclosure to, and enabling assurance activity by the "*Industry Timetable Change Assurance Programme Management Office*", including participation in related steering groups, or any similar independently minded timetable improvement and assurance cooperative function, as may be identified by the Secretary of State.
- 9.2 The Operator shall, provide the Infrastructure Manager with such information as it may reasonably request in respect of paragraph 9.1, including:
- (a) relevant data required to support timetable simulation and performance modelling; and
 - (b) the Operator's assessment of operational resource required to operate the Passenger Services and ancillary train movements, as calculated in accordance with industry standards in each case.
10. **Royal Train**
- 10.1 The Operator shall, if and to the extent requested by any person (including DB Cargo UK Limited, its successors and assigns) and subject to the payment by such person of any reasonable costs of the Operator, co-operate in the provision by such person of railway

passenger services for His Majesty King Charles III or any successor head of state or members of the royal family or representatives of either of them.

- 10.2 The provision of railway services for His Majesty King Charles III or any successor head of state or members of the royal family or representatives of either of them may include:
- (a) running a “**sweeper**” train in front of the royal train;
 - (b) having spare locomotives or other rolling stock on standby as rescue traction; and/or
 - (c) carrying out security requirements or co-operating with other persons in ensuring that security requirements are carried out prior to calling at any station on the Routes.
11. **Ancillary Services**
- 11.1 Subject to obtaining the Secretary of State’s prior Approval, the Operator, to the extent required in order to best serve the needs of passengers on railway passenger services within Great Britain from time to time, shall use all reasonable endeavours to carry out the following Ancillary Services:
- (a) in any Reporting Period, the subleasing, hiring or licensing of the rolling stock vehicles used in the provision of the Passenger Services;
 - (b) the lending, seconding, hiring or contracting out during any Reporting Period to another person or persons (whether for a charge or not) of Business Employees;
 - (c) any heavy maintenance of rolling stock vehicles which does not fall within the Light Maintenance Services, carried out on behalf of any other person at the following Depot(s):
NONE
- 11.2 The Operator:
- (a) may; and
 - (b) to the extent required in order to best serve the needs of passengers on railway passenger services within Great Britain from time to time, shall use all reasonable endeavours to,

carry out the following Ancillary Services on an emergency basis; the subleasing, hiring, licensing, lending, selling of any rolling stock vehicles or other assets of the Operator or the lending, hiring or contracting out of any employees of the Operator or the provision of any other services to the Infrastructure Manager or any other Train Operator.
- 11.3 The Operator shall not during the Contract Term, without the consent of the Secretary of State:
- (a) provide or operate any railway passenger services other than the Passenger Services or Charter Services;
 - (b) operate any stations or light maintenance depots other than the Stations and Depots;
or
 - (c) hold shares, participations or any other interest in any other company or body corporate unless such company or body corporate is:
 - (i) Network Rail;
 - (ii) HS2 Limited; or
 - (iii) owned directly or indirectly by another participant in the railway industry and the holding is incidental to the Operator’s participation in an Inter-Operator Scheme or any other arrangement designed to ensure or facilitate co-operation between such participants or between any such participants and any other person.

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

12.1 Except to the extent that the Secretary of State agrees otherwise, the Operator shall not:

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

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

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

Chapter 4.3

The Rolling Stock

1. The Composition/Deployment of the Train Fleet

1.1 The Train Fleet consists of:

- (a) from the Start Date until the lease expiry dates referred to in Column 6 of Table 1 in Appendix 1 to this Chapter 4.3 the rolling stock vehicles set out in Table 1 in Appendix 1 to this Chapter 4.3 (“**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 Chapter 4.3; and
- (b) from the dates set out in Column 6 of Table 2 in Appendix 1 to this Chapter 4.3, until the lease expiry dates referred to in Column 7 of Table 2 in Appendix 1 to this Chapter 4.3 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 Chapter 4.3, with the Passenger Carrying Capacity per unit referred to in Column 3 and Column 4 of Table 2 in Appendix 1 to this Chapter 4.3.

1.2 The Passenger Carrying Capacity of any rolling stock vehicles shall be as set out in Tables 1 or 2 in Appendix 1 to this Chapter 4.3.

1.3 The Operator shall procure that the rolling stock vehicles described in the Tables 1 or 2 in Appendix 1 to this Chapter 4.3, with the capacity and other characteristics referred to there, are available for deployment in the provision of the Passenger Services to the extent required by the Timetable and Train Formation Capacity Plan during the periods referred to therein.

2. Changes to the Train Fleet

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

- (a) to the classes or types;
- (b) to the interior configurations; or
- (c) which may reduce the journey time capabilities, of any rolling stock vehicles specified in the Train Fleet.

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

2.3 If any change is made to the Train Fleet in accordance with this Chapter 4.3, the Secretary of State may, after consulting the Operator, determine the Passenger Carrying Capacity of any rolling stock vehicles or class of rolling stock vehicles comprising the Train Fleet following such change. The Secretary of State shall notify the Operator of the Secretary of State’s determination of any such Passenger Carrying Capacity.

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

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

3. Train Maintenance

- 3.1 The Operator shall procure that heavy maintenance of Train Fleet is undertaken in accordance with the standard expected of a competent, skilled and experienced train maintainer.
- 3.2 The Operator shall seek Approval from the Secretary of State for any changes to the heavy maintenance regime for the Train Fleet where such change will result in any increase or decrease in costs compared to the budgeted costs in the relevant Cost Category as stated in the relevant Cost Budget most recently Placed in Escrow including the reduction of any lease payments for the relevant rolling stock.

Appendix 1 to Chapter 4.3

The Composition of the Train Fleet

1. Original Rolling Stock

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

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 per unit (including Standard Premium Class)		Column 5 Owner/Lessor	Column 6 Lease expiry date(s) (See Explanatory Note A above)	
		Seated	Wheelchair spaces	Standing	Seats ⁴	Wheelchair Spaces		Scheduled Lease Expiry Date	Early Redelivery Date (if any)
390/1 ¹	35 x 11 car	449	2	268	145	1	Angel Trains	1 April 2031 ²	31 March 2026
390/1 rfb ³	35 x 11 car	513	2	309	99	1	Angel Trains	1 April 2031 ²	31 March 2026
390/0 ¹	21 x 9 car	375	2	236	99	1	Angel Trains	1 April 2031 ²	31 March 2026
390/0 rfb ³	21 x 9 car	375	2	247	99	1	Angel Trains	1 April 2031 ²	31 March 2026
221/1	18 x 5 car	232	1	171	26	1	Beacon Rail	30 June 2024 ⁴	1 August 2023

Notes to Table 1

- 1 Table row applies until completion of refurbishment work
- 2 The earliest date for termination for convenience is 31 March 2026, however the lease shall continue on a rolling basis thereafter until such time as it is terminated on 12 month’s notice. The lease can continue beyond 1 April 2031 but shall not extend beyond the date falling 39 Reporting Periods from 1 April 2031.
- 3 Table row applies from completion of refurbishment work
- 4 Standard Premium seats are counted as First Class seats for the purpose of this Contract

2. Specified Additional Rolling Stock

Table 2 (Specified Additional Rolling Stock)											
Column 1	Column 2	Column 3			Column 4		Column 5	Column 6	Column 7		Column 8
Class of vehicle /unit	Number of vehicles in fleet and unit configuration	Standard Class Passenger Carrying Capacity per unit			First Class per unit (including Standard Premium Class)		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
		Seated	Wheelchair spaces	Standing	Seats	Wheelchair spaces			Lease Expiry Date	Early Redelivery Date (if any)	
805/0	13 x 5- car	276	1	164	25	1	Rock Rail	Date of acceptance under the relevant manufacture and supply agreement	01/04/2034 ¹	01/04/2026	Cl221
807/0	10 x 7-car	404	1	216	49	1	Rock Rail	Date of acceptance under the relevant manufacture and supply agreement	01/04/2034 ¹	01/04/2026	Cl221

Notes to Table 2

1 The earliest date for termination for convenience is 1 April 2026, however the lease shall continue on a rolling basis thereafter until such time as it is terminated on not less than 12 months' notice. The lease shall not continue beyond 1 April 2034.

Chapter 4.4

Operational Performance

1. **Definitions, Track Access Agreement, Amendments to Operational Performance Targets and Notice of Performance Results**

1.1 The OP Targets in relation to TOC on Self Cancellations and Enforcement TOC on Self Cancellations Benchmarks are set out in the TOC on Self Cancellations Benchmark Table and the Enforcement TOC on Self Cancellations Benchmark Table.

1.2 The OP Targets in relation to TOC Minute Delay and Enforcement TOC Minute Delay Benchmarks are set out in TOC Minute Delay Benchmark Table and the Enforcement TOC Minute Delay Benchmark Table.

1.3 NOT USED.

1.4 The T-3 Measure is set out in T-3 Table.

1.5 The T-15 Measure is set out in the T-15 Table.

1.6 The All Cancellations Measure is set out in the All Cancellations Table.

1.7 **Track Access Agreement**

The Operator agrees with the Secretary of State to comply with the requirements of the Network Rail Track Access Agreement in respect of cancellations attribution (Cancellations, Partial Cancellations, Network Rail Cancellations and Network Rail Partial Cancellations) and Minutes Delay attribution.

1.8 **Amendments to Operational Performance Targets**

The Operator acknowledges that:

- (a) paragraph 2.15 (*Operational Performance Target Amendments*) of Chapter 7.5 (*Variations, Changes and Amendments*) sets out the circumstances and the process by which adjustments to the relevant Operational Performance Targets consequent upon the occurrence of an Operational Performance Target Amendment Event will be determined and effected;
- (b) pursuant to paragraph 2.5 (*Calculation of the Performance Based Fee*) of Chapter 7.2 (*Performance Based Fee and Shadow Operator Performance Based Fee*), the Secretary of State may propose changes to the relevant Operational Performance Targets annually in each Request for Business Plan in accordance with the process set out in paragraph 3 (*Annual Business Plan Process*) of Chapter 7.7 (*Business Plan*); and
- (c) paragraph 2.7 (*Changes to the Applicable Assessment Methodology*) of Chapter 7.2 (*Performance Based Fee and Shadow Operator Performance Based Fee*) sets out the circumstances in which the Secretary of State may, from time to time, consult with the Operator to determine the relevant Operational Performance Targets for the application of the Quantified Target Methodology to the Operational Performance Fee.

1.9 **Notice of Performance Results**

As soon as practicable after the end of each Reporting Period and each Contract Year, the Secretary of State shall notify the Operator of the results of the calculations performed pursuant to this Chapter 4.4.

2. **Reporting Requirements**

2.1 The Operator shall at the end of each Reporting Period and in accordance with the relevant requirements of paragraph 12 (*Operational Performance Information*) of this Chapter 4.4 (*Operational Performance*) report to the Secretary of State the operational information as specified in paragraph 12 (*Operational Performance Information*) of this Chapter 4.4 (*Operational Performance*) and required for the purposes of the Secretary of State undertaking any of the calculations required to be performed by the Secretary of State pursuant to this Chapter 4.4.

3. TOC on Self Cancellation Calculation

- 3.1 For each Reporting Period during the Contract Term the Secretary of State shall:
- (a) calculate the Operator’s performance in relation to TOC on Self Cancellations in accordance with the formula set out in Table 1 below (each an “**Initial TOC on Self Cancellations Calculation**”); and
 - (b) (other than for the first (1st) and second (2nd) Reporting Periods following the Start Date) re-calculate the Operator’s performance in relation to TOC on Self Cancellations for the two (2) Reporting Periods immediately preceding the relevant Reporting Period using the formula set out in Table 1 below (each a “**TOC on Self Cancellations Re-Calculation**”), except that
 - (c) if there are outstanding claims with regard to any Force Majeure Event relating to TOC on Self Cancellations for any Reporting Period then a further TOC on Self Cancellations Re-Calculation shall be undertaken for the relevant Reporting Period once the relevant claims have been resolved.
- 3.2 In the event that a TOC on Self Cancellations Re-Calculation demonstrates that the Initial TOC on Self Cancellations Calculation or an earlier TOC on Self Cancellations Re-Calculation was incorrect, the Initial TOC on Self Cancellations Calculation and/or the relevant earlier TOC on Self Cancellations Re-Calculation shall, for the relevant Reporting Period, be replaced with the latest TOC on Self Cancellations Re-Calculation.

Table 1		
A	=	$\frac{B}{C} \times 100$
where:		
B		is the total number of Cancellations or Partial Cancellations of Passenger Services scheduled to be operated in the Enforcement Plan of the Day for that Reporting Period, on the basis that: <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 the occurrence or continuing effect of a Force Majeure Event, shall, if the Operator has complied with paragraph 7 (<i>Service Recovery Plans and Force Majeure</i>) of this Chapter 4.4, be disregarded in determining such total number of Cancellations and Partial Cancellations;
C		is the total number of Passenger Services scheduled to be operated in the Enforcement Plan of the Day for that Reporting Period, disregarding, if the Operator has complied with paragraph 7 (<i>Service Recovery Plans and Force Majeure</i>) of this Chapter 4.4, any Cancellations or Partial Cancellations during that Reporting Period which were caused by the occurrence or continuing effect of a Force Majeure Event.

4. TOC Minutes Delay Calculations

- 4.1 For each Reporting Period during the Contract Term the Secretary of State shall:
- (a) calculate the Operator’s performance in relation to TOC Minutes Delay in accordance with the formula set out in Table 2 below (each an “**Initial TOC Minutes Delay Calculation**”); and
 - (b) (other than for the first (1st) and second (2nd) Reporting Periods following the Start Date) re-calculate the Operator’s performance in relation to TOC Minutes Delay for the two (2) Reporting Periods immediately preceding the relevant Reporting Period using

the formula set out in Table 2 below (each a “**TOC Minutes Delay Re-Calculation**”), except that:

- (c) if there are outstanding claims with regard to any Force Majeure Event relating to TOC Minutes Delay for any Reporting Period then a further TOC Minutes Delay Re-Calculation shall be undertaken for the relevant Reporting Period once relevant claims have been resolved.

4.2 In the event that a TOC Minutes Delay Re-Calculation demonstrates that the Initial TOC Minutes Delay Calculation or an earlier TOC Minutes Delay Re-Calculation was incorrect, the Initial TOC Minutes Delay Calculation and/or the relevant earlier TOC Minutes Delay Re-Calculation shall, for the relevant Reporting Period, be replaced with the latest TOC Minutes Delay Re-Calculation.

Table 2	
$\frac{MD_{SRP}}{H_{SRP}}$	
where:	
MD_{SRP}	is the sum of Minutes Delay that are attributable to the Operator in that Reporting Period.
H_{SRP}	is ascertained as follows:
	$\frac{V}{1000}$
	where:
V	is the sum of Actual Train Mileage in that Reporting Period.

5. **NOT USED**

6. **Calculations**

6.1 The Secretary of State shall perform the calculations referred to in paragraphs 3.1, and 4.1 rounded to two (2) decimal places with the midpoint (that is, 11.115) rounded upwards (that is, 11.12).

7. **Service Recovery Plans and Force Majeure**

7.1 Subject to paragraphs 8.1 and 8.2(b)(i) (*Obligations relating to operating performance management*) of Chapter 4.2 (*Operating Obligations*), the Operator shall create and implement such Service Recovery Plan(s) as may be agreed by Network Rail from time to time (as more particularly described in the “Approved Code of Practice 2013” or any document of a similar equivalent nature) during a Reporting Period.

7.2 The Parties acknowledge that the relevant Enforcement Benchmarks and the relevant OP Targets shall be deemed to be inclusive of the implementation of any Service Recovery Plans as may be agreed from time to time in accordance with paragraph 7.1 above.

7.3 In performing the calculations pursuant to paragraphs 3.1 (*TOC on Self Cancellations Calculations*) and 4.1 (*TOC Minutes Delay Calculations*) the Secretary of State shall disregard any TOC on Self Cancellations or Minutes Delay (as applicable) that have been agreed or finally determined to have been caused by the occurrence or continuing effect of a Force Majeure Event.

8. **Consequences for Poor Performance – Enforcement Benchmarks**

8.1 The Operator shall ensure that its performance in each Reporting Period as calculated by the Secretary of State in accordance with the requirements of this Chapter 4.4, **is not equal to or worse than** each Breach Performance Level in respect of the relevant Contract Year.

8.2 Without limiting the provisions of paragraph 8.4 below and Chapter 7.2 (*Performance Based Fee and Shadow Operator Performance Based Fee*), if in any Reporting Period the Operator’s performance, as calculated by the Secretary of State in accordance with the requirements of

this Chapter 4.4, is **equal to or worse than** any Breach Performance Level relating to an Enforcement Benchmark in respect of the relevant Contract Year, then a contravention of the National Rail Contract 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 Rail Contract*) of Chapter 9.4.3 (*Procedure for remedying a Contravention of the National Rail Contract*).

- 8.3 For the purposes of paragraph 4.2(c) (*Remedial Plans*) of Chapter 9.4.3 (*Procedure for remedying a Contravention of the National Rail Contract*) the steps to be proposed by the Operator pursuant to that paragraph are those which ensure that the Operator's performance against the relevant Enforcement Benchmark will be **better than** the Breach Performance Level relating to such Enforcement Benchmark.
- 8.4 Certain consequences of the Operator's performance being **equal to or worse than** the Breach Performance Levels and Default Performance Levels relating to each Enforcement Benchmark are set out in Chapter 9.4 (*Remedies and Dispute Resolution*).

9. **Consequences for Poor Performance.**

9.1 **Action Plans**

- (a) If in any three (3) consecutive Reporting Periods the:
- (i) Operator's performance against the OP Target for Cancellations is worse than Relevant OP Component Nil Fee Performance Level; and/or
 - (ii) Operator's performance against the OP Target for TOC Minutes Delay is worse than Relevant OP Component Nil Fee Performance Level; and/or
 - (iii) NOT USED;
 - (iv) Actual T-3 Performance Level is worse than the Relevant OP Component Nil Fee Performance Level; and/or
 - (v) Actual T-15 Performance Level is worse than the Relevant OP Component Nil Fee Performance Level; and/or
 - (vi) Actual All Cancellations Performance Level is worse than the Relevant OP Component Nil Fee Performance Level; and/or
 - (vii) Secretary of State considers the Operator's performance on a Route or group of Routes (as applicable) to be unacceptably poor notwithstanding the fact that the Operator's overall performance in respect of any applicable target or level measured pursuant to this Chapter 4.4 meets the relevant target or threshold, then the Secretary of State shall be entitled to request from the Operator a plan in order to secure:
 - (viii) in respect of paragraphs 9.1(a)(i) to (vi) above, a Required Performance Improvement; and
 - (ix) in respect of paragraph 9.1 (a)(vii) above, an improvement of the Operator's performance level on a Route or group of Routes (as applicable) to the satisfaction of the Secretary of State (a "**Route-Specific Required Performance Improvement**").
- (b) Within one (1) month of the Secretary of State's request pursuant to paragraph 9.1(a) above, the Operator shall:
- (i) produce and deliver to the Secretary of State its draft plan for securing a Required Performance Improvement and/or Route-Specific Required Performance Improvement (as applicable) (the "**Draft Action Plan**"); and
 - (ii) subject to paragraph 9.1(d)(iv) below:
 - A. obtain the Secretary of State's consent in relation to the Draft Action Plan in accordance with paragraph 9.1(d) below; and
 - B. commence the implementation of a resulting Action Plan.

- (c) The Draft Action Plan shall contain specific tangible action points and indicate in the case of each action point:
 - (i) how that action will contribute to achieving the Required Performance Improvement and/or Route-Specific Required Performance Improvement (as applicable);
 - (ii) where the action is to be implemented;
 - (iii) when the action is to be commenced and by when it is to be implemented provided always that where any action is expressed to be ongoing the Draft Action Plan shall include specific review dates;
 - (iv) how performance of the action is to be measured; and
 - (v) set out the additional expenditure associated with each action.
- (d) The Secretary of State shall be entitled to:
 - (i) request further information from the Operator with respect to its Draft Action Plan and the Operator shall submit such further information to the Secretary of State within the timescales as requested by the Secretary of State; and/or
 - (ii) propose amendments to the Draft Action Plan and the Parties shall agree and, in the absence of agreement, the Secretary of State shall determine the amendments to the Draft Action Plan, in which case paragraph 9.1(e) below shall apply; or
 - (iii) accept the Draft Action Plan, in which case paragraph 9.1(e) below shall apply; or
 - (iv) not accept the Draft Action Plan, in which case the Operator shall not be obliged to undertake any further action with respect to its Draft Action Plan.
- (e) The Draft Action Plan as agreed, determined or accepted by the Secretary of State (as the case may be) in accordance with paragraph 9.1(d) above, shall be referred to as the “**Action Plan**”. The Operator shall implement the Action Plan in accordance with its terms.
- (f) The Operator acknowledges and agrees that the consent or lack of consent of the Secretary of State in respect of each Draft Action Plan as contemplated in this paragraph 9.1 shall not relieve the Operator of its obligations under this Chapter 4.4 or any other provisions of the National Rail Contract.

9.2 Except where an Action Plan is required and implemented pursuant to paragraph 9.1(a)(vii), this paragraph 9 shall only apply if the Parties have agreed (or the Secretary of State has determined, if applicable) that the Quantified Target Methodology shall apply to the Operational Performance Fee pursuant to Chapter 7.2 (*Performance Based Fee and Shadow Operator Performance Based Fee*).

10. Allocation of Disputed Cancellations/Disputed Partial Cancellations

10.1 For the purpose of performing the calculations referred to in paragraph 3.1 of this Chapter 4.4 the Secretary of State shall, subject to paragraph 10.2, allocate any Disputed Cancellations and/or Disputed Partial Cancellations between the Operator and Network Rail at the end of a Reporting Period in the following ratio of:

Table 4	
F: G	
where:	
F	is the total number of Undisputed Cancellations and/or Undisputed Partial Cancellations from the twelve (12) preceding Reporting Periods including any Disputed Cancellations or Disputed Partial Cancellations which were resolved or determined (and attributed to the Operator) during such twelve (12) preceding Reporting Periods; and

G	is the total number of Undisputed Network Rail Cancellations and/or Undisputed Network Rail Partial Cancellations from the twelve (12) preceding Reporting Periods including any Disputed Cancellations or Disputed Partial Cancellations which were resolved or determined (and attributed to Network Rail) during such twelve (12) preceding Reporting Periods.
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10.2 For so long as fewer than thirteen (13) Reporting Periods have elapsed following the Start Date, the Secretary of State shall, for the purposes of allocating Disputed Cancellations and/or Disputed Partial Cancellations between the Operator and Network Rail in accordance with Table 4, assume performance at the Previous Performance Level in respect of the relevant Reporting Periods (up to a maximum of twelve (12) Reporting Periods) that precede the Start Date.

11. Allocation of Disputed Minutes Delay

11.1 Where the attribution of any Minutes Delay is in dispute between Network Rail and the Operator at the end of a Reporting Period the Secretary of State shall, subject to paragraph 11.2, for the purpose of performing the calculations referred to in paragraph 4.1 of this Chapter 4.4, allocate any disputed Minutes Delay between the Operator and Network Rail in the ratio of:

Table 5	
FF: GG	
where:	
FF	is the total number of undisputed Minutes Delay, in each case, from the twelve (12) preceding Reporting Periods that are attributable to the Operator including any disputed attributions which were resolved or determined (and attributed to the Operator) 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.

11.2 For so long as fewer than thirteen (13) Reporting Periods have elapsed following the Start Date, the Secretary of State shall, for the purposes of allocating disputed Minutes Delay between the Operator and Network Rail in accordance with Table 5, assume performance at the Previous Performance Level in respect of the relevant Reporting Periods (up to a maximum of twelve (12) Reporting Periods) that precede the Start Date.

12. Operational Performance Information

12.1 The Operator shall provide to the Secretary of State the information specified in paragraph 12 (*Operational Performance Information*) to this Chapter 4.4 at the times specified herein and any additional information at such frequencies and in such form as the Secretary of State may require from time to time (including in relation to any new measures of operational performance) for the purposes of the development, implementation and/or operation of any potential new incentive regime developed pursuant to paragraph 7 (*Incentive Regimes*) of Chapter 7.2 (*Performance Based Fee and Shadow Operator Performance Based Fee*).

Information about the operational performance of the Operator

12.2 The Operator shall at all times during the Contract Term maintain records in relation to its operational performance under the National Rail Contract, covering the areas and the information described in this paragraph 12. Such information shall include details as to whether or not any curtailment, diversion, delay or failure to attain any connection is

attributable, in the Operator’s opinion, to either a Force Majeure Event or the implementation of a Service Recovery Plan.

12.3 The Operator shall, subject to paragraph 12.4, provide to the Secretary of State the information set out in the following tables at the frequency specified in the Column of each such table headed “**When information to be provided**”.

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

- (a) such level of disaggregation (including by Route or Service Group) as is specified by the Secretary of State; and
- (b) any particular day, week or other longer period as is specified by the Secretary of State.

12.5 The following key shall apply to the table in this paragraph 12:

A =	Information to be provided on or before any Passenger Change Date;
B =	Information to be provided for every Reporting Period within ten (10) Weekdays of the last day of each Reporting Period; and
C =	Information to be provided annually within ten (10) Weekdays of the last day of each Contract Year.

12.6 For the purposes of this paragraph 12, the following words and expressions shall have the following meanings:

Direct Delay attributable to any other Train Operator	means the number of minutes of delay to the Passenger Services that are: (a) attributed as a “Direct Delay” in accordance with the Delay Attribution Principles and Rules; and (b) attributable to any other Train Operator;
Direct Delay attributable to Network Rail	means the number of minutes of delay to the Passenger Services that are: (a) attributed as a “Direct Delay” in accordance with the Delay Attribution Principles and Rules; and (b) attributable to Network Rail;
Direct Delay attributable to the Operator	means the number of minutes of delay to the Passenger Services that are: (a) attributed as a “Direct Delay” in accordance with the Delay Attribution Principles and Rules; and (b) attributable to the Operator;
Direct Delay on other operators attributable to the Operator	means the number of minutes of delay to passenger services operated by any other Train Operator or services operated by freight operators that are attributed: (a) as “Direct Delay” in accordance with the Delay Attribution Principles and Rules; and (b) to the Operator pursuant to the Network Rail Track Access Agreement;
Reactionary Delay attributable to any other Train Operator	means the number of minutes of delay to the Passenger Services that are: (a) attributed as a “Reactionary Delay” in accordance with the Delay Attribution Principles and Rules; and (b) attributable to any other Train Operator;

Reactionary Delay attributable to Network Rail	means the number of minutes of delay to the Passenger Services that are: (a) attributed as a “Reactionary Delay” in accordance with the Delay Attribution Principles and Rules; and (b) attributable to Network Rail;
Reactionary Delay attributable to the Operator	means the number of minutes of delay to the Passenger Services that are: (a) attributed as a “Reactionary Delay” in accordance with the Delay Attribution Principles and Rules; and (b) attributable to the Operator; and
Reactionary Delay on other operators attributable to the Operator	means the number of minutes of delay to passenger services operated by any other Train Operator or services operated by freight operators that are attributed: (a) as “Reactionary Delay” in accordance with the Delay Attribution Principles and Rules; and (b) to the Operator pursuant to the Network Rail Track Access Agreement.

12.7 This paragraph 12 shall be interpreted in accordance with any guidance issued by the Secretary of State from time to time for that purpose.

Table 6 - Operational Performance Information		
Information to be provided	Information (format)	When information to be provided
Number of Passenger Services		
Number of Passenger Services in the Timetable	[number]	B
Number of Passenger Services in the Enforcement Plan of the Day	[number]	B
Number of Cancellations and Partial Cancellations		
Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Cancellation	[number]	B
Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Partial Cancellation	[number]	B
Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Network Rail Cancellation	[number]	B
Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Network Rail Partial Cancellation	[number]	B
Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Disputed Cancellation	[number]	B
Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Disputed Partial Cancellation	[number]	B
Number of Disputed Cancellations and Disputed Partial Cancellations for the twelve (12) preceding Reporting Periods for which the attribution remains in dispute between Network Rail and the Operator	[number]	B
Number of Disputed Cancellations and Disputed Partial Cancellations from the twelve (12) preceding Reporting Periods for which disputed attribution has been resolved or determined since the Operator’s previous report including whether each relevant Disputed Cancellation and/or Disputed Partial Cancellation was attributed to Network Rail or to the Operator	[number]	B

Table 6 - Operational Performance Information		
Information to be provided	Information (format)	When information to be provided
Where there is a difference between the Timetable and the Plan of the Day on any day the following: (a) the fact of such difference; and (b) the number of: (i) Passenger Services affected; and (ii) Cancellations or Partial Cancellations which would have arisen if the Timetable on that day had been the same as the Plan of the Day	[number]	B
Where there is a difference between the Plan of the Day and the Enforcement Plan of the Day on any day: (a) the fact of such difference; (b) the number of: (i) Passenger Services affected; and (ii) Cancellations or Partial Cancellations which would have arisen if the Plan of the Day had been the same as the Enforcement Plan of the Day	[number]	B
Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a cancellation and which satisfied the conditions of the term Cancellation, except that such cancellations occurred for reasons attributable to the occurrence of a Force Majeure Event	[number]	B
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
Minutes Delay		
Number of Minutes Delay attributable to the Operator	[number]	B
Number of Minutes Delay attributable to Network Rail	[number]	B
Number of Minutes Delay attributable to any other Train Operator	[number]	B
Number of Minutes Delay for such Reporting Period for which the attribution is in dispute between Network Rail and the Operator	[number]	B
Number of Minutes Delay for the twelve (12) preceding Reporting Periods for which the attribution remains in dispute between Network Rail and the Operator	[number]	B
Number of Minutes Delay from the twelve (12) preceding Reporting Periods for which disputed attribution has been resolved or determined since the Operator's previous report and the number of such Minutes Delay attributed to each of the Operator and Network Rail as a result of such resolution or determination	[number]	B
Number of Minutes Delay attributed to the occurrence of a Force Majeure Event	[number]	B
T-3, T-15, All Cancellations 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
All Cancellations percentage published by Network Rail, rounded to two (2) decimal places	[number]	B

Table 6 - Operational Performance Information		
Information to be provided	Information (format)	When information to be provided
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
Direct Delay and Reactionary Delay		
Direct Delay attributable to the Operator	[number]	B
Reactionary Delay attributable to the Operator	[number]	B
Direct Delay attributable to Network Rail	[number]	B
Reactionary Delay attributable to Network Rail	[number]	B
Direct Delay attributable to any other Train Operator	[number]	B
Reactionary Delay attributable to any other Train Operator	[number]	B
Direct Delay on other operators attributable to the Operator	[number]	B
Reactionary Delay on other operators attributable to the Operator	[number]	B

Chapter 5 – The Customer



Chapter 5.1 - Customer Information



Chapter 5.2 - Customer Schemes



Chapter 5.3 - Accessibility and Inclusivity



Chapter 5.4 - Customer Benefits



Chapter 5.5 - Customer Experience Performance

CHAPTER 5
THE CUSTOMER

Chapter 5.1:	Customer Information
Chapter 5.2:	Customer Schemes
	Appendix 1: Community Rail Partnerships
Chapter 5.3:	Accessibility and Inclusivity
	Appendix 1: Accessible Transport Arrangements
Chapter 5.4:	Customer Benefits
	Appendix 1: List of Stations and Car Parks with Accreditation
Chapter 5.5:	Customer Experience Performance
	Part 1: Service Quality Regime
	Appendix 1 to Part 1: Service Quality Areas/Service Quality Indicators/Weightings
	Part 2: RCIS

Chapter 5.1

Customer Information

1. Customer Report

1.1 The Operator shall, in accordance with the requirements of paragraph 1.2 and paragraph 1.3 below, publish a Customer Report in such readily accessible formats as the Secretary of State may require (including in booklet or other similar hard copy formats, in electronic formats (such as on the Operator's website, through social media channels and by email)), in each case in accordance with the provisions of paragraph 3 (*Publication of Performance Data*) and paragraph 4 (*Publication of Complaints and Faults Handling Data*) of this Chapter 5.1 and paragraph 1 (*Environmental Information*) of Chapter 6 (*Environment and Sustainability*).

1.2 The Operator shall publish a Customer Report as follows:

- (a) in respect of the first (1st) Contract Year:
 - (i) where such Contract Year is less than seven (7) Reporting Periods, the Operator shall only be required to publish a Customer Report for that Contract Year by no later than the Start Date (or if later, the date falling six (6) months after the Operator last published an equivalent contract report under the Previous Agreement); or
 - (ii) where such Contract Year is equal to or less than thirteen (13) Reporting Periods but equal to or more than seven (7) Reporting Periods, the Operator shall be required to publish two (2) Customer Reports in that Contract Year, the first Customer Report to be published by no later than the Start Date (or if later, the date falling six (6) months after the Operator last published an equivalent contract report under the Previous Agreement) and the second Customer Report to be published before the end of that first Contract Year; and
- (b) in respect of each subsequent Contract Year, the Operator shall be required to publish a Customer Report at least twice in that Contract Year provided that where the final Contract Year is less than seven (7) Reporting Periods the Operator shall not be required to publish a Customer Report,

provided that in no circumstances shall the Operator be required to publish more than one Customer Report in any period of six (6) consecutive months.

1.3 Without prejudice to the obligations of the Operator as specified in each of paragraphs 2 (*Customer Service and Satisfaction Data*), paragraph 3 (*Publication of Performance Data*) and paragraph 4 (*Publication of Complaints and Faults Handling Data*) of this Chapter 5.1 and paragraph 1 (*Environmental Information*) of Chapter 6 (*Environment and Sustainability*), the Secretary of State and the Operator acknowledge and agree that in respect of each Contract Year to which the provisions of paragraph 1.2(b) apply, the first (1st) Customer Report to be published for that Contract Year shall be prepared in respect of the first six (6) Reporting Periods of that Contract Year and the second (2nd) Customer Report to be published for that Contract Year shall be prepared in respect of the last seven (7) Reporting Periods of that Contract Year.

1.4 The Operator shall ensure that a summary of the then current Customer Report is made available at all staffed Stations (in such format as the Secretary of State may require) and that such summary includes instructions to enable passengers to locate and obtain a full copy of the applicable Customer Report.

1.5 The Operator shall ensure that the Pass Rates published by it pursuant to paragraph 10.1 of Part 1 of Chapter 5.5 (*Customer Experience Performance*) are also recorded in the subsequent Customer Report which relates to the Reporting Periods during which the applicable Pass Rates were achieved, along with:

- (a)
 - (i) (in relation to the third (3rd) Customer Report) a comparison with the Pass Rates achieved in relation to the Reporting Periods that have elapsed since

- the last Reporting Period reported on in the relevant Previous Customer Report accompanied by a supporting narrative describing the outcomes and implications of the results of such comparison exercise onwards;
- (ii) (in the case of each subsequent Customer Report) a comparison with the Pass Rates achieved in relation to the Reporting Periods that have elapsed since the last Reporting Period reported on in the relevant Previous Customer Report for the same Reporting Periods in the previous Contract Year accompanied by a supporting narrative describing the outcomes and implications of the results of such comparison exercise onwards;
- (b) details of any remedial work either:
- (i) planned by the Operator to occur in the period in relation to which the next Customer Report will report to improve the Operator's performance in relation to achieving and exceeding the SQR Benchmarks in respect of any Service Quality Area where performance is below the applicable SQR Benchmark; or
 - (ii) undertaken by the Operator during the Reporting Periods that have elapsed since the previous Customer Report or, in the case of the first Customer Report, since the Start Date, for the purposes of improving the Operator's performance in relation to achieving and exceeding the SQR Benchmarks for any Service Quality Area where performance was below the applicable SQR Benchmark; and
- (c) details of any other initiatives planned to be implemented by the Operator to improve the Operator's performance against the SQR Benchmarks.

2. Customer Service and Satisfaction Data

2.1 As part of each Customer Report to be provided by the Operator pursuant to paragraph 1.1 of this Chapter 5.1, the Operator shall publish (in such format as the Secretary of State may require) details of the Operator's:

- (a) level of adherence to scheduled ticket office opening hours at Stations (so that the Customer Report shows, as a percentage, the proportion of scheduled ticket office opening hours not delivered aggregated across all ticket offices at all Stations); and
- (b) performance by reference to such benchmarks as may be agreed between the Operator and the ORR as part of the Operator's Accessible Travel Policy in respect of the Passenger Assist service operated by the Operator,

in each case in relation to the Reporting Periods that have elapsed since the last Reporting Period reported on in the Previous Customer Report or, in the case of the first (1st) Customer Report, since the last Reporting Period reported on in the last Customer Report provided by the Operator in accordance with the Previous Agreement (and as defined therein), along with a comparison with the relevant statistics or results (as applicable) provided for the same Reporting Periods in the previous Contract Year.

2.2 The Operator shall publish on its website (in such format as the Secretary of State may require):

- (a) within fourteen (14) days of the publication of each Rail Customer Insight Survey carried out by the Secretary of State or any RCIS Administrator during the Contract Term, or at such greater interval as the Secretary of State may specify by notice to the Operator from time to time, details of the scores of such Rail Customer Insight Survey (or the average scores of all such Rail Customer Insight Surveys achieved by the Operator during such interval, as applicable); and
- (b) within fourteen (14) days following the end of any Contract Year, details of the scores achieved by the Operator as against each RCIS Benchmark, as calculated in accordance with paragraph 20 (*Performance Review*) of Chapter 5.5 (*Customer Experience Performance*).

- 2.3 The Operator shall ensure that the scores achieved as against each RCIS Benchmark, (if applicable), published by it pursuant to paragraph 2.2 (if applicable), are also recorded in the subsequent Customer Report which relates to the Reporting Periods during which the applicable scores were achieved, along with:
- (a) if available, a comparison with the scores that were achieved as against each RCIS Benchmark for the same Reporting Periods in the previous Contract Year, accompanied by a supporting narrative describing the outcomes and implications of the results of any such comparison exercise;
 - (b) details of any remedial work either:
 - (i) planned by the Operator to occur in the period in relation to which the next Customer Report will report to improve the Operator's performance in relation to achieving and exceeding the RCIS Benchmarks (for instance, the planned application of additional expenditure); or
 - (ii) undertaken by the Operator during the Reporting Periods that have elapsed since the last Reporting Period reported on in the Previous Customer Report or, in the case of the first (1st) Customer Report, since the last Reporting Period reported on in the last Customer Report provided by the Operator in accordance with the Previous Agreement (and as defined therein), for the purposes of improving the Operator's performance in relation to achieving and exceeding the RCIS Benchmarks (for instance, the planned application of additional expenditure); and
 - (c) details of any other initiatives planned to be implemented by the Operator to improve passenger experience.

3. Publication of Performance Data

- 3.1 The Operator shall in accordance with paragraph 3.2 of this Chapter 5.1 (and in such format as the Secretary of State may require) publish on the Operator's website in relation to each Reporting Period during the Contract Term the performance of the Operator by reference to:
- (a) Cancellations Figures;
 - (b) NOT USED;
 - (c) Time to 3 Minutes Figures;
 - (d) Time to 15 Minutes Figures;
 - (e) All Cancellations Figures; and
 - (f) On Time Figures.

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

- 3.2 The Operator shall ensure that the data published by it pursuant to paragraph 3.1 shall in each case be shown:
- (a) in relation to all Passenger Services;
 - (b) disaggregated by reference to Service Groups;
 - (c) on a periodic and/or on an average basis (as applicable); and
 - (d) include details of:
 - (i) the number of Passenger Services operated by the Operator during each relevant Reporting Period which are late in arriving at their final scheduled destination in the Plan of the Day:
 - (A) by between 30 minutes and 59 minutes;
 - (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 Formation Capacity Plan during such Reporting Period and the percentage that this represents of all Passenger Services scheduled in the Train Formation Capacity Plan to be operated in that Reporting Period.

3.3 As part of each Customer Report to be provided by the Operator pursuant to paragraph 1 (*Customer Report*) of this Chapter 5.1, the Operator shall publish (in such format as the Secretary of State may require):

- (a) the mean average of each of the Cancellations Figures for the Reporting Periods that have elapsed since the last Reporting Period reported on in the previous Customer Report (or, in the case of the first (1st) Customer Report, since the last Reporting Period reported on in the last Customer Report provided by the Operator in accordance with the Previous Agreement (and as defined therein));
- (b) the latest Time to 3 Minutes Figures, Time to 15 Minutes Figures, All Cancellation Figures and On Time Figures for the last Reporting Period before publication of the relevant Customer Report;
- (c) a summary comparison of the statistics produced pursuant to paragraphs 3.3(a) and 3.3(b) as against the equivalent statistics provided for the same Reporting Period(s) in the previous Contract Year (or, in the case of the first (1st) Customer Report, those provided by the Operator in accordance with the Previous Agreement);
- (d) an update on the key activities undertaken by the Operator to improve its performance in relation to the measures referred to in paragraphs 3.3(a) and 3.3(b); and
- (e) a summary of the key activities planned to be undertaken by the Operator in the period in relation to which the next Customer Report will report to improve its performance in relation to the measures referred to in paragraphs 3.3(a) and 3.3(b).

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

4.1 As part of each Customer Report to be provided by the Operator pursuant to paragraph 1 (*Customer Report*) of this Chapter 5.1, the Operator shall publish (in such format as the Secretary of State may 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 last Reporting Period reported on in the last Customer Report provided by the Operator in accordance with the Previous Agreement (and as defined therein):

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

- (i) the mean average number of Notified Faults notified to the Operator;
- (ii) the mean average time taken by the Operator to resolve Notified Faults; and
- (iii) the mean average time taken by the Operator, where Notified Faults have not been resolved within twenty (20) Weekdays to provide feedback to applicable passengers and/or station users on its progress in seeking resolution of such Notified Faults,

in each case in comparison with the relevant equivalent mean average statistics provided for the same Reporting Periods in the previous Contract Year (or, in the case of the first (1st) Customer Report, those provided by the Operator in accordance with the Previous Agreement).

5. **Passenger's Charter**

5.1 **Content**

The Operator shall:

- (a) publish its Passenger's Charter:
 - (i) in substantially the same form as the document in the agreed terms marked **PC**; and
 - (ii) in accordance with the requirements specified in paragraph 5.3;
- (b) review the need for changes to the Passenger's Charter at least every three (3) years, in consultation with the Passengers' Council, and shall submit a draft of any revisions to the Passenger's Charter that it wishes to propose, together with proof of such consultation, to the Secretary of State; and
- (c) state the date of publication clearly on the front cover of the Passenger's Charter.

5.2 The Operator may not change the Passenger's Charter without the Secretary of State's prior written consent.

5.3 **Publishing the Passenger's Charter**

The Operator shall publicise its Passenger's Charter by:

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

save in respect of the Passenger's Charter which is effective on the Start Date, in which case the Operator shall publicise such Passenger's Charter in the manner contemplated by this paragraph 5.3 on and from the Start Date.

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

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

The Operator 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 Operator is legally obliged to do so);
- (b) use all reasonable endeavours to make passengers aware of their right to claim compensation pursuant to the Passenger's Charter including by:
 - (i) displaying the relevant information on trains and at Stations;
 - (ii) making appropriate announcements to passengers on trains and at Stations when the circumstances giving rise to that right occur;

- (iii) making compensation claim forms readily available to passengers at Stations and on the Operator's website; and
- (iv) any other reasonable means to reflect future advancements in technology proposed in writing either by the Operator or the Secretary of State and agreed by both Parties ; 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.

6. **Compensation**

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

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

7. **Publishing the Timetable**

7.1 The Operator shall, unless otherwise instructed by the Secretary of State, publish the Timetable, and revisions and alterations on the Timetable via the following media:

- (a) 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;
- (b) at each Station by displaying the relevant information via digital displays or on static information displays where digital displays are not available or functioning;
- (c) at each Operator Access Station, by providing to the operator of each such station the departure and arrival times of the Passenger Services that call at each such station and the principal Connections to any other transport services relevant to each such station in the same forms as are specified in paragraphs (a) and (b); and
- (d) on the Operator's website, and

such publication shall be from the Start Date, and in the case of revisions and alterations at least four (4) weeks before the changes come into effect.

7.2 **Late and Emergency Timetable Changes**

The Operator shall inform passengers, so far as possible on not less than seven (7) days' prior notice or as soon as practicable in relation to emergency changes, if it will be unable to operate in accordance with the Timetable. Such information shall include any revised Timetable or travelling arrangements.

7.3 Such information shall be provided (in each case as soon as practicable) by:

- (a) at each Station, displaying the relevant information via digital displays or on static information displays where digital displays are not available or functioning;
- (b) notifying the operators of the Operator Access Stations, as appropriate; and
- (c) updating the Operator's website.

7.4 Where any amendments to the Timetable are made pursuant to paragraphs 3, 4, 5 or 6 of Chapter 4.2 (*Operating Obligations*) the Operator shall inform passengers as soon as practicable in accordance with paragraph 7.3 and;

- (a) via the Operator's social media accounts (through which the Operator shall in any event publish any such amendments to the Timetable no later than two (2) hours following agreement of such amendments); and
- (b) via any other direct means of communication with passengers available to the Operator, including email and/or text messaging services.

7.5 **Other Train Operators' Timetables**

The Operator shall also comply with the requirements of paragraphs 7.1 to 7.4 inclusive 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 7.1 to 7.4 where and to the extent that such other Train Operator delivers to the Operator the relevant information and materials in sufficient time for the Operator to so publish; and
- (b) as soon as practicable thereafter where and to the extent that such other Train Operator delivers the relevant information and materials late to the Operator.

7.6 **National Rail Timetable and National Rail Enquiry Scheme**

The Operator shall use all reasonable endeavours to procure (including by virtue of any arrangements made from time to time between Network Rail and RSP) that the National Rail Timetable (or any replacement 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.

- 7.7 The Operator shall use all reasonable endeavours to procure that information in relation to:
- (a) the Timetable; and
 - (b) any material 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.

8. **Route Maps**

- 8.1 The Operator shall produce a Route Map which shall include as a minimum:

- (a) all stations served by the Passenger Services; and
- (b) key stations located on any Other Passenger Route Within the Geographical Area (which shall either be selected by the Operator on a reasonable basis or, if so directed by the Secretary of State, specified by the Secretary of State in a notice to the Operator).

- 8.2 The Route Map shall include notes identifying:

- (a) in relation to any Other Passenger Route Within the Geographical Area with a principal destination point outside of the Geographical Area, such ultimate origin or ultimate destination point; and
- (b) those Routes over which services are also operated and such service is:
 - (i) operated by a passenger train operator other than the Operator; and
 - (ii) run on a more frequent basis (as stated in the National Rail Timetable) than the Passenger Services.

- 8.3 The Operator shall, as soon as practicable, update the Route Map in all places where it is displayed where there is any change:

- (a) to the Passenger Services, leading to a change in the routes falling within the definition of Route; or

- (b) to the passenger services operated by another passenger train operator (as stated in the National Rail Timetable), leading to a change to the routes falling within the definition of Other Passenger Route Within the Geographical Area.
- 8.4 The Route Map shall at all times be displayed:
 - (a) in every passenger carrying vehicle within the Train Fleet;
 - (b) at every Station; and
 - (c) on its website.
- 8.5 The Operator shall be regarded as having complied with the requirement of paragraph 8.1 if a map that meets the requirements of a Route Map is produced by a Local Authority or other relevant Stakeholder. The provisions of paragraphs 8.3 and 8.4 shall apply in relation to any such map.

Chapter 5.2 Customer Schemes

1. Consultations

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

- (a) passengers, potential passengers, Stakeholders and other users of the rail network;
- (b) Disabled Persons who are the subject of the Operator's Accessible Travel Policy; and
- (c) persons with other protected characteristics within the meaning of the EA 2010, for the purposes of the Customer Report.

2. Community Rail Partnerships

2.1 The Operator shall become a member of and shall continue to participate in the Community Rail Partnerships relevant to the Passenger Services, including the Community Rail Partnerships listed in the table in Appendix 1 to this Chapter 5.2 (and any successor Community Rail Partnerships). As part of such participation the Operator shall identify a senior Business Employee whose duties shall include:

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

2.2 The Operator shall, at the request of the Secretary of State:

- (a) co-operate with the Secretary of State, Network Rail, HS2 Limited, Community Rail Network, local transport authorities and/or any other person as the Secretary of State may nominate for the purposes of developing and furthering the success of the Community Rail Partnerships;
- (b) co-operate with, establish and/or participate in any Community Rail Partnership;
- (c) provide technical support in respect of timetable specification for the Community Rail Partnerships, including providing appropriate journey and revenue data; and
- (d) co-operate in the development of the Secretary of State's initiatives to examine:
 - (i) options for a more cost effective delivery of the railway passenger services operated on any Community Rail Route (such options to include changes in working practices of the relevant Business Employees, reducing rolling stock lease costs and maximising opportunities for obtaining local funding of development at relevant stations and developing new ways of maintaining and renewing relevant railway infrastructure); and
 - (ii) the actual costs incurred in operating, maintaining and renewing the infrastructure relevant for such Community Rail Route.

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

2.4 The Secretary of State may at any time, by proposing a Variation pursuant to paragraph 8 of Chapter 7.5 (*Variations, Changes and Amendments*) require the transfer of any Rail Services to another Train Operator in order to deliver either of the initiatives that were examined pursuant to paragraph 2.2(d).

2.5 The Operator shall become a member and shall continue to participate in the National Community Rail Steering Group.

2.6 No later than three (3) months before the start of each Contract Year (excluding the first Contract Year), the Operator shall provide to the Secretary of State a report ("**Community**

Rail Report”) setting out the distribution of the CRP Amount in full amongst the Community Rail Partnerships identified in paragraphs 2.1 and 2.2.

- 2.7 The Community Rail Report shall contain the following information:
- (a) a statement confirming that the Operator’s distribution of funds to the Community Rail Partnerships takes account of the Secretary of State’s then current published Community Rail Strategy;
 - (b) a statement confirming that the Operator has discussed the funding of the Community Rail Partnerships with Community Rail Network and has taken sufficient account of Community Rail Network’s views;
 - (c) confirmation that the Operator has discussed with all Community Rail Partnerships the aims and needs of such partnerships and the funding required to achieve these;
 - (d) a table setting out:
 - (i) the relevant portions of the CRP Amount which are to be paid to each Community Rail Partnership (on a non-indexed basis) in each Contract Year during the Contract Term;
 - (ii) a forecast of the relevant portions of the CRP Amount which would be paid to each Community Rail Partnership (on a non-indexed basis) in each twelve (12) month period during any part of the applicable Business Plan Period which falls outside the Contract Term,

(it being acknowledged that these amounts are likely to be different for each Community Rail Partnership);
 - (e) the activities undertaken by the Operator pursuant to paragraph 2.3 of this Chapter 5.2;
 - (f) a table setting out how the CRP Project Sum has been allocated and a description of the projects that have received CRP Project Sum funding since the previous Community Rail Report was submitted; and
 - (g) such further information as the Secretary of State may from time to time request.
- 2.8 The Operator shall within thirty (30) days of the commencement of each Contract Year, make the relevant payments totalling the CRP Amount to each of the Community Rail Partnerships identified in the Community Rail Report for that year. The Operator shall during each Contract Year make funding available to the Community Rail Partnerships for the sole purpose of funding projects proposed by the Community Rail Partnerships that support the delivery of the Community Rail Development Strategy, up to (but not exceeding) the value of the CRP Project Sum.
- 2.9 The Operator shall hold an annual conference for the Community Rail Partnerships’ officers and station adopters in conjunction with the Community Rail Network to encourage the spread of best practice and to communicate plans for service development. The first such conference shall be held no later than one (1) year after the last such conference held pursuant to the Previous Agreement.
- 2.10 The Operator shall devise and implement, in collaboration with the relevant Community Rail Partnership, a “**station adopters scheme**” under which members of the local community can “**adopt**” a local Station and engage in activities such as:
- (a) promotion of the Passengers Services calling at the Station;
 - (b) monitoring and reporting faults, damage and anti-social and criminal behaviour;
 - (c) carrying out minor Station cleaning and maintenance tasks and the development and cultivation of station gardens.
- 2.11 The Operator shall use all reasonable endeavours to promote the station adopters scheme and provide safety and other training and support to participants.

- 2.12 In collaboration with the relevant Community Rail Partnership and other Stakeholders the Operator shall use all reasonable endeavours to identify sources of third party funding for the Community Rail Partnerships and encourage such third parties to make funding commitments.

Appendix 1 to Chapter 5.2
Community Rail Partnerships

	Community Rail Partnership	Community Rail Route
1	Abbey Line CRP	Watford – St Albans Abbey
2	Bentham Line CRP	Leeds – Morecambe/Heysham Port
3	Bolton & South Lancashire CRP	Bolton – Preston Bolton – Wigan Bolton – Bromley Cross Bolton – Manchester (Victoria/Piccadilly)
4	Cambrian Railways Partnership	Shrewsbury – Aberystwyth and Dovey Junction – Pwllheli
5	3 Counties Connected	Chester – Shrewsbury- Crewe
6	Community Rail Cumbria	<ul style="list-style-type: none"> • Carlisle – Barrow-in-Furness • Lancaster – Barrow-in-Furness • Oxenholme – Windermere
7	Community Rail Lancashire: <ul style="list-style-type: none"> • Clitheroe Line CRP • East Lancashire CRP • South Fylde Line CRP • West of Lancs CRP 	<ul style="list-style-type: none"> • Manchester – Clitheroe • Preston – Colne • Blackpool South - Preston • Preston to Ormskirk
8	Conwy Valley and North Wales Coast CRP	Blaenau Ffestiniog – Llandudno-Holyhead
9	Crewe 2 Manchester CRP	
10	Heart of England CRP	Birmingham, Coventry, Nuneaton, Rugby, Leamington Spa, Warwick, and Stratford-Upon-Avon
11	Heart of Wales Development Company	Shrewsbury – Swansea
12	High Peak Hope Valley CRP	<ul style="list-style-type: none"> • Buxton – Manchester Piccadilly (Buxton Line) • Glossop/Hadfield – Manchester Piccadilly (Glossop Line) • Sheffield – Manchester (Hope Valley)
13	Marston Vale CRP	Milton Keynes Central - Bletchley – Bedford
14	Mid Cheshire Line CRP	Chester – Manchester Piccadilly
15	North Cheshire CRP	Chester – Manchester Piccadilly via Warrington
16	North Staffordshire Line	Crewe – Derby and Stoke – Stafford -Penkridge
17	Rail 74 (South Lanarkshire)	Glasgow Central – Motherwell
18	Settle-Carlisle Railway Development Company	Leeds - Settle – Carlisle
19	South East Manchester CRP	Manchester Piccadilly – Rose Hill – Marple by 2 routes
20	Tyne Valley CRP	Newcastle – Carlisle
(and any successor Community Rail Partnerships)		

Chapter 5.3

Accessibility and Inclusivity

1. Relationship with other obligations relating to Disabled Persons

1.1 The Operator acknowledges that its obligations in this Chapter 5.3 are in addition to and do not limit its obligations to comply with:

- (a) the EA 2010 and any regulations imposed by it;
- (b) any applicable condition(s) in any of its Licences (including in respect of Disabled Persons); and
- (c) any other requirements of the National Rail Contract.

1.2 This Chapter 5.3 sets out requirements for changes, improvements to and maintenance of stations to facilitate and maximise accessibility and use by Disabled Persons and those requiring assistance.

1.3

- (a) Subject to paragraph 1.3(c) below, it is acknowledged that the Operator is subject to obligations regarding accessibility under the terms of its Licences (including under the form of its Accessible Travel Policy as approved from time to time by the ORR in connection with the requirements of its Licences) (the “**Licence Accessibility Obligations**”).
- (b) Where any matter included in this Chapter 5.3 is the subject of a Licence Accessibility Obligation, it is agreed that compliance with the Licence Accessibility Obligation shall take precedence over this Chapter 5.3 such that compliance with the Licence Accessibility Obligation shall be deemed to fulfil the obligation of the Operator in respect of that matter under this Chapter 5.3 and any failure by the Operator in respect of that matter shall be addressed under that Licence and not under the National Rail Contract.
- (c) Paragraph 1.3(a) shall have no application to paragraph 3 (*Dealing with Claims relating to Stations*).

2. Physical Alterations and Accessibility of Stations

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

- (a) there is limited funding available to the Secretary of State to assist Train Operators and/or franchise operators with the carrying out of those works;
- (b) consequently, there is a need for such works to be carried out over a period of time to reflect the availability of funding, and for such works to be prioritised as identified through an accessibility (audit) data collection with the Operator responsible for designing and delivering this; and
- (c) the Secretary of State’s Access for All programme of works of physical alterations at stations addresses these issues in a structured way.

2.2 The Operator shall:

- (a) co-operate with and assist the Secretary of State in the development and furtherance by the Secretary of State of the programme described in paragraph 2.1(c) by providing to the Secretary of State:
 - (i) information concerning the usage of Stations (including, where and to the extent practicable, usage of Stations by Disabled Persons); and
 - (ii) following consultation with its Accessibility Panel, advice as to the most effective way in which accessibility for Disabled Persons could, in the Operator’s reasonable opinion, be improved at Stations;

- (b) co-operate reasonably with other Train Operators and/or any Infrastructure Manager to seek to ensure that the needs of Disabled Persons are considered in any planned work on the Stations and, so far as practicable, co-ordinated with other work to be carried out at the Stations and/or other parts of the network; and
 - (c) use all reasonable endeavours to secure sources of grant funding (other than from itself or an Affiliate of the Operator) for improving accessibility for Disabled Persons at Stations (in addition to any funding secured through the Secretary of State pursuant to paragraph 2.5), including from Local Authorities, local development agencies and National Lottery funding. The Operator shall notify the Secretary of State of:
 - (i) any such additional funding which it secures; and
 - (ii) the terms on which such additional funding has been granted.
- 2.3 In participating in any multi-modal fares scheme, the Operator shall use all reasonable endeavours to secure, through the planning and development of such scheme, improvements in disabled access to the entrances of any relevant station, including within and in the immediate proximity of such station and shall not make physical access more difficult as a result of inappropriately designed and/or sited barriers or other physical changes required by the multi-modal scheme.
- 2.4 If, during the Contract Term:
- (a) the Operator has complied with its obligations in section 20(4) and section 20(9), as varied by paragraph 2(3) of Schedule 2 of the EA 2010 (to take such steps as are reasonable to provide a reasonable alternative method of making services at a Station accessible to a Disabled Person to avoid a Disabled Person being placed at a substantial disadvantage by a physical feature at a Station); and
 - (b) notwithstanding such compliance, the Operator reasonably considers it is still required to carry out or procure physical works of alteration at a Station in order to comply with the EA Requirements in respect of that Station, and, in so carrying out or procuring, would incur expenditure which it would not otherwise have an obligation to incur and which was not contemplated in the Cost Budget as most recently Placed in Escrow,
- the Operator may propose a Cost Budget Change in respect of the same.
- 2.5 If the Operator proposes a Cost Budget Change under paragraph 2.4, and demonstrates to the Secretary of State's satisfaction that the criteria in paragraph 2.4 have been satisfied, then a Cost Budget Change Event shall occur and the Operator shall deliver the relevant improvements so as to comply with the EA Requirements referred to in paragraph 2.4(b).
- 2.6 If and to the extent the Operator is required to pay any increased access charges as a result of additional expenditure required to be incurred by another station Facility Owner for the purpose of complying with the EA Requirements in respect of an Operator Access Station, provided that the Operator:
- (a) notifies the Secretary of State within seven (7) days of becoming aware of any proposal for the increase in such charges (or the works to which they relate); and
 - (b) complies with the Secretary of State's directions regarding the exercise of any rights the Operator may have in respect thereof,
- the imposition of the increased access charges shall be a Cost Budget Change Event and a Cost Financial Target Amendment Event or Profit Financial Target Amendment Event (as applicable).
- 3. Dealing with Claims relating to Stations**
- 3.1 If the Operator receives notification of a claim under the EA 2010 in respect of any alleged non-compliance with the EA Requirements or otherwise in respect of any Station (an "EA Claim") then the Operator shall:

- (a) notify the Secretary of State within seven (7) days of receiving notification of the EA Claim. The Operator shall at the same time notify the Secretary of State of any reasonable alternative methods of making services at the Station accessible to Disabled Persons that it has considered and/or put in place pursuant to section 20(4) and section 20(9), as varied by paragraph 2(3) of Schedule 2 of the EA 2010;
 - (b) if required by the Secretary of State, defend the EA Claim or any aspect of the EA Claim (which may include appealing the judgment). The Secretary of State shall, subject to paragraph 3.4, pay the Operator's reasonable costs of:
 - (i) any defence or appeal required by the Secretary of State; and/or
 - (ii) compliance with the Secretary of State's instructions in accordance with paragraph 3.1(c); and
 - (c) act in accordance with the instructions of the Secretary of State to defend the EA Claim (or any aspect of it) as required under paragraph 3.1(b) and shall not (without the prior consent of the Secretary of State) settle or enter into any compromise in relation to the EA Claim (or the relevant aspect of it), including by entering into mediation.
- 3.2 If, in the reasonable opinion of the Operator, it will be more cost effective to settle the EA Claim rather than act in accordance with the Secretary of State's requirement under paragraph 3.1, it shall produce for the Secretary of State's review and consent a settlement proposal, setting out the terms of the Operator's proposals to make an offer to the Disabled Person making the EA Claim and its reasons for making such offer (the "**Settlement Proposal**").
- 3.3 If the Secretary of State does not accept the Settlement Proposal and still requires the Operator to defend the EA Claim (or any aspect of it) then the Operator shall defend the EA Claim in accordance with paragraph 3.1.
- 3.4 If the Operator is required to defend an EA Claim where it has submitted a Settlement Proposal to the Secretary of State and an award is made in respect of the EA Claim in favour of the person bringing it which is higher than the figure set out in the Settlement Proposal, then, subject to paragraph 3.5 and Appendix 2 (*Disallowable Costs*) to Chapter 7.1 (*Contract Payments*), the Secretary of State shall pay to the Operator:
- (a) the total amount of such award; and
 - (b) the further reasonable costs incurred or payable by the Operator in defending the EA Claim, to the extent that such costs have not already been paid by the Secretary of State under paragraph 3.1(b).
- 3.5 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 opinion, considers that the Operator 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 Disabled Persons**

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

- (c) provide the results of such records to the Secretary of State, and publish a summary of the data in its Customer Report(s) and on the relevant section of the Operator's website.
- 4.2 NOT USED
- 4.3 NOT USED.
- 4.4 The Operator shall promptly send to the Secretary of State a copy of:
- (a) each set of results of the surveys of Passenger Assist users that the Operator undertakes pursuant to its Accessible Travel Policy; and
 - (b) any reports that the Operator submits to ORR in connection with the effectiveness of, and satisfaction with, the Passenger Assist service.
- 4.5 The Operator shall comply with the requirements set out in Appendix 1 (*Accessible Transport Arrangements*) to this Chapter 5.3 in respect of the provision of accessible transport arrangements for Disabled Persons.
- 5. Annual Accessibility Update**
- 5.1 The Parties acknowledge that the Operator, pursuant to its Licence Accessibility Obligations, is required to submit reports from time to time to ORR in respect of accessibility matters, including, in relation to:
- (a) the activities undertaken by the Operator to improve accessibility to the Rail Services;
 - (b) the approach that the Operator has taken to assessing the accessibility requirements of passengers pursuant to the requirements of the EA 2010, for example when making decisions about operations, design and service improvements; and
 - (c) the action(s) taken by the Operator to remedy any failure (whether identified by the Operator or ORR) to comply with the Operator's Accessible Travel Policy or any other accessibility related obligation arising pursuant to its Licence Accessibility Obligations.
- 5.2 The Operator shall provide a copy of any report submitted to ORR pursuant to paragraph 5.1 to the Secretary of State within seven (7) Weekdays of it being submitted to ORR.
- 6. Accessibility Director and Accessibility Manager**
- 6.1 As soon as practicable and by no later than the Start Date the Operator shall nominate (to the extent that the Operator has not already done so):
- (a) a director to the board of directors of the Operator; and
 - (b) an operational manager,
- each with specific responsibility of ensuring the Operator complies with its obligations in connection with accessibility, including pursuant to its Accessible Travel Policy requirements.
- 6.2 The Operator shall ensure that such roles referred to in paragraph 6.1 are filled as soon as practicable after such roles become vacant throughout the Contract Term.
- 7. Accessibility Panel**
- 7.1 The Operator shall:
- (a) consult the Accessibility Panel on operational and policy decisions that may have an impact on the needs of passengers with accessibility requirements;
 - (b) develop the design of the Enhanced Disability Awareness Training referred to in paragraph 8 below, and the co-design of physical assets, electronic services and applications, and other services and facilities relating to accessibility as appropriate, in each case, actively engaging with the Accessibility Panel as may be appropriate; and
 - (c) provide the Accessibility Panel the opportunity to report to the board of directors of the Operator on a quarterly basis.

8. Enhanced Disability Awareness Training

8.1

- (a) The Operator shall deliver the Enhanced Disability Awareness Training to any person (who did not receive the Enhanced Disability Awareness Training during the term of the Previous Agreement) falling within a description identified in column (1) of the table below by no later than the date specified in column (2) of the corresponding row of that table (or, in the case of a person falling within more than one such description, by no later than the earlier or earliest of the dates specified in column (2) of the corresponding rows).

(1)	(2)
All Business Employees who were working in customer contact centre, station or on-board roles (excluding drivers) immediately prior to the Start Date	15 December 2023
All staff with management responsibilities (including executive members of the Operator's board of directors, but excluding driver managers)	31 March 2024 (or, in the case of a person falling within the description in column (1) whose appointment to the relevant role takes effect on or after 1 February 2024, within two months of their appointment to such role)
All Business Employees in customer-facing roles (including drivers and driver managers)	30 September 2024 (or such later date as may be agreed by the Secretary of State and the Operator) or, in the case of a person falling within the description in column (1) whose appointment to the relevant role takes effect on or after 1 August 2024, within two months of their appointment to such role)

- (b) The Operator shall also ensure it delivers the Enhanced Disability Awareness Training to any Business Employees in customer facing roles and any staff with management responsibilities appointed following the Start Date (excluding Business Employees in customer facing roles and any staff with management responsibilities appointed less than two (2) months prior to the Expiry Date if it is not practicable to deliver Enhanced Disability Awareness Training to such Business Employees or staff) as soon as practicable after their appointment.
- (c) If at any time there is material change to the Enhanced Disability Awareness Training as compared to the relevant training provided previously to Business Employees in customer facing roles and staff with management responsibilities pursuant to this paragraph 8.1, the Operator shall use all reasonable endeavours to communicate the new and/or amended Enhanced Disability Awareness Training (including relevant materials) to the Business Employees in customer facing roles and staff with management responsibilities which had received the previous Enhanced Disability Awareness Training.

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

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

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

9. **Accessible Formats of Passenger Facing Information**

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

9.2 The Parties acknowledge that:

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

10. **Diversity Impact Assessments**

10.1 The Operator shall, from the Start Date and throughout the Contract Term, ensure that it conducts a diversity impact assessment on all projects and initiatives that will or may affect the interests of persons with protected characteristics (as defined under the EA 2010) carried out by the Operator (except where in the reasonable opinion of the Operator, the project or initiative is sufficiently completed such that a diversity impact assessment is not reasonably expected to materially influence the outcome of the project, in which case the requirement to conduct a diversity impact assessment in respect of that particular project shall not apply).

10.2 The Operator shall take such steps as it considers appropriate in light of the conclusions of the diversity impact assessment to ensure that issues affecting people with protected characteristics (as defined under the EA 2010) are properly addressed in compliance with applicable Laws.

11. **Station Accessibility Data Collection**

11.1 The Operator shall comply with any request by the Secretary of State in connection with the development and implementation of a station accessibility data collection plan which may include:

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

in each case, in a timely manner.

Appendix 1 to Chapter 5.3

Accessible Transport Arrangements

1. References in this Appendix 1 to Chapter 5.3 (*Accessibility and Inclusivity*) to passengers are references to disabled passengers who are wheelchair users or otherwise severely mobility impaired.
2. Subject to paragraph 4, where:
 - (a) a passenger wants to travel on a Passenger Service; and
 - (b) the design of the station at which the passenger's journey on such Passenger Service is to start (the "**Departure Station**") or finish (the "**Destination Station**") prevents the passenger from using that station to access or disembark from that Passenger Service,

the Operator shall provide accessible transport arrangements for that passenger in accordance with paragraph 3.
3. The Operator shall provide accessible transport arrangements for the passenger referred to in paragraph 2:
 - (a) from the Departure Station to the next station at which the Passenger Service is scheduled to call and at which it is possible for the passenger to access that Passenger Service;
 - (b) to the Destination Station, from the station closest to such station at which the Passenger Service is scheduled to call and which it is possible for the passenger to use to disembark from that Passenger Service; and/or
 - (c) to or from such other station as the Operator may, having regard to the journey and the needs of the passenger, agree,

and, in any case, at no cost additional to the price of the Fare which would otherwise be payable for the passenger's rail journey.
4. The Operator's obligations under this Appendix 1 to Chapter 5.3 (*Accessibility and Inclusivity*) are subject to:
 - (a) reasonable prior notice of the passenger's requirement for accessible transport arrangements; and
 - (b) the availability of suitable accessible transport arrangements (provided that the Operator has used all reasonable endeavours to ensure that it has arrangements in place to meet requirements for the provision of such accessible transport arrangements).

Chapter 5.4 Customer Benefits

1. Smart Ticketing

1.1 The Operator shall:

- (a) join and comply with any RDG approved Smart Ticketing Schemes relevant to some or all of the Passenger Services unless otherwise directed by the Secretary of State;
- (b) fully and effectively co-operate with Network Rail, TfL, Transport for the North, Scottish Ministers, Welsh Ministers, other Train Operators, and relevant Local Authorities, including in relation to the provision of any required equipment, to implement and operate Smart Ticketing Schemes;
- (c) fully and effectively co-operate with TfL, Transport for the North, Scottish Ministers, Welsh Ministers, other Train Operators and Local Authorities and other organisations in relation to proposals to apply Smart Ticketing Schemes to new or existing multi-modal fares schemes, including in the implementation of any Smart Media technology pursuant to any multi-modal fares schemes that it may participate in pursuant to its obligations under paragraph 2.1 (*Multi Modal Fares Schemes*) of Chapter 8.2.8 (*Transport, Travel and Other Schemes*) or as directed by the Secretary of State within and beyond the Rail Services boundary on other modes; and
- (d) prepare and submit a report to the Secretary of State in advance of each Contract Performance Meeting (in such form as the Secretary of State may require) setting out:
 - (i) the baseline of uptake and journey usage of Smart Media from the Start Date and level of migration from magstripe tickets and increased take-up and journeys made using Smart Ticketing Schemes, as a minimum disaggregated between types of fares (Season Ticket Fares, Single Fares and Saver Return Fares) and type of Smart Media (using the LENNON database as the sole source of data unless otherwise agreed with the Secretary of State) by users of the Passenger Services, for each completed Reporting Period during the Contract Term;
 - (ii) the Operator's performance against the Smart Media Targets as specified in the Business Plan;
 - (iii) the steps that the Operator is taking, including other Train Operators Network Rail, TfL, Transport for the North, Scottish Ministers, Welsh Ministers, Local Authorities or other organisations that it will be working with, to increase channel shift to Smart Ticketing Schemes operated by the Operator, or enabled by the Operator for other Smart Ticketing Schemes, and increase usage of Smart Ticketing Schemes by users of the Passenger Services; and
 - (iv) demonstrate how the information and data provided by Smart Ticketing Schemes has been used to better inform customers and provide customer support before, during and after their journey,

and the Operator shall present the report at the Contract Performance Meeting.

1.2 The Operator shall ensure, with effect from the Start Date in relation to any ITSO Smart Media Ticketing Scheme which the Operator operated prior to the Start Date and from the date of commissioning in relation to any ITSO Smart Media Ticketing Scheme introduced by it during the Contract Term, that from such relevant date until the end of the Contract Term:

- (a) it continues to provide, make available and promote (and where applicable effectively maintain) such ITSO Smart Media Ticketing Scheme (including any associated infrastructure);
- (b) all components of the ITSO Smart Media Ticketing Scheme (and any amendment, extension or replacement thereof) inherited, used or introduced by the Operator (whether on a permanent or a trial basis) are at all times compliant with:

- (i) version 2.1.4 of the ITSO Specification;
 - (ii) the ITSO Operating Licence; and
 - (iii) RSPS3002,
- or such subsequent versions as the Operator and the Secretary of State may agree;
- (c) any ITSO Certified Smart Media readers introduced by the Operator (whether on a permanent or temporary basis) shall conform to EMV level 1 certification (hardware) and be capable of being upgraded whilst in operation to EMV level 2 (application) and to EMV level 3 (end to end certification) where there is a contactless payment scheme in place or one is proposed;
 - (d) both the RDG operated central back office and the RSP owned product set that is compliant with the ITSO Specification are used;
 - (e) all available Fares on all Flows for which it is Lead Operator are capable of residing upon and being fulfilled as soon as practicable by the use of ITSO Certified Smart Media; and
 - (f) if so requested in writing by another Train Operator, the Operator shall as soon as practicable give all necessary permissions to that Train Operator so that all available Fares on all Flows for which that Train Operator is Lead Operator are capable of residing upon and being fulfilled by the use of ITSO Certified Smart Media.
- 1.3 Where the Operator was a participant in any RDG approved Smart Ticketing Scheme pursuant to the Previous Agreement, the Operator shall take such action as may be required to ensure that it continues to participate in such Smart Ticketing Scheme from the Start Date without any disruption to the continuity of service received by passengers unless otherwise directed by the Secretary of State.
- 1.4 Without prejudice to its other obligations pursuant to paragraphs 1 and 2 of this Chapter 5.4, the Operator shall undertake such further actions as the Secretary of State may require in connection with the introduction of Smart Ticketing Schemes.
- 1.5 Either Party may propose, or the Secretary of State may determine, a change to the definition of "Smart Media" to include any new technology which enables the fulfilment of a Smart Ticketing Scheme.
- 1.6 The Operator shall ensure that all Weekly Season Tickets, Monthly Season Tickets and Annual Season Tickets which are ordered through the Operator's online retail channels or at ticket offices are, as the default option, offered to the customer on Smart Media.

2. Retail

- 2.1 The Operator shall provide a high quality standard of ticket retailing to all customers including people with physical, developmental, cognitive and/or sensory impairments, people with mental health conditions, people with reduced mobility, and any other class of people that the Secretary of State may designate from time to time across the different communication channels and points of purchase. This will include:
- (a) providing clear information about fares, Passenger Services and ticketing options, including restrictions and fulfilment methods, ensuring:
 - (i) these are easy to access and consistent across the different communication channels, points of purchase and on tickets; and
 - (ii) customers can easily identify and choose the cheapest appropriate fare for their journey;
 - (b) ensuring online, digital and self-service channels are easy to access, clear and user-friendly and incorporate and promote Smart Media functionality;
 - (c) any new or substantially upgraded ticketing retail machines and systems incorporate Smart Media functionality as directed by the Secretary of State;
 - (d) ticket vending machines adopting the RDG Design Guidelines;

- (e) accepting multiple payment methods; and
 - (f) providing options for those without access to, or unable to use, technology.
- 2.2 The Operator shall promote Smart Media across all retail channels enabling customers to make journeys without a magstripe ticket and facilitating integration for all journeys made entirely on Passenger Services.
- 2.3 Without prejudice to its other obligations pursuant to paragraphs 1 and 2 of this Chapter 5.4, the Operator shall undertake such further actions as the Secretary of State may require in connection with the introduction of retailing proposals.
- 2.4 The Operator shall:
- (a) bring forward new proposals for implementing; and/or
 - (b) introduce and implement,
- such amendments to the Ticketing and Settlement Agreement, the Pay As You Go Agreement, the CPAY Agreement and any other applicable industry agreements (including any successor arrangements or any other agreement between the Operator and one or more other Train Operators, rail industry parties and other relevant organisations (including Transport for London) relating to ticketing, fares, fares settlement, the operation of discount schemes or any related matter) as may be directed by the Secretary of State from time to time.
- 2.5 During the term of this Contract, the Operator shall not enter into any new arrangements or material amendments to existing arrangements for the delivery of Fares, ticketing or the retailing of tickets without the prior written consent of the Secretary of State.
- 2.6 The Operator shall promptly (and in any event within any timeframes specified by the Secretary of State) provide to the Secretary of State such information and data in relation to Fares, ticketing and the retail of tickets as the Secretary of State may require from time to time.
3. **Cycles**
- The Operator shall permit the carriage of folding cycles on all Passenger Services and non-folding cycles wherever practicable.
4. **Baby Changing Facilities**
- The Operator shall throughout the Contract Term ensure that each train operated by the Operator in delivering the Passenger Services that is fitted with toilet facilities is also fitted with such number of baby change facilities as is necessary to be compliant with the requirements of the Relevant Technical Specification.
5. **Station Toilet Access**
- The Operator shall ensure that no charge is levied in respect of access to toilet facilities at any Station.
6. **Security at Stations**
- 6.1 The Operator shall maintain for the duration of the Contract Period the Secure Stations Accreditation for the Stations already achieved by the Train Operator as set out in Appendix 1 (*List of Stations and Car Parks with accreditation*) to this Chapter 5.4.
- 6.2 The Operator shall maintain for the duration of the Contract Period the Park Mark scheme for the Stations already achieved by the Train Operator as set out in Appendix 1 (*List of Stations and Car Parks with accreditation*) to this Chapter 5.4.
- 6.3 In the event that the TRH Score for a Station increases by five per cent (5%) or more from the previous year's TRH Score for such Station, the Operator shall:
- (a) in respect of a Station that does not have Secure Station Accreditation, notify the Secretary of State of such increase and, as soon as practicable, obtain Secure Station Accreditation for such Station and shall maintain the same throughout the Contract Period; or

- (b) in respect of a Station that already has Secure Station Accreditation (either pursuant to paragraph 6.1 above, or because the Operator has been required to obtain Secure Station Accreditation pursuant to paragraph 6.3(a) above), notify the Secretary of State of such TRH Score increase and the provisions of paragraph 6.4 shall apply.
- 6.4 Upon the Secretary of State receiving notification pursuant to paragraph 6.3(b) above, the Secretary of State may, following consultation with the British Transport Police, revoke the Secure Station Accreditation for such Station.
- 6.5 Where a Station loses its Secure Station Accreditation (whether pursuant to paragraph 6.4 or otherwise) the Operator shall:
 - (a) obtain Secure Station Accreditation for such Station as soon as 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 Contract Period.
- 7. **CCTV**
- 7.1 The Operator shall ensure that any installation of, or upgrade to, CCTV in the areas accessible by passengers of any vehicle that is operated as part of the Train Fleet shall be undertaken in accordance with the CCTV Guidance.
- 7.2 The Operator shall ensure that any installation of, or upgrade to CCTV at any Station shall be undertaken in accordance with the CCTV Guidance.
- 7.3 The Operator shall ensure that any body worn video equipment used by any Business Employees, and any system associated with it, shall comply with the CCTV Guidance.

Appendix 1 to Chapter 5.4**List of Stations and Car Parks with accreditation****1. Stations**

Birmingham International
Carlisle
Coventry
Crewe
Lancaster
Macclesfield
Oxenholme
Penrith
Preston
Rugby
Runcorn
Stafford
Stockport
Stoke-on-Trent
Warrington Bank Quay
Wigan Northern Western

2. Car Parks

Birmingham International
Carlisle
Coventry
Crewe
Lancaster
Macclesfield
Oxenholme
Penrith
Preston
Rugby
Runcorn
Stafford
Stoke-on-Trent
Warrington Bank Quay
Wigan North Western

Chapter 5.5

Customer Experience Performance

Part 1: Service Quality Regime

1. Purpose

1.1 This Part 1 of Chapter 5.5 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 Calculations related to the Service Quality Regime;
- (d) Part D – Publication and Reporting Requirements; and
- (e) Part E – Remedies.

Part 1A - Service Quality Management Process

2. Service Quality Management

2.1 SQR Management System

- (a) The Operator shall put in place service quality management arrangements and processes (including the collection of relevant data) which shall (as a minimum):
 - (i) be capable of measuring and reporting the Operator’s performance against each Service Quality Indicator comprised in a Service Quality Area;
 - (ii) be capable of recording and retaining Service Quality Rectification Evidence; and
 - (iii) set out procedures for:
 - (A) ensuring compliance with the requirements of this Part 1 of Chapter 5.5 including the obligation to conduct Service Quality Inspections as required pursuant to this paragraph 2; and
 - (B) identifying and rectifying failures identified during each Service Quality Inspection (including processes which ensure that corrective actions identified during any Service Quality Inspection are undertaken in a diligent and prompt manner),

(the “**SQR Management System**”).

- (b) The SQR Management System shall be implemented and fully operational by the Start Date.

2.2 SQR Register

- (a) The Operator shall prepare and complete the SQR Register so as to include the facilities and services which exist on every SQR Train and every SQR Station by the Start Date.
- (b) The form and content of the SQR Register shall include as a minimum the following content:
 - (i) description, purpose and quantity of each facility or service;
 - (ii) photographic evidence of each facility or service;
 - (iii) individual serial number and asset tracking number (where applicable) for each facility or service;
 - (iv) details of the applicable Service Quality Indicators against which the facility or service will be measured and reported against as set out in Appendix 1 (*Service Quality Areas/Service Quality Indicators/Weightings*) of this Part 1 of Chapter 5.5; and

- (v) map of each SQR Station, setting out the location of each facility or service located at such SQR Station.
- (c) The Operator shall maintain the SQR Register and update such SQR Register at such regular intervals as is reasonably necessary to ensure compliance with its obligations under this Part 1 of Chapter 5.5. The Operator shall not, without the prior Approval of the Secretary of State, remove any facility or service from the SQR Register unless such facility or service relates solely to a Ceased Service.
- (d) The Operator shall provide an up to date copy of the SQR Register to the Secretary of State (when requested to do so from time to time) or to any person carrying out an SoS Audit or SoS Service Quality Inspection on behalf of the Secretary of State.

2.3 Changes to Rail Services

- (a) If at any time during the Contract Term, the Operator:
 - (i) operates additional railway passenger services or operates additional stations (including any Managed Stations) which are not part of the SQR Trains or SQR Stations (as the case may be) at the Start Date (including where such are transferred from another train operator) (“**New Services**”); and/or
 - (ii) introduces new facilities or services on a SQR Train and/or on a SQR Station (including Managed Stations) which were not in existence at the Start Date (including where such are transferred from another train operator) (“**New Facilities**”),

then it shall update its SQR Management System and the SQR Register to include such New Services and New Facilities by no later than the first day of the first Reporting Period which commences after the date upon which the Operator begins to operate such New Services or such New Facilities are introduced (as the case may be).

- (b) The requirements of this Part 1 of Chapter 5.5 shall begin to apply in relation to such New Services and such New Facilities from the first day of the first Reporting Period which commences after the date on which the Operator commences the operation of such New Services or New Facilities are introduced (as the case may be).
- (c) If at any time during the Contract Term, the Secretary of State directs the Operator to:
 - (i) permanently stop operating certain railway passenger services or permanently stop operating stations which are part of the SQR Trains or SQR Stations, (as the case may be) at the Start Date; and/or
 - (ii) to remove any facilities or services which are part of the SQR Trains or SQR Stations (as the case may be),
 (together, the “**Ceased Services**”),

then the Operator shall update the SQR Management System and the SQR Register to remove such Ceased Services by no later than the first day of the first Reporting Period which commences after the date upon which the Operator stopped operating such Ceased Services.

- (d) The requirements of this Part 1 of Chapter 5.5 shall cease to apply in relation to such Ceased Services from the first day of the first Reporting Period which commences after the date on which the Operator stops the operation of such Ceased Services are introduced.

2.4 Procuring SQR Services

Prior to any procurement by the Operator of any of the SQR Services, the Operator shall agree with the Secretary of State the scope and terms of the work and/or service to be procured.

Part 1B – Inspections and Audits

3. Operator Service Quality Inspections

- 3.1 In each Reporting Period commencing from the Start Date, the Operator shall procure the undertaking of:

- (a) Station Service Quality Inspections, and Train Service Quality Inspections and Customer Service Quality Inspections (together to be known as the “**Service Quality Inspections**”) in accordance with the requirements of paragraph 3.3;
 - (b) Service Quality Re-inspections, in accordance with the requirements of paragraph 4.1(a); and
 - (c) audits to verify the matters referred to in paragraph 4.1(b).
- 3.2 For the purposes of this Part 1B of Chapter 5.5, where the definition of “**SQR Station**” refers to London Euston, this shall exclude any areas that are exclusively utilised by operators other than the Operator.
- 3.3 The Operator shall (as a minimum):
- (a) ensure that each Service Quality Inspection is carried out so as to determine whether any Service Quality Indicator has been passed or failed in accordance with the failure criteria specified in the Service Quality Schedules;
 - (b) ensure that each Service Quality Inspection is carried out accurately and impartially by independent parties who are not Business Employees (excluding employees of the SQR Contractor from the scope of the term “Business Employees” for these purposes);
 - (c) ensure that any Business Employee who is a member of the customer relations team or who is involved in the operation of any SQR Station or SQR Train (including any person who is responsible for the management and operation of any such SQR Station 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;
 - (d) ensure that:
 - (i) NOT USED; and
 - (ii) a Station Service Quality Inspection is carried out in respect of each Reporting Period at each SQR Station (excluding London Euston) with such Station Service Quality Inspections 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) London Euston is the subject of a Station Service Quality Inspection two (2) times in each Contract Year with such Station Service Quality Inspection being distributed across the day and between the days of the week in proportion to typical passenger use of the SQR Station across the day and the days of the week; and
 - (e) ensure that:
 - (i) in respect of each Reporting Period, one hundred and ninety eight (198) Train Service Quality Inspections are carried out in respect of different vehicles comprised within different SQR Trains with such Train Service Quality Inspection being apportioned across the day and between the days of the week in proportion to the typical distribution of passenger journeys across the day and between the days of the week; and
 - (ii) Train Service Quality Inspections are carried out in respect of vehicles operating on each Route once every Reporting Period. Such Train Service Quality Inspections shall not be unduly concentrated on vehicles that operate on a particular Route; and
 - (iii) one hundred and seventy eight (178) of the Train Service Quality Inspections are carried out on standard class vehicles (including standard premium

vehicles) and twenty (20) of the Train Service Quality Inspections are carried out on first class vehicles in each Reporting Period; and

- (f) ensure that, in each Reporting Period:
- (i) Customer Service Quality Inspections are conducted of the ‘Helpfulness of Staff at Stations’ Service Quality Indicator at no fewer than sixteen (16) Customer Service SQR Stations;
 - (ii) at least sixty (60) Customer Service Quality Inspections are conducted of the “Helpfulness of Staff on Trains” Service Quality Indicator;
 - (iii) at least forty (40) Customer Service Quality Inspections are conducted of the “Social Media Mystery Shopper Question” Service Quality Indicator; and
 - (iv) at least twenty (20) Customer Service Quality Inspections are conducted of the “Planned and Unplanned Disruption” Service Quality Indicator,
- in each case, in accordance with the provisions of the Service Quality Schedules; and
- (g) ensure that:
- (i) 25% of Customer Service Quality Inspections of the “Helpfulness of Staff at Stations” and 25% of Customer Service Quality Inspections of the “Helpfulness of Staff on Trains” Service Quality Indicators are completed by mystery shoppers who require additional assistance (including disabled persons with mobility or other impairments) in each Reporting Period;
 - (ii) 25% of all Customer Service Quality Inspections of the “Social Media Mystery Shopper Question” Service Quality Indicator are related to questions about accessibility in each Reporting Period;
 - (iii) Customer Service Quality Inspections relating to 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
 - (iv) Customer Service Quality Inspections relating to SQR Trains are carried out on each Route once every Reporting Period. Such Customer Service Quality Inspections shall be reasonably apportioned so that they are undertaken on SQR Trains across the different Routes.

3.4 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 3.3(d);
 - (b) Train Service Quality Inspections as specified in paragraph 3.3(e); and
 - (c) Customer Service Quality Inspections as specified in paragraph 3.3(f) and 3.3(g),
- shall be increased or reduced pro rata based on a normal Reporting Period of twenty-eight (28) days.

3.5 For any Contract Year which has less than thirteen (13) Reporting Periods:

- (a) Station Service Quality Inspections as specified in paragraph 3.3(d);
 - (b) Train Service Quality Inspections as specified in paragraph 3.3(e); and
 - (c) Customer Service Quality Inspections as specified in paragraph 3.3(f) and 3.3(g),
- shall be reduced pro rata based on a normal Contract Year of thirteen (13) Reporting Periods.

4. **Service Quality Re-Inspection and Service Quality Rectification Evidence**

4.1 If in any Reporting Period a “fail” is recorded against any Service Quality Indicator set out in any Service Quality Schedule (“**Service Quality Failure**”) then:

- (a) in relation to SQR Stations, the Operator shall rectify such specific Service Quality Failure and undertake an inspection of the relevant facility or service which resulted

in the occurrence of such Service Quality Failure within the relevant time period set out within the Service Quality Schedule (“**Service Quality Re-inspection**”) and the requirements of paragraphs 3.3(b) and 3.3(c) shall apply to any such Service Quality Re-inspection. Where such Service Quality Re-inspection identifies that the Service Quality Failure has not been rectified, then a further Service Quality Failure shall occur (“**Re-inspection Failure**”); and

- (b) in relation to SQR Trains and the applicable Service Quality Indicators for SQR Stations as set out in the Service Quality Schedules, the Operator shall within the relevant time period specified in the Service Quality Schedule (the “**Relevant Rectification Period**”), ensure that relevant Service Quality Rectification Evidence is recorded and retained in the SQR Management System. If no Service Quality Rectification Evidence is recorded in the SQR Management System within the Relevant Rectification Period, then a further Service Quality Failure shall occur (“**Rectification Evidence Failure**”).
- 4.2 Where a Service Quality Re-inspection or Rectification Evidence Failure results in a Service Quality Failure being recorded against a facility or service, such Service Quality Failure(s) shall be included in the calculation of the Pass Rates for the Reporting Period in which the Service Quality Re-inspection is conducted or the Rectification Evidence Failure occurs, in accordance with the provisions of paragraph 8 (*Calculation of Pass Rates*) and paragraph 17 (*Consequences of Performance falling below the SQR Benchmark*) of this Chapter 5.5 and Part 4 of the Service Quality Schedules.
- 4.3 The provisions of this paragraph 4 shall continue to apply until such a time as:
- (a) in the case of the circumstances described in paragraph 4.1(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 4.1(b), the Operator has recorded relevant Service Quality Rectification Evidence within the Relevant Rectification Period and accordingly a Service Quality Failure has not occurred.
- 4.4 If following two (2):
- (a) Re-inspection Failures, the original Service Quality Failure has not been rectified; or
- (b) Rectification Evidence Failures, no Service Quality Rectification Evidence has been recorded in the SQR Management System in respect of the facility or service which resulted in the occurrence of the original Service Quality Failure;
- then the Operator shall within fourteen (14) days of the occurrence of such Re-inspection Failure or Rectification Evidence Failure notify the Secretary of State of such failure.
- 4.5 The Operator shall prepare and submit to the Secretary of State, together with such notice, a plan which sets out the steps the Operator proposes to implement to ensure that the Re-inspection Failure or Rectification Evidence Failure is rectified before the next Service Quality Inspection and the Re-inspection Failure or Rectification Evidence Failure does not reoccur. The Operator shall use all reasonable endeavours to implement such plan in accordance with its terms.
- 4.6 The provisions of this paragraph 4 shall not apply to London Euston station, Customer Service Quality Inspections, or the Service Quality Indicators relating to “*Information During Disruption*”.
5. **Independent Service Quality Audit**
- 5.1 In respect of each Contract Year (and in accordance with paragraph 5.3), the Operator shall procure the carrying out of an independent audit (“**Independent Service Quality Audit**”).
- 5.2 Prior to any procurement by the Operator of any Independent Service Quality Audit, the Operator shall agree with the Secretary of State the scope and terms of the work and/or service to be procured.

- 5.3 An Independent Service Quality Audit shall be undertaken once per Contract Year, or once in relation to any agreed longer or shorter period as agreed with or directed by the Secretary of State in accordance with paragraph 5 (*Effect of alterations to the PBF Assessment Period*) of Chapter 7.2 (*Performance Based Fee and Shadow Operator Performance Based Fee*) in which case such Independent Service Quality Audit may be in respect of multiple Contract Years. The purpose of each Independent Service Quality Audit shall be to verify and confirm that, in respect of the relevant Contract Year(s) to which it relates, the:
- (a) SQR Management System complies with the requirements of paragraph 2.1 (*SQR Management System*) and has been implemented as required pursuant to this Part 1 of Chapter 5.5 (including that Service Quality Rectification Evidence has been recorded and retained in accordance with (and is otherwise in compliance with) the requirements of this Part 1 of Chapter 5.5);
 - (b) Service Quality Inspections undertaken in that Contract Year comply with the requirements of paragraph 3.3 (*Operator Service Quality Inspections*);
 - (c) SQR Register has been maintained and updated as required pursuant to paragraph 2.2 (*SQR Register*);
 - (d) Pass Rates reported by the Operator for Reporting Periods within that Contract Year have been calculated in accordance with the requirements of paragraph 8.1 (*Calculation of Pass Rates*);
 - (e) Pass Rates reported by the Operator for that Contract Year have been calculated in accordance with paragraph 8.2 (*Calculation of Pass Rates*).
- 5.4 Any Independent Service Quality Audit shall, in respect of the relevant Contract Year(s) to which it relates either:
- (a) confirm that, after having regard to the findings of such inspections, its assessment of the matters referred to in paragraphs 5.3(a) to 5.3(e) and any other relevant information at the disposal of any person conducting such Independent Service Quality Audit, it can reasonably be concluded that the Pass Rates reported by the Operator for Reporting Periods within that Contract Year and/or for that Contract Year are a fair, accurate and impartial reflection of the Operator's performance against each Service Quality Indicator or Service Quality Area; or
 - (b) state that such confirmation cannot be provided and proceed to comply with paragraph 5.9 below.
- 5.5 Any Independent Service Quality Audit carried out on behalf of the Operator as required under this paragraph 5 shall be for the benefit of the Secretary of State.
- 5.6 The Secretary of State (and any of the Secretary of State's employees, agents, representatives and/or advisers, and any of its advisers, representatives and employees (each such person to be referred to as a "**SoS Nominee**")) shall have the right to witness any inspection carried out as part of an Independent Service Quality Audit.
- 5.7 The Operator shall co-operate in good faith with the Secretary of State in permitting the Secretary of State (including a SoS Nominee) to exercise the Secretary of State's rights under paragraph 5.6 and this paragraph 5.7 including by promptly providing to the Secretary of State the details of how and when any Independent Service Quality Audit will be conducted a reasonable time (and in any event not less than two (2) weeks) prior to the commencement of any such Independent Service Quality Audit.
- 5.8 The Operator shall provide the report together with all data produced as a consequence of any Independent Service Quality Audit to the Secretary of State as soon as 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 twenty eight (28) days following the last day of the last Contract Year to which the Independent Service Quality Audit relates.
- 5.9 To the extent that the confirmation specified in paragraph 5.4(b) cannot be provided in respect of any Independent Service Quality Audit, the Operator shall procure that any such audit report specifies in detail the reasons why such confirmation cannot be provided (including details of any Material Discrepancies between any Pass Rate reported by the

Operator in accordance with paragraph 11 (*Reporting Requirements*) and a comparable Pass Rate derived from the inspections carried out as part of the Independent Service Quality Audit (and in particular where any such Material Discrepancies are in favour of the Operator)).

6. **Secretary of State's Right of Audit**

6.1 Without prejudice to any other audit rights the Secretary of State may have under the National Rail Contract, the Secretary of State (and a SoS Nominee on the Secretary of State's behalf), shall have the right to carry out audits (the "**SoS Audits**") for the purposes of verifying, as a minimum, the matters referred to in paragraph 3.1 (*Operator Service Quality Inspections*).

6.2 The Secretary of State shall use the Secretary of State's all reasonable endeavours to procure that any inspections carried out as part of any SoS Audits undertaken pursuant to this paragraph 6 are conducted on a basis that is, as far as reasonably practicable, consistent with the Service Quality Inspections undertaken in respect of the Contract Year to which the SoS Audit relates.

7. **Access Rights**

7.1 The Operator shall grant such access to information, individuals and facilities including:

- (a) access to the SQR Stations, the SQR Trains and the Customer Service SQR Stations;
- (b) access to schedules of the locations and times of any actual or planned Independent Service Quality Audits or Service Quality Inspections (as the case may be);
- (c) access to the relevant Business Employees, records and information (including access to relevant third parties and information, records and other materials kept by such third parties on behalf of the Operator); and
- (d) access to any and all Service Quality Rectification Evidence,

as is reasonably necessary to enable the Secretary of State and/or the SoS Nominees to carry out SoS Audits or SoS Service Quality Inspections (as the case may be) or to witness any Service Quality Inspections, or Independent Service Quality Audits.

7.2 The Operator shall ensure that it has necessary arrangements in place with any relevant third parties for the purposes of ensuring that it can comply with its obligations under this paragraph 7.

7.3 The Secretary of State shall use all reasonable endeavours to ensure that the persons employed in undertaking any SoS Service Quality Inspections or SoS Audits carry out such audits diligently and objectively.

7.4 The Secretary of State shall use all reasonable endeavours to notify the Operator of the result of any SoS Service Quality Inspection or SoS Audit that is undertaken.

7.5 In carrying out any SoS Service Quality Inspection or SoS Audit (as the case may be) or witnessing any Service Quality Inspections, or Independent Service Quality Audits, the Secretary of State shall, subject to paragraph 7.6, 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 7.6.

7.6 The Operator shall provide reasonable prior notice from time to time of current location-specific access, security and safety rules and regulations to the Secretary of State for the purpose of ensuring that the Secretary of State (and the SoS Nominees) can carry out their respective inspection and auditing rights in an efficient, secure and safe manner.

Part 1C – Calculations of Pass Rates and Calculations related to the Service Quality Regime

8. Calculation of Pass Rates

8.1 From the Start Date, the Operator shall calculate the Pass Rates for the Train Service Quality Inspections, Station Service Quality Inspections and the Customer Service Quality Inspections for each 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: $p = \left(\frac{SQ_i - SQ_f}{SQ_i} \right) \times 100$	
	where:	
	SQ_i	is, in respect of each Service Quality Indicator relevant to a Service Quality Area, the total number of: (a) Service Quality Inspections carried out; (b) Service Quality Re-inspections in which a Re-inspection Failure was recorded; and (c) occasions on which a Rectification Evidence Failure occurred, 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 in which a Re-inspection Failure was recorded; and (c) occasions on which a Rectification Evidence Failure occurred, in respect of that Service Quality Indicator for that Reporting Period; and
w	is the weighting as specified in either Column 3 (<i>Weighting</i>) or Column 4 (<i>Alternative Weighting</i>) (as applicable) of the table(s) in Appendix 1 (<i>Service Quality Areas/Service Quality Indicators/Weightings</i>) of this Part 1 of Chapter 5.5 in respect of the relevant Service Quality Indicator comprised in that Service Quality Area.	

8.2 Within fourteen (14) days after the end of each Contract Year, the Operator shall provide to the Secretary of State its calculation of the Pass Rate for the relevant Contract Year in respect of each Service Quality Area comprised in each Service Quality Schedule, such Pass Rate to be separately calculated for the Train Service Quality Inspections, Station Service Quality

Inspections and the Customer Service Quality Inspections carried out in that Contract Year as follows:

Table 2						
SQA_{yr} = ΣIPR_{yr}						
where:						
SQA_{yr}	is the Pass Rate for each Service Quality Area comprised in such Service Quality Schedule for that Contract Year;					
IPR_{yr}	is ascertained as follows:					
	p x w					
	where:					
	p is ascertained as follows: p = ($\frac{SQ_i - SQ_f}{SQ_i}$) x 100					
	where:					
	<table border="1"> <tr> <td>SQ_i</td> <td>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 in which a Re-inspection Failure was recorded; and (c) occasions on which a Rectification Evidence Failure occurred, in respect of that Service Quality Indicator for that Contract Year;</td> </tr> <tr> <td>SQ_f</td> <td>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 in which a Re-inspection Failure was recorded; and (c) occasions on which a Rectification Evidence Failure occurred, in respect of that Service Quality Indicator for that Contract Year; and</td> </tr> <tr> <td>w</td> <td>is the weighting as specified in either Column 3 (<i>Weighting</i>) or Column 4 (<i>Alternative Weighting</i>) (as applicable) of the table(s) in Appendix 1 (<i>Service Quality Areas/Service Quality Indicators/Weightings</i>) of this Part 1 of Chapter 5.5 in respect of the relevant Service Quality Indicator comprised in that Service Quality Area.</td> </tr> </table>	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 in which a Re-inspection Failure was recorded; and (c) occasions on which a Rectification Evidence Failure occurred, in respect of that Service Quality Indicator for that Contract Year;	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 in which a Re-inspection Failure was recorded; and (c) occasions on which a Rectification Evidence Failure occurred, in respect of that Service Quality Indicator for that Contract Year; and	w
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 in which a Re-inspection Failure was recorded; and (c) occasions on which a Rectification Evidence Failure occurred, in respect of that Service Quality Indicator for that Contract Year;					
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 in which a Re-inspection Failure was recorded; and (c) occasions on which a Rectification Evidence Failure occurred, in respect of that Service Quality Indicator for that Contract Year; and					
w	is the weighting as specified in either Column 3 (<i>Weighting</i>) or Column 4 (<i>Alternative Weighting</i>) (as applicable) of the table(s) in Appendix 1 (<i>Service Quality Areas/Service Quality Indicators/Weightings</i>) of this Part 1 of Chapter 5.5 in respect of the relevant Service Quality Indicator comprised in that Service Quality Area.					

8.3 The Operator shall perform the calculations referred to in paragraphs 8.1 and 8.2 rounded to two (2) decimal places with the midpoint (that is, 0.115) rounded upwards (that is, 0.12).

9. Calculations related to the Service Quality Regime

9.1 On the later of receipt of the notification(s) referred to in paragraph 8.2 in respect of a Contract Year or any audit report relating to any Independent Service Quality Audit or SoS Audit (as the case may be) undertaken in respect of that Contract Year, the Secretary of State shall:

- (a) confirm the calculation of **SQA_{yr}**; or

- (b) notify the Operator that the provisions of paragraph 15 (*Material Discrepancies*) shall apply where any Independent Service Quality Audit or SoS Audit (as the case may be) reveals that there were Material Discrepancies in the calculation of the Pass Rate in favour of the Operator for that Contract 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 5.1 (*Independent Service Quality Audits*)).

Part 1D – Publication and Reporting Requirements

10. Publication of Pass Rates

- 10.1 The Operator shall publish (as a minimum) on its web site (in such format as the Secretary of State may require) details of:
- (a) within fourteen (14) days of the end of each Reporting Period, the Pass Rate for each Service Quality Area relating to 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 9.1 (*Calculations related to the Service Quality Regime*), the Pass Rate for each Service Quality Area for each Contract Year alongside the applicable SQR Benchmark for such Service Quality Area.

11. Reporting Requirements

- 11.1 Within fourteen (14) days after the end of each Reporting Period, the Operator shall provide to the Secretary of State:
- (a) a statement (disaggregated to separately show the total number of Train Service Quality Inspections, Stations 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 where applicable Service Quality Re-inspections) and/or the recording of Service Quality Rectification Evidence in the SQR Management System within the Relevant Rectification Period pursuant to paragraph 4.1(b) (where applicable);
- (ii) the number of:
- (A) Service Quality Inspections (and where applicable Service Quality Re-inspections) carried out in respect of each Service Quality Schedule in that Reporting Period; and
- (B) occasions on which the Operator was required to record Service Quality Rectification Evidence in the SQR Management System within the Relevant Rectification Period pursuant to paragraph 4.1(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 4.1(b) in that Reporting Period;
- (iv) the number of:
- (A) Service Quality Inspections (and where applicable Service Quality Re-inspections) where a “pass” was recorded in respect of a Service Quality Indicator in that Reporting Period for each Service Quality Schedule; and
- (B) occasions on which the Operator was required to record Service Quality Rectification Evidence in the SQR Management System within the

Relevant Rectification Period pursuant to paragraph 4.1(b) in that Reporting Period and a Service Quality Failure did not occur in respect of the same pursuant to paragraph 4.1(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 Operator’s calculation of the Pass Rate for each Service Quality Area comprised in the relevant Service Quality Schedule.
- 11.2 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 8 (*Calculation of Pass Rates*).
- 11.3 Nothing in this Chapter 5.5 shall require the Operator to provide to the Secretary of State any data which is Personal Data.
- 12. Additional Information Requirements for Service Quality Re-inspections and Service Quality Rectification Evidence**
- 12.1 In addition to the information to be provided by the Operator pursuant to paragraph 11 (*Reporting Requirements*), the Operator shall at the end of each Reporting Period during which Service Quality Inspections have been carried out provide to the Secretary of State a list of each facility or service or train comprised in a SQR Train and SQR Station (on a Station by Station basis) against which a “*fail*” was recorded:
- (a) during any Service Quality Inspections or Service Quality Re-inspection (as the case may be); or
 - (b) in the circumstances described in paragraph 4.1(b).
- 13. Maintenance of Records**
- 13.1 Without limiting the obligations of the Operator pursuant to paragraph 3 (*Maintenance of Records*) of Chapter 1.1 (*Organisation and Management*), the Operator shall maintain true, up to date and complete records of the results of each Service Quality Inspection, its calculations of the Pass Rates in relation to such Service Quality Inspections and the results of each Independent Service Quality Audit.
- 13.2 The Operator shall, immediately at the request of the Secretary of State make any records required under this Part 1 of Chapter 5.5 available to the Secretary of State.

Part 1E – Remedies

14. Consequences of a Failed Audit

- 14.1 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 5 (*Independent Service Quality Audits*) or any confirmation required by paragraph 5.4(a) (*Independent Service Quality Audits*) cannot be provided; or
 - (b) the Operator fails to:
 - (i) carry out a Service Quality Inspection as required by paragraph 3.1 (*Operator Service Quality Inspection*); or
 - (ii) calculate the Pass Rates and/or report to the Secretary of State the Pass Rates as required pursuant to paragraphs 8.1 and 8.2 (*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 5.9 (*Independent Service Quality Audits*),

then the provisions of this paragraph 14 shall apply.

- 14.2 If any of the circumstances specified in paragraph 14.1 occur then:
- (a) the Secretary of State may in the case of an SoS Audit, require the Operator to reimburse to the Secretary of State the reasonable and proper costs incurred in undertaking any such SoS Audit (and such reimbursement shall be a Disallowable Cost); and
 - (b) the Secretary of State may in all cases:
 - (i) require the Operator to carry out additional Service Quality Inspections at the Operator's cost (that is, in excess of those required pursuant to paragraph 3.1 (*Operator Service Quality Inspections*)) which cost shall be a Disallowable Cost;
 - (ii) require the Operator to procure a further Independent Service Quality Audit (or the Secretary of State may carry out a further SoS Audit) for the purposes of verifying whether any deficiencies in the SQR Management System have led or contributed to the failure of any Independent Service Quality Audit or SoS Audit or to confirm or verify whether any of the matters referred to in paragraph 5 (*Independent Service Quality Audits*) have been subsequently rectified by the Operator (the cost of which shall be a Disallowable Cost); 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 Contract 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 in accordance with paragraph 8 (*Calculation of Pass Rates*) and paragraph 2 (*Calculation of the Performance Based Fee*) of Chapter 7.2 (*Performance Based Fee and Shadow Operator Performance Based Fee*);
 - (B) the Operator's obligations to undertake Service Quality Inspections and procure an Independent Service Quality Audit shall cease to apply for the duration of the SoS Service Quality Inspection Period; and
 - (C) the Secretary of State may require the Operator 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 (and such reimbursement shall be a Disallowable Cost).

15. **Material Discrepancies**

- 15.1 For the purposes of this Part 1 of Chapter 5.5, "**Material Discrepancies**" means:
- (a) discrepancies in the Operator's calculation of the Pass Rate which in the 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 5.3 (*Independent Service Quality Audits*) in circumstances where the Pass Rate has been calculated wrongly; or
 - (c) where an Independent Service Quality Audit or SoS Audit confirms that there would have been a different Pass Rate if the Operator had complied with the requirements of paragraph 5.3 (*Independent Service Quality Audits*).
- 15.2 If, in any PBF Assessment Period, an Independent Service Quality Audit or SoS Audit (as the case may be) reveals any Material Discrepancies, paragraph 3.2 (*Material Discrepancies*) of Appendix 5 (*Quantified Target Methodology*) to Chapter 7.2 (*Performance Based Fee and Shadow Operator Performance Based Fee*) shall apply.
- ## 16. **Contravention of the National Rail Contract in respect of Material Discrepancies**
- 16.1 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 National Rail Contract in addition to the provisions of paragraph 15.2 of this Part 1 of Chapter 5.5 applying.

17. **Consequences of Performance falling below the SQR Benchmark**

17.1 If:

- (a) NOT USED; or
- (b) subject to paragraph 17.1(c) below, the Pass Rate as calculated in accordance with paragraph 8 (*Calculation of the Pass Rates*) in respect of any Service Quality Area is below any SQR Benchmark for that Service Quality Area (“**Affected Service Quality Area**”) for:
 - (i) any three (3) consecutive Reporting Periods; or
 - (ii) any four (4) Reporting Periods within any period of thirteen (13) consecutive Reporting Periods; or
 - (iii) any Contract Year,

then the Operator shall immediately notify the Secretary of State of such fact and, 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 prepare and submit to the Secretary of State (for the Secretary of State’s review and consent) the Operator’s proposals for achieving, as soon as practicable, a Service Quality Improvement (a “**Service Quality Improvement Proposal**”); and

- (c) with respect to:
 - (i) paragraph 17.1(b)(i), for so long as fewer than three (3) Reporting Periods have elapsed following the Start Date, the Operator’s performance as against the relevant Previous SQR Benchmark in respect of the relevant Reporting Periods (up to a maximum of two (2) consecutive Reporting Periods) that immediately precede the Start Date shall be taken into account for the purposes of determining the matters referred to in that paragraph (and “Reporting Period” shall have the meaning given to such term in the Previous Agreement with respect to those Reporting Periods falling before the Start Date); and
 - (ii) paragraph 17.1(b)(ii), for so long as fewer than thirteen (13) Reporting Periods have elapsed following the Start Date, the Operator’s performance as against the relevant Previous SQR Benchmark in respect of the relevant Reporting Periods (up to a maximum of twelve (12) consecutive Reporting Periods) that immediately precede the Start Date shall be taken into account for the purposes of determining the matters referred to in that paragraph (and “Reporting Period” shall have the meaning given to such term in the Previous Agreement with respect to those Reporting Periods falling before the Start Date), to the extent that a Service Quality Improvement Proposal has not already been submitted, accepted and/or implemented in respect of the relevant event triggering the application of paragraph 17.1(b)(ii) under the Previous Agreement in accordance with requirements equivalent to those set out in paragraphs 17.2 to 17.5 of this Part 1 of Chapter 5.5.

17.2 The Service Quality Improvement Proposal shall:

- (a) contain specific tangible action points and indicate in the case of each action point:
 - (i) how that action will contribute to meeting the relevant SQR Benchmark;
 - (ii) where the action is to be implemented;
 - (iii) the proposed timescales for implementing such action and, where any action is expressed to be ongoing, proposed review dates;
 - (iv) the date by which the Service Quality Improvement will be achieved; and
- (b) the additional expenditure associated with each action.

- 17.3 The Secretary of State shall be entitled to:
- (a) request further information from the Operator with respect to its Service Quality Improvement Proposal and the Operator shall submit such further information to the Secretary of State within the timescales as requested by the Secretary of State; and/or
 - (b) propose amendments to the Service Quality Improvement Proposal and the Parties shall agree and, in the absence of agreement, the Secretary of State shall determine the amendments to the Service Quality Improvement Proposal, in which case paragraph 17.4 shall apply; or
 - (c) accept the Service Quality Improvement Proposal, in which case paragraph 17.4 shall apply; or
 - (d) not accept the Service Quality Improvement Proposal, in which case the Operator shall not be obliged to undertake any further action with respect to its Service Quality Improvement Proposal.
- 17.4 The Operator shall implement the Service Quality Improvement Proposal as amended, determined or accepted by the Secretary of State (as the case may be) in accordance with paragraph 17.3. Any additional expenditure stated in the Service Quality Improvement Proposal shall trigger a Cost Budget Change Event.
- 17.5 If:
- (a) the Operator fails to implement any Service Quality Improvement Proposal (as consented to by the Secretary of State) as required pursuant to paragraph 17.4 of this Part 1 of Chapter 5.5 within the required timescales; or
 - (b) the Operator's performance in relation to the Affected Service Quality Area is not at a level that is equal to or above the SQR Benchmark within the period specified in the Service Quality Improvement Proposal,

then this shall constitute a contravention of the National Rail Contract.

18. Variations to the Service Quality Regime

- 18.1 The Secretary of State and the Operator may from time to time agree to vary the contents of the Service Quality Schedules, the weightings associated with any Service Quality Indicators and/or any SQR Benchmark (including by reducing the SQR Benchmark in respect of certain Service Quality Areas and at the same time increasing others, or by adjusting the treatment of Service Quality Re-Inspections and/or Service Quality Rectification Evidence). Any variation agreed by the Secretary of State and the Operator pursuant to this paragraph 18.1 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 Operator shall (unless otherwise agreed by the Parties) constitute a Cost Budget Change Event and a Cost Financial Target Amendment Event, a Revenue Financial Target Amendment Event or a Profit Financial Target Amendment Event (as applicable).

Appendix 1 to Part 1 of Chapter 5.5

Service Quality Areas/Service Quality Indicators/Weightings

PART 1 – SQR STATIONS

Where no Service Quality Inspections are conducted of the “Information During Disruption” Indicator during a Reporting Period, the weightings in column 4 shall apply in place of the weightings in column 3 for those Indicators relating to the Service Quality Area “Information”, when conducting the calculations referred to in paragraph 8 of this Part 1 of Chapter 5.5.

Column 1	Column 2	Column 3	Column 4
Service Quality Area	Service Quality Indicators	Weighting	Alternative Weighting
Ambience and Assets	Lighting	15%	N/A
	Seating	20%	
	Shelters and Waiting Rooms	15%	
	Lifts, Escalators and Ramps	15%	
	Toilet Operation	20%	
	Car Parking/Cycle Parking	10%	
	Vegetation	5%	
Cleanliness and Graffiti	General Cleanliness	30%	N/A
	Toilets	25%	
	Litter	25%	
	Graffiti and Etching	20%	
Information	CIS	20%	23%
	PA	20%	23%
	Help Points	15%	18%
	Posters and Frames	15%	18%
	Signage and Information	15%	18%
	Information During Disruption	15%	N/A
Ticketing and Staffing	TVMs	25%	N/A
	Ticket Offices	25%	
	Staff Presence	25%	
	Ticket Gates	25%	

PART 2 – SQR TRAINS

Where no Service Quality Inspections are conducted of the “Information During Disruption” Indicator during a Reporting Period, the weightings in column 4 shall apply in place of the weightings in column 3 for those Indicators relating to the Service Quality Area “Information”, when conducting the calculations referred to in paragraph 8 of Chapter 5.5.

Column 1	Column 2	Column 3	Column 4
Service Quality Area	Service Quality Indicators	Weighting	Alternative Weighting
Ambience and Assets	Heating and Lighting	20%	N/A
	Seating	20%	
	Vehicle Interior Condition	20%	
	Accessibility Features	15%	
	Toilet Operation	25%	
Cleanliness and Graffiti	Interior	25%	N/A
	Exterior	15%	
	Litter	20%	
	Toilets	20%	
	Graffiti and Etching	20%	
Information	PIS	25%	28%
	PA	25%	28%
	Wi-fi	15%	18%
	Catering	5%	8%
	Posters, Frames and Signs	15%	18%
	Information During Disruption	15%	N/A

PART 3 – SQR CUSTOMER SERVICE

Column 1	Column 2	Column 3
Service Quality Area	Service Quality Indicators	Weighting
Staff Helpfulness	Helpfulness of Staff at Stations	50%
	Helpfulness of Staff on Trains	50%
Online Information	Social Media Question	30%
	Planned and Unplanned Disruption	70%

Chapter 5.5, Part 2: RCIS

19. Conduct of Rail Customer Insight Surveys

19.1 The Operator agrees with the Secretary of State that:

- (a) the Secretary of State or any independent entity nominated by the Secretary of State to act on its behalf for such purpose (an “**RCIS Administrator**”) may measure the level of passenger satisfaction with the Rail Services through Rail Customer Insight Surveys;
- (b) the Secretary of State or any RCIS Administrator may, from time to time, publish the results of Rail Customer Insight Surveys on an individual and/or period basis.

19.2 The Secretary of State shall ensure or shall procure that the findings of any Rail Customer Insight Survey are made available to the Operator within a reasonable period of time after the completion of each survey.

19.3 The Operator shall, as soon as practicable (and in any event within 14 days) after such information is made available to the Operator, or at such greater interval as the Secretary of State may specify by notice to the Operator from time to time, in accordance with paragraph 19.2, publicise its performance against the RCIS Benchmarks by including such information in its Customer Report and displaying such information at all of the Stations and on its website.

19.4 It is agreed by the Operator that the performance of the Operator against the RCIS Benchmarks as measured by the Secretary of State or any RCIS Administrator in conducting any such Rail Customer Insight Survey shall be calculated in accordance with the process as described in the document in the agreed terms marked **RCIS PCM** (the “**RCIS Performance Calculation Methodology**”), as may be agreed and updated from time to time between the Secretary of State and the Operator.

19.5 If:

- (a) at any time during the Contract Term the methodology adopted in conducting any Rail Customer Insight Survey is, in the opinion of the Secretary of State, materially inconsistent with the RCIS Performance Calculation Methodology; and
- (b) the Secretary of State determines that in consequence a revision to the RCIS Benchmarks and/or the RCIS Expected Range is required in order to hold constant the risk of the Operator failing to satisfy the RCIS Benchmark and/or perform within the RCIS Expected Range,

then the Secretary of State shall make such revisions to such RCIS Benchmarks and/or the RCIS Expected Range as the Secretary of State considers appropriate to hold constant such risk, subject always to paragraph 2.8 of Chapter 7.2 (*Performance Based Fee and Shadow Operator Performance Based Fee*) (and the Secretary of State’s determination of any such revisions shall be subject to the Determination Escalation Process).

19.6 If:

- (a) Rail Customer Insight Surveys are replaced by an alternative survey; or
- (b) the Secretary of State after consultation with the Operator, determines that an alternative passenger survey would be more appropriate,

then in each case the provisions of this Chapter 5.5 and/or the relevant provisions of Chapter 7.2 (*Performance Based Fee and Shadow Operator Performance Based Fee*) relating to the results of Rail Customer Insight Surveys shall apply in respect of any alternative survey (the “**Alternative Survey**”).

20. Performance Review

20.1 It is agreed by the Secretary of State and the Operator that, subject to paragraph 19.6, the results of the Rail Customer Insight Survey(s) published by the Secretary of State or RCIS Administrator in any Contract Year should be used to determine the Operator’s performance against the RCIS Benchmarks for that Contract Year (calculated in accordance with the RCIS Performance Calculation Methodology). In any Contract Year:

- (a) the performance of the Operator against the RCIS Benchmarks shall be measured on the basis of the average of the results of all of the Rail Customer Insight Surveys published by the Secretary of State or the RCIS Administrator in that Contract Year; or
 - (b) NOT USED; and
 - (c) for the purposes of undertaking the comparison pursuant to this paragraph 20.1, the results referred to in paragraph 20.1(a) shall be rounded up to one (1) decimal place with the midpoint (that is, 4.45) rounded upwards (that is, 4.5).
- 20.2 In the event that the Secretary of State determines that the total number of respondents relating to any RCIS Measure is too low to enable a meaningful statistical analysis the Secretary of State after consultation with the Operator, shall determine any amended or alternative RCIS Measures, and any consequential revisions to the RCIS Benchmarks and/or RCIS Expected Range, subject always to paragraph 2.8 of Chapter 7.2 (*Performance Based Fee and Shadow Operator Performance Based Fee*).
- 20.3 The Secretary of the State and the Operator shall discuss at Contract Performance Meetings the Operator's customer satisfaction performance, including where applicable against the RCIS Benchmarks, and any initiatives the Operator has implemented or intends to implement to address any shortfalls contributing to not meeting such RCIS Benchmarks in the relevant Contract Year using the results of the Rail Customer Insight Surveys published by the Secretary of State or RCIS Administrator pursuant to paragraph 19.1(b).
21. **RCIS Improvement Proposals**
- 21.1 In the event that the Operator fails to achieve an RCIS Benchmark, or the Secretary of State believes that the Operator will fail to achieve an RCIS Benchmark, the Secretary of State may require that the Operator submit a proposal for the Secretary of State's consideration which shall:
- (a) contain specific tangible action points and indicate in the case of each action point:
 - (i) how that action will contribute to meeting the relevant RCIS Benchmark;
 - (ii) where the action is to be implemented;
 - (iii) the proposed timescales for implementing such action and, where any action is expressed to be ongoing, proposed review dates; and
 - (iv) how the Operator proposes to measure the performance of the action; and
 - (b) the additional expenditure associated with each action,
- being the **"RCIS Improvement Proposal"**.
- 21.2 The Secretary of State shall be entitled to:
- (a) request further information from the Operator with respect to its RCIS Improvement Proposal, and the Operator shall submit such further information to the Secretary of State within the timescales as requested by the Secretary of State; and/or
 - (b) propose amendments to the RCIS Improvement Proposal and the Parties shall agree and, in the absence of agreement, the Secretary of State shall determine the amendments to the RCIS Improvement Proposal, in which case paragraph 21.3 shall apply; or
 - (c) accept the RCIS Improvement Proposal, in which case paragraph 21.3 shall apply; or
 - (d) not accept the RCIS Improvement Proposal, in which case the Operator shall not be obliged to undertake any further action with respect to its RCIS Improvement Proposal.
- 21.3 The RCIS Improvement Proposal as agreed, determined or accepted by the Secretary of State (as the case may be) in accordance with paragraph 21.2 shall be referred to as the **"RCIS Improvement Plan"**. The Operator shall implement the RCIS Improvement Plan in accordance with its terms and the provisions of Chapter 7.1 (*Contract Payments*) shall apply.

22. Rail Customer Insight Programme and Other Initiatives

- 22.1 Unless otherwise directed by the Secretary of State, the Operator shall fully and effectively engage with the Rail Customer Insight Programme.
- 22.2 The Operator shall engage with rail industry partners (including the Secretary of State, Network Rail, RDG and the ORR) in the development and implementation of the industry-wide Maturity Model for Customer Experience.

Chapter 6 – Environment and Sustainability



Environment and Sustainability

CHAPTER 6**ENVIRONMENT AND SUSTAINABILITY**

1	Environmental Information
2	Air Quality Monitoring and Improvement
3	Sustainability
4	Measurement of Traction Energy Usage
	Appendix 1 to Chapter 6 – Environmental Information

Chapter 6

Environment and Sustainability

1. Environmental Information

1.1 Data Sharing

- (a) Within three (3) months following the end of each Contract Year, the Operator shall report to the Secretary of State and the RSSB the Initial Dataset corresponding to the previous Contract Year by completing the RSSB's online "Environmental Reporting Tool".
- (b) The Operator shall share all available environmental data with the Secretary of State and/or RSSB as requested from time to time by the Secretary of State and/or RSSB, acting reasonably, including in relation to:
 - (i) air pollution emissions referenced in the Clean Air Strategy 2019 (including nitrogen oxides and particulate matter);
 - (ii) emissions of Greenhouse Gases (as defined in the Kyoto Protocol to the United Nations Framework Convention on Climate Change); and
 - (iii) energy usage.
- (c) The Secretary of State and/or (with the prior approval of the Secretary of State) RSSB, acting reasonably, may instruct the Operator to collect and share with the Secretary of State and/or RSSB (as applicable) such additional environmental data as the Secretary of State and/or RSSB (as applicable) may require from time to time.

1.2 Environmental Information Data Collection Plan

- (a) If the Operator is unable to provide the Initial Dataset in respect of any Contract Year they will promptly inform the Secretary of State and RSSB with a written explanation of why they are unable to provide such data.
- (b) The Operator shall cooperate with the Secretary of State and/or RSSB to seek to identify improvements in type of data to be collected, the method of collection and the efficiency and cost effectiveness of collection.
- (c) The Operator shall ensure that the form of measurement of the Initial Dataset for each Contract Year enables it to report a consolidated periodic or annual usage figure to the Secretary of State and RSSB as specified for each measure in Table 1 in paragraph 1 (*Environmental Impact Monitoring Dataset*) of Appendix 1 (*Environmental Information*) to this Chapter 6.
- (d) In addition to paragraph 1.2(c) above and in complying with its obligations in paragraph 1.1(a) above, the Operator shall deliver the information for each measure in Table 1 in paragraph 1 (*Environmental Impact Monitoring Dataset*) of Appendix 1 (*Environmental Information*) to this Chapter 6 in the units, with the granularity and in respect of the regularity required for each measure as indicated in that Table 1.

1.3 Environmental Impact Monitoring Audit

The Operator shall procure a suitably qualified independent body (such independent body to be appointed only with the prior Approval of the Secretary of State) to undertake an independent audit of the data provided to RSSB and/or the Secretary of State and the collection methodology of the Initial Dataset in respect of the first Contract Year then as requested by the Secretary of State (the "**Environmental Impact Monitoring Audit**"). The scope of the Environmental Impact Monitoring Audit shall be agreed in advance with the Secretary of State.

1.4 Remedial Actions

- (a) In the event that an Environmental Impact Target is not met in any Contract Year, the Operator shall as soon as practicable produce and provide to the Secretary of State a

revised Environmental Impact Targets Plan which, in the opinion of the Secretary of State, is capable of achieving the Environmental Impact Targets.

- (b) The Operator shall use all reasonable endeavours to implement the revised Environmental Impact Targets Plan, which shall be the Environmental Impact Targets Plan for the purposes of this Contract.

1.5 **Publication**

The Operator shall publish (in such format as the Secretary of State may require) details of its performance against the Environmental Impact Targets in widely accessible forms including, as a minimum, publishing them on its website and in each Customer Report (excluding the first (1st) Customer Report).

2. **Air Quality Monitoring and Improvement**

- 2.1 The Operator shall for the purposes of air quality monitoring at Stations or depots under its control:
- (a) provide to the Secretary of State all existing data in relation to air quality and measures that the Operator is implementing to improve air quality at Stations or depots under its control;
 - (b) provide to the Secretary of State, RSSB, or any person whom the Secretary of State might specify, access to any sites, power supplies and telemetry under its control as requested by the Secretary of State or RSSB from time to time, including for the purpose of installing air quality monitors; and
 - (c) assist the Secretary of State, RSSB or any person whom the Secretary of State might specify in the placement, replacement and dispatch of diffusion tubes.
- 2.2 The Operator shall for the purposes of air quality monitoring on rolling stock vehicles:
- (a) provide to the Secretary of State, RSSB or any person whom the Secretary of State might specify during the Contract Term, free-of-charge access to rolling stock vehicles and on board power supplies whilst in or out of service;
 - (b) consent for equipment to be installed on rolling stock vehicles for the purposes of air quality monitoring;
 - (c) provide available on-train air quality data, train management system data and/or on train monitoring recorder data as the Secretary of State may require from time to time.
- 2.3 The Operator shall for the purposes of monitoring and reducing air pollutant emissions from traction:
- (a) through an industry-led industry working group, support the development and delivery of a policy in relation to the maximum time for which a train's engine may be kept idling while stationary;
 - (b) use all reasonable endeavours to work with the fleet owner to develop an air pollution emissions reduction pathway for all diesel rolling stock vehicles; and
 - (c) provide to the Secretary of State such information and/or data in relation to exhaust emissions from rolling stock vehicles comprised within the Train Fleet as the Secretary of State may require from time to time for the purposes of data collection and analysing the consequent impact of such emissions on air quality in Depots and Stations and along the Routes on which such rolling stock vehicles are deployed.
- 2.4 The Operator shall for the purposes of supporting wider industry approaches to air pollution emissions reduction:
- (a) consider the impact of any rolling stock vehicle, operational or infrastructure changes on emissions; and
 - (b) provide to the Secretary of State and RSSB, and update as necessary, a named contact as a point of enquiry in relation to air quality.

3. Sustainability

3.1 Environmental Management and Sustainability Accreditation

- (a) The Operator shall at all times maintain certification pursuant to ISO14001:2015 and ISO50001:2011 or equivalent standards.
- (b) The Operator shall provide the Secretary of State with copies of the certification audit reports and a copy of their ISO50001 Energy Review within four (4) weeks of each subsequent recertification during the Contract Period.

3.2 Sustainable Construction

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

- (a) which are either being funded by the Operator or in respect of which the Operator has design responsibility; and
- (b) in respect of which the total capital cost exceeds £1,000,000 (one million pounds) or such other amount as the Secretary of State may from time to time specify (on not less than 3 months' notice),

the Operator shall use all reasonable endeavours to achieve at least an “**excellent**” rating from an accredited assessor using BREEAM (or a rating equivalent to “**excellent**” in an equivalent recognised standard such as the SKA Rating Standard as appropriate) at both the design stage and the post-construction stage unless the Secretary of State agrees that the relevant project is not of a suitable scale or type to be so assessed and the Operator shall provide to the Secretary of State such information in relation to any construction project as the Secretary of State may request.

4. Measurement of Traction Energy Usage

- 4.1 The Operator shall ensure that all rolling stock units that form part of the Train Fleet are able to measure and monitor fuel use as soon as practicable, and in the case of electric traction, enable the Operator to be a “**Metered Train Operator**” as defined by the Traction Electricity Rules.
- 4.2 NOT USED

Appendix 1 to Chapter 6

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 3.2(b) (Sustainable Construction) of Chapter 6 (<i>Environment and Sustainability</i>)	Total	Per project
WATER	Mains Water consumption (m ³)	Total	Annual
	Water recycling initiatives	Narrative	Annual
WASTE	Waste generated (tonnes)	Total	Annual
	Waste recycled (tonnes)	Total	Annual
	Waste subject to other recovery (tonnes)	Total	Annual
	Waste to landfill (tonnes)	Total	Annual
	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

Chapter 7 – Financial Obligations, Incentives and Scorecards



Chapter 7.1 - Contract Payments



Chapter 7.2 - Performance Based Fee



Chapter 7.3 - Management Information



Chapter 7.4 - Financial Covenants and Bonds



Chapter 7.5 - Variations, Changes and Amendments



Chapter 7.6 - Railways Pension Scheme



Chapter 7.7 - Business Plan

CHAPTER 7
FINANCIAL OBLIGATIONS, INCENTIVES AND SCORECARDS

Chapter 7.1	Contract Payments
	Appendix 1: Calculation of Periodic Contract Payments (PCP)
	Appendix 2: Disallowable Costs
Chapter 7.2	Performance Based Fee
	Appendix 1: PBF Assessment Review
	Appendix 2: PBF Assessment Review Checklist
	Appendix 3: Scorecard Criteria
	Appendix 4: Scorecard Methodology
	Appendix 5: Quantified Target Methodology
	Appendix 6: Shadow Operator Methodology
Chapter 7.3	Management Information
Chapter 7.4	Financial Covenants and Bonds
Chapter 7.5	Variations, Changes and Amendments
	Appendix 1: Trigger Events
Chapter 7.6	Railway Pensions Scheme
	Appendix 1: List of Shared Costs Sections
Chapter 7.7	Business Plan

Chapter 7.1

Contract Payments

1. Contract Payments

1.1 The Contract Payment (£CP) for each Reporting Period shall be an amount equal to:

£CP =	PCP + WCP – WCR + FFPBF + FWCP – FWCA – STSA - FSTSA + ICA+ FCA+ TFAP + ShOp PBF + HSMA1 + HSMA2
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where:

PCP	means the amount of Periodic Contract Payment as calculated pursuant to the provisions of Appendix 1 (<i>Calculation of Periodic Contract Payments (PCP)</i>) of this Chapter 7.1 (<i>Contract Payments</i>) to be made on that Reporting Period's Payment Date. PCP may be a positive or negative number;
WCP	means any Working Capital Payment to be made on that Reporting Period's Payment Date. WCP may only be a positive number;
WCR	means any Working Capital Repayment to be made on that Reporting Period's Payment Date. WCR may only be a positive number;
FFPBF	means the Fixed Fee and the Performance Based Fee for the applicable Contract Year, determined in accordance with paragraph 12.1 and to be paid in accordance with paragraph 12.2. FFPBF may only be a positive number;
FWCP	means an amount equal to the First Working Capital Payment and FWCP may be only be a positive number;
FWCA	means the Final Working Capital Adjustment, determined in accordance with paragraph 11.1 to be made on that Reporting Period's Payment Date. FWCA may be a positive or negative number;
STSA	means the Season Ticket Suspense Adjustment, determined in accordance with paragraphs 13.2 and 13.3(a) (as applicable). STSA may be a positive or negative number;
FSTSA	means the Final Season Ticket Suspense Adjustment, determined in accordance with paragraph 13.8. FSTSA may be a positive or negative number;
ICA	means the Interim Closing Adjustment, determined in accordance with paragraph 18.1 and to be paid in accordance with paragraph 18. ICA may be a positive or negative number;
FCA	means the Final Closing Adjustment, determined in accordance with paragraph 18.2 and to be paid in accordance with paragraph 18. FCA may be a positive or negative number;
TFAP	means an amount equal to the Net Book Value of the Transferring Fixed Assets and TFAP may only be a positive number;
ShOp PBF	means, (subject to paragraph 12.4), the value of the Shadow Operator Performance Based Fee for the applicable Contract Year, determined in accordance with Chapter 7.2 (<i>Performance Based Fee and Shadow Operator Performance Based Fee</i>). ShOp PBF may only be a positive number;

HSMA1	means the “ First HS Milestone Amount ” being in relation to the Contract Year in which the High Speed Start Date occurs, the amount calculated in accordance with paragraph 12A.1; and
HSMA2	means the “ Second HS Milestone Amount ” being in relation to the Contract Year in which the Second HS Milestone Date occurs, the amount calculated in accordance with paragraph 12B.1.

- 1.2 The Parties agree that:
- (a) where **£CP is a positive number**, the Secretary of State shall pay that amount to the Operator on the Payment Date for that Reporting Period;
 - (b) where **£CP is a negative number**, the Operator shall pay the corresponding positive amount to the Secretary of State on the Payment Date for that Reporting Period.
- 1.3 The Parties shall at all times act in a timely manner in relation to the calculation of the Contract Payment (£CP) (including each element thereof) for each Reporting Period.
- 1.4 Subject to the provisions of paragraphs 1.5 and 1.6, if the Parties have not agreed the amount of the Contract Payment (£CP) for a Reporting Period within fifteen (15) Weekdays of the beginning of such Reporting Period, the Secretary of State may (but shall not be obliged to) determine it on the basis of the information then available to the Secretary of State.
- 1.5 If the Parties have not agreed the amount of the relevant Annual Adjustment (AADJ) for a Contract Year within six (6) Reporting Periods after the end of that Contract Year:
- (a) the Secretary of State may (but shall not be obliged to) determine AADJ for the relevant Contract Year on the basis of the information then available to the Secretary of State; or
 - (b) the Secretary of State may (but shall not be obliged to) make an interim determination of AADJ for the relevant Contract Year on the basis of the information then available to the Secretary of State; and/or
 - (c) if the Secretary of State makes an interim determination under paragraph (b) then, unless the Parties agree the amount of the relevant AADJ, the Secretary of State may (but shall not be obliged to) make a further determination of AADJ for the relevant Contract Year taking account of information available to the Secretary of State as at the date of such further determination.
- 1.6 Provided that the Operator has submitted the Management Accounts to the Secretary of State in accordance with paragraph 1.3(a) of Chapter 7.3 (*Management Information*), the Secretary of State shall not be entitled to withhold payment of any undisputed amounts of the Contract Payment (£CP) for the relevant Reporting Period, which amounts shall be paid by the Secretary of State in accordance with paragraph 2 of this Chapter 7.1 (*Contract Payments*).
- 2. Payment of Contract Payments**
- 2.1 The Secretary of State shall notify the Operator, no less than five (5) Weekdays prior to the start of each Reporting Period, of the amount of the Contract Payment payable in respect of that Reporting Period.
- 2.2 Each such notification shall set out in reasonable detail how the Contract Payment has been calculated.
- 2.3 The Payment Date for a Reporting Period shall be the first Weekday of that Reporting Period.
- 2.4 Each Contract Payment shall be payable by the Operator or, as the case may be, the Secretary of State in the amount notified by the Secretary of State in accordance with paragraph 2.1 of this Chapter 7.1 (*Contract Payments*) on the Payment Date of the Reporting Period to which it relates.

- 2.5 Each Contract Payment shall be made:
- (a) by automatic electronic funds transfer in pounds sterling to such bank account in the United Kingdom as the payee of such payment may have previously specified to the payer in writing; and
 - (b) so that cleared funds are received in that account on or before the due date for payment.
- 2.6 References in this Chapter 7.1 (*Contract Payments*) to Reporting Period or Contract Year are deemed amended to the extent necessary to allow:
- (a) any:
 - (i) components of the Contract Payment for the final Contract Year (including any AADJ) which have not been calculated and/or paid prior to the expiry of this Contract; or
 - (ii) any Interim Closing Adjustments or Final Closing Adjustment, to be calculated and paid after the date of termination or expiry of this Contract in accordance with the provisions of this Chapter 7.1 (*Contract Payments*); or
 - (b) the Season Ticket Suspense Adjustments to be calculated in the first Quarter.

3. **Interest**

- 3.1 If:
- (a) the Operator fails to pay any amount to the Secretary of State on its due date,
 - (b) the Secretary of State fails to pay to the Operator the Fixed Fee and Performance Based Fee, Shadow Operator Performance Based Fee, First HS Milestone Amount and Second HS Milestone Amount on its due date,

that Party which has failed to pay shall in addition pay interest on such amount at the Interest Rate, calculated on a daily basis, from the due date for payment to the date on which payment is made.

4. **Contract Payment Adjustments and Disputes**

- 4.1 If either Party considers that the amount of any Contract Payment paid was incorrectly assessed or calculated, that Party shall immediately notify the other and shall meet (at the next Periodic Finance Review Meeting in the case of Contract Payments relating to the Contract Period) to discuss and seek to agree an appropriate adjustment to ensure that if:
- (a) either Party has made a payment to the other Party which is greater than it would have made if the amount of the Contract Payment had been correct, then the recipient shall repay the excess in accordance with paragraph 4.3; 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 Contract Payment had been correct, then the payer shall pay the amount of any shortfall to the payee in accordance with paragraph 4.3.
- 4.2 If the Parties do not agree the amount of any excess or shortfall referred to in paragraph 4.1 at that Periodic Finance Review Meeting (or other meeting as applicable), the Secretary of State may (but shall not be obliged to) determine it on the basis of the information then available to the Secretary of State.
- 4.3 Payments due pursuant to the provisions of paragraph 4.1 shall be paid:
- (a) in the case of adjustments agreed or determined during or within 6 months after the end of the Contract Period, within three (3) Weekdays of the agreement or determination of the same, or if so agreed with or determined by the Secretary of State, on any subsequent Payment Date; and
 - (b) adjustments agreed or determined after such date, as part of the next Interim Closing Adjustment or Final Closing Adjustment (as applicable),

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 Contract Payment was paid until the date on which such excess amount or shortfall is paid.

- 4.4 If the Operator disputes that amounts were reasonably determined pursuant to paragraph 4.2, the dispute shall, unless the Operator and the Secretary of State otherwise agree, be resolved in accordance with the provisions of paragraph 8 (*Governing Law and Jurisdiction*) of Chapter 9.7 (*Miscellaneous Legal Terms*) of this Contract. Any such dispute shall not affect the obligation of either Party to pay a Contract Payment notified in accordance with this Chapter 7.1.

5. **No Double Recovery**

- 5.1 Neither Party shall be entitled to recover (by way of an adjustment to Contract Payment, Cost Budget or otherwise) more than once in respect of the same amount.

- 5.2 The Operator shall use all reasonable endeavours to avail itself of, including applying for, any governmental support or support from any local authority or other such body that:

- (a) is offered to it;
- (b) the details of which are notified to it by the Secretary of State; or
- (c) which a Good and Efficient Operator should have been aware of,

in relation to the impact of and/or recovery from the impacts of COVID-19 from time to time.

- 5.3 If and to the extent that the Operator is successful in receiving any such support described in paragraph 5.2, this shall be taken into account in relation to the relevant payment and adjustments in this Chapter 7.1 (*Contract Payments*) such that the Operator does not benefit from double recovery or double counting.

6. **Force Majeure and Payments**

- 6.1 Following the occurrence of a Force Majeure Event, the payment of Contract Payments shall continue to be calculated in accordance with this Chapter 7.1 (*Contract Payments*) and the payment of such Contract Payments shall continue unaffected.

7. **Format and Content of the Cost Budget and Forecast Revenue**

- 7.1 Each Cost Budget and Forecast Revenue shall:

- (a) adopt a format and structure which facilitates the easy comparison of costs and revenue with the definitions of Actual Cost and Actual Revenue and with the information reported in the Management Accounts and the Annual Management Accounts;
- (b) in the case of:
 - (i) the Cost Budget and associated Record of Assumptions, make no assumptions or include any costs or adjustments which would not fall within the definition of Actual Costs or which (unless otherwise expressly agreed in writing with or required by the Secretary of State) would not be included by a Good and Efficient Operator; and
 - (ii) Forecast Revenue and associated Record of Assumptions, make assumptions and include all revenue and adjustments which would fall within the definition of Actual Revenue or which (unless otherwise agreed in writing with or required by the Secretary of State) would be included by a Good and Efficient Operator;
- (c) adopt:
 - (i) the same format and structure and line by line entries as was used for the most recent Cost Budget and Forecast Revenue (as Placed in Escrow and which may be the Cost Budget in respect of the previous Business Plan Year or the current Business Plan Year, whichever is the most recent) or as otherwise from time to time specified by the Secretary of State;

- (ii) the same accounting principles and standards as set out in the Record of Assumptions (as most recently Placed in Escrow and which may be the Record of Assumptions in respect of the previous Business Plan Year or the current Business Plan Year, whichever is the most recent) (as these may be varied by agreement between the Parties or, in the case of accounting standards, as these may be revised by the Secretary of State to take account of changes to GAAP);
- (d) identify any proposed:
 - (i) payments to an Affiliate of the Operator (including management fees, royalty fees and any commission); and
 - (ii) payment of any fees, remuneration and/or pension contributions in respect of any director or officer of the Operator,
 in each case by reference to each Reporting Period of the relevant Contract Year; and
- (e) save to the extent expressly agreed otherwise by the Secretary of State (in the Secretary of State's discretion):
 - (i) demonstrate compliance with the Procurement Policy; and
 - (ii) in respect of the Shadow Operator Cost Categories, demonstrate compliance with the provisions of paragraph 12 of Chapter 11.1 (*Shadow Operations*).

8. Periodic Finance Review Meetings

- 8.1 Without limiting the requirement for any other meeting, the Parties shall hold (subject to paragraph 8.5) a finance review meeting at least once in every Reporting Period (other than the First Reporting Period) up to and including the third Reporting Period following the end of the Contract Period ("**Periodic Finance Review Meeting**") at such time(s) and location(s) notified to the Operator by the Secretary of State and:
- (a) the purpose of the Periodic Finance Review Meeting shall be to review the financial performance of the Operator. This shall include:
 - (i) a review and discussion of variances arising in the Contract Year to date between Actual Costs, Actual Revenues and the Cost Budget, Record of Assumptions and Forecast Revenue respectively and confirmation of the value of the periodic revenue and cost adjustments to be applied to the Contract Payment to be paid in the subsequent Reporting Period to the Reporting Period in which the Periodic Finance Review Meeting is taking place;
 - (ii) a review and discussion regarding any costs with respect to payments made by the Operator under Approved Affiliate Contracts which exceed the budgeted costs in the relevant Cost Category as stated in the Cost Budget most recently Placed in Escrow with respect to the payments to be made under such contracts;
 - (iii) a review of fees and payments (including bonuses) actually paid by the Operator to its directors and officers during the preceding Reporting Period as against the budgeted costs for such fees and payments as stated in relevant Cost Category in the Cost Budget most recently Placed in Escrow;
 - (iv) a review and discussion of the Operator's management of its working capital and the Operator's Forecast Closing Cash Position for that Reporting Period in which the Periodic Finance Review Meeting is taking place and any Working Capital Payment or Working Capital Repayment to be applied to the Contract Payment to be paid in that Reporting Period in which the Periodic Finance Review Meeting is taking place;
 - (v) actions to be taken in respect of the Operator's financial performance;
 - (vi) any proposed contracts or arrangements with Affiliates of the Operator as referred to in paragraph 8.6;

- (vii) a review and discussion of:
 - (A) any potential Agreed Updates;
 - (B) the Potential Annual Losses (including the Disallowable Costs, Revenue Foregone and SoS Claims) to the end of the previous Reporting Period;
 - (C) any Required PCG Amounts or Potential Annual Losses Decrease Amounts (each as defined in the Funding Deed) which are required to be drawn or repaid under the Funding Deed in relation to the Potential Annual Losses to the end of the previous Reporting Period; and
 - (D) any potential excess or shortfall amounts as referred to in paragraph 4.1,

and the Parties shall seek to agree the amount of each such item. If the Parties do not agree such items at that Periodic Finance Review Meeting, the Secretary of State may (but shall not be obliged to) determine any that are not so agreed on the basis of the information then available to the Secretary of State (and any Secretary of State determination pursuant to this paragraph 8.1(a)(vii)(A) regarding any potential Agreed Updates shall be subject to the Determination Escalation Process);

- (viii) at the next Periodic Finance Review Meeting held after the delivery of the Audited Accounts Reconciliation for that Contract Year:
 - (A) the Fixed Fee and Performance Based Fee and (if relevant) the Shadow Operator Performance Based Fee, First HS Milestone Amount and Second HS Milestone Amount for that Contract Year;
 - (B) the Actual Annual Losses (including Disallowable Costs, Revenue Foregone and SoS Claims) for the Contract Year;
 - (C) any Required PCG Amounts or Actual Annual Losses Decrease Amounts (each as defined in the Funding Deed) which are required to be drawn or repaid under the Funding Deed in relation to such Actual Annual Losses,

and the Parties shall seek to agree the amount of each such item. If the Parties do not agree such items at that Periodic Finance Review Meeting, the Secretary of State may (but shall not be obliged to) determine any that are not so agreed on the basis of the information then available to the Secretary of State;

- (ix) identification of any contracts or arrangements to which paragraph 8.6 of this Chapter 7.1 (*Contract Payments*) or paragraph 1.4(a)(iii) (*Quarterly Financial Information*) of Chapter 7.3 (*Management Information*) will apply in the current or the next six (6) Reporting Periods; and
 - (x) a review and discussion of any fuel hedging arrangement entered into by the Operator (or, in relation to the Rail Services, its Affiliates).
- (b) The Operator shall ensure that the representatives of the Operator at the meeting shall include the finance director of the Operator or a suitable representative of the finance director as may be Approved for this purpose by the Secretary of State.
- 8.2 The Operator shall, prior to the date of each Periodic Finance Review Meeting have provided to the Secretary of State the relevant information required pursuant to paragraph 1.3 (*Reporting Period Financial Information*) of Chapter 7.3 (*Management Information*) together with a statement of the Operator's Forecast Closing Cash Position applicable to that Reporting Period, in accordance with the timescales set out therein, and shall provide the Secretary of State with all further information as the Secretary of State may request from time to time for the purposes of the operation of paragraph 8.1, within such time as the Secretary of

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

- 8.3 The Secretary of State shall be entitled to consider any information provided to the Secretary of State by the Operator and any other sources of information which the Secretary of State considers to be relevant and the Secretary of State shall be entitled to request such information from the Operator as the Secretary of State requires for the purposes of the operation of this Chapter 7.1 (*Contract Payments*). The Operator shall provide the information within such time as the Secretary of State may specify for the purpose (and this paragraph shall continue to apply such that the number of requests which the Secretary of State may make is not limited).
- 8.4 Any Periodic Finance Review Meeting (or part thereof) may be held remotely with the prior agreement of the Parties.
- 8.5 The Secretary of State shall have the discretion (acting reasonably) to decrease (and subsequently increase) the required frequency of the Periodic Finance Review Meetings, provided they shall be no more frequent than once a Reporting Period.

Affiliate Trading

- 8.6 Without limiting paragraph 8.7, and unless otherwise agreed by the Secretary of State by reference to this paragraph, the Operator shall:
- (a) not rely on a Group Contract entered into by an Affiliate Counterparty on or after the Start Date unless:
 - (i) the Operator has rights of enforcement under that Group Contract against each Group Contract Supplier; and/or
 - (ii) the Group Contract is expressed such that rights and other benefits enjoyed by the Operator under that Group Contract can be assigned, novated or otherwise made available to any Public Sector Operator (including by way of Transfer Scheme) on the same terms (including as to price) as enjoyed by the Operator as a beneficiary of the Group Contract, following the termination of this Contract on the occurrence of an Event of Default or a Termination Event; and
 - (b) procure that any Affiliate Contract entered into on or after the Start Date (including a renewal of any such contract or arrangement (including the continuation of any such Affiliate Contract beyond its original term) and/or the variation of any Affiliate Contract):
 - (i) complies with the following requirements (each a “**Minimum Requirement**”), such that any Affiliate Contract, as a minimum:
 - (A) is on terms which ensure that:
 - (1) all rights and other benefits enjoyed by the Operator under that Affiliate Contract can be assigned, novated or otherwise made available to any Public Sector Operator (including by way of Transfer Scheme) following the termination of this Contract on the occurrence of an Event of Default or a Termination Event; and
 - (2) the assignment, novation or other transfer of such Affiliate Contract to a Public Sector Operator (including under a Transfer Scheme) does not, except as permitted under this paragraph 8.6(b), trigger a change to the rights and obligations of the parties under such Affiliate Contract or otherwise result in the Public Sector Operator being subject to different terms than those which would have applied if the Affiliate Contract had not been assigned, novated or otherwise transferred to the Public Sector Operator (including under a Transfer Scheme);

- (B) includes an unlimited warranty that the Affiliate Counterparty has and will continue to have (including upon the transfer of the Affiliate Contract to a Public Sector Operator) all rights (including contractual rights and Intellectual Property Rights) which are necessary for the:
- (1) performance by the Affiliate Counterparty of its obligations under that Affiliate Contract; and
 - (2) Operator to receive the benefit of, and exercise the Operator's rights under, that Affiliate Contract without infringing the rights of the Affiliate Counterparty or any third party (and provides for the grant to the Operator of such rights as are required for that purpose);
- (C) unless otherwise agreed by the Secretary of State, includes a restriction on any right for the Affiliate Counterparty to terminate for convenience the Affiliate Contract or any third party contract(s) necessary for the performance by the Affiliate Counterparty of its obligations under that Affiliate Contract such that the right to terminate for convenience can only be exercised by the Affiliate Counterparty on giving no less than twelve (12) months' notice. For this purpose, "**termination for convenience**" means a right for the Affiliate Counterparty to terminate the relevant contract for any reason other than on the basis permitted by the relevant contract as a result of a breach or insolvency of the other party;
- (D) is procured, arranged and entered into in compliance with Procurement Policy; and
- (E) is capable of being terminated by the Operator upon giving notice of no less than seven (7) Reporting Periods and includes terms that the Operator shall not incur any penalty or be required to make any termination payment to the relevant Affiliate Counterparty if the Operator elects to exercise any such termination right; and
- (ii) complies with the following further requirements (each an "**Additional Requirement**"), such that any Affiliate Contract:
- (A) includes provisions which require the Affiliate Counterparty to ensure that following any transfer of the Affiliate Contract to a Public Sector Operator:
 - (1) the level of service to the Public Sector Operator is to no less a standard than provided to the Operator in the twelve (12) months preceding the transfer (without limiting any provision which provides for a higher standard); and
 - (2) as regards any contractual term which permits a discretion to the Affiliate Counterparty (including as to price), the Public Sector Operator shall be treated by the Affiliate Counterparty no less favourably than the Affiliate Counterparty treats any other Affiliate of the Affiliate Counterparty;
 - (B) includes provisions which require that on the expiry or earlier termination of an Affiliate Contract which has been transferred to a Public Sector Operator, the Affiliate Counterparty will provide reasonable cooperation to the Public Sector Operator and/or its replacement provider. Such reasonable cooperation will include, if and as requested by the Public Sector Operator, acting reasonably in facilitating and implementing data transfer (in a reasonably required format), knowledge transfer, the delivery up of any other Public Sector Operator assets and the return or deletion of data from the Affiliate Counterparty's systems; and

- (C) is entered into, renewed or varied only if the goods and/or services to be purchased from the Affiliate Counterparty are at competitive rates, on an arm's length basis, are in all ways appropriate, comply with this Contract and there is a sound business case for contracting with, or entering into an arrangement with, the Affiliate Counterparty.
- 8.7 The Operator shall not enter into any Affiliate Contract (including the renewal of any such contract or arrangement (including the continuation of any such Affiliate Contract beyond its original term) and/or the variation of any Affiliate Contract) unless the Secretary of State has, in the discretion of the Secretary of State, first consented to the terms of such Affiliate Contract and to it being entered into, varied or renewed on those terms, whether at or following a Periodic Finance Review Meeting (where such Affiliate Contract forms part of the agenda for that meeting) or otherwise, or Qualified Consent has been granted or deemed in respect of such Affiliate Contract pursuant to paragraph 8.8 below. In connection with any permission sought by the Operator in connection with this paragraph, the Operator shall provide to the Secretary of State:
- (a) evidence demonstrating that it has complied with the Minimum Requirements and the Additional Requirements set out in paragraph 8.6(b) above, which in relation to paragraph 8.6(b)(ii)(C), may include quotations and prices from other suppliers or providers for comparison and commercially challenging the price(s) quoted by the Affiliate Counterparty;
 - (b) details of any management charges or management overheads forming part of such proposed Affiliate Contract; and
 - (c) together with the evidence required pursuant to this paragraph 8.7, a certificate signed by a statutory director of the Operator confirming that the proposed Affiliate Contract complies with the requirements of paragraphs 8.6(b) and 8.7.
- 8.8 Where the Operator has provided the evidence and the statutory director certificate set out in paragraph 8.7 to the Secretary of State and:
- (a) the Secretary of State is not, at such time, able to properly evaluate such evidence in order to consent to the entry into (or variation) of any Affiliate Contract then the Secretary of State, at the Secretary of State's discretion, shall be entitled to grant consent to the entry into (or variation) of such Affiliate Contract subject to:
 - (i) the Operator's compliance with any condition or conditions that the Secretary of State considers appropriate; and/or
 - (ii) the Secretary of State retaining at all times the right to withdraw that consent, by notice to the Operator, where the Secretary of State having evaluated the evidence provided by the Operator in accordance with paragraph 8.7 is not or is no longer satisfied with the evidence provided by the Operator in relation to such Affiliate Contract ("**Qualified Consent**"); or
 - (b) the Secretary of State has not, within twenty eight (28) days of receipt of such evidence and the statutory director's certificate, responded to the Operator by granting consent, granting Qualified Consent or refusing consent, in each case, to the entry into (or variation) of any Affiliate Contract then the Secretary of State shall be deemed to have granted Qualified Consent (on the same basis as set out in paragraph 8.8(a)(ii)) to the entry into (or variation) of such Affiliate Contract,
- except that this paragraph 8.8 shall not apply in respect of any intra-group fuel hedging arrangement.
- 8.9 In the event that the Qualified Consent is granted or deemed in accordance with any of paragraphs 8.8(a) or 8.8(b) (as the case may be) then any payments made or costs or other liabilities incurred by the Operator in accordance with the terms of the relevant Affiliate Contract shall not be a Disallowable Cost, unless and until such Qualified Consent is withdrawn and the Operator has not complied with its obligations under paragraph 8.10 (within the timescales stipulated by the Secretary of State in that paragraph), to vary such Affiliate Contract or enter into a replacement agreement, contract, licence or other arrangement.

- 8.10 If Qualified Consent is withdrawn then the Operator shall, within such timescale as the Secretary of State may require:
- (a) vary such Affiliate Contract as required by and to the satisfaction of the Secretary of State for the purposes of securing compliance with the Minimum Requirements and the Additional Requirements and the Operator shall ensure the process set out in paragraph 8.7 is followed in respect of any such variation; or
 - (b) terminate such Affiliate Contract and enter into a replacement agreement, contract, licence or other arrangement. To the extent that such replacement contract is an Affiliate Contract, the Operator shall ensure that the process set out in paragraph 8.7 is followed in respect of the re-procurement of any replacement agreement, contract, licence or other arrangement,

and the timescale to be required by the Secretary of State under this paragraph 8.10 shall be no less than:

- (i) twenty eight (28) days from the date upon which such Qualified Consent is withdrawn, in circumstances where Qualified Consent is withdrawn due to the Affiliate Contract not complying with any Minimum Requirement; and
 - (ii) six (6) months from the date upon which such Qualified Consent is withdrawn, in circumstances where Qualified Consent is withdrawn due to the Affiliate Contract not complying with any Additional Requirement.
- 8.11 Any costs, expenses, and liabilities whatsoever incurred by the Operator in complying with the requirements of paragraph 8.10 and 8.13 shall be borne by the Operator as a Disallowable Cost and:
- (a) such costs shall include any legal, management and procurement costs, any termination costs and liabilities and any costs or expenses (including payments in the nature of a one off or upfront payment such as licence fees) associated with transitioning from any agreement, contract, licence or other arrangement to another, including facilitating and implementing data transfer (in a reasonably required format), knowledge transfer, the delivery up of any Operator assets and (where applicable) the return or deletion of data from the Affiliate Counterparty's systems; but
 - (b) if and to the extent that the payments to be made or any costs or other liabilities to be incurred by the Operator in accordance with the terms of a varied Affiliate Contract or a replacement agreement, contract, licence or other arrangement (as the case may be) that is procured in accordance with any of paragraphs 8.10(a), 8.10(b) or 8.13 (as applicable) are (in aggregate) higher than those which would otherwise have been payable or incurred under the applicable preceding Affiliate Contract then the resulting increase in cost shall not be a Disallowable Cost except that, to the extent that, in the Secretary of State's opinion, such payments, costs or other liabilities include costs which might reasonably have been expected to be incurred under or in connection with the termination of or transition of the applicable preceding Affiliate Contract, then such costs will be Disallowable Costs.

- 8.12 If:
- (a) consent to enter into, or vary, an Affiliate Contract is refused by the Secretary of State; or
 - (b) in respect of an Affiliate Contract in which Qualified Consent is withdrawn by the Secretary of State, the Operator has failed to comply with the requirements of paragraph 8.10 within the timescales stipulated by the Secretary of State in that paragraph,

then, in each case, without limiting any other rights the Secretary of State may have, any payments made or costs or liabilities incurred by the Operator under any such Affiliate Contract subsequent to any refusal of consent or expiry of such relevant timescales shall be a Disallowable Cost.

8.13 If the Operator is, at the Start Date, a party to an Affiliate Contract and such Affiliate Contract does not comply with the Minimum Requirements and Additional Requirements then the Operator shall, within such timescales as may be specified by Secretary of State, use all reasonable endeavours to vary or replace such Affiliate Contract so as to incorporate the Minimum Requirements and Additional Requirements. Paragraph 8.11 above shall apply in relation to any costs, expenses, and other liabilities whatsoever incurred by the Operator in complying with the requirements of this paragraph 8.13.

8.14 The Operator shall:

- (a) attend any additional meetings requested by the Secretary of State for the purposes of agreeing or determining any Contract Payments (if any) which are required to be calculated and paid pursuant to this Chapter 7.1 (Contract Payments) between the end of the Contract Period until the date of payment of the Final Closing Adjustments. Any relevant provisions in paragraphs 8.1 to 8.12 to such Contract Payments in question shall apply *mutatis mutandis* to any such meetings; and
- (b) within ten (10) days of the start of each Contract Year provide to the Secretary of State a document which lists:
 - (i) all the Affiliate Contracts which, as at the date upon which such list is provided, do not comply with the Minimum Requirements and Additional Requirements. The list shall, as a minimum, include a description of the goods and services supplied under such Affiliate Contract, the name of the Affiliate Counterparty, the commencement date and date of expiry of such Affiliate Contract and the details of all third party arrangements relied on by an Affiliate Counterparty for the purposes of delivering the goods and services under the Affiliate Contract); and
 - (ii) all the Group Contracts that the Operator has, as at the date upon which such list is provided, relied on for the provision of the Rail Services and which do not comply with the requirements of paragraph 8.6(a).

At the request of the Secretary of State, the Operator shall provide to the Secretary of State a copy of all Affiliate Contracts (including all third party arrangements relied on by an Affiliate Counterparty for the purposes of delivering the goods and services under the Affiliate Contract) and Group Contracts, in each case, as listed in the document supplied by the Operator under this paragraph 8.14(b).

9. **Working Capital Payments**

9.1 A Working Capital Payment shall become payable to the Operator as part of a Reporting Period’s Contract Payment where the Forecast Closing Cash Position for that Reporting Period is less than the Floor Cash Position. The value of the Working Capital Payment shall be calculated in accordance with paragraph 9.2 below.

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

WCP =	BCP – FCCP
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where:

BCP	the Base Cash Position.
FCCP	the Forecast Closing Cash Position applicable to that Reporting Period.

9.3 If during a Reporting Period, the Operator becomes aware that in its reasonable opinion the Operator’s available Cash Balance will be insufficient to meets its liabilities that will fall due prior to the payment of the next Contract Payment (the “**Working Capital Shortfall**”), the Operator shall immediately:

- (a) notify the Secretary of State that a Working Capital Shortfall is likely to occur during that Reporting Period; and

- (b) provide in or with that notice supporting information (including relevant accounts and calculations) evidencing the likely Working Capital Shortfall and the amount of additional working capital that the Operator considers it will require to ensure that the Working Capital Shortfall is remedied; and
 - (c) provide such further supporting information as the Secretary of State shall require.
- 9.4 The Parties acknowledge and agree that the payment of any amounts to remedy a Working Capital Shortfall shall be at the Secretary of State’s discretion. Where the Secretary of State elects to make a payment to remedy a Working Capital Shortfall, the Parties shall agree or where the Parties fail to agree, the Secretary of State may determine the amount required to remedy such Working Capital Shortfall (an “**Emergency Working Capital Payment**”) and when such Emergency Working Capital Payments are to be paid.
- 9.5 The Secretary of State shall pay to the Operator any Emergency Working Capital Payment in accordance with the timescales agreed or determined in accordance with paragraph 9.4.
- 9.6 If the Operator fails to provide any information required by this paragraph 9, or any information in accordance with its obligations in Chapter 7.3 (*Management Information*) or as otherwise required to enable the Secretary of State to calculate the amount of any Working Capital Payment or Emergency Working Capital Payment the Secretary of State shall (without prejudice to the Secretary of State’s other rights) be entitled (but not obliged) to determine the amount of WCP in accordance with this paragraph 9 by reference to the relevant information available to the Secretary of State at the time of such determination.
- 9.7 The Secretary of State shall at any time on reasonable prior notice to the Operator be entitled to adjust the value of the Ceiling Cash Position, the Base Cash Position and/or the Floor Cash Position provided that the Secretary of State shall have first consulted the Operator as to any such adjustments that the Secretary of State is considering making.

10. Working Capital Repayment

- 10.1 Subject to paragraph 11.3, a Working Capital Repayment shall become payable by the Operator as part of a Reporting Period’s Contract Payment where the Operator’s Forecast Closing Cash Position in that Reporting Period is greater than the Ceiling Cash Position. The value of the Working Capital Repayment shall be calculated in accordance with paragraph 10.2.
- 10.2 A Working Capital Repayment, if payable in any Reporting Period, shall be equal to the following:

WCR =	FCCP – BCP
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where:

FCCP	the Forecast Closing Cash Position applicable to that Reporting Period.
BCP	the Base Cash Position.

11. Final Working Capital Adjustment

- 11.1 The value of FWCA shall equal:

FWCA =	FWCP + TotalWCP – TotalWCR
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where:

FWCP	First Working Capital Payment
TotalWCP	the aggregate of all Working Capital Payments and all Emergency Working Capital Payments paid to the Operator during the Contract Period

TotalWCR	the aggregate of all Working Capital Repayments paid by the Operator during the Contract Period
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11.2 The value of FWCA shall be payable as an adjustment to the Contract Payment payable in the Reporting Period in which the Final Balance Sheet is delivered to the Secretary of State, provided that if the Final Balance Sheet is delivered more than ten (10) Weekdays after the first day of that Reporting Period, the value of FWCA shall become payable in the immediately following Reporting Period.

11.3 If the Operator fails to provide any information in accordance with its obligations in Chapter 7.3 (*Management Information*) to enable the Secretary of State to calculate any Working Capital Repayment or the Final Working Capital Adjustment the Secretary of State shall (without prejudice to the Secretary of State’s other rights) be entitled (but not obliged) to determine the amount of WCR or FWCA (as the case may be) in accordance with this paragraph 11 but by reference to the relevant information available to the Secretary of State at the time of such determination.

12. Fixed Fee and Performance Based Fee and Shadow Operator Performance Based Fee

12.1 Subject to paragraphs 12.2 to 12.4 (inclusive), the value of FFPBF shall equal:

FFPBF =	FF + PBF
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where:

FF	<p>means the value of the Fixed Fee for the relevant Contract Year being:</p> $N \times V$ <p>where:</p> <p>N means the number of Reporting Periods that fall within that Contract Year; and</p> <p>V means either:</p> <p>(a) [REDACTED⁷]; or;</p> <p>(b) from the start of the fifth Contract Year and provided there has been a CPI Increment Event, [REDACTED⁸] multiplied by the CPI Increment.</p> <p>FF may only be a positive number.</p>
PBF	<p>means (subject to paragraph 12.4) the value of the Performance Based Fee for the relevant Contract Year calculated in accordance with Chapter 7.2 (<i>Performance Based Fee and Shadow Operator Performance Based Fee</i>). PBF may only be a positive number.</p>

12.2 Subject to paragraph 12.4 and paragraph 12.5:

⁷ 11 January 2024 (Date of Redactions Approval) 3636793 Where text has been omitted from the document - this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁸ 11 January 2024 (Date of Redactions Approval) 3636793 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) FFPBF shall be included in the next Contract Payment payable after the value of the Fixed Fee and Performance Based Fee for the relevant Contract Year has been finally (subject only to paragraph 2.3 (*Operational Performance*) of Appendix 5 (*Quantified Target Methodology*) of Chapter 7.2 (*Performance Based and Shadow Operator Performance Based Fee*)) calculated pursuant to Chapter 7.2 (*Performance Based Fee and Shadow Operator Performance Based Fee*); and
 - (b) ShOp PBF shall be included in the next Contract Payment payable after the value of the Shadow Operator Performance Based Fee has been finally calculated pursuant to Chapter 7.2 (*Performance Based Fee and Shadow Operator Performance Based Fee*).
- 12.3 FFPBF and ShOp PBF shall each be calculated on the basis that no interest is due pursuant to paragraph 3 of this Chapter 7.1 (*Contract Payments*).
- 12.4 Where a PBF Assessment Period has been extended pursuant to Chapter 7.2 (*Performance Based Fee and Shadow Operator Performance Based Fee*) and such PBF Assessment Period extends across two Contract Years:
- (a) when calculating FFPBF:
 - (i) the value of PBF for the first of those Contract Years shall be zero and the FFPBF for that first Contract Year shall be included in the next Contract Payment payable after the Actual Annual Losses for that Contract Year have been agreed between the Parties or determined by the Secretary of State in accordance with paragraph 8.1(a)(viii); and
 - (ii) the value of PBF for the second of those Contract Years shall be the value of the PBF for the extended PBF Assessment Period and the FFPBF for that second Contract Year shall be included in the next Contract Payment payable after the value of the Fixed Fee and Performance Based Fee has been finally (subject only to paragraph 2.3 (*Operational Performance*) of Appendix 5 (*Quantified Target Methodology*) of Chapter 7.2 (*Performance Based Fee and Shadow Operator Performance Based Fee*)) calculated pursuant to Chapter 7.2 (*Performance Based Fee and Shadow Operator Performance Based Fee*); and
 - (b) when calculating ShOp PBF:
 - (i) the value of ShOp PBF for the first of those Contract Years shall be zero; and
 - (ii) the value of ShOp PBF for the second of those Contract Years shall be the value of the ShOp PBF for the extended PBF Assessment Period and the ShOp PBF for that second Contract Year shall be payable as an adjustment to the next Contract Payment payable after the value of the Shadow Operator Performance Based Fee has been finally calculated pursuant to Chapter 7.2 (*Performance Based Fee and Shadow Operator Performance Based Fee*).
- 12.5 Nothing in this paragraph 12 shall limit the rights and remedies of the Secretary of State in respect of any Potential Annual Losses or Actual Annual Losses. The Secretary of State's rights and remedies in respect of any Potential Annual Losses and/or Actual Annual Losses shall include claims pursuant to and in accordance with the Funding Deed.

12A. First HS Milestone Amount

12A.1 The First HS Milestone Amount (if any) shall be calculated as follows:

- (a) if the High Speed Start Date occurs after the end of the 6th Reporting Period in a PBF Assessment Period:

$$Y \times \left(\frac{ASPBF_{AssP} + ASPBF_{AssP-1}}{MSBPF_{AssP} + MSPBF_{AssP-1}} \right)$$

where:

Y	means either:
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	(a) [REDACTED ⁹]; or (b) if the High Speed Start Date occurs after the start of the fifth Contract Year and provided that there has been a CPI Increment Event, [REDACTED ¹⁰] multiplied by the CPI Increment;
AssP - 1	means the PBF Assessment Period immediately prior to the PBF Assessment Period in which the High Speed Start Date occurs;
ASPBF _{AssP}	means the actual Shadow Operator Performance Based Fee payable in relation to the PBF Assessment Period in which the High Speed Start Date occurs;
ASPBF _{AssP - 1}	means the actual Shadow Operator Performance Based Fee payable in relation to the PBF Assessment Period, AssP - 1;
MSPBF _{AssP}	means the Maximum Shadow Operator Performance Based Fee in relation to the PBF Assessment Period in which the High Speed Start Date occurs; and
MSPBF _{AssP - 1}	means the Maximum Shadow Operator Performance Based Fee in relation to the PBF Assessment Period AssP - 1.

(b) if the High Speed Start Date occurs prior to the end of the 6th Reporting Period in a PBF Assessment Period:

$$Z \times \left(\frac{ASPBF_{AssP-1} + ASPBF_{AssP-2}}{MSBPF_{AssP-1} + MSPBF_{AssP-2}} \right)$$

where:

Z	means either: (a) [REDACTED ¹¹]; or (b) if the High Speed Start Date occurs after the start of the fifth Contract Year and provided that there has been a CPI Increment Event, [REDACTED ¹²] multiplied by the CPI Increment;
AssP - 1	means the PBF Assessment Period immediately prior to the PBF Assessment Period in which the High Speed Start Date occurs;
ASPBF _{AssP - 1}	means the actual Shadow Operator Performance Based Fee payable in relation to the PBF Assessment Period AssP - 1;
AssP - 2	means the PBF Assessment Period immediately prior to AssP - 1;

⁹ 11 January 2024 (Date of Redactions Approval) 3636793 Where text has been omitted from the document - this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

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¹¹ 11 January 2024 (Date of Redactions Approval) 3636793 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 11 January 2024 (Date of Redactions Approval) 3636793 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.

ASPBF_{AssP - 2}	means the actual Shadow Operator Performance Based Fee payable in relation to the PBF Assessment Period _{AssP - 2} ;
MSPBF_{AssP- 1}	means the Maximum Shadow Operator Performance Based Fee in relation to the PBF Assessment Period, _{AssP - 1} ; and
MSPBF_{AssP - 2}	means the Maximum Shadow Operator Performance Based Fee in relation to the PBF Assessment Period _{AssP - 2} ;

- 12A.2 Subject to paragraph 12A.4, HSMA1 shall be included in the next Contract Payment payable after the value of the First HS Milestone Amount is finally calculated.
- 12A.3 HSMA1 shall be calculated on the basis that no interest is due pursuant to paragraph 3 of this Chapter 7.1 (*Contract Payments*).
- 12A.4 For the avoidance of doubt:
 - (a) HSMA1 shall only be payable once; and
 - (b) no HSMA1 shall be payable if the High Speed Start Date occurs after the end of the Contract Period.
- 12A.5 Nothing in this paragraph 12A shall limit the rights and remedies of the Secretary of State in respect of any Potential Annual Losses or Actual Annual Losses. The Secretary of State's rights and remedies in respect of any Potential Annual Losses and/or Actual Annual Losses shall include claims pursuant to and in accordance with the Funding Deed.

12B. Second HS Milestone Amount

- 12B.1 The Second HS Milestone Amount (if any) shall be calculated as follows:
 - (a) if the Second HS Milestone Date occurs after the end of the 6th Reporting Period in a PBF Assessment Period:

$$Y \times \left(\frac{ASPBF_{AssP} + ASPBF_{AssP-1}}{MSBPF_{AssP} + MSPBF_{AssP-1}} \right)$$

where:

Y	means either: (a) [REDACTED ¹³]; or (b) if the Second HS Milestone Date occurs after the start of the fifth Contract Year and provided that there has been a CPI Increment Event, [REDACTED ¹⁴] multiplied by the CPI Increment;
AssP - 1	means the PBF Assessment Period immediately prior to the PBF Assessment Period in which the Second HS Milestone Date occurs;
ASPBF_{AssP}	means the actual Shadow Operator Performance Based Fee payable in relation to the PBF Assessment Period in which the Second HS Milestone Date occurs;

¹³ 11 January 2024 (Date of Redactions Approval) 3636793 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.

¹⁴ 11 January 2024 (Date of Redactions Approval) 3636793 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.

ASPBF _{AssP - 1}	means the actual Shadow Operator Performance Based Fee payable in relation to the PBF Assessment Period, _{AssP - 1} ;
MSPBF _{AssP}	means the Maximum Shadow Operator Performance Based Fee in relation to the PBF Assessment Period in which the Second HS Milestone Date occurs; and
MSPBF _{AssP - 1}	means the Maximum Shadow Operator Performance Based Fee in relation to the PBF Assessment Period _{AssP - 1} .

(b) if the Second HS Milestone Date occurs prior to the end of the 6th Reporting Period in a PBF Assessment Period:

$$Z \times \left(\frac{ASPBF_{AssP-1} + ASPBF_{AssP-2}}{MSBPF_{AssP-1} + MSPBF_{AssP-2}} \right)$$

where:

Z	means either: (a) [REDACTED ¹⁵]; or (b) if the Second HS Milestone Date occurs after the start of the fifth Contract Year and provided that there has been a CPI Increment Event, [REDACTED ¹⁶] multiplied by the CPI Increment;
AssP - 1	means the PBF Assessment Period immediately prior to the PBF Assessment Period in which the Second HS Milestone Date occurs;
ASPBF _{AssP - 1}	means the actual Shadow Operator Performance Based Fee payable in relation to the PBF Assessment Period _{AssP - 1} ;
AssP - 2	means the PBF Assessment Period immediately prior to _{AssP - 1} ;
ASPBF _{AssP - 2}	means the actual Shadow Operator Performance Based Fee payable in relation to the PBF Assessment Period _{AssP - 2} ;
MSPBF _{AssP- 1}	means the Maximum Shadow Operator Performance Based Fee in relation to the PBF Assessment Period, _{AssP - 1} ; and
MSPBF _{AssP - 2}	means the Maximum Shadow Operator Performance Based Fee in relation to the PBF Assessment Period _{AssP - 2} ;

12B.2 Subject to paragraph 12B.4, HSMA2 shall be included in the next Contract Payment payable after the value of the Second HS Milestone Amount is finally calculated.

12B.3 HSMA2 shall be calculated on the basis that no interest is due pursuant to paragraph 3 of this Chapter 7.1 (*Contract Payments*).

12B.4 For the avoidance of doubt:

(a) HSMA2 shall only be payable once; and

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¹⁶ 11 January 2024 (Date of Redactions Approval) 3636793 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) no HSMA2 shall be payable if the Second HS Milestone Date occurs after the end of the Contract Period.

12B.5 Nothing in this paragraph 12B shall limit the rights and remedies of the Secretary of State in respect of any Potential Annual Losses or Actual Annual Losses. The Secretary of State's rights and remedies in respect of any Potential Annual Losses and/or Actual Annual Losses shall include claims pursuant to and in accordance with the Funding Deed

13. STS Amount

13.1 The Operator acknowledges that the cumulative amount of any Season Ticket Suspende Adjustments and Extraordinary STS Adjustments paid to the Secretary of State, are not held on behalf of or in any form of trust for the Operator and that the Operator has no right to claim any such amounts or to payment of interest accruing on any such amounts.

Season Ticket Suspende Adjustments

13.2 Subject to paragraph 13.3(a), the Season Ticket Suspende Adjustment in relation to each Reporting Period in the Contract Period shall be an amount equal to:

STSA =	STS – A + B
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where:

STS	means the most recently recorded STS Amount as at the end of the Reporting Period which is two Reporting Periods prior to the applicable Reporting Period;
A	means the sum of: (a) all Season Ticket Suspende Adjustments paid by the Operator to the Secretary of State prior to the applicable Reporting Period; and (b) all Extraordinary STS Adjustments paid by the Operator to the Secretary of State prior to the applicable Reporting Period, in each case, if any; and
B	means the sum of all Season Ticket Suspende Adjustments paid by the Secretary of State to the Operator prior to the applicable Reporting Period, if any.

Extraordinary Season Ticket Suspende Adjustments

13.3 The Secretary of State may, by notice to the Operator:

- (a) adjust the value of STSA relating to a Reporting Period; and/or
- (b) require the payment of an Extraordinary STS Adjustment by the Operator to the Secretary of State,

in each case, if and to the extent that the Secretary of State considers that the STS Amount at the end of the then current Reporting Period will have increased above the STS Amount last taken into account in calculating STSA by an amount significantly more than the Secretary of State would reasonably expect as a result of a stable, long-run trend.

13.4 Where the Secretary of State requires an adjustment to the value of STSA, the Parties shall agree or where the Parties fail to agree, the Secretary of State may determine the amount of any such adjustment.

13.5 Where the Secretary of State requires the payment of an Extraordinary STS Adjustment, the Parties shall agree or where the Parties fail to agree, the Secretary of State may determine the amount of any Extraordinary STS Adjustment and when such Extraordinary STS Adjustment is to be paid.

- 13.6 The Operator shall pay to the Secretary of State any Extraordinary STS Adjustment in accordance with the timescales agreed or determined in accordance with paragraph 13.5.
- 13.7 The Secretary of State shall be entitled to request (and the Operator shall promptly provide) additional information relating to the STS Amount (including weekly reports and/or forecasts) in relation to calculation of the Contract Payment and/or any Extraordinary STS Adjustment under the provisions of Chapter 7.1 (Contract Payments)).

Final Season Ticket Suspense Adjustment

- 13.8 FSTSA shall be payable as an adjustment to the Contract Payment payable in the third Reporting Period after the end of the Contract Period and shall be an amount equal to:

FSTSA =	$FinSTS - C + D$
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where:

FinSTS	means the amount of “Season Ticket Suspense after Reallocation” as recorded in the LENNON database in respect of the Operator as at the end of the Contract Period;
C	means the sum of: (a) all previous Season Ticket Suspense Adjustments paid by the Operator to the Secretary of State; and (b) all Extraordinary STS Adjustments paid by the Operator to the Secretary of State; and
D	means the sum of all previous Season Ticket Suspense Adjustments paid by the Secretary of State to the Operator.

14. Further Secretary of State’s Rights in relation to Accounting Matters

- 14.1 Where the Secretary of State considers that in calculating any matter which impacts the calculation of a Contract Payment Component, any particular item or transaction has not been accounted for on a reasonable basis (including where the accounting treatment looks to the form rather than the substance, of the item or transaction) and having regard to all circumstances, including GAAP (as may be amended from time to time), the Secretary of State shall be entitled to require it to be accounted for on such other basis as the Secretary of State may determine and notify to the Operator provided that the Secretary of State shall not be entitled pursuant to this paragraph 14 to alter the accounting policies of the Operator from those set out in the Record of Assumptions and applied through the Financial Model.
- 14.2 Where the Annual Audited Accounts and consequently the Audited Accounts Reconciliation in relation to any previous Contract Year are subject to adjustment or restatement the Secretary of State shall have a discretion to require the recalculation of any affected Contract Payment Component for the relevant Contract Year and to require that the Operator shall pay to the Secretary of State the amount which is the difference between:
 - (a) any amount actually paid to the Secretary of State or adjusted in favour of the Secretary of State and the amount that would have been paid or adjusted had the affected Contract Payment Component been originally calculated on the basis that such adjustment or revision was included in the Annual Audited Accounts and Audited Accounts Reconciliation; and/or
 - (b) any amount actually paid by the Secretary of State or adjusted in favour of the Operator and the amount that would have been paid or adjusted had the affected Contract Payment Component been originally calculated on the basis that such adjustment or revision was included in the Annual Audited Accounts and Audited Accounts Reconciliation.
- 14.3 Any payment due to the Secretary of State shall be paid by the Operator within thirty (30) days of the Secretary of State notifying the Operator that the Secretary of State requires a payment to be made pursuant to this paragraph 14.

15. **Indexation**

15.1 For the purposes of calculating the Contract Payment or any other payment under this Chapter 7.1 (*Contract Payments*) only, it is agreed that the Contract Payment and its components, any sum shown in any Cost Budget for any given Contract Year (or other period) and any sum shown in any Amendable Financial Target shall not, as part of such calculation, be subject to indexation or adjustment to take into account the effect of inflation.

16. **Further Obligations of the Operator**

16.1 Except to the extent otherwise agreed by the Secretary of State, the Operator will act as a Good and Efficient Operator in all respects in connection with the operation of this Chapter 7.1 (*Contract Payments*).

16.2 The Operator shall not, without the consent of the Secretary of State, at any time be a party to any arrangement of any kind whatsoever under which:

- (a) any amounts which the Operator might otherwise have received from a third party are reduced, waived or otherwise suppressed; and/or
- (b) any amounts which the Operator might otherwise be properly obliged to pay or be liable are increased,

in either case for or in connection with any benefit or advantage of any kind being obtained by any Affiliate of the Operator from that third party.

16.3 Without limiting any other constraints which operate by virtue of any other part of the National Rail Contract or otherwise, no application shall be made or other step taken by or on behalf of the Operator in respect of the winding up or striking off of the Operator (or any similar or analogous process) and nor shall the Operator permit or facilitate the same:

- (a) until all the adjustments and payments for which this Chapter 7.1 (*Contract Payments*) provides have been made and discharged in full; and/or
- (b) without the prior written consent of the Secretary of State.

16.4 The Operator shall, in the performance of its obligations under, and when incurring any expenditure in connection with, the National Rail Contract comply with the requirements of the Procurement Policy and the Operator's Expenses Policy.

16.5 The Secretary of State shall be entitled to notify the Operator of any future initiatives or proposals that the Secretary of State considers may have the potential to reduce certain Actual Costs below the costs in the Cost Budget as most recently Placed in Escrow and the Operator shall discuss with the Secretary of State all such matters as are relevant to the possible implementation of such initiatives.

16.6 The Operator shall, consistent with its obligation to act as a Good and Efficient Operator, generally use all reasonable endeavours to:

- (a) maximise revenue and minimise or mitigate the impacts of any factors leading to revenue being reduced or increasing less quickly than the Operator had forecast; and
- (b) reduce costs and minimise or mitigate the impacts of any factors leading to costs being increased or decreasing less quickly than the Operator had forecast,

unless otherwise directed in writing by the Secretary of State, provided that where compliance with paragraph (a) in relation to revenue will have consequential impacts on costs and/or compliance with (b) in relation to costs will have consequential impacts on revenue, the Operator's obligation will be to use all reasonable endeavours to optimise in combination the revenue and cost position.

16.7 The Operator shall proactively consider and implement actions to meet its obligations pursuant to paragraph 16.6 above, provided that where the consent of the Secretary of State is required to any action pursuant to the terms of the National Rail Contract, the Operator shall seek the Secretary of State's consent as soon as practicable and shall only pursue such action once consent has been provided.

16.8 The Secretary of State shall have the right to propose to the Operator measures that the Operator could take to maximise revenue and minimise or mitigate the impacts of any factors leading to revenue being reduced or increasing less quickly than the Operator had forecast, such measures being consistent with a train operator bearing revenue risk in relation to its rail services and acting in an economical and efficient manner. The Operator shall give reasonable consideration to any such measures proposed by the Secretary of State and shall either implement such actions or shall explain why in its reasonable opinion such measures would not be appropriate.

17. **Relevant Contracts**

17.1 For the purposes of this paragraph 17, a “**Relevant Contract**” shall mean:

- (a) any Key Contract; or
- (b) any contract with a value in excess of [REDACTED¹⁷]

to which the Operator is a party as at the expiry date of the Previous Agreement.

17.2 Subject to paragraph 17.3, the Operator shall indemnify the Secretary of State against any costs, expenses or liabilities that the Secretary of State incurs (including by way of any increase to the amounts which the Secretary of State is liable to pay under the National Rail Contract) arising from the termination of a Relevant Contract and/or any variation to the terms of a Relevant Contract in either case as a consequence of the exercise of any rights that the counterparty to that Relevant Contract may have to require the termination or variation of that Relevant Contract on termination or expiry of the Previous Agreement.

17.3 The Operator shall not be liable to the Secretary of State pursuant to paragraph 17.2 if the Operator has, prior to the date of this Contract, provided to the Secretary of State (with specific reference to this paragraph 17) full details regarding the rights, referred to in paragraph 17.2, of a counterparty to a Relevant Contract and the Secretary of State expressly agrees that the Operator is not required to indemnify the Secretary of State in accordance with paragraph 17.2.

17A. **Indemnity for Early Termination of Contracts**

17A.1 Subject to paragraph 17A.2, the Operator shall indemnify the Secretary of State against any costs, expenses or liabilities that the Secretary of State incurs (including by way of any increase to the amounts which the Secretary of State is liable to pay under the National Rail Contract) as a result of the termination of any contract or other arrangement to which the Operator is a party or pursuant to which any goods, services, rights and/or other benefits whatsoever are or may be enjoyed by the Operator.

17A.2 The Operator shall not be liable to the Secretary of State pursuant to paragraph 17A.1 in respect of:

- (a) any costs, expenses or liabilities the Operator may incur:
 - (i) pursuant to the terms of a Rolling Stock Related Contract (excluding a Rolling Stock Lease), in circumstances where the Secretary of State has stipulated the Expiry Date of this Contract in accordance with clause 2.2 (*Expiry on or after the Core Term Expiry Date*) so that the Expiry Date occurs prior to the Scheduled Expiry Date of such Rolling Stock Related Contract;
 - (ii) pursuant to the terms of a Rolling Stock Lease in circumstances where the Secretary of State has stipulated the Expiry Date of this Contract in accordance with clause 2.2 (*Expiry on or after the Core Term Expiry Date*) so that the Expiry Date occurs prior to the Scheduled Expiry Date of such Rolling Stock Lease provided that the Operator has, prior to the Start Date, entered into a Rolling Stock Lease Side Letter in relation to the relevant Rolling Stock Lease

¹⁷ 11 January 2024 (Date of Redactions Approval) 3636793 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 has complied with any instruction from the Secretary of State to exercise the Operator's rights under that Rolling Stock Lease Side Letter; and/or

- (iii) pursuant to the terms of a Rolling Stock Related Contract due to the early termination of this Contract where such early termination is as a result of an annulment, setting aside or declaration of ineffectiveness in relation to this Contract following a successful Challenge (as defined in the Direct Award Collateral Agreement);
- (b) any costs, expenses or liabilities the Operator may incur pursuant to the terms of any Property Lease and/or Access Agreement, in circumstances where the Expiry Date of this Contract occurs prior to the Scheduled Expiry Date of such Property Lease and/or Access Agreement;
- (c) any costs, expenses or liabilities the Operator may incur pursuant to the terms of any Extended Term Designatable Contract (which the Secretary of State has Approved or consented to in accordance with paragraph 12.8(a) of Chapter 7.7 (*Business Plan*) in relation to which Approval has not been withdrawn in accordance with paragraph 5.1 of Chapter 1.3 (*Approval Process*)) in circumstances where the Expiry Date of this Contract occurs prior to the Scheduled Expiry Date of such Extended Term Designatable Contract; and
- (d) any costs, expenses or liabilities the Operator may incur (acting as a Good and Efficient Operator) in putting in place any contract or other arrangement to replace any contract or other arrangement:
 - (i) to which the Operator was a party; or
 - (ii) pursuant to which any goods, services, rights and/or other benefits whatsoever were enjoyed by the Operator,

and which has terminated except where such termination has occurred as a result of the Operator acting other than as a Good and Efficient Operator,

provided that in respect of any such contract to which the Operator is a party as at the date of this Contract, the Operator shall not be liable to the Secretary of State pursuant to paragraph 17A.1 if the Operator has, prior to the date of this Contract, provided to the Secretary of State full details of such contract and the costs and liabilities arising thereunder and the Secretary of State expressly agrees that the Operator is not required to indemnify the Secretary of State in accordance with paragraph 17A.1. For the avoidance of doubt, the provisions of paragraphs (a)(i), (a)(ii), (b) and (c) shall not apply where this Contract is terminated early as a result of an Event of Default, a Termination Event, a Force Majeure Event or otherwise terminates earlier than the Expiry Date.

- 17A.3 Subject to paragraph 17A.4, the Operator shall ensure that any agreement, contract, licence or other arrangement entered into on or after the Start Date to which it is a party and which incorporates provisions that provide that expiry or earlier termination of this Contract shall be an event of default shall be expressed such that the counterparty under such agreement, contract, licence or arrangement shall only be entitled to terminate if the future rights, obligations and liabilities of the Operator under such agreement, contract, licence or other arrangement are not transferred by the Secretary of State to a Successor Operator under the Transfer Scheme.
- 17A.4 Paragraph 17A.3 shall not apply in respect of:
- (a) Rolling Stock Leases, Access Agreements, Property Leases; and
 - (b) any other contracts, licences and arrangements in relation to which the Secretary of State has expressly agreed that paragraph 17A.3 will not apply.
- 17A.5 Subject to paragraph 17A.6, the Operator shall use all reasonable endeavours to ensure that any agreement, contract, licence or other arrangement which the Operator enters into on or after the Start Date that has a term which exceeds the Core Term Expiry Date (or such later date as notified by the Secretary of State) incorporates provisions which permit the Operator to terminate such agreement, contract, licence or other arrangement on or after the Core

Term Expiry Date (or such later date as notified by the Secretary of State) by giving no more than three (3) months' notice without costs or other liabilities accruing.

17A.6 Paragraph 17A.5 shall not apply in respect of:

- (a) Rolling Stock Leases, Access Agreements, Property Leases; and
- (b) any other contracts, licences and arrangements in relation to which the Secretary of State has expressly agreed that paragraph 17A.5 will not apply.

18. Closing Adjustments

Interim Closing Adjustment

18.1 Following the delivery of each Interim Closing Accounts Reconciliation the Parties shall seek to agree any amounts payable by the Secretary of State to the Operator or the Operator to the Secretary of State relating to this Contract that have not been taken account of in any previous Contract Payments or any previous Interim Closing Adjustment. If the Parties do not agree such amounts, the Secretary of State may (but shall not be obliged to) determine any amounts not so agreed on the basis of the information then available to the Secretary of State. The amounts agreed or determined pursuant to this paragraph 18.1 shall be the Interim Closing Adjustment.

Final Closing Adjustment

18.2 Following the delivery of the Final Closing Accounts Reconciliation the Parties shall seek to agree any amounts payable by the Secretary of State to the Operator or the Operator to the Secretary of State relating to this Contract that have not been taken account of in any previous Contract Payments or any previous Interim Closing Adjustment. If the Parties do not agree such items, the Secretary of State may (but shall not be obliged to) determine any that are not so agreed on the basis of the information then available to the Secretary of State. The amounts agreed or determined pursuant to this paragraph 18.2 shall be the Final Closing Adjustment.

Miscellaneous

18.3 If the Operator fails to provide information in accordance with its obligations in Chapter 7.3 (*Management Information*) or as otherwise required to enable the Secretary of State to calculate the amount of any Interim Closing Adjustment or the Final Closing Adjustment, the Secretary of State shall (without prejudice to the Secretary of State's other rights) be entitled (but not obliged) to determine the amount of the relevant Interim Closing Adjustment or the Final Closing Adjustment by reference to the relevant information available to the Secretary of State at the time of such determination.

18.4 The Parties acknowledge that the agreement or determination of each Interim Closing Adjustment and the Final Closing Adjustment will occur after the end of the Contract Period and the provisions of paragraph 2.6 shall apply.

18.5 Each ICA and the FCA shall be made as an adjustment to the next Contract Payment payable after the agreement or determination of each ICA and the FCA pursuant to this paragraph 18.

18.6 Subject to paragraphs 18.8 and 18.9 and the Operator's compliance with its obligations pursuant to paragraph 1.1 and 1.2 of Chapter 7.3 (*Management Information*) in relation to the period following expiry of this Contract, the Parties agree that any Actual Costs incurred by the Operator following expiry of this Contract and recorded pursuant to paragraph 1.1 and 1.2 of Chapter 7.3 (*Management Information*) shall be amounts payable by the Secretary of State to the Operator for the purposes of paragraph 18.

18.7 The Parties agree that any Actual Revenue received or receivable by the Operator following expiry of this Contract shall be amounts payable by the Operator to the Secretary of State for the purposes of paragraph 18.

18.8 Prior to incurring any Actual Costs in any year following the expiry of this Contract, the Operator shall provide an expenditure plan to the Secretary of State which sets out the Actual Costs which the Operator expects to incur in such year and the Parties shall meet to discuss such expenditure plan.

- 18.9 If at any point during any year following expiry of this Contract, the Operator foresees that the Actual Costs to be incurred by the Operator during such year will be or are reasonably likely to be in excess of the Actual Costs set out in the expenditure plan for such year submitted pursuant to paragraph 18.8, the Operator shall notify the Secretary of State and the Parties shall meet to discuss the relevant expenditure.

APPENDIX 1 TO CHAPTER 7.1

Calculation of Periodic Contract Payments (PCP)

1. Periodic Contract Payments

1.1 This Appendix 1 (*Calculation of Periodic Contract Payments (PCP)*) to Chapter 7.1 (*Contract Payments*) sets out how the Periodic Contract Payment (PCP) shall be calculated.

1.2 In carrying out the calculations in this Appendix 1 (*Calculation of Periodic Contract Payments (PCP)*):

- (a) Actual Costs and the Cost Budget shall be expressed as positive numbers where they are paid or payable by the Operator; and
- (b) Actual Revenue and Forecast Revenue shall be expressed as positive numbers where they are received or receivable by the Operator

1.3 In this Appendix 1 (*Calculation of Periodic Contract Payments (PCP)*) to Chapter 7.1 (*Contract Payments*):

“Current Reporting Period”	means the Reporting Period for which the Periodic Contract Payment (PCP) calculation is being made;
“Preceding Reporting Period”	means the Reporting Period immediately before the Current Reporting Period;
“Current Year”	means the Contract Year which contains the Current Reporting Period;
“Preceding Year”	means the Contract Year immediately before the Current Year; and
“YT2PP”	means calculated for all Reporting Periods in the Current Year up to and including the Reporting Period that is two Reporting Periods before the Current Reporting Period.

2. Calculation of Periodic Contract Payment

2.1 The Periodic Contract Payment (PCP) (which may be a positive or a negative number) shall be calculated in relation to each Reporting Period after the Start Date as follows:

PCP =	ICP + CostADJ – IRP – RevADJ + AADJ
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where:

ICP (initial cost payment) *	means the initial costs payment being an amount equal to the budgeted costs for the Current Reporting Period as shown in the Cost Budget as most recently Placed in Escrow.
CostADJ (periodic cost adjustment) (i.e. the adjustment for the difference between the initial cost payment and the relevant costs actually incurred, in the relevant period)	means: <ul style="list-style-type: none"> (a) for the first and second Reporting Periods of the first Contract Year, £0 (zero); (b) for the <u>first and second</u> Reporting Period of the <u>second and subsequent</u> Contract Years; CAC_{py}, <u>minus</u> PICP_{py}, <u>minus</u> PCostADJ_{py} i.e.: $CostADJ = CAC_{py} - PICP_{py} - PCostADJ_{py}$ (c) for the <u>third and subsequent</u> Reporting Periods in each Contract Year; CAC_{cy} <u>minus</u> PICP_{cy} <u>minus</u> PCostADJ_{cy} i.e.: $CostADJ = CAC_{cy} - PICP_{cy} - PCostADJ_{cy}$

<p>PICP_{cy} (previous initial cost payments (current year to two reporting periods before the current reporting period))</p>	<p>means the sum of the initial cost payments (calculated as ICP) YT2PP. For the avoidance of doubt, in calculating PICP_{cy}, each ICP is the amount as at the date of its original calculation (i.e. each ICP shall not be recalculated to take account of any Cost Budget Changes).</p>
<p>PICP_{py} (previous initial cost payments (previous year))</p>	<p>means :</p> <p>(a) for the <u>first</u> Reporting Period of the <u>second and subsequent</u> Contract Years the sum of the initial cost payments (calculated as ICP) for all Reporting Periods <u>other than the final</u> Reporting Period of the <u>Preceding Year</u>; and</p> <p>(b) for the <u>second</u> Reporting Period of the <u>second and subsequent</u> Contract Years the sum of the initial cost payments (calculated as ICP) for <u>all</u> Reporting Periods of the <u>Preceding Year</u>.</p> <p>For the avoidance of doubt, in calculating PICP_{py}, each ICP is the amount as at the date of its original calculation (i.e. each ICP shall <u>not</u> be recalculated to take account of any Cost Budget Changes).</p>
<p>CAC_{cy} (cumulative actual costs (current year to two reporting periods before the current reporting period))</p>	<p>means the sum of CAC_{cyCCat} for all Cost Categories CCat, <i>where</i> CAC_{cyCCat} means, for each and every Cost Category CCat, the <u>lower of</u>:</p> <p>(a) the sum of Actual Costs for Cost Category CCat, YT2PP; and</p> <p>(b) the sum of budgeted costs for Cost Category CCat, YT2PP, as shown in the Cost Budget (as most recently <u>Placed in Escrow</u>).</p>
<p>CAC_{py} (cumulative actual costs (preceding year))</p>	<p>means the sum of CAC_{pyCCat} for all Cost Categories CCat, <i>where</i> CAC_{pyCCat} means, for each and every Cost Category CCat:</p> <p>(a) for the <u>first</u> Reporting Period of the <u>second and subsequent</u> Contract Years the <u>lower of</u>:</p> <p>(i) the sum of Actual Costs for Cost Category CCat, in the Reporting Periods <u>other than the final</u> Reporting Period of the <u>Preceding Year</u>; and</p> <p>(ii) the sum of budgeted costs for Cost Category CCat, for the Reporting Periods <u>other than the final</u> Reporting Period of the <u>Preceding Year</u>, as shown in the Cost Budget (as most recently <u>Placed in Escrow</u> for that <u>Preceding Year</u>); and</p> <p>(b) for the <u>second</u> Reporting Period of the <u>second and subsequent</u> Contract Years the <u>lower of</u>:</p> <p>(i) the sum of Actual Costs for Cost Category CCat in <u>all</u> Reporting Periods in the <u>Preceding Year</u>; and</p> <p>(ii) the sum of budgeted costs for Cost Category CCat, for all Reporting Periods in the <u>Preceding Year</u>, as shown in the Cost Budget (as most recently <u>Placed in Escrow</u> for that <u>Preceding Year</u>).</p>
<p>CCat (Cost Category)</p>	<p>means each and every Cost Category in the relevant Cost Budget as most recently <u>Placed in Escrow</u>.</p>
<p>PCostADJ_{cy}</p>	<p>means:</p>

<p>(previous periodic cost adjustments (current year))</p>	<p>(a) for the third Reporting Period of each Contract Year, £0 (zero);</p> <p>(b) for the fourth and subsequent Reporting Periods of each Contract Year, the sum of all previous periodic cost adjustments (calculated as CostADJ) calculated for the third and subsequent Reporting Periods in the Current Year up to and including the Preceding Reporting Period.</p> <p>For the avoidance of doubt, in calculating PCostADJ_{cy}:</p> <p>(i) each CostADJ is the amount as at the date of its original calculation (i.e. each CostADJ shall not be recalculated to take account of any Cost Budget Changes); and</p> <p>(ii) the calculation of PCostADJ_{cy} does not include the periodic cost adjustment CostADJ calculated for the first or second Reporting Period of the Current Year.</p>
<p>PCostADJ_{py} (previous periodic cost adjustments (preceding year excluding RP 1 and 2))</p>	<p>means:</p> <p>(a) for the first Reporting Period of the <u>second and subsequent</u> Contract Years the sum of all periodic cost adjustments (calculated as CostADJ) calculated for the <u>third and subsequent</u> Reporting Periods of the <u>Preceding</u> Year (if any); and</p> <p>(b) for the <u>second</u> Reporting Period of the <u>second and subsequent</u> Contract Years the sum of all periodic cost adjustments (calculated as CostADJ) calculated for the <u>third and subsequent</u> Reporting Periods of the <u>Preceding</u> Year (if any) PLUS the plus the cost adjustment (calculated as CostADJ) calculated for the <u>first</u> Reporting Period of the <u>Current</u> Year (if any).</p> <p>For the avoidance of doubt, in calculating PCostADJ_{py}:</p> <p>(i) each CostADJ is the amount as at the date of its previous calculation (i.e. each CostADJ shall not be recalculated to take account of any Cost Budget Changes);</p> <p>(ii) the calculation of PCostADJ_{py} does not include the periodic cost adjustment CostADJ calculated for the first or second Reporting Period of the Preceding Year;</p> <p>(iii) for the first Reporting Period of the second and subsequent Contract Years if there was only one or two Reporting Periods in the previous Contract Year, then PCostADJ_{py} shall be £0 (zero); and</p> <p>(iv) for the second Reporting Period of the second and subsequent Contract Years if there was only one Reporting Periods in the previous Contract Year, then PCostADJ_{py} shall be £0 (zero).</p>
<p>IRP (initial revenue payment)</p>	<p>means the initial revenue payment being an amount equal to the Forecast Revenue for the Current Reporting Period as most recently Placed in Escrow.</p>
<p>RevADJ (periodic revenue adjustment)</p>	<p>means the periodic revenue adjustment, being:</p> <p>(a) for the first and second Reporting Period of the first Contract Year, £0 (zero); or</p> <p>(b) for all subsequent Reporting Periods, the Actual Revenue for the Reporting Period that is two Reporting Periods before the Current Reporting Period <u>minus</u> Forecast Revenue for the Reporting Period that is two Reporting Periods before the Current Reporting Period. For the avoidance of doubt:</p>

	<p>(i) in the first Reporting Period of each Contract Year after the first Contract Year, the relevant Reporting Period will be the penultimate Reporting Period of the Preceding Contract Year; and</p> <p>(ii) in the second Reporting Period of each Contract Year after the first Contract Year, the relevant Reporting Period will be the final Reporting Period of the Preceding Contract Year.</p> <p>(Without prejudice to the provisions applying to the calculation of AADJRev), in calculating RevADJ, each amount of Forecast Revenue is the amount as at the date of its original calculation (i.e. each RevADJ shall not be recalculated to take account of any revised Forecast Revenue).</p>
<p>AADJ (annual adjustment (costs and revenue))</p>	<p>means for the Current Year AADJCost <u>minus</u> AADJRev:</p> $AADJ = AADJCost - AADJRev$ <p>where</p> <p>AADJCost means:</p> <p>(a) an amount equal to what CAC_{py} would have been, had it been calculated using Actual Costs as shown in the Audited Accounts Reconciliation for the Preceding Year (to be provided pursuant to paragraph 1.5(b) of Chapter 7.3 (<i>Management Information</i>));</p> <p><u>minus</u></p> <p>(b) CAC_{py} as most recently calculated for the Preceding Year (i.e. as calculated in the second Reporting Period after the end of the Preceding Year); and</p> <p>AADJRev means:</p> <p>(a) the total Actual Revenue as shown in the Audited Accounts Reconciliation for the Preceding Year (to be provided pursuant to paragraph 1.5(b) of Chapter 7.3 (<i>Management Information</i>));</p> <p><u>minus</u></p> <p>(b) the total Actual Revenue as taken into account when calculating RevADJ for the Preceding Year (i.e. as calculated by taking the sum of the RevADJ values calculated from the third Reporting Period of the Preceding Year to the second Reporting Period after the end of the Preceding Year).</p> <p>Provided always that for the first Contract Year (where there is no Preceding Year) AADJ shall be £0 (zero).</p> <p>For the avoidance of doubt:</p> <p>(i) in calculating AADJCost, account shall be taken of any costs which were included in CAC_{py} as last calculated but which have since been identified as Disallowable Costs or as not being Actual Costs;</p> <p>(ii) in calculating AADJRev, account shall be taken of any Revenue Foregone which was not included in the total Actual Revenue as last calculated but which have since been identified; and</p> <p>(iii) in calculating AADJ, account shall be taken of any amounts agreed or determined pursuant to the provisions of paragraph 3.1 of this Chapter 7.1 (<i>Contract Payments</i>) which have not already been reflected in Contract Payments made.</p>

* Explanatory note: The descriptions in parenthesis in column one of this table are included to assist the reader only and shall not affect the meaning of these definitions.

3. Annual Adjustment (AADJ)

3.1 The Annual Adjustment (AADJ) shall be included in the next calculation of the Periodic Contract Payment (PCP) which is made after the agreement or determination of the amount of the Annual Adjustment. For any other Reporting Period, AADJ shall equal zero (£0).

3.2 For the avoidance of doubt:

- (a) it is not intended that the calculation of AADJ will be carried out sooner than the third Reporting Period of the Current Year; and
- (b) it is intended that the final calculation of AADJ will be carried out after the end of the Contract Period.

APPENDIX 2 TO CHAPTER 7.1**Disallowable Costs**

The following shall be Disallowable Costs:

1. Any costs that were incurred otherwise than in accordance with those expected to be incurred by a Good and Efficient Operator. Costs likely to be considered to be inconsistent with those expected of a Good and Efficient Operator include:
 - (a) costs that do not reflect the contracted position under:
 - (i) existing contracts as at the Start Date;
 - (ii) new contracts entered in compliance with the Procurement Policy; or
 - (iii) variations in existing contracts made in accordance with the Procurement Policy;
 - (b) “arrangement fees” (or similar) paid or payable to Affiliates of the Operator for or in relation to availability of working capital or any other lending or financial support;
 - (c) interest paid or payable to the extent in excess of a market rate that a Good and Efficient Operator would pay;
 - (d) the amount by which the Purchase Price payable by the Operator to the Successor Operator under the Supplemental Agreement at the end of the Contract Period (and/or to the Successor Shadow Operator at the end of the Shadow Operator Period) is higher than it would have been but for the Operator:
 - (i) incurring Disallowable Costs; or
 - (ii) otherwise acting other than as Good and Efficient Operator;
 - (e) any costs where the Operator has been unable to provide evidence to the satisfaction of the Secretary of State that such costs or expenditure have been properly incurred and are consistent with the Operator acting as a Good and Efficient Operator; and
 - (f) any payments, costs or other liabilities paid or payable to Affiliates of the Operator incurred in relation to the Shadow Operator Services that do not, in the opinion of the Secretary of State, represent Value for Money.
2. Any bonuses, rewards or discretionary benefits paid to any staff, directors or officers under any schemes which have not previously been consented to by the Secretary of State (in the discretion of the Secretary of State) in writing.
3. Any expenses, disbursements or equivalent costs (to which the Operator’s Expenses Policy would apply) which are incurred other than in compliance with the Operator’s Expenses Policy.
4. Costs incurred or to be incurred by the Operator in relation to:
 - (a) developing any Remedial Plan;
 - (b) implementing any Remedial Plan or any other plans to remedy performance shortfalls (including Action Plans, RCIS Improvement Plans, TT Actions Plans, Service Quality Improvement Proposals, Remedial Agreements and/or Business Plan KPI Improvement Plans), but notwithstanding paragraph 1 above only to the extent that the total costs incurred by the Operator relating to the relevant obligations (including any costs incurred prior to or during the course of implementing the Remedial Plan or other plan) exceed those that a Good and Efficient Operator would have incurred in connection with complying with the obligation to which the Remedial Plan or other plan relates.
5. Costs incurred or to be incurred by the Operator (including where payment is made to a Successor Operator) in removing Transitory Branding under paragraph 2 (*Removal of Branding*) of Chapter 9.3 (*Branding and Intellectual Property*) if and to the extent that the

- Transitory Branding in question was applied (i) during the Contract Term and (ii) without the express written prior consent of the Secretary of State.
6. Costs incurred or to be incurred by the Operator in relation to the audit costs referred to in paragraph 4.4 (*Right to Inspect*) of Chapter 1.1 (*Organisation and Management*).
 7. Costs incurred or to be incurred by the Operator in meeting the audit requirements of any of the Parents or any other Affiliate of the Operator to the extent these are additional to audit costs which would otherwise be incurred by the Operator.
 8. Costs incurred or to be incurred by the Operator in relation to any reasonable enforcement costs incurred by the Secretary of State pursuant to paragraph 5.7 (*Enforcement Costs*) of Chapter 9.7 (*Miscellaneous Legal Terms*).
 9. Any cost that the Operator may incur as a result of:
 - (a) it failing to comply with its obligations under or in connection with the National Rail Contract (including the grant thereof) or the Previous Agreement;
 - (b) it failing to comply with its obligations under or in connection with any agreements which are ancillary to this Contract, including the Supplemental Agreement and/or the Direct Award Collateral Agreement (and/or a Transfer Agreement pursuant to (and as defined in) the Direct Award Collateral Agreement);
 - (c) it failing to comply with any applicable Laws, to the extent this gives rise to a criminal liability. Paragraph (a) above shall apply in respect of any other consequence of a failure by the Operator to comply with any applicable Laws; or
 - (d) indemnifying the Secretary of State for any matter which the Operator is obliged to indemnify the Secretary of State pursuant to the National Rail Contract, the Previous Agreement or any agreements which are ancillary to this Contract, including the Supplemental Agreement and/or the Direct Award Collateral Agreement (and/or a Transfer Agreement pursuant to (and as defined in) the Direct Award Collateral Agreement).
 10. Any Facilitation Fee or Administration Fee pursuant to paragraph 2 (*Change of Control and Facilitation Fee*) of Chapter 1.1 (*Organisation and Management*).
 11. Any costs incurred by the Operator arising out of or in connection with any lawful demand by the Secretary of State under the Early Termination Indemnity Agreement or under the Funding Deed or under the Funding Deed Bond (as defined in the Funding Deed) or the Early Termination Indemnity Agreement Bond (as defined in the Early Termination Indemnity Agreement).
 12. Costs of developing and protecting any intellectual property rights which are not owned by the Secretary of State or the Operator or are so owned, but where the costs are not ancillary to an activity included in the Cost Budget.
 13. Except with the prior agreement of the Secretary of State, marketing or advertising costs incurred.
 14. Fines imposed by government or regulatory bodies.
 15. Costs of financial hedging, or cash gains/losses from hedging activity except with prior agreement from the Secretary of State or where such costs or cash gains/losses arise from the Operator's participation in an industry recognised hedging scheme or activity which has been agreed by the Secretary of State. For the avoidance of any doubt, in accordance with paragraph (vi) of the definition of Actual Costs, non-cash gains/losses and other notional accounting entries in relation to fuel hedging are excluded from being Actual Costs and so are therefore also not capable of being Disallowable Costs.
 16. Any costs incurred by the Operator in pursuing or defending any claim against the Secretary of State in respect of or in connection with the National Rail Contract or the Previous Agreement or otherwise.

17. Except with the prior agreement of the Secretary of State (not to be unreasonably withheld), any costs, expenses or liabilities that the Operator may incur as a result of the termination of any contract or other arrangement to which the Operator is a party or pursuant to which any goods, services, rights and/or other benefits whatsoever are or may be enjoyed by the Operator, other than:
- (a) any costs, expenses or liabilities the Operator may incur:
- (i) pursuant to the terms of a Rolling Stock Related Contract (excluding a Rolling Stock Lease) in circumstances where the Secretary of State has stipulated the Expiry Date of this Contract in accordance with clause 2.2 (*Expiry on or after the Core Term Expiry Date*) so that the Expiry Date occurs prior to the Scheduled Expiry Date of such Rolling Stock Related Contract;
- (ii) pursuant to the terms of a Rolling Stock Lease in circumstances where the Secretary of State has stipulated the Expiry Date of this Contract in accordance with clause 2.2 (*Expiry on or after the Core Term Expiry Date*) so that the Expiry Date occurs prior to the Scheduled Expiry Date of such Rolling Stock Lease, provided that the Operator has, prior to the Start Date, entered into a Rolling Stock Lease Side Letter in relation to the relevant Rolling Stock Lease and has complied with any instruction from the Secretary of State to exercise the Operator's rights under that Rolling Stock Lease Side Letter; and/or
- (iii) pursuant to the terms of a Rolling Stock Related Contract due to the early termination of this Contract where such early termination is as a result of an annulment, setting aside or declaration of ineffectiveness in relation to this Contract following a successful Challenge (as defined in the Direct Award Collateral Agreement); and
- (b) any costs, expenses or liabilities of the Operator which directly result from the withdrawal of a relevant Approval and which are deemed to not constitute Disallowable Costs pursuant to paragraph 5.2(a) of Chapter 1.3 (*Approval Process*),
- and for the avoidance of doubt, the provisions of paragraphs (a)(i) and (a)(ii) shall not apply where this Contract is terminated early as a result of an Event of Default, a Termination Event, a Force Majeure Event or otherwise terminates earlier than the Expiry Date.
18. Except with the prior agreement of the Secretary of State, losses on disposals of Fixed or Non-Current Assets.
19. Capital expenditure to the extent that the capital cost of acquisition of the relevant assets was (or was assumed in the Modelling Suite) to be funded by a third party.
20. Costs of any audit pursuant to paragraph 1.9 (*Secretary of State Audit*) of Chapter 7.3 (*Management Information*).
21. Any costs and expenses (including legal and accountancy costs) incurred in connection with the process pursuant to which this Contract was entered into and/or the process of bidding to become, or becoming, a Successor Operator and/or Successor Shadow Operator in relation to any subsequent procurement.
22. Compensating the Secretary of State for all reasonable costs incurred by the Secretary of State in carrying out enhanced monitoring of the Operator's performance of any relevant obligations pursuant to paragraph 6.1 of Chapter 9.4.3 (*Procedure for remedying a Contravention of the National Rail Contract*).
23. Interest paid or payable on negative cash balances unless otherwise agreed by the Secretary of State.
24. Any costs incurred in connection with discharging its obligations following an early termination of this Contract in accordance with Chapter 9.5 (*Exit Management*) other than where such early termination is as a result of the occurrence of a Termination Event under paragraphs 2.1, 2.5, 2.6 or 2.7 of Chapter 9.4.1 (*Events of Default and Termination Events*) or as a result of an annulment, setting aside or declaration of ineffectiveness in relation to this

- Contract following a successful Challenge (as defined in the Direct Award Collateral Agreement).
25. Any increase in pensions contributions required to be made by the Operator as a result of any breach by the Operator of its obligations under Chapter 7.6 (*Railways Pension Scheme*).
 26. Any reimbursement of the costs of an SoS Audit under paragraph 14.2(a) (*Consequences of a Failed Audit*) of Part 1 of Chapter 5.5 (*Customer Experience Performance*).
 27. The costs of any additional Service Quality Inspections under paragraph 14.2(b)(i) (*Consequences of a Failed Audit*) of Part 1 of Chapter 5.5 (*Customer Experience Performance*).
 28. The costs of a further Independent Service Quality Audit or a further SoS Audit under paragraph 14.2(b)(ii) (*Consequences of a Failed Audit*) of Part 1 of Chapter 5.5 (*Customer Experience Performance*).
 29. Any reimbursement of the costs of a SoS Service Quality Inspection under paragraph 14.2(b)(iii)(C) (*Consequences of a Failed Audit*) of Part 1 of Chapter 5.5 (*Customer Experience Performance*).
 30. Any payments, costs or other liabilities owed to Affiliates of the Operator, unless under an Approved Affiliate Contract and provided that, with regard to any Affiliate Contract in respect of which Qualified Consent has been granted or deemed such Qualified Consent has not been withdrawn and the Operator has failed to comply with its obligations under paragraph 8.10 (*Affiliate Trading*) of this Chapter 7.1.
 31. Any legal costs incurred in relation to any negotiation between the Operator and the Secretary of State in connection with the agreement of:
 - (a) the Business Plan for any Subsequent Business Plan Year; or
 - (b) any of the Escrow Documents or Shadow Operator Programmes during the Contract Term.
 32. Any costs incurred in connection with the variation, termination or replacement (as applicable) of any Affiliate Contract pursuant to paragraph 8.10 and/or paragraph 8.13 (*Affiliate Trading*) of this Chapter 7.1 (*Contract Payments*) (including such costs referenced in paragraph 8.11(a) and any other costs stated to be Disallowable Costs in paragraph 8.11(b) of this Chapter 7.1), other than any costs which are expressed to not be Disallowable Costs in accordance with paragraph 8.11(b) of this Chapter 7.1.
 33. Any costs or liabilities incurred in connection with the implementation of any Systems Separability Plan in the event that the Operator has failed to comply with its obligations set out in paragraph 6.2 (*Maintenance as a going concern*) of Chapter 9.5.2 (*Reletting provisions and maintenance as a going concern*) and/or Chapter 9.5.1 (*Handover Package*).
 34. Any costs, payments and expenses incurred in employing or engaging personnel to undertake the Shadow Operator Services where:
 - (a) the roles being undertaken by such personnel have not been specified in the Shadow Operator Resourcing Plan; or
 - (b) the personnel have been sourced other than as specified in the Shadow Operator Resourcing Plan (unless the Secretary of State has Approved such sourcing in accordance with paragraph 12.7 of Chapter 11.1 (*Shadow Operations*)).
 35. Any other costs, payments, expenses, fees, liabilities or other amounts expressly identified as Disallowable Costs in the National Rail Contract and any other costs which this Contract provides shall be at the Operator's cost (including any amounts which the Operator is required to pay or reimburse to the Secretary of State).

Chapter 7.2

Performance Based Fee and Shadow Operator Performance Based Fee

1. Maximum Fee

1.1 The Performance Based Fee attributable to any given PBF Assessment Period shall not exceed £M x N (the “**Maximum Performance Based Fee**” or “**MPBF**”), where:

M	means either: (a) [REDACTED ¹⁸]; or (b) from the start of the fifth Contract Year and provided there has been a CPI Increment Event, [REDACTED ¹⁹] multiplied by the CPI Increment.
N	means the number of Reporting Periods that fall within the relevant PBF Assessment Period.

1.2 The Shadow Operator Performance Based Fee attributable to any given PBF Assessment Period shall not exceed:

S x N

(the “**Maximum Shadow Operator Performance Based Fee**” or “**MSPBF**”),

where:

S	means: (a) in relation to each PBF Assessment Period which is <u>before</u> the PBF Assessment Period in which the Uplift Date occurs, means either: (i) A ; or (ii) from the start of the fifth Contract Year and provided there has been a CPI Increment Event, A_{CPI} ; (b) in relation to the PBF Assessment Period <u>in which</u> the Uplift Date occurs, means either: (i) $(A \times \frac{C}{D}) + (B \times \frac{D-C}{D})$; or (ii) from the start of the fifth Contract Year and provided there has been a CPI Increment Event, $(A_{CPI} \times \frac{C}{D}) + (B_{CPI} \times \frac{D-C}{D})$ (c) in relation to each PBF Assessment Period which is <u>after</u> the PBF Assessment Period in which the Uplift Date occurs, means either: (i) B ; or (ii) from the start of the fifth Contract Year and provided there has been a CPI Increment Event, B_{CPI} ; and
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N	means either: (a) the number of Reporting Periods that fall within the relevant PBF Assessment Period; or (b) if the Shadow Operator Services are terminated during the relevant PBF Assessment Period, the number of full Reporting Periods that fell within the relevant PBF Assessment Period prior to the effective date of termination of the Shadow Operator Services.
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where:

A	means [REDACTED ²⁰]
A_{CPI}	A multiplied by the CPI Increment;
B	means [REDACTED ²¹];
B_{CPI}	B multiplied by the CPI Increment;
C	means, in relation to the PBF Assessment Period in which the Uplift Date occurs, the number of Reporting Periods in such PBF Assessment Period before the Uplift Date; and
D	means either: (a) the total number of Reporting Periods in the PBF Assessment Period in which the Uplift Date occurs; or (b) if the Shadow Operator Services are terminated during the relevant PBF Assessment Period, the number of full Reporting Periods that fell within the relevant PBF Assessment Period prior to the effective date of termination of the Shadow Operator Services.

1.3 No Shadow Operator Performance Based Fee shall be payable and no assessment of the Shadow Operator Scorecard Criteria shall be undertaken in respect of any PBF Assessment Period following termination of the Shadow Operator Services.

2. Calculation of the Performance Based Fee & Shadow Operator Performance Based Fee

2.1 The Performance Based Fee and Shadow Operator Performance Based Fee in relation to any given PBF Assessment Period shall be calculated in accordance with this paragraph 2.

2.2 Subject to the inclusion of any additional PBF Component(s) pursuant to paragraph 2.5(g) below, the Performance Based Fee for each PBF Assessment Period shall be calculated as the sum of the individual PBF Components calculated and weighted in accordance with the relevant Applicable Assessment Methodologies, in accordance with the following formula:

£PBF =	OP + CS + SQ + FIN
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where:

£PBF	shall have a value between zero and the Maximum Performance Based Fee in relation to the relevant PBF Assessment Period;
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OP	means the sum (in pounds sterling) that is zero or a positive number representing the Operational Performance Fee calculated in accordance with the Applicable Assessment Methodology;
CS	means the sum (in pounds sterling) that is zero or a positive number representing the Customer Satisfaction Fee calculated in accordance with the Applicable Assessment Methodology;
SQ	means the sum (in pounds sterling) that is zero or a positive number representing the Service Quality Standards Fee calculated in accordance with the Applicable Assessment Methodology; and
FIN	means the sum (in pounds sterling) that is zero or a positive number representing the Financial Performance Fee determined in accordance with paragraph 2.3.

2.2A Subject to the inclusion of any additional Shadow Operator PBF Component(s) pursuant to paragraph 2.5(i) below, the Shadow Operator Performance Based Fee for each PBF Assessment Period shall be calculated as the sum of the individual Shadow Operator PBF Components, in accordance with the following formula:

£ShOp PBF =	ShOp DEL Fee + ShOp FM Fee
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where:

£ShOp PBF	shall have a value between zero and the amount equal to MSPBF in relation to the relevant PBF Assessment Period;
ShOp DEL Fee	means the sum (in pounds sterling) that is zero or a positive number representing the Shadow Operator Delivery Fee as calculated in accordance with Appendix 6 (<i>Shadow Operator Methodology</i>) to this Chapter.
ShOp FM Fee	means the sum (in pounds sterling) that is zero or a positive number representing the Shadow Operator Financial Management Fee as calculated in accordance with Appendix 6 (<i>Shadow Operator Methodology</i>) to this Chapter.

2.3 For each relevant PBF Assessment Period the Secretary of State shall calculate the value of the Performance Based Fee attributable to the Financial Performance Fee in accordance with the formula set out below, provided that:

- (a) the values of FIN(Cost), FIN(Revenue), FIN(Profit), and FIN(TT) (as applicable) shall each be determined in accordance with the Applicable Assessment Methodology with respect to the Financial Performance Fee; and
- (b) if the FP TT QTM is not applied pursuant to the relevant Applicable Assessment Methodology then the value attributable to FIN(TT) shall be zero and such component shall be removed from the relevant formula.

Applicable Assessment Methodology	£FIN =
FP Scorecard Methodology, FP Cost QTM or FP Revenue QTM	FIN(Cost) + FIN(Revenue) + FIN(TT)
FP Profit QTM	FIN(Profit) + FIN(TT)

2.4 Unless otherwise agreed or determined in accordance with paragraph 2.7 or paragraph 6 (*Exceptional Events*), the Applicable Assessment Methodology with respect to each PBF Component shall be as specified in the then applicable Business Plan.

2.5 In accordance with the process set out in paragraphs 2 (*Initial Business Plan*) and 3 (*Annual Business Plan Process*) of Chapter 7.7 (*Business Plan*), and subject always to paragraph 2.8 below, the Secretary of State shall propose in each Request for Business Plan:

- (a) the Applicable Assessment Methodology with respect to each PBF Component;
- (b) each of the applicable:
 - (i) QTM Targets;
 - (ii) Benchmark Levels; and
 - (iii) RCIS Expected Range,
 or, to the extent that the Secretary of State considers that it is not practicable to specify any of these items, a description of the approach to be taken to set each of them;
- (c) the values for each of W_{OP} , W_{CE} and W_{FIN} ;
- (d) the values for each of W_{OPC} , W_{OPMD} , W_{OPT3} , W_{OPT15} , and W_{OPAC} ;
- (e) the values for each of W_{FINC} , W_{FINR} and W_{FINTT} ;
- (f) any amendments to:
 - (i) any PBF Assessment Part-Period Review Checklist and/or PBF Assessment Period Review Checklist set out in Appendix 2 (*PBF Assessment Review Checklist*) of this Chapter 7.2; and/or
 - (ii) any Scorecard Criterion set out in Appendix 3 (*Scorecard Criteria*) of this Chapter 7.2; and/or
 - (iii) the value of W_{PP} with respect to each PBF Assessment Part-Period in the relevant PBF Assessment Period;
- (g) whether any additional PBF Components shall apply for the purposes of calculating the Performance Based Fee for the relevant PBF Assessment Period and:
 - (i) the Applicable Assessment Methodologies and any consequential weightings, sub-weightings, PBF Assessment Part-Period Review Checklist requirements, Scorecard Criteria and/or targets with respect to such additional PBF Components; and
 - (ii) how the value of the Performance Based Fee attributable to such additional PBF Components shall be calculated in each PBF Assessment Part-Period and/or PBF Assessment Period, as applicable;
- (h) the values for each of $W_{ShOp\ DEL}$ and $W_{ShOp\ FM}$;
- (i) whether any additional Shadow Operator PBF Components shall apply for the purposes of calculating the Shadow Operator Performance Based Fee for the relevant PBF Assessment Period and:
 - (i) any consequential weightings, sub-weightings, PBF Assessment Period Review Checklist requirements, Shadow Operator Scorecard Criteria and/or targets with respect to such additional Shadow Operator PBF Components; and
 - (ii) how the value of the Shadow Operator Performance Based Fee attributable to such additional Shadow Operator PBF Components shall be calculated in each PBF Assessment Period; and/or
- (j) any associated or consequential changes to any other matter set out in this Chapter 7.2 as may be necessary or desirable as a result of any of the specification of the items set out in paragraphs 2.5(a) to 2.5(i) above,

(together, the “**Annual PBF Specifications**”) in each case, to apply in respect of the Business Plan Year to which the Request for Business Plan relates.

- 2.6 The Parties shall comply with the process set out in paragraph 3 (*Annual Business Plan Process*) of Chapter 7.7 (*Business Plan*), and the Business Plan agreed or determined in accordance with such process for the relevant Business Plan Year shall include:
- (a) the Annual PBF Specifications as agreed or determined in accordance with the process set out in paragraph 3 (*Annual Business Plan Process*) of Chapter 7.7 (*Business Plan*); and
 - (b) the Amendable Financial Targets agreed or determined in accordance with paragraph 3 (*Financial Targets*) (if applicable).

2.7 **Changes to the Applicable Assessment Methodology**

- (a) Without prejudice to the Secretary of State's rights in relation to the agreement or determination of the Business Plan, from time to time, the Secretary of State shall consult with the Operator to determine, and following such consultation shall have reasonable regard to the Operator's views in determining, whether:

- (i) the Quantified Target Methodology shall apply to the calculation of one or more of the QTM PBF Components; and/or
- (ii) Customer Satisfaction Scorecard B shall apply to the calculation of the Customer Satisfaction Fee,

and if the Secretary of State so determines, the Secretary of State shall give notice to the Operator which, without prejudice to the Secretary of State's rights under paragraphs 4 (*Target Amendments*), 5 (*Effect of alterations to the PBF Assessment Period*) and 6 (*Exceptional Events*) of this Chapter 7.2:

- (A) confirms that the Quantified Target Methodology or Customer Satisfaction Scorecard B shall apply for calculation of the relevant Non-Financial PBF Component(s) for the period commencing on the first day of any Quarter, as specified in such notice, and ending with the expiry of the relevant PBF Assessment Period, provided that the Operator has at least two full Reporting Periods' notice of such change taking effect; and
- (B) sets out the information that the Secretary of State requires the Operator to provide (and the date by which the Secretary of State requires the Operator to provide such information) to enable the Parties to agree (or the Secretary of State to determine taking into account the reasonable views of the Operator, as the case may be) the applicable matters set out in paragraph 2.7(c) below,

(an "**Assessment Methodology Notification**").

- (b) After the Secretary of State issues an Assessment Methodology Notification to the Operator, the Operator shall provide the information required to be provided pursuant to the Assessment Methodology Notification by the relevant date specified in the Assessment Methodology Notification, and the Parties shall seek to agree the applicable matters set out in paragraph 2.7(c) below, each acting in a timely manner. If the Parties have agreed any of the matters in accordance with paragraph 2.7(c) below prior to the date falling ten (10) Weekdays before the commencement of the relevant Quarter, then such agreed matters shall apply from the commencement of the relevant Quarter until the end of the relevant PBF Assessment Period. If, by the date falling ten (10) Weekdays prior to the commencement of the relevant Quarter in which the changes to the Applicable Assessment Methodology as specified in the Assessment Methodology Notification are to take effect, the Parties have not agreed the matters set out in paragraph 2.7(c) below, the Secretary of State may, subject always to paragraph 2.8 below:
 - (i) determine such matters in relation to any or all of the QTM PBF Components and/or the Customer Satisfaction Fee, and notify the Operator accordingly prior to the commencement of the relevant Quarter, in which case such determined matters shall apply from the commencement of the relevant

- Quarter until the end of the relevant PBF Assessment Period (and any Secretary of State determination pursuant to this paragraph 2.7(b)(i) regarding any QTM Targets, Benchmark Levels, the RCIS Expected Range and/or RCIS Benchmarks shall be subject to the Determination Escalation Process); and/or
- (ii) in the Secretary of State's discretion, notify the Operator prior to the commencement of the relevant Quarter that the then current Applicable Assessment Methodology will continue to apply to:
 - (A) any or all of the QTM PBF Components; and/or
 - (B) the Customer Satisfaction Fee.
- (c) The Parties shall seek to agree (each acting in a timely manner), not later than ten (10) Weekdays before the commencement of the relevant Quarter prior to which the Secretary of State has issued an Assessment Methodology Notification to the Operator pursuant to and in accordance with paragraph 2.7(a)(i) above, as applicable, and subject always to paragraph 2.8 below:
- (i) whether the Quantified Target Methodology shall be applied to any or all of the QTM PBF Components, and if so, the relevant:
 - (A) QTM Targets;
 - (B) Benchmark Levels; and
 - (C) values for each of W_{OPC} , W_{OPMD} , W_{OPT3} , W_{OPT15} , and W_{OPAC} ; (as applicable in relation to such QTM PBF Component) that shall apply during the relevant PBF Assessment Period from the commencement of the relevant Quarter; and
 - (ii) whether Customer Satisfaction Scorecard B shall apply to the calculation of the Customer Satisfaction Fee and, if so, the applicable RCIS Expected Range and RCIS Benchmarks.
- (d) In the event that the Parties agree or the Secretary of State determines any changes to the Applicable Assessment Methodology with respect to any PBF Component in accordance with paragraph 2.7(b) above, or the Parties agree any alternative Applicable Assessment Methodology with respect to the Financial Performance Fee pursuant to paragraph 2.7(f) below:
- (i) such PBF Component shall be calculated by applying the relevant Applicable Assessment Methodologies on a pro rata basis with respect to the number of Reporting Periods in the relevant PBF Assessment Period for which such Applicable Assessment Methodologies respectively apply;
 - (ii) the Parties may agree to conduct an early determination of the portion of any such PBF Component attributable to the number of Reporting Periods in the relevant PBF Assessment Period prior to the effective date of the change to the relevant Applicable Assessment Methodology (an "**Interim PBF Component Determination**"); and
 - (iii) the Parties acknowledge and agree that any Interim PBF Component Determination shall be conducted on an equivalent basis to the process and principles set out in paragraphs 6 (*PBF Assessment Part-Period Review & PBF Assessment Period Review*) to 9 (*Scoring Letter Disputes*) of Appendix 1 (*PBF Assessment Review*) to this Chapter 7.2, subject to such modifications as may be agreed with or determined by the Secretary of State and as may be necessary for any Interim PBF Component Determination to be effective.
- (e) Unless otherwise agreed or determined in accordance with paragraph 2.7(f) or paragraph 6 (*Exceptional Events*), the Financial Performance Fee shall, at all times in any one PBF Assessment Period, be assessed in accordance with the Applicable

Assessment Methodology as specified in the applicable Business Plan for such PBF Assessment Period.

- (f) Without prejudice to the Secretary of State's rights under paragraphs 4 (*Target Amendments*), 5 (*Effect of alterations to the PBF Assessment Period*) and 6 (*Exceptional Events*) of this Chapter 7.2, the Secretary of State may at any time during any PBF Assessment Period or PBF Assessment Part-Period give notice to the Operator indicating the Secretary of State is minded to apply an alternative Applicable Assessment Methodology with respect to the Financial Performance Fee for any remaining part of such PBF Assessment Period or PBF Assessment Part-Period (an "**FP In-Year Change Notice**"). In the event that the Secretary of State issues an FP In-Year Change Notice to the Operator, the Parties shall seek to agree (each acting in a timely manner) the changes proposed in the FP In-Year Change Notice and the basis on which such changes shall be implemented.

2.8 Parameters for targets, weightings and performance levels relating to the PBF Components

Notwithstanding any other provision of this Chapter 7.2 or the provisions relating to amendments to any Amendable Target in accordance with paragraph 2 of Chapter 7.5 (*Variations, Changes and Amendments*), the Parties acknowledge and agree that, at all times during the Contract Term:

- (a) each SQR Expected Fee Performance Level and the TT Expected Fee Performance Level and shall be expressed as a value that:
- (i) a competent Train Operator, acting efficiently, can be expected to achieve in the circumstances that are prevailing for the relevant PBF Assessment Period; and
 - (ii) a high-performing Train Operator could have a realistic prospect of outperforming;
- (b) each Relevant OP Component Expected Fee Range and the RCIS Expected Range shall comprise a range that:
- (i) the performance of a competent Train Operator, acting efficiently, can be expected to fall within, in the circumstances that are prevailing for the relevant PBF Assessment Period; and
 - (ii) a high-performing Train Operator could have a realistic prospect of outperforming,
- and in relation to each Relevant OP Component Expected Fee Range, having regard to normal seasonal variability of operating performance;
- (c) each Relevant OP Component Maximum Fee Performance Level, each SQR Maximum Fee Performance Level and the TT Maximum Fee Performance Level shall be expressed as a value that a high-performing Train Operator could have a realistic prospect of achieving;
- (d) each Relevant OP Component Nil Fee Performance Level, each SQR Nil Fee Performance Level and the TT Nil Fee Performance Level shall be expressed as a value that a Train Operator, acting efficiently and performing at a broadly acceptable level, can be expected not to perform worse than;
- (e) the value of:
- (i) the Breach Performance Level with respect to each of TOC on Self Cancellations and TOC Minutes Delay, each SQR Benchmark, each RCIS Benchmark and the Breach Ticketless Travel Benchmark shall be set at a level that a competent Train Operator, acting efficiently, can be expected not to perform at or worse than (and in relation to such Breach Performance Levels, having regard to normal seasonal variability of operating performance); and

- (ii) the Default Performance Level with respect to each of TOC on Self Cancellations and TOC Minutes Delay shall be set at a level that affords a reasonable opportunity for a competent Train Operator, having performed worse than the Breach Performance Level, to implement any necessary remedial actions to avoid performance deteriorating to that Default Performance Level (having regard to normal seasonal variability of operating performance);
- (f) the weightings of each of W_{OP} , W_{CE} , and W_{FIN} shall not fall below the minimum value or exceed the maximum value specified in the table below and the aggregate weighting to be applied to the PBF Components shall equal one hundred per cent (100%):

Weighting	Minimum Weighting	Maximum Weighting
W_{OP}	[REDACTED ²²]	[REDACTED ²³]
W_{CE}	[REDACTED ²⁴]	[REDACTED ²⁵]
W_{FIN}	[REDACTED ²⁶]	[REDACTED ²⁷]

- (g) the values of W_{PP} for each PBF Assessment Part-Period within each PBF Assessment Period shall at all times equal one hundred per cent (100%) in aggregate;
- (h) the values of W_{FINC} , W_{FINTT} and W_{FINR} shall at all times equal one hundred per cent (100%) in aggregate;
- (i) the values for each of:
 - (i) W_{OPC} , and W_{OPMD} shall at all times equal [REDACTED²⁸] in aggregate; and
 - (ii) W_{OPT3} , W_{OPT15} , and W_{OPAc} shall at all times equal [REDACTED²⁹] in aggregate;
- (j) the aggregate weighting to be applied to any additional PBF Component(s) as may be introduced from time to time pursuant to paragraph 2.5(g) (“ W_{ADD} ”) shall not exceed [REDACTED³⁰] the aggregate weighting to be applied to the PBF Components shall

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equal one hundred per cent (100%), and the calculation of any additional PBF Component (or PBF Components) shall provide the Operator with an opportunity to earn an amount of Performance Based Fee in respect of such additional component (or such additional components in aggregate) in the relevant PBF Assessment Period of up to $(W_{ADD} \times MPBF)$; and

- (k) any amendments to any Scorecard Criterion set out in Appendix 3 (*Scorecard Criteria*) of this Chapter 7.2 may amend, insert or remove requirements but shall not materially:
 - (i) change the overall purpose of the relevant Scorecard Criterion; and/or
 - (ii) improve or impede the ability of the Operator (acting as a Good and Efficient Operator) to achieve any particular score in accordance with the Scorecard Criteria.

2.9 Applicable Assessment Methodology

For the avoidance of doubt:

- (a) if the Scorecard Methodology is the Applicable Assessment Methodology with respect to the relevant Non-Financial PBF Component or Applicable FP Sub-Component, then Appendix 1 (*PBF Assessment Review*), Appendix 2 (*PBF Assessment Review Checklist*), Appendix 3 (*Scorecard Criteria*) and Appendix 4 (*Scorecard Methodology*) shall apply; and
- (b) if the Quantified Target Methodology is the Applicable Assessment Methodology with respect to the relevant QTM PBF Component or Applicable FP Sub-Component, then Appendix 5 (*Quantified Target Methodology*) shall apply.

2.10 Parameters for targets, weightings and performance levels relating to Shadow Operator PBF Components

Notwithstanding any other provision of this Chapter 7.2, the Parties acknowledge and agree that, at all times during the Contract Term:

- (a) the weightings of each of $W_{ShOp\ DEL}$ and $W_{ShOp\ FM}$ shall not fall below the minimum or exceed the maximum value specified in the table below and the aggregate weighting to be applied to the Shadow Operator PBF Components shall equal one hundred per cent (100%):

Weighting	Minimum Weighting	Maximum Weighting
$W_{ShOp\ DEL}$	[REDACTED ³¹]	[REDACTED ³²]
$W_{ShOp\ FM}$	[REDACTED ³³]	[REDACTED ³⁴]

- (b) the aggregate weighting to be applied to any additional Shadow Operator PBF Component(s) as may be introduced from time to time pursuant to paragraph 2.5(i) (“ $W_{ShOp\ ADD}$ ”) shall not exceed twenty five per cent (25%), the aggregate weighting to be applied to the Shadow Operator PBF Components shall equal one hundred per cent

³¹ 11 January 2024 (Date of Redactions Approval) 3636793 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.

³² 11 January 2024 (Date of Redactions Approval) 3636793 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.

³³ 11 January 2024 (Date of Redactions Approval) 3636793 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 11 January 2024 (Date of Redactions Approval) 3636793 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%) and the calculation of any additional Shadow Operator PBF Component (or Shadow Operator PBF Components) shall provide the Operator with an opportunity to earn an amount of Performance Based Fee in respect of such additional component (or such additional components in aggregate) in the relevant PBF Assessment Period of up to $(W_{\text{ShOpADD}} \times \text{MSPBF})$.

3. Financial Targets

3.1 Target Cost

(a) If the Secretary of State notifies the Operator in any Request for Business Plan that the Secretary of State is minded to apply the FP Cost QTM as the Applicable Assessment Methodology with respect to the Financial Performance Fee in relation to any PBF Assessment Period pursuant to paragraph 2.5(a) (*Calculation of the Performance Based Fee*) of this Chapter 7.2, the Operator shall deliver to the Secretary of State (as a separate tab to the Financial Model within the draft Escrow Documents to be provided alongside the draft Business Plan with respect to such PBF Assessment Period in accordance with paragraph 3.4 of Chapter 7.7 (*Business Plan*)) a spreadsheet setting out the Operator's proposed:

- (i) Target Cost; and
- (ii) Target Cost Maximum Fee Performance Level and Target Cost Nil Fee Performance Level (in each case consistent with the principles set out in paragraphs (d)(ii) and (e)(ii) below),

each based on benchmarking evidence gathered by the Operator as part of the Cost Efficiency Analysis included in the Financial Plan for the relevant Business Plan Year pursuant to paragraph 1.3(k)(iii) of Chapter 7.7 (*Business Plan*), with Cost Category lines of forecast expenditure for each Reporting Period of the relevant PBF Assessment Period in at least the level of disaggregation of the costs shown in, and consistent with, the Cost Budget (the "**Target Cost Template**"), but excluding any consideration of Shadow Operator Cost Categories. The Target Cost Template shall allocate forecast expenditure in a format consistent with the Cost Budget with no netting off between lines.

- (b) The Parties shall seek to agree (each acting in a timely manner and through sufficiently senior representatives) the Target Cost, Target Cost Maximum Fee Performance Level and Target Cost Nil Fee Performance Level for the relevant PBF Assessment Period, taking into account the Cost Budget but excluding any Shadow Operator Cost Categories.
- (c) The Target Cost shall be set at a value the Parties agree (or, if the Parties are unable to agree such value by the 28 February falling prior to the start of the relevant PBF Assessment Period, the Secretary of State may determine (and any such determination shall be subject to the Determination Escalation Process)) represents a central case forecast of Actual Costs falling within the relevant PBF Assessment Period (excluding any forecast Disallowable Costs and any Actual Costs relating to the Shadow Operator Cost Categories), expressed as a positive number. For the avoidance of any doubt, the Target Cost may be set at a value lower than the aggregate costs in the Cost Budget.
- (d) The Target Cost Maximum Fee Performance Level shall be set at a value:
 - (i) lower than the value of the Target Cost; and
 - (ii) that the Parties agree (or, if the Parties are unable to agree such value by the 28 February falling prior to the start of the relevant PBF Assessment Period, the Secretary of State may determine (and any such determination shall be subject to the Determination Escalation Process)) that a highly efficient Train Operator would have a realistic prospect of achieving,
 and shall not take into account the Shadow Operator Cost Categories.
- (e) The Target Cost Nil Fee Performance Level shall be set at a value:

- (i) greater than the value of the Target Cost; and
- (ii) that the Parties agree (or, if the Parties are unable to agree such value by the 28 February falling prior to the start of the relevant PBF Assessment Period, the Secretary of State may determine (and any such determination shall be subject to the Determination Escalation Process)) that a broadly competent Train Operator would be likely to achieve or improve upon,

and shall not take into account the Shadow Operator Cost Categories.

- (f) Within five (5) Weekdays of the Target Cost, the Target Cost Maximum Fee Performance Level and the Target Cost Nil Fee Performance Level being agreed or determined in accordance with this paragraph 3.1, the Operator shall apply the Target Cost, the Target Cost Maximum Fee Performance Level and the Target Cost Nil Fee Performance Level to the Target Cost Template within a tab of the Financial Model, which shall then be Placed in Escrow at the same time as the other Escrow Documents pursuant to paragraph 5 of Chapter 7.5 (*Variations, Changes and Amendments*).

3.2 Target Revenue

- (a) If the Secretary of State notifies the Operator in any Request for Business Plan that the Secretary of State is minded to apply the FP Revenue QTM as the Applicable Assessment Methodology with respect to the Financial Performance Fee in relation to any PBF Assessment Period pursuant to paragraph 2.5(a) (*Calculation of the Performance Based Fee*) of this Chapter 7.2, the Operator shall deliver to the Secretary of State (as a separate tab to the Financial Model within the draft Escrow Documents to be provided alongside the draft Business Plan with respect to such PBF Assessment Period in accordance with paragraph 3.4 of Chapter 7.7 (*Business Plan*)) a spreadsheet setting out the Operator's proposed:

- (i) Target Revenue; and
- (ii) Target Revenue Maximum Fee Performance Level and Target Revenue Nil Fee Performance Level (in each case consistent with the principles set out in paragraphs 3.2(d)(ii) and 3.2(e)(ii) below),

each based on benchmarking evidence and other explanation included by the Operator as part of the Cost Efficiency Analysis included in the Financial Plan for the relevant Business Plan Year pursuant to paragraph 1.3(k)(iii) of Chapter 7.7 (*Business Plan*), with lines of forecast revenue and expenditure for each Reporting Period of the relevant PBF Assessment Period in at least the level of disaggregation of the Forecast Revenue (the "**Target Revenue Template**"), but excluding any consideration of Forecast Revenue relating to the Shadow Operator Services. The Target Revenue Template shall allocate forecast revenue in a format consistent with the Forecast Revenue with no netting off between lines.

- (b) The Parties shall seek to agree (each acting in a timely manner and through sufficiently senior representatives) the Target Revenue, Target Revenue Maximum Fee Performance Level and Target Revenue Nil Fee Performance Level for the relevant PBF Assessment Period, taking into account the Forecast Revenue but excluding any Forecast Revenue relating to the Shadow Operator Services.
- (c) The Target Revenue shall be set at a value the Parties agree (or, if the Parties are unable to agree such value by the 28 February falling prior to the start of the relevant PBF Assessment Period, the Secretary of State may determine (and any such determination shall be subject to the Determination Escalation Process)) represents a central case forecast of Actual Revenue falling within the relevant PBF Assessment Period (but excluding any Forecast Revenue relating to the Shadow Operator Services), expressed as a positive number.
- (d) The Target Revenue Maximum Fee Performance Level shall be set at a value:
 - (i) greater than the value of the Target Revenue; and

- (ii) that the Parties agree (or, if the Parties are unable to agree such value by the 28 February falling prior to the start of the relevant PBF Assessment Period, the Secretary of State may determine (and any such determination shall be subject to the Determination Escalation Process)) that a high performing Train Operator would have a realistic prospect of achieving,

and shall not take into account any Forecast Revenue relating to the Shadow Operator Services.

- (e) The Target Revenue Nil Fee Performance Level shall be set at a value:

- (i) lower than the value of the Target Revenue; and
- (ii) that the Parties agree (or, if the Parties are unable to agree such value by the 28 February falling prior to the start of the relevant PBF Assessment Period, the Secretary of State may determine (and any such determination shall be subject to the Determination Escalation Process)) that a broadly competent Train Operator would be likely to improve upon,

and shall not take into account any Forecast Revenue relating to the Shadow Operator Services..

- (f) Within five (5) Weekdays of the Target Revenue, the Target Revenue Maximum Fee Performance Level and the Target Revenue Nil Fee Performance Level being agreed or determined in accordance with this paragraph 3.2, the Operator shall apply the Target Revenue, the Target Revenue Maximum Fee Performance Level and the Target Revenue Nil Fee Performance Level to the Target Revenue Template within a tab of the Financial Model which shall then be Placed in Escrow at the same time as the other Escrow Documents pursuant to paragraph 5 of Chapter 7.5 (*Variations, Changes and Amendments*).

3.3 Target Profit

- (a) If the Secretary of State notifies the Operator in any Request for Business Plan that the Secretary of State is minded to apply the FP Profit QTM as the Applicable Assessment Methodology with respect to the Financial Performance Fee in relation to any PBF Assessment Period pursuant to paragraph 2.5(a) (*Calculation of the Performance Based Fee*) of this Chapter 7.2, the Operator shall deliver to the Secretary of State (as a separate tab to the Financial Model within the draft Escrow Documents to be provided alongside the draft Business Plan with respect to such PBF Assessment Period in accordance with paragraph 3.4 of Chapter 7.7 (*Business Plan*)) a spreadsheet setting out the Operator's proposed:
- (i) Target Profit; and
- (ii) Target Profit Maximum Fee Performance Level and Target Profit Nil Fee Performance Level (in each case consistent with the principles set out in paragraphs 3.3(c)(ii) and 3.3(d)(ii) below),

each based on benchmarking evidence and other explanation included by the Operator as part of the Cost Efficiency Analysis included in the Financial Plan for the relevant Business Plan Year pursuant to paragraph 1.3(k)(iii) of Chapter 7.7 (*Business Plan*), with lines of forecast revenue and Cost Category lines of forecast expenditure for each Reporting Period of the relevant PBF Assessment Period in at least the level of disaggregation of the costs shown in, and consistent with, the Forecast Revenue and the Cost Budget (the "**Target Profit Template**") but excluding any consideration of Forecast Revenue relating to the Shadow Operator Services or the Shadow Operator Cost Categories. The Target Profit Template shall allocate forecast revenue and expenditure in a format consistent with the Forecast Revenue and the Cost Budget, with no netting off between lines.

- (b) The Parties shall seek to agree (each acting in a timely manner and through sufficiently senior representatives) the Target Profit, Target Profit Maximum Fee Performance Level and Target Profit Nil Fee Performance Level for the relevant PBF Assessment Period, taking into account the Cost Budget and the Forecast Revenue,

but excluding any Shadow Operator Cost Categories and any Forecast Revenue relating to the Shadow Operator Services.

- (c) The Target Profit shall be set at a value that the Parties agree (or, if the Parties are unable to agree such value by the 28 February falling prior to the start of the relevant PBF Assessment Period, the Secretary of State may determine (and any such determination shall be subject to the Determination Escalation Process)) represents a central case forecast of:
- (i) Actual Revenue falling within the relevant PBF Assessment Period (excluding any Actual Revenue relating to the Shadow Operator Services), expressed as a positive number; and
 - (ii) Actual Costs falling within the relevant PBF Assessment Period (excluding any forecast Disallowable Costs and any Actual Costs relating to the Shadow Operator Cost Categories), expressed as a negative number and, for the avoidance of any doubt, this forecast of Actual Costs may be set at a value lower than the aggregate costs in the Cost Budget.
- (d) The Target Profit Maximum Fee Performance Level shall be set at a value:
- (i) greater than the value of the Target Profit; and
 - (ii) that the Parties agree (or, if the Parties are unable to agree such value by the 28 February falling prior to the start of the relevant PBF Assessment Period, the Secretary of State may determine (and any such determination shall be subject to the Determination Escalation Process)) that a highly efficient Train Operator maximising its financial return would have a realistic prospect of achieving,

and shall not take into account any Shadow Operator Cost Categories or Forecast Revenue relating to the Shadow Operator Services.

- (e) The Target Profit Nil Fee Performance Level shall be set at a value:
- (i) lower than the value of the Target Profit; and
 - (ii) that the Parties agree (or, if the Parties are unable to agree such value by the 28 February falling prior to the start of the relevant PBF Assessment Period, the Secretary of State may determine (and any such determination shall be subject to the Determination Escalation Process)) that a broadly competent Train Operator would be likely to improve upon,

and shall not take into account any Shadow Operator Cost Categories or Forecast Revenue relating to the Shadow Operator Services.

- (f) Within five (5) Weekdays of the Target Profit, the Target Profit Maximum Fee Performance Level and the Target Profit Nil Fee Performance Level being agreed or determined in accordance with this paragraph 3.3, the Operator shall apply the Target Profit, the Target Profit Maximum Fee Performance Level and the Target Profit Nil Fee Performance Level to the Target Profit Template within a tab of the Financial Model which shall then be Placed in Escrow at the same time as the other Escrow Documents pursuant to paragraph 5 of Chapter 7.6 (*Variations, Changes and Amendments*).

3.4 Continued application of Scorecard Methodology

If the Parties have not agreed (or, if applicable, the Secretary of State has not determined) any or all of the Target Cost, Target Cost Maximum Fee Performance Level, Target Cost Nil Fee Performance Level, Target Profit, Target Profit Maximum Fee Performance Level, Target Profit Nil Fee Performance Level, Target Revenue, Target Revenue Maximum Fee Performance Level and/or Target Revenue Nil Fee Performance Level in accordance with paragraph 3.1 (*Target Cost*), 3.2 (*Target Revenue*) or 3.3 (*Target Profit*), as applicable, then the Secretary of State may notify the Operator that the FP Scorecard Methodology shall apply in relation to the Financial Performance Fee.

4. Target Amendments

Any Amendable Target may be amended from time to time in accordance with paragraph 2 (*How any adjustments to the Cost Budget, Record of Assumptions, Amendable Financial Target(s) and Operational Performance Target(s), will be established*) of Chapter 7.5 (*Variations, Changes and Amendments*).

5. Effect of alterations to the PBF Assessment Period

5.1 If the Secretary of State:

- (a) issues an Expiry Notice to the Operator prior to the Final 1 April (taking into account the Expiry Date specified in such Expiry Notice); or
- (b) agrees or determines, in accordance with paragraphs 3 (*Annual Business Plan Process*) or 6 (*Business Plan Revisions*) of Chapter 7.7 (*Business Plan*), that the duration of the final Subsequent Business Plan Year shall be the Extended Final Year,

the Secretary of State may notify the Operator that (notwithstanding limb (b) of the definition of PBF Assessment Period) the final PBF Assessment Period shall be the period commencing at 02:00 on 1 April in the Final Full Year, and ending on the Expiry Date.

5.2 Following an alteration to the duration of a PBF Assessment Period for any reason, the Parties shall seek to agree (each acting in a timely manner and through sufficiently senior representatives):

- (a) any necessary additions and/or alterations (as appropriate) to the QTM Targets, RCIS Expected Range and applicable Amendable Financial Targets in respect of the relevant PBF Assessment Period;
- (b) the Benchmark Levels (as applicable) for the relevant PBF Assessment Period in respect of each of the additional Reporting Periods;
- (c) the duration of the PBF Assessment Part-Periods contained within the relevant PBF Assessment Period; and
- (d) any other amendments to the terms of this National Rail Contract as may reasonably be required as a consequence of the alteration to the duration of the relevant PBF Assessment Period,

taking into consideration the alteration to the duration of the relevant PBF Assessment Period. If the Parties have agreed any additions and/or alteration(s) to the QTM Targets, RCIS Expected Range, applicable Amendable Financial Targets and/or Benchmark Levels, and/or other reasonably required amendments, within twenty (20) Weekdays of the alteration to the duration of the relevant PBF Assessment Period, then such agreed matters shall apply in accordance with paragraph 5.4 below.

5.3 If the Parties have not agreed any necessary additions and/or alterations to the QTM Targets, RCIS Expected Range, applicable Amendable Financial Targets and/or Benchmark Levels, durations of relevant PBF Assessment Part-Periods and/or other reasonably required amendments, for the relevant PBF Assessment Period within twenty (20) Weekdays of the alteration to the duration of the relevant PBF Assessment Period, then the Secretary of State:

- (a) may determine any necessary additions and/or alterations to the QTM Targets, RCIS Expected Range and/or applicable Amendable Financial Targets for the relevant PBF Assessment Period (and any such determination shall be subject to the Determination Escalation Process);
- (b) may determine the Benchmark Levels (as applicable) for the relevant PBF Assessment Period (and any such determination shall be subject to the Determination Escalation Process);
- (c) may determine the duration of the PBF Assessment Part-Periods contained within the relevant PBF Assessment Period (and any such determination shall be subject to the Determination Escalation Process);

- (d) may determine any other reasonably required amendments (as referenced in paragraph 5.2(d) above); and
 - (e) shall promptly notify the Operator of such decision, in which case the additions and/or alteration(s) to the QTM Targets, RCIS Expected Range, applicable Amendable Financial Targets and/or Benchmark Levels, durations of relevant PBF Assessment Part-Periods and/or other reasonably required amendments, (as applicable) determined by the Secretary of State in accordance with this paragraph 5.3 shall apply in accordance with paragraph 5.4 below.
- 5.4 Any additions and/or alteration(s) to the QTM Targets, RCIS Expected Range, applicable Amendable Financial Targets and/or any new Benchmark Levels, durations of relevant PBF Assessment Part-Periods and/or other reasonably required amendments, (as applicable) shall apply retrospectively from the date on which the alteration to the duration of a PBF Assessment Period occurred and shall continue to apply until the end of the relevant PBF Assessment Period.

6. Exceptional Events

Following the occurrence of an Exceptional Event, the Secretary of State may (as applicable with respect to the effects of the relevant Exceptional Event):

- (a) if the Quantified Target Methodology is the Applicable Assessment Methodology with respect to any QTM PBF Component, notify the Operator that from the date of such notification (or such alternative date as may be specified in the notification) the Scorecard Methodology shall apply in lieu of the Quantified Target Methodology in relation to any or all of the QTM PBF Components during the relevant PBF Assessment Period;
- (b) if Customer Satisfaction Scorecard B is the Applicable Assessment Methodology with respect to the Customer Satisfaction Fee, notify the Operator that from the date of such notification (or such alternative date as may be specified in the notification) Customer Satisfaction Scorecard A shall apply in lieu of Customer Satisfaction Scorecard B in relation to the Customer Satisfaction Fee during the relevant PBF Assessment Period;
- (c) if the Applicable Assessment Methodology with respect to the Financial Performance Fee is the FP Cost QTM, the FP Revenue QTM or the FP Profit QTM, notify the Operator that from the date of such notification (or such alternative date as may be specified in the notification) the FP Scorecard Methodology shall apply in lieu of the previous Applicable Assessment Methodology in relation to the Financial Performance Fee during the relevant PBF Assessment Period;
- (d) if the Applicable Assessment Methodology with respect to the Financial Performance Fee is the FP Profit QTM, notify the Operator that from the date of such notification (or such alternative date as may be specified in the notification) the Secretary of State is minded to apply the FP Cost QTM in lieu of the previous Applicable Assessment Methodology in relation to the Financial Performance Fee during the relevant PBF Assessment Period, and the Parties shall seek to agree (each in a timely manner) the basis on which the FP Cost QTM shall be implemented for such period (including any relevant Amendable Financial Targets, a Target Cost Template and any other required updates to the Escrow Documents), provided that in the absence of such agreement the Secretary of State may at any time notify the Operator that from the date of such notification (or such alternative date as may be specified in the notification) the FP Scorecard Methodology shall apply in lieu of the previous Applicable Assessment Methodology in relation to the Financial Performance Fee during the relevant PBF Assessment Period;
- (e) if the Applicable Assessment Methodology with respect to the Financial Performance Fee applies the FP TT QTM, notify the Operator that from the date of such notification (or such alternative date as may be specified in the notification), the FP TT QTM shall no longer apply during the relevant PBF Assessment Period (in which case, with effect from such date, the weighting attributable to W_{FINTT} shall be reduced to zero and the weighting attributable to W_{FINR} shall be increased by an equivalent

amount for the period from such date until the end of the relevant PBF Assessment Period);

- (f) suspend any applicable Amendable Financial Target, OP Targets, SQR Targets and/or TT Targets and apply the Scorecard Methodology in a manner which, as far as is practicable, aligns with any suspended target which has already been set for that PBF Assessment Period;
- (g) for the relevant PBF Assessment Period calculate the Performance Based Fee attributable to:
 - (i) each QTM PBF Component on a *pro-rata* basis according to the duration of the period for which each of the Quantified Target Methodology and the Scorecard Methodology applied to such QTM PBF Component;
 - (ii) the Customer Satisfaction Fee on a *pro-rata* basis according to the duration of the period for which each of Customer Satisfaction Scorecard A and Customer Satisfaction Scorecard B applied to the Customer Satisfaction Fee;
 - (iii) the Financial Performance Fee on a *pro-rata* basis (or such alternative basis as the Parties may agree) according to the duration of the period for which the respective Applicable Assessment Methodologies applied to the Financial Performance Fee; and
 - (iv) the Financial Performance Fee on a *pro-rata* basis according to the duration of the period for which the FP TT QTM was applied pursuant to the Applicable Assessment Methodologies applied to the Financial Performance Fee; and/or
- (h) take such other action as the Secretary of State considers appropriate and necessary for the purposes of ensuring it is practicable and appropriate to assess the Operator's performance against the RCIS Expected Range, any of the QTM Targets or any of the Amendable Financial Targets (as applicable).

7. Incentive Regimes

7.1 The Operator shall, as required by the Secretary of State, fully and effectively co-operate with the Secretary of State to design, develop and (as applicable) implement and provide to the Secretary of State such data as the Secretary of State may require in relation to potential new incentive regimes (which may be used in future contracts with Train Operators and/or may be introduced into this Contract by means of a Variation, provided that no such new incentive regime may be introduced into the calculation of the Performance Based Fee pursuant to this Chapter 7.2 (*Performance Based Fee and Shadow Operator Performance Based Fee*) without the prior written agreement of the Parties), including designing:

- (a) new measures of operational performance;
- (b) new models for assessing customer satisfaction and sentiment, including from the perspective of customers with disabilities;
- (c) future regimes for assessing service quality standards delivered by the Operator, including from the perspective of customers with disabilities;
- (d) alternative cost or other financial incentive mechanisms;
- (e) a new regime for assessing the Operator's performance in relation to deterring and preventing ticketless travel; and/or
- (f) new approaches to assessing collaborative behaviours and capability.

7.2 The Operator's obligations pursuant to paragraph above may include:

- (a) developing, reviewing and/or commenting on proposals in relation to such new incentive regimes;
- (b) providing advice on the feasibility, costs and other implications of any such proposals made by the Secretary of State;

- (c) attending meetings to discuss such proposals and any related matters; and
- (d) supporting the Secretary of State in preparing to implement such new incentive mechanisms, including by collecting and providing relevant data to the Secretary of State in accordance with any requirements specified by the Secretary of State from time to time.

**Appendix 1 to Chapter 7.2
PBF Assessment Review**

1. Operator's Performance Review

1.1 The Secretary of State shall review the Operator's performance in relation to:

- (a) all Non-Financial PBF Components and Applicable FP Sub-Components to which, in each case, the Scorecard Methodology is applicable in accordance with this Appendix 1 to Chapter 7.2; and
- (b) all Shadow Operator PBF Components,

provided that no assessment of the Shadow Operator PBF Components shall occur in respect of any PBF Assessment Period:

- (i) falling wholly after termination of the Shadow Operator Services; or
- (ii) in which the Eligible ShOp Costs fall below the applicable amount specified as "Z" in Appendix 5 to Chapter 7.2 (*Performance Based Fee and Shadow Operator Performance Based Fee*).

2. Performance Assessment in Contract Performance Meetings

2.1 At each periodic Contract Performance Meeting, the Parties shall discuss and review the Operator's performance against the Scorecard Criteria (and any other assessment criteria implemented pursuant to this Chapter 7.2) during the Reporting Period immediately prior to the Contract Performance Meeting (or during such other Reporting Period as may be relevant).

2.2 During the discussions referenced at paragraph 2.1 above, the Parties may refer to, without limitation:

- (a) the periodic update report and such other information as may be required by the Secretary of State, each as provided by the Operator under paragraph 5 (*Periodic Update Report*) of Chapter 1.1 (*Organisation and Management*);
- (b) such other information as the Operator may provide under paragraph 8.3 (*Contract Performance Meetings*) of Chapter 1.1 (*Organisation and Management*); and/or
- (c) any information required by the Secretary of State in any Evidence Request.

2.3 Notwithstanding paragraph 8.3 (*Contract Performance Meetings*) of Chapter 1.1 (*Organisation and Management*):

- (a) if the periodic update report and other information referenced in paragraphs 2.2(a) to (c) above is not available for any reason, the Operator shall prepare and submit to the Secretary of State, not less than five (5) Weekdays prior to the relevant Contract Performance Meeting, a report setting out the Operator's performance against the Scorecard Criteria and any other assessment criteria implemented pursuant to this Chapter 7.2 during the Reporting Period immediately prior to the Contract Performance Meeting (or during such other Reporting Period as may be relevant), provided that such report shall be no longer than twenty (20) A4 pages in total, unless otherwise agreed by the Secretary of State; and
- (b) the Secretary of State may, at any time, request additional evidence in respect of the Operator's performance during any Reporting Period in relation to any Scorecard Criteria and any other assessment criteria implemented pursuant to this Chapter 7.2 (each an "**Evidence Request**") and the Operator shall:
 - (i) if the Secretary of State issues an Evidence Request by the end of the relevant Reporting Period, provide such additional evidence to the Secretary of State no later than ten (10) Weekdays following the end of the relevant Reporting Period; and

- (ii) if the Secretary of State issues an Evidence Request after the end of the relevant Reporting Period, provide such additional evidence to the Secretary of State as soon as practicable.
- 2.4 The Parties acknowledge and agree that the materials provided pursuant to paragraphs 2.2 and/or 2.3 above are not intended to be the final record of all information or evidence in respect of the Reporting Period to which the Contract Performance Meeting relates and the Parties shall be entitled to raise for discussion, at or in advance of any subsequent Contract Performance Meeting, additional evidence relating to such Reporting Period as may be relevant to that, or any other, Contract Performance Meeting.
- 3. Indicative Scoring Contract Performance Meetings**
- 3.1 Unless otherwise directed by the Secretary of State:
- (a) at each Contract Performance Meeting in respect of the third and tenth Reporting Periods in each Contract Year; or
- (b) with respect to any Contract Year which is not thirteen Reporting Periods in duration, at such one or two Contract Performance Meetings as the Secretary of State may direct,
- the Parties shall discuss the Operator's performance during the relevant PBF Assessment Part-Period to date in relation to all Non-Financial PBF Components and Applicable FP Sub-Components to which, in each case, the Scorecard Methodology is applicable (each an **"Indicative Scoring Contract Performance Meeting"**).
- 3.2 Notwithstanding paragraph 8.3 (*Contract Performance Meetings*) of Chapter 1.1 (*Organisation and Management*), as soon as practicable after the end of the third and tenth Reporting Periods in each Contract Year (or, with respect to any Contract Year which is not thirteen Reporting Periods in duration, as soon as practicable after the end of such Reporting Periods as the Secretary of State may direct), and in any event no later than ten (10) Weekdays after the relevant Reporting Period:
- (a) the Operator shall, to the extent reasonably practicable having regard to the information available at the relevant time, submit to the Secretary of State drafts of the materials set out in Appendix 2 (*PBF Assessment Review Checklist*) to this Chapter 7.2 in respect of the relevant Non-Financial PBF Components or Applicable FP Sub-Components (as applicable); and
- (b) the Operator shall provide to the Secretary of State:
- (i) the Operator's proposal for an indicative score for the Operator's performance during the PBF Assessment Part-Period to date in relation to all Non-Financial PBF Components and Applicable FP Sub-Components to which, in each case, the Scorecard Methodology is applicable; and
- (ii) the Operator's proposed rationale for each such indicative score by reference to the materials submitted pursuant to paragraph 3.2(a) above.
- 3.3 At each Indicative Scoring Contract Performance Meeting, the Secretary of State shall determine and provide an indicative score (together with accompanying rationale) for the Operator's performance during the PBF Assessment Part-Period to date in relation to all Non-Financial PBF Components and Applicable FP Sub-Components to which, in each case, the Scorecard Methodology is applicable.
- 3.4 The Secretary of State shall take into account the Operator's proposed indicative scores, proposed rationales and draft materials submitted in accordance paragraph 3.2 above when determining the indicative scores which are provided pursuant to paragraph 3.3 above.
- 4. Contract Performance Meeting following the PBF Assessment Part-Period**
- 4.1 At each Contract Performance Meeting in respect of the sixth and thirteenth Reporting Periods in each Contract Year (or with respect to any Contract Year which is not thirteen Reporting Periods in duration, at such one or two Contract Performance Meetings as the Secretary of State may direct):

- (a) the Secretary of State may require the Operator to ensure that the representatives of the Operator include such:
 - (i) appropriate and qualified personnel of the Operator;
 - (ii) directors and/or senior managers of the Operator; and
 - (iii) directors and/or senior managers of the Parent, as the Secretary of State may require; and
- (b) the Parties may discuss the Operator's performance by reference to, without limitation:
 - (i) the materials set out in the PBF Assessment Part-Period Review Checklist as provided by the Operator to the Secretary of State pursuant to paragraph 7.1 (*PBF Assessment Review Checklist*) and, at the Contract Performance Meeting in respect of the thirteenth Reporting Period, the materials set out in the PBF Assessment Period Review Checklist as provided by the Operator to the Secretary of State pursuant to paragraph 7.1A (*PBF Assessment Review Checklist*);
 - (ii) the periodic update reports and such other information as may be required by the Secretary of State, each as provided by the Operator under paragraph 5 (*Periodic Update Report*) of Chapter 1.1 (*Organisation and Management*) or (where relevant) such reports as the Operator has provided to the Secretary of State pursuant to paragraph 2.3(a) (*Performance Assessment in Contract Performance Meetings*) above;
 - (iii) such other information as the Operator may provide under paragraph 8.3 (*Contract Performance Meetings*) of Chapter 1.1 (*Organisation and Management*);
 - (iv) any information required by the Secretary of State in any Evidence Request; and/or
 - (v) any representations or evidence provided pursuant to paragraph 7.2 (*PBF Assessment Review Checklist*) below.

5. **Effect of Contract Performance Meetings**

The discussions and outcomes of each Contract Performance Meeting and each Indicative Scoring Contract Performance Meeting (including any indicative scores determined and provided by the Secretary of State) shall be without prejudice to the assessment and determination of any score in accordance with paragraphs 6 (*PBF Assessment Part-Period Review & PBF Assessment Period Review*) to 9 (*Scoring Letter Disputes*) of this Appendix 1 and Appendix 3 (*Scorecard Criteria*) to this Chapter 7.2.

6. **PBF Assessment Part-Period Review & PBF Assessment Period Review**

- 6.1 The Secretary of State shall carry out a PBF Assessment Part-Period Review with respect to each PBF Assessment Part-Period and a PBF Assessment Period Review with respect to each PBF Assessment Period.
- 6.2 Each PBF Assessment Part-Period Review and PBF Assessment Period Review shall be carried out in accordance with the process set out in paragraphs 6 (*PBF Assessment Part-Period Review & PBF Assessment Review*) to 9 (*Scoring Letter Disputes*) of this Appendix 1 to Chapter 7.2.

7. **PBF Assessment Review Checklist**

- 7.1 As soon as practicable after the end of each PBF Assessment Part-Period, and in any event no later than ten (10) Weekdays after the end of the relevant PBF Assessment Part-Period, the Operator shall provide to the Secretary of State:
 - (a) the materials set out in the PBF Assessment Part-Period Review Checklist in respect of that PBF Assessment Part-Period;

- (b) a certificate addressed to the Secretary of State and signed by a statutory director of the Operator confirming that the relevant director has reviewed the materials referred to in paragraph 7.1(a) above;
 - (c) the Operator's proposed scores for the Operator's performance during the relevant PBF Assessment Part-Period in relation to all Non-Financial PBF Components and Applicable FP Sub-Components to which, in each case, the Scorecard Methodology is applicable; and
 - (d) the Operator's proposed rationale for each such score by reference to the materials submitted pursuant to paragraph 7.1(a) above.
- 7.1A As soon as practicable after the end of each PBF Assessment Period, and in any event no later than ten (10) Weekdays after the end of the relevant PBF Assessment Period, the Operator shall provide to the Secretary of State:
- (a) the materials set out in the PBF Assessment Period Review Checklist in respect of that PBF Assessment Period;
 - (b) a certificate addressed to the Secretary of State and signed by a statutory director of the Operator:
 - (i) confirming that the relevant director has reviewed the materials referred to in paragraph 7.1A(a) above; and
 - (ii) as required by paragraph 12.13 of Chapter 11.1 (*Shadow Operations*);
 - (c) the Operator's proposed scores for the Operator's performance during the relevant PBF Assessment Period in relation to all Shadow Operator PBF Components; and
 - (d) the Operator's proposed rationale for each such score by reference to the materials submitted pursuant to paragraph 7.1A(a) above.
- 7.2 The Secretary of State may take such steps as the Secretary of State considers to be necessary or appropriate to take into consideration any representations or evidence provided by Network Rail, HS2 Limited and/or any other relevant third party to the extent relevant to the Scorecard Criteria, including:
- (a) procuring views or evidence from Network Rail, HS2 Limited and/or other relevant stakeholders; and/or
 - (b) subject to any requirements in relation to confidentiality, sharing extracts (on an anonymised or redacted basis, if required) of evidence supplied by the Operator with Network Rail, HS2 Limited and/or other relevant stakeholders.
- 8. Scoring Letter**
- 8.1 The Secretary of State shall provide to the Operator, no later than the date which is thirty (30) Weekdays following the relevant PBF Assessment Part-Period, an ICWC Scoring Letter.
- 8.1A The Secretary of State shall provide to the Operator, no later than the date which is sixty (60) Weekdays following the relevant PBF Assessment Period, a Shadow Operator Scoring Letter.
- 8.2 The Operator shall be scored three (3), two (2) or one (1) in relation to the Scorecard Criteria with respect to:
- (a) each Non-Financial PBF Component to which the Scorecard Methodology is to be applied (other than in relation to each Scorecard Criteria with respect to Customer Satisfaction Scorecard B, with respect to which the Operator shall be scored four (4), three (3), two (2) or one (1) subject always to paragraph 8.4 below);
 - (b) each of the FP Cost Sub-Component and the FP Revenue Sub-Component to which the Scorecard Methodology is to be applied; and
 - (c) each Shadow Operator PBF Component with respect to which the Operator shall be scored three (3), two (2) or one (1),
- and, in relation to any other assessment criteria implemented pursuant to this Chapter 7.2, shall be assessed or scored (as applicable) in accordance with such assessment criteria.

- 8.3 The ICWC Scoring Letter shall set out the scores awarded by the Secretary of State and the rationale for such scores by reference to the applicable ICWC Scorecard Criteria. The Shadow Operator Scoring Letter shall set out the scores awarded by the Secretary of State and the rationale for such scores by reference to the Shadow Operator Scorecard Criteria. Subject to paragraph 8.4 below, one single, integer, overall score shall be awarded in relation to each relevant Non-Financial PBF Component and Applicable FP Sub-Component to which, in each case, the Scorecard Methodology is applicable and each Shadow Operator PBF Component based on the Secretary of State's assessment of the Operator's performance in relation to the relevant Scorecard Criteria and taking into account:
- (a) the materials set out in the PBF Assessment Part-Period Review Checklist or PBF Assessment Period Review Checklist (as applicable) and the Operator's proposed scores and proposed rationales, each as provided by the Operator to the Secretary of State pursuant to paragraph 7.1 or 7.1A (*PBF Assessment Review Checklist*) above;
 - (b) where relevant, the periodic update report and such other information as may be required by the Secretary of State, each as provided by the Operator under paragraph 5 (*Periodic Update Report*) of Chapter 1.1 (*Organisation and Management*) or such reports as the Operator has provided to the Secretary of State pursuant to paragraph 2.3(a) (*Performance Assessment in Contract Performance Meetings*) above;
 - (c) such other information as the Operator may provide under paragraph 8.3 (*Contract Performance Meetings*) of Chapter 1.1 (*Organisation and Management*);
 - (d) any information required by the Secretary of State in any Evidence Request;
 - (e) discussions between the Operator and the Secretary of State at any Contract Performance Meeting as may be relevant to the applicable PBF Assessment Part-Period or PBF Assessment Period (as applicable); and/or
 - (f) any representations or evidence provided by Network Rail, HS2 Limited and/or any other relevant third party pursuant to paragraph 7.2 (*PBF Assessment Review Checklist*) above.
- 8.4 Where Customer Satisfaction Scorecard B is the Applicable Assessment Methodology with respect to the Customer Satisfaction Fee, if the Overall RCIS Score is not available by the time at which the Scoring Letter with respect to the first PBF Assessment Part-Period in any PBF Assessment Period is issued in accordance with paragraph 8.1 above:
- (a) the Operator shall not be scored in respect of Customer Satisfaction Scorecard B pursuant to paragraphs 8.2 and 8.3 as part of the PBF Assessment Part-Period Review of such first PBF Assessment Part-Period, but the Secretary of State shall notify the Operator in the Scoring Letter whether:
 - (i) the Operator shall be awarded "an Acceptable Insight Rating" or "a Good Insight Rating"; or
 - (ii) the Operator has achieved neither insight rating,
 in each case, with respect to the first PBF Assessment Part-Period; and
 - (b) the Operator shall be scored four (4), three (3), two (2) or one (1) for such first PBF Assessment Part-Period in accordance with the Scorecard Criteria for Customer Satisfaction Scorecard B as part of the PBF Assessment Part-Period Review for the second PBF Assessment Part-Period in the relevant PBF Assessment Period, taking into account the award or notification received by the Operator in accordance with paragraph 8.4(a) above with respect of such first PBF Assessment Part-Period.
- 8.5 Notwithstanding any other provision of this Contract, the Parties acknowledge and agree that, during the Contract Term, the Parties may agree to amend (or the Secretary of State may determine such amendments to) this Chapter 7.2 with the effect that, where Customer Satisfaction Scorecard B is the Applicable Assessment Methodology with respect to the Customer Satisfaction Fee, the Operator's performance in respect of the Customer Satisfaction Fee shall only be assessed and determined once with respect to each PBF Assessment Period, including such that the Secretary of State may award "an Acceptable

Insight Rating” or “a Good Insight Rating” or notify the Operator of no insight rating in respect of the duration of each complete PBF Assessment Period (rather than in respect of each PBF Assessment Part-Period), together with such consequential amendments as may be reasonably necessary in relation to such amendments.

9. **Scoring Letter Disputes**

- 9.1 Within seven (7) Weekdays of the date of receipt of a Scoring Letter issued pursuant to paragraph 8.1 or 8.1A (*Scoring Letter*) above, the Operator may notify the Secretary of State that the Operator does not accept any one or more score(s) in the Scoring Letter.
- 9.2 If the Operator does not give notice under paragraph 9.1 or otherwise confirms acceptance of the Scoring Letter, the Operator shall be deemed to accept the Scoring Letter.
- 9.3 If the Operator gives notice under paragraph 9.1 above, the Secretary of State shall promptly notify the Operator of the date, time and location for a further meeting at which the Operator may make further representations in respect of (as applicable):
- (a) its performance in relation to the relevant PBF Assessment Part-Period by reference to the PBF Assessment Part-Period Review Checklist provided pursuant to paragraph 7.1 (*PBF Assessment Review Checklist*) above; and/or
 - (b) its performance in relation to the relevant PBF Assessment Period by reference to the PBF Assessment Period Review Checklist provided pursuant to paragraph 7.1A (*PBF Assessment Review Checklist*) above,
- (a “**Score Review Meeting**”), provided always that the Score Review Meeting shall take place no later than the date which is five (5) Weekdays following receipt of the Operator’s notice given under paragraph 9.1 above.
- 9.4 Following the Score Review Meeting and no later than the date which is five (5) Weekdays following the date of the Scoring Meeting, the Secretary of State shall provide to the Operator an updated Scoring Letter that includes the Secretary of State’s rationale for why any score has been changed or left unchanged.
- 9.5 Within ten (10) Weekdays of the date of receipt of the updated Scoring Letter pursuant to paragraph 9.4 above, the Operator may elect to refer the relevant matter to the Managing Director of Passenger Services at the Department for Transport (or any replacement role of equivalent seniority) by way of letter to the Secretary of State setting out the Operator’s grounds for dispute.
- 9.6 If the Operator elects to make a referral pursuant to paragraph 9.5 above, the Secretary of State may, as the Secretary of State considers appropriate:
- (a) commission a review of the evidential audit trail relating to the relevant matter by such external adviser(s) with relevant audit and assurance experience as the Secretary of State considers appropriate; and/or
 - (b) seek additional advice from any external adviser, Network Rail and/or HS2 Limited.
- 9.7 The Managing Director of Passenger Services at the Department for Transport (or their nominee or such other sufficiently senior representative of the Secretary of State) shall, having regard to:
- (a) the information, materials and evidence considered by the Secretary of State in accordance with paragraphs 8.3(a) to (f) above; and
 - (b) any report produced by external adviser(s) in accordance with paragraph 9.6 above,
- determine the relevant scores and the Secretary of State shall notify the outcome to the Operator within twenty-five (25) Weekdays of receipt of the Operator’s letter issued under paragraph 9.5 above by way of an updated Scoring Letter that includes the rationale for why any score has been changed or left unchanged.
- 9.8 The PBF Assessment Part-Period Review or PBF Assessment Period Review (as applicable) shall be complete on the earliest to occur of the following events:

- (a) the Secretary of State has sent a Scoring Letter to the Operator in accordance with paragraph 8.1 (*Scoring Letter*) and the Operator is deemed to accept the Scoring Letter pursuant to paragraph 9.2 above; or
 - (b) the Secretary of State has sent a Scoring Letter to the Operator in accordance with paragraph 9.4 above and the Operator has not referred the relevant matter to the Managing Director of Passenger Services at the Department for Transport (or any replacement role of equivalent seniority) in accordance with paragraph 9.5 above within ten (10) Weekdays of the date of receipt of the Scoring Letter; or
 - (c) the Secretary of State has sent a Scoring Letter to the Operator in accordance with paragraph 9.7 above.
- 9.9 For the avoidance of doubt, the Determination Escalation Process shall not apply in relation to the matters set out in this Appendix 1 to Chapter 7.2.

10. **Remedial Plans**

If the Operator:

- (a) is operating at a level that would, or would likely, be scored “one (1)”; or
- (b) has received a score of “one (1)”,

in relation to:

- (c) any of the Non-Financial PBF Components and Applicable FP Sub-Components to which, in each case, the Scorecard Methodology is applicable during a PBF Assessment Part-Period; and/or
- (d) any of the Shadow Operator PBF Components,

then the Secretary of State may require a Remedial Plan and the provisions of Chapter 9.4.3 (*Procedure for remedying a Contravention of the National Rail Contract*) of this Contract shall apply.

Appendix 2 to Chapter 7.2
PBF Assessment Review Checklists

Part One: PBF Assessment Part-Period Review Checklist

1. Operational Performance

- 1.1 A report on the Operator's delivery of the operational performance elements of the Train Service Operations Plan Business Plan Component over the PBF Assessment Part-Period, including evidence of:
- (a) the delivery of the relevant Core Business Plan Commitments, including delivery to time and delivery of expected outputs and outcomes or the Operator's plans for delivery of such Core Business Plan Commitments, to the extent that the relevant PBF Assessment Part-Period does not end on the last day of the thirteenth Reporting Period in such Contract Year;
 - (b) performance against each of the relevant Core Business Plan KPIs in the Business Plan or the Operator's plans for delivery of such Core Business Plan KPIs, to the extent that the relevant PBF Assessment Part-Period does not end on the last day of the thirteenth Reporting Period in such Contract Year;
 - (c) an explanation of the level of performance achieved during the PBF Assessment Part-Period and the underlying drivers of that performance, including:
 - (i) Plan of the Day operation and capacity provisions;
 - (ii) incident management recovery; and
 - (iii) incident learning review processes,
 together with evidence of the impacts of any significant actions the Operator has undertaken during the PBF Assessment Part-Period to improve performance or to reduce the impacts of incidents;
 - (d) in respect of significant or repeated failures to deliver the Enforcement Plan of the Day, an explanation of the underlying root causes of those failures, including setting out (if relevant) any act, omission or failure of a third party which has impacted performance and the extent of that impact;
 - (e) a summary of the Operator's approach to service recovery, Depot and Train Fleet management during the PBF Assessment Part-Period, including any significant action taken by the Operator to improve those approaches, supported by evidence of their effectiveness;
 - (f) a summary of the Operator's plans for train crew management during the relevant PBF Assessment Part-Period, including any significant actions taken to improve those approaches, supported by evidence of their effectiveness (such as through minimising instances of insufficient train crew availability to resource the applicable Enforcement Plan of the Day; and
 - (g) where applicable and relevant to the assessment of a particular Scorecard Criterion, evidence of:
 - (i) any Relevant OP Limiting Factors (as defined in paragraph 1.4 (*Operational Performance*) of Appendix 3 (*Scorecard Criteria*) to this Chapter 7.2) and how they affected the Operator's ability to meet the particular Scorecard Criterion; and
 - (ii) the actions taken by the Operator to minimise and mitigate their impact.
- 1.2 Where relevant, a report including:
- (a) evidence of delivery of operational performance-related Core Business Plan Commitments specified in the Train Service Operations Plan Business Plan Component, including demonstrating better outcomes;

- (b) evidence of delivery of operational performance-related Core Business Plan KPIs in the Train Service Operations Plan Business Plan Component, including evidence of exceeding relevant targets;
 - (c) an outline of the Operator's approach to service recovery and associated ratio of Reactionary Delay to Direct Delay in respect of the Passenger Services with comparisons to historical average standards as measured over the previous 5 years (taking account of all Direct Delay, whether attributed to the Operator or not);
 - (d) evidence of reviews referred to in paragraph 1.2(c)(iii) of Appendix 3 (*Scorecard Criteria*) to this Chapter 7.2, and evidence these reviews have resulted in actions which have minimised or will minimise the likelihood of such failures and/or their impacts on passengers; and
 - (e) evidence of the Operator's Depot, Train Fleet and train crew management approach and plans, including evidencing rolling stock and crew availability to deliver the Enforcement Plan of the Day and where possible compared to relevant historic standards as measured over the previous 5 years.
- 1.3 Unless otherwise agreed by the Secretary of State, the evidence the Operator provides pursuant to this paragraph 1 shall be no more than 20 A4 pages in total (using 11 point Arial font and including annexes) and the Operator may, if required, refer to relevant data provided to the Secretary of State in accordance with this Contract.

2. Customer Satisfaction

2.1 Checklist for Customer Satisfaction Scorecard A

If Customer Satisfaction Scorecard A was the Applicable Assessment Methodology with respect to the Customer Satisfaction Fee for the relevant PBF Assessment Part-Period:

- (a) a report including:
 - (i) provision of:
 - (A) a summary of customer feedback obtained during the PBF Assessment Part-Period, including a summary of insights gathered through customer insight channels, the Wavelength Programme, National Rail Passenger Survey (if available), other surveys or external sources and social media; and
 - (B) for each customer feedback data source, details of:
 - (1) the number of customers who have provided feedback; and
 - (2) the Operator's conclusions following analysis of such data, including all areas of customer experience which are working well and all areas of customer experience which require improvement;
 - (ii) to the extent available in relation to the relevant PBF Assessment Period, evidence of the actions taken by the Operator during the relevant PBF Assessment Part-Period to embed best practice and/or address customer satisfaction issues, including:
 - (A) the specific actions and activities employed by the Operator to target customer experience improvements for customer segments and/or markets served in relation to the Customer Priority Areas;
 - (B) evidence of how the actions and activities referred to in paragraph (ii)(A) above have improved outcomes for customers, including:
 - (1) a statement of the total number of customer complaints per 100,000 journeys (as relevant in relation to the relevant PBF Assessment Part-Period) with commentary on whether this represents an upward or downward trend;

- (2) actions taken by the Operator to address the five most frequent customer complaints;
 - (3) detail of positive feedback from customers;
 - (4) details of Delay Repay Compensation processing response times and performance, with commentary on whether this represents an upward or downward trend;
 - (5) actions taken by the Operator which are focused on improving the Passenger Assist service, including improving numbers of bookings and successful journeys using the Passenger Assist service, and an assessment of customer satisfaction and/or customer feedback regarding the same;
 - (6) a summary of how the Operator has improved outcomes for customers in relation to one or more of the Customer Priority Areas; and
 - (7) a summary of action taken by the Operator to improve passenger support during disruption to Passenger Services, together with outcomes achieved, lessons learnt, feedback from affected customers and details of specific events,
- and, in respect of each of (1) to (7) above, details of any relevant Core Business Plan KPI progress or delivery; and
- (C) where applicable and relevant to the assessment of a particular Scorecard Criterion, evidence of:
 - (1) any Relevant CSA Limiting Factors (as defined in paragraph 2.4 (*Customer Satisfaction - Scorecard A*) of Appendix 3 (*Scorecard Criteria*) to this Chapter 7.2) and how they affected the Operator's ability to meet the particular Scorecard Criterion; and
 - (2) the actions taken by the Operator to minimise and mitigate their impact; and
 - (iii) a summary of customer-focused improvements implemented by the Operator across the Customer Priority Areas during the relevant PBF Assessment Part-Period as a result of collaborating or partnering with third parties (including disability groups, the Infrastructure Manager, the British Transport Police and Local Authorities) including, where relevant, results of Core Business Plan KPIs relating to the Collaboration Plan within the Business Plan;
- (b) where relevant, a report including:
 - (i) a summary of:
 - (A) key actions taken by the Operator during the relevant PBF Assessment Part-Period to address customer needs, which include customer-focused initiatives and show continuous improvement in approach and, where appropriate, are innovative and/or best in class; and
 - (B) evidence of material improvements that the Operator has delivered across all or the majority of the Customer Priority Areas during the relevant PBF Assessment Part-Period, including the actions taken and, where appropriate, reference to relevant Core Business Plan KPIs; and
 - (ii) a summary of customer-focused improvements implemented by the Operator during the relevant PBF Assessment Part-Period across all or the majority of the Customer Priority Areas and any areas outside of Operator's direct control, each as a result of collaborating or partnering with third parties (such

as disability groups, Infrastructure Manager, British Transport Police, Local Authorities) including the relevant results of any Core Business Plan KPIs relating to the Collaboration Plan within the Business Plan; and

2.2 Checklist for Customer Satisfaction Scorecard B

If Customer Satisfaction Scorecard B was the Applicable Assessment Methodology with respect to the Customer Satisfaction Fee for some or all of the relevant PBF Assessment Period, a report on how the Operator has used insights to improve customer satisfaction, including:

- (a) if available, the Operator's calculation of the Overall RCIS Score for the relevant PBF Assessment Period;
- (b) a summary of customer feedback obtained during the PBF Assessment Part-Period, including insights gathered through the Wavelength Programme, complaints, feedback from passengers using the Passenger Assist service, other surveys where relevant, social media and any other relevant sources;
- (c) a summary of how the Operator has used these customer insights and National Rail Passenger Survey results to identify, address and deliver improved outcomes for customers in relation to one or more of the Customer Priority Areas;
- (d) a summary of how the Operator has collaborated with persons with disabilities and their representative bodies in particular, and how this has directly improved outcomes for such passengers;
- (e) the results of any research or assessments undertaken by the Passengers' Council, the ORR or any other independent bodies which demonstrate the Operator's compliance with any of the Scorecard Criteria; and
- (f) where applicable and relevant to the assessment of a particular Scorecard Criterion, evidence of:
 - (i) any Relevant CSB Limiting Factors (as defined in paragraph 3.2A (*Customer Satisfaction – Scorecard B*) of Appendix 3 (*Scorecard Criteria*) to this Chapter 7.2) and how they affected the Operator's ability to meet the particular Scorecard Criterion; and
 - (ii) the actions taken by the Operator to minimise and mitigate their impact.

2.3 Unless otherwise agreed by the Secretary of State, the evidence the Operator provides pursuant to this paragraph 2 shall:

- (a) be no more than 20 A4 pages in total (using 11 point Arial font and including annexes) and the Operator may, if required, refer to relevant data provided to the Secretary of State in accordance with this Contract; and
- (b) not include evidence which contributes to the Operator's Operational Performance Fee.

3. Service Quality Standards

3.1 A report on the service quality standards delivered by the Operator, including:

- (a) all available Service Quality Regime outputs;
- (b) for areas or time periods where Service Quality Regime outputs are not available or are incomplete, tables, charts and other data (as appropriate) showing, for the PBF Assessment Part-Period:
 - (i) delivery of Station and train cleans against the planned programme;
 - (ii) level of adherence to staffing rosters;
 - (iii) a summary of the availability of key assets such as Station and train toilets and ticket vending machines, and the length of time taken to remedy any faults; and

- (iv) a summary of how the Operator has provided consistently accurate, timely and relevant information to customers at stations, on rolling stock used to deliver the Passenger Services and online (including via relevant social media, mobile apps and websites, as appropriate);
 - (c) a summary of passenger complaints about service quality and how these were addressed;
 - (d) an explanation of the level of performance achieved during the PBF Assessment Part-Period in respect of each of the above and the underlying drivers of that performance, including evidence of the impacts of any significant actions the Operator has undertaken during the PBF Assessment Part-Period to improve performance;
 - (e) the results of any research or assessments undertaken by the Passengers' Council, the ORR or any other independent bodies which demonstrate the Operator's compliance with any of the Scorecard Criteria; and
 - (f) where applicable and relevant to the assessment of a particular Scorecard Criterion, evidence of:
 - (i) any Relevant SQ Limiting Factors (as defined in paragraph 4.4 (*Service Quality Standards*) of Appendix 3 (*Scorecard Criteria*) to this Chapter 7.2) and how they affected the Operator's ability to meet the particular Scorecard Criterion; and
 - (ii) the actions taken by the Operator to minimise and mitigate their impact.
- 3.2 Unless otherwise agreed by the Secretary of State, the evidence the Operator provides pursuant to this paragraph 3 shall be no more than 20 A4 pages in total (using 11 point Arial font and including annexes) and the Operator may, if required, refer to relevant data provided to the Secretary of State in accordance with this Contract.

4. Financial Performance

4.1 FP Cost Sub-Component

- (a) A report including:
 - (i) detail of the extent to which the Operator has acted as a Good and Efficient Operator (other than in relation to the Shadow Operator Cost Categories), including evidence of:
 - (A) the analysis and actions which the Operator has taken (other than in respect of the Shadow Operator Cost Categories) during the relevant PBF Assessment Part-Period to maximise cost efficiency and the effect those actions have had on costs; and
 - (B) the approach the Operator has taken to balancing the Secretary of State's short, medium and long term financial interest in the operation of the Rail Services (excluding the Shadow Operator Services) both within and beyond the relevant Business Plan Period);
 - (ii) evidence to demonstrate how the Operator has (other than in respect of the Shadow Operator Services), ensured that forecasts of future costs and revenues provided to the Secretary of State are realistic, including, where appropriate, reference to discussions at Periodic Finance Review Meetings and associated information and those sections of the Operator's Management Accounts which:
 - (A) compare Actual Revenues against Forecast Revenue;
 - (B) compare costs actually incurred to the Cost Categories included within the Cost Budgets; and
 - (C) provide the Operator's explanation regarding variances within such comparative information;

- (iii) a summary of any Relevant FPC Limiting Factors which the Operator believes are relevant in relation to the relevant PBF Assessment Part-Period and evidence of mitigation actions the Operator has undertaken to minimise the impact of such Relevant FPC Limiting Factors;
- (iv) a copy of a register of Cost Budget Change Events maintained by the Operator which:
 - (A) records any Cost Budget Change Event which has taken place during relevant PBF Assessment Part-Period; and
 - (B) clearly sets out the relevant Cost Budget Change Event and provisions of this Contract to which each such Cost Budget Change Event relates;
 - (C) identifies whether any Cost Budget Change has occurred as a result of such Cost Budget Change Event; and
 - (D) specifies, in respect of each Cost Budget Change Event, whether the impact was on the Shadow Operator Cost Categories and/or non-Shadow Operator Cost Categories;
- (v) a confirmation that, during the relevant PBF Assessment Part-Period, other than in respect of the Shadow Operator Cost Categories, there has not been any Cost Budget Change in relation to the Cost Budget Change Event described at paragraph 1.27 of Part 1 (*Cost Budget Change Events*) of Appendix 1 to Chapter 7.5 (*Variations, Changes and Amendments*) or otherwise, where such a Cost Budget Change has occurred during the relevant PBF Assessment Part-Period, evidence of action taken by the Operator in respect of such Cost Budget Change, including giving the required notice, reporting and mitigation. Such evidence may include reference to relevant correspondence, reporting and/or meeting minutes, each in relation to Cost Budget Change Events and as required under the terms of this Contract;
- (vi) a confirmation of whether during the relevant PBF Assessment Part-Period, (other than in respect of the Shadow Operator Cost Categories) there has been any Cost Budget Change at all in the circumstances described at paragraph 2.9 of Chapter 7.5 (*Variations, Changes and Amendments*);
- (vii) where any Cost Budget Change Event has occurred during the relevant PBF Assessment Part-Period, (other than in respect of the Shadow Operator Cost Categories) evidence of how the Operator has:
 - (A) consistently presented viable options for mitigation of the impact of any such Cost Budget Change Event on the Cost Budget and on the delivery of Core Business Plan Commitments and core contractual commitments; and
 - (B) worked in partnership with Secretary of State to agree the most appropriate resolution (such evidence may include reference to correspondence, reporting and/or meeting minutes, each as required under the terms of this Contract);
- (viii) other than in respect of the Shadow Operator Services, an outline description of any reductions in outputs during the relevant Business Plan Year which have been planned and agreed with Secretary of State and of the impact of any such reductions on the Cost Budget together with evidence that associated cost reductions are optimal, and that the Operator has complied with its obligations under Chapter 7.5 (*Variations, Changes and Amendments*) in relation to relevant Cost Budget Change Events (such outline description and evidence may include reference to correspondence, reporting and/or meeting minutes, each as required under the terms of this Contract);

- (ix) other than in respect of the Shadow Operator Services, high level commentary of the key internal processes and controls in place for managing the Operator's expenditure across all areas of the business, together with reference to:
 - (A) where such processes and controls are documented in Operator's management system; and
 - (B) any reports or other evidence evidencing the effectiveness of such controls and processes;
- (x) other than in respect of the Shadow Operator Services, evidence of having implemented actions directed by Secretary of State, including correspondence, meeting minutes and the Management Accounts, each as required under the terms of this Contract; and
- (xi) in circumstance where the Operator has not fully complied with the requirements of the Scorecard Criteria set out in paragraph 5.2(b)(v)(A) or (B) of Appendix 3 (*Scorecard Criteria*) to this Chapter 7.2, a summary of associated remedial action or, otherwise, a statement confirming no such instances have occurred.

The report should not address any issues otherwise reflected in the Shadow Operator Scorecard Criteria.

- (b) Where relevant, a report including (other than in respect of the Shadow Operator Services):
 - (i) evidence of instances where the Operator has proactively monitored for and responded promptly to unexpected changes in circumstances in a cost efficient manner during the relevant PBF Assessment Part-Period, such as reference to the register of Cost Budget Change Events maintained by the Operator, actions logs, meeting minutes and reporting as required under the terms of this Contract;
 - (ii) a summary of cost efficiency opportunities identified by the Operator during the relevant PBF Assessment Part-Period, together with relevant evidence including reference to plans, reports, reporting and meeting minutes; and
 - (iii) evidence of regularly reporting accurate costs forecasts, providing early notice of underspends and/or decreases in costs and providing notice of related Cost Budget Change Events, including reference to the Management Accounts, reporting and meeting minutes, each as required under the terms of this Contract.
- (c) Unless otherwise agreed by the Secretary of State, the evidence the Operator provides pursuant to this paragraph 4.1 shall be no more than 20 A4 pages in total (using 11 point Arial font and including annexes) and the Operator may, if required, refer to relevant data provided to the Secretary of State in accordance with this Contract.

4.2 **FP Revenue Sub-Component**

- (a) A report including:
 - (i) a summary and/or table which sets out (other than in respect of the Shadow Operator Services):
 - (A) the initiatives the Operator is delivering or has delivered during the relevant PBF Assessment Part-Period to drive and accommodate revenue recovery and growth, with reference to long, medium and short term plans;
 - (B) further actions taken by the Operator during the relevant PBF Assessment Part-Period to promote and grow demand and revenue growth as directed by the Secretary of State;

- (C) the value for money initiatives implemented by the Operator during the relevant PBF Assessment Part-Period to drive and accommodate recovery and growth in patronage;
 - (D) in respect of (A) to (C) above, details which illustrate the success of the relevant targeted revenue growth initiatives (such as reference to LENNON and, where applicable, ROI data from marketing campaigns);
 - (E) in circumstance where the Operator has not fully complied with the requirements of the Scorecard Criteria set out in paragraph 6.2(c) of Appendix 3 (Scorecard *Criteria*) to this Chapter 7.2, a summary of associated remedial action taken by the Operator during the relevant PBF Assessment Part-Period, which may include reference to relevant sections of the Operator's Management Accounts which:
 - (1) compare Actual Revenues against Forecast Revenue;
 - (2) compare costs actually incurred to the Cost Categories included within the Cost Budgets; and
 - (3) provide the Operator's explanation regarding variances within such comparative information;
- (ii) a summary of:
- (A) the Operator's plan to monitor and reduce ticketless travel during the relevant PBF Assessment Part-Period;
 - (B) any year-on-year reductions in Ticketless Travel Rates achieved by the Operator;
 - (C) the report setting out the results of the relevant Ticketless Travel Survey provided by the Operator pursuant to paragraph 1.3 (*Ticketless Travel Survey*) of Chapter 8.1 (*Marketing and Revenue*); and
 - (D) actions taken by the Operator during the relevant PBF Assessment Part-Period in relation to:
 - (1) if available, the Operator's Ticketless Travel Rates, and any TT Action Plan, as consistent with the actions of a Good and Efficient Operator;
 - (2) actual gateline staffing hours
 - (3) alignment of gateline operation with key Rail Services;
 - (4) where relevant data is available, scan rate and/or volume for barcode and smart tickets; and
 - (5) other revenue protection activity, such as identification, deployment and impact of targeted initiatives and the measured success of these initiatives;
 - (E) the number and value of successful prosecutions in the relevant PBF Assessment Part-Period; and
 - (F) the Operator's revenue protection training plan and evidence of delivery of such training plan during the PBF Assessment Part-Period,
- provided that the evidence set out in this paragraph 4.2(a)(ii) shall not be required if the Applicable Assessment Methodology with respect to the Financial Performance Fee applies the FP TT QTM; and
- (iii) other than in respect of the Shadow Operator Services, a summary of the stakeholder partnerships which the Operator has engaged in throughout the

- relevant PBF Assessment Part-Period, along with a summary of the outputs which have been delivered from these partnerships in relation to revenue growth; and
- (iv) a summary of any Relevant FPR Limiting Factors which the Operator believes are relevant in relation to the relevant PBF Assessment Part-Period and evidence of mitigating actions taken by the Operator to minimise the impact of such Relevant FPR Limiting Factors.
- (b) Where relevant, a report including a summary of the activities undertaken to identify market trends and/or opportunities relating to passenger revenue as they emerge during the relevant PBF Assessment Part-Period, and the initiatives delivered against those trends to grow patronage and revenue accordingly (including optimising delivery), including:
- (i) detail of growth achieved;
 - (ii) in respect of relevant opportunities and initiatives delivered by the Operator during the relevant PBF Assessment Part-Period:
 - (A) an explanation of which opportunities and initiatives have exceeded the requirements of the Business Plan for the Business Plan Year corresponding to the relevant PBF Assessment Part-Period;
 - (B) a summary of how such opportunities and initiatives represent value for money; and
 - (C) a summary of the impact which these initiatives have had or are expected to have on patronage and revenue growth; and
 - (iii) a summary quantifying the reductions in ticketless travel achieved together with a summary of the actions taken by the Operator to achieve such reductions and an explanation as to how these go beyond those forecast in the Operator's proposed plan relating to monitoring and reducing ticketless travel, provided that the evidence set out in this paragraph 4.2(b)(iii) shall not be required if the Applicable Assessment Methodology with respect to the Financial Performance Fee applies the FP TT QTM.
- (c) Unless otherwise agreed by the Secretary of State, the evidence the Operator provides pursuant to this paragraph 4.2 shall be no more than 20 A4 pages in total (using 11 point Arial font and including annexes) and the Operator may, if required, refer to relevant data provided to the Secretary of State in accordance with this Contract.

Part Two: PBF Assessment Period Review Checklist

5. Shadow Operator Delivery

- 5.1 A report detailing the Operator's performance in delivering those sections of the Business Plan relating to the Shadow Operator Services with respect to the Business Plan Year corresponding to the relevant PBF Assessment Period which is the subject of the PBF Assessment Period Review, including evidence of:
- (a) the delivery of the Shadow Operator Business Plan Commitments, including delivery to time and delivery of expected outputs and outcomes;
 - (b) performance against each of the Shadow Operator Business Plan KPIs in the Business Plan;
 - (c) any risk mitigation or other measures the Operator has proposed and, where agreed with the Secretary of State, implemented where any aspect of the Shadow Operator Services (including any Shadow Operator Business Plan Commitments) or Shadow Operator Business Plan KPIs have not been achieved;
 - (d) how the Operator has managed its requests for guidance, consents, directions, derogations and other decisions relating to the Shadow Operator Services so as to ensure they are accompanied by sufficient high-quality supporting evidence and allow sufficient time for due consideration by the Secretary of State;

- (e) how the Operator has proactively responded to challenges faced in delivery of the Shadow Operator Services (including the Shadow Operator Business Plan Commitments);
 - (f) any ways which the Operator has pro-actively identified to reduce the cost of delivering the Shadow Operator Services (including the Shadow Operator Business Plan Commitments); and
 - (e) how the Operator acted in a constructive and helpful manner to seek to resolve any disagreements relating to the manner, outputs and/or performance of the Shadow Operator Services.
- 5.2 The report should not address any issues otherwise reflected in the Service Quality Standards Scorecard Criteria, Customer Satisfaction Scorecard Criteria, Operational Performance Scorecard Criteria, Collaboration Scorecard Criteria, Financial Performance Scorecard Criteria or assessment through the Quantified Target Methodology of any of the Operational Performance Fee, Service Quality Standards Fee or Financial Performance Fee (as applicable).
- 5.3 Unless otherwise agreed by the Secretary of State, the report the Operator provides pursuant to this paragraph 5 shall be no more than 20 A4 pages in total (using 11 point Arial font and including annexes) and the Operator may, if required, refer to relevant data provided to the Secretary of State in accordance with this Contract.
- 6. Shadow Operator Financial Management**
- 6.1 The Operator shall deliver the agreed Business Plan and the Escrow Documents (both: (i) as first delivered by the Operator pursuant to paragraph 3.4 of Chapter 7.7 (*Business Plan*); and (ii) as agreed or determined pursuant to paragraphs 3.5 to 3.9 of Chapter 7.7 (*Business Plan*)) for the Subsequent Business Plan Year immediately following the relevant PBF Assessment Period.
- 6.2 The Operator shall deliver a report:
- (a) detailing the extent to which the Operator has acted as a Good and Efficient Operator, including evidence of how the internal processes which it has put in place in relation to the Rail Services excluding the Shadow Operator Services have been applied to the Shadow Operator Services and evidence to demonstrate how effective such processes have been in guarding against unnecessary or excessive spend and have ensured Value for Money relating to the Shadow Operator Services;
 - (b) evidence to demonstrate how the Operator has, in respect of the Shadow Operator Services, ensured that forecasts of future costs and (if applicable) revenues provided to the Secretary of State are realistic and presented in the same format and structure as those shown in the most disaggregated line items included within the Modelling Suite as most recently Placed in Escrow, including, where appropriate, reference to discussions at Periodic Finance Review meetings and associated information and those sections of the Operator's Management Accounts which:
 - (i) compare Actual Revenues against Forecast Revenue and Quarterly Forecasts;
 - (ii) compare costs actually incurred to the most disaggregated line items included within the Cost Budgets and Quarterly Forecasts;
 - (iii) provide the Operator's explanation regarding variances within such comparative information; and;
 - (c) a copy of a register of Cost Budget Change Events maintained by the Operator which:
 - (i) records any Cost Budget Change Event which has taken place during relevant PBF Assessment Period; and
 - (ii) clearly sets out the relevant Cost Budget Change Event and provisions of this Contract to which each such Cost Budget Change Event relates;
 - (iii) identifies whether any Cost Budget Change has occurred as a result of such Cost Budget Change Event; and

- (iv) specifies, in respect of each Cost Budget Change Event, whether the impact was on the Shadow Operator Cost Categories and/or non-Shadow Operator Cost Categories;
- (d) a confirmation that, during the relevant PBF Assessment Period, in respect of the Shadow Operator Cost Categories, there has not been any Cost Budget Change in relation to the Cost Budget Change Event described at paragraph 1.27 of Part 1 (*Cost Budget Change Events*) of Appendix 1 to Chapter 7.5 (*Variations, Changes and Amendments*) or otherwise, where such a Cost Budget Change has occurred during the relevant PBF Assessment Period, evidence of action taken by the Operator in respect of such Cost Budget Change, including giving the required notice, reporting and mitigation. Such evidence may include reference to relevant correspondence, reporting and/or meeting minutes, each in relation to Cost Budget Change Events and as required under the terms of this Contract;
- (e) a confirmation of whether during the relevant PBF Assessment Period, in respect of the Shadow Operator Cost Categories, there has been any Cost Budget Change at all in the circumstances described at paragraph 2.9 of Chapter 7.5 (*Variations, Changes and Amendments*);
- (f) where any Cost Budget Change Event has occurred during the relevant PBF Assessment Period, in respect of the Shadow Operator Cost Categories, evidence of how the Operator has:
 - (i) consistently presented viable options for mitigation of the impact of any such Cost Budget Change Event on the Cost Budget and on the delivery of Shadow Operator Business Plan Commitments and contractual commitments relating to the Shadow Operator Services; and
 - (ii) worked in partnership with Secretary of State to agree the most appropriate resolution (such evidence may include reference to correspondence, reporting and/or meeting minutes, each as required under the terms of this Contract);
- (g) in respect of the Shadow Operator Services, evidence of having implemented actions directed by Secretary of State, including correspondence, meeting minutes and the Management Accounts, each as required under the terms of this Contract;
- (h) Unless otherwise agreed by the Secretary of State, the evidence the Operator provides pursuant to this paragraph 6.2 shall be no more than 20 A4 pages in total (using 11 point Arial font and including annexes) and the Operator may, if required, refer to relevant data provided to the Secretary of State in accordance with this Contract.

Appendix 3 to Chapter 7.2 Scorecard Criteria

Part One: ICWC Scorecard Criteria

1. Operational Performance

1.1 One (1): Below acceptable standard

The Operator has failed in any material respect to demonstrate that it has met the standard required to score a “two (2)”.

1.2 Two (2): Acceptable

So far as reasonably practicable taking account of any Relevant OP Limiting Factors, the Operator has, during the relevant PBF Assessment Part-Period:

- (a) delivered the majority of the operational performance-related Core Business Plan Commitments relating to the Train Service Operations Plan Business Plan Component on time and with the outputs and outcomes specified in the Business Plan or effectively planned for delivery of such Core Business Plan Commitments, to the extent that the relevant PBF Assessment Part-Period does not end on the last day of the thirteenth Reporting Period in such Contract Year;
 - (b) met the majority of the operational performance-related Core Business Plan KPIs in the Train Service Operations Plan Business Plan Component or effectively planned for delivery of such Core Business Plan KPIs, to the extent that the relevant PBF Assessment Part-Period does not end on the last day of the thirteenth Reporting Period in such Contract Year;
 - (c) generally delivered the Passenger Services in accordance with the applicable Enforcement Plan of the Day, such that where there have been significant or repeated failures to deliver the applicable Enforcement Plan of the Day:
 - (i) these have typically been due to external factors and/or incidents beyond the reasonable control of the Operator (and for the purposes of this subparagraph (i) any Relevant OP Limiting Factors are to be treated as being beyond the reasonable control of the Operator);
 - (ii) the Operator has used all reasonable endeavours to recover the Passenger Services as quickly as possible so as to minimise passenger inconvenience and delay, regardless of whether or not the root cause was within the Operator’s reasonable control; and
 - (iii) the Operator has undertaken reviews of the root cause(s) of such failure(s) to deliver the applicable Enforcement Plan of the Day and, as a result of such reviews, taken effective action to minimise the likelihood of such failures and/or their impacts on passengers;
 - (d) set in place and implemented during the relevant PBF Assessment Part-Period appropriate Depot and Train Fleet management plans that have been generally effective in minimising the number of instances of insufficient rolling stock vehicles being available to resource the applicable Enforcement Plan of the Day; and
 - (e) set in place and implemented during the relevant PBF Assessment Part-Period appropriate plans for train crew management, recruitment, training, succession and contingency management that have generally been effective in minimising the number of instances of insufficient train crew being available to resource the applicable Enforcement Plan of the Day.
- 1.3 **Three (3): Good**
- (a) The Operator has fully met the criteria for a “two (2)” and in addition, so far as reasonably practicable taking account of any Relevant OP Limiting Factors, the Operator has achieved at least four of the following criteria during the relevant PBF Assessment Part-Period:

- (i) the Operator has delivered better outcomes from at least one of the operational performance-related Core Business Plan Commitments than specified in the Train Service Operations Plan Business Plan Component;
- (ii) the Operator has exceeded at least one of the operational performance-related Core Business Plan KPIs in the Train Service Operations Plan Business Plan Component;
- (iii) there have been very few, if any, significant or repeated failures to deliver the applicable Enforcement Plan of the Day that have been due to factors and/or incidents within the reasonable control of the Operator;
- (iv) the Operator's approach to service recovery has been particularly robust and, as a result, the ratio of Reactionary Delay to Direct Delay in respect of the Passenger Services has been lower than average historical standards as measured over the previous 5 years (taking account of all Direct Delay, whether attributed to the Operator or not);
- (v) the reviews referred to in paragraph 1.2(c)(iii) of this Appendix 3 to Chapter 7.2 have been particularly thorough and, as a result of those reviews, the Operator has identified and implemented significant actions that have minimised (or will minimise) the likelihood and the impacts on passengers of similar incidents occurring in future; and
- (vi) the Operator's Depot, Train Fleet and train crew management has been particularly robust and, as a result, the number of instances of insufficient rolling stock or train crew being available to deliver the Enforcement Plan of the Day have been lower than historical standards as measured over the previous 5 years.

1.4 In this paragraph 1, "**Relevant OP Limiting Factors**" means:

- (a) the level of funding which the Secretary of State has agreed to be available to the Operator through the Cost Budget (excluding the Shadow Operator Cost Categories); and/or
- (b) any unavoidable, temporary adverse impacts resulting from:
 - (i) Industrial Action (other than Industrial Action arising as a result of the Operator failing to comply with its obligations under this Contract, including Chapter 2.2 (*Rail Workforce*));
 - (ii) compliance by the Operator with any guidance or direction given to the Operator by the Secretary of State; or
 - (iii) any other event or circumstance outside of the Operator's reasonable control which would have had a material adverse impact on the ability of the Operator (acting as a Good and Efficient Operator) to achieve the Scorecard Criterion,

provided in each case that the Operator has taken reasonable steps (acting as a Good and Efficient Operator) to minimise and mitigate those adverse impacts.

2. **Customer Satisfaction – Scorecard A**

2.1 **One (1): Below acceptable standard**

The Operator has failed in any material respect to demonstrate that it has met the standard required to score a "two (2)".

2.2 **Two (2): Acceptable**

The Operator has during the relevant PBF Assessment Part-Period:

- (a) used, where reasonably practicable, the following:
 - (i) Operator-generated survey results, data and research; and

- (ii) wider industry survey results and data sources (including Wavelength Programme and National Rail Passenger Survey data, ORR survey data and Passengers' Council data, in each case, where available),

in order to:

- (iii) review customer needs and the extent to which they are being met; and
 - (iv) identify areas where improvement in customer satisfaction is required; and
- (b) so far as reasonably practicable taking account of any Relevant CSA Limiting Factors:
- (i) for each of the customer segments and/or markets served by the Rail Services, implemented actions to improve customer satisfaction, including in:
 - (A) each of the areas identified by the Operator as referenced in paragraph (a)(iv) above;
 - (B) passenger safety and security;
 - (C) accessibility;
 - (D) support during disruption to Passenger Services (such as provision of information or additional staff assistance); and
 - (E) any other areas identified by the Secretary of State from time to time, together, the “**Customer Priority Areas**”,

provided that, to the extent that the effect of the Operator's actions contributes to the Operator's Operational Performance Fee, such actions shall not be considered for the purpose of this paragraph (b)(i);
 - (ii) made demonstrable progress in delivering improvements in outcomes for customers (or, in the opinion of the Secretary of State, will achieve improvements, either during the Business Plan Period or in the longer term) (for example, through reduced negative feedback and/or increased positive feedback) as a result of the actions referred to in (b)(i) above; and
 - (iii) worked in partnership with industry stakeholders to achieve improvements in outcomes for customers with regard to applicable Customer Priority Areas.

2.3 **Three (3): Good**

The Operator has fully met the criteria for a “two (2)” and in addition so far as reasonably practicable taking account of any Relevant CSA Limiting Factors during the relevant PBF Assessment Part-Period:

- (a) taken effective action to address the Customer Priority Areas, including by proactively implementing customer-focused initiatives which are designed to respond to changes in customer expectations and ensure continuous improvement and, where appropriate, are innovative and/or best in class; and
- (b) achieved a positive trend in material improvements in outcomes for customers (or, in the opinion of the Secretary of State, will achieve such improvements, either during the Business Plan Period or in the longer term) (for example, through a trend of reduced negative feedback and/or increased positive feedback) as a result of such actions referred to in (a) above; and
- (c) worked in partnership with industry stakeholders and applied lessons learnt, to achieve improvements in customer outcomes across all or the majority of the Customer Priority Areas, including the delivery of cross-industry collaborative customer experience initiatives to support areas outside of the Operator's direct control.

2.4 In this paragraph 2, “**Relevant CSA Limiting Factors**” means:

- (a) the level of funding which the Secretary of State has agreed to be available to the Operator through the Cost Budget (excluding the Shadow Operator Cost Categories); and/or
- (b) any unavoidable, temporary adverse impacts resulting from:
 - (i) Industrial Action (other than Industrial Action arising as are result of the Operator failing to comply with its obligations under this Contract, including Chapter 2.2 (*Rail Workforce*));
 - (ii) compliance by the Operator with any guidance or direction given to the Operator by the Secretary of State; or
 - (iii) any other event or circumstance outside of the Operator’s reasonable control which would have had a material adverse impact on the ability of the Operator (acting as a Good and Efficient Operator) to achieve the Scorecard Criterion,

provided in each case that the Operator has taken reasonable steps (acting as a Good and Efficient Operator) to minimise and mitigate those adverse impacts.

3. **Customer Satisfaction – Scorecard B**

3.1 The Operator will achieve an Acceptable Insight Rating where:

- (a) the Operator has used some survey results and other relevant data and information (including Wavelength Programme and National Rail Passenger Survey data, where available) to review customer needs and the extent to which they are being met; and
- (b) in circumstances where needs are not being met, the Operator has (so far as reasonably practicable taking account of any Relevant CSB Limiting Factors, and where consistent with the requirement to act as a Good and Efficient Operator or where the Secretary of State has otherwise consented) taken action to address them. These actions have demonstrably resulted in meaningful improvements in outcomes for customers including in relation to some of the Customer Priority Areas and in relation to disabled passengers and other passengers with accessibility needs (or, in the opinion of the Secretary of State, will result in such improvements, either during the Business Plan Period or in the longer term).

3.2 The Operator will achieve a Good Insight Rating where:

- (a) the Operator has regularly used a range of different survey results and other relevant data and information (including Wavelength Programme and National Rail Passenger Survey data, where available) to review customer needs and the extent to which they are being met;
- (b) the Operator’s plans and processes for managing customer experience have been particularly thorough and, as a result, any potential issues have consistently been identified and resolved as swiftly and effectively as reasonably practicable taking account of any Relevant CSB Limiting Factors. Any actual issues have also been few in number and low in impact, and (so far as reasonably practicable taking account of any Relevant CSB Limiting Factors) the Operator has taken prompt and effective remedial action when they have occurred; and
- (c) so far as reasonably practicable taking account of any Relevant CSB Limiting Factors, the Operator has taken prompt action to address identified customer needs. These actions have demonstrably resulted in meaningful improvements in outcomes for customers, including in relation to most or all of the Customer Priority Areas and in relation to disabled passengers and other passengers with accessibility needs.

3.2A In paragraphs 3.1 and 3.2 above, “**Relevant CSB Limiting Factors**” means:

- (a) the level of funding which the Secretary of State has agreed to be available to the Operator through the Cost Budget (excluding the Shadow Operator Cost Categories); and/or
- (b) any unavoidable, temporary adverse impacts resulting from:
 - (i) Industrial Action (other than Industrial Action arising as a result of the Operator failing to comply with its obligations under this Contract, including Chapter 2.2 (*Rail Workforce*));
 - (ii) compliance by the Operator with any guidance or direction given to the Operator by the Secretary of State; or
 - (iii) any other event or circumstance outside of the Operator’s reasonable control which would have had a material adverse impact on the ability of the Operator (acting as a Good and Efficient Operator) to achieve the Scorecard Criterion,

provided in each case that the Operator has taken reasonable steps (acting as a Good and Efficient Operator) to minimise and mitigate those adverse impacts.

3.3 One (1): Below acceptable standard

The Operator has:

- (a) not achieved an Acceptable Insight Rating or a Good Insight Rating; and/or
- (b) has achieved an Overall RCIS Score lower than the RCIS Expected Range.

3.4 Two (2): Acceptable

The Operator has achieved:

- (a) an Acceptable Insight Rating; and
- (b) an Overall RCIS Score within the RCIS Expected Range.

3.5 Three (3): Improving

- (a) Either the Operator has achieved:
 - (i) an Acceptable Insight Rating; and
 - (ii) an Overall RCIS Score higher than the RCIS Expected Range; or
- (b) the Operator has achieved:
 - (i) a Good Insight Rating; and
 - (ii) an Overall RCIS Score within the RCIS Expected Range.

3.6 Four (4): Good

The Operator has achieved:

- (a) a Good Insight Rating; and
- (b) an Overall RCIS Score higher than the RCIS Expected Range.

4. Service Quality Standards

4.1 One (1): Below acceptable standard

The Operator has failed in any material respect to demonstrate that it has met the standard required to score a “two (2)”.

4.2 Two (2): Acceptable

The Operator has:

- (a) so far as reasonably practicable taking account of any Relevant SQ Limiting Factors, taken a proactive approach to managing service quality for all customers, with appropriate plans and processes in place that have been generally effective in:
- (i) providing information on rolling stock used to deliver the Passenger Services (where appropriate), online and at stations at which the Passenger Services call that is accurate, timely and easy for customers to understand, taking account of the needs of different customers and which covers (but is not limited to):
 - (A) the timetable being operated;
 - (B) planned and unplanned disruption;
 - (C) fares, ticketing and retail;
 - (D) passenger rights (including compensation and redress);
 - (E) the availability of station and train facilities;
 - (F) the accessibility of stations, trains, and other customer-facing services; and
 - (G) (when appropriate) COVID-19 Guidance and Regulation;
 - (ii) ensuring that all customer contact surfaces are cleaned regularly and keeping Stations and rolling stock used to deliver the Passenger Services free from litter, dirt and other unhygienic substances;
 - (iii) ensuring that all Stations, rolling stock used to deliver the Passenger Services and online services have been staffed as required to provide a visible, helpful, accessible and proactive customer-facing service; and
 - (iv) maintaining all Station and train facilities so that they are fully functional, available for use and presented in good condition, with any non-availability of facilities for repair or maintenance being kept to the minimum necessary; and
- (b) regularly and at an appropriate frequency monitored compliance with those plans and processes and (so far as reasonably practicable taking account of any Relevant SQ Limiting Factors) taken prompt remedial action when they have been found not to be working.

4.3 **Three (3): Good**

The Operator has fully met the criteria for a “two (2)” and in addition:

- (a) the Operator’s plans and processes described in paragraph 4.2(a) of this Appendix 3 to Chapter 7.2 have been particularly robust, such that there have been very few, if any, repeated or systemic failures to:
- (i) provide timely, accurate and relevant information in the manner described in paragraph 4.2(a)(i) of this Appendix 3 to Chapter 7.2;
 - (ii) undertake cleaning activities and maintain high levels of cleanliness at Stations and on rolling stock used to deliver the Passenger Services;
 - (iii) staff Stations, rolling stock used to deliver the Passenger Services and online services to provide a proactive and accessible customer-facing service; and
 - (iv) maintain Station and train facilities so that they are fully functional and well-presented,
- that have been due to factors and/or incidents within the reasonable control of the Operator (taking account of any Relevant SQ Limiting Factors); and
- (b) the Operator’s plans and processes for managing service quality standards have been particularly thorough and, as a result, any *potential* issues have consistently been identified and resolved as swiftly and effectively as reasonably practicable taking account of any Relevant SQ Limiting Factors. Any *actual* issues within the Operator’s

reasonable control have also been few in number and low in impact, and (so far as reasonably practicable taking account of any Relevant SQ Limiting Factors) the Operator has taken prompt and effective remedial action when they have occurred.

4.4 In this paragraph 4, “**Relevant SQ Limiting Factors**” means:

- (a) the level of funding which the Secretary of State has agreed to be available to the Operator through the Cost Budget (excluding the Shadow Operator Cost Categories); and/or
- (b) any unavoidable, temporary adverse impacts resulting from:
 - (i) Industrial Action (other than Industrial Action arising as a result of the Operator failing to comply with its obligations under this Contract, including Chapter 2.2 (*Rail Workforce*));
 - (ii) compliance by the Operator with any guidance or direction given to the Operator by the Secretary of State; or
 - (iii) any other event or circumstance outside of the Operator’s reasonable control which would have had a material adverse impact on the ability of the Operator (acting as a Good and Efficient Operator) to achieve the Scorecard Criterion,

provided in each case that the Operator has taken reasonable steps (acting as a Good and Efficient Operator) to minimise and mitigate those adverse impacts.

5. **FP Cost Sub-Component**

5.1 **One (1): Below acceptable standard**

The Operator has failed in any material respect to demonstrate that it has met the standard required to score a “two (2)”.

5.2 **Two (2): Acceptable**

- (a) The Operator has consistently acted as a Good and Efficient Operator and has been effective in optimising the financial prospects of its business over the short, medium and long term by driving continuous improvement in cost efficiency.
- (b) So far as reasonably practicable taking account of any Relevant FPC Limiting Factors, during the relevant PBF Assessment Part-Period:
 - (i) the Operator has (other than in respect of the Shadow Operator Services) ensured that forecasts of future costs and revenues provided to the Secretary of State are realistic, central-case forecasts (unless the Secretary of State has requested otherwise);
 - (ii)
 - (A) other than in respect of the Shadow Operator Cost Categories, there has not been any Cost Budget Change in relation to the Cost Budget Change Event described at paragraph 1.27 of Part 1 (*Cost Budget Change Events*) of Appendix 1 to Chapter 7.5 (*Variations, Changes and Amendments*), or the extent of any such Cost Budget Changes is consistent with what would be expected of a competent Train Operator, acting efficiently, having regard to the frequency and quantum of any such Cost Budget Changes over the whole relevant PBF Assessment Part-Period, as well as over the full Contract Term to date. For this purpose, any Cost Budget Changes shall be disregarded to the extent that these have been resolved by a net-neutral revision to the overall Cost Budget (the total of all Cost Categories) pursuant to paragraph 2.8(b)(ii) of Chapter 7.5 (*Variations, Changes and Amendments*), provided that Business Plan outcomes and core contractual commitments pursuant to this Contract are unaffected by such Cost Budget Change; and

- (B) (other than in respect of the Shadow Operator Cost Categories) there has not been a Cost Budget Change at all in the circumstances described at paragraph 2.9 of Chapter 7.5 (*Variations, Changes and Amendments*);
- (iii) other than in respect of the Shadow Operator Cost Categories, in relation to any Cost Budget Change Events, the Operator has consistently presented viable options for mitigation of the impact of such Cost Budget Change Events on the Cost Budget, and on delivery of the Core Business Plan Commitments and core contractual commitments pursuant to this Contract, and has worked collaboratively with the Secretary of State to agree the most appropriate resolution, and the Secretary of State has not exercised rights to determine such mitigation action pursuant to paragraph 2.7 (*Cost Budget Change Events*) of Chapter 7.5 (*Variations, Changes and Amendments*);
- (iv) other than in respect of the Shadow Operator Services, where any reductions in outputs during the relevant Business Plan Year have been planned and agreed with the Secretary of State, the Operator has demonstrated that optimal cost reductions have been reflected in the Cost Budget, and the Operator has complied with its obligations under Chapter 7.5 (*Variations, Changes and Amendments*) in relation to relevant Cost Budget Change Events; and
- (v) the Operator has (excluding in relation to the Shadow Operator Services):
- (A) put in place appropriate internal processes which have been effective in managing the Operator's expenditure across all areas of the business, so as to improve efficiency and guard against unnecessary or excessive spend; and
- (B) implemented such further actions as may have been directed by the Secretary of State with a view to controlling costs,
- while also continuing to incur such expenditure as is reasonably necessary to meet the Operator's obligations under this Contract and to protect the long-term financial interests of the UK rail industry both during the Business Plan Period and in the longer term, and to the extent that there are any specific instances where the Operator has not fully complied with requirements (A) and (B) described above, such instances have been few in number and limited in impact, and the Operator has taken prompt and effective remedial action following any such instances.

5.3 **Three (3): Good**

The Operator has fully met the criteria for a "two (2)" and in addition has, throughout the relevant PBF Assessment Part-Period:

- (a) demonstrably proactively monitored for and responded promptly to any unexpected changes in circumstances during the year in a cost efficient manner (other than where such unexpected changes related solely to the Shadow Operator Services);
- (b) proactively identified and pursued cost efficiency opportunities including identifying industry wide opportunities for cost efficiency (other than in respect of the Shadow Operator Services); and
- (c) other than in respect of the Shadow Operator Services and Shadow Operator Cost Categories, regularly reported accurate cost forecasts, provided early notice of forecast underspends and/or decreases in costs and, acting as a Good and Efficient Operator, promptly gave notice of relevant Cost Budget Change Events accordingly.

5.3A For the purposes of this paragraph 5, the scorecard assessment will not take into account any issues to the extent that such issues are reflected in the Shadow Operator Scorecard Criteria.

5.4 In this paragraph 5, “**Relevant FPC Limiting Factors**” means:

- (a) the level of funding which the Secretary of State has agreed to be available to the Operator through the Cost Budget (excluding the Shadow Operator Cost Categories); and/or
- (b) any unavoidable, temporary adverse impacts resulting from:
 - (i) Industrial Action (other than Industrial Action arising as a result of the Operator failing to comply with its obligations under this Contract, including Chapter 2.2 (*Rail Workforce*));
 - (ii) compliance by the Operator with any guidance or direction given to the Operator by the Secretary of State; or
 - (iii) any other event or circumstance outside of the Operator’s reasonable control which would have had a material adverse impact on the ability of the Operator (acting as a Good and Efficient Operator) to achieve the Scorecard Criterion,

provided in each case that the Operator has taken reasonable steps (acting as a Good and Efficient Operator) to minimise and mitigate those adverse impacts.

6. **FP Revenue Sub-Component**

6.1 **One (1): Below acceptable standard**

The Operator has failed in any material respect to demonstrate that it has met the standard required to score a “two (2)”.

6.2 **Two (2): Acceptable**

So far as reasonably practicable taking account of any Relevant FPR Limiting Factors, the Operator has, during the relevant PBF Assessment Part-Period (other than in respect of the Shadow Operator Services):

- (a) consistently acted as a Good and Efficient Operator and has been effective in optimising the financial prospects of its business over the short, medium and long term by driving the recovery and future growth of passenger demand and revenue
- (b) worked with industry partners as appropriate to take a cross-industry approach to promoting rail travel and implemented such further actions as may have been directed by the Secretary of State with a view to promoting demand and revenue growth;
- (c) delivered any value for money initiatives, as included within the agreed Business Plan, and taken proactive action to drive and accommodate recovery and growth in patronage and revenue, and to the extent that there are any specific instances where the Operator has not fully complied with requirements of this paragraph 6.2(c), such instances have been few in number and limited in impact, and the Operator has taken prompt and effective remedial action following any such instances;
- (d) implemented a plan which monitors ticketless travel and taken appropriate, value for money measures to deter ticketless travel, consistent with those that a Good and Efficient Operator would be expected to take and has delivered year-on-year reduction in Ticketless Travel Rates, and in doing so, has worked in partnership with the Secretary of State and, where applicable, other stakeholders, provided that the Scorecard Criterion in this paragraph 6.2(d) shall not apply if the Applicable Assessment Methodology with respect to the Financial Performance Fee applies the FP TT QTM; and
- (e) worked in partnership with the Secretary of State and, where applicable, other stakeholders to identify opportunities to grow revenue and implemented actions to grow accordingly.

6.3 Three (3): Good

The Operator has fully met the criteria for a “two (2)” and in addition has throughout the relevant PBF Assessment Part-Period, so far as reasonably practicable taking account of any Relevant FPR Limiting Factors (other than in respect of the Shadow Operator Services):

- (a) identified market trends and/or opportunities as they emerge and has implemented value for money and affordable initiatives to grow patronage and revenue accordingly;
- (b) optimised delivery to maximise passenger revenue beyond targets included in the Business Plan and identified further value for money initiatives to grow patronage and revenue actively; and
- (c) achieved improvements in reducing ticketless travel beyond any forecast reductions in ticketless travel as specified in any plan for monitoring and reducing ticketless travel (as referred to in paragraph 6.2(d) above), provided that the Scorecard Criterion in this paragraph 6.3(c) shall not apply if the Applicable Assessment Methodology with respect to the Financial Performance Fee applies the FP TT QTM.

6.3A For the purposes of this paragraph 6, the scorecard assessment will not take into account any issues to the extent that such issues are reflected in the Shadow Operator Scorecard Criteria.

6.4 In this paragraph 6, “**Relevant FPR Limiting Factors**” means:

- (a) the level of funding which the Secretary of State has agreed to be available to the Operator through the Cost Budget (excluding the Shadow Operator Cost Categories); and/or
- (b) any unavoidable, temporary adverse impacts resulting from:
 - (i) Industrial Action (other than Industrial Action arising as a result of the Operator failing to comply with its obligations under this Contract, including Chapter 2.2 (*Rail Workforce*));
 - (ii) compliance by the Operator with any guidance or direction given to the Operator by the Secretary of State; or
 - (iii) any other event or circumstance outside of the Operator’s reasonable control which would have had a material adverse impact on the ability of the Operator (acting as a Good and Efficient Operator) to achieve the Scorecard Criterion,

provided in each case that the Operator has taken reasonable steps (acting as a Good and Efficient Operator) to minimise and mitigate those adverse impacts.

Part Two: Shadow Operator Scorecard Criteria**7. Shadow Operator Delivery****7.1 One (1): Below acceptable standard**

The Operator has failed in any material respect to demonstrate that it has met the standard required to score a “two (2)”.

7.2 Two (2): Acceptable

- (a) So far as reasonably practicable taking account of the level of funding which the Secretary of State has made available to the Operator for the Cost Budget for the Business Plan Year to which the draft Business Plan relates, each draft Business Plan submitted by the Operator in response to the Request for Business Plan:
 - (i) includes Shadow Operator Business Plan Commitments that cover all of the principal actions the Operator is proposing to take and that are specific, measurable and described clearly;
 - (ii) substantially meets the requirements of the Secretary of State relating to the Shadow Operator Services as set out in the Request for Business Plan (as such

- requirements may subsequently have been waived, amended or supplemented by the Secretary of State at any time after issuing the Request for Business Plan); and
- (iii) reflects any changes to the assumptions underlying the HS2 Project including any changes to the programme of work being undertaken by HS2 Limited, in each case, that the Operator is (or, having made due and careful enquiries, ought to be) aware of.
- (b) Each draft of the Shadow Operator Programmes submitted by the Operator in response to the Request for Business Plan:
- (i) has been updated in accordance with paragraph 3 of Appendix 1 (*Shadow Operator Programmes*) to Chapter 7.7 (*Business Plan*);
 - (ii) substantially meets the requirements of the Secretary of State relating to the Shadow Operator Services as set out in the Request for Business Plan (as such requirements may subsequently have been waived, amended or supplemented by the Secretary of State at any time after issuing the Request for Business Plan);
 - (iii) has been updated to reflect any Scoping Documents, Initial Output Reports and Final Output Reports which have been agreed by the Secretary of State; and
 - (iv) reflects any changes to the assumptions underlying the HS2 Project, including any changes to the programme of work being undertaken by HS2 Limited, in each case, that the Operator is (or, having made due and careful enquiries, ought to be) aware of.
- (c) The Parties agree those sections of the Business Plan relating to the Shadow Operator Services and the Shadow Operator Programmes without the Secretary of State exercising the right to determine any material matters pursuant to paragraph 3.7 of Chapter 7.7 (*Business Plan*) of this Contract.
- (d) So far as reasonably practicable:
- (i) the Operator has delivered all or nearly all aspects of the Shadow Operator Services (including all or nearly all Shadow Operator Business Plan Commitments) on time, and with the outputs and outcomes specified in the Business Plan;
 - (ii) the Operator has met all or nearly all of the Shadow Operator Business Plan KPIs, to the extent specified, in the Business Plan relating to the Shadow Operator Services.
- (e) Where any aspect of the Shadow Operator Services (including any Shadow Operator Business Plan Commitment and any Shadow Operator Business Plan KPI) has not been met or has been delivered late, the Operator has demonstrated that:
- (i) this was primarily due to factors outside its reasonable control;
 - (ii) the Operator has proactively engaged with the Secretary of State (and, where relevant HS2 Limited), promptly to find and propose mitigating actions, has implemented any mitigating actions agreed with the Secretary of State in line with any timescales agreed with the Secretary of State and has acted as a Good and Efficient Operator in implementing such mitigating actions; and
 - (iii) the Operator has, where relevant, followed the Collaboration Agreement process to seek to resolve the issue with HS2 Limited.
- (f) Requests for the Secretary of State to provide any guidance, consents, directions, derogations and other decisions relating to the Shadow Operator Services have been made in sufficient time to allow for due consideration by the Secretary of State. Such requests having been supported by appropriate supporting evidence and analysis to

enable the Secretary of State to make an informed decision. Unnecessary or spurious requests have been avoided.

7.3 **Three (3): Good**

The Operator has fully met the criteria for a “two (2)” and in addition:

- (a) has acted proactively to bring to the attention of the Secretary of State any issues in relation to the provision of any draft Shadow Operator Business Plan Component or any Shadow Operator Programme to the Secretary of State and/or the delivery of any aspect of the Shadow Operator Services;
- (b) has proactively responded to challenges faced in delivery of the Shadow Operator Services (including the Shadow Operator Business Plan Commitments), including by identifying and implementing appropriate mitigating actions;
- (c) has engaged constructively, as applicable, with the Secretary of State, Network Rail, HS2 Limited, any relevant stakeholders and (where requested by the Secretary of State) any other parties, to agree and enable the effective provision of any draft Shadow Operator Business Plan Component or any Shadow Operator Programme to the Secretary of State and to enable the effective delivery of any aspect of the Shadow Operator Services, as applicable;
- (d) where there has been any disagreement (whether with the Secretary of State, HS2 Limited, Network Rail or any other stakeholder) in relation to the development of those sections of the Business Plan relating to the Shadow Operator Services and/or the Shadow Operator Programmes, the Operator has acted in a constructive and helpful manner with the Secretary of State to seek to resolve such disagreement; and
- (e) has pro-actively identified (and brought to the Secretary of State’s attention) ways to reduce the cost of delivering the Shadow Operator Services (including the Shadow Operator Business Plan Commitments) which would not have a negative impact upon the delivery or outcomes of the Shadow Operator Services (including the Business Plan Commitments).

7.4 For the purposes of this paragraph 7, the scorecard assessment will not take into account any issues to the extent that such issues are reflected in the Shadow Operator Financial Management Scorecard Criteria.

8. **Shadow Operator Financial Management**

8.1 **One (1): Below acceptable standard**

The Operator has failed in any material respect to demonstrate that it has met the standard required to score a “two (2)”.

8.2 **Two (2): Acceptable**

So far as reasonably practicable in developing the relevant Shadow Operator components of the Escrow Documents for submission to the Secretary of State in accordance with paragraph 3.4 of Chapter 7.7 (*Business Plan*), the Operator has (except if such a Business Plan has not been agreed or determined, in accordance with paragraph 3 of Chapter 7.7):

- (a) worked effectively with the Secretary of State to agree the Shadow Operator components of the Cost Budget in the relevant Subsequent Business Plan Year, reasonably enabling the Secretary of State to consider and agree the Cost Budget within the timeframe and process set out in Chapter 7.7 (*Business Plan*) by:
 - (i) complying with and reflecting the requirements set out in paragraph 12 of Chapter 11.1 (*Shadow Operations*);
 - (ii) providing a sufficiently detailed set of assumptions relating to the Shadow Operator Services in the Record of Assumptions;
 - (iii) providing sufficient supporting evidence that those assumptions are reasonable and realistic to meet the relevant requirements and deliver the Shadow

Operator Business Plan Commitments and achieve the Shadow Operator Business Plan KPIs;

- (iv) responding to requests from the Secretary of State for clarification and further information accurately, clearly, and concisely within reasonable timescales; and
 - (v) ensuring that all feedback provided by the Secretary of State is properly acted on promptly and reasonably within the timescales specified by the Secretary of State; and
- (b) ensured that each draft of the Modelling Suite submitted as part of the process set out in Chapter 7.7 (*Business Plan*) provided an accurate representation of costs and revenues that the Operator (acting as a Good and Efficient Operator) expects to incur in relation to and over the full duration of the Shadow Operator Services) with due regard to the Shadow Operator components of the latest Quarterly Forecast.

In addition, so far as reasonably practicable in managing the finances relating to the Shadow Operator Services:

- (c) the Operator has, in relation to the Shadow Operator Services, applied the internal processes which are referred to in paragraph 5.2(b), so as to guard against unnecessary or excessive spend and ensure Value for Money relating to the Shadow Operator Services;
- (d) the Operator has, throughout the Business Plan Year, ensured that the forecasts of future costs and (if applicable) revenues relating to the Shadow Operator Services provided to the Secretary of State are realistic, central case forecasts (unless the Secretary of State has requested otherwise);
- (e) in respect of the Shadow Operator components of the Cost Budget there has:
 - (i) not been any Cost Budget Change in relation to the Cost Budget Change Event described at paragraph 1.27 of Part 1 (*Cost Budget Change Events*) of Appendix 1 to Chapter 7.5 (*Variations, Changes and Amendments*), or the extent of any such Cost Budget Changes is consistent with what would be expected of the Operator acting competently and efficiently, having regard to the frequency and quantum of any such Cost Budget Changes over the whole relevant PBF Assessment Period, as well as over the full Contract Term to date. For this purpose, any Cost Budget Changes shall be disregarded to the extent that these have been resolved by a net-neutral revision to the overall Cost Budget (the total of all Cost Categories) pursuant to paragraph 2.8(b)(ii) of Chapter 7.5 (*Variations, Changes and Amendments*), provided that Shadow Operator Business Plan Commitments and core contractual commitments relating to the Shadow Operator Services pursuant to this Contract are unaffected by such Cost Budget Change; and
 - (ii) not been a Cost Budget Change at all in the circumstances described at paragraph 2.9 of Chapter 7.5 (*Variations, Changes and Amendments*);
- (f) in respect of the Shadow Operator Cost Categories, in relation to any Cost Budget Change Events, the Operator has consistently presented viable options for mitigation of the impact of such Cost Budget Change Events on the Cost Budget, and on delivery of the Shadow Operator Services (including the Shadow Operator Business Plan Commitments) and has worked collaboratively with the Secretary of State to agree the most appropriate resolution, and the Secretary of State has not exercised rights to determine such mitigation action pursuant to paragraph 2.7 (*Cost Budget Change Events*) of Chapter 7.5 (*Variations, Changes and Amendments*);
- (g) in relation to any Cost Budget Change Events potentially affecting the Shadow Operator Components of the Cost Budget, the Operator has worked effectively with the Secretary of State to agree any revised inputs to the Modelling Suite and the Shadow Operator components of the resulting Cost Budget, reasonably enabling the Secretary of State to consider and agree the revised inputs and resulting Cost Budget within the timeframe and process set out in this contract by acting in accordance with the same requirements as set out in paragraphs 12.2 (a)(i)-(v); and

- (h) the Operator has implemented such further actions as may have been directed by the Secretary of State with a view to controlling costs relating to the Shadow Operator Services.

8.3 **Three (3): Good**

The Operator has fully met the criteria for a “two (2)” and in addition has:

- (a) in developing the Escrow Documents for submission to the Secretary of State in accordance with paragraph 3.4 of Chapter 7.7 (*Business Plan*); and
- (b) in the case of most (and all of the most significant) changes, variations, and updates to the Modelling Suite,

enabled the Secretary of State to consider and agree the Shadow Operator components of the Cost Budget (or revised inputs to the Modelling Suite), at line item and Cost Category level, with little or no need for clarification or further information to be requested following the initial submission of the Escrow Documents and/or Modelling Suite.

Appendix 4 to Chapter 7.2 Scorecard Methodology

1. Application of the ICWC Scorecard Criteria and calculation of Performance Based Fee

- 1.1 Subject to paragraph 1.3 below, each PBF Component and Applicable FP Sub-Component to be calculated in accordance with the Scorecard Methodology shall be assessed with respect to the Operator's PBF Assessment Part-Period Review scores for the relevant PBF Assessment Part-Periods (pursuant to paragraphs 8 (*Scoring Letter*) and 9 (*Scoring Letter Disputes*) of Appendix 1 (*PBF Assessment Review*), as applicable) within the relevant PBF Assessment Period by reference to the Scorecard Criteria, then the scores shall be used to calculate the value of the Performance Based Fee attributable to that PBF Component or Applicable FP Sub-Component, as applicable, in each PBF Assessment Part-Period, as set out below:

PBF Component	PBF Assessment Part-Period Scorecard score for relevant PBF Component	PBF £
Operational Performance Fee	Three (3)	$MPBF \times W_{OP} \times W_{PP}$
	Two (2)	$MPBF \times W_{OP} \times 65\% \times W_{PP}$
	One (1)	Zero (£0)
Customer Satisfaction Fee (to the extent that Customer Satisfaction Scorecard A is the Applicable Assessment Methodology with respect to the Customer Satisfaction Fee in the PBF Assessment Part-Period)	Three (3)	$MPBF \times W_{CE} \times W_{CS} \times W_{PP}$
	Two (2)	$MPBF \times W_{CE} \times W_{CS} \times 65\% \times W_{PP}$
	One (1)	Zero (£0)
Customer Satisfaction Fee (to the extent that Customer Satisfaction Scorecard B is the Applicable Assessment Methodology with respect to the Customer Satisfaction Fee in the PBF Assessment Part-Period)	Four (4)	$MPBF \times W_{CE} \times W_{CS} \times W_{PP}$
	Three (3)	$MPBF \times W_{CE} \times W_{CS} \times 82.5\% \times W_{PP}$
	Two (2)	$MPBF \times W_{CE} \times W_{CS} \times 65\% \times W_{PP}$
	One (1)	Zero (£0)
Service Quality Standards Fee	Three (3)	$MPBF \times W_{CE} \times W_{SQ} \times W_{PP}$
	Two (2)	$MPBF \times W_{CE} \times W_{SQ} \times 65\% \times W_{PP}$
	One (1)	Zero (£0)
FP Cost Sub-Component	Three (3)	$MPBF \times W_{FIN} \times W_{FINC} \times 80\% \times W_{PP}$
	Two (2)	$MPBF \times W_{FIN} \times W_{FINC} \times 45\% \times W_{PP}$
	One (1)	Zero (£0)
FP Revenue Sub-Component	Three (3)	$MPBF \times W_{FIN} \times W_{FINR} \times 80\% \times W_{PP}$
	Two (2)	$MPBF \times W_{FIN} \times W_{FINR} \times 45\% \times W_{PP}$
	One (1)	Zero (£0)

- 1.2 The value of the Performance Based Fee attributable to each PBF Component or Applicable FP Sub-Component, as applicable, in each PBF Assessment Period shall be the sum of the relevant values for such PBF Component or Applicable FP Sub-Component with respect to each PBF Assessment Part-Period within the relevant PBF Assessment Period, as calculated to pursuant to paragraph 1.1 above.
- 1.3 If Customer Satisfaction Scorecard B is the Applicable Assessment Methodology with respect to the Customer Satisfaction Fee for any PBF Assessment Part-Period, the value of the Performance Based Fee attributable to the Customer Satisfaction Fee shall be calculated in accordance with paragraphs 1.1 and 1.2 above as soon as practicable on or following the date on which the Operator's Overall RCIS Score in respect of the relevant PBF Assessment Period is available.

Appendix 5 to Chapter 7.2 Quantified Target Methodology

Part 1: The Operational Performance Fee, Service Quality Standards Fee and FP TT Sub-Component

1. Application of the Quantified Target Methodology

- 1.1 If the Applicable Assessment Methodology with respect to the Operational Performance Fee is the Quantified Target Methodology, paragraph 2 (*Operational Performance*) of this Appendix 5 to Chapter 7.2 shall apply in respect of the value of the Performance Based Fee attributable to the Operational Performance Fee.
- 1.2 If the Applicable Assessment Methodology with respect to the Service Quality Standards Fee is the Quantified Target Methodology, paragraph 3 (*Service Quality Standards*) of this Appendix 5 to Chapter 7.2 shall apply in respect of the value of the Performance Based Fee attributable to the Service Quality Standards Fee.
- 1.3 If the Applicable Assessment Methodology with respect to the Financial Performance Fee applies the FP TT QTM, paragraph 4 (*Ticketless Travel*) of this Appendix 5 to Chapter 7.2 shall apply in respect of the value of the Performance Based Fee attributable to the FP TT Sub-Component.

2. Operational Performance

- 2.1 The value of OP for the purposes of the formula set out in paragraph 2.2 of Chapter 7.2 shall be calculated as the aggregate of the calculations performed with respect to each Reporting Period in the relevant PBF Assessment Period pursuant to paragraphs 2.2 to 2.4 of this Appendix 5 to Chapter 7.2 (as applicable), in respect of each of:
- (a) TOC on Self Cancellations;
 - (b) TOC Minutes Delay;
 - (c) NOT USED;
 - (d) T-3;
 - (e) T-15; and
 - (f) All Cancellations.
- 2.2 Subject to paragraph 2.3 below, for each Reporting Period within the relevant PBF Assessment Period, the Secretary of State shall calculate a financial sum in respect of each of TOC on Self Cancellations, TOC Minutes Delay and All Cancellations in accordance with the applicable formula set out below based on whether the Operator's Actual All Cancellations Performance Level or the Operator's Actual Performance Level in relation to TOC on Self Cancellations and TOC Minutes Delay is:
- (a) greater than or equal to the Relevant OP Component Nil Fee Performance Level;
 - (b) less than the Relevant OP Component Nil Fee Performance Level but greater than the Relevant OP Component Expected Fee Performance Level B;
 - (c) equal to or less than the Relevant OP Component Expected Fee Performance Level B but greater than or equal to the Relevant OP Component Expected Fee Performance Level A;
 - (d) less than the Relevant OP Component Expected Fee Performance Level A but greater than the Relevant OP Component Maximum Fee Performance Level; or
 - (e) equal to or less than the Relevant OP Component Maximum Fee Performance Level,
- in each case for the applicable Operational Performance Component in the relevant Reporting Period:

TOC on Self Cancellations, TOC Minutes Delay, and All Cancellations Performance	Fee for the applicable Operational Performance Component (£)
Greater than or equal to the Relevant OP Component Nil Fee Performance Level	<i>Zero (£0)</i>
Less than the Relevant OP Component Nil Fee Performance Level but greater than the Relevant OP Component Expected Fee Performance Level B	$W_{ROPC} \times W_{OP} \times \left(\frac{MPBF}{N}\right) \times 65\% \times \left(\frac{Nil - Actual}{Nil - Expected B}\right)$
Equal to or less than the Relevant OP Component Expected Fee Performance Level B but greater than or equal to the Relevant OP Component Expected Fee Performance Level A	$W_{ROPC} \times W_{OP} \times \left(\frac{MPBF}{N}\right) \times 65\%$
Less than the Relevant OP Component Expected Fee Performance Level A but greater than the Relevant OP Component Maximum Fee Performance Level	$W_{ROPC} \times W_{OP} \times \left(\frac{MPBF}{N}\right) \times \left(65\% + \left(35\% \times \frac{Expected A - Actual}{Expected A - Max}\right)\right)$
Equal to or less than the Relevant OP Component Maximum Fee Performance Level	$W_{ROPC} \times W_{OP} \times \left(\frac{MPBF}{N}\right)$

where:

Actual	means (as applicable to the relevant Operational Performance Component): (i) the Actual All Cancellations Performance Level; or (ii) the Operator’s Actual Performance Level in relation to TOC on Self Cancellations or TOC Minutes Delay
Max	means the Relevant OP Component Maximum Fee Performance Level
Nil	means the Relevant OP Component Nil Fee Performance Level
Expected A	means the Relevant OP Component Expected Fee Performance Level A
Expected B	means the Relevant OP Component Expected Fee Performance Level B
W_{ROPC}	means (as applicable to the relevant Operational Performance Component), W_{OPC} , W_{OPMD} , or W_{OPAc}
N	means the number of Reporting Periods in the relevant PBF Assessment Period

2.3 If, upon the resolution of any claim with respect to any Force Majeure Event relating to TOC on Self Cancellations and/or TOC Minutes Delay (as applicable) in any Reporting Period(s), it is determined that the Operator is entitled to relief in respect of its performance in relation to such Operational Performance Component(s) in the relevant Reporting Period(s):

- (a) the Secretary of State shall calculate a revised financial sum in respect of the relevant Operational Performance Component(s) for any relevant Reporting Period(s) in accordance with paragraph 2.2 of this Appendix 5 to Chapter 7.2, provided that for such purpose, references to “Actual Performance Level” shall be construed as being to the “FM Adjusted Performance Level”;
- (b) the Secretary of State shall calculate the difference between:

- (i) the amount of the Operational Performance Fee for the relevant PBF Assessment Period attributable to such Operational Performance Component(s) in the relevant Reporting Period(s), as originally determined in accordance with paragraph 2.2 of this Appendix 5 to Chapter 7.2 or as previously determined in accordance with paragraph 2.3(a) of this Appendix 5 to Chapter 7.2; and
 - (ii) the revised financial sum calculated in accordance with paragraph 2.3(a) of this Appendix 5 to Chapter 7.2; and
 - (c) the Secretary of State shall pay the amount of such difference (expressed as a positive number) to the Operator by way of an adjustment to the next following Contract Payment following its determination (or if there are no further Contract Payments to be paid at the time of such determination, by way of a separate payment to the Operator within 30 days of such determination).
- 2.4 For each Reporting Period within the relevant PBF Assessment Period, the Secretary of State shall calculate a financial sum in respect of each of T-3 and T-15 in accordance with the applicable formula set out below based on whether the Operator’s Actual T-3 Performance Level or Actual T-15 Performance Level is:
- (a) less than or equal to the Relevant OP Component Nil Fee Performance Level;
 - (b) greater than the Relevant OP Component Nil Fee Performance Level but less than the Relevant OP Component Expected Fee Performance Level B;
 - (c) equal to or greater than the Relevant OP Component Expected Fee Performance Level B but less than or equal to the Relevant OP Component Expected Fee Performance Level A;
 - (d) greater than the Relevant OP Component Expected Fee Performance Level A but less than the Relevant OP Component Maximum Fee Performance Level; or
 - (e) equal to or greater than the Relevant OP Component Maximum Fee Performance Level,

in each case for the applicable Operational Performance Component in the relevant Reporting Period:

T-3 or T-15 Performance	Fee for the applicable Operational Performance Component (£)
Less than or equal to the Relevant OP Component Nil Fee Performance Level	<i>Zero (£0)</i>
Greater than the Relevant OP Component Nil Fee Performance Level but less than the Relevant OP Component Expected Fee Performance Level B	$W_{ROPC} \times W_{OP} \times \left(\frac{MPBF}{N}\right) \times 65\% \times \left(\frac{Actual - Nil}{Expected B - Nil}\right)$
equal to or greater than the Relevant OP Component Expected Fee Performance Level B but less than or equal to the Relevant OP Component Expected Fee Performance Level A	$W_{ROPC} \times W_{OP} \times \left(\frac{MPBF}{N}\right) \times 65\%$
Greater than the Relevant OP Component Expected Fee Performance Level A but less than the Relevant OP Component Maximum Fee Performance Level	$W_{ROPC} \times W_{OP} \times \left(\frac{MPBF}{N}\right) \times \left(65\% + \left(35\% \times \frac{Actual - Expected A}{Max - Expected A}\right)\right)$

Equal to or greater than the Relevant OP Component Maximum Fee Performance Level	$W_{ROPC} \times W_{OP} \times \left(\frac{MPBF}{N}\right)$
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where:

Actual	means the Operator’s Actual T-3 Performance Level or Actual T-15 Performance Level (as applicable)
Max	means the Relevant OP Component Maximum Fee Performance Level
Nil	means the Relevant OP Component Nil Fee Performance Level
Expected A	means the Relevant OP Component Expected Fee Performance Level A
Expected B	means the Relevant OP Component Expected Fee Performance Level B
W_{ROPC}	means (as applicable to the relevant Operational Performance Component), W_{OPT3} , or W_{OPT15}
N	means the number of Reporting Periods in the relevant PBF Assessment Period

3. Service Quality Standards

3.1 Calculation of Service Quality Standards Fee (“SQ”)

- (a) Within ten (10) Weekdays after the end of each PBF Assessment Period, the Operator shall provide to the Secretary of State its calculation of:
 - (i) the mean average of the four Pass Rates calculated pursuant to paragraph 8.2 (*Calculation of Pass Rates*) of Part 1 (*Service Quality Regime*) of Chapter 5.5 (*Customer Experience Performance*) in relation to the SQR Stations Component (the “**Overall Station Pass Rate**”), being:
 - (A) Ambience and Assets;
 - (B) Cleanliness and Graffiti;
 - (C) Information; and
 - (D) Ticketing & Staffing;
 - (ii) the mean average of the three Pass Rates calculated pursuant to paragraph 8.2 (*Calculation of Pass Rates*) of Part 1 (*Service Quality Regime*) of Chapter 5.5 (*Customer Experience Performance*) in relation to the SQR Trains Component (the “**Overall Trains Pass Rate**”), being:
 - (A) Ambience and Assets;
 - (B) Cleanliness and Graffiti; and
 - (C) Information; and
 - (iii) the mean average of the two Pass Rates calculated pursuant to paragraph 8.2 (*Calculation of Pass Rates*) of Part 1 (*Service Quality Regime*) of Chapter 5.5 (*Customer Experience Performance*) in relation to the SQR Customer Service Component the “**Overall Customer Service Pass Rate**”), being:
 - (A) Staff Helpfulness; and
 - (B) Online Information.
- (b) Subject to paragraphs 14.2 (*Consequences of a Failed Audit*) of Part 1 (*Service Quality Regime*) of Chapter 5.5 (*Customer Experience Performance*) and paragraph 3.2 (*Material Discrepancies*) of this Appendix 5 (*Quantified Target Methodology*) to Chapter 7.2 (*Performance Based Fee and Shadow Operator Performance Based Fee*), within twenty eight (28) days following the later of:

- (i) receipt of the calculations from the Operator pursuant to paragraph 3.1(a) above; and
- (ii) the findings of any SoS Audit or Independent Service Quality Audit undertaken in respect of the relevant Contract Year pursuant to Part 1 (*Service Quality Regime*) of Chapter 5.5 (*Customer Experience Performance*),

the Secretary of State shall calculate the Operator’s performance against each of the SQR Targets pursuant to and in accordance with the applicable formula set out below based on whether the Operator’s performance against the applicable SQR Target is:

- (iii) less than or equal to the SQR Nil Fee Performance Level;
- (iv) greater than the SQR Nil Fee Performance Level but less than the SQR Expected Fee Performance Level but;
- (v) equal to or greater than the SQR Expected Fee Performance Level but less than the SQR Maximum Fee Performance Level; or
- (vi) equal to or greater than the SQR Maximum Fee Performance Level,

in each case for each SQR Component:

SQR Component Performance (Overall Station Pass Rate / Overall Trains Pass Rate / Overall Customer Service Pass Rate)	Fee for the applicable SQR Component (S/T/C) (£)
Less than or equal to the SQR Nil Fee Performance Level	Zero (£0)
Greater than the SQR Nil Fee Performance Level but less than the SQR Expected Fee Performance Level	$\left(\frac{W_{SQ}}{3}\right) \times W_{CE} \times MPBF \times 80\% \times \left(\frac{Pass\ Rate - SQR\ Nil}{SQR\ Expected - SQR\ Nil}\right)$
Equal to or greater than the SQR Expected Fee Performance Level but less than the SQR Maximum Fee Performance Level	$\left(\frac{W_{SQ}}{3}\right) \times W_{CE} \times MPBF \times \left(80\% + \left(20\% \times \frac{Pass\ Rate - SQR\ Expected}{SQR\ Max - SQR\ Expected}\right)\right)$
Equal to or greater than the SQR Maximum Fee Performance Level	$\left(\frac{W_{SQ}}{3}\right) \times W_{CE} \times MPBF$

where:

Pass Rate	means the Operator’s Overall Station Pass Rate, Overall Trains Pass Rate or Overall Customer Service Pass Rate (as applicable)
SQR Max	means the SQR Maximum Fee Performance Level
SQR Expected	means the SQR Expected Fee Performance Level
SQR Nil	means the SQR Nil Fee Performance Level

- (c) For each relevant PBF Assessment Period the Secretary of State shall calculate the value of the Performance Based Fee attributable to SQ for the purposes of paragraph 2.2 of this Chapter 7.2 in accordance with the formula set out below.

£SQ =	S + T + C
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where:

S	means the value attributable to the Stations SQR Component calculated in accordance with paragraph 3.1(b) above;
T	means the value attributable to the Trains SQR Component calculated in accordance with paragraph 3.1(b) above; and
C	means the value attributable to the Customer Service SQR Component calculated in accordance with paragraph 3.1(b) above.

3.2 Material Discrepancies

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

- (a) any Material Discrepancies, the Overall SQR Component Pass Rate(s) in respect of each SQR Component affected by the Material Discrepancies shall be deemed to be equal to the SQR Nil Fee Performance Level for the purposes of calculating the Service Quality Standards Fee pursuant to paragraph 3.1 (*Service Quality Standards*) of this Appendix 5 (*Quantified Target Methodology*) to Chapter 7.2 (*Performance Based Fee and Shadow Operator Performance Based Fee*) and the element of the Service Quality Standards Fee attributable to the applicable SQR Component(s) shall be zero; and/or
- (b) any Material Discrepancies which are so significant as to indicate in the opinion of the Secretary of State wilful misconduct by the Operator or a material or persistent disregard by the Operator of its obligations under Part 1 to Chapter 5.5 (*Customer Experience Performance*), then, notwithstanding paragraph 3.1 (*Service Quality Standards*) of this Appendix 5 (*Quantified Target Methodology*) to Chapter 7.2 (*Performance Based Fee and Shadow Operator Performance Based Fee*), the Service Quality Standards Fee shall be zero.

4. Ticketless Travel

4.1 Calculation of FIN(TT)

In relation to any PBF Assessment Period, where the Applicable Assessment Methodology with respect to the Financial Performance Fee includes the application of the FP TT QTM, the element of the Financial Performance Fee attributable to the FP TT Sub-Component shall be determined in accordance with this paragraph 4.

- (a) The TT Expected Fee Performance Level, TT Maximum Fee Performance Level and TT Nil Fee Performance Level as specified as part of the Annual PBF Specifications in the Business Plan shall apply to the relevant PBF Assessment Period.
- (b) The Secretary of State shall undertake any calculations required to be performed pursuant to this paragraph 4 by reference to the Ticketless Travel Rate(s) identified by the Ticketless Travel Survey(s) undertaken during the relevant PBF Assessment Period in accordance with Chapter 8.1 (*Marketing and Revenue Growth*).
- (c) If the duration of the relevant PBF Assessment Period:
 - (i) includes only one Ticketless Travel Survey Period, the Overall PBF TTR with respect to the relevant PBF Assessment Period shall be the Ticketless Travel Rate for such Ticketless Travel Survey Period; or
 - (ii) includes more than one Ticketless Travel Survey Period, the Overall PBF TTR with respect to the relevant PBF Assessment Period shall be calculated as the sum of the weighted Ticketless Travel Rate (“**WTTR**”) in respect of each such Ticketless Travel Survey Period, where each WTTR is calculated in accordance with the formula below.

WTTR =	$TTR_x \times \frac{N_x}{N_y}$
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where:

N_x	means the number of Reporting Periods to which Period X relates (as referred to in the definition of Ticketless Travel Survey Period), which also fall during the relevant PBF Assessment Period;
N_y	means the aggregate number of Reporting Periods to which any applicable Ticketless Travel Survey Periods relate (as referred to in the definition of Ticketless Travel Survey Period), which also fall during the relevant PBF Assessment Period;
Period X	means each applicable Ticketless Travel Survey Period; and
TTR_x	means the Ticketless Travel Rate during Period X.

- (d) The Operator shall provide to the Secretary of State all financial information required for the purposes of making each of the calculations required pursuant to this paragraph 4 in accordance with paragraph 1.1 (*Accounting Records*) to paragraph 1.5 (*Annual Financial Information*) of Chapter 7.3 (*Management Information*).
- (e) Within twenty eight (28) days of receipt of all financial information required for the purposes of making the relevant calculations, the Secretary of State shall calculate the value of the element of the Financial Performance Fee attributable to the FP TT Sub-Component in accordance with the applicable formula set out below based on whether the Overall PBF TTR is:
 - (i) greater than or equal to the TT Nil Fee Performance Level;
 - (ii) less than the TT Nil Fee Performance Level but greater than the TT Expected Fee Performance Level;
 - (iii) equal to or less than the TT Expected Fee Performance Level but greater than the TT Maximum Fee Performance Level; or
 - (iv) equal to or less than the TT Maximum Fee Performance Level:

Overall PBF TTR	£ FIN(TT)
Greater than or equal to the TT Nil Fee Performance Level	<i>Zero (£0)</i>
Less than the TT Nil Fee Performance Level but greater than the TT Expected Fee Performance Level	$\left(\frac{(TTNil - OPT)}{(TTNil - TTE)}\right) \times W_{FIN} \times W_{FINTT} \times MPBF \times 70\%$
Equal to or less than the TT Expected Fee Performance Level but greater than the TT Maximum Fee Performance Level	$(W_{FIN} \times W_{FINTT} \times MPBF) - \left(\frac{(OPT - TTMax)}{(TTE - TTMax)}\right) \times W_{FIN} \times W_{FINTT} \times MPBF \times 30\%$
Equal to or less than the TT Maximum Fee Performance Level	$(W_{FIN} \times W_{FINTT} \times MPBF)$

where:

OPT	means the Overall PBF TTR;
TTE	means the TT Expected Fee Performance Level;
TTNil	means the TT Nil Fee Expected Performance Level; and
TTMax	means the TT Maximum Fee Performance Level.

Part 2: The FP Cost Sub-Component, FP Revenue Sub-Component and FP Profit Sub-Component

5. Application of Quantified Target Methodology to the Applicable FP Sub-Components

5.1 For each relevant PBF Assessment Period, if the Quantified Target Methodology is to be applied to:

- (a) the FP Cost Sub-Component, paragraph 5.2 shall apply;
- (b) the FP Revenue Sub-Component, paragraph 5.3 shall apply;
- (c) the FP Profit Sub-Component, paragraph 5.4 shall apply.

5.2 Calculation of FIN(Cost)

- (a) Subject to paragraphs 4 (*Target Amendments*) 5 (*Effect of alterations to the PBF Assessment Period*) and 6 (*Exceptional Events*) of Chapter 7.2, each of the Target Cost, Target Cost Nil Fee Performance Level and Target Cost Maximum Fee Performance Level agreed or determined in accordance with paragraph 3.1 (*Target Cost*) of Chapter 7.2 shall apply to the relevant PBF Assessment Period.
- (b) The Operator shall provide to the Secretary of State all financial information required for the purposes of making each of the calculations required pursuant to this paragraph 5.2 in accordance with paragraph 1.1 (*Accounting Records*) to paragraph 1.5 (*Annual Financial Information*) of Chapter 7.3 (*Management Information*).
- (c) Within twenty eight (28) days of receipt of all financial information required for the purposes of making the relevant calculations, the Secretary of State shall calculate the value of the element of the Financial Performance Fee attributable to the FP Cost Sub-Component in accordance with the applicable formula set out below based on whether the Actual Cost (excluding any Actual Costs relating to the Shadow Operator Cost Categories) in respect of such PBF Assessment Period is:
 - (i) greater than or equal to the Target Cost Nil Fee Performance Level;
 - (ii) less than the Target Cost Nil Fee Performance Level but greater than the Target Cost;
 - (iii) equal to or less than the Target Cost but greater than the Target Cost Maximum Fee Performance Level; or
 - (iv) equal to or less than the Target Cost Maximum Fee Performance Level:

Actual Cost (excluding in relation to Shadow Operator Cost Categories)	£FIN(Cost)
Greater than or	Zero (£0)

equal to TCNil	
Less than TCNil but greater than Target Cost	$\left(\frac{TCNil - AC}{TCNil - TC}\right) \times MPBF \times W_{FIN} \times W_{FINC} \times 67.5\%$
Equal to or less than Target Cost, but greater than TCMax	$MPBF \times W_{FIN} \times W_{FINC} \times \left(1 - \left(\frac{AC - TCMax}{TC - TCMax} \times 32.5\%\right)\right)$
Equal to or less than TCMax	$MPBF \times W_{FIN} \times W_{FINC}$

where:

AC	means the Actual Cost (excluding any Actual Costs relating to the Shadow Operator Cost Categories)
TC	means the Target Cost
TCNil	means the Target Cost Nil Fee Performance Level
TCMax	means the Target Cost Maximum Fee Performance Level

5.3 Calculation of FIN(Revenue)

- (a) Subject to paragraphs 4 (*Target Amendments*) 5 (*Effect of alterations to the PBF Assessment Period*) and 6 (*Exceptional Events*) of Chapter 7.2, the Target Revenue, Target Revenue Nil Fee Performance Level and Target Revenue Maximum Fee Performance Level agreed or determined in accordance with paragraph 3.2 (*Target Revenue*) of Chapter 7.2 shall apply to the relevant PBF Assessment Period.
- (b) The Operator shall provide to the Secretary of State all financial information required for the purposes of making each of the calculations required pursuant to this paragraph 5.3 in accordance with paragraph 1.1 (*Accounting Records*) to paragraph 1.5 (*Annual Financial Information*) of Chapter 7.3 (*Management Information*).
- (c) Within twenty eight (28) days of receipt of all financial information required for the purposes of making the relevant calculations, the Secretary of State shall calculate the value of the Performance Based Fee attributable to the FP Revenue Sub-Component in accordance with the applicable formula set out below based on whether the Actual Revenue (excluding any Actual Revenue relating to the Shadow Operator Services) in respect of such PBF Assessment Period is:
 - (i) greater than or equal to the Target Revenue Maximum Fee Performance Level;
 - (ii) less than the Target Revenue Maximum Fee Performance Level but greater than or equal to the Target Revenue;
 - (iii) less than the Target Revenue but greater than the Target Revenue Nil Fee Performance Level; or
 - (iv) equal to or less than the Target Revenue Nil Fee Performance Level:

Actual Revenue (excluding in relation to Shadow Operator Services)	£FIN(Revenue)
Greater than or equal to TRMax	$MPBF \times W_{FIN} \times W_{FINR}$
Less than TRMax but greater than or equal to Target Revenue	$MPBF \times W_{FIN} \times W_{FINR} \times \left(1 - \left(\frac{(TRMax - AR)}{(TRMax - TR)} \times 32.5\% \right) \right)$
Less than Target Revenue but greater than TRNil	$\left(\frac{(AR - TRNil)}{(TR - TRNil)} \right) \times MPBF \times W_{FIN} \times W_{FINR} \times 67.5\%$
Equal to or less than TRNil	Zero (£0)

where:

AR	means the Actual Revenue (excluding Actual Revenue relating to the Shadow Operator Services)
TR	means the Target Revenue
TRNil	means the Target Revenue Nil Fee Performance Level
TRMax	means the Target Revenue Maximum Fee Performance Level

5.4 **Calculation of FIN(Profit)**

- (a) Subject to paragraphs 4 (*Target Amendments*) 5 (*Effect of alterations to the PBF Assessment Period*) and 6 (*Exceptional Events*) of Chapter 7.2, the Target Profit, Target Profit Nil Fee Performance Level and Target Profit Maximum Fee Performance Level agreed or determined in accordance with paragraph 3.3 (*Target Profit*) of Chapter 7.2 shall apply to the relevant PBF Assessment Period.
- (b) The Operator shall provide to the Secretary of State all financial information required for the purposes of making each of the calculations required pursuant to this paragraph 5.4 in accordance with paragraph 1.1 (*Accounting Records*) to paragraph 1.5 (*Annual Financial Information*) of Chapter 7.3 (*Management Information*).
- (c) Within twenty eight (28) days of receipt of all financial information required for the purposes of making the relevant calculations, the Secretary of State shall calculate the value of the Performance Based Fee attributable to the FP Profit Sub-Component in accordance with the applicable formula set out below based on whether the Actual Profit in respect of such PBF Assessment Period is:
 - (i) greater than or equal to the Target Profit Maximum Fee Performance Level;

- (ii) less than the Target Profit Maximum Fee Performance Level but greater than or equal to the Target Profit;
- (iii) less than the Target Profit but greater than the Target Profit Nil Fee Performance Level; or
- (iv) equal to or less than the Target Profit Nil Fee Performance Level:

Actual Profit	£FIN(Profit)
Greater than or equal to TPMax	$MPBF \times W_{FIN} \times (W_{FINC} + W_{FINR})$
Less than TPMax but greater than or equal to Target Profit	$MPBF \times W_{FIN} \times (W_{FINC} + W_{FINR}) \times \left(1 - \left(\frac{TPMax - AP}{TPMax - TP} \times 32.5\% \right) \right)$
Less than Target Profit but greater than TPNil	$\left(\frac{AP - TPNil}{TP - TPNil} \right) \times MPBF \times W_{FIN} \times (W_{FINC} + W_{FINR}) \times 67.5\%$
Equal to or less than TPNil	Zero (£0)

where:

AP	means the Actual Profit
TP	means the Target Profit
TPNil	means the Target Profit Nil Fee Performance Level
TPMax	means the Target Profit Maximum Fee Performance Level

**Appendix 6 to Chapter 7.2
Shadow Operator Methodology**

1. Application of the Shadow Operator Scorecard Criteria and calculation of Performance Based Fee

Each Shadow Operator PBF Component shall be assessed with respect to the Operator’s PBF Assessment Period Review score for the relevant PBF Assessment Period (pursuant to paragraphs 8 (*Scoring Letter*) and 9 (*Scoring Letter Disputes*) of Appendix 1 (*PBF Assessment Review*) as applicable) by reference to the Shadow Operator Scorecard Criteria, then the scores shall be used to calculate the value of the Shadow Operator Performance Based Fee attributable to that Shadow Operator PBF Component, as applicable, as set out below:

Shadow Operator PBF Component	Shadow Operator PBF Assessment Scorecard for relevant Scorecard Criterion	Shadow Operator PBF £
Shadow Operator Delivery Fee	Three (3)	$MSPBF \times R \times W_{ShOp\ DEL}$
	Two (2)	$MSPBF \times R \times W_{ShOp\ DEL} \times 85\%$
	One (1)	Zero (£0)
Shadow Operator Financial Management Fee	Three (3)	$MSPBF \times R \times W_{ShOp\ FM}$
	Two (2)	$MSPBF \times R \times W_{ShOp\ FM} \times 65\%$
	One (1)	Zero (£0)

where:

R means	(a) if Eligible ShOp Costs <u>exceed</u> : X x N	R = 1
	(b) if Eligible ShOp Costs: (i) are <u>less than or equal</u> to X x N ; but (ii) <u>exceed or are equal</u> to Z x N	$R = \frac{Eligible\ ShOp\ Costs}{X\ x\ N}$
	(c) if Eligible Shop Costs are <u>less than</u> : Z x N	R = 0

X means	either: (a) [REDACTED³⁵] ; or
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³⁵ 11 January 2024 (Date of Redactions Approval) 3636793 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) from the start of the fifth Contract Year and provided there has been a CPI Increment Event, [REDACTED ³⁶] multiplied by the CPI Increment
Z means	either: (a) [REDACTED ³⁷]; or (b) from the start of the fifth Contract Year and provided there has been a CPI Increment Event, [REDACTED ³⁸] multiplied by the CPI Increment
N means	either: (a) the number of Reporting Periods that fall within the relevant PBF Assessment Period; or (b) if the Shadow Operator Services are terminated during the relevant PBF Assessment Period, the number of full Reporting Periods that fell within the relevant PBF Assessment Period prior to the effective date of termination of the Shadow Operator Services.

³⁶ 11 January 2024 (Date of Redactions Approval) 3636793 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 11 January 2024 (Date of Redactions Approval) 3636793 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.

³⁸ 11 January 2024 (Date of Redactions Approval) 3636793 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.

Chapter 7.3 Management Information

1. Financial Information

1.1 Accounting Records

The Operator shall prepare and at all times during the Contract Term and until the date of payment of the Final Closing Adjustment, maintain true, up to date and complete accounting records as are required to be kept under section 386 of the Companies Act 2006. Such records shall be prepared on a consistent basis for each Reporting Period of the Contract Year. The Operator shall ensure that such accounting records are disaggregated to show the Shadow Operator Services separately and are separately produced and maintained in a form which distinguishes between transactions which reasonably and properly relate, on the accruals basis, to:

- (a) the period prior to 1 March 2020;
- (b) the period from 1 March 2020 to the Start Date;
- (c) the Contract Period; and
- (d) the period from the end of the Contract Period until the date of payment of the Final Closing Adjustment.

- 1.2 The Operator shall record all balances and transactions relating to this Contract within an accounting system, or a clearly distinguishable and separate section of an accounting system, entirely separate from transactions and balances relating to the Previous Agreement. At all times this separation of transactions and balances shall be maintained such that receipts, payments, the reversal of accounting transactions and any other accounting adjustments relating to the Previous Agreement are entirely separately identifiable and capable of aggregation into a separate balance sheet, on demand by the Secretary of State, which exclusively contains information in relation to Previous Agreement.

In winding down the balance sheets and settling transactions relating to: (1) any Previous Agreement until its Final Settlement Date (as defined in the Previous Agreement); and (2) the period from the end of the Contract Period until the date of payment of the Final Closing Adjustment, the Operator shall act as a Good and Efficient Operator including by:

- (a) making payments to third parties only where there is compelling evidence that such payments are required to be made by contract or statute, permitted by the Funding Deed (as defined in the Previous Agreement) or the Funding Deed, or are at the direction of the Secretary of State;
- (b) not writing off, forgoing, failing to correct or otherwise not pursuing third parties which the Operator believes owe the Operator cash or other consideration, whether as settlement of debtors, claims or otherwise, and whether recorded as a debtor or accrued income in the Operator's accounts or otherwise;
- (c) actively and frequently reviewing provisions and other liabilities to consider the likelihood of cash payments being required to be made to settle these, and only writing off any such balances where there is a highly remote chance of the Operator being required to settle these balances;
- (d) actively and frequently reviewing debtor and accrued income balances to consider whether there are opportunities to bring forward receipt and settlement of such debts;
- (e) seeking to settle balances with third parties at values and within timescales which a Good and Efficient Operator seeking to maximise revenue and minimise cost would seek to do (unless otherwise directed by the Secretary of State);
- (f) matching the receipt of cash or the payment of cash against accounting balances, and where such payments and receipts occur, seeking to adjust any remaining balances

relating to such transactions so that once settled in full, residual debtors and creditors are nil;

- (g) reviewing, analysing and, as required by the Secretary of State from time to time, reporting the residual balances relating to the Previous Agreement, sufficient to be capable of providing an accurate, true and fair balance sheet, restated as necessary to take account of subsequent events, in accordance with GAAP as at:
 - (i) 1 March 2020;
 - (ii) 20 September 2020;
 - (iii) the Start Date; and
 - (iv) the date of payment of the Final Closing Adjustment;
- (h) otherwise maintaining records sufficient to provide the Secretary of State with any of the equivalent applicable reporting requirements of paragraph 1.3 of this Chapter 7.3 (*Management Information*) for transactions and balances in relation to the Previous Agreement;
- (i) promptly updating the Secretary of State when material transactions occur relating to the Previous Agreement at any time, or occur relating to this contract after the Expiry Date, providing sufficient information for the Secretary of State to consider the requirement to make, and value of, transactions between the Secretary of State and the Operator in order to comply with the obligation of this Contract or the Previous Agreement;
- (j) reviewing, analysing and, as required by the Secretary of State from time to time, reporting the residual balances relating to this Contract, sufficient to be capable of providing an accurate, true and fair balance sheet, restated as necessary to take account of subsequent events, in accordance with GAAP as at:
 - (i) the Start Date;
 - (ii) the end of the Contract Period; and
 - (iii) the date of payment of the Final Closing Adjustment; and
- (k) otherwise maintaining records sufficient to provide the Secretary of State with any of the equivalent applicable reporting requirements of paragraph 1.3 of this Chapter 7.3 (*Management Information*) for transactions and balances in relation to the National Rail Contract.

1.3 Reporting Period Financial Information

- (a) The Operator shall deliver to the Secretary of State, within ten (10) Weekdays of the end of each Reporting Period:
 - (i) Management Accounts for such Reporting Period, setting out a cash flow statement, profit and loss account and balance sheet for each of:
 - (aa) that Reporting Period; and
 - (bb) cumulatively for the Contract Year to date; and
 in respect of the Management Accounts produced in relation to the first Contract Year only,
 - (cc) the ERMA Final Part Year; and
 - (dd) cumulatively for the period from 1 April 2023 to date,
 ensuring that:
 - (A) costs within the profit and loss account shall adopt, be allocated to and be presented in the same format and structure as those shown in the most disaggregated line items included within the Modelling Suite as most recently Placed in Escrow, or other such level of aggregation as agreed by the Secretary of State from time to time, sufficient to allow for

an accurate and consistent comparison between Cost Categories shown in the Cost Budget and costs actually incurred in relation to those Cost Categories;

- (B) revenues within the profit and loss account shall be reported in sufficient detail to allow for an understanding of (1) revenue from Fare revenue (including from different ticket types, flow groups and sources to be obtained) (2) any revenue relating to the Shadow Operator Services and (3) any other revenue;
- (C) there shall be no netting off between costs and revenues reported, or between individual Cost Categories, with all transactions shown on a gross basis;
- (D) the Management Accounts clearly and separately identify each of:
 - (1) Actual Costs and Actual Revenues;
 - (2) any Disallowable Costs and Revenue Foregone; and
 - (3) any other accounting debits and credits which are not Actual Costs or Actual Revenue clearly and separately identifying:
 - (aa) any Actual Costs and Actual Revenue (each as defined in the Previous Agreement) and any ERMA Actual Shadow Operator Costs and ERMA Actual Shadow Operator Revenue;
 - (bb) any Disallowable Costs and Revenue Foregone (each as defined in the Previous Agreement);
 - (cc) any other accounting debits and credits which relate to the period from 20 September 2020 to the Start Date;
 - (dd) any Actual EMA Costs and Actual EMA Revenue (each as defined in the Previous Agreement);
 - (ee) any EMA Disallowable Costs and EMA Revenue Foregone (each as defined in the Previous Agreement);
 - (ff) any other account debits and credits which relate to the period from 1 March 2020 to 20 September 2020; and
 - (gg) any costs, revenues, debits and credits which relate to the period prior to 1 March 2020; and
- (E) in respect of the Management Accounts which relate to the first Contract Year, such Management Accounts clearly and separately identify:
 - (1) any Actual Costs, Actual Capex and Actual Revenue (each as defined in the Previous Agreement);
 - (2) any Disallowable Costs and Revenue Foregone (each as defined in the Previous Agreement); and
 - (2A) any Actual Shadow Operator Costs and Actual Shadow Operator Revenue and/or any revenue within limb (b) of the definition of Actual Shadow Operator Revenue (each as defined in the Previous Agreement)
 - (3) any other accounting debits and credits,

in each case, which relate to the ERMA Final Part Year;
- (ii) written confirmation that the Management Accounts, to the best of the knowledge, information and belief of the board of directors of the Operator, contain a true and accurate reflection of:

- (A) the Actual Revenue, Actual Costs, Potential Annual Losses (including Disallowable Costs, Revenue Foregone and SoS Claims and all other limbs of the definition of Potential Annual Losses) and of the allocation of costs between the Shadow Operator Cost Categories and the other Cost Categories; and
 - (B) any other relevant profit and loss transactions), assets and liabilities of the Operator,
- and, to the extent that they do not, identify in a written report relevant issues in reasonable detail and provide such further information that the Secretary of State shall require;
- (iii) written confirmation from a statutory director of the Operator that the Operator has complied with the restrictions applicable during the Lock-up Period pursuant to paragraph 2 of Chapter 7.4 (*Financial Covenants and Bonds*);
 - (iv) any further information the Secretary of State requests for the purpose of calculating the Contract Payment; and
 - (v) the amount and details of any additional Potential Annual Losses (and the constituent elements thereof) incurred in the Reporting Period and the amount of Potential Annual Losses (and the constituent elements thereof) for the Contract Year to date.
- (b) The Management Accounts shall also set out:
- (i) the Operator's forecast of:
 - (A) the Operator's daily Cash Balance for the period of the three (3) Reporting Periods following the Reporting Period to which the Management Accounts relate, inclusive of the Forecast Closing Cash Position for each Reporting Period;
 - (B) the amount of Working Capital Payment or Working Capital Repayment (if any) that the Operator forecasts that it will require or be capable of repaying pursuant to paragraph 9 or 10 of Chapter 7.1 (*Contract Payments*) (as applicable) in respect of the three (3) Reporting Periods following the Reporting Period to which the Management Accounts relate; and
 - (C) payments to and from Affiliates of the Operator (disaggregated between each individual Affiliate entity and also disaggregated to show payments relating to the Shadow Operator Services separately) in respect of the three (3) Reporting Periods following the Reporting Period to which the Management Accounts relate;
 - (ii) a detailed statement of the Operator's actual payments to and from Affiliates of the Operator in that Reporting Period and the Contract Year to date and, for the first Contract Year only, in relation to the period from 1 April 2023 to date, and the net balance of such payments, disaggregated between each individual Affiliate (and also disaggregated to show payments relating to the Shadow Operator Services separately) as at the end of the Reporting Period to which the Management Accounts relate, which shall provide separate identification of:
 - (A) the Affiliate to or from whom each such payment was made; and
 - (B) a description of the nature of the services rendered in relation to each such payment;
 - (iii)
 - (A) a comparison of Actual Revenue in relation to this Contract compared to the Forecast Revenue (as most recently Placed in Escrow):

- (1) for that Reporting Period; and
 - (2) cumulatively for the Reporting Periods in the Contract Year to date;
- (B) a comparison of costs actually incurred in relation to this Contract compared to the Cost Categories included within the Cost Budget (as most recently Placed in Escrow):
- (1) for that Reporting Period; and
 - (2) cumulatively for the Reporting Periods in the Contract Year to date;
- (C) in respect of the Management Accounts which relate to the first Contract Year, a comparison of costs actually incurred in relation to the ERMA Final Part Year compared to the Cost Categories included within the Cost Budget (as most recently Placed in Escrow) including those set out in the Periods 1 to 7 Budget) (and also disaggregated to show payments relating to the Shadow Operator Services separately):
- (1) for that Reporting Period; and
 - (2) cumulatively for the Reporting Periods in the Contract Year to date; and
- (D) a comparison between the actual payments to and from Affiliates of the Operator and the forecast of such payments included in the Cost Budget and the Forecast Revenue (each as most recently Placed in Escrow):
- (1) for that Reporting Period; and
 - (2) cumulatively for the Reporting Periods in the Contract Year to date; and
- (E) in relation to the Shadow Operator Services only:
- (1) a profit and loss account and balance sheet; and
 - (2) a comparison of the Operator's cumulative financial performance against the cumulative position set out in the Modelling Suite (presented in the same format and structure as those shown in the most disaggregated line items included within the Modelling Suite as most recently Placed in Escrow, or other such level of aggregation as agreed by the Secretary of State from time to time) including clear identification of any costs which are cumulatively in excess of the relevant costs in the Modelling Suite as most recently Placed in Escrow,
- in each case:
- (I) cumulatively for the Reporting Periods in the Contract Year to date; and
 - (II) cumulatively for the Reporting Periods from the Start Date to date;
- (iv) a detailed and comprehensive written explanation regarding any material variances within the comparative information provided in paragraph 1.3(b)(iii) to this Chapter 7.3 (*Management Information*);
- (v) if applicable, a detailed statement and explanation of any PCG Advances (as defined in the Funding Deed) and/or repayments made pursuant to the Funding Deed provided or made during such Reporting Period; and
- (vi) sufficient information, as required, to enable the Secretary of State to calculate the Performance Based Fee and/or Shadow Operator Performance Based Fee, and any other information which the Secretary of State may request.

- (c) Within fifteen (15) Weekdays after receipt of the Management Accounts for each Reporting Period in accordance with paragraphs (a) and (b) above, the Secretary of State shall notify the Operator of any further information, explanation or analysis which the Secretary of State requires in relation to the Management Accounts (including information in relation to the calculation of the Contract Payment under the provisions of Chapter 7.1 (*Contract Payments*)) and the Operator shall promptly provide such further information or analysis.
- (d) For each Reporting Period commencing on or after the Final 1 April in an Extended Final Year, where the Operator is obliged to provide Management Accounts in respect of the Contract Year to date pursuant to this paragraph 1.3 of this Chapter 7.3, the Operator shall also provide, within 10 (ten) Weekdays of the end of each such Reporting Period, such Management Accounts in respect of the Extended Final Year to date as if references in this paragraph to “Contract Year to date” were construed as meaning “Extended Final Year to date”. Paragraph 1.3(c) of this Chapter 7.3 shall apply *mutatis mutandis* to Management Accounts provided pursuant to this paragraph 1.3(d).

1.4 Quarterly Financial Information

- (a) No later than 10 (ten) Weekdays after the start of each Quarter (save for the first Quarter in each Contract Year), the Operator shall deliver to the Secretary of State the following information (a “**Quarterly Forecast**”) (disaggregated to show the Shadow Operator Services separately) and which, for the avoidance of any doubt, shall in no way be taken to amend the Cost Budget and delivery of which shall not be deemed a Cost Budget Change Event:
- (i) a comprehensive updated profit and loss forecast, cash flow forecast and forecast balance sheet (including a comprehensive forecast of Actual Costs, and Actual Revenue) for each Reporting Period within the then current Contract Year and for the following four (4) years and, in relation to the Shadow Operator Services, for the period from the date of such forecast and the following ten (10) years (or such other period as specified by the Secretary of State), together with:
- (A) a detailed and comprehensive written explanation as to any changes in such forecast from any previous forecast provided pursuant to the provisions of this Chapter 7.3 (*Management Information*), for each Reporting Period for:
- (1) the then current Contract Year;
 - (2) the following four (4) years; and
 - (3) in relation to the Shadow Operator Services, for the period from the date of such forecast and the following ten (10) years (or such other period as specified by the Secretary of State),
- which the Secretary of State may (at the discretion of the Secretary of State) take account of to determine any revision to Forecast Revenue; and
- (B) a forecast of any costs, revenues or other debits and credits which relate to the Previous Agreement, disaggregated between those relating to the period prior to 1 March 2020, those relating to the period from 1 March 2020 to the Start Date and those relating to the period from the Start Date;
- (ii) a forecast of any Potential Annual Losses (including any Disallowable Costs, Revenue Foregone, SoS Claims and any other limbs of the definition of Potential Annual Losses) which are considered likely to be incurred for each Reporting Period for the then current Contract Year;

- (iii)
 - (A) a copy of each new contract or arrangement with an Affiliate of the Operator which the Operator proposes to enter into or renew in the next 6 months;
 - (B) a copy of each existing contract or arrangement with an Affiliate of the Operator which the Operator proposes to amend in the next 6 months; and
 - (C) details of any potential contract procurement process (pursuant to which the Operator proposes to enter into a contract with the successful bidder) in which the Operator expects an Affiliate of the Operator to participate in the next 6 months; and
 - (iv) a statement from a statutory director of the Operator confirming that the profit and loss forecast delivered pursuant to paragraph 1.4(a)(i) has been prepared in accordance with the requirements of this Contract.

1.5 Annual Financial Information

Annual Management Accounts

- (a) By no later than 30 April in each year which follows the end of the Contract Period until (and including) the 30 April which follows the date of payment of the Final Closing Adjustment, the Operator shall deliver to the Secretary of State:
 - (i) its Annual Management Accounts for the preceding twelve month period beginning on 1 April and ending on 31 March in accordance with the requirements set out in paragraph 1.3(a)(i) (*mutatis mutandis*); and
 - (ii) a supplementary explanation setting out details of:
 - (A) any other costs which are not Actual Costs; and
 - (B) any other costs which are Disallowable Costs; and
 - (C) any Revenue Foregone.

Annual Audited Accounts and Audited Accounts Reconciliation

- (b) By no later than 31 July in each year from 31 July 2024 until (and including) the 31 July which follows the date of payment of the Final Closing Adjustment, the Operator shall deliver to the Secretary of State (as relevant):
 - (i) certified true copies of its annual report and Annual Audited Accounts for:
 - (A) the period from 1 April 2023 to the end of the first Contract Year; and
 - (B) the preceding Contract Year; or
 - (C) following the end of the Contract Period, the preceding twelve month period beginning on 1 April and ending on 31 March,

together with copies of all related directors' and auditors' reports. Additionally, the auditors shall certify that the accounting for and reporting of any annual related bonuses paid to the directors and managers is reasonably consistent with GAAP;
 - (ii) a detailed and comprehensive reconciliation between:
 - (A) in respect of the 12 month period ending on the last day of the first Contract Year:
 - (1) the Annual Audited Accounts for the period from 1 April 2023 to the end of the first Contract Year; and
 - (2) the relevant cumulative figures contained in the Management Accounts for the final Reporting Period of such Contract Year

(including the first Contract Year and, if applicable, the ERMA Final Part Year);

- (B) in respect of each Contract Year, but excluding the first Contract Year and any final Contract Year which is less than 12 months in duration:
 - (1) the Annual Audited Accounts for such Contract Year; and
 - (2) the relevant cumulative figures contained in the Management Accounts for the final Reporting Period of such Contract Year;
 - (C) where the final Contract Year is less than 12 months in duration, in respect of the 12 month period beginning on the first day of the final Contract Year:
 - (1) the Annual Audited Accounts for the period from the first day of the final Contract Year to the following 31 March;
 - (2) the relevant cumulative figures contained in the Management Accounts for the final Reporting Period of the final Contract Year; and
 - (3) the Annual Management Accounts for the period from the first day of the final Contract Year to the following 31 March; or
 - (D) in respect of each twelve month period beginning on 1 April and ending on 31 March following the end of the Contract Period:
 - (1) the Annual Audited Accounts for such period; and
 - (2) the Annual Management Accounts for such period,

(the “**Audited Accounts Reconciliation**”);
 - (iii) a statement from the Operator’s auditors (in a format to be specified by the Secretary of State from time to time, on the basis of providing the Secretary of State with reasonable assurance) that the Audited Accounts Reconciliation has been undertaken accurately;
 - (iv) a certificate addressed to the Secretary of State and signed by a statutory director of the Operator confirming that:
 - (A) the Audited Accounts Reconciliation contains a true and accurate reflection of the transactions and balances of the Operator pursuant to the requirements of paragraph (ii) above and have been prepared accurately and in line with the principles set out in this Agreement and, where relevant, Schedules 8.1(ERMA) (*Franchise Payments*), 8.8A (*Performance Based Fee*), 11.2A (*Management Information*), 12A (*Financial Covenants and Bonds*), and 18 (*Shadow Operator*) of the Previous Agreement; and
 - (B) the Disallowable Costs, Revenue Foregone and SoS Claims set out in the Audited Accounts Reconciliation are complete and up-to-date as of the date of the certificate;
 - (v) a statement from the Operator’s auditors confirming that GAAP has been applied in a fair and consistent manner within the Audited Accounts Reconciliation;
 - (vi) sufficient information for the Secretary of State to calculate the Final Working Capital Adjustment, the Performance Based Fee, Shadow Operator Performance Based Fee, the Annual Adjustment, any Interim Closing Adjustment(s) and the Final Closing Adjustment (as applicable); and
 - (vii) any further information the Secretary of State requests for the purpose of calculating the Contract Payment.
- (c) The Audited Accounts Reconciliation shall:

- (i) include a detailed reconciliation, disaggregating Actual Costs, Actual Revenues, Actual Annual Losses (including Disallowable Costs, Revenue Foregone, SoS Claims, and any other limbs of the definition of Actual Annual Losses), costs, revenues or other debits and credits which relate to the Previous Agreement prior to 1 March 2020 and costs, revenues or other debits and credits which relate to the Previous Agreement after 1 March 2020 in the Annual Audited Accounts to: (i) (if applicable) the relevant cumulative figures contained in the Management Accounts for the final Reporting Period within the relevant period (to which paragraph 1.5(b)(ii)(A), (B), (C) or (D) relates, as applicable) and (ii) any Annual Management Accounts in relation to such period, all in a format to be from time to time specified by the Secretary of State. This reconciliation shall:
 - (A) disaggregate the Actual Costs and Actual Revenues in the Annual Audited Accounts so as to report against (and show in a format consistent with that used in) the Cost Budget and Forecast Revenue (as most recently Placed in Escrow) and, where relevant, the Target Cost Template and/or the Target Profit Template and/or Target Revenue Template held in Escrow in relation to any PBF Assessment Periods within such period;
 - (B) facilitate the identification of Actual Costs within their relevant Cost Categories and Actual Revenues as reported in the Annual Audited Accounts;
 - (C) be disaggregated and reconcile the information specified in paragraph 1.3(a)(i) (*mutatis mutandis*); and
 - (D) reconcile Actual Shadow Operator Costs and Actual Shadow Operator Revenue and/or any revenue within limb (b) of the definition of Actual Shadow Operator Revenue (each as defined in the Previous Agreement) with the applicable line items in the Cost Baseline or Transitional Budget as applicable;
- (ii) identify any and all Actual Annual Losses (including all Disallowable Costs) or Revenue Foregone which are in the balance sheet of the Annual Audited Accounts, and any Revenue Foregone which is not included in the balance sheet but which existed as at the date of such balance sheet); and
- (iii) identify separately the transactions, accounting adjustments and balances within the Annual Audited Accounts between those which relate to:
 - (A) the period prior to 1 March 2020;
 - (B) the period between 1 March 2020 and the Start Date;
 - (C) this Contract; and
 - (D) the period after the end of the Contract Period.
- (d) For the avoidance of doubt:
 - (i) the Operator must continue to comply with paragraph 9.4A of Schedule 11.2A and paragraph 17 of Schedule 18.1 of the Previous Agreement in respect of transactions and balances which relate to Previous Agreement (including (for the avoidance of doubt) those relating to the ERMA Final Part Year); and
 - (ii) where there are references in this paragraph 1.5 to “Reporting Period” used in the context of the period of time following the end of the Contract Period, such definition shall be deemed amended as necessary to ensure that a Reporting Period in such context means a period of 28 days (except where advised by the Office of Rail and Road (or any successor body) within their publication of rail period dates from time to time).

1.6 Accounting Standards and Practices

- (a) Each set of Management Accounts and Annual Management Accounts shall:
- (i) be in the format as the Secretary of State specifies from time to time;
 - (ii) be prepared:
 - (A) in accordance with the Operator's obligations in clause 3 (*General Obligations*) and paragraph 1 (*All Reasonable Endeavours*) of Chapter 9.7 (*Miscellaneous Legal Terms*); and
 - (B) consistently in accordance with the Operator's normal accounting policies, details of which shall be supplied on request to the Secretary of State; and
 - (iii) not include any changes in such accounting policies from those policies that were applied in preparing each of the profit and loss account, the cash flow projection and the balance sheet contained in the Financial Model most recently Placed in Escrow.
- (b) The Annual Audited Accounts shall:
- (i) be prepared and audited in accordance with GAAP, consistently applied and in accordance with the Companies Act 2006; and
 - (ii) give a true and fair view of:
 - (A) the state of affairs, profits and financial condition of the Operator for the period covered by such accounts; and
 - (B) the amount of its total revenue (being all revenue whatsoever from any source obtained from any commercial or non-commercial activity or undertaking of the Operator, such revenue to be disaggregated by reference to revenue derived by the Operator from:
 - (1) the sale of tickets;
 - (2) income received from the Infrastructure Manager pursuant to Schedule 4 and Schedule 8 to the Track Access Agreement; and
 - (3) other items of revenue.

1.7 Changes to Accounting Policies

The Operator shall not, without the express written consent of the Secretary of State, make any alteration to its accounting policies or basis of preparation in relation to its Management Accounts, Annual Management Accounts, Annual Audited Accounts or Audited Accounts Reconciliation.

1.8 Parent and Affiliate Accounts and Affiliate Trading

- (a) The Operator shall, upon the request of the Secretary of State, promptly deliver to, (or procure delivery to), the Secretary of State:
- (i) certified true copies of the annual reports and audited accounts of each Parent and any Affiliate of the Operator, together with copies of all related directors' and auditors' reports. If the Parent or such Affiliate is domiciled outside England and Wales, the equivalent documents in the jurisdiction of residence of the relevant Parent or Affiliate shall be delivered to the Secretary of State;
 - (ii) certified true copies of and/or details of (as instructed by the Secretary of State) any contracts or non-contractual arrangements with any Affiliate of the Operator, including those which give rise to payments from such Affiliate to the Operator or payments from the Operator to such (including payments or charges in relation to management services);
 - (iii) procurement policies in relation to contracts and non-contractual arrangements with Affiliates of the Operator, including policies in relation to

such Affiliates procuring services from third parties on behalf of (or for the benefit of) the Operator;

- (iv) evidence that each Affiliate Contract:
 - (A) entered into by the Operator on or after the Start Date in accordance with paragraph 8.7 (*Affiliate Trading*) of Chapter 7.1 (*Contract Payments*); or
 - (B) varied or replaced pursuant to paragraph 8.13 (*Affiliate Trading*) of Chapter 7.1 (*Contract Payments*),
 complies with the Minimum Requirements and Additional Requirements; and
- (v) evidence that each Group Contract entered into by an Affiliate Counterparty on or after the Start Date complies with the requirements of paragraph 8.6(a) (*Affiliate Trading*) of Chapter 7.1 (*Contract Payments*).

1.9 Secretary of State Audit of Calculations and Data provided pursuant to paragraphs 1.3, 1.4 and 1.5

- (a) Without prejudice to Chapter 7.4 (*Financial Covenants and Bonds*) or to any other rights of the Secretary of State under this Contract, the Secretary of State and the Secretary of State's representatives shall be permitted to inspect at any time the books, records and any other material kept by or on behalf of the Operator in order to check or audit any item contained in or relating to the Management Accounts, the Annual Management Accounts, the Annual Audited Accounts, the Audited Accounts Reconciliation, and any information held or provided in connection with the Operator's obligations under Chapter 7.1 (*Contract Payments*), Chapter 7.4 (*Financial Covenants and Bonds*) and/or Chapter 7.5 (*Variations, Changes and Amendments*).
- (b) The Operator shall make available to the Secretary of State and the Secretary of State's representatives such information and grant such access or procure the grant of such access (including to or from third parties) as they shall require in connection with any audit to be carried out pursuant to paragraph 1.9(a). If any audit carried out pursuant to paragraph 1.9(a) reveals, in the opinion of the Secretary of State, any material inaccuracy in the Management Accounts, Annual Management Accounts or Audited Accounts Reconciliation, then:
 - (i) the Secretary of State may:
 - (A) determine any item contained in or relating to the Management Accounts, Annual Management Accounts or Audited Accounts Reconciliation; or
 - (B) require any item contained in or relating to the Management Accounts, Annual Management Accounts or Audited Accounts Reconciliation to be adjusted in a manner which is fair and reasonable and, so far as determinable, on the basis on which such particular item should have been accounted for by the Operator as determined by the Secretary of State,
 in either case to the extent that the Secretary of State considers appropriate in the circumstances for the purpose of making any such reasonable determination; and
 - (ii) the Operator shall pay all reasonable costs of any such audit as a monitoring cost pursuant to paragraph 6.4 of Chapter 9.4.3 (*Procedure for remedying a Contravention of the National Rail Contract*). The Operator shall not in any circumstances be entitled to claim back any such costs from the Secretary of State whether pursuant to Chapter 7.1 (*Contract Payments*) or otherwise.
- (c) Without prejudice to any other provisions of this Contract, if any audit carried out pursuant to paragraph 1.9(a) reveals, in the opinion of the Secretary of State, any material inaccuracy in the Management Accounts, Annual Management Accounts, Annual Audited Accounts and/or the contents or form of the Audited Accounts

Reconciliation then the Secretary of State shall have the right to determine any Contract Payment Components and/or any Interim Closing Adjustment(s) and/or the Final Closing Adjustment for the purposes of correcting the effect of such material inaccuracy.

1.10 Adjustment and Restatement of the Annual Audited Accounts

The Operator shall promptly notify the Secretary of State as soon as it becomes aware of any requirement to adjust or restate the Annual Audited Accounts and shall deliver to the Secretary of State any such adjusted or restated Annual Audited Accounts along with an updated Audited Accounts Reconciliation, as soon as such accounts are available.

1.11 Access to financial information

The Secretary of State, the Secretary of State's representatives and/or advisors shall be permitted to inspect at any time the books, records and other material kept by or on behalf of the Operator in order to check or audit any item contained in or relating to the financial information provided pursuant to the provisions of the National Rail Contract and the Previous Agreement, and to request further information or review of this information, including:

- (a) the use of an external auditor;
- (b) provision of full access to this information by the Secretary of State's officials, representatives and/or advisors on an "open book" basis; and
- (c) provision of full access to this information by the National Audit Office or other equivalent body on an "open book" basis.

Chapter 7.4
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 Operator shall not:
- (a) incur any liability or financial indebtedness except in the ordinary course of providing and operating the Rail Services;
 - (b) borrow any sum, or enter into any loan or lending agreement for the purpose of borrowing from any person;
 - (c) 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(e) or to an employee in the ordinary course of its business);
 - (d) create or permit to subsist any Security Interest over any of its assets or property or give any guarantee or indemnity to or for the benefit of any person or otherwise assume liability or become obliged (actually or contingently) in respect of any obligation of any other person, in each case other than in the ordinary course of the business of providing and operating the Rail Services; or
 - (e) 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. Lock-up Restriction

- 2.1 The Operator shall not during the Lock-up Period, do any of the following without the prior written consent of the Secretary of State:
- (a) declare or pay any dividend (equity or preference) or make any other distribution including surrendering any taxable losses to any Affiliates of the Operator or pay any Affiliates of the Operator in respect of taxable losses that they wish to surrender to the Operator (in relation to a Permitted Dividend or a Pre-EMA Profit Dividend, subject to paragraph 2.3 and paragraph 2.6);
 - (b) make payments to any Affiliates of the Operator, including payments in respect of management charges or costs for goods or services rendered by or through an Affiliate of the Operator save to the extent such charges or payments (including with respect to the quantum of such charges or payments) have been expressly allocated and agreed or determined by the Secretary of State in the Cost Budget;
 - (c) make payment under any intra-group borrowings (including where the provider of such intra-group borrowings is no longer an Affiliate of the Operator), which for the avoidance of doubt shall include any repayments pursuant to the Funding Deed or the Previous Funding Deed; or
 - (d) make payment of any fees, remuneration, pension contribution or other payment to or in respect of any director or officer of the Operator or of any Affiliate of the Operator save and only to the extent that the same (including with respect to the quantum of them) have been expressly allocated and agreed or determined by the Secretary of State in the Cost Budget.
- 2.2 **“Lock-up Period”** means the period commencing on the date of this Contract and expiring on the date which the Secretary of State confirms by notice in writing to the Operator that:
- (a) the Secretary of State considers that all the obligations of the Parties to account to each other pursuant to Chapter 7.1 (*Contract Payments*) have been fully performed and discharged (such confirmation not to be unreasonably withheld or delayed); and
 - (b) by virtue of such notice, the Lock-Up Period has expired.

No such notice shall constitute a waiver of any rights which the Secretary of State may have under or in respect of Chapter 7.1 (*Contract Payments*).

2.3 Subject to the Operator fully performing and discharging all its obligations under Chapter 7.1 (*Contract Payments*), paragraph 1 (*Financial Information*) of Chapter 7.3 (*Management Information*) and the Funding Deed in relation to that Contract Year to the satisfaction of the Secretary of State, the consent of the Secretary of State pursuant to paragraph 2.1(a) and/or 2.1(b):

- (a) may be sought annually or, in relation to a Contract Year of less than thirteen (13) Reporting Periods, on the expiry or termination of the relevant Contract Year, but for the avoidance of doubt, the Operator must seek the consent of the Secretary of State in relation to the payment of any Permitted Dividend and any Pre-EMA Profit Dividend under this paragraph 2.3 simultaneously; and
- (b) shall in respect of a Permitted Dividend or a Pre-EMA Profit Dividend be subject to the Operator having made any required repayments under the Funding Deed and the Parties agree that it shall be reasonable for the Secretary of State to require the Operator to use FFPBF, ShOp PBF, HSMA1 and/or HSMA2 included in a Contract Payment and/or ICPI (as defined in paragraph 2.4 below) to repay any PCG Facility Loan in accordance with the Funding Deed (including where there has been a Pre-EMA Net Assets PCG Advance (as defined in the Funding Deed)) or to fund any other amounts which have been properly taken account of in the calculation of Actual Annual Losses. Any Permitted Dividend shall be reduced by the amount of any FFPBF, ShOp PBF, HSMA1 and or HSMA2 included in a Contract Payment and/or ICPI (as defined in paragraph 2.4 below) used to repay any PCG Facility Loan pursuant to this paragraph 2.3 and the Funding Deed (including any PCG Facility Loan made by way of a Pre-EMA Net Assets PCG Advance (as defined in the Funding Deed)) or to fund any other amounts which have been properly taken account of in the calculation of Actual Annual Losses.

2.4 For the purposes of paragraph 2.3, a “**Permitted Dividend**” shall be an amount in respect of FFPBF, ShOp PBF, HSMA1 and/or HSMA2 (if and to the extent that an amount in respect of FFPBF, ShOp PBF, HSMA1 and/or HSMA2 has been included in a Contract Payment paid in accordance with Chapter 7.1 (*Contract Payments*)) and/or ICPI, calculated as follows:

PD =	$(FFPBF + ShOp\ PBF + HSMA1 + HSMA2) - ((FFPBF + ShOp\ PBF + HSMA1 + HSMA2) \times NTR) + ICPI - (ICPI \times NTR)$
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where:

PD	means the Permitted Dividend;
FFPBF	means, the amount of FFPBF (as the case may be) that has been included in a Contract Payment paid in accordance with Chapter 7.1 (<i>Contract Payments</i>) as reduced pursuant to paragraph 2.3;
ICPI	means, the aggregate amount of payment(s) made to the Operator under paragraphs (b) and (c) of the definition of ICP Incentivisation in relation to the relevant Contract Year;
NTR	<p>means the rate of corporation tax (as published by HM Revenue & Customs) applicable at the time at which the Secretary of State determines the value of FFPBF (as applicable) in accordance with Chapter 7.1 (<i>Contract Payments</i>) provided that:</p> <ul style="list-style-type: none"> (a) NTR shall not be adjusted, revalued or otherwise affected by the application of tax losses or any other reliefs to which the Operator may be entitled; and (b) if a Permitted Dividend has been made in accordance with this paragraph 2.4 and there is a subsequent variation in the rate of corporation tax in the relevant tax year, the Permitted Dividend shall not be recalculated to take account of that variation;

ShOp PBF	means, the amount of ShOp PBF that has been included in a Contract Payment paid in accordance with Chapter 7.1 (<i>Contract Payments</i>) as reduced pursuant to paragraph 2.3;
HSMA1	means, the amount of HSMA1 that has been included in a Contract Payment paid in accordance with Chapter 7.1 (<i>Contract Payments</i>) as reduced pursuant to paragraph 2.3; and.
HSMA2	means, the amount of HSMA2 that has been included in a Contract Payment paid in accordance with Chapter 7.1 (<i>Contract Payments</i>) as reduced pursuant to paragraph 2.3.

- 2.5 The Operator shall use all reasonable endeavours to plan its business activities and working capital position such that the Forecast Closing Cash Position does not fall below the Floor Cash Position.
- 2.6 Any consent of the Secretary of State pursuant to paragraph 2.1 in respect of a Pre-EMA Profit Dividend shall be subject to the receipt by the Secretary of State of:
- (a) the Annual Audited Accounts and Audited Accounts Reconciliation for each Contract Year up to and including the previous Contract Year (and the Secretary of State having confirmed in writing to the Operator that such Audited Annual Accounts and Audited Accounts Reconciliation are reasonably acceptable to the Secretary of State);
 - (b) the information required to be provided to the Secretary of State pursuant to paragraphs 9.4 (*Annual Financial Information*) and 9.4A (*Additional Financial Information*) of Schedule 11.2A (*Management Information*) of the Previous Agreement for each Franchisee Year (as defined in the Previous Agreement) (and the Secretary of State having confirmed in writing to the Operator that such information is reasonably acceptable to the Secretary of State);
 - (c) a version of the Restated P2012 Balance Sheet updated to give a true and fair view of the assets, liabilities, equity and reserves of the Franchisee (as defined in the Previous Agreement) as at the 1 March 2020 in accordance with GAAP consistently applied and on the basis of all knowledge and information available to the Operator as at the date of the submission of the Annual Audited Accounts and Audited Accounts Reconciliation for each Contract Year, which has been adjusted to reduce the value of distributable reserves by the amount of any dividend paid since 1 March 2020 which is not a Permitted Dividend (as defined in this Contract or in the Previous Agreement);
 - (d) an audit opinion which shows the financial statements in the Annual Audited Accounts give a true and fair view (provided as part of the auditor’s report(s) supplied to the Secretary of State together with the Operator’s Annual Audited Accounts for the relevant Contract Year ending 31 March); and
 - (e) a clear and detailed calculation prepared by the Operator of the amount of the relevant Pre-EMA Profit Dividend.
- 2.7 For the purposes of paragraph 2.3, a “**Pre-EMA Profit Dividend**” shall be an amount which is no more than:
- (a) the profits available for distribution (as defined by GAAP) as shown in the Restated P2012 Balance Sheet provided pursuant to paragraph 2.6(c) above;
- Plus*
- (b) provided that the PCS Facility Loan (as defined in the Previous Funding Deed) has been waived by the Previous Guarantors and written off in the Operator’s accounts, the absolute value of:
 - (i) the PCS creditor as stated in the accounts of the Franchisee (as defined in the Previous Agreement) as at 1 March 2020 (without any subsequent adjustment or restatement); and

- (ii) the absolute value of any PCS Advances (as defined in the Previous Funding Deed) made since 1 March 2020 pursuant to the Previous Funding Deed to fund either costs (or a deficit in net assets) which properly relate to the periods before 1 March 2020 and/or the Termination Sum;
- (c) the total amount of any loan advances (excluding any PCS Advances (as defined in the Previous Funding Deed)) made by any Guarantor or any Previous Guarantor to the Operator to fund either costs (or a deficit in net assets) which properly relate to the periods before 1 March 2020 and/or the Termination Sum, provided such loan advances have been waived by the Guarantors or Previous Guarantors (as applicable) and written off by the Operator;

Less:

- (d) the absolute value of any Termination Sum payable under the ERMA;
- (e) the value of any other costs or contingent liabilities (as defined by GAAP) shown within the Annual Audited Accounts for the most recent Contract Year or the Management Accounts for the current Contract Year to date (to any extent not reflected in the Restated P2012 Balance Sheet provided pursuant to paragraph 2.6(c) above) which properly relate to:
 - (i) the period prior to 1 March 2020; or
 - (ii) potential liabilities which, if they crystallised, would be Non-Recoverable Costs or Disallowable Costs (each as defined in the Previous Agreement), but excluding any of the Operator's contingent liabilities which arise solely as a result of the existence of any bonds provided pursuant to the Funding Deed, the Early Termination Indemnity Agreement, the Previous Agreement or the Previous Funding Deed, any guarantees provided pursuant to the Previous Funding Deed or the Funding Deed, or any indemnity pursuant to the Early Termination Indemnity Agreement;
- (f) any profits available for distribution (as defined by GAAP) shown in the version of the Restated P2012 Balance Sheet provided pursuant to paragraph 2.6(c) above which result from accrued income which has not yet subsequently been received; and
- (g) the Operator's reasonable forecast of any taxation amounts relating to the period prior to 1 March 2020 not already taken account of and any Non-Recoverable Costs or Disallowable Costs or Revenue Foregone (each as defined in the Previous Agreement) for the period until the expected provision of the Final Closing Accounts not already included pursuant to paragraph 2.7(e) above,

and for the avoidance of any doubt the Pre-EMA Profit Dividend shall not include any items already paid or payable within any Permitted Dividend (as defined either in this Contract or the Previous Agreement), Pre-EMA Profit Dividend, any other dividend previously paid or declared or permitted by the Secretary of State since 1 March 2020 or within the repayment of any loan advances made by the Guarantor to the Operator pursuant to clause 12.1 of the Funding Deed which the Secretary of State has permitted to be repaid pursuant to paragraph 2 of this Chapter 7.4 in lieu of a Pre EMA Profit Dividend.

Chapter 7.5

Variations, Changes and Amendments

1. Purpose and Application of Chapter

1.1 This Chapter 7.5 (*Variations, Changes and Amendments*) sets out (*inter alia*):

- (a) the circumstances which will result in an adjustment to any of the Escrow Documents and/or the Operational Performance Targets;
- (b) the process by which the Operational Performance Target(s) will be adjusted to reflect any Operational Performance Target Amendment Event; and
- (c) the process by which the Amendable Financial Target(s) will be adjusted to reflect any Financial Amendment Event.

2. How any adjustments to the Cost Budget, Record of Assumptions, Amendable Financial Target(s) and Operational Performance Target(s), will be established

2.1 Each Party shall notify the other promptly on becoming aware that any Trigger Event has occurred or is likely to occur and in particular the Operator shall notify the Secretary of State as soon as practicable after the date that Operator becomes so aware (or if earlier, that date that a Good and Efficient Operator should have been aware).

2.2 Any notice under paragraph 2.1:

- (a) in the case of a notice of a Cost Budget Change Event or a Financial Target Amendment Event served by the Operator shall be accompanied by such information as will enable the Secretary of State to determine the financial effect of such Cost Budget Change Event or Financial Target Amendment Event (including, where appropriate, the proposed updates to the applicable Cost Category, and if applicable to the Amendable Financial Target and/or the Record of Assumptions to reflect the financial effect of the Cost Budget Change Event or Financial Target Amendment Event);
- (b) in the case of a notice of a Cost Budget Change Event or a Financial Target Amendment Event served by the Secretary of State, the Operator shall supply to the Secretary of State such information within such period as the Secretary of State may require for the purposes of determining the financial effect of such Cost Budget Change Event or Financial Target Amendment Event (including, where appropriate, the proposed updates to the applicable Cost Category in the Cost Budget and the Record of Assumptions to reflect the financial effect of the Cost Budget Change Event or Financial Target Amendment Event);
- (c) in the case of a notice of an Operational Performance Target Amendment Event served by the Operator, shall be accompanied by such information as will enable the Secretary of State to determine the operational effect of such Operational Performance Target Amendment Event (including the proposed updates to the applicable Operational Performance Target(s) to reflect the operational effect of the Operational Performance Target Amendment Event); and
- (d) in the case of a notice of an Operational Performance Target Amendment Event served by the Secretary of State, the Operator shall supply to the Secretary of State such information within such period as the Secretary of State may require for the purposes of determining the operational effect of such Operational Performance Target Amendment Event (including the proposed updates to the applicable Operational Performance Target(s) to reflect the operational effect of the Operational Performance Target Amendment Event).

2.3 The Parties shall act in a timely manner in considering the effects of any Trigger Event notified under paragraph 2.1 or in any discussions pursuant to paragraph 1.27 of Appendix 1 to this Chapter 7.5 (*Variations, Changes and Amendments*).

Cost Budget Changes

Periods 1 to 7 Budget Change

2.4 A Cost Budget Change will occur to reflect the difference between:

- (a) the Operator's outturn costs for each Cost Category for the ERMA Final Part Year; and
- (b) each of the Cost Categories for the Periods 1 to 7 Budget, as calculated in accordance with paragraph 2.5.

2.5 The EFPY Outturn (**EFPYO**) for each Cost Category shall be calculated as follows:

EFPYO = Periods 1 to 7 Budget Costs – EFPY Actuals

where

Periods 1 to 7 Budget Costs	means in relation to each Cost Category, an amount equal to the total costs included in the Periods 1 to 7 Budget (updated in accordance with the provisions of paragraph 2.5A); and
EFPY Actuals	means in relation to each Cost Category, an amount equal to the ERMA Final Part Year Actual Costs plus the ERMA Final Part Year Actual Capex plus the ERMA Actual Shadow Operator Costs, adjusted as follows: (a) by excluding any Aggregated Costs and Revenues Liabilities (as defined in paragraph 9.11 of Schedule 8.1(ERMA) of the Previous Agreement) for the ERMA Final Part Year; (b) by excluding any depreciation; (c) by applying such other adjustments as the Parties agree or the Secretary of State reasonably determines are appropriate to achieve a “like-for-like” comparison between the ERMA Final Part Year outturn costs and (disaggregated) costs in the Periods 1 to 7 Budget for the ERMA Final Part Year; (d) by excluding any ERMA Actual Shadow Operator Costs which were not reimbursed (or due to be reimbursed) as “ShOpR” under Appendix 1 to Schedule 18.5 of the Previous Agreement; and (e) by including an amount equal to the amount of revenue or other value which was not received or receivable by the Operator as ERMA Actual Shadow Operator but which would have been receivable and received or otherwise realised by the Operator if it had acted as an Efficient Operator (as defined in the Previous Agreement).

If EFPYO:

- (a) equals **zero**, there will be no Cost Budget Change under this paragraph 2.5;
- (b) is a **positive number**, the Cost Budget for the first Contract Year shall be increased by that amount;
- (c) is a **negative number**, the Cost Budget for the first Contract Year shall be reduced by the absolute value of that amount,

and the Parties shall seek to agree the Agreed Updates to reflect such financial impact (including discussing the reasons for the overspends and/or underspends). If the Secretary of

State and the Operator are unable to agree such Agreed Updates, the Secretary of State may determine them.

- 2.5A Prior to calculating the EFPYO, the Periods 1 to 7 Budget and the Cost Budget shall be adjusted to take account of any events which occur before the Start Date, which would, had the Start Date already occurred have been Cost Budget Change Events (to extent not already reflected in the Periods 1 to 7 Budget and the Cost Budget). The Parties shall seek to agree such adjustments. If the Secretary of State and the Operator are unable to agree such adjustments, the Secretary of State may determine them.
- 2.6 If the Final Audited Accounts Reconciliation (as defined in the Previous Agreement) indicates that the EFPY Outturn amount was incorrect or if the Final Accounts (as defined in the Previous Agreement) are subject to adjustment or restatement, the Secretary of State shall have a discretion to require the recalculation of the EFPY Outturn amount, and the Parties shall seek to agree the Agreed Updates. If the Secretary of State and the Operator are unable to agree such Agreed Updates, the Secretary of State may (but shall not be obliged to) determine them.

Cost Budget Change Events

- 2.7 If a Cost Budget Change Event occurs, (save to the extent that any mitigation measures and/or amended outputs agreed or determined following discussions under paragraph 2.8, result in the Cost Budget Change Event having no financial impact on any of the Cost Categories) a Cost Budget Change will occur and the Parties shall seek to agree the Agreed Updates (if any) to reflect the financial impact of the Cost Budget Change Event and of such mitigation measures and amended outputs (if any) as may be agreed or determined. If the Secretary of State and the Operator are unable to agree such mitigation measures and/or Agreed Updates (if any), the Secretary of State may determine them (if any). Any Secretary of State determination pursuant to this paragraph 2.7 regarding any potential Agreed Updates shall be subject to the Determination Escalation Process.
- 2.8 When considering the financial impact of a Cost Budget Change Event:
- (a) the Parties shall discuss the reasons for any actual or anticipated overspend or underspend;
 - (b) if the Cost Budget Change Event causes an increase in costs, the Operator shall promptly propose and the Parties shall consider proposals for mitigating any increase in cost in any Cost Category resulting from (or otherwise associated with) the Cost Budget Change Event, including whether any such increase can be:
 - (i) absorbed (in whole or part) by being offset by actual or anticipated underspend on other cost items within the relevant Cost Category;
 - (ii) absorbed (in whole or part) within the overall Cost Budget (including by offsetting (in whole or part) the increase in cost in a Cost Category by reducing the costs in another Cost Category to reflect actual or anticipated underspend); and/or
 - (iii) offset (in whole or part) by a Business Plan Revision pursuant to the provisions of paragraph 6 of Chapter 7.7 (*Business Plan*) or by a Variation;
 - (c) if the Cost Budget Change Event causes a decrease in costs, the Operator shall promptly propose and the Parties shall consider options for the application of the reduction in costs resulting from the Cost Budget Change Event to deliver additional or improved outputs including through a Business Plan Revision or Variation; and
 - (d) in relation to a Cost Budget Change Event pursuant to paragraph 1.27 of Appendix 1 to this Chapter 7.5 (*Variations, Changes and Amendments*) only, the Parties shall take account of any relevant discussions held between the Parties pursuant to paragraph 1.27 of Appendix 1 to this Chapter 7.5 (*Variations, Changes and Amendments*).
- 2.9 If there is no relevant Trigger Event as referred to in paragraphs 1.1 to 1.26 of Appendix 1 to this Chapter 7.5 (*Variations, Changes and Amendments*) but:

- (a) the Actual Costs, incurred or expected to be incurred in relation to a Cost Category exceed the level in the Cost Budget as most recently Placed in Escrow; and
- (b) the Secretary of State is not satisfied that that the provisos in paragraph 1.27 of Appendix 1 to this Chapter 7.5 (*Variations, Changes and Amendments*) have been met,

the Secretary of State (at the Secretary of State's discretion) may determine that a Cost Budget Change Event shall occur in which case the updated Cost Budget shall not include any costs to the extent arising from the Operator's failure to act as a Good and Efficient Operator.

- 2.10 Any Cost Budget Change shall take effect when the updated Cost Budget and associated updated Escrow Documents are Placed in Escrow. For the avoidance of doubt, although a Cost Budget Change takes effect from the Placed in Escrow date, the Parties acknowledge that it may have a retrospective impact on the Cost Budget.
- 2.11 If the Cost Budget has been agreed or determined before the start of the relevant Contract Year and a Cost Budget Change Event occurs after the relevant Escrow Documents are updated which will affect it, the provisions of paragraph 2.7 shall apply in relation to the impact that such Cost Budget Change Event has on the Cost Budget Placed in Escrow.

Financial Target Amendments

- 2.12 A Financial Target Amendment will occur if:
 - (a) a Financial Target Amendment Event occurs; and
 - (b) such Financial Target Amendment Event requires the relevant Amendable Financial Target(s) for that Contract Year to be amended by a net financial value which is equal to or greater than the Relevant Threshold Amount for that Amendable Financial Target,

and the Parties shall seek to agree the financial impact of a Financial Target Amendment Event and if applicable shall seek to agree the Agreed Updates (if any) to reflect the financial impact of the Financial Target Amendment Event. If the Secretary of State and the Operator are unable to agree whether the Relevant Threshold Amount has been met (or exceeded) and/or such Agreed Updates (if any), the Secretary of State may determine such matters (and any such determination shall be subject to the Determination Escalation Process).

- 2.13 Any Financial Target Amendment shall take effect when the updated relevant Escrow Documents are Placed in Escrow. For the avoidance of doubt, although a Financial Target Amendment takes effect from the Placed in Escrow date, the Parties acknowledge that it may have a retrospective impact on the Amendable Financial Target(s).
- 2.14 If an Amendable Financial Target has been agreed or determined before the start of the relevant Contract Year and a Financial Target Amendment Event occurs after the relevant Escrow Documents are updated which will affect it, the provisions of paragraph 2.12, shall apply in relation to the impact that such Financial Target Amendment Event has on the relevant Amendable Financial Targets Placed in Escrow.

Operational Performance Target Amendments

- 2.15 If an Operational Performance Target Amendment Event occurs, an Operational Performance Target Amendment will occur and the Parties shall seek to agree the impact of the Operational Performance Target Amendment Event and updates (if any) to the applicable Operational Performance Target(s) to reflect the Operational Performance Target Amendment Event. If the Secretary of State and the Operator are unable to agree such updates (if any), the Secretary of State may determine them (if any) (and any such determination shall be subject to the Determination Escalation Process).
- 2.16 Any Operational Performance Target Amendment shall take effect on and from the date that the relevant updated Operational Performance Target(s) is agreed or determined. For the avoidance of doubt, although an Operational Performance Target Amendment takes effect from date agreed or determined, the Parties acknowledge that it may have a retrospective impact on the Operational Performance Target(s).

3. **Other impacts of Trigger Events and Agreed Updates**

- 3.1 Where the Secretary of State 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 determine the assumptions or additional assumptions to be utilised for this purpose (and any such determination shall be subject to the Determination Escalation Process).
- 3.2 In considering or determining the impact of any Trigger Event, the Secretary of State shall (*inter alia*) take account of:
- (a) the Operator's obligations to perform the Rail Services in accordance with the provisions of this Contract; and
 - (b) whether (in the opinion of the Secretary of State) in relation to the Trigger Event, the Operator has acted as a Good and Efficient Operator.
- 3.3 Within five (5) Weekdays after the end of each Quarter in each Contract Year, the Operator shall make the relevant adjustment to the Escrow Documents to implement:
- (a) any Agreed Updates which were agreed or determined in the previous Quarter; and
 - (b) any updates to the Forecast Revenue which were notified by the Secretary of State, and submit drafts of the updated Escrow Documents to the Secretary of State. The Operator shall give notice to the Secretary of State of the time and location any adjustments to such Escrow Documents are to be processed and allow representatives of the Secretary of State to attend when these adjustments are processed. The impacts of the Agreed Updates will not be processed until the Secretary of State has confirmed that the adjusted updated document(s) are ready to be Placed in Escrow in accordance with paragraph 5 of this Chapter 7.5 (*Variations, Changes and Amendments*).
- 3.4 Within five (5) Weekdays after the end of each Quarter in each Contract Year, the Operator shall submit to the Secretary of State draft updates:
- (a) to the Business Plan if and as required to reflect any Agreed Updates and/or any updates to the Forecast Revenue as referred to in paragraph 3.3;
 - (b) to the Annual PBF Specification if and as required to reflect any Financial Target Amendment which occurred during the previous Quarter; and
 - (c) any other updates to the Business Plan if and as required to reflect any other impact of a Trigger Event having occurred during the previous Quarter.
- 3.5 If the Secretary of State and the Operator are unable to agree the updates referred to in paragraph 3.4 above (or whether any updates are needed), the Secretary of State may determine such matters (and any such determination shall be subject to the Determination Escalation Process).

4. **Information**

- 4.1 The Operator shall promptly, having regard to the other timescales anticipated in this Chapter 7.5 (*Variations, Changes and Amendments*) 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 Chapter 7.5 (*Variations, Changes and Amendments*).

5. **Operator's Escrow Obligations**

- 5.1 The Operator shall deliver a copy of the Escrow Documents and Shadow Operator Programmes to the Secretary of State (in electronic format which, unless otherwise notified by the Secretary of State, is non-rewritable and password protected) via such electronic (or other) medium as from time to time specified by the Secretary of State:
- (a) in relation to the Escrow Documents (other than the IO Modelling Suite and IO Record of Assumptions):

- (i) for the Initial Business Plan Year only, no later than the date of this Contract; and
 - (ii) for any Subsequent Business Plan Year, within five (5) Weekdays of such Escrow Documents being agreed or determined in accordance with paragraph 3 (*Annual Business Plan Process*) of Chapter 7.7 (*Business Plan*); and
 - (iii) within five (5) Weekdays of any revisions to such Escrow Documents being agreed or determined in accordance with the provisions of this Chapter 7.5 (*Variations, Changes and Amendments*) (including paragraph 3.3 (*Other impacts of Trigger Events and Agreed Updates*)), paragraphs 3.1(f), 3.2(f) or 3.3(f) of Chapter 7.2 (*Performance Based Fee and Shadow Operator Performance Based Fee*) or paragraph 6.1(c) (*Business Plan Revisions*) of Chapter 7.7 (*Business Plan*);
- (b) in relation to the IO Modelling Suite and IO Record of Assumptions:
- (i) no later than the date of this Contract; and
 - (ii) within five (5) Weekdays of such IO Modelling Suite and IO Record of Assumptions being agreed or determined in accordance with paragraph 3 of Chapter 11.1 (*Shadow Operations*);
- (c) in relation to the Shadow Operator Programmes:
- (i) no later than the date of this Contract; and
 - (ii) within five (5) Weekdays of such Shadow Operator Programmes being agreed or determined in accordance with paragraph 3 (*Annual Business Plan Process*) of Chapter 7.7 (*Business Plan*).

5.2 The Operator shall deliver:

- (a) with each deposit of the Escrow Documents and Shadow Operator Programmes in accordance with paragraph 5.1 above, all of the following information to the extent that it is relevant:
 - (i) details of the Escrow Documents and Shadow Operator Programmes deposited (including full filename and version details, any details required to access such Escrow Documents and Shadow Operator Programmes including media type, backup command/software used, compression used, archive hardware and operating system details); and
 - (ii) the names and contact details of persons who are able to provide support in relation to accessing and interpreting such Escrow Documents and Shadow Operator Programmes; and
- (b) within fifteen (15) Weekdays of any deposit of the Escrow Documents or Shadow Operator Programmes in accordance with paragraph 5.1 above and if required by the Secretary of State, a certificate from independent auditors (such independent auditors having been Approved by the Secretary of State), confirming that the deposited version of such Escrow Documents and Shadow Operator Programmes is as agreed as at the date of depositing or is as agreed or determined in accordance with the provisions of this Chapter 7.5 (*Variations, Changes and Amendments*) (as the case may be) and is in accordance with paragraphs 5.2(a)(i) and 5.2(a)(ii).

5.3 As soon as possible following the date on which any of the Escrow Documents or Shadow Operator Programmes are Placed in Escrow, the Operator shall store a copy of such Escrow Documents and Shadow Operator Programmes in the Secretary of State's contract management system.

5.4 The Parties acknowledge that:

- (a) there shall be a separate set of Escrow Documents for each Business Plan Year;
- (b) the Escrow Documents for any Business Plan Year may also include data relating to any period outside of that Business Plan Year; and

- (c) without prejudice to paragraph (b) above, where any Business Plan Year extends across two Contract Years, the Escrow Documents shall include a Cost Budget containing budgeted costs relating to each Contract Year within such Business Plan Year,

provided always that the provisions of this paragraph 5.4 shall not apply in relation to the IO Modelling Suite or the IO Record of Assumptions.

6. Secretary of State's Escrow Obligations

- 6.1 The Secretary of State shall use all reasonable endeavours to ensure that each copy of the Escrow Documents and Shadow Operator Programmes that the Operator deposits in the Secretary of State's contract management system is at all times kept in a safe and secure environment.
- 6.2 The Secretary of State shall:
- (a) have no obligation or responsibility to any person whatsoever to determine the existence, relevance, completeness, accuracy, effectiveness or any other aspect of any of the Escrow Documents or Shadow Operator Programmes; and
- (b) not be liable for any loss, damage or destruction caused to the Operator arising from any loss of, damage to or destruction of any of the Escrow Documents or Shadow Operator Programmes.

7. Errors in Escrow Documents or Shadow Operator Programmes

- 7.1 Any feature of any of the Escrow Documents or Shadow Operator Programmes which is in the opinion of the Secretary of State an error will be rectified as soon as practicable and the Operator shall deliver to the Secretary of State such rectified documents within seven (7) days of such rectification. In such circumstances, paragraphs 5.2 and 5.3 above shall apply.

8. Variations

- 8.1 The terms of the National Rail Contract may be varied as follows but not otherwise:
- (a) by the Secretary of State in relation to:
- (i) any aspect of the Rail Services; and/or
- (ii) any provision of this Contract other than those provisions specified in paragraph 8.2,
- by service of a notice on the Operator referring to this paragraph 8.1(a) and setting out the variation to the terms of the National Rail Contract; and
- (b) in relation to any other provision of the National Rail Contract, by agreement in writing between the Parties to that effect,
- (each a "**Variation**").
- 8.2 Without prejudice to the Secretary of State's rights under paragraph 8.1(a), the terms of each of:
- (a) clause 2 (*Duration of this Contract*), paragraph 2 (*Assignment*) of Chapter 9.7 (*Miscellaneous Legal Terms*), Chapter 9.4.2 (*Dispute Resolution Procedures*), clause 5 (*Notices*), paragraph 4 (*Set-Off*) of Chapter 9.7 (*Miscellaneous Legal Terms*) and paragraph 5 (*Miscellaneous Provisions*) of Chapter 9.7 (*Miscellaneous Legal Terms*);
- (b) Chapters 7.1 (*Contract Payments*), 7.2 (*Performance Based Fee and Shadow Operator Performance Based Fee*), 7.4 (*Financial Covenants and Bonds*), 7.5 (*Variations, Changes and Amendments*), Chapter 9.2.1 (*Key Contracts*), Chapter 9.2.2 (*Key Assets - Designation of Assets*), Chapter 9.3 (*Branding and Intellectual Property*), Chapter 9.4.1 (*Events of Default and Termination Events*), Chapter 9.4.3 (*Procedure for remedying a Contravention of the National Rail Contract*), Chapter 9.4.4 (*Force Majeure*), Chapter 9.4.5 (*Liability*) and Chapter 9.5.3 (*Provisions applying on and after Termination*) of this Contract; and

- (c) the definitions set out at Chapter 10 (*Definitions and Interpretation*) of this Contract insofar as such affect the respective rights and obligations of the Secretary of State and the Operator 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 National Rail Contract or with the agreement of the Parties.
- 8.3 The Secretary of State shall, to the extent practicable, allow the Operator a reasonable opportunity to make representations to the Secretary of State concerning any Variation to be made in accordance with paragraph 8.1(a), prior to making any such Variation.
- 8.4 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; and
 - (b) require the Operator to provide any information that the Secretary of State requires for this purpose (including in relation to prospective change to costs (including for the avoidance of doubt, capital expenditure) and revenue as a consequence of proceeding with the Variation).
- 8.5 Procedures issued pursuant to paragraph 8.4 shall have contractual effect between the Parties in accordance with their terms.
- 8.6 The Operator 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 this Contract;
 - (c) the impact of effecting the proposed Variation on the provision of the Rail Services and the Operator's proposals as to how to minimise such impact; and
 - (d) the financial consequences of implementing the Variation proposed by the Operator in terms of the revisions to the Cost Budget that the Operator considers the Variation would require.
9. **Increased Level of Services**
- 9.1 The Operator acknowledges that the Secretary of State may, as a Variation, require special measures, in the form of increased co-operation or additional services, to be implemented during the Contract Term and the Operator shall use its best endeavours to accommodate such requests and act in the national interests.
- 9.2 The Operator, if requested by the Secretary of State as a Variation, shall use its best endeavours to provide additional services, such as enhanced cleaning regimes to a standard proposed by the Secretary of State.
- 9.3 The reasonable and proper costs incurred by the Operator in performing its obligations under this paragraph 9 shall be recoverable from the Secretary of State as Actual Costs, subject to the provisions of Chapter 7.1 (*Contract Payments*) to the National Rail Contract.
10. **Rail Reform Change of Law**
- 10.1 In the event that a Change of Law which has significant impact on the structure of the rail industry (a "**Rail Reform Change of Law**") occurs or is shortly to occur, then the Secretary of State may notify the Operator of the Secretary of State's opinion on the likely effects of the Rail Reform Change of Law, including:
- (a) any necessary change in the Rail Services;
 - (b) whether any changes are required to the terms of this Contract to deal with that Rail Reform Change of Law;
 - (c) any other financial, legal or commercial effects that directly result from that Rail Reform Change of Law.

- 10.2 As soon as practicable after receipt of a notice from the Secretary of State under paragraph 10.1, the Parties shall discuss the matters referred to in paragraph 10.1 and the Secretary of State shall, to the extent reasonably practicable, allow the Operator reasonable opportunity to make representations to the Secretary of State concerning the impact of the Rail Reform Change of Law.
- 10.3 Without prejudice to the generality of this Chapter 7.5 (*Variations, Changes and Amendments*), where any notice under paragraph 10.1 has been duly served by the Secretary of State, the Secretary of State may, as the Secretary of State determines to be necessary, issue a notice pursuant to paragraph 8.1(a) (*Variations*) of this Chapter 7.5 in respect of any Variation(s) which in the opinion of the Secretary of State is required in response to the relevant Rail Reform Change of Law.

APPENDIX 1 TO CHAPTER 7.5**Trigger Events****PART 1 – Cost Budget Change Events****1. Automatic Cost Budget Change Events**

A **Cost Budget Change Event** shall automatically occur if any of the following events occurs:

- 1.1 Any variation in the rate of employer pension contributions (or, to the extent applicable, the amount of any lump sum employer deficit contributions) payable to an Operator Pension Section from the rate (or amount) set out in the Assumed Schedule of Contributions applicable to that Operator Pension Section which is not already provided for in the applicable Cost Category in the Cost Budget provided that, to the extent the Operator's consent or permission was required for that variation, the Operator has complied with its obligations pursuant to Chapter 7.6 (*Railways Pension Scheme*), including the obligations to:
 - (a) obtain the Secretary of State's prior written consent in respect of any such variation; and
 - (b) act in a Reasonable Commercial Manner.
- 1.2 The circumstances contemplated in clause 4.6 (*Rail Services*) occur.
- 1.3 Either:
 - (a) the Secretary of State designates the occurrence of Industrial Action as a Cost Budget Change Event pursuant to paragraph 5.3 (*Industrial Action*) of Chapter 2.2 (*Rail Workforce*); or
 - (b) the occurrence of Industrial Action in the circumstances set out in paragraph 5.4 (*Industrial Action*) of Chapter 2.2 (*Rail Workforce*).
- 1.4 A Variation which either results in the Operator being required to incur additional expenditure acting as a Good and Efficient Operator or would reasonably result in the Operator incurring lower expenditure than if the Variation had not been implemented.
- 1.5 A Charge Variation.
- 1.6 A Change of Law.
- 1.7 The circumstances contemplated in paragraph 4.8(b) or 4.9(b) of Chapter 4.1 (*Service Development*) occur.
- 1.8 A change to the Train Service Requirement previously in force pursuant to the issue of an amended or new Train Service Requirement in accordance with paragraph 8 (*Development of Proposals for Passenger Service Enhancements*) of Chapter 4.1 (*Service Development*).
- 1.9 The Operator being required to take any action pursuant to paragraph 11.1(a) and/or paragraph 11.1(b) (*Provisions relating to Access Agreements and Property Leases*) of Chapter 4.1 (*Service Development*).
- 1.10 Either:
 - (a) the Operator demonstrates to the satisfaction of the Secretary of State that the requirements of paragraph 2.4 (*Physical Alterations and Accessibility Of Stations*) of Chapter 5.3 (*Accessibility and Inclusivity*) have been satisfied; or
 - (b) the imposition, subject to the provisions of paragraph 2.6 (*Physical Alterations and Accessibility Of Stations*) of Chapter 5.3 (*Accessibility and Inclusivity*), of any increased access charges in respect of EA Requirements at Operator Access Stations.
- 1.11 The circumstances contemplated in paragraph 3.1(b) or 3.4 of Chapter 5.3 (*Accessibility and Inclusivity*) occur.
- 1.12 The Parties agree to vary the contents of the Service Quality Regime in accordance with the provisions of paragraph 18.1 (*Variations to the Service Quality Regime*) of Chapter 5.5 (*Customer Experience Performance*).

- 1.13 The Operator is required to implement any Remedial Plan or any other plans to remedy performance shortfalls (including Action Plans, D&I Improvement Plans, RCIS Improvement Proposals, TT Actions Plans, Service Quality Improvement Proposals and/or a Business Plan KPI Improvement Plans) but only to the extent that any additional costs incurred by the Operator in that respect are not Disallowable Costs.
- 1.14 A Business Plan Revision is agreed or determined under paragraph 6 of Chapter 7.7 (*Business Plan*).
- 1.15 The Secretary of State:
- (a) issues a notice pursuant to paragraph 3.2(i) (*Flexible Ticket*) of Chapter 8.2.2 (*Operator's Obligation to Create Fares*);
 - (b) issues a notice pursuant to paragraph 3.3 (*Flexible Ticket*) of Chapter 8.2.2 (*Operator's Obligation to Create Fares*);
 - (c) instructs the Operator to make such alterations to the Flexible Ticket as the Secretary of State considers necessary pursuant to paragraph 3.4 (*Flexible Ticket*) of Chapter 8.2.2 (*Operator's Obligation to Create Fares*); or
 - (d) issues a notice pursuant to paragraph 3.5 (*Flexible Ticket*) of Chapter 8.2.2 (*Operator's Obligation to Create Fares*).
- 1.16 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 as referred to in paragraph 3 (*Discount Fare Schemes*) of Chapter 8.2.8 (*Transport, Travel and Other Schemes*).
- 1.17 The Secretary of State approves or consents to an amendment or proposed amendment to an Inter-Operator Scheme as referred to in paragraph 4.5 (*Inter-Operator Schemes*) of Chapter 8.2.8 (*Transport, Travel and Other Schemes*).
- 1.18 The Secretary of State issues a direction to the Operator under paragraph 10.1(b) (*Cascaded Rolling Stock and Delayed Cascade Mitigation Plan*) of Chapter 9.1 (*Fixed Assets*).
- 1.19 The Secretary of State or the Infrastructure Manager requires the Operator to operate the Passenger Services to a specification that is materially different compared to the specification that was assumed when the applicable Cost Category in the Cost Budget was established.
- 1.20 The delay or non-delivery of an item of expenditure or a group of items of similar expenditure where the timing of expenditure is materially different from that assumed in the applicable Cost Category in the Cost Budget (and Record of Assumptions as applicable).
- 1.21 The Secretary of State issuing any guidance or instruction which could reasonably be expected to have a material impact on the Operator's ability to deliver the relevant contractual obligation within the amounts set out in the applicable Cost Category including where such guidance or instruction causes the Operator to incur costs in a different Cost Category to that envisaged in the Cost Budget in order to deliver such obligation.
- 1.22 The Secretary of State requires the use of a different or amended rolling stock fleet for delivering the Rail Services.
- 1.23 A Scoping Document in relation to which the Operator has an obligation to undertake or deliver any activities or deliverables in the then current Business Plan Year is agreed, determined or updated.
- 1.24 The Anticipated High Speed Start Date is changed pursuant to paragraph 5.1 of Chapter 11.1 (*Shadow Operations*).
- 1.25 The circumstances specified in paragraph 11.1(a) of Chapter 11.1 (*Shadow Operations*) occur.
- 1.26 An event or other significant factor occurs:
- (a) which is outside the control of the Operator and/or any of its Affiliates;
 - (b) the full costs of which were not allowed for in the applicable Cost Category in the Cost Budget as most recently Placed in Escrow (e.g. due to low likelihood of occurrence)

and (except and to the extent that the relevant item in Cost Category was determined by the Secretary of State) it was reasonable for the Operator not to have included those costs within the Cost Category; and

- (c) which causes a requirement to amend the applicable Cost Category to ensure that the Operator is no more and no less likely to deliver the relevant contractual obligation within the applicable Cost Category than if such event or factor had not occurred.
- 1.27 No Trigger Event under paragraphs 1.1 to 1.26 above applies but the Actual Costs, incurred or expected to be incurred in relation to a Cost Category are expected to exceed the level in Cost Budget as most recently Placed in Escrow, provided that the Secretary of State (having discussed the relevant circumstances with the Operator) is satisfied that:
- (a) the Operator has notified the Secretary of State of the anticipated overspend as soon as practicable after the date that the Operator becomes aware of it (or if earlier, that date that a Good and Efficient Operator should have been aware of it) and in any event, before incurring or committing to incur the overspend;
- (b) the notice under paragraph (a) has set out the reasons for the anticipated overspend and the steps taken by the Operator to minimise the amount of anticipated overspend;
- (c) a Good and Efficient Operator would not be able to absorb the impact of the anticipated overspend within the relevant Cost Category;
- (d) the Operator has used all reasonable endeavours to mitigate the anticipated overspend; and
- (e) the overspend would be incurred by a Good and Efficient Operator.
- 1.28 The Secretary of State (at the Secretary of State's discretion) determines that there is a Cost Budget Change Event under the provisions of paragraph 2.9 of this Chapter 7.5 (*Variations, Changes and Amendments*).

2. Other Cost Budget Change Events

A **Cost Budget Change Event** shall also occur if:

- (a) either Party notifies the other of an event listed in paragraphs 2.1 to 2.2 below; and
- (b) the Parties agree or the Secretary of State (taking into account the information available to the Secretary of State including any evidence provided by the Operator) determines that such occurrence shall be a Cost Budget Change Event (and any such determination shall be subject to the Determination Escalation Process).
- 2.1 The Operator proposes a material change to its planned delivery method, which will cause no net increase to the total Cost Budget as most recently Placed in Escrow and which will have no adverse impact on the relevant Business Plan outcomes, provided that the Operator's notice, identifies the specific increases and decreases to each affected Cost Category in the Cost Budget, provides a commentary explaining the reasons for and implications of the proposed change in method of delivery and where applicable, sets out the proposed amendments to the Record of Assumptions.
- 2.2 The Operator proposes a contractually committed opportunity for additional revenue for the sale of goods and/or services to another party on a profitable basis, which would require an increase in Actual Costs and therefore an adjustment to the applicable Cost Categories to ensure that the Operator is no more and no less likely to deliver the additional revenue within the applicable Cost Category in the Cost Budget.

PART 2 – Operational Performance Target Amendment Events

3. Operational Performance Target Amendment Events

An **Operational Performance Target Amendment Event** shall automatically occur if any of the following events occurs provided always that such event has a material impact on the likelihood of the Operator achieving the Operational Performance Target(s):

- 3.1 The Secretary of State or the Infrastructure Manager requires the Operator to operate the Passenger Services to a specification that is materially different compared to the specification that was assumed when the Operational Performance Target(s) was established.
- 3.2 The circumstances contemplated in paragraph 4.8(b) or 4.9(b) of Chapter 4.1 (*Service Development*) occur.
- 3.3 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 8 (*Development of Proposals for Passenger Service Enhancements*) of Chapter 4.1 (*Service Development*).
- 3.4 The Operator being required to take any action pursuant to paragraph 11.1(a) and/or paragraph 11.1(b) (*Provisions relating to Access Agreements and Property Leases*) of Chapter 4.1 (*Service Development*).
- 3.5 The Secretary of State requires the use of a different or amended rolling stock fleet for delivering the Rail Services.
- 3.6 A Change of Law.
4. **Other Operational Performance Target Amendment Events**
- An **Operational Performance Target Amendment Event** shall also occur if:
- (a) either Party notifies the other of an event within paragraph 4.1 below; and
- (b) the Parties agree or the Secretary of State (taking into account the information available to the Secretary of State including any evidence provided by the Operator) determines that such occurrence shall be an Operational Performance Target Amendment Event (and any such determination shall be subject to the Determination Escalation Process).
- 4.1 The Secretary of State issues any guidance or instruction which could reasonably be expected to have a material impact on the Operator's ability to achieve, exceed or fail to achieve the relevant Operational Performance Target(s).

PART 3 – Financial Target Amendment Events

5. **Cost Financial Target Amendment Events**
- A Financial Target Amendment Event shall occur in relation to a **Target Cost, a Target Cost Maximum Fee Performance Level and/or a Target Cost Nil Fee Performance Level** if any of the following events occurs provided always that such event does not solely impact on the Shadow Operator Services:
- 5.1 Any variation in the rate of employer pension contributions (or, to the extent applicable, the amount of any lump sum employer deficit contributions) payable to an Operator Pension Section from the rate (or amount) set out in the Assumed Schedule of Contributions applicable to that Operator Pension Section which is not already provided for in the applicable Target Cost Template provided that, to the extent the Operator's consent or permission was required for that variation, the Operator has complied with its obligations pursuant to Chapter 7.6 (*Railways Pension Scheme*), including the obligations to:
- (a) obtain the Secretary of State's prior written consent in respect of any such variation; and
- (b) act in a Reasonable Commercial Manner.
- 5.2 The circumstances contemplated in clause 4.6 (*Rail Services*) occur.
- 5.3 Either:
- (a) the Secretary of State designates the occurrence of Industrial Action as a Financial Target Amendment Trigger Event pursuant to paragraph 5.3 (*Industrial Action*) of Chapter 2.2 (*Rail Workforce*); or
- (b) the occurrence of Industrial Action in the circumstances set out in paragraph 5.4 (*Industrial Action*) of Chapter 2.2 (*Rail Workforce*).

- 5.4 A Variation which either results in the Operator incurring additional expenditure or would reasonably result in the Operator incurring lower expenditure than if the Variation had not been implemented.
- 5.5 A Charge Variation.
- 5.6 A Change of Law.
- 5.7 The circumstances contemplated in paragraph 4.8(b) or 4.9(b) of Chapter 4.1 (*Service Development*) occur.
- 5.8 A change to the Train Service Requirement previously in force pursuant to the issue of an amended or new Train Service Requirement in accordance with paragraph 8 (*Development of Proposals for Passenger Service Enhancements*) of Chapter 4.1 (*Service Development*).
- 5.9 The Operator being required to take any action pursuant to paragraph 11.1(a) and/or paragraph 11.1(b) (*Provisions relating to Access Agreements and Property Leases*) of Chapter 4.1 (*Service Development*).
- 5.10 The imposition, subject to the provisions of paragraph 2.6 (*Physical Alterations and Accessibility Of Stations*) of Chapter 5.3 (*Accessibility and Inclusivity*), of any increased access charges in respect of EA Requirements at Operator Access Stations.
- 5.11 The Parties agree to vary the contents of the Service Quality Regime in accordance with the provisions of paragraph 18.1 (*Variations to the Service Quality Regime*) of Chapter 5.5 (*Customer Experience Performance*).
- 5.12 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 as referred to in paragraph 3 (*Discount Fare Schemes*) of Chapter 8.2.8 (*Transport, Travel and Other Schemes*).
- 5.13 The Secretary of State approves or consents to an amendment or proposed amendment to an Inter-Operator Scheme, as referred to in paragraph 4.5 (*Inter-Operator Schemes*) of Chapter 8.2.8 (*Transport, Travel and Other Schemes*).
- 5.14 The Secretary of State issues a direction to the Operator under paragraph 10.1(b) (*Cascaded Rolling Stock and Delayed Cascade Mitigation Plan*) of Chapter 9.1 (*Fixed Assets*) occur.
- 5.15 The delay or non-delivery of an item of expenditure or a group of items of similar expenditure where the timing of expenditure is materially different from that included in the Modelling Suite used to derive the contents of the Target Cost Template most recently Placed in Escrow.
- 5.16 The Secretary of State requires the use of a different or amended rolling stock fleet for delivering the Rail Services.
- 5.17 The Secretary of State or the Infrastructure Manager requires the Operator to operate the Passenger Services to a specification that is materially different compared to the specification that was assumed when the relevant Amendable Financial Target was established.
- 5.18 A Business Plan Revision is agreed or determined under paragraph 6 of Chapter 7.7 (*Business Plan*).
- 6. Other Cost Financial Target Amendment Events**
- A **Cost Financial Target Amendment Event** shall also occur if:
- (a) either Party notifies the other of an event listed in paragraphs 6.1 or 6.2 below; and
- (b) the Parties agree or the Secretary of State (taking into account the information available to the Secretary of State including any evidence provided by the Operator) determines that such occurrence shall be a Cost Financial Target Amendment Event (and any such determination shall be subject to the Determination Escalation Process).
- 6.1 An event or other significant factor (which is not listed in paragraph 5 of Appendix 1 to this Chapter 7.5 (*Variations, Changes and Amendments*)) occurs:
- (a) which is outside the control of the Operator and/or any of its Affiliates;

- (b) which causes a requirement to amend the applicable Amendable Financial Target to ensure that the Operator is no more and no less likely to achieve the applicable Amendable Financial Target than if such event or factor had not occurred .
- 6.2 The Operator proposes a contractually committed opportunity for additional revenue for the sale of goods and/or services to another party on a profitable basis, which would require an increase in the Cost Budget and an associated amendment to the applicable Amendable Financial Target to ensure that the Operator is no more and no less likely to achieve the Amendable Financial Target than if such event had not occurred.
7. **Revenue Financial Target Amendment Events**
- A Financial Target Amendment Event shall occur in relation to a **Target Revenue, a Target Revenue Maximum Fee Performance Level and/or a Target Revenue Nil Fee Performance Level** if any of the following events occurs provided always that such event does not solely impact on the Shadow Operator Services:
- 7.1 The circumstances contemplated in clause 4.6 (*Rail Services*) occur.
- 7.2 Either:
- (a) the Secretary of State designates the occurrence of Industrial Action as a Financial Target Amendment Event pursuant to paragraph 5.3 (*Industrial Action*) of Chapter 2.2 (*Rail Workforce*); or
- (b) the occurrence of Industrial Action in the circumstances set out in paragraph 5.4 (*Industrial Action*) of Chapter 2.2 (*Rail Workforce*).
- 7.3 A Variation which:
- (a) results in the Operator earning less Actual Revenue; or
- (b) would reasonably result in the Operator earning greater Actual Revenue, than if the Variation had not been implemented.
- 7.4 A Change of Law.
- 7.5 The circumstances contemplated in paragraph 4.8(b) or 4.9(b) of Chapter 4.1 (*Service Development*) occur.
- 7.6 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 8 (*Development of Proposals for Passenger Service Enhancements*) of Chapter 4.1 (*Service Development*).
- 7.7 The Operator being required to take any action pursuant to paragraph 11.1(a) and/or paragraph 11.1(b) (*Provisions relating to Access Agreements and Property Leases*) of Chapter 4.1 (*Service Development*).
- 7.8 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 as referred to in paragraph 3 (*Discount Fare Schemes*) of Chapter 8.2.8 (*Transport, Travel and Other Schemes*).
- 7.9 The Secretary of State approves or consents to an amendment or proposed amendment to an Inter-Operator Scheme, as referred to in paragraph 4.5 (*Inter-Operator Schemes*) of Chapter 8.2.8 (*Transport, Travel and Other Schemes*).
- 7.10 The Secretary of State exercises the Secretary of State's power pursuant to paragraph 5 (*Changes to Fares Regulation*) of Part B to Chapter 8.2.5 (*Changes to Fares and Fares Regulation*) to alter the obligations of and restrictions on the Operator under Chapter 8.2 (*Fares*).
- 7.11 The Operator 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.
- 7.12 The Secretary of State issues a direction to the Operator under paragraph 10.1(b) (*Cascaded Rolling Stock and Delayed Cascade Mitigation Plan*) of Chapter 9.1 (*Fixed Assets*) occur.

- 7.13 The delay or non-delivery of an item of revenue or a group of items of similar revenue where the timing of revenue being recognised is materially different from that included in the Modelling Suite used to derive the contents of the Target Revenue Template most recently Placed in Escrow.
- 7.14 The Secretary of State or the Infrastructure Manager requires the Operator to operate the Passenger Services to a specification that is materially different compared to the specification that was assumed when the relevant Amendable Financial Target was established.
- 7.15 The Secretary of State issuing any guidance or instruction which could reasonably be expected to have a material impact on the Operator's ability to achieve, exceed or fail to achieve the applicable Amendable Financial Target.
- 7.16 A Business Plan Revision is agreed or determined under paragraph 6 of Chapter 7.7 (*Business Plan*).
- 7.17 An event or other significant factor that is outside the control of the Operator and/or its Affiliates, which was not foreseen in the Modelling Suite used to derive the contents of the Target Revenue Template (as most recently Placed in Escrow).

8. **Other Revenue Financial Target Amendment Events**

A **Revenue Financial Target Amendment Event** shall also occur if:

- (a) either Party notifies the other of an event listed in paragraphs 8.1 or 8.2 below; and
- (b) the Parties agree or the Secretary of State (taking into account the information available to the Secretary of State including any evidence provided by the Operator) determines that such occurrence shall be a Revenue Financial Target Amendment Event (and any such determination shall be subject to the Determination Escalation Process).
- 8.1 An event or other significant factor (which is not listed in paragraph 7 of Appendix 1 to this Chapter 7.5 (*Variations, Changes and Amendments*)) occurs:
- (a) which is outside the control of the Operator and/or any of its Affiliates; and
- (b) which causes a requirement to amend the applicable Amendable Financial Target to ensure that the Operator is no more and no less likely to achieve the applicable Amendable Financial Target than if such event or factor had not occurred.
- 8.2 The Secretary of State identifies a contractually committed opportunity for additional revenue for the sale of goods and/or services to another party on a profitable basis, which would require an amendment to the applicable Amendable Financial Target to ensure that the Operator is no more and no less likely to achieve the Amendable Financial Target than if such event had not occurred.

9. **Profit Financial Target Amendment Events**

A Financial Target Amendment Event shall occur in relation to a **Target Profit, a Target Profit Maximum Fee Performance Level and/or a Target Profit Nil Fee Performance Level** if any of the following events occurs provided always that such event does not solely impact on the Shadow Operator Services:

- 9.1 Any variation in the rate of employer pension contributions (or, to the extent applicable, the amount of any lump sum employer deficit contributions) payable to an Operator Pension Section from the rate (or amount) set out in the Assumed Schedule of Contributions applicable to that Operator Pension Section which is not already provided for in the applicable Target Profit Template provided that, to the extent Operators consent or permission was required for that variation, the Operator has complied with its obligations pursuant to Chapter 7.6 (*Railways Pension Scheme*), including the obligations to:
- (a) obtain the Secretary of State's prior written consent in respect of any such variation; and
- (b) act in a Reasonable Commercial Manner.
- 9.2 The circumstances contemplated in clause 4.6 (*Rail Services*) occur.

- 9.3 Either:
- (a) the Secretary of State designates the occurrence of Industrial Action as a Financial Target Amendment Event pursuant to paragraph 5.3 (*Industrial Action*) of Chapter 2.2 (*Rail Workforce*); or
 - (b) the occurrence of Industrial Action in the circumstances set out in paragraph 5.4 (*Industrial Action*) of Chapter 2.2 (*Rail Workforce*).
- 9.4 A Variation which:
- (a) results in the Operator incurring additional expenditure;
 - (b) would reasonably result in the Operator incurring lower expenditure;
 - (c) results in the Operator earning less revenue; or
 - (d) would reasonably result in the Operator earning greater revenue, than if the Variation had not been implemented.
- 9.5 A Charge Variation.
- 9.6 A Change of Law.
- 9.7 The circumstances contemplated in paragraph 4.8 or 4.9(b) of Chapter 4.1 (*Service Development*) occur.
- 9.8 A change to the Train Service Requirement previously in force pursuant to the issue of an amended or new Train Service Requirement in accordance with paragraph 8 (*Development of Proposals for Passenger Service Enhancements*) of Chapter 4.1 (*Service Development*).
- 9.9 The Operator being required to take any action pursuant to paragraph 11.1(a) and/or paragraph 11.1(b) (*Provisions relating to Access Agreements and Property Leases*) of Chapter 4.1 (*Service Development*).
- 9.10 The Parties agree to vary the contents of the Service Quality Regime in accordance with the provisions of paragraph 18.1 (*Variations to the Service Quality Regime*) of Chapter 5.5 (*Customer Experience Performance*).
- 9.11 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 as referred to in paragraph 3 (*Discount Fare Schemes*) of Chapter 8.2.8 (*Transport, Travel and Other Schemes*).
- 9.12 The Secretary of State approves or consents to an amendment or proposed amendment to an Inter-Operator Scheme, as referred to in paragraph 4.5 (*Inter-Operator Schemes*) of Chapter 8.2.8 (*Transport, Travel and Other Schemes*).
- 9.13 The imposition, subject to the provisions paragraph 2.6 (*Physical Alterations and Accessibility Of Stations*) of Chapter 5.3 (*Accessibility and Inclusivity*), of any increased access charges in respect of EA Requirements at Operator Access Stations.
- 9.14 A Business Plan Revision is agreed or determined under paragraph 6 of Chapter 7.7 (*Business Plan*).
- 9.15 The Secretary of State exercises the Secretary of State's power pursuant to paragraph 5 (*Changes to Fares Regulation*) of Part B to Chapter 8.2.5 (*Changes to Fares and Fares Regulation*) to alter the obligations of and restrictions on the Operator under Chapter 8.2 (*Fares*).
- 9.16 The Operator 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.
- 9.17 The Secretary of State issues a direction to the Operator under paragraph 10.1(b) (*Cascaded Rolling Stock and Delayed Cascade Mitigation Plan*) of Chapter 9.1 (Fixed Assets) occur.
- 9.18 The delay or non-delivery of an item of expenditure or a group of items of similar expenditure where the timing of expenditure or revenue being recognised is materially different from that

included in the Modelling Suite used to derive the contents of the Target Profit Template most recently Placed in Escrow.

- 9.19 The Secretary of State requires the use of a different or amended rolling stock fleet for delivering the Services.
- 9.20 The Secretary of State or the Infrastructure Manager requires the Operator to operate the Passenger Services to a specification that is materially different compared to the specification that was assumed when the relevant Amendable Financial Target was established.
10. **Other Profit Financial Target Amendment Events**
- 10.1 A **Profit Financial Target Amendment Event** shall also occur if:
- (a) either Party notifies the other of an event listed in paragraphs 10.2 to 10.3 below; and
 - (b) the Parties agree or the Secretary of State (taking into account the information available to the Secretary of State including any evidence provided by the Operator) determines that such occurrence shall be a Profit Financial Target Amendment Event (and any such determination shall be subject to the Determination Escalation Process).
- 10.2 An event or other significant factor (which is not listed in paragraph 9 of Appendix 1 to this Chapter 7.5 (*Variations, Changes and Amendments*)) occurs:
- (a) which is outside the control of the Operator and/or any of its Affiliates; and
 - (b) which causes a requirement to amend the applicable Amendable Financial Target to ensure that the Operator is no more and no less likely to achieve the amend the applicable Amendable Financial Target than if such event or factor had not occurred.
- 10.3 Either Party identifies a contractually committed opportunity for additional revenue for the sale of goods and/or services to another party on a profitable basis, which would require an amendment to the applicable Amendable Financial Target to ensure that the Operator is no more and no less likely to achieve the Amendable Financial Target than if such event had not occurred.

Chapter 7.6

Railways Pension Scheme

1. Definitions

Unless otherwise defined in this Contract, terms used in this Chapter 7.6 shall have the meanings given to them in the Railways Pension Scheme.

2. Operator Pensions Sections

The Operator shall participate in and become the Designated Employer in relation to the Shared Cost Sections of the Railways Pension Scheme as specified in Appendix 1 to this Chapter 7.6 (together the “**Operator Pension Sections**”) in respect of the Rail Services. Subject to paragraphs 3 and 4.2(d) membership of an Operator Pension Section will be offered to each employee of the Operator only.

3. Closed Schemes

3.1 Subject to any requirements of HM Revenue & Customs, the Operator shall take any necessary steps (including entering into any relevant deed of participation) to allow Closed Scheme Employees to continue in membership of the British Railways Superannuation Fund or the BR (1974) Pension Fund in accordance with their terms during the Contract Period.

3.2 For the purposes of this paragraph 3, “**Closed Scheme Employees**” means such of the employees of the Operator who were, immediately prior to the commencement of their employment with the Operator, members of either of the British Railways Superannuation Fund or the BR (1974) Pension Fund.

4. Variations in benefits, contributions and investment

4.1 If the Operator is considering making a proposal that falls within the scope of paragraphs 4.2(a) to 4.2(g) inclusive, it shall promptly consult with the Secretary of State in relation to that proposal prior to putting such a proposal to the Pensions Committee of any Operator Pension Section, the Trustee of the Railways Pension Scheme (the “**Trustee**”), or to any trade union. The Operator must otherwise consult in good time with the Secretary of State in relation to any proposal falling within the scope of paragraphs 4.2(a) to 4.2(g) inclusive.

4.2 Separately and in addition to complying with its obligations under paragraph 4.1, the Operator shall not, without the prior written consent of the Secretary of State (which may be given on such terms and subject to such conditions as the Secretary of State thinks fit):

- (a) restructure or change the composition of the earnings of employees of the Operator in such a way as to increase the part of those earnings which qualifies as pensionable earnings under the rules of the Railways Pension Scheme applicable to any Operator Pension Section (the “**Operator Pension Section Rules**”) or take any action (or consent to the taking of any action) which could detrimentally affect the funding of any Operator Pension Section, including varying or providing different or additional benefits under that Operator Pension Section or promising to do so, unless this change:
 - (i) is required by Law; or
 - (ii) only affects benefits payable in respect of past service of members of that Operator Pension Section and on or prior to the effective date of the change the Operator pays an additional cash payment to the Trustee which, in the opinion of the Actuary, meets in full the additional funding cost imposed on that Operator Pension Section; or
 - (iii) would not lead to substantial changes in the funding of any Operator Pension Section and is the result of the normal application of the Operator Pension Section Rules in the ordinary day to day running of the business of the Rail Services, for example, where individual employees are, from time to time promoted or transferred to higher paid or different employment which has a different composition of earnings;

- (b) make or consent to any proposal to change any of the provisions of the Pension Trust in respect of the Operator Pension Sections unless the change is required by Law;
 - (c) provide retirement, death or life assurance benefits in respect of any of its employees other than under any Operator Pension Section or as provided in paragraph 3;
 - (d) omit to provide the above-mentioned benefits in respect of its employees save that, without prejudice to any rights which any such employee may otherwise have, the Operator shall not under this Chapter 7.6 be obliged for the purposes of this Contract to offer such benefits to any employee employed on a fixed term contract of twelve (12) months or less;
 - (e) take any action (or consent to the taking of any action) which could affect the contributions payable by Participating Employers under any Operator Pension Section, including exercising any discretion allowed to the Operator as Designated Employer arising out of any actuarial valuation of an Operator Pension Section, and varying or providing different or additional benefits under the Operator Pension Sections in respect of future service, unless such action is required by Law;
 - (f) close an Operator Pension Section to new members; or
 - (g) take (or omit to take) any action which could result in any Operator Pension Section being wound up, in whole or in part.
- 4.3 The Operator shall consult with the Secretary of State on:
- (a) any proposal made by the Trustee to change the statement of investment principles applicable to any Operator Pension Section; and
 - (b) any proposal to alter the rate of contributions payable by the Operator or its employees under a new schedule of contributions for the Operator Pension Section.
- 4.4 With respect to any proposal falling within the scope of paragraph 4.3(a) or 4.3(b), the Operator shall also consult with the Trustee on the basis of any response it receives from the Secretary of State in relation to any such proposal.
- 5. Funding Liabilities**
- 5.1 The Operator shall pay the employer contributions required under the schedule of contributions applicable to each Operator Pension Section (or either of the British Railways Superannuation Fund or the BR (1974) Pension Fund in which it participates) in respect of the Contract Term subject to the provisions of paragraph 5.2 below.
- 5.2 Where, during the Contract Term, Rail Services are aggregated or disaggregated by the Secretary of State (for example, as a result of remapping) and, as a consequence, an Operator Pension Section of which the Operator is the Designated Employer is required to accept a transfer in or to make a transfer out of members, the Secretary of State shall ensure that the Operator has no liability for any resulting deterioration immediately arising in the funding level of the Operator Pension Section measured in accordance with the Operator Pension Sections' technical provisions in Part 3 of the Pensions Act 2004, or for any amount arising under Article 7(4) of the Railway Pensions (Protection and Designation of Schemes) Order 1994. Notwithstanding the above the Secretary of State shall have no liability for any future deterioration in the funding levels of the Operator Pension Section linked to such transfer in or out of members.
- 6. Discharge of Obligations**
- 6.1 The Secretary of State may at any time during the Contract Term seek information from the Trustee with a view to satisfying himself that the Operator and the other Participating Employers (if any) have fully discharged their respective obligations under the Railways Pension Scheme, including their obligations in respect of the payment of contributions to any Operator Pension Section.
- 6.2 The Operator shall promptly provide such information in relation to any Operator Pension Section, including actuarial advice and information, as the Secretary of State may from time to time request and shall authorise and consent to the Trustee doing so.

6.3 The Operator shall, in respect of the Contract Term, use all reasonable endeavours to provide to the Secretary of State:

- (a) within one (1) month of the expiry of each Contract Year; and
- (b) at other times as soon as practicable following a request by the Secretary of State, a certificate signed by the Trustee in relation to the Operator Pension Sections stating either that the Operator has fully complied with its obligations under the Railways Pension Scheme, including its obligation to contribute to the Operator Pension Sections or, if it has not so complied, stating the extent to which it has not done so. Where the certificate is given pursuant to paragraph 6.3(a), it shall cover the relevant Contract Year. Where the certificate has been given pursuant to paragraph 6.3(b), it shall cover such period as the Secretary of State shall specify.

7. **Termination of this Contract**

The Secretary of State shall at the end of the Contract Period ensure that the Operator has no liability for any deficit in the Operator Pension Sections (other than for contributions due and payable by the Operator to the Operator Pension Sections for any period prior to the end of the Contract Term) and shall have no right to benefit from any surplus which may exist in the Operator Pension Sections. For the avoidance of doubt, this paragraph 7 shall apply where the Rail Services are either aggregated or disaggregated (for example, as a result of remapping).

8. **Operator Obligations to Participate in any Investigation and Reform**

8.1 The Operator shall:

- (a) act in good faith and in a Reasonable Commercial Manner at all times; and
- (b) engage appropriately with the RDG, the Pensions Regulator and the relevant trade unions,

in discharging its obligations under paragraph 8.2 of this Chapter 7.6.

8.2 The Operator shall use all reasonable endeavours to participate in:

- (a) the development and implementation of the RDG's response to the current and any future Investigation and the associated concerns raised by the Pensions Regulator regarding those sections of the Railways Pension Scheme for which a Train Operator is the designated employer;
- (b) any Investigation concerning one or more of the Operator Pension Sections, in which case the Operator shall use all reasonable endeavours to achieve an outcome from that Investigation with which a reasonable Train Operator, who was in the position of the Operator and acting in a Reasonable Commercial Manner, would be satisfied; and
- (c) any industry wide efforts to reform the pension arrangements or benefits payable under the Railways Pension Scheme or offered to employees of Train Operators, recognising the need for the British passenger rail industry to be affordable and offer value for money in the interests of relevant stakeholders including taxpayers.

9. **Information Powers**

Where required by the Secretary of State, the Operator agrees to allow the Secretary of State or the Secretary of State's representatives to attend any meeting between the Operator and the Trustee and/or the Pensions Regulator where the meeting in whole or part relates to matters to which paragraph 8 or 10 of this Chapter 7.6 applies.

10. **Pension Directions by the Secretary of State**

10.1 The Secretary of State may, at any time, by written notice to the Operator, direct that the Operator take such action in relation to pensions for employees and workers of the Operator as the Secretary of State may (at the discretion of the Secretary of State) determine. The Secretary of State may consult with the Operator before issuing any such direction under this paragraph 10. The Secretary of State may issue more than one direction to the Operator under this paragraph 10.

- 10.2 Without limiting the generality of paragraph 10.1, such directions may include:
- (a) directing the Operator to propose a schedule of contributions or recovery plan to the Trustee of the Railways Pension Scheme incorporating such employer and employee contributions and over such period as the Secretary of State may determine;
 - (b) directing the Operator to offer such alternative pension arrangements to employees or workers of the Operator as the Secretary of State may determine; and
 - (c) directing the Operator to make proposals to the Trustee of the Railways Pension Scheme in relation to benefits, contributions or investments.
- 10.3 Where the Operator receives a direction under paragraph 10.1, the Operator will use all reasonable endeavours to implement the direction and to work in good faith and act in a Reasonable Commercial Manner with other parties to give effect to the direction.
- 10.4 To the extent that the terms of any direction given under paragraph 10.1 conflict with any of the other terms of this Chapter 7.6, the terms of the direction shall prevail to the extent of that inconsistency.
- 10.5 The Operator will provide the Secretary of State with any documents or information which it may request in connection with any matter which is relevant to the subject of any direction given under paragraph 10.1 or its implementation.
- 10.6 Nothing in this paragraph 10 shall require the Operator to breach any legal obligation to which it is subject. Where the Operator reasonably considers that the implementation of any aspect of the direction will cause it to breach any legal obligation of the Operator the Secretary of State shall work in cooperation with the Operator with a view to agreeing an approach to discuss changes to avoid or otherwise mitigate the risk of such breach.

APPENDIX 1 TO CHAPTER 7.6

List of Shared Costs Sections

Shared Costs Sections	
Section	Employer
West Coast Partnership	Operator

Chapter 7.7

Business Plan

1. Contents of the Business Plan

1.1 Unless the Secretary of State specifies otherwise in any Request for Business Plan, each Business Plan shall include:

- (a) the following components (the “**Core Business Plan Components**”):
 - (i) Leadership, Management and Resourcing Plan;
 - (ii) People Plan;
 - (iii) Collaboration Plan;
 - (iv) Train Service Operations Plan;
 - (v) Customer & Communities Plan;
 - (vi) Revenue Plan;
 - (vii) Environment and Sustainability Plan;
 - (viii) Accessibility Plan; and
 - (ix) any additional component as specified by the Secretary of State in any Request for Business Plan;
- (b) the Financial Plan;
- (c) the Annual PBF Specifications;
- (d) components relating to the delivery of the Shadow Operator Services (the “**Shadow Operator Business Plan Components**”); and
- (e) a resourcing plan setting out the resources which the Operator will use to deliver the Shadow Operator Services in the relevant Business Plan Year:
 - (i) including a breakdown of whether the resources will be sourced from Business Employees (and whether such Business Employees are employed on a permanent or fixed-term basis), the Consultancy Affiliates, secondments from Affiliates (excluding the Consultancy Affiliates), consultants from Affiliates (excluding the Consultancy Affiliates) or third party contractors;
 - (ii) how the resources will be allocated between the Shadow Operator Cost Categories and each Accepted Programme Specific Requirement and/or Transitional Programme Specific Requirement;
 - (iii) an explanation and justification for the type, number and source of the proposed resources; and
 - (iv) where any consultants or secondments are being provided from TOC Affiliates, details of any proposed backfilling of such roles and, in particular, where the backfill will be sourced from an Affiliate, why the individual undertaking the backfill is not being assigned directly to the Operator to undertake Shadow Operator Services,
 (the “**Shadow Operator Resourcing Plan**”),

and shall otherwise be in such form as may be specified in the relevant Request for Business Plan.

1.2 Unless the Secretary of State specifies otherwise in any Request for Business Plan, each Business Plan Component shall include:

- (a) an Outline Business Plan with respect to such Business Plan Component in relation to the relevant Business Plan Period; and
- (b) clearly identified:

- (i) Business Plan Commitments;
- (ii) Business Plan KPIs,

together with the Business Plan Approach, in each case with respect to such Business Plan Component.

1.3 Unless the Secretary of State specifies otherwise in any Request for Business Plan, the Financial Plan shall include:

- (a) evidence and explanation of the analysis carried out by the Operator (including appropriate benchmarking evidence and identification of efficiencies) to support the content of the Escrow Documents with respect to the relevant Business Plan Year to which the Business Plan relates;
- (b) a statement from a statutory director of the Operator confirming that the Escrow Documents delivered pursuant to paragraph 3.4 of this Chapter 7.7 (*Business Plan*) have been prepared in accordance with the requirements of the Contract and the Request for Business Plan;
- (c) a statement from each of a statutory director of the Operator and a statutory director of each Parent confirming that the Cost Budget has been provided to, considered and endorsed by the board of directors of each Parent and that the board of directors of each Parent is not aware of any other plan which may alter, vary or impact on the Business Plan and shall at any time during the following twelve (12) months notify the Secretary of State should any of them become aware of any such plan;
- (d) a forecast of the Operator's Forecast Closing Cash Position for the last day of each of the Reporting Periods in the relevant Business Plan Year;
- (e) a statement demonstrating how the Operator intends to ensure that at the end of each of the Reporting Periods in the relevant Business Plan Year it will have an available Forecast Closing Cash Position which is not less than the Floor Cash Position;
- (f) a forecast of the amount of Working Capital Payment or Working Capital Repayment (if any) that the Operator forecasts that it will require or be capable of repaying pursuant to paragraphs 10 (*Working Capital Payments*) or 11 (*Working Capital Repayment*) of Chapter 7.1 (*Contract Payments*) in the relevant Business Plan Year;
- (g) details of any new technologies, processes, developments and/or proposals which could improve the provision of the Rail Services, reduce the cost of providing the Rail Services or enable the Rail Services to be provided more efficiently together with confirmation that the implementation of any such new technologies, processes, developments and proposals would comply with all the requirements of this Contract (including, where applicable, the requirements of paragraphs 8.6 and 8.7 (*Affiliate Trading*) of Chapter 7.1 (*Contract Payments*));
- (h) an analysis of the impact of any technologies, processes, developments and/or proposals that are proposed in relation to the Rail Services, including analyses of the costs of and timescale for effecting such changes and the impact on the provision of the Rail Services;
- (i) details of those technologies, processes, developments and/or proposals which the Operator proposes to implement during that Business Plan Year together with confirmation that such technologies, processes, developments and/or proposals will comply with all the requirements of this Contract (including, where applicable, the requirements of paragraphs 8.6 and 8.7 (*Affiliate Trading*) of Chapter 7.1 (*Contract Payments*));
- (j) an analysis of the technologies, processes, developments and/or proposals which the Operator implemented in the previous Business Plan Year, including details of any cost reductions and/or efficiency gains arising from the same and a reconciliation to the annual improvement plan for the previous Business Plan Year;
- (k) a "**Cost Efficiency Analysis**", including:
 - (i) a year-to-year bridge bar chart analysis showing the trend in costs for each Cost Category identifying the differences between:

- (A) the previous Business Plan Year's Actual Costs; and
 - (B) the Quarterly Forecast as at the end of the 9th Reporting Period for current Business Plan Year forecast costs; and
 - (C) the proposed Cost Budget for the Business Plan Year for which the Financial Plan applies; and
 - (D) if applicable, any proposed Target Cost or any cost component of the Target Profit, for the Business Plan Year for which the Financial Plan applies;
- (ii) an analysis of each Cost Category in the proposed Cost Budget for the Business Plan Year for which the Financial Plan applies, explaining the trends in each area by attributing them to:
 - (A) changes in required or business plan outputs;
 - (B) changes in the efficiency of resource volumes; or
 - (C) changes in market prices for materials, services and human resources;
 - (iii) benchmarking research and analysis of all key resource volumes in each cost category against other relevant businesses in the UK and overseas, key operational/output metrics. This should not be limited to the other operations of the Operator or its Affiliates, and the Operator should use all reasonable endeavours to gain intelligence on other rail, bus and transit operations to the extent relevant;
 - (iv) market testing and research on the prevailing market prices for all key categories of materials, services and human resources to be employed in delivering the Business Plan;
 - (v) conclusions on current and potential future cost efficiency in each Cost Category, envisaging opportunities arising from emerging innovations, technological advancement and changes to industry practices, as well as seeking to re-optimize cost efficiency where the level of outputs is changed;
 - (vi) a strategic plan for maintaining / improving cost efficiency over the long term. This should set out target efficiency trends for the Business Plan Year for which the Financial Plan applies and the following four (4) years and approaches to meeting those targets with evidence that these are realistic and deliverable. It should include a demonstration that the proposed Target Cost and Cost Budget are consistent with this plan in terms of progress for the Business Plan Year for which the Financial Plan applies;
 - (vii) an explanation of costs included in the Cost Budget for planned revenue growth initiatives, as well as benchmarking and other analysis of how these initiatives represent value for money by delivering a positive revenue return, which is reflected in the Forecast Revenue and (if applicable) the proposed Target Revenue;
 - (viii) an explanation (using benchmarking and other analysis required in the Financial Plan) of the rationale for each of the proposed Target Cost Maximum Fee Performance Level, Target Cost Nil Fee Performance Level, Target Revenue Maximum Fee Performance Level, Target Revenue Nil Fee Performance Level, Target Profit Maximum Fee Performance Level and Target Profit Nil Fee Performance Level, as applicable pursuant to paragraph 3 (*Financial Targets*) of Chapter 7.2 (*Performance Based Fee and Shadow Operator Performance Based Fee*); and
 - (ix) an analytical cost bridge which shows the movement in the costs relating to the Shadow Operator Services from the Cost Budget currently Placed in Escrow, both at the level of the Shadow Operator Cost Categories and broken down to show the costs which are expected to be incurred in undertaking each Accepted Programme Specific Requirement and Transitional Programme Specific Requirement in accordance with the draft Shadow Operator Programmes submitted in response to the Request for Business Plan and broken down to such other level as the Secretary of State requests in the Request for Business Plan. The bridge should provide a

clear explanation of reasons for changes in any costs and set out any changes in the assumptions which have caused the change in costs; and

- (I) information in relation to arrangements with Affiliates, including:
 - (A) a forecast of payments to or from any Affiliate, crossed referenced to the relevant Cost Categories in the Cost Budget where such forecast payments are shown;
 - (B) a forecast of fees, remuneration, pension contributions or any other payment to or in respect of any director or officer of the Operator, crossed referenced to the relevant Cost Categories in the Cost Budget where such forecast payments are shown; and
 - (C) evidence that all such payments are compliant with the terms of this Contract, including the provisions of paragraphs 8.6 (*Affiliate Trading*) of Chapter 7.1 (*Contract Payments*).
- 1.4 For the avoidance of doubt, the Escrow Documents and the Shadow Operator Programmes shall not form part of the Business Plan.
- 1.5 For the avoidance of doubt, to the extent that the Escrow Documents for a relevant Business Plan Year cover any period of time following the expiry of this Contract, such parts of the Escrow Documents shall be for information purposes only and shall not in any circumstances be used in the calculation of the Contract Payment pursuant to Chapter 7.1 (*Contract Payments*).
- 1.6 The Parties agree that any costs relating to the activities in the Transitional Programme (including costs relating to any necessary training to enable staff to deliver High Speed Services, employing any drivers specifically in relation to High Speed Services, testing, commissioning, maintaining and leasing rolling stock intended for use in High Speed Services) shall be recorded in the Shadow Operator Cost Categories of the Cost Budget.
- 2. Initial Business Plan**
- 2.1 Prior to the date of this Contract, the Parties agreed the Business Plan with respect to the Initial Business Plan Year.
- 3. Annual Business Plan Process**
- 3.1 By no later than the 30 September falling prior to the commencement of each Subsequent Business Plan Year, the Secretary of State shall provide the Operator with a Request for Business Plan with respect to such Subsequent Business Plan Year.
- 3.2 In the Request for Business Plan with respect to the Final Full Year, the Secretary of State may instruct the Operator that the duration of the final Subsequent Business Plan Year shall be the Extended Final Year.
- 3.3 Following the Secretary of State's provision of any Request for Business Plan in accordance with paragraph 3.1 above, such Request for Business Plan may be updated or revised from time to time by agreement between the Parties (each acting in a timely manner) or as directed by the Secretary of State.
- 3.4 Following receipt of the Request for Business Plan with respect to any Subsequent Business Plan Year, the Operator shall deliver to the Secretary of State a draft Business Plan and draft versions of the Escrow Documents in respect of such Subsequent Business Plan Year and draft Shadow Operator Programmes, on or before the 15 December falling prior to the commencement of such Subsequent Business Plan Year, which:
- (a) comply with the requirements of such Request for Business Plan;
 - (b) ensure that, by the end of such Subsequent Business Plan Year, the Operator would be in a position to be able to meet the requirements of the Outline Business Plan (as set out in such draft Business Plan) and the Shadow Operator Programmes;
 - (c) in respect of the Cost Budget and the Forecast Revenue, complies with the requirements set out in paragraph 7 (*Format and Content of the Cost Budget and Forecast Revenue*) of Chapter 7.1 (*Contract Payments*); and

- (d) in respect of the Shadow Operator Programmes comply with the requirements set out in paragraph 3 of Appendix 1 (*Shadow Operator Programmes*) to this Chapter 7.7.
- 3.5 The Parties, each acting through sufficiently senior representatives, shall each use all reasonable endeavours to agree the Business Plan and the Escrow Documents with respect to each Subsequent Business Plan Year, and the Shadow Operator Programmes, in a timely manner and, in any event, on or before the 28 February falling prior to the commencement of such Subsequent Business Plan Year. During such period, the Operator shall comply, in a timely manner, with any written requests made by the Secretary of State that the Operator:
- (a) provide further detail or evidence in relation to the draft Business Plan, draft Escrow Documents and/or draft Shadow Operator Programmes delivered in accordance with paragraph 3.4; and/or
 - (b) amend the draft Business Plan, draft Escrow Documents and/or draft Shadow Operator Programmes in accordance with the Secretary of State's requirements (including any requirement of the Secretary of State that the duration of the final Subsequent Business Plan Year shall be the Extended Final Year) and provide the amended draft(s) to the Secretary of State.
- 3.6 In the event that (pursuant to paragraph 3 (*Financial Targets*) of Chapter 7.2 (*Performance Based Fee and Shadow Operator Performance Based Fee*) any Amendable Financial Targets are to be agreed as part of the Escrow Documents, the relevant provisions of paragraph 3 (*Financial Targets*) of Chapter 7.2 (*Performance Based Fee and Shadow Operator Performance Based Fee*) shall apply in respect of the agreement or determination of such Amendable Financial Targets, in addition to the provisions of this paragraph 3 (*Annual Business Plan Process*) of Chapter 7.7 (*Business Plan*).
- 3.7 To the extent that the Parties do not agree the Business Plan and/or Escrow Documents with respect to any Subsequent Business Plan Year and/or the Shadow Operator Programmes on or before the 28 February falling prior to the commencement of such Subsequent Business Plan Year, the Secretary of State may reasonably determine the content of such Business Plan, Escrow Documents and/or Shadow Operator Programmes, and provide the Operator with written notice of the determined Business Plan, Escrow Documents and/or Shadow Operator Programmes. Any Secretary of State determination pursuant to this paragraph 3.7 shall be subject to the Determination Escalation Process.
- 3.8 In considering or determining the draft Business Plan, Escrow Documents or Shadow Operator Programmes, the Secretary of State shall (*inter alia*) take account of:
- (a) the Operator's obligations to perform the Rail Services in accordance with the provisions of the Contract; and
 - (b) the ability of a Good and Efficient Operator to deliver the Business Plan Commitments, having regard to the associated Cost Budget with respect to the relevant Business Plan Year.
- 3.9 Once agreed or determined in accordance with this paragraph 3 (*Annual Business Plan Process*) of Chapter 7.7 (*Business Plan*), such Business Plan and Escrow Documents shall apply in respect of the relevant Subsequent Business Plan Year to which they relate.
- 4. Business Plan Commitments**
- 4.1 In each Business Plan Year, the Operator shall deliver the Business Plan Commitments in accordance with the Business Plan with respect to such Business Plan Year.
- 4.2 If the Secretary of State considers that the Operator is likely to fail to deliver any Business Plan Commitment, the Secretary of State may give notice to the Operator requiring the Operator to perform or deliver such relevant requirements of the Business Plan Approach as the Secretary of State may determine (to the extent that the Business Plan Approach relates to the performance of the relevant Business Plan Commitment).
- 4.3 If the Operator fails to perform or deliver any relevant requirement of the Business Plan Approach as the Secretary of State may specify in a notice to the Operator in accordance with paragraph 4.2, this shall constitute a contravention of the Contract.

4.4 Any requirement for the Operator to perform or deliver relevant requirements of the Business Plan Approach pursuant to paragraph 4.2 shall not entitle the Operator to any adjustment to the Cost Budget.

4.5 **Continuation of Availability**

(a) Where the Operator is obliged pursuant to any Business Plan Commitment for any Business Plan Year to provide, implement or install something (whether a service, facility or otherwise) the Operator shall ensure that once the same is provided, implemented or installed that it continues to be provided and made available (and where relevant, effectively maintained) for the remainder of the Contract Term unless the contrary is instructed by the Secretary of State or expressly stated.

(b) Where the Business Plan Commitments include a commitment:

(i) regarding the maintenance of certain facilities or activities or other similar analogous matters which are the subject of the Business Plan Commitments, the Operator shall not be regarded as having contravened the relevant obligation due to any temporary non-availability of the facility or activity (as the case may be) due to accidental damage or vandalism or maintenance, repair or replacement activities; or

(ii) regarding staffing requirements or particular appointments the Operator is required to make and maintain, the obligation of the Operator shall not be regarded as being contravened by:

(A) temporary absences (for example for sickness or holiday); or

(B) temporary non-fulfilment of a relevant post whilst the Operator is recruiting for that post,

providing always that the Operator is using all reasonable endeavours to keep the duration of any (1) non-availability of a facility or activity or (2) vacant or unfulfilled post or appointment (as the case may be) as short as practicable.

4.6 **Expenditure Commitment**

(a) Annual Expenditure

Where a Business Plan Commitment provides for the expenditure of an annual amount (or an amount over some other period) by the Operator, that amount:

(i) is assessed net of Value Added Tax; and

(ii) is the amount required to be expended by the Operator itself or procured by the Operator to be expended.

(b) Expenditure Commitments in nominal amounts

All Business Plan Commitments related to expenditure shall be expressed in nominal terms with respect to the relevant Business Plan Year in which such Business Plan Commitments are to be delivered.

4.7 **Nature of Business Plan Commitment**

(a) Any Business Plan Commitment shall be in addition to any obligation of the Operator elsewhere in the National Rail Contract and nothing in this Chapter 7.7 (*Business Plan*) or in any Business Plan Commitment shall limit or restrict an obligation imposed on the Operator elsewhere in the National Rail Contract.

(b) Save as expressly provided in the relevant Business Plan, each Business Plan Commitment is a separate obligation from any other Business Plan Commitment and satisfaction of or steps taken towards the satisfaction of one Business Plan Commitment will not amount to or contribute towards satisfaction of any other Business Plan Commitment.

(c) Where in the relevant Business Plan, references are made to particular:

- (i) manufacturers or suppliers of equipment or services, the Operator may fulfil its relevant commitment by using reasonable equivalents; or
- (ii) stakeholders, the Operator may fulfil its relevant commitment with reference to successor bodies to the relevant stakeholder.

4.8 **Consequences of Late Completion or Non-Delivery of Business Plan Commitments**

If the Operator fails to deliver in full a Business Plan Commitment in accordance with, and by the timeframe specified for its delivery in, the relevant Business Plan, such late, partial or non-delivery shall constitute a contravention of the Contract.

4.9 **Obligations on Delivery of a Business Plan Commitment**

By no later than thirty (30) days after the date of delivery of a Business Plan Commitment the Operator shall provide to the Secretary of State a certificate (in such form as may be specified by the Secretary of State from time to time) signed by a statutory director of the Operator confirming that such Business Plan Commitment has been delivered in full and in accordance with its terms. Any supporting information as may be requested by the Secretary of State from time to time shall be provided by the Operator as soon as practicable, and in any event within such period as the Secretary of State may specify.

5. **Business Plan KPIs**

5.1 In each Business Plan Year, the Operator shall use all reasonable endeavours to achieve the Business Plan KPIs set out in the Business Plan with respect to such Business Plan Year.

5.2 **Business Plan KPI Performance Review**

- (a) The Operator shall report on its performance against the Business Plan KPIs to the Secretary of State in accordance with paragraph 5 (*Periodic Update Reports*) of Chapter 1.1 (*Organisation and Management*).
- (b) At each Contract Performance Meeting during each Business Plan Year, the Secretary of State and the Operator shall discuss the Operator's performance against the Business Plan KPIs set out in the Business Plan with respect to such Business Plan Year.
- (c) If the Operator has failed (or the Secretary of State considers that the Operator is likely to fail) to meet any relevant target for any Business Plan KPI then the Secretary of State shall notify the Operator of such failure and shall be entitled to:
 - (i) request from the Operator a Business Plan KPI Improvement Plan in order to enable the Operator to meet such Business Plan KPIs; and/or
 - (ii) require that the Operator performs or delivers any relevant requirements of the Business Plan Approach as the Secretary of State may determine (to the extent that the Business Plan Approach relates to the performance of the relevant Business Plan KPI), during such time as the plan referred to under paragraph 5.2(c)(i) is developed and implemented, and/or for the remainder of the Business Plan Year. Any such requirement for the Operator to perform or deliver relevant requirements of the Business Plan Approach shall not entitle the Operator to any adjustment to the Cost Budget.

5.3 **Business Plan KPI Improvement Plan**

As soon as practicable following receipt of the Secretary of State's request pursuant to paragraph 5.2(c)(i) (or within such longer period as may be agreed by the Secretary of State), the Operator shall prepare and deliver to the Secretary of State its draft improvement plan for meeting the Business Plan KPIs which shall:

- (a) contain specific tangible action points and indicate in the case of each action point:
 - (i) how that action will contribute to meeting the relevant Business Plan KPI;
 - (ii) where the action is to be implemented;
 - (iii) the proposed timescales for implementing such action and, where any action is expressed to be ongoing, proposed review dates; and

- (iv) how the Operator proposes to measure the performance of the action; and
 - (b) the additional expenditure associated with each action.
- 5.4 The Parties shall seek to agree the draft improvement plan for meeting the Business Plan KPIs as soon as practicable. In the event that the Parties are unable to agree such draft improvement plan by such time as the Secretary of State may require, the Secretary of State shall be entitled to determine the content of the draft improvement plan.
- 5.5 The draft improvement plan as agreed or determined by the Secretary of State (as the case may be) in accordance with paragraph 5.4 shall be referred to as the “**Business Plan KPI Improvement Plan**”. The Operator shall implement the Business Plan KPI Improvement Plan in accordance with its terms and the agreement or determination of the Business Plan KPI Improvement Plan shall be a Cost Budget Change Event, provided that any action point that would require the Operator to perform or deliver relevant requirements of the Business Plan Approach shall not entitle the Operator to any adjustment to the Cost Budget.

6. Business Plan Revisions

6.1 Subject always to the provisions relating to Cost Budget Changes, Financial Target Amendments and Operational Performance Amendments set out in Chapter 7.5 (*Variations, Changes and Amendments*) (including any changes to the methodologies, targets and criteria applicable to calculation of the Performance Based Fee in Chapter 7.2 (*Performance Based Fee and Shadow Operator Performance Based Fee*):

- (a) at the first Periodic Finance Review Meeting in each Quarter, the Parties shall seek to agree (each acting in a timely manner) any revisions to the then current Business Plan as may be necessary in order to properly reflect the impact of any Cost Budget Changes, Financial Target Amendments and Operational Performance Amendments as may be agreed or determined in accordance with Chapter 7.5 (*Variations, Changes and Amendments*);
- (b) if the Secretary of State exercises the Secretary of State’s rights pursuant to clause 2.2 (*Expiry on or after the Core Term Expiry Date*) to specify an Expiry Date of the National Rail Contract which falls within a Business Plan Year in respect of which the relevant Business Plan has previously been agreed or determined in accordance with paragraph 3 (*Annual Business Plan Process*) of this Chapter 7.7 (*Business Plan*), the Parties shall seek to agree (each acting in a timely manner) any revisions to such Business Plan as may be necessary as a result of, or reasonably consequential upon, the impact of such earlier Expiry Date;
- (c) if the Secretary of State notifies the Operator that the Secretary of State is minded to require the Business Plan to apply in respect of an Extended Final Year, and the Business Plan with respect to the Final Full Year has previously been agreed or determined in accordance with paragraph 3 (*Annual Business Plan Process*) of this Chapter 7.7 (*Business Plan*), the Parties shall seek to agree (each acting in a timely manner):
 - (i) any supplements or revisions to such Business Plan as may be necessary in order for such Business Plan to apply in respect of the Extended Final Year;
 - (ii) the Cost Budget that shall apply in relation to each of the additional Reporting Periods now comprised within the Extended Final Year; and
 - (iii) any other revisions to the Escrow Documents that may be reasonably necessary in consequence of the application of an Extended Final Year and the agreement or determination of the Cost Budget as described in paragraph (ii) above,

and in each case, changes to the Cost Budget (and its Cost Categories) and/or the Escrow Documents shall be agreed between the Parties or determined at the Secretary of State’s discretion (and any such determination shall be subject to the Determination Escalation Process), provided that (to the extent practicable) the Secretary of State shall act reasonably and shall not make such a determination without first consulting with, and taking due regard of any views of, the Operator, (and, for the avoidance of doubt, any such change to the Cost Budget (and its Cost Categories) and/or the Escrow Documents shall not be a Trigger Event pursuant to paragraph 2.9 (*Cost Budget Change Events*) of

Chapter 7.5 (*Variations, Changes and Amendments*) or paragraph 1.27 of Appendix 1 (*Trigger Events*) to Chapter 7.5 (*Variations, Changes and Amendments*)); and

- (d) either Party may from time to time propose, by notice to the other Party, that revisions may be made to the then current Business Plan,

and in each case, revisions to the then current Business Plan may be agreed between the Parties or determined at the Secretary of State's discretion (and any such determination shall be subject to the Determination Escalation Process), provided that (to the extent practicable) the Secretary of State shall act reasonably and shall not make such a determination without first consulting with, and taking due regard of any views of, the Operator, any such revision being a "**Business Plan Revision**" for the purposes of this Contract.

- 6.2 The Operator's performance and progress against the Business Plan will be reviewed in particular at each Contract Performance Meeting and in the first Periodic Finance Review Meeting in each Quarter. No later than ten (10) Weekdays after the start of each Quarter (save for the first Quarter in each Contract Year), the Operator shall:
- (a) provide an updated version of the Quarterly Forecast for the then current Business Plan Year and for the following four (4) years, which would not automatically override any Amendable Financial Targets (if used) or the Cost Budget;
 - (b) set out the progress it has made against its obligations under this Contract, Business Plan Commitments and Business Plan KPIs; and
 - (c) outline any material deviations from the Business Plan Approach.
7. **Industry Change Projects**
- 7.1 Without prejudice to paragraph 3 (*Annual Business Plan Process*) of this Chapter 7.7, the Operator may give notice to the Secretary of State from time to time of any proposed Industry Change Project, together with the Operator's proposals as to any ICP Incentivisation and/or ICP Relief with respect to such Industry Change Project.
- 7.2 Following receipt of any proposal of an Industry Change Project by the Operator, the Secretary of State shall notify the Operator whether (in the Secretary of State's discretion):
- (a) the Secretary of State wishes the parties to seek to agree the terms of such Industry Change Project pursuant to paragraph 7.3 below;
 - (b) the Secretary of State wishes the Operator to amend its proposal with respect to such Industry Change Project, and/or provide further information as the Secretary of State may request in relation to such Industry Change Project (and following the submission of any such amended Industry Change Project proposal and/or additional information, the Secretary of State shall notify the Operator whether (in the Secretary of State's discretion) the Secretary of State is then minded to apply limb (a), (b) or (c) of this paragraph 7.2 in relation to such Industry Change Project); or
 - (c) the Secretary of State does not wish to proceed with such Industry Change Project.
- 7.3 Following any notification from the Secretary of State to the Operator pursuant to paragraph 7.2(a) above, the Parties shall each act in a timely manner to seek to agree the terms of such Industry Change Project, together with any associated ICP Incentivisation and/or ICP Relief, such that the Operator is enabled to deliver such Industry Change Project under this Contract, provided that in all circumstances:
- (a) any ICP Incentivisation shall be commensurate with the increased risk to be adopted by the Operator as a result of the relevant Industry Change Project, taking into account:
 - (i) any other incentives and rewards available to the Operator pursuant to this Contract;
 - (ii) the scale and nature of the relevant Industry Change Project;
 - (iii) the extent of any increased requirements for the Operator to deploy or draw on the input and expertise of senior employees of any Parent or Affiliate of the Operator in excess of what would reasonably be expected to be required

- for the purposes of the day to day management of the Operator and the performance of its obligations under the National Rail Contract;
- (iv) the levels of return that could reasonably be expected in relation to projects of a similar nature (whether within the rail industry or otherwise);
 - (v) the extent to which the Secretary of State is likely to benefit from the Operator's transfer, grant or licensing of Intellectual Property Rights relating solely to the relevant Industry Change Project; and
 - (vi) the terms and effect of any applicable ICP Relief;
- (b) any ICP Relief shall not exceed the relief necessary in order to account for any adverse effect on the Operator's performance of its obligations under the National Rail Contract (or other adverse impact on the Operator pursuant to the provisions of the National Rail Contract) which would otherwise arise as a direct result of the Operator's performance or delivery of the associated Industry Change Project; and
 - (c) the Secretary of State considers (in the Secretary of State's discretion), that the Industry Change Project meets any affordability criteria as the Secretary of State may be minded to apply in relation to consideration of any proposed Industry Change Project from time to time; and
 - (d) the terms of any Industry Change Project, together with any associated ICP Incentivisation and/or ICP Relief are consistent with the Procurement Policy, Subsidies Rules, Regulation 1370, and all applicable Laws (including all applicable requirements therein relating to the correspondence between compensation and net financial effect (including a reasonable profit) and the avoidance of overcompensation or a lack of compensation).
- 8. Conflicts between the National Rail Contract and the Business Plan**
- 8.1 In the event of any conflict between the National Rail Contract and any Business Plan Commitment or other element of the Operator's then current Business Plan:
- (a) each Party shall notify the other promptly on becoming aware of any such conflict; and
 - (b) subject to paragraph 8.2 below, the provisions of the National Rail Contract shall prevail.
- 8.2 If at any time there is a conflict between the National Rail Contract and any Business Plan Commitment or other element of the Operator's then current Business Plan, the Parties may agree or the Secretary of State may give notice to vary this Contract in accordance with the provisions of paragraph 8 (*Variations*) of Chapter 7.5 (*Variations, Changes and Amendments*).
- 9. Business Plan Intellectual Property Rights**
- Ownership of Business Plan IP***
- 9.1 Nothing in this Contract shall transfer or assign any title, interest of either the Operator or the Secretary of State in any Background IP comprised, described or subsisting in, or incorporated into, any draft Business Plan or preparatory materials relating to any Business Plan, any Business Plan or any Business Plan Component ("**BP Background**").
- 9.2A As between the Parties, the Operator shall own any Foreground IP created or developed by or on behalf of the Operator comprised, described or subsisting in, or incorporated into, any draft Business Plan or preparatory materials relating to any Business Plan, any Business Plan or any Business Plan Component ("**BP Foreground**"), and such BP Foreground will immediately vest in the Operator.
- 9.2B Neither BP Background nor BP Foreground shall encompass Intellectual Property Rights in individual physical items or specific items of software that may be mentioned or referred to in any draft Business Plan or preparatory materials relating to any Business Plan, any Business Plan or any Business Plan Component.

Cross-licensing of Business Plan IP

- 9.3 Subject to paragraph 9.5 below, the Secretary of State hereby grants (or shall procure the grant of) to the Operator:
- (a) a non-exclusive, sub-licensable, royalty-free, paid-up, licence to use, copy, maintain and modify the Secretary of State's BP Background during the Contract Period to the extent necessary and for the purposes of: (i) the performance of the Rail Services under this Contract; and/or (ii) implementing, amending or modifying any Business Plan; and
 - (b) a non-exclusive, perpetual, sub-licensable, royalty-free, paid-up, licence to use and copy the Secretary of State's BP Background for any purpose, but only to the extent that such BP Background is incorporated into or necessary for the use of BP Foreground.
- 9.4 Subject to paragraph 9.5 below, the Operator hereby grants to the Secretary of State a non-exclusive, perpetual, irrevocable, royalty-free, paid-up, licence to use, copy, maintain and modify the Operator's BP Background and the BP Foreground for any purpose related to the provision of rail services on the United Kingdom heavy rail network.
- 9.5 Prior to any disclosure of any confidential BP Background belonging to the other Party or any confidential BP Foreground to a third party pursuant to any sub-licence permitted under paragraph 9.3 or 9.4 above, the disclosing Party shall ensure that such third party is bound by obligations of confidentiality no less onerous than those contained in this Contract, including relevant obligations set out in Chapter 9.6 (*Confidentiality and Data Protection*). Notwithstanding the foregoing provisions of this paragraph 9.5, the Operator shall not disclose any commercially sensitive information to any third party without the prior written consent of the Secretary of State.

10. Industry Change Projects Intellectual Property Rights***Ownership of Industry Change Project IP***

- 10.1 Nothing in this Contract shall transfer or assign any title, interest of either the Operator or the Secretary of State in any Background IP used or incorporated in, provided to, or introduced into any Industry Change Project ("**ICP Background**").
- 10.2 As between the Parties, the Operator shall own any Foreground IP created or devised by or on behalf of the Operator for the purposes of, or in the course of undertaking any services relating to, or for the planning or implementation of, any Industry Change Project (including any preparatory design work) ("**ICP Foreground**"), and such ICP Foreground will immediately vest in the Operator.

Cross-licensing of Industry Change Project IP

- 10.3 Subject to paragraph 10.5 below, the Secretary of State hereby grants (or shall procure the grant of) to the Operator:
- (a) a non-exclusive, sub-licensable, royalty free, paid-up, licence to use, copy, maintain and modify the Secretary of State's ICP Background during the Contract Period to the extent necessary and for the sole purpose of undertaking any aspect of an Industry Change Project; and
 - (b) a non-exclusive, perpetual, sub-licensable, royalty free, paid-up, licence to use and copy the Secretary of State's ICP Background for any purpose, but only to the extent that such ICP Background is incorporated into or necessary for the use of ICP Foreground.
- 10.4 Subject to paragraphs 10.5 and 10.6 below, the Operator hereby grants (or shall procure the grant of) to the Secretary of State a non-exclusive, perpetual, sub-licensable, royalty-free, paid-up licence to use, copy, maintain and modify the ICP Background belonging to the Operator and the ICP Foreground in connection with any heavy rail services in the United Kingdom.
- 10.5 In the case of any third party Background IP that is embedded in, or is an integral part and/or required for the use of any ICP Foreground IP ("**Embedded ICP Background**"), the

Operator shall use all reasonable efforts to procure for the Secretary of State a non-exclusive, perpetual, royalty-free, paid-up, licence to use and copy such Embedded ICP Background for any purpose related to the provision of rail services on the United Kingdom heavy rail network, with the right to grant sub-licences to any Successor Operator. Where, having used all reasonable efforts to procure the foregoing licence, the Operator has been unable to do so, and where the Operator intends to proceed with the use of the applicable Embedded ICP Background in relation to the provision of rail services, it shall notify the Secretary of State in writing, providing brief details of: (i) the applicable Embedded ICP Background and the ICP Foreground to which it relates; (ii) the third party owner or licensor of such Embedded ICP Background; and (iii) the terms on which the Operator proposes to licence the Embedded ICP Background from the applicable owner or third party licensor. The Operator may not proceed with the use of such third party Embedded ICP Background IP unless the Secretary of State Approves.

- 10.6 Prior to any disclosure of any confidential ICP Background of the other Party or any confidential ICP Foreground to a third party pursuant to any sub-licence permitted under paragraph 10.3(b) or 10.4 above, the disclosing Party shall ensure that such third party recipient is bound by obligations of confidentiality no less onerous than those contained in this Contract, including relevant obligations set out in Chapter 9.6 (*Confidentiality and Data Protection*). Notwithstanding the foregoing provisions of this paragraph 10.5, the Operator shall not disclose any commercially sensitive information to any third party without the prior written consent of the Secretary of State.

11. Access to IP Materials and Resources

- 11.1 The Operator shall upon the request of the Secretary of State provide access to or copies of all such materials and resources as the Secretary of State requires:

(a) for the purpose of utilising any results, deliverables, facilities, or any other matter resulting from the Industry Change Project; and/or

(b) in connection with any heavy rail services in the United Kingdom,

including provision of copies of software source code and electronic and hard copies of documentation. Upon expiry of the Contract Period, the Operator shall make available any such materials in static form that is not dependent upon access to any systems provided to or via the Operator.

12. Extended Term Contracts and Extended Term Designatable Contracts

- 12.1 The provisions of this paragraph 12 shall:

(a) be without prejudice to the provisions of paragraphs 8.6 to 8.11 (*Affiliate Trading*) of Chapter 7.1 (*Contract Payments*) to the extent that a contract referred to in this paragraph is also a Group Contract or an Affiliate Contract; and

(b) not apply in respect of:

(i) Rolling Stock Related Contracts, Access Agreements, Property Leases; and

(ii) any other contracts, licences and arrangements in relation to which the Secretary of State has expressly agreed that this paragraph 12 will not apply.

- 12.2 The Parties agree and acknowledge that where a Business Plan includes:

(a) details of the proposed Business Plan Approach for Subsequent Business Plan Years, any actual implementation and delivery of that approach will be dependent upon the Secretary of State (in the Secretary of State's discretion) deciding to agree such implementation and delivery and related funding as part of the Business Plan for each of the relevant Subsequent Business Plan Years so referred to in the Business Plan Approach; and

(b) Business Plan Commitments that are to continue for Subsequent Business Plan Years, any actual implementation and delivery of that Business Plan Commitment will be dependent upon the Secretary of State (in the Secretary of State's discretion) deciding to agree such implementation and delivery and related funding as part of the Business

Plan for each of the relevant Subsequent Business Plan Years to which the continuation of that Business Plan Commitment relates.

- 12.3 At the end of each Quarter, the Operator shall provide to the Secretary of State a report listing:
- (a) each contract entered into by the Operator during the relevant Quarter which:
 - (i) the Operator requires to deliver any Business Plan Commitment; and
 - (ii) has a term extending beyond the then current Business Plan Year, (each an “**Extended Term Contract**”);
 - (b) the purpose and scheduled expiry date of each relevant Extended Term Contract; and
 - (c) the potential breakage and termination costs which would be incurred in respect of each relevant Extended Term Contract if the relevant Extended Term Contract were terminated by the Operator prior to the end of its term.
- 12.4 The Operator shall not, without the prior consent (or Approval, if so required in accordance with the terms of this Contract in relation to the subject matter and/or effect of the relevant contract) of the Secretary of State, enter into any contract which:
- (a) the Operator requires for the performance of or compliance with its obligations under this Contract, including to deliver any Business Plan Commitment or any part of the Shadow Operator Services;
 - (b) has a term extending beyond the Core Term Expiry Date (or such later date as notified by the Secretary of State); and
 - (c) does not provide a right for the Operator to terminate the relevant contract on three (3) months’ notice (or less) on or after the Core Term Expiry Date (or such later date as notified by the Secretary of State) without the Operator incurring breakage or termination costs, (an “**Extended Term Designatable Contract**”).
- 12.5 The Operator shall provide to the Secretary of State:
- (a) by no later than the Start Date, a report listing all of the Extended Term Designatable Contracts to which the Operator is a party and which the Secretary of State has Approved or consented to (as applicable); and
 - (b) on or before each anniversary of the Start Date, an updated version of the report provided pursuant to paragraph 12.5(a), unless otherwise directed by the Secretary of State.
- 12.6 When seeking the Secretary of State’s Approval or consent (as applicable) in respect of any Extended Term Designatable Contract, the Operator shall specify (i) the preferred term of each relevant contract; (ii) why it believes that such term is optimal by reference to all relevant factors including contract terms, costs and value for money considerations; and (iii) potential breakage and termination costs if any such contract was to be terminated by the Operator prior to the end of the proposed term. If relevant, the Operator shall also provide by way of comparator details of the contracts that it could obtain for the same outputs terminating as the case may be at the end of the Core Term Expiry Date (or such later date as notified by the Secretary of State) or on no more than three (3) months’ notice thereafter.
- 12.7 In developing the scope and content of any: (i) proposed Business Plan Commitments set out in a draft Business Plan (pursuant to paragraph 3 (Annual Business Plan Process) of Chapter 7.7 (*Business Plan*)), or (ii) any proposed revisions to Business Plan Commitments resulting from proposed Business Plan Revisions (in either case a “**Proposed Business Plan Commitment**”), the Operator shall also provide details to the Secretary of State of any Extended Term Designatable Contract that the Operator considers it will reasonably need to enter into in order to deliver a Proposed Business Plan Commitment, unless otherwise directed by the Secretary of State.

- 12.8 Notwithstanding Chapter 1.3 (*Approval Process*), following receipt of the information provided by the Operator pursuant to paragraph 12.6 above and paragraph 12.7 above (if applicable), the Secretary of State shall be entitled to:
- (a) Approve or consent to (as applicable) the contracting approach proposed by the Operator with respect to such Extended Term Designatable Contract and, where the Secretary of State so Approves or consents (as applicable):
 - (i) the Secretary of State shall confirm that the Secretary of State would be minded to Approve or consent to (as applicable) the Operator entering into the relevant Extended Term Designatable Contract subject to the Secretary of State's Approval of or consent to the final terms of that contract; and
 - (ii) if the Secretary of State subsequently Approves or consents to (as applicable) the terms of the relevant Extended Term Designatable Contract and to the Operator entering into such contract and the Secretary of State issues an Expiry Notice pursuant to clause 2.2 (*Expiry on or after the Core Term Expiry Date*), then the Secretary of State shall, by (on or around the Expiry Date) serving a notice on the Operator, designate each Extended Term Designatable Contract as a Primary Asset, with such designation being on the following terms:
 - (A) the relevant designation shall take effect on the Expiry Date;
 - (B) the Operator shall not be released from any accrued but unperformed obligation, the consequences of any antecedent breach of a covenant or obligation in the relevant Extended Term Designatable Contract or any liability in respect of any act or omission under or in relation to the Extended Term Designatable Contract prior to, or as at the date of, the transfer (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 transfer); and
 - (C) neither the Secretary of State nor the Secretary of State's nominee shall be obliged, in connection with such transfer, to agree to assume responsibility for any unperformed obligation, liability or consequences of a breach referred to in paragraph 12.8(a)(ii)(B), and the Operator shall indemnify the Secretary of State or the Secretary of State's nominee, as the case may be, on demand, on an after-tax basis against any costs, losses, liabilities or expenses suffered or incurred in relation thereto except to the extent that any such costs, losses liabilities or expenses incurred by the Secretary of State or the Secretary of State's nominee arise in respect of circumstances where the Operator was acting as a Good and Efficient Operator; or
 - (b) reject the requirement for an Extended Term Designatable Contract and instead specify those terms that the Secretary of State requires to be included in the relevant contract, including provisions allowing for that contract to expire or terminate, without any termination liabilities or breakage costs accruing. Prior to the Operator entering into any such contract on those terms as specified by the Secretary of State, the Secretary of State shall be entitled to review and propose amendments to or Approve or consent to (as applicable) the relevant contract.
- 12.9 The Operator shall, in negotiating the terms of any Extended Term Contract, Extended Term Designatable Contract or contract referred to in paragraph 12.8(b), acting as a Good and Efficient Operator achieve the most commercially advantageous terms to the Operator (in the context of the position of the Secretary of State under this Contract) and if requested by the Secretary of State, use all reasonable endeavours to obtain terms to a specification requested by the Secretary of State.
- 12.10 In relation to any Extended Term Contract, where a Business Plan Commitment extends into Subsequent Business Plan Years and that Business Plan Commitment is not included in any relevant Subsequent Business Plan Year, then the Cost Budget for that Subsequent Business

Plan Year will include any such breakage costs and redundancy costs as contained in the relevant Extended Term Contract provided that:

- (a) the Operator has used all reasonable endeavours to minimise and mitigate such costs to the maximum extent reasonably practicable; and
- (b) if the relevant Extended Term Contract is also an Extended Term Designatable Contract, the Secretary of State has Approved or consented to (as applicable) the relevant Extended Term Designatable Contract applicable to that Business Plan Commitment in accordance with paragraph 12.8(a).

12.11 If the Operator is, at the date of this Contract, a party to a contract which meets the conditions set out in paragraph 12.4(a) to (c) above, the Parties agree that such contracts shall:

- (a) constitute an Extended Term Designatable Contract for the purpose of this Contract; and
- (b) be deemed to be Approved pursuant to paragraph 3 (*Deemed Approval*) of Chapter 1.3 (*Approval Process*) on the date of this Contract,

provided that the Operator shall, within such timescales as may be specified by Secretary of State, use all reasonable endeavours to vary or replace the relevant contract so as to incorporate a right for the Operator to terminate the relevant contract on three (3) months' notice (or less) on or after the Core Term Expiry Date (or such later date as notified by the Secretary of State) without the Operator incurring breakage or termination costs.

Appendix 1 to Chapter 7.7
Shadow Operator Programmes

1. Initial Shadow Operator Programmes

- 1.1 Prior to the date of this Contract, the Secretary of State and the Operator agreed the initial versions of the Shadow Operator Programmes.
- 1.2 The Shadow Operator Programmes are for information purposes only and do not represent either obligations of the Operator or a commitment by the Secretary of State to request the services set out therein from the Operator.

2. Pre-Business Plan Update Process

- 2.1 On 31 August in each Contract Year, the Operator shall submit to the Secretary of State draft Shadow Operator Programmes and a draft Modelling Suite and shall:
- (a) ensure that the draft Shadow Operator Programmes (including the draft Accepted Programme Specific Requirements and the Transitional Programme Specific Requirements) and draft Modelling Suite have been updated to reflect:
 - (i) the impact of any Business Plan Revisions which have been agreed or determined since the last version of the Shadow Operator Programmes was Placed in Escrow, including any re-programming of the Shadow Operator Programmes which the Operator considers is required as a result of such requirements;
 - (ii) any Scoping Documents, Final Output Reports or other Required Outputs which have been agreed by the Secretary of State since the last version of the Shadow Operator Programmes was Placed in Escrow; and
 - (iii) any changes to the Anticipated High Speed Start Date since the last version of the Shadow Operator Programmes was Placed in Escrow;
 - (b) ensure that the draft Modelling Suite has been prepared in compliance with paragraph 12 of Chapter 11.1 (*Shadow Operations*); and
 - (c) provide a report detailing the changes between the Shadow Operator Programmes and Modelling Suite currently Placed in Escrow and the draft Shadow Operator Programmes and the draft Modelling Suite, including an explanation of and justification for such changes.
- 2.2 The draft Shadow Operator Programmes and Modelling Suite provided under paragraph 2 of this Appendix shall be for information purposes only and shall not be Placed in Escrow.

3. Annual Update Process

- 3.1 When submitting draft Shadow Operator Programmes in accordance with paragraph 3.4 of Chapter 7.7, the Operator shall:
- (a) ensure that the draft Shadow Operator Programmes (including the draft Accepted Programme Specific Requirements and the Transitional Programme Specific Requirements) have been updated to reflect:
 - (i) the impact of any requirements of the Secretary of State relating to the Shadow Operator Services as set out in the Request for Business Plan, including any re-programming of the Shadow Operator Programmes which the Operator considers is required as a result of such requirements;
 - (ii) any Scoping Documents, Final Output Reports or other Required Outputs which have been agreed by the Secretary of State since the last version of the Shadow Operator Programmes was Placed in Escrow; and
 - (iii) any changes to the Anticipated High Speed Start Date since the last version of the Shadow Operator Programmes was Placed in Escrow; and

- (b) provide a report detailing the changes between the Shadow Operator Programmes currently Placed in Escrow and the draft Shadow Operator Programmes, including an explanation of and justification for such changes.

Chapter 8 – Fares and Revenue



Chapter 8.1 - Marketing and Revenue Growth



Chapter 8.2 - Fares

CHAPTER 8
FARES AND REVENUE

Chapter 8.1	Marketing and Revenue Growth
Chapter 8.2	Fares
Chapter 8.2.1	Purpose, Structure and Construction
Chapter 8.2.2	Operator's Obligation to Create Fares
Chapter 8.2.3	Allocation of Fares to Fares Baskets
Chapter 8.2.4	Regulation of Fares Basket Values and Individual Fares
Chapter 8.2.5	Exceeding the Regulated Value, Regulated Price or Regulated Child Price, and Changes to Fares and Fares Regulation
Chapter 8.2.6	Fares Regulation Information and Monitoring
Chapter 8.2.7	Fare Selling Restrictions
Chapter 8.2.8	Transport, Travel and Other Schemes
	Appendix 1: List Of Transport, Travel And Other Schemes

Chapter 8.1

Marketing and Revenue Growth

Part A – Marketing And Revenue Growth

1. Ticketless Travel Surveys

- 1.1 The Operator on behalf of the Secretary of State shall carry out Ticketless Travel Surveys in each Ticketless Travel Survey Period in accordance with the Ticketless Travel Survey Methodology.
- 1.2 It is acknowledged and agreed by the Operator that:
- (a) a Ticketless Travel Survey can only be carried out during a Ticketless Travel Survey Period; and
 - (b) nothing in this paragraph 1 shall prevent the Secretary of State from carrying out any other ticketless travel surveys as the Secretary of State may wish to undertake from time to time (such surveys not to be subject to the provisions of this paragraph 1).
- 1.3 Within thirty (30) days of the completion of each Ticketless Travel Survey the Operator shall produce and provide to the Secretary of State a report setting out the results of such Ticketless Travel Survey and detailing how such Ticketless Travel Survey was carried out in accordance with the Ticketless Travel Survey Methodology.

2. Ticketless Travel Performance

2.1 Ticketless Travel Survey Periods Calculations

(a) Calculation of “TT Deemed”

At the end of the second and each subsequent Ticketless Travel Survey Period the Secretary of State shall use the Ticketless Travel Rate for such Ticketless Travel Survey Period to calculate the Operator’s performance against the TT Nil Fee Performance Level and/or the Breach Ticketless Travel Benchmark (as applicable) in accordance with the following formula:

$$TT\ Deemed = \frac{A + B}{2}$$

where:

- TT Deemed** is the Operator’s deemed performance against the TT Nil Fee Performance Level and/or the Breach Ticketless Travel Benchmark (as applicable);
- A** is the Ticketless Travel Rate for that Ticketless Travel Survey Period; and
- B** is the Ticketless Travel Rate for the preceding Ticketless Travel Survey Period.

2.2 Consequences of Poor Performance

- (a) If for any Ticketless Travel Survey Period the TT Deemed as calculated pursuant to paragraph 2.1 above is:
- (i) more than (that is, is **equal to or worse than**) the TT Nil Fee Performance Level the Operator shall produce a plan intended to ensure that the Ticketless Travel Rates will be below (that is, **better than**) the TT Nil Fee Performance Level (“**TT Action Plan**”);
 - (ii) more than (that is, is **equal or worse than**) the relevant Breach Ticketless Travel Benchmark then a contravention shall occur and the Secretary of State may serve a Remedial Plan Notice in accordance with the provisions of

paragraph 2 of Chapter 9.4.3 (*Procedure for remedying a Contravention of the National Rail Contract*).

- (b) The Operator shall (i) produce, (ii) obtain the Secretary of State's consent in relation to, and (iii) commence the implementation of the TT Action Plan within three (3) months after the TT Deemed is calculated as being more than (that is, is **equal to or worse than**) the TT Nil Fee Performance Level.
- (c) The TT Action Plan shall contain specific tangible action points and indicate in the case of each action point:
 - (i) how that action will contribute to ensuring that the Ticketless Travel Rates will be below (that is, **better than**) the TT Nil Fee Performance Level;
 - (ii) where the action is to be implemented;
 - (iii) when the action is to be commenced and by when it is to be implemented provided always that where any action is expressed to be ongoing the TT Action Plan shall include specific review dates; and
 - (iv) how performance of the action is to be measured.
- (d) The Operator shall, except to the extent otherwise agreed by the Secretary of State in advance, implement each TT Action Plan in accordance with its terms.
- (e) It is acknowledged by the Operator that the consent or lack of consent of the Secretary of State in respect of each TT Action Plan as contemplated in this paragraph shall not relieve the Operator of its obligations in relation to this paragraph 2 or any other provisions of the National Rail Contract.

3. **Percentage Allocations**

- 3.1 The Operator shall monitor on an on-going basis the Percentage Allocations in relation to Rail Products.
- 3.2 The Operator 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 this Contract.
- 3.3 Except to the extent that the Secretary of State may Approve from time to time the Operator shall not take any action or step which may result in its Percentage Allocation in respect of any Rail Product being reduced.
- 3.4 The Operator 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 Operator shall take such action as the Secretary of State may 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 Operator's notification within one (1) month of the date of receipt of such notification, the Operator shall be entitled to take the action or step so notified.

4. **Yield Management Data**

- 4.1 The **Operator** shall ensure that any Yield Management Data and Yield Management System are the property of the Operator or are licensed to the Operator on terms which have been consented to by the Secretary of State.
- 4.2 The Operator shall notify the Secretary of State in writing of the full names and registered office addresses of the entities which from time to time are hosting or storing any of the Yield Management Data, or which are otherwise holding within their possession or control any of the Yield Management Data, together with the location(s) in which the Yield Management Data is hosted, stored or otherwise held. In cases where the hosting, storage or holding of the Yield Management Data occurs in location(s) which are outside of the United Kingdom the notification shall include details of the relevant country(ies) or territory(ies).

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

Chapter 8.2.1**Fares****Purpose, Structure and Construction****1. Purpose of provisions relating to Creating Fares**

1.1 The purpose of Chapter 8.2.2 (*Operator'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 Operator's ability to Create Fares.

1.2 Purpose of Fares Regulation

- (a) The purpose of Chapter 8.2.3 (*Allocation of Fares to Fares Baskets*) to Chapter 8.2.6 (*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 Chapter 8.2 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 Part B of Chapter 8.2.4 (*Regulation of Individual Fares*).
- (d) Subject to the more detailed provisions of Chapter 8.2.4 (*Regulation of Fares Basket Values and 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 Part A of Chapter 8.2.4 (*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 Part B of Chapter 8.2.4 (*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 Part B of Chapter 8.2.5 (*Changes to Fares and Fares Regulation*).

2. Structure of Chapter 8

- 2.1 Chapter 8.2.2 (*Operator's Obligation to Create Fares*) sets out or refers to the Operator's obligations to Create Fares.
- 2.2 Chapter 8.2.3 (*Allocation of Fares to Fares Baskets*) sets out the allocation of Fares to Fares Baskets.
- 2.3 Part A of Chapter 8.2.4 (*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 Part B of Chapter 8.2.4 (*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 Part A of Chapter 8.2.5 (*Exceeding the Regulated Value, Regulated Price or Regulated Child Price*) sets out the consequences of the Operator exceeding:
- (a) the Regulated Value of any Fares Basket; or
 - (b) the Regulated Price and/or Regulated Child Price of any Fare.
- 2.6 Part B of Chapter 8.2.5 (*Changes to Fares and Fares Regulation*) sets out the Secretary of State's ability to vary the foregoing provisions.
- 2.7 Chapter 8.2.6 (*Fares Regulation Information and Monitoring*) sets out Fares regulation information and monitoring provisions.
- 2.8 Paragraphs 1 and 2 of Chapter 5.4 (*Customer Benefits*) sets out provisions relating to the introduction of smart ticketing, participation in Smart Ticketing Schemes and reporting requirements and ticket retailing standards.
- 2.9 Paragraphs 2.4 to 2.6 of Chapter 5.4 (*Customer Benefits*) sets out provisions relating to the reforms for Fares, ticketing and the retailing of tickets, including the planning and/or development of industry reforms and provision of data relating to Fares, ticketing and the retail of ticket.
3. **References to "Fare"**
- 3.1 For the purposes of:
- (a) Chapter 8.2.2 (*Operator's Obligation to Create Fares*), Fare shall have the wide meaning given to it in paragraph (a) of that definition; and
 - (b) Chapter 8.2.3 (*Allocation of Fares to Fares Baskets*) to Chapter 8.2.6 (*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 Chapter 8 to a Fare shall, except to the extent the context otherwise requires, be construed as references to the Fare which is or can be Created by the Lead Operator for the Flow to which the Fare relates or, if such Flow is not a Compulsory Inter-available Flow, any Fare which the Operator has Created or can Create in respect of that Flow as the Secretary of State may specify.
4. **Fares Documents**
- 4.1 In the event that, in the Secretary of State's 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 2017 or the 2017 Nominal Ticket Sales:
- (a) described in or determined in accordance with this Chapter 8; 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 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 2017 or the 2017 Nominal Ticket Sales:
- (a) described in or determined in accordance with this Chapter 8; and
 - (b) described in the relevant Fares Document,
- this Chapter 8 shall prevail.
5. **Setting of Child Prices**
- 5.1 Any requirement under this Chapter 8 to set a Child Price in respect of a Fare shall be satisfied by the Operator Creating either:
- (a) a Fare which is only valid for use by persons under the age of 16; or

- (b) a Fare which is valid for use:
 - (i) by any person at a price; and
 - (ii) by persons under the age of 16 at a discounted price relative to the price set pursuant to paragraph 5.1(b)(i).

6. New Stations

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

- (a) 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 Operator, determine and references in this Chapter 8 to Fares Basket, Commuter Fare, Protected Fare and Fares and other relevant definitions shall be construed accordingly.

Chapter 8.2.2

Operator's Obligation to Create Fares

1. Creation of Commuter Fares and Protected Fare

The Operator shall ensure that each Commuter Fare and Protected Fare has been Created, in accordance with the Fares Plan (as the same may be amended from time to time in accordance with a Business Plan Revision pursuant to paragraph 6 of Chapter 7.7 (*Business Plan*)) and to the extent it is entitled or obliged to do so under the terms of the Ticketing and Settlement Agreement.

2. Restrictions on Creation of Fares

- 2.1 The Operator shall set the Child Price for any Fare that it Creates so that that Fare may be purchased by or for a person under the age of 16 for an amount which is no greater than fifty per cent (50%) of the Price of the relevant Fare.
- 2.2 The Operator shall not Create or agree to Create any Fare or Discount Card with a validity of thirteen (13) or more months without the consent of the Secretary of State.

3. Flexible Ticket Product

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

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

- (a) be valid for use for a period of four weeks from a start date nominated by the holder at the time of purchase of the Flexible Ticket (the "**Flexible Ticket Validity Period**") and sold in multiples of eight (8);
- (b) be capable of use:
- (i) on any Flow in respect of which the Operator is entitled to Create a Fare under the terms of the Ticketing and Settlement Agreement and a Weekly Season Ticket has been purchased at any time in the twenty-four months immediately prior to 17 May 2021, save where:
- (A) such Flow is wholly within Zones 1-6;
- (B) such Flow is a cross London flow (being a Flow on which the holder of a Cross London Ticket (as defined in the Through Ticketing (Non Travelcard) Agreement) is permitted to travel);
- (C) NOT USED
- (D) such Flow is a Flow on which the holder of an Inter-Available Fare is permitted to travel on the passenger services operated by any of the Train Operators from time to time of the Wales and Borders, Merseyrail or Scotrail franchises (or any successor Train Operator of such passenger services) provided that, to the extent there is in effect an agreement between the Operator and such Train Operator for the use of Flexible Tickets on the passenger services operated by such Train Operator, the foregoing provisions of this paragraph 3.2(b)(i)(D) shall not apply, and the Operator shall use all reasonable endeavours to enter into such an agreement with each such Train Operator; or
- (E) the Secretary of State agrees in writing that the Flexible Ticket does not need to be capable of use on a particular Flow,
- (each such flow being a "**Relevant Flow**"); and
- (ii) only:
- (A) by persons having attained the age of sixteen years; and

- (B) in respect of travel in Standard Class Accommodation;
- (c) entitle the holder to make an unlimited number of journeys in either direction on the Passenger Services and the passenger services of other Train Operators on a Relevant Flow on any one (1) day during the Flexible Ticket Validity Period, and where a Flexible Ticket is used on any such day it shall entitle the holder to travel on such Relevant Flow until 04:29 hours on the immediately following day;
- (d) unless otherwise agreed by the Secretary of State, be available to purchase through online channels only and be priced midway between the Price of an anytime day return and twenty per cent (20%) of the Price of a Weekly Season Ticket (in each case in respect of the relevant Flow) in accordance with the following formula:

$$FST = \frac{ADR + \left(\frac{7DS}{5}\right)}{2}$$

where:

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

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

- (i) where the Price of an anytime day return in respect of such Flow is different depending on the direction of travel of the outward leg, the Price of the more expensive Fare shall be used for these purposes; and
- (ii) where no anytime day return is available in respect of such Flow, the Price of a Fare for an equivalent return journey on such Flow shall be used for these purposes, being the Price of an anytime open return or (if no such Fare is available) the Price of an open standard return;

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

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

- (i) FST, and the product of any calculation of twenty per cent (20%) of 7DS or eighty-seven point five per cent (87.5%) of ADR in accordance with paragraphs (ii) and (iii) below respectively, shall:
- (A) (if ending in £0.05 or more) be rounded up to the nearest £0.10; and
- (B) (if ending in less than £0.05) be rounded down to the nearest £0.10;
- (ii) FST shall (save to the extent such outcome arises solely as a result of any rounding in accordance with the provisions of paragraph (i) above) never be less than twenty per cent (20%) of 7DS (and any calculation made in accordance with the preceding formula which would otherwise result in FST being less than twenty per cent (20%) of 7DS shall be deemed to result in FST being an amount equal to twenty per cent (20%) of 7DS, rounded in accordance with the provisions of paragraph (i) above);
- (iii) FST shall (save to the extent such outcome arises solely as a result of any rounding in accordance with the provisions of paragraph (i) above) never be less than eighty seven point five per cent (87.5%) of ADR (and any calculation made in accordance with the preceding formula which would otherwise result in FST being less than eighty seven point five per cent (87.5%) of ADR shall be deemed to result in FST being an amount equal to eighty seven point five per cent (87.5%) of ADR, rounded in accordance with the provisions of paragraph (i) above); and
- (iv) FST shall not be discounted to the purchaser pursuant to any Local Authority Concessionary Travel Scheme, Multi-Modal Scheme, Discount Fare Scheme or Inter-Operator Scheme (each as set out in Appendix 1 to Chapter 8.2.8 (*Transport, Travel and Other Schemes*)) or otherwise provided that FST shall be discounted pursuant to either the 16-17 Saver railcard scheme or the Job Centre Plus Travel Discount card scheme;

- (e) be enabled by the Operator within the retail control service operated by Rail Settlement Plan Limited (the “RCS”) for fulfilment on ITSO Certified Smart Media and barcode enabled media by any person entitled to retail the same in accordance with the Ticketing and Settlement Agreement, save that the Operator shall be obliged to enable Flexible Tickets for fulfilment on ITSO Certified Smart Media only (and not on barcode enabled media) where:
- (i) either or both of the origin and destination stations on the Relevant Flow on which the Flexible Ticket entitles the holder to travel are operated by or on behalf of any of TfL (including any franchisee or concessionaire thereof) or the Train Operators of any of the c2c, South Eastern or Merseyrail franchises; and
 - (ii) barcode enabled media is not accepted by the operator at such station;
- (f) (subject to prior consent in writing from the Secretary of State to incur any associated costs to enable the same) be retailed by the Operator on ITSO Certified Smart Media or (save where sub-paragraphs 3.2(e)(i) and (ii) above apply) barcode enabled media, or both, and the Operator shall retail all similar and equivalent products created and enabled for fulfilment within RCS by other Train Operators on ITSO Certified Smart Media or (to the extent enabled for fulfilment within RCS on such media) barcode enabled media, or both;
- (g) not include a Travelcard when offered for sale;
- (h) offer additional benefits of convenience, including greater flexibility of use, than a Weekly Season Ticket; and
- (i) include such other characteristics as the Secretary of State may notify the Operator in writing from time to time (and the issue of any notice by the Secretary of State under this paragraph 3.2(i) shall be a Cost Budget Change Event and a Financial Target Amendment Event).
- 3.3 In addition to the obligations set out at paragraph 3.2, the Operator shall take such other action in connection with the Flexible Ticket as the Secretary of State may notify the Operator in writing from time to time, including such actions as the Secretary of State may require in order for the Operator to:
- (a) promote and market the Flexible Ticket to potential users; and
 - (b) make the Flexible Ticket available to users without independent access to smart media or barcode enabled devices in such manner as the Secretary of State may from time to time approve or instruct,
- and the issue of any notice under this paragraph 3.3 shall be a Cost Budget Change Event and a Financial Target Amendment Event (as applicable).
- 3.4 The Secretary of State and the Operator shall undertake a review of the Flexible Ticket during the period falling six (6) to nine (9) months from Flexible Ticket Commencement Date (or such later period as the Secretary of State may notify the Operator in writing), following which the Secretary of State may instruct the Operator to make such alterations to the product as the Secretary of State considers necessary (and the issue of any such instruction by the Secretary of State under this paragraph 3.4 shall be a Cost Budget Change Event and a Financial Target Amendment Event). The Operator may also propose to the Secretary of State such alterations to the Flexible Ticket as the Operator considers necessary, specifying its reasons for the same and the Secretary of State may, in the Secretary of State’s discretion, permit the Operator to make such alterations to the Flexible Ticket, subject to any adjustments required by the Secretary of State. The Operator shall from time to time provide the Secretary of State with such information as the Secretary of State may request in writing.
- 3.5 The Secretary of State may vary the terms on which the Operator shall make the Flexible Ticket available to passengers pursuant to this paragraph 3 upon reasonable notice of such variation to the Operator. The issue of any notice by the Secretary of State under this paragraph 3.5 shall be a Cost Budget Change Event and a Financial Target Amendment Event.

Chapter 8.2.3

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 Chapter 8.2.3.
- 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 2017:
 - (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 Part B of Chapter 8.2.5 (*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 Part B of Chapter 8.2.5 (*Changes to Fares and Fares Regulation*).

Chapter 8.2.4

Regulation of Fares Basket Values and Individual Fares

Part A – Regulation of Fares Basket Values

1. Value of Fares Basket not to exceed Regulated Value

Subject to paragraph 1.3 of Part A of Chapter 8.2.5 (*Exceeding the Regulated Value, Regulated Price or Regulated Child Price*) the Operator 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 2017 Nominal Ticket Sales	
where:	
P	is the Price of that Fare at that time; and
2017 Nominal Ticket Sales	is the number of nominal ticket sales of that Fare for 2017, 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 Chapter 8.2.3 (<i>Allocation of Fares to Fares Baskets</i>) for the period of twelve (12) months which ended 31 March 2017; and
B	is the Price for that Fare recorded by RSP in January 2017

4. Regulated Value

4.1 The Regulated Value of a Fares Basket for any Fare Year shall be an amount equal to:

2017 Ticket Revenue x PPAI	
where:	
2017 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 2017;
PPAI	is:
	where:
	(a)
(b)	in respect of each Fare Year commencing on or after 1 January 2017, the product of the Permitted Aggregate Increase for each Fare Year between that Fare Year and the Fare Year which begins on 1 January 2017 (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 a month as specified in writing by the Secretary of State from time to time of the calendar year preceding that Fare Year; and
RPI-2	is the Retail Prices Index for the month as specified in writing by the Secretary of State from time to time of the calendar year preceding the calendar year referred in the definition of RPI-1 ; and	
K	shall be as specified in writing by the Secretary of State from time to time.	

Part B – Regulation of Individual Fares

1. Price not to exceed Regulated Price or Regulated Child Price

- 1.1 The Operator shall procure that the Price of:
 - (a) 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 Operator shall procure that the Price of any Season Ticket Fare shall be the same in both directions.
- 1.3 The Operator shall procure that the Child Price of each Fare in any Fare Year does not exceed fifty per cent (50%) of the Price for such Fare in that Fare Year.

2. Regulated Price

2.1 The Regulated Price for any Fare in any Fare Year shall be an amount equal to the greater of:

(a)	Preceding Year Ticket Price + £0.10p; and
(b)	ROUND Preceding Year Ticket Price x PII
where:	
Preceding Year Ticket Price	for the Fare Year commencing 1 January 2017, is the maximum Price for that Fare recorded by RSP in 2017 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 Chapter 8 as it is applied at the relevant time such maximum Price was recorded by RSP. If such maximum Price did not so comply, then such maximum Price shall be the last Price recorded by RSP which did so comply; and
PII	is the Permitted Individual Increase in any Fare Year, as determined in accordance with paragraph 2.2;
ROUND	(a) if (Preceding Year Ticket Price x PII), when rounded to two (2) decimal places, results in a value ending in five pence (£0.05) to nine pence (£0.09), then (Preceding Year Ticket Price x PII) shall be rounded up to the nearest whole multiple of £0.10; or (b) if (Preceding Year Ticket Price x PII), when rounded to two (2) decimal places, results in a value ending in one pence (£0.01) to four pence (£0.04) (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:

	RPI-1	is the Retail Prices Index for a month as specified in writing by the Secretary of State from time to time of the calendar year preceding that Fare Year; and
	RPI-2	is the Retail Prices Index for the month as specified in writing by the Secretary of State from time to time of the calendar year preceding the calendar year referred in the definition of RPI-1 ;
k	shall be as specified in writing by the Secretary of State from time to time.	
f	shall be as specified in writing by the Secretary of State from time to time.	

2.3 Where:

- (a) the Operator sets the Price of any Commuter Fare or Protected Fare in any Fare Year; and
- (b) the Secretary of State 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 Chapter 8, as recorded by RSP in the relevant preceding Fare Year.

3. **Compulsory Inter-available Flows**

3.1 Where the Operator:

- (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 Operator 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.

Chapter 8.2.5

Exceeding the Regulated Value, Regulated Price or Regulated Child Price, and Changes to Fares and Fares Regulation

Part A – Exceeding the Regulated Value, Regulated Price or Regulated Child Price

1. Exceeding the Regulated Value

- 1.1 If the Operator is in contravention of paragraph 1 of Part A of Chapter 8.2.4 (*Regulation of Fares Basket Values*) in respect of either the Commuter Fares Basket or the Protected Fares Basket 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 Part A of Chapter 8.2.4 (*Regulation of Fares Basket Values*) from such date.
- 1.2 It shall not be a contravention of paragraph 1 of Part A of Chapter 8.2.4 (*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 of the Operator); and
 - (c) the Operator does not have a reasonable opportunity, under any procedure for consulting or notifying Train Operators of alterations to the Prices of Fares under the Ticketing and Settlement Agreement or otherwise, to alter some or all of the other Commuter Fares in the Commuter Fares Basket so as to avoid the Value of the Commuter Fares Basket exceeding its Regulated Value.
- 1.3 If and to the extent that the circumstances described in paragraph 1.2 prevail in any Fare Year, the Operator 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 Operator would, otherwise than under paragraph 1.2, comply with the provisions of paragraph 1 of Part A of Chapter 8.2.4 (*Regulation of Fares Basket Values*) in relation to the Commuter Fares Basket.
- 1.4 Where circumstances described in paragraph 1.2 prevail in any Fare Year, the Operator 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 Operator is in contravention of any of the provisions of paragraph 1 of Part B of Chapter 8.2.4 (*Regulation of Individual Fares*) 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 Part B of Chapter 8.2.4 (*Regulation of Individual Fares*) from such date.

Part B – 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 2017;
 - (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 Chapter 8.2.3 (*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 Operator:
- (a) at any time prior to the Start Date; and
 - (b) thereafter, no later than the commencement of any Fares Setting Round,
- to require any Fare to be included in a Fares Basket or to designate any Fare as a Non Fares Basket Fare pursuant to paragraph 1.1.
- ### 2. Changes to the 2017 Nominal Ticket Sales
- 2.1 The Operator may, in the event of any significant change to the pattern of travel on the Passenger Services during the Contract Term, apply to the Secretary of State for the **value of factors A and/or B** in the formula for determining 2017 Nominal Ticket Sales in paragraph 3 of Part A of Chapter 8.2.4 (*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; 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 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, 2017 Nominal Ticket Sales and/or 2017 Ticket Revenue**
- 3.1 The Secretary of State may, by notice in writing served on the Operator no later than the date of commencement of any Fares Setting Round, require:
- (a) the Reference Revenue of any Fares Basket to be calculated by reference to a different reference period for the purpose of paragraph 2 of Chapter 8.2.3 (*Allocation of Fares to Fares Baskets*) than the period of twelve (12) months ended 31 March 2017; and/or
 - (b) the Gross Revenue of all Commuter Fares and Protected Fares to be recalculated for the purpose of paragraph 2 of Chapter 8.2.3 (*Allocation of Fares to Fares Baskets*) by reference to a different reference period than the period of twelve (12) months ended 31 March 2017; and/or
 - (c) **the value of factor A** in the formula for determining the 2017 Nominal Ticket Sales in paragraph 3 of Part A of Chapter 8.2.4 (*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 2017; and/or
 - (d) **the value of factor B** in the formula for determining the 2017 Nominal Ticket Sales in paragraph 3 of Part A of Chapter 8.2.4 (*Regulation of Fares Basket Values*) to be recalculated in respect of any Fare by reference to a different reference date other than February 2017; and/or
 - (e) the 2017 Ticket Revenue in respect of any Fares Basket to be re calculated for the purpose of paragraph 4 of Part A of Chapter 8.2.4 (*Regulation of Fares Basket Values*) by reference to a different reference period than the period of twelve (12) months ended 31 March 2017.
- 3.2 Where, in accordance with paragraph 3.1(e), the 2017 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 Part A of Chapter 8.2.4 (*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**
- 4.1 The Operator may from time to time submit proposals to the Secretary of State to increase any Prices beyond the levels permitted under Chapter 8.2.4 (*Regulation of Fares Basket Values and Individual Fares*) in connection with any proposed or actual improvement in any aspect of the Passenger Services relating to such Fares.
- 4.2 The Secretary of State shall consider any such proposal and may (at the Secretary of State’s discretion) require the Operator to implement any such proposal in whole or in part.
5. **Changes to Fares Regulation**
- 5.1 The Parties agree that the Secretary of State shall have the power at any time and on more than one occasion during the Contract Term to alter the obligations of, and restrictions on, the Operator under Chapter 8.2.1 (*Purpose, Structure and Construction*) to Chapter 8.2.6 (*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 Part A of Chapter 8.2.4 (*Regulation of Fares Basket Values*) and/or paragraph 2.2 of Part B of Chapter 8.2.4 (*Regulation of Individual Fares*) and/or alteration of the **value of “f”** under paragraph 2.2 of Part B of Chapter 8.2.4 (*Regulation of Individual Fares*)).

5.2 The exercise by the Secretary of State of the Secretary of State's powers under this paragraph 5 shall be a Revenue Financial Target Amendment Event or a Profit Financial Target Amendment Event (as applicable).

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 Operator, require any Fare Created in respect of the Equivalent Flow which has substantially the same characteristics as the Reference Fare to be included in 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 Operator shall not without the Secretary of State's prior consent, agree to any request under the Ticketing and Settlement Agreement that it cease to be Lead Operator in respect of any Flow.

7.2 The Operator shall inform the Secretary of State if it becomes the Lead Operator in respect of any Flow. Upon the Operator becoming the Lead Operator in respect of any Flow, the Secretary of State may without limiting paragraph 3 above, exercise the Secretary of State's rights pursuant to paragraph 3 in relation to the relevant Fares Basket.

7.3 The Operator shall inform the Secretary of State if it ceases to be a Major Flow Operator in respect of any Flow.

8. **Changes to Fares Documents**

8.1 Following:

- (a) any allocation of Fares to any Fares Basket pursuant to Part B of Chapter 8.2.3 (*Allocation of Fares to Fares Baskets*); or
- (b) any subsequent adjustment thereof pursuant to this Part B of Chapter 8.2.5,

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 practicable thereafter, the Secretary of State shall issue or reissue (as the case may be) such Fares Document(s) to the Operator.

9. **Changes to applicable Fares Plans**

9.1 Where the Secretary of State exercises any of the Secretary of State's rights specified in any of paragraphs 1 to 8 of this Part B of Chapter 8.2.5, it is acknowledged that Business Plan Revisions may be required pursuant to paragraph 6 of Chapter 7.7 (*Business Plan*).

Chapter 8.2.6**Fares Regulation Information and Monitoring****1. Information**

- 1.1 The Operator shall provide to the Secretary of State by no later than week twelve (12) of each Fares Setting Round, a summary (to such level of detail or generality as the Secretary of State may require) of the Prices of the Commuter Fares or Protected Fares it is intending to set.
- 1.2 The Operator shall notify, or procure the notification to, the Secretary of State of any proposed increase to the Price of any 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 request from time to time.
- 1.3 The Operator shall make available, or procure that RSP makes available, to the Secretary of State, for any Fares Setting Round during the Contract Term, such details (including the proposed Prices) of the Initial Permanent Fare of any Commuter Fare or Protected Fare for each such Fares Setting Round as the Secretary of State may request from time to time.

2. Monitoring

- 2.1 The Operator shall provide to the Secretary of State:
- (a) such access as the Secretary of State may require to information pertaining to the Prices of 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 Operator in relation to any particular Fare or Fares or any particular period.
- 2.2 By no later than week seventeen (17) of each Fares Setting Round, the Operator shall provide to the Secretary of State written confirmation from a statutory director of the Operator of whether the Operator has complied with its obligations under this Chapter 8 (*Fares and Revenue*) during each such Fares Setting Round.
- 2.3 The Operator shall take such action as the Secretary of State may require following receipt of any details from the Operator pursuant to paragraph 1 in order to ensure that the Operator shall comply with the provisions of Chapter 8.2.2 (*Operator's Obligation to Create Fares*) to this Chapter 8.2.6 (*inclusive*).

Chapter 8.2.7
Fares Selling Restrictions

1. Fares Selling Restrictions

1.1 Restrictions on Sales

The Operator 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 Operator may 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.

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

1.3 Where the Operator 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 Chapter 4.3 (*The Rolling Stock*).

1.4 The Operator shall not sell or offer to sell:

- (a) any Fare in respect of which the:
 - (i) Prices are regulated under Chapter 8.2.4 (*Regulation of Fares Basket Values and Individual Fares*), at prices that are greater than the Prices set for such Fares from time to time in accordance with Chapter 8.2.4; and
 - (ii) Child Prices are regulated under paragraph 1.3 of Part B (*Regulation of Individual Fares*) of Chapter 8.2.4 (*Regulation of Fares Basket Values and 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.

1.5 Agents of the Operator

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

- (a) for Fares in respect of which the Prices are regulated under Chapter 8.2.4 (*Regulation of Fares Basket Values and 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 Chapter 8.2.4; and
- (b) for Fares in respect of which the Child Price has been set pursuant to paragraph 2.1 of Chapter 8.2.2 (*Operator's Obligation to Create Fares*), sell or offer to sell such Fares to any person under the age of 16 for an amount which is no greater than fifty per cent (50%) of the Price of the relevant Fare; and
- (c) for all Fares:
 - (i) do not sell or offer to sell any Fare or Discount Card with a validity of thirteen (13) or more months without the consent of the Secretary of State; and
 - (ii) comply with the provisions of paragraphs 2 and 3 of Chapter 8.2.7 (*Fares Selling Restrictions*) to the extent they apply to the selling of Fares by the Operator.

1.6 Additional Ancillary Services

The Operator shall, subject to this paragraph 1, 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.

1.7 Sale of Fares for travel on Bank Holidays

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

2. Reduction in Prices of Fares during the Last Thirteen (13) Month Period

2.1 During the last thirteen (13) months of the Contract Period the Operator shall not, without the prior written consent of the Secretary of State, 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 Contract 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.

2.2 Paragraph 2.1 shall not prevent the Operator from giving any discount or reduction to which the purchaser of a Fare may be entitled by virtue of:

- (a) presenting a Discount Card (or any equivalent replacement thereof) issued by the Operator before the commencement of such thirteen (13) month period and to which the purchaser would have been entitled before the commencement of such period;
- (b) presenting a Discount Card issued by another train operator;
- (c) the Passenger's Charter or the passenger's charter of any other train operator; or
- (d) any relevant conditions of carriage.

- 2.3 The Operator 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 2.1 to the extent that such provisions apply to the selling of Fares by the Operator.
3. **Restrictions in respect of Sale of Advance Purchase Train-specific Fares**
- 3.1 It is acknowledged that the Operator shall make available for sale prior to the end of the Contract Period Advance Purchase Train-specific Fares which are valid for travel after the end of the Contract Period.
- 3.2 In making such Advance Purchase Train-specific Fares available for purchase the Operator 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 Contract Period.
- 3.3 The Operator 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 Operator's practice in addressing such seasonal factors in the corresponding period in the previous year.

Chapter 8.2.8

Transport, Travel and Other Schemes

1. Local Authority Concessionary Travel Schemes

1.1 The Operator shall participate in and comply with its obligations under:

- (a) the concessionary travel schemes in place at the Start Date, listed in paragraph 1 of Appendix 1 (*List of Transport, Travel and Other Schemes*) to this Chapter 8.2.8; and
- (b) any other concessionary travel scheme or amendment to the concession travel schemes referred to in (a) above in either case which the Operator is directed to comply with by the Secretary of State

1.2 The Secretary of State shall consult the Operator before making any request of the Operator to participate in any amended or new concessionary travel scheme pursuant to paragraph 1.1(b) and shall allow the Operator a reasonable opportunity to make representations to the Secretary of State with respect to any such participation.

2. Multi-modal Fares Schemes

2.1 The Operator shall participate in and comply with its obligations under:

- (a) the multi-modal fares schemes in place at the Start Date set out in paragraph 2 of Appendix 1 (*List of Transport, Travel and Other Schemes*) to this Chapter 8.2.8; and
- (b) any other multi-modal fares scheme or amendment to the multi-modal fare schemes referred to in (a) above in either case which the Operator is directed to comply with by the Secretary of State,

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

2.2 The Secretary of State shall consult the Operator before making any request of the Operator to participate in any amended or new multi-modal fares scheme pursuant to paragraph 2.1(b) and shall allow the Operator a reasonable opportunity to make representations to it with respect to any such participation.

3. Discount Fare Schemes

3.1 If the Secretary of State:

- (a) effects 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, introduction or cessation of approval shall be a Cost Budget Change Event and a Cost Financial Target Amendment Event, Revenue Financial Target Amendment Event or Profit Financial Target Amendment Event (as applicable).

3.2 The Secretary of State shall provide a reasonable opportunity to the Operator to make representations to the Secretary of State before amending, introducing or ceasing to approve a Discount Fare Scheme pursuant to paragraph 3.1.

3.3 The Operator shall supply to the Secretary of State, in respect of any Discount Fare Scheme referred to in paragraph 3.1, such information within such period as the Secretary of State may 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 Subject to paragraph 4.1A, the Operator shall participate in and comply with its obligations under the terms of each of the Inter-Operator Schemes.

4.1A The Operator's obligation to participate in the Inter-Operator Scheme under:

- (a) the PAYG Agreement; and

- (b) the CPAY Agreement,
shall each be conditional on the Parties agreeing or the Secretary of State directing that the Operator shall participate in such scheme.
- 4.2 Without limiting paragraphs 4.1 and 4.3, the Operator agrees to be bound by Parts IV and V of Chapter 4 of the Ticketing and Settlement Agreement and shall not amend, or agree or propose to amend, the Ticketing and Settlement Agreement without the prior written consent of the Secretary of State.
- 4.3 The Operator shall not amend, or agree or propose to amend, any Inter-Operator Scheme other than in accordance with its terms.
- 4.4 The Operator shall:
- (a) provide reasonable notice to the Secretary of State of any proposal to amend any Inter-Operator Scheme which it intends to make or of which it receives notification and which, in its opinion, is reasonably likely to materially affect the provision of the Rail Services; and
- (b) have regard to the Secretary of State's views in respect of any such proposal.
- 4.5 If an amendment is effected 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 Cost Budget Change Event and a Cost Financial Target Amendment Event, Revenue Financial Target Amendment Event or Profit Financial Target Amendment Event (as applicable).
- 5. Voting on Scheme Councils**
- 5.1 The Operator 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 Operator is represented; or
- (ii) a scheme management group of any Inter-Operator Scheme:
- (A) in which the Operator has a permanent position; or
- (B) where the Operator employs a member of such group; and
- (b) the resolutions to be voted upon at any such meeting,
and the Operator shall, if so directed by the Secretary of State, present any documents authored by the Secretary of State and/or the Operator at any such meeting.
- 5.2 The Operator shall vote at any such meeting in the manner required by the Secretary of State.

APPENDIX 1 TO CHAPTER 8.2.8**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) Strathclyde Partnership for Transport Concessionary Scheme;
- (b) Transport for Greater Manchester Concessionary Fare Scheme;
- (c) West Midlands Combined Authority Concessionary Fares Scheme
- (d) Greater Manchester Traincard;
- (e) Rail Ranger; and
- (f) Avanti Only Stockport –Manchester CTLZ.

1.2 Any other concessionary travel scheme which the Operator is required to participate in during the Contract Term pursuant to paragraph 1.1(b) of Chapter 8.2.8.

2. Multi-modal Fares Schemes

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

- (a) Strathclyde Transport multi-modal scheme;
- (b) West Midlands Combined Authority Centrocard Scheme;
- (c) West Midlands Combined Authority Rail Master Scheme;
- (d) TfGM Wayfarer; and
- (e) Greater Manchester System One Travelcards.

2.2 Any other multi-modal fares travel scheme which the Operator is required to participate in during the Contract Term pursuant to paragraph 2.1(b) of Chapter 8.2.8.

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 Operator and other participants in the railway industry:

- (a) Staff Travel Scheme dated 23 July 1995 between the participants named therein;
- (b) Ticketing and Settlement Agreement;
- (c) LRT Scheme dated 23 July 1995 between the participants named therein;
- (d) Travelcard Agreement dated 15 October 1995 between London Regional Transport and the parties named therein;
- (e) Through Ticketing (Non-Travelcard) Agreement dated 15 October 1995 (as amended and restated) between London Regional Transport and the parties named therein;

- (f) National Rail Enquiry Scheme dated 11 June 1996 between the participants named therein;
- (g) the Pay As You Go Agreement;
- (h) the CPAY Agreement;
- (i) any Discount Fare Scheme;
- (j) the 16-17 Saver railcard scheme introduced for use with effect from 2 September 2019 between the participants named therein;
- (k) the Veterans Railcard scheme between the participants named therein to provide discounted rail travel to military veterans and their named companions and accompanying children; and
- (l) any other scheme, agreement and/or contract of a similar or equivalent nature as may from time to time during the Contract Period amend, replace or substitute, in whole or in part, any of such schemes, agreements and/or contracts.

Chapter 9 – Standard Provisions



Chapter 9.1 - Fixed Assets



Chapter 9.2 - Key Contracts and Key Assets



Chapter 9.3 - Branding and Intellectual Property



Chapter 9.4 - Remedies and Dispute Resolution



Chapter 9.5 - Exit Management



Chapter 9.6 - Confidentiality and Data Protection



Chapter 9.7 - Miscellaneous Legal Terms

CHAPTER 9
STANDARD PROVISIONS

Chapter 9.1	Fixed Assets
Chapter 9.2	Key Contracts and Key Assets
Chapter 9.3	Branding and Intellectual Property
Chapter 9.4	Remedies and Dispute Resolution
Chapter 9.5	Exit Management
Chapter 9.6	Confidentiality and Data Protection
Chapter 9.7	Miscellaneous Legal Terms

CHAPTER 9.1**Fixed Assets****1. Station Asset Management**

- 1.1 The Operator shall implement and comply with the Station Asset Management Plan from the Start Date.
- 1.2 NOT USED
- 1.3 The Operator 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 Operator since the Start Date;
 - (b) the details of any maintenance, repair and renewal activity which the Operator 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 the Infrastructure Manager, any Local Authority, any Community Rail Partnership and any other relevant stakeholder, which the Operator is aware of;
 - (d) the assumptions that the Operator 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 Operator 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 asset provision at the Station in the context of future passenger projections and characteristics (including any implications of the commencement or operation of the High Speed Services);
 - (f) the plans to ensure that delivery of Station Services is resilient to periods of extreme weather and minimises disruption to passengers;
 - (g) the plans to ensure that maintenance, repair, renewal, enhancement and other building works to be carried out at such Station is consistent with the Principles of Inclusive Design and the Security in the Design of Stations Guidance; and
 - (h) the plans to ensure that activity at such Station is consistent with the Network Rail Asset Management Policy (or if relevant, HS2 Limited's equivalent policy).
- 1.4 In addition, the Operator 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 Chapter 9.1, as if the Operator was to operate each of the Stations for such forty (40) year period;
 - (b) is developed in accordance, and complies, with guidance published by the Institute of Asset Management (or such appropriate replacement guidance).
- 1.5 Any amendments to the Station Asset Management Plan shall not be made without the consent of the Secretary of State.
- 1.6 The Operator shall ensure that all renewal, enhancement and other building works at Stations are implemented in accordance with the Principles of Inclusive Design.
- 1.7 **Updating the Station Asset Management Plan**
- (a) Together with the Business Plan submitted in respect of each Subsequent Business Plan Year, the Operator shall have reviewed the Station Asset Management Plan and shall submit to the Secretary of State for consent a draft updated version of the Station Asset Management Plan (in substantially the same form as the preceding Station Asset Management Plan).
 - (b) The updated draft Station Asset Management Plan shall include:

- (i) a schedule of any revisions to the current Station Asset Management Plan and a brief summary of the rationale supporting any change;
 - (ii) any changed and developing circumstances and the requirements of the Station Asset Management Plan Accreditation; and
 - (iii) where relevant, the outcomes of, and the Operator's responses to the stakeholder consultation.
- (c) If:
- (i) the Secretary of State consents to an updated draft Station Asset Management Plan submitted to it pursuant to paragraph 1.7 (a), such document shall become the then current Station Asset Management Plan; or
 - (ii) the Secretary of State does not consent to an updated draft Station Asset Management Plan submitted to it pursuant to paragraph 1.7(a), then the Operator shall make:
 - (A) such amendments to it as the Secretary of State shall direct; and
 - (B) provide such additional information as the Secretary of State may require.

1.8 **Consultations relating to the Station Asset Management Plan**

On or before the annual submission of the Station Asset Management Plan pursuant to the provisions of this Chapter 9.1, the Operator shall conduct consultations with relevant Stakeholders (including the Community Rail Network, passengers, users of Stations, members of relevant local communities, Infrastructure Manager and the British Transport Police) in relation to the potential risks, opportunities and priorities for investment and operational efficiencies in relation to Stations. The Operator shall determine the scope of the specification of such consultations including the Stations to be considered.

1.9 **ISO Certification**

The Operator shall at all times maintain certification pursuant to ISO55001:2014.

2. **Information about Station Improvement Measures**

- 2.1 The Operator shall, subject to paragraph 2.5, at all times during the Contract Period maintain records in relation to the measures taken by it to improve the Station environment at each of the Stations, covering the areas and the information set out in Appendix 1 to this Chapter 9.1.
- 2.2 The Operator shall, subject to paragraphs 2.3 and 2.5, provide to the Secretary of State the information set out in Appendix 1 (*Information about Station Improvement Measures*) to this Chapter 9.1 no later than the end of the first Reporting Period in each Contract Year other than the first Contract Year.
- 2.3 When so requested by the Secretary of State, the Operator shall, within such reasonable period as the Secretary of State may specify, make such information available for review by the Secretary of State by reference to:
- (a) such level of disaggregation as is specified by the Secretary of State; and
 - (b) any particular Station as is specified by the Secretary of State.
- 2.4 The information to be provided by the Operator to the Secretary of State within the timescales stipulated are set out in Appendix 1 (*Information about Station Improvement Measures*) to this Chapter 9.1.
- 2.5 The Secretary of State may in consultation with the Operator review the scope of the areas and information (including the format of that information and timescales within which that information is to be provided) to be set out in Appendix 1 (*Information about Station Improvement Measures*) to this Chapter 9.1 and shall within three (3) Reporting Periods of the Start Date notify the Operator of any additions, updates or revisions to Appendix 1 to this

Chapter 9.1 that the Secretary of State requires and thereafter Appendix 1 to this Chapter 9.1 shall be deemed to be amended in accordance with the Secretary of State's notice.

3. **Vesting of Property Leases at the Start Date**

- 3.1 The Operator shall not without the prior written consent of the Secretary of State, whether generally or on a case-by-case basis:
- (a) enter into any new Property Lease; or
 - (b) effect any amendment to any Property Lease, except to the extent that the Operator is required to do so by virtue of any station or depot access conditions to which it is a party.
- 3.2 In respect of any new Property Leases with the Infrastructure Manager, the Operator shall enter into such Property Leases:
- (a) with the intent that section 31 of the Act shall apply to such leases; and
 - (b) in the agreed terms marked **SL** and **DL** (as appropriate) or as otherwise agreed by the Secretary of State.
- 3.3 In respect of any assignment or amendment of any Property Lease to which section 31 of the Act applied on its grant, each of the Secretary of State and the Operator acknowledge that it is their intention that section 31 of the Act shall continue to apply to such assigned or amended lease.
- 3.4 The Operator shall use all reasonable endeavours to ensure that any Station Lease that it enters into accurately records all fixtures and fittings in relation to such Station Lease.

4. **Novation of Access Agreements during the Contract Term**

- 4.1 The Operator shall, to the extent so requested by the Secretary of State (other than on termination of this Contract, for which the provisions of paragraph 1 (*Novation of Access Agreements on Termination of the National Rail Contract*) of Chapter 9.5.3 (*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.
- 4.2 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.
- 4.3 Such novation shall be on such terms as the Secretary of State may require, including:
- (a) that the Operator shall not be released from any accrued but unperformed obligation, the consequences of any breach of the relevant agreement which is the subject of arbitration or litigation between the Parties thereto or any liability in respect of any act or omission under or in relation to the relevant agreement prior to, or as at the date of, any such novation (except to the extent that the Secretary of State or the Secretary of State's nominee agrees to assume responsibility for such unperformed obligation, such liability or the consequences of such breach in connection with the relevant novation); and
 - (b) that neither the Secretary of State nor the Secretary of State's nominee shall be obliged, in connection with the novation, to agree to assume responsibility for any unperformed obligation, liability or consequences of a contravention referred to in paragraph 4.3(a),

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

4.4 The Operator shall, on the occurrence of any of the circumstances specified in paragraph 4.1 in relation to any other Train Operator who is a party to an Access Agreement to which the Operator is also party, agree to the novation of the relevant Train Operator's interest under the relevant Access Agreement to the Secretary of State or as the Secretary of State may direct, subject, to the extent applicable, to the consent of the ORR. The provisions of paragraph 4.3 shall apply to any such novation.

4.5 The Operator shall notify the Secretary of State on becoming aware of any circumstances which might lead to the Secretary of State being able to require the Operator to novate its interest or agree to the novation of another Train Operator's interest under this paragraph 4.

5. **Assignment of Property Leases during the Contract Term**

5.1 The Operator shall (other than on termination of this Contract, for which the provisions of paragraph 4.5 (*Property Leases*) of Chapter 9.5.3 (*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.

5.2 Such assignment shall be on such terms as the Secretary of State may require, including:

(a) that the Operator shall not be released from any accrued but unperformed obligation, the consequences of any antecedent breach of a covenant or obligation in the Property Leases or any liability in respect of any act or omission under or in relation to the Property Lease prior to, or as at the date of, any such assignment (except to the extent that the Secretary of State or 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 5.2(a), and the Operator 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 except to the extent that any such costs, losses liabilities or expenses incurred by the Secretary of State or the Secretary of State's nominee arise in respect of circumstances where the Operator was acting as a Good and Efficient Operator.

5.3 The Operator shall, on the occurrence of any of the circumstances specified in paragraph 5.1 in relation to any other Train Operator who is a party to a Property Lease to which the Operator is also party, agree to the assignment of such Train Operator's interest under the relevant Property Lease to the Secretary of State or as the Secretary of State may direct, subject, where applicable, to the consent of the relevant Infrastructure Manager. The provisions of paragraph 5.2 shall apply to any such assignment.

5.4 The Operator shall notify the Secretary of State on becoming aware of any circumstances which might lead to the Secretary of State being able to require the Operator to assign its interest or agree to the assignment of another Train Operator's interest under this paragraph 5.

6. **Sub-Leasing Arrangements**

6.1 Where the Secretary of State requires the Operator to sub-let some of its fleet to another Train Operator under the terms of paragraph 2.4 (*Changes to the Train Fleet*) of Chapter 4.3 (*The Rolling Stock*), then the Operator shall:

(a) provide the sub-lessee with access to maintenance and mileage records;

- (b) give the sub-lessee reasonable access to the relevant rolling stock prior to the handover of such rolling stock to assist with relevant handover in relation to both operation and maintenance;
- (c) use all reasonable endeavours to offer the sub-lessee “knowledge transfer” sessions (including, technical and operation support) to enable recipient engineers and operational personnel to learn from informed peers;
- (d) provide the sub-lessee all relevant information in relation to property arrangements at any Depot relevant to the sub-leased rolling stock (a “**Relevant Depot**”) including any stabling arrangements, and

procure such access to each Relevant Depot as the sub-lessee may reasonably require.

7. **Station and Depot Leases**

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

7.2 The Operator shall not:

- (a) terminate or agree to terminate in whole or in part, or take or omit to take any other action which might result in the termination of any Station Lease or Depot Lease;
- (b) assign all or part of its interest under any Station Lease or Depot Lease; or
- (c) sublet the whole or substantially the whole of the property comprised in any Station Lease or Depot Lease,

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

8. **Station Subleases**

8.1 Unless the Secretary of State agrees otherwise, the Operator shall not sublet to any of its Affiliates any part of the property comprised in any Property Lease except on terms that any such subletting:

- (a) (other than any subletting to an Affiliate of the Operator which is a Train Operator) is terminable without compensation immediately upon the termination of this Contract; and
- (b) is excluded from the provisions of Part II of the Landlord and Tenant Act 1954 and the Tenancy of Shops (Scotland) Act 1949.

8.2 If so requested by the Secretary of State, the Operator shall:

- (a) extend each Station Sublease on the same terms for such period as the Secretary of State may request (including a period equivalent to the 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 8.2(b) shall include the termination of a station sublease in respect of which the Operator was the lessor), grant a new Station Sublease on the same terms to such Train Operator and for such period as the Secretary of State may request (including a period equivalent to the franchise term of the Train Operator who is the lessee under such Station Sublease),

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

8.3 The Operator shall notify the Secretary of State immediately on it becoming aware of any event which might give the Operator a right to forfeit or terminate any Station Sublease. The Operator shall notify the Secretary of State if it wishes to forfeit or terminate any such Station Sublease but shall not (without the Secretary of State’s prior written consent) effect such

forfeiture or termination until the date which occurs three (3) months after the date of such notice.

9. **Rolling Stock Related Contracts and Insurance Arrangements**

9.1 The Operator shall not:

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

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

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

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

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

9.4 The Operator shall not, without the prior written consent of the Secretary of State:

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

9.5 The Operator shall, in addition, if it enters into any New Insurance Arrangements, use all reasonable endeavours to ensure that the relevant insurers waive their rights of subrogation against any Train Operator which may have equivalent insurance arrangements providing for a similar waiver of rights of subrogation against the Operator, whether on a reciprocal basis or otherwise.

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

10.1 Without limiting paragraph 9.1 (*Rolling Stock Related Contracts and Insurance Arrangements*):

- (a) each Rolling Stock Lease that relates to Cascaded Rolling Stock must be capable of allowing the Secretary of State to make a direction under paragraph 10.1(b) below

- including allowing Cascaded Rolling Stock to be sub-leased to the Prior Train Operator; and
- (b) if a Relevant Delay occurs, the Secretary of State may in the Secretary of State's discretion direct the Operator to make the Cascaded Rolling Stock available for use by the Prior Train Operator during such period as the Secretary of State may require, and the Operator shall comply with such direction. Any such direction may include the Secretary of State requiring the Operator to sublease the Cascaded Rolling Stock back to the Prior Train Operator and/or to delay the date on which the Cascaded Rolling Stock is required to be delivered to the Operator under such Rolling Stock Lease.
- 10.2 Where the Secretary of State exercises the Secretary of State's right pursuant to paragraph 10.1(b) to make Cascaded Rolling Stock available for use by the Prior Train Operator during a specified period there shall be a Cost Budget Change Event and a Financial Target Amendment Event and for the purposes of Chapter 7.5 (*Variations, Changes and Amendments*), the impact of such change on the Cost Budget shall set out 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 Operator in place of the Cascaded Rolling Stock.
- 10.3 Where there is a Trigger Event pursuant to paragraph 10.2 and the period that the Prior Train Operator retains any Cascaded Rolling Stock is more than ninety (90) days there shall be a further Trigger Event.
- 10.4 Where there is a Trigger Event pursuant to paragraphs 10.2 or 10.3 there shall be a further Trigger Event on the date that the last Cascaded Rolling Stock ceases to be retained by the Prior Train Operator.
- 10.5 Where the Secretary of State exercises the Secretary of State's right pursuant to paragraph 10.1(b) to require the Operator to make the Cascaded Rolling Stock available for use by the Prior Train Operator during a specified period, the Operator shall not be liable for any failure to comply with its obligations under this Contract to the extent that:
- (a) such failure to comply arises directly as a result of the Operator being unable to use the Cascaded Rolling Stock; and
- (b) the Operator uses all reasonable endeavours to comply with the relevant obligations notwithstanding the unavailability of the Cascaded Rolling Stock.
- 10.6 The Operator shall notify the Secretary of State as soon as practicable if it becomes aware of any material risk that a Relevant Delay will occur. If a Relevant Delay does occur the Operator shall use all reasonable endeavours to mitigate the impact on the delivery of the Rail Services of the unavailability of the Cascaded Rolling Stock at the expected time including by identifying and proposing value for money alternative sources of replacement rolling stock.
- 10.7 If a Relevant Delay has occurred or the Secretary of State believes that there is a material risk that a Relevant Delay will occur, the Secretary of State may serve a notice on the Operator requiring it to produce a plan to a reasonable specification provided with the notice to remedy or mitigate the impact of the delayed availability of the Cascaded Rolling Stock ("**Delayed Cascade Mitigation Plan**"). Such specification may include measures to be implemented by the Operator to mitigate the direct or indirect impact of the Relevant Delay on the Prior Train Operator or any other affected Train Operator. The Delayed Cascade Mitigation Plan shall provide a comprehensive analysis backed by relevant data and assumptions of:
- (a) all cost and revenue and other financial implications of options contained within it including the potential implications for Contract Payments;
- (b) the implications (if any) for the Operator's performance in relation to TOC on Self Cancellations and/or TOC Minutes Delay; and
- (c) the likely impact of options within it for existing and future passenger journeys and journey opportunities.

- 10.8 The Operator shall meet with the Secretary of State to discuss the Delayed Cascade Mitigation Plan and provide such further information or analysis and further iterations of the Delayed Cascade Mitigation Plan as the Secretary of State shall require.
- 10.9 Where any rolling stock vehicles cease to be part of the Train Fleet but are acquired by another Train Operator for use in delivering passenger services the Operator shall:
- (a) ensure that:
 - (i) such rolling stock is in an acceptable redelivery condition consistent with the hand back terms agreed with the lessor;
 - (ii) a complete set of maintenance and mileage records are handed over in a suitable format; and
 - (iii) the Train Operator is given reasonable access to the relevant rolling stock prior to handover to assist with an effective hand over in relation to both operation and maintenance; and
 - (b) use all 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.

APPENDIX 1 TO CHAPTER 9.1
Information about Station Improvement Measures

Table A		
Column 1	Column 2	Column 3
Information to be provided	Information (format)	When information to be provided
A summary of capital expenditure by Station	Spreadsheet	As per paragraph 2.2 but subject to paragraph 2.3 (<i>Information about Station Improvement Measures</i>).

CHAPTER 9.2

Key Contracts and Key Assets

Chapter 9.2.1	Key Contracts
	Appendix 1: List of Key Contracts
	Appendix 2: Categories of Key Contracts
Chapter 9.2.2	Key Assets

CHAPTER 9.2.1**Key Contracts****1. Key Contracts**

1.1 This Chapter shall apply to any agreement, contract, licence or other arrangement designated as a Key Contract from time to time and sets out:

- (a) the Secretary of State's rights to designate certain contracts as Key Contracts where the Secretary of State considers that such contracts are necessary for the purposes of securing continuity of the Rail Services by a Successor Operator on expiry of the Contract Period (or, to the extent applicable and where earlier, by a Successor Shadow Operator on termination of the Shadow Operator Services); and
- (b) the Secretary of State's rights to require the Operator, in accordance with paragraph 5 (Direct Agreements), to procure that a counterparty to a Key Contract enters into a Direct Agreement with the Secretary of State.

1.2 Where at any time on or after the date of this Contract the Operator proposes to enter into any agreement, contract, licence or other arrangement which falls within one of the categories listed in Appendix 2 (*Categories of Key Contracts*) to this Chapter 9.2.1 the Operator shall:

- (a) as soon as practicable, inform the Secretary of State of any such agreement, contract, licence or other arrangement which it may be intending to enter into; and
- (b) where the Secretary of State serves a notice on the Operator pursuant to paragraph 2.2 (Designation of Key Contracts) that the Secretary of State intends to designate such contract as a Key Contract, comply with the provisions of paragraph 5.1 (Direct Agreements) in respect of any such agreement, contract, licence or other arrangement.

1.3 Without prejudice to the provisions of paragraphs 2 (*Designation of Key Contracts*), 3 (*De-designation of Key Contracts*) and 4 (*Re-designation of Key Contracts*) of this Chapter 9.2.1, following any:

- (a) designation by the Secretary of State of any actual or prospective agreement, contract, licence or other arrangement to which or under which the Operator is (or may become) a party or a beneficiary pursuant to paragraph 2 (*Designation of Key Contracts*) of this Chapter 9.2.1; or
- (b) de-designation by the Secretary of State of any Key Contract pursuant to paragraph 3 (*De-designation of Key Contracts*) of this Chapter 9.2.1; or
- (c) re-designation by the Secretary of State pursuant to paragraph 4 (*Re-designation of Key Contracts*) of this Chapter 9.2.1,

the Secretary of State may, following the provision of written notice to the Operator, amend Appendix 1 (*List of Key Contracts*) to this Chapter 9.2.1 to take account of any such designation, de-designation or re-designation.

2. Designation of Key Contracts

2.1 Where the Secretary of State considers that it is reasonably necessary for securing the continued provision of the Rail Services or the provision of services similar to the Rail Services by a Successor Operator in accordance with the National Rail Contract, the Secretary of State may make a designation pursuant to paragraph 2.2.

2.2 The Secretary of State may at any time, by serving notice on the Operator, designate as a Key Contract any actual or prospective agreement, contract, licence or other arrangement with effect from the date specified in such notice.

2.3 Key Contracts may include any agreement, contract, licence or other arrangement whether in written, oral or other form, whether formal or informal and whether with an Affiliate of the Operator or any other person and may include any arrangement for the storage of assets (including electronic systems or Computer Systems) or accommodation of employees.

3. **De-designation of Key Contracts**

The Secretary of State may at any time, by serving a notice on the Operator, de-designate any Key Contract from continuing to be a Key Contract with effect from the date specified in such notice.

4. **Re-designation of Key Contracts**

The Secretary of State may at any time, by serving notice on the Operator, re-designate as a Key Contract anything which has ceased to be designated as a Key Contract in accordance with paragraph 3 with effect from the date specified in such notice.

5. **Direct Agreements**

5.1 Unless the Secretary of State otherwise agrees, or unless directed to do so by the ORR, the Operator shall not enter into any prospective Key Contract unless the counterparty to that prospective Key Contract:

- (a) is a Train Operator; or
- (b) has entered (or, at the same time that the Operator enters into the prospective Key Contract, enters) into a Direct Agreement with the Secretary of State in respect of that prospective Key Contract, providing on a basis acceptable to the Secretary of State, amongst other things, for the continued provision of the Passenger Services and/or the continued operation of the Stations and Depots in the event of:
 - (i) breach, termination or expiry of such Key Contract;
 - (ii) termination or expiry of this Contract; or
 - (iii) the making of a railway administration order in respect of the Operator.

5.2 Where the Secretary of State designates or re-designates as a Key Contract any agreement, contract, licence or other arrangement to which the Operator is already a party, the Operator shall use all reasonable endeavours to assist the Secretary of State in entering into a Direct Agreement as envisaged by paragraph 5.1(b).

5.3 The Operator shall pay to the Secretary of State an amount equal to any losses, costs, liabilities, charges or expenses which may be suffered or incurred by the Secretary of State under the provisions of any Direct Agreement and which may be notified to the Operator as a result of, or in connection with:

- (a) any breach by the Operator of the terms of the Key Contract to which the relevant Direct Agreement relates; or
- (b) any unsuccessful claim being brought by the Operator against the counterparty of any such Key Contract in relation to the termination of such Key Contract.

6. **Emergencies**

6.1 Where any emergency may arise in connection with the provision and operation of the Rail Services, the Operator:

- (a) may enter into on a short-term basis such contracts, licences or other arrangements as it considers necessary or appropriate to deal with the emergency;
- (b) need not procure that the relevant counterparty enters into a Direct Agreement in respect of such contracts or use all reasonable endeavours to assist the Secretary of State in entering into the same;
- (c) shall promptly inform the Secretary of State of any such emergency and contracts, licences or other arrangements which it proposes to enter into; and
- (d) shall take such action in relation to such emergency, contracts, licences or other arrangements as the Secretary of State may request.

7. **No Amendment**

7.1 The Operator shall not at any time without the prior Approval of the Secretary of State vary, or purport to vary, the terms or conditions of any Key Contract referred to in Appendix 1 (*List of*

Key Contracts) (or as otherwise notified by the Secretary of State) as requiring Approval, unless directed to do so by the ORR.

7.2 The Operator shall not at any time without the prior consent of the Secretary of State vary, or purport to vary, the terms or conditions of any Key Contract relating to the Shadow Operator Services or any Key Contract referred to in Appendix 1 (*List of Key Contracts*) (or as otherwise notified by the Secretary of State) as requiring consent, unless directed to do so by the ORR.

8. **Replacement of Key Contracts**

The Operator shall, prior to the scheduled expiry date of any Key Contract (or, if earlier, such other date on which it is reasonably likely that such Key Contract will terminate), use all reasonable endeavours to enter into an appropriate replacement contract (whether with the counterparty to the existing Key Contract or not) and shall comply with the instructions of the Secretary of State and the provisions of this Chapter 9.2.1 in relation to such replacement contract.

9. **Termination of Key Contracts**

The Operator shall, to the extent so requested by the Secretary of State, exercise its right to terminate any Key Contract on the Expiry Date.

APPENDIX 1 TO CHAPTER 9.2.1

List of Key Contracts

Key Contract	Date from which designation takes effect	consent or Approval?
As specified in the agreed terms List of Key Contracts marked LOKC (as updated from time to time pursuant to the provisions of Chapter 9.2.1 (<i>Key Contracts</i>))	As specified in the agreed terms List of Key Contracts marked LOKC (as updated from time to time pursuant to the provisions of Chapter 9.2.1 (<i>Key Contracts</i>))	As specified in the agreed terms List of Key Contracts marked LOKC (as updated from time to time pursuant to the provisions of Chapter 9.2.1 (<i>Key Contracts</i>))

APPENDIX 2 TO CHAPTER 9.2.1**Categories of Key Contracts**

The table below:

- (a) lists the categories of prospective Key Contracts to which paragraph 1.2 of Chapter 9.2.1 (*Key Contracts*) shall apply; and
- (b) identifies, for the purposes of paragraph 7 of Chapter 9.2.1, whether a prospective Key Contract in that category requires the prior Approval of the Secretary of State or the prior consent of the Secretary of State to vary its terms or conditions (and, for the avoidance of doubt, notwithstanding column 3 in the table below, the provisions of Chapter 1.3 do not,) (save to the extent specifically referred to in paragraphs 12.6(b) and 12.7(b) of Chapter 11.1 (*Shadow Operations*), apply in relation to the Shadow Operator Services).

No.	Key Contract Category	consent or Approval?
1	Any Access Agreement to which the Operator is a party other than in its capacity as a Facility Owner.	consent
2	Any Property Lease and all side agreements relating to such relevant Property Lease.	consent
3	Any Rolling Stock Related Contract including the Rolling Stock Leases listed in Table 1 (<i>Original Rolling Stock</i>), and Table 2 (<i>Specified Additional Rolling Stock</i>) of Appendix 1 (<i>The Composition of the Train Fleet</i>) to Chapter 4.3 (<i>The Rolling Stock</i>).	consent
4	NOT USED	NOT USED
5	Any contract or arrangement for the lending, seconding, hiring, contracting out, supervision, training, assessment, or accommodation by another Train Operator or other third party of any train drivers, conductors or other train crew used by the Operator in the provision of the Passenger Services or the Shadow Operator Services.	Approval
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 or the Shadow Operator Services (whether or not the Approval of the Secretary of State is required to such subcontracting or delegation under paragraph 13 (<i>Subcontracting any Passenger Services</i>) of Chapter 4.1 (<i>Service Development</i>)).	Approval
7	Any contract or arrangement with a Train Operator or other third party (other than an Access Agreement) for the provision to the Operator of train dispatch, performance or supervision of platform duties, security activities, evacuation procedures, advice or assistance to customers, assistance to disabled customers, operation of customer information systems, cash management or ticket issuing systems administration.	Approval
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 or the Shadow Operator Services.	Approval
9	Any contract or arrangement for the supply of spare parts or Spares.	consent
10	Any contract or arrangement for the maintenance of track and other related infrastructure.	Approval
11	Any licences of Marks to the Operator.	consent
12	Any contract or arrangement relating to the operation of smart ticketing and ticketing retail.	consent

No.	Key Contract Category	consent or Approval?
13	Any licence of any CRM System or Yield Management System.	consent
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 considers is essential for the delivery of the Rail Services.	Approval
15	Any SQR Contract.	Approval
16	Any Universal Licence Agreement.	consent
17	Any other category of agreement, contract, licence or other arrangement notified to the Operator by the Secretary of State.	As notified by the Secretary of State
18	Any contract or arrangement for the procurement, implementation, processing and/or operation of the smart ticketing solutions (including hardware and/or software) (including Intellectual Property Rights (or licence to use the same) relating to the smart ticketing solutions (including hardware and/or software)).	consent
19	Any contract or arrangement for the procurement, implementation, processing and/or operation of Delay Repay Compensation (including Intellectual Property Rights (or licence to use the same) relating to Delay Repay Compensation).	consent

CHAPTER 9.2.2**Key Assets – Designation of Assets****1. Operating Assets**

- 1.1 The Operator shall maintain, protect and preserve the Operating Assets in good standing or good working order, subject to fair wear and tear.
- 1.2 The Operator shall carry out its obligations under paragraph 1.1 so that the Operating Assets may be transferred at the end of the Contract Period to a Successor Operator and used by such Successor Operator in the provision or operation of similar services to the Rail Services (or, to the extent applicable and where earlier, transferred on termination of the Shadow Operator Services to, and used by, any Successor Shadow Operator, in the provision or operation of similar services to the Shadow Operator Services).
- 1.3 Where any Operating Asset is lost, destroyed or otherwise beyond repair, the Operator shall replace the Operating Asset with property, rights or liabilities in modern equivalent form to the Operating Asset to be replaced. The Operator shall at all times maintain an appropriate volume of Spares, and/or an appropriate level of access to Spares from a third party, to enable it to perform its obligations under the National Rail Contract.
- 1.4 The Secretary of State may at any time require the Operator to provide to the Secretary of State a schedule specifying the condition of any asset or class of assets that the Secretary of State specifies for this purpose. Such schedule shall cover such aspects of asset condition as the Secretary of State may 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 Chapter 9.4.2 (*Dispute Resolution Procedures*). Until such dispute is resolved, the Operator shall comply with the Secretary of State's requirements in respect of such schedule of condition.

2. Assets

- 2.1 Subject to paragraph 2.2, all property, rights and liabilities of the Operator from time to time during the Contract Period shall be designated as Assets and shall constitute "Franchise Assets" for the purposes of section 27(11) (*Transfer of franchise assets and shares*) of the Act.
- 2.2 The rights and liabilities of the Operator in respect of the following items shall not be designated as Assets and shall not constitute "Franchise Assets" for the purposes of section 27(11) of the Act:
- (a) any contracts of employment;
 - (b) the National Rail Contract 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 Operator and the Secretary of State may agree from time to time or as the Secretary of State may de-designate as Assets under paragraph 12.2; and
 - (f) any Rolling Stock Leases.
- 2.3 The Operator shall keep vested in it at all times during the Contract Period all Assets designated as such pursuant to this Chapter 9.2.2 (*Key Assets - Designation of Assets*) as it may require in order to comply with:
- (a) the Licences;
 - (b) any contracts of employment with Business 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 Assets.

3. **Spares**

The obligation of the Operator to maintain, preserve and protect the Operating Assets under this Chapter 9.2.2 shall, in respect of Spares, include the obligation to replace any Spare which has been designated as a Primary Asset, which subsequent to its designation ceases to be part of the stock of Spares available to the Operator for use in the provision of the Rail Services, with an equivalent Spare of equal or better quality than the Spare so replaced.

4. **Primary Assets**

4.1 The following property, rights and liabilities shall (to the extent that they constitute Assets) be designated as Primary 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 Assets*) to this Chapter 9.2.2 (which constitute Primary Assets agreed between the Parties as at the date of the National Rail Contract), on the Start Date;
- (b) any additional property, rights and liabilities designated under paragraph 5 (*Designation of Additional Primary Assets*) during the Contract Period, on the date of such designation;
- (c) any property or right which is vested in the Operator and used for the purpose of maintaining, replacing, repairing or renewing any property designated as Primary 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 Operator under any Key Contract designated under paragraph 7 (*Designation of Key Contracts as Primary Assets*), on the date of such designation;
- (e) the rights and liabilities of the Operator in respect of the terms of any Fare or Discount Card designated under paragraph 8 (*Designation of Fares and Discount Cards*), 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 Operator, 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) 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 15.1 (*Passenger Numbers Information*) of Chapter 4.1 (*Service Development*);
- (i) any property and rights comprised in a Business Plan Commitment and designated by the Secretary of State as Primary Assets pursuant to paragraph 19 (*Designation of Assets comprised in Business Plan Commitments as Primary Assets*) of Chapter 9.2.2 (*Key Assets - Designation of Assets*), on the date of such designation;
- (j) all assets, which are not consumables and which are not routinely traded or disposed of as part of business as usual by a Good and Efficient Operator, that have been

acquired by the Operator during the term of this Contract on the date of such acquisition;

- (k) any Digital Rights:
 - (i) acquired during the term of this Contract, from the date of acquisition; or
 - (ii) previously designated as Primary Franchise Assets (as defined in the Previous Agreement) pursuant to the Previous Agreement, on the Start Date;
- (l) any SQR Data and, to the extent that any SQR Management System and/or SQR Register is the property of the Operator, such SQR Management System and/or SQR Register on the later of the Start Date and:
 - (i) in relation to SQR Data, the date on which such SQR Data is collected and/or generated; or
 - (ii) in relation to any such SQR Management System or SQR Register, the date on which such SQR Management System or SQR Register is created,

save, in relation to any SQR Data which constitutes Personal 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; and
- (m) any licence of any SQR Management System and/or SQR Register, on the date of such licence; and
- (n) any assets purchased through the Operator completing its obligations under Chapter 11 (*Shadow Operator*) and/or any Shadow Operator Business Plan Commitment on the date that such asset is purchased by the Operator.

5. **Designation of Additional Primary Assets**

- 5.1 The Secretary of State may at any time and from time to time, by serving notice on the Operator, designate any or all of the Assets as Primary Assets.
- 5.2 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.
- 5.3 On or before designation of any Asset as a Primary Asset, the Secretary of State may agree not to subsequently de-designate such Primary Asset without the prior written consent of the Operator. If the Secretary of State so agrees, the notice designating the relevant Asset as a Primary Asset shall state the commitment not to de-designate.

6. **Designation during last twelve (12) months of Contract Period**

- 6.1 If the Secretary of State designates an Asset as a Primary Asset under paragraph 5 at any time during the last twelve (12) months of the Contract Period then, within twenty eight (28) days of such designation, the Secretary of State may, subject to paragraph 6.2, de-designate such Primary Asset by serving notice on the Operator. Such de-designation shall take effect upon delivery of such notice.
- 6.2 Where, the Secretary of State has given a commitment not to de-designate a Primary Asset pursuant to paragraph 5.3 (*Designation of Additional Primary Assets*) and/or pursuant to Appendix 1 (*List of Primary Assets*) to this Chapter 9.2.2, the Secretary of State shall not de-designate such Primary Asset pursuant to paragraph 6.1 without first obtaining the prior written consent of the Operator.

7. **Designation of Key Contracts as Primary Assets**

- 7.1 The Secretary of State shall, subject to paragraphs 2.2 (*Assets*) and 9 (*Rights and Liabilities*) and without prejudice to paragraph 7.2, be entitled to designate any Key Contract as a Primary Asset at any time during the Contract Period by serving notice on the Operator. Such designation shall take effect from delivery of such notice.
- 7.2 If the Secretary of State issues an Expiry Notice pursuant to clause 2.2 of this Contract then subject to paragraph 7.4, the Secretary of State shall, by serving a notice on the Operator in

accordance with paragraph 7.3 (a “**Overhanging Contract Designation Notice**”), designate as a Primary Asset any Access Agreement, Property Lease and/or Rolling Stock Related Contract (other than any Rolling Stock Lease) which:

- (a) has a term extending beyond the Core Term Expiry Date (or such later date as notified by the Secretary of State); and
- (b) does not provide a right for the Operator to terminate the relevant contract on three (3) months’ notice (or less) on or after the Core Term Expiry Date (or such later date as notified by the Secretary of State) without the Operator incurring breakage or termination costs,

(each a “**Designated Overhanging Contract**”).

7.3 The Secretary of State shall issue each Overhanging Contract Designation Notice on or around the Expiry Date and each such Overhanging Contract Designation Notice shall specify that:

- (a) the relevant designation shall take effect on the Expiry Date; and
- (b) the Operator shall not be released from any accrued but unperformed obligation, the consequences of any antecedent breach of a covenant or obligation in the relevant Designated Overhanging Contract or any liability in respect of any act or omission under or in relation to the Designated Overhanging Contract prior to, or as at the date of, the transfer (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 transfer); and
- (c) neither the Secretary of State nor the Secretary of State’s nominee shall be obliged, in connection with such transfer, to agree to assume responsibility for any unperformed obligation, liability or consequences of a breach referred to in paragraph 7.3(b), and the Operator shall indemnify the Secretary of State or the Secretary of State’s nominee, as the case may be, on demand, on an after-tax basis against any costs, losses, liabilities or expenses suffered or incurred in relation thereto.

7.4 The Secretary of State shall only be required to serve an Overhanging Contract Designation Notice in accordance with paragraph 2 in respect of:

- (a) any Access Agreement, in circumstances where such Access Agreement (and any related Network Rail Collateral Agreement) has not been novated to the Secretary of State or as otherwise directed by the Secretary of State in accordance with paragraph 1 (*Novation of Access Agreements on Termination or Expiry of the National Rail Contract*) of Chapter 9.5.3 (*Provisions applying on and after Termination*);
- (b) any Property Lease, in circumstances where such Property Lease has not been assigned to the Secretary of State or as otherwise directed by the Secretary of State in accordance with paragraph 4.5 (*Property Leases*) of Chapter 9.5.3 (*Provisions applying on and after Termination*).

8. **Designation of Fares and Discount Cards**

The Secretary of State may designate any Fare or Discount Card as a Primary Asset at any time during the Contract Period by serving a notice on the Operator. Such designation shall take effect from delivery of such notice.

9. **Rights and Liabilities**

The Secretary of State, in designating the rights and liabilities of the Operator (whether under a particular contract or other arrangement) as a Primary 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 Contract Period) or to those relating only to the Rail Services or a particular part thereof.

10. **Disputes Over Designation**

10.1 The Operator agrees that it shall not object in writing to or dispute any designation by the Secretary of State pursuant to paragraph 5 (*Designation of Additional Primary Assets*) or 6 (*Designation during last twelve (12) months of Contract Period*).

11. **Provision of Information to the Secretary of State**

11.1 The Operator shall provide such information as the Secretary of State may require in order to satisfy the Secretary of State that any Assets which are to be designated as Primary Assets after the Start Date under this Chapter 9.2.2 will at the time of such designation be vested in the Operator. Such information may include details of any Security Interests over such property, rights and liabilities.

11.2 The Operator shall further provide such information as to the property, rights and liabilities of the Operator as the Secretary of State may require in connection with the designation of Primary Assets. Such information shall be supplied to the Secretary of State within such timescale as the Secretary of State may require.

12. **De-Designation of Assets and Primary Assets**

12.1 The Secretary of State and the Operator may agree in writing at any time that:

- (a) an Asset shall cease to be designated as an Asset; or
- (b) a Primary Asset shall cease to be designated as a Primary Asset,

and the relevant Asset or Primary Asset (as the case may be) shall cease to be designated upon such agreement coming into effect.

12.2 The Secretary of State may, in addition at any time during the Contract Period, by serving notice on the Operator:

- (a) cause an Asset which is not a Primary Asset to cease to be designated as an Asset. Such Asset shall cease to be designated on the date specified in such notice; or
- (b) subject to paragraph 12.3, cause a particular Primary Asset to cease to be designated as such. Such Primary Asset shall cease to be designated on the date specified in such notice.

12.3 Where, the Secretary of State has given a commitment not to de-designate a Primary Asset pursuant to paragraph 5.3 (*Designation of Additional Primary Assets*) and/or pursuant to Appendix 1 (*List of Primary Assets*) to this Chapter 9.2.2, the Secretary of State shall not de-designate such Primary Asset pursuant to paragraph 12.2(b) without first obtaining the prior written consent of the Operator.

12.4 The Secretary of State's rights pursuant to paragraph 12.2(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 Asset, no later than one (1) year prior to the expiry of the Contract Term.

13. **Amendment of the List of Primary Assets**

The table in Appendix 1 (*List of Primary Assets*) to this Chapter 9.2.2 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 Assets pursuant to this Chapter 9.2.2, except this shall not include a requirement to generically list all Primary Assets with a value of less than £20,000.

14. **Assets not Designated as Primary Assets**

14.1 This paragraph 14 relates to any Assets that are property or rights and are not designated as Primary Assets and Primary Assets with a value of less than £20,000 (together "**Relevant Assets**").

14.2 For the purposes of section 27(3) of the Act, the Secretary of State consents to the Operator:

- (a) transferring or agreeing to transfer any such Assets or any interests in, or right over, any Relevant Assets; and

- (b) creating or extinguishing, or agreeing to create or extinguish, any interest in, or right over, any Relevant Assets.

15. Liabilities not Designated as Primary Assets

- 15.1 This paragraph 15 relates to any liabilities which are not designated as Primary Assets.
- 15.2 For the purposes of section 27(3) of the Act, the Secretary of State consents to the Operator entering into any agreement under which any such liability is released or discharged, or transferred to another person.

16 Assets and Primary Assets

- 16.1 This paragraph 16 relates to Assets (whether or not designated as Primary Assets) which are property or rights.
- 16.2 The Secretary of State hereby consents to the installation of Spares which have been designated as Primary Assets on any rolling stock vehicles. Any Spare which is so installed shall cease to be so designated on such installation.
- 16.3 For the purposes of section 27(3) of the Act, the Secretary of State hereby consents to the Operator creating or agreeing to create any Security Interest over any of these Assets to the extent that the terms of any such Security Interest provided that:
 - (a) if the relevant 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 Asset is assigned, novated or otherwise transferred to another person pursuant to and in accordance with the National Rail Contract, 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 Asset ceases to be designated as an Asset.

17. Other Security Interests

- 17.1 The Operator shall not create or agree to create a Security Interest over any Asset except on the terms permitted under paragraph 16.3 (*Assets and Primary Assets*).
- 17.2 The Operator shall promptly inform the Secretary of State of any Security Interest arising at any time over any of its property or rights and shall provide the Secretary of State with such information in relation thereto as the Secretary of State may require.

18. Information about Assets used in respect of Rail Services

- 18.1 The Operator shall at all times during the Contract 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 for each Primary Asset or other asset which is the subject of, or operated under, a Key Contract, in either case which has a value in excess of twenty thousand pounds (£20,000):
 - (a) the progress and completion of all work described in the maintenance schedules and manuals; and
 - (b) all operating manuals (including any safety related regulations); and
 - (c) all permits, licences, certificates or other documents required to operate such asset; and
 - (d) a printed or electronic list of all assets owned by the Operator from time to time (excluding, unless otherwise requested by the Secretary of State, any office furniture and consumable items).

19. **Designation of Assets comprised in Business Plan Commitments as Primary Assets**
- 19.1 The Secretary of State may at any time designate as a Primary Asset any asset introduced by the Operator by way of a Business Plan Commitment (the “**Designated BP Primary Assets**”). Such designation shall take effect from the date on which the Secretary of State delivers to the Operator a notice designating the relevant asset as a Designated BP Primary Asset.
- 19.2 The transfer value in relation to any Designated BP Primary Asset, which at the end of the Contract Period is:
- (a) not de-designated as a Primary Asset pursuant to paragraph 12 (*De-Designation of Assets and Primary Assets*) of this Chapter 9.2.2 (*Key Assets - Designation of 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.

APPENDIX 1 TO CHAPTER 9.2.2**List of Primary Assets**

Description of Primary Asset*	Commitment not to de-designate	To Transfer to Successor Operator at Nil Value
Dell models – Physical Servers	No	Yes
Station Customer Information Screens - CIS at Stations, hardware and software	No	Yes
Automatic Ticket Gates – ATGs at Stations and integration links	No	Yes
Barcode Ticket Handheld Scanners – Scanners for TMs/RPOs to check barcode tickets	No	Yes
Envoy – Mobile Ticket Issuing System on Board	No	Yes
Avocet – Ticket Issuing System at Stations	No	Yes
FAST – Ticket Vending Machines at Stations	No	Yes
Station iPads – Station Staff Info devices	No	Yes
Station Customer Wi-Fi – Ruckus Access points in Stations, service & contract	No	Yes
WAN Data Lines – MPLS corporate network	No	Yes
Captive Equipment – Bonded Store	No	Yes
Captive Equipment – Par Levels on Trains	No	Yes
Captive Equipment – Par Levels in Service Centres	No	Yes
Tableware – Bonded Store	No	Yes
Tableware – Par Levels on Trains	No	Yes
Tableware – Par Levels in Service Centres	No	Yes
Trolleys	No	Yes
Carts & Other Equipment	No	Yes
Base Service Centre MHE Asset List	No	Yes
Service Centre Equipment & Furniture	No	Yes
Wi-Fi – Wi-Fi Nomad	No	Yes
Help Points & Rail Points	No	Yes

**Note that the Secretary of State may elect to designate under Chapter 9.2.2 as Primary Assets any assets delivered by the Operator as part of a Business Plan Commitment.*

CHAPTER 9.3**Branding and Intellectual Property****1. Branding and Brand Licence**

1.1 The Operator shall comply with the Brand Licence.

1.2 Subject to any applicable obligations or restrictions on the Operator (including the terms of the Rolling Stock Leases), the Operator shall:

- (a) apply the Primary Brands to:
 - (i) the Train Fleet;
 - (ii) the Stations;
 - (iii) staff uniforms;
 - (iv) marketing materials;
 - (v) publications; and
 - (vi) ticket sales channels;
- (b) apply the Primary Brands to any assets which:
 - (i) are owned or used by the Operator in the operation and provision of the Rail Services;
 - (ii) passengers interface with or are otherwise exposed to (including passenger information displays); and
 - (iii) the Operator, acting as a Good and Efficient Operator, considers it is appropriate to brand in such manner taking into account the general approach across the industry and the aspiration for a consistent approach to brand application.

1.3 Subject to any applicable obligations or restrictions on the Operator (including the terms of the Rolling Stock Leases), the Operator shall apply:

- (a) each Secondary Brand identified in the first column of the following table in the circumstances, to the assets and/or in the locations described in the second column in the following table:

Secondary Brand	Circumstances/Assets/Locations
Double Arrows Symbol	All Stations
AVANTI WEST COAST FEEL GOOD TRAVEL	As the Operator considers appropriate pursuant to paragraph 1.3(c)
The Royal Scot	As the Operator considers appropriate pursuant to paragraph 1.3(c)
The Clansman	As the Operator considers appropriate pursuant to paragraph 1.3(c)
The Welsh Dragon	As the Operator considers appropriate pursuant to paragraph 1.3(c)
The Caledonian	As the Operator considers appropriate pursuant to paragraph 1.3(c)
The Red Rose	As the Operator considers appropriate pursuant to paragraph 1.3(c)

The Coronation Scot	As the Operator considers appropriate pursuant to paragraph 1.3(c)
Y Ddraig Gymreig	As the Operator considers appropriate pursuant to paragraph 1.3(c)
Journeycare	As the Operator considers appropriate pursuant to paragraph 1.3(c)
Intercity (1277000)	As the Operator considers appropriate pursuant to paragraph 1.3(c)
Intercity (1518859)	As the Operator considers appropriate pursuant to paragraph 1.3(c)
Intercity (1537905)	As the Operator considers appropriate pursuant to paragraph 1.3(c)
2 Swallows	As the Operator considers appropriate pursuant to paragraph 1.3(c)
2 Swallows	As the Operator considers appropriate pursuant to paragraph 1.3(c)
4 Swallows	As the Operator considers appropriate pursuant to paragraph 1.3(c)

- (b) in the case of the Double Arrows Symbol, to any further assets as the Secretary of State may reasonably direct; and
 - (c) in the case of any Secondary Brand other than the Double Arrows Symbol, in any further circumstances, to any further assets and/or in any further locations which the Operator, acting as a Good and Efficient Operator, considers it is appropriate to brand in such manner taking into account the general approach across the industry and the aspiration for a consistent approach to brand application.
- 1.4 Subject to any applicable obligations or restrictions on the Operator (including the terms of the Rolling Stock Leases), the Operator shall apply the Trade Marks to those assets which:
- (a) are owned or used by the Operator in the operation and provision of the Rail Services;
 - (b) passengers interface with or are otherwise exposed to; and
 - (c) the Operator, acting as a Good and Efficient Operator, considers it is appropriate to brand in such manner taking into account the general approach across the industry and the aspiration for a consistent approach to brand application.
- 1.5 Assets which the Operator will consider in discharge of its obligations under paragraph 1.4 above shall include:
- (a) the Train Fleet;
 - (b) the Stations;
 - (c) staff uniforms;
 - (d) marketing materials;
 - (e) publications;
 - (f) ticket sales channels; and
 - (g) passenger information display screens.
- 1.6 The Operator shall not apply any trade marks, other than the Primary Brands, the Secondary Brands, the Trade Marks or the Third Party Trade Marks, without the express prior written consent of the Secretary of State.

- 1.7 The Operator shall not apply any trade marks which are neither Enduring Branding nor a Third Party Trade Mark without the express prior written consent of the Secretary of State.
- 1.8 The Operator shall maintain the Enduring Branding, including the Primary Brands and the Secondary Brands, throughout the Contract Term.
- 2. Removal of Branding**
- 2.1 The Operator shall ensure that all branding that is neither Enduring Branding nor a Third Party Trade Mark, (“**Transitory Branding**”) shall, unless otherwise expressly agreed with the Secretary of State, be removed by the end of the Contract Period, which shall include the following:
- (a) removing or covering Transitory Branding from the exterior of any rolling stock vehicle;
 - (b) removing or covering interior indications of Transitory Branding including upholstery and carpets;
 - (c) replacing or covering all station or other signs including billboards;
 - (d) replacing or covering all staff uniforms; and
 - (e) 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 Rail Services.
- 2.2 If the Operator has not complied with the obligations under paragraph 2.1 above by the end of the Contract Term, the Operator shall pay to the relevant Successor Operator such amount as may be agreed between the Operator 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 Transitory Branding or otherwise removing all indications or reference to the Transitory Branding in a manner acceptable to the Secretary of State. Such amount shall not in any event exceed the cost to the Successor Operator of replacing such Transitory Branding with its own. If the Operator and the relevant Successor Operator fail to agree such cost within twenty eight (28) days of the expiry of the Contract Period, the Operator shall submit such dispute for resolution in accordance with such dispute resolution procedures as the Secretary of State may require.
- 2.3 Any costs incurred by the operator in complying with paragraph 2.1 or 2.2 shall be a Disallowable Cost, if and to the extent that the Transitory Branding in question was applied:
- (a) during the Contract Term; and
 - (b) without the express written prior consent of the Secretary of State.
- 3. Designation as Primary Assets**
- 3.1 The Operator shall ensure that all rights (including any copyright and right in goodwill or passing off) in the Operator Trade Marks (each as may be modified from time to time) are capable of being designated as Primary Assets and accordingly transferred to the Successor Operator and, if the Secretary of State so designates rights in relation to the Operator Trade Marks and does not de-designate them pursuant to paragraph 12 (*De-Designation of Assets and Primary Assets*) of Chapter 9.2.2 (*Key Assets - Designation of Assets*), the transfer value shall (unless otherwise agreed by the Secretary of State) be nil.
- 4. Licence to Operator’s Intellectual Property**
- 4.1 On the expiry of the Contract Period, insofar as the Operator is able to do so having complied with the terms of paragraph 4.2 below, the Operator shall grant a non-exclusive licence to any Successor Operator including the Secretary of State, of any Intellectual Property Rights which:
- (a) are owned by or licensed to the Operator;
 - (b) have not been designated as a Primary Asset;
 - (c) do not represent or constitute a Mark; and

- (d) may, in the opinion of the Secretary of State, be necessary for any Successor Operator to operate the Rail Services on an efficient and economic basis after the expiry of the Contract Period.
- 4.2 Without prejudice to paragraph 7.10 (*Intellectual Property Rights and General Provisions*) of this Chapter 9.3, when agreeing the terms on which Intellectual Property Rights are to be licensed to it from third parties, the Operator shall use commercially reasonable efforts, acting as a Good and Efficient Operator, to procure that the terms of the applicable licence(s) include the right for the Operator to sub-license such Intellectual Property Rights in accordance with this paragraph 4. The Operator shall not enter into a licence that does not include such a provision unless the Secretary of State Approves. The terms of this paragraph 4.2 shall not apply to any licences to third party Intellectual Property Rights entered into by the Operator prior to the date of this Contract.
- 4.3 Any licence of any Intellectual Property Rights granted to the relevant Successor Operator under this paragraph 4 shall be for such period as the Secretary of State may determine to be reasonably necessary for the purpose of securing continuity of the provision of the Rail Services. Such licence shall be free of charge and royalty-free for a minimum of six (6) months. The Secretary of State may (at the discretion of the Secretary of State) extend the royalty-free period of any licence.
- 4.4 If the licence of any Intellectual Property Rights is for a period in excess of the royalty-free period determined under paragraph 4.3 above, the grant of the licence shall be subject to payment of a reasonable royalty on the basis of a willing licensor and licensee entering into a licence on comparable terms to similar licences of such Intellectual Property Rights. If the Operator and the relevant Successor Operator are unable to agree such royalty, the Operator shall submit such dispute for resolution in accordance with such dispute resolution rules as the Secretary of State may require.
- 4.5 Any licence granted under this paragraph 4 shall be in such form as the Secretary of State shall determine and shall:
- (a) be non-exclusive and limited to use solely for the purposes of the provision and operation of the Rail Services and will not provide for any right to use such Intellectual Property Rights for any other purpose (including its marketing or exploitation for any other purpose);
 - (b) be terminable on material breach by the Successor Operator or the Secretary of State;
 - (c) contain an indemnity from the Operator to the effect that to the best of its knowledge and belief it owns the relevant Intellectual Property Rights or has the right to license them and the licensing of such Intellectual Property Rights and the subsequent use of the Intellectual Property Rights will not infringe any third party Intellectual Property Rights; and
 - (d) require the Successor Operator, to the extent that it relates to any trade marks, to use such trade marks in such manner as may reasonably be required by the Operator provided that it shall not be reasonable for the Operator to require any such trade mark to be used in a manner materially different from its use during the Contract Period.
- 4.6 The terms of this paragraph 4 are without prejudice to the Secretary of State's right to sublicense any Operational Foreground and/or Background IP to a Successor Operator (or any other person), as permitted in accordance with paragraph 7.10.
5. **Customer Relationship Management (CRM) Data**
- 5.1 The Operator shall ensure that any CRM System is the property of the Operator or is licensed to the Operator on terms which have been consented to by the Secretary of State and that any CRM Data (and any Intellectual Property Rights subsisting in the CRM Data or the database in which it is organised, collated or stored) obtained by or on behalf of the Operator shall be:
- (a) obtained on terms such that the Operator shall be the Controller of such data; and
 - (b) the property of the Operator.

- 5.2 In relation to any CRM Data obtained by or on behalf of the Operator, the Operator shall:
- (a) ensure that the CRM Data is collected and processed by or on behalf of the Operator in accordance with the Data Protection Legislation;
 - (b) without prejudice to paragraph 5.2(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 5.2(a) ensure that there is a lawful basis for its collection and processing of the CRM Data;
 - (d) without prejudice to paragraph 5.2(a) ensure that the principles of fairness and lawfulness are satisfied in particular in respect of the disclosure of the CRM Data to any Successor Operator and/or the Secretary of State such that the CRM Data may be processed by any Successor Operator for the same purposes as are relevant to the processing of the CRM Data by the Operator; and
 - (e) without prejudice to paragraph 5.2(a) ensure that where consents are required under the Data Protection Legislation for the processing of the CRM Data by the Operator and any Successor Operator (including in relation to marketing, sign up for notifications or general alerts, sign up for newsletters, and (as relevant) processing of Special Categories of Personal Data) all such consents are sought in such a way as to enable any Successor Operator to process the CRM Data for the same purposes as are relevant to the processing of it by the Operator.

5.3 The consents referred to in paragraph 5.2(e) shall be sought in such manner as shall from time to time be Approved by the Secretary of State and shall be on terms such as shall permit, in each case in compliance with Data Protection Legislation:

- (a) the Operator to disclose such CRM Data to any Successor Operator and/or the Secretary of State; and
- (b) any such Successor Operator to process such CRM Data in the manner contemplated by paragraph 5.2.

5.4 The Operator shall:

- (a) disclose, publish, share, provide and otherwise make available the CRM Data to any person (including a Successor Operator or any participant involved with the re-letting of the Rail Services); and
- (b) provide access to any CRM System,

in each case pursuant to the terms of the National Rail Contract (together, the “**CRM Data Obligations**”) to the extent that compliance with the CRM Data Obligations is in accordance with the Data Protection Legislation.

6. Rail Passenger Counts Database

6.1 Subject to compliance by the Operator with its obligations set out in Chapter 4.1 (*Service Development*), the Secretary of State shall:

- (a) use all reasonable endeavours to populate the RPC Database with such Actual Passenger Demand information as the Operator shall provide pursuant to the Operator’s obligations contained elsewhere in this Contract and any other information that the Secretary of State shall desire; and
- (b) use all reasonable endeavours to provide the Operator with log-in details to the RPC Database in order to allow the Operator to access Actual Passenger Demand information that has been provided by the Operator, any Infrastructure Manager Data, any Third Party Data and to generate reports from the RPC Database. The Operator will not be provided with access to Actual Passenger Demand provided by another Train Operator.

- 6.2 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 and accepts no liability for:
- (a) any data or information contained in the RPC Database;
 - (b) the raw Actual Passenger Demand information provided by the Operator or any Infrastructure Manager 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, Infrastructure Manager Data and/or Third Party Data and/or the loss, corruption, degradation or destruction of such data.

6.3 Without prejudice to Chapter 9.2.2 (*Key Assets - Designation of Assets*), paragraphs 2.1 (*Preparation for Reletting*) and 3 (*Data Site Information*) of Chapter 9.5.2 (*Reletting Provisions and Maintenance as a Going Concern*), Chapter 9.5.3 (*Provisions applying on and after Termination*) or any other rights of the Secretary of State, the Operator agrees that, following the expiry or termination by whatever means of this Contract and any Continuation Document, the Secretary of State shall be entitled to allow access to the Operator's Actual Passenger Demand information by way of granting access to that area of the RPC Database or otherwise to any future operator of the Passenger Services (whether or not in direct succession to the Operator) or to such part of the Actual Passenger Demand information as relates to the part of the Rail Services which is being taken over by such future operator.

7. Intellectual Property Rights and General Provisions

RPC Database

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

Actual Passenger Demand

7.2 Subject to Chapter 9.2.2 (*Key Assets - Designation of Assets*) and Chapter 9.5.3 (*Provisions applying on and after Termination*), all Intellectual Property Rights in the Actual Passenger Demand information will at all times remain owned by the Operator and (subject as previously stated) to the extent that any rights in the Actual Passenger Demand information vest in the Secretary of State by operation of law, the Secretary of State hereby assigns such rights to the Operator.

Infrastructure Manager Data

7.3 All Intellectual Property Rights in the Infrastructure Manager Data will at all times remain owned by the relevant NR entity or HS2 Limited entity and to the extent that any rights in the Infrastructure Manager Data vest in the Secretary of State or the Operator by operation of law, the Secretary of State and/or the Operator (as applicable) will enter into a separate agreement with the relevant NR entity or HS2 Limited entity to assign such rights to it.

Third Party Data

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

Miscellaneous IP

7.5 Subject to Chapter 9.2.2 (*Key Assets - Designation of Assets*) and Chapter 9.5.3 (*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 Background IP (or that of the other Party's licensors) by virtue of the rights granted to it under this Contract or through its use of such Background IP; 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 Background IP.
- 7.6 Except for BP Foreground, ICP Foreground, RPC Data, Actual Passenger Demand Data, CRM Data, Infrastructure Manager Data and Third Party Data (the ownership of which is otherwise addressed elsewhere in the National Rail Contract), as between the Parties any Foreground IP created or devised for the purposes of, or in the course of undertaking or performing the Rail Services or any other obligations under this Contract shall belong to the Operator ("**Operational Foreground**"), and such Operational Foreground will immediately vest in the Operator.
- 7.7 Any domain names brought into use on or after the Start Date for the purposes of providing or receiving Rail Services shall be registered in the name of the Secretary of State.
- 7.8 The Secretary of State hereby grants, for the duration of the Contract Period, the Operator a non-exclusive, non-transferable licence to use:
- (a) the RPC Database;
 - (b) any Derivative Output; and
 - (c) all Intellectual Property Rights in the same,
- in the United Kingdom for the purposes of accessing the Actual Passenger Demand information by using the functionality of the RPC Database.
- 7.9 Without limiting any other rights the Secretary of State may have, the Operator hereby grants the Secretary of State a perpetual, non-terminable, non-exclusive licence (which is transferable and/or capable of being sub-licensed in the circumstances set out in this paragraph 7.9) 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 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 National Rail Contract to share, disclose, or publish the same and transfer and/or sub-licence and permit the use and sharing, disclosing or publishing for the purposes it is shared or disclosed; and/or
 - (e) to allow a future operator of the Passenger Services (whether or not in direct succession to the Operator to view and access such Actual Passenger Demand information (whether via the RPC Database or otherwise) as directly relates to the services that it will be running,
- and such rights to use the Actual Passenger Demand information and all Intellectual Property Rights pursuant to this paragraph 7.9 shall continue following expiry or termination of this Contract.
- 7.10 Subject to paragraph 7.11 below, the Operator:
- (a) hereby grants (or shall procure the grant of) to the Secretary of State a non-exclusive, perpetual, royalty-free, paid-up licence to use and copy the Background IP owned by the Operator and the Operational Foreground:
 - (i) for any purpose related to the provision of rail services on the United Kingdom heavy rail network; and
 - (ii) to enable the Secretary of State to receive the full benefit of the Shadow Operator Services both during and after the Contract Period,

such licence may be sub-licensed; and

- (b) shall, in the case of any third party Background IP that is embedded in, or is an integral part and/or required for the use of any Operational Foreground (“**Embedded Operational Background**”), use all reasonable efforts to procure for the Secretary of State a non-exclusive, perpetual, royalty-free, paid-up licence to use and copy such Embedded Operational Background for any purpose related to the provision of rail services on the United Kingdom heavy rail network, with the right to grant sub-licences to any Successor Operator. Where, having used all reasonable efforts to procure the foregoing licence, the Operator has been unable to do so, and where the Operator intends to proceed with the use of the applicable Embedded Operational Background in relation to the provision of rail services or Shadow Operator Services, it shall notify the Secretary of State in writing, providing brief details of: (i) the applicable Embedded Operational Background and the Operational Foreground to which it relates; (ii) the third party owner or licensor of such Embedded Operational Background; and (iii) the terms on which the Operator proposes to licence the Embedded Operational Background from the applicable owner or third party licensor. The Operator may not proceed with the use of such third party Embedded Operational Background unless the Secretary of State Approves.


The foregoing provisions of this paragraph 7.10 shall not apply to any Intellectual Property Rights owned by third parties which had been licensed to the Operator or the Secretary of State prior to the date of this Contract upon binding terms that do not permit the grant of the licences contained in this paragraph 7.10.

- 7.11 Prior to any disclosure of any confidential Background IP of the other Party or any confidential Operational Foreground to a third party pursuant to any sub-licence permitted under paragraphs 7.8 above, the disclosing Party shall ensure that such third party recipient is bound by obligations of confidentiality no less onerous than those contained in this Contract, including relevant obligations set out in Chapter 9.6 (*Confidentiality and Data Protection*). Notwithstanding the foregoing provisions of this paragraph 7.11, the disclosing Party shall not disclose any commercially sensitive information to any third party without the prior written consent of the other Party.
- 7.12 Paragraphs 6.2 (*Rail Passenger Counts Database*), 7.1, 7.2 and 7.9 of this Chapter 9.3 shall continue in force after expiry or termination of this Contract or any Continuation Document, together with any other provisions which expressly or impliedly continue in force after the expiry or termination of this Contract or any Continuation Document.
- 7.13 The Parties intend that the provisions of The Contract (Rights of Third Parties) Act 1999 will apply to allow the relevant NR entity or HS2 Limited entity to rely on and enforce against a third party the provisions of paragraph 7.3 of this Chapter 9.3.
- 7.14 The Operator shall register the unregistered trade marks specified in Appendix 1 (*List of Operator Trade Marks*) by no later than 30 April 2024 and shall, save to the extent otherwise agreed by the Secretary of State, promptly register any other trade marks capable of registration created during the Contract Period in relation to the Rail Services.

APPENDIX 1 TO CHAPTER 9.3

List of Operator Trade Marks

1. Registered trade marks

Owner	Operator Trade Mark	Registration No	Classes	Date of Filing	Registration Date	Status
First Trenitalia West Coast Rail Limited	Avanti West Coast 	3448122	9, 12, 14, 16, 18, 25, 26, 28, 35, 39, 45	29 November 2019	6 March 2020	Registered
First Trenitalia West Coast Rail Limited	Avanti West Coast Feel Good Travel AVANTI WEST COAST FEEL GOOD TRAVEL	3623708	12, 35, 39	09 April 2021	20 August 2021	Registered
First Trenitalia West Coast Rail Limited	CLUB AVANTI	3801454	9, 35, 36, 42	21 June 2022	23 September 2022	Registered
First Trenitalia West Coast Rail Limited	AVANTI SUPERFARE	3856780	9, 16, 35, 36, 39	07 December 2022	24 March 2023	Registered

2. Unregistered trade marks

Owner	Operator Trade Mark	Status
First Trenitalia West Coast Rail Limited	Avanti Business	Un-registered

CHAPTER 9.4**Remedies and Dispute Resolution**

Chapter 9.4.1:	Events of Default and Termination Events
Chapter 9.4.2:	Dispute Resolution Procedures
Chapter 9.4.3:	Procedure for remedying a Contravention of the National Rail Contract
Chapter 9.4.4:	Force Majeure
Chapter 9.4.5	Liability

CHAPTER 9.4.1

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 Operator, any Parent, Guarantor or ETIA Counterparty;
- (b) **Insolvency:** The Operator or any Parent, Guarantor or ETIA Counterparty stopping or suspending or threatening to stop or suspend payment of all or, in the 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 Operator or of any Parent Guarantor, or ETIA Counterparty making any proposal under section 1 of the Insolvency Act 1986, or any of the Operator, Parents, Guarantors or ETIA Counterparties 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 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 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 Operator or the whole or a substantial part of the assets or undertaking of the Operator, or any Parent, Guarantor or ETIA Counterparty, 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 Operator, or any Parent, Guarantor or ETIA Counterparty with a view to its winding-up or any person presenting a winding-up petition or any of the Operator, Parents, Guarantors or ETIA Counterparties ceasing or threatening to cease to carry on all or, in the 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 consented to by the Secretary of State before that step is taken;
- (f) **Railway Administration Order:** A railway administration order being made in relation to the Operator under sections 60 to 62 of the Act;
- (g) **Moratorium:** Any step being taken by any person with a view to the filing of a moratorium under Part A1 of the Insolvency Act 1986 in respect of the Operator, or any Parent, Guarantor or ETIA Counterparty; and
- (h) **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.

1.2 Non-Payment

The Operator failing to pay to the Secretary of State any amount due under the National Rail Contract 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 paragraph 2 (*Change of Control and Facilitation Fee*) of Chapter 1.1 (*Organisation and Management*)

1.4 Revocation of Licence

Revocation of any Licence required to be held by the Operator in order to comply with its obligations under this Contract.

1.5 Safety Certificate and Safety Authorisation

The Safety Certificate and/or Safety Authorisation of the Operator being withdrawn or terminated.

1.6 Passenger Service Performance

The Operator's performance in relation to any Enforcement Benchmark is **equal to or worse than** the Default Performance Level for that Enforcement 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,

save that, unless otherwise instructed by the Secretary of State, this paragraph 1.6 shall not apply during the Contract Period, provided that the Parties agree that paragraph 1.6 shall automatically apply if the Quantified Target Methodology is the Applicable Assessment Methodology with respect to the Operational Performance Fee in accordance with the terms of Chapter 7.2 (*Performance Based Fee and Shadow Operator Performance Based Fee*).

1.7 Non-compliance with Remedial Agreements and Orders under the Act

- (a) Non-compliance by the Operator with a Remedial Agreement, where such non-compliance is considered by the Secretary of State to be material.
- (b) Non-compliance by the Operator 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 Operator with any enforcement notice issued to it by the Secretary of State pursuant to section 120 of the Act.

1.8 Breach of Law

- (a) It becoming unlawful for the Operator to provide all or, in the opinion of the Secretary of State, a material part of the Passenger Services or to operate all or, in the opinion of the Secretary of State, a material number of the Stations or Depots (except to the extent not required under the National Rail Contract);
- (b) The Operator or any of the directors or senior managers of the Operator being convicted of manslaughter, fraud or any other indictable criminal offence in each case relating directly to the provision and operation of the Rail Services;
- (c) The Operator being, in the 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 Operator 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 1.8(c) until such appeal has been determined to be unsuccessful; or

- (d) It becoming unlawful for the Operator to provide all or, in the opinion of the Secretary of State, a material part of the Shadow Operator Services.

1.9 **Contravention of Other Obligations**

The occurrence of the following:

- (a) the Operator contravening to an extent which is considered by the Secretary of State to be material to any one or more of its obligations under the National Rail Contract (other than such non-performance or non-compliance as may constitute an Event of Default under the provisions of this Chapter 9.4.1 other than this paragraph 1.9);
- (b) the service by the Secretary of State on the Operator 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 Operator is required to so remedy; and
- (c) the Operator:
- (i) contravening such obligation or obligations again to an extent which is 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 1.9(b)(ii)

1.10 **Non-membership of Inter-Operator Schemes**

Subject to paragraph 1.10A, the Operator 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.

1.10A The Operator ceasing to participate in the Inter-Operator Scheme under:

- (a) the PAYG Agreement; and/or
- (b) the CPAY Agreement,

shall not be an Event of Default unless the Parties have agreed (or the Secretary of State has directed) that the Operator shall participate in such scheme in accordance with paragraph 4.1A of Chapter 8.2.8 (*Transport, Travel and Other Schemes*).

1.11 **Key Contracts**

Termination of any Key Contract, or the failure by the Operator to use all reasonable endeavours 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 Operator has demonstrated to the satisfaction of the Secretary of State that for the duration of the Contract 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 Rail Services.

1.12 **Funding Deed**

- (a) A failure by the Operator or any Guarantor to comply with their respective obligations under the Funding Deed; or
- (b) the PCG Facility Loan is at any time equal to the PCG Facility; or
- (c) the PCS Facility Loan (as defined in the Previous Funding Deed) is at any time equal to the PCS Facility (as defined in the Previous Funding Deed); or

- (d) a failure by the Operator or any Guarantor to comply with their respective obligations under the Previous Funding Deed.

1.13 **Early Termination Indemnity Agreement**

- (a) A failure by any ETIA Counterparty to comply with their obligations under the Early Termination Indemnity Agreement; or
- (b) any ETIA Counterparty's liability pursuant to paragraph 2.1 (*Indemnity*) or 4.3 (*Continuing Liability and Indemnity*) of the Early Termination Indemnity Agreement is equal to or exceeds the Maximum Indemnity Amount (as defined in the Early Termination Indemnity Agreement) for that ETIA Counterparty.

1.14 **Other Events of Default**

Any other failure, or act or omission of the Operator, or other circumstances, explicitly stated in this Contract to be an Event of Default.

1.15 **Shadow Operator Cost Budget Change**

The Operator requests any Agreed Update to a Shadow Operator Cost Category as a result of the Cost Budget Change Event described in either:

- (a) paragraph 1.27; and/or
- (b) paragraph 1.28

of Appendix 1 (*Trigger Events*) to Chapter 7.5 (*Variations, Changes and Amendments*) (each a "**ShOp Trigger**"), where the result of the Agreed Update would be to increase the overall total of the Shadow Operator Cost Categories from that immediately prior to the relevant Cost Budget Change Event. For the avoidance of doubt, this Event of Default will not apply where any Agreed Update to a Shadow Operator Cost Category as a result of a ShOp Trigger is offset by at least equal reductions in other Shadow Operator Cost Categories.

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 Operator from delivering, wholly or mainly, the Passenger Services for more than six (6) consecutive months; or
- 2.2 the warranty given by the Operator pursuant to paragraph 3.2(a) (*Tax Compliance*) of Chapter 9.7 (*Miscellaneous Legal Terms*) is materially untrue; or
- 2.3 the Operator 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 required by paragraph 3.2(b)(i) (*Tax Compliance*) of Chapter 9.7 (*Miscellaneous Legal Terms*); or
- 2.4 the Operator fails to provide details of proposed mitigating factors as required by paragraph 3.2(b)(ii) (*Tax Compliance*) of Chapter 9.7 (*Miscellaneous Legal Terms*) which in the opinion of the Secretary of State, are acceptable; or
- 2.5 the Secretary of State serves a Competition Event Notice on the Operator pursuant to paragraph 6 (*Competition*) of Chapter 9.7 (*Miscellaneous Legal Terms*); or
- 2.6 any Force Majeure Event continues with the effect of preventing the Operator from delivering, wholly or mainly, the Shadow Operator Services for more than six (6) consecutive months; or
- 2.7 the HS2 Project is cancelled.

3. **Consequences of Events of Default**

The occurrence of an Event of Default shall constitute a contravention of the National Rail Contract by the Operator. On the occurrence of an Event of Default, the provisions of Chapter 9.4.3 (*Procedure for remedying a Contravention of the National Rail Contract*) shall apply.

4. **Notification of Event of Default**

The Operator shall notify the Secretary of State as soon as 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 Operator 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 (excluding the Event of Default specified in paragraph 1.15) 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 (*Definition of Termination Events*) of this Chapter 9.4.1 which is unremedied or continuing; or
- (c) a Termination Event specified in paragraphs 2.2, 2.3, 2.4 and 2.5 (*Definition of Termination Events*) of this Chapter 9.4.1,

terminate the National Rail Contract by serving a Termination Notice on the Operator. The National Rail Contract 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 Operator is implementing a Remedial Agreement in accordance with its terms.

5.4 The Secretary of State may, on and at any time after the occurrence of a Termination Event specified in paragraphs 2.6 and/or 2.7 (*Definition of Termination Events*) of this Chapter 9.4.1, terminate the Shadow Operator Services by serving a Shadow Operator Termination Notice on the Operator. The Shadow Operator Services shall terminate with effect from the date specified in any such Shadow Operator Termination Notice.

5.5 The Secretary of State may, on and at any time after the occurrence of (subject to paragraphs 5.2 and 5.3) the Event of Default in paragraph 1.15 which:

- (a) is unremedied or continuing; and
- (b) the Secretary of State considers to be material,

terminate the Shadow Operator Services by serving a Shadow Operator Termination Notice on the Operator. The Shadow Operator Services shall terminate with effect from the date specified in any such Shadow Operator Termination Notice.

6. Consequences of Termination or Expiry

6.1 Upon termination of this Contract (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 this Contract;
- (b) any obligations which are expressed to continue in accordance with the terms of this Contract; 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 Operator in connection with the termination of this Contract prior to the expiry of the Contract Term.

6.3 Upon termination of the Shadow Operator Services, paragraphs 8, 9 and 10 of Chapter 11.1 (*Shadow Operations*) shall apply.

CHAPTER 9.4.2**Dispute Resolution Procedures****1. Disputes under the National Rail Contract**

- 1.1 Wherever the National Rail Contract provides that the Secretary of State may determine any matter, the Operator may, unless the National Rail Contract expressly provides otherwise, dispute whether a determination made by the Secretary of State is reasonable, but the Secretary of State's determination shall prevail unless and until it is agreed or found to have been unreasonable.

Determination Escalation Process

- 1.2 Wherever the National Rail Contract provides that a determination made by the Secretary of State shall be subject to the Determination Escalation Process, paragraphs 1.3 to 1.7 below shall apply.
- 1.3 Wherever the Determination Escalation Process applies, prior to the Secretary of State exercising the right to determine the relevant matter the Secretary of State shall give notice in writing to the Operator of the Secretary of State's intended determination, together with the reasons for the intended determination.
- 1.4 Within ten (10) Weekdays of receipt of any notice issued pursuant to paragraph 1.3, the Operator may:
- (a) make further representations to the Secretary of State in respect of the relevant matter; and/or
 - (b) elect to refer the relevant matter to the Managing Director of Passenger Services at the Department for Transport (or any replacement role of equivalent seniority),
- and, in absence of any such representations or referral by the Operator pursuant to this paragraph 1.4, the Secretary of State's intended determination shall become effective as the Secretary of State's determination at the end of the tenth Weekday following the Operator's receipt of the relevant notice.
- 1.5 If the Operator elects to make a referral pursuant to paragraph 1.4(b) above, the Managing Director of Passenger Services at the Department for Transport (or equivalent) shall consult with a senior representative of the Operator or the Parent and may, as the Secretary of State considers appropriate, seek additional advice from any external advisor, Network Rail and/or HS2 Limited.
- 1.6 Following the receipt of any further representations from the Operator pursuant to paragraph 1.4(a) and/or the conclusion of any referral to the Managing Director of Passenger Services at the Department for Transport (or equivalent) pursuant to paragraph 1.5, the Secretary of State shall determine the relevant matter and the Operator shall perform its obligations in accordance with the Secretary of State's determination.
- 1.7 If the Secretary of State considers appropriate, taking into account the urgency of the prevailing circumstances, the Secretary of State may, at any time during the process set out in paragraphs 1.3 to 1.6 above, determine any matter to which the Determination Escalation Process applies by notice to the Operator (an "**Interim Determination**"). Any Interim Determination issued pursuant to this paragraph 1.7 shall prevail unless and until:
- (a) following any representations by the Operator pursuant to paragraph 1.4(a) and/or the conclusion of any referral to the Managing Director of Passenger Services at the Department for Transport (or equivalent) pursuant to paragraph 1.5 above:
 - (i) the Secretary of State provides a determination pursuant to paragraph 1.6 above; or
 - (ii) the Secretary of State withdraws its Interim Determination; or
 - (b) it is agreed or found to have been unreasonable.

- 1.8 If an Interim Determination is revised or withdrawn in accordance with paragraph 1.7(a) above:
- (a) the Operator shall perform its obligations in accordance with the revised determination; and
 - (b) the Secretary of State shall reimburse the Operator any appropriate financial adjustment associated with costs or liabilities incurred by the Operator in performing its obligations in accordance with the Interim Determination prior to its revision or withdrawal which would not have been incurred if the revised determination had applied from the outset or if the Interim Determination had not been made (as applicable), except to the extent that such costs or liabilities are Disallowable Costs.

Dispute Resolution Rules

- 1.9 Where either Party is entitled, pursuant to the terms of the National Rail Contract, to refer a dispute arising out of or in connection with the National Rail Contract for resolution or determination in accordance with the Dispute Resolution Rules, then such dispute shall, unless the Parties otherwise agree and subject to any duty of the Secretary of State under section 55 of the Act, be resolved or determined by arbitration pursuant to the Dispute Resolution Rules.
- 1.10 Where, in the absence of an express provision in the National Rail Contract entitling it to do so, either Party wishes to refer a dispute arising out of or in connection with the National Rail Contract to arbitration pursuant to the Dispute Resolution Rules, the following process shall apply:
- (a) the Party seeking to refer to arbitration shall serve a written notice upon the other Party stating (i) the nature and circumstances of the dispute, (ii) the relief sought including, to the extent possible, an indication of any amount(s) claimed, and (iii) why it is considered that the dispute should be resolved by way of arbitration rather than litigation;
 - (b) the other Party shall respond within 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;
 - (c) in the event that the Parties agree to refer the dispute to arbitration then it shall be resolved or determined in accordance with the Dispute Resolution Rules;
 - (d) in the event that the Parties do not agree to refer the dispute to arbitration then it shall be resolved or determined in accordance with paragraph 8 (*Governing Law and Jurisdiction*) of Chapter 9.7 (*Miscellaneous Legal Terms*);
 - (e) nothing in this paragraph 1 (*Disputes under the National Rail Contract*), paragraph 2 (*Disputes under other agreements*) or paragraph 3 (*Disputes under Chapter 7 (Financial Obligations, Incentives and Scorecards) of this Contract*) of Chapter 9.4.2 (*Dispute Resolution Procedures*) 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.
- 1.11 The arbitrator in any dispute referred for resolution or determination under the Dispute Resolution Rules shall be a suitably qualified person chosen by agreement between the Parties or, in default of agreement, chosen by the Secretary of the Access Disputes Committee from a panel of persons agreed from time to time for such purposes between the Secretary of State and the Operator or, in default of agreement as to the arbitrator or as to such panel, selected on the application of any Party by the President of the Law Society or the President of the Institute of Chartered Accountants in England and Wales from time to time (or such other person to whom they may delegate such selection).

2. Disputes under other agreements

- 2.1 The Operator shall notify the Secretary of State of any disputes to which it is a party under any Inter-Operator Scheme, Access Agreement, Property Lease or Rolling Stock Related Contract, or under any other agreement in circumstances where the relevant dispute could have an adverse effect on the Operator's ability to comply with its obligations under the National Rail Contract or on the provision of the Rail Services and which have been submitted for resolution either to the courts or to any other procedure for dispute resolution provided for under such agreements.
- 2.2 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).
- 2.3 The Operator shall provide such further details of any dispute referred to in paragraph 1.11 (*Disputes under the National Rail Contract*) as the Secretary of State may request from time to time.

3. Disputes under Chapter 7 (Financial Obligations, Incentives and Scorecards) of this Contract

- 3.1 The Parties shall comply with the terms of paragraph 4 (*Contract Payment Adjustments and Disputes*) of Chapter 7.1 (*Contract Payments*) of this Contract.

4. Cumulative Rights and Remedies

- 4.1 The rights and remedies of the Secretary of State under the National Rail Contract 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 National Rail Contract or pursue any available remedies under general Law.

CHAPTER 9.4.3

Procedure for remedying a Contravention of the National Rail Contract

1. Contraventions of the National Rail Contract

- 1.1 The Operator shall notify the Secretary of State, so far as possible before it may occur and in any event as soon as practicable thereafter, of any contravention by the Operator of any provision of the National Rail Contract. This includes where the Operator is under an obligation to use all reasonable endeavours to achieve a particular result by a particular time, where such result is not achieved by such time.
- 1.2 The Operator shall deliver to the Secretary of State, or procure the delivery to the Secretary of State of, such information, records or documents as the Secretary of State may request within such period as the Secretary of State may require for the purpose of determining the existence, likelihood, nature or scope of any contravention of, Event of Default or Termination Event under, the National Rail Contract.

2. Remedies for Contraventions of the National Rail Contract

- 2.1 If:
- (a) the Secretary of State is satisfied that the Operator is contravening or is likely to contravene any term of the National Rail Contract; and/or
 - (b) the:
 - (i) Secretary of State is satisfied that the Operator is operating at a level that would, or would likely, be scored “1”; or
 - (ii) Operator has received a score of “1”,
 in relation to any of the Scorecard Criteria for a particular PBF Component in accordance with Chapter 7.2 (*Performance Based Fee and Shadow Operator Performance Based Fee*); and/or
 - (c) the Operator has received a score of “1” in relation to any ERMA Scorecard Criterion in the final PBF Assessment Period (as defined in and in accordance with the Previous Agreement),
- the Secretary of State may serve a notice on the Operator requiring it to:
- (d) propose such steps as the Operator considers appropriate for the purpose of securing or facilitating compliance with the term in question; and/or
 - (e) address and overcome the shortfalls or failures that have led to the Operator receiving, or being likely to receive, a score of “1” with respect to the relevant Scorecard Criterion,
- as applicable, (a “**Remedial Plan Notice**”).

3. Remedial Plan Notices

- 3.1 Each Remedial Plan Notice shall specify the following:
- (a) the:
 - (i) term or terms of the National Rail Contract that the Secretary of State is satisfied that the Operator is contravening or is likely to contravene (each a “**Relevant Term**”); and/or
 - (ii) specific Scorecard Criterion under Appendix 3 (*Scorecard Criteria*) of Chapter 7.2 (*Performance Based Fee and Shadow Operator Performance Based Fee*) that the Secretary of State is satisfied that the Operator is likely to score, or has scored, “1” in; and/or
 - (iii) specific ERMA Scorecard Criterion under the Previous Agreement in respect of which the Operator has scored “1”,

as applicable; and

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

4. **Remedial Plans**

4.1 If the Secretary of State issues a Remedial Plan Notice, the Operator 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:
- (i) Relevant Term which has caused such Remedial Plan to be required; and/or
 - (ii) the Scorecard Criterion in respect of which the Operator has received, or is likely to receive, a score of “1”; and/or
 - (iii) the ERMA Scorecard Criterion in respect of which the Operator has received a score of “1” (pursuant to the Previous Agreement),

as applicable;

- (b) an explanation of the reasons for:
- (i) the contravention or likely contravention of the Relevant Term; and/or
 - (ii) the Operator receiving, or being likely to receive, a score of “1” with respect to the relevant Scorecard Criterion; and/or
 - (iii) the Operator receiving a score of “1” with respect to the relevant ERMA Scorecard Criterion (pursuant to the Previous Agreement),

as applicable;

- (c) the steps proposed for the purposes of:
- (i) securing or facilitating compliance with the Relevant Term; and/or
 - (ii) addressing and overcoming the shortfalls or failures that have led to the Operator receiving, or being likely to receive, a score of “1” with respect to the relevant Scorecard Criterion and/or ERMA Scorecard Criterion (pursuant to the Previous Agreement as amended) (as applicable),

as applicable; and

- (d) the time period within which the Operator 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:

- (a) require the Operator to enter into a supplemental agreement (the “**Remedial Agreement**”) with the Secretary of State to implement those matters; or
- (b) give notice to the Operator that the Secretary of State shall not require the Operator to implement those matters.

5.2 If the Secretary of State gives notice under paragraph 5.1(b) above in relation to any Remedial Plan proposed as a result of the circumstances in paragraph 2.1(a) (*Remedies for Contraventions of the National Rail Contract*), then:

- (a) the Secretary of State may not issue any further Remedial Plan Notice in respect of the circumstances which originally gave rise to the relevant Remedial Plan; and

- (b) the Operator shall be entitled to such derogation as the Secretary of State may determine to be necessary to account for the relevant contravention or likely contravention of the National Rail Contract,

in each case, for the duration of the period in which the relevant circumstances are continuing.

6. **Enhanced Monitoring by the Secretary of State**

6.1 Where:

- (a) there is an occurrence of a contravention of the National Rail Contract; and/or
- (b) the Secretary of State is satisfied that the Operator is operating at a level that would, or would likely, be scored “1” or the Operator has received a score of “1” in relation to any of the Scorecard Criteria for a particular PBF Component, in accordance with Chapter 7.2 (*Performance Based Fee and Shadow Operator Performance Based Fee*),

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 Operator’s performance of any relevant obligations until such time as the Operator demonstrates, to the Secretary of State’s satisfaction, that the Operator is capable of performing and will perform such obligations as required by the National Rail Contract.

6.2 The Operator shall co-operate fully with the Secretary of State in relation to the enhanced monitoring referred to in paragraph 6.1.

6.3 The results of such enhanced monitoring will be reviewed at each Contract Performance Meeting held pursuant to paragraph 8 (*Contract Performance Meetings*) of Chapter 1.1 (*Organisation and Management*).

6.4 The Operator shall compensate the Secretary of State for all reasonable costs incurred by the Secretary of State in carrying out such monitoring. Any such compensation shall be a Disallowable Cost pursuant to Appendix 2 (*Disallowable Costs*) to Chapter 7.1 (*Contract Payments*).

7. **Statutory Notices**

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

CHAPTER 9.4.4**Force Majeure****1. Definition of Force Majeure Events**

1.1 The following events shall constitute “**Force Majeure Events**”, subject to the conditions specified in paragraph 2 being satisfied:

- (a) the Operator or any of its agents or subcontractors is prevented or restricted by Network Rail or HS2 Limited (including by virtue of the implementation of any Contingency Plan) from gaining access to any section or part of track (including any track running into, through or out of a station). For the purposes of this paragraph 1.1:
 - (i) references to a party being prevented or restricted from gaining access to any section or part of track shall mean that such party is not permitted to operate any trains on the relevant section or part of track, or is only permitted to operate a reduced number of trains from that which it was scheduled to operate;
 - (ii) the period of such prevention or restriction shall be deemed to commence with effect from the first occasion on which the Operator is prevented or restricted from operating a train on such section or part of track;
 - (iii) references in paragraphs 1.1(a)(i) and 1.1(a)(ii) to the operation of trains include scheduled empty rolling stock vehicle movements; and
 - (iv) “**Contingency Plan**” means a contingency plan (as defined in the Railway Operational Code or where the Railway Operational Code ceases to exist such other replacement document of a similar or equivalent nature which contains a definition of contingency plan similar to that contained in the Railway Operational Code) implemented by and at the instigation of Network Rail or HS2 Limited, or such other contingency or recovery plan as the Secretary of State may agree from time to time;
- (b) the Operator or any of its agents or subcontractors is prevented or restricted by Network Rail, HS2 Limited or any Facility Owner (other than a Facility Owner which is an Affiliate of the Operator) from entering or leaving:
 - (i) any station or part thereof (excluding any prevention or restriction from gaining access to any section or part of track running into, through or out of a station); or
 - (ii) any depot or part thereof (including the movement of trains on tracks within any depot but excluding any prevention or restriction from gaining access to any track outside such depot running into or out of that depot);
- (c) any of the following events occurs:
 - (i) a programme of Mandatory Modifications commences;
 - (ii) any Rolling Stock Units are damaged by fire, vandalism, sabotage or a collision and are beyond repair or beyond economic repair; or
 - (iii) a government authority prevents the operation of Rolling Stock Units on the grounds of safety,

and, in each case, the greater of two (2) Rolling Stock Units and ten per cent (10%) of all rolling stock vehicles used by the Operator in the provision of the Passenger Services in relation to any Service Group are unavailable for use in the provision of the Passenger Services as a result of the occurrence of such event.

For the purposes of this paragraph 1.1(c), “**Rolling Stock Units**” means the smallest number of rolling stock vehicles which are normally comprised in a train used by the Operator in the provision of the Passenger Services;

- (d) the Operator prevents or restricts the operation of any train on safety grounds provided that:
- (i) the Operator has, either before or as soon as 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 1.1(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 1.1(e) by reason of:
- (i) the suicide or attempted suicide of any person that does not constitute an act of terrorism;
 - (ii) the activities of the police, fire service, ambulance service or other equivalent emergency service that are not in response to acts of terrorism or suspected terrorism; or
 - (iii) an act of God which results in the Operator or its agents or subcontractors being prevented or restricted by Network Rail or HS2 Limited from gaining access to any relevant section or part of track; or
 - (iv) the occurrence and impact, whether direct or indirect, of COVID-19; and
- (f) any strike or other Industrial Action by any or all of the employees of the Operator or any or all of the employees of:
- (i) Network Rail;
 - (ii) HS2 Limited;
 - (iii) the operator of any other railway facility; or
 - (iv) any person with whom the Operator has a contract or arrangement for the lending, seconding, hiring, contracting out or supervision by that person of train drivers, conductors, other train crew or station or depot staff used by the Operator in the provision of the Rail Services,
- or of the agents or sub-contractors of any such person listed in paragraphs 1.1(f)(i) to 1.1(f)(iv).

1.2 The definition of “**Force Majeure Event**” shall exclude the occurrence and impact, whether direct or indirect, of COVID-19.

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 1.1(a), that event has continued for more than twelve (12) consecutive hours;
- (b) the Operator notifies the Secretary of State within two (2) Weekdays of it becoming aware or, if circumstances dictate, as soon as practicable thereafter, of:
 - (i) the occurrence or likely occurrence of the relevant event; and

- (ii) the effect or the anticipated effect of such event on the Operator's performance of the Passenger Services and/or Shadow Operator Services (as appropriate);
- (c) at the same time as the Operator serves notification on the Secretary of State under paragraph 2.1(b), it informs the Secretary of State of the steps taken and/or proposed to be taken by the Operator to prevent the occurrence of, and/or to mitigate and minimise the effects of, the relevant event and to restore the provision of the Passenger Services and/or Shadow Operator Services (as appropriate);
- (d) the relevant event did not occur as a result of:
 - (i) any act or omission to act by the Operator or its agents or subcontractors, save that in respect of the occurrence of Industrial Action in accordance with paragraph 1.1(f), the provisions of paragraph 2.2 apply; or
 - (ii) the Operator's own contravention of, or default under, the National Rail Contract, any Access Agreement, Rolling Stock Related Contract, Property Lease or any other agreement;
- (e) the Operator used and continues to use all reasonable endeavours to avert or prevent the occurrence of the relevant event and/or to mitigate and minimise the effects of such event on its performance of the Passenger Services and to restore the provision of the Passenger Services and/or Shadow Operator Services (as appropriate) as soon as practicable after the onset of the occurrence of such event; and
- (f) the Operator shall, to the extent 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 1.1(f) occurs as a result of an act or omission to act by the Operator or its agents or subcontractors;
 - (b) the Secretary of State believes that it was reasonable for the Operator, its agents or subcontractors (as the case may be) so to act or omit to act; and
 - (c) the other conditions specified in paragraph 2.1 have been satisfied,
- such occurrence shall be a Force Majeure Event.

3. Consequences of Force Majeure Events

- 3.1 The Operator shall not be responsible for any failure to perform any of its obligations under the National Rail Contract, nor shall there be any contravention of the National Rail Contract 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 Operator 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 Chapter 9.4.1 (*Events of Default and Termination Events*).
- 3.3 If any Force Majeure Event continues, with the effect of preventing the Operator from delivering, wholly or mainly, the Shadow Operator Services for more than six (6) consecutive months, it shall be a Termination Event in accordance with paragraph 2.6 (*Definition of Termination Events*) of Chapter 9.4.1 (*Events of Default and Termination Events*).
- 3.4 Notwithstanding any other provision of this Contract, and without prejudice to the Parties' positions as to whether the Force Majeure Event provisions would otherwise be engaged, the Operator agrees that it shall not be entitled to further relief from obligations pursuant to the Force Majeure Event provisions under this Chapter 9.4.4 as a direct or indirect impact of COVID-19.

4. **Effect of Force Majeure Event on a Remedial Agreement**

- 4.1 Without prejudice to the operation of paragraph 2.1 (*Definition of Termination Events*) of Chapter 9.4.1 (*Events of Default and Termination Events*), the following provisions shall apply in relation to Force Majeure Events affecting the Operator's performance of their obligations pursuant to a Remedial Agreement:
- (a) the Operator shall give written notice to the Secretary of State promptly after the Operator 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 Operator's ability to comply with a Remedial Agreement within the period specified therein;
 - (b) each notice submitted in accordance with paragraph 4.1(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 Operator considers it likely to occur;
 - (c) the Operator 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 Operator having complied with its obligations under paragraphs 4.1(a) to 4.1(c) (inclusive) the Operator 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 Operator's ability to comply with that Remedial Agreement.

5. **No Relief under Force Majeure**

- (a) Nothing in paragraph 3 (*Consequences of Force Majeure Events*) will relieve the Operator from its obligations under this Contract to create, implement and operate the Business Continuity Plan.
- (b) If a Force Majeure Event affecting the Operator occurs which is an event or circumstance that is within the scope of the Business Continuity Plan, then paragraph 3.1 will only apply to that Force Majeure Event to the extent that the impacts of that Force Majeure Event would have arisen even if:
 - (i) the Operator had complied with paragraph 2 (*Business Continuity Plan*) of Chapter 1.2 (*Strategies and Plans*); and
 - (ii) the Business Continuity Plan had been fully and properly implemented and operated in accordance with paragraph 2 (*Business Continuity Plan*) of Chapter 1.2 (*Strategies and Plans*) and the terms of the Business Continuity Plan in respect of that Force Majeure Event.

6. **Force Majeure and Payments**

Following the occurrence of a Force Majeure Event, the payment of Contract Payments shall continue to be calculated in accordance with Chapter 7.1 (*Contract Payments*) and the payment of such Contract Payments shall continue unaffected.

CHAPTER 9.4.5**Liability****1. Liability with respect to Passengers and Third Parties**

- 1.1. The Operator hereby acknowledges that the Secretary of State shall not be responsible for the actions of the Operator or any Affiliate of the Operator and that, except as expressly provided in the National Rail Contract, the Operator shall provide and operate the Rail Services at its own cost and risk without recourse to the Secretary of State or government funds or guarantees.
- 1.2. The Operator, 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 Rail Services which is caused or contributed to by the Operator, any Affiliate of the Operator, or any employee, agent, contractor or sub-contractor of the Operator or of any Affiliate of the Operator.

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 Operator for any loss or damage caused by the negligent exercise of any powers reserved to the Secretary of State under the National Rail Contract, except to the extent that such negligence also constitutes a contravention of an obligation of the Secretary of State under the National Rail Contract. The Operator 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.

3. No Relief due to the Secretary of State

- 3.1. The Secretary of State may for the Secretary of State's own purposes (whether under the National Rail Contract or under any other arrangement or otherwise and whether before or after the date of this Contract) monitor or review any proposals, plans or projects (or any aspect thereof) of the Operator under the National Rail Contract, 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 National Rail Contract.
- 3.2. 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 National Rail Contract 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 National Rail Contract.

CHAPTER 9.5**Exit Management**

Chapter 9.5.1	Handover Package
	Appendix 1: Form of Handover Package
	Appendix 2: Form of Shadow Operator Handover Package
Chapter 9.5.2	Reletting Provisions and Maintenance as a Going Concern
Chapter 9.5.3	Provisions applying on and after Termination

CHAPTER 9.5.1**Handover Package****1. Handover Package Status****1.1** The Operator shall:

- (a) provide to the Secretary of State:
 - (i) subject to paragraph (a)(iv) below, on or before the Start Date, the workbooks and other information specified in Appendix 1 (*Form of Handover Package*) to this Chapter 9.5.1 and such other information as the Secretary of State may specify from time to time (the “**Handover Package**”);
 - (ii) subject to paragraph (a)(iv) below, on or before the Start Date, the package which contains the information specified in Appendix 2 (*Form of Shadow Operator Handover Package*) to this Chapter 9.5.1 and such other information as the Secretary of State may specify from time to time (the “**Shadow Operator Handover Package**”);
 - (iii) on or before the Start Date, a letter in a form consented to by and addressed to the Secretary of State confirming the details of any insurer providing insurance to the Operator and authorising the insurer (and any relevant broker) to release any insurance-related information to any of the Secretary of State, any Successor Operator, any Successor Shadow Operator or its agent on demand;
 - (iv) within three (3) months of the Start Date, a copy of the Operator’s Systems Separability Plan;
 - (v) at any time requested by the Secretary of State, an up-to-date copy of the Operator’s Handover Package and/or Shadow Operator Handover Package (each updated as required pursuant to paragraph 1.1(b) of this Chapter 9.5.1) and such other information as the Secretary of State may specify from time to time;
- (b) maintain the Handover Package and the Shadow Operator Handover Package and update them at least every three (3) Reporting Periods;
- (c) in respect of the information required pursuant to paragraph 1.1(a)(iii), 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;
- (d) ensure that any Successor Operator will have immediate access to the Handover Package on the expiry of the Contract Period (provided that any Successor Operator that is solely a Successor Shadow Operator shall not be required to have such access);
- (e) put in place such arrangements as are necessary (to the satisfaction of the Secretary of State) to ensure that the Handover Package is (and continues to be maintained) in a format acceptable to the Secretary of State which is capable of being transferred to a Successor Operator so that the Successor Operator is able to access, use and amend the Handover Package using the same format;
- (f) ensure that any Successor Shadow Operator will have immediate access to the Shadow Operator Handover Package on the expiry of the Shadow Operator Period; and
- (g) put in place such arrangements as are necessary (to the satisfaction of the Secretary of State) to ensure that the Shadow Operator Handover Package is (and continues to be maintained) in a format acceptable to the Secretary of State which is capable of being transferred to a Successor Shadow Operator so that the Successor Shadow Operator is able to access, use and amend the Shadow Operator Handover Package using the same format.

1.2 The Handover Package shall include the Station Asset Management Plan and the Operator shall update the Station Asset Management Plan included in the Handover Package pursuant

to this paragraph 1.3 whenever such plans are updated in accordance with Chapter 9.1 (*Fixed Assets*).

- 1.3 If at any time the Secretary of State considers that any part of the Handover Package and/or Shadow Operator Handover Package fails to meet the Secretary of State's requirements, the Secretary of State may instruct the Operator to amend the relevant part of the Handover Package and/or Shadow Operator Handover Package to the satisfaction of the Secretary of State and the Operator shall promptly comply with such instruction.
- 2. Statutory Director's Certificate**
- 2.1 At the same time as the Operator is required to provide each draft Business Plan with respect to each Subsequent Business Plan Year to the Secretary of State as required by paragraph 3 (*Annual Business Plan Process*) of Chapter 7.7 (*Business Plan*), the Operator 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 Chapter 9.5.1) together with:
- (a) a certificate signed by a statutory director of the Operator, 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 Chapter 9.5.1 (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.
- 2.2 At the same time as the Operator is required to provide each draft Business Plan with request to each Subsequent Business Plan Year to the Secretary of State as required by paragraph 3 (*Annual Business Plan Process*) of Chapter 7.7 (*Business Plan*), the Operator shall provide to the Secretary of State the latest version of the Shadow Operator Handover Package (updated as required pursuant to paragraph 1.1(b) of this Chapter 9.5.1) together with:
- (a) a certificate signed by a statutory director of the Operator, addressed to the Secretary of State, which confirms that:
 - (i) the Shadow Operator Handover Package contains the information specified in Appendix 2 (*Form of Shadow Operator Handover Package*) to this Chapter 9.5.1 (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 Shadow Operator Handover Package since the last version of the Shadow Operator Handover Package provided to the Secretary of State pursuant to this paragraph 2.2.
- 3. Key Personnel List**
- 3.1 The Operator shall on or before the Start Date, provide to the Secretary of State the Key Personnel List, the Key Shadow Operator Personnel List and the Shadow Operator Employee List by following the guidance issued by the Secretary of State from time to time. The Key Personnel List, the Key Shadow Operator Personnel List and the Shadow Operator Employee List shall be stored separately, in an encrypted server with password protected access.
- 3.2 The Operator shall ensure that the Key Personnel List, the Key Shadow Operator Personnel List and the Shadow Operator Employee List are maintained in an accurate and up to date form. In the event of any change(s) to the Key Personnel List, the Key Shadow Operator Personnel List and/or the Shadow Operator Employee List, or the organisation chart detailing the responsibilities and reporting lines of each of the Key Personnel, the Key Shadow Operator Personnel and/or the Shadow Operator Employees, the Operator shall supply the revised Key Personnel List, the Key Shadow Operator Personnel List and/or the Shadow Operator

Employee List and/or the organisation chart (as the case may be) to the Secretary of State pursuant to the guidance mentioned in paragraph 3.1 above and:

- (a) in the case of the Key Personnel List and Key Shadow Operator Personnel List as soon as practicable after the change(s) is/are made; and
 - (b) in the case of the Shadow Operator Employee List, within five (5) Weekdays of the start of each Quarter or upon the request of the Secretary of State.
- 3.3 The Operator shall make the relevant Business Employee listed in the Key Personnel List, the Key Shadow Operator Personnel List and/or the Shadow Operator Employee List, aware that their Personal Data shall be shared with:
- (a) the Secretary of State and retained by the Secretary of State during the Contract Term (until such time as the Personal Data is replaced in the Key Personnel List, the Key Shadow Operator Personnel List and/or the Shadow Operator Employee 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 Notwithstanding paragraphs 3.2 (a) and (b) of this Chapter 9.5.1, the Operator shall be responsible for informing the Secretary of State if details in the Key Personnel List, the Key Shadow Operator Personnel List and/or the Shadow Operator Employee List, are incorrect or need to be deleted by the Secretary of State within five (5) Weekdays of notice from the relevant Business Employee. The Secretary of State shall delete or amend the details within five (5) Weekdays of notice from the Operator.
- 3.5 The Operator shall also ensure that the Key Personnel List, the Key Shadow Operator Personnel List and the Shadow Operator Employee List is provided to the Secretary of State within twenty four (24) hours of:
- (a) receipt of any Termination Notice; or
 - (b) any request by the Secretary of State for the provision of such Key Personnel List, Key Shadow Operator Personnel List and/or the Shadow Operator Employee List
- 3.6 The Operator shall also ensure that the Key Shadow Operator Personnel List and the Shadow Operator Employee List is provided to the Secretary of State within twenty four (24) hours of the receipt of any Shadow Operator Termination Notice.

APPENDIX 1 TO CHAPTER 9.5.1**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**
The information as specified in the document in the agreed terms marked **PMW** (the “**Property Matrix Workbook**”), including:
 - (a) list of all property owned, leased, operated or occupied by the Operator (including leases of whatever type and licences) and station schemes, depot schemes, tenancies (together with details of associated dilapidations) entered into by the Operator on or after the Start Date;
 - (b) the address and contact telephone number of each such property;
 - (c) the term, expiry dates of any such leases and lease payments; and
 - (d) where applicable, the name, office address and telephone number of any such lessor and/or party which has granted authority to use or occupy the relevant property, and any relevant reference numbers applicable to such lease or occupation.
3. **Contracts and Insurance**
 - (a) The information as specified in the document in the agreed terms marked **CIMW** (the “**Contracts and Insurance Matrix Workbook**”), excluding any information relating solely to the Shadow Operator Services, including:
 - (i) a list of all contracts (sales, purchases, rolling stock leases or otherwise) fixed assets, rolling stock and insurance arrangements entered between the Operator and the counterparty or counterparties to each such contract;
 - (ii) the name, office address and telephone number of each such counterparty;
 - (iii) the relevant contract reference number of the Operator and each such counterparty (if any); and
 - (iv) the contract price/value, term and expiry date of each such contract, unless otherwise agreed by the Secretary of State.
 - (b) A copy of the letter and other information relating to the Operator’s insurances provided pursuant to paragraphs 1.1(a)(ii) and/or 1(c) (*Handover Package Status*) of this Chapter 9.5.1.
 - (c) A list of the names, office addresses and telephone numbers of all insurers and any relevant broker providing insurance to the Operator, excluding any details relating solely to the Shadow Operator Services, together with the relevant policy numbers and other references and details of outstanding claims or unresolved disputes.
4. **Systems and Systems Separability Plan**
 - (a) The information as specified in the document in the agreed terms marked **SAMW** (the “**Systems and Assets Matrix Workbook**”), excluding any information relating solely to the Shadow Operator Services, including:
 - (i) a list of the electronic systems networks (including any applicable certifications), computer and information technology, information technology assets, platforms and applications (including relevant passwords for the same which shall be provided separately for information security purposes) and systems and services processing Personal Data in use by the Operator on or after the Start Date, along with a risk summary; and

- (ii) the name, office address and telephone number of the Operator's Information Technology Manager (or the holder of any equivalent post) who is responsible for administration of each such system.
 - (b) A copy of the Operator's Systems Separability Plan.
 - (c) A copy of the Station Asset Management Plan.
 - (d) A list of all assets owned or operated by the Operator, together with their location to the extent not already included in the Property Matrix Workbook, Contracts and Insurance Matrix Workbook or Systems and Assets Matrix Workbook.
5. **Safety Certificate/Safety Authorisation**
- (a) A complete copy of the Safety Certificate, an electronic copy of the Operator's application for the Safety Certificate and full details of the Operator's safety management system in place to support the Safety Certificate.
 - (b) A complete copy of the Safety Authorisation, an electronic copy of the Operator's application for the Safety Authorisation and full details of the Operator's safety management system in place to support the Safety Authorisation.

APPENDIX 2 TO CHAPTER 9.5.1**Form of Shadow Operator Handover Package**

1. All information in the Shadow Operator Handover Package must be provided electronically in a form that is acceptable to the Secretary of State.
2. **Contracts and Insurance**
 - (a) The information as specified in the document in the agreed terms marked **ShOpCIMW** (the “**Shadow Operator Contracts and Insurance Matrix Workbook**”) in so far as the same relates to the Shadow Operator Services, including:
 - (i) a list of all contracts (sales, purchases, rolling stock leases or otherwise) fixed assets, rolling stock and insurance arrangements entered between the Operator and the counterparty or counterparties to each such contract;
 - (ii) the name, office address and telephone number of each such counterparty;
 - (iii) the relevant contract reference number of the Operator and each such counterparty (if any); and
 - (iv) the contract price/value, term and expiry date of each such contract, unless otherwise agreed by the Secretary of State.
 - (b) A copy of the letter and other information relating to the Operator’s insurances provided pursuant to paragraphs 1.1(a)(ii) and/or 1(c) (*Handover Package Status*) of this Chapter 9.5.1.
 - (c) A list of the names, office addresses and telephone numbers of all insurers and any relevant broker providing insurance to the Operator relating to the Shadow Operator Services, together with the relevant policy numbers and other references and details of outstanding claims or unresolved disputes.
3. **Systems and Systems Separability Plan**
 - (a) The information as specified in the document in the agreed terms marked **ShOpSAMW** (the “**Shadow Operator Systems and Assets Matrix Workbook**”), in so far as the same relates to the Shadow Operator Services, including:
 - (i) a list of the electronic systems networks (including any applicable certifications), computer and information technology, information technology assets, platforms and applications (including relevant passwords for the same which shall be provided separately for information security purposes) and systems and services processing Personal Data in use by the Operator on or after the Start Date, along with a risk summary; and
 - (ii) the name, office address and telephone number of the Operator’s Information Technology Manager (or the holder of any equivalent post) who is responsible for administration of each such system.
 - (b) A copy of the Operator's Systems Separability Plan.
 - (c) A list of all assets owned or operated by the Operator and used in the delivery of the Shadow Operator Services or which are intended to be used in delivery of the High Speed Services, together with their location to the extent not already included in the Shadow Operator Contracts and Insurance Matrix Workbook or Shadow Operator Systems and Assets Matrix Workbook.
4. **Contractors**

A list of all Shadow Operator Contractors together with the role that each Shadow Operator Contractor undertakes, the relevant Shadow Operator Contractor’s start date and the expected end date of their contract.

CHAPTER 9.5.2**Reletting Provisions and Maintenance as a Going Concern****1. Reletting of Rail Services**

1.1 The Operator acknowledges that the Secretary of State may wish, at or before the expiry of the Contract Period, either to invite persons to tender for the right to:

- (a) provide all or some of the Passenger Services under an agreement, (as determined by the Secretary of State from time to time);
- (b) provide all or some of the Shadow Operator Services under an agreement, (as determined by the Secretary of State from time to time); and/or
- (c) provide all or some of the Passenger Services and the Shadow Operator Services under an agreement, (as determined by the Secretary of State from time to time),

or alternatively to enter into an agreement (as determined by the Secretary of State from time to time) in respect of all or some of the Passenger Services and/or Shadow Operator Services without having gone through a tendering process.

1.2 The Operator further acknowledges that the Secretary of State has in certain circumstances a duty under section 30 of the Act to secure the continued provision of services equivalent to the Passenger Services on expiry or termination of this Contract. The Operator accordingly accepts and agrees to the restrictions and obligations imposed on it under Chapter 4 (*Rail Services*) and this Chapter 9 (*Standard Provisions*).

2. Preparation for Reletting

2.1 The Operator shall, if so requested by the Secretary of State provide the Secretary of State and the Secretary of State's representatives and advisers with access to officers, the Business Employees and all books, records and other materials kept by or on behalf of the Operator in connection with the Rail Services (including electronic or magnetic records, any CRM System and any Yield Management System) for the purpose of assisting such representatives and advisers:

- (a) to prepare reports or other documents in connection with any invitation to potential Successor Operators to tender for the right and obligation to operate all or any of the Rail Services;
- (b) to prepare invitations to other potential Operators to tender for the right and obligation to provide any other railway passenger services or operate any other additional railway asset; or
- (c) to enter into any National Rail Contract or other agreement (including any agreement entered into by the Secretary of State in fulfilment of the Secretary of State's duties under section 30 of the Act) relating to the services equivalent to the Rail Services (or any part thereof), without undergoing a tendering process,

provided that the exercise of such access rights by the Secretary of State and the Secretary of State's representatives and advisers shall not unduly interfere with the continuing provision and operation of the Rail Services by the Operator.

3. Data Site Information

3.1 The Operator shall, at the request of the Secretary of State, make available to the Secretary of State and the Secretary of State's representatives and advisers such information as they shall reasonably require in connection with the matters referred to in paragraph 2.1, by no later than three (3) months after the date of any such request. For the purposes of this paragraph 3 such information shall be "**Data Site Information**".

3.1A The Secretary of State may from time to time specify or the Operator shall, at the request of the Secretary of State, provide to the Secretary of State, an index of the information which should be contained in any Data Site Information (the "**Data Site Monitor and Index**"). A request by the Secretary of State under this paragraph 3.1A for the Operator to provide the

Data Site Monitor and Index shall be a Cost Budget Change Event under paragraph 1.26 of Appendix 1 (*Trigger Events*) to Chapter 7.5 (*Variations, Changes and Amendments*), provided that the conditions set out in paragraph 1.26(b) and (c) of Appendix 1 (*Trigger Events*) to Chapter 7.5 (*Variations, Changes and Amendments*) are met.

- 3.2 The Data Site Monitor and Index may be amended and updated by the Secretary of State from time to time. Such amended and updated Data Site Monitor and Index shall, from the date that the Operator receives notification from the Secretary of State of any such amendment or update, be the applicable Data Site Monitor and Index for the purposes of this paragraph 3.
- 3.3 The Operator shall prepare and present the Data Site Information in such manner and in such format (including in disaggregated form) as set out in the Data Site Monitor and Index or as the Secretary of State may specify or otherwise require, and shall provide such assistance as the Secretary of State may require in connection with the verification and the updating of such Data Site Information.
- 3.4 The Operator shall provide such confirmation in relation to the accuracy of:
- (a) the contents of the documents referred to in paragraph 2.1; and
 - (b) any Data Site Information uploaded to such electronic data site as the Secretary of State may require pursuant to paragraph 3.5,
- in each case, as the Secretary of State shall require from time to time.
- 3.5 The Operator shall upload the Data Site Information to such electronic data site as the Secretary of State may specify and shall make a sufficient number of appropriate staff available for that purpose. The Operator shall ensure that such staff are trained in the use of such data site.
- 3.6 The Operator shall:
- (a) comply with its obligations under paragraph 2.1 (*Preparation for Reletting*) and this paragraph 3 promptly and in any case in accordance with any reasonable timetable with which the Secretary of State requires the Operator by notice in writing to comply;
 - (b) where the Secretary of State raises with the Operator any query in relation to any Data Site Information, make a full and substantive response to such query within five (5) Weekdays. Such response shall include any further information requested by the Secretary of State in relation to such query; and
 - (c) nominate a person to whom:
 - (i) all queries or requests for information pursuant to paragraph 3.6(b);
 - (ii) requests for access to premises pursuant to paragraph 5 (*Inspection Rights during the Tendering/Reletting Process*); and
 - (iii) requests for access to employees,

shall be addressed and who shall be responsible for complying with any such queries or requests for information and such requests for access to employees and premises. The Operator shall notify the Secretary of State (the Secretary of State's representatives and advisers) of the name and contact details of such person.
- 3.7 In connection with any proposal (whether or not yet finalised) to enter into separate National Rail Contracts and/or other agreements with more than one Successor Operator, each relating to only some of the services equivalent to the Rail Services (whether or not together with other railway passenger services) at or following the end of the Contract Period, the Operator agrees and acknowledges that the Secretary of State may require:
- (a) that the Operator provides the Secretary of State with additional information and reports and analysis in respect of such Service Groups as the Secretary of State may specify. This may include:
 - (i) information relating to the operational and financial performance of the Operator in relation to such Service Groups; and

- (ii) identification of those employees, assets and liabilities which relate to such Service Groups together with an indication of the extent to which the same are shared between the operation of different Service Groups; and
 - (b) subject to an appropriate Business Plan Revision, that the Operator reorganises the business of providing services equivalent to the Rail Services in order to facilitate the transfer anticipated by this Chapter 9.5.2 on an ongoing basis of the business of providing the Rail Services within each of such Service Groups to separate Successor Operators. This may include, to the extent practicable:
 - (i) the re-organisation of personnel such that an appropriate number of employees (having sufficient skills, qualifications and experience) will transfer by operation of Law to each Successor Operator of each such Service Group; and/or
 - (ii) entering into additional or clarificatory contractual or other arrangements so that the Successor Operator of each such Service Group will have the necessary assets and rights to operate the Rail Services within that Service Group; and
 - (c) that the Operator uploads Data Site Information to more than one data site.
- 3.8 The Operator shall make available to any Successor Operator, in an orderly fashion, suitable data to evidence its performance against the Diversity KPIs.

4. **Non-Frustration of Transfer to Successor Operator**

- 4.1 The Operator shall take no action or steps which is or are designed, directly or indirectly:
- (a) to prevent, prejudice or frustrate the transfer as a going concern of the business of providing the Rail Services at the end of the Contract Period to a Successor Operator; or
 - (b) to prevent, prejudice or frustrate the transfer as a going concern of the business of providing the Shadow Operator Services at the end of the Shadow Operator Period to a Successor Shadow Operator; or
 - (c) to avoid, frustrate or circumvent any provision of the National Rail Contract (including in particular the provisions of this Chapter 9 (*Standard Provisions*)) 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 National Rail Contract, the Operator may take such action as it may require for the purposes of bidding to become, or becoming, a Successor Operator.

5. **Inspection Rights during the Tendering/Reletting Process**

- 5.1 Without limiting any other rights of the Secretary of State under the National Rail Contract and subject to paragraph 5.3, the Operator shall permit the undertaking of inspections (including the taking of inventories) or surveys of:
- (a) trains;
 - (b) Stations;
 - (c) Depots;
 - (d) sidings; and/or
 - (e) other premises owned or occupied by the Operator or any Affiliates of the Operator or used in connection with the provision of the Rail Services by the Operator or any Affiliates of the Operator,

(“**Inspections**”) by the Secretary of State (or the Secretary of State’s nominee, which for these purposes shall include potential Successor Operators including potential bidders who have expressed an interest in tendering for the right and obligation to operate any or all of the Rail Services, and who carry suitable identification and evidence of authorisation

(“**Nominee**”) as the Secretary of State may require in connection with any Tendering/Reletting Process.

- 5.2 The Operator shall provide a travel permit(s) which will allow the Secretary of State or a Nominee to travel free of charge on the Routes in order to carry out the Inspections.
- 5.3 The Secretary of State shall use all reasonable endeavours to ensure that any Inspections shall be undertaken so as not to unduly interfere with the continuing provision and operation of the Rail Services by the Operator.
- 6. Maintenance as a going concern**
- 6.1 The Operator shall maintain and manage the business of providing the Rail Services so that, to the greatest extent possible and practicable:
- (a) the Operator is able to perform its obligations under the National Rail Contract;
 - (b) a Successor Operator would be able to take over the business of providing the Rail Services immediately at any time; and
 - (c) (without limiting (b)) a Successor Shadow Operator would be able to take over the business of providing the Shadow Operator Services immediately at any time.
- 6.2 The Operator’s obligation under paragraph 6.1 shall include an obligation to ensure that any computer and information technology systems of the Operator shared in whole or in part with Affiliates of the Operator or third parties (including systems relating to human resources, finance and payroll and call centres) and all data contained within such systems can be operated as a standalone system and/or retrieved (as applicable) by a Successor Operator without continued reliance on such Affiliates of the Operator or other third parties immediately from the date of termination of this Contract without any reduction in functionality or any increase in maintenance or support costs to the Successor Operator (this obligation being without prejudice to any requirement for the Operator to obtain consent to such arrangements relating to sharing computer and information technology systems and related data from the Secretary of State).
- 6.3 The Operator shall use all reasonable endeavours to ensure that such Successor Operator would have immediate access to all Business Employees and Primary Assets for such purpose.
- 6.4 The Operator shall maintain and manage the business of providing the Rail Services on the basis that such business will be transferred, in the manner contemplated under the National Rail Contract, as a going concern at the end of the Contract Period to, and continued immediately thereafter by, a Successor Operator (including, where applicable, with regard to the transfer of the Shadow Operator Services to a Successor Shadow Operator).
- 6.5 The Operator shall use all reasonable endeavours to ensure that an appropriate number of employees (having sufficient skills, qualifications and experience) will transfer by operation of Law to any Successor Operator (including, where applicable, to any Successor Shadow Operator) following the expiry of the Contract Period and in so doing shall plan for the recruitment and training of Business Employees to continue up until the end of the Contract Term.
- 6.6 The Operator shall comply with all reasonable requirements of the Secretary of State to obtain or maintain the property and rights that a Successor Operator would require, or that it would be convenient for it to have, on the basis that the same will transfer by operation of Law to any Successor Operator following the expiry of the Contract Term (or, to the extent applicable and where earlier, may transfer to any Successor Shadow Operator on termination of the Shadow Operator Services).
- 6.7 Unless otherwise directed by the Secretary of State, no later than:
- (a) six (6) months before the Expiry Date; or
 - (b) where the Secretary of State has issued an Expiry Notice which stipulates that the Contract will expire on a date which is less than six months following the date of issue of such Expiry Notice, as soon as practicable following the issue of that Expiry Notice,

the Operator shall deliver to the Secretary of State a copy of its Demobilisation Plan. If at any time the Secretary of State considers that any part of the Demobilisation Plan fails to meet the Secretary of State's requirements, the Secretary of State may instruct the Operator to amend the relevant part of the Demobilisation Plan to the satisfaction of the Secretary of State and the Operator shall promptly comply with such instruction.

CHAPTER 9.5.3**Provisions applying on and after Termination****1. Novation of Access Agreements on Termination or Expiry of the National Rail Contract**

- 1.1 The Operator shall, to the extent so requested by the Secretary of State on termination or expiry of this Contract, in relation to any Access Agreement to which it is a party, novate its interest under any relevant Access Agreement (and any related 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 require, including:
- (a) that the Operator shall not be released from any accrued but unperformed obligation, the consequences of any breach of the relevant agreement which is the subject of arbitration or litigation between the Parties or any liability in respect of any act or omission under or in relation to the relevant agreement prior to, or as at the date of, any such novation (except to the extent that the Secretary of State or the Secretary of State's nominee agrees to assume responsibility for such unperformed obligation, such liability or the consequences of such breach in connection with the relevant novation); and
 - (b) that neither the Secretary of State nor the Secretary of State's nominee shall be obliged, in connection with such novation, to agree to assume responsibility for any unperformed obligation, liability or consequences of a breach of the relevant agreement referred to in paragraph 1.3(a),

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

- 1.4 The Operator shall, on the occurrence of the circumstances specified in paragraph 1.1 in relation to any other Train Operator who is a party to an Access Agreement to which the Operator is also party, agree to the novation of the relevant Train Operator's interest under the relevant Access Agreement to the Secretary of State or as the Secretary of State may direct, subject, to the extent applicable, to the consent of the ORR. The provisions of paragraph 1.3 shall apply to any such novation.
- 1.5 The Operator shall notify the Secretary of State on becoming aware of any circumstances which might lead to the Secretary of State being able to require the Operator to novate its interest or agree to the novation of another Train Operator's interest under this paragraph 1.

2. Co-operation with Successor Operator

- 2.1 In order to ensure the continuity of, and an orderly handover of control over, the Rail Services, the Operator shall co-operate with:
- (a) where one or more Successor Operators have been appointed, each such Successor Operator; or
 - (b) the Secretary of State; or
 - (c) any relevant Train Operator,
- and shall take such steps as may be requested by the Secretary of State in connection therewith.
- 2.2 In satisfaction of its obligations under paragraph 2.1, the Operator shall make appropriately skilled and qualified Business Employees available to attend such meetings with the Secretary of State, any Successor Operator, Network Rail, ORR, HS2 Limited, any relevant Train Operator, any rolling stock lessor or sub-lessee and/or any 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 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 Chapter 9.5.3, those rights and liabilities as may be specified in any Transfer Scheme.

3. **Transfer of Primary Assets**

3.1 **Option Arrangements**

- (a) The Secretary of State hereby grants to the Operator the right to require the Secretary of State to make, and the Operator 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 Assets on the expiry of the Contract Period.
- (b) On or within fourteen (14) days before the expiry of the Contract Period:
 - (i) either Party may serve notice on the other Party specifying the Primary Assets to be transferred; and
 - (ii) the other Party may (within such timescale) serve a subsequent notice specifying any additional Primary Assets to be transferred.
- (c) The Secretary of State may (and shall if required by the Operator) make one or more such Transfer Schemes for the transfer of the Primary Assets specified in any such notice within fourteen (14) days after service of such notice (except in relation to any such Primary Assets which are, in accordance with Chapter 9.2.2 (*Key Assets - Designation of Assets*), de-designated as such prior to the end of the Contract Period).
- (d) Any Assets or Primary 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 Operator 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 Operator shall enter into any such Supplemental Agreement and shall comply with its obligations thereunder.

3.3 **Payment of Estimated Transfer Price**

- (a) The Secretary of State may require the Operator to pay to any transferee under a Transfer Scheme, or may require any such transferee to pay to the Operator, 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 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 Operator 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 Operator 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 Assets

On the coming into force of a Transfer Scheme, the Operator shall deliver up to the Secretary of State (or the Secretary of State's nominee) possession of the Primary Assets transferred under such Transfer Scheme.

3.5 Transfer of Primary Assets to a Successor Shadow Operator

- (a) At any time during the Shadow Operator Termination Assistance Period or within the period which is fourteen (14) days before the expiry of the Shadow Operator Period, the Operator shall, upon receipt of a request from the Secretary of State:
- (i) take such actions and execute such agreements as may be necessary to transfer all Primary Assets that the Successor Shadow Operator may (in the Secretary of State's opinion) require to provide services similar and/or equivalent to the Shadow Operator Services to the Successor Shadow Operator at nil value with full title guarantee and free from all encumbrances and other rights of whatever nature exercisable by any third party;
 - (ii) transfer any and all documentation (which shall, for the avoidance of doubt, be Background IP) relating to the Primary Assets referred to in paragraph (i) to the Successor Shadow Operator;
 - (iii) assign or novate any contracts relating to the Primary Assets referred to in paragraph (i) to the Successor Shadow Operator;
 - (iv) provide the Successor Shadow Operator with such assistance and/or information as the Successor Shadow Operator and/or the Secretary of State reasonably requires in order to enable the Successor Shadow Operator to receive the full benefit of, maintain and operate the Primary Assets referred to in paragraph (i); and
 - (v) where the relevant Primary Assets are physical assets, deliver such Primary Assets to such location at such date and time as the Secretary of State or the Operator may reasonably request.
- (b) Paragraph 3.5(a) applies to all Primary Assets referred to in paragraph 3.5(a)(i) (other than Key Contracts in respect of which a Direct Agreement is in place, which shall be subject to the provisions of paragraph 4.3 of this Chapter 9.5.3).

4. Associated Obligations on Termination

4.1 Assistance in Securing Continuity

- (a) In order to facilitate the continuity of the Rail Services on expiry of the Contract Period, the Operator shall take such steps, both before and after the expiry of the Contract Period, as the Secretary of State may require, to assist and advise any Successor Operator in providing and operating the Rail Services.
- (b) In particular, the Operator shall provide any Successor Operator with such records and information relating to or connected with the Rail Services as the Secretary of State may require (other than confidential financial information but including any Business Plan, Cost Budget and all records relating to the Business Employees).

4.2 Access

On the expiry of the Contract Period, the Operator shall grant, (or, in relation to the rolling stock vehicles, procure that any sub-lessee shall provide), the Secretary of State and the

Secretary of State's representatives such access as the Secretary of State may request to any property owned, leased or operated by the Operator at such time, for the purpose of facilitating the continued provision of the Rail Services.

4.3 Key Contracts

- (a) The Operator shall provide such assistance to any Successor Operator as the Secretary of State may require in ensuring that, pursuant to any Direct Agreements, such Successor Operator may enter into (or enjoy the benefit of) contracts equivalent to the relevant Key Contracts (or part thereof).
- (b) In satisfaction of its obligations under paragraph 4.3(a), the Operator shall terminate, surrender, cancel or undertake not to enforce its rights under any Key Contract (or part thereof) provided that nothing in this paragraph shall require the Operator to undertake not to enforce any rights under a Key Contract relating to the period prior to the expiry of the Contract Period.

4.4 Change of Name

The Operator shall cease to use any trade marks which are licensed to the Operator under any of the Brand Licences forthwith upon expiry of the Contract Period and shall take all necessary steps to change any company name which incorporates any such marks as soon as practicable.

4.5 Property Leases

- (a) The Operator shall, on the expiry of the Contract Period, if requested by the Secretary of State, assign its interest under all or any Property Leases to the Secretary of State or as the Secretary of State may direct, subject where applicable to the agreement of any other party to such Property Lease or the ORR.
- (b) Such assignment shall be on such terms as the Secretary of State may require, including:
 - (i) that the Operator shall not be released from any accrued but unperformed obligation, the consequences of any antecedent breach of a covenant or obligation in the Property Leases or any liability in respect of any act or omission under or in relation to the Property Lease prior to, or as at the date of, any such assignment (except to the extent that the Secretary of State or the Secretary of State's nominee agrees to assume responsibility for such unperformed obligation, such liability or the consequences of such breach in connection with the relevant assignment); and
 - (ii) that neither the Secretary of State nor the Secretary of State's nominee shall be obliged, in connection with such assignment, to agree to assume responsibility for any unperformed obligation, liability or consequences of a breach referred to in paragraph 4.5(b)(i), and the Operator shall indemnify the Secretary of State or the Secretary of State's nominee, as the case may be, on demand, on an after-tax basis against any costs, losses, liabilities or expenses suffered or incurred in relation thereto, except to the extent that any such costs, losses liabilities or expenses incurred by the Secretary of State or the Secretary of State's nominee arise in respect of circumstances where the Operator was acting as a Good and Efficient Operator.
- (c) The Operator shall, on the occurrence of any of the circumstances specified in paragraph 4.5(a) in relation to any other Train Operator who is a party to a Property Lease to which the Operator is also party, agree to the assignment of such Train Operator's interest under the relevant Property Lease to the Secretary of State or as the Secretary of State may direct, subject, where applicable, to the consent of Network Rail or HS2 Limited (as applicable). The provisions of paragraph 4.5(b) shall apply to any such assignment.
- (d) The Operator shall notify the Secretary of State on becoming aware of any circumstances which might lead to the Secretary of State being able to require the

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

5. **Actions required immediately on Handover**

- 5.1 The Operator shall immediately on the expiry of the Contract Period make available to the Secretary of State:
- (a) information as to the status of each purchase order or contract, including its award date, anticipated delivery date, confirmation of receipt of goods or services and the payment records for each purchase order, together with any matters in dispute with the appointed subcontractor and, to the extent that the Operator is a subcontractor to another Train Operator, equivalent information in respect of that Train Operator; and
 - (b) information concerning any contract necessary for the continued operation of the Rail Services where a procurement or bidding process has been initiated.
- 5.2 The Operator agrees that the Secretary of State or the Secretary of State's agents may have access to and use free of charge any information contained in any Computer System or in hard copy format as the Secretary of State sees fit (for the purposes of continuing the operation of the Rail Services).

6. **Maintenance Records in relation to Rolling Stock**

- 6.1 The Operator shall immediately on expiry of the Contract Period provide to the Secretary of State or (in relation to rolling stock vehicles) procure that any sub-lessee shall provide:
- (a) records of the status of the maintenance of the rolling stock vehicles used in the provision of the Passenger Services;
 - (b) records of the status of the maintenance of any lifting equipment;
 - (c) a list of any deferred maintenance; and
 - (d) records of the status of the maintenance of any depot or station which is an Asset, including the extent of completion of examinations and the modification status of each such rolling stock vehicle.

7. **Ticketing Arrangements**

- 7.1 The Operator shall provide immediately on expiry of the Contract Period a statement certifying:
- (a) all ticketing transactions with the public or credit card agencies that are in process and not yet complete, together with any allocations on multi-modal travel with other agencies or local authorities;
 - (b) the extent of any outstanding claims with ticketing settlement agencies;
 - (c) refund arrangements (whether under the Passenger's Charter or not) with members of the public or other Train Operators or ticketing settlement agencies that are in process and not yet complete; and
 - (d) commissions owed and/or due.

8. **Information about Passengers**

- 8.1 The Operator shall immediately on the expiry of the Contract Period make available to the Secretary of State and/or the Secretary of State's nominee:
- (a) passenger numbers information specified in paragraph 15 (*Passenger Numbers Information*) of Chapter 4.1 (*Service Development*) 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.

9. **Successor Operator Timetables**

9.1 Both prior to and following the selection of a Successor Operator (whether a Train Operator or otherwise and whether or not subject to the satisfaction of any conditions), the Operator shall:

- (a) co-operate with, where a Successor Operator has been appointed, that Successor Operator, or where not, the Secretary of State; and
- (b) take such steps as may be requested by the Secretary of State, so as to ensure the continuity of, and orderly handover of control over of the Rail Services.

9.2 The steps that the Secretary of State may request the Operator to take pursuant to paragraph 9.1 include:

- (a) participating in any timetable development process that takes place during the Contract Period, but which relates to any timetable period applying wholly or partly after the expiry of the Contract Term (“**Successor Operator Timetable**”), including bidding for and securing any Successor Operator Timetable, whether or not:
 - (i) the Successor Operator has been identified; or
 - (ii) there is in place an Access Agreement relating to the period over which that Successor Operator Timetable is intended to be operated;
- (b) using all reasonable endeavours to seek amendments to and/or extensions of Access Agreements which can be transferred to the Successor Operator on expiry of the Contract Period;
- (c) assisting the Secretary of State or the Successor Operator (as the case may be) in the preparation and negotiation of any new Access Agreement relating to any Successor Operator Timetable; and/or
- (d) entering into that Access Agreement in order to secure the relevant priority bidding rights required by the Successor Operator to operate that Successor Operator Timetable, provided that the Operator shall not be required to enter into any such Access Agreement unless the Secretary of State has first provided to it confirmation in writing that the Secretary of State shall include that Access Agreement in any Transfer Scheme pursuant to paragraph 3.1 (*Transfer of Primary Assets*) of Chapter 9.5.3 (*Provisions applying on and after Termination*).

9.3 In addition to its obligation in paragraph 9.2(c), the Operator shall undertake such planning, preparation and organisation as would be undertaken by a Good and Efficient Operator to ensure the successful operation of the Successor Operator Timetable from the Expiry Date or any earlier date of termination as if the Operator were to be operating the same from that date.

10. **Other Train Operating Companies**

10.1 If the franchise agreement or equivalent agreement of another Train Operator terminates or a railway administration order is made in respect of another Train Operator, the Operator shall co-operate with any request of the Secretary of State to ensure:

- (a) that the services provided or operated by such other Train Operator may continue to be provided or operated by any successor Train Operator or the railway administrator; and
- (b) that the benefit of any arrangements between the Operator and such other Train Operator which were designated as a key contract under such franchise agreement or equivalent 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.

10.2 The benefit of any arrangements of the type referred to in paragraph 10.1(b) shall be provided on substantially the same terms as previously obtained by the relevant Train Operator, subject to paragraph 5.8 (*Arm’s Length Dealings*) of Chapter 9.7 (*Miscellaneous Legal Terms*) and

paragraph 10.3 of this Chapter 9.5.3, provided that the Secretary of State may exclude or modify any terms agreed or amended by such Train Operator in the twelve (12) months preceding the date on which such Train Operator'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 opinion, to the material detriment of such Train Operator's business. The benefit of such arrangements shall be provided for such period as the Secretary of State may require to allow the relevant Train Operator or railway administrator to renegotiate such arrangements or make alternative arrangements.

- 10.3 The Operator shall notify the Secretary of State of its intention to terminate any contract with any other Train Operator which is designated as a Key Contract under that Train Operator's franchise agreement or equivalent 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.
- 10.4 If the franchise agreement or equivalent agreement of another Train Operator terminates in contemplation of the entry into or entry into effect of a new franchise agreement or equivalent agreement with the same Train Operator in respect of all or a material part of the relevant railway passenger services, the Operator shall waive any event of default or other right it may have to terminate any agreement with such Train Operator arising out of such termination, provided that the entry into or entry into effect of such new franchise agreement or equivalent agreement takes place.

CHAPTER 9.6**Confidentiality 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 (*Disclosure of Confidential Information*) to 8 (*Continuing Obligation*) and 10 (*Redactions*) inclusive of this Chapter 9.6, each Party shall hold in confidence the Contract Documents and all documents, materials and other information, whether technical or commercial, supplied by or on behalf of the other Party (including all documents and information supplied in the course of proceedings under the Dispute Resolution Rules or the rules of any other dispute resolution procedures to which a dispute is referred in accordance with the National Rail Contract) (all together the “**Confidential Information**”) and shall not, except with the other Party’s prior written authority, publish or otherwise disclose any Confidential Information otherwise than as expressly provided for in the National Rail Contract unless or until the recipient Party can demonstrate that any such document, material or information is in the public domain through no fault of its own and through no contravention of the National Rail Contract, whereupon to the extent that it is in the public domain this obligation shall cease.

2. Disclosure of Confidential Information

2.1 Each Party may disclose any data or information acquired by it under or pursuant to the National Rail Contract or information relating to a dispute arising under the National Rail Contract without the prior written consent of the other Party if such disclosure is made in good faith:

- (a) to any Affiliate of such Party or outside consultants or advisers of such Affiliate, upon obtaining from such Affiliate and/or such outside consultants or advisers of such Affiliate an undertaking of confidentiality equivalent to that contained in paragraph 1 (*Confidentiality*) above;
- (b) to any outside consultants or advisers engaged by or on behalf of such Party and acting in that capacity, upon obtaining from such consultants or advisers an undertaking of confidentiality equivalent to that contained in paragraph 1 (*Confidentiality*) above;
- (c) to any lenders, security trustee, bank or other financial institution (and its or their advisers) from which such Party is seeking or obtaining finance, upon obtaining from any such person an undertaking of confidentiality equivalent to that contained in paragraph 1 (*Confidentiality*) above;
- (d) to the extent required by Law or pursuant to an order of any court of competent jurisdiction or under the Dispute Resolution Rules or the rules of any other dispute resolution procedures to which a dispute is referred in accordance with the National Rail Contract or the rules of a recognised stock exchange or a formal or informal request of any taxation authority;
- (e) to any insurer, upon obtaining from such insurer an undertaking of confidentiality equivalent to that contained in paragraph 1 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 National Rail Contract or to protect or enforce its rights under the National Rail Contract;
- (g) by the Operator, to the ORR, the Passengers’ Council or a Local Authority; or
- (h) by the Secretary of State (with the consent of the Operator (such consent not to be unreasonably withheld or delayed)) to HS2 Limited and Network Rail and its consultants and advisers, upon obtaining from HS2 Limited and Network Rail or 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 Operator:
- (a) on a confidential basis to any Central Government Body for any proper purpose of the Secretary of State or of the relevant Central Government Body;
 - (b) to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
 - (c) to the extent that the Secretary of State 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 Chapter 9.6 (including any benchmarking organisation) for any purpose relating to or connected with the Rail Services;
 - (e) on a confidential basis for the purpose of the exercise of its rights under the National Rail Contract, including its right of audit, assessment or inspection pursuant to paragraph 4 (*Right to Inspect*) of Chapter 1.1 (*Organisation and Management*) and its rights pursuant to Chapter 9.5.2 (*Reletting Provisions and Maintenance as a Going Concern*);
 - (f) on a confidential basis to a Local Authority or other relevant Stakeholder to the extent that the Secretary of State deems such disclosure necessary or appropriate for the purposes of the development and/or implementation of any proposal promoted by (or on behalf of) such Local Authority or other relevant Stakeholder in relation to the provision of additional, varied and/or extended Passenger Services, introduction of new stations or enhancements to Stations or other infrastructure schemes which impact on the Rail Services;
 - (g) on a confidential basis to a proposed successor, transferee or assignee of the Secretary of State in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under the National Rail Contract;
 - (h) on a confidential basis to any Devolved Transport Body for any proper purpose of the Secretary of State or of the relevant Devolved Transport Body;
 - (i) to the extent required to enable the Secretary of State to enjoy and exercise the full extent of the benefits and rights conferred by each licence granted pursuant to paragraph 9.4 (*Cross-licensing of Business Plan IP*) and paragraph 10.4 (*Cross-licensing of Industry Change Project IP*) of Chapter 7.7 (*Business Plan*) and paragraph 7.10 (*Miscellaneous IP*) of Chapter 9.3 (*Branding and Intellectual Property*);
 - (j) on a confidential basis, to the extent necessary to provide Business Plans, Cost Budgets, Strategic Operational Baseline Forecast, Accepted Programme, Transitional Programme and any related information to a prospective Successor Operator and/or a prospective Successor Shadow Operator or any persons invited to tender for the right to provide all or some of the Passenger Services and/or Shadow Operator Services;
 - (k) to the European Union, to the extent required under Article 4.7, Chapter 4 of Title XI of Part Two of the Trade and Cooperation Agreement,

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Secretary of State under this paragraph 2.2 of this Chapter 9.6.

3. **Publication of Certain Information**

- 3.1 Notwithstanding the provisions of paragraph 1 of this Chapter 9.6 (*Confidentiality and Data Protection*), paragraph 9.5 (*Cross-licensing of Business Plan IP*) and paragraph 10.5 (*Cross-licensing of Industry Change Project IP*) of Chapter 7.7 (*Business Plan*) and paragraph 7.11 (*Miscellaneous IP*) of Chapter 9.3 (*Branding and Intellectual Property*), the Secretary of State may publish (for purposes including section 73 of the Act) and whether to the press, the public or to one or more individuals, companies or other bodies, including to any prospective

Successor Operator and/or any Successor Shadow Operator) in such form and at such times as the Secretary of State sees fit, the following (irrespective of whether the same was provided to the Secretary of State by the Operator or a third party):

- (a) any or all of the Contract Documents provided that the Secretary of State shall, prior to publishing the same, redact from any Contract Documents any Redactions pursuant to paragraph 10 (*Redactions*) of this Chapter 9.6;
- (b) the amount of any Contract Payments payable under this Contract and the aggregate amount of Contract Payments paid in each year under this Contract;
- (c) such information as the Secretary of State may consider necessary to publish in connection with the performance of the Secretary of State's functions in relation to any Closure or proposed Closure;
- (d) the amount of any payments by the Operator under the Passenger's Charter;
- (e) such information (including CRM Data and Yield Management Data) as may 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 the National Rail Contract including any analyses, statistics and other information derived from such reports and accounts;
- (g) the results of any monitoring or measurement of the performance of the Operator in the provision of the Rail Services (including any information provided under Chapter 4 (*Rail Services*));
- (h) the results, on a Service Group, Route, station or other comparable basis, of any calculation of passenger numbers under Chapter 4.1 (*Service Development*);
- (i) the results of any survey under Part 2 (*RCIS*) of Chapter 5.5 (*Customer Experience Performance*);
- (j) the results of any assessment or inspection under Chapter 7.3 (*Management Information*) or Chapter 1.1 (*Organisation and Management*);
- (k) details of the Operator's plans and performance in respect of safety;
- (l) such information as the Secretary of State may require to include in the Secretary of State's annual report in respect of the Operator provided that, in preparing that report, the Secretary of State shall have regard to the need for excluding, so far as is practicable, the matters specified in paragraphs (a) and (b) of section 71(2) of the Act for this purpose, taking references in those paragraphs to the ORR as references to the Secretary of State;
- (m) such information as the Secretary of State may require to publish at or around the expiry or possible termination of the Contract Period in order to secure continuity of the provision and operation of the Rail Services;
- (n) such information as the Secretary of State may reasonably require to publish at or around the possible termination of the Shadow Operator Services in order to secure continuity of the provision and operation of the Shadow Operator Services; and
- (o) any information provided to the Secretary of State pursuant to any provision of the National Rail Contract including pursuant to a Request for Data where in the opinion of the Secretary of State publication is appropriate for the purposes of properly carrying out its duties.

3.2 Without prejudice to any other provision of this Chapter 9.6, the Secretary of State may publish any other information relating to the Operator if the Secretary of State has previously notified the Operator and the Operator does not demonstrate to the satisfaction of the Secretary of State within fourteen (14) days of such notification that the publication of such information would, in the reasonable opinion of the Operator, have a material adverse effect

on its business. If the Operator attempts so to demonstrate to the Secretary of State but the Secretary of State is not so satisfied, the Secretary of State shall allow seven (7) more days before publishing the relevant information.

4. Service Development Information

Nothing in this Chapter 9.6 shall be deemed to prohibit, prevent or hinder, or render either Party liable for, the disclosure by either Party to Network Rail, the ORR, any Devolved Transport Body, HS2 Limited, 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 Chapter 4.1 (*Service Development*).

5. Publication by Secretary of State

Nothing in this Chapter 9.6 shall be deemed to prohibit, prevent or hinder, or render the Secretary of State liable for, the disclosure of any information by the Secretary of State to the ORR, the Parliamentary Commissioner for Administration, a Minister of the Crown, any department of the government of the United Kingdom, the Scottish Parliament, the National Assembly of Wales, the Mayor of London, the Greater London Authority or any department or officer of any of them or of information which is otherwise disclosed for the purpose of facilitating the carrying out of the Secretary of State's functions.

6. Provision of Information to the ORR

The Operator hereby authorises the Secretary of State to provide to the ORR, to the extent so requested by the ORR, such information as may be provided to the Secretary of State in relation to the Operator under the National Rail Contract.

7. Disclosure by Comptroller and Auditor General

The Parties recognise that the Comptroller and Auditor General may, in pursuance of the functions of the Comptroller and Auditor General 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 Comptroller and Auditor General has obtained pursuant to those Acts and which a Party to this Contract would not be able to disclose otherwise than under this Chapter 9.6.

8. Continuing Obligation

This Chapter 9.6 (and any other provisions necessary to give effect hereto) shall survive the termination of this Contract, irrespective of the reason for termination.

9. Freedom of Information - General Provisions

9.1 The Operator 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 Operator 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 Operator shall (and shall procure that its agents and subcontractors shall):

- (a) transfer to the Secretary of State any Requests for Information received by the Operator (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 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 discretion, and notwithstanding any other provision in the National Rail Contract or any other agreement, whether Confidential Information (as such term is defined in paragraph 1 (*Confidentiality*) of this Chapter 9.6) 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 Operator 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 Operator acknowledges and shall procure that its agents and subcontractors acknowledge that notwithstanding any provision to the contrary in the National Rail Contract 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 Operator and/or its agents and subcontractors:
- (a) in certain circumstances without consulting the Operator (or its agents and/or subcontractors where applicable); or
 - (b) following consultation with the Operator 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 use all reasonable endeavours where appropriate to give the Operator advance notice or failing that to draw the disclosure to the Operator'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) twenty (20) Weekdays after the date of this Contract (in respect of the Contract Documents referred to in paragraphs (a) and (f) of the definition thereof);
 - (b) twenty (20) Weekdays after the date of their respective execution (in respect of the Contract Documents referred to in paragraphs (b), (c), and (g) of the definition thereof);
 - (c) twenty (20) Weekdays after the dates that such Contract Documents are agreed or determined (in respect of the Contract Documents referred to in paragraphs (d) and (f) of the definition thereof);
 - (d) twenty (20) Weekdays after the date of notification by the Secretary of State to the Operator of another agreement that is required for publication (in respect of the Contract Documents referred to in paragraph (e) and (h) of the definition thereof); and
 - (e) twenty (20) Weekdays after the date of any document varying the terms of any Contract Documents,

the Operator shall provide to the Secretary of State details of any provisions of the Contract Documents or any such variation which the Operator believes are exempt from disclosure in accordance with the provisions of the Freedom of Information Act, the Environmental Information Regulations and/or section 73(3) of the Act (the "**Redactions**").

- 10.2 For each such Redaction the Operator should specify:
- (a) the exact text of the Contract Documents or variation that the Operator proposes is redacted using the template table(s) provided by the Secretary of State from time to time;

- (b) whether the Operator proposes that the Redaction applies in relation to the publication of the relevant Contract Documents or variation on the website of the Department for Transport, on the register required to be maintained by the Secretary of State pursuant to section 73 of the Act or on both such website and such register; and
 - (c) the reasons why the Operator believes that the proposed Redaction is justified in accordance with the Freedom of Information Act, the Environmental Information Regulations and/or section 73(3) of the Act. Such reasons shall be stated in the template table(s) provided by the Secretary of State from time to time.
- 10.3 The Secretary of State shall consult with the Operator in relation to the Operator's proposed Redactions (provided that the same are provided to the Secretary of State in accordance with paragraph 10.1).
- 10.4 If the Secretary of State and the Operator are unable to agree upon any proposed Redaction, the Secretary of State shall be entitled to determine, in the Secretary of State's discretion, whether or not to make such proposed Redaction.
- 10.5 If the Operator does not provide its proposed Redactions to the Secretary of State in accordance with paragraph 10.1, the Operator shall be deemed to have consented to publication of the relevant document without any Redactions.
- 11. Data Protection**
- 11.1 In respect of any Personal Data processed by the Operator, including CRM Data and Personal Data relating to Business Employees, the Operator agrees that it shall:
- (a) comply with the Data Protection Legislation; and
 - (b) procure that its agents and sub-contractors, including the Operations Data Processors, shall comply with the Data Protection Legislation.
- 11.2 The Operator shall promptly:
- (a) notify the Secretary of State of any Operations Data Breach, upon the Operator's awareness of the same, including all relevant details, whether the Operations Data Breach is by itself or by an Operations Data Processor;
 - (b) provide the Secretary of State on request with all reasonable information, assistance and co-operation in relation to its processing of the CRM Data and the Personal Data relating to Business Employees, and procure that any Operations Data Processor which it appoints shall provide the Operator with all reasonable information, assistance and co-operation in relation to the processing of the CRM Data and the Personal Data relating to Business Employees by the Operations Data Processor, in each case in order to permit the Secretary of State to make an accurate and complete assessment of compliance by the Operator with this paragraph 11; and
 - (c) provide the Secretary of State on request with all reasonable information, assistance and co-operation in relation to any audit of the Operator in relation to its processing of the CRM Data and the Personal Data relating to Business Employees, and procure that any Operations Data Processor which it appoints shall submit itself to audits by the Operator of the Operations Data Processor (whether those audits are by the Operator or by any person appointed on its behalf), in each case in order to permit the Secretary of State to make an accurate and complete assessment of compliance by the Operator with this paragraph 11.
- 11.3 The Operator shall and shall procure that any Operations Data Processor which it appoints shall:
- (a) notify (in the case of Operator) the Secretary of State and (in the case of any Operations Data Processor) the Operator in writing of the full names and registered office addresses of the entities which are from time to time carrying out any storage, hosting and/or other processing of the CRM Data and/or the Personal Data relating to Business Employees, together with the storage, hosting and/or other processing location(s);

- (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 United Kingdom decision that the country or territory to which the transfer is made ensures an adequate level of protection for processing of Personal Data and that there are in place the standard contractual clauses approved by the Information Commissioner's Office for the transfer of personal data to processors established in third countries accompanied by a valid transfer impact assessment, in each case in relation to the transfer.
- 11.4 With reference to paragraphs 11.1 to 11.3 inclusive, the Operator hereby acknowledges that whilst the Secretary of State is not the Controller in respect of the CRM Data or Personal Data relating to Business Employees (save that it is acknowledged that the Secretary of State is Controller in relation to any identifiable data within the Apprenticeship Data Collection Form processed in accordance with paragraph 12 below), the Secretary of State's legitimate interests given its duties under the Act, and its reputation, may be adversely affected in the event of any unlawful processing of CRM Data and/or Personal Data relating to Business Employees, or in the event of any Operations Data Breach. In addition, the Operator hereby acknowledges that the Secretary of State legitimately wishes to have knowledge of the locations in which the CRM Data and the Personal Data relating to Business Employees is stored, hosted or otherwise processed from time to time (whether inside or outside of the United Kingdom) given that all such information would be relevant in the event of any transfer of the Rail Services to a Successor Operator.

12. Data Protection – Apprenticeships

- 12.1 In respect of information relating to each Business Employee who commences an Apprenticeship and which is included in the Apprenticeships Data Collection Form, the Operator shall:
- (a) provide no more information than that which is requested on the Apprenticeship Data Collection Form; and
 - (b) ensure that:
 - (i) the Business Employee who commences an Apprenticeship is made aware that their Personal Data may be shared with the Rail Delivery Group (and onward to the Secretary of State) for the purpose described in paragraph 2.2 (*Apprenticeships*) of Chapter 2.1 (*Diversity and Inclusion and Training and Development*);
 - (ii) the Personal Data is collected and processed by or on behalf of the Operator in accordance with the Data Protection Legislation;
 - (iii) the fairness principle of the Data Protection Legislation is satisfied including by issuing all relevant privacy notices in relation to the collecting and processing of the Personal Data by the Operator, and for the disclosure to and subsequent processing by the Rail Delivery Group (and the Secretary of State) for the purpose described in paragraph 2.2 (*Apprenticeships*) of Chapter 2.1 (*Diversity and Inclusion and Training and Development*);
 - (iv) there is a lawful basis for the collection and processing of the Personal Data by the Operator, and for the disclosure to and subsequent processing by the Rail Delivery Group (and the Secretary of State) for the purpose described in paragraph 2.2 (*Apprenticeships*) of Chapter 2.1 (*Diversity and Inclusion and Training and Development*); and
 - (v) the Business Employee is made aware that their Personal Data shall be retained by the Secretary of State for a period of seven (7) years following its receipt of the same from the Rail Delivery Group.

12.2 Nothing in paragraph 12.1(b) is intended by the Parties to absolve the Operator from its obligations under paragraph 12.1(a).

13. Further Information

13.1 The Operator shall:

- (a) deliver to the Secretary of State, or procure the delivery to the Secretary of State of, such data, information, records or documents as the Secretary of State may request within such period as the Secretary of State may require and which relate to or are connected with the Operator's performance of the National Rail Contract; and
- (b) procure that each Affiliate of the Operator complies with paragraph 13.1(a) in respect of any data, information, records or documents that relate to its dealings with the Operator in connection with the Operator's performance of its obligations under the National Rail Contract.

13.2 The information referred to in paragraph 13.1 shall include:

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

13.3 The Secretary of State may require the Operator to provide:

- (a) the information required to be provided under the National Rail Contract more frequently than set out in this Contract;
- (b) the information required to be provided under the National Rail Contract, or, in the Secretary of State's discretion, more detailed financial information, at any time in connection with the re-letting of the Rail Services;
- (c) such unaudited accounts under such accounting policies as may be prescribed by the Secretary of State from time to time;
- (d) research or survey datasets which relate to or are connected with the Operator's performance of the National Rail Contract;
- (e) any data or information which supports operational and business functions; and
- (f) information about any agreement, contract or arrangement to which the Operator is a party and which relate to or are connected with the Operator's performance of the National Rail Contract.

14. Request for Data

14.1

- (a) If the Secretary of State requires any further information, data, records or documents during the Contract Term which the Operator is not otherwise required to provide pursuant to this Contract (the "**Relevant Data**"), the Secretary of State may issue a request to the Operator specifying:
 - (i) the Relevant Data the Operator is to provide to the Secretary of State;
 - (ii) any requirement in relation to timeliness, format and method of delivery of such Relevant Data; and
 - (iii) where such Relevant Data is required to be provided on an ongoing basis, may include the frequency with which such Relevant Data shall be required to be delivered,

(each a “**Request for Data**”).

- (b) The Operator acknowledges and agrees that any Relevant Data provided by the Operator pursuant to a Request for Data may be shared with other persons who are acting on the Secretary of State’s behalf or such other persons as the Secretary of State may notify, in each case, in accordance with this Chapter 9.6.
 - (c) Within fourteen (14) days of the date of issuance of a Request for Data by the Secretary of State or such other timeframe as may be specified in the relevant Request for Data, the Operator shall:
 - (i) provide to the Secretary of State all Relevant Data specified in the Request for Data as it is reasonably able to provide or procure within such period; and
 - (ii) if the Operator has not provided all the Relevant Data specified in the Request for Data, it shall provide the Secretary of State with:
 - (A) details of any further action that would be required to enable it to provide such Relevant Data, including the rationale for requiring such further action together with relevant supporting evidence;
 - (B) the Operator’s proposed timescales for taking such action in a timely manner and the rationale for arriving at such timeframe; and
 - (C) where applicable, an estimate (including a breakdown of the individual cost components) of any additional costs the Operator expects to incur in order to provide such Relevant Data together with relevant supporting evidence.
 - (d) The Secretary of State may, following review of the Operator’s response pursuant to paragraph 14.1(c)(ii), require the Operator to take such further action as the Secretary of State may specify, including providing part or all of the Relevant Data which remains outstanding or taking any steps to mitigate the amount of any costs that the Operator may incur in order to comply with the Request for Data.
- 14.2 The Operator shall provide an audit of data sources and information that are used by the Operator’s business, as requested by the Secretary of State from time to time. The Secretary of State may also request information and guidance from the Operator about its data sources, including the purpose for collecting such data, any risks associated with handling or sharing such data, and any third party contracts or agreements used to collect and process the data.
- 14.3 Nothing in paragraph 13, this paragraph 14 or paragraph 15 (*Information from Third Parties*) of this Chapter 9.6 shall require the Operator to provide any Relevant Data or any other data, information, records or documents which would, or is reasonably likely to:
- (a) require it to incur additional costs, over and above those provided for within the Cost Budget most recently Placed in Escrow, unless the Secretary of State otherwise directs; or
 - (b) put it in breach of any applicable law or regulation.
- 14.4 If the Operator reasonably considers that any provision of paragraph 13 (*Further Information*), this paragraph 14 or paragraph 15 (*Information from Third Parties*) of this Chapter 9.6 requires, or is likely to require, it do anything inconsistent with acting as a Good and Efficient Operator, it shall notify and consult with the Secretary of State as soon as practicable following becoming aware of the same and proceed in accordance with any guidance or directions that the Secretary of State may provide or direct.
- 15. Information from Third Parties**
- 15.1 The Operator shall, if the Secretary of State so requests, through a Request for Data or otherwise, use all reasonable endeavours to ensure that the Secretary of State has direct access to any information, data or records relating to the Operator which is or are maintained by third parties and to which the Secretary of State is entitled to have access, or of which the Secretary of State is entitled to receive a copy under the National Rail Contract.

- 15.2 The Operator shall, if the Secretary of State so requests, procure the provision by RSP to the Secretary of State of such information, data and records as the Operator is entitled to receive under the Ticketing and Settlement Agreement, in such form as the Secretary of State may specify from time to time.
- 15.3 The obligations of the Operator to provide information to the Secretary of State shall not apply if the Secretary of State notifies the Operator that the Secretary of State has received the relevant information directly from any other person (including the relevant Infrastructure Manager or RSP). The Operator shall, if the Secretary of State so requests, confirm or validate any such information which is received from any such other person.
- 15.4 The Operator shall promptly advise the Secretary of State of any changes that are to be made to the databases, systems or processes which are owned, operated or otherwise used by the Operator which may have an impact on the Operator's ability to meet its data sharing obligations pursuant to the National Rail Contract or any Request for Data issued by the Secretary of State or will, in the reasonable opinion of the Operator, materially affect the continuity of any supply of information or data that the Operator is required to provide to the Secretary of State. Any such advice shall include an assessment of the materiality of the relevant change.
- 15.5 To the extent that collection or supply of any data, information, records or documents is managed by a third party on the Operator's behalf:
- (a) the Operator shall use all reasonable endeavours to ensure that all relevant third party service providers permit the sharing with the Secretary of State of all data, information, records or documents which such third party service provider shall be required to provide or may provide on request to the Operator; or
 - (b) where the Operator is unable to procure access pursuant to paragraph 15.5(a), it shall use all reasonable endeavours to agree a variation or amendment to any contract or other arrangement in place between the Operator and the relevant third party as may be required to comply with paragraph 15.5(a).
- 15.6 During the Contract Term, the Operator shall:
- (a) not enter into any new contracts or other arrangements which may materially adversely affect the Operator's ability to comply with paragraph 13 (*Further Information*), paragraph 14 (*Request for Data*) and this paragraph 15 of this Chapter 9.6, without the Approval of the Secretary of State; and
 - (b) to the extent it is entering into any material amendments to any existing contracts or arrangements with third parties, use all reasonable endeavours to ensure that the contract or arrangement (as amended) does not materially adversely affect the Operator's ability to comply with its requirements pursuant to paragraph 13 (*Further Information*), paragraph 14 (*Request for Data*) and this paragraph 15 of this Chapter 9.6.
- 16. Compatibility of information**
- 16.1 All financial, operational or other information, and any data and records required to be provided to the Secretary of State under the National Rail Contract shall be provided, if so requested by the Secretary of State, in a form compatible with the Secretary of State's electronic data and records systems on the Start Date, as modified from time to time.
- 16.2 The Operator shall ensure that the interconnection of such systems or the provision of such information, data and records to the Secretary of State under the National Rail Contract will not result in any infringement of any third party Intellectual Property Rights to which its systems or such information, data or records may be subject.

CHAPTER 9.7

Miscellaneous Legal Terms**1. All Reasonable Endeavours**

- 1.1 Any obligation on the part of the Operator to use “all reasonable endeavours” shall extend to consequent obligations adequately to plan and resource its activities, and to implement those plans and resources, with all due efficiency and economy.

2. Assignment

- 2.1 The Operator 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 National Rail Contract or any part hereof or any benefit or interest or right herein or hereunder (other than any right of the Operator to receive monies under a Supplemental Agreement).

3. Compliance with Laws**3.1 General**

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

3.2 Tax Compliance

- (a) The Operator 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 Operator (including where the Operator is an unincorporated joint venture or consortium, the members of that unincorporated joint venture or consortium) is the Affected Party or any litigation that it is involved in that is in connection with any Occasions of Tax Non-Compliance where the Operator (including where the Operator is a joint venture or consortium, the members of that joint venture or consortium) is the Affected Party.
- (b) If, at any point during the Contract Term, an Occasion of Tax Non-Compliance occurs in relation to any Affected Party, the Operator shall:
- (i) notify the Secretary of State in writing of such fact within five (5) Weekdays of its occurrence; and
 - (ii) promptly provide to the Secretary of State:
 - (A) 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
 - (B) such other information in relation to the Occasion of Tax Non-Compliance as the Secretary of State may require.

4. Set Off

- 4.1 Save as otherwise expressly provided under the National Rail Contract or required by law, all sums payable under the National Rail Contract shall be paid in full and without any set-off or any deduction or withholding including on account of any counter-claim.
- 4.2 Notwithstanding paragraph 4.1 the Secretary of State shall be entitled to set-off against any amounts payable by the Secretary of State under the National Rail Contract:
- (a) any amount or liability payable or due to the Secretary of State under or in relation to the National Rail Contract or the Previous Agreement (whether such amount or liability is present, contingent and/or future, liquidated or unliquidated); and
 - (b) any monetary penalty payable under the Act.
- 4.3 Notwithstanding paragraph 4.1, the Secretary of State shall be entitled to set off any liability for payment under Chapter 7.1 (*Contract Payments*) against any sum owed to the Secretary of State by the Operator under Chapter 7.1 (*Contract Payments*).

5. Miscellaneous Provisions

5.1 Waivers

- (a) Any Party may at any time waive any obligation of any other Party owed to it under this Contract and the obligations of the Parties hereunder shall be construed accordingly.
- (b) No waiver by any Party of any default by any other Party in the performance of such Party's obligations under this Contract shall operate or be construed as a waiver of any other or further such default, whether of a like or different character. A failure to exercise or delay in exercising a right or remedy under this Contract shall not constitute a waiver of any right or remedy or a waiver of any other rights or remedies and no single or partial exercise of any right or remedy under this Contract shall prevent any further exercise of such right or remedy or the exercise of any other right or remedy.
- (c) A waiver of any right or remedy under this Contract or by law is only effective if given in writing by the Secretary of State.
- (d) The terms of this Contract shall only be capable of waiver or variation in writing in accordance with this paragraph 5.1 (*Waivers*) and paragraph 8 (*Variations*) of Chapter 7.5 (*Variations, Changes and Amendments*) (respectively).

5.2 Time Limits

Where in the National Rail Contract any obligation of a Party is required to be performed within a specified time limit (including an obligation to use all reasonable endeavours or reasonable endeavours to secure a particular result within such time limit): (i) that obligation shall be deemed to continue after the expiry of such time limit if such Party fails to comply with that obligation (or secure such result, as appropriate) within such time limit; (ii) the Parties shall consult on the relevant Party's failure to perform the obligation within the specified time limit; and (iii) the relevant Party shall, as applicable, continue to use all reasonable endeavours or reasonable endeavours to do or procure that the relevant thing is done as soon as practicable thereafter.

5.3 Partial Invalidity

If any provision in the National Rail Contract is held to be void, illegal, invalid or unenforceable, in whole or in part, under any enactment or rule of Law, such provision or part shall to that extent be deemed not to form part of the National Rail Contract but the legality, validity and enforceability of the remainder of the National Rail Contract shall not be affected.

5.4 Further Assurance

Each Party agrees to execute and deliver all such further instruments and do and perform all such further acts and things as shall be necessary or expedient for the carrying out of the provisions of this Contract.

5.5 Rights of Third Parties

- (a) A person who is not a Party to the National Rail Contract shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the National Rail Contract except to the extent set out in this paragraph 5.5.
- (b) Any Successor Operator or potential Successor Operator nominated by the Secretary of State and notified to the Operator and the Operator for the purposes of this paragraph 5.5 may enforce and rely on the provisions of Chapter 9.5 (*Exit Management*) and paragraph 9 of Chapter 11.1 (*Shadow Operations*) to the same extent as if it were a Party but subject to paragraphs 5.5(c) and 5.5(d).
- (c) The National Rail Contract may be terminated, and any term may be amended or waived, in each case in accordance with the terms of the National Rail Contract, without the consent of any person nominated under paragraph 5.5(b).
- (d) The person nominated under paragraph 5.5(b) shall only be entitled to enforce and rely on Chapter 9.5 (*Exit Management*) and/or paragraph 9 of Chapter 11.1 (*Shadow*

Operations) 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 Chapter 9.5 (*Exit Management*) and/or paragraph 9 of Chapter 11.1 (*Shadow Operations*), any legal proceedings in relation thereto must be commenced within one (1) year of the expiry of the Contract Period and any such person shall not be entitled to enforce or rely on Chapter 9.5 (*Exit Management*) and/or paragraph 9 of Chapter 11.1 (*Shadow Operations*) to the extent that it has consented to any particular act or omission of the Operator which may constitute a contravention of Chapter 9.5 (*Exit Management*) and/or paragraph 9 of Chapter 11.1 (*Shadow Operations*) or has been afforded a reasonable opportunity to indicate to the Operator that it is not so consenting and has not so indicated (the extent of such reasonable opportunity to be determined by the Secretary of State unless otherwise agreed).

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

Where any provision of the National Rail Contract provides for any matter to be subject to the Approval, consent or approval of the Secretary of State, then the Secretary of State shall be entitled to give that Approval, 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 National Rail Contract.

5.7 ***Enforcement Costs***

The Operator shall compensate the Secretary of State for all reasonable costs incurred by the Secretary of State as a result of the Operator failing to perform its obligations under the National Rail Contract in accordance with their terms in the exercise of the Secretary of State's rights under Chapter 9.4 (*Remedies and Dispute Resolution*).

5.8 ***Arm's Length Dealings***

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

5.9 ***Non-Discrimination***

The Operator shall not discriminate in:

- (a) seeking offers in relation to, or in awarding, a contract for the purchase or hire of goods, or the purchase of services; or
- (b) making offers in relation, or in awarding, a contract for the sale of goods or the sale of services,

in either case on the grounds:

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

For the purposes of this paragraph, "relevant state" means:

- (i) any state which is a party to the EEA agreement entered into on 2 May 1992 (as updated from time to time) where such discrimination is prohibited under the Trade and Cooperation Agreement or under any free trade agreement (whenever entered into) between the United Kingdom and the EEA; and/or
- (ii) any other state which is a party to a Free Trade Agreement where that Free Trade Agreement prohibits such discrimination.

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

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

5.11 **No Partnership or Agency**

Nothing in this Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the Parties, constitute any Party the agent of another Party, or authorise any Party to make or enter into any commitments for or on behalf of any other Party except as expressly provided in this Contract.

5.12 **Survival**

The following provisions and any other provisions of this Contract (as amended by the terms of this Contract as applicable) reasonably required for the purpose of giving full effect to such provisions or for any other purpose shall survive the termination or expiry of this Contract for any reason and shall continue in full force and effect in accordance with their terms unless and until the Secretary of State instructs otherwise, and the continued operation of such provisions following the termination of this Contract pursuant to clause 2 shall not constitute a Trigger Event for the purposes of this Contract:

- (a) clause 3 (*General Obligations*);
- (b) clause 5 (*Notices*);
- (c) clause 6 (*Entire Agreement*);
- (d) paragraph 3.2 (*Maintenance of Records*) of Chapter 1.1 (*Corporate Information*);
- (e) paragraph 1.2 (*Small and Medium-sized Enterprises*) and 2.2 (*Business Continuity Plan*) of Chapter 1.2 (*Strategies and Plans*);
- (f) Chapter 7.1 (*Contract Payments*);
- (g) Chapter 7.2 (*Performance Based Fee and Shadow Operator Performance Based Fee*);
- (h) Chapter 7.3 (*Management Information*);
- (i) Chapter 7.4 (*Financial Covenants and Bonds*);
- (j) paragraph 3 (*Other impacts of Trigger Events and Agreed Updates*) and paragraph 5 (*Operator's Escrow Obligations*) of Chapter 7.5 (*Variations, Changes and Amendments*);
- (k) paragraph 7 (*Termination of National Rail Contract*) of Chapter 7.6 (*Railways Pension Scheme*);
- (l) paragraph 8 (*Conflicts between the National Rail Contract and the Business Plan*) of Chapter 7.7 (*Business Plan*);
- (m) paragraph 9 (*Termination of Key Contracts*) of Chapter 9.2.1 (*Key Contracts*);
- (n) paragraph 19.2 (*Designation of Assets comprised in Business Plan Commitments as Primary Assets*) of Chapter 9.2.2 (*Key Assets - Designation of Assets*);
- (o) paragraph 2 (*Removal of Branding*), paragraph 4 (*Licence to Operator's Intellectual Property*), paragraph 6 (*Rail Passenger Counts Database*) and paragraph 7 (*Intellectual Property Rights and General Provisions*) of Chapter 9.3 (*Branding and Intellectual Property*);
- (p) Chapter 9.4 (*Remedies and Dispute Resolution*) except for the provisions of Chapter 9.4.3 (*Procedure for remedying a Contravention of the National Rail Contract*);
- (q) paragraphs 1.1(d) to (g) (*Handover Package Status*) and paragraphs 3.3 and 3.5 (*Key Personnel List*) of Chapter 9.5.1 (*Handover Package*);
- (r) Chapter 9.5.2 (*Reletting Provisions and Maintenance as a Going Concern*);
- (s) Chapter 9.5.3 (*Provisions applying on and after Termination*);
- (t) Chapter 9.6 (*Confidentiality and Data Protection*);
- (u) Chapter 9.7 (*Miscellaneous Legal Terms*);
- (v) Chapter 10 (*Definitions and Interpretation*); and

- (w) paragraphs 8 (*Obligations on Termination of the Shadow Operator Services*) and 9 (*Employees*) of Chapter 11.1 (*Shadow Operations*).

5.13 **Counterparts**

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

6. **Competition**

6.1 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 Operator shall use all reasonable endeavours expeditiously to progress the consideration of the Transaction by the relevant Competition Authority.

6.2 Without prejudice to the generality of paragraph 6.1, the Operator 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.

6.3 The Operator 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 Operator shall promptly provide to the Secretary of State copies of all material communications with the Competition Authority, including 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 Operator may redact from such copies information which is confidential to the Operator and which may if disclosed to the Secretary of State prejudicially affect the Operator’s legitimate business interests).

6.4 If at any time the Secretary of State determines that a Competition Event has arisen, the Secretary of State shall have the right to give written notice to the Operator informing it that such Competition Event has arisen (“**Competition Event Notice**”) and the provisions of paragraph 2.5 (*Definition of Termination Events*) of Chapter 9.4.1 (*Events of Default and Termination Events*) shall apply.

7. **Subsidy Control, State Aid and Procurement Regulations**

7.1 The Operator shall maintain and comply with a procurement policy that is consistent with all requirements (including all publication or notification requirements that apply from time to time) of the Utilities Contracts Regulations 2016 (“**Procurement Policy**”). In addition, the Procurement Policy shall require the Operator to act in accordance with Commercial Considerations when conducting procurements which are not subject to the Utilities Contracts Regulations 2016. The Operator shall make its Procurement Policy publicly available at all times and shall publish and maintain an up-to-date copy on its website. The Operator shall act in accordance with such Procurement Policy in relation to all processes to procure goods and services that are commenced during the Contract Term.

7.2 The Operator acknowledges and agrees that the National Rail Contract must not result in any financial advantage being granted to the Operator that is incompatible with any of the following (together, the “**Subsidies Rules**”): Chapter 3: Subsidy control of Title XI of Part Two of the Trade and Cooperation Agreement; EU rules on State aid and, in particular, Articles 107 and 108 of the Treaty on the Functioning of the European Union insofar as those rules are applicable pursuant to the Northern Ireland Protocol; any other rules on subsidy control contained in any legislation enacted in the United Kingdom, or contained in any Free

Trade Agreement, that apply to the National Rail Contract from time to time. In that regard, it is noted in particular that Chapter 7 (*Financial Obligations, Incentives & Scorecards*) defines the parameters on the basis of which the compensation payment for discharging the public service obligations is to be calculated. In accordance with Articles 4(1) and 6(1) of Regulation 1370, these parameters have been determined in such a way that no compensation payment may exceed the amount required to cover the net financial effect on costs incurred and revenues generated in discharging the public service obligations, taking account of revenue relating thereto kept by the Operator and a reasonable profit. At the end of the term of the National Rail Contract, the Secretary of State will carry out an ex-post check to ensure that there has been no overcompensation for the discharge of the public service obligations over the duration of the National Rail Contract in violation of Regulation 1370, or any other financial advantage that is identified as having been granted as a result of the National Rail Contract in violation of the Subsidies Rules. The Secretary of State will recover, in accordance (where applicable) with any mechanism that exists from time to time to enforce the Subsidies Rules and/or Regulation 1370, any overcompensation of the Operator over the duration of the National Rail Contract in violation of Regulation 1370 or any other financial advantage that is identified as having been granted as a result of the National Rail Contract in violation of the Subsidies Rules, and the Operator agrees to repay such monies promptly.

- 7.3 Subject to paragraph 7.4, the Operator shall act in accordance with Commercial Considerations when selling goods or services.
- 7.4 Where the Operator is selling tickets for, or any other right to, travel on Passenger Services, the provisions of paragraph 7.3 do not apply.

8. **Governing Law and Jurisdiction**

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

Chapter 10 – Definitions and Interpretations

Chapter 10 - Definitions and Interpretations

CHAPTER 10

DEFINITIONS AND INTERPRETATION

1.	Interpretation
2.	Agreed Documents
3.	Definitions

Chapter 10

Definitions and Interpretation

1. Interpretation

- 1.1 For the purposes of this agreement, “**National Rail Contract**” means this Contract and the Direct Award Collateral Agreement which together constitute a single agreement. The National Rail Contract is a “*franchise agreement*” for the purposes of the Act.
- 1.2 In the National Rail Contract, except to the extent the context otherwise requires:
- (a) words and expressions defined in Part I of the Act have the same meanings when used therein provided that, except to the extent expressly stated, “railway” shall not have the wider meaning attributed to it by section 81(2) of the Act;
 - (b) words and expressions defined in the Interpretation Act 1978 have the same meanings when used in the National Rail Contract;
 - (c) references to “Parties” shall mean the Secretary of State and the Operator (and references to a “Party” shall mean the Secretary of State or the Operator as the context requires);
 - (d) the words “include”, “including” and “in particular” are to be construed without limitation;
 - (e) references to any “person” include its successors, transferees or assignees;
 - (f) the words “subsidiary”, “subsidiary undertaking” and “parent undertaking” each have the same meaning in the National Rail Contract as in section 1162 of the Companies Act 2006;
 - (g) references in any of the agreements comprising the National Rail Contract to Recitals, clauses, Chapters, Parts of Chapters, paragraphs of Chapters and Appendices to Chapters are to Recitals, clauses, Chapters, Parts of Chapters, paragraphs of Chapters and Appendices to Chapters of that agreement, unless expressly specified to the contrary, and the Chapters and Appendices form part of the agreement in which they appear;
 - (h) references in any Chapter in any of the agreements comprising the National Rail Contract to a Part, paragraph or Appendix are references to a Part, paragraph or Appendix of that Chapter (or the relevant Part of a Chapter), unless expressly specified to the contrary;
 - (i) headings and references to headings shall be disregarded in construing the National Rail Contract;
 - (j) references to any enactment include any subordinate legislation made from time to time under such enactment and are to be construed as references to that enactment as for the time being amended or modified or to any enactment for the time being replacing or amending it and references to any subordinate legislation are to be construed as references to that legislation as for the time being amended or modified or to any legislation for the time being replacing or amending it;
 - (k) references to an agreement or any other document shall be construed as referring to that agreement or document as from time to time supplemented, varied, replaced, amended, assigned or novated;
 - (l) references to any particular provisions of any agreement or any other document shall be construed to include any other provisions of, or incorporated in, that agreement or other document which the Secretary of State considers have an equivalent effect or are intended to fulfil the same function;
 - (m) amendments to or variations of contracts or arrangements include assignments, novations or other transfers of rights and/or obligations (in whole or in part) under such contracts or arrangements;

- (n) words importing the masculine gender include the feminine and vice versa, and words in the singular include the plural and vice versa;
- (o) wherever provision is made for the giving or issuing of any notice, endorsement, consent, approval, waiver, certificate or determination by any person, unless otherwise specified, such notice, endorsement, consent, approval, waiver, certificate or determination shall be in writing and the words “notify”, “endorse”, “consent”, “approve”, “waive”, “certify” or “determine” and other cognate expressions shall be construed accordingly;
- (p) references to materials, information, data and other records shall be to materials, information, data and other records whether stored in electronic, written or other form;
- (q) references to the Operator bidding for Train Slots or a Timetable shall mean the final action incumbent on the Operator under the Network Code to confirm to 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 paragraph 3 (*Definitions*) shall be construed, where relevant, as being references to the terms defined as such in a franchise agreement or relevant agreement made under section 30 of the Act or section 6 of the Railways Act 2005 with any other Train Operator;
- (v) references to sums of money being expended by the Operator shall be to such sums exclusive of Value Added Tax;
- (w) the words “shall not be liable” are to be construed as meaning that no contravention of the National Rail Contract 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 National Rail Contract” or a “contravention” (and cognate expressions) are to be construed as meaning a breach of the National Rail Contract;
- (y) wherever provision is made for the Operator to “procure” or “ensure” the delivery of an obligation under the National Rail Contract, unless otherwise specified, that provision shall be construed as a primary obligation on the Operator to deliver that obligation;
- (z) references to “profit” shall be construed as meaning profit before corporation tax, determined in accordance with GAAP;
- (aa) references to “process” or “processing” or “processed” are to be construed in accordance with the Data Protection Legislation for the purposes of paragraph 4.1 of Chapter 9.2.2 (*Key Assets - Designation of Assets*), paragraph 5 of Chapter 9.3 (*Branding and Intellectual Property*), paragraph 12.1 of Chapter 9.6 (*Confidentiality and Data Protection*), and paragraph 11 (*Data Protection*) of Chapter 9.6 (*Confidentiality and Data Protection*); and
- (bb) references to any of the Escrow Documents being the version of such Escrow Document which has been “most recently Placed in Escrow”, shall be construed as

meaning the version of the relevant Escrow Document relating to the relevant Business Plan Year which has been most recently Placed in Escrow.

- 1.3 Where there is a requirement on the Operator to “**fully and effectively co-operate**” with one (1) or more other third parties with regard to an objective, that requirement relates to the quality of co-operation to be provided by the Operator taking into account and subject to the response of the other third parties concerned. Subject to the detailed provisions of Chapter 3 (*Collaboration*), it does not indicate an obligation on the Operator beyond co-operation, relating to the funding of detailed design and development of an infrastructure project, actual delivery or subsequent operation (including in each case performance, cost and revenue effects). It does indicate that the Operator shall participate actively in relation to the relevant objective including through the application of management time and internal resources, correspondence and attendance at meetings, in each case as the Operator reasonably considers in all of the circumstances to be an appropriate use of its resources and effective to achieve the relevant objective.
- 1.4 The NRC Expiry Provisions shall apply from:
- (a) subject to 1.4(b) below, the date which is twelve (12) or thirteen (13) months, as the case may be, prior to the Expiry Date;
 - (b) if the Secretary of State issues a Termination Notice or an Expiry Notice, the date of such Termination Notice or Expiry Notice; or
 - (c) such earlier date as the Secretary of State may determine and of which the Secretary of State shall notify the Operator.
- 1.5 In the National Rail Contract, 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 Operator.

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

BP	Business Plan;
CFD	Commuter Fares Document;
CASD	Continuing Ancillary Services Document;
CIMW	Contracts and Insurance Matrix Workbook;
DL	Depot Lease;
EP	Expenses Policy;
IntP	Integrated Plan;
IOModS	IO Modelling Suite;
KSHOPP	Key Shadow Operator Personnel Schedule;
LOKC	List of Key Contracts;
NRCA	Network Rail Collateral Agreement;
ORC	Overarching Requirements Certificate
PC	Passenger’s Charter;
PFD	Protected Fares Document;
PMW	Property Matrix Workbook;
POA	Power of Attorney;
RCIS PCM	RCIS Performance Calculation Methodology;
ShOpAF	Shadow Operator Assurance Framework;
ShOpCIMW	Shadow Operator Contracts and Insurance Matrix Workbook;
ShOpSAMW	Shadow Operator Systems and Assets Matrix Workbook;
SL	Station Lease;
SA	Supplemental Agreement;
SAMP	Station Asset Management Plan;

SAMW	Systems and Assets Matrix Workbook;
ShOpAP	Accepted Programme;
ShOpCA	Collaboration Agreement;
ShOpTP	Transitional Programme;
ShOpRP	Shadow Operator Resourcing Plan;
SQS	Service Quality Schedules;
TS	Transfer Scheme;
TFCP	Train Formation Capacity Plan;
TSR	Train Service Requirement ; and
TTSM	Ticketless Travel Survey Methodology.

3. Definitions

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

“2027 Q1 CPI”	means the level of the Consumer Prices Index (all items) in the first quarter of calendar year 2027, with the index based at 2015 = 100;
“Acceptable Insight Rating”	has the meaning given in paragraph 3 of Appendix 3 (<i>Scorecard Criteria</i>) to Chapter 7.2 (<i>Performance Based Fee and Shadow Operator Performance Based Fee</i>);
“Accepted Programme”	means the programme for Accepted Programme Specific Requirements in the agreed terms marked ShOpAP as from time to time updated in accordance with Appendix 1 (<i>Shadow Operator Programmes</i>) to Chapter 7.7 (<i>Business Plan</i>) and Placed in Escrow;
“Accepted Programme Specific Requirement”	means those Shadow Operator Services set out in the <i>Accepted Programme Specific Requirements Document</i> ;
“Accepted Programme Specific Requirements Document”	means the annex to the Accepted Programme;
“Access Agreement”	has the meaning given to the term “access agreement” in section 83(1) of the Act;
“Accessibility Panel”	means the regular forum of disabled passengers, including users of assisted travel, which the Operator must operate and consult on accessibility issues by virtue of section B5 of the Accessible Travel Policy Guidance;
“Accessible Travel Policy”	means the Operator’s policy for accessible travel which the Operator is required to establish and review from time to time in accordance with the conditions of its Licences in respect of the operation of railway passenger services and/or stations;
“Accessible Travel Policy Guidance”	means the “Accessible Travel Policy: Guidance for Train and Station Operators”, published by the ORR in July 2019 as amended and/or replaced from time to time;
“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 9.1(e) of Chapter 4.4 (<i>Operational Performance</i>);

“Actual All Cancellations Performance Level”

means, in respect of a Reporting Period, the All Cancellations Figures most recently published by Network Rail for that Reporting Period in relation to the Operator;

“Actual Annual Losses”

means in relation to a Contract Year the sum of:

- (a) the aggregate amount of Disallowable Costs incurred in the Contract Year;
- (b) the aggregate amount of Revenue Foregone in the Contract Year;
- (c) the aggregate value of all SoS Claims in the Contract Year;
- (d) all Actual Costs incurred by the Operator in the Contract Year which were not reimbursed in the Contract Payment for that Contract Year;
- (e) any costs reimbursed in any Contract Payment relating to any preceding Contract Year which during the Contract Year have been agreed or determined to be Disallowable Costs pursuant to paragraph 4 of Chapter 7.1 (*Contract Payments*);
- (f) any revenue not taken account of in any Contract Payment relating to any preceding Contract Year which during the Contract Year has been agreed or determined to be Revenue Foregone pursuant to paragraph 4 of Chapter 7.1 (*Contract Payments*); and
- (g) any costs reimbursed in any Contract Payment relating to any preceding Contract Year which have during the Contract Year, been agreed or determined to not be Actual Costs (excluding Disallowable Costs) pursuant to paragraph 4 of Chapter 7.1 (*Contract Payments*), if and to the extent that in the period between such costs being reimbursed and the agreement or determination that they were not Actual Costs, the Secretary of State has consented to the Operator declaring or paying a Permitted Dividend,

minus:

- (i) an amount equal to the total Fixed Fee and Performance Based Fee, Shadow Operator Performance Based Fee, First HS Milestone Amount and Second HS Milestone Amount earned by the Operator for the relevant Contract Year; and
- (ii) the aggregate amount of any payment(s) made to the Operator under paragraphs (b) and (c) of the definition of ICP Incentivisation in the relevant Contract Year,

calculated in each case, on the basis of the Operator’s Audited Accounts Reconciliation for the relevant Contract Year and as agreed between the Parties or determined by the Secretary of State in accordance with paragraph 8.1(a)(viii) of Chapter 7.1 (*Contract Payments*). For the

avoidance of doubt the Actual Annual Losses may be positive or negative;

“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 Costs”

means costs, expenses (including payments and capital expenditure) and liabilities reasonably and properly incurred by the Operator arising out of or in connection with the Rail Services in accordance with this Contract and:

- (a) on the accruals accounting basis;
- (b) net of any future likely discounts, rebates or price reductions; and
- (c) calculated on a gross, actual basis (whether or not the Operator accounts on the agency basis),

provided that if the Operator’s profit and loss account includes any cost(s) in respect of right of use assets treated in accordance with IFRS16 (the “**IFRS16 Cost**”), then for the purpose of this definition the amount for each IFRS16 Cost shall be deemed to be replaced (for the purposes of this definition and all related consequential purposes under this Contract) with the amount which would have applied if the cost had been treated on a cash basis, as such cost is incurred in accordance with the relevant contractual arrangements, rather than in accordance with IFRS16,

but excluding:

- (i) Contract Payments (including any Fixed Fee; any Performance Based Fee, any Shadow Operator Performance Based Fee, any First HS Milestone Amount and/or any Second HS Milestone Amount);
- (ii) Disallowable Costs;
- (iii) corporation tax, deferred tax and any other accounting adjustments relating to Taxation;
- (iv) the amount of any interest payable by the Operator to the Secretary of State in accordance with paragraph 3.1 of Chapter 7.1 (*Contract Payments*);
- (v) amounts paid to the Secretary of State or any third parties in relation to SoS Claims;
- (vi) any accounting transaction included in the Management Accounts, Annual Management Accounts, Annual Audited Accounts or Audited Accounts Reconciliation but which does not require the Operator to make a cash payment including notional pensions accounting adjustments, any non-cash gains/losses and other notional accounting entries in relation to fuel hedging, the accounting impact of financial

instrument revaluations and depreciation and amortisation;

- (vii) any debits shown in the profit and loss account in the Management Accounts, the Annual Management Accounts, the Annual Audited Accounts or the Audited Accounts Reconciliation which arise from the reversal of amounts of income previously accrued, deferred or provided for which have subsequently been reversed, which shall instead be treated as Actual Revenue;
- (viii) for the avoidance of doubt, any costs relating to the Previous Agreement; and
- (ix) any interest paid or payable by the Operator on PCG Advances (as defined in the Funding Deed);

“Actual Passenger Demand”

has the meaning given to it in paragraph 15.1 of Chapter 4.1 (*Service Development*);

“Actual Performance Level”

means, as applicable with respect to the relevant OP Component, the Operator’s actual performance in any Reporting Period in relation to:

- (a) TOC on Self Cancellations, as determined by the TOC on Self Cancellations Re-Calculation carried out pursuant to paragraph 3.1(b) of Chapter 4.4 (*Operational Performance*) in the second Reporting Period after the relevant Reporting Period in respect of which the Operator’s performance is measured; or
- (b) TOC Minutes Delay, as determined by the TOC Minutes Delay Re-Calculation carried out pursuant to paragraph 4.1(b) of Chapter 4.4 (*Operational Performance*) in the second Reporting Period after the relevant Reporting Period in respect of which the Operator’s performance is measured,

in each case disregarding the potential impact of any outstanding claims with respect to any Force Majeure Event relating to TOC on Self Cancellations or TOC Minutes Delay (as applicable) in the relevant Reporting Period;

“Actual Profit”

means, with respect to any PBF Assessment Period:

- (a) the Actual Revenue (excluding any Actual Revenue relating to the Shadow Operator Services); less
- (b) the Actual Cost (excluding any Actual Costs relating to the Shadow Operator Services),

in each case with respect to such PBF Assessment Period;

“Actual Revenue”

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

- (a) all revenue whatsoever from any source; and

(b) calculated on a gross, actual basis (whether or not the Operator accounts on the agency basis),

and (for the avoidance of doubt) including:

- (i) any revenue received or receivable by the Operator under any Track Access Agreement (including under Schedules 4 or 8 to such Track Access Agreement) (and any amounts paid or payable under Schedules 4 or 8 to such Track Access Agreement, shall be treated as a negative revenue and shall not be Actual Costs);
- (ii) Revenue Foregone;
- (iii) cash or other consideration received or receivable on disposal of any assets (including any cash or other consideration received or receivable from a Successor Operator) provided that those assets were funded by the Secretary of State, including by way of payment of Actual Costs or the Contract Payment Component TFAP;
- (iv) compensation (or equivalent) paid or payable by the Operator (whether pursuant to the Passenger's Charter (or otherwise)), and for the avoidance of doubt, such compensation shall not be Actual Costs; and
- (v) retail or other commission, allowances or similar payments, paid or payable by the Operator (and for the avoidance of doubt, such commission, allowances or similar payments paid or payable by the Operator shall not be Actual Costs);

but excluding:

- (A) Contract Payments (including any Fixed Fee, any Performance Based Fee, any Shadow Operator Performance Based Fee, any First HS Milestone Amount and/or any Second HS Milestone Amount);
- (B) any accounting transaction included in the Management Accounts, the Annual Management Accounts, the Annual Audited Accounts or the Audited Accounts Reconciliation but which does not entitle the Operator to receive a cash payment. (Examples include notional pensions accounting adjustments, the accounting impact of financial instrument or other revaluations and (except with prior agreement from the Secretary of State) gains from hedging activity);
- (C) any other transactions where and to the extent that, as part of a revenue stream the Operator makes a payment, nets off a payment or otherwise foregoes revenue in lieu of a payment (which shall be classified as costs);
- (D) cash or other consideration received or receivable on disposal of any assets where those assets were not funded by the Secretary of State, including by

	<p>way of payment of Actual Costs or the Contract Payment Component, TFAP;</p> <p>(E) the amount of any interest payable by the Secretary of State to the Operator in accordance with paragraph 3.1 of Chapter 7.1 (<i>Contract Payments</i>); and</p> <p>(F) any credits shown in the profit and loss account in the Management Accounts, the Annual Management Accounts, the Annual Audited Accounts or the Audited Accounts Reconciliation which arise from the reversal of amounts of expenditure previously accrued, prepaid or provided for which have subsequently been reversed, which shall instead be treated as Actual Costs;</p>
“Actual T-3 Performance Level”	means, in respect of a Reporting Period, the T-3 figures most recently published by Network Rail for that Reporting Period in relation to the Operator;
“Actual T-15 Performance Level”	means, in respect of a Reporting Period, the T-15 figures most recently published by Network Rail for that Reporting Period in relation to the Operator;
“Actual Train Mileage”	means the actual train mileage operated during each Reporting Period by each train used in the provision of the Passenger Services (excluding any actual train mileage operated as a result of positioning or other movements of rolling stock vehicles outside the Timetable) and “Actual Train Miles” shall be construed accordingly;
“Actuary”	has the meaning given to it in the Pension Trust;
“Additional Boxing Day Services”	has the meaning given to it in paragraph 14.1 (b) of Part 2 of Chapter 4.1 (<i>Service Development</i>);
“Additional Requirement”	means, in relation to any Affiliate Contract, each requirement set out in paragraph 8.6(b)(ii) (<i>Affiliate Trading</i>) of Chapter 7.1 (<i>Contract Payments</i>);
“Administration Fee”	has the meaning given to it in paragraph 2.5 (<i>Change of Control and Facilitation Fee</i>) of Chapter 1.1 (<i>Organisation and Management</i>);
“Advance Purchase Train-specific Fares”	has the meaning given to it under the Ticketing and Settlement Agreement;
“Affected Party”	<p>means, in respect of the Operator (including where Operator is an unincorporated joint venture or consortium, the members of that unincorporated joint venture or consortium) or the Operator (such party being the “Affected Party”):</p> <p>(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 is found to be incorrect as a result of:</p> <p>(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</p>

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;

“Affected Service Quality Area”

has the meaning given to such term in paragraph 17.1(b) of Chapter 5.5 (*Customer Experience Performance*);

“Affiliate”

means:

- (a) in respect of any person (“A”):
 - (i) any person which A Controls or which Controls A; or
 - (ii) any person which is Controlled by any other Affiliate of A; and
- (b) any person which directly or indirectly (including as a shareholder in any immediate parent undertaking):
 - (i) holds any share capital in the Operator;
 - (ii) in the event of the winding-up or other analogous event in respect of the Operator would be entitled to any share or receive any assets of the Operator which are available for distribution; or
 - (iii) has any voting power in the Operator,

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;

“Affiliate Consultancy Costs”

means the Consultancy Costs multiplied by 1.3;

“Affiliate Contract”

means any agreement, contract, licence or other arrangement entered into by the Operator with an Affiliate, other than any Access Agreement or other cross-industry arrangement;

“Affiliate Counterparty”

means an Affiliate of the Operator who is a party to an Affiliate Contract or Group Contract (as the case may be);

“Agreed Update”

means:

- (a) the updates to the Cost Budget (and any consequential amendments to the applicable Cost Category, Record of Assumptions and/or terms of the National Rail Contract) to reflect a Cost Budget Change, as agreed or determined pursuant to the provisions of paragraphs 2.5, 2.6 or 2.7 of Chapter 7.5 (*Variations, Changes and Amendments*); and/or

- (b) the updates to the applicable Amendable Financial Target(s) (and any consequential amendment to the Record of Assumptions and/or terms of the National Rail Contract) to reflect a Financial Target Amendment, as agreed or determined pursuant to the provisions of paragraph 2.12 of Chapter 7.5 (*Variations, Changes and Amendments*);

“All Cancellations”

means the sum of Cancellations, Partial Cancellations, Network Rail Cancellations and Network Rail Partial Cancellations relating to the Rail Services as produced and/or published by Network Rail;

“All 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 Measure”

means, for each Reporting Period, each of the benchmarks specified in the All Cancellations Table for that Reporting Period;

“All Cancellations Table”

means the table entitled “All Cancellations Table” as set out as part of the Annual PBF Specifications in the Business Plan;

“Alternative Survey”

has the meaning given to it in paragraph 19.6 of Part 2 (*RCIS*) of Chapter 5.5 (*Customer Experience Performance*);

“Amendable Financial Target”

means a:

- (a) Target Cost;
- (b) Target Cost Maximum Fee Performance Level;
- (c) Target Cost Nil Fee Performance Level;
- (d) Target Profit;
- (e) Target Profit Maximum Fee Performance Level;
- (f) Target Profit Nil Fee Performance Level;
- (g) Target Revenue;
- (h) Target Revenue Maximum Fee Performance Level; and/or
- (i) Target Revenue Nil Fee Performance Level,

as the case may be;

“Amendable Target”

means an Amendable Financial Target and/or an OP Target (as applicable);

“Ancillary Service”

means:

- (a) the selling, lending or hiring of any goods or rights and the provision of any services (whether for a charge or not) on any train used in the provision of the Passenger Services where such goods or services are sold or provided principally for consumption or use on the relevant train, including the sale of any Fares, meals, light refreshments, newspapers, magazines, books, entertainment materials information or materials

- targeted at tourists and other leisure passengers (such as maps) or phone cards;
- (b) the provision of any service at any station which, if provided on a train used in the provision of the Passenger Services, would fall within paragraph (a) or which, if provided at a Station, would fall within the meaning of the term Station Services and which, in each case, is made available only or principally to persons at such stations who either are about to travel or have recently travelled on a train used in the provision of the Passenger Services;
 - (c) the selling at any location of any Fare which is valid, in whole or in part, on the Passenger Services and the selling of any other Fare at any location where such Fares may be purchased from the Operator on or before the date of this Contract or at any other location, provided that the majority of Fares sold at any such other location shall be Fares which are valid, in whole or in part, on the Passenger Services;
 - (d) the selling, in conjunction with any Fare, of any other rights which entitle the purchaser thereof to:
 - (i) travel on any other train or light rail service;
 - (ii) travel on any aircraft;
 - (iii) travel on any shipping or ferry service;
 - (iv) travel on any bus; or
 - (v) attend any event or attraction or enter any location;
 - (e) the lending, seconding, hiring or contracting out of Business Employees to other Train Operators in order to enable such Train Operators to provide services at the Stations to passengers travelling on any such operator's trains;
 - (f) the provision of information relating to railway passenger services within Great Britain to passengers through telephone, internet, mobile data services or other appropriate means;
 - (g) the supervision, management and training of train crew of other Train Operators provided such activity is necessarily incidental to the provision of the Passenger Services and could not reasonably be carried out by or through an Affiliate of the Operator;
 - (h) the licensing or permitting of any other person (including an Affiliate of the Operator) to carry out any activity or business, in connection with the provision of the Rail Services, or otherwise, on any rolling stock vehicle operated by the Operator, at any station served by the Passenger Services, at any Depot, or otherwise (including the letting, leasing or licensing (on an exclusive basis or

otherwise) of any part or all of a Station or Depot to such other person);

- (i) such other activity or business as may be reasonably necessary for the purpose of providing any other Rail Services or complying with the National Rail Contract, provided that it could not reasonably be carried out by or through an Affiliate of the Operator;
- (j) the subleasing to any other person of the following property which is not comprised in a Station or Depot:
NONE
- (k) the provision or operation of Charter Services, subject to the Planned Train Mileage of such Charter Services not exceeding in any Reporting Period two per cent (2%) of the Planned Train Mileage of Passenger Services provided by the Operator in such Reporting Period;
- (l) the provision of consultancy services reasonably ancillary to the provision of the other Rail Services; and
- (m) any services or activity not falling within the meaning of the term Light Maintenance Services, or (a) to (l) above, subject to the gross value of any such services or activity (excluding any attribution of costs) not exceeding twenty five thousand pounds (£25,000) per annum in each Contract Year, per item and in aggregate, two hundred and fifty thousand pounds (£250,000) per annum in each Contract Year provided that in the second and each subsequent Contract Year, these amounts will be increased by multiplying by CPI (where CPI is the quotient of the Consumer Prices Index for the January which immediately precedes the commencement of the relevant Contract Year divided by the Consumer Prices Index for January 2023);

“Annual Adjustment” or “AADJ”

means the annual adjustment to the Periodic Contract Payment calculated pursuant to Chapter 7.1 (*Contract Payments*);

“Annual Audited Accounts”

means the accounts of the Operator which:

- (a) comply with of the requirements of Chapter 7.3 (*Management Information*); and
- (b) are delivered to the Secretary of State by the Operator in accordance with paragraph 1.5(b) of Chapter 7.3 (*Management Information*) and certified by the Operator’s auditors as true and fair;

“Annual Management Accounts”

means the management accounts of the Operator which:

- (a) comply with the requirements of Chapter 7.3 (*Management Information*); and

- (b) are delivered to the Secretary of State by the Operator in accordance with paragraphs 1.5(a) of Chapter 7.3 (*Management Information*);
- “Annual PBF Specifications”** has the meaning given in paragraph 2.5 (*Changes to the Applicable Assessment Methodology*) in Chapter 7.2 (*Performance Based Fee and Shadow Operator Performance Based Fee*);
- “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;
- “Anticipated High Speed Start Date”** means the date as from time to time specified by the Secretary of State in a notice served on the Operator (expressly confirming the date to apply for the purposes of this definition);
- “Applicable Assessment Methodology”** means, with respect to:
- (a) each QTM PBF Component, the relevant Scorecard Methodology or the relevant Quantified Target Methodology;
 - (b) the Customer Satisfaction Fee, Customer Satisfaction Scorecard A or Customer Satisfaction Scorecard B;
 - (c) the Financial Performance Fee:
 - (i) the FP Scorecard Methodology;
 - (ii) the FP Cost QTM;
 - (iii) the FP Revenue QTM; or
 - (iv) the FP Profit QTM,
 in each case with or without application of the FP TT QTM,
- as may be designated as applicable to the relevant PBF Component from time to time:
- (d) in the Business Plan applicable to the relevant PBF Assessment Period or PBF Assessment Part-Period (as applicable); or
 - (e) by any agreement with or direction by the Secretary of State in the course of the relevant PBF Assessment Period in accordance with paragraph 2.7 (*Changes to the Applicable Assessment Methodology*) or paragraph 6 (*Exceptional Events*) of Chapter 7.2 (*Performance Based Fee and Shadow Operator Performance Based Fee*);
- “Applicable FP Sub-Components”** means, where the Applicable Assessment Methodology with respect to the Financial Performance Fee is:
- (a) the FP Scorecard Methodology, the FP Cost QTM or the FP Revenue QTM:
 - (i) the FP Cost Sub-Component;
 - (ii) the FP Revenue Sub-Component; and

- (iii) (if the FP TT QTM is applied), the FP TT Sub-Component;
- (b) the FP Profit QTM:
 - (i) the FP Profit Sub-Component; and
 - (ii) (if the FP TT QTM is applied), the FP TT Sub-Component;

“Apprenticeship”

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

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

and references to **“Apprenticeships”** shall be construed accordingly;

“Apprenticeships Data Collection Form”

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

“Apprenticeships Requirement”

has the meaning given to it in paragraph 2.4 of Chapter 2.1 (*Diversity and Inclusion and Training and Development*);

“Approval”

means:

- (a) where the Operator gives notice under paragraph 1.1(b) of Chapter 1.3 (*Approval Process*), the approval of the Secretary of State pursuant to paragraph 2.3(a) of Chapter 1.3 (*Approval Process*) or deemed approval of the Secretary of State pursuant to paragraph 3 of Chapter 1.3 (*Approval Process*) (in either case as granted in accordance with paragraph 1.3 of Chapter 1.3 (*Approval Process*)); and

- (b) otherwise, the Secretary of State’s consent as granted in accordance with paragraph 1.2 of Chapter 1.3 (as applicable),

and “**Approve**” and “**Approved**” shall be construed accordingly (and, for the avoidance of doubt, (save to the extent specifically referred to in paragraphs 12.6(b) and 12.7(b) of Chapter 11.1 (*Shadow Operations*)), shall not apply in relation to the Shadow Operator Services);

“Approved Affiliate Contract”

means a contract or arrangement entered into between the Operator and an Affiliate of the Operator to which the Secretary of State has consented to:

- (a) in accordance with paragraph 8.7 of Chapter 7.1 (*Contract Payments*); or

- (b) on or prior to the Start Date,

save that if such contract or arrangement is renewed (including the continuation of any such contract or arrangement beyond its original term) and/or varied then the provisions of paragraph 8.7 of Chapter 7.1 (*Contract Payments*) shall apply to such renewal and/or variation of the contract or arrangement;

“Assessment Methodology Notification”

has the meaning given in paragraph 2.7(a) (*Changes to the Applicable Assessment Methodology*) of Chapter 7.2 (*Performance Based Fee and Shadow Operator Performance Based Fee*);

“Assets”

means the property, rights and liabilities designated as such pursuant to paragraph 2 of Chapter 9.2.2 (*Key Assets - Designation of Assets*) but excluding such property, rights or liabilities as shall, in accordance with the terms of the National Rail Contract, cease to be so designated;

“Assumed Schedule of Contributions”

means the schedule of contributions for an Operator Pension Section which as at the date of agreement or determination of the Cost Budget, Target Cost Template or Target Profit Template (as applicable) applies for the relevant Contract Year or PBF Assessment Period;

“Audited Accounts Reconciliation”

has the meaning given in paragraph 1.5(b)(ii) of Chapter 7.3 (*Management Information*);

“Backfill Costs”

means the actual costs, reasonably and properly incurred by a TOC Affiliate to replace an individual (**Individual A**) who has been seconded or made available to the Operator for the purpose of undertaking the Shadow Operator Services, but only for the shorter of the period:

- (a) during which the replacement is undertaking duties which would otherwise have been undertaken by Individual A; and
- (b) that Individual A is made available for the undertaking of the Shadow Operator Services;

“Background IP”

means all Intellectual Property Rights owned by or licensed to a Party that exist at the start of the Contract Period and/or which are created or developed during the Contract Period independently by a Party or its third party licensor separately from the performance or receipt of Rail Services or any obligations under this Contract;

“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 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;
“Base Cash Position”	means £80,000,000 (pounds sterling eighty million) or such other value as the Secretary of State may determine in accordance with paragraph 9.7 of Chapter 7.1 (<i>Contract Payments</i>);
“Benchmark Levels”	means each of: <ul style="list-style-type: none"> (a) the Breach Performance Levels and Default Performance Levels with respect to each of TOC on Self Cancellations and TOC Minutes Delay; (b) the SQR Benchmark with respect to each Service Quality Area; (c) the RCIS Benchmark with respect to each RCIS Measure; and (d) the Breach Ticketless Travel Benchmark; in each case as set out as part of the Annual PBF Specifications in the Business Plan, or as may be agreed or determined in accordance with paragraph 2.7(b) or paragraph 5 (<i>Effect of alterations to the PBF Assessment Period</i>) of Chapter 7.2 (<i>Performance Based Fee and Shadow Operator Performance Based Fee</i>);
“Boxing Day Services”	has the meaning given to it in paragraph 14.1(a) of Chapter 4.1 (<i>Service Development</i>);
“BP Background”	has the meaning given to it in paragraph 9.1 (<i>Ownership of Business Plan IP</i>) of Chapter 7.7 (<i>Business Plan</i>);
“BP Foreground”	has the meaning given to it in paragraph 9.2 (<i>Ownership of Business Plan IP</i>) of Chapter 7.7 (<i>Business Plan</i>);
“Brand Licence”	means any licence between the Secretary of State (or any company wholly owned by the Secretary of State) and the Operator in respect of any registered or unregistered trade marks which are listed in Schedule 1 (<i>Licensed IP</i>) of the relevant licence;
“Breach Performance Level”	means, in relation the relevant Enforcement Benchmark for any Reporting Period, the number set out in the relevant column of the Enforcement TOC on Self Cancellations Benchmarks Table, the Enforcement TOC Minutes Delay Benchmarks Table and (as the case may be) in the row of the applicable table for that Contract Year;
“Breach Ticketless Travel Benchmark”	means the value in relation to the Ticketless Travel Rate as set out as part of the Annual PBF Specifications in the Business Plan, or as may be agreed or determined in accordance with paragraph 2.7(b) of Chapter 7.2 (<i>Performance Based Fee and Shadow Operator Performance Based Fee</i>);
“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”	means the document in which the British Transport Police sets out the ‘ <i>Threat, Risk, Harm (TRH)</i> ’ performance monitoring approach and worked examples, a copy of which is available from the Secretary of State;
“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 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 Operator in accordance with the requirements of paragraph 2 of Chapter 1.2 (<i>Strategies and Plans</i>);
“Business Employee”	means: <ul style="list-style-type: none"> (a) any employee of the Operator from time to time; and (b) any other person who is an employee of any Affiliate of the Operator or is an employee of any party to whom the Rail Services or services which are in support of or ancillary to the Rail Services have been subcontracted (at any tier) or delegated by the Operator; and (c) in the case of (a) or (b) whose contract of employment would (subject to the exercise of such person’s right to object to the transfer) be transferred to a Successor Operator following the expiry of the Contract Period by virtue of the operation of Law (including the Transfer of Undertakings (Protection of Employment) Regulations 2006) or in respect of whom liabilities arising from a contract of employment or employment relationship may be so transferred;
“Business Employee Change”	has the meaning given in paragraph 11.2 (<i>Changes in Numbers and Total Cost of Employees</i>) of Chapter 2.2 (<i>Rail Workforce</i>);
“Business Plan”	means the business plan: <ul style="list-style-type: none"> (a) in respect of the Initial Business Plan Year, as agreed between the Parties prior to the date of this Contract in accordance with paragraph 2 (<i>Initial Business Plan</i>) of Chapter 7.7 (<i>Business Plan</i>); or (b) as the same may be replaced from time to time in respect of each Subsequent Business Plan Year, and (in each case) in the agreed terms marked BP and as may otherwise only be revised in accordance with paragraph 6 (<i>Business Plan Revisions</i>) of Chapter 7.7 (<i>Business Plan</i>);
“Business Plan Approach”	means the Shadow Operator Resourcing Plan and any strategies, actions, and processes that the Operator

intends to take or follow (as applicable), as described in any Business Plan, for the purposes of delivering:

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

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

“Business Plan Commitments”

means the Core Business Plan Commitments and the Shadow Operator Business Plan Commitments;

“Business Plan Components”

means the Core Business Plan Components and the Shadow Operator Business Plan Components;

“Business Plan KPIs”

means, in relation to a Business Plan, the key performance indicators, which shall be measurable expressions of specific outputs and/or outcomes, used to measure the Operator’s performance against the Business Plan in relation to a Business Plan Year (provided that to the extent that the Operator’s performance against any QTM Targets or Amendable Financial Targets is assessed pursuant to Chapter 7.2 (*Performance Based Fee and Shadow Operator Performance Based Fee*), no Business Plan KPI shall measure the Operator’s performance in relation to the relevant outputs and/or outcomes so assessed);

“Business Plan KPI Improvement Plan”

has the meaning given in paragraph 5.5 of Chapter 7.7 (*Business Plan*);

“Business Plan Period”

means, in respect of any Business Plan, the Business Plan Year to which such Business Plan relates, together with a period of four (4) years following the end of such Business Plan Year (regardless of whether such period extends beyond the Contract Term), or such other period as the Secretary of State may specify;

“Business Plan Revision”

has the meaning given in paragraph 6.1 (*Business Plan Revisions*) of Chapter 7.7 (*Business Plan*);

“Business Plan Year”

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

“Cancellation”

means a Passenger Service:

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

“Cancellations Figures”

means the number of:

- (a) Cancellations and Partial Cancellations; and

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

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

“Cascaded Rolling Stock”

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

“Cash Balance”

means in respect of any Weekday during the Contract Period, the Operator’s actual cash balance as at the end of business hours on the previous Weekday;

“CCTV Guidance”

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

“Ceased Services”

has the meaning given to it in paragraph 2.3(c) of Part 1 (*Service Quality Regime*) of Chapter 5.5 (*Customer Experience Performance*);

“Ceiling Cash Position”

means £85,000,000 (pounds sterling eighty-five million) or such other value as the Secretary of State may determine in accordance with paragraph 9.7 of Chapter 7.1 (*Contract Payments*);

“Central Government Body”

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

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

“Change of Control”

has the meaning given to it in paragraph 2.1 (*Change of Control and Facilitation Fee*) of Chapter 1.1 (*Organisation and Management*);

“Change of Law”

means the coming into effect after the date of this Contract 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 this Contract, and for this purpose, but without limitation, there shall be regarded as foreseeable any Legislation which on the date of this Contract 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 Relevant Technical Specification 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 Operator is a Party on the Start Date (or any Replacement Agreement or any equivalent provisions in any HS2 Track Access 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;
 - (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 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 Operator;
- (c) for which the advance booking or booking arrangements for seats on the relevant service are, in the 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 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 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 Operator 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;
- “Closed Scheme Employees”** has the meaning given to it in paragraph 3.2 of Chapter 7.6 (*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”** means the Competition and Markets Authority;
- “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);
- “Collaboration Agreement”** means the document in the agreed terms marked **ShOpCA** among the Operator, the Secretary of State and HS2 Limited, setting out the manner in which the parties thereto will collaborate for, among other reasons, delivery of responsibilities under this Agreement;
- “Collective Agreement”** has the meaning given to it in the Trade Union and Labour Relations (Consolidation) Act 1992;
- “Commercial Considerations”** means considerations of price, quality, availability, marketability, transportation and other terms and conditions of purchase or sale, or other factors that would normally be taken into account in the commercial decisions of a privately owned enterprise operating according to market economy principles in the relevant business or industry;
- “Commitment”** means:
- (a) 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 Operator or any Affiliate of the Operator that the CMA is able to accept pursuant to section 73(2) of the Enterprise Act 2002 in relation to the Transaction; or
- (b) 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 Operator or any Affiliate of the Operator 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;

- “Community Rail Network”** means the grassroots community network whose purpose is to support Community Rail Partnerships (previously known as the Association of Community Rail Partnerships) or any successor body;
- “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 Chapter 5.2 (*Customer Schemes*);
- “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 2018 and which provides a broad framework within local lines can support their communities;
- “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 Operator 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 Chapter 8.2.3 (<i>Allocation of Fares to Fares Baskets</i>);
	(b) for the purposes of regulating aggregate Prices, as the case may be, in accordance with Chapter 8.2.4 (<i>Regulation of Fares Basket Values and Individual Fares</i>);
	(c) amended by the Secretary of State from time to time in accordance with Part B of Chapter 8.2.5 (<i>Exceeding the Regulated Value, Regulated Price or Regulated Child Price and 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 Part B of Chapter 8.2.5 (<i>Exceeding the Regulated Value, Regulated Price or Regulated Child Price and Changes to Fares and Fares Regulation</i>);
“Competition Authority”	means the European Commission or the CMA;
“Competition Event”	means an Intervention by a Competition Authority or any Commitment which could prejudice the ability of: <ul style="list-style-type: none"> (a) the Operator to operate the Rail Services in accordance with the National Rail Contract; or (b) any Affiliate of the Operator to continue to operate any other rail contract of which it is the franchisee;
“Competition Event Notice”	has the meaning given to it in paragraph 6.4 of Chapter 9.7 (<i>Miscellaneous Legal Terms</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 Chapter 9.6 (<i>Confidentiality and Data Protection</i>);
“Connection”	means a connection (however described) between any of the Passenger Services provided by the Operator and any other railway passenger service provided by the Operator or any other Train Operator or any bus, ferry or shipping service and cognate phrases shall be construed accordingly;
“Consultancy Affiliates”	means: <ul style="list-style-type: none"> (a) Italferr S.p.A, registered at the Italian Index of Economic and Administrative Data with number 541241 and with its registered office at Via V. G. Galati, 71 00155 Rome, Italy; and (b) Italcertifer S.p.A, registered at the Florence business registry with number 521976 and with a registered address of Piazza della Stazione, 45 50123, Firenze, Italy;
“Consultancy Costs”	means the actual Payroll Costs incurred by the Affiliate in connection with employing the relevant person, solely for

the period during which they provide the relevant consultancy services relating to the Shadow Operator Services without any profit or overhead addition. The Consultancy Costs shall be calculated as follows:

$$\text{Consultancy Costs} = \text{Payroll Costs} \times \frac{A}{(B - (C + D))}$$

where:

- A** means the number of days or part days spent providing the relevant consultancy services during the relevant calendar year, provided that each day shall be calculated on the basis of 7.5 hours worked and no more than one day can be charged in respect of work undertaken on a single calendar day;
- B** means the total number of days in the relevant calendar year;
- C** means the total number of Saturdays and Sundays in the relevant calendar year;
- D** means the total number of holidays to which the relevant individual is contractually entitled in the relevant calendar year, plus any bank holidays which are given in addition to such entitlement;

For the avoidance of doubt, the calculation of **A** shall not include:

- (i) any time during which the individual is sick, or otherwise absent and not providing the relevant consultancy services;
- (ii) any time during which the individual is undertaking travel or training which is not required to undertake the relevant consultancy services; or
- (iii) any time travelling to the normal place from which the relevant consultancy services are performed.

“Consumer Prices Index” or “CPI”

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 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 Operator, determine to be appropriate in the circumstances;

“Contingency Plan”

has the meaning given in paragraph 1.1(a)(iv) (*Definition of Force Majeure Events*) of Chapter 9.4.4 (*Force Majeure*);

“Continuation Document”

means any franchise agreement, direct award, interim franchise agreement or other arrangement pursuant to which the Operator is required to provide services for the carriage of passengers by railway which is entered into by the Operator 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 National Rail Contract;

“Continuing Ancillary Service”	means any service and/or activity (including any Ancillary Service) carried out by the Operator and permitted under the Previous Agreement which the Secretary of State requires to be continued under this Contract, as listed in the Continuing Ancillary Services Document;
“Continuing Ancillary Service Document” or “CASD”	means the document in the agreed terms marked CASD as the same may be amended from time to time in accordance with clause 4 (<i>Rail Services</i>);
“Contract”	means clauses 1 to 11 and Chapters 1 to 11 including any Appendices and Annexes as varied from time to time;
“Contract Documents”	means: <ul style="list-style-type: none"> (a) this Contract; (b) the Direct Award Collateral Agreement; (c) the Funding Deed; (d) the Train Service Requirement; (e) any Request for Business Plan; (f) any Business Plan agreed or determined in accordance with Chapter 7.7 (<i>Business Plan</i>); (g) the Early Termination Indemnity Agreement; and (h) any other agreement signed by the Operator at the time of the award of the Rail Services which is in the possession of the Secretary of State and which is notified by the Secretary of State to the Operator as being required for publication;
“Contract Payment”	means, in relation to any Reporting Period, the amount determined in accordance with paragraph 1 of Chapter 7.1 (<i>Contract Payments</i>);
“Contract Payment Component”	means: <ul style="list-style-type: none"> (a) each of the components of the “£CP” of Chapter 7.1 (<i>Contract Payments</i>); and (b) any component or element, described in the relevant provisions of Chapter 7.1 (<i>Contract Payments</i>) and Chapter 7.2 (<i>Performance Based Fee and Shadow Operator Performance Based Fee</i>), as the case may be, which is used in determining or calculating the value of those components described in paragraph (a) above;
“Contract Performance Meeting”	means a meeting between the Secretary of State and the Operator to be held in accordance with paragraph 8 of Chapter 1.1 (<i>Organisation and Management</i>);
“Contract Period”	means the period commencing on the Start Date and ending on the Expiry Date or, if earlier, the date of termination of this Contract pursuant to Chapter 9.4 (<i>Remedies and Dispute Resolution</i>);
“Contract Term”	means the period commencing on the Start Date and expiring on the Expiry Date;
“Contract Year”	means any period of twelve (12) months during the Contract Period, beginning on 1 April and ending on 31 March, except that the first Contract Year and the Final Contract Year may be for a period of less than twelve (12)

months and the first Contract Year shall begin on the Start Date and the Final Contract Year shall end on the last day of the Contract Period;

“Contracts and Insurance Matrix Workbook” or “CIMW”

means the document in the agreed terms marked **CIMW** and has the meaning given to it in paragraph 3(a) of Appendix 1 (*Form of Handover Package*) to Chapter 9.5.1 (*Handover Package*);

“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-

	<p>five per cent (25%) or more of the amount so distributed; or</p> <p>(iii) such rights as would, in the event of the winding-up or other analogous event in respect of:</p> <p>(A) A;</p> <p>(B) any person who has equivalent rights over A; or</p> <p>(C) any person who A has equivalent rights over,</p> <p>entitle him to receive twenty-five per cent (25%) or more of the assets of such person which would then be available for distribution,</p> <p>and “Controlled” shall be construed accordingly;</p>
“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;
“Controller”	has the meaning given to it in the Data Protection Legislation;
“Conventional Rail Network”	means the network in respect of which Network Rail is the Facility Owner and which is situated in England, Wales and Scotland;
“Conventional Rolling Stock”	means any rolling stock intended to be used by the Operator on and from the High Speed Start Date, except the High Speed Rolling Stock;
“Conventional Services”	means the Passenger Services on and after the High Speed Start Date, excluding the High Speed Services;
“Core Business Plan Commitments”	means the contractual obligations which the Operator is required to deliver in relation to any Business Plan Year, which (in respect of each Core Business Plan Component in the Business Plan) are identified as ‘Core Business Plan Commitments’ in the Business Plan, and which shall include the achievement of milestones and other indicators of progress towards associated longer-term requirements as described in the Outline Business Plan;
“Core Business Plan Components”	has the meaning given in paragraph 1.1(a) of Chapter 7.7 (<i>Business Plan</i>);
“Core Business Plan KPIs”	means those Business Plan KPIs which do not relate solely to the Shadow Operator Services;
“Core Term Expiry Date”	means 01:59 on 18 October 2026;
“Cost Budget”	means, in respect of: <ul style="list-style-type: none"> (a) the first Business Plan Year, the periodic cost budget (expressed in nominal prices) generated by the Financial Model provided and Placed in Escrow pursuant to paragraph 5.1(a) of Chapter 7.5 (<i>Variations, Changes and Amendments</i>); and (b) each Subsequent Business Plan Year, the periodic cost budget (expressed in nominal prices) generated by the Financial Model provided and

Placed in Escrow pursuant to paragraph 5.1(b) of Chapter 7.5 (*Variations, Changes and Amendments*),

each as amended from time to time in accordance with this Contract and subsequently Placed in Escrow pursuant to paragraph 5.1(c) of Chapter 7.5 (*Variations, Changes and Amendments*);

“Cost Budget Change”	means any change to the Cost Budget (and as applicable the Record of Assumptions) as agreed or determined under the provisions of paragraphs 2.5, 2.6 or 2.7 of Chapter 7.5 (<i>Variations, Changes and Amendments</i>);
“Cost Budget Change Event”	has the meaning given to it in Part 1 of Appendix 1 to Chapter 7.5 (<i>Variations, Changes and Amendments</i>);
“Cost Category” or “C_{Cat}”	means the cost categories containing groups of individual lines of costs as set out in the Cost Budget as most recently Placed in Escrow;
“Cost Efficiency Analysis”	has the meaning given to it in paragraph 1.3(k) (<i>Contents of the Business Plan</i>) of Chapter 7.7 (<i>Business Plan</i>);
“Cost Financial Target Amendment Event”	means the events described in paragraphs 5 and 6 of Part 3 (<i>Financial Target Amendment Events</i>) of Appendix 1 (<i>Trigger Events</i>) to Chapter 7.5 (<i>Variations, Changes and Amendments</i>);
“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 17 of Chapter 4.1 (<i>Service Development</i>);
“COVID-19”	means the coronavirus disease 2019;
“COVID-19 Guidance and Regulation”	means guidance and/or regulation relating to COVID-19 as from time to time issued by the ORR, Public Health England or any other relevant government department, agencies or public bodies;
“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 Increment”	means the 2027 Q1 CPI divided by the Forecast 2027 Q1 CPI;
“CPI Increment Event”	means where the 2027 Q1 CPI is greater than the Forecast 2027 Q1 CPI;
“Creating”	has the meaning given to it in the Ticketing and Settlement Agreement, cognate expressions and references to “ Create ” shall be construed accordingly;
“Critical Friend”	means the Operator acting in its capacity as future operator of the High Speed Services, providing advice to HS2 Limited on the delivery of the HS2 Project where it considers the overall operational outcomes and customer

	experience could be improved in accordance with the Operator's obligations set out in paragraph 4 of Chapter 11.1 (<i>Shadow Operations</i>);
“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 Operator relating to persons travelling on or purchasing tickets for travel on the Passenger Services or other services for the carriage of passengers by railway;
“CRM Data Obligations”	has the meaning given to it in paragraph 5.4 of Chapter 9.3 (<i>Branding and Intellectual Property</i>);
“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;
“CRP Amount”	means the sum of one hundred and ninety thousand pounds (£190,000) per Contract Year (reduced pro-rata in respect of any Contract Year of less than three hundred and sixty five (365) days);
“CRP Project Sum”	means the sum of one hundred and ninety thousand pounds (£190,000) per Contract Year (reduced pro rata in respect of any Contract Year of less than three hundred and sixty five (365) days);
“Current Reporting Period”	has the meaning given to it in paragraph 1.3 of Appendix 1 (<i>Calculation of Periodic Contract Payments (PCP)</i>) to Chapter 7.1 (<i>Contract Payments</i>);
“Current Year”	has the meaning given to it in paragraph 1.3 of Appendix 1 (<i>Calculation of Periodic Contract Payments (PCP)</i>) to Chapter 7.1 (<i>Contract Payments</i>);
“Customer Priority Areas”	has the meaning given in paragraph 2.2(b) (<i>Customer Satisfaction - Scorecard A</i>) of Appendix 3 (<i>Scorecard Criteria</i>) to Chapter 7.2 (<i>Performance Based Fee and Shadow Operator Performance Based Fee</i>);
“Customer Report”	means a report published in accordance with paragraph 1 (<i>Customer Report</i>) of Chapter 5.1 (<i>Customer Information</i>);
“Customer Satisfaction Fee” or “CS”	means the element of the Performance Based Fee the purpose of which is to measure the Operator's effectiveness in delivering high levels of satisfaction and positive sentiment amongst users of the Passenger Services;
“Customer Satisfaction Scorecard A”	means the methodology applicable to calculation of the Customer Satisfaction Fee where Customer Satisfaction Scorecard A is the Applicable Assessment Methodology, as set out in Appendix 4 (<i>Scorecard Methodology</i>) of Chapter 7.2 (<i>Performance Based Fee and Shadow Operator Performance Based Fee</i>);
“Customer Satisfaction Scorecard B”	means the methodology applicable to calculation of the Customer Satisfaction Fee where Customer Satisfaction Scorecard B is the Applicable Assessment Methodology, as set out in Appendix 4 (<i>Scorecard Methodology</i>) of Chapter 7.2 (<i>Performance Based Fee and Shadow Operator Performance Based Fee</i>);

“Customer Service Quality Inspection”	means an inspection (and provision of reports as specified) of the Operator’s customer facing systems and procedures against the Service Quality Indicators in the manner specified in Part 3 of the Service Quality Schedules, and in accordance with the requirements of Chapter 5.5 (<i>Customer Experience Performance</i>);
“Customer Service SQR Stations”	means: <ul style="list-style-type: none"> (a) the Stations; (b) the Managed Stations; and (c) Milton Keynes Central Station;
“Dataset”	means the data specified in Appendix 1 (<i>Environmental Information</i>) to Chapter 6 (<i>Environment and Sustainability</i>) as the same may be amended from time to time by the Secretary of State;
“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 UK GDPR, Data Protection Act 2018, and, to extent that they are applicable, the Privacy and Electronic Communications (EC Directive) Regulations 2003 (as may be amended by the proposed Regulation on Privacy and Electronic Communications);
“Data Site Information”	has the meaning given to it in paragraph 3.1 of Chapter 9.5.2 (<i>Reletting Provisions and Maintenance as a Going Concern</i>);
“Data Site Monitor and Index”	has the meaning given to it in paragraph 3.1A of Chapter 9.5.2 (<i>Reletting Provisions and Maintenance as a Going Concern</i>);
“Data Subject”	has the meaning given to it in the Data Protection Legislation;
“Default Performance Level”	means, in relation to the relevant Enforcement Benchmark for any Reporting Period, the number set out in the relevant Column of the Enforcement TOC on Self Cancellations Benchmarks Table or Enforcement TOC Minutes Delay Benchmarks Table (as the case may be) in the row of the applicable table for that Contract Year;
“Delay Attribution Principles and Rules”	means the version of the document known as the Delay Attribution Principles and Rules referenced in the Network Code;
“Delayed Cascade Mitigation Plan”	has the meaning given to it in paragraph 10.7 of Chapter 9.1 (<i>Fixed Assets</i>);
“Delay Repay 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;
“Demobilisation Plan”	means the Operator’s plan for the demobilisation of Rail Services which shall: <ul style="list-style-type: none"> (a) demonstrate the Operator’s compliance with its obligation to ensure that the business of providing Rail Services can be transferred to a Successor Operator as a going concern at any time (in accordance with paragraph 6 (<i>Maintenance as a</i>

	<i>going concern</i>) of Chapter 9.5.2 (<i>Reletting Provisions and Maintenance as a going concern</i>));
	(b) be tailored specifically to the Rail Services; and
	(c) include critical path milestones for demobilisation and transfer at the date of termination or expiry of this Contract;
“Departure Station”	has the meaning given to it in paragraph 2 of Appendix 1 (<i>Accessible Transport Arrangements</i>) to Chapter 5.3 (<i>Accessibility and Inclusivity</i>);
“Depot”	means a depot in respect of which the Operator has entered into a Depot Lease;
“Depot Lease” or “DL”	means: <ul style="list-style-type: none"> (a) any lease of a depot to which the Operator is a party as at the Start Date; or (b) any other lease of a depot in relation to which the Operator becomes the Facility Owner at any time during the Contract 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 the format of all reports and analysis);
“Designated BP Primary Assets”	has the meaning given to it in paragraph 19.1 (<i>Designation of Assets comprised in Business Plan Commitments as Primary Assets</i>) of Chapter 9.2.2 (<i>Key Assets - Designation of Assets</i>);
“Designated Employer”	has the meaning given to it in the Pension Trust;
“Designated Overhanging Contract”	has the meaning given in paragraph 7.2 (<i>Designation of Key Contracts as Primary Assets</i>) of Chapter 9.2.2 (<i>Key Assets – Designation of Assets</i>);
“Destination Station”	has the meaning given to it in paragraph 2 of Appendix 1 (<i>Accessible Transport Arrangements</i>) to Chapter 5.3 (<i>Accessibility and Inclusivity</i>);
“Determination Escalation Process”	means the process set out in paragraphs 1.3 to 1.8 of Chapter 9.4.2 (<i>Dispute Resolution Procedures</i>);
“Devolved Transport Body”	means, any public sector body which has been given responsibility for public passenger transport in the United Kingdom including Transport for London, Transport for Wales, Transport Scotland, Transport for the North, any Passenger Transport Executive or Combined Authority and any other public body with relevant public passenger transport responsibilities;
“Development Agreement”	means the development agreement dated 8 December 2014 between HS2 Limited and the Secretary of State as amended or replaced from time to time;
“Digital Rights”	means rights held at all times by Operator namely each of: <ul style="list-style-type: none"> (a) the Intellectual Property Rights relating to domain names together with any linked email addresses;

- (b) the Intellectual Property Rights relating to social media handles together with any linked messaging functionality; and
- (c) any other domain names, email addresses, social media handles, URLs or other digital Intellectual Property Rights acquired for the Rail Services after the date of this Contract;

“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 Chapter 9.2.1 (*Key Contracts*);

“Direct Award Collateral Agreement”

means the agreement between the Secretary of State and the Operator 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 Contract;

“Direct Delay”

means a delay that is attributed as “Direct Delay” in accordance with the Delay Attribution Principles and Rules;

“Disabled Person”

is a reference to a person who has a disability as defined in the EA 2010;

“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;

“Disallowable Costs”

means any costs or capital expenditure which are described within Appendix 2 (*Disallowable Costs*) to Chapter 7.1 (*Contract Payments*) or any other costs or capital expenditure identified as Disallowable Costs in this Contract, and may include amounts stated in any Cost Budget, Financial Model and/or Record of Assumptions (as applicable) which have been Placed in Escrow;

“Discount Card”

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

“Discount Fare Scheme”

means 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;

“Dispute Handling Plan”

has the meaning given to it in paragraph 5.2 (*Industrial Action*) of Chapter 2.2. (*Rail Workforce*);

“Dispute Handling Policy”	means the policy issued by the Secretary of State with the same name on, on or about the Start Date, as may be amended, supplemented or replaced from time to time;
“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), in either case, in circumstances where attribution of responsibility for the same is, at the relevant time, in dispute between Network Rail and the Operator pursuant to the Network Rail Track Access Agreement;
“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, in either case, in circumstances where attribution of responsibility for the same is, at the relevant time, in dispute between Network Rail and the Operator pursuant to the Network Rail Track Access Agreement;
“Diversity KPIs”	means D&I Initiatives KPIs and D&I Characteristics KPIs;
“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;
“Double Arrows Symbol”	means the double arrows symbol trade mark detailed in Part 1 (<i>Registered Trade Marks</i>) of Schedule 1 (<i>Licensed IP</i>) of the Brand Licence;
“Draft Action Plan”	has the meaning given to it in paragraph 9.1(b)(i), of Chapter 4.4 (<i>Operational Performance</i>);

“D&I Annual Report”	means a report produced by the Operator developed in accordance with paragraph 1.3 of Chapter 2.1 (<i>Diversity and Inclusion and Training and Development</i>) in respect of the previous twelve (12) months or, if shorter, the period since the Start Date;
“D&I Annual Reporting Date”	means the date on which the Operator must provide the D&I Annual Report to the Secretary of State as stated in the D&I Strategy, provided that if this date, in any Contract Year, occurs after the expiry of the term of this Contract then the D&I Annual Reporting Date shall be one (1) month before the expiry of the term of this Contract;
“D&I Champion”	means the director or senior executive that is accountable and responsible for implementing the D&I Strategy and ensuring that the Operator complies with its obligations relating to diversity and inclusion (excluding the obligations in paragraph 1.4 of Chapter 2.1 (<i>Diversity and Inclusion and Training and Development</i>));
“D&I Characteristics KPIs”	means the KPIs set out in the Operator’s D&I Strategy used to assess the impact of the Operator’s initiatives on diversity at different levels of the workforce and in connection with different characteristics (including gender, age, ethnicity and disability) compared to the region and/or nationally;
“D&I Improvement Plan”	has the meaning given to it in paragraph 1.7 of Chapter 2.1 (<i>Diversity and Inclusion and Training and Development</i>);
“D&I Initiatives KPIs”	means the KPIs set out in the Operator’s D&I Strategy used to measure its performance against diversity initiatives and policies, which may include KPIs along the following lines: <ul style="list-style-type: none"> (a) the number of positive action initiatives implemented and maintained by the Operator; (b) the number of adverts in targeted publications; (c) membership of diversity and inclusion networks and forums; (d) the percentage of staff trained annually in diversity and inclusion; (e) the number of line managers completing diversity and inclusion training; (f) the number of members of the board of directors completing diversity and inclusion training; and (g) the number of diversity and inclusion training sessions;
“D&I Strategy”	means the diversity and inclusion strategy developed by the Operator and approved pursuant to the Previous Agreement as set out in the relevant annex to the Operator’s Business Plan and as may be updated from time to time in accordance with Chapter 7.7 (<i>Business Plan</i>), including by way of a Business Plan Revision;
“EA 2010”	means the Equality Act 2010;

“EA Claim”	has the meaning given to it in paragraph 3.1 of Chapter 5.3 (Accessibility and Inclusivity);
“EA Requirements”	means the duties of a provider of services under sections 20(3), 20(5) and sections 20(9)(a) and 20(9)(b) in relation to section 20(4), of the EA 2010;
“Early Termination Indemnity Agreement”	means the deed made between the Secretary of State and the ETIA Counterparties dated on or about the date of this Contract specifying arrangements relating to the provision of an indemnity in favour of the Secretary of State for liabilities arising in relation to an early termination of this Contract or any failure by the Operator to perform or comply with any of its obligations under any applicable Supplemental Agreement;
“Eligible ShOp Costs”	means the Actual Costs relating to the Shadow Operator Cost Categories (excluding those relating to the Shadow Operator HQ Cost Category) for the relevant PBF Assessment Period (as shown in the Audited Accounts Reconciliation for the relevant Contract Year(s));
“Elizabeth line 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;
“Elizabeth line Services”	means the passenger services operated or to be operated by the Elizabeth line Operator;
“Embedded ICP Background”	has the meaning given in paragraph 10.5 (<i>Cross Licensing of Industry Change Project IP</i>) of Chapter 7.7 (<i>Business Plan</i>);
“Embedded Operational Background”	has the meaning given in paragraph 7.10(b) (<i>Miscellaneous IP</i>) of Chapter 9.3 (<i>Branding and Intellectual Property</i>);
“Emergency Events”	has the meaning given to it in paragraph 1.1(e) of Chapter 9.4.4 (<i>Force Majeure</i>);
“Emergency Working Capital Payment”	has the meaning given in paragraph 9.4 of Chapter 7.1 (<i>Contract Payments</i>);
“Employment Agreement”	means the terms and conditions of employment of any Business Employee whether contained in or otherwise incorporated or implied, including by way of custom or practice, into any Collective Agreement, individual contract of employment, employee handbook or otherwise, in each case whether or not in writing;
“Employment Policy Framework”	has the meaning given to it in paragraph 2.1(a) of Chapter 2.2 (<i>Rail Workforce</i>);
“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);
“Enduring Branding”	means: <ul style="list-style-type: none"> (a) branding which shall not: <ul style="list-style-type: none"> (i) bear any brand image or symbol; (ii) display any distinctive trade marks;

- (iii) (subject to paragraph 1.7 of Chapter 9.3 (*Branding and Intellectual Property*)) make any reference to the name of the company or entity which owns the branding, the Operator or an Affiliate of the Operator; or
- (iv) use any colour combinations, livery or other elements;

that are specific to the Operator, an Affiliate of the Operator or any other company and shall incorporate no other visual link to the Operator, an Affiliate of the Operator or any other company unless otherwise agreed by the Secretary of State; and

- (b) such trade marks as:
 - (i) the Operator applies to any Primary Asset or other asset used by it under a Key Contract that encapsulate the heritage, regional and passenger perception of railway routes served by its train services; and
 - (ii) are under the proprietorship of the Secretary of State and licensed to the Operator in accordance with the Brand Licence under paragraph 1.1 of Chapter 9.3 (*Branding and Intellectual Property*) that encapsulate the heritage, regional and passenger perception of railway routes served by its train services;

and includes the Primary Brands and the Secondary Brands;

“Enforcement Benchmarks”

means any of the Enforcement TOC on Self Cancellations Benchmarks or the Enforcement TOC Minutes Delay Benchmarks (as the context may require);

“Enforcement Plan of the Day”

means the Plan of the Day except for any:

- (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,

in each case:

- (i) as proposed by the Operator in breach of its obligations in paragraph 4 of Chapter 4.2 (*Operating Obligations*); or
- (ii) as agreed by the Operator in breach of its obligations in paragraph 3 of Chapter 4.2 (*Operating Obligations*);

“Enforcement TOC Minutes Delay Benchmarks”	means for each Reporting Period within each Contract Year: (a) the Breach Performance Level; (b) the Default Performance Level; each as applicable and as specified in the Enforcement TOC Minutes Delay Benchmarks Table for that Contract Year;
“Enforcement TOC Minutes Delay Benchmarks Table”	means the table entitled “TOC Minutes Delay Benchmarks” as set out as part of the Annual PBF Specifications in the Business Plan;
“Enforcement TOC on Self Cancellations Benchmarks”	means for each Reporting Period within each Contract Year: (a) the Breach Performance Level; (b) the Default Performance Level; each as applicable and as specified in the Enforcement TOC on Self Cancellations Benchmarks Table for that Contract Year;
“Enforcement TOC on Self Cancellations Benchmarks Table”	means the table entitled “Enforcement TOC on Self Cancellations Benchmarks” as set out as part of the Annual PBF Specifications in the Business Plan;
“Enhanced Disability Awareness Training”	means training which is compliant with the requirements set out in section 4, paragraph B6 of the Accessible Travel Policy Guidance;
“Environmental Impact Monitoring Audit”	has the meaning given to it in paragraph 1.3 of Chapter 6 (<i>Environment and Sustainability</i>);
“Environmental Impact Targets”	means the targets in relation to the Operator’s environmental impact which are set out in the Operator’s Business Plan;
“Environmental Impact Targets Plan”	means the Operator’s plan in relation to the Environmental Impact Targets as set out in the Operator’s Business Plan, as may be updated from time to time in accordance with Chapter 7.7 (<i>Business Plan</i>), including by way of a Business Plan Revision;
“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 Part B (<i>Changes to Fares and Fares Regulation</i>) of Chapter 8.2.5 (<i>Exceeding the Regulated Value, Regulated Price or Regulated Child Price, and Changes to Fares and Fares Regulation</i>);
“Equivalent Flow”	has the meaning given to it in paragraph 6.1(b) of Part B (<i>Changes to Fares and Fares Regulation</i>) of Chapter 8.2.5 (<i>Exceeding the Regulated Value, Regulated Price or Regulated Child Price, and Changes to Fares and Fares Regulation</i>);
“ERMA”	means the emergency recovery measures agreement between the Secretary of State and the Operator which

	was entered into on 19 September 2020 and took effect on 20 September 2020;
“ERMA Actual Shadow Operator Costs”	has the meaning given to “Actual Shadow Operator Costs” in the Previous Agreement;
“ERMA Actual Shadow Operator Revenue”	has the meaning given to “Actual Shadow Operator Revenue” in the Previous Agreement;
“ERMA Final Part Year”	means the Reporting Periods commencing on 1 April 2023 and ending on the Start Date of this Contract;
“ERMA Final Part Year Actual Capex”	means the Actual Capex (as defined in the Previous Agreement) for the ERMA Final Part Year;
“ERMA Final Part Year Actual Costs”	means the Actual Costs (as defined in the Previous Agreement) for the ERMA Final Part Year;
“ERMA Scorecard Criterion”	has the meaning given to “Scorecard Criterion” in the Previous Agreement;
“Escrow Documents”	means: <ul style="list-style-type: none"> (a) in relation to a Business Plan Year, the Modelling Suite (including the Cost Budget and, if applicable, the Amendable Financial Targets), the Forecast Revenue and the Record of Assumptions, in each case that are applicable in respect of that Business Plan Year; and (b) the IO Modelling Suite (including the Strategic Operational Baseline Forecast and IO Forecast Revenue) and the IO Record of Assumptions;
“ETIA Counterparty”	has the meaning given to it under the Early Termination Indemnity Agreement;
“EU Merger Regulation”	has the meaning given to it in paragraph 6.1(a) (<i>Competition</i>) of Chapter 9.7 (<i>Miscellaneous Legal Terms</i>);
“Evening Peak”	means, in relation to any Passenger Service, the period between 16:00 and 18:59 (inclusive) during a Weekday or such other continuous three hour period between 12:00 and 23:59 (inclusive) as the Secretary of State may specify from time to time;
“Evening Peak Service”	means a Passenger Service which departs from London Euston, Birmingham New Street or Manchester Piccadilly 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 Chapter 9.4.1 (<i>Events of Default and Termination Events</i>);
“Event Steering Groups”	has the meaning given to it in the Network Code;
“Evidence Request”	has the meaning given in paragraph 2.3(b) (<i>Performance Assessment in Contract Performance Meetings</i>) of Appendix 1 (<i>PBF Assessment Review</i>) to Chapter 7.2 (<i>Performance Based Fee and Shadow Operator Performance Based Fee</i>);
“Exceptional Event”	means an event, the effect of which, in the opinion of the Secretary of State, is that: <ul style="list-style-type: none"> (a) it would no longer be practicable to collect the data required to assess the Operator’s performance

	against the RCIS Expected Range and/or one or more of the QTM Targets in respect of a PBF Assessment Period;
	(b) the degree of challenge involved in meeting the RCIS Expected Range and/or any one or more of the QTM Targets is likely to be increased or decreased to such a significant extent that it would no longer be appropriate to assess the Operator’s performance against such RCIS Expected Range and/or one or more of the QTM Targets; or
	(c) the degree of uncertainty with respect to the Operator’s future cost and/or revenue prospects is increased to such an extent that (even after applying any Financial Target Amendments which may also be caused by such event), it would no longer be appropriate to assess the Operator’s performance against any of the Amendable Financial Targets which are applicable at that time in the context of the then current Applicable Assessment Methodology with respect to the Financial Performance Fee;
“Expenses Policy” or “EP”	means the Operator’s policy in respect of expenses in the agreed terms;
“Expiry Date”	means:
	(a) 01:59 on 17 October 2032; or
	(b) any earlier date specified in an Expiry Notice issued in accordance with clause 2.2 (<i>Expiry on or after the Core Term Expiry Date</i>);
“Expiry Notice”	has the meaning given to it in clause 2.2 (<i>Expiry on or after the Core Term Expiry Date</i>);
“Extended Final Year”	means the period commencing at the start of the Final Full Year and ending on the Expiry Date;
“Extended Term Contract”	has the meaning given in paragraph 12.3(a) (<i>Extended Term Contracts and Extended Term Designatable Contracts</i>) of Chapter 7.7 (<i>Business Plan</i>);
“Extended Term Designatable Contract”	has the meaning given in paragraph 12.4 (<i>Extended Term Contracts and Extended Term Designatable Contracts</i>) of Chapter 7.7 (<i>Business Plan</i>);
“Extraordinary STS Adjustment”	means such amount as the Secretary of State may require pursuant to paragraph 13.3(b) of Chapter 7.1 (<i>Contract Payments</i>);
“Facilitation Fee”	has the meaning given to it in paragraph 2.4 (<i>Change of Control and Facilitation Fee</i>) of Chapter 1.1 (<i>Organisation and Management</i>);
“Facility Owner”	has the meaning given to the term facility owner in section 17(6) of the Act;
“Fare”	means:
	(a) the right, exercisable against one or more Train Operators, subject to any applicable rights or restrictions and the payment of the relevant price, to make one or more journeys on the network or to carry on such a journey an item of luggage or

an animal (where this right does not arise under the relevant conditions of carriage except on the payment of a fee) and, where applicable, to obtain goods or services from a person; and

- (b) for the purposes only of Chapter 8.2.3 (Allocation of Fares to Fares Baskets) to Chapter 8.2.6 (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;
 - (iii) a Cross London Ticket (as defined in the Through Ticketing (Non Travelcard) Agreement); or
 - (iv) sold under the Pay As You Go Agreement and/or the CPAY Agreement utilising TTL smart media as defined in such agreement;

“Fare Year”	means the period from 1 January in any year to 31 December in the same year or any alternative period that the Secretary of State may specify in writing to the Operator from time to time;
“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 Plan”	means the Operator's plan in relation to Fares as set out in the Operator's Business Plan, as may be updated from time to time in accordance with Chapter 7.7 (<i>Business Plan</i>), including by way of a Business Plan Revision;
“Fares Setting Round”	has the meaning given to it in the Ticketing and Settlement Agreement;
“Final 1 April”	means the 1 April immediately preceding the Expiry Date;
“Final Balance Sheet”	means the balance sheet included in the Operator's Annual Audited Accounts for the last Contract Year of the Contract Period (provided pursuant to paragraph 1.5(b) (<i>Annual Financial Information</i>) of Chapter 7.3 (<i>Management Information</i>));
“Final Closing Accounts”	means the Operator's Annual Audited Accounts (provided pursuant to paragraph 1.5(b) (<i>Annual Financial Information</i>) of Chapter 7.3 (<i>Management Information</i>)) where the balance sheet shows that:

- (a) the only amounts owed to the Operator are amounts owed by the Secretary of State, amounts in relation to unsettled taxation and any incidental debtor which the Secretary of State may determine for this purpose; and
- (b) the only creditors of the Operator are the Secretary of State, the Parent, amounts in relation to unsettled taxation and any incidental creditor which the Secretary of State may determine for this purpose;

“Final Closing Accounts Reconciliation”

means the Audited Accounts Reconciliation relating to the Final Closing Accounts;

“Final Closing Adjustment” or “FCA”

means the financial adjustment (if any) calculated in accordance with the provisions of paragraph 18.2 of Chapter 7.1 (*Contract Payments*);

“Final Contract Year”

means the Contract Year ending on the last day of the Contract Period;

“Final Full Year”

means the period of twelve (12) months ending on the 31 March immediately preceding the Expiry Date;

“Final Output Report”

means any written report produced in accordance with paragraph 3 of Appendix 1 (*Required Outputs*) to Chapter 11.1 (*Shadow Operations*) and submitted by the Operator to the Secretary of State;

“Final Season Ticket Suspense Adjustment” or “FSTSA”

means the financial adjustment (if any) calculated in accordance with paragraph 13.8 of Chapter 7.1 (*Contract Payments*);

“Final Working Capital Adjustment”

means the financial adjustment (if any) calculated in accordance with the provisions of paragraphs 11.1 of Chapter 7.1 (*Contract Payments*);

“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 Model”

means, in respect of a Business Plan Year, the financial model within the Modelling Suite relating to that Business Plan Year used to generate the Cost Budget and, if applicable, the Templates that derive and record the Amendable Financial Targets (in each case, that are applicable to that Business Plan Year) together with, for the first Contract Year, the Periods 1 to 7 Budget (and, for the avoidance of doubt, the Periods 1 to 7 Budget does not form part of the Cost Budget) as amended from time to time in accordance with this Contract and subsequently Placed in Escrow pursuant to paragraph 5.1(c) of Chapter 7.5 (*Variations, Changes and Amendments*);

“Financial Performance Fee” or “FIN”

means the element of the Performance Based Fee, the purpose of which is to measure the Operator's effectiveness in controlling costs, driving revenue growth and deterring ticketless travel;

“Financial Plan”	means the financial plan forming part of each Business Plan as described in paragraph 1.3 of Chapter 7.7 (<i>Business Plan</i>);
“Financial Target Amendment”	means any amendment to the Amendable Financial Target(s) as agreed or determined under the provisions of paragraph 2.12 of Chapter 7.5 (<i>Variations, Changes and Amendments</i>);
“Financial Target Amendment Event”	means: <ul style="list-style-type: none"> (a) a Cost Financial Target Amendment Event; (b) a Revenue Financial Target Amendment Event; or (c) a Profit Financial Target Amendment Event, as the case may be (and in each case as described in Part 3 of Appendix 1 to Chapter 7.5 (<i>Variations, Changes and Amendments</i>));
“First HS Milestone Amount” or “HSMA₁”	has the meaning given in paragraph 1.1 of Chapter 7.1 (<i>Contract Payments</i>);
“First IO Year”	means the period from the High Speed Start Date to the start of the next Contract Year;
“First Reporting Period”	means the first Reporting Period to occur during the Contract Term;
“First Working Capital Payment” or “FWCP”	means the amount notified by the Secretary of State to the Operator prior to the Start Date;
“Fixed Fee” or “FF”	means the fixed fee part of the Fixed Fee and Performance Based Fee calculated in accordance with paragraph 12 of Chapter 7.1 (<i>Contract Payments</i>);
“Fixed Fee and Performance Based Fee” or “FFPBF”	means the Contract Payment Component calculated in accordance with paragraph 12 of Chapter 7.1 (<i>Contract Payments</i>) comprising of the Fixed Fee and the Performance Based Fee;
“Fixed or Non-Current Assets”	means any asset which is a fixed or non-current asset in accordance with GAAP;
“Flexible Ticket”	has the meaning given in paragraph 3.1 (<i>Flexible Ticket Product</i>) of Chapter 8.2.2 (<i>Operator’s Obligation to Create Fares</i>), subject to any variations that may be required by the Secretary of State pursuant to paragraph 3 (<i>Flexible Ticket Product</i>) of Chapter 8.2.2 (<i>Operator’s Obligation to Create Fares</i>);
“Flexible Ticket Commencement Date”	means the date on which the Operator was required to make available to passengers a flexible ticket product pursuant to the Previous Agreement, being 15 May 2021;
“Flexible Ticket Validity Period”	has the meaning given in paragraph 3.2(a) (<i>Flexible Ticket Product</i>) of Chapter 8.2.2 (<i>Operator’s Obligation to Create Fares</i>);
“Floor Cash Position”	means £30,000,000 (pounds sterling thirty million); or such other value as the Secretary of State may determine in accordance with paragraph 9.7 of Chapter 7.1 (<i>Contract Payments</i>);
“Flow”	has the meaning given to it in the Ticketing and Settlement Agreement;

- “FM Adjusted Performance Level”** means, as applicable with respect to the relevant OP Component, the Operator’s actual performance in any Reporting Period in relation to:
- (a) TOC on Self Cancellations, as determined by the TOC on Self Cancellations Re-Calculation carried out pursuant to paragraph 3.1(c) of Chapter 4.4 (*Operational Performance*); or
 - (b) TOC Minutes Delay, as determined by the TOC Minutes Delay Re-Calculation carried out pursuant to paragraph 4.1(c) of Chapter 4.4 (*Operational Performance*),
 - (c) in each case after accounting for any impact of any resolved claims with respect to any Force Majeure Event relating to TOC on Self Cancellations or TOC Minutes Delay (as applicable) in the relevant Reporting Period;
- “Force Majeure Event”** means any of the events described as such in paragraph 1 of Chapter 9.4.4 (*Force Majeure*) where the conditions specified in paragraph 2 of Chapter 9.4.4 (*Force Majeure*) are satisfied;
- “Forecast Closing Cash Position”** means, with respect to a Reporting Period, the Operator’s forecast cash balance (excluding the Contract Payment to be made in the following Reporting Period) as at the last day of that Reporting Period as reflected in the Operator’s latest Management Accounts;
- “Forecast 2027 Q1 CPI”** means 131.5 (with the index based at 2015 = 100);
- “Forecast Passenger Demand”** means the forecast prepared by the Operator pursuant to paragraph 2.5 of Chapter 4.1 (*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;
- “Forecast Revenue”** means in respect of:
- (a) the first Business Plan Year, the forecast of Actual Revenue (expressed in nominal prices) provided and Placed in Escrow pursuant to paragraph 5.1(a) of Chapter 7.5 (*Variations, Changes and Amendments*); and
 - (b) each Subsequent Business Plan Year, the forecast of Actual Revenue (expressed in nominal prices) provided and Placed in Escrow pursuant to paragraph 5.1(b) of Chapter 7.5 (*Variations, Changes and Amendments*),
- each as amended from time to time in accordance with this Contract and subsequently Placed in Escrow pursuant

	to paragraph 5.1(c) of Chapter 7.5 (<i>Variations, Changes and Amendments</i>);
“Foreground IP”	means Intellectual Property Rights created, devised by or on behalf of one of the Parties during the Contract Period: <ul style="list-style-type: none"> (a) in the performance of Rail Services; (b) in carrying out any activities in relation to the network which are connected with, ancillary to, or intended to benefit from the Rail Services; and/or (c) in the course of performing any obligations under this Contract;
“FP Cost QTM”	means the application of: <ul style="list-style-type: none"> (a) the Quantified Target Methodology to the FP Cost Sub-Component; and (b) the Scorecard Methodology to the FP Revenue Sub-Component;
“FP Cost Sub-Component” or “FIN(Cost)”	means the element of the Financial Performance Fee attributable to the Operator’s effectiveness in controlling costs, calculated in accordance with the Applicable Assessment Methodology with respect to the Financial Performance Fee;
“FP In-Year Change Notice”	has the meaning given to it in paragraph 2.7(g) (<i>Changes to the Applicable Assessment Methodology</i>) of Chapter 7.2 (<i>Performance Based Fee and Shadow Operator Performance Based Fee</i>);
“FP Profit QTM”	means the application of the Quantified Target Methodology to the FP Profit Sub-Component;
“FP Profit Sub-Component” or “FIN(Profit)”	means the element of the Financial Performance Fee attributable to the Operator’s effectiveness in controlling costs and driving revenue growth and (where the FP TT QTM is not applied and deterring ticketless travel is not otherwise incentivised pursuant to Chapter 7.2 (<i>Performance Based Fee and Shadow Operator Performance Based Fee</i>)) deterring ticketless travel, calculated in accordance with the Applicable Assessment Methodology with respect to the Financial Performance Fee;
“FP Revenue QTM”	means the application of: <ul style="list-style-type: none"> (a) the Scorecard Methodology to the FP Cost Sub-Component; and (b) the Quantified Target Methodology to the FP Revenue Sub-Component;
“FP Revenue Sub-Component” or “FIN(Revenue)”	means the element of the Financial Performance Fee attributable to the Operator’s effectiveness in driving revenue growth and (where the FP TT QTM is not applied and deterring ticketless travel is not otherwise incentivised pursuant to Chapter 7.2 (<i>Performance Based Fee and Shadow Operator Performance Based Fee</i>)) deterring ticketless travel, calculated in accordance with the Applicable Assessment Methodology with respect to the Financial Performance Fee;

“FP Scorecard Methodology”	means the application of the Scorecard Methodology to both the FP Cost Sub-Component and the FP Revenue Sub-Component;
“FP TT QTM”	means the application of the Quantified Target Methodology to the FP TT Sub-Component (which may be included as part of any Applicable Assessment Methodology with respect to the Financial Performance Fee);
“FP TT Sub-Component” or “FIN(TT)”	means the element of the Financial Performance Fee attributable to the Operator’s effectiveness in deterring ticketless travel, calculated in accordance with the Applicable Assessment Methodology with respect to the Financial Performance Fee;
“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;
“Free Trade Agreement”	means an international free trade agreement (whether bilateral, plurilateral or multilateral) to which the United Kingdom is party, whether entered into before, on or after the date of this Contract;
“Functional Aspect”	means all of the following: <ul style="list-style-type: none"> (a) Passenger Proposition Aspects; (b) Rolling Stock Functional Aspects;
“Functional Requirement Acceptance Criteria”	has the meaning given in paragraph 7.1(d) of Appendix 1 (<i>Required Outputs</i>) to Chapter 11.1 (<i>Shadow Operations</i>);
“Functional Requirement Asset”	means any asset (including any property, right or liability) relating to any Functional Requirement or Functional Requirements;
“Functional Requirements”	means the functionality and the capability, notified to the Secretary of State in accordance with paragraph 6.2 of Appendix 1 (<i>Required Outputs</i>) to Chapter 11.1 (<i>Shadow Operations</i>) or determined by the Secretary of State in accordance with paragraph 6.3 of Appendix 1 (<i>Required Outputs</i>) to Chapter 11.1 (<i>Shadow Operations</i>), which the Operator requires that HS2 Limited will procure for each separate Functional Aspect, including the acceptance methodology and rationale;
“Funding Deed”	means the deed made between the Secretary of State, the Operator and the Guarantor dated on or about the date of the National Rail Contract specifying arrangements relating to the funding for the Operator by the Guarantor and giving rights to the Secretary of State in relation to such funding;
“GAAP”	means generally accepted accounting principles in the United Kingdom, as derived from and including the accounting requirements of the Companies Act 2006, ‘ <i>Financial Reporting Standards 100, 101 and 102</i> ’, 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;

“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;

“Geographical Area”

means that area of Great Britain bounded by a reasonably drawn line running through the railway stations at the following places:

- (a) London Euston;
- (b) Watford Junction;
- (c) Rugby;
- (d) Stoke-on-Trent;
- (e) Manchester Piccadilly;
- (f) Preston;
- (g) Carlisle;
- (h) Edinburgh Waverley;
- (i) Motherwell;
- (j) Glasgow Central;
- (k) Lockerbie;
- (l) Carlisle;
- (m) Windermere;
- (n) Lancaster;
- (o) Blackpool North;
- (p) Liverpool Lime Street;
- (q) Chester;
- (r) Llandudno;
- (s) Holyhead;
- (t) Chester;
- (u) Shrewsbury;
- (v) Wolverhampton;
- (w) Birmingham New Street;
- (x) Milton Keynes Central; and
- (y) London Euston; or

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

“Good and Efficient Operator”

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

- (a) having the same commercial, regulatory and operational arrangements as the Operator and being subject to the same operational circumstances;
- (b) which is a party to an agreement in equivalent terms to the National Rail Contract (with performance targets and standards equivalent to those set out in Chapter 7.2 (*Performance Based Fee and Shadow Operator Performance Based Fee*) and which complies with its obligations under such agreement and the Licences in a timely, efficient and economical manner;
- (c) with the degree of skill, diligence, prudence and foresight which can be expected from a skilled and experienced train operator so that in this context costs and revenues are optimised in combination to the greatest extent practicable, adopting a reasonable balance in respect of short, medium and longer term consequences for the relevant rail services; and

without limiting (a) to (c), in the context of the winding down of the Operator's affairs in the period following the end of the Contract Period, a notional train operator as described in paragraphs (a) to (c), seeking to maximise the receipts from debtors and minimise costs and payments to creditors in the realisation of its assets and discharge of its liabilities so as to ensure the largest possible available sum for distribution to its shareholders within a reasonable time, following the end of the operational period of its National Rail Contract, provided that the Secretary of State shall be entitled for the purpose of this provision by notice to the Operator from time to time to direct the period which is to be regarded as a reasonable period for this purpose;

“Good Industry Practice”

means all relevant practices and professional standards that would be expected of a well-managed expert service provider performing services substantially similar to the Shadow Operator Services;

“Good Insight Rating”

has the meaning given in paragraph 3 of Appendix 3 (*Scorecard Criteria*) to Chapter 7.2 (*Performance Based Fee and Shadow Operator Performance Based Fee*);

“Gross Revenue”

means, in relation to any period and any Fare, the gross revenue to the Operator (or any relevant predecessor of the Operator) attributable to such Fare over the relevant period, excluding any applicable Value Added Tax, costs, commissions or other expenses which may be paid or incurred in connection with such Fare;

“Group Contract”

means an agreement, contract, licence or other arrangement entered into by an Affiliate of the Operator with a third party, under or pursuant to which any goods, services, rights and/or other benefits whatsoever are or may be enjoyed by the Operator;

“Group Contract Supplier”

means any party to a Group Contract which is responsible for the provision of goods, services, rights and/or other

	benefits which are or may be enjoyed by the Operator under or pursuant to that Group Contract;
“Guarantor”	has the meaning given to it under the Funding Deed;
“Halifax Abuse Principle”	means the principle explained in the CJEU Case C-255/02 Halifax and others;
“Handover Package”	has the meaning giving to it in paragraph 1.1(a)(i) of Chapter 9.5.1 (<i>Handover Package</i>);
“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;
“High Speed Rolling Stock”	means the conventional-compatible high speed rolling stock which is to be procured by or on behalf of HS2 Limited, and manufactured and supplied by the TMM pursuant to the High Speed Rolling Stock MSA;
“High Speed Rolling Stock MSA”	means the manufacture and supply agreement to be entered into between HS2 Limited and the TMM in respect of the High Speed Rolling Stock;
“High Speed Rolling Stock TSA”	means the train services agreement to be entered into initially by HS2 Limited with the TMM, in relation to the maintenance of the High Speed Rolling Stock;
“High Speed Services”	means the Passenger Services which use the HS2 Network for some part of their route and are operated by the High Speed Rolling Stock;
“High Speed Services TSR”	means in respect of the High Speed Start Date, the TSR notified by the Secretary of State to the Operator as being applicable from the High Speed Start Date;
“High Speed Start Date”	means the date on which the High Speed Services commence operation in accordance with the High Speed Services TSR;
“Home Depot”	means a new depot to be constructed at Washwood Heath in Birmingham, to be procured by HS2 Limited for the purposes of maintaining, servicing and stabling the High Speed Rolling Stock and any further or successor fleets of rolling stock operating on the HS2 Network;
“Hot Standby”	means any rolling stock vehicle specified in the Train Formation Capacity Plan which: <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 Design Group”	means the design group set up by HS2 Limited, as notified by the Secretary of State in writing to the Operator from time to time;
“HS2 Independent Design Panel”	means the independent design panel set up by HS2 Limited, as notified by the Secretary of State in writing to the Operator from time to time;
“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 Limited Material”	means any Material licensed to or created by, for or on behalf of HS2 Limited which is provided (including where such Material is provided by the Secretary of State to the Operator on HS2 Limited’s behalf) to the Operator in connection with the performance or receipt of the Shadow Operator Services;
“HS2 Network”	means the network in respect of which HS2 Limited is the Facility Owner;
“HS2 Output”	has the meaning given to it in paragraph 4.1 of Appendix 1 (<i>Required Outputs</i>) to Chapter 11.1 (<i>Shadow Operations</i>);
“HS2 Output Report”	has the meaning given to it in paragraph 4.5 of Appendix 1 (<i>Required Outputs</i>) to Chapter 11.1 (<i>Shadow Operations</i>);
“HS2 Recommended Option”	has the meaning given to it in paragraph 5.1(a) of Appendix 1 (<i>Required Outputs</i>) to Chapter 11.1 (<i>Shadow Operations</i>);
“HS2 Phase 2a”	has the meaning given to it in the High Speed Rail (West Midlands to Crewe) Act 2021;
“HS2 Phase One”	has the meaning given to it in the High Speed Rail (London to West Midlands) Act 2017;
“HS2 Project”	the construction and development of a high speed railway which will provide high-speed inter-city services linking the biggest cities in Scotland with Manchester, Birmingham and London and all related infrastructure;
“HS2 Recommended Option”	has the meaning given to it in paragraph 5.1(a) of Appendix 1 (<i>Required Outputs</i>) of Chapter 11.1 (<i>Recommended Options</i>);
“HS2 Scope”	has the meaning given to it in paragraph 4.1 of Appendix 1 (<i>Required Outputs</i>) of Chapter 11.1 (<i>Recommended Options</i>);
“HS2 Strategic Goals”	means the set of goals and objectives for the HS2 Project as set out in Annex 7 (Strategic Goals and Objectives) of the Development Agreement;
“HS2 Systems”	means: <ul style="list-style-type: none"> (a) track; (b) overhead electrifications; (c) high voltage distribution and traction power substations; (d) tunnel mechanical and electrical systems;

- (e) tunnel ventilation systems;
- (f) lineside mechanical and electrical systems;
- (g) communications (safety-critical, operational and passenger) systems;
- (h) command, control and signalling systems; and/or
- (i) railway traffic management systems,

each as procured (or intended to be procured by or on behalf of HS2 Limited for use on the HS2 Network;

“HS2 Track Access Agreement”

means each Access Agreement between HS2 Limited and the Operator which permits the Operator to provide the Passenger Services on the HS2 Network;

“HS2 Western Leg”

mean the connection to the HS2 Network south of Crewe which continues to Manchester, the railway between Hoo Green in Cheshire and a junction with the Conventional Rail Network at Bamfurlong, south of Wigan;

“ICP Background”

has the meaning given to it in paragraph 10.1 (*Ownership of Industry Change Project IP*) of Chapter 7.7 (*Business Plan*);

“ICP Foreground”

has the meaning given to it in paragraph 10.2 (*Ownership of Industry Change Project IP*) of Chapter 7.7 (*Business Plan*);

“ICP Incentivisation”

means, in relation to any Industry Change Project, such further incentives or rewards (in addition to that provided for through the Fixed Fee and Performance Based Fee, the Shadow Operator Performance Based Fee, the First HS Milestone Amount and the Second HS Milestone Amount) as may be made available to the Operator to the extent necessary for the purposes of adequately incentivising the Operator’s performance or delivery of such Industry Change Project, which may include:

- (a) adjustments to any relevant elements of future Contract Payments;
- (b) payment(s) to be made by the Secretary of State to the Operator on completion of the relevant Industry Change Project (which may be variable and calculated by reference to the Operator’s performance in delivering, and/or the benefits realised from, the relevant Industry Change Project); and/or
- (c) milestone payments to be paid by the Secretary of State to the Operator on completion of any applicable milestones during the course of delivery of the Industry Change Project;

“ICP Relief”

means, in relation to any Industry Change Project, relief from any specific requirements of and/or adverse consequences pursuant to the provisions of this Contract, as may be made available to the Operator to the extent necessary for the purposes of adequately protecting the Operator from adverse consequences resulting directly from the Operator’s performance or delivery of such Industry Change Project, which may include:

- (a) relief from or adjustment to the determination of any relevant elements of the Performance Based Fee and/or Shadow Operator Performance Based Fee;
- (b) relief from or adjustment to the provisions of this Contract dealing with the consequences of poor performance by the Operator (including, for example, any applicable circumstances in which the Operator would otherwise be required to put in place a Remedial Plan); and
- (c) any other necessary and appropriate relief from performance,

in each case, the extent necessary in order to account for any adverse impact on the Operator pursuant to such provisions of this Contract that would otherwise arise as a direct result of the Operator’s performance or delivery of the associated Industry Change Project;

“ICWC Scorecard Criterion”

means:

- (a) each criterion set out in Part 1 of Appendix 3 (*Scorecard Criteria*) of Chapter 7.2 (*Performance Based Fee and Shadow Operator Performance Based Fee*), as subject to any amendments pursuant to paragraph 2.5(f)(ii) (*Calculation of the Performance Based Fee*) of Chapter 7.2 (*Performance Based Fee and Shadow Operator Performance Based Fee*) as set out in the Annual PBF Specifications; and
- (b) if applicable with respect to any additional PBF Component as may be proposed pursuant to paragraph 2.5(g) (*Calculation of the Performance Based Fee*) of Chapter 7.2 (*Performance Based Fee and Shadow Operator Performance Based Fee*), any additional criterion as set out in the Annual PBF Specifications,

in each case, in respect of which the Operator’s performance relating to the Rail Services (excluding the Shadow Operator Services) is measured (in whole or in part) in relation to a PBF Assessment Part-Period and for which a score shall be awarded in a Scoring Letter, as may be amended from time to time in accordance with this Contract (and “ICWC Scorecard Criteria” means the plural of ICWC Scorecard Criterion);

“ICWC Scoring Letter”

means a letter from the Secretary of State to the Operator setting out the Operator’s performance with respect to each of the Non-Financial PBF Components and Applicable FP Sub-Components to which, in each case, the Scorecard Methodology is applicable, as issued in accordance with paragraph 8.1 (*Scoring Letter*), 9.4 or 9.7 (*Scoring Letter Disputes*) of Appendix 1 (PBF Assessment Review) to Chapter 7.2 (*Performance Based Fee and Shadow Operator Performance Based Fee*);

“IFRS16 Cost”

has the meaning given in the definition of Actual Costs;

“Immediately Effective Chapter Provisions”

means:

- (a) paragraphs 1 (*Corporate Information*), 2 (*Change of Control and Facilitation Fee*), 3 (*Maintenance of Records*), 4 (*Right to inspect*), 5 (*Periodic Update Reports*) and 7 (*Identification of Key Personnel and Provision of Organisation Chart*) of Chapter 1.1 (*Organisation and Management*);
- (b) paragraph 2 (*Business Continuity Plan*) of Chapter 1.2 (*Strategies and Plans*);
- (c) paragraph 1 (*Duty of Cooperation*) of Chapter 3 (*Collaboration*);
- (d) paragraphs 1 (*Train Service Requirement*), 2 (*Train Formation Capacity Plan*), 6.4 (*Finalising the Train Formation Capacity Plan*) and 13 (*Subcontracting any Passenger Services*) of Chapter 4.1 (*Service Development*);
- (e) paragraph 1 (*Customer Report*) and paragraph 5.3 (*Publishing the Passenger's Charter*) of Chapter 5.1 (*Customer Information*);
- (f) paragraph 2.8 (*Community Rail Partnerships*) of Chapter 5.2 (*Customer Schemes*);
- (g) Paragraphs 1 (*Smart Ticketing*) and 2 (*Retail*) of Chapter 5.4 (*Customer Benefits*);
- (h) Chapter 7.5 (*Variations, Changes and Amendments*);
- (i) paragraph 3 (*Annual Business Plan Process*), paragraph 7 (*Industry Change Projects*), paragraphs 9 (*Business Plan Intellectual Property Rights*) to 11 (*Access to IP Materials and Resources*) and 12 (*Extended Term Contracts and Extended Term Designatable Contracts*) of Chapter 7.7 (*Business Plan*);
- (j) Chapter 8.2.1 (*Purpose, Structure and Construction*);
- (k) Chapter 8.2.3 (*Allocation of Fares to Fares Baskets*);
- (l) Part B (*Changes to Fares and Fares Regulation*) of Chapter 8.2.5 (*Exceeding the Regulated Value, Regulated Price or Regulated Child Price, and Changes to Fares and Fares Regulation*);
- (m) paragraph 3 (*Vesting of Property Leases at the Start Date*), paragraph 9 (*Rolling Stock Related Contracts and Insurance Arrangements*) and paragraph 10 (*Cascaded Rolling Stock and Delayed Cascade Mitigation Plan*) of Chapter 9.1 (*Fixed Assets*);
- (n) Chapter 9.2.1 (*Key Contracts*);
- (o) paragraph 18.2 (*Information about Assets used in respect of Rail Services*) of Chapter 9.2.2 (*Key Assets - Designation of Assets*);
- (p) Chapter 9.4 (*Remedies and Dispute Resolution*);

- (q) paragraph 1.1 (*Handover Package Status*) and paragraph 3 (*Key Personnel List*) of Chapter 9.5.1 (*Handover Package*);
- (r) Chapter 9.5.2 (*Reletting Provisions and Maintenance as a Going Concern*);
- (s) paragraph 10 (*Other Train Operating Companies*) of Chapter 9.5.3 (*Provisions applying on and after Termination*);
- (t) Chapter 9.6 (*Confidentiality and Data Protection*);
- (u) the provisions of Chapter 9.7 (*Miscellaneous Legal Terms*) (save for paragraph 3.2 (*Tax Compliance*) and paragraph 6 (*Competition*));
- (v) Chapter 10 (*Definitions and Interpretation*); and
- (w) Chapter 11 (*Shadow Operations*);

“Improvement Initiatives”

means initiatives which are intended to:

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

and may include:

- (i) initiatives proposed by the Secretary of State or identified proactively by the Operator;
- (ii) initiatives arising in connection with the conclusions of the Plan for Rail; and/or
- (iii) initiatives which are capable of delivery by the Operator acting alone, and/or initiatives which would require collaboration between the Operator and other parties to deliver;

“Incident Response Plan”

means the plan created by the Operator pursuant to paragraph 5 of Chapter 1.2 which contains (as a minimum) the information set out in paragraph 5.2 of Chapter 1.2 (*Strategies and Plans*);

“Incremental Output Statement Charge”

means the charge to which that description is commonly given, first introduced into Relevant Agreements in April 2001;

“Independent Service Quality Audits”

has the meaning given to it in paragraph 5.1 of Part 1 (*Service Quality Regime*) of Chapter 5.5 (*Service Quality Regime*);

“Independent Station”	means, at any time, any station of which an Infrastructure Manager (or any other person other than a Train Operator) is the Facility Owner at that time;
“Independent Station Access Conditions”	has the meaning given to it in the Access Agreement to which it relates;
“Indicative Scoring Contract Performance Meeting”	has the meaning given in paragraph 3.1 (<i>Indicative Scoring Contract Performance Meeting</i>) of Appendix 1 (<i>PBF Assessment Review</i>) to Chapter 7.2 (<i>Performance Based Fee and Shadow Operator Performance Based Fee</i>);
“Industrial Action”	means any concerted action taken in connection with the employment of any employees of the Operator or of any of the employees of persons listed in paragraphs 1.1(f)(i) to 1.1(f)(iii) of Chapter 9.4.4 (<i>Force Majeure</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 Operator being able to demonstrate the occurrence of such unofficial industrial action to the satisfaction of the Secretary of State;
“Industry Change Project”	<p>means any scheme or proposal (excluding any scheme or proposal relating to or arising out of the HS2 Project) to introduce changes to the operation or delivery of the Rail Services that are expected to deliver long term and industry wide efficiency savings, reduced cost and/or revenue growth, but which, in the opinion of the Secretary of State, a reasonable Train Operator would not be sufficiently incentivised to deliver in accordance with the terms of this Contract (in the absence of any ICP Incentivisation or ICP Relief) as a result of:</p> <ul style="list-style-type: none"> (a) materially increased risk of: <ul style="list-style-type: none"> (i) adverse impacts on the Performance Based Fee, as calculated pursuant to Chapter 7.2 (<i>Performance Based Fee and Shadow Operator Performance Based Fee</i>); (ii) adverse consequences for the Operator as a result of poor performance pursuant to the terms of this Contract (including, for example, requirements to put in place Remedial Plans); and/or (iii) prejudice to delivery of any other Business Plan Commitments and/or performance against any Business Plan KPIs; (b) significantly increased reputational risk; and/or (c) any resulting necessity for the Operator to require materially increased deployment of and/or input from senior employees of any Parent or Affiliate of the Operator with relevant expertise, in excess of what would reasonably be expected to be required for the purposes of the day to day management of

	the Operator and the performance of its obligations under the National Rail Contract, such that it would not be reasonable for the Secretary of State to require delivery of such scheme or proposal as part of a Business Plan in the absence of corresponding ICP Incentivisation and/or ICP Relief;
“Industry Schemes”	means multi-modal fares schemes and/or Traveline;
“Information Commissioner”	has the same meaning as “Commissioner” in section 3 of the Data Protection Act;
“Infrastructure Manager”	means: <ul style="list-style-type: none"> (a) Network Rail in relation to the Conventional Rail Network; and (b) with effect on and from the date on which the Operator and HS2 Limited enter into the HS2 Track Access Agreement, HS2 Limited in relation to the HS2 Network;
“Infrastructure Manager Data”	means any information, data and materials that may be provided to the Secretary of State by HS2 Limited or NR that relates to the Operator and which the Secretary of State decides (in the Secretary of State’s discretion) to add to the RPC Database;
“Infrastructure Management Strategy”	means the infrastructure management strategy relating to the HS2 Network produced by HS2 Limited as updated from time to time;
“Initial Business Plan Year”	means the period beginning on the Start Date and ending on 31 March 2024;
“Initial Dataset”	means the Dataset provided in accordance with paragraph 1.1 (<i>Data Sharing</i>) of Chapter 6 (<i>Environment and Sustainability</i>) (or the equivalent data provided under the Previous Agreement), excluding any measures which the Secretary of State agrees that the Operator was (under the Previous Agreement), or is (in accordance with the National Rail Contract) (as applicable), despite using all reasonable endeavours, unable to provide;
“Initial Output Report”	means any initial written report produced in accordance with paragraph 2 of Appendix 1 (<i>Required Outputs</i>) to Chapter 11.1 (<i>Shadow Operations</i>) and submitted by the Operator to the Secretary of State;
“Initial Permanent Fare”	has the meaning given to it in the Ticketing and Settlement Agreement;
“Initial TOC Minutes Delay Calculation”	has the meaning given to it in paragraph 4.1(a) of Chapter 4.4 (<i>Operational Performance</i>);
“Initial TOC on Self Cancellations Calculation”	has the meaning given to it in paragraph 3.1(a) of Chapter 4.4 (<i>Operational Performance</i>);
“Inspections”	has the meaning given to it in paragraph 5.1 of Chapter 9.5.2 (<i>Reletting Provisions and Maintenance as a Going Concern</i>);
“Institute of Asset Management”	means The Institute of Asset Management, a company limited by guarantee, registered with company number 05056259 with registered office 4th Floor, St Catherine’s Court, Berkeley Place, Bristol BS8 1BQ or its successors;

“Integrated Plan”	means a plan of the Operator’s programme for the Shadow Operator Services, which will show key timescales, deliverables and required activities to support the delivery of the HS2 programme and the operation of Integrated Services in the agreed terms marked IntP and as amended from time to time in accordance with the provisions of this Contract;
“Integrated Services”	means the High Speed Services and the Conventional Services on and from the High Speed Start Date;
“Intellectual Property Rights”	means all intellectual and industrial property rights of any kind including patents, supplementary protection certificates, rights in Know-How, registered trade marks, registered designs, unregistered design rights, unregistered trade marks, 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 Operator, determine from time to time) during any period in which an amount payable under the National Rail Contract remains unpaid;
“Interim Closing Accounts Reconciliation”	means the Audited Accounts Reconciliation relating to: <ul style="list-style-type: none"> (a) the period from the end of the Contract Period until the next 31 March; (b) thereafter, each year to 31 March until the 31 March before the date of the Final Closing Accounts;
“Interim Closing Adjustment” or “ICA”	means each financial adjustment (if any) calculated in accordance with the provisions of paragraph 18.1 of Chapter 7.1 (<i>Contract Payments</i>);
“Interim Determination”	has the meaning given in paragraph 1.7 (<i>Determination Escalation Process</i>) of Chapter 9.4.2 (<i>Dispute Resolution Procedures</i>);
“Interim PBF Component Determination”	has the meaning given to that term in paragraph 2.7(d)(ii) of Chapter 7.2 (<i>Performance Based Fee and Shadow Operator Performance Based Fee</i>);
“Inter-Operator Schemes”	means the list of schemes in paragraph 4 of Appendix 1 (<i>List of Transport, Travel and Other Schemes</i>) to Chapter 8.2.8 (<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”	means a determination following the completion of a second phase investigation that the merger resulting from the award of the Rail Services to the Operator (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;

“Investigation”

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

“Invitation to Negotiate”

means the invitation to negotiate issued by the Secretary of State to the Operator in relation to this National Rail Contract on 3 January 2023 as updated by the supplemental invitation to negotiate issued by the Secretary of State to the Operator on 9 June 2023;

“In-Scope Matters”

means any of the following matters in relation to any Business Employees:

- (a) pay negotiation strategies;
- (b) changes to any remuneration strategy, pension arrangements or staff benefits;
- (c) any proposed restructuring or redundancy plans;
- (d) any proposed changes affecting Business Employees (including proposed changes to the terms of any Employment Agreement, any proposed changes to working practices or procedures, howsoever these are recorded or have become established, and whether these apply nationally or locally) which either Party reasonably believes (a) is likely to give rise to material industrial relations risks (including a risk of Industrial Action); and/or (b) could have a material negative impact on productivity; and/or (c) would not be in train passengers’ interests;
- (e) any proposed variations to the terms or conditions of employment of any Business Employee (in particular, any proposal to make any additional payment or provide any additional benefit or vary any term or condition relating to holiday, leave or hours to be worked) where such variation:
 - (i) wholly or partly first takes effect after the end of the Contract Period;
 - (ii) results in any such employment not being terminable by the Operator or other Relevant Employer within six (6) months of the expiry of the Contract Period;

- (iii) relates to a payment or the provision of a benefit triggered by termination of employment;
 - (iv) relates to the provision of a benefit (excluding base salary) which any such employee will or may have a contractual right to receive after the expiry of the Contract Period; or
 - (v) prevents, restricts or hinders any such employee from working for a Successor Operator or from performing the duties which such employee performed for the Operator;
- (f) any creation or grant of terms or conditions of employment for any Business Employee where the employment of such Business Employee by the Operator or such other Relevant Employer may commence on or after the Start Date if and to the extent that such terms or conditions are, in the reasonable opinion of the Operator, materially different from the terms or conditions of employment of equivalent or nearest equivalent Business Employees at the date on which such employment is scheduled to commence;
- (g) any other matter notified to the Operator by the Secretary of State from time to time; and/or
- (h) any negotiation or consultation strategies regarding any of the matters at (a) to (g) above;

“IO Assumptions Change Log”

means a log of any changes to the assumptions contained in the IO Record of Assumptions prepared by the Operator and submitted to the Secretary of State in accordance with paragraph 2 of Chapter 11.1 (*Shadow Operations*);

“IO Baseline Comparator”

means the version of the IO Modelling Suite to be used for comparison purposes as developed by the Operator in accordance with the Previous Agreement;

“IO Financial Model”

means the financial model within the IO Modelling Suite used to generate the IO Cost Strategic Operational Baseline Forecast and record the Amendable Financial Targets (if applicable);

“IO Forecast Revenue”

means, in respect of the First IO Year, the forecast of Actual Revenue (expressed in nominal prices) contained within the IO Modelling Suite as last Placed in Escrow;

“IO Modelling Suite”

means, the suite of spreadsheet models (including the IO Financial Model, Strategic Operational Baseline Forecast, IO Forecast Revenue, the Amendable Financial Targets (if applicable) and the IO Operational Models) in the agreed terms marked **IOMods** and as amended from time to time in accordance with the provisions of this Contract and subsequently Placed in Escrow;

“IO Operational Models”

means the spreadsheet models used to calculate inputs to, or otherwise required to obtain a full understanding of

	the calculation of items within, the IO Financial Model and/or the IO Record of Assumptions;
“IO Record of Assumptions”	means the record of assumptions in respect of the IO Modelling Suite as most recently Placed in Escrow;
“ISO50001:2011”	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 organisation 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;
“ISO 22301:2019”	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;
“ISO55001:2014”	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;
“ISO14001:2015”	means the standard that is set by the International Organisation for Standardisation which specifies requirements for an environmental management system to enable an organisation to develop and implement a policy and objectives which takes into account legal requirements and other requirements to which the organisation subscribes, and information about significant environmental aspects or any equivalent standard which is generally recognised as having replaced it;
“ISO50001 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 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 Ltd”	means the non-profit distributing organisation run by its members for the benefit of members and users of Smart Media;
“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 Smart Media Ticketing Scheme”	means a Smart Ticketing Scheme that utilises ITSO Certified Smart Media;
“ITSO Specification”	means the common specification issued by ITSO Ltd and which enables the use of interoperable Smart Media in transport and other areas;

“Key Contract”

means:

- (a) each agreement and contract listed in Appendix 1 (*List of Key Contracts*) to Chapter 9.2.1 (*Key Contracts*); and
- (b) any other agreement, contract, licence or other arrangement to which the Operator is a party or under which the Operator is the beneficiary from time to time which is designated as such pursuant to Chapter 9.2.1 (*Key Contracts*),

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

“Key Personnel”

means those persons identified by the Operator in accordance with paragraph 7 of Chapter 1.1 (*Organisation and Management*);

“Key Personnel List”

means a list of the following Business Employees:

- (a) all directors (statutory or otherwise);
- (b) all managers with responsibility for a department/function within the Operator’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 Shadow Operator Personnel”

means those personnel identified as such in the Key Shadow Operator Personnel Schedule;

“Key Shadow Operator Personnel List”

means a list of key contacts relating to the Shadow Operator Services to include all Key Shadow Operator Personnel, and must include:

- (a) operations, commercial, personnel and public affairs departments (or in each case their nearest equivalents);
- (b) the name, office address and office telephone numbers of such key contacts (including any out of business hours contact details that such key contacts will usually provide to the Operator for emergency or business continuity reasons); and
- (c) a brief description of the person’s role and responsibilities in the business;

“Key Shadow Operator Personnel Schedule”

means the document in the agreed terms marked **KSHOPP** setting out the organisation chart relating to Key Shadow Operator Personnel, as updated from time to time in accordance with this Contract;

“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 Operator may be required from time to time to hold under the Act or under the Railway (Licensing of Railway Undertakings) Regulations 2005 (as amended) in order to provide or operate the Rail Services;
“Licence Accessibility Obligations”	has the meaning given to it in paragraph 1.3(a) of Chapter 5.3 (<i>Accessibility and Inclusivity</i>);
“Light Maintenance Service”	means: <ul style="list-style-type: none"> (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, <p>in each case for itself and/or other Train Operators, at any Station or Depot; and</p>

- (k) the provision of any service which the Operator may provide, or may be required to provide, under any Access Agreement;

“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”

means the period commencing on the date of this Contract and expiring on the date which the Secretary of State confirms by notice in writing to the Operator that:

- (a) the Secretary of State considers that all the obligations of the Parties to account to each other pursuant to Chapter 7.1 (Contract Payments) have been fully performed and discharged (such confirmation not to be unreasonably withheld or delayed); and
- (b) by virtue of such notice, the Lock-Up Period has expired.

No such notice shall constitute a waiver of any rights which the Secretary of State may have under or in respect of Chapter 7.1 (*Contract Payments*);

“London Station”	means any station served by the Railway Passenger Services in the Zones and any Zone to or from which a passenger may travel from or to such station;
“London Transport Users’ Committee”	means the London Transport Users’ Committee established under the London Transport Users’ Committee (Transitional Provisions) Order 2000, generally known as “London TravelWatch”;
“Long Term Charge”	has the meaning given to it in the Station Access Conditions;
“Maintenance Contract”	means any contract or arrangement to which the Operator is a party, which includes the carrying out for the Operator of any maintenance work (including Light Maintenance Services) or service provision in respect of rolling stock vehicles used by the Operator in the provision of the Passenger Services or for the enforcement of warranties or other rights against a manufacturer in respect of any such rolling stock vehicles;
“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 Rail Services where an Infrastructure Manager is the Facility Owner or becomes the Facility Owner during the Contract Period;
“Managed Station Area”	means the premises comprising part or parts of a Managed Station to be occupied by the Operator on or after the Start Date and to be used for or in connection with the provision of the Rail Services;
“Management Accounts”	means, in relation to any Reporting Period, the Operator’s management accounts which: <ul style="list-style-type: none"> (a) comply with the requirements of Chapter 7.3 (Management Information); and (b) are required to be delivered to the Secretary of State by the Operator in accordance with paragraphs 1.3(a), 1.3(b) and 1.3(d) of Chapter 7.3 (Management Information);
“Mandate”	means in relation to any In-Scope Matter any mandate formally agreed from time to time in writing (other than through email or other informal correspondence unless the email in question includes express confirmation from the Secretary of State that its content (or stipulated part of it) is to form a Mandate) between the Operator and the Secretary of State regarding: (i) the objective or objectives of negotiations or consultation; (ii) any parameters or constraints on such objective(s), or the substance of such negotiations or consultation; and/or (iii) how such negotiations or consultation are to be approached, structured or handled;
“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;
“Marks”	means such trade marks as the Operator may apply to any Primary Asset or other asset used by it under a Key

	Contract, which are applied on the expiry of the Contract Period and are not the subject of a Brand Licence;
“Material”	means any document, information, data or other material (in whatever form) including documented methodology, process and procedure and any other output;
“Material Discrepancies”	has the meaning given to it in paragraph 15.1 of Part 1 (<i>Service Quality Regime</i>) of Chapter 5.5 (<i>Customer Experience Performance</i>);
“Maturity Model for Customer Experience”	means a framework assessing business capability against defined levels of maturity in order to drive continuous improvement in rail services for customers;
“Maximum Performance Based Fee” or “MPBF”	has the meaning given to that term in paragraph 1 of Chapter 7.2 (<i>Performance Based Fee and Shadow Operator Performance Based Fee</i>);
“Maximum Shadow Operator Performance Based Fee” or “MSPBF”	has the meaning given to that term in paragraph 1 of Chapter 7.2 (<i>Performance Based Fee and Shadow Operator Performance Based Fee</i>);
“Minimum Requirement”	means, in relation to any Affiliate Contract, each requirement set out in paragraph 8.6(b)(i) (<i>Affiliate Trading</i>) of Chapter 7.1 (<i>Contract Payments</i>);
“Minister of the Crown”	has the meaning given to it in section 8(1) of the Minister of the Crown Act 1975;
“Minor Works”	means small scale physical alterations or additions to improve accessibility of Stations to Disabled Persons, not involving substantial works of construction or reconstruction;
“Minutes Delay”	means the minutes of delay to the Passenger Services that are attributed to the Operator or Network Rail (as the case may be) pursuant to the Network Rail Track Access Agreement and disregarding any minutes of delay that are imputed to Passenger Services that were cancelled;
“Modelling Suite”	means, in respect of each Business Plan Year, the suite of spreadsheets (including the Financial Model, Cost Budget, Forecast Revenue, the Amendable Financial Targets (if applicable) and the Operational Models) that is applicable to that Business Plan Year, as most recently Placed in Escrow;
“Modern Slavery Helpline”	means the point of contact for reporting suspicion, seeking help or advice and information on the subject of modern slavery, which as of the date of this Contract is available online at https://www.modernslaveryhelpline.org/report or by telephone on 08000 121 700;
“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 07:00 and 09:59 (inclusive) during a Weekday or such other continuous three hour period between 06:00 and 11:59 (inclusive) as the Secretary of State may specify from time to time;

“Morning Peak Service”	means a Passenger Service which arrives at London Euston, Birmingham New Street or Manchester Piccadilly 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”	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;
“National Lottery”	means the state-franchised national lottery in the United Kingdom;
“National Rail Enquiry Scheme”	means the telephone information scheme run by RDG, providing information to customers regarding rail journeys throughout the country;
“National Railway Network”	means the entire rail transport system which operates across the HS2 Network and the Conventional Rail Network, including infrastructure, rolling stock, all railway systems, operations and maintenance facilities;
“National Rail Passenger Survey”	means a passenger satisfaction survey in respect of the Rail Services (excluding the Shadow Operator Services) to be carried out by the Passengers' Council to measure the level of passenger satisfaction with the Rail Services (excluding the Shadow Operator Services);
“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;
“NCSC Cyber-Security Information Sharing Partnership” or “CSIP”	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;
“Net Book Value of the Transferring Fixed Assets”	means, in respect of the First Reporting Period only, the net book value agreed in writing by the Secretary of State of the fixed assets that the Operator and the Secretary of State have agreed will transfer to become fixed assets under the National Rail Contract and thereafter shall be zero;
“Network Change”	has the meaning given to it in the Network Code;
“Network Code”	means: <ul style="list-style-type: none"> (a) in respect of the Conventional Rail Network, 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; and (b) in respect of the HS2 Network, any code equivalent to that specified in (a) which applies to

the HS2 Network or any other code which the Secretary of State may specify 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 Waterloo General Office, London, SE1 8SW; 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 Network Rail 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 Operator with Network Rail or any other franchisee as a condition to any Access Agreement of which the Operator is a 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 Operator and which the Secretary of State decides (in the Secretary of State’s 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 Track Access Agreement”	means each Access Agreement between Network Rail and the Operator which permits the Operator to provide the Passenger Services on track operated by Network Rail;
“New Facilities”	has the meaning given to it in paragraph 2.3(a)(ii) of Part 1 (<i>Service Quality Regime</i>) of Chapter 5.5 (<i>Customer Experience Performance</i>);
“New Insurance Arrangements”	has the meaning given to it in paragraph 9.4(b) of Chapter 9.1 (<i>Fixed Assets</i>);
“New Services”	has the meaning given to it in paragraph 2.3(a)(i) of Part 1 (<i>Service Quality Regime</i>) of Chapter 5.5 (<i>Customer Experience Performance</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 this Contract or otherwise) railway passenger services operated by the Operator call;
“2017 Nominal Ticket Sales”	has the meaning given to it in paragraph 3 of Chapter 8.2.4 (<i>Regulation of Fares Basket Values and Individual Fares</i>);
“Nominee”	has the meaning given to it in paragraph 5.1 of Chapter 9.5.2 (<i>Reletting Provisions and Maintenance as a Going Concern</i>);
“Non Fares Basket Fare”	means a Fare that is designated as such by the Secretary of State pursuant to paragraph 2.1 of Chapter 8.2.3 (<i>Allocation of Fares to Fares Baskets</i>) and which has not been de-designated as such pursuant to paragraph 1.1 of Part B (<i>Changes to Fares and Fares Regulation</i>) of Chapter 8.2.5 (<i>Exceeding the Regulated Value, Regulated Price or Regulated Child Price, and Changes to Fares and Fares Regulation</i>);
“Non-Financial PBF Component”	means each PBF Component other than the Financial Performance Fee;
“Northern Ireland Protocol”	means the Protocol on Ireland/Northern Ireland forming part of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community;
“Notified Fault”	has the meaning given to it in paragraph 4.1(b) of Chapter 5.1 (<i>Customer Information</i>);
“NR”	means Network Rail Limited (company number 04402220), Network Rail Infrastructure Limited

(company number 2904587) whose registered offices are both at Waterloo General Office, London, SE1 8SW or any Affiliate thereof from time to time;

“NR Data Sharing Strategy”

means the Network Rail data sharing strategy agreed pursuant to the Previous Agreement, as may be amended from time to time pursuant to paragraph 2 (*NR Data Sharing Strategy*) of Chapter 3 (*Collaboration*);

“NRC Expiry Provisions”

means:

- (a) paragraph 2 (*Reduction in Prices of Fares during the Last Thirteen (13) Month Period*) of Chapter 8.2.7 (*Fares Selling Restrictions*); and
- (b) paragraph 6 (*Designation during last twelve (12) months of Contract Period*) of Chapter 9.2.2 (*Key Assets – Designation of Assets*);

“NRC Longstop Date”

means the date set out in limb (a)(i) of the definition of “Expiry Date”;

“NTR”

has the meaning given to it in paragraph 2.4 (*Lock-Up Restriction*) of Chapter 7.4 (*Financial Covenants and Bonds*);

“NTSN”

means any National Technical Specification Notice (as may be supplemented by any National Technical Rules) published by the Secretary of State with which the Operator is required to comply;

“Occasion of Tax Non-Compliance”

means, in respect of the Operator (including where Operator is an unincorporated joint venture or consortium, the members of that unincorporated joint venture or consortium) or the Operator (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;

“Off-Peak Passenger Service”	means a Passenger Service that is not a Morning Peak Service or an Evening Peak Service;
“On Time”	means the percentage of recorded station stops called at within 59 seconds of the planned time relating to the Rail Services as produced and/or published by Network Rail;
“On Time Figures”	means the moving annual average percentage published by Network Rail in respect of On Time, rounded to two (2) decimal places;
“On-Network Works”	means in respect of the Conventional Rail Network, any works in connection with the HS2 Project to facilitate the operation of the High Speed Services on the Conventional Rail Network;
“Operating Assets”	means all assets (including any Intellectual Property Rights or intangible assets) employed by the Operator in the performance of the Operator’s obligations under the National Rail Contract;
“Operational Foreground”	has the meaning given to it in paragraph 7.6 (<i>Miscellaneous IP</i>) of Chapter 9.3 (<i>Branding and Intellectual Property</i>);
“Operational Models”	means the spreadsheet models used to calculate inputs to, or otherwise required to obtain a full understanding of the calculation of items within, the Financial Model and/or the Record of Assumptions as most recently Placed in Escrow and the Operational Performance Targets as amended from time to time in accordance with this Contract and subsequently Placed in Escrow pursuant to paragraph 5.1(c) of Chapter 7.5 (<i>Variations, Changes and Amendments</i>);
“Operational Performance Component”	means each of the matters in relation to which the Operational Performance Fee is assessed using the Quantified Target Methodology, being: <ul style="list-style-type: none"> (a) TOC on Self Cancellations; (b) TOC Minutes Delay; (c) NOT USED; (d) T-3; (e) T-15; and (f) All Cancellations;
“Operational Performance Component ABPS Table”	means, with respect to each Operational Performance Component (as applicable) the: <ul style="list-style-type: none"> (a) TOC on Self Cancellations Benchmarks Table; (b) TOC Minutes Delay Benchmarks Table; (c) NOT USED; (d) T-3 Table; (e) T-15 Table; and (f) All Cancellations Table;
“Operational Performance Fee” or “OP”	means the element of the Performance Based Fee, the purpose of which is to measure the Operator’s effectiveness in delivering punctual and reliable journeys

and in providing an appropriate amount of passenger-carrying capacity;

“Operational Performance Target Amendment”

means any amendment to the Operational Performance Target(s) as agreed or determined under the provisions of paragraph 2.15 of Chapter 7.5 (*Variations, Changes and Amendments*);

“Operational Performance Target Amendment Event”

has the meaning given to it in Part 2 of Appendix 1 to Chapter 7.5 (*Variations, Changes and Amendments*);

“Operational Performance Targets”

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

“Operational Planning Matters”

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

- (a) the quality of the Operator’s Infrastructure Manager’s timetable planning activities, through, amongst other things:
 - (i) adequate resourcing of train planning and diagramming activities for both rolling stock and traincrew;
 - (ii) collaborative working between the Operator’s and Infrastructure Manager’s or other Train Operators’ planning teams;
 - (iii) the timely sharing of plans for rolling stock and traincrew, including ancillary moves;
 - (iv) timely sharing of rolling stock characteristics required to support timetable simulation and performance modelling; and
 - (v) an increased focus on the advance development of major timetable changes, including through Event Steering Groups;
- (b) the robustness and resilience of the Operator’s and Infrastructure Manager’s train plans through collaborative working, to ensure jointly developed train regulation policies, contingency and service recovery plans including data in relation to, and plans for:
 - (i) diversionary route availability (including traincrew knowledge and rolling stock clearance); and
 - (ii) traincrew flexibility (including route and traction knowledge, and spare cover);

“Operations Data Breach”

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

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

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

“Operations Data Processor”

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

“Operator Access Station”

means any station at which the Passenger Services call (other than any Station);

“Operator Material”

means the Background IP and the Operational Foreground relating to the Shadow Operator Services;

“Operator Pension Sections”

has the meaning given to it in paragraph 2 of Chapter 7.6 (*Railways Pension Scheme*);

“Operator Pension Section Rules”

has the meaning given to it in paragraph 4.2(a) of Chapter 7.6 (*Railways Pension Scheme*);

“Operator Relationship Manager”

means the person responsible for managing the Operator’s overall relationship with the Secretary of State;

“Operator Trade Marks”

means registered or unregistered trade marks which are not owned by the Secretary of State (including such of the Primary Brands and any Secondary Brands not owned by the Secretary of State), as set out in Appendix 1 (*List of Operator Trade Marks*) to Chapter 9.3 (*Branding and Intellectual Property*);

“Operator’s HS2 Report”

means any written report produced in accordance with paragraph 5 of Appendix 1 (*Required Outputs*) to Chapter 11.1 (*Shadow Operations*) and submitted by the Operator to the Secretary of State;

“Operator’s Representative”

means the role to be performed by the Operator, in support of the activities of HS2 Limited under the High Speed Rolling Stock MSA and the High Speed Rolling Stock TS, as broadly described in paragraph 13.1 of Chapter 11.1 (*Shadow Operations*), and including any relevant roles and functions delegated to the Operator by HS2 Limited with the consent of the Secretary of State, as contemplated in paragraph 13 of Chapter 11.1 (*Shadow Operations*);

“OP Targets”	<p>means, in relation to each Operational Performance Component in each Reporting Period during the relevant PBF Assessment Period the:</p> <ul style="list-style-type: none"> (a) Relevant OP Component Maximum Fee Performance Level; (b) Relevant OP Component Expected Fee Performance Level A; (c) Relevant OP Component Expected Fee Performance Level B; and (d) Relevant OP Component Nil Fee Performance Level; <p>as specified as part of the Annual PBF Specifications in the Business Plan, or as may be agreed or determined in accordance with paragraph 2.7(b) (<i>Changes to the Applicable Assessment Methodology</i>), paragraph 4 (<i>Target Amendments</i>) or paragraph 5 (<i>Effect of alterations to the PBF Assessment Period</i>) of Chapter 7.2 (<i>Performance Based Fee and Shadow Operator Performance Based Fee</i>);</p>
“Original Rolling Stock”	has the meaning given to it in paragraph 1.1 of Chapter 4.3 (<i>The Rolling Stock</i>);
“ORR”	means the Office of Rail and Road established by section 15 of the Railways and Transport Safety Act 2003 and having duties and obligations as set out in the Act;
“Other Passenger Route Within the Geographical Area”	means any route which is not a Route but is a route in the Geographical Area over which a passenger train operator other than the Operator operates passenger services included in the National Rail Timetable;
“Outline Business Plan”	<p>means, with respect to each Business Plan Component within a Business Plan, the longer-term context and strategy for such Business Plan Component applicable from:</p> <ul style="list-style-type: none"> (a) the end of the relevant Business Plan Year, to (b) the end of the relevant Business Plan Period, <p>which shall (among other things) include identification and consideration of any anticipated or potential developments or enhancements which may be required to be reflected in the Business Plan with respect to any future Business Plan Years during the relevant Business Plan Period to the extent that such developments or enhancements are within the reasonable contemplation of the Parties at the time of agreement or determination of the relevant Business Plan;</p>
“Overall Customer Service Pass Rate”	has the meaning given to it in paragraph 3.1(a)(iii) (<i>Service Quality Standards</i>) of Appendix 5 (<i>Quantified Target Methodology</i>) to Chapter 7.2 (<i>Performance Based Fee and Shadow Operator Performance Based Fee</i>);
“Overall RCIS Score”	means the overall score (described in the RCIS Performance Calculation Methodology) achieved by the Operator for the relevant PBF Assessment Period, calculated in accordance with the process detailed in the RCIS Performance Calculation Methodology;

“Overall PBF TTR” or “OPT”	means, in relation to any PBF Assessment Period, the overall ticketless travel rate with respect to such PBF Assessment Period as determined in accordance with paragraph 4.1(c) of Appendix 5 (<i>Quantified Target Methodology</i>) of Chapter 7.2 (<i>Performance Based Fee and Shadow Operator Performance Based Fee</i>);
“Overall SQR Component Pass Rate”	means each of the Overall Station Pass Rate, the Overall Trains Pass Rate and the Overall Customer Service Pass Rate, in each case as calculated in accordance with paragraph 3.1 (<i>Calculation of Service Quality Standards Fee (“SQ”)</i>) of Appendix 5 (<i>Quantified Target Methodology</i>) of Chapter 7.2 (<i>Performance Based Fee and Shadow Operator Performance Based Fee</i>);
“Overall Station Pass Rate”	has the meaning given to it in paragraph 3.1(a)(i) (<i>Service Quality Standards</i>) of Appendix 5 (<i>Quantified Target Methodology</i>) to Chapter 7.2 (<i>Performance Based Fee and Shadow Operator Performance Based Fee</i>);
“Overall Trains Pass Rate”	has the meaning given to it in paragraph 3.1(a)(ii) (<i>Service Quality Standards</i>) of Appendix 5 (<i>Quantified Target Methodology</i>) to Chapter 7.2 (<i>Performance Based Fee and Shadow Operator Performance Based Fee</i>);
“Overhanging Contract Designation Notice”	has the meaning given in paragraph 7.2 (<i>Designation of Key Contracts as Primary Assets</i>) of Chapter 9.2.2 (<i>Key Assets – Designation of Assets</i>);
“Parent”	means: <ul style="list-style-type: none"> (a) First Rail Holdings Limited, (company number: 5154485), whose registered office is at 8th Floor The Point, 37 North Wharf Road, London, W2 1AF; (b) FirstGroup plc (company number: SC157176) whose registered office is at 395 King Street, Aberdeen AB24 5RP; (c) Trenitalia UK Limited (company number: 10419770) a company incorporated under the laws of England whose registered office is at Cutlers Court, 115 Houndsditch, London, EC3A 7BR; (d) TRENITALIA S.p.A. (No. 05403151003) a company incorporated under the laws of Italy whose registered office is at Piazza della Croce Rossa n. 1, 00161 Rome, Italy, company registration number R.E.A 0883047; and (e) Ferrovie dello Stato Italiane S.p.A. (No. 06359501001) whose registered office is at Piazza della Croce Rossa 1, 00161 Rome, Italy, filed with the Company’s Register of Rome, company registration number R.E.A. 962805;
“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;
“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 Operator pursuant to a Network Rail Track Access Agreement;

“Participating Employer”

has the meaning given to it in the Pension Trust;

“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 8 of Chapter 5.5 (*Customer Experience Performance*); and
- (b) in respect of each Service Quality Schedule and for each Contract 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 8 of Chapter 5.5 (*Customer Experience Performance*),

both expressed as a percentage;

“Passenger Assist”

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 Chapter 4.3 (*The Rolling Stock*) or determined by the Secretary of State in accordance with paragraph 2.3 of Chapter 4.3 (*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 Proposition”

has the meaning given to it in paragraph 36.2 of the Accepted Programme Specific Requirements Document;

“Passenger Proposition Aspect”

means each separate aspect of the Passenger Proposition;

“Passenger Services”

means the Operator’s railway passenger services as specified in any Timetable and/or Plan of the Day including the High Speed Services and those railway passenger services which the Operator may delegate or subcontract or otherwise secure through any other person

	from time to time in accordance with the National Rail Contract;
“Passenger Services Enhancement Options”	has the meaning given to it in paragraph 8.1 (<i>Development of Proposals for Passenger Service Enhancements</i>) of Chapter 4.1 (<i>Service Development</i>);
“Passenger’s Charter” or “PC”	means the Operator’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 5 of Chapter 5.1 (<i>Customer Information</i>);
“Passengers’ Council” or “Transport Focus”	means the passengers’ council established under section 19 of the Railways Act 2005 (as amended by The Passengers’ Council (Non-Railway Functions) Order 2010). The Passengers’ Council has been generally known as “Transport Focus” from 30 March 2015;
“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 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 Operator 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 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 Zone”	means the Stations within the “PAYG Area” (as such is defined in the Pay As You Go 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);
“Payroll Costs”	means salary, national insurance and pensions costs relating to the employment of an individual for the relevant calendar year;
“Payment Date”	means the date for the payment of Contract Payments in accordance with paragraph 2.3 of Chapter 7.1 (<i>Contract Payments</i>);
“PBF Assessment Part-Period”	means, in respect of each Contract Year, each period of: <ul style="list-style-type: none"> (a) six (6) Reporting Periods, starting on the first day of the first Reporting Period of such Contract Year and ending on the last day of the sixth Reporting Period of such Contract Year; and (b) seven (7) Reporting Periods, starting on the first day of the seventh Reporting Period of such Contract Year and ending on the last day of the

thirteenth Reporting Period of such Contract Year,

except that, if any Contract Year contains fewer than thirteen (13) Reporting Periods, the Secretary of State shall notify the Operator of the duration(s) of the relevant PBF Assessment Part-Period(s) to take place during the relevant Contract Year;

“PBF Assessment Part-Period Review”

means a review carried out (or to be carried out) with respect to a PBF Assessment Part-Period in accordance with paragraphs 6 (*PBF Assessment Part-Period Review & PBF Assessment Period Review*) to 9 (*Scoring Letter Disputes*) of Appendix 1 (*PBF Assessment Review*) of Chapter 7.2 (*Performance Based Fee and Shadow Operator Performance Based Fee*);

“PBF Assessment Part-Period Review Checklist”

means, in respect of a PBF Assessment Part-Period Review, a checklist completed (or, as the case may be, to be completed) with respect to all Non-Financial PBF Components and Applicable FP Sub-Components to which, in each case, the Scorecard Methodology is applicable, substantially in the form of that set out in Part One of Appendix 2 (*PBF Assessment Review Checklist*) of Chapter 7.2 (*Performance Based Fee and Shadow Operator Performance Based Fee*) as may be amended from time to time in accordance with this Contract;

“PBF Assessment Period”

means:

- (a) the period commencing on the Start Date and ending on 1 April 2024 at 01:59; and
- (b) each subsequent period of thirteen Reporting Periods commencing on 1 April at 02:00, provided that the final PBF Assessment Period shall commence on the Final 1 April at 02:00 and end on the Expiry Date,

subject to any agreed longer or shorter period as agreed with or directed by the Secretary of State in accordance with paragraph 5 (*Effect of alterations to the PBF Assessment Period*) of Chapter 7.2 (*Performance Based Fee and Shadow Operator Performance Based Fee*);

“PBF Assessment Period Review”

means a review carried out (or to be carried out) with respect to a PBF Assessment Period in accordance with paragraphs 6 (*PBF Assessment Part-Period Review & PBF Assessment Period Review*) to 9 (*Scoring Letter Disputes*) of Appendix 1 (*PBF Assessment Review*) of Chapter 7.2 (*Performance Based Fee and Shadow Operator Performance Based Fee*);

“PBF Assessment Period Review Checklist”

means, in respect of a PBF Assessment Period Review, a checklist completed (or, as the case may be, to be completed) with respect to all Shadow Operator PBF Components, substantially in the form of that set out in Part Two of Appendix 2 (*PBF Assessment Review Checklist*) of Chapter 7.2 (*Performance Based Fee and Shadow Operator Performance Based Fee*) as may be amended from time to time in accordance with this Contract;

“PBF Component”	means each of the following components which shall be individually assessed to calculate the corresponding element of the PBF: <ul style="list-style-type: none"> (a) Operational Performance Fee; (b) Service Quality Standards Fee; (c) Customer Satisfaction Fee; (d) Financial Performance Fee; and (e) any additional component to be implemented from time to time pursuant to paragraph 2.5(g) of Chapter 7.2 (<i>Performance Based Fee and Shadow Operator Performance Based Fee</i>);
“PBF” or “Performance Based Fee”	means the performance-based element of the Contract Payments relating to the Rail Services (excluding the Shadow Operator Services) as calculated pursuant Chapter 7.2 (<i>Performance Based Fee and Shadow Operator Performance Based Fee</i>);
“PCG Facility”	has the meaning given in the Funding Deed;
“PCG Facility Loan”	has the meaning given in the Funding Deed;
“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 Improvement Management System”	means the rail industry framework for the management of performance risks;
“Performance Strategy Plan”	means any joint plan, which the Operator and Network Rail or the Operator and HS2 Limited 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 relevant Infrastructure Manager and the Operator);
“Periodic Contract Payment” or “PCP”	means the Contract Payment Component calculated in accordance with paragraph 1.1 of Chapter 7.1 (<i>Contract Payments</i>);
“Periodic Finance Review Meeting”	has the meaning given in paragraph 8.1 of Chapter 7.1 (<i>Contract Payments</i>);
“Periods 1 to 7 Budget”	means the budget for the ERMA Final Part Year as set out in the columns entitled “Pre-NRC Budget” of the Financial Model (and, for the avoidance of doubt, the Periods 1 to 7 Budget does not form part of the Cost Budget);
“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 Chapter 8.2.4 (<i>Regulation of Fares Basket Values and Individual Fares</i>);
“Permitted Dividend” or “PD”	has the meaning given to it in paragraph 2.4 of Chapter 7.4 (<i>Financial Covenants and Bonds</i>);
“Permitted Individual Increase” or “PII”	has the meaning given to it in paragraph 2.2 of Part B (<i>Regulation of Individual Fares</i>) of Chapter 8.2.4 (<i>Regulation of Fares Basket Values and 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 in respect of the relevant Escrow Documents and the Shadow Operator Programmes, delivery thereof in accordance with paragraph 5 of Chapter 7.5 (<i>Variations, Changes and Amendments</i>);
“Plan for Rail”	means the government’s plan to transform the railways in Great Britain published on 20 May 2021;
“Plan of the Day”	means, in relation to each day during the Contract Term, the Passenger Services scheduled to be operated on that day through specification in the Timetable or as notified to the Operator by the relevant Infrastructure Manager from time to time prior to 22:00 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);
“Police Scotland”	means the national police force for Scotland as formed in 2013 following the merger of eight regional police forces;
“Potential Annual Losses”	means in relation to a Contract Year the sum of: <ul style="list-style-type: none"> (a) the aggregate amount of Disallowable Costs incurred in the relevant Contract Year; (b) the aggregate amount of Revenue Foregone in the relevant Contract Year; (c) the aggregate value of all SoS Claims in the relevant Contract Year; (d) all Actual Costs incurred in the relevant Contract Year to date which were not reimbursed in the Contract Payment; (e) any costs reimbursed in any Contract Payment during any preceding Contract Year which during the Contract Year have been agreed or determined to be Disallowable Costs pursuant to paragraph 4 of Chapter 7.1 (<i>Contract Payments</i>); (f) any revenue not taken account of in any Contract Payment relating to any preceding Contract Year which during the Contract Year has been agreed or determined to be Revenue

Foregone pursuant to paragraph 4 of Chapter 7.1 (*Contract Payments*); and

- (g) any costs reimbursed in any Contract Payment during any preceding Contract Year which during the Contract Year have been agreed or determined to not be Actual Costs (excluding Disallowable Costs) pursuant to paragraph 4 of Chapter 7.1 (*Contract Payments*), if and to the extent that in the period between such costs being reimbursed and the agreement or determination that they were not Actual Costs, the Secretary of State has consented to the Operator declaring or paying a Permitted Dividend,

minus

- (i) an amount equal to the proportion of the Fixed Fee earned by the Operator for the relevant Contract Year, calculated on a pro rata basis,

as agreed between the Parties or determined by the Secretary of State in accordance with paragraph 8.1(a)(vii) of Chapter 7.1 (*Contract Payments*), provided that where the sum calculated is negative the Potential Annual Losses shall be zero;

“Power of Attorney” or “POA”

means the power of attorney granted by the Operator in favour of the Secretary of State in the agreed terms marked **POA**;

“Pre-EMA Profit Dividend”

has the meaning given in paragraph 2.7 (*Lock-up Restriction*) of Chapter 7.4 (*Financial Covenants and Bond*);

“Preceding Reporting Period”

has the meaning given to it in paragraph 1.3 of Appendix 1 (*Calculation of Periodic Contract Payments (PCP)*) to Chapter 7.1 (*Contract Payments*);

“Preceding Year”

has the meaning given to it in paragraph 1.3 of Appendix 1 (*Calculation of Periodic Contract Payments (PCP)*) to Chapter 7.1 (*Contract Payments*);

“Preceding Year Ticket Price”

has the meaning given to it in paragraph 2.1 of Part B (*Regulation of Individual Fares*) of Chapter 8.2.4 (*Regulation of Fares Basket Values and Individual Fares*);

“Preliminary Database”

means such database as may be put in place by the Secretary of State prior to making any RPC Database available to the Operator, as part of the development of the RPC Database;

“Previous Agreement”

means a franchise agreement dated 28 August 2019 under which services equivalent to the Rail Services (or a material proportion thereof) were provided by the Operator on or about the day prior to the Start Date;

“Previous Customer Report”

means, in relation to a Customer Report, the Customer Report published by the Operator immediately prior to that Customer Report;

“Previous Funding Deed”

has the meaning given in the Funding Deed;

“Previous Guarantors”

has the meaning given in the Funding Deed;

“Previous Passenger Services”	means: <ul style="list-style-type: none"> (a) any railway passenger services operated under a Previous Agreement that is the same or substantially the same as any Passenger Service in terms of departure and arrival times and stopping patterns; and (b) if no such railway passenger service is found under paragraph (a) such other railway passenger services operated under a Previous Agreement which is similar in terms of departure and arrival times and stopping patterns to the Passenger Services as the Secretary of State may determine;
“Previous Performance Level”	means the level of performance actually achieved in relation to the Previous Passenger Services;
“Previous SQR Benchmark”	has the meaning given to the term “SQR Improvement Plan Level” under the Previous Agreement;
“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 (<i>Fares and Smart Ticketing</i>) to the Ticketing and Settlement Agreement;
“Primary Assets”	means: <ul style="list-style-type: none"> (a) the property, rights and liabilities of the Operator listed in Appendix 1 (<i>List of Primary Assets</i>) to Chapter 9.2.2 (<i>Key Assets - Designation of Assets</i>); and (b) any other property, rights and liabilities of the Operator which is or are designated as such pursuant to Chapter 9.2.2 (<i>Key Assets - Designation of Assets</i>), <p>but excluding such property, rights or liabilities as may, in accordance with the terms of the National Rail Contract, cease to be so designated;</p>
“Primary Brands”	means “Avanti West Coast” (with a picture) and “Avanti West Coast” (without a picture) (as detailed in Appendix 1 (<i>List of Operator Trade Marks</i>) to Chapter 9.3 (<i>Branding and Intellectual Property</i>));
“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 “ <i>The Principles of Inclusive Design</i> ” (as revised from time to time”);
“Prior Train Operator”	means the Train Operator which used or is using the Cascaded Rolling Stock immediately prior to its proposed use by the Operator;
“Processor”	has the meaning given to it in the Data Protection Legislation;

“Procurement Policy”	has the meaning given in paragraph 7 (<i>Subsidy Control, State Aid and Procurement Regulations</i>) of Chapter 9.7 (<i>Miscellaneous Legal Terms</i>);
“Profit Financial Target Amendment Event”	means the events described in paragraphs 9 and 10 in Part 3 (<i>Financial Target Amendment Events</i>) of Appendix 1 (<i>Trigger Events</i>) to Chapter 7.5 (<i>Variations, Changes and Amendments</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 Chapter 8.2.4 (<i>Regulation of Fares Basket Values and Individual Fares</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 Operator may enter into with a person who has an interest in a network or a railway facility which is to be used for or in connection with the provision or operation of the Rail Services;
“Property Matrix Workbook” or “PMW”	means the document in the agreed terms marked PMW and has the meaning given to it in paragraph 2 of Appendix 1 (<i>Form of Handover Package</i>) to Chapter 9.5.1 (<i>Handover Package</i>);
“Proposed Business Plan Commitment”	has the meaning given in paragraph 12.7 (<i>Extended Term Contracts and Extended Term Designatable Contracts</i>) of Chapter 7.7 (<i>Business Plan</i>);
“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 Chapter 8.2.3 (<i>Allocation of Fares to Fares Baskets</i>); (b) for the purposes of regulating their aggregate Prices in accordance with Chapter 8.2.4 (<i>Regulation of Fares Basket Values and Individual Fares</i>); (c) amended by the Secretary of State from time to time in accordance with of Part B (<i>Changes to Fares and Fares Regulation</i>) of Chapter 8.2.5 (<i>Exceeding the Regulated Value, Regulated Price or Regulated Child Price, and 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 Part B (<i>Changes to Fares and Fares Regulation</i>) of Chapter 8.2.5 (<i>Exceeding the Regulated Value, Regulated Price or Regulated Child Price, and Changes to Fares and Fares Regulation</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 Operator is entitled or obliged from time to time to set the Price under the Ticketing and Settlement Agreement, subject to the following additional rights and restrictions:

- (i) it shall be valid for no less than one (1) month;
- (ii) it shall be valid all day on a Saturday or Sunday and from no later than 10:30 on any other day;
- (iii) it need not be valid for any journey:
 - (A) beginning between 15:00 and 19:00 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 Operator is entitled or obliged from time to time to set the Price under the Ticketing and Settlement Agreement,

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

“Public Sector Operator”

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

“Purchase Price”

has the meaning given in Clause 2.1 of any Supplemental Agreement;

“QTM PBF Components”

means each of the:

- (a) Operational Performance Fee; and
- (b) Service Quality Standards Fee;

“QTM Targets”

means any:

- (a) OP Targets;
- (b) SQR Targets; and/or
- (c) TT Targets,

	as applicable;
“Qualified Consent”	has the meaning given to it in paragraph 8.8(a)(ii) (<i>Affiliate Trading</i>) of Chapter 7.1 (<i>Contract Payments</i>);
“Quantified Target Methodology”	means, with respect to: <ul style="list-style-type: none"> (a) each QTM PBF Component; and (b) the Applicable FP Sub-Component, the relevant methodology with respect to such QTM PBF Component or Applicable FP Sub-Component (as applicable) as set out in Appendix 5 (<i>Quantified Target Methodology</i>) of Chapter 7.2 (<i>Performance Based Fee and Shadow Operator Performance Based Fee</i>);
“Quarter” or “Quarterly”	means: <ul style="list-style-type: none"> (a) in respect of the first Contract Year only: <ul style="list-style-type: none"> (i) a period of two (2) consecutive Reporting Periods ending at the end of the ninth in the first Contract Year; or (ii) a period of four (4) consecutive Reporting Periods ending at the end of the thirteenth Reporting Period in the first Contract Year; and (b) in respect of each other Contract Year: <ul style="list-style-type: none"> (i) a period of three (3) consecutive Reporting Periods ending at the end of the third, sixth and ninth Reporting Periods in a Contract Year; or (ii) a period of four (4) consecutive Reporting Periods ending at the end of the thirteenth Reporting Period of a Contract Year, <p>(and “Quarterly” shall be interpreted accordingly);</p>
“Quarterly Forecast”	has the meaning given to it in paragraph 1.4(a) (<i>Quarterly Financial Information</i>) of Chapter 7.3 (<i>Management Information</i>);
“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 Customer Insight Programme”	means the programme of work being developed by the rail industry which involves collecting, analysing and utilising a wide range of information about the customer experience by assessing, amongst other things, the Operator’s performance in relation to a passenger’s rail journey (as specified in the Rail Customer Insight Survey);
“Rail Customer Insight Survey”	means a customer satisfaction survey in respect of the Rail Services (in such form as may be agreed from time to time), which is undertaken as part of the Rail Customer Insight Programme to monitor, amongst other things, the Operator’s performance in relation to a passenger’s rail journey (as specified in the relevant Rail Customer Insight Survey), and shall include any Alternative Survey as

	referred to in paragraph 19.6 of Part 2 (RCIS) of Chapter 5.5 (<i>Customer Experience Performance</i>);
“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 Product”	has the meaning given to it in the Ticketing and Settlement Agreement and references to “Rail Products” shall be construed accordingly;
“Rail Reform Change of Law”	has the meaning given in paragraph 10.1 (<i>Rail Reform Change of Law</i>) of Chapter 7.5 (<i>Variations, Changes and Amendments</i>);
“Rail Revenue Recovery Group” or “RRRG”	means the body known as the Rail Revenue Recovery Group, established to advise on how best to drive the recovery and subsequent ongoing growth of rail revenues, including by developing proposals for a programme of cross-industry activities;
“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, 4th Floor, One South Place, London, EC2M 2RB;
“Rail Services”	means: <ul style="list-style-type: none"> (a) the Passenger Services, the Shadow Operator Services, the Light Maintenance Services, the Station Services and the Ancillary Services as the Operator may provide or operate from time to time, including any of such services as the Operator may delegate or subcontract or otherwise secure through any other person from time to time in accordance with the National Rail Contract; and (b) the rights proposed by the Secretary of State in the Request for Business Plan to operate the Passenger Services over the Routes prescribed in paragraph 7 (<i>Restrictions relating to Rail Services</i>) of Chapter 4.1 (<i>Service Development</i>);
“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 Chapter 8 (<i>Fares and Revenue</i>) only, services for the carriage of passengers by railway which are provided by a person who is bound by the Ticketing and Settlement Agreement, or any part of it, and including the Operator and any other Train Operator from time to time;

“Railways Pension Scheme”	means the pension scheme established by the Railways Pension Scheme Order 1994 (No. 1433);
“RCIS Administrator”	has the meaning given to it in paragraph 19.1(a) of Part 2 (<i>Part 2: RCIS</i>) of Chapter 5.5 (<i>Customer Experience Performance</i>);
“RCIS Benchmark”	means, in respect of a relevant Contract Year, the benchmark for each RCIS Measure as set out in the RCIS Benchmark Table or as may be agreed or determined in accordance with paragraph 2.7(b) of Chapter 7.2 (<i>Performance Based Fee and Shadow Operator Performance Based Fee</i>) or paragraphs 19.5 or 20.2 of Part 2 (<i>RCIS</i>) of Chapter 5.5 (<i>Customer Experience Performance</i>);
“RCIS Benchmark Table”	means the tables setting out the RCIS Benchmarks as set out as part of the Annual PBF Specifications in the Business Plan;
“RCIS Expected Range”	means, in relation to the Operator’s Overall RCIS Score, the range between (and inclusive of) the values in relation to performance as set out as part of the Annual PBF Specifications in the Business Plan, or as may be agreed or determined in accordance with paragraph 2.7(b) of Chapter 7.2 (<i>Performance Based Fee and Shadow Operator Performance Based Fee</i>), paragraph 5 (<i>Effect of alterations to the PBF Assessment Period</i>) or paragraphs 19.5 or 20.2 of Part 2 (<i>RCIS</i>) of Chapter 5.5 (<i>Customer Experience Performance</i>);
“RCIS Improvement Plan”	has the meaning given to it in paragraph 21.3 of Part 2 (<i>RCIS</i>) of Chapter 5.5 (<i>Customer Experience Performance</i>);
“RCIS Improvement Proposal”	has the meaning given to it in paragraph 21.1 of Part 2 (<i>RCIS</i>) of Chapter 5.5 (<i>Customer Experience Performance</i>);
“RCIS Measure”	means each of the factors as may be determined and more particularly described in the RCIS Performance Calculation Methodology;
“RCIS Performance Calculation Methodology” or “RCIS PCM”	has the meaning given to it in paragraph 19.4 of Part 2 (<i>RCIS</i>) of Chapter 5.5 (<i>Customer Experience Performance</i>);
“RCS”	has the meaning given in paragraph 3.2(e) (<i>Flexible Ticket Product</i>) of Chapter 8.2.2 (<i>Operator’s Obligation to Create Fares</i>);
“RDG Design Guidelines”	means the Rail Delivery Group’s ticket vending machine design guidelines;
“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 “ <i>Emergency Planning, Knowledge, Understanding and Responsibilities</i> ” dated April 2015 and published by RDG, as amended or updated from time to time, or other relevant guidance as specified by the Secretary of State during the Contract Term;
“Reactionary Delay”	means a delay that is attributed as “Reactionary Delay” in accordance with the Delay Attribution Principles and Rules;

“Reactionary Minutes Delay”

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

“Reasonable Commercial Manner”

means:

- (a) acting in the long-term interests of the Rail Services taking into account the long-term affordability, sustainability and financial robustness of the Operator Pension Section(s) as if the Operator and its employees (as appropriate) were solely responsible for the funding of the Operator Pension Section(s) and, at all times, disregarding the actual allocation of cost risk as between the Operator and the Secretary of State in this Contract;

or, at the option of the Secretary of State,

- (b) acting in such other manner as the Secretary of State directs;

“Re-inspection Failure”

has the meaning given to it in paragraph 4.1(a) of Part 1 (*Service Quality Regime*) of Chapter 5.5 (*Customer Experience Performance*);

“Recognised Accreditation Scheme”

means any of the following diversity accreditation schemes:

- (a) Investors in Diversity;
- (b) Clear Assured;
- (c) National Equality Standards;
- (d) Diversity Development Standard;
- (e) Inclusive Employers; and/or,

such other scheme as the Secretary of State may designate as a Recognised Accreditation Scheme from time to time;

“Recommended Options”

means those options which are recommended by the Operator as the preferred options in relation to the Required Output based upon the requirements set out in the Scoping Document;

“Record of Assumptions” or “ROA”

means, in respect of:

- (a) the first Business Plan Year, the document(s) provided and Placed in Escrow pursuant to paragraph 5.1(a)(i) of Chapter 7.5 (*Variations, Changes and Amendments*); and
- (b) each Subsequent Business Plan Year, the document(s) provided and Placed in Escrow pursuant to paragraph 5.1(a)(ii) of Chapter 7.5 (*Variations, Changes and Amendments*),

in each case providing:

- (i) detailed assumptions, explanations of assumptions and parameters underlying the Financial Model and Operational Models;

- (ii) a description of the functionality, operation and structure of Financial Model and Operational Models; and
- (iii) a description of each input cell, its requirements and its inter-relationship with the Financial Model and Operational Models; and

each as amended from time to time in accordance with this Contract and subsequently Placed in Escrow pursuant to paragraph 5.1(c) of Chapter 7.5 (*Variations, Changes and Amendments*);

“Recruitment Objectives”	has the meaning given to it in paragraph 1.5(a) of Chapter 2.1 (<i>Diversity and Inclusion and Training and Development</i>);
“Recruitment Targets”	means the recruitment targets and associated timeframes in respect of all new recruits across all grades, jobs, positions and roles, as set out in the Operator’s D&I Strategy;
“Rectification Evidence Failure”	has the meaning given to such term in paragraph 4.1(b) of Part 1 (<i>Service Quality Regime</i>) to Chapter 5.5 (<i>Customer Experience Performance</i>);
“Redactions”	has the meaning given to it in paragraph 10.1 of Chapter 9.6 (<i>Confidentiality and Data Protection</i>);
“Reference Fare”	has the meaning given to it in paragraph 6.1(a) of Part B (<i>Changes to Fares and Fares Regulation</i>) of Chapter 8.2.5 (<i>Exceeding the Regulated Value, Regulated Price or Regulated Child Price, and Changes to Fares and Fares Regulation</i>);
“Reference Flow”	has the meaning given to it in paragraph 6.1(a) of Part B (<i>Changes to Fares and Fares Regulation</i>) of Chapter 8.2.5 (<i>Exceeding the Regulated Value, Regulated Price or Regulated Child Price, and 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 2017 or such other reference period as the Secretary of State may require pursuant to paragraph 3.1(a) of Chapter 8.2.5 (<i>Changes to Fares and Fares Regulation</i>);
“Regulated Child Price”	means the Child Price that is permitted to be charged by the Operator in respect of any Fare in any Fare Year as specified in paragraph 1.3 of Part B (<i>Regulation of Individual Fares</i>) of Chapter 8.2.4 (<i>Regulation of Fares Basket Values and Individual Fares</i>);
“Regulated Price”	means the Price that is permitted to be charged by the Operator in respect of any Fare in any Fare Year, determined in accordance with paragraph 2.1 of Part B (<i>Regulation of Individual Fares</i>) of Chapter 8.2.4 (<i>Regulation of Fares Basket Values and 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 Contract 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 Part A (*Regulation of Fares Basket Values*) of Chapter 8.2.4 (*Regulation of Fares Basket Values and Individual Fares*);

“Regulation 1370”

means Regulation (EC) N° 1370/2007 of 23 October 2007 on public passenger transport services by rail and by road as incorporated into domestic law by the European Union (Withdrawal) Act 2018 and as amended by S.I. 2020/504 and S.I. 2020/1470, and Regulation (EC) N° 1370/2007 of 23 October 2007 on public passenger transport services by rail and by road as applicable in the European Union;

“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 Operator in connection with the Rail 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 Operator 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 Assets”

has the meaning given to it in paragraph 14.1 (*Assets not Designated as Primary Assets*) of Chapter 9.2.2 (*Key Assets – Designation of Assets*);

“Relevant Contract”

has the meaning given in paragraph 17.1 of Chapter 7.1 (*Contract Payments*);

“Relevant CSA Limiting Factors”

has the meaning given in paragraph 2.4 (*Customer Satisfaction - Scorecard A*) of Appendix 3 (*Scorecard Criteria*) to Chapter 7.2 (*Performance Based Fee and Shadow Operator Performance Based Fee*);

“Relevant CSB Limiting Factors”

has the meaning given in paragraph 3.2A (*Customer Satisfaction - Scorecard B*) of Appendix 3 (*Scorecard Criteria*) to Chapter 7.2 (*Performance Based Fee and Shadow Operator Performance Based Fee*);

“Relevant Data”

has the meaning given to it in paragraph 14.1(a) (*Request for Data*) of Chapter 9.6 (*Confidentiality and Data Protection*);

“Relevant Delay”

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

“Relevant Depot”

has the meaning given to it in paragraph 6.1(d) (*Sub-Leasing Arrangements*) of Chapter 9.1 (*Fixed Assets*);

“Relevant Documents”	has the meaning given to it in paragraph 9.2(a) of Chapter 5.3 (<i>Accessibility and Inclusivity</i>);
“Relevant Employer”	means any of the Operator’s Affiliates to whom the Rail Services or services which are in support of or ancillary to the Rail Services have been subcontracted (at any tier) or delegated by the Operator, which employs Business Employees performing or in support of or ancillary to the Rail Services;
“Relevant Flow”	has the meaning given in paragraph 3.2(b) (<i>Flexible Ticket Product</i>) of Chapter 8.2.2 (<i>Operator’s Obligation to Create Fares</i>);
“Relevant FPC Limiting Factors”	has the meaning given in paragraph 5.4 (FP Cost Sub-Component) of Appendix 3 (<i>Scorecard Criteria</i>) to Chapter 7.2 (<i>Performance Based Fee and Shadow Operator Performance Based Fee</i>);
“Relevant FPR Limiting Factors”	has the meaning given in paragraph 6.4 (<i>FP Revenue Sub-Component</i>) of Appendix 3 (<i>Scorecard Criteria</i>) to Chapter 7.2 (<i>Performance Based Fee and Shadow Operator Performance Based Fee</i>);
“Relevant OP Component Expected Fee Performance Level A”	means, in respect of the relevant Operational Performance Component, the value in relation to performance set out in the relevant Operational Performance Component ABPS Table or otherwise agreed or determined (as applicable) in accordance with paragraph 2.7(b) (<i>Changes to the Applicable Assessment Methodology</i>), paragraph 4 (<i>Target Amendments</i>) or paragraph 5 (<i>Effect of alterations to the PBF Assessment Period</i>) of Chapter 7.2 (<i>Performance Based Fee and Shadow Operator Performance Based Fee</i>);
“Relevant OP Component Expected Fee Performance Level B”	means, in respect of the relevant Operational Performance Component, the value in relation to performance set out in the relevant Operational Performance Component ABPS Table or otherwise agreed or determined (as applicable) in accordance with paragraph 2.7(b) (<i>Changes to the Applicable Assessment Methodology</i>), paragraph 4 (<i>Target Amendments</i>) or paragraph 5 (<i>Effect of alterations to the PBF Assessment Period</i>) of Chapter 7.2 (<i>Performance Based Fee and Shadow Operator Performance Based Fee</i>);
“Relevant OP Component Expected Fee Range”	means, in relation to each Operational Performance Component, the range between the Relevant OP Component Expected Fee Performance Level B and the Relevant OP Component Expected Fee Performance Level A, in each case with respect to such Operational Performance Component;
“Relevant OP Component Maximum Fee Performance Level”	means, in respect of the relevant Operational Performance Component, the value in relation to performance set out in the relevant Operational Performance Component ABPS Table or otherwise agreed or determined (as applicable) in accordance with paragraph 2.7(b) (<i>Changes to the Applicable Assessment Methodology</i>), paragraph 4 (<i>Target Amendments</i>) or paragraph 5 (<i>Effect of alterations to the PBF Assessment Period</i>) of Chapter 7.2 (<i>Performance Based Fee and Shadow Operator Performance Based Fee</i>);

“Relevant OP Component Nil Fee Performance Level”	means, in respect of the relevant Operational Performance Component, the value in relation to performance set out in the relevant Operational Performance Component ABPS Table or otherwise agreed or determined (as applicable) in accordance with paragraph 2.7(b) (<i>Changes to the Applicable Assessment Methodology</i>), paragraph 4 (Target Amendments) or paragraph 5 (<i>Effect of alterations to the PBF Assessment Period</i>) of Chapter 7.2;
“Relevant OP Limiting Factors”	has the meaning given in paragraph 1.4 (<i>Operational Performance</i>) of Appendix 3 (<i>Scorecard Criteria</i>) to Chapter 7.2 (<i>Performance Based Fee and Shadow Operator Performance Based Fee</i>);
“Relevant Rectification Period”	has the meaning given to such term in paragraph 4.1(b) of Part 1 (<i>Service Quality Regime</i>) of Chapter 5.5 (<i>Customer Experience Performance</i>);
“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 Operator;
“Relevant SQ Limiting Factors”	has the meaning given in paragraph 4.4 (<i>Service Quality Standards</i>) of Appendix 3 (<i>Scorecard Criteria</i>) to Chapter 7.2 (<i>Performance Based Fee and Shadow Operator Performance Based Fee</i>);
“Relevant Tax Authority”	means HM Revenue & Customs, or, if applicable, a tax authority in the jurisdiction in which the Affected Party is established;
“Relevant Technical Specification”	means the applicable TSI or NTSN;
“Relevant Term”	has the meaning given to it in paragraph 3.1 of Chapter 9.4.3 (<i>Procedure for remedying a Contravention of the National Rail Contract</i>);
“Relevant Threshold Amount”	means: <ul style="list-style-type: none"> (a) in relation to a Target Cost, £2,287,000 (two million two hundred and eighty-seven thousand pounds); and (b) in relation to a Target Profit, or a Target Revenue, the amount determined by the Secretary of State prior to the relevant PBF Assessment Period;
“Remedial Agreement”	has the meaning given to it in paragraph 5.1 of Chapter 9.4.3 (<i>Procedure for remedying a Contravention of the National Rail Contract</i>);
“Remedial Plan”	has the meaning given to it in paragraph 3.1(b) of Chapter 9.4.3 (<i>Procedure for remedying a Contravention of the National Rail Contract</i>);
“Remedial Plan Notice”	has the meaning given to it in paragraph 2 of Chapter 9.4.3 (<i>Procedure for remedying a Contravention of the National Rail Contract</i>);
“Remedial Plan Period”	has the meaning given to it in paragraph 3.1(b) of Chapter 9.4.3 (<i>Procedure for remedying a Contravention of the National Rail Contract</i>);

“Replacement Agreement”	means an agreement entered into as a replacement for any Relevant Agreement;
“Reporting Period”	means a period of twenty eight (28) days, provided that: <ul style="list-style-type: none"> (a) the first such period during the Contract Period shall exclude any days up to but not including the Start Date; (b) the first and last such period in any Reporting Year may be varied by up to seven (7) days by notice from the Secretary of State to the Operator; (c) each such period shall start on the day following the last day of the preceding such period; and (d) the last such period during the Contract Period shall end at the end of the Contract Period;
“Reporting Year”	means a period normally commencing on 1 April in each calendar year, comprising thirteen (13) consecutive Reporting Periods;
“Request for Approval”	has the meaning given to it in paragraph 1.1(b) of Chapter 1.3 (<i>Approval Process</i>);
“Request for Business Plan” or “RfBP”	means, with respect to each Business Plan Year, the request issued by the Secretary of State to the Operator (as may be updated or revised from time to time in accordance with paragraph 3.3 of Chapter 7.7 (<i>Business Plan</i>)), setting out the specification to be achieved by, and the requirements as to the format and content of, the Business Plan with respect to such Business Plan Year, and shall include the Secretary of State’s proposed Annual PBF Specifications;
“Request for Data”	has the meaning given to it in paragraph 14.1(a) (<i>Request for Data</i>) of Chapter 9.6 (<i>Confidentiality and Data Protection</i>);
“Request for Information”	means a request for information or an apparent request under the Freedom of Information Act or the Environmental Information Regulations;
“Required Output”	means the action or product the Operator is required to deliver in order to demonstrate fulfilment of any Accepted Programme Specific Requirement or Transitional Programme Specific Requirement;
“Required Output Report”	means any Initial Output Report, as supplemented or amended by each applicable Final Output Report, where the Required Output in response to any Accepted Programme Specific Requirement is production of a report;
“Required Establishment”	means the number of train crew required in order to operate the Passenger Services, which in the case of drivers shall be calculated in accordance with the Rail Delivery Group’s “ <i>Guidance Note on Driver Establishment Calculation (December 2013)</i> ” and otherwise in accordance with an equivalent methodology;
“Required Performance Improvement”	means, in relation to each relevant Operational Performance Component, an improvement in the Operator’s performance;

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

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

“Restated P2012 Balance Sheet”

has the meaning given in the Previous Agreement;

“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 opinion of the Secretary of State, a material change in the basis of the index or if, at any relevant time, there is a delay in the publication of the index, such other retail prices index as the Secretary of State may, after consultation with the Operator, determine to be appropriate in the circumstances;

“Return Fare”

means a Fare which entitles the purchaser to make, without further restrictions as to the time of day for which the Fare is valid, a journey in each direction in Standard Class Accommodation between the stations and/or the zones for which such Fare is valid and which expires no earlier than 02:00 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 02:00;

“Revenue Financial Target Amendment Event”

means the events described in paragraphs 7 and 8 in Part 3 (*Financial Target Amendment Events*) of Appendix 1 (*Trigger Events*) to Chapter 7.5 (*Variations, Changes and Amendments*);

“Revenue Foregone”

means:

- (a) :
 - (i) any revenue earned without making any deduction or allowance for amounts which the Secretary of State considers (taking into account the relevant circumstances) has been lost or reduced as a result of the Operator’s breach of its obligations under the National Rail Contract or as a result of the fraud or dishonesty of any Business Employee and, for the avoidance of doubt any such amounts lost or reduced shall be treated as Revenue Foregone; and
 - (ii) an amount equal to the amount of revenue which was not received or receivable by the Operator (including debts or other receivables waived, not

collected or written off) but which the Secretary of State determines (taking into account the relevant circumstances) would have been received or receivable by a Good and Efficient Operator and, for the avoidance of doubt any such amounts lost or reduced shall be treated as Revenue Foregone,

and for the purpose of limbs (a) (i) and (ii) only, any breach by the Operator of paragraph 8 (*Consequences for Poor Performance – Enforcement Benchmarks*) of Chapter 4.4 (*Operational Performance*) shall be disregarded where the circumstances resulting in such breach do not amount to a breach of any other relevant obligation of the Operator pursuant to the National Rail Contract; and

- (b) any other amounts identified as Revenue Foregone in this Contract;

“Reward and People Principles”

means any policy or policies, high level objectives, principles, instructions or guidance issued to the Operator or any Relevant Employer by the Secretary of State:

- (a) with the title “*Reward and People Policy*”, “*Reward Policy*” and/or “*People Policy*”; and/or
- (b) which relates to remuneration, pensions, benefits, working arrangements, working practices or terms and conditions of employment in respect of any Business Employee,

in each case (a) and (b) as may be amended, supplemented or replaced by the Secretary of State from time to time;

“RM3P”

means the ‘*Risk Management Maturity Model for Performance*’ system to monitor and manage operational performance within the rail industry;

“Rolling Stock Functional Aspects”

means each of the aspects listed at paragraph 14.1 of the Accepted Programme Specific Requirements Document;

“Rolling Stock Lease”

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

“Rolling Stock Lease Side Letter”

means, in relation to any Rolling Stock Lease with a term extending beyond the Core Term Expiry Date, the side letter in a form agreed by the Secretary of State and entered into between the Operator and the relevant rolling stock leasing company prior to the Start Date, regarding the potential consequences of the Secretary of State’s issue of an Expiry Notice under this Contract;

“Rolling Stock Related Contract”

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

“Rolling Stock Units”	means the smallest number of rolling stock vehicles which are normally comprised in a train used by the Operator in the provision of the Passenger Services;
“Route”	means any route specified in the Timetable over which the Operator has permission to operate the Passenger Services pursuant to any Track Access Agreement;
“Route-Specific Required Performance Improvement”	has the meaning given to it in paragraph 9.1(a)(ix), of Chapter 4.4 (<i>Operational Performance</i>);
“Route Map”	means a map (which may be a topological map) showing each of the Routes and each Other Passenger Route Within the Geographical Area meeting the requirements set out in paragraph 8 of Chapter 5.1 (<i>Customer Information</i>);
“RPC Database”	means a database to be provided by the Secretary of State pursuant to and on the terms of paragraph 6.1 of Chapter 9.3 (<i>Branding and Intellectual Property</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;
“RSP”	means Rail Settlement Plan Limited;
“RSPS3002”	means the RSP document with reference RSPS3002, version 3 (03-00) published on 27 September 2017 (or amended publications that replace this) which specifies standards for issuing, checking and validating rail products on ITSO Certified Smart Media and defines the rail specific rules required to ensure interoperability across the rail network;
“Safeguarding on Rail Scheme”	means the scheme for the accreditation of organisations in relation to the protection of vulnerable children and adults at risk on rail transport and includes the Safeguarding Principles and Measures, as set out in the “ <i>Safeguarding on Rail Scheme - Guidance Notes</i> ” published by the British Transport Police (as amended or replaced from time to time);
“Safeguarding Principles and Measures”	means the principles and measures to protect vulnerable children and adults at risk on rail transport, contained in the “ <i>Safeguarding on Rail Scheme – Guidance Notes</i> ” published by the British Transport Police against which the Operator will be assessed (as amended or replaced from time to time);
“Safeguarding Strategy”	means a safeguarding strategy which is approved by the British Transport Police and which promotes and enforces: <ul style="list-style-type: none"> (a) the Safeguarding Principles and Measures; and (b) the Safeguarding on Rail Scheme;
“Safety Authorisation”	means the authorisation issued by the ORR under the Safety Regulations authorising the Operator’s safety management system (as defined in those regulations) and the provisions adopted by the Operator to meet the requirements that are necessary to ensure safe 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 Operator’s safety management system (as defined in those regulations) and the provisions adopted by the Operator to meet the requirements that are necessary to ensure safe operation on the Routes;
“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 Operator to form a train in the Train Fleet for any particular Passenger Service and the manner in which they are scheduled to be configured;
“Scheduled Expiry Date”	means the date on which the relevant Rolling Stock Related Contract, Property Lease, Access Agreement or Extended Term Designatable Contract (as the case may be) is scheduled to expire in accordance with its terms;
“Scoping Document”	means any scoping document produced and submitted by the Operator to the Secretary of State in accordance with paragraph 1 of Appendix 1 (<i>Required Outputs</i>) to Chapter 11.1 (<i>Shadow Operations</i>);
“Scorecard Criterion”	means each of: <ul style="list-style-type: none"> (a) the ICWC Scorecard Criteria; and (b) the Shadow Operator Scorecard Criteria, <p>(and “Scorecard Criteria” means the plural of Scorecard Criterion);</p>
“Scorecard Methodology”	means: <ul style="list-style-type: none"> (a) in relation to a PBF Component other than the Customer Satisfaction Fee, the methodology set out in Appendix 4 (<i>Scorecard Methodology</i>) of Chapter 7.2 (<i>Performance Based Fee and Shadow Operator Performance Based Fee</i>); and (b) in relation to the Customer Satisfaction Fee, the Customer Satisfaction Scorecard A or Customer Satisfaction Scorecard B (whichever is the Applicable Assessment Methodology for the Customer Satisfaction Fee);
“Scoring Letter”	means either the Shadow Operator Scoring Letter or the ICWC Scoring Letter;
“Scottish Ministers”	has the meaning ascribed to it in section 44(2) of the Scotland Act 1998 and shall include any other body replacing them from time to time;
“Season Ticket Fare”	means 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;
“Season Ticket Suspense Adjustment” or “STSA”	means an amount calculated in accordance with paragraphs 13.2 of Chapter 7.1 (<i>Contract Payments</i>) adjusted (if applicable) in accordance with paragraph 13.3(a) of Chapter 7.1 (<i>Contract Payments</i>);
“Second HS Milestone Amount” or “HSMA2”	has the meaning given in paragraph 1.1 of Chapter 7.1 (<i>Contract Payments</i>);
“Second HS Milestone Date”	means the date on which Passenger Services commence operation from Old Oak Common to Curzon Street on the HS2 Network and then on to the Conventional Network via Handsacre Junction in accordance with the TSR notified by the Secretary of State to the Operator as being applicable from the Second HS Milestone Date;
“Secondary Brands”	means the Avanti West Coast Feel Good Travel, Double Arrows Symbol, The Royal Scot, The Clansman, The Welsh Dragon, The Caledonian, The Red Rose, The Coronation Scot, Y Ddraig Gymreig, Journeycare, Intercity, Intercity, Intercity, 2 Swallows, 2 Swallows, 4 Swallows (each as detailed in Appendix 1 (<i>List of Operator Trade Marks</i>) to Chapter 9.3 (<i>Branding and Intellectual Property</i>) or Schedule 1 (<i>Licensed IP</i>) to the Brand Licence) and the Parties acknowledge that, excluding Avanti West Coast Feel Good Travel, such brands constitute Enduring Branding;
“Secretary of State Material”	means any Material created by, for or on behalf of the Secretary of State (or any of the Secretary of State’s subcontractors) which is provided to the Operator in connection with the performance or receipt of the Rail Services;
“Secretary of State Relationship Manager”	means the person responsible for managing the Secretary of State’s overall relationship with the Operator;
“Secretary of the Access Disputes Committee”	means the person appointed as the secretary of the Access Disputes Committee from time to time;
“Secure Stations Accreditation”	means Stations which have achieved accreditation under the Secure Stations Scheme;
“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;
“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 directed by the Secretary of State;
“Selected Option”	has the meaning given in paragraph 2.2(a) of Appendix 1 (<i>Required Outputs</i>) to Chapter 11.1 (<i>Shadow Operations</i>);

“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 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 1 to Part 1 (<i>Service Quality Regime</i>) of Chapter 5.5 (<i>Customer Experience Performance</i>);
“Service Quality Failure”	has the meaning given to it in paragraph 4.1 of Part 1 (<i>Service Quality Regime</i>) of Chapter 5.5 (<i>Customer Experience Performance</i>);
“Service Quality Improvement”	means the Operator ensuring that the relevant Affected Service Quality Area is provided at a level that is equal to or above the SQR Benchmark;
“Service Quality Improvement Proposal”	has the meaning given to it in paragraph 17.1 (<i>Consequences of Performance falling below the SQR Benchmark</i>) of Chapter 5.5 (<i>Customer Experience Performance</i>);
“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 2 of the table(s) in Appendix 1 to Part 1 (<i>Service Quality Regime</i>) of Chapter 5.5 (<i>Customer Experience Performance</i>);
“Service Quality Inspection”	has the meaning given to it in paragraph 3.1 of Part 1 (<i>Service Quality Regime</i>) of Chapter 5.5 (<i>Customer Experience Performance</i>);
“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 Chapter 5.5 (<i>Customer Experience Performance</i>);
“Service Quality Re-inspection”	has the meaning given to it in paragraph 4.1(a) of Part 1 (<i>Service Quality Regime</i>) of Chapter 5.5 (<i>Customer Experience Performance</i>);
“Service Quality Schedules”	means each of the service schedules for SQR Stations, SQR Trains and SQR Customer Service (as applicable) contained in the document in the agreed terms marked SQS ;
“Service Quality Standards Fee” or “SQ”	means the element of the Performance Based Fee the purpose of which is to measure the Operator’s effectiveness in delivering high-quality provision of facilities, services, customer care and other outputs that affect passengers’ satisfaction and sentiment;
“Service Quality Rectification Evidence”	means evidence and/or documentation demonstrating (as the case may be) that the Operator has rectified a relevant Service Quality Failure in relation to SQR Trains or SQR Stations, as applicable;
“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 Formation Capacity Plan, a plan implemented by the Operator;

- (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 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 relevant 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 Operator, the relevant 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 relevant 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 1.1(a)(i) of Chapter 9.4.4 (*Force Majeure*);

“Settlement Proposal”

has the meaning given to it in paragraph 3.2 of Chapter 5.3 (*Accessibility and Inclusivity*);

“Shadow Operator Business Plan Commitments”

means the contractual obligations which the Operator is required to deliver in relation to any Business Plan Year, which (in respect of each Shadow Operator Business Plan Component in the Business Plan) are identified as ‘Shadow Operator Business Plan Commitments’ in the Business Plan, and which shall include the achievement of milestones and other indicators of progress towards

	associated longer-term requirements as described in the Accepted Programme and Transitional Programme;
“Shadow Operator Business Plan Components”	has the meaning given in paragraph 1.1(d) of Chapter 7.7 (<i>Business Plan</i>);
“Shadow Operator Business Plan KPIs”	means those Business Plan KPIs which relate solely to the Shadow Operator Services;
“Shadow Operator Contractor”	means each contractor who, as part of their terms of engagement, is from time to time directly involved in the performance of the Shadow Operator Services (other than those persons for whom the provision of the Shadow Operator Services forms an incidental part of their terms of engagement only);
“Shadow Operator Contracts and Insurance Matrix Workbook” or “ShOpCIMW”	means the document in the agreed terms marked ShOpCIMW and has the meaning given to it in paragraph 2(a) of Appendix 2 (<i>Form of Shadow Operator Handover Package</i>) to Chapter 9.5.1 (<i>Handover Package</i>);
“Shadow Operator Cost Categories”	means each and every Cost Category which relates to the Shadow Operator Services;
“Shadow Operator Delay Action Plan”	has the meaning given to it in paragraph 11.9 of Chapter 11.1 (<i>Shadow Operations</i>);
“Shadow Operator Delay Event”	means: <ul style="list-style-type: none"> (a) any failure by HS2 Limited to perform (or procure the performance of) any activity (including producing or delivering any item) on or before a date agreed in advance by the Operator and HS2 Limited; (b) on receipt of any reasonable request by the Operator to agree in advance a date for HS2 Limited to perform (or procure the performance of) any activity, any failure by HS2 Limited to respond promptly to that request to either: <ul style="list-style-type: none"> (i) where the Operator has proposed a date, agree to that date or to propose or to propose an alternative date; or (ii) where the Operator has requested that HS2 Limited propose a date, propose a date; (c) any failure by Network Rail to perform (or procure the performance of) any activity (including producing or delivering any item) on or before a date agreed in advance by the Operator and Network Rail; (d) on receipt of any reasonable request by the Operator to agree in advance a date for Network Rail to perform (or procure the performance of) any activity, any failure by Network Rail to respond promptly to that request to either: <ul style="list-style-type: none"> (i) where the Operator has proposed a date, agree to that date or to propose an alternative date; or

- (ii) where the Operator has requested that Network Rail propose a date, propose a date;
- (e) any failure by the Secretary of State to perform (or procure the performance of) any activity (including producing or delivering any item) on or before a date agreed in advance by the Operator and the Secretary of State; or
- (f) on receipt of any reasonable request by the Operator to agree in advance a date for the Secretary of State to perform (or procure the performance of) any activity, any failure by the Secretary of State to respond promptly to that request to either:
 - (i) where the Operator has proposed a date, agree to that date or to propose an alternative date; or
 - (ii) where the Operator has requested that the Secretary of State propose a date, propose a date,

in each case, which causes the Operator to be delayed in the performance of, or unable to perform any part of, the Shadow Operator Services;

“Shadow Operator Delay Event Notice”

has the meaning given to it in paragraph 11.8 of Chapter 11.1 (*Shadow Operations*);

“Shadow Operator Delivery Fee” or “ShOp DEL Fee”

means the element of the Shadow Operator Performance Based Fee attributable to the Operator’s performance in delivering the Business Plan with respect to the Business Plan Year corresponding to the relevant PBF Assessment Period, including time and delivery of expected outputs, outcomes and performance against the Shadow Operator Business Plan Commitments and Shadow Operator Business Plan KPIs;

“Shadow Operator Employee”

means each Business Employee who, as part of their employment services, is from time to time directly involved in the performance of the Shadow Operator Services (other than those persons for whom the provision of the Shadow Operator Services forms an incidental part of their employment services only);

“Shadow Operator Employee List”

means a list of all Shadow Operator Employees together with the role which each individual undertakes and details of the contract under which each individual is employed (including: (a) name of the employing entity; (b) notice period; (c) where the employing entity is not the Operator, a copy of the contract under which the individual is made available to the Operator; and (d) such other details as the Secretary of State may specify from time to time);

“Shadow Operator Financial Management Fee” or “ShOp FM Fee”

means the element of the Shadow Operator Performance Based Fee, the purpose of which is to measure the Operator’s effectiveness in managing the Shadow Operator Cost Categories, forecasts of costs and revenues relating to the Shadow Operator Services and Cost Budget Changes relating to the Shadow Operator Cost Categories;

“Shadow Operator Handover Package”	has the meaning giving to it in paragraph 1.1(a)(ii) of Chapter 9.5.1 (<i>Handover Package</i>);
“Shadow Operator PBF Component”	means each of the following components which shall be individually assessed to calculate the corresponding element of the ShOp PBF: <ul style="list-style-type: none"> (a) Shadow Operator Delivery; (b) Shadow Operator Financial Management; and (c) any additional component to be implemented from time to time pursuant to paragraph 2.5(i) of Chapter 7.2 (<i>Performance Based Fee and Shadow Operator Performance Based Fee</i>);
“Shadow Operator Period”	means the period commencing on the Start Date and ending on the Expiry Date or, if earlier, the date of termination of the Shadow Operator Services pursuant to paragraph 5 of Chapter 9.4.1 (<i>Events of Default and Termination Events</i>);
“Shadow Operator Performance Based Fee” or “ShOp PBF”	means the performance-based element of the Contract Payments relating to the Shadow Operator Services as calculated pursuant Chapter 7.2 (<i>Performance Based Fee and Shadow Operator Performance Based Fee</i>);
“Shadow Operator Programmes”	means the Accepted Programme, the Transitional Programme and the Integrated Plan;
“Shadow Operator Resourcing Plan”	has the meaning give in paragraph 1.1(e) of Chapter 7.7 (<i>Business Plan</i>);
“Shadow Operator Scorecard Criterion”	means: <ul style="list-style-type: none"> (a) each criterion set out in Part 2 of Appendix 3 (<i>Scorecard Criteria</i>) of Chapter 7.2 (<i>Performance Based Fee and Shadow Operator Performance Based Fee</i>), as subject to any amendments pursuant to paragraph 2.5(f)(ii) (<i>Calculation of the Performance Based Fee</i>) of Chapter 7.2 (<i>Performance Based Fee and Shadow Operator Performance Based Fee</i>) as set out in the Annual PBF Specifications; and (b) if applicable with respect to any additional Shadow Operator PBF Component as may be proposed pursuant to paragraph 2.5(i) (<i>Calculation of the Performance Based Fee</i>) of Chapter 7.2 (<i>Performance Based Fee and Shadow Operator Performance Based Fee</i>), any additional criterion as set out in the Annual PBF Specifications, <p>in each case, in respect of which the Operator’s performance relating to the Shadow Operator Services is measured (in whole or in part) in relation to a PBF Assessment Period and for which a score shall be awarded in a Scoring Letter as may be amended from time to time in accordance with this Contract (and “Shadow Operator Scorecard Criteria” means the plural of Shadow Operator Scorecard Criterion);</p>
“Shadow Operator Scoring Letter”	means a letter from the Secretary of State to the Operator setting out the Operator’s performance with respect to each of the Shadow Operator PBF Components, as issued

in accordance with paragraph 8.1A (*Scoring Letter*), 9.4 or 9.7 (*Scoring Letter Disputes*) of Appendix 1 (*PBF Assessment Review*) to Chapter 7.2 (*Performance Based Fee and Shadow Operator Performance Based Fee*);

“Shadow Operator Services”

means all of the obligations to be performed by the Operator:

- (a) in accordance with Chapter 11 (*Shadow Operator*), including the provision of services, the exercise of rights and all other activities that the Operator is required to perform, including any of such obligations as the Operator may delegate or subcontract or otherwise secure through any other person from time to time in accordance with this Contract;
- (b) pursuant to the Shadow Operator Business Plan Commitments;

“Shadow Operator Systems and Assets Matrix Workbook” or “ShOpSAMW”

means the document in the agreed terms marked **ShOpSAMW** and has the meaning given to it in paragraph 3(a) of Appendix 2 (*Form of Shadow Operator Handover Package*) to Chapter 9.5.1 (*Handover Package*);

“Shadow Operator Termination Assistance Period”

means the period beginning on the earlier of the date:

- (a) on which a Shadow Operator Termination Notice is served by the Secretary of State;
- (b) on which a Termination Notice is served by the Secretary of State; or
- (c) which is six (6) months prior to the Expiry Date;

and expiring on the date on which the Shadow Operator Services terminate or on the Expiry Date (whichever is the earlier);

“Shadow Operator Termination Notice”

means a notice from the Secretary of State to the Operator terminating the Shadow Operator Services following an Event of Default or Termination Event in accordance with Chapter 9.4.1 (*Events of Default and Termination Events*);

“Shadow Operator TUPE Employees”

means all persons employed in the performance of the Shadow Operator Services immediately before the Shadow Operator TUPE Transfer Date (whether employed by the Operator or otherwise) whose contract of employment has been or is to be transferred to the Successor Shadow Operator by virtue of the operation of Law (including the Transfer Regulations) or any other person employed at any time in the performance of the Shadow Operator Services 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);

“Shadow Operator TUPE Transfer Date”

has the meaning given to it in paragraph 19.2 of Chapter 11.1 (*Shadow Operations*);

“Shared Facilities”

means those facilities in respect of which the Operator and Network Rail or HS2 Limited carry out their respective activities concurrently;

“ShOp HQ Cost Category” or “Shadow Operator HQ Cost Category”

means the Shadow Operator Cost Category labelled “ShOp HQ” (or “Shadow Operator HQ”) in the Cost Budget most recently Placed in Escrow;

“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:

- (a) digital barcodes;
- (b) a barcode printed on paper either by customers (e.g. at home, office) or by staff at stations or on board trains;
- (c) ITSO Certified Smart Media;
- (d) contactless payment media (cEMVs);
- (e) Oyster (TfL’s smartcard); and
- (f) any of the above formats stored and presented on a portable electronic device;

“Smart Media Target”

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

“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;

“SoS Audits”

has the meaning given to such term in paragraph 6.1 of Part 1 (*Service Quality Regime*) of Chapter 5.5 (*Customer Experience Performance*);

“SoS Claim”

means all losses, liabilities, costs, damages and expenses that the Secretary of State or, for the purpose of paragraph (b) below, the Secretary of State’s nominee does or will incur or suffer:

- (a) as a consequence of any breach, negligence or other default of the Operator under or in connection with this Contract and/or any agreement ancillary to this Contract, including the Supplemental Agreement, the Direct Award Collateral Agreement (and/or a Transfer Agreement pursuant to (and as defined in) the Direct Award Collateral Agreement); and/or
- (b) in respect of any matter for which the Operator is to indemnify the Secretary of State or, for the purpose of paragraph 5.2(b) (*Assignment of Property Leases during the Contract Term*) of Chapter 9.1 (*Fixed Assets*) or paragraph 4.5(b)(ii) (*Property Leases*) of Chapter 9.5.3 (*Obligations applying on or after Termination*) only, the Secretary of State’s nominee pursuant to this Contract or any agreement ancillary to this Contract, including the Supplemental Agreement the Direct Award Collateral Agreement (and/or a Transfer Agreement pursuant to (and as defined in) the Direct Award Collateral Agreement);

“SoS Nominee”

has the meaning given to it in paragraph 5.6 of Part 1 (*Service Quality Regime*) of Chapter 5.5 (*Customer Experience Performance*);

“SoS Service Quality Inspection”

means inspections undertaken by the Secretary of State or the Secretary of State’s agents in place of the Operator;

“SoS Service Quality Inspection Period”

has the meaning given to it in paragraph 14.2(b)(iii) of Part 1 (*Service Quality Regime*) of Chapter 5.5 (*Customer Experience Performance*);

“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 Actions”

include:

- (a) identifying, developing, designing, assessing and/or advising on options or proposals for delivering particular outputs or outcomes, including undertaking or commissioning feasibility studies; keeping records; collating

- relevant data; developing implementation plans; analysing financial, operational, practical and other impacts and risks; developing business cases; reviewing and commenting on documents, proposals, draft implementation timetables and programmes;
- (b) supplying to the Secretary of State and other relevant Specified Persons any relevant data or information that is held by the Operator or which the Operator can reasonably be expected to obtain or produce (including any documents, information or other outputs prepared pursuant to paragraph (a) above, and, where applicable, information regarding usage and financial performance of passenger services);
 - (c) providing opinions, advice, expertise, comments, commentary or analysis to relevant Specified Persons, in writing and/or by attending and actively participating in meetings, workshops, steering groups, advisory panels as may be appropriate in the circumstances;
 - (d) carrying out all the activities and actions that might reasonably be required to be carried out or undertaken by a competent train operator to support the effective, efficient and timely delivery of any improvement scheme promoted by any Specified Person;
 - (e) if requested to do so by the Secretary of State, negotiating in good faith with a Specified Person with a view to reaching agreement with that person in relation to the terms (including price) for provision of Passenger Services at any new station or on any new or reopened rail route;
 - (f) not unreasonably exercising its rights under, or raising any objections pursuant to, its Access Agreements or any industry procedures (including Network Change and Station Change) in a way designed to directly or indirectly prevent, prejudice or frustrate the implementation or achievement of any Specified Matter in a way that would frustrate the achievement of the Specified Matter;
 - (g) if requested by the Secretary of State, identifying a specific person who will act as the Operator's primary point of contact with the Secretary of State in relation to any of the Specified Matters;
 - (h) implementing any initiatives or actions that may be agreed with Specified Persons during the course of the cooperation required by paragraph 1.1 (*Duty of Cooperation*) of Chapter 3 (*Collaboration*) (but subject to paragraph 1.3 (*Duty of Cooperation*) of Chapter 3 (*Collaboration*)); and
 - (i) taking, or refraining from taking, such other actions as the Secretary of State may specify by notice to the Operator in accordance with

paragraph 1.2 (*Duty of Cooperation*) of Chapter 3 (*Collaboration*),

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

“Specified Additional Rolling Stock” has the meaning given in paragraph 1.1(b) of Chapter 4.3 (*The Rolling Stock*);

“Specified Industry Initiatives” means such Improvement Initiatives which are intended to secure improvements on a railway industry wide basis as the Secretary of State and/or relevant Infrastructure Manager may, from time to time, notify the Operator, which may include measures or initiatives in relation to:

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

“Specified Matters” include:

- (a) the identification, development and design of Improvement Initiatives, including the Specified Industry Initiatives;
- (b) NOT USED;
- (c) the planning and delivery of improvement works at Stations or Operator Access Stations, including Minor Works and other physical works to improve accessibility;
- (d) developing opportunities for financing investment at Stations and Operator Access Stations, for example in order to improve the customer experience, to improve energy efficiency and/or achieve other environmental benefits;
- (e) developing anything that can reasonably be considered to be a railway industry system, including systems in relation to the attribution of train delay, the allocation of revenue and the collection and dissemination of industry-wide information;

- (f) ensuring the continuation of passenger services across the network in a coordinated manner, and in line with the priorities and directions, as may be set out by the Secretary of State from time to time, including:
- (i) co-ordinating with other Train Operators to ensure consistency of coverage to all communities across the national network, including changes to Rail Services to assist where other Train Operators are unable to fully perform their own Rail Services;
 - (ii) assisting altered or additional freight services to operate on the national rail network and, where appropriate, enabling certain essential goods (such as medical equipment or other urgent items) to be carried on Passenger Services; and
 - (iii) continuing where possible and appropriate to enforce any agreements with third parties to deliver quality and value for money;
- (g) the design and development of any scheme promoted by a Local Authority or any other person specified in paragraph 1.3 (*Duty of Cooperation*) of Chapter 3 (*Collaboration*) aimed at providing additional or varied Passenger Services; improving any station; regenerating, redeveloping or otherwise improving the public realm in the area surrounding any station; constructing and providing passenger services at new stations; opening new railway routes or reopening disused or freight-only railway routes for passenger use; or delivering other improvements that relate to the Rail Services;
- (h) efficient planning, development and implementation of infrastructure maintenance, renewal and enhancement works, including:
- (i) planning possessions, and
 - (ii) identifying opportunities to coordinate and combine the delivery of works (e.g. renewals and enhancements),
- with a view to achieving the optimum compromise between outcomes for passengers and cost-efficiency for the railway industry and ensuring that track worker safety is a key consideration (including incorporating recommendations and learning points from Rail Accident Investigation Branch investigations such as Rail Accident Report 11/2020);
- (i) continuous improvement of train timetabling and train planning functions, including the Operational Planning Matters;
 - (j) developing and implementing initiatives relating to the Operator's participation or prospective

- participation in Industry Schemes, where such Industry Schemes relate to the Rail Services;
- (k) conserving and promoting historic buildings and structures forming part of the railway estate;
 - (l) identifying and executing joint initiatives with heritage railway lines within the area of the Rail Services, with a view to increasing their usage and providing benefit to Passengers and the community;
 - (m) facilitating the achievement of the objectives of any Specified Person, where the achievement of such objectives would:
 - (i) benefit passengers, the environment or the achievement of any other government policy objective; or
 - (ii) improve the cost efficiency of operating the railway;
 - (n) developing and implementing initiatives to improve end-to-end journeys through integrated public transport;
 - (o) 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; and
 - (p) such other activities as the Secretary of State may specify by notice to the Operator in accordance with paragraph 1.2 (*Duty of Cooperation*) of Chapter 3 (*Collaboration*);

“Specified Persons”

include:

- (a) the Secretary of State;
- (b) Network Rail;
- (c) other train operators, including any operator who is the holder of a passenger licence or non-passenger licence under the Act;
- (d) suppliers (including rolling stock lessors and maintainers);
- (e) any Local Authority or Devolved Transport Body;
- (f) the Scottish Ministers;
- (g) the Welsh Ministers;
- (h) the British Transport Police;
- (i) the ORR;
- (j) the RSSB;
- (k) the Passengers’ Council;
- (l) the London Transport Users’ Committee;
- (m) the Accessibility Panel and other bodies representing the interests of persons who share protected characteristics within the meaning of the EA 2010;

- (n) NOT USED;
- (o) HS2 Limited;
- (p) any Successor Shadow Operator;
- (q) NOT USED;
- (r) the Railway Heritage Trust;
- (s) the RDG;
- (t) the RRRG;
- (u) any other rail industry body not identified above;
- (v) any local operators of non-rail public transport; and
- (w) such other persons as the Secretary of State may specify by notice to the Operator in accordance with paragraph 1.2 (*Duty of Cooperation*) of Chapter 3 (*Collaboration*),

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

“SQR Benchmark”

means any SQR Station Benchmark, SQR Train Benchmark or SQR Customer Service Benchmark (as the context may require);

“SQR Component”

means each of the:

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

“SQR Contract”

means any contract between the Operator and the SQR Contractor pursuant to which the SQR Contractor provides any of the SQR Services;

“SQR Contractor”

means any contractor appointed by the Operator under the SQR Contract to undertake any of the SQR Services;

“SQR Customer Service”

means the services measured by the indicators set out in Part 3 (*SQR Customer Service*) of the Service Quality Schedules;

“SQR Customer Service Benchmark”

means the benchmark for each Service Quality Area relating to SQR Customer Service as set out as part of the Annual PBF Specifications in the Business Plan, or as may be agreed or determined in accordance with paragraph 18.1 of Part 1 of Chapter 5.5 (*Customer Experience Performance*) or paragraph 2.7(b) of Chapter 7.2 (*Performance Based Fee and Shadow Operator Performance Based Fee*);

“SQR Customer Service Component”

means those Service Quality Areas that relate to customer service, as more particularly described in paragraph 3 (*Service Quality Standards*) of Appendix 5 (*Quantified Target Methodology*) of Chapter 7.2 (*Performance Based Fee and Shadow Operator Performance Based Fee*);

“SQR Data”

means any and all data:

- (i) generated or collected by or under the SQR Management System;

- (ii) obtained as a result of the Service Quality Inspections, Service Quality Re-inspections and Service Quality Rectification Evidence;
- (iii) contained in the SQR Register; or
- (iv) otherwise obtained under or in connection with the Service Quality Regime for and on behalf of the Operator;

“SQR Expected Fee Performance Level”

means, in respect of the relevant SQR Component, the specified value in relation to SQR performance as set out as part of the Annual PBF Specifications in the Business Plan, or otherwise agreed or determined (as applicable) in accordance with paragraph 2.7(b) of Chapter 7.2 (*Performance Based Fee and Shadow Operator Performance Based Fee*);

“SQR Management System”

has the meaning given to it in paragraph 2.1 of Part 1 (*Service Quality Regime*) of Chapter 5.5 (*Customer Experience Performance*);

“SQR Maximum Fee Performance Level”

means, in respect of the relevant SQR Component, the specified value in relation to SQR performance as set out as part of the Annual PBF Specifications in the Business Plan, or otherwise agreed or determined (as applicable) in accordance with paragraph 2.7(b) of Chapter 7.2 (*Performance Based Fee and Shadow Operator Performance Based Fee*);

“SQR Nil Fee Performance Level”

means, in respect of the relevant SQR Component, the specified value in relation to SQR performance as set out as part of the Annual PBF Specifications in the Business Plan, or otherwise agreed or determined (as applicable) in accordance with paragraph 2.7(b) of Chapter 7.2 (*Performance Based Fee and Shadow Operator Performance Based Fee*);

“SQR Register”

means the register of the facilities and services which exist on a SQR Train and at a SQR Station and which is to be used for carrying out:

- (a) Service Quality Inspections; and
- (b) Independent Service Quality Audits, SoS Audits or SoS Service Inspections,

in each case, as such register is required pursuant to paragraph 2.2 of Part 1 (*Service Quality Regime*) of Chapter 5.5 (*Customer Experience Performance*);

“SQR Services”

means the following services:

- (a) the Service Quality Inspections, Service Quality Re-inspections and Service Quality Rectification Evidence;
- (b) the creation, setting up, hosting and/or running of the SQR Management System; and/or
- (c) the creation, setting up, hosting and/or maintaining of the SQR Register,

(together the **“SQR Services”**);

“SQR Station”

means the Stations and London Euston station;

“SQR Station Benchmark”	means the benchmark for each Service Quality Area relating to SQR Stations as set out as part of the Annual PBF Specifications in the Business Plan, or as may be agreed or determined in accordance with paragraph 18.1 of Part 1 of Chapter 5.5 (<i>Customer Experience Performance</i>) or paragraph 2.7(b) of Chapter 7.2;
“SQR Stations Component”	means those Service Quality Areas that relate to SQR Stations, as more particularly described in paragraph 3 (<i>Service Quality Standards</i>) of Appendix 5 (<i>Quantified Target Methodology</i>) of Chapter 7.2 (<i>Performance Based Fee and Shadow Operator Performance Based Fee</i>);
“SQR Targets”	means, in relation to each SQR Component, in the relevant PBF Assessment Period, the: <ul style="list-style-type: none"> (a) SQR Nil Fee Performance Level; (b) SQR Expected Fee Performance Level; and (c) SQR Maximum Fee Performance Level; as specified as part of the Annual PBF Specifications in the Business Plan, or as may be agreed or determined in accordance with paragraph 2.7(b) (<i>Changes to the Applicable Assessment Methodology</i>) or paragraph 5 (<i>Effect of alterations to the PBF Assessment Period</i>) of Chapter 7.2 (<i>Performance Based Fee and Shadow Operator Performance Based Fee</i>);
“SQR Train”	means a train engaged in the provision of Passenger Services;
“SQR Train Benchmark”	means the benchmark for each Service Quality Area relating to SQR Trains as set out as part of the Annual PBF Specifications in the Business Plan, or as may be agreed or determined in accordance with paragraph 18.1 of Part 1 of Chapter 5.5 (<i>Customer Experience Performance</i>) or paragraph 2.7(b) of Chapter 7.2;
“SQR Trains Component”	means those Service Quality Areas that relate to trains engaged in the provision of Passenger Services as more particularly described in paragraph 3 (<i>Service Quality Standards</i>) of Appendix 5 (<i>Quantified Target Methodology</i>) of Chapter 7.2 (<i>Performance Based Fee and Shadow Operator Performance Based Fee</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/classificationsandstandards/standardoccupationalclassificationsoc/soc2010/soc2010volume2thestructureandcodingindex ;
“Start Date”	means the time and date on which the Operator is to commence operating the Rail Services, which shall be 02:00 on 15 October 2023;
“Station”	means: <ul style="list-style-type: none"> (a) any station in respect of which the Operator has entered into a Station Lease; or (b) any New Station at which the Operator becomes the Facility Owner;
“Station Access Conditions”	has the meaning given to it in the relevant Access Agreement to which it relates;
“Station Asset Management Plan”	means the document in the agreed terms marked SAMP provided by the Operator pursuant to the Previous Agreement and as amended from time to time in accordance with the provisions of Chapter 9.1 (<i>Fixed Assets</i>);
“Station Asset Management Plan Accreditation”	means the certification of the Operator’s station asset management organisation and systems for Stations as complying with the requirements of ISO55001:2014 (or such other reasonably equivalent standard as may be Approved in writing by the Secretary of State from time to time in place of ISO55001:2014);
“Station Change”	has the meaning given to the term “Proposal for Change” under the Station Access Conditions or any proposal or arrangement which, in the opinion of the Secretary of State, has a similar effect;
“Station Lease” or “SL”	means: <ul style="list-style-type: none"> (a) any lease of a station that the Operator is a party to as at the Start Date; or (b) a lease of any other station to which the Operator becomes the Facility Owner at any time during the Contract Period;
“Station Services”	means: <ul style="list-style-type: none"> (a) the provision of any services to persons at Stations or to Train Operators whose trains call at such Stations, provided that such services: <ul style="list-style-type: none"> (i) are made available only or principally to passengers alighting from or joining trains calling at such Stations and to such Train Operators; (ii) are provided in connection with the calling of trains at such Stations and are not designed to encourage passengers or other persons to use such Station Services other than in connection with a journey on a train calling at such Stations;

- (iii) exclude the sale or issue (for a charge) of any goods other than passenger timetables and any items included in the price of a Fare; and
 - (iv) may include the provision of car parking spaces;
 - (b) the provision of access to any person under an Access Agreement at any Station; and
 - (c) the provision of any service which the Operator may provide, or may be required to provide, under any Access Agreement;
- “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 Chapter 5.5 (*Customer Experience Performance*);
- “Station Sublease”** means a lease or sub lease of premises comprising part or parts of a Station exclusively occupied by another Train Operator;
- “Stored Credit Balance”** means any monetary amount held by the Operator which a passenger can apply at a future date to the purchase of a Fare (and stored in any medium);
- “Strategic Market Report”** has the meaning given to it in paragraph 35.1 of the Accepted Programme Specific Requirements Document;
- “Strategic Operational Baseline Forecast”** means the forecast of the costs and revenues expected in relation to the Integrated Services on the basis of the IO Baseline Comparator which is derived from the IO Modelling Suite, as most recently Placed in Escrow;
- “STS Amount”** means the amount of “*Season Ticket Suspense*” as recorded on the LENNON database in respect of the Operator;
- “Subcontractor”** has the meaning given to it in paragraph 6.3(b) of Chapter 9.3 (*Branding and Intellectual Property*);
- “Subsequent Business Plan Year”** means any period of twelve (12) months beginning on 1 April and ending on the following 31 March, that commences:
- (a) upon or after the date of expiry of the Initial Business Plan Year; and
 - (b) before the end of the Contract Term,
- (regardless of whether such period extends beyond the Contract Term), provided that if it is so agreed or determined in accordance with paragraphs 3 (*Annual Business Plan Process*) or 6 (*Business Plan Revisions*) of Chapter 7.7 (*Business Plan*), the final Subsequent Business Plan Year shall be the Extended Final Year;
- “Subsidies Rules”** has the meaning given in paragraph 7 (*Subsidy Control, State Aid and Procurement Regulations*) of Chapter 9.7 (*Miscellaneous Legal Terms*);
- “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:

- (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 or in the case of the Shadow Operator Services any third party, succeeding or intended by the Secretary of State to succeed (and whose identity is notified to the Operator by the Secretary of State) the Operator in the provision or operation of all or any of the Rail Services including, where the context so admits:

- (a) the Operator where it is to continue to provide or operate the Rail Services following termination of this Contract; and/or
- (b) any Successor Shadow Operator;

“Successor Operator Timetable”

has the meaning given to it in paragraph 9.2(a) of Chapter 9.5.3 (*Provisions applying on and after Termination*);

“Successor Shadow Operator”

means any third party succeeding or intended by the Secretary of State to succeed (and whose identity is notified to the Operator by the Secretary of State) the Operator in provision of services similar or equivalent to the Shadow Operator Services including, where the

	context so admits, the Operator where it is to continue to provide or operate services similar or equivalent to the Shadow Operator Services following termination of this Contract;
“Suicide Prevention Duty Holders Group”	means the cross industry steering group which directly governs and oversees the management and delivery of the rail industry’s suicide prevent programme and which is made of representatives from those organisations within the industry that have responsibility for preventing suicide on the railway;
“Suicide Prevention Duty Holders’ Group’s 9 Point Plan”	means the best practice plan established and published by the “ <i>cross-industry suicide prevention group</i> ”, setting out nine deliverables aimed at suicide reduction (as amended or replaced from time to time);
“Suicide Prevention Plan”	means the Operator’s suicide prevention plan developed under the Previous Agreement, as may be updated from time to time in accordance with this Contract;
“Suicide Prevention Strategy”	means the ‘ <i>From Crisis to Care</i> ’ strategy document for the period 2016-2019 (as amended or replaced from time to time) published by the British Transport Police;
“Supplemental Agreement”	means a supplemental agreement between the Operator and a Successor Operator to be entered into pursuant to a Transfer Scheme, being substantially in the form of the document entitled Supplemental Agreement in the agreed terms, but subject to such amendments as the Secretary of State may make thereto as a result of any change of circumstances (including any Change of Law) affecting such supplemental agreement between the date of this Contract and the date on which the relevant Transfer Scheme is made and subject further to paragraph 3.2 of Chapter 9.5.3 (<i>Provisions applying on and after Termination</i>);
“Systems Integrator”	means HS2 Limited acting in its role as “systems integrator” to ensure that the separate supplier packages relating to the Conventional Rail Network, HS2 Network, HS2 Systems and High Speed Rolling Stock are integrated in order to provide a functioning and integrated railway system on the HS2 Network and the Conventional Rail Network;
“Systems Separability Plan”	means the Operator’s plan for the separability of any computer and information technology systems of the Operator shared in whole or in part with Affiliates of the Operator or third parties (including systems relating to human resources, finance and payroll and call centres) and the retrieval of all data contained within such systems on the expiry of the Contract Period or in the event of any earlier termination, which shall: <ul style="list-style-type: none"> (a) include such information as specified by the Secretary of State; and (b) demonstrate how the business of providing Rail Services can be transferred as a going concern (in accordance with paragraph 6 (<i>Maintenance as a going concern</i>) of Chapter 9.5.2 (<i>Reletting Provisions and Maintenance as a going concern</i>)),

	as may be updated and amended from time to time in accordance with this Contract;
“Systems and Assets Matrix Workbook” or “SAMW”	means the document in the agreed terms marked SAMW and has the meaning given to it in paragraph 4(a) of Appendix 1 (<i>Form of Handover Package</i>) to Chapter 9.5.1 (<i>Handover Package</i>);
“T-3 Measure”	means, for each Reporting Period each of the benchmarks specified in the T-3 Table for that Reporting Period;
“T-3 Table”	means the table entitled, “T-3 Table” as set out as part of the Annual PBF Specifications in the Business Plan;
“T-15 Measure”	means, for each Reporting Period each of the benchmarks specified in the T-15 Table for that Reporting Period;
“T-15 Table”	means the table entitled, “T-15 Table” as set out as part of the Annual PBF Specifications in the Business Plan;
“Target Cost” or “TC”	means the value agreed or determined (as applicable) pursuant to paragraph 3.1 (<i>Target Cost</i>) of Chapter 7.2 (<i>Performance Based Fee and Shadow Operator Performance Based Fee</i>) and specified in the Target Cost Template within the Financial Model, as may be amended pursuant paragraphs 4 (<i>Target Amendments</i>), 5 (<i>Effect of alterations to the PBF Assessment Period</i>) or 6 (<i>Exceptional Events</i>) of Chapter 7.2 (<i>Performance Based Fee and Shadow Operator Performance Based Fee</i>);
“Target Cost Maximum Fee Performance Level” or “TCMax”	means the value agreed or determined (as applicable) pursuant to paragraph 3.1 (<i>Target Cost</i>) of Chapter 7.2 (<i>Performance Based Fee and Shadow Operator Performance Based Fee</i>) and specified in the Target Cost Template within the Financial Model, as may be amended pursuant paragraphs 4 (<i>Target Amendments</i>), 5 (<i>Effect of alterations to the PBF Assessment Period</i>) or 6 (<i>Exceptional Events</i>) of Chapter 7.2 (<i>Performance Based Fee and Shadow Operator Performance Based Fee</i>);
“Target Cost Nil Fee Performance Level” or “TCNil”	means the value agreed or determined (as applicable) pursuant to paragraph 3.1 (<i>Target Cost</i>) of Chapter 7.2 (<i>Performance Based Fee and Shadow Operator Performance Based Fee</i>) and specified in the Target Cost Template within the Financial Model, as may be amended pursuant paragraphs 4 (<i>Target Amendments</i>), 5 (<i>Effect of alterations to the PBF Assessment Period</i>) or 6 (<i>Exceptional Events</i>) of Chapter 7.2 (<i>Performance Based Fee and Shadow Operator Performance Based Fee</i>);
“Target Cost Template”	has the meaning given to it in paragraph 3.1(a) (<i>Target Cost</i>) of Chapter 7.2 (<i>Performance Based Fee and Shadow Operator Performance Based Fee</i>);
“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 Profit” or “TP”	means the value agreed or determined (as applicable) pursuant to paragraph 3.3 (<i>Target Profit</i>) of Chapter 7.2 (<i>Performance Based Fee and Shadow Operator Performance Based Fee</i>) and specified in the Target Profit Template within the Financial Model, as may be amended

	pursuant paragraphs 4 (<i>Target Amendments</i>), 5 (<i>Effect of alterations to the PBF Assessment Period</i>) or 6 (<i>Exceptional Events</i>) of Chapter 7.2 (<i>Performance Based Fee and Shadow Operator Performance Based Fee</i>);
“Target Profit Maximum Fee Performance Level” or “TPMax”	means the value agreed or determined (as applicable) pursuant to paragraph 3.3 (<i>Target Profit</i>) of Chapter 7.2 (<i>Performance Based Fee and Shadow Operator Performance Based Fee</i>) and specified in the Target Profit Template within the Financial Model, as may be amended pursuant paragraphs 4 (<i>Target Amendments</i>), 5 (<i>Effect of alterations to the PBF Assessment Period</i>) or 6 (<i>Exceptional Events</i>) of Chapter 7.2 (<i>Performance Based Fee and Shadow Operator Performance Based Fee</i>);
“Target Profit Nil Fee Performance Level” or “TPNil”	means the value agreed or determined (as applicable) pursuant to paragraph 3.3 (<i>Target Profit</i>) of Chapter 7.2 (<i>Performance Based Fee and Shadow Operator Performance Based Fee</i>) and specified in the Target Profit Template within the Financial Model, as may be amended pursuant paragraphs 4 (<i>Target Amendments</i>), 5 (<i>Effect of alterations to the PBF Assessment Period</i>) or 6 (<i>Exceptional Events</i>) of Chapter 7.2 (<i>Performance Based Fee and Shadow Operator Performance Based Fee</i>);
“Target Profit Template”	has the meaning given to it in paragraph 3.3(a) (<i>Target Profit</i>) of Chapter 7.2 (<i>Performance Based Fee and Shadow Operator Performance Based Fee</i>);
“Target Revenue” or “TR”	means the value agreed or determined (as applicable) pursuant to paragraph 3.2 (<i>Target Revenue</i>) of Chapter 7.2 (<i>Performance Based Fee and Shadow Operator Performance Based Fee</i>) and specified in the Target Revenue Template within the Financial Model, as may be amended pursuant paragraphs 4 (<i>Target Amendments</i>), 5 (<i>Effect of alterations to the PBF Assessment Period</i>) or 6 (<i>Exceptional Events</i>) of Chapter 7.2 (<i>Performance Based Fee and Shadow Operator Performance Based Fee</i>);
“Target Revenue Maximum Fee Performance Level” or “TRMax”	means the value agreed or determined (as applicable) pursuant to paragraph 3.2 (<i>Target Revenue</i>) of Chapter 7.2 (<i>Performance Based Fee and Shadow Operator Performance Based Fee</i>) and specified in the Target Revenue Template within the Financial Model, as may be amended pursuant paragraphs 4 (<i>Target Amendments</i>), 5 (<i>Effect of alterations to the PBF Assessment Period</i>) or 6 (<i>Exceptional Events</i>) of Chapter 7.2 (<i>Performance Based Fee and Shadow Operator Performance Based Fee</i>);
“Target Revenue Nil Fee Performance Level” or “TRNil”	means the value agreed or determined (as applicable) pursuant to paragraph 3.2 (<i>Target Revenue</i>) of Chapter 7.2 (<i>Performance Based Fee and Shadow Operator Performance Based Fee</i>) and specified in the Target Revenue Template within the Financial Model, as may be amended pursuant paragraphs 4 (<i>Target Amendments</i>), 5 (<i>Effect of alterations to the PBF Assessment Period</i>) or 6 (<i>Exceptional Events</i>) of Chapter 7.2 (<i>Performance Based Fee and Shadow Operator Performance Based Fee</i>);
“Target Revenue Template”	has the meaning given to it in paragraph 3.2(a) (<i>Target Revenue</i>) of Chapter 7.2 (<i>Performance Based Fee and Shadow Operator Performance Based Fee</i>);

“Taxation”	means any kind of tax, duty, levy or other charge whether or not similar to any in force at the date of this Contract and whether imposed by a local, governmental or other competent authority in the United Kingdom or elsewhere;
“TDR Amendment”	has the meaning given to it in paragraph 4.6 (TDR Amendments) of Chapter 4.1 (<i>Service Development</i>);
“Technical Support Contract”	means a contract for technical support to which the Operator is a party, relating to the rolling stock vehicles used in the provision of the Passenger Services;
“Tendering/Reletting Process”	means either of the processes described in paragraph 1.1 and 1.2 of Chapter 9.5.2 (<i>Reletting Provisions and Maintenance as a Going Concern</i>);
“Termination Event”	means any or each of the following: <ul style="list-style-type: none"> (a) any Force Majeure Event continues with the effect of preventing the Operator from delivering, wholly or mainly, the Passenger Services for more than six (6) consecutive months; or (b) the warranty given by the Operator pursuant to paragraph 3.2 (<i>Tax Compliance</i>) of Chapter 9.7 (<i>Miscellaneous Legal Terms</i>) is materially untrue; or (c) the Operator 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 required by paragraph 3.2(b)(i) (<i>Tax Compliance</i>) of Chapter 9.7 (<i>Miscellaneous Legal Terms</i>); or (d) the Operator fails to provide details of proposed mitigating factors as required by paragraph 3.2(b)(ii) (<i>Tax Compliance</i>) of Chapter 9.7 (<i>Miscellaneous Legal Terms</i>) which in the opinion of the Secretary of State, are acceptable; or (e) the Secretary of State serves a Competition Event Notice on the Operator pursuant to paragraph 6 (<i>Competition</i>) of Chapter 9.7 (<i>Miscellaneous Legal Terms</i>); or (f) any Force Majeure Event continues with the effect of preventing the Operator from delivering, wholly or mainly, the Shadow Operator Services for more than six (6) consecutive months; or (g) the HS2 Project is cancelled;
“Termination Notice”	means a notice from the Secretary of State to the Operator terminating the National Rail Contract following an Event of Default or a Termination Event in accordance with Chapter 9.4.1 (<i>Events of Default and Termination Events</i>);
“Termination Sum”	has the meaning given in the ERMA;
“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 Operator and which the Secretary of State decides (in the Secretary of State’s discretion) to add to the RPC Database;

“Third Party Trade Mark”	means any trade mark which: <ul style="list-style-type: none"> (a) is owned or licensed by a third party; (b) does not relate to the Operator or any Affiliate of the Operator; (c) any Successor Operator can reasonably be expected to continue to display on the assets to which it is applied; and (d) is reasonably and legitimately used in the ordinary course of the Operator’s provision of the Rail Services;
“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 Chapter 8.2.8 (<i>Transport, Travel and Other Schemes</i>);
“2017 Ticket Revenue”	has the meaning given to it in paragraph 4 of Chapter 8.2.4 (<i>Regulation of Fares Basket Values and Individual Fares</i>);
“Ticketing and Settlement Agreement”	means the Ticketing and Settlement Agreement dated 23 July 1995 between RSP, the Operator and the other Train Operators named therein, as amended from time to time with the approval of the Secretary of State;
“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 Surveys conducted within that Ticketless Travel Survey Period to be associated with passengers travelling on the Passenger Services without a valid ticket or other valid permission to travel;
“Ticketless Travel Survey”	means for the purposes of paragraph 1 of Part A of Chapter 8.1 (<i>Marketing and Revenue Growth</i>), the survey carried out by or on behalf of the Secretary of State in each Ticketless Travel Survey Period for the purposes of submitting to the Secretary of State the report required pursuant to paragraph 1.3 of Part A of Chapter 8.1 (<i>Marketing and Revenue Growth</i>);
“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 (or such alternative periods as the Secretary of State may specify) for the purposes of paragraph 2 of Part A of Chapter 8.1 (<i>Marketing and Revenue Growth</i>): <ul style="list-style-type: none"> (a) the first to the sixth Reporting Period (inclusive) to fall in any Contract Year; and (b) the seventh to the thirteenth Reporting Period (inclusive) to fall in any Contract Year;
“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 Rail Services 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 Rail Services 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 National Rail Timetable containing the departure and arrival times of: <ul style="list-style-type: none"> (a) all Passenger Services which call at Stations and/or Operator Access Stations; and (b) principal Connections at those stations and other stations;
“Timetable Development Rights”	means all or any of the rights of the Operator under any Track Access Agreement to: <ul style="list-style-type: none"> (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 Operator 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;
“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 08:47 service departing London Euston to Glasgow Central on a Sunday etc.);
“Timetabling and Train Planning Compliance Investigation”	has the meaning set out in paragraph 2.1 of Chapter 4.2 (<i>Operating Obligations</i>);
“TMM”	means the train manufacturer and maintainer to be appointed by HS2 Limited in respect of the procurement of the High Speed Rolling Stock;

“TOC Affiliate”	means any Affiliate which provides Rail Passenger Services pursuant to a national rail contract (or any successor contract) between the relevant Affiliate and the Secretary of State;
“TOC Affiliate Secondment Costs”	the actual Payroll Costs incurred by the Affiliate in connection with employing relevant person, solely for the period during which they are seconded to the Operator to undertake Shadow Operator Services without any profit or overhead addition. The TOC Affiliate Secondment Costs shall be calculated as follows: <i>TOC Affiliate Secondment Costs = Payroll Costs × $\frac{A}{B}$</i> where: A means the number of calendar days spent on secondment to the Operator to undertake Shadow Operator Services during the relevant calendar year; B means the total number of days in the relevant calendar year;
“TOC Minutes Delay”	means the relevant measure by which the Operator’s operational performance is assessed, as described in and calculated in accordance with paragraph 4.1 (<i>TOC Minutes Delay Calculations</i>) of Chapter 4.4 (<i>Operational Performance</i>);
“TOC Minute Delay Benchmark Table”	means the table entitled “ <i>TOC Minute Delay Benchmarks</i> ” as set out as part of the Annual PBF Specifications in the Business Plan;
“TOC Minutes Delay Re-Calculation”	has the meaning given to it in paragraph 4.1(b) of Chapter 4.4 (<i>Operational Performance</i>);
“TOC on Self Cancellations”	means the relevant measure by which the Operator’s operational performance is assessed, as described in and calculated in accordance with paragraph 3.1 (<i>TOC on Self Cancellation Calculation</i>) of Chapter 4.4 (<i>Operational Performance</i>);
“TOC on Self Cancellations Benchmark Table”	means the table entitled “ <i>TOC on Self Cancellations Benchmarks</i> ” as set out as part of the Annual PBF Specifications in the Business Plan;
“TOC on Self Cancellations Re-Calculation”	has the meaning given to it in paragraph 3.1(b) of Chapter 4.4 (<i>Operational Performance</i>);
“Track Access Agreement”	means, in relation to the: (a) Conventional Rail Network, the Network Rail Track Access Agreement; and (b) HS2 Network, the HS2 Track Access Agreement, and a reference to a “ Track Access Agreement ” means either the Network Rail Track Access Agreement or the HS2 Track Access Agreement as the context requires;
“Traction Electricity Rules”	means the document known as the “ <i>Traction Electricity Rules</i> ” published by Network Rail on its website and as may be amended from time to time;

“Trade and Cooperation Agreement”	means the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the One Part, and the United Kingdom of Great Britain and Northern Ireland, of the Other Part signed on 30 December 2020;
“Trade Mark”	means any registered or unregistered trade mark either: <ul style="list-style-type: none"> (a) licensed by the Secretary of State under the Brand Licence; or (b) specified in Appendix 1 (<i>List of Operator Trade Marks</i>) to Chapter 9.3 (<i>Branding and Intellectual Property</i>), but excluding the Primary Brands and any Secondary Brands;
“Trade Union”	means any trade union(s) recognised by the Operator or any Relevant Employer in respect of Business Employees;
“Train Crew Numbers Data”	has the meaning given to it in paragraph 3.3 (<i>Sharing further data with Network Rail</i>) of Chapter 3 (<i>Collaboration</i>);
“Train Fleet”	means: <ul style="list-style-type: none"> (a) the rolling stock vehicles described in or required by Chapter 4.3 (<i>The Rolling Stock</i>); and (b) any other rolling stock vehicles the Secretary of State consents to in accordance with paragraph 2 of Chapter 4.3 (<i>The Rolling Stock</i>);
“Train Formation Capacity Plan” or “TFCP”	means the plan (including sub-plans) prepared by the Operator for the operation of trains and train formations under the Timetable that best matches available capacity to Forecast Passenger Demand as amended from time to time during the Contract Period in accordance with this Contract;
“Train Operator”	means a franchisee, franchise operator or other operator, which in each case operate railway passenger services pursuant to a franchise agreement (or equivalent agreement) or a Public Sector Operator;
“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 Part 1 (<i>Service Quality Regime</i>) of Chapter 5.5 (<i>Customer Experience Performance</i>);
“Train Service Requirement” or “TSR”	means the train service requirement more particularly described in paragraph 1 of Chapter 4.1 (<i>Service Development</i>) as such train service requirement may subsequently be amended or replaced in accordance with Chapter 4.1 (<i>Service Development</i>);
“Train Slot”	has the meaning given to it in the Network Code;
“Transaction”	means the entry into the National Rail Contract by the Secretary of State and the Operator;
“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 Chapter 9.5.3 (<i>Provisions applying on and after Termination</i>), being substantially in the form of the document entitled Transfer Scheme in the agreed terms, 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 this Contract and the date on which such scheme is made;
“Transitional Programme”	means the programme of activities to enable the commencement of High Speed Services marked ShOpTP as from time to time updated in accordance with Appendix 1 (<i>Shadow Operator Programmes</i>) to Chapter 7.7 (<i>Business Plan</i>) and Placed in Escrow;
“Transitional Programme Specific Requirement”	means those Shadow Operator Services set out in the <i>Transitional Programme Specific Requirements Document</i> ;
“Transitional Programme Specific Requirements Document”	means the annex to the Transitional Programme;
“Transitory Branding”	has the meaning given to it in paragraph 2.1 (<i>Removal of Branding</i>) of Chapter 9.3 (<i>Branding and Intellectual Property</i>);
“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 Contract at: https://www.gov.uk/government/publications/transport-infrastructure-skills-strategy-building-sustainable-skills);
“Transport Scotland”	means the national transport agency of Scotland created on 1 January 2006 which is an Executive Agency of the Scottish Government and accountable to Scottish Ministers;
“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 Chapter 8.2.8 (<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”	means the threat, risk harm score for each Station calculated by the British Transport Police in accordance with the BTP Methodology at railway stations;

“Trigger Event”	means if and when any of the following occurs: (a) any Cost Budget Change Event; (b) any Financial Target Amendment Event; and/or (c) any Operational Performance Target Amendment Event;
“Trustee”	has the meaning given to it in paragraph 4.1 of Chapter 7.6 (<i>Railways Pension Scheme</i>);
“TSI”	means any Technical Standard for Interoperability with which the Operator is required to comply pursuant to Directives EU 96/48 and EU 2001/16 and related legislation;
“TT Action Plan”	has the meaning given to it in paragraph 2.2(a)(i) of Chapter 8.1 (<i>Marketing and Revenue Growth</i>);
“TT Deemed”	has the meaning given to it in paragraph 2.1 (<i>Ticketless Travel Survey Periods Calculations</i>) of Chapter 8.1 (<i>Marketing and Revenue Growth</i>);
“TT Expected Fee Performance Level” or “TTE”	means, in respect of the FP TT Sub-Component, the specified value in relation to the FP TT Sub-Component as set out as part of the Annual PBF Specifications in the Business Plan, or otherwise agreed or determined (as applicable) in accordance with paragraph 2.7(b) or paragraph 5 (<i>Effect of alterations to the PBF Assessment Period</i>) of Chapter 7.2 (<i>Performance Based Fee and Shadow Operator Performance Based Fee</i>);
“TT Maximum Fee Performance Level” or “TTMax”	means, in respect of the FP TT Sub-Component, the specified value in relation to the FP TT Sub-Component as set out as part of the Annual PBF Specifications in the Business Plan, or otherwise agreed or determined (as applicable) in accordance with paragraph 2.7(b) or paragraph 5 (<i>Effect of alterations to the PBF Assessment Period</i>) of Chapter 7.2 (<i>Performance Based Fee and Shadow Operator Performance Based Fee</i>);
“TT Nil Fee Performance Level” or “TTNil”	means, in respect of the FP TT Sub-Component, the specified value in relation to the FP TT Sub-Component as set out as part of the Annual PBF Specifications in the Business Plan, or otherwise agreed or determined (as applicable) in accordance with paragraph 2.7(b) or paragraph 5 (<i>Effect of alterations to the PBF Assessment Period</i>) of Chapter 7.2 (<i>Performance Based Fee and Shadow Operator Performance Based Fee</i>);
“TT Targets”	means, in relation to the FP TT Sub-Component, in the relevant PBF Assessment Period, the: (a) TT Nil Fee Performance Level; (b) TT Expected Fee Performance Level; and (c) TT Maximum Fee Performance Level;
“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;

“UK GDPR”	means the United Kingdom General Data Protection Regulation, as it forms part of the law of England and Wales, Scotland and Northern Ireland by virtue of section 3 of the European Union (Withdrawal) Act 2018;
“Undisclosed Shadow Operator TUPE Employee”	has the meaning given to it in paragraph 9.2(d) of Chapter 11.1 (<i>Shadow Operations</i>);
“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;
“Undisputed Partial Cancellation”	means a Partial Cancellation that is not a Disputed Partial Cancellation;
“Universal Licence Agreement”	means a licence which permits the Operator to obtain copies of and use copyrighted material contained in certain rolling stock technical diagrams held by Railway Documentation and Drawing Services Ltd (or any other entity by which such rolling stock technical diagrams are subsequently held);
“Unrepresented Employees”	has the meaning given to it in paragraph 1.6 of Chapter 2.2 (<i>Rail Workforce</i>);
“Uplift Date”	has the meaning given in paragraph 5.3(b) of Chapter 11.1 (<i>Shadow Operations</i>);
“Uplift Notification”	means a notice issued by the Secretary of State to the Operator in accordance with paragraph 5.3 of Chapter 11.1 (<i>Shadow Operations</i>);
“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;
“Value for Money” or “VfM”	means the utilisation of public resources so as to create and maximise public value;
“Value for Money Assessment”	means an assessment of whether public resources are being utilised so as to create and maximise public value, such assessment being carried out in a manner consistent with HM Treasury’s <i>The Green Book</i> : appraisal and evaluation in central government, the Department for Transport’s <i>Transport analysis guidance: WebTAG</i> , the Department for Transport’s <i>Value-for-Money Framework</i> , HM Treasury’s <i>Managing Public Money</i> and, where appropriate, the <i>Passenger Demand Forecasting Handbook</i> or equivalent documentation from time to time;
“Variation”	means a variation to the terms of this Contract pursuant to paragraph 8 of Chapter 7.5 (<i>Variations, Changes and Amendments</i>);
“VCSE”	means Voluntary, Community and Social Enterprise, a non-governmental organisation that is value-driven and which principally reinvests its surpluses to further social, environmental or cultural objectives. VCSEs include small local community and voluntary groups, registered

	charities, foundations, trusts and the growing number of social enterprises and co-operatives;
“Wavelength Programme”	means the programme of work being developed by the rail industry which involves collecting a wide range of information about the customer experience by tracking, amongst other things, the Operator's performance against certain journey touchpoints (as specified in the Wavelength Survey) and certain key commitments based on core passenger priorities;
“Wavelength Survey”	means the weekly survey relating to the Passenger Services (in such form as may be agreed from time to time), which is undertaken as part of the Wavelength Programme to monitor, amongst other things, the Operator's performance against certain journey touchpoints (as specified in the Wavelength Survey) and certain key commitments based on core passenger priorities;
“W_{CE}”	means the aggregate weighting of the customer experience element of the Performance Based Fee (comprising the aggregate of the Service Quality Standards Fee and the Customer Satisfaction Fee) as specified as part of the Annual PBF Specifications in the Business Plan;
“W_{CS}”	means the weighting of the Customer Satisfaction Fee expressed as a percentage of the customer experience element of the Performance Based Fee and which shall be forty per cent (40%);
“W_{PP}”	means the percentage weighting applicable to that portion of the Maximum Performance Based Fee attributable to each PBF Component and Applicable FP Sub-Component for the PBF Assessment Part-Period and shall be calculated as: $\frac{\text{No. of Reporting Periods in the PBF Assessment Part Period}}{\text{No. of Reporting Periods in the PBF Assessment Period}}$ unless otherwise agreed or determined by the Secretary of State, in which case such percentage weighting shall be specified as part of the Annual PBF Specifications in the Business Plan;
“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 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;
“W_{FIN}”	means the weighting of the Financial Performance Fee expressed as a percentage of the Performance Based Fee, specified as part of the Annual PBF Specifications in the Business Plan;
“W_{FINC}”	means the weighting to be applied to the FP Cost Sub-Component when calculating the amount of the Financial Performance Fee for that PBF Assessment Period, being

	the percentage specified as part of the Annual PBF Specifications in the Business Plan;
“W _{FINR} ”	means the weighting to be applied to the FP Revenue Sub-Component when calculating the amount of the Financial Performance Fee for that PBF Assessment Period, being the percentage specified as part of the Annual PBF Specifications in the Business Plan or as may be amended from time to time in accordance with this Contract;
“W _{FINTT} ”	means, where the Applicable Assessment Methodology with respect to the Financial Performance Fee applies the FP TT QTM, the weighting to be applied to the FP TT Sub-Component when calculating the amount of the Financial Performance Fee for that PBF Assessment Period, being the percentage specified as part of the Annual PBF Specifications in the Business Plan or as may be amended from time to time in accordance with this Contract;
“Withdrawal of Approval Date”	has the meaning given to it in paragraph 5.1 of Chapter 1.3 (<i>Approval Process</i>);
“W _{OP} ”	means the weighting of the Operational Performance Fee expressed as a percentage of the Performance Based Fee, specified as part of the Annual PBF Specifications in the Business Plan;
“W _{OPAC} ”	means the percentage weighting applicable to All Cancellations, specified as part of the Annual PBF Specifications in the Business Plan or as may be amended from time to time in accordance with this Contract; and
“W _{OPC} ”	means the percentage weighting applicable to TOC on Self Cancellations, specified as part of the Annual PBF Specifications in the Business Plan or as may be amended from time to time in accordance with this Contract;
“W _{OPMD} ”	means the percentage weighting applicable to TOC Minutes Delay, specified as part of the Annual PBF Specifications in the Business Plan or as may be amended from time to time in accordance with this Contract;
“W _{OPT3} ”	means the percentage weighting applicable to T-3, specified as part of the Annual PBF Specifications in the Business Plan or as may be amended from time to time in accordance with this Contract;
“W _{OPT15} ”	means the percentage weighting applicable to T-15, specified as part of the Annual PBF Specifications in the Business Plan or as may be amended from time to time in accordance with this Contract;
“Workers”	has the meaning given to it in paragraph 10 of Chapter 2.2 (<i>Rail Workforce</i>);
“Workforce Diversity Data”	means data on the diversity of the Operator’s workforce including statistics showing: <ul style="list-style-type: none"> (a) the gender, race, disability, sexual orientation and working pattern breakdown for specified jobs, categories and levels; (b) religion and gender reassignment across the whole workforce;

- (c) the promotion of the Operator’s workforce that fall into the following groups: marriage and civil partnership; pregnancy and maternity; social mobility; and parental leave and caring responsibilities; and
- (d) such other data as the Secretary of State may notify the Operator in accordance with paragraph 1.6(b)(ii) of Chapter 2.1 (*Diversity and Inclusion and Training and Development*);

“Working Capital Payment”

means the Contract Payment Component calculated in accordance with paragraph 9.2 of Chapter 7.1 (*Contract Payments*);

“Working Capital Repayment”

means the Contract Payment Component calculated in accordance with paragraph 10.2 of Chapter 7.1 (*Contract Payments*);

“Working Capital Shortfall”

has the meaning given to it in paragraph 9.3 of Chapter 7.1 (*Contract Payments*);

“W_{ShOp DEL}”

means the weighting of the Shadow Operator Delivery Fee expressed as a percentage of the Shadow Operator Performance Based Fee, specified as part of the Annual PBF Specifications in the Business Plan;

“W_{ShOp FM}”

means the weighting of the Shadow Operator Business Plan Financial Management Fee expressed as a percentage of the Shadow Operator Performance Based Fee specified as part of the Annual PBF Specifications in the Business Plan;

“W_{SQ}”

means the weighting of the Service Quality Standards Fee expressed as a percentage of the customer experience element of the Performance Based Fee and which shall be sixty per cent (60%);

“Yield Management Data”

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

- (a) the number of passengers travelling upon any particular Passenger Service;
- (b) the ticket types held by such passengers;
- (c) the prices paid by such passengers for such tickets; and
- (d) the dates and/or times between which such tickets were made available to purchase at such prices;

“Yield Management System”

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

“YT2PP”

has the meaning given to it in paragraph 1.3 of Appendix 1 (*Calculation of Periodic Contract Payments (PCP)*) to Chapter 7.1 (*Contract Payments*); 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.

Chapter 11 – Shadow Operator

Chapter 11 – Shadow Operator

CHAPTER 11
SHADOW OPERATOR

Chapter 11.1	Shadow Operations
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Chapter 11.1
Shadow Operations

1. Shadow Operator Services

- 1.1 Without prejudice to clause 3 (*General Obligations*), the Operator shall perform the Shadow Operator Services:
- (a) in accordance with this Contract and the Shadow Operator Business Plan Commitments;
 - (b) in accordance with the provisions of paragraph 12 of this Chapter;
 - (c) with reasonable skill, care and diligence and in accordance with Good Industry Practice; and
 - (d) in a demonstrably objective and unbiased manner and shall take reasonable steps to avoid any real or perceived conflicts of interest in performing the Shadow Operator Services.
- 1.2 The Operator shall have regard to each of the following when performing the Shadow Operator Services:
- (a) the HS2 Strategic Goals;
 - (b) the Plan for Rail;
 - (c) any other publicly available policies of the Secretary of State relating to rail, from time to time; and
 - (d) Value for Money in relation to the National Railway Network.
- 1.3 Without prejudice to paragraph 1.1(b) and 1.1(c), the Operator shall ensure that it provides a sufficient level of appropriately skilled resource to provide representatives to attend appropriate meetings, including with relevant Stakeholders, HS2 Limited, Network Rail and such other persons as may be required for the Operator to perform the Shadow Operator Services in accordance with this Chapter 11.
- 1.4 The Secretary of State may, at any time, perform itself or retain third parties to perform the Shadow Operator Services (or part thereof) and/or any services similar, related to or substantially the same as the Shadow Operator Services.
- 1.5 The Operator shall apply the assurance framework established in accordance with paragraph 3 of Schedule 18.1 of the Previous Agreement and marked in the agreed terms marked **ShOpAF** in relation to the performance of the Shadow Operator Services.
- 1.6 The Operator shall ensure that all Required Output Reports which it provides to the Secretary of State form a cohesive set of proposals for the development of the High Speed Services, Passenger Services other than High Speed Services and the wider National Railway Network.

2. Updates to the IO Modelling Suite

- 2.1 The Operator shall, upon the request of the Secretary of State (which shall not, prior to the date falling two (2) years prior to the Anticipated High Speed Start Date, be more than once per Quarter), provide the Secretary of State with a draft IO Modelling Suite, Strategic Operational Baseline Forecast and IO Assumptions Change Log.
- 2.2 The Operator shall ensure that the draft IO Modelling Suite and draft Strategic Operational Baseline Forecast have been updated:
- (a) to reflect any Final Output Reports and Operator's HS2 Reports which have been agreed by the Secretary of State;
 - (b) to reflect any change in the assumptions set out in the IO Record of Assumptions;
 - (c) to reflect any changes to the Anticipated High Speed Start Date,
- in each case since the IO Modelling Suite and Strategic Operational Baseline Forecast were last Placed in Escrow; and
- (d) in compliance with paragraph 12 of Chapter 11.1 (*Shadow Operations*); and
 - (e) provide a report setting out the changes between the IO Modelling Suite and Strategic Operational Baseline Forecast currently Placed in Escrow and the draft IO Modelling

Suite and Strategic Operational Baseline Forecast, including an explanation of and justification for such changes.

- 2.3 The Operator shall ensure that the IO Assumptions Change Log includes details of all changes to the assumptions set out in the draft IO Record of Assumptions as compared to the IO Record of Assumptions most recently Placed in Escrow.
- 2.4 The Parties, each acting through sufficiently senior representatives, shall each use all reasonable endeavours to agree the IO Modelling Suite and Strategic Operational Baseline Forecast in a timely manner and, in any event, within twenty (20) Weekdays of receipt by the Secretary of State. The Operator shall comply, in a timely manner, with any written requests made by the Secretary of State that the Operator:
- (a) provide further detail or evidence in relation to the draft IO Modelling Suite, draft Strategic Operational Baseline Forecast and/or IO Assumptions Change Log delivered in accordance with paragraph 2.1; and/or
 - (b) amend the draft IO Modelling Suite, draft Strategic Operational Baseline Forecast and/or IO Assumptions Change Log in accordance with the Secretary of State's requirements and provide the amended draft(s) to the Secretary of State.
- 2.5 To the extent that the Parties do not agree the IO Modelling Suite, Strategic Operational Baseline Forecast and/or IO Assumptions Change Log by the date falling twenty (20) Weekdays after such documents were received by the Secretary of State, the Secretary of State may reasonably determine the content of IO Modelling Suite, Strategic Operational Baseline Forecast and/or IO Assumptions Change Log, and provide the Operator with written notice of the determined IO Modelling Suite, Strategic Operational Baseline Forecast and/or IO Assumptions Change Log. Any Secretary of State determination pursuant to this paragraph 2.5 shall be subject to the Determination Escalation Process.
- 2.6 In considering or determining the draft IO Modelling Suite, Strategic Operational Baseline Forecast and/or IO Assumptions Change Log, the Secretary of State shall (*inter alia*) take account of the Operator's obligations to perform the Rail Services in accordance with the provisions of the Contract.

3. The Collaboration Agreement

- 3.1 Each of the Secretary of State and the Operator shall comply with the provisions of the Collaboration Agreement until the termination or expiry of the Collaboration Agreement.
- 3.2 Any failure by the Operator to comply with the provisions of the Collaboration Agreement shall constitute a contravention of this Contract.

4. The Operator's Role as Critical Friend

- 4.1 The Operator shall, from the Start Date act as Critical Friend to HS2 Limited and as Critical Friend shall notify the Secretary of State of any concerns which arise from the Operator's attendance at, and review of papers relating to, all HS2 Governance Meetings and which relate to its perspective as a future Train Operator of the High Speed Services.
- 4.2 For the purposes of this paragraph 4.2, Network Rail CF shall mean the Operator acting in its capacity as representing the future operator of the High Speed Services, providing advice to Network Rail, in accordance with the Operator's obligations set out in paragraph 4.2(a):
- (a) the Operator shall, on and from the Start Date, act as Network Rail CF. In acting as Network Rail CF, the Operator shall, subject to the prior consent of the Secretary of State, review any documents submitted to the Operator by Network Rail and advise Network Rail on how any such documents could be improved from the perspective of any current or future Train Operator (including any Successor Operator) of the High Speed Services such that the outcome in the documents may be delivered more efficiently and/or effectively.
 - (b) to the extent that the Operator becomes aware that Network Rail does not agree with the Operator's advice, the Operator shall refer the matter to the Secretary of State.

5. Anticipated High Speed Start Date & Uplift Notification

- 5.1 The Secretary of State may, from time to time, notify the Operator in writing of an amendment to the Anticipated High Speed Start Date, provided that:

- (a) such notice is provided to the Operator at least one month prior to the date originally specified or, if the change is to make the Anticipated High Speed Start Date earlier, six months prior to the amended Anticipated High Speed Start Date; and
- (b) the amended date notified to the Operator under this paragraph 5 is no earlier than the date on which the Secretary of State considers that the Operator can commence operation of the High Speed Services in accordance with the High Speed Services TSR.
- 5.2 The Operator shall, between thirty six (36) and thirty (30) months prior to the Anticipated High Speed Start Date provide written notice to the Secretary of State, requesting the Secretary of State to issue the Uplift Notification, pursuant to the provisions of paragraph 5.3. For the avoidance of doubt, if following such request, the Secretary of State amends the Anticipated High Speed Start Date pursuant to the provisions of paragraph 5.1, the Operator's obligation under this paragraph 5.2 shall apply again in relation to each amended Anticipated High Speed Start Date.
- 5.3 Following receipt of the Operator's request under paragraph 5.2, the Secretary of State shall, by no later than two (2) years prior to the Anticipated High Speed Start Date issue the Uplift Notification. The Uplift Notification shall:
- (a) subject always to the provisions of paragraph 5.1, confirm the Anticipated High Speed Start Date;
- (b) confirm the date from which Shadow Operator Performance Based Fee shall be uplifted (the "**Uplift Date**") being:
- (i) if the date which falls two (2) years before the Anticipated High Speed Start Date confirmed under paragraph (a) ("**AHSSD-2**") is the first day of a Reporting Period, such AHSSD-2 date; or
- (ii) if the AHSSD-2 date is not the first day of a Reporting Period, the closest date to AHSSD-2 which is a first day of a Reporting Period (which (for the avoidance of doubt) may be before or after the AHSSD-2 date).
- The Uplift Date shall be used for the purposes of calculating component "S" in paragraph 1.2 of Chapter 7.2 (*Performance Based Fee and Shadow Operator Performance Based Fee*).
- 6. Liability**
- 6.1 Subject to the Operator's compliance with paragraphs 6.3 to 6.5 and 6.7 of this Chapter 11.1, the Operator shall not be responsible for any failure to perform any of its obligations under Chapter 11 (*Shadow Operator*), nor shall any such failure constitute a contravention of this Contract, if and to the extent that such failure is caused by any Shadow Operator Delay Event.
- 6.2 Where paragraph 6.5 of this Chapter 11.1 applies, the Secretary of State shall have due regard to that Shadow Operator Delay Event in completing those sections of the PBF Assessment Scorecard which relate to the Shadow Operator Scorecard Criteria for the relevant PBF Assessment Period under paragraph 6 of Appendix 1 (*PBF Assessment Period Review*) to Chapter 7.2 (*Performance Based Fee and Shadow Operator Performance Based Fee*) and shall not apply any scoring deduction as a result of any failure by the Operator to perform any of its obligations under this Contract, to the extent that such failure is caused by a Shadow Operator Delay Event.
- 6.3 The Operator shall promptly give notice in writing to the Secretary of State if it becomes aware that a Shadow Operator Delay Event is going to occur or is reasonably likely to occur.
- 6.4 If any Shadow Operator Delay Event occurs, or on request by the Secretary of State following receipt of a notice from the Operator under paragraph 6.3 of this Chapter 11.1, then without prejudice to the Operator's obligations to comply with this Contract, the Operator shall promptly notify the Secretary of State in writing of the Shadow Operator Delay Event (a "**Shadow Operator Delay Event Notice**"), giving full details of the nature of the event and its potential consequences and impact (including any delay and/or cost impact) on the Shadow Operator Services (including the Shadow Operator Business Plan Components) and, if requested by the Secretary of State on the Accepted Programme and the Transitional Programme.
- 6.5 Following provision of a Shadow Operator Delay Event Notice, the Operator shall (unless the Secretary of State notifies the Operator in writing that no Shadow Operator Delay Action Plan is required in respect of the relevant Shadow Operator Delay Event) submit within a timescale

reasonably appropriate to the nature of the Shadow Operator Delay Event in question (subject to a maximum of twenty (20) Weekdays) to the Secretary of State for consent, a plan (the “**Shadow Operator Delay Action Plan**”) for the Shadow Operator Delay Event, which shall include:

- (a) a detailed proposal, including any proposal for any Business Plan Revision and/or Cost Budget Change effective to mitigate and address the impact of the Shadow Operator Delay Event; and
- (b) details for implementing such proposals and the Operator’s forecast of the impact of such proposals on the Operator’s compliance with its obligations under this Contract.

6.6 Following receipt of a Shadow Operator Delay Event Notice (whether before, along with or after receipt of any Shadow Operator Delay Action Plan required pursuant to paragraph 6.5 of this Chapter 11.1), the Secretary of State shall notify the Operator of any action the Secretary of State proposes to take, or to require the Operator to take, with respect to the Shadow Operator Delay Event, which may include:

- (a) agreement to part or all of the proposals set out in the Shadow Operator Delay Action Plan, in which case the Operator (and, to the extent specified in the Shadow Operator Delay Action Plan, the Secretary of State) shall implement the Shadow Operator Delay Action Plan in accordance with its terms;
- (b) requests that the Operator revise the Shadow Operator Delay Action Plan to take into account any alternative proposals suggested by the Secretary of State, in which case the Operator shall re-submit the Shadow Operator Delay Action Plan and this paragraph 6.6 shall apply again following that re-submission;
- (c) if relevant, responses to the Operator’s proposal for a Business Plan Revision and/or Cost Budget Change;
- (d) proposals for an alternative Business Plan Revision and/or Cost Budget Change;
- (e) a change to the Anticipated High Speed Start Date; and/or
- (f) any other action as the Secretary of State sees fit in the circumstances,

and any such response shall be without prejudice to the other rights that are available to the Secretary of State under this Contract, or otherwise.

6.7 The Operator shall use all reasonable endeavours to mitigate the impact of any Shadow Operator Delay Event.

6.8 Subject to paragraph 6.10 of this Chapter 11.1, the Operator shall not (and shall procure that its contractors, sub-contractors and Affiliates shall not) bring any proceedings, claims or demands against HS2 Limited (whether in contract, tort (including negligence), or otherwise) arising out of or in relation to the Shadow Operator Services (including any Shadow Operator Delay Event).

6.9 Subject to paragraph 6.10 of this Chapter 11.1, the Secretary of State shall procure that HS2 Limited (and the contractors, sub-contractors and Affiliates of HS2 Limited) shall not bring any proceedings, claims or demands (whether in contract, tort (including negligence), or otherwise) against the Operator arising out of or in relation to the Operator’s performance of the Shadow Operator Services.

6.10 The provisions of paragraphs 6.8 and 6.9 of this Chapter 11.1 do not prevent the Operator or HS2 Limited from bringing claims under:

- (a) the HS2 Track Access Agreement; or
- (b) any other contract between the Operator and HS2 Limited, provided that such contract has not been entered into with the aim of avoiding the restrictions set out in paragraph 6.8 and/or 6.9 of this Chapter 11.1.

6.11 The Operator shall indemnify the Secretary of State on demand, on an after-tax basis against any costs, liabilities or expenses suffered or incurred by the Secretary of State to the extent arising out of or in relation to any failure by the Operator to comply with paragraph 6.8 of this Chapter 11.1, including any claims made by HS2 Limited under paragraph 14.3 of Annex 10 of the Development Agreement.

6.12 The Secretary of State shall indemnify the Operator on demand, on an after-tax basis against any costs, liabilities or expenses suffered or incurred by the Operator out of or in relation to any failure by the Secretary of State to comply with paragraph 6.9 of this Chapter 11.1.

7. Intellectual Property Rights

- 7.1 The Secretary of State hereby grants, or shall procure the grant of, to the Operator a non-exclusive, non-transferable, royalty free, paid-up, worldwide, personal licence to use, copy, maintain and modify the Secretary of State Material during the Contract Period to the extent necessary and for the sole purpose of the proper performance of the Rail Services.
- 7.2 The licence granted to the Operator under paragraph 7.1 of this Chapter 11.1 shall terminate automatically at the end of the Contract Period or (if earlier) when such Secretary of State Material is no longer required in connection with the performance of the Rail Services.
- 7.3 The Secretary of State shall procure the grant to the Operator of a non-exclusive, non-transferable, royalty free, paid-up, worldwide, personal licence to use, copy, maintain and modify the HS2 Limited Material during the Contract Period to the extent necessary and for the sole purpose of the proper performance of the Shadow Operator Services.

8. Obligations on Termination of the Shadow Operator Services

- 8.1 The Operator shall fully co-operate with and assist the Secretary of State and/or any Successor Shadow Operator in ensuring the smooth handover and continued running of the Shadow Operator Services during the Shadow Operator Termination Assistance Period and shall render such assistance to the Secretary of State and/or any Successor Shadow Operator as the Secretary of State may require including:
- (a) promptly upon request:
 - (i) providing a copy of any and all Operator Material to the Secretary of State and, where such Operator Material is in electronic form, providing an electronic copy of such Operator Material to the Secretary of State in such format as the Secretary of State may require;
 - (ii) providing a copy of any correspondence with Network Rail, HS2 Limited and/or any other Stakeholder which relates to the Shadow Operator Services;
 - (iii) providing a copy of the most recent version of any ways of working which are in place between the Operator and Network Rail, HS2 Limited and/or any other Stakeholder in relation to the Shadow Operator Services;
 - (iv) return to the Secretary of State or destroy (at the Secretary of State's option) any copies of the Secretary of State Material;
 - (v) answer any questions which the Secretary of State or a Successor Shadow Operator may have regarding the Shadow Operator Services;
 - (vi) make available to the Secretary of State and/or each Successor Shadow Operator such of the Shadow Operator Employees and for such period as the Secretary of State and/or the relevant Successor Shadow Operator may reasonably require;
 - (b) providing such assistance to any Successor Shadow Operator as the Secretary of State may require in ensuring that, pursuant to any Direct Agreements, such Successor Shadow Operator may enter into (or enjoy the benefit of) contracts equivalent to any Key Contracts relating to the Shadow Operator Services;
 - (c) in satisfaction of its obligations under paragraph 8.1(b), the Operator shall terminate, surrender, cancel or undertake not to enforce its rights under any Key Contract (or part thereof) relating to the Shadow Operator Services provided that nothing in this paragraph shall require the Operator to undertake not to enforce any rights under a Key Contract relating to the period prior to termination of the Shadow Operator Services; and
 - (d) taking such steps as the Secretary of State and/or any Successor Shadow Operator may require to effect the transfer of any Primary Assets relating to the Shadow Operator Services to the Secretary of State or a Successor Shadow Operator (as the Secretary of State may require).

9. Employees

- 9.1 For the purposes of this paragraph 9, "**Taxation**" shall mean "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 HS2 Limited or Successor Shadow Operator) all penalties and interest relating thereto."

9.2 Exit

The Parties accept that, to the extent that services similar or equivalent to the Shadow Operator Services or part of the Shadow Operator Services are continued by a Successor Shadow Operator after the date on which the Shadow Operator Services terminate or (if earlier) the Expiry Date (the “**Shadow Operator TUPE Transfer Date**”), the transfer which is effected by the Secretary of State is governed by the Transfer Regulations and the following provisions shall apply in connection therewith:

- (a) the contract of employment of each of the Shadow Operator TUPE 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 Successor Shadow Operator with effect from the Shadow Operator TUPE Transfer Date which shall be the “time of transfer” under the Transfer Regulations and the Secretary of State shall procure that the Successor Shadow Operator shall employ each such Shadow Operator TUPE 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 Shadow Operator TUPE Transfer Date;
- (b) the Operator shall perform and discharge all its obligations in respect of all the Shadow Operator TUPE Employees for its own account up to and including the Shadow Operator TUPE Transfer Date including discharging all wages and salaries of the Shadow Operator TUPE Employees, all employer’s contributions to any relevant occupational pension scheme and all other costs and expenses related to their employment (including any Taxation, accrued holiday pay, accrued bonus, commission or other sums payable in respect of service prior to the close of business on the Shadow Operator TUPE Transfer Date) and shall indemnify the Successor Shadow Operator and keep the Successor Shadow Operator indemnified against each and every action, proceeding, liability (including any Taxation), cost, claim, expense (including reasonable legal fees) or demand arising from the Operator’s failure so to discharge;
- (c) the Operator shall indemnify the Successor Shadow Operator and keep the Successor Shadow Operator indemnified against each and every action, proceeding, cost, claim, liability (including any Taxation), expense (including reasonable legal fees) or demand which relates to or arises out of any act or omission by the Operator or any other event or occurrence prior to the Shadow Operator TUPE Transfer Date and which the Successor Shadow Operator may incur in relation to any contract of employment or collective agreement concerning one or more of the Shadow Operator TUPE Employees pursuant to the provisions of the Transfer Regulations or otherwise including any such matter relating to or arising out of:
 - (i) the Operator’s rights, powers, duties and/or liabilities (including 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 Successor Shadow Operator in accordance with the Transfer Regulations; or
 - (ii) anything done or omitted before the Shadow Operator TUPE Transfer Date by or in relation to the Operator in respect of any such contract of employment or collective agreement or any Shadow Operator TUPE Employee, which is deemed by the Transfer Regulations to have been done or omitted by or in relation to the Successor Shadow Operator save where the thing done or omitted to be done before the Shadow Operator TUPE Transfer Date relates to the Successor Shadow Operator’s failure to comply with its obligations referred to in paragraph 9.6;
- (d) if any contract of employment or collective agreement which is neither disclosed in writing to the Successor Shadow Operator by the Operator prior to the Shadow Operator TUPE Transfer Date nor made available to the Secretary of State under Chapter 9.5.1 (*Handover Package*) of the National Rail Contract prior to the Shadow Operator TUPE Transfer Date shall have effect as if originally made between the Successor Shadow Operator and any employee (the “**Undisclosed Shadow Operator TUPE 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 Successor Shadow Operator):

- (i) the Successor Shadow Operator 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 Operator shall indemnify the Successor Shadow Operator against each and every action, proceeding, cost, claim, liability (including any Taxation), expense (including reasonable legal fees) or demand relating to or arising out of such termination and reimburse the Successor Shadow Operator for all costs and expenses (including any Taxation) incurred in employing such employee in respect of his or her employment following the Shadow Operator TUPE Transfer Date; and
 - (iii) the Operator shall indemnify the Successor Shadow Operator in respect of any Undisclosed Shadow Operator TUPE Employee on the same terms mutatis mutandis as the Operator has indemnified the Successor Shadow Operator in respect of a Shadow Operator TUPE Employee pursuant to the terms of paragraphs 9.2(b) and 9.2(c); and
 - (e) the Operator shall indemnify the Successor Shadow Operator and keep the Successor Shadow Operator indemnified against each and every action, proceeding, cost, claim, liability (including any Taxation) expense (including reasonable legal fees) or demand which relates to or arises out of any dismissal (including constructive dismissal) by the Operator of any employee (not being a Shadow Operator TUPE Employee) and which the Successor Shadow Operator may incur pursuant to the provisions of the Transfer Regulations.
- 9.3 The Secretary of State shall procure that the Successor Shadow Operator shall indemnify the Operator and keep the Operator indemnified against each and every action, proceeding, liability (including 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 Shadow Operator TUPE Employees to his or her detriment or any of them occurring on or after the Shadow Operator TUPE Transfer Date;
 - (b) the change of employer occurring by virtue of the Transfer Regulations and/or the National Rail Contract being significant and detrimental to any of the Shadow Operator TUPE Employees;
 - (c) the employment by the Successor Shadow Operator on or after the Shadow Operator TUPE Transfer Date of any of the Shadow Operator TUPE Employees other than on terms (including terms relating to any occupational pension scheme) at least as good as those enjoyed prior to the Shadow Operator TUPE Transfer Date or the termination of the employment of any of them on or after the Shadow Operator TUPE Transfer Date; or
 - (d) any claim by any Shadow Operator TUPE 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 for unfair dismissal, redundancy, statutory redundancy, equal pay, sex or race discrimination) as a result of any act or omission by the Successor Shadow Operator after the Shadow Operator TUPE Transfer Date.
- 9.4 The Secretary of State shall procure that the Successor Shadow Operator shall indemnify the Operator and keep the Operator 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 Operator in writing with such information and at such time as will enable the Operator to carry out its duties under Regulation 13(2)(d) and 13(6) of the Transfer Regulations concerning measures envisaged by the Successor Shadow Operator in relation to the Shadow Operator TUPE Employees.
- 9.5 Without prejudice to the Operator's duties under the Transfer Regulations, the Operator shall at the relevant time warrant to the Secretary of State and to the Successor Shadow Operator that it has (to the extent not made available to the Secretary of State under Chapter 9.5.3 (*Provisions Applying on and after Termination*) of the National Rail Contract prior to the Shadow Operator TUPE Transfer Date) provided the Successor Shadow Operator prior to the Shadow Operator TUPE Transfer Date with full particulars of:

- (a) each Shadow Operator TUPE Employee, including name, sex, and the date on which continuity of employment began for each Shadow Operator TUPE 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 Shadow Operator TUPE Employees or termination of employment effected within twelve (12) months prior to the Shadow Operator TUPE Transfer Date including the Shadow Operator TUPE Transfer Date;
 - (e) all agreements or arrangements entered into in relation to the Shadow Operator TUPE Employees between the Operator, any Affiliate of the Operator 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 Shadow Operator TUPE Employee within twelve (12) months prior to the Shadow Operator TUPE Transfer Date including the Shadow Operator TUPE Transfer Date.
- 9.6 The Operator shall, and the Secretary of State shall procure that the Successor Shadow Operator shall, deliver to each of the Shadow Operator TUPE Employees letters in an agreed form from the Operator and Successor Shadow Operator as soon as is practicable (to the extent not already delivered prior to the Shadow Operator TUPE Transfer Date).
- 10. Consequences of Expiry or Termination of the Shadow Operator Services**
- 10.1 Upon:
- (a) expiry of this Contract; or
 - (b) termination of the Shadow Operator Services following service of a Termination Notice or Shadow Operator Termination Notice in accordance with paragraph 5 of Chapter 9.4.1 (*Events of Default and Termination Events*),
- the obligations of the Parties under or in connection with this Chapter 11 (*Shadow Operator*) shall cease except for:
- (i) any obligations arising as a result of any antecedent contravention of the National Rail Contract;
 - (ii) any obligations which are expressed to continue in accordance with the terms of the National Rail Contract; and
 - (iii) any other obligations which give effect to such expiry or termination or to the consequences of such expiry or termination or which otherwise apply (expressly or impliedly on or after such expiry or termination).
- 10.2 Nothing in this paragraph 10 shall prevent the Secretary of State from bringing an action against the Operator in connection with the termination of this Contract prior to the expiry of the Contract Term.
- 11. Entry into Third Party Contracts**
- 11.1 Where the Secretary of State directs and/or requires the Operator to enter into any contract with a third party relating to the Shadow Operator Services:
- (a) a Cost Budget Change Event shall occur upon entry into the relevant contract; and
 - (b) the Operator shall be entitled to notify the Secretary of State, in writing, of any provisions relating to the liability of the Operator in the relevant third party contract which the Operator believes are not consistent with standard industry practice for a contract of the nature, value and risk profile of the relevant third party contract, together with a detailed explanation of the reasons for the Operator's opinion.
- 11.2 The Secretary of State shall consider any notice provided by the Operator in accordance with paragraph 11.1(b) of this Chapter 11.1 and may (at the Secretary of State's absolute discretion) propose a Variation to provide the Operator with relief relating to any provisions notified to the Secretary of State in accordance with paragraph 11.1(b) of this Chapter 11.1.
- 11.3 The provisions of this paragraph 11 shall not apply to any Access Agreement entered into (or to be entered into) with HS2 Limited.

12. Overarching Requirements

- 12.1 Where the Operator contracts with a TOC Affiliate for the delivery of any consultancy services relating to the Shadow Operator Services, the Operator shall ensure that the costs charged to the Operator by the relevant TOC Affiliate are equal to the greater of:
- (a) the Consultancy Costs incurred by the TOC Affiliate in respect of the relevant individual who is delivering consultancy services relating to the Shadow Operator Services; and
 - (b) the Backfill Costs incurred by the TOC Affiliate to replace the person who is delivering consultancy services relating to the Shadow Operator Services.
- 12.2 Where the Operator contracts with an Affiliate which is not a TOC Affiliate nor a Consultancy Affiliate for:
- (a) the delivery of any consultancy services relating to the Shadow Operator Services; or
 - (b) the secondment of any personnel to undertake the Shadow Operator Services,
- the Operator shall ensure that the costs charged to the Operator by the relevant Affiliate are equal to the Affiliate Consultancy Costs incurred by the Affiliate in respect of the relevant individual who is delivering consultancy services relating to the Shadow Operator Services or who is seconded to undertake the Shadow Operator Services.
- 12.3 Where the Operator contracts with a Consultancy Affiliate for the delivery of any consultancy services relating to the Shadow Operator Services, the Operator shall ensure that the costs charged to the Affiliate by the Operator reflect arms' length market rates for delivery of such consultancy services.
- 12.4 Where any personnel are seconded by a TOC Affiliate to the Operator in order to undertake the Shadow Operator Services, the Operator shall ensure that the costs charged to the Operator by the relevant TOC Affiliate are equal to the greater of:
- (a) the TOC Affiliate Secondment Costs in respect of the personnel seconded to undertake the Shadow Operator Services; and
 - (b) the Backfill Costs incurred by the TOC Affiliate solely in order to replace the person who is seconded to the Operator for the period of the secondment.
- 12.5 For the purpose of this paragraph 12, a person shall be considered "seconded" where they are no longer fulfilling their normal employment duties but have been seconded to undertake work in relation to the Shadow Operator Services instead of their regular employment. For example, a person who works solely in relation to the Shadow Operator Services for a three month period shall be considered to be seconded to the Operator for the relevant period. Where a person is seconded to the Operator, the Operator shall ensure that they are engaged solely in relation to the Shadow Operator Services, provided that the person shall be entitled to undertake any mandatory training required by the Operator or their employing Affiliate.
- 12.6 Where the Operator intends to backfill a role with a TOC Affiliate and such backfilling has not been clearly identified (including details of the proposed source of the backfilled member of staff) in the Shadow Operator Resourcing Plan:
- (a) the Operator shall notify the Secretary of State prior to entering into any contract or commitment in relation to such backfill and shall provide the Secretary of State with an explanation of why the backfill is necessary and, in particular, where the backfill will be sourced from an Affiliate, why the individual undertaking the backfill is not being assigned directly to the Operator to undertake Shadow Operator Services; and
 - (b) the Operator shall not (and shall procure that the relevant TOC Affiliate shall not) enter into any commitment or contract relating to the proposed backfilling prior to receiving the Approval of the Secretary of State in writing.
- 12.7 Where the Operator intends to subcontract the delivery of any Shadow Operator Services (whether to an Affiliate or not or through a secondment or otherwise) and such subcontracting has not been clearly identified (including details of the proposed subcontractor) in the Shadow Operator Resourcing Plan or there is a change to the identity of the proposed subcontractor from that set out in the Shadow Operator Resourcing Plan:
- (a) the Operator shall notify the Secretary of State prior to entering into any contract or commitment in relation to such subcontracting and shall provide the Secretary of State with an explanation of why the subcontracting is necessary and, in particular, why the

- expertise which will be provided through the subcontractor is not available from among the Operator's own personnel; and
- (b) the Operator shall not enter into such subcontract prior to receiving the Approval of the Secretary of State in writing.
- 12.8 Where the Operator subcontracts the delivery of any Shadow Operator Services, the Operator shall ensure that it:
- (a) co-ordinates all subcontracting so that the Shadow Operator Services are delivered in a coherent and efficient manner;
- (b) provides the subcontractor and relevant subcontractor personnel with any information, know-how and knowledge which the Operator has derived from performing the Rail Services and which is relevant to those aspects of the Shadow Operator Services to be performed by the relevant subcontractor; and
- (c) reviews all work produced by subcontractors and ensures that the outputs produced by subcontractors have properly taken into account any information, knowledge, know-how and experience which the Operator has due to its performance of the Rail Services.
- 12.9 The Operator shall ensure that (save to the extent otherwise expressly agreed by the Secretary of State in writing) where it subcontracts the delivery of any parts of the Shadow Operator Services to consultants, the contracts for such services provide for full flexibility as to the level of consultancy services to be provided without any requirement for the Operator to buy a minimum or fixed level of service or any right for the subcontractor to increase their charges or impose additional charges as a result of the level of consultancy services changing over time.
- 12.10 The Operator shall ensure that (save to the extent otherwise expressly agreed by the Secretary of State in writing), where it employs any personnel who will deliver any part of the Shadow Operator Services on fixed term contracts, such contracts are terminable upon not more than three (3) months' notice.
- 12.11 Notwithstanding any other provision of this Contract, the Operator shall:
- (a) ensure that all personnel seconded from any Affiliate or providing consultancy services from any Affiliate prepare daily timesheets setting out the work undertaken in relation to delivery of the Shadow Operator Services; and
- (b) record details of all actual Payroll Costs and Backfill Costs which are charged by Affiliates to the Operator in relation to the secondment of personnel or provision of consultancy services relating to the Shadow Operator Services, together with details of how such costs have been calculated and, in relation to Backfill Costs, any invoices relating to the Backfill Costs, including those addressed to the TOC Affiliate which has incurred such costs,
- the Operator shall provide the information referred to in this paragraph 12.11 to the Secretary of State promptly upon request.
- 12.12 Notwithstanding paragraphs 12.1 to 12.4 (and for the avoidance of doubt, provided that such expenses or costs are not Disallowable Costs) the Operator may reimburse its Affiliates for:
- (a) expenses incurred by personnel undertaking secondments/providing consultancy services relating to the Shadow Operator Services, provided that such expenses have been incurred in accordance with the Expenses Policy; and
- (b) relocation costs and expenses reasonably and properly incurred by or in relation to personnel undertaking secondments/providing consultancy services relating to the Shadow Operator Services, provided that such expenses have been specifically included in the Record of Assumptions or have been expressly agreed in writing by Secretary of State.
- 12.13 At the same time as the Operator is required to provide the PBF Assessment Review Checklist in respect of the relevant PBF Assessment Period in accordance with paragraph 7.1A of Appendix 1 (*PBF Assessment Review*) to Chapter 7.2 (*Performance Based Fee and Shadow Operator Performance Based Fee*), the Operator shall provide to the Secretary of State a certificate signed by a statutory director of the Operator, addressed to the Secretary of State, which confirms that the Operator has complied with the provisions of this paragraph 12 throughout the relevant PBF Assessment Period (such certificate to be in the agreed terms or such other form as may be agreed from time to time).

13. **The Role of the Operator's Representative**

- 13.1 The Operator acknowledges that the High Speed Rolling Stock MSA and High Speed Rolling Stock TSA will contain the concept of an "Operator's Representative" (**Operator's Representative**), whose role is to be undertaken and performed by the Operator and will include:
- (a) generally representing and putting forward the interests of the future operators of the High Speed Rolling Stock including by advising in relation to matters affecting the Passenger Proposition;
 - (b) if required to do so by the Secretary of State, supporting HS2 Limited in the testing and commissioning of the HS2 Network and the High Speed Rolling Stock;
 - (c) planning for and implementing the mobilisation of the High Speed Services;
 - (d) attending all meetings (save where the Secretary of State has specifically notified the Operator in writing that its attendance is not required) (whether in the UK or abroad) between HS2 Limited and the TMM in connection with the High Speed Rolling Stock MSA, the High Speed Rolling Stock TSA or otherwise in connection with the delivery of the High Speed Rolling Stock and/or the Home Depot, for the purposes of representing the views, requirements and interests of future operators of the High Speed Rolling Stock;
 - (e) providing relevant information, advice and assistance to HS2 Limited in connection with the exercise of its rights and the performance of its obligations under the High Speed Rolling Stock MSA, the High Speed Rolling Stock TSA and any other documents relating to the High Speed Rolling Stock to which HS2 Limited is party; and
 - (f) providing such other assistance to HS2 Limited in connection with the foregoing as HS2 Limited considers necessary or desirable from time to time.
- 13.2 In the event that HS2 Limited purports to delegate to the Operator any rights and responsibilities of HS2 Limited under the High Speed Rolling Stock MSA or High Speed Rolling Stock TSA which are not contemplated in this Agreement as relating to a role or responsibility that the Operator may be expected to perform, then the Operator shall:
- (a) promptly inform the Secretary of State to this effect, providing reasonable details in relation to any costs and expenses that the Operator would incur if it were to accept the delegation of the rights and responsibilities in question; and
 - (b) await the Secretary of State's further direction before taking any action in connection with such purportedly delegated rights and responsibilities.
- 13.3 Where HS2 Limited delegates any relevant rights and responsibilities under the High Speed Rolling Stock MSA or High Speed Rolling Stock TSA to the Operator, and such delegation either: (i) is contemplated in this Agreement as relating to a role or responsibility that the Operator may be expected to perform; or (ii) is ratified by the Secretary of State following a referral by the Operator under paragraph 13.2, then the Operator shall exercise such rights and perform such responsibilities until such time (if any) as the relevant delegation is revoked and report to HS2 Limited as appropriate in respect of its exercise and performance of the delegated rights and/or responsibilities during the period of the delegation.
- ### 14. **Customer**
- #### Customer Community
- 14.1 The Operator shall maintain in place until the Expiry Date, arrangements for the performance of services that, as a minimum, are substantially similar and equivalent to the services (and standards of service) which were provided to HS2 Limited under the HS2 Customer Community Contract and which shall include:
- (a) an online customer community that includes at least two hundred (200) individuals per major customer segment (such major customer segments being those which shall be identified as part of the market segmentation carried out by the Operator pursuant to the Strategic Market Report; and
 - (b) focus group events each Contract Year, the number and content of such focus group events to be agreed between the Operator and HS2 Limited and agreed in writing by the Secretary of State.

Customer Experience

- 14.2 The Operator shall procure that an appropriate number of senior, suitably qualified personnel with high levels of expertise in customer experience attend on behalf of the Operator and actively participate in each meeting of:
- (a) the HS2 Design Group; and
 - (b) the HS2 Independent Design Panel,
- to which the Operator is invited.

Appendix 1 to Chapter 11.1**Required Outputs****1. Scoping Document**

- 1.1 Each Scoping Document shall contain (unless otherwise agreed between the Parties):
- (a) the detailed scope of the Required Output relating to the relevant requirement, including the scope of any Value for Money Assessment to be undertaken, the period over which any financial implications and Value for Money Assessment must be assessed and any affordability constraints which must be taken into account;
 - (b) the steps which the Operator will undertake to prepare the Required Output, including:
 - (i) any consultation and communications with relevant Stakeholders and other relevant third parties;
 - (ii) any research which the Operator intends to undertake in developing the Required Output;
 - (iii) how the Required Output will take into account any other Required Outputs which have already been provided to the Secretary of State and/or which are currently being developed; and
 - (iv) how the Operator will ensure that the Required Output complies with paragraph 1.6 of Chapter 11.1 (*Shadow Operations*);
 - (c) any assumptions which the Operator will rely on in developing the Required Output;
 - (d) the key milestones relating to preparation and delivery of the Required Output;
 - (e) appropriate gateways and/or staged deliverables which will apply to the development of the Required Output and which the Operator and Secretary of State must agree have been achieved prior to the Operator providing any Required Output to the Secretary of State; and
 - (f) the basis on which any Recommended Options are to be developed (for example, whether Recommended Options are to include an option which reflects the Operator's preferred approach without taking into account existing HS2 Limited baselines) and, as far as possible, a minimum and maximum number of Recommended Options which will be included in the Required Output Report.
- 1.2 Together with each Scoping Document, the Operator shall supply the following supplemental information (unless otherwise agreed between the Parties):
- (a) a budget for the activities set out in the Scoping Document;
 - (b) an overview of any amendments to the Shadow Operator Resourcing Plan which will be required to reflect the Scoping Document; and
 - (c) an overview of any amendments to the Accepted Programme (and the Accepted Programme Specific Requirements) which will be required to reflect the Scoping Document.
- 1.3 Within twenty (20) Weekdays of receiving the Scoping Document and the supplemental information required under paragraph 1.2 (or, where any additional information and/or evidence has been requested in accordance with paragraph 1.3(b) within twenty (20) Weekdays of the Secretary of State receiving all requested information and/or evidence) (or in each case, such longer period as may be agreed between the Parties in writing), the Secretary of State shall give notice in writing to the Operator:
- (a) agreeing the Scoping Document;
 - (b) requesting the provision of additional information and/or evidence to enable the Secretary of State to determine whether to agree or require revisions to the Scoping Document; or
 - (c) requiring such revisions to the Scoping Document as the Secretary of State may require.
- 1.4 If the Secretary of State gives notice in writing requiring revisions under paragraph 1.3(c), the Operator shall produce and submit a revised Scoping Document within twenty (20) Weekdays incorporating the required revisions. In the event of any dispute, the Secretary of State may determine, the scope and form of the Scoping Document.

- 1.5 If the Secretary of State agrees the Scoping Document, in accordance with paragraph 1.3(a), where:
- (a) there is a Shadow Operator Business Plan Commitment to undertake any activities set out in the relevant Scoping Document in the then-current Business Plan Year; and/or
 - (b) any activities set out in the Scoping Document are to be undertaken in the then-current Business Plan Year,

the Operator shall propose a Business Plan Revision to reflect the activities which are to be carried out by the Operator in accordance with such Scoping Document.

- 1.6 For the avoidance of doubt, the Parties may vary any Scoping Document by agreement in writing.

2. Initial Output Report

- 2.1 Each Initial Output Report shall, unless otherwise specified in the Scoping Document, contain:

- (a) a summary of research undertaken and evidence considered in connection with the production of the Initial Output Report;
- (b) a detailed explanation of the options available in progressing the relevant Shadow Operator Service;
- (c) a detailed explanation of how the costs and revenues associated with each of the options will vary from the Strategic Operational Baseline Forecast and, where relevant, the Management Accounts and the Cost Budget;
- (d) an assessment of the financial implications and a Value for Money Assessment, as specified in the relevant Scoping Document, in respect of each option provided in the Initial Output Report as set out in paragraph 2.1(b), for:
 - (i) the High Speed Services;
 - (ii) the Passenger Services other than the High Speed Services;
 - (iii) passenger and freight services in respect of the National Railway Network, for the following periods:
 - (iv) during the Contract Term; and
 - (v) any other periods specified in the relevant Scoping Document;
- (e) the Recommended Options, including a detailed description of each Recommended Option and reasons for each recommendation;
- (f) an assessment of the market for procuring any assets and/or services required to deliver each Recommended Option, including the approximate number of potential suppliers for each required asset or service, identifying any potential supplier with which the Operator has an existing relationship together with a summary of such existing relationship, and stating if the relevant market is served by only one or two potential suppliers;
- (g) in respect of each of the Modelling Suite and IO Modelling Suite, a detailed financial assessment of each Recommended Option;
- (h) evidence that relevant Stakeholders, and each of HS2 Limited and Network Rail where appropriate, have each been consulted in respect of each Recommended Option;
- (i) a summary of any concerns, still outstanding at the time of the Initial Output Report, of HS2 Limited and/or Network Rail and/or other relevant Stakeholders in relation to each Recommended Option;
- (j) an assessment of the impact of each Recommended Option on any Shadow Operator Services other than those in relation to which the Initial Output Report was produced, if applicable;
- (k) an assessment of the impact of any other Shadow Operator Services on each Recommended Option, if applicable; and
- (l) the last responsible moment decision points (as agreed with HS2 Limited, Network Rail and the Department).

- 2.2 Within twenty (20) Weekdays of receiving the Initial Output Report (or such other period as is notified by the Secretary of State to the Operator when agreeing or determining the scope of the relevant Initial Output Report), the Secretary of State shall give notice in writing to the Operator:
- (a) agreeing a Recommended Option or part of a Recommended Option, which shall become the “**Selected Option**”;
 - (b) if the Secretary of State considers that:
 - (i) amendments are required (including minor amendments) to the Initial Output Report; or
 - (ii) the Initial Output Report does not adequately fulfil the requirements of the applicable Scoping Document, requiring revisions to the Initial Output Report (including to any Recommended Option) and, if so, specifying what revisions are required (including where required in order to fulfil the agreed scope);
 - (c) subject to agreement by the Secretary of State on any necessary additional costs:
 - (i) requiring additional evidence, information and/or explanation in support of any Recommended Option, any other component part of the Initial Output Report or any other matter contained in the Initial Output Report; or
 - (ii) requiring further development of an alternative course(s) of action to the Recommended Options; or
 - (d) confirming that:
 - (i) no further action, including a Final Output Report, is required; or
 - (ii) no further action is required in relation to the Initial Output Report but that the Secretary of State has chosen an alternative Selected Option in respect of which a Final Output Report may (subject to inclusion of a Shadow Operator Business Plan Commitment) be required.
- 2.3 If the Secretary of State gives notice in writing of any requirement set out in paragraphs 2.2(b) or 2.2(c) of this Appendix, the Operator shall produce and submit a revised Initial Output Report within twenty (20) Weekdays incorporating the required amendments in accordance with paragraph 2.1 of this Appendix.

3. **Final Output Report**

- 3.1 If a Final Output Report is required to be produced in respect of a plan or document under this Contract that is not an Initial Output Report, the Secretary of State shall advise the Operator in writing of the Selected Option to be used for the purposes of that Final Output Report. Where the Secretary of State has agreed a Selected Option, the Secretary of State may require that the Operator deliver a Final Output Report in respect of an alternative option or an amended version of the Selected Option and such alternative or amended option shall constitute the Selected Option for the purpose of this paragraph 3. For the avoidance of doubt:
- (a) where a Scoping Document has already been agreed on the basis of the prior agreed Selected Option, the Parties shall agree such amendments to the Scoping Document as are required to reflect the revised Selected Option notified by the Secretary of State; and
 - (b) the Operator may propose a Business Plan Revision, if required in order to reflect any change to a Selected Option.
- 3.2 Each Final Output Report shall, unless otherwise specified in the Scoping Document, contain:
- (a) the relevant Selected Option;
 - (b) an explanation of the steps required to implement the Selected Option;
 - (c) any applicable additions and/or amendments necessary to deliver the Selected Option to the Accepted Programme (including the Accepted Programme Specific Requirements) and Transitional Programme (including the Transitional Programme Specific Requirements);
 - (d) a plain English note describing the Selected Option;

- (e) any applicable additions and/or amendments (including any additional cost categories) necessary to deliver the Selected Option to the:
 - (i) IO Modelling Suite; and
 - (ii) Modelling Suite; and
 - (f) for all additional capital expenditure or operating expenditure:
 - (i) a detailed explanation of all costs and revenue impacts in relation to the IO Modelling Suite and the Modelling Suite; and
 - (ii) confirmation by a statutory director of the Operator that any applicable additions and/or amendments relating to the Shadow Operator Cost Categories as included in the Final Output Report in accordance with paragraph 3.2(e) are compliant with paragraph 12 of Chapter 11.1 (*Shadow Operations*).
- 3.3 Within forty (40) Weekdays of receiving the Final Output Report, the Secretary of State shall give notice in writing to the Operator:
- (a) agreeing the Final Output Report; or
 - (b) requiring revisions to the Final Output Report and, if so, specifying what revisions are required and whether the reason for the revisions is that the Final Output Report does not fulfil the requirements of the applicable Scoping Document (in the opinion of the Secretary of State).
- 3.4 If the Secretary of State gives notice in writing of any requirement set out in paragraph 3.3(b) of this Appendix, the Operator shall promptly after receiving such notice, produce and submit a revised Final Output Report incorporating the required amendments in accordance with paragraphs 3.1 and 3.2 of this Appendix.
- 3.5 If the Secretary of State gives notice in writing of the Secretary of State's agreement of any Final Output Report under paragraph 3.3(a) of this Appendix, if the Final Output Report, requires any amendments to any Business Plan Commitments in the then-current Business Plan Year, the Operator shall propose a Business Plan Revision to reflect the amendments to such Business Plan Commitments.
- 4. HS2 Outputs and HS2 Output Reports**
- 4.1 If the Required Output is to cooperate with HS2 Limited to enable delivery of HS2 Limited's obligations under the Development Agreement including in respect of HS2 Phase One, HS2 Phase 2a and/or HS2 Phase 2b (the "**HS2 Output**"), the Operator shall discuss and agree with HS2 Limited the scope and form of its role and involvement ("**HS2 Scope**") in the delivery of the HS2 Output, including in relation to:
- (a) timescales; and
 - (b) where applicable, costs and funding,
- and in compliance with any instructions, administrative practices, formal or informal guidance, policies measures or publications advised by the Secretary of State. For clarity, the parameters set out in paragraph 1.1 and 1.2 shall, to the extent applicable, apply to any HS2 Scope.
- 4.2 Prior to submitting any HS2 Scope for formal approval by HS2 Limited, the Operator shall provide the Secretary of State with the draft HS2 Scope which is intended to be submitted to HS2 Limited for approval.
- 4.3 Within twenty (20) Weekdays of receiving the draft HS2 Scope (or, where any additional information and/or evidence has been requested in accordance with paragraph 4.3(b) within twenty (20) Weekdays of the Secretary of State receiving all requested information and/or evidence) (or in each case, such longer period as may be agreed between the Parties in writing), the Secretary of State shall give notice in writing to the Operator:
- (a) agreeing the draft HS2 Scope;
 - (b) requesting the provision of additional information and/or evidence to enable the Secretary of State to determine whether to agree or require revisions to the draft HS2 Scope; or
 - (c) requiring such revisions to the HS2 Scope as the Secretary of State may require.

- 4.4 If the Secretary of State gives notice in writing requiring revisions under paragraph 4.3(c), the Operator shall seek to agree a revised HS2 Scope with HS2 Limited and shall submit a revised draft HS2 Scope to the Operator following agreement with HS2 Limited.
- 4.5 The Operator shall promptly notify the Secretary of State in writing once the HS2 Scope has been agreed between the Operator and HS2 Limited. Any HS2 Scope agreed between the Operator and HS2 Limited shall be in the form agreed by the Secretary of State under paragraph 4.3(a).
- 4.6 If there is any dispute between the Operator and HS2 Limited as to the HS2 Scope (including where the Operator and HS2 Limited are unable to agree such revisions as the Secretary of State required under paragraph 4.3(c)), the Operator shall promptly notify the Secretary of State of such dispute. The Secretary of State may determine the HS2 Scope.
- 4.7 Following agreement or determination of any HS2 Scope, if:
- (a) any aspect is to be delivered in the then-current Business Plan Year; and
 - (b) the aspect(s) of such HS2 Scope which are to be delivered in the then-current Business Plan Year require any amendments to be made to the Business Plan Commitments, the Operator shall propose a Business Plan Revision to reflect the amendments required by the relevant aspect.
- 4.8 If HS2 Limited is required to produce any paper, document, report, plan, advice or recommendation as contemplated by this Contract or otherwise in relation to any HS2 Output, delivery of which requires the Operator to cooperate with HS2 Limited (a “**HS2 Output Report**”), the Operator shall discuss, review and provide comment in writing to HS2 Limited upon each version of the HS2 Output Report received by the Operator within twenty (20) Weekdays, or such other period as HS2 Limited and the Operator may agree, of its submission to the Operator by HS2 Limited.
- 4.9 At any time following the Operator’s notification under paragraph 4.5, the Secretary of State may require the Operator to provide an Operator’s HS2 Report by such time as the Secretary of State may specify.
- 4.10 If there is any dispute between the Operator and HS2 Limited, arising out of or in connection with any HS2 Output or HS2 Output Report, including any concerns of the Operator relating to the HS2 Recommended Option that the Operator considers have not been given reasonable consideration by HS2 Limited, the Operator shall promptly notify the Secretary of State of such dispute.

5. **Operator’s HS2 Report**

- 5.1 Each Operator’s HS2 Report shall contain (unless otherwise agreed between the Parties):
- (a) an evaluation of each option proposed by HS2 Limited for implementing the HS2 Output (if applicable, as set out in the HS2 Output Report), including the option preferred by HS2 Limited (the “**HS2 Recommended Option**”);
 - (b) any concerns still outstanding of the Operator in relation to the HS2 Recommended Option;
 - (c) a detailed explanation of how the HS2 Recommended Option will impact upon the Strategic Operational Baseline Forecast;
 - (d) a detailed explanation of how the HS2 Recommended Option corresponds to or deviates from the assumptions contained in the IO Record of Assumptions;
 - (e) an assessment of the financial implications and a Value for Money Assessment in respect of each option proposed (as set out in paragraph 5.1(a)), if adopted, for:
 - (i) the High Speed Services;
 - (ii) if applicable, the Passenger Services other than High Speed Services;
 - (iii) passenger and freight services in respect of the National Railway Network, for the following periods:
 - (iv) during the Contract Term; and
 - (v) for the period specified by the Secretary of State;
 - (f) an explanation of the steps required to implement the HS2 Recommended Option;

- (g) any applicable additions and/or amendments to the Accepted Programme (including the Accepted Programme Specific Requirements) and/or, Transitional Programme (including the Transitional Programme Specific Requirements) necessary to deliver the HS2 Recommended Option;
- (h) a plain English note describing the HS2 Recommended Option;
- (i) an explanation of whether any amendments are required to the Business Plan Commitments for the then-current Business Plan Year in order to deliver (or enable delivery of) the HS2 Recommended Option;
- (j) any applicable additions and/or amendments necessary to deliver the HS2 Recommended Option to the:
 - (i) IO Modelling Suite;
 - (ii) Modelling Suite; and
- (k) for all additional capital expenditure or operating expenditure:
 - (i) a detailed explanation of all costs and revenue impacts in relation to the IO Modelling Suite and the Modelling Suite; and
 - (ii) confirmation by a statutory director of the Operator that any applicable additions and/or amendments included in accordance with paragraph 5.1(j) are compliant with paragraph 12 of Chapter 11.1 (*Shadow Operations*).

6. Agreement on Functional Requirements

6.1 If a Shadow Operator Business Plan Commitment requires the Operator to provide Functional Requirements to HS2 Limited to enable delivery of any HS2 Output, the Operator shall provide its proposed functionality and compatibility for the relevant Functional Aspect to HS2 Limited and the Operator and HS2 Limited shall discuss and agree:

- (a) the scope and form of the relevant Functional Requirement;
- (b) the costs and funding relating to the relevant Functional Requirement; and
- (c) a recommendation as to whether the Functional Requirement Asset should be vested in HS2 Limited, the Operator or a third party and, if a third party, identifying such third party,

in each case, in compliance with any instructions, administrative practices, guidance, policies measures or publications advised by the Secretary of State.

6.2 The Operator shall promptly notify the Secretary of State in writing once the scope and form of any Functional Requirement has been agreed between the Operator and HS2 Limited, including in relation to whole life costs and funding.

6.3 If there is any dispute between the Operator and HS2 Limited as to the appropriate scope and form of any Functional Requirement, the Operator shall promptly notify the Secretary of State of such dispute. The Secretary of State may determine the scope and form of any Functional Requirement.

6.4 If the Operator and HS2 Limited agree on the scope and form of any Functional Requirement but such Functional Requirement diverges from existing industry practice, the Operator shall submit such Functional Requirement in writing to the Secretary of State for consent.

6.5 Following agreement or determination of the scope and form of any Functional Requirement, and, if applicable, written agreement from the Secretary of State pursuant to paragraph 6.4 of this Appendix, the Operator shall cooperate with HS2 Limited in accordance with the Collaboration Agreement to finalise such Functional Requirement.

6.6 Following finalisation of any Functional Requirement, the Operator shall promptly submit such Functional Requirement in writing to the Secretary of State for consent.

6.7 Within twenty (20) Weekdays of receiving any Functional Requirement, the Secretary of State shall give notice in writing to the Operator (and HS2 Limited):

- (a) agreeing the Functional Requirement; or
- (b) requiring revisions to the Functional Requirement, in which case the Operator shall cooperate with HS2 Limited in accordance with the Collaboration Agreement to produce a revised Functional Requirement incorporating such revisions; and

- (c) determining whether the Functional Requirement Asset should be vested in HS2 Limited, the Operator or a third party and, if a third party, identifying such third party (taking into account the recommendation provided pursuant to paragraph 6.1(c)).

7. Delivering the Functional Requirement

- 7.1 Following agreement regarding Functional Requirements, if required under a Shadow Operator Business Plan Commitment, the Operator and HS2 Limited shall discuss and agree in order that HS2 Limited may develop:
- (a) the necessary project requirement specification to deliver such Functional Requirement;
 - (b) the necessary technical specification to deliver such project requirement specification;
 - (c) the form of contract under which such Functional Requirement will be procured and (where applicable) maintained; and
 - (d) the acceptance criteria (or equivalent, where the performance of services is being procured) relating to such Functional Requirement (“**Functional Requirement Acceptance Criteria**”).
- 7.2 If there is any dispute between the Operator and HS2 Limited in agreeing the Functional Requirement Acceptance Criteria, the Operator shall promptly notify the Secretary of State of such dispute. The Secretary of State may determine the Functional Requirement Acceptance Criteria.
- 7.3 If HS2 Limited does not consult the Operator reasonably promptly after commencing, or reasonably frequently during, the process for the procurement of any Functional Requirement Asset, or if the Operator (acting reasonably) has any concerns about such a process, the Operator shall immediately notify the Secretary of State.
- 7.4 Prior to HS2 Limited completing the purchase (or acquisition, entry into or assumption, as applicable) of a Functional Requirement Asset, the Operator shall work with HS2 Limited to confirm whether the Functional Requirement Asset meets the Functional Requirement or Functional Requirements and whether the Functional Requirement Asset is reasonably likely to meet the Functional Requirement Acceptance Criteria. The Operator shall:
- (a) promptly notify HS2 Limited if the Operator considers (acting reasonably) that the Functional Requirement Asset meets the Functional Requirement or Functional Requirements and meets, or is reasonably likely to meet, the Functional Requirement Acceptance Criteria, setting out the reasons for its opinion; or
 - (b) promptly notify HS2 Limited and the Secretary of State if the Operator does not consider (acting reasonably) that the Functional Requirement Asset meets the Functional Requirement or Functional Requirements and meets, or is reasonably likely to meet, the Functional Requirement Acceptance Criteria, any proposed solution to any failure to meet the Functional Requirement or Functional Requirements and/or the Functional Requirement Acceptance Criteria (if appropriate).
- 7.5 Following HS2 Limited’s purchase (or acquisition, entry into or assumption, as applicable) of the Functional Requirement Asset, if required under a Shadow Operator Business Plan Commitment:
- (a) the Operator shall undertake an assessment of that Functional Requirement Asset in order to confirm whether the Functional Requirement Asset meets the Functional Requirement Acceptance Criteria and shall promptly notify HS2 Limited and the Secretary of State of whether or not it considers the Functional Requirement Acceptance Criteria have been met, setting out the reasons for its opinion;
 - (b) the Operator and the Secretary of State shall agree a Scoping Document in accordance with paragraph 1 and the Operator shall produce a Required Output Report in accordance with paragraph 2 of this Appendix, including:
 - (i) detailed information on how the Functional Requirement or Functional Requirements meet the relevant Shadow Operator Business Plan Commitment; and
 - (ii) the Operator’s assessment of the Functional Requirement Asset including details of:
 - (A) how the Functional Requirement Asset meets the Functional Requirement or Functional Requirements;

- (B) whether, in the Operator's reasonable opinion, the Functional Requirement Asset meets the Functional Requirement Acceptance Criteria; and
- (C) where the Secretary of State has notified the Operator in accordance with paragraph 6.7(c) that the Functional Requirement Asset should be vested in the Operator, the life and the maintenance requirements (if any) of the Functional Requirement Asset.

8. **Functional Requirement Asset**

- 8.1 If the Secretary of State has determined in accordance with paragraph 6.7(c) that the Functional Requirement Asset should be vested in HS2 Limited the Secretary of State shall confirm in writing to HS2 Limited and the Operator that no further action is required and the Functional Requirement Asset shall remain vested in HS2 Limited.
- 8.2 If the Secretary of State has determined in accordance with paragraph 6.7(c) that the Functional Requirement Asset should be vested in the Operator, then within twenty (20) Weekdays of receiving the Required Output Report pursuant to paragraph 7.5(b) of this Appendix, the Secretary of State shall notify HS2 Limited and the Operator in writing of the anticipated date on which such Functional Requirement Asset shall be transferred to the Operator.
- 8.3 Upon the Secretary of State providing written notice to the Operator pursuant to paragraph 8.2 of this Appendix:
- (a) the Operator shall accept the transfer of any Functional Requirement Asset which the Secretary of State has determined should be vested in the Operator;
 - (b) the Operator shall enter into a novation agreement with HS2 Limited and any relevant third party to transfer any agreements relating to such Functional Requirement Asset to the Operator (such novation agreement to be in the form set out in Appendix 2 to this Chapter 11.1, unless otherwise agreed by the Secretary of State);
 - (c) the Operator shall provide HS2 Limited with all reasonable assistance in ensuring that any relevant third party enters into Direct Agreements relating to such Functional Requirement Asset;
 - (d) the Operator shall do and execute any act or document requested of it by the Secretary of State to implement and give full effect to the transfer of any Functional Requirement Asset to the Operator;
 - (e) the Functional Requirement Asset and any agreements relating to that Functional Requirement Asset shall be designated a Primary Asset which shall transfer to a Successor Operator at nil value and shall not be de-designated as such. Following completion of the transfer of such Functional Requirement Asset, the Secretary of State shall confirm that no further action is required in respect of each Functional Requirement Asset which has been transferred.

Appendix 2 to Chapter 11.1

Form of Novation Agreement for Functional Requirement Asset

Dated [Year]

**[INSERT NAME OF SUPPLIER]
HIGH SPEED TWO (HS2) LIMITED
[INSERT NAME OF OPERATOR]**

**[TEMPLATE] DEED OF NOVATION OF A
CONTRACT**

This deed is dated

[DATE]

Parties

- (1) **[INSERT NAME OF SUPPLIER]** incorporated and registered in **[INSERT JURISDICTION IN WHICH SUPPLIER IS REGISTERED]** with company number **[INSERT COMPANY NUMBER OF SUPPLIER]** whose registered office is at **[INSERT REGISTERED OFFICE OF SUPPLIER]** (**Supplier**)
- (2) **HIGH SPEED TWO LIMITED** incorporated and registered in England with company number 06791686 whose registered office is at Two Snow Hill, Snow Hill Queensway, Birmingham, B4 6GA (**HS2 Limited**)
- (3) **[INSERT NAME OF OPERATOR]** incorporated and registered in England with company number **[INSERT COMPANY NUMBER OF OPERATOR]** whose registered office is at **[INSERT REGISTERED OFFICE OF SUPPLIER]** (**Operator**)

Background

- (A) The Supplier and HS2 Limited are party to a contract for the provision of **[INSERT BRIEF DESCRIPTION OF PURPOSE OF CONTRACT TO BE NOVATED]** dated **[INSERT DATE OF CONTRACT TO BE NOVATED]** (**Contract**).
- (B) HS2 Limited wishes to transfer its rights and obligations under the Contract to the Operator.
- (C) HS2 Limited shall continue to be liable for any failure by it to perform its obligations under the Contract before the Effective Date, with the Operator assuming responsibility for all liabilities arising on and from the Effective Date.
- (D) The parties have therefore agreed to novate HS2 Limited's rights and obligations under the Contract to the Operator on the terms of this deed with effect from the date of this deed (**Effective Date**).

Agreed terms

1 Novation

- 1.1 HS2 Limited transfers all its rights and obligations under the Contract to the Operator with effect from the Effective Date.
- 1.2 The Operator shall enjoy all the rights and benefits of HS2 Limited under the Contract with effect from the Effective Date (including any rights and benefits which have accrued prior to the Effective Date). The Operator agrees to perform the Contract with effect from the Effective Date and be bound by its terms in every way as if it were the original party to it in place of HS2 Limited.
- 1.3 The Supplier agrees to perform the Contract and be bound by its terms in every way as if the Operator were the original party to it in place of HS2 Limited.
- 1.4 All references to HS2 Limited in the Contract shall be read and construed as references to the Operator.

2 Release of obligations

- 2.1 The Supplier and HS2 Limited release each other from all future obligations to the other under the Contract.
- 2.2 Nothing in this deed shall affect or prejudice any claim or demand that the Supplier may have against HS2 Limited under or in connection with the Contract with respect to matters occurring before the Effective Date.
- 2.3 The Operator shall have the right to enforce the Contract and pursue any claims and demands under the Contract against the Supplier with respect to matters arising before, on or after the Effective Date as though the Operator were the original party to the Contract instead of HS2 Limited.
- 2.4 HS2 Limited shall have the right to enforce the Contract and pursue any claims and demands under the Contract against the Supplier with respect to any losses incurred by HS2 Limited due to breaches of the Contract which occurred prior to the Effective Date.

3 Indemnity

- 3.1 The Operator shall indemnify HS2 Limited against all liabilities, costs, expenses, damages and losses that HS2 Limited suffers or incurs under or in connection with the Contract as a result of the Operator's failure, with effect from the Effective Date, to perform or satisfy its assumed obligations under the Contract.

3.2 HS2 Limited shall indemnify the Operator against all liabilities, costs, expenses, damages and losses that the Operator suffers or incurs under or in connection with the Contract as a result of HS2 Limited’s failure to perform or satisfy its obligations under the Contract before the Effective Date.

4 **Governing law**

This deed and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England.

5 **Jurisdiction**

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this deed or its subject matter or formation.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

Executed as a deed by)
[INSERT NAME OF SUPPLIER] acting by a)
director in the presence of) Director

.....
Signature of witness

Name

Address

.....

Executed as a deed by)
HIGH SPEED TWO (HS2) LIMITED acting)
by a director in the presence of) Director

.....
Signature of witness

Name

Address

.....

Executed as a deed by)

[INSERT NAME OF OPERATOR] acting by)

a director in the presence of) Director

.....

Signature of witness

Name

Address

.....

DEROGATIONS (WAIVERS) - POST CONTRACT SIGNATURE DATE

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