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Dated [201◆]

(1) The Secretary of State for Transport

(2) [FRANCHISEE]

Draft franchise agreement revised and republished 17 September 2015

EAST ANGLIA FRANCHISE AGREEMENT

Guidance Note to Bidders: The franchise agreement should be read together with the **Explanatory Note** which is to follow and sets out the changes to the Franchise Agreement since the issue of the Northern and TPE Competition Agreements in April 2015.

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THIS AGREEMENT is dated [201◆]

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) **[FRANCHISEE]** (Company Number [INSERT NUMBER]), whose registered office is at [registered address] (the **"Franchisee"**).

WHEREAS:

(A) On 19 February 2015 the Secretary of State advertised in the Official Journal of the European Union (reference 2015/S 038-065248) inviting prospective franchisees to submit proposals for the provision of railway services to the East Anglia rail passenger franchise. On the basis of the Franchisee's response to the advertisement and a subsequent Invitation to Tender, the Secretary of State selected the Franchisee as its preferred service provider.

(B) The Secretary of State wishes to appoint a franchisee to provide railway passenger services within the Franchise and expects his franchisee, on the terms of the Franchise Agreement, actively to seek, in all reasonable business ways, greatly improved performance over the Franchise Term from its employees, its Train Fleet and other assets, and from Network Rail and its other suppliers, so as to deliver to the passenger the best railway passenger service that can be obtained from the resources that are available to it.

(C) The Franchisee wishes to be appointed as the Secretary of State's franchisee for the Franchise and intends, on the terms of this Agreement, actively to seek, in all reasonable business ways, greatly improved performance over the Franchise Term from its employees, its Train Fleet and other assets, and from Network Rail and its other suppliers, so as to deliver to the passenger the best railway passenger service that can be obtained from the resources that are available to it.

(D) The following provisions of this Agreement are intended to reflect and give effect to the matters referred to in Recitals (B) and (C) inclusive.

1. INTERPRETATION

1.1 In the Franchise Agreement, except to the extent the context otherwise requires:

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

(b) words and expressions defined in the Interpretation Act 1978 have the same meanings when used in the Franchise Agreement;

(c) references to **"Party"** or **"Parties"** shall mean the Secretary of State and the Franchisee;

(d) the words **"include"**, **"including"** and **"in particular"** are to be construed without limitation;

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(e) references to any **"person"** include its successors, transferees or assignees;

(f) the words **"subsidiary"**, **"subsidiary undertaking"** and **"parent undertaking"** each have the same meaning in the Franchise Agreement as in Section 1162 of the Companies Act 2006;

(g) references in any of the agreements comprising the Franchise Agreement to Recitals, clauses, Schedules, Parts of Schedules, paragraphs of Schedules and Appendices to Schedules are to Recitals, clauses, Schedules, Parts of Schedules, paragraphs of Schedules and Appendices to Schedules of that agreement, unless expressly specified to the contrary, and the Schedules and Appendices form part of the agreement in which they appear;

(h) references in any Schedule in any of the agreements comprising the Franchise Agreement to a Part, paragraph or Appendix are references to a Part, paragraph or Appendix of that Schedule (or the relevant Part of a Schedule), unless expressly specified to the contrary;

(i) headings and references to headings shall be disregarded in construing the Franchise Agreement;

(j) references to any enactment include any subordinate legislation made from time to time under such enactment and are to be construed as references to that enactment as for the time being amended or modified or to any enactment for the time being replacing or amending it and references to any subordinate legislation are to be construed as references to that legislation as for the time being amended or modified or to any legislation for the time being replacing or amending it;

(k) references to an agreement or any other document shall be construed as referring to that agreement or document as from time to time supplemented, varied, replaced, amended, assigned or novated;

(l) references to any particular provisions of any agreement or any other document shall be construed to include any other provisions of, or incorporated in, that agreement or other document which the Secretary of State reasonably considers have an equivalent effect or are intended to fulfil the same function;

(m) amendments to or variations of contracts or arrangements include assignments, novations or other transfers of rights and/or obligations (in whole or in part) under such contracts or arrangements;

(n) words importing the masculine gender include the feminine and vice-versa, and words in the singular include the plural and vice-versa;

(o) wherever provision is made for the giving or issuing of any notice, endorsement, consent, approval, waiver, certificate or determination by any person, unless otherwise specified, such notice, endorsement, consent, approval, waiver, certificate or determination shall be in writing and the words **"notify"**, **"endorse"**, **"consent"**, **"approve"**, **"waive"**, **"certify"** or **"determine"** and other cognate expressions shall be construed accordingly;

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(p) references to materials, information, data and other records shall be to materials, information, data and other records whether stored in electronic, written or other form;

(q) references to the Franchisee bidding for Train Slots or a Timetable shall mean the final action incumbent on the Franchisee under the Network Code to confirm to Network Rail its interests in the Train Slots to which that confirmation relates, and **"bid"** shall be construed accordingly;

(r) references to the period of validity of any Fare are references to its period of validity excluding any rights of any purchaser thereof to extend such period under the Passenger's Charter, any equivalent document, or the terms and conditions attaching to such Fare (including any applicable conditions of carriage) in the event of the cancellation or delay of any of the railway passenger services for which such Fare is valid;

(s) references to **"railway passenger services"** are to be construed subject to Section 40 of the Railways Act 2005;

(t) references to the **"provision of railway passenger services"** include the organisation of the relevant train movements and making the necessary arrangements with Network Rail or any other relevant Facility Owner;

(u) references in lower case letters to terms defined in clause 3 (Definitions) shall be construed, where relevant, as being references to the terms defined as such in the franchise agreement or relevant agreement made under Section 30 of the Act or Section 6 of the Railways Act 2005 with any other Train Operator;

(v) references to sums of money being expended by the Franchisee shall be to such sums exclusive of Value Added Tax;

(w) the words **"shall not be liable"** are to be construed as meaning that no contravention of the Franchise Agreement and no Event of Default shall arise as a result of the occurrence of the matter to which such words relate;

(x) references to a **"contravention of the Franchise Agreement"** (and cognate expressions) are to be construed as meaning a breach of the Franchise Agreement;

(y) wherever provision is made for the Franchisee to **"procure"** or **"ensure"** the delivery of an obligation under the Franchise Agreement, unless otherwise specified, that provision shall be construed as a primary obligation on the Franchisee to deliver that obligation;

(z) references to **"profit"** shall be construed as meaning profit before corporation tax, determined in accordance with GAAP.

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

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2. AGREED DOCUMENTS

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

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

[1]**ABD**	Actual Benchmark Data;
[2]**CESM**	Customer Experience Survey Methodology
[3]**CFD**	Commuter Fares Document;
[4]**CRT**	Crossrail Timetable May 2019;
[5]**CSES**	Customer & Stakeholder Engagement Strategy;
[6]**DL**	Depot Lease;
[7]**ERTMSP**	Network Rail ERTMS Implementation Plan;
[8]**FF**	Financial Formats;
[9]**FM**	Financial Model;
[10]**GAL**	Grey Assets List;
[11]**IS**	Innovation Strategy;
[12]**OM**	Operational Model;
[13]**PC**	Passenger's Charter;
[14]**PFD**	Protected Fares Document;

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1 **Note to Bidders:** To be supplied by the DfT.

2 **Note to Bidders:** To be supplied by the DfT.

3 **Note to Bidders:** To be supplied by the DfT.

4 **Note to Bidders:** To be supplied by the DfT.

5 **Note to Bidders:** To be supplied by Bidders as part of Delivery Plan No. 2.3

6 **Note to Bidders:** To be supplied by the DfT.

7 **Note to Bidders**: To be supplied by the DfT.

8 **Note to Bidders:** To be provided only to the winning bidder.

9 **Note to Bidders:** To be supplied by Bidders as required by Section 6 of the ITT.

10 **Note to Bidders:** To be supplied by the DfT.

11 **Note to Bidders**: To be supplied by Bidders as part of Delivery Plan No. 3.2.

12 **Note to Bidders**: To be supplied by Bidders as required by Section 6 of the ITT.

13 **Note to Bidders**: To be supplied by Bidders as part of Delivery Plan No. 2.2.

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[15]**POA**	Power of Attorney;
[16]**PSAMP**	Previous Franchisee's Station Asset Management Plan;
[17]**ROA**	Record of Assumptions;
[18]**SAMP**	Station Asset Management Principles;
[19]**SCM**	Station Condition Methodolgy;
[20]**SCDP**	Station Social and Commercial Development Plan;
[21]**SL**	Station Lease;
[22]**TP**	Train Plan; and
TSR 1-2	Train Service Requirements.

3. DEFINITIONS

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

"16 to 25 Railcard"	means a Discount Card issued under the Discount Fare Scheme referred to in paragraph 3 of Schedule 2.5 (Transport, Travel and Other Schemes);
"2015 Nominal Ticket Sales"	has the meaning given to it in paragraph 3 of Schedule 5.4 (Regulation of Fares Basket Values);
"2015 Ticket Revenue"	has the meaning given to it in paragraph 4 of Schedule 5.4 (Regulation of Fares Basket Values);
"Access Agreement"	has the meaning given to the term **"access agreement"** in Section 83(1) of the Act;
"ACoRP"	means the Association of Community Rail Partnerships whose principle place of business is The Old Water Tower, Huddersfield Railway Station,

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14 **Note to Bidders**: Final version to be supplied by the DfT to the winning bidder only.

15 **Note to Bidders**: To be supplied by the DfT.

16 **Note to Bidders:** To be supplied by the DfT.

17 **Note to Bidders**: To be supplied by Bidders as required by Section 6 of the ITT.

18 **Note to Bidders**: To be derived from the Bidder's response on approach to asset management as part of Delivery Plan No. 2.1.

19 **Note to Bidders**: To be supplied by the DfT.

20 **Note to Bidders**: To be supplied by Bidders as part of Delivery Plan No. 2.1.

21 **Note to Bidders**: To be supplied by the DfT.

22 **Note to Bidders**: To be supplied by Bidders as part of Delivery Plan No. 1.1.

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St Georges Square, Huddersfield, HD1 1JF or any successor body whose purpose is to support Community Rail Partnerships;

"Act" means the Railways Act 1993 (as modified, amended or replaced by the Transport Act 2000 and/or the Railways Act 2005) and any regulations or orders made thereunder;

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

"Actual CaSL Performance Level" has the meaning given to it in paragraph 1.1 of Schedule 7.1 (Performance Benchmarks);

"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 Operating Costs" means:

(a) the Franchisee's total operating expenses for the period being reviewed as stated in its profit and loss account, including any of the following operating expenses that are payable during that period:

(i) amounts payable to the Secretary of State and Network Rail;

(ii) taxation;

(iii) shareholder distributions including dividends;

(iv) interest;

(v) capital expenditure (net of grants received);

(vi) lease payments in relation to on-balance sheet leased assets; and

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

(vii) interest relating to on-balance sheet leased assets;

(viii) depreciation;

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(ix) amortisation; and

(x) bad debt provisions; and

(b) either:

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

(ii) less any increase in the total amount owing by the Franchisee to creditors over that period,

where creditors:

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

(B) exclude persons owed amounts by the Franchisee in respect of season ticket liabilities, lease liabilities in relation to on-balance sheet leased assets and liabilities in relation to grants received for the purchase of fixed assets;

"Actual Passenger Demand" has the meaning given to it in paragraph 1.1 of Schedule 1.5 (Information about Passengers);

"Actual PPM Performance Level" has the meaning given to it in paragraph 1.1 of Schedule 7.1 (Performance Benchmarks);

"Actual Station Condition Expenditure" means the expenditure actually and properly incurred by the Franchisee in any Reporting Period in respect of the maintenance, repair and renewal of the Stations in accordance with the Station Asset Management Plan;

"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);

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

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"Additional Rolling Stock"	means Specified Additional Rolling Stock [and Unspecified Additional Rolling Stock][23];
"Administration Fee"	has the meaning given to it in clause 8.5 (Change of Control and Facilitation Fee);
"Advance Purchase Train-specific Fares"	has the meaning given to it under the Ticketing and Settlement Agreement;
"Affected Party"	has the meaning given to it in paragraph 6.3 of Schedule 12 (Financial Covenants and Bonds);
"Affiliate"	means, in respect of any person, any person by which that person is Controlled or which is Controlled by that person, or any person which is Controlled by any other Affiliate of that person and for the purpose of this definition Network Rail or NR shall not be construed as being an affiliate of the Secretary of State;
"AFP"	has the meaning given to it in Appendix 1 to Schedule 8.1 (Annual Franchise Payments);
"Agreement"	means clauses 1 to 16 and Schedules 1 to 17 including any Appendices and Annexes as varied from time to time;
"Aggregated Qualifying Change"	means two (2) or more Changes which: (a) are notified or agreed (in the case of a Change which is a Variation pursuant to paragraph 1.1 of Schedule 9.3 (Variations to the Franchise Agreement and Incentivising Beneficial Changes)); and/or (b) a Party has become aware of (in the case of any other kind of Change),

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[23] **Note to Bidders:** Drafting to be adopted if the Bidder proposes Unspecified Rolling Stock as part of its rolling stock solution.

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

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

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

"Alliance Agreement" has the meaning given to such term in paragraph 6.2 of Schedule 13.1 (Rail Industry Initiatives);

"Alternative NRPS" has the meaning given to such term in paragraph 2.6 of Schedule 7.2 (National Rail Passenger Surveys, Customer Report and CCIF Scheme);

"Alternative Scheme" means a Committed Obligation proposed by the Franchisee in place of a Specimen Scheme in accordance with paragraph 7 of Part 2 (Special Terms related to Committed Obligations) of Schedule 6.2 (Committed Obligations);

"Ancillary Service" means any service specified in paragraph 7 of Part 1 (Franchise Services) of Schedule 1.1 (Franchise Services and Service Development);

"Annual Audited Accounts" means the accounts of the Franchisee which:

(a) comply with paragraph 9.5(b) of Schedule 11.2 (Management Information)

(b) are delivered to the Secretary of State by the Franchisee in accordance with paragraph 9.4(c) of Schedule 11.2 (Management Information) and certified by

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the Franchisee's auditors as true and fair;

"Annual Benchmark" means any of the Annual Cancellations Benchmark, the Annual TOC Minute Delay Benchmark or the Annual Short Formation Benchmark or the Annual Short Formation Benchmark;

"Annual Benchmark Table" has the meaning given to it in paragraph 1.1 of Schedule 7.1 (Performance Benchmarks);

"Annual Business Plan" means the plan to be provided by the Franchisee to the Secretary of State in accordance with paragraph 10.2 of Schedule 11.2 (Management Information);

"Annual Cancellations Benchmark" means for each Franchisee Year, each of the benchmarks specified in the Annual Cancellations Benchmark Table for that Franchisee Year provided that where a Franchisee Year is shorter than thirteen (13) Reporting Periods then the Annual Cancellations Benchmark for that Franchisee Year shall be as determined pursuant to paragraph 20.1(a) of Schedule 7.1 (Performance Benchmarks);

"Annual Cancellations Benchmark Table" has the meaning given to it in paragraph 1.1 of Schedule 7.1 (Performance Benchmarks);

"Annual Cancellations Payment Table" has the meaning given to it in paragraph 1.1 of Schedule 7.1 (Performance Benchmarks);

"Annual Cap Performance Level" has the meaning given to it in paragraph 1.1 of Schedule 7.1 (Performance Benchmarks);

"Annual CaSL Target Performance Level" has the meaning given to it in paragraph 1.1 of Schedule 7.1 (Performance Benchmarks);

"Annual Financial Statements" means the final draft financial statements of the Franchisee which:

(a) comply with paragraph 9.5(b) of Schedule 11.2; (Management Information); and

(b) are delivered to the Secretary of State by the Franchisee in accordance with paragraph 9.4(b) of Schedule 11.2 (Management Information);

"Annual Floor Performance Level" has the meaning given to it in paragraph 1.1 of Schedule 7.1 (Performance Benchmarks);

"Annual Franchise Payment" means, in relation to any Franchisee Year, the amount determined in accordance with Appendix 1 (Annual Franchise Payments) to Schedule 8.1

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(Franchise Payments);

"Annual Franchise Payment Components"	means the values of **"FXD"**, **"VCRPI"**, **"VCAWE"**, **"PRPI"** and **"RRPI"** specified for each Franchisee Year in the table set out in Appendix 2 (Figures for Calculation of Annual Franchise Payments) to Schedule 8.1 (Franchise Payments);
"Annual Intermediate Performance Level"	has the meaning given to it in paragraph 1.1 of Schedule 7.1 (Performance Benchmarks);
"Annual Management Accounts"	means the management accounts of the Franchisee which: (a) comply with paragraph 9.5(a) of Schedule 11.2 (Management Information); and (b) are delivered to the Secretary of State by the Franchisee in accordance with paragraph 9.4(a) of Schedule 11.2 (Management Information);
"Annual PPM Target Performance Level"	has the meaning given to it in paragraph 1.1 of Schedule 7.1 (Performance Benchmarks);
"Annual Season Ticket"	means a Season Ticket Fare which is valid in Standard Class Accommodation from (and including) the day on which it first comes into effect until (but excluding) the day which falls twelve (12) months after such day;
"Annual Short Formation Benchmark"	has the meaning given to it in paragraph 1.1 of Schedule 7.1 (Performance Benchmarks);
"Annual Short Formation Benchmark Table"	has the meaning given to it in paragraph 1.1 of Schedule 7.1 (Performance Benchmarks);
"Annual Short Formation Payment Table"	has the meaning given to it in paragraph 1.1 of Schedule 7.1 (Performance Benchmarks);
"Annual Station Condition Amount"	means the annual amount attributed to the maintenance, repair and renewal of Stations for the relevant Franchisee Year set out in Column 2 of the table in Appendix 4 (Annual Station Condition Amount) in Schedule 1.7 (Stations);
"Annual Target Performance Level"	has the meaning given to it in paragraph 1.1 of Schedule 7.1 (Performance Benchmarks);
"Annual TOC Minute Delay Benchmark"	has the meaning given to it in paragraph 1.1 of Schedule 7.1 (Performance Benchmarks);
"Annual TOC Minute Delay Benchmark Table"	has the meaning given to it in paragraph 1.1 of Schedule 7.1 (Performance Benchmarks);

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"Annual TOC Minute Delay Payment Table"	has the meaning given to it in paragraph 1.1 of Schedule 7.1 (Performance Benchmarks);
"Approved CCIF Scheme"	means a CCIF Scheme approved by the Secretary of State in accordance with paragraph 11.4 of Schedule 7.2 (National Rail Passenger Surveys, Customer Report and CCIF Scheme);
"Asset Remaining Life"	means the amount of the life of a Station Asset remaining (calculated as a percentage in accordance with NR/ARM/M17PR or such other standards as may be notified from time to time) before that asset can reasonably be expected to require replacement by a new asset (assessed on the assumption that the asset continues to receive appropriate repair and maintenance throughout its remaining life);
"ATOC"	means the Association of Train Operating Companies including any of its successors and assigns;
"Average Weekly Earnings"	means the United Kingdom average weekly earnings measure excluding bonuses as published from time to time by the Office for National Statistics or, if such measure shall cease to be published or if, in the reasonable opinion of the Secretary of State, there is a material change in the basis of such measure, such other alternative index as the Secretary of State may, after consultation with the Franchisee, determine to be appropriate in the circumstances;
"AWE"	has the meaning given to it in Appendix 1 (Annual Franchise Payments) to Schedule 8.1 (Franchise Payments);
"Bank"	means a person which has a permission under Part 4A of the Financial Services and Markets Act 2000 to carry on the regulated activity of accepting deposits thereunder and which is reasonably acceptable to the Secretary of State;
"Bank Holiday"	means any day other than a Saturday or Sunday on which banks in the City of London are not open for business;
"Benchmark"	means any of the Cancellations Benchmark, the TOC Minute Delay Benchmark or the Short Formation Benchmark (as the context may require);
"Benchmark Table"	has the meaning given to it in paragraph 1.1 of Schedule 7.1 (Performance Benchmarks);

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"Bid Profit Stream"	means the estimated total operating profit of the Franchisee from the date that the Change of Control (pursuant to clause 8 (Change of Control)) is to occur until the Expiry Date as shown in the profit and loss forecast in the Initial Business Plan (without taking into account any Annual Business Plan) calculated in real terms as at the date of the Change of Control and applying the prevailing discount rate per annum (in real terms) stated in HM Treasury's **"Green Book Appraisal Guidelines"** (such rate being [three point five per cent (3.5%)][24] per annum (in real terms) as at the date of the Franchise Agreement);
"Bond Provider"	means any person or persons who may provide or be an obligor under a Performance Bond or Season Ticket Bond from time to time and who shall, unless the Secretary of State otherwise agrees, be: (a) a Bank; or (b) an insurance company, (c) in each case with the Relevant Credit Rating;
"Bond Year"	means the period beginning on the Start Date and ending on [31 March 2017] and any subsequent period of thirteen (13) Reporting Periods beginning on the day after the end of the preceding Bond Year provided that: (a) the Franchisee and the Secretary of State may agree to vary the Reporting Period in which a Bond Year ends from time to time; and (b) the last Bond Year shall expire on the expiry of the Franchise Period and may be a period of less than thirteen (13) Reporting Periods;
"Brand Licence"	means a licence between the Secretary of State (or any company wholly owned by the Secretary of State) and the Franchisee in respect of any registered or unregistered trade marks;
"Breach Performance Level"	has the meaning given to it in paragraph 1.1 of Schedule 7.1 (Performance Benchmarks);
"Breach Reporting	has the meaning given to it in paragraph 1.1 of

[24] **Note to Bidders** - To be confirmed at the date of the Franchise Agreement

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Period"	Schedule 7.1 (Performance Benchmarks);
"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);
"Buildings Research Establishment Environmental Assessment Method" or "BREEAM"	means the internationally recognised environmental assessment method and rating system for buildings developed by Building Research Establishment Limited or any other standard which is generally recognised as having replaced it;
"Business Action Plan"	means an action plan produced by the Franchisee in relation to the delivery of any aspect of the Franchise Services (including in respect of any outcome anticipated by its Business Plan, in accordance with paragraph 10.2(c) of Schedule 11.2 (Management Information));
"Business Continuity Plan" and "BCP"	means a business continuity and disaster recovery plan (including a Force Majeure Events recovery plan) required to be produced, maintained and implemented by the Franchisee in accordance with the requirements of paragraph 4 of Schedule 10.3 (Force Majeure and Business Continuity);
"Business Plan"	means the Initial Business Plan or any Annual Business Plan, as the context requires, to be delivered in accordance with paragraphs 10.1 and 10.2 of Schedule 11.2 (Management Information);
"Cancellation"	means a Passenger Service: (a) which is included in the Enforcement Plan of the Day and which is cancelled for reasons attributed to the Franchisee pursuant to its Track Access Agreement; or (b) which is included in the Enforcement Plan of the Day and which operates less than fifty per cent (50%) of its scheduled mileage (as prescribed in the Enforcement Plan of the Day) for reasons attributed to the Franchisee pursuant to its Track Access Agreement;
"Cancellations Benchmark"	means any of the performance levels in respect of Cancellations and Partial Cancellations set out in the Cancellations Benchmark Table;
"Cancellations Benchmark Table"	has the meaning given to it in paragraph 1.1 of Schedule 7.1 (Performance Benchmarks);

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"Cancellations Figures"	means the number of: (a) Cancellations and Partial Cancellations; and (b) Network Rail Cancellations and Network Rail Partial Cancellations, in each case, relating to the Passenger Services operated in each Reporting Period;
"Cancellations Performance Sum"	means an amount determined in accordance with paragraph 19.3 of Schedule 7.1 (Performance Benchmarks);
"Capacity Mitigation Plan"	has the meaning given to it in paragraph 15.1 of Part 2 (Service Development) of Schedule 1.1 (Franchise Services and Service Development);
"Capital Expenditure"	has the meaning given to it in paragraph 3.4 of Schedule 9.3 (Variations to the Franchise Agreement and Incentivising Beneficial Changes);
"Cascaded Rolling Stock"	has the meaning given to it in paragraph 3.1 of Schedule 2.2 (Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases);
"CaSL" or "Cancellation and Significant Lateness"	means the cancellation and significant lateness measure as produced and/or published by Network Rail;
"CaSL Figures"	means the moving annual average percentage published by Network Rail in respect of CaSL, rounded to one (1) decimal place;
"CCIF Amount"	means the sum of £1,934,000 (indexed by the Retail Prices Index in the same way as variable costs are indexed in Schedule 8.2 (Profit Share Mechanism) per Franchisee Year within a CCIF Period (reduced pro-rata in respect of any Franchisee Year within a CCIF Period of less than three hundred and sixty five (365) days) as adjusted in accordance with paragraph 5.8(a) of Schedule 7.2 (National Rail Passenger Surveys, Customer Report and CCIF Scheme);
"CCIF Period"	means each of the following periods: (a) 1 April 2020- 31 March 2022; (b) 1 April 2022- 31 March 2024; and (c) 1 April 2024- 31 March 2026;
"CCIF Scheme"	has the meaning given in paragraph 5.1 of Schedule 7.2 (National Rail Passenger Surveys,

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Customer Report and CCIF Scheme);

"CCIF Scheme Cost" means in respect of any CCIF Scheme, the total cost to the Franchisee of developing and implementing that CCIF Scheme;

"CCIF Scheme Margin" means five per cent (5%) of the applicable CCIF Scheme Costs;

"CCIF Scheme Revenue" means in respect of any CCIF Scheme, the revenue earned by the Franchisee from that CCIF Scheme;

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

"CCIF Underspend" has the meaning given in paragraph 11.6 of Schedule 7.2 (National Rail Passenger Surveys, Customer Report and CCIF Scheme);

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

(a) Government Department;

(b) Non-Departmental Public Body or Assembly Sponsored Public Body (advisory, executive, or tribunal);

(c) Non-Ministerial Department; or

(d) Executive Agency.

"Certificate of Commencement" means the certificate to be issued by the Secretary of State pursuant to the Conditions Precedent Agreement;

"Change" means if and whenever any of the following occurs:

(a) an event set out in any Secretary of State Risk Assumption specified in Schedule 9.4 (Secretary of State Risk Assumptions);

(b) a Charge Variation;

(c) a Change of Law (excluding any Change of Law to the extent that it results in an adjustment to the Franchise Payments pursuant to Schedule 8.3 (Track Access Adjustments and Station Charge Adjustments));

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(d) a change to the Train Service Requirement previously in force pursuant to the issue of an amended or new Train Service Requirement in accordance with paragraph 16.5 of Schedule 1.1 (Franchise Services and Service Development);

(e) the Franchisee is required to take any action pursuant to paragraph 19.1(a) and/or paragraph 19.1(b) of Schedule 1.1 (Franchise Services and Service Development);

(f) the Secretary of State effects an amendment to a Discount Fare Scheme, introduces a new Discount Fare Scheme or ceases to approve a Discount Fare Scheme for the purposes of Section 28 of the Act;

(g) the Secretary of State approves an amendment or proposed amendment to an Inter-Operator Scheme, as referred to in paragraph 4.5 of Schedule 2.5 (Transport, Travel and Other Schemes) to the extent and only to the extent that the Franchisee makes a saving as a consequence of such amendment or proposed amendment;

(h) the imposition, subject to the provisions of paragraph 2.6 of Schedule 4 (Accessibility and Inclusivity), of any increased access charges in respect of EA Requirements at Franchisee Access Stations;

(i) the Secretary of State exercises his power pursuant to paragraph 5 of Schedule 5.7 (Changes to Fares and Fares Regulation) to alter the obligations of and restrictions on the Franchisee under Schedule 5 (Fares);

(j) the Franchisee is obliged to charge Value Added Tax on a Fare or there is an increase or decrease in the rate of Value Added Tax which it must charge on such Fare, in either case due to a change in the Value Added Tax treatment of the provision of Passenger Services;

(k) the exercise by the Secretary of State of his rights pursuant to paragraph 1.9 of Schedule 7.1 (Performance Benchmarks);

(l) the exercise by the Secretary of State of his rights pursuant to paragraph 15.1(c) of Schedule 11.2 (Management Information);

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(m) where the Secretary of State makes an amendment to column 2 of the Minimum Asset Remaining Life Table in accordance with paragraph 2.3(c) of Schedule 1.7 (Stations);

(n) a Variation to the terms of the Franchise Agreement pursuant to paragraph 1.1 of Schedule 9.3 (Variations to the Franchise Agreement and Incentivising Beneficial Changes);

(o) the Start Date is a date that is later than 02:00 on 16 October 2016 for reasons solely attributable to any act or omission by the Secretary of State including the exercise of his right to amend the Start Date pursuant to clause 5.3 except where:

(i) the Secretary of State exercises his rights pursuant to Clause 4.2 or 4.3 of the Conditions Precedent Agreement to alter such Start Date; or

(ii) the relevant acts or omissions of the Secretary of State arise as a result of or in connection with any failure by the Franchisee to satisfy any of the conditions precedent set out in the Conditions Precedent Agreement;

(p) the Expiry Date is a date that is later than 01:59 on [12 October 2025] in consequence of the Secretary of State exercising his right to amend the Start Date pursuant to clause 5.3;

(q) the circumstances set out in paragraph 1.5 of Schedule 2.2 (Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases) occur;

(r) a change to the amount of the Long Term Charge payable by:

(i) Users at Stations; and/or

(ii) the Franchisee at a Franchisee Access Station to which the applicable Station Access Conditions are those entitled **"National Station Access Conditions 2011 (FRI Leases) (England and Wales)"** (**"New Regime Station Access**

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Agreements"),

in each case, in consequence of any consultation undertaken by the ORR on the structure or the level of the Long Term Charges payable by such Users at Stations and/or the Franchisee under New Regime Station Access Agreements;

(s) a change to the amount of the total Long Term Charge payable by the Franchisee under an Access Agreement in respect of a Franchisee Access Station in circumstances where all of the following conditions are applicable:

(i) the Franchisee has entered into a new Access Agreement in respect of a Franchisee Access Station on the termination of the previous Access Agreement in respect of such Franchisee Access Station to which it was a party as at the Start Date;

(ii) such termination has arisen as a result of a termination of the franchise agreement of a Facility Owner at such Franchisee Access Station);

(iii) the Station Access Conditions applicable in relation to such new Access Agreement are those entitled **"National Station Access Conditions 2011 (FRI Leases) (England and Wales)"** or any replacement or subsequent Station Access Conditions applicable in relation to that new Access Agreement and which in the reasonable opinion of the Secretary of State can be regarded as similar or equivalent to those entitled **"National Station Access Conditions 2011 (FRI Leases) (England and Wales)"**;

(iv) such change has not arisen by agreement between the Franchisee and the Facility Owner at such Franchisee Access Station whether pursuant to condition F12 of the Station Access Conditions (or otherwise) or a result of the operation of conditions F4 to F10 (inclusive) of the Station Access

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Conditions; and

(v) such change has not already been accounted for as a result of the Change set out in paragraph (u) of the definition of Change; or

(t) Not Used;

(u) any two or more of the foregoing that the Secretary of State groups together in accordance with any procedures issued by him pursuant to paragraph 1.4 of Schedule 9.3 (Variations to the Franchise Agreement and Incentivising Beneficial Changes) occur;

"Change of Control" has the meaning given to it in clause 8.1 (Change of Control);

"Change of Law" means the coming into effect after the date of the Franchise Agreement of:

(a) Legislation; or

(b) any applicable judgment of a court of Law which changes a binding precedent,

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

(i) excluding any changes in Taxation;

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

(A) in a draft parliamentary bill as part of a government departmental consultation paper;

(B) in a parliamentary bill;

(C) in a draft statutory instrument; or

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(D) as a proposal in the Official Journal of the European Union except to the extent that such proposal is intended to apply solely within member states other than the United Kingdom,

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

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

"Charge Variation" means a variation:

(a) to a Relevant Agreement; and

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

"Charging Review" means:

(a) the exercise by the ORR of its powers under:

(i) Part 7 of Schedule 7 of the Track Access Agreement to which the Franchisee is a Party on the Start Date or any Replacement Agreement which is or is deemed to be a Relevant Agreement in accordance with the definition of that term;

(ii) Condition F12.4 (Review of Long Term Charge) of the Station Access Conditions in relation to any station which is not an Independent Station; or

(iii) Condition 42.5 of the Independent Station Access Conditions in relation

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to any station which is an Independent Station or a Station;

(b) the following by the ORR of the procedure in Schedule 4A of the Act;

(c) the exercise by the ORR of any of its powers or the following of any other procedure, which, in the Secretary of State's reasonable opinion:

(i) has an equivalent effect to; or

(ii) is intended to fulfil the same function as,

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

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

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

(a) which is not reflected in the Timetable;

(b) which does not conform to the pattern of railway passenger services normally provided by the Franchisee;

(c) for which the advance booking or booking arrangements for seats on the relevant service are, in the reasonable opinion of the Secretary of State, materially different from those generally applicable to the Passenger Services;

(d) for which tickets are available on a restricted basis or on terms and conditions which, in the reasonable opinion of the Secretary of

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State, are materially different from those generally applicable to the Passenger Services; and/or

(e) for which the departure time, journey time and calling pattern are, in the reasonable opinion of the Secretary of State, materially different from those of the Passenger Services,

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

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

"Closed Scheme Employees" has the meaning given to it in paragraph 3.2 of Schedule 16 (Pensions);

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

"Code of Practice" means the code of practice for protecting the interests of users of railway passenger services or station services who have disabilities, as prepared, revised from time to time (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);

"Collateral Agreement" means an agreement which is required to be entered into by the Franchisee with Network Rail or any other franchisee as a condition to any Access Agreement of which the Franchisee is the beneficiary;

"Commercial Return" means where the CCIF Scheme Revenue equals or exceeds the aggregate of the CCIF Scheme Costs and the CCIF Scheme Margin;

"Committed Obligations" means any of the Franchisee's obligations listed in Part 1 (Committed Obligations) of Schedule 6.2 (Committed Obligations);

"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

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services;

"Community Rail Report" has the meaning given to it in paragraph 2.6 of Schedule 13.1 (Rail Industry Initiatives);

"Community Rail Route" means any route in respect of which the Secretary of State determines that any relevant Community Rail Partnership has an interest;

"Commuter Fare" means any:

(a) Weekly Season Ticket, Monthly Season Ticket, Quarterly Season Ticket and Annual Season Ticket (and their equivalent ITSO products) between each London Station and any other such station or other station; and

(b) unrestricted Single Fare and unrestricted Return Fare (and their equivalent ITSO products) between each London Station; and

(c) unrestricted Single Fare and unrestricted Return Fare (and their equivalent ITSO products) from each Suburban Station to each London Station (but not in the other direction); and

(d) PAYG Peak Fare or PAYG Off-Peak Fare (and their equivalent ITSO products) between each London Station and any other such station (and, if and when CPAY is introduced, the CPAY equivalent Peak and [Off-Peak][25] fares); and

(e) any Flexi Season Ticket that may be offered for unlimited travel between each London Station and any other such station or other station but which has restrictions on the permitted times of use or the volume of travel allowed. These restrictions may include permitting travel only on fewer than five (5) days a week or outside [Peak][26] hours,

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

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[25] **Note to Bidders** - DfT to confirm

[26] **Note to Bidders** - DfT to confirm

"Commuter Fares Basket"	means the grouping of Commuter Fares: (a) determined by the Secretary of State pursuant to Schedule 5.3 (Allocation of Fares to Fares Baskets); (b) for the purposes of regulating aggregate Prices or Child Prices, as the case may be, in accordance with Schedule 5.4 (Regulation of Fares Basket Values); (c) amended by the Secretary of State from time to time in accordance with Schedule 5.7 (Changes to Fares and Fares Regulation); and (d) set out in the Commuter Fares Document;
"Commuter Fares Document"	means the document in the agreed terms marked **CFD** as the same may be amended from time to time in accordance with Schedule 5.7 (Changes to Fares and Fares Regulation);
"Compulsory Inter-available Flow"	has the meaning given to it in the Ticketing and Settlement Agreement;
"Computer System"	means computer hardware and computer software, including licensed third party software and data protocols;
"Conditions Precedent Agreement"	means the agreement between the Secretary of State and the Franchisee of even date herewith specifying certain conditions to be satisfied or waived by the Secretary of State prior to the issue of a Certificate of Commencement;
"Confidential Information"	has the meaning given to it in paragraph 1 of Schedule 17 (Confidentiality and Freedom of Information);
"Connection"	means a connection (however described) between any of the Passenger Services provided by the Franchisee and any other railway passenger service provided by it or any other Train Operator or any bus, ferry or shipping service and cognate phrases shall be construed accordingly;
"Connection Agreement"	means any agreement entered into by the Franchisee and Network Rail on or before the Start Date relating to the connection of a Depot to the relevant part of the network;
"Contingency Plan"	has the meaning given to it in paragraph 1(a)(iii) of Schedule 10.3 (Force Majeure and Business Continuity);

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"Continuation Document" means any franchise agreement, direct award, interim franchise agreement or other arrangement pursuant to which the Franchisee is required to provide services for the carriage of passengers by railway which is entered into by the Franchisee in respect of some or all of the same Passenger Services by way of direct or indirect continuation of the arrangement currently in place under the Franchise Agreement;

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

"Control" means, in respect of a person, that another person (whether alone or with others and whether directly or indirectly and whether by the ownership of share capital, the possession of voting power, contract or otherwise):

(a) has the power to appoint and/or remove all or the majority of the members of the board of directors or other governing body of that person or of any other person which Controls that person;

(b) controls or has the power to control the affairs and policies of that person or of any other person which Controls that person;

(c) is the parent undertaking of that person or of any other person which Controls that person; or

(d) possesses or is, or will be at a future date, entitled to acquire:

(i) thirty per cent (30%) or more of the share capital or issued share capital of, or of the voting power in, that person or any other person which Controls that person;

(ii) such part of the issued share capital of that person or any other person which controls that person as would, if the whole of the income of such person were distributed, entitle him to receive thirty per cent (30%) or more of the amount so distributed; or

(iii) such rights as would, in the event of the winding-up of that person or any

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other person which controls that person or in any other circumstances, entitle him to receive thirty per cent (30%) or more of the assets of such person which would then be available for distribution,

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

"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;

"Cost Savings" has the meaning given to such term in paragraph 4.1 of Schedule 1.7(Stations);

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

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

"CRM Data" means Personal Data (including any or all of name, address, e-mail address and ticket purchasing history, credit and debit card details) collected by or on behalf of the Franchisee relating to:

(a) persons travelling on or purchasing tickets for travel on the Passenger Services or other services for the carriage of passengers by railway; or

(b) use of the Mobile Communication Services by the persons referred to in limb (a) above;

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

"CRM Obligations" has the meaning given to it in paragraph 4.4 of Schedule 1.5 (Information about Passengers);

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

"Crossrail May 2019 Timetable" or "CRT" means the document in agreed form marked **CRT**;

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"Crossrail Central Core" means an underground railway between, in the west, a tunnel portal at Royal Oak in the City of Westminster and, in the east, tunnel portals at Custom House and Pudding Mill Lane in the London Borough of Newham;

"Crossrail Fleet" means the 44 Class 315 Units leased from Eversholt and used for the provision of railway passenger services between Liverpool Street and Shenfield;

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

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

"Crossrail Services" means the passenger services operated or to be operated by the Crossrail Operator;

"Crossrail Stations" means the following stations which are operated by the Crossrail Operator:

(a) Maryland;

(b) Forest Gate;

(c) Manor Park;

(d) Ilford;

(e) Seven Kings;

(f) Goodmayes;

(g) Chadwell Heath;

(h) Romford;

(i) Gidea Park;

(j) Harold Wood;

(k) Brentwood; and

(l) Stratford;

"Crossrail Track Access Option" means the track access option dated 22 September 2008 and made between Network Rail and the Secretary of State for Transport (as

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	amended by the supplement agreement dated 2 September 2014);
"CRP Amount"	means the sum of two hundred and forty thousand pounds (£240,000) (indexed by the Retail Prices Index in the same way as variable costs are indexed in Appendix 1 (Annual Franchise Payments) to Schedule 8.1 (Franchise Payments)) per Franchisee Year (reduced pro-rata in respect of any Franchisee Year of less than three hundred and sixty five (365) days);
"Current Franchisee Year"	has the meaning given to it in paragraph 1.5 of Schedule 8.2 (Profit Share Mechanism);
"Customer and Stakeholder Engagement Strategy" or **"CSES"**	means the Customer and Stakeholder Engagement Strategy in the agreed terms marked CSES and any replacement Customer and Stakeholder Engagement Strategy revised in accordance with paragraph 9.2 of Schedule 7.2 (National Rail Passenger Surveys, Customer Report and CCIF Scheme);
"Customer Experience Survey Methodology"	shall have the meaning given to such term in paragraph 1.1. of Schedule 7.3 (Customer Experience Performance);
"Customer Report"	means a report in the format and providing the information specified in the Customer and Stakeholder Engagement Strategy published in accordance with paragraph 10.1 of Schedule 7.2 (National Rail Passenger Surveys, Customer Report and CCIF Scheme);
"Data Controller"	has the same meaning as in the Data Protection Act;
"Data Processor"	has the same meaning as in the Data Protection Act;
"Data Protection Act"	means the Data Protection Act 1998 and any guidance issued from time to time by the Information Commissioner's Office or a relevant Central Government Body in relation to the Data Protection Act 1998;
"Data Site Information"	has the meaning given to it in paragraph 3.5 of Schedule 15.1 (Reletting Provisions);
"Data Subject"	has the same meaning as in the Data Protection Act;
"Dataset"	means the data specified in Appendix 1 (Environmental Information) to Schedule 11.2 (Management Information) as the same may be amended from time to time by the Secretary of

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	State (acting reasonably);
"Default Performance Level"	means, in relation to a Benchmark for any Reporting Period, the number set out in the relevant Column of the Benchmark Table to Schedule 7.1 (Performance Benchmarks) relating to that Benchmark and in the row of that table for that Reporting Period;
"Delayed Cascade Mitigation Plan"	has the meaning given to it in paragraph 3.5(b) of Schedule 2.2 (Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases);
"Departure Station"	has the meaning given to it in paragraph 2.2 of Appendix 2 (Accessible Transport Arrangements) to Schedule 4 (Accessibility and Inclusivity);
"Depot"	means a depot in respect of which the Franchisee has entered into a Depot Lease;
"Depot Access Conditions"	has the meaning given to it in the relevant Access Agreement to which it relates;
"Depot Lease"	means: any lease of a depot to which the Franchisee is a party as at the Start Date; or any other lease of a depot in relation to which the Franchisee becomes the Facility Owner at any time during the Franchise Period;
"Derivative Output"	means Intellectual Property Rights that are derived from or generated by the RPC Database or the Preliminary Database when querying such database (which includes, but is not limited to, the format of all reports and analysis);
"Designated Employer"	has the meaning given to it in the Pension Trust;
"Destination Station"	has the meaning given to it in paragraph 2.2 of Appendix 2 (Accessible Transport Arrangements) to Schedule 4 (Accessibility and Inclusivity);
"Direct Agreement"	means any agreement made, or to be made, from time to time between the Secretary of State and the counterparty of a Key Contract in relation to such Key Contract, including any agreement entered into by the Secretary of State under Schedule 14.3 (Key Contracts);
"Disabled People's Protection Policy"	means the Franchisee's policy for the protection of persons with disabilities which the Franchisee is required to establish and review from time to time in accordance with the conditions of its Licences in respect of the operation of railway passenger

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services and/or stations;

"Disabled Person" is a reference to a person who has a disability as defined in the EA;

"Disabled Persons Transport Advisory Committee" or "DPTAC" means the committee with that name established under Section 125 of the Transport Act 1985 and its statutory successors;

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

"Discount Fare Scheme" has the meaning given to it in paragraph 3 of the Appendix (List of Transport, Travel and Other Schemes) to Schedule 2.5 (Transport, Travel and Other Schemes)

"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://www.ridr.co.uk/rules.htm (or such other applicable web address that is adopted by the Railway Industry Dispute Resolution Committee from time to time);

"Disputed Cancellation" means a Passenger Service:

(a) which is included in the Enforcement Plan of the Day and which is cancelled; or

(b) which is included in the Enforcement Plan of the Day and which operates less than 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 Franchisee pursuant to the Track Access Agreement;

"Disputed Partial Cancellation" means a Passenger Service which is included in the Enforcement Plan of the Day and which:

(a) misses a stop; or

(b) completes fifty per cent (50%) or more, but less than one hundred per cent (100%) of its scheduled journey 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 Franchisee

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pursuant to the Track Access Agreement;

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

"DOTAS" has the meaning given to it in paragraph 6.3 of Schedule 12 (Financial Covenants and Bonds);

"Driver Controlled Operation" means operation of a train by a driver alone without the need for a conductor (or any other Franchise Employee);

"EA" means the Equality Act 2010;

"EA Claim" has the meaning given to it in paragraph 3.1 of Schedule 4 (Accessibility and Inclusivity);

"EA Requirements" means the duties of a provider of services under Sections 20(3), 20(5) and Sections 20(9)(a) and 20(9)(b) in relation to Section 20(4), of the EA;

"Emergency Events" has the meaning given to it in paragraph 1(e) of Schedule 10.3 (Force Majeure and Business Continuity);

"EMV" means contactless payment cards that conform to the international standards issued by EMVCo (owned by American Express, Discover, JCB, MasterCard, UnionPay and Visa) which manages, maintains and enhances the EMV1 integrated circuit card specifications;

"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 Franchisee in breach of its obligations in paragraph 4 of Schedule 1.2 (Operating Obligations); or

(ii) as agreed by the Franchisee in breach of its obligations in

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paragraph 3 of Schedule 1.2 (Operating Obligations);

"Environmental Damage"	has the meaning given in the Station Access Conditions;
"Environmental Data Collection Plan"	has the meaning given to it in paragraph 15.1(a)(iii) of Schedule 11.2 (Management Information);
"Environmental Impact Monitoring Audit"	has the meaning given to it in paragraph 15.2(b) of Schedule 11.2 (Management Information);
"Environmental Impact Monitoring Report"	has the meaning given to it in paragraph 15.2(a) of Schedule 11.2 (Management Information);
"Environmental Impact Targets"	has the meaning given to it in paragraph 16.1 of Schedule 11.2 (Management Information);
"Environmental Impact Targets Plan"	has the meaning given to it in paragraph 16.2(c) of Schedule 11.2 (Management Information);
"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 Central Government Body in relation to such Regulations;
"Environmental Law"	has the meaning given in the Station Access Conditions;
"Environmental Liability"	means any costs incurred by the Franchisee in complying with any claim, judgement, order direction or injunction of any court or Competent Authority under Environmental Law in relation to Environmental Damage that had occurred prior to the Start Date and that is not apparent from the documentation relating to the state and condition of the Stations provided on the data site provided by the Secretary of State in relation to the East Anglia franchise letting process or is not otherwise within the actual or constructive knowledge of the Franchisee and includes the costs reasonably and properly incurred in taking any action or carrying out any works to prevent, mitigate or remedy Environmental Damage where it is foreseeable that such Environmental Damage will result in the Franchisee being subject to a successful claim, judgement, order, direction or injunction of any court or Competent Authority under Environmental Law;
"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,

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including that specified in paragraph 3 of Schedule 1.5 (Information about Passengers);

"Equivalent Fare" has the meaning given to it in paragraph 6.1 of Schedule 5.7 (Changes to Fares and Fares Regulation);

"Equivalent Flow" has the meaning given to it in paragraph 6.1(b) of Schedule 5.7 (Changes to Fares and Fares Regulation);

"ERTMS" means the European Rail Traffic Management System;

"ERTMS Programme" means the Network Rail cross rail industry programme for delivering the national implementation of ERTMS;

"Escrow Documents" means those documents and other items referred to in paragraph 1.1 of Schedule 9.2 (Identity of the Financial Model);

"Estimated Profit Stream" means estimated total operating profit of the Franchisee from the date that the Change of Control (pursuant to clause 8 (Change of Control and Facilitation Fee)) is to occur until the Expiry Date as reasonably determined by the Secretary of State. In reasonably determining the Estimated Profit Stream the Secretary of State shall:

(a) take into account all relevant circumstances and have due regard to the Financial Model, the profit and loss forecast in the Initial Business Plan and the most recent Annual Business Plan and the assumptions in the Record of Assumptions;

(b) use the accounting policies and standards set out in the Record of Assumptions and applied through the Financial Model;

(c) estimate profit:

(i) before taking into account:

(A) interest, finance income and finance charges (other than finance items recognised in respect of retirement benefits) and dividends and other distributions of profit;

(B) any taxation on profits including corporation tax;

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(C) shares of the profit of any Affiliate of the Franchisee, except dividends received in cash;

(D) non cash entries in respect of the Franchise Section and any other pension schemes to the extent connected with the Franchise, excluding accruals or prepayments of any normal pension contributions due; and

(ii) after taking into account:

(A) Franchise Payments;

(B) all extraordinary and exceptional items, as defined under GAAP;

(C) the Franchisee's normal pension contributions in relation to the Franchise Section and any other pension schemes to the extent connected with the Franchise;

(D) any payments to Affiliates of the Franchisee (including management fees and royalty fees) except to the extent that such payments exceed the amount determined in accordance with the formula set out in paragraph 1.2(a)(v) of the definition of Relevant Profit in paragraph 1.2 of Schedule 8.2 (Profit Share Mechanism); and

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

(d) calculate amounts in real terms as at the date of the Change of Control and apply the prevailing discount rate per annum (in real terms) stated in HM Treasury's **"Green**

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Book Appraisal Guidelines" (such rate being as at the date of the Franchise Agreement [three point five per cent (3.5%)] per annum (in real terms))[27];

"Estimated Revisions" has the meaning given to it in paragraph 10.3 of Schedule 9.1 (Financial and Other Consequences of Change);

"Evening Peak" means, in relation to any Passenger Service, the period between 1600 and 1859 (inclusive) during a Weekday or such other continuous three hour period between 1200 and 2359 (inclusive) as the Secretary of State may specify from time to time;

"Event of Default" means any of the events set out in paragraph 1 of Schedule 10.2 (Procedure for Events of Default and Termination Events);

"Excluded Data" has the meaning given to it in paragraph 15.1(a)(i) of Schedule 11.2 (Management Information);

"Expiry Date" means the later of:

(a) 01:59 on 12 October 2015; or

(b) any such later date that is specified by the Secretary of State pursuant to clause 5.3 (Duration of the Franchise Agreement); or

(c) any such later date to which the Franchise Agreement is continued in accordance with clause 5.2 (Duration of the Franchise Agreement);

"Facilitation Fee" has the meaning given to it in clause 8.4 (Change of Control and Facilitation Fee));

"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

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27 **Note to Bidders** - To be confirmed at the date of the Franchise Agreement

(where this right does not arise under the relevant conditions of carriage except on the payment of a fee) and, where applicable, to obtain goods or services from a person; and

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

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

(ii) der the Travelcard Agreement; or

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

(iv) sold under the Pay As You Go 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;

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

"Fares Document" means any of the Commuter Fares Document and the Protected Fares Document;

"Fares Setting Round" has the meaning given to it in the Ticketing and Settlement Agreement;

"Financial Action Plan" means any action plan produced by the Franchisee pursuant to paragraph 9.2(b)(vi) of Schedule 11.2 (Management Information), where the level of its financial performance specified in the Management Accounts is materially worse than forecast by the Franchisee in its current Business Plan;

"Financial Conduct Authority" means the UK Financial Conduct Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS and with company registered number

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	01920623 or such other regulatory body which may succeed or replace it from time to time;
"Financial Formats" or "FF"	means the Franchisee's financial formats in the agreed terms marked **FF;**
"Financial Model" or "FM"	means the Franchisee's financial model in the agreed terms marked **FM** deposited with the Secretary of State on the date of the Franchise Agreement in accordance with Schedule 9.2 (Identity of the Financial Model), as may be subsequently revised in accordance with Schedule 9.2 (Identity of the Financial Model);
"Financial Ratios"	means the financial ratios specified in paragraph 2 of Schedule 12 (Financial Covenants and Bonds);
"First Profit Share Threshold" or "FPST"	has the meaning given to it in paragraph 1.1 of Schedule 8.2 (Profit Share Mechanism);
"Fleet Fitment and Mobilisation Costs"	means costs associated with the installation, maintenance and operation of ERTMS on the Franchisee's train fleets. This includes the capital and operational costs of the ERTMS equipment fitted to train fleets, installation and test activities, approvals, maintenance activities and maintenance equipment, staff training and training equipment excluding costs covered by Network Rail;
"Flow"	has the meaning given to it in the Ticketing and Settlement Agreement;
"Force Majeure Event"	means any of the events described as such in paragraph 1 of Schedule 10.3 (Force Majeure and Business Continuity) where the conditions specified in paragraph 2 of Schedule 10.3 (Force Majeure and Business Continuity) are satisfied;
"Forecast Modified Revenue"	means, in relation to any Reporting Period, the items specified in the definition of Modified Revenue, as most recently forecast for that Reporting Period pursuant to paragraph 9.3(a) of Schedule 11.2 (Management Information);
"Forecast Operating Costs"	means, in relation to any Reporting Period, the items specified in the definition of Actual Operating Costs, as most recently forecast for that Reporting Period pursuant to paragraph 9.3 of Schedule 11.2 (Management Information) adjusted for any movement in creditors arising from deemed PCS borrowings pursuant to Clause 18 of the Funding Deed;
"Forecast Passenger Demand"	means the forecast prepared by the Franchisee pursuant to paragraph 12.2 of Part 2 (Service Development) of Schedule 1.1 (Franchise Services

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and Service Development) in respect of:

(a) the number of passengers travelling in each class of accommodation:

(i) on each Passenger Service;

(ii) on each Route; and/or

(iii) at any station or between any stations; and

(b) the times of day, week or year at which passengers travel,

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

"Franchise" means the rights tendered by the Secretary of State on [17 September 2015] to operate railway passenger services over the Routes prescribed in paragraph 2.1 of Part 1 (Franchise Services) of Schedule 1.1 (Franchise Services and Service Development);

"Franchise Agreement" means this Agreement and the Conditions Precedent Agreement which together constitute a single agreement and which is a **"franchise agreement"** for the purposes of the Act;

"Franchise Assets" means the property, rights and liabilities designated as such pursuant to paragraph 1 of Schedule 14.4 (Designation of Franchise Assets) but excluding such property, rights or liabilities as shall, in accordance with the terms of the Franchise Agreement, cease to be so designated;

"Franchise Documents" means:

(a) this Agreement;

(b) the Conditions Precedent Agreement;

(c) the Funding Deed;

(d) the Train Service Requirement; and

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

"Franchise Employee" means:

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(a) any employee of the Franchisee from time to time; and

(b) any other person who is an employee of any of its Affiliates or is an employee of any party to whom the Franchise Services or services which are in support of or ancillary to the Franchise Services have been subcontracted (at any tier) or delegated by the Franchisee; and

(c) in the case of (a) or (b) whose contract of employment would (subject to the exercise of such person's right to object to the transfer) be transferred to a Successor Operator following the expiry of the Franchise Period by virtue of the operation of Law (including the Transfer of Undertakings (Protection of Employment) Regulations 2006) or in respect of whom liabilities arising from a contract of employment or employment relationship may be so transferred;

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

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

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

"Franchise Period" means the period commencing on the Start Date and ending on the Expiry Date or, if earlier, the date of termination of the Franchise Agreement pursuant to Clauses 4.2(b) or 4.3(b) of the Conditions Precedent Agreement or Schedule 10 (Remedies, Events of Default and Termination Events);

"Franchise Section" has the meaning given to it in paragraph 2 of Schedule 16 (Pensions);

"Franchise Services" means such of the Passenger Services, the Light Maintenance Services, the Station Services and the Ancillary Services as the Franchisee may provide or operate from time to time, including any of such

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services as the Franchisee may delegate or subcontract or otherwise secure through any other person from time to time in accordance with the Franchise Agreement;

"Franchise Term" means the period commencing on the Start Date and expiring on the Expiry Date;

"Franchisee Excess Amount has the meaning given to such term in paragraph 4.1 of Schedule 1.7 (Stations);

"Franchisee Excess Amount Cap" has the meaning given to such term in paragraph 4.1 of Schedule 1.7 (Stations);

"Franchisee Access Station" means any station at which the Passenger Services call (other than any Station);

"Franchisee ERTMS Plan" means the Franchisee's plan to deliver all activities for the implementation of the ERTMS Programme for which the Franchisee is responsible as further described in paragraph 11.1(e) of Schedule 13.1 (Rail Industry Initiatives);

"Franchisee Owned RV Asset" means each of the assets listed in Column 1 of the table set out in the Appendix (List of the RV Assets) to Schedule 14.6 (Residual Value Mechanism) which:

(a) are not annotated in Column 4 of such table as Network Rail Fixture Assets; and

(b) are designated as Primary Franchise Assets in accordance with paragraph 2.1(h) of Schedule 14.4 (Designation of Franchise Assets) such that they can be transferred to a Successor Operator at the applicable value specified in Column 2 of the table in the Appendix (List of the RV Assets) to Schedule 14.6 (Residual Value Mechanism) (as such value may be amended during the Franchise Term in accordance with the provisions of paragraphs 1.4 or 1.6 of Schedule 14.6 (Residual Value Mechanism);

"Franchisee Year" means any period of twelve (12) months during the Franchise Period, beginning on 1 April and ending on 31 March, except that the first and last Franchisee Years may be for a period of less than twelve (12) months and the first Franchisee Year shall begin on the Start Date and the last Franchisee Year shall end on the last day of the Franchise Period;

"Freedom of Information Act" means the Freedom of Information Act 2000 together with any guidance and/or codes of practice issued by the Information Commissioner or any

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relevant Central Government Body in relation to the Freedom of Information Act 2000;

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

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

"GAAP" means generally accepted accounting principles in the United Kingdom, as derived from and including the accounting requirements of the Companies Act 2006, 'Financial Reporting Standards 100, 101 and 102', abstracts issued by the Urgent Issues Task Force of the Accounting Standards Board and, where appropriate, International Financial Reporting Standards and the listing rules of the Financial Conduct Authority, in each case, as amended from time to time;

"General Anti-Abuse Rule" has the meaning given to it in paragraph 6.3 of Schedule 12 (Financial Covenants and Bonds);

"Grey Assets" means:

(a) the assets on the Grey Assets List; and

(b) any other structures and locations on or close to the boundary of the "Station" and "Network" (both as such terms are defined under the relevant Station Lease) where the Franchisee or Network Rail consider (acting reasonably) that clarification is required as to whether or not the same forms part of the Station (for example, certain hybrid structures such as bridges, viaducts, embankments and any supporting structures);

"Grey Assets List" or "GAL" ***[Note to Bidders: To be defined by the list issued in the dataroom which will be updated and become an Agreed Form document for completion];***

"Gross Revenue" means, in relation to any period and any Fare, the gross revenue to the Franchisee (or any relevant predecessor of the Franchisee) attributable to such Fare over the relevant period, excluding any applicable Value Added Tax, costs, commissions or other expenses which may be paid or incurred in

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connection with such Fare;

"Guarantor" has the meaning given to such term under the Funding Deed;

"Halifax Abuse Principle" has the meaning given to it in paragraph 6.3 of Schedule 12 (Financial Covenants and Bonds);

"Handover Package" means a package containing the information and objects specified in the Appendix (Form of Handover Package) to Schedule 15.3 (Handover Package) and such other information and objects as the Secretary of State may reasonably specify from time to time;

"Hot Standby" means any rolling stock vehicle specified in the Train Plan which:

(a) is operationally ready to provide the Passenger Services in the Timetable;

(b) is not already assigned to the delivery of any Passenger Service in the Timetable; and

(c) will only be used to deliver such Passenger Services if:

(i) a rolling stock vehicle scheduled to deliver such Passenger Services is unable to so deliver; and

(ii) Actual Passenger Demand could only be met by the deployment in service of such rolling stock vehicle;

"HS2 Project" means the project for the construction and development of a proposed high speed railway from London to Birmingham and the North known as "HS2" or "High Speed Two" and all related infrastructure works;

"Incremental Output Statement Charge" means the charge to which that description is commonly given, first introduced into Relevant Agreements in April 2001;

"Independent Station" has the meaning given to it in paragraph 2.7 of Schedule 8.3 (Track Access Adjustments and Station Charge Adjustments);

"Independent Station Access Conditions" has the meaning given to it in the Access Agreement to which it relates;

"Individual Station Charge Adjustment" has the meaning given to it in paragraph 2.2 of Schedule 8.3 (Track Access Adjustments and Station Charge Adjustments);

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"Industrial Action"	means any concerted action taken in connection with the employment of such employees (whether or not that action involves any breach of such employees' conditions of employment, and including any action taken in furtherance of a dispute, or with a view to improving the terms of employment of the relevant employees or by way of support for any other person) subject always, in the case of any unofficial industrial action, to the Franchisee being able to demonstrate the occurrence of such unofficial industrial action to the reasonable satisfaction of the Secretary of State;
"Industry Schemes"	has the meaning given to it in paragraph 4 of Schedule 13.1 (Rail Industry Initiatives);
"Information Commissioner"	has the meaning given to it in Section 6 of the Data Protection Act;
"Initial Business Plan"	means the business plan to be provided by the Franchisee to the Secretary of State as described in paragraph 10.1 of Schedule 11.2 (Management Information);
"Initial Dataset"	has the meaning given in paragraph 15.1(b) of Schedule 11.2 (Management Information);
"Initial Performance Bond"	means the performance bond issued or to be issued on or prior to the date of this Agreement by a Bond Provider to the Secretary of State which complies with the requirements of paragraph 4.2 of Schedule 12 (Financial Covenants and Bonds);
"Initial Period"	has the meaning given to it in paragraph 7.5 of Schedule 9.1 (Financial and Other Consequences of Change);
"Initial Permanent Fare"	has the meaning given to it in the Ticketing and Settlement Agreement;
"Initial Reporting Period"	means any Reporting Period in the first (1st) Reporting Period in the First Franchisee Year to the first (1st) Reporting Period of the second Franchisee Year[28];
"Innovation Strategy"	means the Innovation Strategy in the agreed terms marked **IS** as updated from time to time in accordance with paragraph 1.1 of Schedule 13.2

[28] **Note to Bidders**: The Initial Reporting Period will be 7 Reporting Periods and the above definition is based on a Start Date of 16 October 2016.

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(Innovation Obligations);

"Institute of Asset Management"	means The Institute of Asset Management, a company limited by guarantee, registered with company number 05056259 with registered office Woodlands Grange, Woodlands Lane, Bradley Stoke, Bristol, BS32 4JY or its successors;
"Intellectual Property Rights"	means all intellectual and industrial property rights of any kind including (without limitation) patents, supplementary protection certificates, rights in Know-How, registered 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 Franchisee, determine from time to time) during any period in which an amount payable under the Franchise Agreement remains unpaid;
"Inter-Operator Schemes"	means the list of schemes in paragraph 4 of the Appendix (List of Transport, Travel and Other Schemes) to Schedule 2.5 (Transport, Travel and Other Schemes);
"International Organisation for Standardisation"	means the international standard setting body known as **"ISO"** or any such successor body;
"Investment Asset"	means the Franchise Assets designated as such pursuant to paragraph 2.2 of Schedule 14.4 (Designation of Franchise Assets);
"Investment Asset Request Date"	means each anniversary of the Start Date provided that the final Investment Asset Request Date shall be the date thirteen (13) months prior to the end of the Franchise Term and there shall not be an Investment Asset Request Date on the anniversary of the Start Date where this would occur within twelve (12) months of such final Investment Asset Request Date;

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"Invitation to Tender"	means the Invitation to Tender issued by the Secretary of State on [17 September 2015] as part of the procurement process pursuant to which the Franchise Agreement was entered into;
"IOP"	means ITSO on Prestige;
"IOP Agreement"	means an agreement between the Secretary of State and Transport for London for the acceptance of ITSO Certified Smartmedia dated 28 May 2009;
"ISO14001:2004"	means the standard that is set by the International Organisation for Standardisation which specifies requirements for an environmental management system to enable an organization to develop and implement a policy and objectives which takes into account legal requirements and other requirements to which the organization subscribes, and information about significant environmental aspects or any equivalent standard which is generally recognised as having replaced it;
"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 organization to follow a systematic approach in achieving continual improvement of energy performance, including energy efficiency, energy use and consumption or any equivalent standard which is generally recognised as having replaced it;
"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;
"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;
"ISO 22301"	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.
"ITSO"	means (as the context may require) both:

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(a) the non profit distributing organisation run by its members for the benefit of members and users of smartcards, supported by the Department for Transport (**"DfT"**); and

(b) the common specification such non profit distributing organisation has created to enable the use of interoperable smartcards in transport and other areas;

"ITSO Certified Smartmedia" means the contactless smartcards, devices or other media designed to hold fare and travel information with the monetary or other value encoded which have been fully certified by ITSO;

"ITSO Equipment" means all of the equipment and services required to be provided for the purposes of the South East Flexible Ticketing Scheme pursuant to the Previous SEFT Deed;

"Key Contacts List" means the list which contains the name, address, home, office and mobile telephone numbers, and a brief description of the person's role and responsibilities in the business in respect of:

(a) all directors (statutory or otherwise);

(b) all managers with responsibility for a department/function within the Franchisee's business;

(c) all managers in the operations, commercial, personnel and public affairs departments or in each case their nearest equivalents;

"Key Contract" means:

(a) each agreement and contract listed in the Appendix (List of Key Contracts) to Schedule 14.3 (Key Contracts) as at the date of the Franchise Agreement; and

(b) any other agreement, contract, licence or other arrangement to which the Franchisee is a party or under which the Franchisee is the beneficiary from time to time which is designated as such pursuant to Schedule 14.3 (Key Contracts),

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

"Key Personnel" means those persons identified by the Franchisee in accordance with paragraph 3.1 of Schedule 11.2

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(Management Information) and "**Key Person**" shall be construed accordingly;

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

"Latent Defect Liability" means a defect in the structure or fabric of a station building which exists before the Start Date but which is not apparent from any documentation relating to the state and condition of the Stations on the data site provided by the Secretary of State in relation to the franchise letting process, would not be apparent from a reasonable inspection of the relevant station and is not otherwise within the actual or constructive knowledge of the Franchisee and in respect of which there is no provision incorporated into the Franchisee's maintenance proposals contained in the tender it submitted in response to the Invitation to Tender;

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

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

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

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

"Light Maintenance Service" means any service specified in paragraph 6 of Part 1 (Franchise Services) of Schedule 1.1 (Franchise Services and Service Development) which may be provided by the Franchisee at the

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Depots and Stations;

"Local Authority" means:

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

(b) in Wales, a county council, a district council or a council which is established under the Local Government Act 1972 or the Local Government (Wales) Act 1994;

(c) in Scotland, the Strathclyde Passenger Transport Executive, or a district council or a unitary authority which is established under the Local Government (Scotland) Act 1973 or the Local Government, etc. (Scotland) Act 1994;

(d) in London, the Mayor of London and Transport for London established under the Greater London Authority Act 1999;

(e) a combined authority created pursuant to the Local Democracy, Economic Development and Construction Act 2009;

(f) any local enterprise partnership;

(g) any other body or council replacing any of the above from time to time; and

(h) any other body or instrument of local or regional government specified by the Secretary of State from time to time;

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

"Local Authority Increment Scheme" means any scheme proposed by a Local Authority involving incremental additions and improvements to a part of the Passenger Services which does not conflict with the Train Service Requirement

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pursuant to a contract with such Local Authority;

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

"London Peak Passenger Service" means any Passenger Service that is specified in the Timetable to:

(a) arrive at London Liverpool Street during the Morning Peak,

(b) arrive or terminate at Stratford during the Morning Peak and which does not serve London Liverpool Street Station in either case;

(c) depart from London Liverpool Street during the Evening Peak; or

(d) depart from Stratford during the Evening Peak and which does not serve London Liverpool Street;

"London Station" means any station served by the Railway Passenger Services in the Zones and any Zone to or from which a passenger may travel from or to such station;

"Long Term Charge" shall have the meaning given to it in the Station Access Conditions;

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

"Major Flow Operator" has the meaning given to it in the Ticketing and Settlement Agreement;

"Managed Station" means any station used in connection with the provision of the Franchise Services where Network Rail is the Facility Owner or becomes the Facility Owner during the Franchise Period;

"Managed Station Area" means the premises comprising part or parts of a Managed Station to be occupied by the Franchisee on or after the Start Date and to be used for or in connection with the provision of the Franchise Services;

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"Management Accounts" means, in relation to any Reporting Period, the Franchisee's management accounts which:

(e) comply with paragraph 9.5(a) of Schedule 11.2 (Management Information); and

(f) are required to be delivered to the Secretary of State by the Franchisee in accordance with paragraphs 9.2(a) and 9.2(b) of Schedule 11.2 (Management Information);

"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 Franchisee may apply to any Primary Franchise Asset or other asset used by it under a Key Contract, which are applied on the expiry of the Franchise Period and are not the subject of a Brand Licence;

"MCS Contract" means any contract relating to the provision of Mobile Communication Services;

"Minimum Asset Remaining Life" means the minimum average length of remaining life (calculated as a percentage in accordance with NR/ARM/M17PR or such other standards as may be notified from time to time) of a Station Asset Group (in the aggregate across such Station Asset Group) set out in the Minimum Asset Remaining Life Table;

"Minimum Asset Remaining Life Table" means the table in Appendix 3 (Minimum Asset Remaining Life Table) of Schedule 1.7 (Stations);

"Minimum Wi-Fi Service Requirements" has the meaning given in paragraph 12.4 of Schedule 13.1 (Rail Industry Initiatives);

"Minister of the Crown" has the meaning given to it in Section 8(1) of the Minister of the Crown Act 1975;

"Minor Works" has the meaning given to it in paragraph 2.7(a) of Schedule 4 (Accessibility and Inclusivity);

"Minor Works' Budget" means two hundred and fifity thousand pounds (£250,000) for each Franchisee Year allocated by the Franchisee for the purpose of facilitating Minor Works at Stations to improve accessibility of the Stations to persons with disabilities, save that:

(a) for any Franchisee Year which is shorter than twelve (12) months, the amount shall be reduced pro rata; and

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(b) for each Franchisee Year after the first Franchisee Year, the amount shall be subject to adjustment as follows:

Minor Works' Budget x RPI

where:

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

"Minor Works' Programme" means the Franchisee's programme of Minor Works at Stations to improve accessibility of the Stations to persons with disabilities, developed prior to the start of each Franchisee Year pursuant to paragraph 2.7(b) of Schedule 4 (Accessibility and Inclusivity);

"Minutes Delay" means the minutes of delay to the Passenger Services that are attributed to the Franchisee or Network Rail (as the case may be) pursuant to the Track Access Agreement and disregarding any minutes of delay that are imputed to Passenger Services that were cancelled;

"Mobile Communication Services" means the wireless internet service which shall as a minimum comply with the Minimum Wi-Fi Service Requirements;

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

"Modified Revenue" means:

(a) the sum of:

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

(A) including any amounts receivable from the Secretary of State, Network Rail and any interest; but

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

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

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

(B) the amount equivalent to:

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

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

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

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

(b) either:

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

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

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

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

"Morning Peak" means, in relation to any Passenger Service, the period between 0700 and 0959 (inclusive) during a Weekday or such other continuous three hour

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period between 0600 and 1159 as the Secretary of State may specify from time to time;

"National Joint ROSCO Project" means the joint project between Porterbrook Leasing Company Limited, Angel Trains Limited and Eversholt Rail (UK) Limited, funded by Network Rail, for implementing ERTMS first in class designs to existing rolling stock which will operate over the routes where ERTMS will be rolled out;

"National Rail Enquiry Scheme" means the telephone information scheme run by ATOC, providing information to customers regarding rail journeys throughout the country;

"National Rail Passenger Survey" means a passenger satisfaction survey in respect of the Franchise Services to be carried out by the Passengers' Council as described in paragraph 2 of Schedule 7.2 (National Rail Passenger Surveys, Customer Report and CCIF Scheme) and shall include any Alternative NRPS as referred to in paragraph 2.6 of Schedule 7.2 (National Rail Passenger Surveys, Customer Report and CCIF Scheme);

"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;

"Network Change" has the meaning given to it in the Network Code;

"Network Change Compensation Claims" has the meaning given to it in paragraph 11.2(a)(i) of Schedule 13.1 (Rail Industry Initiatives);

"Network Code" means the document known as the Network Code and formerly known as the Railtrack Track Access Conditions 1995 (as subsequently replaced or amended from time to time) or any equivalent code or agreement applying to Network Rail or NR;

"Network Rail" means in respect of:

(a) the network or any relevant facility:

(i) Network Rail Infrastructure Limited, a company registered in England with registered number 02904587 whose registered office is 1 Eversholt Street, London NW1 2DN; and

(ii) any successor in title to the network or any relevant railway facility; or

(b) any new or other sections of network or any relevant new or other railway facilities, the

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owner (if different);

"Network Rail's Traction Electricity Rules" means the document entitled "Traction Electricity Rules" as published by the ORR;

"Network Rail Cancellation" means a Passenger Service:

(a) which is included in the Enforcement Plan of the Day and which is cancelled; or

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

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

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

"Network Rail ERTMS Implementation Plan" or "ERTMSP" means Network Rail's plan for the implementation of the ERTMS Programme as more particularly described in the document in the agreed terms marked **ERTMSP**;

"Network Rail Fixture Asset" means a tangible asset annotated as such in Column 4 of the table in the Appendix (List of the RV Assets) to Schedule 14.6 (Residual Value Mechanism) which is:

(a) funded by the Franchisee and affixed to a Station or Depot (as the case may be) such that it is regarded as a fixture to and part of such Station or Depot (as the case may be); and

(b) designated as a Primary Franchise Assets in accordance with paragraph 2.1 of Schedule 14.4 (Designation of Franchise Assets) such that it can be transferred as the unencumbered property of the Franchisee to a Successor Operator at the applicable value specified in Column 2 of the table in the Appendix (List of the RV Assets) to Schedule 14.6 (Residual Value Mechanism) (as such value may be amended during the Franchise Term in accordance with the provisions of paragraphs 1.4 or 1.6 of Schedule 14.6 (Residual Value Mechanism);

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"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 journey 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 Strategic Business Plan" means the strategic business plan for England & Wales published by Network Rail from time to time;

"New Insurance Arrangements" has the meaning given to it in paragraph 2.4(b) of Schedule 2.2 (Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases);

"New Results" means, in relation to any Change, the following as restated in accordance with Schedule 9.1 (Financial and Other Consequences of Change) following a Run of the Financial Model in relation to that Change:

(a) the restated values of "FXD", "VCRPI", "VCAWE", "PRPI" and "RRPI" to be specified for each Franchisee Year in Appendix 2 (Figures for Calculation of Annual Franchise Payments) to Schedule 8.1 (Franchise Payments);

(b) the restated values of FPST, SPST and TPST to be specified for each Franchisee Year in paragraphs 1, 2 and 3 (respectively) of Appendix 1 (Profit Share Thresholds) to Schedule 8.2 (Profit Share Mechanism); and

(c) the restated values of AFA and DFR to be specified for each Franchisee Year in paragraphs 1 and 2 (respectively) of Appendix 2 (Components of AFA and DFR) to Schedule 8.2 (Project Share Mechanism);

"New Station" means:

(a) a station not served by railway passenger services as at February 2003, but which has since that time been, or is subsequently, served by railway passenger services which have been, or are subsequently to be, included in the Timetable or in another relevant Train Operator's timetable; and/or

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(b) if the Secretary of State requires, a station, other than a Station, at which, with the consent of the Secretary of State (whether by amendment to the Franchise Agreement or otherwise) railway passenger services operated by the Franchisee call;

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

"Notified Fault" shall have the meaning given to such term in paragraph 9.1 of Schedule 1.4 (Passenger Facing Obligations);

"NR" means Network Rail Limited (company number 04402220), Network Rail Infrastructure Limited (company number 2904587) whose registered offices are both at 1, Eversholt Street, London NW1 2DN or any Affiliate thereof from time to time;

"Occasion of Tax Non-Compliance" has the meaning given to it in paragraph 6.3 of Schedule 12 (Financial Covenants and Bonds);

"Off-Peak" means, in relation to any Passenger Service, the period of time outside of the Peak;

"Off-Peak Passenger Service" means any Passenger Service that is not a London Peak Passenger Service or a Regional Peak Passenger Service;

"Old Results" means in relation to any Change, the following as produced in accordance with Schedule 9.1 (Financial and Other Consequences of Change) by or following the Run of the Financial Model in respect of the immediately preceding Change or, in relation to the first Change only, the following as at the date hereof:

(a) the values of "FXD", "VCRPI", "VCAWE", "PRPI" and "RRPI" specified for each Franchisee Year in Appendix 2 (Figures for Calculation of Annual Franchise Payments) to Schedule 8.1 (Franchise Payments);

(b) the values of FPST, SPST and TPST specified for each Franchisee Year in paragraphs 1, 2 and 3 of Appendix 1 (Profit Share Threshold) to Schedule 8.2 (Project Share Mechanism); and

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(c) the values of AFA and DFR specified for each Franchisee Year in paragraphs 1, and 2 (respectively) of Appendix 2 (Components of AFA and DFR) to Schedule 8.2 (Profit Share Mechanism);

"Operating Assets" has the meaning given to it in paragraph 1.1 of Schedule 14.2 (Maintenance of Operating Assets);

"Operational Model" or "OM" means the following models in the agreed terms marked **OM**:

(a) revenue model;

(b) the performance model;

(c) all cost models; and

(d) any other relevant models that have generated input to the Financial Model;

"Original Rolling Stock" has the meaning given to it in paragraph 2.1(a) of Schedule 1.6 (The Composition of the Train Fleet);

"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;

"ORR Mandate AO/24" means the mandate issued by the ORR entitled "AO/24";

"Parent" means [INSERT DETAILS OF THE ULTIMATE PARENT COMPANY OF THE FRANCHISEE][29];

"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 journey as prescribed in the Enforcement Plan of the Day,

in each case, for reasons which are attributed to the Franchisee pursuant to its Track Access

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[29] **Note to Bidders**: This should be the ultimate parent of the Franchisee and if the parent of the Franchisee is a joint venture company the bidder should populate by specifying the names of the ultimate parent of each of shareholders in the joint venture company and not the name of the joint venture company.

	Agreement;
"Participating Employer"	has the meaning given to it in the Pension Trust;
"Passenger Assistance"	means the passenger assistance service provided by train operating companies and referred to by the ORR as **"Passenger Assist"**, as such service may be further described by the ORR from time to time at: http://orr.gov.uk/info-for-passengers/passengers-with-disabilities (or such other applicable web address that is adopted by the ORR for these purposes from time to time);
"Passenger Carrying Capacity"	means, in relation to a Passenger Service, the capacity of the rolling stock vehicles (as stated in Schedule 1.6 (The Composition of the Train Fleet) or determined by the Secretary of State in accordance with paragraph 3.4 of Schedule 1.6 (The Composition of the Train Fleet)) from which the Passenger Service is formed;
"Passenger Change Date"	means a date upon which significant changes may be made to the Timetable in accordance with or by virtue of the Network Code;
"Passenger Services"	means the Franchisee's railway passenger services as specified in any Timetable and/or Plan of the Day including those railway passenger services which the Franchisee may delegate or subcontract or otherwise secure through any other person from time to time in accordance with the Franchise Agreement;
"Passenger's Charter" or "PC"	means the Franchisee's service commitments to its passengers in the agreed terms marked **PC**, as amended or replaced from time to time with the prior written consent of the Secretary of State in accordance with paragraph 4 of Schedule 1.4 (Passenger Facing Obligations);
"Passengers' Council"	means the passengers' council established under Section 19 of the Railways Act 2005 (as amended by The Passengers' Council (Non-Railway Functions) Order 2010). The Passengers' Council shall be generally known as **"Transport Focus"** from 30 March 2015;
"Pay As You Go Agreement"	means an agreement dated 16 October 2009 between Transport Trading Limited and train operators operating in London enabling joint ticketing and the acceptance of each other's tickets using smartmedia technology under the name **"Pay as You Go"**;
"PAYG Peak Fare"	means a Fare which is a Permanent Fare and which entitles the purchaser to make a single journey

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	under the Pay As You Go Agreement in Standard Class Accommodation between and within the PAYG Zones for which the fare is valid, at any time;
"PAYG Off-Peak Fare"	means a Fare which is a Permanent Fare and which entitles the purchaser to make a single journey under the Pay As You Go Agreement in Standard Class Accommodation between and within the PAYG Zones for which the fare is valid, at any time on Saturdays and Sundays and at such times as the Franchisee may designate on Mondays to Fridays (where such Fare need not be valid between 6:30am and 9:30am or between 4.00pm and 7.00pm but must be valid at all other times) and which may take into account the different directions of travel;
"PAYG Zone"	means the Stations within the "PAYG Area" (as such is defined in the PAYG Agreement) or otherwise included in part 1 (PAYG Acceptance) of schedule 3 (Operation of PAYG) of the Pay As You Go Agreement (as such is amended from time to time);
"Payment Date"	means the date for the payment of Franchise Payments in accordance with paragraph 2.3 of Schedule 8.1 (Franchise Payments);
"Peak"	means the Morning Peak and the Evening Peak;
"Pension Trust"	means the pension trust governing the Railways Pension Scheme;
"Pensions Committee"	has the meaning given to it in the Railways Pension Scheme;
"Percentage Allocation"	has the meaning given to it in the Ticketing and Settlement Agreement;
"Performance Bond"	means the Initial Performance Bond and any Replacement Performance Bond, which in each case, shall comply with the requirements of paragraph 4.2 of Schedule 12 (Financial Covenants and Bonds);
"Performance Strategy Plan"	has the meaning given to it in the Network Code;
"Performance Sum Adjustment Date"	has the meaning given to it in paragraph 1.1 of Schedule 7.1 (Performance Benchmarks);
"Permanent Fare"	has the meaning given to it in the Ticketing and Settlement Agreement;
"Permitted Aggregate	has the meaning given to it in paragraph 4.2 of

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Increase"	Schedule 5.4 (Regulation of Fares Basket Values);
"Permitted Individual Increase"	has the meaning given to it in paragraph 2.2 of Schedule 5.5 (Regulation of Individual Fares);
"Personal Data"	has the same meaning as in the Data Protection Act and includes Sensitive Personal Data as defined therein;
"Personal Data Legislation"	has the meaning given to it in paragraph 6.1 of Schedule 1.5 (Information about Passengers);
"Placed in Escrow"	means: (a) in respect of the Financial Model, delivery of the Financial Model: (i) dated the date of the Franchise Agreement; and (ii) adjusted to the extent necessary to reflect any time elapsed between the actual Start Date and the date assumed to be the Start Date in the Initial Business Plan; and (iii) where Schedule 9.1 (Financial and Other Consequences of Change) and Schedule 9.2 (Identity of the Financial Model) apply, the inputs to the Financial Model derived therefrom following an audit of a Run of the Financial Model; and (b) in respect of the Operational Model, delivery of: (i) the Operational Model dated the date of the Franchise Agreement; (ii) the Operational Model adjusted to the extent necessary to reflect any time elapsed between the actual Start Date and the date assumed to be the Start Date in the Initial Business Plan; and (iii) where Schedule 9.1 (Financial and Other Consequences of Change) and Schedule 9.2 (Identity of the Financial Model) apply, audited following a Run of the Financial Model and updated with any Revised Inputs; and

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(c) in respect of the Record of Assumptions, delivery thereof,

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

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

"Planned Delivery Date" shall have the meaning given to such term in paragraph 1.4 of Schedule 14.6 (Residual Value Mechanism);

"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);

"Platform Validator" means the platform validators to be installed by the Franchisee pursuant to the terms of the SEFT Deed;

"Power of Attorney" or "POA" means the power of attorney granted by the Franchisee in favour of the Secretary of State in the agreed terms marked **POA**;

"PPM" or "Public Performance Measure" means the public performance measure as produced and/or published by Network Rail;

"PPM Figures" means the moving annual average percentage published by Network Rail in respect of PPM, rounded to one decimal place;

"Preceding thirteen (13) Reporting Periods" has the meaning given to it in paragraph 2.1 of Schedule 12 (Financial Covenants and Bonds);

"Preceding Year Ticket Price" has the meaning given to it in paragraph 2.1 of Schedule 5.5 (Regulation of Individual Fares);

"Preliminary Database" means such database as may reasonably be put in place by the Secretary of State prior to making any RPC Database available to the Franchisee, as part of the development of the RPC Database;

"Previous Franchise Agreement" means any franchise agreement under which services equivalent to the Franchise Services (or a material proportion thereof) were provided by a Train Operator on or about the day prior to the Start Date;

"Previous Franchisee's means the agreed form document marked as

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Station Asset Management Plan" or "PSAMP"	"**PSAMP**";
"Previous SEFT Deed"	means the deed dated 15 April 2014 between (1) Secretary of State and (2) Abellio Greater Anglia Limited (as amended);
"Price"	means, in respect of any Fare, the price of such Fare before the deduction of any applicable discount to which a purchaser may be entitled, as notified to RSP in accordance with Schedule 5 (Fares) to the Ticketing and Settlement Agreement;
"Primary Franchise Assets"	means: (a) the property, rights and liabilities of the Franchisee listed in the Appendix (List of Primary Franchise Assets) to Schedule 14.4 (Designation of Franchise Assets); and (b) any other property, rights and liabilities of the Franchisee which is or are designated as such pursuant to Schedule 14.4 (Designation of Franchise Assets), but excluding such property, rights or liabilities as may, in accordance with the terms of the Franchise Agreement, cease to be so designated;
"Principles of Inclusive Design"	means planning, designing, building and managing places, while having due regard and a proportionate response to stakeholder views obtained through consultation or otherwise, so that they work better for everybody and reflect the diversity of the people who use them as embodied in the document published by the Commission for Architecture and the Built Environment in 2006 with the title **"The Principles of Inclusive Design"** (as revised from time to time");
"Prior Train Operator"	has the meaning given to it in paragraph 3.1 of Schedule 2.2 (Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases);
"PRM TSI"	means the EU's Regulation (EU) No 1300/2014 of 18 November 2014 (as amended from time to time) on the technical specifications for interoperability relating to accessibility of the European Union's rail system for persons with disabilities and persons with reduced mobility;
"Process"	has the same meaning as in the Data Protection Act;
"Profit Share	has the meaning ascribed to it in paragraph 1.1(a)

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Components"	of Schedule 9.1 (Financial and Other Consequences of Change);
"Projected Revenue"	means the revenue in any Fare Year which is projected to be attributable to any Fare, determined in accordance with paragraph 3 of Schedule 5.4 (Regulation of Fares Basket Values);
"Property Lease"	means any Depot Lease, any lease in respect of a Managed Station Area, any lease in respect of Shared Facilities or any Station Lease and any agreement or lease of a similar or equivalent nature (whether in respect of any such facility or otherwise) which the Franchisee may enter into with a person who has an interest in a network or a railway facility which is to be used for or in connection with the provision or operation of the Franchise Services;
"Protected Fare"	means a Protected Return Fare or a Protected Weekly Season Ticket;
"Protected Fares Basket"	means the grouping of Protected Fares: (a) determined by the Secretary of State pursuant to Schedule 5.3 (Allocation of Fares to Fares Baskets); (b) for the purposes of regulating their aggregate Prices or Child Prices, as the case may be, in accordance with Schedule 5.4 (Regulation of Fares Basket Values); (c) amended by the Secretary of State from time to time in accordance with Schedule 5.7 (Changes to Fares and Fares Regulations); and (d) set out in the Protected Fares Document;
"Protected Fares Document" or "PFD"	means the document in the agreed terms marked **PFD**, as the same may be amended from time to time in accordance with Schedule 5.7 (Changes to Fares and Fares Regulations);
"Protected Proposal"	has the meaning given to it in paragraph 2 of Schedule 9.3 (Variations to the Franchise Agreement and Incentivising Beneficial Changes);
"Protected Return Fare"	means in respect of a Fare for a Flow: (a) for which there was a Saver Return Fare in February 2003, a Return Fare for each such Flow in respect of which the Franchisee is entitled or obliged from time to time to set the Price or Child Price under the Ticketing

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and Settlement Agreement, subject to the following additional rights and restrictions:

(i) it shall be valid for no less than one (1) month;

(ii) it shall be valid all day on a Saturday or Sunday and from no later than 1030 on any other day;

(iii) it need not be valid for any journey:

(A) beginning between 1500 and 1900 on any day other than a Saturday or Sunday;

(B) where such journey begins from a London Station or any station between any London Station and Reading station, Watford station, Luton station, or Stevenage station (inclusively); and

(C) which is in a direction away from London; or

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

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

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

"PRPI" shall have the meaning given to such term in Appendix 1 to Schedule 8.1 (Franchise Payments);

"Public Sector Operator" means any person (other than a franchisee or franchise operator in relation to the services provided or operated under its franchise agreement) who provides railway passenger services or operates any station or light maintenance depot pursuant to or under Section 30

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of the Act or Section 6 of the Railways Act 2005;

"Qualifying Change" means a Change which:

(a) following a Run of the Financial Model (where Schedule 9.1 (Financial and Other Consequences of Change) applies) in accordance with Schedule 9 (Changes and Variations) results in adjustments in Franchise Payments over the remaining life of the Franchise Agreement that have a net present value as at the date of the Change in excess of the Threshold Amount for the Franchisee Year during which the relevant Change arises. For the purposes of ascertaining a net present value of the amount of any adjustment in any Franchise Payment, the amount of the adjustment shall be discounted at the prevailing discount rate per annum (in real terms) stated in HM Treasury's **"Green Book Appraisal Guidelines"**, counting back from the date of receipt of that adjusted Franchise Payment to the date of the Change. As at the date of the Franchise Agreement that rate is [three point five per cent (3.5%)][30]; or

(b) the Franchise Agreement expressly provides shall be a Qualifying Change;

"Quarterly Season Ticket" means a Season Ticket Fare which is valid in Standard Class Accommodation from (and including) the day it first comes into effect until (but excluding) the day which falls three (3) months after such day;

"Rail Industry Sustainable Development Principles" means the principles which were published by the Rail Safety and Standards Board in February 2009 as amended from time to time;

"Rail 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 Safety and Standards Board means the online self-assessment framework against the Rail Industry Sustainable Development

[30] **Note to Bidders** - To be confirmed at the date of the Franchise Agreement

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Sustainable Development Self-Assessment Framework"	Principles published by the Rail Safety and Standards Board;
"Railway Group"	means the committee responsible for cross industry co-ordination in respect of rail safety legislation and industry safety standards chaired by the Rail Safety and Standards Board;
"Railway Operational Code"	has the meaning given to it in Condition H of the Network Code;
"Railway Passenger Services"	means, for the purposes of Schedule 5 (Fares) only, services for the carriage of passengers by railway which are provided by a person who is bound by the Ticketing and Settlement Agreement, or any part of it, and including the Franchisee and any other Train Operator from time to time;
"Railways Pension Scheme"	means the pension scheme established by the Railways Pension Scheme Order 1994 (No. 1433);
"Reconciliation Amount"	has the meaning given to it in paragraph 10.9 Schedule 9.1 (Financial and Other Consequences of Change);
"Record of Assumptions" or "ROA"	means a document in the agreed terms marked **ROA** prepared by the Franchisee (and/or, where Schedule 9.1 (Financial and Other Consequences of Change) applies) as may be revised in accordance with Schedule 9 (Changes and Variations) and Placed in Escrow providing: (a) detailed assumptions, explanations of assumptions and parameters underlying the Financial Model; (b) details of how Franchise Payments have been calculated (including by reference to a defined annual profit margin); (c) a description of the functionality, operation and structure of the Financial Model; and (d) a description of each input cell, its requirements and its inter-relationship with the Financial Model;
"Redactions"	has the meaning given to it in paragraph 10.1 of Schedule 17 (Confidentiality and Freedom of Information);
"Reference Fare"	has the meaning given to it in paragraph 6.1(a) of Schedule 5.7 (Changes to Fares and Fares Regulation);

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"Reference Flow" has the meaning given to it in paragraph 6.1(a) of Schedule 5.7 (Changes to Fares and Fares Regulation);

"Reference Revenue" means the aggregate Gross Revenue recorded by RSP as attributable to sales of all Commuter Fares or Protected Fares for the period of twelve (12) months which ended 31 March 2010 or such other reference period as the Secretary of State may require pursuant to paragraph 3.1(a) of Schedule 5.7 (Changes to Fares and Fares Regulation);

"Regional Peak Passenger Service" means any Passenger Service that does not call at or pass through Manningtree Station, Stansted Mountfitchet Station or Diss Station, and is specified in the Timetable to:

(a) arrive at Cambridge Station, Ipswich Station or Norwich Station during the Morning Peak;

(b) depart from Cambridge Station, Ipswich Station or Norwich Station during the Evening Peak;

(c) depart from Sudbury Station and make a Connection at Marks Tey Station with a Passenger Service that arrives at London Liverpool Street Station during the Morning Peak; or

(d) terminate at Sudbury Station having made a Connection at Marks Tey Station with a Passenger Service that departed from London Liverpool Street Station during the Evening Peak;

"Regulated Child Price" means the Child Price that is permitted to be charged by the Franchisee in respect of any Fare in any Fare Year, determined in accordance with paragraph 2.1 of Schedule 5.5 (Regulation of Individual Fares);

"Regulated Price" means the Price that is permitted to be charged by the Franchisee in respect of any Fare in any Fare Year, determined in accordance with paragraph 2.1 of Schedule 5.5 (Regulation of Individual Fares);

"Regulated Value" means the Value of any Fares Basket that is permitted in any Fare Year, determined in accordance with paragraph 4.1 of Schedule 5.4 (Regulation of Fares Basket Values);

"Regulations" has the meaning given to it in paragraph 1.2 of Schedule 2.5 (Transport, Travel and Other

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Schemes);

"Reinstatement Works" shall have the meaning given to such term in paragraph 4.1 of Schedule 1.7 (Stations);

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

(e) following the effective date of any Charge Variation, the Franchisee enters into any Replacement Agreement;

(f) the effect of that Charge Variation is reflected in the terms of the Replacement Agreement; and

(g) 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 Credit Rating" means a credit rating of:

(a) A - (or better) by Standard and Poor's Corporation or Fitch Ratings Limited in respect of long term senior debt; or

(b) A3 (or better) by Moody's Investors Service Inc. in respect of long term senior debt; or

(c) if any credit rating specified in paragraph (a) or (b) ceases to be published or made available or there is a material change in the basis of any such credit rating, such other rating or standard as the Secretary of State may, after consultation with the Franchisee, determine to be appropriate in the circumstances;

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

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

"Relevant Profit Report" has the meaning given to it in paragraph 2.1 of Schedule 8.2 (Profit Share Mechanism);

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"Relevant Reporting Period"	has, for the purposes of paragraph 5.3 of Schedule 12 (Financial Covenants and Bonds) only, the meaning given to it in that paragraph;
"Relevant Rolling Stock"	has the meaning given to it in paragraph 3.1 of Schedule 2.2 (Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases);
"Relevant Tax Authority"	has the meaning given to it in paragraph 6.3 of Schedule 12 (Financial Covenants and Bonds);
"Relevant Term"	has the meaning given to it in paragraph 3.1(a) of Schedule 10.1 (Procedure for Remedying a Contravention of the Franchise Agreement)
"Remedial Agreement"	has the meaning given to it in paragraph 5.1 of Schedule 10.1 (Procedure for Remedying a Contravention of the Franchise Agreement);
"Remedial Plan"	has the meaning given to it in paragraph 3.1(b) of Schedule 10.1 (Procedure for Remedying a Contravention of the Franchise Agreement);
"Remedial Plan Notice"	has the meaning given to it in paragraph 2 of Schedule 10.1 (Procedure for Remedying a Contravention of the Franchise Agreement);
"Replacement Agreement"	means an agreement entered into as a replacement for any Relevant Agreement;
"Replacement Copy"	has the meaning given to it in paragraph 2.2(b) of Schedule 9.2 (Identity of the Financial Model);
"Replacement Crossrail Fleet"	means the fleet of new Class 345 trains introduced to replace all or part of the Crossrail Fleet (as the case may be);
"Replacement Performance Bond"	means any performance bond issued or to be issued following the issue of the Initial Performance Bond by a Bond Provider to the Secretary of State which complies with the requirements of paragraph 4.2 of Schedule 12 (Financial Covenants and Bonds);
"Reporting Period"	means: (a) for the purposes of the Season Ticket Bond, any consecutive seven (7) day period or any other period, each within a Reporting Period (as defined in paragraph (b)) agreed in accordance with paragraph 5.10 of Schedule 12 (Financial Covenants and Bonds); or

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(b) for all other purposes, a period of twenty eight (28) days, provided that:

(i) the first such period during the Franchise Period shall exclude any days up to but not including the Start Date;

(ii) the first and last such period in any Reporting Year may be varied by up to seven (7) days by notice from the Secretary of State to the Franchisee;

(iii) each such period shall start on the day following the last day of the preceding such period; and

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

"Reporting Year" means a period normally commencing on 1 April in each calendar year, comprising thirteen (13) consecutive Reporting Periods;

"Request for Information" means a request for information or an apparent request under the Freedom of Information Act or the Environmental Information Regulations;

"Required Performance Improvement" has the meaning given to it in paragraph 19.8 of Schedule 7.1 (Performance Benchmarks);

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

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

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

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be completed if commenced before 0200 hours;

"Review Date" means:

(a) [INSERT DATE]; or

(b) such later date as may be notified to the Franchisee by the Secretary of State pursuant to Clause 4.2 or Clause 4.3 of the Conditions Precedent Agreement;

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

"Right Time Figures" means the moving annual average percentage published by Network Rail in respect of the Right Time Measure, rounded to one decimal place;

"Right Time Measure" means the Right Time Measure as produced and/or published by Network Rail and/or the ORR showing the number of Passenger Services (expressed as a percentage of the number of Passenger Services which are scheduled to be provided under the Plan of the Day) which arrive at their final scheduled destination in the Plan of the Day either early or no more than 59 seconds late;

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

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

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

"ROSCO" means any company leasing rolling stock vehicles to the Franchisee under a Rolling Stock Lease;

"Route" means any route specified in the Timetable over which the Franchisee has permission to operate the Passenger Services pursuant to any Track Access Agreement;

"Route Efficiency Benefit means the route level efficiency benefit sharing

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Share (REBS) Mechanism" or "REBS Mechanism"	mechanism introduced by the ORR in its determination for the control period commencing on 1 April 2014 or any similar arrangement under which the benefits of any outperformance (or downsides of failure to achieve efficiency targets) are to be shared between Network Rail and Train Operators at route level;
"RPC Database"	means a database to be provided by the Secretary of State pursuant to and on the terms of paragraph 7.1 of Schedule 1.5 (Information about Passengers) 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;
"RRPI"	has the meaning given to it in Appendix 1 (Annual Franchise Payments) to Schedule 8.1 (Franchise Payments);
"RSP"	means Rail Settlement Plan Limited;
"RSPS3002"	means the RSP document with reference RSPS3002, version 02.00 published June 2013 which specifies standards for issuing, checking and validating rail products on ITSO Certified Smartmedia and defines the rail specific rules required to ensure interoperability across the rail network;
"Run of the Financial Model"	means a run of the Financial Model with the Revised Inputs and the Change Inputs and which complies with the requirements of Schedule 9.1 (Financial and Other Consequences of Change);
"RV Asset"	means: (a) a Franchisee Owned RV Asset; or (b) a Network Rail Fixture Asset;
"Safety Authorisation"	means the authorisation issued by the ORR under the Safety Regulations authorising the Franchisee's safety management system (as defined in those regulations) and the provisions adopted by the Franchisee to meet the requirements that are necessary to ensure safe design, maintenance and operation of the relevant infrastructure on the Routes;
"Safety Certificate"	means the certificate issued by the ORR under the Safety Regulations, certifying its acceptance of the Franchisee's safety management system (as defined in those regulations) and the provisions adopted by the Franchisee to meet the requirements that are necessary to ensure safe

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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 fares manuals and systems of the RSP as at the date of such manuals;

"Scheduled Consist Data" means information as to the type of individual vehicles of rolling stock that have been scheduled by the Franchisee to form a train in the Train Fleet for any particular Passenger Service and the manner in which they are scheduled to be configured;

"Season Ticket Bond" means the season ticket bond to be provided to the Secretary of State in respect of the Franchisee's liabilities under certain Fares and Season Ticket Fares in the form set out in Appendix 2 (Form of Season Ticket Bond) to Schedule 12 (Financial Covenants and Bonds) and such other bond as may replace it from time to time under Schedule 12 (Financial Covenants and Bonds);

"Season Ticket Fare" means:

(a) for the purposes of Schedule 12 (Financial Covenants and Bonds) and the definition of Season Ticket Bond only, a Fare which entitles the purchaser to make an unlimited number of journeys in any direction during the period for which, and between the stations and/or the zones for which, such Fare is valid; and

(b) for all other purposes, a Fare which entitles the purchaser to make, without further restriction except as to class of accommodation, an unlimited number of journeys in any direction during the period for which, and between the stations and/or the zones for which, such Fare is valid;

"Second Profit Share Threshold" or "SPST" has the meaning given to it in paragraph 1.1(b) of Schedule 8.2 (Profit Share Mechanism);

"Secretary of State Risk Assumptions" means those assumptions set out in Schedule 9.4 (Secretary of State Risk Assumptions);

"Security Breach" has the meaning given to it in paragraph 6.3(c)(i) of Schedule 1.5 (Information about Passengers);

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"Security Interest" means any mortgage, pledge, lien, hypothecation, security interest or other charge or encumbrance or any other agreement or arrangement having substantially the same economic effect;

"SEFT Deed" means the agreement between the Secretary of State and the Franchisee entered into pursuant to paragraph 1.3 of Schedule 5.9 (Smart Ticketing), specifying certain obligations in relation to equipment to be procured, installed, migrated, integrated and commissioned for the purposes of the South East Flexible Ticketing (SEFT) programme;

"SEFT Station" means any station which is defined as a "Target Station" within the Deed of Amendment between the Secretary of State and Abellio Greater Anglia Limited dated 16 March 2015;

"Service Group" has the meaning given to it in the Track Access Agreement or as specified by the Secretary of State from time to time;

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

(a) to minimise the disruption arising from such prevention or restriction of access by operating, during such period of disruption, the best possible level of service given such disruption, including by:

(i) keeping service intervals to reasonable durations;

(ii) keeping extended journey times to reasonable durations; and

(iii) managing any resulting overcrowding;

(b) to:

(i) return the level of service to that level specified in the Timetable as soon as reasonably practicable; and

(ii) prior to the attainment of the level of service specified in paragraph (b)(i)

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operate any reduced level of service agreed with Network Rail for the purpose of minimising such disruption pursuant to paragraph (a);

(c) in accordance with the principles of service recovery set out in the ATOC **"Approved Code of Practice: Contingency Planning for Train Service Recovery - Service Recovery 2013"** or any document of a similar or equivalent nature; and

(d) where the particulars of such plan in relation to the requirements of paragraphs (a) and (b) have been:

(i) agreed at an initial and, where required, subsequent telephone conference between the Franchisee, Network Rail and any other affected Train Operator; and

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

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

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

"Shared Facilities" means those facilities in respect of which the Franchisee and Network Rail carry out their respective activities concurrently;

"Short Formation Benchmark" has the meaning given to it in paragraph 1.1 of Schedule 7.1 (Performance Benchmarks);

"Short Formation Benchmark Table" has the meaning given to it in paragraph 1.1 of Schedule 7.1 (Performance Benchmarks);

"Short Formation Peak Passenger Service" has the meaning given to it in paragraph 1.1 of Schedule 7.1 (Performance Benchmarks);

"Short Formation Performance Sum" has the meaning given to it in paragraph 1.1 of Schedule 7.1 (Performance Benchmarks);

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

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"Significant Alterations" shall, in relation to any proposed new or amended Timetable, include alterations from the then current Timetable which result in, or are likely to result in:

(a) the addition or removal of railway passenger services;

(b) changes to stopping patterns or destinations or origin;

(c) changes of timings for first/last trains by more than 10 minutes;

(d) Not Used;

(e) significant changes to journey times and/or key connections at the Stations or at other stations at which relevant railway passenger services call by more than 10 minutes;

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

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

"Small and Medium-sized Enterprises ("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

"Spares" means parts and components of rolling stock vehicles which are available for the purpose of

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	carrying out maintenance services on rolling stock vehicles;
"Special Event"	has the meaning given to such term in paragraph 4.1 of Schedule 1.7 (Stations);
"Specifically Included Change of Law"	has the meaning given to it in the definition of Change of Law;
"Specified Additional Rolling Stock"	has the meaning given in paragraph 2.1(b) of Schedule 1.6 (The Composition of the Train Fleet);
"Specified Project"	means any of the following projects: (i) the construction of Tottenham Hale station; (ii) the construction of Cambridge North (Chesterton) station; (iii) the construction of Lea Bridge station; (iv) the construction of Meridian Water (Angel) Road station; and (v) the development of proposals for the re-opening of a line between March and Wisbech;
"Specimen Scheme"	means the Committed Obligations set out in paragraphs [INSERT LIST][31] of Part 1 (Committed Obligations) of Schedule 6.2 (Committed Obligations);
"Specimen Scheme Output"	means, for each Specimen Scheme, the output intended to be achieved by that Specimen Scheme, as set out in the relevant paragraph of Part 1 (Committed Obligations) of Schedule 6.2 (Committed Obligations);
"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

[31] **Note to Bidders**: To be populated by the DfT taking into account the schemes proposed by Bidders in their Schedule of Initiatives.

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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 of Repair" shall have the meaning given to such term in paragraph 2.1 of Schedule 1.7 (Stations);

"Start Date" means the time and date stated in the Certificate of Commencement as being the time at and date on which the Franchisee is to commence operating the Franchise Services, which shall either be:

(a) 02:00 on 16 October 2016; or

(b) such later time and date as may be notified to the Franchisee by the Secretary of State pursuant to:

(i) Clause 4.2 of the Conditions Precedent Agreement; or

(ii) Clause 4.3 of the Conditions Precedent Agreement;

"Start Date Transfer Scheme" has the meaning given to it in Clause 6.1 of the Conditions Precedent Agreement;

"Station" means:

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

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

"Station Access Conditions" has the meaning given to it in the relevant Access Agreement to which it relates;

"Station Asset" means each platform, footbridge, canopy and building located at a Station;

"Station Asset Group" means a group of station assets across all Stations that fall within the following categories (a) platforms, (b) footbridges, (c) canopies and (d) other buildings, each category being a "**Station Asset Group**" and together being the "**Station Asset Groups**";

"Station Asset Management Plan" means the plan created by the Franchisee pursuant to paragraph 1 of Schedule 1.7 (Stations) and as amended from time to time by in accordance with the provisions of Schedule 1.7 (Stations);

"Station Asset the certification of the Franchisee's station asset

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Management Plan Accreditation"	management organisation and systems for Stations as complying with the requirements of ISO55001:2014 (or such other reasonably equivalent standard as may be approved in writing by the Secretary of State from time to time in place of ISO55001:2014);
"Station Asset Management Plan Accreditation Certificate"	has the meaning given to it in paragraph 1.11(b) of Schedule 1.7 (Stations);
"Station Asset Management Principles" or "SAMP"	means the Franchisee's principles for the development of the Station Asset Management Plan in the agreed form marked **SAMP**;
"Station Change"	has the meaning given to the term **"Proposal for Change"** under the Station Access Conditions;
"Station Charge Adjustment"	means any adjustment to payments under an Access Agreement determined in accordance with paragraph 2 of Schedule 8.3 (Track Access Adjustments and Station Charge Adjustments);
"Station Condition Account"	has the meaning given to it in paragraph 3.1 of Schedule 1.7 (Stations);
"Station Condition Amount"	means in relation to any Reporting Period the amount determined in accordance with paragraph 3.5 of Schedule 1.7 (Stations);
"Station Condition Fund"	has the meaning given to it in paragraph 3.2;
"Station Lease"	means: (a) any lease of a station that the Franchisee is a party to as at the Start Date; or (b) a lease of any other station to which the Franchisee becomes the Facility Owner at any time during the Franchise Period;
"Station Service"	means any service specified in paragraph 5 of Part 1 (Franchise Services) of Schedule 1.1 (Franchise Services and Service Development) which may be provided by the Franchisee at the Stations;
"Station Social and Commercial Development Plan" or **"SCDP"**	means the Franchisee's station social and commercial development plan in the agreed terms marked **SCDP**, as such plan may be updated in accordance with the provisions of paragraph 7 of Schedule 1.7 (Stations);
"Station Sublease"	means a lease or sub lease of premises comprising part or parts of a Station exclusively occupied by

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	another Train Operator;
"Stored Credit Balance"	means any monetary amount held by the Franchisee which a passenger can apply at a future date to the purchase of a Fare (and stored in any medium);
"Subcontractor"	has the meaning given to it in paragraph 7.3(b) of Schedule 1.5 (Information about Passengers);
"Subsequent Reporting Period"	has the meaning given to it in paragraph 1.1 of Schedule 7.1 (Performance Benchmarks);
"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: Shoeburyness, Southend Victoria, Southminster, Marks Tey (excluding Sudbury branch), Audley End (but not including Stansted Airport), Ashwell & Morden, Arlesey, Harlington, Bletchley (excluding Bedford branch), Aylesbury, Haddenham & Thame Parkway, Twyford (including Henley branch), Windsor & Eton Riverside, Earley, Fleet, Alton, Whitley, Christ's Hospital, Brighton (excluding Coastway), East Grinstead, Crowborough, Wadhurst, Paddock Wood (including the line between Strood and Paddock Wood), Maidstone East, Canterbury East and Margate;
"Successor Operator"	means a Train Operator succeeding or intended by the Secretary of State to succeed (and whose identity is notified to the Franchisee by the Secretary of State) the Franchisee in the provision or operation of all or any of the Franchise Services including, where the context so admits, the Franchisee where it is to continue to provide or operate the Franchise Services following termination of the Franchise Agreement;
"Successor Operator Timetable"	has the meaning given to it in paragraph 2.2(a) of Schedule 14.1 (Maintenance of Franchise);
"Supplemental Agreement"	means a supplemental agreement between the Franchisee and a Successor Operator to be entered into pursuant to a Transfer Scheme, being substantially in the form of Appendix 2 (Form of Supplemental Agreement) to Schedule 15.4 (Provisions Applying on and after Termination), but subject to such amendments as the Secretary of State may reasonably make thereto as a result of any change of circumstances (including any Change of Law) affecting such supplemental agreement between the date of the Franchise Agreement and the date on which the relevant Transfer Scheme is made and subject further to paragraph 3.2 of Schedule 15.4 (Provisions Applying on and after

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	Termination);
"Sustainable Development Strategy" or "SDS"	means the Franchisee's strategy for sustainable development for the Franchise as agreed or determined pursuant to paragraph 10.1(b) of Schedule 13.1 (Rail Industry Initiatives) including as a minimum: the matters listed in paragraph 10.1(a) of Schedule 13.1 (Rail Industry Initiatives), key aims, resources, risks and details of how sustainable development will be embedded in the governance of the Franchise and investment decisions (as revised from time to time);
"Target Passenger Demand"	means the higher of Actual Passenger Demand and Forecast Passenger Demand or any other level of passenger demand specified by the Secretary of State not being greater than the higher of Actual Passenger Demand or Forecast Passenger Demand;
"Target Performance Level"	has the meaning given to it in paragraph 1.1 of Schedule 7.1 (Performance Benchmarks);
"Taxation"	means any kind of tax, duty, levy or other charge whether or not similar to any in force at the date of the Franchise Agreement and whether imposed by a local, governmental or other competent authority in the United Kingdom or elsewhere;
"TDR Amendment"	has the meaning given to it in paragraph 12.7 of Part 2 (Service Development) of Schedule 1.1 (Franchise Services and Service Development);
"Technical Support Contract"	means a contract for technical support to which the Franchisee is a party, relating to the rolling stock vehicles used in the provision of the Passenger Services;
"Tendering/Reletting Process"	means either of the processes described in paragraph 1.1 and 1.2 of Schedule 15.1 (Reletting Provisions);
"Termination Event"	has the meaning given to it in paragraph 2 of Schedule 10.2 (Procedure for Events of Default and Termination Events);
"Termination Notice"	means a notice from the Secretary of State to the Franchisee terminating the Franchise Agreement following an Event of Default or a Termination Event in accordance with Schedule 10.2 (Procedure for Events of Default and Termination Events);
"Third Party Data"	means any information, data and materials that may be provided to the Secretary of State by any third party that relates to the Franchisee and which the Secretary of State decides (in his absolute

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discretion) to add to the RPC Database;

"Third Profit Share Threshold" or "TPST" has the meaning given to it in paragraph 1.1(c) of 8.2 (Profit Share Mechanism);

"Threshold Amount" has the meaning given to it in Appendix 1 (Definition of Threshold Amount) to Schedule 9.1 (Financial and Other Consequences of Change);

"Through Ticketing (Non-Travelcard) Agreement" means the agreement of that name referred to in paragraph 4.1(e) of the Appendix (List of Transport Travel and Other Schemes) to Schedule 2.5 (Transport, Travel and Other Schemes);

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

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

(a) all Passenger Services which call at Stations and/or Franchisee Access Stations; and

(b) principal Connections at those stations and other stations;

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

(a) operate Passenger Services and ancillary movements by virtue of that Track Access Agreement;

(b) deliver any required notification and/or declaration to Network Rail in respect of its intention to exercise any rights;

(c) make or refrain from making any bids for Train Slots, in each case before any relevant priority dates provided for in, and in accordance with, the Network Code;

(d) surrender any Train Slots allocated to the Franchisee by Network Rail 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 Network Rail; and

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(f) seek from Network Rail additional benefits as a condition to granting any consent to any actual or proposed act or omission by Network Rail;

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

"Timetabled Services" means a 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 (such as the 930 service from London Euston to Birmingham New Street; the 1254 service London Euston to Birmingham New Street on a Sunday etc.);

"Timetabling and Train Planning Compliance Investigation" has the meaning set out in paragraph 2.1 of Schedule 1.2 (Operating Obligations);

"TOC Minute Delay Benchmark" has the meaning given to it in paragraph 1.1 of Schedule 7.1 (Performance Benchmarks);

"TOC Minute Delay Benchmark Table" has the meaning given to it in paragraph 1.1 of Schedule 7.1 (Performance Benchmarks);

"TOC Minute Delay Performance Sum" means an amount determined in accordance with paragraph 19.4 of Schedule 7.1 (Performance Benchmarks);

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

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

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

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

"Track Access Adjustment" means any adjustment to payments under a Track Access Agreement determined in accordance with paragraph 1 of Schedule 8.3 (Track Access Adjustments and Station Charge Adjustments);

"Track Access Agreement" means each Access Agreement between Network Rail and the Franchisee which permits the Franchisee to provide the Passenger Services on track operated by Network Rail;

"Train Fleet" means:

(a) the rolling stock vehicles described in or required by Schedule 1.6 (The Composition of the Train Fleet); and

(b) any other rolling stock vehicles the Secretary of State consents to in accordance with paragraph 3 of Schedule 1.6 (The Composition of the Train Fleet);

"Train Mileage" means Actual Train Mileage and Planned Train Mileage and **"Train Miles"** shall be construed accordingly;

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

"Train Plan" shall have the meaning given to it in paragraph 10.1 of Part 2 (Service Development) of Schedule 1.1 (Franchise Services and Development);

"Train Service Requirement" means the train service requirement more particularly described in paragraph 9 of Part 2 (Service Development) of Schedule 1.1 (Franchise Services and Service Development) as such train service requirement may subsequently be amended or replaced in accordance with Schedule 1.1 (Franchise Services and Service Development);

"Train Slots" shall have the meaning given to it in the Network Code;

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"Transfer Scheme"	means a transfer scheme made by the Secretary of State under Section 12 and Schedule 2 of the Railways Act 2005 (or equivalent statutory provision) pursuant to paragraph 3.1 of Schedule 15.4 (Provisions Applying on and after Termination), being substantially in the form of Appendix 1 (Form of Transfer Scheme) to Schedule 15.4 (Provisions Applying on and after Termination), but subject to such amendments as the Secretary of State may make thereto as a result of any change of Law affecting such transfer scheme or other change of circumstances between the date of the Franchise Agreement and the date on which such scheme is made;
"Transport Act"	means the Transport Act 2000;
"Transport for London" or "TfL"	means Transport for London as established under the Greater London Authority Act 1999;
"Travelcard Agreement"	means the agreement of that name referred to in paragraphs 4.1(d) of the Appendix (List of Transport, Travel and Other Schemes) to Schedule 2.5 (Transport, Travel and Other Schemes);
"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;
"Trustee"	has the meaning given to it in paragraph 4.1 of Schedule 16 (Pensions);
"TSI"	means any Technical Standard for Interoperability with which the Franchisee is required to comply pursuant to Directives EU 96/48 and EU 2001/16 and related legislation;
"Turnaround Time"	means the time specified in the Train Plan between the completion of a Passenger Service in accordance with the Timetable and the commencement of the next Passenger Service in accordance with the Timetable on the same day using some or all of the same rolling stock vehicles;
"Turnover"	means, in relation to any period, the aggregate revenue (excluding any applicable Value Added Tax) accruing to the Franchisee from the sale of Fares and the receipt of Franchise Payments during such period;

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"Underspend"	has the meaning given to it in paragraph 2.4 of Part 2 (Special Terms related to Committed Obligations) of Schedule 6.2 (Committed Obligations);
"Undisputed Cancellation"	has the meaning given to it in paragraph 1.1 of Schedule 7.1 (Performance Benchmarks);
"Undisputed Network Rail Cancellation"	has the meaning given to it in paragraph 1.1 of Schedule 7.1 (Performance Benchmarks);
"Undisputed Network Rail Partial Cancellation"	has the meaning given to it in paragraph 1.1 of Schedule 7.1 (Performance Benchmarks);
"Undisputed Partial Cancellation"	has the meaning given to it in paragraph 1.1 of Schedule 7.1 (Performance Benchmarks);
"Uninsured Event"	means any event that does not fall within the insurance required to be taken out by the Franchisee pursuant to Condition E1 of the Station Access Conditions either because the: (a) insurance is not available to the Franchisee in respect of the risk in the rail industry market in the United Kingdom with an insurer who is a member of the Association of British Insurers (other than where the predominant cause of the insurance not being available is any act(s) or omission(s) of the Franchisee or an Affiliate of the Franchisee); or (b) the insurance premium payable for insuring that risk is at such a level that the risk is not generally being insured in the rail industry market in the United Kingdom by a reasonable and prudent Train Operator in the railway industry.
["Unspecified Additional Rolling Stock"	has the meaning given in paragraph 2.3 of Schedule 1.6 (The Composition of the Train Fleet);]
"User"	shall have the meaning given to it in the Station Access Conditions;
"Value"	means at any time the aggregate of the Projected Revenue of each Fare in a Fares Basket at that time;
"Value Added Tax"	means value added tax as provided for in the Value Added Tax Act 1994;
"Variation"	means a variation to the terms of the Franchise Agreement pursuant to paragraph 1 of Schedule 9.3 (Variations to the Franchise

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Agreement and Incentivising Beneficial Changes);

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

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

"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;

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

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

(b) the ticket types held by such passengers;

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

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

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

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

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4. COMMENCEMENT

4.1 [32]All the clauses of this Agreement and the following Schedules of this Agreement shall take effect and be binding upon each of the Secretary of State and the Franchisee immediately upon signature of this Agreement:

(a) paragraph 4 (Subcontracting any Passenger Services) and paragraph 14.4 (Finalising the Train Plan) of Schedule 1.1 (Franchise Services and Service Development);

(b) Schedule 2.1 (Asset Vesting and Transfer);

(c) paragraphs 2 (Rolling Stock Related Contracts and Insurance Arrangements) and 3 (Cascaded Rolling Stock and Delayed Cascade Mitigation Plan) of Schedule 2.2 (Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases);

(d) paragraph 1 (Other Franchisees) of Schedule 2.3 (Other Franchisees);

(e) paragraph 4.3 (Specific additional obligations relating to people with disabilities) of Schedule 4 (Accessibility and Inclusivity);

(f) Schedule 5.1 (Purpose, Structure and Construction);

(g) Schedule 5.3 (Allocation of Fares to Fares Baskets);

(h) Schedule 5.7 (Changes to Fares and Fares Regulation);

(i) paragraph 1.3 (Smart Ticketing) of Schedule 5.9 (Smart Ticketing);

(j) Schedule 9 (Changes and Variations);

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

(l) paragraphs 1 (Corporate Information), 3 (Identification of Key Personnel and Provision of Organisation Chart), 5 (Maintenance of Records), 6 (Right to inspect) and 8 (Periodic Update Reports) of Schedule 11.2 (Management Information);

(m) paragraph 4 (Performance Bond) of Schedule 12 (Financial Covenants and Bonds);

(n) Schedule 14.3 (Key Contracts);

(o) Schedule 15.1 (Reletting Provisions); and

(p) paragraph 1.1 (Handover Package Status) of Schedule 15.3 (Handover Package); and

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[32] **Note to Bidders**: Provisions to be subject to review and amendment to take account of bidder proposals.

(q) Schedule 17 (Confidentiality and Freedom of Information).

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

5. DURATION OF THE FRANCHISE AGREEMENT

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

5.2 Additional Reporting Periods

(a) If the Secretary of State gives notice to the Franchisee not less than three (3) months before the date on which the Franchise Agreement is due to expire in accordance with clause 5.1, the Franchise Agreement shall continue after such date on the terms set out in the Franchise Agreement for not less than one and (subject to sub-clause 5.2(b) below) not more than thirteen (13) Reporting Periods, as the Secretary of State may stipulate.

(b) Where the Secretary of State exercises his rights in accordance with clause 5.3 to extend the Expiry Date by a specified number of Reporting Periods then the maximum number of Reporting Periods by which the Franchise Term can be extended pursuant to clause 5.2(a) shall be reduced by the same number of Reporting Periods.

5.3 Amendment of Start Date/Expiry Date

(a) The Secretary of State shall have the right on or before 16 September 2016 to serve notice on the Franchisee that the Start Date shall be a date later than 0200 on 16 October 2016. Such amended Start Date shall be 0200 on the first day of a Reporting Period and the latest such date that the Start Date can be amended to is 0200 on 1 April 2017. The Secretary of State may in such notice also require that the Expiry Date is amended to a later date. Such amended Expiry Date shall be 0200 on the first day of a Reporting Period and the same number of Reporting Periods after the unamended Expiry Date as the number of Reporting Periods that the amended Start Date is after the unamended Start Date.

(b) Where the Secretary of State exercises his rights pursuant to clause 5.3(a) to amend the Start Date and/or the Expiry Date he shall be entitled to make such other amendments to the terms of this Franchise Agreement as are reasonably consequential upon such amendments.

6. GENERAL OBLIGATIONS

6.1 The Franchisee shall perform its obligations under this Agreement in accordance with its terms and with that degree of skill, diligence, prudence and foresight which would be exercised by a skilled and experienced Train Operator of the Franchise.

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6.2 Any obligation on the part of the Franchisee to use **"all reasonable endeavours"** shall extend to consequent obligations adequately to plan and resource its activities, and to implement those plans and resources, with all due efficiency and economy.

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

6.4 The Secretary of State shall act reasonably and in good faith in and about the performance of his obligations and the exercise of his rights pursuant to the Franchise Agreement.

7. ASSIGNMENT

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

8. CHANGE OF CONTROL AND FACILITATION FEE

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

8.2 Otherwise then in accordance with the prior consent of the Secretary of State given pursuant to clause 8.3, a Change of Control shall be constitute an Event of Default pursuant to paragraph 1.3 of Schedule 10.2 (Procedure for Events of Default and Termination Events)

8.3 The Franchisee may, at any time, apply in writing to the Secretary of State for his consent to a Change of Control (as such term is defined pursuant to clause 8.1).

8.4 The Secretary of State may require the Franchisee to pay a fee in consideration of the grant of such consent (the "**Facilitation Fee**").

8.5 The Secretary of State may require the Franchisee to pay an additional fee in respect of the staff, professional and other costs incurred by the Secretary of State in connection with the Franchisee's application (the "**Administration Fee**"). The Administration Fee shall be payable whether or not the Secretary of State consents to the proposed Change of Control.

8.6 On or after submitting such application to the Secretary of State, the Franchisee will provide, and will procure that the seller and the buyer provide, the Secretary of State with such documentation and information as the Secretary of State may require to assess such application and the amount of the Facilitation Fee. Without

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limiting clauses 8.11 or 8.12, it shall be deemed to be reasonable for the Secretary of State to delay or withhold consent to the Change of Control where any such documentation is not provided.

8.7 The Facilitation Fee shall be a sum equal to the greater of:

(a) one million pounds (£1,000,000); or

(b) where the Estimated Profit Stream is greater than the Bid Profit Stream, five per cent (5%) of the difference between the Bid Profit Stream and the Estimated Profit Stream.

8.8 The Administration Fee shall be determined by the Secretary of State on the basis of:

(a) the aggregate time spent by officials within the Secretary of State's Department on matters relating to such application;

(b) the Secretary of State's hourly scale rates for such officials, as varied from time to time; and

(c) the aggregate costs and disbursements, including where applicable VAT and professional costs, incurred by the Secretary of State in connection with such application.

8.9 Any determination by the Secretary of State for the purposes of clauses 8.7 and 8.8 shall in the absence of manifest error be final and binding as between the Secretary of State and the Franchisee (but without prejudice to the requirement of the Secretary of State to reasonably determine the Estimated Profit Stream).

8.10 Any consent by the Secretary of State to a Change of Control may be given subject to such conditions as the Secretary of State sees fit and the Franchisee shall, as applicable, comply with, and/or procure that the seller and/or the buyer comply with, any such conditions.

8.11 The Secretary of State shall have absolute discretion as to the grant of consent to any Change of Control and may accordingly refuse such consent for any reason he sees fit.

8.12 The Secretary of State shall have no liability whatever to the Franchisee in respect of any refusal of consent to a Change of Control, any delay in providing such consent, or any condition of such consent.

9. COMPLIANCE WITH LAWS

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

10. CUMULATIVE RIGHTS AND REMEDIES

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

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11. DISPUTE RESOLUTION PROCEDURE

11.1 Disputes under the Franchise Agreement

(a) Wherever the Franchise Agreement provides that the Secretary of State may reasonably determine any matter, the Franchisee may, unless the Franchise Agreement expressly provides otherwise, dispute whether a determination made by the Secretary of State is reasonable, but the Secretary of State's determination shall prevail unless and until it is agreed or found to have been unreasonable.

(b) Where either Party is entitled, pursuant to the terms of the Franchise Agreement, to refer a dispute arising out of or in connection with the Franchise Agreement for resolution or determination in accordance with the Dispute Resolution Rules, then such dispute shall, unless the Parties otherwise agree and subject to any duty of the Secretary of State under Section 55 of the Act, be resolved or determined by arbitration pursuant to the Dispute Resolution Rules.

(c) Where, in the absence of an express provision in the Franchise Agreement entitling it to do so, either Party wishes to refer a dispute arising out of or in connection with the Franchise Agreement to arbitration pursuant to the Dispute Resolution Rules, the following process shall apply:

(i) the Party seeking to refer to arbitration shall serve a written notice upon the other Party stating (i) the nature and circumstances of the dispute, (ii) the relief sought including, to the extent possible, an indication of any amount(s) claimed, and (iii) why it is considered that the dispute should be resolved by way of arbitration rather than litigation;

(ii) the other Party shall respond within twenty (20) Weekdays of service of the notice confirming whether or not referral of the dispute to arbitration is agreed. In the absence of any response, the referral to arbitration shall be deemed not to have been agreed;

(iii) in the event that the Parties agree to refer the dispute to arbitration then it shall be resolved or determined in accordance with the Dispute Resolution Rules;

(iv) in the event that the Parties do not agree to refer the dispute to arbitration then it shall be resolved or determined in accordance with clause 16 (Governing Law and Jurisdiction); and

(v) nothing in this clause 11.1 shall preclude either Party from commencing, continuing or otherwise taking any step by way of litigation in pursuit of the resolution or determination of the dispute unless an agreement is reached to refer the dispute to arbitration.

(d) The arbitrator in any dispute referred for resolution or determination under the Dispute Resolution Rules shall be a suitably qualified person

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chosen by agreement between the Parties or, in default of agreement, chosen by the Disputes Secretary from a panel of persons agreed from time to time for such purposes between the Secretary of State and the Franchisee or, in default of agreement as to the arbitrator or as to such panel, selected on the application of any Party by the President of the Law Society or the President of the Institute of Chartered Accountants in England and Wales from time to time (or such other person to whom they may delegate such selection).

11.2 Disputes under other agreements

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

(b) Such notification shall be made both:

(i) at the time of such submission (and such notification shall include reasonable details of the nature of the dispute); and

(ii) at the time of the resolution of the dispute (whether or not subject to appeal) (and such notification shall include reasonable details of the result of the dispute, any associated award and whether it is subject to appeal).

(c) The Franchisee shall provide such further details of any dispute referred to in clause 11.1(d) (Disputes under the Franchise Agreement) as the Secretary of State may reasonably request from time to time.

11.3 Disputes under Schedule 8 (Payments) of this Agreement

The Parties shall comply with the terms of paragraph 4 of Schedule 8.1 of this Agreement.

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12. NOTICES

12.1 Notices

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

Name:	The Department for Transport
Address:	33 Horseferry Road, London SW1P 4DR
Email:	franchise.notices@dft.gsi.gov.uk
Attention:[33]	The Manager - [*Insert name of Specific Franchise*]
Name:[34]	[*Insert company name of Franchisee*]
Address:[35]	[*Insert business address of Franchisee*]
Email:[36]	[*Insert Franchisee contact's email address*]
Attention:[37]	[*Insert name of contact at Franchisee*]

(b) Any other notice, notification or other communication under or in connection with the Franchise Agreement shall be in writing and shall be delivered:

(i) in accordance with clause 12.1(a); or

(ii) by electronic data transfer,

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

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33 **Note to Bidders**: To be populated by the DfT.

34 **Note to Bidders**: To be populated by the DfT.

35 **Note to Bidders**: To be populated by the DfT.

36 **Note to Bidders**: To be populated by the DfT.

37 **Note to Bidders**: To be populated by the DfT.

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12.2 Deemed Receipt

Any such notice or other communication shall be deemed to have been received by the party to whom it is addressed as follows:

(a) if sent by hand or recorded delivery, when delivered;

(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; and

(c) if sent by electronic data transfer, upon sending, subject to receipt by the sender of a **"delivered"** confirmation (provided that the sender shall not be required to produce a **"read"** confirmation).

13. SET-OFF

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

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

(a) any amount or liability payable or due to him under or in relation to the Franchise Agreement (whether such amount or liability is present, contingent and/or future, liquidated or unliquidated); and

(b) any monetary penalty payable under the Act.

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

14. MISCELLANEOUS PROVISIONS

14.1 Waivers

(a) Any Party may at any time waive any obligation of any other Party owed to it under the Franchise Agreement and the obligations of the Parties hereunder shall be construed accordingly.

(b) No waiver by any Party of any default by any other Party in the performance of such Party's obligations under the Franchise Agreement shall operate or be construed as a waiver of any other or further such default, whether of a like or different character. A failure to exercise or delay in exercising a right or remedy under the Franchise Agreement shall not constitute a waiver of any right or remedy or a waiver of any other rights or remedies and no single or partial exercise of any right or remedy under the Franchise Agreement shall prevent any further exercise of such right or remedy or the exercise of any other right or remedy.

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14.2 Time limits

Where in the Franchise Agreement any obligation of a Party is required to be performed within a specified time limit (including an obligation to use all reasonable endeavours or reasonable endeavours to secure a particular result within such time limit) 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.

14.3 Partial invalidity

If any provision in the Franchise Agreement is held to be void, illegal, invalid or unenforceable, in whole or in part, under any enactment or rule of Law, such provision or part shall to that extent be deemed not to form part of the Franchise Agreement but the legality, validity and enforceability of the remainder of the Franchise Agreement shall not be affected.

14.4 Further assurance

Each Party agrees to execute and deliver all such further instruments and do and perform all such further acts and things as shall be necessary or expedient for the carrying out of the provisions of the Franchise Agreement.

14.5 Rights of Third Parties

(a) A person who is not a party to the Franchise Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Franchise Agreement except to the extent set out in this clause 14.5.

(b) Any Successor Operator or potential Successor Operator nominated by the Secretary of State and notified to the Franchisee and the Franchisee for the purposes of this clause 14.5 may enforce and rely on the provisions of Schedule 15 (Obligations Associated with Termination) to the same extent as if it were a party but subject to clauses 14.5(c) and 14.5(d).

(c) The Franchise Agreement may be terminated, and any term may be amended or waived, in each case in accordance with the terms of the Franchise Agreement, without the consent of any person nominated under clause 14.5(b).

(d) The person nominated under clause 14.5(b) shall only be entitled to enforce and rely on Schedule 15 (Obligations Associated with Termination) to the extent determined by the Secretary of State (whether at the time of nomination or at any other time) and, to the extent that any such person is entitled to enforce and rely on Schedule 15 (Obligations Associated with Termination), any legal proceedings in relation thereto must be commenced within one (1) year of the expiry of the Franchise Period and any such person shall not be entitled to enforce or rely on Schedule 15 (Obligations Associated with Termination) to the extent that it has consented to any particular act or omission of the Franchisee which may constitute a contravention of Schedule 15 (Obligations Associated with Termination) or has been afforded a reasonable opportunity to indicate to the Franchisee that it is not so consenting and has not so indicated

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(the extent of such reasonable opportunity to be determined by the Secretary of State unless otherwise agreed).

14.6 Secretary of State's consent or approval

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

14.7 Enforcement costs

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

14.8 Arm's length dealings

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

14.9 Non-discrimination

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

(a) of nationality, against a person who is a national of and established in an EEA state; or

(b) that the goods to be supplied under the contract originate in another EEA state.

For the purpose of this clause, **"EEA state"** means any state which is a party to the EEA agreement entered into on 2 May 1991 (as updated from time to time).

15. ENTIRE AGREEMENT

15.1 This Agreement and the Conditions Precedent Agreement contain the entire agreement between the Parties in relation to the subject matter of the Franchise Agreement and supersede all prior agreements and arrangements between the Parties other than any confidentiality agreements or undertakings which the Franchisee may have entered into with the Secretary of State in connection with his proposal to secure the provision of the Passenger Services under the Franchise Agreement.

15.2 The Franchisee hereby acknowledges that it is not entering into this Franchise Agreement in reliance on any warranties, representations or undertakings howsoever or to whomsoever made except in so far as such warranties, representations or undertakings are contained in the Franchise Agreement.

WITHDRAWN JANUARY 2026

15.3 The Franchisee hereby acknowledges and agrees with the Secretary of State (for himself and as trustee for each of the other persons referred to therein) to the disclaimers of liability which are contained in Section 3.2 of the Invitation to Tender and the section entitled **"Important Notice"** contained in any document supplied by or on behalf of the Secretary of State in connection with the Franchise Agreement, the process leading to the entering into of the Franchise Agreement, or the Franchise Services (including any Invitation to Tender issued in connection therewith).

15.4 The Franchisee irrevocably and unconditionally waives any right which it may otherwise have to claim damages in respect of and/or to rescind this Agreement and/or the Conditions Precedent Agreement on the basis of any warranty, representation (whether negligent or otherwise, and whether made prior to and/or in this Agreement or the Conditions Precedent Agreement) or undertaking howsoever or to whomsoever made unless and to the extent that such warranty, representation or undertaking was made fraudulently.

16. GOVERNING LAW AND JURISDICTION

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

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

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SEAL REF No.

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

Authenticated by authority of the
Secretary of State for Transport

SIGNED FOR AND ON BEHALF OF)
[INSERT])

Director:

Director/Secretary:

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SCHEDULE 1

Passenger Service Obligations

Schedule 1.1:	Franchise Services and Service Development Part 1 - FRANCHISE SERVICES Part 2 - SERVICE DEVELOPMENT
Schedule 1.2:	Operating Obligations
Schedule 1.3:	NOT USED
Schedule 1.4:	Passenger Facing Obligations
Schedule 1.5:	Information about Passengers
Schedule 1.6:	The Composition of the Train Fleet
	Appendix to Schedule 1.6
Schedule 1.7:	Stations
	Appendix 1 to Schedule 1.7: List of Stations and Car Parks with Secure Stations Accreditation and Secure Car Parks Accreditation
	Appendix 2 to Schedule 1.7: Information about Station Improvement Measures

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SCHEDULE 1.1

Franchise Services and Service Development

Part 1 - FRANCHISE SERVICES

1. Franchise Services

1.1 The Franchisee may at all times during the Franchise Term provide and operate the Franchise Services specified in this Schedule 1.1.

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

1.3 Nothing in this Schedule 1.1 shall restrict any Affiliate of the Franchisee from having an interest in or participating in any business or activity.

2. Restrictions relating to Franchise Services

2.1 The Franchisee shall not without the prior written consent of the Secretary of State operate Passenger Services other than on the following Routes (and in the event of disruption, any reasonable diversionary route):

(a) Great Eastern Main Line between London Liverpool Street and Norwich, and branches to Braintree, Colchester Town, Clacton-on-Sea, Walton-on-the-Naze; and Harwich Town;

(b) Marks Tey to Sudbury;

(c) London Liverpool Street to Southend Victoria;

(d) Wickford to Southminster;

(e) West Anglia routes between London Liverpool Street and Stratford to Hertford East; Stansted Airport, Cambridge, and Kings Lynn;

(f) Ipswich to Felixstowe, Lowestoft, Cambridge, Ely and Peterborough;

(g) Norwich to Cambridge, Great Yarmouth, Lowestoft, Cromer and Sheringham;

(h) Cambridge to Stansted Airport; and

(i) *[any other additional route geography proposed by bidders and agreed by the Authority that may be added for inclusion within the franchise geography during the Bid Phase]*[38].

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[38] **Note to Bidders:** Bidder to insert details if applicable.

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

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

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

(a) provide or operate any railway passenger services other than the Passenger Services or Charter Services;

(b) operate any stations or light maintenance depots other than the Stations and Depots; or

(c) hold shares, participations or any other interest in any other company or body corporate unless such company or body corporate is:

(i) Network Rail; or

(ii) owned directly or indirectly by another participant in the railway industry and the holding is incidental to the Franchisee's participation in an Inter-Operator Scheme or any other arrangement designed to ensure or facilitate co-operation between such participants or between any such participants and any other person.

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

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

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

(a) cease to operate;

(b) cease to secure the operation of; or

(c) propose to terminate the use of,

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

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

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4. **Subcontracting any Passenger Services**

4.1 Subject to paragraph 4.2, the Franchisee may not subcontract or delegate the provision of the Passenger Services without the prior written consent of the Secretary of State.

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

(a) the Secretary of State receives prior written notice of any such subcontracting or delegation;

(b) the Franchisee continues to be party to all Access Agreements and Property Leases necessary to provide such Passenger Services and to enjoy all relevant access and operational rights thereunder;

(c) the Franchisee continues to specify and control the terms and conditions (subject to the requirements of the Inter-Operator Schemes) on which such Passenger Services are to be provided, including the determination of the Price or Child Price (as the case may be) of any Fares;

(d) the Planned Train Mileage of the Passenger Services so delegated or subcontracted does not exceed five per cent (5%) of the Planned Train Mileage of the Franchisee in any Reporting Period; and

(e) the Franchisee continues to perform its obligations under this Schedule 1.1 in respect of any subcontracted or delegated services.

4.3 Any such subcontracting or delegation shall not relieve the Franchisee from any of its obligations under the Franchise Agreement, including its obligations under this paragraph 4 and Schedule 14 (Preservation of Assets).

5. **Station Services**

5.1 The Station Services shall comprise:

(a) the provision of any services to persons at Stations or to Train Operators whose trains call at such Stations, provided that such services:

(i) are made available only or principally to passengers alighting from or joining trains calling at such Stations and to such Train Operators;

(ii) are provided in connection with the calling of trains at such Stations and are not designed to encourage passengers or other persons to use such Station Services other than in connection with a journey on a train calling at such Stations;

(iii) exclude the sale or issue (for a charge) of any goods other than passenger timetables and any items included in the price of a Fare; and

(iv) may include the provision of car parking spaces; and

(b) the provision of access to any person under an Access Agreement at any Station.

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

6. **Light Maintenance Services**

6.1 Light Maintenance Services shall comprise:

(a) the provision of access to any other person under an Access Agreement;

(b) the carrying out of inspections of rolling stock vehicles;

(c) the carrying out of maintenance work on rolling stock vehicles of a kind which is normally carried out at regular intervals of twelve (12) months or less;

(d) replacement of failed components and consumables on rolling stock vehicles;

(e) the preparation of rolling stock vehicles for service;

(f) the stabling or other temporary holding of rolling stock vehicles;

(g) the refuelling of rolling stock vehicles;

(h) the replenishment of water tanks; and

(i) the cleaning of the exterior or the interior of rolling stock vehicles,

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

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

7. **Ancillary Services**

The Franchisee may carry out the following Ancillary Services:

(a) the selling, lending or hiring of any goods or rights and the provision of any services (whether for a charge or not) on any train used in the provision of the Passenger Services where such goods or services are sold or provided principally for consumption or use on the relevant train, including the sale of any Fares, meals, light refreshments, newspapers, magazines, books, entertainment materials 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 7(a) or which, if provided at a Station, would fall within paragraph 5 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;

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(c) in any Reporting Period, the subleasing, hiring or licensing of up to ten per cent (10%) of the rolling stock vehicles used in the provision of the Passenger Services (such percentage to be determined by reference to the aggregate period of time for which such rolling stock vehicles are sub-let, hired or licensed and the aggregate period of time for which they are used in the provision of the Passenger Services);

(d) the lending, seconding, hiring or contracting out during any Reporting Period to another person or persons (whether for a charge or not) of:

(i) up to one per cent (1%) of the number of Franchise Employees as at the Start Date, for over ninety per cent (90%) of their normal working hours during such Reporting Period (including on a full-time basis); and

(ii) one per cent (1%) of any other Franchise Employees as at the Start Date,

provided that this paragraph shall not apply to any employee lent, seconded, hired or contracted out under any of paragraphs 7(a) to 7(c) inclusive and paragraphs 7(e) to 7(p) inclusive, or engaged in any other activity which is permitted under this Schedule 1.1;

(e) any heavy maintenance of rolling stock vehicles which does not fall within the Light Maintenance Services, carried out on behalf of any other person at the following Depot(s), subject to the number of persons engaged or employed in such activity not exceeding by more than ten per cent (10%) the number so engaged or employed on the Start Date:

[INSERT DETAILS];[39]

(f) the selling at any location of any Fare which is valid, in whole or in part, on the Passenger Services and the selling of any other Fare at any location where such Fares may be purchased from the Franchisee on or before the date of the Franchise Agreement or at any other location, provided that the majority of Fares sold at any such other location shall be Fares which are valid, in whole or in part, on the Passenger Services;

(g) the selling, in conjunction with any Fare, of any other rights which entitle the purchaser thereof to:

(i) travel on any other train or light rail service;

(ii) travel on any aircraft;

(iii) travel on any shipping or ferry service;

(iv) travel on any bus; or

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[39] **Note to Bidders:** Bidders to populate.

(v) attend any event or attraction or enter any location;

(h) the lending, seconding, hiring or contracting out of Franchise Employees to other Train Operators in order to enable such Train Operators to provide services at the Stations to passengers travelling on any such operator's trains;

(i) the provision of information relating to railway passenger services within Great Britain to passengers through telephone, internet, mobile data services or other appropriate means;

(j) the supervision, management and training of train crew of other Train Operators provided such activity is necessarily incidental to the provision of the Passenger Services and could not reasonably be carried out by or through an Affiliate of the Franchisee;

(k) the subleasing, hiring, licensing, lending, selling of any rolling stock vehicles or other assets of the Franchisee or the lending, hiring or contracting out of any employees of the Franchisee or the provision of any other services to Network Rail or any other Train Operator on an emergency basis;

(l) the licensing or permitting of any other person (including an Affiliate of the Franchisee) to carry out any activity or business, in connection with the provision of the Franchise Services, or otherwise, on any rolling stock vehicle operated by the Franchisee, at any station served by the Passenger Services, at any Depot, or otherwise (including the letting, leasing or licensing (on an exclusive basis or otherwise) of any part or all of a Station or Depot to such other person);

(m) such other activity or business as may be reasonably necessary for the purpose of providing any other Franchise Services or complying with the Franchise Agreement, provided that it could not reasonably be carried out by or through an Affiliate of the Franchisee;

(n) the subleasing to any other person of the following property which is not comprised in a Station or Depot:

[INSERT DETAILS][40]

(o) the provision or operation of Charter Services, subject to the Planned Train Mileage of such Charter Services not exceeding in any Reporting Period two per cent (2%) of the Planned Train Mileage of Passenger Services provided by the Franchisee in such Reporting Period;

(p) the provision of consultancy services reasonably ancillary to the provision of the other Franchise Services; and

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[40] **Note to Bidders:** Bidders to populate.

(q) any services or activity not falling within paragraphs 5, 6, 7(a) to 7(p) above, subject to the gross value of any such services or activity (excluding any attribution of costs) not exceeding twenty five thousand pounds (£25,000) per annum in each Franchisee Year, per item and in aggregate, two hundred and fifty thousand pounds (£250,000) per annum in each Franchisee Year provided that in the second and each subsequent Franchisee Year, these amounts will be increased by RPI.

8. **Royal Train**

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

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

(a) running a **"sweeper"** train in front of the royal train;

(b) having spare locomotives on standby as rescue traction; and/or

(c) carrying out security requirements or co-operating with other persons in ensuring that security requirements are carried out prior to calling at any station on the Routes.

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Part 2 - SERVICE DEVELOPMENT

9. Train Service Requirement - Purpose And Responsibility

9.1 The Train Service Requirement is the minimum specification of the Passenger Services and capacity to be provided by the Franchisee during the Franchise Term.

9.2 The Train Service Requirement as at the date of the Franchise Agreement is comprised in the following, all in agreed terms marked as follows:

(a) **TSR1** being the Train Service Requirement applicable from the Start Date until the Passenger Change Date in May 2019; and

(b) **TSR2** being the Train Service Requirement applicable from the Passenger Change Date in May 2019 until the end of the Franchise Term,

and for the purposes of this Schedule 1.1, such Train Service Requirement shall remain in force unless and until amended or replaced pursuant to this Schedule 1.1. The Train Service Requirement does not in any way limit the Franchisee's obligations pursuant to paragraph 14 of this Schedule 1.1.

9.3 The Franchisee is required to seek Train Slots from Network Rail in accordance with the Train Service Requirement with the intention that the working timetable issued by Network Rail is consistent with such Train Service Requirement. With regard to capacity, the Franchisee is required to include in the Train Plan the minimum capacity specified in the Train Service Requirement.

9.4 The Train Service Requirement may be expressed in whole or in part at any level of generality or to any level of detail the Secretary of State considers appropriate.

10. Train Plan

10.1 Subject to paragraph 10.2, for the purposes of this Agreement, the **"Train Plan"** shall be the plan or diagram (including sub-plans or sub-diagrams) prepared by the Franchisee for the operation of trains and train formations under the Timetable that best matches available capacity to Forecast Passenger Demand as amended from time to time during the Franchise Period in accordance with this Agreement;

10.2 For the purposes of Schedule 7 (Performance Benchmarks), references to **"Train Plan"** shall be construed as the latest version of the Train Plan which includes any amendments thereto pursuant to paragraphs 3, 4 and/or 5 of Schedule 1.2 (Operating Obligations):

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

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

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

10.3 The Franchisee shall submit to the Secretary of State a Train Plan in respect of each Timetable in accordance with this Schedule 1.1.

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10.4 In preparing any Train Plan, the Franchisee shall do so by reference to the Timetable that it envisages operating in order to comply with the Train Service Requirement and paragraph 14 of this Schedule 1.1.

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

(a) its start point and departure time;

(b) its terminating point and arrival time;

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

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

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

10.6 A Train Plan shall be in any format that the Secretary of State may reasonably specify for this purpose.

10.7 At the Start Date, Network Rail will have issued the applicable working timetable on which the Timetable is to be based. Accordingly the Franchisee shall confirm to the Secretary of State that it intends:

(a) to adopt, from the Start Date until the next Passenger Change Date, the Train Plan prepared by the Train Operator under the Previous Franchise Agreement; **or**

(b) to prepare its own Train Plan in accordance with this Schedule 1.1,

such Train Plan shall become the document in the agreed terms marked **TP** as at the Start Date.

11. Consultation on Significant Alterations to the Timetable

11.1 Notwithstanding any consultation the Secretary of State might separately undertake in respect of any amended or new draft Train Service Requirement issued pursuant to paragraph 16, the Franchisee shall where:

(a) it intends that any future Timetable shall contain Significant Alterations compared to the Timetable then in force; and

(b) such Significant Alterations are likely to have, in the reasonable opinion of the Franchisee, a materially adverse effect on:

(i) the ability of passengers using any station served by the Passenger Services to make journeys relating to work or education at reasonably convenient times; and/or

(ii) the trading prospects of commercial enterprises located in any community in which a station served by the Passenger Services is located in consequence of it being more difficult for customers or

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employees to access such commercial enterprises through travel on the Passenger Services,

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

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

(a) as soon as reasonably practicable provide to the Secretary of State and all Stakeholders a comprehensive summary of the proposed changes from the Timetable then in force specifying the proposed Timetable changes, the reasons for them and the likely impact on passengers;

(b) carry out the consultation in relation to such proposed changes using a reasonable range of communication channels (taking into account the scale of the proposed changes) and in a manner that can be reasonably expected to encourage responses from a broad range of affected Stakeholders;

(c) give consultees such time as is reasonable under all the circumstances to respond (it being agreed that it shall normally be reasonable to give at least twelve (12) weeks to respond in relation to major proposed Timetable changes);

(d) take due account of the responses of consultees;

(e) within six (6) weeks of the close of the consultation (or such longer period as the Secretary of State may agree, such agreement not to be unreasonably withheld or delayed) publish a report containing a summary of the main issues raised by respondents (including quantitative analysis of the responses received), the reasoned response of the Franchisee to them and notification of how the Franchisee will now seek to exercise relevant Timetable Development Rights in the context of its obligation to take due account of the results of the consultation;

(f) ensure that the published report is promptly provided to the Secretary of State and all respondents who submitted written responses to the consultation and published in a widely accessible form; and

(g) ensure that the relevant Timetable Development Rights to implement the proposed Timetable change are not exercised prior to the publication of the report and exercise such Timetable Development Rights in the manner indicated in the report.

12. Timetable Development Rights

12.1 The Franchisee shall use all reasonable endeavours to amend and/or enter into such Access Agreements as may be necessary or desirable from time to time to obtain the Timetable Development Rights that it requires to secure a Timetable that enables it to operate railway passenger services that comply with the Train Service Requirement and otherwise comply with its obligations under the Franchise Agreement.

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12.2 Prior to exercising any Timetable Development Rights to secure a Timetable the Franchisee shall make an informed estimate of Forecast Passenger Demand and in doing so shall make reasonable assumptions based on available evidence (making proper use of recognised railway industry systems and forecasting tools as these may develop over the Franchise Period) with the estimate being in such format and to such level of disaggregation as the Secretary of State may reasonably require.

12.3 The Franchisee shall exercise its Timetable Development Rights so as to secure a Timetable that enables it to operate railway passenger services that comply with the Train Service Requirement and paragraph 14 of this Schedule 1.1 in accordance with its obligations under paragraph 17 of this Schedule 1.1.

12.4 Where the Franchisee proposes to exercise its Timetable Development Rights so that the Timetable in force after the relevant Passenger Change Date contains Significant Alterations to that in force prior to such Passenger Change Date the Franchisee shall, without prejudice to its obligation to consult pursuant to paragraph 11, act reasonably with the intention of obtaining a Timetable which enables paragraphs 14.1(b) and 14.1(c) of this Schedule 1.1 to be achieved in relation to each Passenger Service in the Timetable to the greatest extent reasonably practicable. It is agreed that in acting reasonably the Franchisee shall take full and proper account of its calculation of Forecast Passenger Demand made pursuant to paragraph 12.2 above.

12.5 Unless the Secretary of State otherwise directs, the Franchisee shall, for the purposes of securing a Timetable that complies with the Train Service Requirement and paragraph 14 of this Schedule 1.1, exercise its rights under the Track Access Agreement (including the Network Code) to object, to make representations and to withhold consent in respect of any actual or proposed act or omission by Network Rail in relation to such agreement in respect of its Timetable Development Rights.

12.6 Subject to the Franchisee complying with its obligations under paragraph 12.5 above, it shall not be liable for any failure to secure a Timetable that enables the Franchisee to operate railway passenger services that comply with the Train Service Requirement and paragraph 14 of this Schedule 1.1, to the extent that such failure is caused by:

(a) the Franchisee's Timetable Development Rights being inadequate to enable it to secure the requisite Train Slots, provided that the Franchisee has exercised and, unless otherwise agreed by the Secretary of State, is continuing to exercise all reasonable endeavours to obtain the requisite Timetable Development Rights in accordance with paragraph 12.3 above;

(b) Network Rail exercising its flexing rights from time to time under the Track Access Agreement or the Network Code in respect of such Train Slots;

(c) Network Rail exercising its other rights from time to time under the Track Access Agreement or the Network Code; or

(d) the exercise by the ORR of its powers pursuant to Section 22C of the Act.

12.7 **TDR Amendments**

(a) If and to the extent that the Franchisee is not able to secure a Timetable enabling it to operate railway passenger services that comply with the

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Train Service Requirement as a result of it not being able to obtain the Timetable Development Rights that it requires for that purpose, then the Secretary of State shall (subject to paragraphs 12.7(b) and 12.7(c) below) issue to the Franchisee such amendments to the Train Service Requirement (**"TDR Amendment"**) as the Secretary of State considers necessary such that the Franchisee is able to secure a Timetable in compliance with the Train Service Requirement as amended by the TDR Amendment by exercise of the Timetable Development Rights that the Franchisee does have.

(b) The Secretary of State shall have an unfettered discretion as to whether or not to issue a TDR Amendment in circumstances where the Franchisee:

(i) has failed to exercise all reasonable endeavours to obtain the requisite Timetable Development Rights in accordance with paragraph 12.3 above; and

(ii) is not relieved by paragraph 12.6 above from liability for such failure to secure a Timetable that enables the Franchisee to operate railway passenger services that comply with the Train Service Requirement.

(c) Where the Secretary of State reasonably considers that the failure to secure a Timetable that enables the Franchisee to operate the Train Service Requirement is partly due to the default of the Franchisee in not properly complying with its obligations under the Franchise Agreement in relation to securing Timetable Development Rights any TDR Amendment shall not relieve the Franchisee of the obligation to comply with the Train Service Requirement to the extent that the Secretary of State determines that the failure is due to such default of the Franchisee and the Franchisee may be in contravention of the Franchise Agreement accordingly.

(d) Following issue of any TDR Amendment pursuant to paragraph 12.7(a), 12.7(b) and 12.7(c) the Franchisee shall, unless otherwise agreed by the Secretary of State, continue to use all reasonable endeavours to amend and/or enter into such Access Agreements as may be necessary or desirable from time to time to obtain the Timetable Development Rights that it requires to secure a Timetable that enables it to operate railway passenger services that comply with the Train Service Requirement without such TDR Amendment.

(e) Any TDR Amendment issued pursuant to paragraph 12.7(a), 12.7(b) and 12.7(c) unless otherwise required by the Secretary of State, shall cease to have effect on the date (if any) on which the first Timetable comes into effect after the Franchisee has obtained the Timetable Development Rights that it requires to secure a Timetable that enables it to operate railway passenger services that comply with the Train Service Requirement without any such TDR Amendment.

(f) With effect from the date on which any TDR Amendment ceases to have effect in accordance with paragraph 12.7(e) the Train Service Requirement without such TDR Amendment shall thereafter apply.

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

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

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

13.3 The Franchisee shall:

(a) keep the Secretary of State fully informed of any discussions with Network Rail in relation to the matters referred to in this Schedule 1.1 which may, in the reasonable opinion of the Franchisee, have a material impact on the ability of the Franchisee to deliver the Train Service Requirement or meet the requirements of paragraph 14 of this Schedule 1.1 through the Timetable and shall, if required to do so by the Secretary of State, supply copies of any related correspondence to the Secretary of State; and

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

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

14.1 **Capacity and Timetable Planning**

(a) The Franchisee shall, in preparing its Timetable and Train Plan, unless the Secretary of State otherwise agrees, provide for at least the capacity specified in Train Service Requirement.

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

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

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

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

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

If at the time it prepares its Timetable and/or Train Plan, having exercised all reasonable endeavours, the Franchisee is unable to prepare a Timetable and/or

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Train Plan having the Passenger Carrying Capacity and/or meeting the reasonable expectations referred to in paragraphs 14.1(b) to 14.1(c), then the Timetable and/or the Train Plan shall specify the best allocation of Passenger Services and rolling stock vehicles to Passenger Services that is reasonably practicable with a view to:

(a) minimising, so far as is possible, the amount by which Target Passenger Demand exceeds the provision of Passenger Carrying Capacity on the affected Passenger Services;

(b) ensuring, so far as is possible, that such excess is not unduly concentrated on any particular Route or Passenger Service; and

(c) minimising, so far as is possible, the extent to which passengers are required to stand:

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

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

14.3 **Preparation of Timetable and Train Plan**

(a) Subject to paragraph 14.3(b), the Franchisee shall in preparing its Timetable and its Train Plan take full and proper account of its calculation of Forecast Passenger Demand and use all reasonable endeavours to ensure that the Train Fleet is deployed in an optimal manner for the purposes of complying with its obligations under sub paragraphs 14.1 and 14.2 above.

(b) The Franchisee shall in preparing its Timetable and Train Plan deploy the entire Train Fleet (excluding reasonable planning requirements for the allocation of Hot Standbys or other rolling stock vehicles to be out of service due to maintenance requirements, Mandatory Modifications or any other reason agreed with the Secretary of State (such agreement not to be unreasonably withheld or delayed)) in delivering the Passenger Services:

(i) during each Peak; and

(ii) at such times during each Off-Peak where such deployment of the entire Train Fleet is reasonably required to meet the Franchisee's obligations pursuant to sub paragraphs 14.1 and 14.2 above.

14.4 **Finalising the Train Plan**

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

(b) The Franchisee shall submit its final Train Plan to the Secretary of State prior to the commencement of the Timetable to which it relates.

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(c) The Train Plan shall be certified by a statutory director of the Franchisee as being true and accurate and including the minimum capacity specified in the Train Service Requirement.

15. **Capacity Mitigation Plan**

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

15.2 The Capacity Mitigation Plan referred to in paragraph 15.1 may, without limitation, include measures to be implemented by the Franchisee to:

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

(b) minimise, so far as is possible, the amount by which Target Passenger Demand exceeds the provision of Passenger Carrying Capacity on the affected Passenger Services;

(c) ensure, so far as is possible, that such excess is not unduly concentrated on any particular Route or Passenger Service; and

(d) minimise, so far as is possible, the extent to which passengers are required to stand:

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

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

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

15.3 Where the Secretary of State reasonably believes that future circumstances may lead to the Franchisee being unable to prepare a Timetable and/or a Train Plan which meets the requirements of paragraph 14.1 at any time within the next four (4) years (including after the end of the Franchise Term) the Secretary of State shall have the right to serve notice on the Franchisee specifying those future circumstances and the date that the Franchisee should assume that they will arise from and requiring it to produce a Capacity Mitigation Plan to remedy or mitigate such future circumstances on the basis of assumptions provided by the Secretary of State.

15.4 The Capacity Mitigation Plan shall (unless the Secretary of State specifies to the contrary) include the Franchisee's informed estimate of Forecast Passenger Demand, in such format and to such level of disaggregation as the Secretary of

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State may reasonably require. Without limitation such specification may require the Franchisee to present options to address relevant issues through:

(a) alterations to the Train Service Requirement;

(b) modification of rolling stock or the acquisition of additional or replacement rolling stock;

(c) alterations to Fares; and/or

(d) alterations or enhancements to any track, signalling, station, depot or other relevant railway infrastructure.

15.5 The Capacity Mitigation Plan shall provide a comprehensive analysis backed by relevant data and assumptions of:

(a) all cost and revenue and other financial implications of options contained within it including the potential implications for Franchise Payments;

(b) the implications (if any) for the Benchmarks and/or Annual Benchmarks; and

(c) the likely impact of options within it for existing and future passenger journeys and journey opportunities.

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

16. **New or amended Train Service Requirement by the Secretary of State and Franchisee Informed Opinion**

16.1 Prior to issuing any amended or new Train Service Requirement the Secretary of State shall provide to the Franchisee his draft of any proposed amended or new Train Service Requirement stating the date upon which he proposes that such amended or new Train Service Requirement should take effect along with the Secretary of State's view as to the changes (if any) that he proposes to make to the Benchmarks and/or Annual Benchmarks.

16.2 On receipt of any proposed amended or new Train Service Requirement from the Secretary of State the Franchisee shall provide (if so requested) its informed opinion:

(a) with supporting reasons as to the impact of the proposed amended or new Train Service Requirement on the delivery of an optimal range of railway passenger services patterns relative to Target Passenger Demand and compliance with paragraph 14.1;

(b) with supporting reasons as to the changes to resources and adjustment to Franchise Payments (if any) which would be required in consequence of the proposed amended or new Train Service Requirement;

(c) with supporting reasons as to changes (if any) to the Benchmarks and/or Annual Benchmarks;

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(d) of the process to be required to implement the proposed amendment to the Train Service Requirement together with a plan for the implementation of the amendment to the Train Service Requirement (including all steps required to ensure that the Franchisee can deliver a Timetable compliant with such amended or new Train Service Requirement) prepared in accordance with procedural arrangements specified by the Secretary of State pursuant to paragraph 17; and

(e) with supporting reasons of the likely impact of the proposed amended or new Train Service Requirement on existing and future passenger journeys and journey opportunities.

16.3 There may be iterations of drafts of the proposed amended or new Train Service Requirement and the Franchisee shall to the extent required by the Secretary of State have the obligations described in this paragraph 16 in respect of all such iterations.

16.4 Processes contained in this paragraph 16 shall take place in accordance with procedural arrangements and timescales stipulated by the Secretary of State pursuant to paragraph 17.2.

16.5 The Secretary of State may issue to the Franchisee any amended or new Train Service Requirement that he requires the Franchisee to operate and notice of the amendments (if any) to the Benchmarks and/or Annual Benchmarks. Such amended or new Train Service Requirement will be issued prior to the commencement of the timetable development process of Network Rail for the Timetable in respect of which it is proposed to implement the change to Passenger Services arising from the amended or new Train Service Requirement.

16.6 In the absence of the Secretary of State issuing any amended or new Train Service Requirement the existing Train Service Requirement will remain in full force and effect. The degree of variation from any Train Service Requirement specified at the date the Franchise Agreement was entered into in respect of any particular period and brought about by any amended or new Train Service Requirement issued pursuant to this paragraph 16 shall (where relevant) be of a magnitude no greater than that contemplated in the Invitation to Tender.

16.7 At the same time as the Secretary of State provides the Franchisee with a draft of any proposed amended or new Train Service Requirement pursuant to paragraph 16.1, the Secretary of State shall also provide to the Franchisee his opinion of any amendments (if any) that are required to the Benchmarks and/or the Annual Benchmarks.

17. Procedural Arrangements and Timescales

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

17.2 The Franchisee agrees that the Secretary of State may stipulate any reasonable procedural arrangements and timescales that are to be followed by the Secretary of State and the Franchisee for these purposes (which shall be consistent with any relevant standard railway industry processes for the development of the

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Timetable and the resultant Train Plan) and that the Secretary of State may amend any such stipulation from time to time.

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

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

(a) shall be at the reasonable discretion of the Secretary of State;

(b) may contain procedural arrangements and timescales to be followed by the Franchisee in relation to other changes to the Franchise Services (pursuant to paragraph 1 of Schedule 9.3 (Variations to the Franchise Agreement and Incentivising Beneficial Changes)) in conjunction with the Train Service Requirement; and

(c) may provide for iterations of drafts of any amended or new Train Service Requirement, Train Plan or Timetable.

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

18. Obligations in relation to other Train Operators

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

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

(b) the stopping patterns of such railway passenger services are placed at approximately evenly-spaced intervals throughout each relevant hour, taking into account the reasonable needs of passengers and the different types of railway passenger services provided by other Train Operators and the Franchisee; and

(c) a reasonable pattern of railway passenger service is provided on the relevant route(s) to enable passengers to make Connections (particularly where low frequency railway passenger services are operated or last trains are involved, taking account of seasonal fluctuations in passenger demand and the time needed to make any such Connection).

19. Provisions relating to Access Agreements and Property Leases

19.1 Where the Secretary of State considers it requisite for the purposes of better securing the delivery of Passenger Services under the Franchise Agreement, or any other franchise agreement, or for the better achievement by him of any of his duties, functions and powers in relation to railways, or the implementation of the Crossrail Programme and the operation of the Crossrail Services by the Crossrail Operator, the Secretary of State may require the Franchisee:

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(a) to exercise or refrain from exercising any or all of its rights under any Access Agreement or any Property Lease, or any related rights under such other agreements as the Secretary of State may specify; and/or

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

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

(a) where the approval of the ORR is required under the Act, not less than ten (10) Weekdays before the submission to the ORR; and

(b) where no such approval is required, not less than ten (10) Weekdays prior to entering into such amendment or Access Agreement.

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

(a) to notify or consult with the Secretary of State on any matter or proposal relating to that Access Agreement or Property Lease; and

(b) which are contingent on a particular course of action being taken by the Secretary of State or which are otherwise expressly included in that Access Agreement or Property Lease for the benefit of the Secretary of State.

19.4 If and to the extent that:

(a) the Secretary of State exercises his rights pursuant to paragraph 19.1;

(b) the Franchisee's compliance with the Secretary of State's requirements pursuant to paragraph 19.1 would lead to the unavoidable consequence of the Franchisee contravening any other terms of the Franchise Agreement or the occurrence of an Event of Default; and

(c) the Franchisee duly complies with such requirements,

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

20. The Timetable and Network Rail's Working Timetable

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

20.2 The Franchisee shall ensure, for each period between two (2) consecutive Passenger Change Dates during the Franchise Term that the Timetable for such period is, in its reasonable opinion, not materially different from the relevant working timetable issued by Network Rail

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SCHEDULE 1.2

Operating Obligations

1. Daily Operating Obligations

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

2. Timetabling and Train Planning Compliance Investigation

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

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

(a) provide such information as the Secretary of State may reasonably require for the purposes of determining if the Franchisee has complied with its obligations under paragraphs 12.1, 12.3, 12.4, 12.5, 14.1 or 14.2 of Schedule 1.1 (Franchise Services and Service Development) and/or paragraph 1 of this Schedule 1.2 including evidence of:

(i) the steps taken by the Franchisee to amend and/or enter into Access Agreements, exercise Timetable Development Rights and exercise its rights under the Track Access Agreement to object, to make representations and to withhold consent in respect of any actual or proposed act or omission by Network Rail in relation to such agreement in respect of its Timetable Development Rights;

(ii) the extent to which the Franchisee has operated on each day of the relevant Reporting Period each of its Passenger Services as are set out in the Plan of the Day for that day and with at least the Passenger Carrying Capacity specified in the Train Plan for that Passenger Service;

(iii) Forecast Passenger Demand and the way that it was calculated including all evidence taken into account and assumptions used

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(including any divergences from then existing industry modelling standards and the reasons for such divergences); and

(iv) any assumptions about the timetables likely to be operated by other Train Operators made by the Franchisee; and

(v) the alternative solutions considered by the Franchisee before finalising the Timetable and Train Plan and the reasons why any such alternative solutions were not adopted; and

(b) permit the Secretary of State to carry out an audit of the extent to which the Timetable and Train Plan enables the Franchisee to operate railway passenger services that comply with the Train Service Requirement and paragraph 14 of Schedule 1.1 (Franchise Services and Service Development) and fully co-operate with and provide all information needed to facilitate such audit.

2.3 **Contravention of the Franchise Agreement**

(a) The Franchisee shall be in contravention of the Franchise Agreement if following the completion by the Secretary of State of the Timetabling and Train Planning Compliance Investigation he concludes that the Franchisee breached any of its obligations under any of paragraphs paragraphs 12.1, 12.3, 12.4, 12.5, 14.1 or 14.2 of Schedule 1.1 (Franchise Services and Service Development) and/or paragraph 1 of this Schedule 1.2 including where the Franchisee:

(i) failed to act reasonably in calculating Forecast Passenger Demand because it unreasonably assumed that there would be differences between Forecast Passenger Demand and Actual Passenger Demand at the time that the Forecast Passenger Demand calculation was made; or

(ii) made unreasonable assumptions about the timetables likely to be operated by other Train Operators serving some or all of the same stations as the Franchisee.

(b) Where the Secretary of State does conclude pursuant to paragraph 2.3(a) above that the Franchisee has breached any relevant obligation the Franchisee shall pay to the Secretary of State the costs incurred by him in undertaking any Timetabling and Train Planning Compliance Investigation (including any audit pursuant to paragraph 2.2(b)).

(c) The Secretary of State shall notify the Franchisee if he concludes pursuant to paragraph 2.3(a) that the Franchisee is in contravention of the Franchise Agreement and he may at his discretion, and entirely without prejudice to his other rights consequent upon the relevant contravention, serve a Remedial Plan Notice pursuant to paragraph 2 of Schedule 10.1 (Procedure for Remedying a Contravention of the Franchise Agreement).

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

3.1 The Franchisee shall notify the Secretary of State promptly after being notified by Network Rail that Network Rail has decided or proposes to:

(a) omit from the Plan of the Day Passenger Services that are included in the Timetable; or

(b) reschedule in the Plan of the Day Passenger Services from their scheduling in the Timetable.

3.2 To the extent that any such decision or proposal may, in the reasonable opinion of the Franchisee, materially (having regard to both duration and scale) prejudice the Franchisee's ability to deliver the Timetable with the Passenger Carrying Capacity stipulated in the Train Plan the Franchisee shall explain in such notification the way in which, in its reasonable opinion, such omission or rescheduling may materially prejudice the Franchisee's ability to deliver the Timetable with the Passenger Carrying Capacity stipulated in the Train Plan.

3.3 The Franchisee agrees to supply to the Secretary of State from time to time, in the format required by the Secretary of State, such details of any actual or proposed omission or rescheduling of Passenger Services by Network Rail as the Secretary of State may reasonably require, including details of the steps which the Franchisee proposes to take pursuant to paragraph 3.4.

3.4 Where the actual or proposed omission or rescheduling of Passenger Services is one which may, in the reasonable opinion of the Secretary of State or the Franchisee, materially prejudice the Franchisee's ability to deliver the Timetable with the Passenger Carrying Capacity stipulated in the Train Plan, the Franchisee agrees (unless the Secretary of State specifically agrees otherwise) to exercise its rights under the Track Access Agreement (including the Network Code) to:

(a) object (including submitting its objection to any relevant dispute resolution arrangements or procedures and appealing against any award or determination under such arrangements or procedures, including to the ORR);

(b) make representations; and

(c) withhold consent,

in respect of any actual or proposed omission or rescheduling of Passenger Services by Network Rail.

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

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

4.1 The Franchisee agrees, subject to paragraph 4.3, not to propose to Network Rail:

(a) the addition to the Plan of the Day of any railway passenger services which are not included in the Timetable;

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(b) the omission from the Plan of the Day of any Passenger Services included in the Timetable; or

(c) the rescheduling in the Plan of the Day of any Passenger Services from their scheduling in the Timetable,

without the Secretary of State's prior consent.

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

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

5. **Timetable changes requested by the Secretary of State**

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

(a) the addition to the Plan of the Day of any railway passenger services that are not included in the Timetable;

(b) the omission from the Plan of the Day of any Passenger Services that are included in the Timetable; and/or

(c) the rescheduling in the Plan of the Day of any Passenger Services from their scheduling in the Timetable.

5.2 The Franchisee shall submit to the Secretary of State an amended Train Plan in respect of the requested changes in paragraph 5.1 above.

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

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

(a) without prejudice to any other provision of this Schedule 1.2, notify the Secretary of State promptly where such disruption would materially (having regard to both duration and scale) prejudice the Franchisee's ability to deliver the Timetable or deliver the Timetable in accordance with the Train Plan;

(b) co-operate with Network Rail and other Train Operators to act in the overall interests of passengers using such railway passenger services, including using all reasonable endeavours to ensure that such disruption is not concentrated on a particular part of the network, except where such concentration either:

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(i) would be in the overall interests of passengers using such Passenger Services or railway passenger services and would not result in disproportionate inconvenience to any group of passengers; or

(ii) is reasonably necessary as a result of the cause or the location of the disruption; and

(c) use all reasonable endeavours to provide or secure the provision of alternative transport arrangements in accordance with paragraph 6.2.

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

(a) ensure that such alternative transport arrangements are of reasonable quality, of a reasonably similar frequency to the Passenger Services included in the Timetable which such arrangements replace and reasonably fit for the purpose of the journey to be undertaken;

(b) transport passengers to, or as near as reasonably practicable to, the end of their intended journey on such Passenger Services, having particular regard to the needs of any Disabled Persons and, where appropriate, making additional arrangements for such Disabled Persons to complete their intended journey;

(c) provide adequate and prominent publicity of such alternative transport arrangements in advance, subject, in the case of unplanned disruption, to the Franchisee having sufficient notice of such disruption to enable it to provide such publicity;

(d) provide sufficient alternative transport capacity for the reasonably foreseeable demand for the disrupted Passenger Services; and

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

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

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

(a) ensure (so far as it is able to do so) the provision of the Passenger Services as set out in the Plan of the Day in accordance with the Train Plan in ordinary operating conditions;

(b) take reasonable measures to avoid and/or reduce the impact of any disruption to the Franchise Services having regard to all the circumstances, including the reasonably foreseeable risks arising from the matters referred to in paragraph 7.2; and

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(c) actively manage the performance by Network Rail of its contractual relationship with the Franchisee (and provide appropriate management resources for this purpose) so as to secure the best performance reasonably obtainable from Network Rail by these means (including taking the steps referred to in paragraph 7.4), having regard to all the circumstances.

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

(a) variations in weather and operating conditions (including Network Rail's infrastructure not being available for any reason), which may in either case include seasonal variations;

(b) default by, or restrictions imposed by, suppliers to the Franchisee;

(c) shortages of appropriately skilled or qualified Franchise Employees;

(d) disputes with Franchise Employees;

(e) the availability of the Train Fleet, having regard to maintenance requirements and any Mandatory Modifications;

(f) establishing reasonable Turnaround Time allowances for enabling or disabling (as appropriate) any part of a train, the rostering of any train crew and the servicing or cleaning of any rolling stock vehicles; and

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

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

(a) to the historical levels of incidence of disruption in the operation of:

(i) the Franchise Services;

(ii) similar services both by the Franchisee and/or its predecessors; and

(iii) other services of a type similar to the Franchise Services; and

(b) to potential changes in circumstances which may affect those levels.

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

(a) co-operating with Network Rail in the development, agreement and implementation of:

(i) a five (5) year (rolling) Performance Strategy Plan; and

(ii) recovery plans in response to failures to achieve the performance levels specified in any Performance Strategy Plan;

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(b) co-operating with Network Rail in adopting the principles set out in any Service Recovery Plans agreed between Network Rail and the Franchisee from time to time;

(c) undertaking regular reviews of:

(i) the most common and most detrimental causes of PPM attrition and delay to the Passenger Services; and

(ii) the causes of the 10 delays to the Passenger Services with the longest duration (to the extent not already reviewed in accordance with paragraph 7.4(c)(i)),

which have occurred during a defined review period (e.g. weekly/four (4) weekly/quarterly) and which have been caused by the Franchisee, any other Train Operator, any other train operator licensed under the Act or Network Rail;

(d) undertaking with Network Rail a review of the time taken to recover the Passenger Services following the occurrence of any of the events specified in paragraphs 7.4(c)(i) and 7.4(c)(ii) and seeking to identify and implement actions that reduce the delay effect of such events;

(e) setting up and holding regular and effective performance review meetings with Network Rail, evidenced by meeting minutes and the closure of actions agreed between the parties;

(f) regularly monitoring (at least every Reporting Period) the delivery of local output commitments made by Network Rail in the Performance Strategy Plan and derived delivery plans and using reasonable endeavours to specify and develop such delivery plans;

(g) as and when required by Network Rail, co-operating with Network Rail in improving the accuracy of future timetables by providing access to trains (and data collected from train systems), other facilities and/or information;

(h) co-operating with Network Rail in other delay management initiatives and ongoing quarterly reviews of the Performance Strategy Plan;

(i) regularly reviewing (at least every Reporting Period) the imposition and clearance of temporary speed restrictions;

(j) regularly reviewing (at least every Reporting Period) the timely and efficient handover and hand-back of possessions; and

(k) where appropriate and where Network Rail fails to perform its obligations under the Track Access Agreement, enforcing the Franchisee's rights under such Track Access Agreement.

7.5 The Franchisee undertakes to reasonably co-operate with Network Rail with regard to Network Rail's management of the network, including in relation to the establishment of up to date Timetable Planning Rules.

7.6 To the extent not already provided for in the Franchise Agreement, the Franchisee shall use all reasonable endeavours to ensure the performance by

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Network Rail of its obligations under any relevant agreement including, where appropriate or where requested by the Secretary of State, enforcing its rights against Network Rail under any such agreement.

7.7 When and to the extent reasonably requested by the Secretary of State, the Franchisee shall provide to the Secretary of State evidence of the steps taken by it in order to comply with its obligations under this paragraph 7.

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SCHEDULE 1.3

NOT USED

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SCHEDULE 1.4

Passenger Facing Obligations

1. Publishing the Timetable

1.1 The First Timetable

The Franchisee shall publish on the Start Date:

(a) the Timetable:

(i) at each staffed Station, by making the relevant information available upon request and free of charge in one or more booklets or in other similar form;

(ii) at each Station, by displaying the relevant information on information displays;

(iii) at each Franchisee Access Station, by providing to the operator of each such station the departure and arrival times of the Passenger Services that call at each such station and the principal Connections to any other transport services relevant to each such station in the same forms as are specified in paragraphs (i) and (ii); and

(iv) on the Franchisee's website; and

(b) the timetables of other Train Operators at Stations, in accordance with paragraph 1.4.

1.2 Timetable Revisions and Alterations

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

(a) in the case of booklets, at least four (4) weeks before the changes come into effect;

(b) in the case of information displays, no later than the day before the changes come into effect;

(c) in the case of information provided to the operators of Franchisee Access Stations, in sufficient time for such information to be published by such operators within the time limits provided for in this paragraph 1.2; and

(d) in the case of the Franchisee's website, at least four (4) weeks before the changes come into effect.

1.3 In addition, the Franchisee shall:

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

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

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

1.4 **Other Train Operators' Timetables**

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

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

(b) as soon as reasonably practicable thereafter where and to the extent that such other Train Operator delivers the relevant information and materials late to the Franchisee.

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

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

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

(a) the Timetable; and

(b) any significant alterations to the Timetable to take effect between any two (2) Passenger Change Dates,

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

2. **Communicating Late Timetable Changes**

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

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2.2 Such information shall be provided by:

(a) revising or adding to the information displays referred to in paragraph 1.1;

(b) notifying the operators of the Franchisee Access Stations, as appropriate, including by providing such operators with revised posters; and

(c) updating the Franchisee's website.

2.3 The Franchisee shall revise or add to the information displays at the Stations promptly on receipt of any equivalent information relating to the railway passenger services of other Train Operators whose services call at the Stations.

2.4 Where the Franchisee is unable to provide the information specified in paragraph 2.1 because the relevant revisions are made on an emergency basis, the Franchisee shall notify passengers and publish the relevant revisions by way of the means contemplated by paragraph 2.2 as soon as reasonably practicable.

2.5 The Franchisee shall ensure that, so far as reasonably practicable (including by communication of the relevant information to persons likely to receive enquiries), passengers making enquiries regarding the Passenger Services are informed of the revised Timetable and any revised travel arrangements of the Franchisee as far in advance as is reasonably practicable.

3. **Fares Selling Restrictions**

3.1 Restrictions on Sales

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

(a) shall be entitled, without further charge, to such rights of access and egress and other similar rights at the commencement and end of the relevant intended journey or journeys as may be reasonably necessary for such purchaser to travel on the Passenger Services;

(b) shall not be required to incur any cost or take any action beyond the payment of an amount equal to the Price or Child Price (as the case may be) of such Commuter Fare or Protected Fare (as the case may be) and, in relation to the issue of a Season Ticket Fare, and the completion of such identity card as the Franchisee may reasonably require by notice in writing to the Franchisee; and

(c) shall not be required to pay an amount in respect of a seat reservation or other similar right which it may be compulsory for such purchaser to have in order to make a journey with such Commuter Fare or Protected Fare (as the case may be) on a Passenger Service.

3.2 The Franchisee shall procure that for any:

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

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

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

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

(a) the number of seats in Standard Class Accommodation on such train; and

(b) the capacity of Standard Class Accommodation of the rolling stock vehicles comprising such train according to the tables set out in the Appendix to Schedule 1.6 (The Composition of the Train Fleet).

3.4 The Franchisee shall not sell or offer to sell:

(a) any Fare in respect of which the:

(i) Prices are regulated under Schedule 5.4 (Regulation of Fares Basket Values) and Schedule 5.5 (Regulation of Individual Fares), at prices that are greater than the Prices set for such Fares from time to time in accordance with Schedule 5.4 (Regulation of Fares Basket Values) and Schedule 5.5 (Regulation of Individual Fares); and

(ii) Child Prices are regulated under Schedule 5.4 (Regulation of Fares Basket Values) and Schedule 5.5 (Regulation of Individual Fares), at prices that are greater than the Child Prices set for such Fares from time to time in accordance with Schedule 5.4 (Regulation of Fares Basket Values) and Schedule 5.5 (Regulation of Individual Fares);

(b) any Fare or Discount Card which has a validity of thirteen (13) or more months, except to the extent required to do so under the terms of the Ticketing and Settlement Agreement.

3.5 **Agents of the Franchisee**

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

(a) for Fares in respect of which the:

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

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

(b) for Fares in respect of which the Child Price has been set pursuant to paragraph 2.1 of Schedule 5.2 (Franchisee's Obligation to Create Fares), sell or offer to sell such Fares to any person under the age of 16 for an amount which is no greater than the lowest amount that would be paid if that person were the holder of a 16 to 25 Railcard with no minimum fare (as amended or replaced from time to time) and whose purchase was made without condition; and

(c) for all Fares:

(i) do not sell or offer to sell any Fare or Discount Card with a validity of thirteen (13) or more months without the consent of the Secretary of State (such consent not to be unreasonably withheld); and

(ii) comply with the provisions of paragraph 5 of Schedule 15.2 (Last Twelve (12) or Thirteen (13) months of Franchise Period and other conduct of business provisions) to the extent they apply to the selling of Fares by the Franchisee.

3.6 **Additional Ancillary Services**

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

(a) which are ancillary to the railway passenger service for which such Commuter Fare or Protected Fare (as the case may be) was purchased (including, charges in respect of car parking or catering services); and

(b) which such purchaser is not obliged to purchase.

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

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

4. **Passenger's Charter**

4.1 **Content**

The Franchisee shall:

(a) publish its Passenger's Charter:

(i) in substantially the same form as the document in the agreed terms marked **PC**; and

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(ii) in accordance with the requirements specified in paragraph 4.3;

(b) review the need for changes to the Passenger's Charter at least every three (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.

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

4.3 **Publishing the Passenger's Charter**

The Franchisee shall publicise its Passenger's Charter by:

(a) providing copies to the Secretary of State and the Passengers' Council at least seven (7) days before it comes into effect;

(b) providing copies to passengers, free of charge, at each staffed Station and in the case of any revision thereto, providing such copies at least seven (7) days before such revision comes into effect;

(c) sending a copy, free of charge, to any person who requests it; and

(d) displaying it on its website at all times and, in the case of any revision thereto, at least seven (7) days before such revision comes into effect,

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

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

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

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

The Franchisee shall:

(a) make all payments which passengers may reasonably expect to be made or provided from time to time under the terms of the Passenger's Charter (whether or not the Franchisee is legally obliged to do so);

(b) use all reasonable endeavours to make passengers aware of their right to claim compensation pursuant to the Passenger's Charter including by:

(i) displaying the relevant information on trains and at Stations;

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(ii) making appropriate announcements to passengers on trains and at Stations when the circumstances giving rise to that right occur;

(iii) making compensation claim forms readily available to passengers at Stations and on the Franchisee's website; and

(iv) any other reasonable means to reflect future advancements in technology proposed in writing either by the Franchisee or the Secretary of State and agreed by both Parties (acting reasonably); and

(c) use all reasonable endeavours:

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

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

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

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

6. **Statutory Notices**

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

7. **Train and station cleaning**

The Franchisee shall:

7.1 ensure that the nature and frequency of its planned and reactive programme for maintaining a reasonable standard of train presentation is such that all rolling stock used by it in the provision of the Passenger Services is expected to be kept reasonably clean, appropriately stocked with consumables and free from minor defects;

7.2 use all reasonable endeavours to ensure that a reasonable standard of train presentation is maintained at all times in respect of all rolling stock used by it in the provision of the Passenger Services;

7.3 ensure that the nature and frequency of its planned and reactive programme for maintaining a reasonable standard of Station condition and passenger environment is such that all of the Stations are expected to be clean, free of litter and graffiti, painted to a reasonable standard and free from minor defects; and

7.4 use all reasonable endeavours to ensure that all Stations are clean, free of litter and graffiti, painted to a reasonable standard and free from minor defects throughout the Franchise Term.

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8. **Publication of Performance Data**

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

(a) the Cancellations Figures;

(b) PPM Figures;

(c) Right Time Figures;

(d) CaSL Figures; and

(e) the Short Formations Figures.

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

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

(a) in relation to all Passenger Services;

(b) disaggregated by reference to Service Groups;

(c) on a periodic and/or on average basis (as applicable); and

(d) include details of:

(i) the number of Passenger Services operated by the Franchisee during each relevant Reporting Period which are late in arriving at their final scheduled destination in the Plan of the Day:

(A) by between 30 minutes and 59 minutes;

(B) by between 60 minutes and 119 minutes; and

(C) by 120 minutes or more,

and the percentage that each such category of delayed Passenger Services represents of the total number of Passenger Services scheduled to be provided in the Plan of the Day during such Reporting Period; and

(ii) the number of Passenger Services formed with less Passenger Carrying Capacity than specified in the Train Plan during such Reporting Period and the percentage that this represents of all Passenger Services scheduled to be operated in that Reporting Period.

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8.3 As part of each Customer Report to be provided by the Franchisee pursuant to paragraph 10.1 of Schedule 7.2 (National Rail Passenger Surveys, Customer Report and CCIF Scheme), the Franchisee shall publish (in such format as the Secretary of State may reasonably require):

(a) the mean average of the Cancellations Figures, PPM Figures, Right Time Figures, CaSL Figures and the Short Formations Figures for the Reporting Periods that have elapsed since the last Reporting Period reported on in the previous Customer Report or, in the case of the first Customer Report, since the Start Date;

(b) from the third Customer Report onwards a summary comparison of the mean average of the measures referred to in paragraph 8.3(a) as against the equivalent mean average of the measures referred to in paragraph 8.3(a) provided for the same Reporting Periods in the previous Franchisee Year;

(c) an update on the key activities undertaken by the Franchisee to improve its performance in relation to the measures during the period referred to in paragraph 8.3(a); and

(d) a summary of the key activities planned to be undertaken by the Franchisee in the period in relation to which the next Customer Report will report to improve its performance in relation to the measures referred to in paragraph 8.3(a).

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

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

(a) a summary of the data published by the ORR from time to time in relation to the handling of passenger complaints regarding the Franchisee's operation of the Passenger Services;

(b) details of the number of faults notified to the Franchisee by passengers or station users through specified channels including the website of the Franchisee (each a "**Notified Fault**") in each case identifying the total numbers of Notified Faults (by reference to whether such Notified Faults relate to rolling stock or stations), with such numbers further disaggregated by Service Group and broken down into relevant sub-categories of Notified Fault;

(c) the mean average time taken by the Franchisee:

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(i) to resolve Notified Faults; and

(ii) where Notified Faults are not resolved within twenty (20) Weekdays, to provide feedback to applicable passengers and/or station users on its progress in seeking resolution of such Notified Faults; and

(d) from the third Customer Report onwards a summary comparison of:

(i) the mean average number of Notified Faults notified to the Franchisee;

(ii) the mean average time taken by the Franchisee to resolve Notified Faults; and

(iii) the mean average time taken by the Franchisee, where Notified Faults have not been resolved within twenty (20) Weekdays. to provide feedback to applicable passengers and/or station users on its progress in seeking resolution of such Notified Faults,

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

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SCHEDULE 1.5

Information about Passengers

1. **Passenger Numbers Information**

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

(a) the number of passengers travelling in each class of accommodation:

(i) on each Passenger Service;

(ii) on each Route; and/or

(iii) at any station or between any stations;

(b) the times of the day, week or year at which passengers travel; and

(c) the Actual Consist Data and the Scheduled Consist Data

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

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

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

(a) promptly following its collation and in any case within the following timescales:

in the case of data collected automatically by the Equipment and capable of being transmitted directly and automatically to the RPC Database or the Preliminary Database (as appropriate), within 48 hours of its collation;

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in the case of data collected automatically by the Equipment but not capable of direct and automatic transmission to the RPC Database or the Preliminary Database (as appropriate), within one (1) calendar month of its collation; and

in the case of data collected by manual count, within one (1) calendar month of its collation;

(b) using such systems, in such a format and to such level of disaggregation as the Secretary of State may reasonably require, and in a format which is capable of being read by the RPC Database or the Preliminary Database (as appropriate) (which shall include providing data which is not encrypted);

(c) either by transmitting such data directly to the RPC Database or the Preliminary Database (as appropriate) or by ensuring that the database provider can pull and transmit such data to the RPC Database or the Preliminary Database (as appropriate), as appropriate according to the nature of the Franchisee's Equipment from time to time or by providing such data to the Secretary of State by such other means as the Secretary of State notifies to the Franchisee from time to time; and

(d) to the extent required by the Secretary of State, by providing the Secretary of State with direct remote access to the system used by the Franchisee to collect such information such that the Secretary of State is able to download such information;

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

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

2. Manual Passenger Counts

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

2.2 The Secretary of State shall be entitled to audit such counts (whether by specimen checks at the time of such counts, verification of proper compliance with the manner approved by him or otherwise). In the event that such audit reveals, in the reasonable opinion of the Secretary of State, a material error, or a reasonable likelihood of material error, in such counts, the Secretary of State may require the counts to be repeated or the results adjusted as he considers appropriate, and in these circumstances the Franchisee shall pay to the Secretary of State the costs of any such audits.

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3. **Technology for Obtaining the Information Referred to in paragraph 1.2**

3.1 The technology to be used for the purpose of paragraph 1.2 shall be [*specify technology*].[41]

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

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

(b) in the case of all other rolling stock, by 1 January 2020, to every vehicle comprised within no less than 35% of such rolling stock units included in the Train Fleet from time to time in aggregate.

(i) Without limiting the Secretary of State's rights under paragraph 1.1 of this Schedule 1.5, the technology specified in paragraph 3.1 and 3.2 above shall be used to provide counts in respect of, in any period of not less than twelve (12) weeks, at least two of each of the Timetabled Services, and each count shall be carried out on each rolling stock unit comprising a particular train. The Franchisee may only use a method of extrapolation and use extrapolated data to provide a reliable estimate of a full train's count with the Secretary of State's prior written approval of the use of extrapolated data and the method of extrapolation (such approval not to be unreasonably withheld or delayed).

(ii) The Franchisee shall comply with its obligation under this paragraph 3 from the date(s) such rolling stock is incorporated into the Train Fleet.

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

4. **CRM Data**

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

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

(b) the property of the Franchisee.

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41 **Note to Bidders:** Bidders to populate, noting the requirements of paragraph (b).

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

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

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

(b) any such Successor Operator to process such CRM Data in the manner contemplated by paragraph 4.2.

4.4 The Franchisee shall not be required to:

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

(b) provide access to any CRM System,

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

5. Yield Management Data

5.1 The Franchisee shall ensure that any Yield Management Data and Yield Management System are the property of the Franchisee or are licensed to the Franchisee on terms which have been approved by the Secretary of State (such approval not to be unreasonably withheld or delayed).

5.2 If and to the extent that the collection, use and/or processing of any Yield Management Data is subject to the Data Protection Act then paragraphs 4.1(a), 4.2, 4.3, 4.4 and 6 of this Schedule 1.5 shall apply in respect of Yield Management Data in the same way as they apply to CRM Data.

6. Personal Data - General Provisions

6.1 In respect of any Personal Data processed by the Franchisee, including CRM Data, the Franchisee agrees that it shall (i) comply with the Data Protection Act and all other legislation relating to the protection and use of personal information (including the Privacy and Electronic Communications (EC Directive) Regulations 2003) (all such legislation collectively being the "Personal Data Legislation") to the extent that such legislation applies to it and (ii) procure that its agents or sub-contractors shall do the same to the extent that such legislation applies to any of them.

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6.2 Pursuant to paragraph 6.1, the Franchisee agrees to comply with the Personal Data Legislation in respect of its Processing of CRM Data and in particular, but without limitation, the Franchisee shall:

(a) ensure that CRM Data is Processed fairly and lawfully (in accordance with Part 1 of Schedule 1 of the Data Protection Act);

(b) ensure that CRM Data is obtained only for one or more specified and lawful purposes, and shall not be further Processed in any manner incompatible with that purpose or those purposes (in accordance with Part 2 of Schedule 1 of the Data Protection Act); and

(c) obtain and maintain all appropriate notifications as required under the Data Protection Act.

6.3 In accordance with its capacity as Data Controller of CRM Data and in accordance with the ensuing obligations under the Data Protection Act:

(a) the Franchisee shall procure that any CRM Data Processor which it appoints shall:

(i) prior to any disclosure of CRM Data to the CRM Data Processor, enter into written terms between itself and the Franchisee which are equivalent to those contained in this paragraph 6.3; and

(ii) process CRM Data only on behalf of the Franchisee, only for the purpose(s) as defined by the Franchisee and only in accordance with instructions received from the Franchisee from time to time;

(b) the Franchisee shall, and shall procure that any CRM Data Processor which it appoints shall, at all times have in place appropriate technical and organisational measures against unauthorised or unlawful processing of CRM Data and against accidental loss or destruction of, or damage to, CRM Data and that such measures shall:

(i) reflect the level of harm, damage and/or distress that might be suffered by the Data Subject to whom the CRM Data relates in the event of a breach of the measures as set out herein;

(ii) ensure that only authorised personnel have access to CRM Data and that any persons authorised to have access to CRM Data will respect and maintain all due confidentiality; and

(iii) (in the case of the CRM Data Processor) include compliance with a Schedule of minimum security measures pursuant to the written terms between the Franchisee and the CRM Data Processor;

(c) the Franchisee shall procure that any CRM Data Processor which it appoints shall:

(i) promptly notify the Franchisee of any actual or suspected, threatened or 'near miss' incident of accidental or unlawful destruction or accidental loss, alteration, unauthorised or accidental disclosure of or access to the CRM Data or other breach of this paragraph 6.3(c) (**"Security Breach"**) and, pursuant to this the Franchisee shall promptly notify the Secretary of State of all

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Security Breaches by itself or by the CRM Data Processor (the Franchisee hereby acknowledges that whilst the Secretary of State is not Data Controller in respect of the CRM Data, the Secretary of State's legitimate interests given its duties under the Act may be affected in the event of a Security Breach and as such the Secretary of State wishes to be notified of the same); and

(ii) promptly provide the Franchisee on request with all reasonable information, assistance and co-operation in relation to its use of the CRM Data, including in relation to any audit by the Franchisee or by any person appointed on its behalf to permit an accurate and complete assessment of compliance with this paragraph 6;

(d) the Franchisee shall, and shall procure that any CRM Data Processor which it appoints shall, at all times take reasonable steps to ensure the reliability if its/their personnel who have access to the CRM Data and ensure they are aware of the obligations of the Franchisee or the CRM Data Processor (as appropriate) in relation to the same; and

(e) the Franchisee shall, and shall procure that any CRM Data Processor which it appoints shall, not cause or permit the CRM Data to be transferred to any location outside the European Economic Area (as defined in the Data Protection Act or otherwise as appropriate) without the prior written permission of:

(i) (in the case of the Franchisee) the Secretary of State; or

(ii) (in the case of any Data Processor appointed by the Franchisee) the Franchisee provided that the Franchisee shall not give any such consent without the prior written permission of the Secretary of State;

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

7. Rail Passenger Counts Database

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

(a) use reasonable endeavours to set up and thereafter maintain the RPC Database;

(b) use reasonable endeavours to populate the RPC Database with such Actual Passenger Demand information as the Franchisee shall provide pursuant to the Franchisee's obligations contained elsewhere in this Franchise Agreement and any other information that the Secretary of State shall desire; and

(c) use reasonable endeavours to provide the Franchisee with log-in details to the RPC Database in order to allow the Franchisee to access Actual Passenger Demand information that has been provided by the Franchisee,

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any Network Rail Data, any Third Party Data and to generate reports from the RPC Database.

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

(a) any data or information contained in the RPC Database;

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

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

7.3

(a) The Secretary of State is not liable for:

(i) any inaccuracy, incompleteness or other error in Actual Passenger Demand information, Network Rail Data, Third Party Data or product of the above provided to the Secretary of State by the Franchisee, NR or a third party; or

(ii) any failure of the RPC Database to achieve any particular business result for the Franchisee. For the avoidance of doubt, it is the responsibility of the Franchisee to decide the appropriateness of using the RPC Database to achieve its own business results;

(iii) any loss, destruction, corruption, degradation, inaccuracy or damage of or to the Actual Passenger Demand information following its submission to the RPC Database;

(iv) any loss or damage to the property or assets of the Franchisee (tangible or intangible) as a result of a breach of paragraph 7.1 of this Schedule 1.5; or

(v) any indirect, special or consequential loss or damage.

(b) The Secretary of State's total liability for the duration of this Franchise Agreement in respect of a breach of its obligations under paragraph 7.1 of this Schedule 1.5 for all other heads of loss or damage which can lawfully be limited shall be limited to the extent to which the Secretary of State is successful in recovering the equivalent loss from such entity to whom the Secretary of State subcontracts its obligations under paragraph 7.1 of this Schedule 1.5 (the **"Subcontractor"**), subject to the following provisions:

(i) if reasonably requested by the Franchisee within three (3) months of incurring such loss or damage, the Secretary of State shall use reasonable endeavours to recover the equivalent losses from the Subcontractor;

(ii) it shall not be reasonable for the Franchisee to make a request pursuant to paragraph 7.3(b)(i) above if the value of the

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Franchisee's losses does not exceed ten thousand pounds (£10,000) x RPI;

(iii) prior to accounting to the Franchisee for any sums recovered from the Subcontractor pursuant to this paragraph 7.3(b), the Secretary of State shall be entitled to deduct and retain any reasonable costs and expenses incurred in pursuing such a claim which he does not successfully recover from the Subcontractor; and

(iv) the Secretary of State shall be entitled to deduct from any sums recovered from the Subcontractor pursuant to this paragraph 7.3(b) such sum as he reasonably deems appropriate to take account of the Secretary of State's actual or potential liability to other train operating companies pursuant to equivalent arrangements with them, with a view to distributing any sums received from the Subcontractor fairly between the various operators.

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

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

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

8. Intellectual Property Rights and General Provisions

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

8.2 Subject to Schedule 14.4 (Designation of Franchise Assets) and Schedule 15.4 (Provisions Applying on and after Termination), all Intellectual Property Rights in the Actual Passenger Demand information will at all times remain owned by the Franchisee and (subject as previously stated) to the extent that any rights in the Actual Passenger Demand information vest in the Secretary of State by operation of law, the Secretary of State hereby assigns such rights to the Franchisee.

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

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

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

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

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

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

(a) the RPC Database;

(b) any Derivative Output; and

(c) all Intellectual Property Rights in the same

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

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

(a) by including them in the RPC Database; and/or

(b) by including them in the Preliminary Database; and/or

(c) whether included in the RPC Database, the Preliminary Database or in any other format for such purposes as he may reasonably require including for the purposes of assisting his decision making on future train service requirements, infrastructure, station and rolling stock investment, the best use of the network and the alleviation of overcrowding; and/or

(d) to the extent permitted by the other provisions of this Franchise Agreement to share, disclose, or publish the same and transfer and/or

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sub-licence and permit the use and sharing, disclosing or publishing for the purposes it is shared or disclosed; or

(e) to allow a future operator of the Passenger Services (whether or not in direct succession to the Franchisee) to view and access such Actual Passenger Demand information (whether via the RPC Database or otherwise) as directly relates to the services that it will be running,

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

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

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

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SCHEDULE 1.6

The Composition of the Train Fleet

1. Purpose and Definitions

1.1 The Original Rolling Stock is set out in Table 1 of the Appendix to this Schedule 1.6.

1.2 The Specified Additional Rolling Stock is set out in Table 2 of the Appendix to this Schedule 1.6.

1.3 [The Unspecified Additional Rolling Stock is set out in Table 3 of the Appendix to this Schedule 1.6][42].

2. The Composition of the Train Fleet

2.1 The Train Fleet consists of:

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

(b) from the dates set out in Column 6 of Table 2 in the Appendix to this Schedule 1.6, until the lease expiry dates referred to in Column 7 of Table 2 in the Appendix to this Schedule 1.6 with the Passenger Carrying Capacity per unit, the rolling stock vehicles (**"Specified Additional Rolling Stock"**) set out in Table 2, in the Appendix to this Schedule 1.6 with the Passenger Carrying Capacity per unit referred to in Column 4 of Table 2;

(c) [from the relevant dates specified in paragraph 2.3, each Unspecified Additional Rolling Stock; and][43]

(d) following any lease expiry dates referred to in paragraph 2.1(a) or 2.1(b), substitute rolling stock vehicles having (unless otherwise agreed by the Secretary of State and subject to compliance with all other relevant provisions of this Agreement including in relation to Rolling Stock Related Contracts):

(i) at least the capacity specified in respect of the rolling stock vehicles being substituted;

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[42] **Note to Bidders:** Drafting to be adopted if the Bidder proposes Unspecified Rolling Stock as part of its rolling stock solution.

[43] **Note to Bidders:** Drafting to be adopted if the Bidder proposes Unspecified Rolling Stock as part of its rolling stock solution.

(ii) reliability, capability and quality that is at least equal to the reliability, capability and quality of the rolling stock vehicles being substituted; and

(iii) an aggregate total capacity which is at least equal to the aggregate total capacity of the rolling stock vehicles being substituted or such higher amount of aggregate capacity as is specified by this Agreement.

2.2 In addition to paragraph 2.1(d), the Franchisee may at any time substitute rolling stock vehicles for any Additional Rolling Stock provided that any such substitute rolling stock vehicles comply (unless otherwise agreed by the Secretary of State and subject to compliance with all other relevant provisions of this Agreement including in relation to Rolling Stock Related Contracts) with paragraphs 2.1(d)(i), (ii) and (iii).

2.3 [The Franchisee shall by no later than:

(a) the date which is [◆] [INSERT NUMBER OF MONTHS][44] months prior to each such date specified in Column 1 of Table 3 in the Appendix to this Schedule 1.6, enter into Rolling Stock Leases (subject to compliance with all other relevant provisions of this Agreement including in relation to Rolling Stock Related Contracts) in respect of; and

(b) each date specified in Column 1 of Table 3 in the Appendix to this Schedule 1.6, introduce into revenue earning passenger service,

the quantum of rolling stock specified in Column 2 of Table 3 in the Appendix to this Schedule 1.6 and which (unless otherwise agreed by the Secretary of State) provides at least the minimum Passenger Carrying Capacity per unit referred to in Column 3 of Table 3 in the Appendix to this Schedule 1.6 and has at least the minimum reliability, capability and quality characteristics referred to in Column 5 of Table 3 in the Appendix to this Schedule 1.6 (**"Unspecified Additional Rolling Stock"**).][45]

2.4 The Passenger Carrying Capacity of any rolling stock vehicles shall be as set out in Tables 1 or 2 [or 3] in the Appendix to this Schedule 1.6 or as determined by the Secretary of State in accordance with paragraph 3.4 of this Schedule 1.6 (as applicable).

2.5 Without limiting paragraph 2 of Schedule 2.2 (Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases) or Schedule 14.3 (Key Contracts), the Franchisee shall, in respect of any Rolling Stock Lease which is to expire at any time during the Franchise Period, not less than one (1) year prior to such expiry date, enter into a new Rolling Stock Lease in respect of substitute

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[44] **Note to Bidders:** Period to be inserted by DfT based on the winning bidder's bid proposal in relation to the lead time between entering in to the Transaction Documents for the new rolling stock and the date or introduction of the new rolling stock.

[45] **Note to Bidders:** Drafting to be adopted if the Bidder proposes Unspecified Rolling Stock as part of its rolling stock solution.

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rolling stock vehicles which meet the requirements of paragraphs 2.1(d) (i), (ii) and (iii).

3. Changes to the Train Fleet

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

(a) to the classes or types;

(b) to the interior configurations; or

(c) which may reduce the journey time capabilities,

of any rolling stock vehicles specified in the Train Fleet.

3.2 The Franchisee shall procure that the rolling stock vehicles described in the Tables 1 or 2 [or 3] in the Appendix to this Schedule 1.6, with the capacity and other characteristics referred to there, are available for deployment in the provision of the Passenger Services to the extent required by the Timetable and Train Plan during the periods referred to therein.

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

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

4. Rolling Stock Testing and Commissioning

4.1 The Franchisee shall, to the extent reasonably requested by the Secretary of State and subject to payment of the Franchisee's reasonable costs by the relevant third party, co-operate with any third party which the Secretary of State may specify (including a Successor Operator, a rolling stock vehicle manufacturer or Network Rail or the Secretary of State itself in connection with the testing and commissioning of new rolling stock vehicles or any new equipment to be fitted to rolling stock vehicles (whether such rolling stock vehicles are new or otherwise). Any such request by the Secretary of State under this paragraph 5.1 shall be reasonable and co-operation by the Franchisee with any third party shall be subject to payment of the Franchisee's reasonable costs by the relevant third party.

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

(a) the movement of test trains within and around depots;

(b) making available suitably qualified personnel to operate test trains along the Routes and provide information on the Routes;

(c) making Train Slots available for such purposes;

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(d) granting or procuring the grant of access to the third party and its representatives to any relevant facilities; and

(e) the delivery of rolling stock vehicles to specific locations.

5. **Controlled Emission Toilets**

5.1 By no later than 31 December 2019, the Franchisee shall ensure that each Rolling Stock Unit comprised in the Train Fleet and used for the provision of the Passenger Services which has on board toilet facilities, and any new rolling stock vehicles procured by the Franchisee which are to be used for the provision of the Passenger Services shall be fitted with Controlled Emission Toilets.

5.2 The Franchisee shall ensure that the contents of the toilet retention tanks relating to each Controlled Emission Toilet fitted on Rolling Stock Units in accordance with the requirements of paragraph 5.1 are disposed of in a safe and hygienic manner at suitable facilities at Depots and stabling points.

5.3 Pending installation of the Controlled Emission Toilets, the Franchisee shall use reasonable endeavours to stop toilets fitted to existing Rolling Stock Units emptying whilst the Rolling Stock Unit is stationary within a station.

5.4 The provisions of paragraphs 1 and 5 of Part 2 of Schedule 6.2 (Committed Obligations) shall apply in respect of the obligations of the Franchisee specified in paragraph 6.1.

6. **Baby Changing Facilities**

For Rolling Stock Units that have on board toilet facilities, a baby changing facility shall be provided by the Franchisee which shall be compliant with the requirements of the PRM TSI.

7. **Metered Train Operator Status**

7.1 The Franchisee shall ensure that all Rolling Stock Units that form part of the Train Fleet are able to measure and monitor fuel use as soon as reasonably practicable, and in the case of electric traction, enable the Franchisee to be a "Metered Train Operator" as defined by Network Rail's Traction Electricity Rules.

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APPENDIX TO SCHEDULE 1.6

1. Original Rolling Stock

Table 1 (Original Rolling Stock)								
Column 1	Column 2	Column 3				Column 4	Column 5	Column 6
Class of vehicle / unit	Number of vehicles in fleet and unit configuration	Passenger Carrying Capacity per unit				Total Wheel-chair(s) per unit	Owner / Lessor and Lease Type (e.g. Wet or Dry)	Lease expiry date(s)
		Standard Class (Std)			First Class Seats			
		Seats	Standing	Total				

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
Class of vehicle / unit	Number of vehicles in fleet and unit configuration	Passenger Carrying Capacity per unit				Total Wheel-chair(s) per unit	Owner / Lessor and Lease Type (e.g. Wet or Dry)	Lease start date(s)	Lease expiry date(s)
		Standard Class (Std)			First Class Seats				
		Seats	Stand-ing	Total					

3. [46][Unspecified Additional Rolling Stock]

Table 3 (Unspecified Additional Rolling Stock)							
Column 1	Column 2	Column 3				Column 4	Column 5
Date of introduction into revenue earning passenger service (such date must be on or after 16 October 2021)	Number of vehicles in fleet and unit configuration	Passenger Carrying Capacity per unit				Total Wheel-chair(s) per unit	Characteristics (e.g. minimum reliability, capability and quality such as CET, automated passenger counts or other characteristics of the rolling stock specified in the Franchisee's proposal)
		Standard Class (Std)			First Class Seats		
		Seats	Stand-ing	Total			

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[46] **Note to Bidders:** the inclusion of this provision will depend on the bidder's rolling stock solution and whether it is intended that unspecified rolling stock will be used.

SCHEDULE 1.7

Stations

1. Station Asset Management

1.1 The Franchisee shall implement and comply with:

(a) the Previous Franchisee's Station Asset Management Plan until the date of approval of the Station Asset Management Plan in accordance with paragraph 1.2; and

(b) from such date, the Station Asset Management Plan.

1.2 By no later than the end of the first Franchisee Year (or such later date as the Secretary of State may reasonably determine) the Franchisee shall prepare and provide to the Secretary of State for approval (such approval not to be unreasonably withheld or delayed) the Station Asset Management Plan. Where the Secretary of State does not approve the draft Station Asset Management Plan submitted to it, the Franchisee shall make:

(a) such amendments to it as the Secretary of State shall reasonably direct; and

(b) provide such additional information as the Secretary of State may reasonably require.

1.3 The Station Asset Management Plan shall:

(a) include the information set out in paragraph 1.4; and

(b) meet the requirements of paragraph 1.5,

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

1.4 The Franchisee shall ensure that the Station Asset Management Plan shall include in relation to each Station:

(a) the details of all maintenance, repair and renewal activity undertaken by the Franchisee since the Start Date;

(b) the details of any maintenance, repair and renewal activity which the Franchisee has not completed or not completed within the specified time frame set out in any Station Asset Management Plan (or the Previous Franchisee's Station Asset Management Plan, as the case may be) together with reasons;

(c) the maintenance (including the Franchisee's approach to identifying and dealing with reactive maintenance), repair and renewal activity planned by the Franchisee including such activities the Franchisee plans to undertake in order to ensure that the condition and capability of Station Assets are maintained and comply with the Standard of Repair;

(d) the maintenance, repair and renewal activity undertaken since the Start Date or planned by Network Rail, any Local Authority, any Community Rail

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Partnership and any other relevant stakeholder, which the Franchisee is aware of;

(e) the assumptions the Franchisee has made about the current state and future degradation of assets at the Station at the Start Date or, if an asset becomes an asset at the Station on a later date, the assumptions of the Franchisee about the current state and future degradation of each relevant asset on the date that it becomes such an asset at the Station;

(f) under and over provision of assets at the Station at the Start Date given current and projected future customer volumes and reasonable customer demands and planned enhancements or removals to accommodate changing customer volumes and reasonable customer demands;

(g) plans for improving the environmental performance of Stations, including where appropriate, plans for:

(i) energy metering and data management, including measurement and verification plans for measures adopted;

(ii) lighting and lighting controls;

(iii) heating and heating controls;

(iv) auxiliary power uses;

(v) other energy efficiency measures;

(vi) renewable energy generation; and

(vii) water efficiency measures;

(h) the plans to ensure that delivery of Station Services is resilient to periods of extreme weather and minimises disruption to passengers;

(i) how the Principles of Inclusive Design will be taken into account in the maintenance, repair and renewal of the Station; and

(j) details of compliance with railway safety obligations, including a programme of structural assessments in line with the requirements detailed in the Network Rail Standard NR/SP/CIV/035 or such other equivalent standard adopted by the Franchisee.

1.5 In addition, the Franchisee shall ensure that the Station Asset Management Plan:

(a) shall cover a period of no less than forty (40) years from the date that it is created or revised and updated in accordance with this Schedule 1.7, as if the Franchisee was to operate each of the Stations for such forty (40) year period;

(b) fully reflects the principles and approach to asset management set out in the Station Asset Management Principles;

(c) includes an indicative volume and level of spend of funds to be deposited in the Station Condition Account for five (5) years following the date of the

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Station Asset Management Plan in relation to those planned activities described in accordance with paragraph 1.4; and

(d) is developed in accordance, and complies, with guidance and policies (including the guidance documents known as "Subject Specific Guidelines" published by the Institute of Asset Management (or such appropriate replacement guidance) which are commensurate with those that would be referred to by a competent, skilled and experienced train operator using an asset management planning approach, in particular in respect of the balance of maintenance and renewal of each asset type.

1.6 Any amendments to the Station Asset Management Plan must be agreed by the Secretary of State (such consent not to be unreasonably withheld or delayed).

1.7 By the date three (3) months prior to the end of the second Franchisee Year and on each subsequent anniversary of the such date the Franchisee shall have reviewed the Station Asset Management Plan and shall submit to the Secretary of State for approval (such approval not to be unreasonably withheld or delayed) a draft updated version of the Station Asset Management Plan.

1.8 The updated draft Station Asset Management Plan shall include and reflect the following:

(a) a schedule of any revisions to the current Station Asset Management Plan and a brief summary of the rationale supporting any change for review and approval by the Secretary of State;

(b) any changed and developing circumstances and the requirements of the Station Asset Management Plan Accreditation;

(c) where relevant, the outcomes of, and the Franchisee's responses to the stakeholder consultation process described in paragraph 8; and

(d) the information required in accordance with paragraphs 1.4 and 1.5 of this Schedule 1.7 save that the reference to the "Start Date" in paragraph 1.4(a) shall be read as the date on which the Station Asset Management Plan is reviewed and updated by the Franchisee in accordance with paragraph 1.8 of this Schedule 1.7.

1.9 If:

(a) the Secretary of State approves an updated draft Station Asset Management Plan submitted to it pursuant to paragraph 1.7, such document shall become the then current Station Asset Management Plan; or

(b) the Secretary of State does not approve an updated draft Station Asset Management Plan submitted to it pursuant to paragraph 1.7, then the Franchisee shall make:

(i) such amendments to it as the Secretary of State shall reasonably direct; and

(ii) provide such additional information as the Secretary of State may reasonably require.

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1.10 The Franchisee shall put in place such arrangements as are necessary (to the reasonable satisfaction of the Secretary of State) to ensure that the Station Asset Management Plan is (and continues to be maintained in) a format acceptable to the Secretary of State which is capable of being transferred to a Successor Operator as part of the Handover Package so that the Successor Operator is able to access, use and amend the Station Asset Management Plan using the same format.

1.11 The Franchisee shall:

(a) ensure that it applies for and obtains the Station Asset Management Plan Accreditation by no later than the end of the second Franchisee Year;

(b) promptly upon receipt by the Franchisee, provide to the Secretary of State a certificate of accreditation issued by and organisation accredited by the United Kingdom Accreditation System (UKAS) which has been signed by a director of the Franchisee and which confirms that the Station Asset Management Plan Accreditation has been obtained (the **"Station Asset Management Plan Accreditation Certificate"**); and

(c) maintain the Station Asset Management Plan Accreditation from the date that it is required to be achieved in accordance with paragraph 1.11 (a) for the remainder of the Franchise Period.

1.12 If the Station Asset Management Plan Accreditation is at any time lost or the Franchisee fails to secure such then the Franchisee shall report that fact to the Secretary of State as soon as reasonably practicable and in any event within ten (10) Weekdays of the Franchisee becoming aware of such fact.

1.13 From the date upon which the Franchisee notified the Secretary of State pursuant to paragraph 1.12 (or should have notified the Secretary of State having complied with the provisions of this Agreement), the Franchisee shall:

(a) re-secure such accreditation as soon as reasonably practicable and in any case within three (3) months; and

(b) report to the Secretary of State every Reporting Period on the measures it is proposing to take, and is taking, to achieve such restoration of the Station Asset Management Plan Accreditation.

1.14 Where the Franchisee fails to secure the Station Asset Management Plan Accreditation pursuant to paragraph 1.13 within three (3) months of the date of such accreditation being lost or failed to be secured (as the case may be) such failure shall constitute a contravention of the Franchise Agreement and the Secretary of State may issue a Remedial Plan Notice pursuant to Schedule 10.1 (Procedure for Remedying Contraventions of the Franchise Agreement) and the provisions of Schedule 10 (Remedies, Termination and Expiry) shall apply.

1.15 The Franchisee shall calculate the Station Stewardship Measure defined by NR/ARM/M17PR for each Station, providing validated scores for each Station to Network Rail or ORR on an annual basis at such time specified by the ORR and Network Rail, and assisting Network Rail and/or the ORR in the any future development of such measure.

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2. Station Maintenance Obligations

2.1 Subject to paragraph 2.4, the Franchisee shall ensure that the Asset Remaining Life in relation to each of the Station Asset Groups specified in Column 1 of the Minimum Asset Remaining Life Table (on a basis averaging such Asset Remaining Life across all relevant assets from each of the Station Asset Groups at all Stations) is not less than the corresponding Minimum Asset Remaining Life specified in column 2 of the Minimum Asset Remaining Life Table (the "**Standard of Repair**").

2.2 Within thirty (30) days of the start of each Franchisee Year (other than the first Franchisee Year) the Franchisee shall deliver a written report based on the requirements of ORR Mandate AO/24 (as such may be updated or replaced from time to time) to the Secretary of State that complies with the following requirements:

(a) it has been prepared by a reputable firm of surveyors who have carried out inspections of the Stations for the purposes of the preparation of the Station Strewardship Measure report no more than sixty (60) days prior to the end of the previous Franchisee Year;

(b) it is addressed to the Secretary of State (but may also be addressed to other parties at the discretion of the Franchisee);

(c) it contains a fair summary of the extent to which the Franchisee has complied with its obligations to achieve the Standard of Repair during the preceding twelve (12) months;

(d) it contains the calculation of the Franchisee (as a percentage) of the average Asset Remaining Life of each Station Asset Group (in accordance with standard "NR/ARM/M17PR" or such other standard as may be notified to the Franchisee by the Secretary of State from time to time);

(e) it identifies separately any Stations where a Station Asset has an asset life that is less than:

(i) [47.50][47]% in relation to platforms;

(ii) [49.91][48]% in relation to footbridges;

(iii) [45.99][49]% in relation to canopies; and

(iv) [39.38][50]% in relation to buildings at Stations;

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47 **Note to Bidders:** DfT to confirm

48 **Note to Bidders**: DfT to confirm

49 **Note to Bidders**: DfT to confirm

50 **Note to Bidders**: DfT to confirm

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(f) it contains a copy of the Station Stewardship Measure report issued by the Franchisee to ORR and/or Network Rail; and

(g) it contains such other details as may be specified in writing by the Secretary of State from time to time.

2.3 It is agreed by the Secretary of State and the Franchisee that:

(a) the methodology to be adopted by the Secretary of State for the purposes of monitoring the Franchisee's compliance with its obligations in paragraph 2.1 shall, subject to paragraph 2.3(b), be as described in the document entitled NR/ARM/M17PR Network Rail Asset Reporting Manual - Procedures for the Reporting of the Station Stewardship Measure" in the agreed terms marked "SCM" (the "**Stations Conditions Methodology**");

(b) the Stations Conditions Methodology can be amended by the Secretary of State; and

(c) if, at any time during the Franchise Period, the Stations Conditions Methodology is amended as envisaged under paragraph 2.3(b) and the Secretary of State reasonably determines that it is appropriate to amend the Minimum Asset Remaining Life of any Station Assets to take account of the alteration to the Stations Conditions Methodology then the Secretary of State shall make such amendment to column 2 of the Minimum Asset Remaining Life Table as he reasonably considers appropriate to take account of the alterations to the Stations Conditions Methodology and such amendment shall be a Change.

2.4 Where the Franchisee fails to achieve the Minimum Asset Remaining Life in respect of any Station Asset Group and:

(a) the Franchisee is not acting as a reasonable ISO 55001 accredited asset manager in relation to its management of a Station Asset Group; or

(b) the Asset Remaining Life of such Station Asset Group is more than three per cent (3%) lower than the Minimum Asset Remaining Life,

such failure to achieve the Minimum Asset Remaining Life in respect of such Station Asset Group shall be treated as a contravention of this Franchise Agreement.

2.5 The Franchisee shall maintain appropriate, accurate, readily accessible and transferable information about the asset at the Stations, including their condition and function.

2.6 The Franchisee shall provide to the Secretary of State such information as the Secretary of State may reasonably require for the purposes of monitoring the obligations of the Franchisee in relation to Stations.

2.7 At the Secretary of State's request, the Franchisee shall commission and pay for an independent audit of any information submitted to the Secretary of State under paragraph 2.6 and shall provide a copy of the audit report to the Secretary of State.

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3. **Station Condition Account**

3.1 The Franchisee will set up a separate, dedicated interest bearing bank account by the Start Date ("**Station Condition Account**") with a reputable bank and will notify the Secretary of State of the identity of such bank and the account number of the Station Condition Account.

3.2 The sums standing to the credit of the Station Condition Account (including accrued interest) (the "**Station Condition Fund**") shall be held on trust by the Franchisee on behalf of the Secretary of State on the terms of the Trust Deed for the purpose of discharging the entitlements of the Secretary of State and/or the Franchisee to payments from the Station Condition Account as and when they fall due in accordance with this paragraph 3 and the Station Condition Account will accordingly be set up so as to ensure that in the event of the insolvency of the Franchisee, monies standing to credit of the Station Condition Account are not at risk of being applied for the benefit of creditors or otherwise applied for a different purpose to that intended to the reasonable satisfaction of the Secretary of State. For the avoidance of doubt the obligations of the Franchisee in relation to the maintenance, repair and renewal of Stations whether pursuant to its obligations under this Agreement or otherwise are in no way limited by reference to the availability of funds in the Station Condition Fund.

3.3 Prior to the first date upon which any monies are required to be deposited in the Station Condition Account under this paragraph 3, the Franchisee will procure that the bank with whom the Station Condition Account is held undertakes to the Secretary of State (on terms satisfactory to the Secretary of State) that:

(a) it acknowledges that the credit balance from time to time on the Station Condition Account does not belong solely to the Franchisee but is held on trust for the Secretary of State on the terms of the Trust Deed; and

(b) such bank will not set-off sums standing to the credit of the Station Condition Account against any amount owing from the Franchisee or any other person to such bank.

3.4 The Franchisee will operate the Station Condition Account in accordance with the provisions of this paragraph 3.

3.5 On each Payment Date, the Franchisee shall pay the Station Condition Amount calculated as follows into the Station Condition Account:

SCA = ((RPD/FYD) x ASCA) Where:	
SCA	means the Station Condition Amount for such Reporting Period;
FYD	is equal to 365, or if February 29 falls during the Franchisee Year in which that Reporting Period falls, 366;
RPD	means the number of days in that Reporting Period; and
ASCA	means the Annual Station Condition Amount for the Franchisee Year in which that Reporting Period falls

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	determined as follows: (CA x RPI) where: CA is the amount shown in the respect of the relevant Franchisee Year in column 2 of the table set out in Appendix 4 (Figures for Calculation of Annual Station Condition Amount) of this Schedule 1.7; and RPI has the meaning given to such term in Appendix 1 (Annual Franchise Payments) to Schedule 8.1 (Franchise Payments).

3.6 During the Franchise Period the Franchisee may withdraw the funds properly required to meet Actual Station Condition Expenditure that has properly fallen due for payment by the Franchisee as set out in the Station Asset Management Plan (or the Previous Franchisee's Asset Management Plan, as the case may be) and in respect of which funds have not previously been withdrawn from the Station Condition Account without the consent of the Secretary of State provided that:

(a) the Franchisee may not make any withdrawal from the Station Condition Account pursuant to this paragraph 3.6 that would reduce the Station Condition Fund to less than zero (0);

(b) the Franchisee shall not make any withdrawal from the Station Condition Account pursuant to this paragraph 3.6 where the amount to be withdrawn is in relation to expenditure not provided or planned for under the Station Asset Management Plan (or the Previous Franchisee's Asset Management Plan, as the case may be) without the prior written consent of the Secretary of State;

(c) where the Franchisee requires such consent pursuant to paragraph 3.6(b) it shall provide to the Secretary of State with its request for consent a written confirmation from a director of the Franchisee certifying that the information provided to the Secretary of State is, in all material respects, true, accurate, complete and not misleading and identifying the amount proposed to be withdrawn, the purpose of the proposed withdrawal from the Station Condition Account and that such proposed expenditure will be properly expended for satisfying the Standard of Repair in respect of the Stations; and

(d) if requested by the Secretary of State the Franchisee agrees to demonstrate to the reasonable satisfaction of the Secretary of State that the written confirmation is true and accurate. It shall be a contravention of the Franchise Agreement if any such written confirmation is, in any material respect, found to be untrue, inaccurate and/or misleading.

3.7 The Franchisee shall maintain records of the following:

(a) a breakdown in relation to each Reporting Period of all Actual Station Condition Expenditure actually incurred in the Reporting Period together

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with such further details of each relevant item of expenditure as the Secretary of State may reasonably require;

(b) a breakdown of all funds withdrawn from the Station Condition Account in each Reporting Period and the reason for that withdrawal; and

and provide such records to the Secretary of State as may reasonably be requested from time to time together with:

(c) written confirmation from a director of the Franchisee certifying that:

(i) the information provided to the Secretary of State is, in all material respects, true, accurate, complete and not misleading;

(ii) all Actual Station Condition Expenditure has been properly expended for satisfying the Standard of Repair in respect of the Stations; and

(iii) all withdrawals from the Station Condition Account made by the Franchisee were properly due to the Franchisee under paragraph 3.6 and have been applied for the purposes for which they were withdrawn.

3.8 If requested by the Secretary of State the Franchisee agrees to demonstrate to the reasonable satisfaction of the Secretary of State that the written confirmation is a true and accurate confirmation of the Franchisee's compliance with its relevant obligations. It shall be a contravention of the Franchise Agreement if any such written confirmation is, in any material respect, found to be untrue, inaccurate and/or misleading.

3.9 In the event that the Secretary of State determines that any monies have been withdrawn from the Station Condition Account improperly he shall notify the Franchisee of the same specifying the relevant amount and requiring the Franchisee to repay the relevant amount into the Station Condition Account on or prior to such Weekday as the Secretary of State shall notify to the Franchisee.

3.10 On expiry or early termination of the Franchise Agreement, the Secretary of State shall be entitled to all sums then standing to the credit of the Station Condition Account. The Franchisee shall take all steps as may be necessary so as to authorise any sums then standing to the credit of the Station Condition Account to be paid to the Secretary of State to such account as the Secretary of State shall, at that time, notify to the Franchisee (which may be the account of a Successor Operator).

3.11 If:

(a) any revised Station Asset Management Plan delivered by the Franchisee pursuant to paragraphs 1.6 or 1.7 provides for the bringing forward of any works intended to ensure that the Franchisee complies with its obligation in relation to the Standard of Repair;

(b) the additional cost incurred by the Franchisee in the Franchisee Year in which such costs are now to be incurred exceeds the amount that the Franchisee is required to pay into the Station Condition Account in such Franchisee Year by more than 10%; and

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(c) the Franchisee can demonstrate to the reasonable satisfaction of the Secretary of State that the effect of bringing forward such works is to achieve the Standard of Repair in a more efficient or cost effective manner or to otherwise achieve real and demonstrable whole rail industry or passenger benefits in either case in a way that has no adverse financial or other impacts on the Secretary of State,

then the Secretary of State shall reasonably determine the reprofiling of the amounts specified in Appendix 4 (Figures for Calculation of Annual Condition Amount) to this Schedule 1.7 to reasonably take account of the bringing forward of the relevant works provided that the total of the amounts specified in Appendix 4 (Figures for Calculation of Annual Condition Amount) to this Schedule 1.7 shall not reduce overall as a result of such reprofiling.

4. **Uninsured Events and Latent Defects Liability**

4.1 If any Station and/or Equipment comprised in a Station is (1) damaged or destroyed due to the occurrence of an Uninsured Event (2) any Station and/or Equipment comprised in a Station is discovered to contain a Latent Defects Liability or (3) an Environmental Liability arises at a Station (each such event to be known as a "**Special Event**") then the Secretary of State may (at his absolute discretion) elect to:

(a) require the Franchisee to undertake the works necessary to repair, reinstate or make good to his satisfaction such Station or Equipment which is the subject of a Special Event (the "**Reinstatement Works**"). Any such requirement by the Secretary of State to carry out Reinstatement Works shall be a Qualifying Change and in these circumstances:

(i) notwithstanding the Qualifying Change, the Franchisee shall be liable for the first five hundred thousand pounds (£500,000) of any Reinstatement Costs (the "**Franchisee Excess Amount**") in respect of each Special Event that occurs at each Station provided that the Franchisee's maximum liability in relation to Reinstatement Costs shall not exceed ten million pounds (£10,000,000) in aggregate (the "**Franchisee Excess Amount Cap**") for the duration of the Franchise Period:

(ii) where Reinstatement Works or the effects of the Special Event pending completion of the Reinstatement Works result in the Franchisee not being able to operate the Station (or part thereof) or provide Passenger Services which call at such Station, any such Qualifying Change pursuant to this paragraph 4.1 shall take account of any costs savings made by the Franchisee as a result of it not being able to provide Passenger Services which call at such Station or operate such Station (or part thereof) (including as a result of it not being required to maintain and repair such Station (or any part thereof) or any Equipment pending its repair, reinstatement or making good (the "**Cost Savings**"));

(iii) the Franchisee shall: (1) consult on and agree with the Secretary of State the Reinstatement Works and the programme for the carrying out of the Reinstatement Works; and (2) carry out the Reinstatement Works in accordance with the programme as agreed (or on failing to agree, as reasonably determined by the Secretary

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of State) and the Franchise Agreement shall be amended to reflect the carrying out of such Reinstatement Works, if required; and

(iv) the Franchisee shall ensure that the Reinstatement Cost is as low as reasonably practicable and shall use all reasonable endeavours to minimise any Environmental Liability;

(b) require the Franchisee not to undertake the Reinstatement Works (including because he would require a Successor Operator to undertake such works) and in these circumstances a Qualifying Change shall occur;

(c) require the Franchisee to use all reasonable endeavours to secure other sources of grant funding, such as Local Authority grants, for the purposes of carrying out the Reinstatement Works; and/or

(d) seek to utilise other alternative funding mechanisms for the purposes of the release of the funds required for carrying out the Reinstatement Works by:

(i) requiring the Franchisee, to source the funds for carrying out such works through an adjustment to the Franchisee's Integrated Station Asset Management Plan; and/or

(ii) requiring the Franchisee not to undertake certain Committed Obligations at Stations such that any capital expenditure allocated to such Committed Obligations can be utilised by the Franchisee for the purposes of undertaking the Reinstatement Works. In these circumstances, a Qualifying Change shall occur and there shall be an amendment to the Franchise Agreement to reflect the fact that the Franchisee would no longer be required to carry out the affected Committed Obligations but would instead be required to utilise any capital expenditure so released in undertaking the Reinstatement Works.

4.2 If the Secretary of State elects that the funding of the Reinstatement Works should be undertaken using any of the alternative funding mechanisms set out in paragraph 4.1(d) then any such funding shall be on the basis that the Franchisee shall be liable for the Franchisee Excess Amount after the deduction of any Cost Savings and subject to the Franchisee Excess Amount Cap.

4.3 In respect of the second and each subsequent Franchisee Year, the Franchisee Excess Amount and the Franchisee Excess Amount Cap shall be adjusted in accordance with the following formula:

FA x RPI Where:	
FA	is the Franchisee Excess Amount or the Franchisee Excess Amount Cap (as the case may be);
RPI	has the meaning given to it in Appendix 1 to Schedule 8.1 (Franchise Payments).

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5. **Registration of Title**

The Franchisee shall as soon as reasonably practicable upon receipt of the relevant documentation from the Train Operator party to the Previous Franchise Agreement, lodge, procure the lodging of properly completed applications for the registration of Station Leases at HM Land Registry in accordance with the required time limits for making such applications. The Franchisee shall use all reasonable endeavours to ensure that registration of the title is obtained in relation to each Station as soon as reasonably practicable and to the highest standard reasonably obtainable.

6. **Grey Assets**

6.1 The Franchisee shall use all reasonable endeavours to agree with Network Rail by the date no later than the date two (2) years following the Start Date the allocation of responsibility under the relevant Station Leases of all the Grey Assets which have been identified during the first eighteen (18) months following the Start Date.

6.2 The Franchisee shall, where it discovers any Grey Assets not covered by paragraph 6.1:

(a) consult with Network Rail and, where reasonably necessary and agreed by Network Rail, carry out a joint inspection of the Grey Asset; and

(b) use all reasonable endeavours to agree with Network Rail the allocation of responsibility under the relevant Station Lease of such Grey Asset as soon as reasonably practicable.

6.3 Where the Franchisee is unable to agree with Network Rail the allocation of responsibility under the relevant Station Lease of any Grey Asset pursuant to paragraph 6.1 or paragraph 6.2 (b), the Franchisee shall refer such matter to the dispute resolution process under the terms of the relevant Station Lease.

7. **Station Social and Commercial Development Plan**

7.1 From the State Date, the Franchisee shall implement and comply with the Station Social and Commercial Development Plan for the Franchise Period.

7.2 Any amendments to the Station Social and Commercial Development Plan must be agreed by the Secretary of State in accordance with this paragraph 7.

7.3 The Franchisee shall revise the Station Social and Commercial Development Plan by no later than the end of the first Franchisee Year and on each subsequent anniversary of this date by submitting to the Secretary of State an updated version of the Station Social and Commercial Development Plan for approval.

7.4 Subsequent updated versions of the Station Social and Commercial Development Plan shall:

(a) incorporate a schedule of any revisions to the Station Social and Commercial Development Plan and a brief summary of the rationale supporting any change for review and approval by the Secretary of State;

(b) reflect changed and developing circumstances where relevant; and

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(c) reflect the outcomes of, and the Franchisee's responses to, the stakeholder consultation process described in paragraph 8.

7.5 The Franchisee shall ensure that the Station Social and Commercial Development Plan shall be updated so that following each update it continues to cover at least a period of 10 years from the date of the update.

7.6 If:

(a) the Secretary of State approves an updated draft Station Social and Commercial Development Plan submitted to it pursuant to paragraph 7.3, such document shall become the then current Station Social and Commercial Development Plan; or

(b) the Secretary of State does not approve an updated draft Station Social and Commercial Development Plan submitted to it pursuant to paragraph 7.3, then the Franchisee shall:

(i) make such amendments to it as the Secretary of State shall reasonably direct; and

(ii) provide such additional information as the Secretary of State may reasonably require,

it being agreed that it will be unreasonable for the Secretary of State to make amendments that increase cost and risk to the Franchisee beyond parameters specified in the Record of Assumptions.

8. Consultations

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

9. Principles of Inclusive Design

9.1 The Franchisee shall ensure that all renewal, enhancement and other building works at Stations are implemented in accordance with the Principles of Inclusive Design.

10. Security at Stations

10.1 The Franchisee shall during the Franchise Period, monitor and record all reported and observed incidents of:

(a) anti-social behaviour; and

(b) criminality (including assaults on passengers and Franchise Employees, theft, criminal damage to railway property and graffiti vandalism),

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which occur at Stations, and shall use all reasonable endeavours to address, minimise and avoid future instances of anti-social behaviour and criminality at Stations taking account of such data. The Franchisee may comply with its obligations to monitor and record incidents under this paragraph by providing copies of relevant information provided by the Franchisee to the British Transport Police where such information is relevant.

10.2 The Franchisee shall provide to the Secretary of State upon request such information as the Secretary of State may reasonably require from time to time in respect of the Franchisee's compliance with the requirements of paragraph 10.1.

10.3 The Franchisee shall maintain for the duration of the Franchise Period the Secure Stations Accreditation for the Stations already achieved by the Train Operator under the Previous Franchise Agreement as set out in Appendix 1 to this Schedule 1.7.

10.4 In this paragraph 10:

(a) **"Secure Stations Accreditation"** and means Stations which have achieved accreditation under the Secure Stations Scheme; and

(b) the **"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.

11. **Information about Station Improvement Measures**

11.1 The Franchisee shall at all times during the Franchise Period maintain records in relation to the measures taken by it to improve the Station environment at each of the Stations, covering the areas and the information set out in Table A of Appendix 2 to this Schedule 1.7.

11.2 The Franchisee shall, subject to paragraph 11.3, provide to the Secretary of State the information set out in Table A of Appendix 2 to this Schedule 1.7 within one Reporting Period of each anniversary of the Start Date during the Franchise Period.

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

(a) such level of disaggregation as is reasonably specified by the Secretary of State; and

(b) any particular Station as is reasonably specified by the Secretary of State.

11.4 The information to be provided by the Franchisee to the Secretary of State within the timescales stipulated are set out in Appendix 2 to this Schedule 1.7.

12. **Termination**

12.1 On the date that is the earlier of eighteen (18) months prior to the end of the Franchise Period or the date upon which a Termination Notice is served upon the Franchisee, the Secretary of State and the Franchisee shall agree (or the Secretary of State shall reasonably determine) the amendments to be made to

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the Statement of Condition (as such term is defined in the Station Lease) so as to ensure that the Statement of Condition accurately evidences the state of repair and condition of each Station as at that date.

12.2 At the end of the Franchise Period and, upon the assignment, transfer or novation of the Station Leases to a Successor Operator (whether pursuant to a Transfer Scheme or otherwise) the Franchisee shall ensure that the condition of each Station so transferred, assigned or novated is in a state of repair and condition which is no worse than that evidenced in the Statement of Condition as amended pursuant to paragraph 12.1.

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APPENDIX 1 TO SCHEDULE 1.7

List of Stations with Secure Stations Accreditation

1. Secure Stations Accreditation

Audley End
Billericay
Bishops Stortford
Brentwood
Brimsdown
Broxbourne
Bury St Edmunds
Bush Hill Park
Cambridge
Chadwell Heath
Chelmsford
Cheshunt
Chingford
Clacton-on-Sea
Colchester
Colchester Town
Diss
Elsenham
Ely
Enfield Lock
Enfield Town
Gidea Park
Great Yarmouth
Hackney Downs
Halesworth
Harlow Town
Harold Wood
Harwich International
Hatfield Peverel
Hertford East
Highams Park
Ilford
Ingatestone
Kelvedon
London Fields
Lowestoft
Manningtree
Marks Tey
Newport
Northumberland Park
Norwich
Ponders End
Rayleigh
Rectory Road
Romford
Rye House
Sawbridgeworth
Saxmundham
Seven Sisters
Shenfield
Silver Street
St James Street
Southend Victoria
St Margarets
Stansted Airport
Stansted Mountfitchet
Stowmarket
Stratford
Tottenham Hale
Waltham Cross
Walthamstow Central
Ware
White Hart Lane
Wickford
Wood Street
Woodbridge

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Ipswich

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APPENDIX 2 TO SCHEDULE 1.7

Information about Station Improvement Measures

[Note to Bidders: Bidders to populate columns 1 and 2 of Table A. Column 1 to be populated with the information to be maintained and provided by the Franchisee as required by paragraph 11, such information to relate to the dashboard metrics requirements set out in the ITT and, if relevant, any information relating to the additional proposals offered by the bidder as contemplated in the ITT.**]**

Table A		
Information to be provided	**Information (format)**	**When information to be provided**
		As per paragraph 6.2 but subject to paragraph 6.3.

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APPENDIX 3 TO SCHEDULE 1.7

Minimum Asset Remaining Life Table

Column 1	Column 2
Category of Station Asset Group	**Minimum Asset Remaining Life (calculated as a percentage in accordance with NR/ARM/M17PR or such other standards as may be notified from time to time) as an average of asset remaining life across each Station Asset Group at all Stations**
Platforms	[47.50][51]
Footbridges	[49.91][52]
Canopies	[45.99][53]
Buildings	[39.38][54]

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51 Note to Bidders: DfT to confirm

52 Note to Bidders: DfT to confirm

53 Note to Bidders: DfT to confirm

54 Note to Bidders: DfT to confirm

APPENDIX 4 TO SCHEDULE 1.7

Figures for Calculation of Annual Condition Amount

Column 1	Column 2

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SCHEDULE 2

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

Schedule 2.1:	Asset Vesting and Transfer
Schedule 2.2:	Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases
Schedule 2.3:	Other Franchisees
Schedule 2.4:	NOT USED
Schedule 2.5:	Transport, Travel and Other Schemes
	Appendix to Schedule 2.5: List of Transport, Travel and Other Schemes

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SCHEDULE 2.1

Asset Vesting and Transfer

1. Vesting of Property Leases

1.1 The Franchisee shall not without the prior written consent of the Secretary of State (such consent not to be unreasonably withheld), whether generally or on a case-by-case basis:

(a) enter into any new Property Lease; or

(b) effect any amendment to any Property Lease, except to the extent that the Franchisee is required to do so by virtue of any station or depot access conditions to which it is a party.

1.2 In respect of the new Property Leases specified in paragraph 1.3 or any other new Property Lease with Network Rail, the Franchisee shall enter into such Property Leases:

(a) with the intent that section 31 of the Act shall apply to such leases; and

(b) in the agreed terms marked **SL** and **DL** (as appropriate).

1.3 The Franchisee shall enter into the following leases with Network Rail:

(a) a lease of each Station, on or before the expiry of the Station Lease relating to each such Station (each such lease, once granted, shall be a Station Lease for the purposes of the Franchise Agreement);

(b) a lease of each Depot, on or before the expiry of the Depot Lease relating to each such Depot (each such lease, once granted, shall be a Depot Lease for the purposes of the Franchise Agreement);

(c) a supplemental lease relating to any Station or Depot, as soon as practicable following the successful completion of any procedure (including obtaining any requisite approval from the ORR) for including additional land within the demise of such Station or Depot (as the case may be) and each such supplemental lease, once granted, shall be a Station Lease or a Depot Lease (as the case may be) for the purposes of the Franchise Agreement; and

(d) a lease of any Network Rail owned station or depot, which:

(i) the Secretary of State consents to or requires the Franchisee to be a party to; and

(ii) the Franchisee was not a party to on the date hereof, but which has been contemplated by the Franchise Agreement,

and the Franchisee shall enter into such lease as soon as practicable after its terms and form have been agreed and all applicable preconditions to its granting have been satisfied or waived (including obtaining any requisite approval of the ORR). Any such supplemental lease, once granted, shall be a Station Lease or a Depot Lease (as the case may be) for the purposes of the Franchise Agreement and any such station or depot (as the case

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may be) shall be a Station or Depot for the purposes of the Franchise Agreement.

1.4 The Franchisee shall not be in contravention of paragraph 1.3 if and to the extent that Network Rail refuses to enter into any leases specified therein.

1.5 In respect of any assignment or amendment of any Property Lease to which section 31 of the Act applied on its grant, each of the Secretary of State and the Franchisee acknowledges that it is their intention that section 31 of the Act shall continue to apply to such assigned or amended lease.

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SCHEDULE 2.2

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

1. Novation of Access Agreements during the Franchise Term

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

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

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

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

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

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

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

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

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

1.4 The Franchisee shall, on the occurrence of any of the circumstances specified in paragraph 1.1 in relation to any other Train Operator who is a party to an Access Agreement to which the Franchisee is also party, agree to the novation of the relevant Train Operator's interest under the relevant Access Agreement to the Secretary of State or as he may direct, subject, to the extent applicable, to the consent of the ORR. The provisions of paragraph 1.3 shall apply to any such novation.

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

2. **Rolling Stock Related Contracts and insurance arrangements**

2.1 The Franchisee shall not:

(a) execute any Rolling Stock Related Contract;

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

(c) amend or waive the terms of any Rolling Stock Related Contract,

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

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

(a) such other information or documentation relating to such Rolling Stock Related Contract and/or the relevant rolling stock as the Secretary of State may request (which may include offer letters (original and final));

(b) the terms proposed by any person providing finance in relation to the relevant rolling stock (including cash flows);

(c) any agreement (in whatever form) to which the Franchisee (or an Affiliate of the Franchisee) is a party and which relates to the relevant rolling stock;

(d) information relating to capital allowances, details of any changes in the terms (including rentals) on which the relevant rolling stock is proposed to be leased compared to the terms on which such rolling stock was previously leased; and

(e) a detailed justification of the Franchisee's proposed maintenance strategy for the relevant rolling stock and/or the Franchisee's analysis of the whole life costs of the relevant rolling stock.

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

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

(a) amend the terms of any insurance arrangements which relate to rolling stock vehicles used by it in the provision of the Passenger Services to which it is a party on the Start Date; or

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

2.5 The Franchisee shall, in addition, if it enters into any New Insurance Arrangements, use all reasonable endeavours to ensure that the relevant insurers waive their rights of subrogation against any Train Operator which may have equivalent insurance arrangements providing for a similar waiver of rights of subrogation against the Franchisee, whether on a reciprocal basis or otherwise.

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

3.1 Without limiting paragraph 2.1, where the rolling stock to be leased by the Franchisee under any Rolling Stock Lease is Cascaded Rolling Stock the Secretary of State may:

(a) as a condition of giving his consent to the Franchisee executing such Rolling Stock Lease, require that such Rolling Stock Lease contains a provision whereby, in the event of a Relevant Delay, the Secretary of State may require that such Cascaded Rolling Stock can continue to be used by the Prior Train Operator during such period as the Secretary of State shall specify. Without limitation this may include the Franchisee subleasing the Cascaded Rolling Stock back to the Prior Train Operator and/or a delay to the date on which the Cascaded Rolling Stock is required to be delivered to the Franchisee under such Rolling Stock Lease; and

(b) where the Secretary of State requires such a provision to be included in the relevant Rolling Stock Lease, if a Relevant Delay occurs, require the Franchisee to make the Cascaded Rolling Stock available for use by the Prior Train Operator during such period as the Secretary of State may require.

For the purpose of this paragraph 3:

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

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

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

"Relevant Rolling Stock" means rolling stock to be acquired by another Train Operator which, when acquired, will initiate the **"cascade"** of rolling stock that

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directly or indirectly makes the Cascaded Rolling Stock available for use by the Franchisee.

3.2

(a) Where the Secretary of State exercises his right pursuant to paragraph 3.1 (b) to make Cascaded Rolling Stock available for use by the Prior Train Operator during a specified period there shall be a Change and where this is a Qualifying Change it shall be assumed that the period that the Prior Train Operator retains any Cascaded Rolling Stock shall not exceed ninety (90) days and the only Revised Inputs shall be in relation to the difference between each of the rolling stock lease costs and variable track usage charge for the Cascaded Rolling Stock and the rolling stock lease costs and variable track usage charge applicable in relation to whatever rolling stock is to be used by the Franchisee in place of the Cascaded Rolling Stock.

(b) Where there is a Change pursuant to paragraph 3.2(a) and the period that the Prior Train Operator retains any Cascaded Rolling Stock is more than ninety (90) days there shall be a further Change. Where such Change is a Qualifying Change the modifications to the methodology for calculating Revised Inputs provided for in paragraph 3.1(a) shall not apply.

(c) Where there is a Change pursuant to paragraphs 3.2(a) or 3.2(b) and any such Change is a Qualifying Change there shall be a further Change (which shall be a Qualifying Change irrespective of whether such Change meets the requirements of the definition of Qualifying Change) on the date that the last Cascaded Rolling Stock ceases to be retained by the Prior Train Operator.

3.3 Without limiting paragraph 2.1, where the rolling stock to be leased by the Franchisee under any Rolling Stock Lease is Cascaded Rolling Stock, the Franchisee shall provide appropriate support to the subsequent operator of that rolling stock, including sharing technical know-how, maintenance manuals and records and such other documentation as the future lessee of that rolling stock may reasonably require for the efficient operation of the fleet.

3.4 Where the Secretary of State exercises his right pursuant to paragraph 3.1(b) to require the Franchisee to make the Cascaded Rolling Stock available for use by the Prior Train Operator during a specified period, the Franchisee shall not be liable for any failure to comply with its obligations under the Franchise Agreement to the extent that:

(a) such failure to comply arises directly as a result of the Franchisee being unable to use the Cascaded Rolling Stock; and

(b) the Franchisee uses all reasonable endeavours to comply with the relevant obligations notwithstanding the unavailability of the Cascaded Rolling Stock.

3.5

(a) The Franchisee shall notify the Secretary of State as soon as reasonably practicable if it becomes aware of any material risk that a Relevant Delay will occur. If a Relevant Delay does occur the Franchisee shall use all reasonable endeavours to mitigate the impact on the delivery of the Franchise Services of the unavailability of the Cascaded Rolling Stock at

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the expected time including by identifying and proposing value for money alternative sources of replacement rolling stock.

(b) If a Relevant Delay has occurred or the Secretary of State believes that there is a material risk that a Relevant Delay will occur he may serve a notice on the Franchisee requiring it to produce a plan to a reasonable specification provided with the notice to remedy or mitigate the impact of the delayed availability of the Cascaded Rolling Stock (**"Delayed Cascade Mitigation Plan"**). Such specification may include measures to be implemented by the Franchisee to mitigate the direct or indirect impact of the Relevant Delay on the Prior Train Operator or any other affected Train Operator. The Delayed Cascade Mitigation Plan shall provide a comprehensive analysis backed by relevant data and assumptions of:

(i) all cost and revenue and other financial implications of options contained within it including the potential implications for Franchise Payments;

(ii) the implications (if any) for Benchmarks; and

(iii) the likely impact of options within it for existing and future passenger journeys and journey opportunities.

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

4. **Assignment of Property Leases during the Franchise Term**

4.1 The Franchisee shall (other than on termination of the Franchise Agreement, for which the provisions of paragraph 4.5 of Schedule 15.4 (Provisions Applying on and after Termination) shall apply) following receipt of a notice purporting to terminate a Property Lease or on becoming aware of any proceedings or any other steps having or purporting to have similar effect, if requested by the Secretary of State, assign its interest under all or any Property Leases to the Secretary of State or as he may direct, subject where applicable to the agreement of any other party to such Property Lease or the ORR.

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

(a) that the Franchisee shall not be released from any accrued but unperformed obligation, the consequences of any antecedent breach of a covenant or obligation in the Property Leases or any liability in respect of any act or omission under or in relation to the Property Lease prior to, or as at the date of, any such assignment (except to the extent that the Secretary of State or his nominee agrees to assume responsibility for such unperformed obligation, such liability or the consequences of such breach in connection with the relevant assignment); and

(b) that neither the Secretary of State nor his nominee shall be obliged, in connection with such assignment, to agree to assume responsibility for any unperformed obligation, liability or consequences of a breach referred to in paragraph 4.2(a), and the Franchisee shall indemnify the Secretary of State or his nominee, as the case may be, on an after-tax basis against

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any costs, losses, liabilities or expenses suffered or incurred in relation thereto.

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

4.4 The Franchisee shall notify the Secretary of State on becoming aware of any circumstances which might lead to the Secretary of State being able to require the Franchisee to assign its interest or agree to the assignment of another Train Operator's interest under this paragraph 4.

5. **Station and Depot Leases**

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

5.2 The Franchisee shall not:

(a) terminate or agree to terminate in whole or in part, or take or omit to take any other action which might result in the termination of any Station Lease or Depot Lease;

(b) assign all or part of its interest under any Station Lease or Depot Lease; or

(c) sublet the whole or substantially the whole of the property comprised in any Station Lease or Depot Lease,

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

6. **Station Subleases**

6.1 Unless the Secretary of State agrees otherwise, the Franchisee shall not sublet to any of its Affiliates any part of the property comprised in any Property Lease except on terms that any such subletting:

(a) (other than any subletting to an Affiliate which is a Train Operator) is terminable without compensation immediately upon the termination of the Franchise Agreement; and

(b) is excluded from the provisions of Part II of the Landlord and Tenant Act 1954 and the Tenancy of Shops (Scotland) Act 1949.

6.2 If so requested by the Secretary of State, the Franchisee shall:

(a) extend each Station Sublease on the same terms for such period as the Secretary of State may request (including a period equivalent to the

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franchise term of the Train Operator who is the lessee under such Station Sublease); and

(b) if such Station Sublease terminates (which for the purposes of this paragraph 6.2(b) shall include the termination, at or around the time of termination of the Previous Franchise Agreement, of a station sublease in respect of which the Franchisee was the lessor), grant a new Station Sublease on the same terms to such Train Operator and for such period as the Secretary of State may request (including a period equivalent to the franchise term of the Train Operator who is the lessee under such Station Sublease),

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

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

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SCHEDULE 2.3

Other Franchisees

1. Other Franchisees

1.1 If the franchise agreement of another franchisee terminates or a railway administration order is made in respect of another franchisee, the Franchisee shall co-operate with any reasonable request of the Secretary of State to ensure:

(a) that the services provided or operated by such other franchisee may continue to be provided or operated by any successor Train Operator or the railway administrator; and

(b) that the benefit of any arrangements between the Franchisee and such other franchisee which were designated as a key contract under such franchise agreement immediately prior to its termination or to a railway administration order being made will continue to be provided to any successor Train Operator or to the railway administrator.

1.2 The benefit of any arrangements of the type referred to in paragraph 1.1(b) shall be provided on substantially the same terms as previously obtained by the relevant franchisee, subject to clause 14.8 (Arm's length dealings) and paragraph 1.3 of this Schedule 2.3, provided that the Secretary of State may exclude or modify any terms agreed or amended by such franchisee in the twelve (12) months preceding the date on which such franchisee's franchise agreement was terminated or the date on which the relevant railway administration order was made which were, in the Secretary of State's reasonable opinion, to the material detriment of such franchisee's business. The benefit of such arrangements shall be provided for such period as the Secretary of State may reasonably require to allow the relevant Train Operator or railway administrator to renegotiate such arrangements or make alternative arrangements.

1.3 The Franchisee shall notify the Secretary of State of its intention to terminate any contract with any other Train Operator which is designated as a **"Key Contract"** under that Train Operator's franchise agreement and shall give that Train Operator sufficient notice to enable it to make suitable alternative arrangements for its passengers without causing disruption to the railway passenger services provided by such Train Operator.

1.4 If the franchise agreement of another franchisee terminates in contemplation of the entry into or entry into effect of a new franchise agreement with the same franchisee in respect of all or a material part of the relevant railway passenger services, the Franchisee shall waive any event of default or other right it may have to terminate any agreement with such franchisee arising out of such termination, provided that the entry into or entry into effect of such new franchise agreement takes place.

1.5 References in this paragraph 1 to **"a franchisee"** include references to any franchise operator of that franchisee.

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SCHEDULE 2.4

NOT USED

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SCHEDULE 2.5

Transport, Travel and Other Schemes

1. Local Authority Concessionary Travel Schemes

1.1 The Franchisee shall:

(a) subject to paragraph 1.2, participate in and comply with its obligations under:

(i) the concessionary travel schemes listed in the Appendix (List of Transport, Travel and Other Schemes) to this Schedule 2.5; and

(ii) any other concessionary travel scheme which the Franchisee is required to participate in during the Franchise Term pursuant to paragraph 1.1(b); and

(b) subject to paragraph 1.3, if so requested by the Secretary of State, participate in and comply with its prospective obligations under:

(i) any concessionary travel scheme listed in the Franchise Agreement the terms of which have been amended since the date of the Franchise Agreement; and

(ii) such other concessionary travel schemes as any relevant Local Authority may require or request it to participate in.

1.2 Subject to the terms of the relevant concessionary travel scheme, the Franchisee shall be entitled to cease to participate in any scheme referred to in paragraph 1.1(a) where, in the reasonable opinion of the Secretary of State:

(a) the Franchisee's continuing participation in such scheme; and/or

(b) the obligations assumed by the relevant Local Authority in connection therewith,

each pursuant to Part II of the Travel Concession Schemes Regulations 1986 (SI 1986/77) (the **"Regulations"**), would fail to leave the Franchisee financially no worse off (following consideration of the application of the reimbursement test in paragraph 5(2) of the Regulations) than it was immediately following the Start Date.

1.3 The Secretary of State shall not require the Franchisee to participate in any scheme referred to in paragraph 1.1(b) where the Secretary of State is reasonably satisfied that:

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

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

each pursuant to the Regulations would fail to leave the Franchisee financially no worse off (following consideration of the application of the reimbursement test in paragraph 5(2) of the Regulations) as a result of such participation.

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1.4 The Secretary of State shall consult the Franchisee before making any request of the Franchisee to participate in any amended or new concessionary travel scheme pursuant to paragraph 1.1(b) and shall allow the Franchisee a reasonable opportunity to make representations to him with respect to any such participation.

1.5 The Franchisee shall supply to the Secretary of State, in respect of any concessionary travel schemes referred to in paragraph 1.1(b), such information within such period as the Secretary of State may reasonably require for the purposes of determining whether or not the Franchisee is or will be financially no worse off (following consideration of the application of the reimbursement test in paragraph 5(2) of the Regulations) as a consequence of its participation in any such scheme, and/or the obligations assumed by such Local Authority in connection therewith.

1.6 If the Secretary of State and the Franchisee are unable to agree whether the Franchisee will be financially no worse off (following consideration of the application of the reimbursement test in paragraph 5(2) of the Regulations), the Secretary of State and the Franchisee may resolve such dispute in accordance with the Dispute Resolution Rules.

2. Multi-modal Fares Schemes

2.1 The Franchisee shall:

(a) subject to paragraph 2.2, participate in and comply with its obligations under:

(i) the multi-modal fares schemes set out in paragraph 2 of the Appendix (List of Transport, Travel and Other Schemes) to this Schedule 2.5; and

(ii) any other multi-modal fares scheme which the Franchisee is required to participate in during the Franchise Term pursuant to paragraph 2.1(b);

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

(b) subject to paragraph 2.3, if so requested by the Secretary of State, participate in and comply with its prospective obligations under:

(i) any multi-modal fares scheme set out in paragraph 2 of the Appendix (List of Transport, Travel and Other Schemes) to this Schedule 2.5, the terms of which have been amended since the date of signature of this Agreement; and

(ii) such other multi-modal fares schemes as any relevant Local Authority may require or request it to participate in.

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

(a) the Franchisee's continuing participation in such scheme; and/or

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(b) the obligations assumed by the relevant Local Authority in connection therewith,

would fail, by way of distribution of income or otherwise, to render the Franchisee financially no worse off.

2.3 The Secretary of State shall not require the Franchisee to participate in any scheme referred to in paragraph 2.1(b) where the Secretary of State is reasonably satisfied that the Franchisee's participation in any such scheme and/or the obligations to be assumed by the relevant Local Authority in connection therewith, would fail, by way of distribution of income or otherwise, to render the Franchisee financially no worse off.

2.4 In determining whether the Franchisee shall, pursuant to paragraph 2.2, continue to participate or, pursuant to paragraph 2.3, participate in any multi-modal fares scheme, the Secretary of State shall construe the term **"financially no worse off"** to mean:

(a) in respect of any multi-modal fares scheme set out in paragraph 2 of the Appendix (List of Transport, Travel and Other Schemes) to this Schedule 2.5, that the Franchisee incurs no greater financial loss than the financial loss (if any) incurred by the Franchisee at the Start Date under that scheme, as adjusted by reference to any change in the level of prices according to the Retail Prices Index since such date;

(b) in respect of any multi-modal fares scheme which replaces and (in the Secretary of State's reasonable opinion) is reasonably similar to any such scheme as may be set out in paragraph 2 of the Appendix (List of Transport, Travel and Other Schemes) to this Schedule 2.5, that the Franchisee incurs no greater financial loss than the financial loss (if any) incurred by the Franchisee at the Start Date under the replaced scheme, as adjusted by reference to any change in the level of prices according to the Retail Prices Index since such date; and

(c) in respect of any multi-modal fares scheme which does not replace or which does replace but which is not (in the Secretary of State's reasonable opinion) reasonably similar to any such scheme or schemes as may be set out in paragraph 2 of the Appendix (List of Transport, Travel and Other Schemes) to this Schedule 2.5, such reimbursement arrangements as agreed by the relevant parties to such multi-modal fares schemes (or on failure to agree, as determined by the Secretary of State).

2.5 The Secretary of State shall consult the Franchisee before making any request of the Franchisee to participate in any amended or new multi-modal fares scheme pursuant to paragraph 2.1(b) and shall allow the Franchisee a reasonable opportunity to make representations to it with respect to any such participation.

2.6 The Franchisee shall supply to the Secretary of State, in respect of any multi-modal fares schemes referred to in paragraph 2.1 such information within such period as the Secretary of State may reasonably require for the purposes of determining whether or not the Franchisee is or will be financially no worse off as a consequence of its participation in any such scheme and/or the obligations to be assumed by the relevant Local Authority in connection therewith.

2.7 If the Secretary of State and the Franchisee are unable to agree whether the Franchisee will be financially no worse off, the Secretary of State and the

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Franchisee may resolve such dispute in accordance with the Dispute Resolution Rules.

3. Discount Fare Schemes

3.1 If the Secretary of State:

(a) effects, or proposes to effect, an amendment to a Discount Fare Scheme;

(b) introduces any new Discount Fare Scheme; or

(c) ceases to approve a Discount Fare Scheme,

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

3.2 The Secretary of State shall provide a reasonable opportunity to the Franchisee to make representations to him before amending, introducing or ceasing to approve a Discount Fare Scheme pursuant to paragraph 3.1.

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

4. Inter-Operator Schemes

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

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

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

4.4 The Franchisee shall:

(a) provide reasonable notice to the Secretary of State of any proposal to amend any Inter-Operator Scheme which it intends to make or of which it receives notification and which, in its opinion, is reasonably likely to materially affect the provision of the Franchise Services; and

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

4.5 If an amendment is effected or proposed to be effected to an Inter-Operator Scheme which requires the consent or approval of the Secretary of State in accordance with the terms thereof, such amendment shall be treated as a Change to the extent and only to the extent that the Franchisee makes a saving as a consequence of such amendment or proposed amendment.

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APPENDIX TO SCHEDULE 2.5

List of Transport, Travel and Other Schemes

1. Local Authority Concessionary Travel Schemes

1.1 Each of the following concessionary travel schemes:

(a) London Boroughs Concessionary fares schemes;

(b) Suffolk County Council Scholar Season Ticket Agreement dated 1 September 1999 between Anglia Railway Train Services Limited and Suffolk County Council;

(c) Suffolk County Council Scholar Season Ticket (covers student travel to Woodridge and Ipswich). Agreement dated 1 September 1999 between Anglia Railway Train Services Limited and Suffolk County Council;

(d) Suffolk County Council Scholar Season Ticket (covers student travel to Lowestoft and Norwich). Agreement dated 1 September 1999 between Anglia Railway Train Services Limited and Suffolk County Council;

(e) Norfolk County Council Scholar Season Ticket (covers student travel on various routes in Norfolk). Agreement dated 3 September 1991 between Anglia Railway Train Services Limited and Norfolk County Council; and

(f) Norfolk County Council Scholar Season Ticket (covers student travel between Norfolk and Great Yarmouth). Agreement dated 1 April 2004 between Anglia Railway Train Services Limited and Norfolk County Council; and

(g) any other concessionary travel scheme which the Franchisee is required to participate in during the Franchise Term pursuant to paragraph 2.1(b).

2. Multi-modal Fares Schemes

None.

3. Discount Fare Schemes

3.1 Each of the following discount fare schemes:

(a) ATOC Disabled Persons Railcard Scheme dated 23 July 1995 between the participants therein;

(b) ATOC Young Persons Railcard Scheme dated 23 July 1995 between the participants therein; and

(c) ATOC 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.

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4. **Inter-Operator Schemes**

4.1 Each of the following schemes which relate to arrangements between the Franchisee and other participants in the railway industry:

(a) ATOC Staff Travel Scheme dated 23 July 1995 between the participants named therein;

(b) Ticketing and Settlement Agreement;

(c) ATOC 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) any other scheme, agreement and/or contract of a similar or equivalent nature as may from time to time during the Franchise Period amend, replace or substitute, in whole or in part, any of such schemes, agreements and/or contracts; and

(i) any Discount Fare Scheme.

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SCHEDULE 3

Not used

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SCHEDULE 4

Accessibility and Inclusivity

Schedule 4:	Accessibility and Inclusivity
	Appendix 1 to Schedule 4: Minor Works
	Appendix 2 to Schedule 4: Accessible Transport Arrangements

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SCHEDULE 4

Accessibility and Inclusivity

1. Relationship with other obligations relating to persons with disabilities

1.1 The Franchisee acknowledges that its obligations in this Schedule 4 are in addition to and do not limit its obligations to comply with:

(a) the EA and any regulations imposed by it;

(b) any applicable condition(s) in any of its Licences (including in respect of persons with disabilities); and

(c) any other of the requirements of the Franchise Agreement.

1.2 This Schedule 4 sets out:

(a) specific arrangements which apply in respect of physical alterations to stations to facilitate accessibility and use by Disabled Persons; and

(b) specific obligations of the Franchisee directed at meeting the needs of persons with disabilities.

2. Physical Alterations and Accessibility of Stations

2.1 In respect of physical alteration works at stations to facilitate accessibility and use by Disabled Persons, it is acknowledged by the Franchisee that:

(a) there is limited funding available to the Secretary of State to assist franchisees and/or franchise operators with the carrying out of those works;

(b) consequently, there is a need for such works to be carried out over a period of time to reflect the availability of funding, and for such works to be prioritised with regard to where there is the greatest need and/or where physical alterations can have the greatest effect; and

(c) the Secretary of State's national programme of works of physical alterations at stations addresses these issues in a structured way.

2.2 The Franchisee shall:

(a) co-operate reasonably with and assist the Secretary of State in the development and furtherance by the Secretary of State of the programme described in paragraph 2.1(c) by providing to the Secretary of State:

(i) information concerning the usage of Stations (including, where and to the extent reasonably practicable, usage of Stations by Disabled Persons); and

(ii) advice as to the most economic way in which accessibility for Disabled Persons could, in the Franchisee's reasonable opinion, be improved at Stations;

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(b) co-operate reasonably with other Train Operators and/or Network Rail to seek to ensure that, where it would be advantageous to do so, having regard to the needs of Disabled Persons, any planned work on the Stations to facilitate accessibility and use by Disabled Persons is, so far as reasonably practicable, co-ordinated with other work to be carried out at the Stations and/or other parts of the network; and

(c) use all reasonable endeavours to secure sources of grant funding (other than from itself or an Affiliate) for improving accessibility for Disabled Persons at Stations (in addition to any funding secured through the Secretary of State pursuant to paragraph 2.5), including from Local Authorities, local development agencies and the Lottery Commission. The Franchisee shall notify the Secretary of State of:

(i) any such additional funding which it secures; and

(ii) the terms on which such additional funding has been granted.

2.3 In participating in any multi-modal fares scheme, the Franchisee shall use all reasonable endeavours to secure, through the planning and development of such scheme, improvements in disabled access to the entrances of any relevant station, including within and in the immediate proximity of such station.

2.4 If, during the Franchise Term:

(a) the Franchisee has complied with its obligations in Section 20(4) and Section 20(9), as varied by paragraph 2(3) of Schedule 2, of the EA (to take such steps as are reasonable to provide a reasonable alternative method of making services at a Station accessible to a Disabled Person to avoid a Disabled Person being placed at a substantial disadvantage by a physical feature at a Station) and its obligations in paragraph 2.7 concerning Minor Works; and

(b) notwithstanding such compliance, the Franchisee reasonably considers it is still required to carry out or procure physical works of alteration at a Station in order to comply with the EA Requirements in respect of that Station, and, in so carrying out or procuring, would incur expenditure which it would not otherwise have an obligation to incur,

the Franchisee may seek funding from the Secretary of State in respect of that expenditure.

2.5 If the Franchisee seeks funding from the Secretary of State under paragraph 2.4, and demonstrates to the Secretary of State's satisfaction that the criteria in paragraph 2.4 have been satisfied, then the Secretary of State may agree to adjust the amount of Franchise Payments in respect of some or all of the works and/or expenditure. In considering his response to any such request, the Secretary of State will have regard to the availability of funding and the priorities set out in the national programme described in paragraph 2.1(c), together with any other available sources of funding described in paragraph 2.2(c). If and to the extent the Secretary of State agrees to adjust Franchise Payments in accordance with this paragraph 2.5 in any Franchisee Year:

(a) the Secretary of State shall make such adjustment to the Franchise Payments; and

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(b) the Franchisee shall spend such additional funds:

(i) in order to comply with the EA Requirements referred to in paragraph 2.4(b); and

(ii) in accordance with any conditions the Secretary of State may notify the Franchisee of.

2.6 If and to the extent the Franchisee is required to pay any increased access charges as a result of additional expenditure required to be incurred by another station Facility Owner for the purpose of complying with the EA Requirements in respect of a Franchisee Access Station, provided that the Franchisee:

(a) notifies the Secretary of State within seven (7) days of becoming aware of any proposal for the increase in such charges (or the works to which they relate); and

(b) complies with the Secretary of State's reasonable directions regarding the exercise of any rights the Franchisee may have in respect thereof,

the imposition of the increased access charges shall be a Change.

2.7 The Franchisee shall:

(a) establish and manage the Minor Works' Budget to fund the carrying out of Minor Works. For the purposes of this paragraph 2.7, Minor Works means small scale physical alterations or additions to improve accessibility of Stations to Disabled Persons, not involving substantial works of construction or reconstruction. The Minor Works:

(i) may, but shall not necessarily include, the Minor Works described in Appendix 1 (Minor Works) to this Schedule 4;

(ii) shall not include any works which Network Rail, the Franchisee or any other person has a separate obligation to carry out, except where:

(A) such obligation is an obligation of the Franchisee under the EA; or

(B) the inclusion of such works would lead to the acceleration of the timescale for their completion and the Secretary of State gives his consent pursuant to paragraph 2.7(a)(iii);

(iii) shall only include works other than those permitted by paragraphs 2.7(a)(i) and 2.7(a)(ii) with the prior consent of the Secretary of State; and

(iv) must comply with the standards provided for in the Code of Practice, unless otherwise agreed with the prior consent of the Secretary of State;

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(b) as soon as reasonably practicable (and in any event within four (4) months) after the Start Date and thereafter before the start of each Franchisee Year:

(i) develop a Minor Works' Programme and consult with the Disabled Persons Transport Advisory Committee and relevant Passengers' Council in relation thereto;

(ii) in conjunction with its activities in paragraph 2.7(b)(i), and, consistent with its obligations under paragraph 2.2(b), liaise with Network Rail and other Train Operators as necessary with regard to the determination and implementation of each Minor Works' Programme; and

(iii) following the consultation and liaison described in paragraphs 2.7(b)(i) and 2.7(b)(ii), obtain the Secretary of State's prior approval (such approval not to be unreasonably withheld) of each Minor Works' Programme;

(c) carry out or procure the carrying out of the Minor Works' Programme in each Franchisee Year and in doing so, spend at least the amount of the Minor Works' Budget for the relevant Franchisee Year in such Franchisee Year (unless otherwise agreed by the Secretary of State);

(d) report progress to the Secretary of State in determining and carrying out the Minor Works' Programme no less than once every three (3) Reporting Periods; and

(e) co-operate, as the Secretary of State may reasonably require, with Network Rail or any other person seeking to carry out or procure Minor Works at the Stations or any other stations.

3. Dealing with Claims relating to Stations

3.1 If the Franchisee receives notification of a claim under the EA in respect of any alleged non-compliance with the EA Requirements or otherwise in respect of any Station (an **"EA Claim"**) then the Franchisee shall:

(a) notify the Secretary of State within seven (7) days of receiving notification of the EA Claim. The Franchisee shall at the same time notify the Secretary of State of any reasonable alternative methods of making services at the Station accessible to Disabled Persons that it has considered and/or put in place pursuant to Section 20(4) and Section 20(9), as varied by paragraph 2(3) of Schedule 2, of the EA;

(b) if required by the Secretary of State, defend the EA Claim or any aspect of the EA Claim (which may include appealing the judgment). The Secretary of State will, subject to paragraph 3.4, pay the Franchisee's reasonable costs of:

(i) any defence or appeal required by the Secretary of State; and/or

(ii) compliance with the Secretary of State's instructions in accordance with paragraph 3.1(c); and

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(c) act in accordance with the reasonable instructions of the Secretary of State to defend the EA Claim (or any aspect of it) as required under paragraph 3.1(b) and shall not (without the prior consent of the Secretary of State) settle or enter into any compromise in relation to the EA Claim (or the relevant aspect of it), including by entering into mediation.

3.2 If, in the reasonable opinion of the Franchisee, it will be more cost effective to settle the EA Claim rather than act in accordance with the Secretary of State's requirement under paragraph 3.1, it shall produce for the Secretary of State's approval a settlement proposal, setting out the terms of the Franchisee's proposals to make an offer to the Disabled Person making the EA Claim and its reasons for making such offer (the **"Settlement Proposal"**).

3.3 If the Secretary of State does not accept the Settlement Proposal and still requires the Franchisee to defend the EA Claim (or any aspect of it) then the Franchisee shall defend the EA Claim in accordance with paragraph 3.1.

3.4 If the Franchisee is required to defend an EA Claim where it has submitted a Settlement Proposal to the Secretary of State and an award is made in respect of the EA Claim in favour of the person bringing it which is higher than the figure set out in the Settlement Proposal, then, subject to paragraph 3.5, the Secretary of State shall pay to the Franchisee:

(a) the difference between such an award and the figure set out in the Settlement Proposal; and

(b) the further reasonable costs incurred or payable by the Franchisee in defending the EA Claim, to the extent that such costs have not already been paid by the Secretary of State under paragraph 3.1(b).

3.5 The Secretary of State shall not have any obligation to make the payments described in paragraphs 3.1(b) or 3.4 where it is determined or, if no declaration or determination by the court on this point has been sought or made, the Secretary of State, in his reasonable opinion, considers that the Franchisee has not taken such steps as it is reasonable, in all the circumstances of the case, for it to take to provide a reasonable alternative method of making services at the Station accessible to Disabled Persons.

4. Specific additional obligations relating to persons with disabilities

4.1 The Franchisee shall establish and implement procedures necessary to:

(a) record the making of reservations for seating accommodation for and/or the provision of assistance to, persons with disabilities which are made through the Passenger Assistance (or whatever service may replace it from time to time for the purposes of ORR's most recent guidance on Disabled People's Protection Policies);

(b) record whether such seating accommodation and/or assistance is actually provided; and

(c) provide such records to the Secretary of State on his request.

4.2 Any helpline established by the Franchisee for the purposes of making reservations for seating accommodation for and/or the provision of assistance to, persons with disabilities shall be provided free of charge.

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4.3 Where the Franchisee's Disabled People's Protection Policy:

(a) has been established before the date of the Franchise Agreement; and

(b) has not been revised and approved by the ORR to take into account the ORR's most recent published guidance on Disabled People's Protection Policies as at the date of the Franchise Agreement,

the Franchisee shall within six (6) months of the date of the Franchise Agreement revise its Disabled People's Protection Policy such that it complies with that guidance, and obtain the ORR's approval of the revised version.

4.4 The Franchisee shall comply with the requirements set out in Appendix 2 (Accessible Transport Arrangements) to this to Schedule 4 in respect of the provision of accessible transport arrangements for persons with disabilities.

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APPENDIX 1 TO SCHEDULE 4

Minor Works

1. Providing additional signage, where it does not currently exist, to allow better way finding around the Station by Disabled Persons.

2. Removing:

2.1 thresholds (above 15 millimetres) which do not comply with the Code of Practice; or

2.2 fewer than three steps,

from the entrances to booking halls or platforms to enable those facilities to have step-free access.

3. Providing contrasting manifestations on glazed areas where contrasting manifestations do not currently exist.

4. Providing additional handrails around the Station where handrails do not currently exist and where the Franchisee reasonably believes they may be required by a Disabled Person.

5. Providing new accessible stair nosings where stair nosings do not currently exist.

6. Providing new tactile surfaces, including at the top and bottom of flights of steps (but excluding at platform edges) where tactile surfaces do not currently exist.

7. Providing additional seating that is accessible to Disabled Persons, but not replacing existing seating.

8. Providing induction loops for ticket office windows where induction loops do not currently exist.

9. Replacing non-standard fittings with fittings that are compliant with the Code of Practice in existing disabled toilets, which would include replacing non-standard fittings in respect of toilet bowls and sinks, but would not include making major changes to plumbing or to the dimensions of the toilet area.

10. Providing dropped kerbs at drop off/set down points or Station car parks to enable access/egress thereto where dropped kerbs do not currently exist.

11. Marking out existing car-parking bays for use by persons with disabilities which comply with the Code of Practice, where such car parking bays do not currently comply.

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APPENDIX 2 TO SCHEDULE 4

Accessible Transport Arrangements

1. References in this Appendix 2 to Schedule 4 (Accessibility and Inclusivity) to passengers are references to passengers with disabilities who are wheelchair users or otherwise severely mobility impaired.

2. Subject to paragraph 4, where:

2.1 a passenger wants to travel on a Passenger Service; and

2.2 the design of the station at which the passenger's journey on such Passenger Service is to start (the **"Departure Station"**) or finish (the **"Destination Station"**) prevents the passenger from using that station to access or disembark from that Passenger Service,

the Franchisee shall provide accessible transport arrangements for that passenger in accordance with paragraph 3.

3. The Franchisee shall provide accessible transport arrangements for the passenger referred to in paragraph 2:

3.1 from the Departure Station to the next station at which the Passenger Service is scheduled to call and at which it is possible for the passenger to access that Passenger Service;

3.2 to the Destination Station, from the station closest to such station at which the Passenger Service is scheduled to call and which it is possible for the passenger to use to disembark from that Passenger Service; and/or

3.3 to or from such other station as the Franchisee may, having regard to the journey and the needs of the passenger, agree,

and, in any case, at no cost additional to the price of the Fare which would otherwise be payable for the passenger's rail journey.

4. The Franchisee's obligations under this Appendix 2 to Schedule 4 (Accessibility and Inclusivity) are subject to:

4.1 reasonable prior notice of the passenger's requirement for accessible transport arrangements; and

4.2 the availability of suitable accessible transport arrangements (provided that the Franchisee has used all reasonable endeavours to ensure that it has arrangements in place to meet requirements for the provision of such accessible transport arrangements).

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SCHEDULE 5

Fares

Schedule 5.1:	Purpose, Structure and Construction
Schedule 5.2:	Franchisee's Obligation to Create Fares
Schedule 5.3:	Allocation of Fares to Fares Baskets
Schedule 5.4:	Regulation of Fares Basket Values
Schedule 5.5:	Regulation of Individual Fares
Schedule 5.6:	Exceeding the Regulated Value, Regulated Price or Regulated Child Price
Schedule 5.7:	Changes to Fares and Fares Regulation
Schedule 5.8:	Fares Regulation Information and Monitoring
Schedule 5.9:	Smart Ticketing

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SCHEDULE 5.1

Purpose, Structure and Construction

1. Purpose of Schedule 5

Purpose of provisions relating to Creating Fares

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

Purpose of Fares Regulation

1.2 The purpose of Schedule 5.3 (Allocation of Fares to Fares Baskets) to Schedule 5.8 (Fares Regulation Information and Monitoring) (inclusive) is to provide for the regulation of Fares by the Secretary of State pursuant to Section 28 of the Act.

1.3 For the purpose of regulating Fares, each Fare that is to be regulated shall be allocated in accordance with this Schedule 5.1 to one of the following Fares Baskets:

(a) the Commuter Fares Basket; or

(b) the Protected Fares Basket.

1.4 The Secretary of State's regulation of Fares places a limit on the Price or Child Price of each Fare that is allocated by the Secretary of State to a Fares Basket. The limit on the Price or Child Price of each Fare is set by reference to:

(a) the overall increase of the Prices and the Child Prices of all Fares in a Fares Basket; and

(b) the individual increase in the Price or the Child Price of each Fare in a Fares Basket.

1.5 Subject to the more detailed provisions of Schedule 5.4 (Regulation of Fares Basket Values) and Schedule 5.5 (Regulation of Individual Fares):

(a) the overall increase of the Prices and the Child Prices of all Fares in a Fares Basket may not exceed the Retail Prices Index + k per cent per annum in respect of each Fare Year; and

(b) the increase in the Price or the Child Price of any individual Fare in a Fares Basket may not exceed the Retail Prices Index + k per cent + f per cent per annum in respect of each Fare Year.

1.6 The Secretary of State may alter these limits, and other aspects of the regulation of Fares, in accordance with the more detailed provisions of Schedule 5.7 (Changes to Fares and Fares Regulation).

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2. Structure of Schedule 5

2.1 Schedule 5.2 (Franchisee's Obligation to Create Fares) sets out or refers to the Franchisee's obligations to Create Fares.

2.2 Schedule 5.3 (Allocation of Fares to Fares Baskets) sets out the allocation of Fares to Fares Baskets.

2.3 Schedule 5.4 (Regulation of Fares Basket Values) sets out the limits applicable to the overall increase in Prices and Child Prices of all Fares in a Fares Basket.

2.4 Schedule 5.5 (Regulation of Individual Fares) sets out the limits applicable to the increase in the Price or Child Price of any individual Fare in a Fares Basket.

2.5 Schedule 5.6 (Exceeding the Regulated Value, Regulated Price or Regulated Child Price) sets out the consequences of the Franchisee exceeding:

(a) the Regulated Value of any Fares Basket; or

(b) the Regulated Price or Regulated Child Price of any Fare.

2.6 Schedule 5.7 (Changes to Fares and Fares Regulation) sets out the Secretary of State's ability to vary the foregoing provisions.

2.7 Schedule 5.8 (Fares Regulation Information and Monitoring) sets out Fares regulation information and monitoring provisions.

2.8 Schedule 5.9 (Smart Ticketing) sets out provisions relating to the introduction of smart ticketing.

3. Construction

References to "Fare"

3.1 For the purposes of:

(a) Schedule 5.2 (Franchisee's Obligation to Create Fares), Fare shall have the wide meaning given to it in paragraph (a) of that definition; and

(b) Schedule 5.3 (Allocation of Fares to Fares Baskets) to Schedule 5.8 (Fares Regulation Information and Monitoring) (inclusive), Fare shall have the narrow meaning given to it in paragraph (b) of that definition.

3.2 References in this Schedule 5 to a Fare shall, except to the extent the context otherwise requires, be construed as references to the Fare which is or can be Created by the Lead Operator for the Flow to which the Fare relates or, if such Flow is not a Compulsory Inter available Flow, any Fare which the Franchisee has Created or can Create in respect of that Flow as the Secretary of State may specify.

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Fares Documents

3.3 In the event that, in the Secretary of State's reasonable opinion, there is an immaterial inconsistency between the Fares, the maximum Price or Child Price (as the case may be) for any Fare recorded by RSP in 2015 or the 2015 Nominal Ticket Sales:

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

(b) described in the relevant Fares Document,

the relevant Fares Document shall prevail.

3.4 In the event that, in the Secretary of State's reasonable opinion, there is a material inconsistency between the Fares, the maximum Price or Child Price (as the case may be) for any Fare recorded by RSP in 2015 or the 2015 Nominal Ticket Sales:

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

(b) described in the relevant Fares Document,

this Schedule 5 shall prevail.

Setting of Child Prices

3.5 Any requirement under this Schedule 5 to set a Child Price in respect of a Fare shall be satisfied by the Franchisee Creating either:

(a) a Fare which is only valid for use by persons under the age of 16; or

(b) a Fare which is valid for use:

(i) by any person at a price; and

(ii) by persons under the age of 16 at a discounted price relative to the price set pursuant to paragraph 3.5(b)(i).

New Stations

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

(a) Fares Basket;

(b) Commuter Fare; and

(c) Protected Fare,

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

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SCHEDULE 5.2

Franchisee's Obligation to Create Fares

1. Creation of Commuter Fares and Protected Fares

The Franchisee shall ensure that each Commuter Fare and each Protected Fare has been Created, to the extent it is entitled or obliged to do so under the terms of the Ticketing and Settlement Agreement.

2. Restrictions on Creation of Fares

2.1 The Franchisee shall set the Child Price for any Fare that it Creates so that that Fare may be purchased by or for a person under the age of 16 for an amount which is no greater than the lowest amount that would be paid if that person were the holder of a 16 to 25 Railcard with no minimum fare (as amended or replaced from time to time) and whose purchase was made without condition.

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

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SCHEDULE 5.3

Allocation of Fares to Fares Baskets

1. Allocation of Fares to Fares Baskets

1.1 On or prior to the Start Date the Secretary of State shall allocate each Commuter Fare and each Protected Fare to the relevant Fares Basket in accordance with this Schedule 5.3.

1.2 Subject to paragraph 2, every Commuter Fare shall be allocated by the Secretary of State to the Commuter Fares Basket and every Protected Fare shall be allocated by the Secretary of State to the Protected Fares Basket.

2. Designation of Non Fares Basket Fares

2.1 On or prior to the Start Date, the Secretary of State shall:

(a) separately (or in aggregate with other Fares of the same type in the opposite direction or for similar journeys that have the same Price or Child Price as the case may be) rank, in descending order according to their Gross Revenue for the period of twelve (12) months which ended 31 March 2015:

(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; and

(ii) those Protected Fares with the lowest Gross Revenue, until the total of the aggregated Gross Revenue of such fares accounts for up to five per cent (5%) of the aggregate Reference Revenue of all Protected Fares; and

(c) designate, following such aggregation:

(i) those Commuter Fares referred to in paragraph 2.1(b)(i) as Non Fares Basket Fares; and

(ii) those Protected Fares referred to in paragraph 2.1(b)(ii) as Non Fares Basket Fares.

2.2 Without prejudice to the Secretary of State's right to require the content of a Fares Basket to change at any time prior to the Start Date, or, thereafter, prior to the commencement of any Fares Setting Round, pursuant to paragraph 1 of Schedule 5.7 (Changes to Fares and Fares Regulation), any Commuter Fare or Protected Fare that is also designated as a Non Fares Basket Fare shall not be allocated to the relevant Fares Basket.

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2.3 The Secretary of State may de-designate any Non Fares Basket Fare pursuant to paragraph 1.1(d)(iii) of Schedule 5.7 (Changes to Fares and Fares Regulation).

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SCHEDULE 5.4

Regulation of Fares Basket Values

1. Value of Fares Basket not to exceed Regulated Value

Subject to paragraph 1.3 of Schedule 5.6 (Exceeding the Regulated Value, Regulated Price or Regulated Child Price) the Franchisee shall procure that the Value of a Fares Basket at any time in any Fare Year does not exceed its Regulated Value for that Fare Year.

2. Value

The Value of a Fares Basket at any time shall be the aggregate of the Projected Revenue of each Fare in that Fares Basket at that time.

3. Projected Revenue

The Projected Revenue of any Fare at any time shall be an amount equal to:

P x 2015 Nominal Ticket Sales

where:

P	is the Price or Child Price (as the case may be) of that Fare at that time; and
2015 Nominal Ticket Sales	is the number of nominal ticket sales of that Fare for 2015, ascertained as follows:
	$\frac{A}{B}$
	where:
	A is the aggregate Gross Revenue recorded by RSP as attributable to sales of that Fare and any other Fare with which it was aggregated under paragraph 2.1(a) of Schedule 5.3 (Allocation of Fares to Fares Baskets) for the period of twelve (12) months which ended 31 March 2015; and
	B is the Price or Child Price (as the case may be) for that Fare recorded by RSP in February 2015.

4. Regulated Value

4.1 The Regulated Value of a Fares Basket for any Fare Year shall be an amount equal to:

2015 Ticket Revenue x PPAI

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where:

2015 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 2015;
PPAI	is:
	(a) in respect of the Fare Year commencing 1 January 2017, the Permitted Aggregate Increase for that Fare Year; and
	(b) in respect of each Fare Year commencing on or after 1 January 2018, 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:

$$PAI = \frac{(110 x RPI) + k}{100}$$

where:

PAI		is the Permitted Aggregate Increase in that Fare Year;
RPI		is an amount equal to:
	$\frac{RPI-1}{RPI-2}$	
	where:	
	RPI_1	is the Retail Prices Index for the July of the calendar year preceding that Fare Year; and
	RPI_2	is the Retail Prices Index for the July of the calendar year preceding the calendar year referred in the definition of RPI_1; and
	k	is equal to zero (0) for each Fare Year until the Fare Year commencing on 1 January 2021 where it will be equal to plus one (+ 1) per annum for any Fare Year thereafter.

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SCHEDULE 5.5

Regulation of Individual Fares

1. **Price or Child Price not to exceed Regulated Price or Regulated Child Price**

1.1 The Franchisee shall procure that the Price or Child Price (as the case may be) of:

(a) each Commuter Fare included in the Commuter Fares Basket; and

(b) each Protected Fare included in the Protected Fares Basket,

in any Fare Year does not exceed the Regulated Price or Regulated Child Price (as the case may be) for such Fare in that Fare Year.

1.2 The Franchisee shall procure that the Price or Child Price (as the case may be) of any Season Ticket Fare shall be the same in both directions.

2. **Regulated Price**

2.1 The Regulated Price or the Regulated Child Price (as the case may be) for any Fare in any Fare Year shall be an amount equal to the greater of:

(a) Preceding Year Ticket Price + £0.10p; and

(b) Preceding Year Ticket Price x PII

where:

Preceding Year Ticket Price	for the Fare Year commencing 1 January 2017, is the maximum Price or Child Price (as the case may be) for that Fare recorded by RSP in 2016 and, for any subsequent Fare Year, is the maximum Price or Child Price (as the case may be) recorded by RSP in the Fare Year preceding that Fare Year, provided that such maximum Price or Child Price (as the case may be) complied with the requirements of this Schedule 5. If such maximum Price or Child Price (as the case may be) did not so comply, then such maximum Price or Child Price (as the case may be) shall be the last Price or Child Price (as the case may be) 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.

2.2 The Permitted Individual Increase in any Fare Year shall be an amount equal to:

$$\text{PII} = \frac{(100 x RPI) + k + f}{100}$$

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where:

PII	is the Permitted Individual Increase in that Fare Year;
RPI	is an amount equal to:
	$\frac{RPI-1}{RPI-2}$
	where:
	RPI_1 is the Retail Prices Index for the July of the calendar year preceding that Fare Year; and
	RPI_2 is the Retail Prices Index for the July of the calendar year preceding the calendar year referred in the definition of RPI_1;
k	is equal to zero (0) for each Fare Year until the Fare Year commencing on 1 January 2021 where it will be equal to plus one (+ 1) per annum for any Fare Year thereafter; and
f	is equal to zero (0).

2.3 Where:

(a) the Franchisee sets the Price or Child Price (as the case may be) of any Commuter Fare or Protected Fare in any Fare Year; and

(b) the Secretary of State reasonably determines that the Price or Child Price (as the case may be) of such Commuter Fare or Protected Fare was set solely for the purpose of increasing the value of the Preceding Year Ticket Price in the next Fare Year,

the Preceding Year Ticket Price for the purposes of determining the Regulated Price or Regulated Child Price (as the case may be) pursuant to paragraph 2.1 in the next Fare Year shall be the maximum Price or Child Price (as the case may be) prior to such setting that complied with the requirements of this Schedule 5, as recorded by RSP in the relevant preceding Fare Year.

3. **Compulsory Inter available Flows**

Where the Franchisee:

3.1 as Lead Operator for a Compulsory Inter available Flow, is responsible for setting the Price or Child Price (as the case may be) of a Commuter Fare for that Flow; and

3.2 has notified RSP of the Price or Child Price (as the case may be) of that Commuter Fare in any Fares Setting Round,

3.3 the Franchisee shall not increase the Price or Child Price (as the case may be) of that Commuter Fare in the same Fares Setting Round without the consent of either the Secretary of State or each other Train Operator which provides railway passenger services for such Flow.

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SCHEDULE 5.6

Exceeding the Regulated Value, Regulated Price or Regulated Child Price

1. Exceeding the Regulated Value

1.1 If the Franchisee is in contravention of paragraph 1 of Schedule 5.4 (Regulation of Fares Basket Values) in respect of either the Commuter Fares Basket or the Protected Fares Basket:

(a) it shall reduce the Price or Child Price of Fares in the relevant Fares Basket at the next available opportunity and, in any event, at the next Fares Setting Round, so as to comply with the requirements of paragraph 1 of Schedule 5.4 (Regulation of Fares Basket Values) from such date; and

(b) the Secretary of State may adjust Franchise Payments by an amount equivalent in his opinion to the sum of:

(i) any additional gross revenue accruing to the Franchisee or any person selling Fares on its behalf as a result of the Value of any Fares Basket exceeding its Regulated Value permitted under Schedule 5.4 (Regulation of Fares Basket Values); and

(ii) any costs incurred by the Secretary of State in determining the amount of such additional gross revenue.

1.2 Any adjustment to Franchise Payments by the Secretary of State pursuant to paragraph 1.1:

(a) shall not be treated as a Change; and

(b) shall be without prejudice to any other rights or remedies of the Secretary of State under the Act or the Franchise Agreement in respect of such contravention.

1.3 It shall not be a contravention of paragraph 1 of Schedule 5.4 (Regulation of Fares Basket Values) if and to the extent that:

(a) the Value of the Commuter Fares Basket exceeds its Regulated Value in any Fare Year;

(b) such excess is caused by the Price or Child Price of any relevant Commuter Fare being set pursuant to the terms of the Ticketing and Settlement Agreement by another person (other than an Affiliate); and

(c) the Franchisee does not have a reasonable opportunity, under any procedure for consulting or notifying Train Operators of alterations to the Prices and Child Prices of Fares under the Ticketing and Settlement Agreement or otherwise, to alter some or all of the other Commuter Fares in the Commuter Fares Basket so as to avoid the Value of the Commuter Fares Basket exceeding its Regulated Value.

1.4 If and to the extent that the circumstances described in paragraph 1.3 prevail in any Fare Year, the Franchisee shall not subsequently increase during that Fare Year, or any subsequent Fare Year, the Price or Child Price of any Commuter Fare in the Commuter Fares Basket which it is entitled to set pursuant to the terms of

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the Ticketing and Settlement Agreement, unless, following such increase, the Franchisee would, otherwise than under paragraph 1.3, comply with the provisions of paragraph 1 of Schedule 5.4 (Regulation of Fares Basket Values) in relation to the Commuter Fares Basket.

1.5 Where circumstances described in paragraph 1.3 prevail in any Fare Year, the Franchisee shall not be required to reduce the Price or Child Price of any other Commuter Fare at any time during that Fare Year, or any subsequent Fare Year, where such Price or Child Price has previously been set in a Fares Setting Round.

2. **Exceeding the Regulated Price or Regulated Child Price**

2.1 If the Franchisee is in contravention of paragraph 1 of Schedule 5.5 (Regulation of Individual Fares):

(a) it shall reduce the Price or Child Price of any relevant Fare at the next available opportunity and, in any event, at the next Fares Setting Round, so as to comply with the requirements of paragraph 1 of Schedule 5.5 (Regulation of Individual Fares) from such date; and

(b) the Secretary of State may adjust Franchise Payments by an amount equivalent in his opinion to the sum of:

(i) any additional gross revenue accruing to the Franchisee or any person selling Fares on its behalf as a result of the sale of Fares at Prices and/or Child Prices in excess of the relevant amounts permitted under Schedule 5.5 (Regulation of Individual Fares); and

(ii) any costs incurred by the Secretary of State in determining the amount of such additional gross revenue.

2.2 Any adjustment to Franchise Payments by the Secretary of State pursuant to paragraph 2.1:

(a) shall not be a Change; and

(b) shall be without prejudice to any other rights or remedies of the Secretary of State under the Act or the Franchise Agreement in respect of such contravention.

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SCHEDULE 5.7

Changes to Fares and Fares Regulation

1. Changes to Fares Baskets

1.1 The Secretary of State may require the content of the Commuter Fares Basket or the Protected Fares Basket (as the case may be) to change in accordance with the following:

(a) where the Secretary of State is not satisfied that the Price or Child Price of any Non Fares Basket Fare is reasonably constrained by the Price or Child Price of other Fares which:

(i) have been set in respect of the same, or part of the same, Flow as such Non Fares Basket Fare, or a Flow which is reasonably proximate to the Flow on which such Non Fares Basket Fare has been set; and

(ii) have been included in the relevant Fares Basket,

the Secretary of State may de designate any Non Fares Basket Fare and include such Non Fares Basket Fare in the relevant Fares Basket;

(b) where any Commuter Fare for a Flow has been included in the Commuter Fares Basket, the Secretary of State may require the inclusion in the Commuter Fares Basket of any Weekly Season Ticket, Monthly Season Ticket, Quarterly Season Ticket, Annual Season Ticket, unrestricted Single Fare or unrestricted Return Fare that existed on that Flow in February 2015;

(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 paragraph 3.1(a) and/or 3.1(b) then, in relation to the Fares Basket in which such Fare is or would be included, and without limiting paragraphs 1.1(a) to (c) inclusive, the Secretary of State may also:

(i) make any of the changes to such Fares Basket contemplated by this paragraph 1.1;

(ii) designate any Fare as a Non Fares Basket Fare in accordance with the provisions (other than the requirement that such designation occurs on or prior to the Start Date) of paragraph 2 of Schedule 5.3 (Allocation of Fares to Fares Baskets); and/or

(iii) de designate any Non Fares Basket Fare and include such Non Fares Basket Fare in the relevant Fares Basket.

1.2 The Secretary of State shall serve notice in writing on the Franchisee:

(a) at any time prior to the Start Date; and

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(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 2015 Nominal Ticket Sales

2.1 The Franchisee may, in the event of any significant change to the pattern of travel on the Passenger Services during the Franchise Term, apply to the Secretary of State for the value of factors A and/or B in the formula for determining 2015 Nominal Ticket Sales in paragraph 3 of Schedule 5.4 (Regulation of Fares Basket Values) to be adjusted to take account of such changes, such that:

(a) the value of factor A is re calculated by using the Gross Revenue in respect of the sales of the relevant Fares for the most recently completed period of twelve (12) months ending 31 March; and/or

(b) the value of factor B is recalculated by using the Price or Child Price (as the case may be) of the relevant Fares recorded by RSP in the month of February during such period.

2.2 The Secretary of State shall act reasonably in relation to any such application but shall not under any circumstances be obliged to accept any such application in whole or in part. The Secretary of State shall be entitled to impose conditions upon any such acceptance, including conditions requiring that the value of both factors A and B are adjusted and/or are adjusted in respect of any or all Fares in the relevant Fares Basket.

3. Changes to the Reference Revenue, Gross Revenue, 2015 Nominal Ticket Sales and/or 2015 Ticket Revenue

3.1 The Secretary of State may, by notice in writing served on the Franchisee no later than the date of commencement of any Fares Setting Round, require:

(a) the Reference Revenue of any Fares Basket to be calculated by reference to a different reference period for the purpose of paragraph 2 of Schedule 5.3 (Allocation of Fares to Fares Baskets) than the period of twelve (12) months ended 31 March 2015; and/or

(b) the Gross Revenue of all Commuter Fares and Protected Fares to be re calculated for the purpose of paragraph 2 of Schedule 5.3 (Allocation of Fares to Fares Baskets) by reference to a different reference period than the period of twelve (12) months ended 31 March 2015; and/or

(c) the value of factor A in the formula for determining the 2015 Nominal Ticket Sales in paragraph 3 of Schedule 5.4 (Regulation of Fares Basket Values) to be re calculated in respect of any Fare by reference to a different reference period than the period of twelve (12) months ended 31 March 2015; and/or

(d) the value of factor B in the formula for determining the 2015 Nominal Ticket Sales in paragraph 3 of Schedule 5.4 (Regulation of Fares Basket Values) to be re calculated in respect of any Fare by reference to a different reference date other than February 2015; and/or

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(e) the 2015 Ticket Revenue in respect of any Fares Basket to be re calculated for the purpose of paragraph 4 of Schedule 5.4 (Regulation of Fares Basket Values) by reference to a different reference period than the period of twelve (12) months ended 31 March 2015.

3.2 Where, in accordance with paragraph 3.1(e), the 2015 Ticket Revenue in respect of any Fares Basket is re calculated by reference to a different reference period, the value of **"PPAI"** in paragraph 4 of Schedule 5.4 (Regulation of Fares Basket Values) shall be determined solely by reference to the product of the Permitted Aggregate Increase for each Fare Year beginning after the end of such reference period.

3.3 Any revision pursuant to paragraph 3.1 or 3.2 shall take effect upon commencement of the next Fare Year to commence after the Fares Setting Round referred to in paragraph 3.1.

4. **Changes to Prices**

The Franchisee may request permission from the Secretary of State from time to time to increase any Prices or Child Prices beyond the levels permitted under Schedule 5.4 (Regulation of Fares Basket Values) and Schedule 5.5 (Regulation of Individual Fares) in connection with any proposed or actual improvement in any aspect of the Passenger Services relating to such Fares. The Secretary of State shall act reasonably in relation to any such request but shall not under any circumstances be obliged to accept any such request in whole or in part.

5. **Changes to Fares Regulation**

The Parties agree that the Secretary of State shall have the power at any time and on more than one occasion during the Franchise Term to alter the obligations of, and restrictions on, the Franchisee under Schedule 5.1 (Purpose, Structure and Construction) to Schedule 5.8 (Fares Regulation Information and Monitoring) inclusive for any Fare Year, or part thereof (including alteration of the value of **"k"** under paragraph 4.2 of Schedule 5.4 (Regulation of Fares Basket Values) and/or paragraph 2.2 of Schedule 5.5 (Regulation of Individual Fares) and/or alteration of the value of **"f"** under paragraph 2.2 of Schedule 5.5 (Regulation of Individual Fares)). The exercise by the Secretary of State of his powers under this paragraph 5 shall be a Change.

6. **Changes to Compulsory Inter available Flows**

6.1 Where:

(a) pursuant to 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 his consent to the abolition of the Reference Flow, by written notice to the Franchisee, require any Fare Created in respect of the Equivalent Flow which has substantially the same

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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 and Child Price of any Equivalent Fare in the first Fare Year in which it is to be introduced shall be no greater than the maximum permitted Price or Child Price in that Fare Year of the relevant Reference Fare, as if such Reference Fare had not been abolished.

7. **Change of Lead Operator / Major Flow Operator**

7.1 The Franchisee shall not without the Secretary of State's prior approval, agree to any request under the Ticketing and Settlement Agreement that it cease to be Lead Operator in respect of any Flow.

7.2 The Franchisee shall inform the Secretary of State if it becomes the Lead Operator in respect of any Flow. Upon the Franchisee becoming the Lead Operator in respect of any Flow, the Secretary of State may without limiting paragraph 3, exercise his rights pursuant to paragraph 3 in relation to the relevant Fares Basket.

7.3 The Franchisee shall inform the Secretary of State if it ceases to be a Major Flow Operator in respect of any Flow.

8. **Changes to Fares Documents**

8.1 Following:

(a) any allocation of Fares to any Fares Basket pursuant to Schedule 5.3 (Allocation of Fares to Fares Baskets); or

(b) any subsequent adjustment thereof pursuant to this Schedule 5.7,

the Secretary of State shall set out in the Commuter Fares Document and/or the Protected Fares Document (as the case may be) all Fares then included in the relevant Fares Basket and, as soon as reasonably practicable thereafter, the Secretary of State shall issue or reissue (as the case may be) such Fares Document(s) to the Franchisee.

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SCHEDULE 5.8

Fares Regulation Information and Monitoring

1. Information

1.1 The Franchisee shall provide to the Secretary of State by no later than week twelve (12) of each Fares Setting Round, a summary (to such level of detail or generality as the Secretary of State may reasonably require) of the Prices and Child Prices of the Commuter Fares or Protected Fares it is intending to set.

1.2 The Franchisee shall notify, or procure the notification to, the Secretary of State of any proposed increase to the Price or Child Price of any Commuter Fare or any Protected Fare and shall provide such details of any such proposal at such times (including before and during each Fares Setting Round) and in such form (including by electronic data transfer) as the Secretary of State may reasonably request from time to time.

1.3 The Franchisee shall make available, or procure that RSP makes available, to the Secretary of State, for any Fares Setting Round during the Franchise Term, such details (including the proposed Prices or Child Prices) of the Initial Permanent Fare of any Commuter Fare or Protected Fare for each such Fares Setting Round as the Secretary of State may reasonably request from time to time.

2. Monitoring

2.1 The Franchisee shall provide to the Secretary of State:

(a) such access as the Secretary of State may require to information pertaining to the Prices or Child Prices of Commuter Fares and Protected Fares from time to time; and

(b) such further information as the Secretary of State may require for the purpose of determining the Gross Revenue of the Franchisee in relation to any particular Fare or Fares or any particular period.

2.2 By no later than week seventeen (17) of each Fares Setting Round, the Franchisee will provide to the Secretary of State written confirmation from a statutory director of the Franchisee of whether the Franchisee has complied with its obligations under this Schedule 5 (Fares) during each such Fares Setting Round. It shall be a contravention of the Franchise Agreement if any such written confirmation from a statutory director of the Franchisee is, in the reasonable opinion of the Secretary of State, in any material respect, untrue, inaccurate and/or misleading.

2.3 The Franchisee shall take such action as the Secretary of State may require following receipt of any details from the Franchisee pursuant to paragraph 1 in order to ensure that the Franchisee will comply with the provisions of Schedule 5.2 (Franchisee's Obligation to Create Fares) to this Schedule 5.8 (inclusive).

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SCHEDULE 5.9

Smart Ticketing

1. Smart Ticketing

1.1 The Franchisee shall:

(a) join and comply with any ATOC approved smart ticketing related schemes relevant to some or all of the Passenger Services;

(b) develop an approach to the use of smart ticketing to facilitate the roll out of more flexible ticket types and demand management over time;

(c) co-operate with Network Rail, the Crossrail Operator, TfL, other Train Operators and relevant local authorities in relation to the provision of smart ticketing equipment; and

(d) co-operate with the Crossrail Operator, TfL, other Train Operators and relevant local authorities in relation to proposals to:

(i) introduce new multi-modal fare schemes; and

(ii) convert any multi-modal fare schemes to use smart ticketing.

1.2 In relation to any ITSO Certified Smartmedia ticketing scheme, the Franchisee shall ensure that (on introduction or inheritance of such a scheme):

(a) The Franchisee continues to provide, make available and promote (and where applicable effectively maintain) such a scheme (including any associated infrastructure) for the duration of the franchise; and

(b) all scheme components (and any amendment, extension or replacement thereof) inherited, used or introduced by the Franchisee (whether on a permanent or a trial basis) are at all times compliant with:

(i) version 2.1.4 of the ITSO specification and the ITSO operating licence;

(ii) version 02-00 of RSPS3002; and

(iii) the South East Flexible Ticketing (SEFT) Programme WebTIS Requirements Specification v1.0.,

or such subsequent versions as the Franchisee and the Secretary of State may agree; and

(c) further to paragraph 1.2(b) above, any ITSO Certified Smartmedia readers introduced by the Franchisee (whether on a permanent or temporary basis) shall conform to EMV level 1 certification (hardware) and be capable of being upgraded whilst in operation to EMV level 2 (application); and

(d) the Franchisee is responsible for all costs of participating in the smart ticketing scheme including maintaining all required scheme components to the standards specified in this Schedule 5.9;

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(e) where the Train Operator under the Previous Franchise Agreement had joined and complied with any ATOC approved smart ticketing related schemes, the Franchisee takes such action as may be required in order to facilitate continuity and the orderly handover of such inherited scheme to the Franchisee and continues to make use of the central RSP managed service contracts for the remainder of the Franchise Period.

1.3 On or before the Start Date and at the direction of the Secretary of State, the Franchisee shall enter into the SEFT Deed with the Secretary of State which shall be supplemental to the Franchise Agreement and be construed together with the Franchise Agreement provided that the Franchisee agrees and acknowledges that no act, omission or waiver by the Secretary of State under the terms of the SEFT Deed shall relieve the Franchisee of its obligation to comply with the provisions of this Schedule 5.9.

1.4 The Franchisee shall ensure that by a date which is three (3) calendar years after the Franchise Start Date, at least ninety five per cent (95%) of all journeys made by passengers using any season ticket issued by the Franchisee, including but not limited to Annual Season Tickets, Quarterly Season Tickets, Monthly Season Tickets and Weekly Season Tickets, where such journeys are between any SEFT Station and any other SEFT Station, or between any SEFT Station and the PAYG Zone and Stations therein, are made using ITSO-Certified Smartmedia.

1.5 Where the Franchisee reasonably considers that it cannot achieve the requirements of paragraph 1.4 due to any delay by the Secretary of State under the terms of the SEFT Deed, the Franchisee shall notify the Secretary of State of such together with a detailed explanation.

1.6 Without prejudice to its obligations elsewhere in this Schedule, the Franchisee shall also undertake such further actions as the Secretary of State may reasonably require in connection with the introduction of smart ticketing on the network.

1.7 The Secretary of State will reimburse the reasonable costs incurred by the Franchisee in complying with any such requirement issued pursuant to paragraph 1.6 above provided that:

(a) prior to incurring such costs, the Franchisee has obtained the Secretary of State's approval of the same; and

(b) the Franchisee has not already recovered (or is able to recover) such costs through any Franchise Payment, pursuant to any SEFT Deed and/or pursuant to any other provision of this Agreement or otherwise.

1.8 The Franchisee will co-operate with TfL, the Secretary of State, the Crossrail Operator and relevant Train Operators in making such reasonable changes to joint ticketing products as are reasonably required to permit TfL to generate sufficient additional revenue to meet the IOP operating and maintenance costs as set out in the IOP Agreement subject to :

(a) TfL meeting the Franchisee's reasonable and demonstrable costs as agreed in advance by the Secretary of State that are directly associated with the changes to such joint ticketing products;

(b) any necessary changes to, or derogations from, fares regulation being granted by the Secretary of State; and

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(c) the Franchisee not being obliged to make any payment or transfer of revenue to TfL to cover TfL's IOP operating and maintenance costs as defined in the scope of the IOP Agreement, except in the case of a change where the Franchisee has agreed to pay for all or part of TfL's operating and maintenance costs associated with that change.

2. **Delayed Equipment**

2.1 Where:

(a) any of the ITSO Equipment is not transferred to the Franchisee pursuant to the Start Date Transfer Scheme;

(b) installation of any of the ITSO Equipment has not been completed by the Franchisee or by a Train Operator pursuant to the terms of the Previous Franchise Agreement or Previous SEFT Deed (as appropriate); and/or

(c) any ITSO Equipment transferred to the Franchisee pursuant to the Start Date Transfer Scheme:

(i) is not capable of operation at a level required to meet the relevant service level requirements applicable to that such ITSO Equipment; and

(ii) the Secretary of State has not required the the ITSO Equipment procured and installed pursuant to the Previous Franchise Agreement or Previous SEFT Deed (as appropriate) to be reprocured and upgraded in order to meet the relevant service level requirements applicable to such ITSO Equipment,

the Secretary of State may, having consulted with the Franchisee, notify the Franchisee that it shall make an adjustment to the Franchise Payment in accordance with paragraph 2.2 to reflect the savings in operating costs reasonably able to be made by the Franchisee as a result of any delay or failure to transfer, install or make capable of operation at the relevant service level requirements of such ITSO Equipment (the "**SEFT Opex Saving**").

2.2 The Secretary of State shall determine the SEFT Opex Saving acting reasonably and taking into account the values set out in the following rows of the Financial Model:

(a) *[Bidder to populate relevant row references from the Financial Model which capture the cost of operating and maintain the ITSO Equipment]*[55]

(b) any other row of the Financial Model which is reasonably relevant to determine the SEFT Opex Saving;

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55 **Note to Bidder** - this will need to capture all relevant operational, maintenance, contracts and staffing costs that will not be incurred if all the ITSO Equipment is not installed by the Start Date.

and the Secretary of State shall be entitled to make an adjustment to the Franchise Payments to reflect the SEFT Opex Saving as:

(c) a lump sum deduction to the Franchise Payment;

(d) an adjustment to the Franchise Payment on a per Reporting Period basis,

(e) a mixture of the above options,

the ("**SEFT Equipment Opex Adjustment"**).

3. **Platform Validators**

3.1 Where in any given Reporting Period commencing on or after 1 April 2017 and before the end of the Franchise Period the installation of any Platform Validators has not been "Accepted" pursuant to the terms of the SEFT Deed**,** the Platform Validator Adjustment (PVA) to be made in respect of any Reporting Period shall be determined in accordance with the following formula:

PVA = NIP x (MPA x RPI)

where:

NIP means the number of Platform Validators where installation of such Platform Validators has not yet been "Accepted" pursuant to the terms of the SEFT Deed by the first day of such Reporting Period;

MPA means £[308]/13 which represents the sum assumed by the Franchisee as being payable for the operation and maintenance of each such Platform Validators per Reporting Period; and

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

3.2 Where in any given Reporting Period commencing on or after 1 April 2017 and before the end of the Franchise Period, the installation of any Platform Validators has been "Accepted" pursuant to the terms of the SEFT Deed and the value of MPA x RPI is greater than the value of APA, the Platform Validator Savings Adjustment (PVSA) to be made in respect of any Reporting Period shall be determined in accordance with the following formula:

PVSA = IP x ((MPA x RPI) - APA)

where:

APA means the mean actual amount payable by the Franchisee in the Reporting Period in respect of operation and maintenance of each Platform Validator which has been Accepted;

MPA means £[308]/13 which represents the sum assumed by the Franchisee as being payable for the operation and maintenance of such Platform Validator per Reporting Period;

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IP means the number of Platform Validators which have been "Accepted" pursuant to the terms of the SEFT Deed by the first day of such Reporting Period; and

RPI shall have the meaning given to it in Appendix 1 (Annual Franchise Payments) to Schedule 8.1 (Franchise Payments).

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SCHEDULE 6

Franchise Specific Obligations and Committed Obligations

Schedule 6.1:	Franchise Specific Obligations
Schedule 6.2:	Committed Obligations
	Part 1: Committed Obligations
	Part 2: Special Terms related to Committed Obligations

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SCHEDULE 6.1

Franchise Specific Obligations

1. Crossrail

1.1 The Franchisee shall fully and effectively co-operate with the Secretary of State in connection with the operation of the Crossrail Services by the Crossrail Operator (including, without limitation, the letting of a concession or franchise agreement). Accordingly if so requested by the Secretary of State the Franchisee shall:

(a) provide the Secretary of State (or any of his advisers, employees, representatives, nominees or agents) with such information, reports and analysis as the Secretary of State (or any of his advisers, employees, representatives, nominees or agents) may require. This may include without limitation:

(i) upon reasonable notice, attending meetings with the Secretary of State (or any of his advisers, employees, representatives, nominees or agents) in relation to the operation of the Crossrail Services by the Crossrail Operator;

(ii) reviewing and commenting on the implementation of timetables and programmes relating to the operation of the Crossrail Services by the Crossrail Operator; and/or

(iii) any other relevant information as the Secretary of State (or any of his advisers, employees, representatives, nominees or agents) may specify from time to time.

1.2 The Franchisee shall comply with the reasonable requirements of the Secretary of State in relation to:

(a) the operation of the Crossrail Services by the Crossrail Operator; and

(b) the implementation of all aspects of the Crossrail Programme (including through co-operation with Network Rail, the Crossrail Operator, Crossrail Limited and TfL as directed by the Secretary of State) where such implementation involves an interface with any railway infrastructure used in relation to the Franchise Services or is otherwise related to the Franchise Services.

The Franchisee's obligations pursuant to this paragraph 1.2 shall include:

(i) upon reasonable notice, attending meetings with the Secretary of State, TfL, Network Rail, the Crossrail Operator and other relevant bodies specified by the Secretary of State to discuss and provide an opinion on any relevant issues;

(ii) providing information, data, reports and analysis reasonably required by the Secretary of State in relation to assessing the implications of the commencement of the operation of Crossrail Services by the Crossrail Operator or relevant aspects of the implementation of the Crossrail Programme including the transfer of the Crossrail Stations; and

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(iii) reviewing and commenting on implementation timetables and programmes for the commencement of the operation of the Crossrail Services by the Crossrail Operator, the transfer of the Crossrail Stations or relevant aspects of the implementation of the Crossrail Programme.

1.3 The Franchisee shall participate fully and actively in good faith as a skilled and experienced train operator in risk reviews initiated by the Secretary of State or (if directed by the Secretary of State) TfL relating to the implementation of the Crossrail Programme. The Franchisee shall develop risk mitigation plans as reasonably required by the Secretary of State pursuant to such risk reviews.

1.4 The Franchisee:

(a) shall comply with the depot access agreement for Ilford Depot to provide (i) stabling, external cleaning and maintenance of the Crossrail Fleet and (ii) to provide stabling and external cleaning for the Replacement Crossrail Fleet; and

(b) shall comply with the agreement in respect of the maintenance shed at Ilford Depot relating to maintenance of the Crossrail Fleet and external cleaning of Class 315 units operated by the Crossrail Operator.

1.5 The Franchisee shall:

(a) [fully and effectively co-operate with Network Rail for the purposes of facilitating the efficient achievement of the enhancement and rebuilding programme at all relevant stations served by the Passenger Services and affected by the Crossrail Programme (including the Crossrail Stations, Liverpool Street and Shenfield) in accordance with the timescales for the Crossrail Programme as they might be varied from time to time and act reasonably in relation to station change and network change processes including through reasonable co-operation with TfL or Rail for London][56];

(b) fully and effectively co-operate with the Secretary of State, TfL, Network Rail, Rail for London, the Crossrail Operator and other relevant bodies specified by the Secretary of State for the purpose of developing and implementing plans for the enhancement and rebuilding of relevant stations served by the Passenger Services in connection with the Crossrail Programme;

(c) in connection with the installation and maintenance of certain equipment at Shenfield station for the purposes of the operation of the Crossrail Services (including in relation to driver only operation), grant reasonable access to such station to Network Rail, TfL, Rail for London or the Crossrail Operator and co-operate in relation to such installation and maintenance.

(d) retail and load both ITSO and Oyster products (following the conclusion of relevant negotiations in relation to "contactless technology" and in any

[56] **Note to Bidders:** DfT to confirm.

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case by the date such technology is introduced onto the Franchise) support the agreement proposed to be entered into in relation to such contactless technology;

(e) take no actions or steps which is or are designed, directly or indirectly to prevent, prejudice, or frustrate:

(i) the letting of a franchise agreement or concession agreement in relation to the operation of the Crossrail Services; or

(ii) the implementation of the Crossrail Programme;

(f) fully and effectively co-operate with the Crossrail Operator in relation to train planning, timetabling and platforming arrangements for the purpose of ensuring the efficient operation of passenger services by the Crossrail Operator;

(g) to continue to provide, on the same or similar terms as the previous Franchisee:

(i) accommodation for carriage cleaners (turnaround and overnight stabling) at Shenfield;

(ii) shared use of train crew facilities at Ilford;

(iii) the provision of platform dispatch staff at Liverpool Street (Main Level); and

to the extent reasonably required by the Crossrail Operator;

(h) fully and effectively co-operate with the Crossrail Operator to optimise the maintenance programme for the Crossrail Fleet and other rolling stock fleets which interwork with the Crossrail Fleet to minimise the impact of any heavy maintenance programme or out of course stoppage of units on either the Passenger Services or the Crossrail Services; and

(i) fully and effectively co-operate with the Crossrail Operator from the Start Date for the purpose of ensuring the passengers using trains operated by the Crossrail Operator receive throughout the Franchise Term a consistently high level of customer service and experience at Shenfield and accordingly the Franchisee shall make Franchise Employees engaged in customer facing activities at Shenfield stations available for training and briefing in common customer service and experience standards specified by the Crossrail Operator, subject to the Franchisee being compensated by the Crossrail Operator for the reasonable costs associated with such training.

1.6 The Secretary of State shall have the right to notify the Franchisee that specified rights of the Secretary of State pursuant to this paragraph 1 shall be exercisable by TfL on his behalf and the Franchisee shall be required to act and perform its obligations accordingly. In the event such notification has been given and the Franchisee believes that:

(a) there is any conflict between instructions received from TfL and instructions received from the Secretary of State; or

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(b) instructions received from TfL are inconsistent with the terms of this Agreement,

the Franchisee shall notify the Secretary of State forthwith identifying the conflict or inconsistency. The Franchisee shall act in accordance with instructions received from the Secretary of State in relation to any such matter. The Franchisee shall not be liable for any failure to act in accordance with the instructions of TfL where such a conflict or inconsistency is established to the extent that such failure was a consequence of such conflict or inconsistency.

2. New Stations

2.1 The Franchisee from the Start Date until the completion of any Specified Project co-operate in good faith with all relevant parties responsible for the delivery of such Specified Project with the intention of assisting its timely, efficient and cost effective completion.

2.2 To the extent that the development of a Specified Project leads to the Franchisee having rights under railway industry procedures including Network Change or Station Change the Franchisee shall not act in a way designed to directly or indirectly prevent, prejudice or frustrate the delivery of such new station shall not unreasonably raise any objection under any railway industry procedure including Network Change or Station Change.

2.3 The Franchisee shall provide such information in respect of any Specified Project as the Secretary of State may reasonably request from time to time.

2.4 If new stations at Cambridge North (Chesterton), Meridian Water (Angel Road) and Lea Bridge are completed before the Expiry Date, the Franchisee shall:

(a) make provision for the Passenger Services to stop at such new stations; and

(b) if so required by the Secretary of State:

(i) surrender the Station Lease for Meridian Water (Angel Road) Station;

(ii) enter into a Station Lease in respect of each such new station,

both in such forms to be approved by the Secretary of State (and the Secretary of State may require that such Station Leases contain full repairing and insuring obligations in respect of such stations and a duration specified by the Secretary of State).

3. HS2 Spoil Train

3.1 The Franchisee shall use reasonable endeavours to co-operate with Network Rail and relevant freight and passenger service operators to enable one (1) "spoil train" to be able to run in each direction on the Great Eastern Main Line in the Off Peak each day during Weekdays, when required, in relation to the HS2 Project.

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SCHEDULE 6.2

Committed Obligations

Part 1 - COMMITTED OBLIGATIONS

[**Note to Bidders:** This Part will specify the terms of the Committed Obligations and the dates by which the Committed Obligations must be performed. For any Specimen Scheme, this will also include the applicable expenditure commitment and the output intended to be delivered by the Specimen Scheme. Where the DfT wishes to contractualise initiatives in the bid as Committed Obligations, the DfT will provide bidders with drafting which reflects such requirements.][57]

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[57] **Note to Bidders:** To be populated by the DfT based on the Committed Obligations set out in the Bidder's Schedule of Committed Obligations in accordance with the ITT.

SCHEDULE 6.2

Part 2 - SPECIAL TERMS RELATED TO COMMITTED OBLIGATIONS

1. Continuation of Availability

1.1 The Franchisee shall maintain facilities or activities or other matters established in accordance with its Committed Obligations throughout the remainder of the Franchise Term, regardless of whether or not such Committed Obligation specifically provides for the Franchisee to maintain throughout the Franchise Term the facilities, activities or other matters established in accordance with such Committed Obligation, unless such Committed Obligation expressly provides for the cessation of such maintenance at an earlier date.

1.2 The Franchisee shall be treated as maintaining the relevant facilities, activities or other matters which are the subject of the Committed Obligations notwithstanding temporary non-availability due to accidental damage or vandalism or maintenance, repair or replacement activities, or temporary staff absence, subject in each case to the Franchisee taking all reasonable steps to keep any such period of temporary non-availability to a minimum.

1.3 Where Part 1 to Schedule 6.2 (Committed Obligations) includes a commitment regarding staffing or particular appointments the Franchisee plans to make:

(a) the obligation of the Franchisee shall not be regarded as being contravened by:

(i) temporary absences (for example for sickness or holiday); or

(ii) temporary non-fulfilment of a relevant post whilst the Franchisee is recruiting for that post, subject to the Franchisee using all reasonable endeavours to keep the duration between appointments as short as reasonably practicable; and

(b) the Franchisee's rights and obligations in relation to the numbers or deployment of its other staff remain unaffected.

2. Expenditure Commitments

Annual Expenditure

2.1 Where Part 1 to Schedule 6.2 (Committed Obligations) provides for the expenditure of an annual amount (or an amount over some other period) by the Franchisee, that amount:

(a) is assessed net of Value Added Tax; and

(b) is the amount required to be expended by the Franchisee itself or procured by the Franchisee to be expended.

Expenditure Commitments in real amounts

2.2 All expenditure commitments set out in Part 1 to Schedule 6.2 (Committed Obligations), to the extent they have not already been incurred by the Franchisee, shall be indexed by the Retail Prices Index (in the same way as variable costs are indexed in Appendix 1 to Schedule 8.1 (Franchise Payments)).

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Expenditure by Network Rail

2.3 All amounts which the Franchisee has committed (whether unconditionally or otherwise) pursuant to Part 1 to Schedule 6.2 (Committed Obligations) to expend in connection with improvements to track or Stations shall be in addition to any expenditure made by Network Rail as part of its infrastructure improvements or maintenance programme to the extent such expenditure is not directly funded or reimbursed by the Franchisee.

Underspend

2.4 Where in relation to any Committed Obligation that is expressed in terms of a requirement to spend not less than a specified sum in fulfilling its stated objective, the Franchisee is able to achieve that stated objective without incurring the full amount referred to in that Committed Obligation, whether because of cost savings or otherwise, the Franchisee shall notify the Secretary of State, together with a statement of the costs it has incurred (excluding any third party funding) in delivering the relevant obligations and a reconciliation against the amount it had committed to spend (excluding any third party funding) (**"Underspend"**).

2.5 The Parties shall, acting reasonably, seek to agree an alternative scheme or schemes which would give rise to benefits to passengers using the Passenger Services to be funded using the Underspend and, once agreed, the Franchisee shall apply such Underspend in the delivery of the agreed scheme(s). In circumstances only where, despite having used reasonable endeavours the Parties fail to agree an alternative scheme in relation to which the Underspend will be applied, such Underspend shall be repaid to the Secretary of State as soon as reasonably practicable.

3. **Liaison and Co-Operation**

Where the Franchisee is committed to liaison and co-operation under Part 1 to Schedule 6.2 (Committed Obligations), it shall participate actively in the relevant measures including through the application of management time and internal resources, correspondence and attendance at meetings, in each case as the Franchisee reasonably considers in all the circumstances to be an appropriate use of its resources and effective to help achieve the relevant objective.

4. **Nature of Commitment**

4.1 Any commitment in terms of Part 1 to Schedule 6.2 (Committed Obligations) shall be in addition to any obligation of the Franchisee elsewhere in this Agreement and nothing in this Schedule 6.2 (Committed Obligations) shall limit or restrict an obligation imposed on the Franchisee elsewhere in this Agreement.

4.2 Save as expressly provided in Part 1 to Schedule 6.2 (Committed Obligations), each Committed Obligation is a separate obligation from any other Committed Obligation and satisfaction of or steps taken towards the satisfaction of one Committed Obligation will not amount to or contribute towards satisfaction of any other Committed Obligation.

4.3 Where in Part 1 to Schedule 6.2 (Committed Obligations), references are made to particular manufacturers or suppliers of equipment or services, the Franchisee may fulfil its relevant commitment by using reasonable equivalents.

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4.4 Each commitment under this Schedule 6.2 (Committed Obligations) shall come to an end on expiry of the Franchise Term for whatever reason.

5. Review of Compliance

5.1 Progress with Committed Obligations shall be considered and discussed at Franchise Performance Meetings and the Franchisee shall ensure that progress with regard to Committed Obligations is included in Periodic Update Reports provided in accordance with paragraph 8 of Schedule 11.2 (Management Information).

5.2 In addition to its obligation under paragraph 5.1, the Franchisee shall from time to time promptly provide such evidence of its compliance with any Committed Obligation as the Secretary of State may reasonably request.

6. Remedy for Late Completion or Non-Delivery of Committed Obligations

If the Franchisee fails to deliver in full a Committed Obligation in accordance with and by the timeframe specified for its delivery in Schedule 6.2 (Committed Obligations), such late, partial or non-delivery shall constitute a contravention of the Franchise Agreement.

7. Specimen Schemes

7.1 The Franchisee may propose to undertake an Alternative Scheme in place of a Specimen Scheme. Any such Alternative Scheme must:

(a) be intended to deliver as a minimum the relevant Specimen Scheme Output;

(b) require the Franchisee to incur expenditure of no less than the expenditure which the Franchisee is committed to incur in relation to the relevant Specimen Scheme; and

(c) deliver at least an equivalent level of benefits (whether to passengers, the Secretary of State, the wider rail industry or otherwise) as the Specimen Scheme.

7.2 If the Franchisee wishes to propose an Alternative Scheme, the Franchisee will provide the Secretary of State with such details of the Alternative Scheme as the Secretary of State may reasonably require.

7.3 If the Secretary of State approves (such approval not to be unreasonably withheld or delayed) such Alternative Scheme then it shall replace the relevant Specimen Scheme and Part 1 to Schedule 6.2 (Committed Obligations) shall be amended accordingly.

7.4 For the avoidance of doubt, if the Franchisee does not propose or the Secretary of State does not approve an Alternative Scheme then the Franchisee shall remain obliged to deliver the relevant Specimen Scheme in accordance with Part 1 to Schedule 6.2 (Committed Obligations).

8. Third Party Consents, Agreement and Conditions

8.1 Where, in delivering a Committed Obligation, the Franchisee is required to obtain one or more consents or satisfy one or more conditions, the Franchisee shall use

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all reasonable endeavours to obtain such consents and/or satisfy such conditions within such timescales as would enable the Franchisee to deliver such Committed Obligation by the delivery date specified in respect of such Committed Obligation. If the Franchisee is unable to satisfy the relevant condition and/or obtain the relevant consent or the proposed terms upon which the relevant consent would be granted would, in the reasonable opinion of the Franchisee, be likely to prejudice the financial and/or commercial viability of delivering the Committed Obligation, the Franchisee may apply to the Secretary of State for the approval referred to in paragraph 8.3.

8.2 For the purposes of this paragraph 8, the expression **"consent"** shall mean those approvals, authorisations, consents, derogations, exemptions, licences, permissions, and registrations which are required by Law or any contract to which the Franchisee is a party, to be obtained by the Franchisee in connection with the delivery of a Committed Obligation.

8.3 The Secretary of State's approval for the purposes of this paragraph 9 is his approval for the Franchisee to modify the relevant Committed Obligation so as to deliver a scheme which would give rise to benefits to passengers using the Passenger Services similar to (but not necessarily the same as) those benefits which would have arisen if the Franchisee delivered the relevant Committed Obligation. The modifications to the relevant Committed Obligation shall be agreed between the Franchisee and the Secretary of State or failing such agreement shall be reasonably determined by the Secretary of State. The approval of the Secretary of State may not be unreasonably withheld.

8.4 If the Secretary of State gives his approval pursuant to this paragraph 8 in respect of a Committed Obligation, then to the extent that the Franchisee delivers the modified Committed Obligation by the date agreed between the Franchisee and the Secretary of State, or failing such agreement by the date reasonably determined by the Secretary of State, the Franchisee shall not be in breach of the Franchise Agreement.

9. **Definition of "all reasonable endeavours" or "reasonable endeavours"**

Where in respect of any Committed Obligation the Franchisee is obliged to use **"all reasonable endeavours"** or **"reasonable endeavours"** to do or procure that something is done by a specified date then, without prejudice to any other rights the Secretary of State may have (whether under the Franchise Agreement or otherwise) in respect of any contravention of the Franchise Agreement if the same is not achieved by such specified date the Franchisee shall consult with the Secretary of State and if required by the Secretary of State shall continue to use all reasonable endeavours or reasonable endeavours (as applicable) to do or procure that the relevant thing is done as soon as reasonably practicable thereafter.

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SCHEDULE 6.3

NOT USED

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SCHEDULE 7

Performance Benchmarks

Schedule 7.1:	Performance Benchmarks
	Appendix 1: Cancellations Benchmarks and Annual Cancellations Benchmarks
	Appendix 2: TOC Minute Delay Benchmarks and Annual TOC Minute Delay Benchmarks
	Appendix 3: Short Formation Benchmark and Annual Short Formation Benchmark Table
Schedule 7.2:	National Rail Passenger Surveys, Customer Report and CCIF Scheme
Schedule 7.3	Customer Experience Performance

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SCHEDULE 7.1

Performance Benchmarks

1. Definitions, Formula Definitions and Location and amendment of Benchmarks and Annual Benchmarks

1.1 For the purposes of this Schedule 7.1 (Performance Benchmarks) only, the following words and expressions shall have following meanings:

"Actual CaSL Performance Level" means, in respect of a Franchisee Year, the CaSL Figures most recently published by Network Rail for that Franchisee Year in relation to the Franchisee provided that where a Franchisee Year is shorter than thirteen (13) Reporting Periods then the Actual CaSL Performance Level for that Franchisee Year shall be as determined pursuant to paragraph 21.1 (a) of this Schedule 7.1 (Performance Benchmarks);

"Actual PPM Performance Level" means, in respect of a Franchisee Year, the PPM Figures most recently published by Network Rail for that Franchisee Year in relation to the Franchisee provided that where a Franchisee Year is shorter than thirteen (13) Reporting Periods then the Actual PPM Performance Level for that Franchisee Year shall be as determined pursuant to paragraph 21.1(b) of this Schedule 7.1 (Performance Benchmarks);

"Annual Benchmark Table" means, in relation to:

(a) any Annual Cancellations Benchmark, the Annual Cancellations Benchmark Table;

(b) any Annual TOC Minute Delay Benchmark, the Annual TOC Minute Delay Benchmark Table; and

(c) any Annual Short Formation Benchmark, the Annual Short Formation Benchmark Table;

"Annual Cancellations Benchmark Table" means the table set out in Part 2 (Annual Cancellations Benchmark Table) of Appendix 1 (Cancellations Benchmarks and Annual Cancellations Benchmarks) of Schedule 7.1 (Performance Benchmarks);

"Annual Cancellations Payment Table" means the table set out in Part 3 (Annual Cancellations Payment Table) of Appendix 1 (Cancellations Benchmarks and Annual Cancellations Benchmarks) of Schedule 7.1

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(Performance Benchmarks);

"Annual Cap Performance Level" means, in relation to an Annual Cancellations Benchmark or an Annual TOC Minute Delay Benchmark (as the case may be) for any Franchisee Year, the number set out in Column 2 (Annual Cap Performance Level) of the Annual Cancellations Benchmark Table or the number set out in Column 2 (Annual Cap Performance Level) of the Annual TOC Minute Delay Benchmark Table (as the case maybe);

"Annual CaSL Target Performance Level" means, in respect of a Franchisee Year, the number set out in Column 5 (Annual CaSL Target Performance Level) of the Annual Cancellations Benchmark Table and in the row in that table for that Franchisee Year provided that where a Franchisee Year is shorter than thirteen (13) Reporting Periods then the Annual CaSL Target Performance Level for that Franchisee Year shall be as determined pursuant to paragraph 20.1(d) of Schedule 7.1 (Performance Benchmarks);

"Annual Floor Performance Level" means, in relation to:

(a) an Annual Cancellations Benchmark or an Annual TOC Minute Delay Benchmark (as the case may be) for any Franchisee Year, the number set out in Column 4 (Annual Floor Performance Level) of the Annual Cancellations Benchmark Table or the number set out in Column 4 (Annual Floor Performance Level) of the Annual TOC Minute Delay Benchmark Table (as the case maybe) for that Franchisee Year; and

(b) an Annual Short Formation Benchmark for any Franchisee Year, the number set out in Column 4 (Annual Floor Performance Level) of the Annual Short Formation Benchmark Table for that Franchisee Year;

"Annual Intermediate Performance Level" means, in relation to the Annual Short Formation Benchmark for any Franchisee Year, the number set out in Column 3 (Annual Intermediate Performance Level) of the Annual Short Formation Benchmark Table and in the row of that table for that Franchisee Year;

"Annual PPM Target Performance means, in respect of a Franchisee Year, the number set out in Column 5 (Annual PPM

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Level"	Target Performance Level) of the Annual TOC Minute Delay Benchmark Table and in the row of that table for that Franchisee Year provided that where a Franchisee Year is shorter than thirteen (13) Reporting Periods then the Annual PPM Target Performance Level for that Franchisee Year shall be as determined pursuant to paragraph 20.1(e) of Schedule 7.1 (Performance Benchmarks);
"Annual Short Formation Benchmark"	means, for each Franchisee Year, each of the benchmarks specified in the Annual Short Formation Benchmark Table for that Franchisee Year provided that where a Franchisee Year is shorter than thirteen (13) Reporting Periods then the Annual Short Formation Benchmark for that Franchisee Year shall be as determined pursuant to paragraph 20.1(c) of Schedule 7.1 (Performance Benchmarks);
"Annual Short Formation Benchmark Table"	means the table set out in Part 2 (Annual Short Formation Benchmark Table) of Appendix 3 (Short Formation Benchmark and Annual Short Formation Benchmark Table) of Schedule 7.1 (Performance Benchmarks);
"Annual Short Formation Payment Table"	means the table set out in Part 3 (Annual Short Formation Payment Table) of Appendix 3 (Short Formation Benchmark and Annual Short Formation Benchmark Table) of Schedule 7.1 (Performance Benchmarks);
"Annual Target Performance Level"	means, in relation to: (a) an Annual Cancellations Benchmark or an Annual TOC Minute Delay Benchmark (as the case may be) for any Franchisee Year, the number set out in Column 3 (Annual Target Performance Level) of the Annual Cancellations Benchmark Table or the number set out in Column 3 (Annual Target Performance Level) of the Annual TOC Minute Delay Benchmark Table (as the case maybe) for that Franchisee Year; and (b) an Annual Short Formation Benchmark for any Franchisee Year, the number set out in Column 2 (Annual Target Performance Level) of the Annual Short Formation Benchmark Table for that Franchisee Year;
"Annual TOC Minute Delay	means, for each Franchisee Year, each of the benchmarks specified in the Annual TOC Minute

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Benchmark"	Delay Benchmark Table for that Franchisee Year provided that where a Franchisee Year is shorter than thirteen (13) Reporting Periods then the Annual TOC Minute Delay Benchmark for that Franchisee Year shall be as determined pursuant to paragraph 20.1(b) of Schedule 7.1 (Performance Benchmarks);
"Annual TOC Minute Delay Benchmark Table"	means the table set out in Part 2 (Annual TOC Minute Delay Benchmark Table) of Appendix 2 (TOC Minute Delay Benchmarks and Annual TOC Minute Delay Benchmarks) of Schedule 7.1 (Performance Benchmarks);
"Annual TOC Minute Delay Payment Table"	means the table set out in Part 3 (Annual TOC Minute Delay Payment Table) of Appendix 2: TOC Minute Delay Benchmarks and Annual TOC Minute Delay Benchmarks to Schedule 7.1 (Performance Benchmarks);
"Benchmark Table"	means, in relation to: (a) any Cancellations Benchmark, the Cancellations Benchmark Table; (b) any TOC Minute Delay Benchmark, the TOC Minute Delay Benchmark Table; and (c) any Short Formation Benchmark, the Short Formation Benchmark Table;
"Breach Performance Level"	means, in relation to a Benchmark for any Reporting Period, the number set out in the relevant Column of the Benchmark Table to Schedule 7.1 (Performance Benchmarks) relating to that Benchmark and in the row of that table for that Reporting Period;
"Breach Reporting Period"	means any of the second Reporting Period in the second Franchisee Year to the (6th) to Reporting Period in the second Franchisee Year[58];

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[58] **Note to Bidders**: The Breach Reporting Period will be 5 Reporting Periods. The definition is based on a Start Date of 16 October 2016.

"Cancellations Benchmark Table"	means the table set out in Part 1 (Cancellations Benchmark Table) of Appendix 1 (Cancellations Benchmarks and Annual Cancellations Benchmarks) of Schedule 7.1 (Performance Benchmarks);
"Default Performance Level"	means, in relation to a Benchmark for any Reporting Period, the number set out in the relevant Column of the Benchmark Table to Schedule 7.1 (Performance Benchmarks) relating to that Benchmark and in the row of that table for that Reporting Period;
"Performance Sum Adjustment Date"	means in the case of each Cancellations Performance Sum or TOC Minute Delay Performance Sum determined pursuant to paragraph 19 of Schedule 7.1 (Performance Benchmarks) and payable by the Secretary of State, the first Payment Date falling no less than seven (7) days after that determination;
"Required Performance Improvement"	has the meaning given to it in paragraph 19.8 of Schedule 7.1 (Performance Benchmarks);
"Short Formation Benchmark"	means, any of the performance levels in respect of the Passenger Carrying Capacity operated in delivering the Short Formation Peak Passenger Services as set out in the Short Formation Benchmark Table;
"Short Formation Benchmark Table"	means the table set out in Part 1 (Short Formation Benchmark Table) of Appendix 3 (Short Formation Benchmark and Annual Short Formation Benchmark Table) to Schedule 7.1 (Performance Benchmarks);
"Short Formation Peak Passenger Service"	means a Passenger Service that is a London Peak Passenger Service or a Regional Peak Passenger Service, provided that any Passenger Service shall only be counted once for the purposes of the relevant provisions of Schedule 7.1 (Performance Benchmarks); provided that a Passenger Service which falls within the scope of more than one of the limbs (a) to (e) above shall only be counted once for the purposes of the relevant provisions of Schedule 7.1 (Performance Benchmarks);
"Short Formation Performance Sum"	means an amount determined in accordance with paragraph 18.4 of Schedule 7.1 (Performance Benchmarks) which is payable by the Franchisee to the Secretary of State;
"Subsequent Reporting Period"	means any Reporting Period after the Breach

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	Reporting Period;
"Target Performance Level"	means, in relation to any Benchmark for any Reporting Period, the number set out in the relevant Column of the Benchmark Table to Schedule 7.1 (Performance Benchmarks) relating to that Benchmark and in the row of that table for that Reporting Period;
"TOC Minute Delay Benchmark"	means any of the performance levels in respect of Minutes Delay attributable to the Franchisee set out in the TOC Minute Delay Benchmark Table;
"TOC Minute Delay Benchmark Table"	means the table set out in Part 1 (TOC Minute Delay Benchmark Table) of Appendix 2 (TOC Minute Delay Benchmarks and Annual TOC Minute Delay Benchmarks) to Schedule 7.1 (Performance Benchmarks);
"Undisputed Cancellation"	means a Cancellation that is not a Disputed Cancellation;
"Undisputed Network Rail Cancellation"	means a Network Rail Cancellation that is not a Disputed Cancellation;
"Undisputed Network Rail Partial Cancellation"	means a Network Rail Partial Cancellation that is not a Disputed Partial Cancellation; and
"Undisputed Partial Cancellation"	means a Partial Cancellation that is not a Disputed Partial Cancellation.

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1.2 The following formula definitions shall have following meanings:

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: (a) a Cancellation shall count as 1; (b) a Partial Cancellation shall count as 0.5; (c) any Cancellations or Partial Cancellations during that Reporting Period which were caused by: (i) the Franchisee's implementation of a Service Recovery Plan during that Reporting Period; or (ii) the occurrence or continuing effect of a Force Majeure Event, shall, if the Franchisee has complied with paragraph 18.6 of this Schedule 7.1, be disregarded in determining such total number of Cancellations and Partial Cancellations;
C	is the total number of Passenger Services scheduled to be operated in the Enforcement Plan of the Day for that Reporting Period, disregarding, if the Franchisee has complied with paragraph 18.6 of this Schedule 7.1, any Cancellations or Partial Cancellations during that Reporting Period which were caused by: (a) the Franchisee's implementation of a Service Recovery Plan during that Reporting Period; or (b) the occurrence or continuing effect of a Force Majeure Event;
N	is the number of Reporting Periods that have elapsed since the Start Date; and
XY	is the number of Reporting Periods in the Franchisee Year.

1.3 The Cancellations Benchmarks are set out in the table in Part 1 of Appendix 1 (Cancellations Benchmarks and Annual Cancellations Benchmarks) to this Schedule.

1.4 The Annual Cancellations Benchmarks are set out in the table in Part 2 of Appendix 1 (Cancellations Benchmarks and Annual Cancellations Benchmarks) of this Schedule.

1.5 The TOC Minute Delay Benchmarks are set out in the table in Part 1 of Appendix 2 (TOC Minute Delay Benchmarks and Annual TOC Minute Delay Benchmarks) to this Schedule.

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1.6 The Annual TOC Minute Delay Benchmarks are set out in the table in Part 2 of Appendix 2 (TOC Minute Delay Benchmarks and Annual TOC Minute Delay Benchmarks) to this Schedule.

1.7 The Short Formation Benchmarks are set out in the table in Part 1 of Appendix 3 (Short Formation Benchmark and Annual Short Formation Benchmark Table) to this Schedule.

1.8 The Annual Short Formation Benchmarks are set out in the table in Part 2 of Appendix 3 (Short Formation Benchmark and Annual Short Formation Benchmark Table) to this Schedule.

1.9 The Secretary of State may at any time after a Charging Review vary, on giving not less than three (3) months' notice in writing, any of the Cancellations Benchmarks, Annual Cancellations Benchmarks, TOC Minute Delay Benchmarks and/or the Annual TOC Minute Delay Benchmarks to reflect the Secretary of State's reasonable view of the performance trajectory set as part of such Charging Review. Where the Secretary of State exercises his right pursuant to this paragraph 1.9, the relevant Cancellations Benchmark Table, Annual Cancellations Benchmark Table, TOC Minute Delay Benchmark Table and/or Annual TOC Minute Delay Benchmark Table shall be deemed to have been amended accordingly. The exercise by the Secretary of State of his rights pursuant to this paragraph 1.9 shall be a Change as specified in paragraph (k) of the definition of Change.

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

2. Information Provisions relating to Cancellations Benchmarks and Annual Cancellations Benchmarks

2.1 At the end of each Reporting Period, the Franchisee shall, in accordance with the relevant requirements of Appendix 2 (Operational Information) to Schedule 11.2 (Management Information), report to the Secretary of State:

(a) the total number of Cancellations and Partial Cancellations in that Reporting Period;

(b) the total number of Disputed Cancellations and Disputed Partial Cancellations in that Reporting Period;

(c) the total number of Network Rail Cancellations and Network Rail Partial Cancellations in that Reporting Period;

(d) the total number of Disputed Cancellations and Disputed Partial Cancellations from the twelve (12) preceding Reporting Periods for which the attribution remains in dispute; and

(e) the total number of Disputed Cancellations and Disputed Partial Cancellations for which the disputed attribution has been resolved since the Franchisee's last report pursuant to this paragraph 2.1 (including whether each relevant Disputed Cancellation and/or Disputed Partial Cancellation was attributed to Network Rail or to the Franchisee).

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3. **Cancellation Calculation: Value of A**

For each Reporting Period, the Secretary of State shall calculate the Franchisee's performance against the Cancellations Benchmark in accordance with the following formula:

A	=	$\frac{B}{C} \times 100$
	B	has the meaning given to it in paragraph 1.2;
	C	has the meaning given to it in paragraph 1.2.

4. **Cancellation Calculations during the Initial Reporting Period**

For each Initial Reporting Period, the Secretary of State shall calculate the Franchisee's performance against the Cancellations Benchmark in accordance with the following formula:

A	=	$\frac{B}{C} \times 100$
	B	has the meaning given to it in paragraph 1.2;
	C	has the meaning given to it in paragraph 1.2.

5. **Cancellation Calculations during the Breach Reporting Period**

For each Breach Reporting Period, the Secretary of State shall calculate the Franchisee's performance against the Cancellations Benchmark in accordance with the following formula:

$\frac{A + D}{N}$	
A	has the meaning given to it in paragraph 3;
D	is the sum of the values of A in each of the Reporting Periods in the first Franchisee Year immediately preceding that Breach Reporting Period;
N	has the meaning given to it in paragraph 1.2.

6. **Cancellation Calculations during the Subsequent Reporting Period**

For each Subsequent Reporting Period, the Secretary of State shall calculate a moving annual average of the Franchisee's performance against the Cancellations Benchmark in accordance with the following formula:

$$\frac{A + E}{13}$$

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where:	
A	has the meaning given to it in paragraph 3;
E	is the sum of the values of A in each of the twelve (12) preceding Reporting Periods.

7. **Annual Performance Cancellations Calculations**

At the end of each Franchisee Year the Secretary of State shall calculate the Franchisee's performance against the Annual Cancellations Benchmark in accordance with the following formula:

$\mathbf{ACTUAL_C}$	=	$\frac{\sum A}{X}$
where:		
$\sum \mathbf{A}$	is the sum of the values of A as determined in accordance with paragraph 3 for each Reporting Period in that Franchisee Year; and	
X	(a) in respect of a Franchisee Year consisting of thirteen (13) Reporting Periods equals, 13; or (b) in respect of a Franchisee Year consisting of less than thirteen (13) Reporting Periods, the number of Reporting Periods in such Franchisee Year.	

8. **Allocation of Disputed Cancellations / Disputed Partial Cancellations**

8.1 For the purpose of performing the calculations referred to in paragraphs 3, 4, 5, 6 and/or 7 the Secretary of State shall allocate any Disputed Cancellations and/or Disputed Partial Cancellations between the Franchisee and Network Rail at the end of a Reporting Period and/or a Franchisee Year (as applicable) in the following ratio of:

F : G	
where:	
F	is:
	(a) for the purposes of the calculations specified in paragraphs 3 and 4, the total number of Undisputed Cancellations and/or Undisputed Partial Cancellations in respect of the Initial Reporting Period including any Disputed Cancellations or Disputed Partial Cancellations which were resolved or determined (and attributed to the Franchisee) during such Initial Reporting Period; (b) for the purposes of the calculations specified in paragraph 5, the total number of Undisputed Cancellations and/or Undisputed Partial Cancellations for the Reporting Periods preceding that Breach Reporting

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		Period including any Disputed Cancellations or Disputed Partial Cancellations which were resolved or determined (and attributed to the Franchisee) during such Breach Reporting Period; and
	(c)	for the purposes of the calculations specified in paragraphs 6 and 7, the total number of Undisputed Cancellations and/or Undisputed Partial Cancellations from the twelve (12) preceding Reporting Periods including any Disputed Cancellations or Disputed Partial Cancellations which were resolved or determined (and attributed to the Franchisee) during such twelve (12) preceding Reporting Periods; and
G	is:	
	(a)	for the purposes of the calculations specified in paragraph 4, the total number of Undisputed Network Rail Cancellations and/or Undisputed Network Rail Partial Cancellations in respect of that Initial Reporting Period including any Disputed Cancellations or Disputed Partial Cancellations which were resolved or determined (and attributed to Network Rail) during such Initial Reporting Period;
	(b)	for the purposes of paragraph 5, the total number of Undisputed Network Rail Cancellations and/or Undisputed Network Rail Partial Cancellations for the Reporting Periods preceding that Breach Reporting Period including any Disputed Cancellations or Disputed Partial Cancellations which were resolved or determined (and attributed to Network Rail) during such Breach Reporting Period; and
	(c)	for the purposes of paragraphs 6 and 7, 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.

9. **Information provisions relating to TOC Minute Delay Benchmarks and Annual TOC Minute Delay Benchmarks**

9.1 At the end of each Reporting Period the Franchisee shall, in accordance with the relevant requirements of Appendix 2 (Operational Information) to Schedule 11.2 (Management Information), report to the Secretary of State:

(a) the total number of Minutes Delay:

(i) in that Reporting Period attributable to the Franchisee;

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(ii) in that Reporting Period for which the attribution is in dispute between Network Rail and the Franchisee;

(iii) from the twelve (12) preceding Reporting Periods for which the attribution remains in dispute; and

(iv) from the twelve (12) preceding Reporting Periods for which disputed attributions have been resolved or determined since the Franchisee's last report pursuant to this paragraph 9.1, and the number of such Minutes Delay attributed to each of the Franchisee and Network Rail as a result of such resolution or determination; and

(b) the Actual Train Mileage in that Reporting Period.

10. TOC Minute Delay Calculations during the Initial Reporting Period

10.1 For each Initial Reporting Period the Secretary of State shall calculate the Franchisee's performance against the TOC Minute Delay Benchmark in accordance with the following formula:

$\frac{MD_{TRP}}{H_{TRP}}$	
where:	
MD_{TRP}	is the Minutes Delay that are attributable to the Franchisee in such Initial Reporting Period; and
H_{TRP}	is ascertained as follows:
	$\frac{Y}{1000}$
	where: ***Y*** is the Actual Train Mileage in that Initial Reporting Period.

11. TOC Minute Delay Calculations during the Breach Reporting Period

11.1 For each Breach Reporting Period the Secretary of State shall calculate the Franchisee's performance against the TOC Minute Delay Benchmark in accordance with the following formula:

$\frac{MD_{BRP}}{H_{BRP}}$	
where:	
MD_{BRP}	is the sum of the number of Minutes Delay that are attributable to the Franchisee: (a) in such Breach Reporting Period; and (b) in each of the Reporting Periods in the first Franchisee Year immediately preceding that Breach Reporting Period; and
H_{BRP}	is ascertained as follows:

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	$\frac{Z}{1000}$
	where: ***Z*** is the sum of the Actual Train Mileage: (a) in such Breach Reporting Period; and (b) in each of the Reporting Periods in the first Franchisee Year immediately preceding that Breach Reporting Period.

12. **TOC Minute Delay Calculations during the Subsequent Reporting Period**

For each Subsequent Reporting Period, the Secretary of State shall calculate a moving annual average of the Franchisee's performance against the TOC Minute Delay Benchmark in accordance with the following formula:

$\frac{MD_{SRP}}{H_{SRP}}$	
where:	
MD_{SRP}	is the sum of the number of Minutes Delay that are attributable to the Franchisee: (a) in such Reporting Period; and (b) in each of the twelve (12) preceding Reporting Periods; and
H_{SRP}	is ascertained as follows:
	$\frac{V}{1000}$
	where: *V* is the sum of the Actual Train Mileage: (a) in such Reporting Period; and (b) in each of the twelve (12) preceding Reporting Periods.

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13. **Annual Performance TOC Minute Delay Calculations**

13.1 At the end of each Franchisee Year the Secretary of State shall calculate the Franchisee's performance against the Annual TOC Minute Delay Benchmark in accordance with the following formula:

$ACTUAL_{MD}$	=	$\frac{AA}{AD}$
where:		
AA	is the sum of the number of Minutes Delay that are attributable to the Franchisee in each Reporting Period in that Franchisee Year; and	
AD	is ascertained as follows:	
	$\frac{AB}{1000}$	
	where:	
	AB is the sum of the Actual Train Mileage in each Reporting Period in that Franchisee Year.	

13.2 In performing the calculation pursuant to paragraphs 10, 11, 12 and/or 13.1, the Secretary of State shall disregard any Minutes Delay that are caused by the occurrence or continuing effect of a Force Majeure Event.

14. **Allocation of Disputed Minutes Delay**

14.1 Where the attribution of any Minutes Delay is in dispute between Network Rail and the Franchisee at the end of a Reporting Period and/or a Franchisee Year (as applicable) the Secretary of State shall, for the purpose of performing the calculation referred to in paragraphs 10, 11, 12 and/or 13.1, allocate any disputed Minutes Delay between the Franchisee and Network Rail in the ratio of:

FF: GG		
where:		
FF	(a)	for the purposes of the calculations specified in paragraph 10, the total number of undisputed Minutes Delay in respect of that Initial Reporting Period that are attributable to the Franchisee including any disputed attributions which were resolved or determined (and attributed to the Franchisee) during such Initial Reporting Period;
	(b)	for the purposes of the calculations specified in paragraph 11, the total number of undisputed Minutes Delay for the Reporting Periods preceding that Breach Reporting Period that are attributable to the Franchisee including any disputed attributions which were resolved or determined (and attributed to the Franchisee) during such Breach Reporting Period; and

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	(c)	for the purposes of the calculations specified in paragraphs 12 and 13.1, the total number of undisputed Minutes Delay, in each case, from the twelve (12) preceding Reporting Periods that are attributable to the Franchisee including any disputed attributions which were resolved or determined (and attributed to the Franchisee) during such twelve (12) preceding Reporting Periods; and
GG	is:	
	(a)	for the purposes of the calculations specified in paragraph 10, the total number of undisputed Minutes Delay in respect of that Initial Reporting Period that are attributable to Network Rail including any disputed attributions which were resolved or determined (and attributed to Network Rail) during such Initial Reporting Period;
	(b)	for the purposes of paragraph 11, the total number of undisputed Minutes Delay for the Reporting Periods preceding that Breach Reporting Period that are attributable to Network Rail including any disputed attributions which were resolved or determined (and attributed to Network Rail) during such Breach Reporting Period; and
	(c)	for the purposes of the calculations specified in paragraphs 12 and 13.1, 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;

15. **Short Formation Benchmarks and Annual Short Formation Benchmark**

15.1 **Short Formation (SF) Calculation: Value of A_{SF}**

At the end of each Reporting Period, the Franchisee shall, in accordance with the relevant requirements of Appendix 2 (Operational Information) to Schedule 11.2 (Management Information), report to the Secretary of State the total number of Short Formation Peak Passenger Services in that Reporting Period operated with less Passenger Carrying Capacity than that specified for each such Short Formation Peak Passenger Service in the Train Plan.

$\mathbf{A^{SF}}$	=	$\frac{BSF}{CSF} \times 100$
where:		
$\mathbf{B^{SF}}$	is the total number of Short Formation Peak Passenger Services in that Reporting Period operated with less Passenger Carrying Capacity than that specified for each such Short Formation Peak Passenger Service in the Train Plan disregarding, if the Franchisee has complied with paragraph 18.6 of this Schedule 7.1 any such Short Formation Peak Passenger Services which were operated in	

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	that way as a result of: (a) the Franchisee's implementation of a Service Recovery Plan during that Reporting Period; or (b) the occurrence or continuing effect of a Force Majeure Event; and
C^{SF}	is the total number of Short Formation Peak Passenger Services scheduled to be operated in that Reporting Period disregarding, if the Franchisee has complied with paragraph 18.6 of this Schedule 7.1, any such Short Formation Peak Passenger Service operated with less Passenger Carrying Capacity than that specified for each such Short Formation Peak Passenger Service in the Train Plan as a result of: (a) the Franchisee's implementation of a Service Recovery Plan during that Reporting Period; or (b) the occurrence or continuing effect of a Force Majeure Event.

15.2 **Short Formation Calculations during the Initial Reporting Period**

For each Initial Reporting Period, the Secretary of State shall calculate the Franchisee's performance against the Short Formation Benchmark in accordance with the following formula:

A^{SF}	=	$\frac{B^{SF}}{C^{SF}} \times 100$
where:		
B^{SF}	has the meaning given to it in paragraph 15.1;	
C^{SF}	has the meaning given to it in paragraph 15.1;	

15.3 **Short Formation Calculations during the Breach Reporting Period**

For each Breach Reporting Period the Secretary of State shall calculate the Franchisee's performance against the Short Formation Benchmark in accordance with the following formula:

$\frac{A^{SF} + D^{SF}}{N}$
where:
A^{SF} has the meaning given to it in paragraph 15.1;
D^{SF} is the sum of the values of A^{SF} in each of the Reporting Periods in the first Franchisee Year immediately preceding that Breach Reporting Period; and
N has the meaning given to it in paragraph 1.2.

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15.4 **Short Formation Calculations during the Subsequent Reporting Period**

For each Subsequent Reporting Period, the Secretary of State shall calculate *a moving annual average of* the Franchisee's performance against the Short Formation Benchmark in accordance with the following formula:

$$\frac{A^{SF} + E^{SF}}{13}$$

where:	
A^{SF}	has the meaning given to it in paragraph 15.1;
E^{SF}	is the sum of the values of A^{SF} in each of the twelve (12) preceding Reporting Periods;

15.5 **Annual Short Formation Performance Calculations: Value of $ACTUAL_{SF}$**

At the end of each Franchisee Year the Secretary of State shall calculate the Franchisee's performance against the Annual Short Formation Benchmark in accordance with the following formula:

$ACTUAL_{SF}$	**=**	$\frac{\sum Asf}{X}$
where:		
$\sum Asf$		is the sum of the values of A^{SF} as determined in accordance with paragraph 15.1 for that Franchisee Year; and
X		has the meaning given to it in paragraph 7.

15.6 For the purposes of the calculations to be undertaken by the Secretary of State pursuant to paragraphs 15.1 to 15.5:

(a) if and to the extent that any Passenger Service is operated with Passenger Carrying Capacity in excess of the Passenger Carrying Capacity specified for that Passenger Service in the Train Plan, the excess capacity shall be disregarded; and

(b) any Passenger Service that is the subject of a Cancellation or a Partial Cancellation shall be disregarded.

16. **Calculations**

16.1 The Secretary of State shall perform the calculations referred to in paragraphs 3, 4, 5, 6, 7, 10, 11, 12, 13, 15.1-15.5 and 19 rounded to two decimal places with the midpoint (that is, 11.115) rounded upwards (that is, 11.12).

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17. **Notice of Performance Results**

As soon as reasonably practicable after the end of each Reporting Period and each Franchisee Year, the Secretary of State shall notify the Franchisee of the results of the calculations performed pursuant to this Schedule 7.1.

18. **Consequences for Poor Performance**

18.1 The Franchisee shall ensure that its performance in each Reporting Period, calculated as a moving annual average in accordance with this Schedule 7.1, is **not equal to or worse than** each Breach Performance Level in respect of that Reporting Period, except in respect of any Reporting Period falling within the Initial Reporting Period.

18.2 It shall be a contravention of the Franchise Agreement if the Franchisee's performance is **equal to or worse than** any Breach Performance Level in any Reporting Period.

18.3 Without limiting the provisions of paragraphs 18.5 and 19, if in any Reporting Period (other than any Initial Reporting Period) the Franchisee's performance as calculated pursuant to paragraphs 5, 6, 11, 12, 13, 15.3 or 15.4 is **equal to or worse than** the Breach Performance Level relating to each Benchmark in respect of any Reporting Period (other than the Initial Reporting Period), then a contravention of the Franchise Agreement shall occur and the Secretary of State may serve a Remedial Plan Notice in accordance with the provisions of paragraph 3 of Schedule 10.1 (Procedure for remedying a Contravention of the Franchise Agreement).

18.4 For the purposes of paragraph 4.2(c) of Schedule 10.1 (Procedure for remedying a Contravention of the Franchise Agreement) the steps to be proposed by the Franchisee pursuant to that paragraph are those which ensure that the Franchisee's performance against the relevant Benchmark will be **equal to or better than** the Target Performance Level relating to such Benchmark.

18.5 Certain consequences of the Franchisee's performance being equal to or worse than the Breach Performance Levels and Default Performance Levels relating to each Benchmark are set out in Schedule 10 (Remedies, Events of Default and Termination Events).

18.6 **Submission of Records Relating to the Implementation of a Service Recovery Plan**

The Franchisee shall, within eight (8) weeks of the end of each Reporting Period for which a Service Recovery Plan has been implemented (or such other period as may be agreed by the Secretary of State), submit to the Secretary of State all the comprehensive records (as more particularly described in the relevant paragraph of the Service Recovery Plan) which relate to the implementation of such Service Recovery Plan during that Reporting Period.

19. **Performance Sum Payments**

19.1 At the end of each Franchisee Year (save for the first or last Franchisee Year where such Franchisee Year is for a period less than six (6) Reporting Periods) the Secretary of State shall, in accordance with this paragraph 19, calculate:

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(a) the Cancellations Performance Sum and the TOC Minute Delay Performance Sum payable by the Secretary of State to the Franchisee or required to be incurred by the Franchisee (as the case may be); and

(b) the Short Formation Performance Sum required to be incurred by the Franchisee.

19.2 Where a Franchisee Year is for a period less than six (6) Reporting Periods no Cancellations Performance Sum or TOC Minute Delay Performance Sum or Short Formation Performance Sum shall be payable by the Secretary of State to the Franchisee or be incurred by the Franchisee.

19.3 **Cancellations Performance Sum**

For any Franchisee Year (save for the first or last Franchisee Year where such Franchisee Year is for a period less than six (6) Reporting Periods), the Cancellations Performance Sum shall be calculated as follows:

ACTUAL$_C$	has the meaning given to it in paragraph 7;
TARGET$_C$	is the Annual Target Performance Level relating to that Annual Cancellations Benchmark for that Franchisee Year;
CAP$_C$	is the Annual Cap Performance Level relating to that Annual Cancellations Benchmark for that Franchisee Year; and
FLOOR$_C$	is the Annual Floor Performance Level relating to that Annual Cancellations Benchmark for that Franchisee Year.

Value of **ACTUAL$_C$** is		**CaSL Achieved? (Y/N)**	**Cancellations Performance Sum payable by the Secretary of State to the Franchisee shall be an amount calculated by the following Table**	**Cancellations Performance Sum payable by Franchisee to Secretary of State and shall be an amount calculated by the following Table**
1	*≤ CAPc*	Y	Table 1	
2	*≤ CAPc*	N	Table 2	
3	*> CAPc and < TARGETc*	Y	Table 3	
4	*> CAPc and < TARGETc*	N	Table 4	
5	*≥TARGETc and < FLOORc*	N		Table 5
6	*≥ TARGETc and < FLOORc*	Y		Table 6
7	*≥ FLOORc*	N		Table 7
8	*≥ FLOORc*	Y		Table 8

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Table 1		
($TARGET_C$ – CAP_C) x PBP_C		
where:		
$TARGET_C$	has the meaning given to it in paragraph 19.3;	
CAP_C	has the meaning given to it in paragraph 19.3;	
PBPc (Performance Bonus Payment)	is, in respect of that Franchisee Year, an amount calculated as follows:	
	PB_C x RPI	
	where:	
	PB_C	is where the Actual CaSL Performance Level is: **better than or equal to** the Annual CaSL Target Performance Level for that Franchisee Year, the amount equal to the amount specified in row 1 (PBP_C) in Column 3 (With Multiplier) of the Annual Cancellations Payment Table; and
	RPI	has the meaning given to it in Appendix 1 (Annual Franchise Payments) to Schedule 8.1 (Franchise Payments).

Table 2		
($TARGET_C$ – CAP_C) x PBP_C		
where:		
$TARGET_C$	has the meaning given to it in paragraph 19.3; and	
CAP_C	has the meaning given to it in paragraph 19.3; and	
PBP_C (Performance Bonus Payment)	is, in respect of that Franchisee Year, an amount calculated as follows:	
	PB_C x RPI	
	where:	
	PB_C	is where the Actual CaSL Performance Level is **worse than** the Annual CaSL Target Performance Level for that Franchisee Year, the amount specified in row 1 (PBP_C) of Column 2 (Without Multiplier) of the Annual Cancellation Payment Table; and
	RPI	has the meaning given to it in Appendix 1 (Annual Franchise Payments) to Schedule 8.1 (Franchise Payments).

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Table 3		
($TARGET_C$ – $ACTUAL_C$) x PBP_C		
where:		
$TARGET_C$	has the meaning given to it in paragraph 19.3; and	
$ACTUAL_C$	has the meaning given to it in paragraph 7; and	
PBP_C **(Performance Bonus Payment)**	is, in respect of that Franchisee Year, an amount calculated as follows:	
	PB_C x RPI	
	where:	
	PB_C	is where the Actual CaSL Performance Level is: **better than or equal to** the Annual CaSL Target Performance Level for that Franchisee Year, the amount equal to the amount specified in row 1 (PBP_C) in Column 3 (With Multiplier) of the Annual Cancellations Payment Table; and
	RPI	has the meaning given to it in Appendix 1 (Annual Franchise Payments) to Schedule 8.1 (Franchise Payments).

Table 4		
($TARGET_C$ – $ACTUAL_C$) x PBP_C		
where:		
$TARGET_C$	has the meaning given to it in paragraph 19.3;	
$ACTUAL_C$	has the meaning given to it in paragraph 7; and	
PBP_C **(Performance Bonus Payment)**	is, in respect of that Franchisee Year, an amount calculated as follows:	
	PB_C x RPI	
	where:	
	PB_C	is where the Actual CaSL Performance Level is **worse than** the Annual CaSL Target Performance Level for that Franchisee Year, the amount specified in row 1 (PBP_C) of Column 2 (Without Multiplier) of the Annual Cancellation Payment Table; and
	RPI	has the meaning given to it in Appendix 1 (Annual Franchise Payments) to Schedule 8.1 (Franchise Payments).

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Table 5		
($ACTUAL_C$ - $TARGET_C$) x PDP_C		
where:		
$ACTUAL_C$	has the meaning given to it in paragraph 7; and	
$TARGET_C$	has the meaning given to it in paragraph 19.3;	
PDP_C **(Performance Deduction Payment)**	is, in respect of that Franchisee Year, an amount calculated as follows:	
	PD_C x RPI	
	where:	
	PD_C	where the Actual CaSL Performance Level is **worse than** the Annual CaSL Target Performance Level for that Franchisee Year, the amount equal to the amount specified in row 2 (PDP_c) of Column 3 (With Multiplier) of the Annual Cancellations Payment Table; and
	RPI	has the meaning given to it in Appendix 1 (Annual Franchise Payments) to Schedule 8.1 (Franchise Payments).

Table 6		
($ACTUAL_C$ - $TARGET_C$) x PDP_C		
where:		
$ACTUAL_C$	has the meaning given to it in paragraph 7; and;	
$TARGET_C$	has the meaning given to it in paragraph 19.3;	
PDP_c **(Performance Deduction Payment)**	is, in respect of that Franchisee Year, an amount calculated as follows:	
	PD_C x RPI	
	where:	
	PD_C	where the Actual CaSL Performance Level is **better than or equal to** the Annual CaSL Target Performance Level for that Franchisee Year, the amount equal to the amount specified in row 2 (PDP_c) in Column 2 (Without Multiplier) of the Annual Cancellations Payment Table; and
	RPI	has the meaning given to it in Appendix 1 (Annual Franchise Payments) to Schedule 8.1 (Franchise Payments).

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Table 7		
($FLOOR_C$ - $TARGET_C$) x PDP_C		
where:		
$FLOOR_C$	is the Annual Floor Performance Level relating to that Annual Cancellations Benchmark for that Franchisee Year;	
$TARGET_C$	has the meaning given to it in Table 1; and	
PDP_C **(Performance Deduction Payment)**	is, in respect of that Franchisee Year, an amount calculated as follows:	
	PD_C x RPI	
	where:	
	PD_C	where the Actual CaSL Performance Level is **worse than** the Annual CaSL Target Performance Level for that Franchisee Year, the amount equal to the amount specified in row 2 (PDP_c) of Column 3 (With Multiplier) of the Annual Cancellations Payment Table; and
	RPI	has the meaning given to it in Appendix 1 (Annual Franchise Payments) to Schedule 8.1 (Franchise Payments).

Table 8		
($FLOOR_C$ - $TARGET_C$) x PDP_C		
where:		
$FLOOR_C$	has the meaning given to it in paragraph 19.3;	
$TARGET_C$	has the meaning given to it in paragraph 19.3; and	
PDP_C **(Performance Deduction Payment)**	is, in respect of that Franchisee Year, an amount calculated as follows:	
	PD_C x RPI	
	where:	
	PD_C	where the Actual CaSL Performance Level is **better than or equal to** the Annual CaSL Target Performance Level for that Franchisee Year, the amount equal to the amount specified in row 2 (PDPc) in Column 2 (Without Multiplier) of the Annual Cancellations Payment Table; and
	RPI	has the meaning given to it in Appendix 1 (Annual Franchise Payments) to Schedule 8.1 (Franchise Payments).

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19.4 **TOC Minute Delay Performance Sum**

For any Franchisee Year (save for the first or last Franchisee Year where such Franchisee Year is for a period less than six (6) Reporting Periods), the TOC Minute Delay Performance Sum is calculated as follows:

$ACTUAL_{MD}$	has the meaning given to it in paragraph 13.1;
$TARGET_{MD}$	is the Annual Target Performance Level relating to that Annual TOC Minute Delay Benchmark for that Franchisee Year;
CAP_{MD}	is the Annual Cap Performance Level relating to that Annual TOC Minute Delay Benchmark for that Franchisee Year; and
$FLOOR_{MD}$	is the Annual Floor Performance Level relating to that Annual TOC Minute Delay Benchmark for that Franchisee Year.

Value of **$ACTUAL_{MD}$** is		**PPM Achieved? (Y/N)**	**TOC Minute Delay Performance Sum payable by the Secretary of State to the Franchisee shall be an amount calculated by the following Table**	**TOC Minute Delay Performance Sum payable by Franchisee to Secretary of State and shall be an amount calculated by the following Table**
1.	$\leq CAP_{MD}$	Y	Table 9	
2.	$\leq CAP_{MD}$	N	Table 10	
3.	$> CAP_{MD}$ *and* $< TARGET_{MD}$	Y	Table 11	
4.	$> CAP_{MD}$ *and* $< TARGET_{MD}$	N	Table 12	
5.	$\geq TARGET_{MD}$ *and* $< FLOOR_{MD}$	N		Table 13
6.	$\geq TARGET_{MD}$ *and* $< FLOOR_{MD}$	Y		Table 14
7.	$\geq FLOOR_{MD}$	N		Table 15
8.	$\geq FLOOR_{MD}$	Y		Table 16

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Table 9		
($TARGET_{MD}$ – CAP_{MD}) x PBP_{MD}		
where:		
$TARGET_{MD}$	has the meaning given to it in paragraph 19.4;	
CAP_{MD}	has the meaning given to it in paragraph 19.4;	
PBP_{MD} **(Performance Bonus Payment)**	is, in respect of any Franchisee Year, an amount calculated as follows:	
	PB_{MD} x RPI	
	where:	
	PB_{MD}	is, where the Actual PPM Performance Level is **better than or equal to** the Annual PPM Target Performance Level for that Franchisee Year, the amount equal to the amount specified in row 1 (PBP_{MD}) of Column 3 (With Multiplier) of the Annual TOC Minute Delay Payment Table; and
	RPI	has the meaning given to it in Appendix 1 (Annual Franchise Payments) to Schedule 8.1 (Franchise Payments).

Table 10		
($TARGET_{MD}$ – CAP_{MD}) x PBP_{MD}		
where:		
$TARGET_{MD}$	has the meaning given to it in paragraph 19.4;	
CAP_{MD}	has the meaning given to it in paragraph 19.4; and	
PBP_{MD} **(Performance Bonus Payment)**	is, in respect of that Franchisee Year, an amount calculated as follows:	
	PB_{MD} x RPI	
	where:	
	PB_{MD}	is, where the Actual PPM Performance Level is **worse than** the Annual PPM Target Performance Level for that Franchisee Year, the amount specified in row 1 (PBP_{MD}) of Column 2 (Without Multiplier) of the Annual TOC Minute Delay Payment Table; and
	RPI	has the meaning given to it in Appendix 1 (Annual Franchise Payments) to Schedule 8.1 (Franchise Payments).

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Table 11		
($TARGET_{MD}$ – $ACTUAL_{MD}$) x PBP_{MD}		
where:		
$TARGET_{MD}$	has the meaning given to it in paragraph 19.4;	
$ACTUAL_{MD}$	has the meaning given to it in paragraph 13.1; and	
PBP_{MD} **(Performance Bonus Payment)**	is, in respect of any Franchisee Year, an amount calculated as follows:	
	PB_{MD} x RPI	
	where:	
	PB_{MD}	is, where the Actual PPM Performance Level is **better than or equal to** the Annual PPM Target Performance Level for that Franchisee Year, the amount equal to the amount specified in row 1 (PBP_{MD}) of Column 3 (With Multiplier) of the Annual TOC Minute Delay Payment Table; and
	RPI	has the meaning given to it in Appendix 1 (Annual Franchise Payments) to Schedule 8.1 (Franchise Payments).

Table 12		
($TARGET_{MD}$ – $ACTUAL_{MD}$) x PBP_{MD}		
where:		
$TARGET_{MD}$	has the meaning given to it in paragraph 19.4;	
$ACTUAL_{MD}$	has the meaning given to it in paragraph 13.1; and	
PBP_{MD} **(Performance Bonus Payment)**	is, in respect of that Franchisee Year, an amount calculated as follows:	
	PB_{MD} x RPI	
	where:	
	PB_{MD}	is, where the Actual PPM Performance Level is **worse than** the Annual PPM Target Performance Level for that Franchisee Year, the amount specified in row 1 (PBP_{MD}) of Column 2 (Without Multiplier) of the Annual TOC Minute Delay Payment Table; and
	RPI	has the meaning given to it in Appendix 1 (Annual Franchise Payments) to Schedule 8.1 (Franchise Payments).

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Table 13		
($ACTUAL_{MD}$ – $TARGET_{MD}$) x PDP_{MD}		
where:		
$ACTUAL_{MD}$	has the meaning given to it in paragraph 13.1;	
$TARGET_{MD}$	has the meaning given to it in paragraph 19.4; and	
PDP_{MD} **(Performance Deduction Payment)**	is, in respect of that Franchisee Year, an amount calculated as follows:	
	PD_{MD} x RPI	
	where:	
	PD_{MD}	is, where the Actual PPM Performance Level is **worse than** the Annual PPM Target Performance Level for that Franchisee Year, the amount equal to the amount specified in row 2 (PDP_{MD}) of Column 3 (With Multiplier) of the Annual TOC Minute Delay Payment Table; and
	RPI	has the meaning given to it in Appendix 1 (Annual Franchise Payments) to Schedule 8.1 (Franchise Payments).

Table 14		
($ACTUAL_{MD}$ – $TARGET_{MD}$) x PDP_{MD}		
where:		
$ACTUAL_{MD}$	has the meaning given to it in paragraph 13.1;	
$TARGET_{MD}$	has the meaning given to it in paragraph 19.4; and	
PDP_{MD} **(Performance Deduction Payment)**	is, in respect of that Franchisee Year, an amount calculated as follows:	
	PD_{MD} x RPI	
	where:	
	PD_{MD}	is, where the Actual PPM Performance Level is; **better than or equal to** the Annual PPM Target Performance Level for that Franchisee Year, the amount equal to the amount specified in row 2 (PDP_{MD}) of Column 2 (Without Multiplier) of the Annual TOC Minute Delay Payment Table; and
	RPI	has the meaning given to it in Appendix 1 (Annual Franchise Payments) to Schedule 8.1 (Franchise Payments).

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Table 15		
($FLOOR_{MD}$ – $TARGET_{MD}$) x PDP_{MD}		
where:		
$FLOOR_{MD}$	has the meaning given to it in paragraph 19.4;	
$TARGET_{MD}$	has the meaning given to it in paragraph 19.4; and	
PDP_{MD} (Performance Deduction Payment)	is, in respect of that Franchisee Year, an amount calculated as follows:	
	PD_{MD} x RPI	
	where:	
	PD_{MD}	is, where the Actual PPM Performance Level is **worse than** the Annual PPM Target Performance Level for that Franchisee Year, the amount equal to the amount specified in row 2 (PDP_{MD}) of Column 3 (With Multiplier) of the Annual TOC Minute Delay Payment Table; and
	RPI	has the meaning given to it in Appendix 1 (Annual Franchise Payments) to Schedule 8.1 (Franchise Payments).

Table 16		
($FLOOR_{MD}$ – $TARGET_{MD}$) x PDP_{MD}		
where:		
$FLOOR_{MD}$	has the meaning given to it in paragraph 19.4;	
$TARGET_{MD}$	has the meaning given to it in paragraph 19.4; and	
PDP_{MD} (Performance Deduction Payment)	is, in respect of that Franchisee Year, an amount calculated as follows:	
	PD_{MD} x RPI	
	where:	
	PD_{MD}	is, where the Actual PPM Performance Level is; **better than or equal to** the Annual PPM Target Performance Level for that Franchisee Year, the amount equal to the amount specified in row 2 (PDP_{MD}) of Column 2 (Without Multiplier) of the Annual TOC Minute Delay Payment Table; and
	RPI	has the meaning given to it in Appendix 1 (Annual Franchise Payments) to Schedule 8.1 (Franchise Payments).

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19.5 **Short Formation Performance Sum**

For any Franchisee Year (save for the first or last Franchisee Year where such Franchisee Year is for a period less than six (6) Reporting Periods), the Short Formation Performance Sum is calculated as follows:

$ACTUAL_{SF}$	has the meaning given to it in paragraph 15.5;
$TARGET_{SF}$	is the Annual Target Performance Level relating to the Annual Short Formation Benchmark for that Franchisee Year;
AIL_{SF}	is the Annual Intermediate Performance Level relating to the Annual Short Formation Benchmark for that Franchisee Year; and
$FLOOR_{SF}$	is the Annual Floor Performance Level relating to that Annual Short Formation Benchmark for that Franchisee Year.

Value of $Actual_{SF}$		**Short Formation Performance Sum payable by Franchisee to the Secretary of State and shall be an amount calculated by the following Table**
1	≥ $TARGET_{SF}$ < AIL_{SF}	17
2	≥ AIL_{SF} < $FLOOR_{SF}$	18
3	≥ $FLOOR_{SF}$	19

Table 17		
($(ACTUAL_{SF} – TARGET_{SF}) \times IPLR_{SF}$)		
where:		
$ACTUAL_{SF}$	has the meaning given to it in paragraph 15.5;	
$TARGET_{SF}$	has the meaning given to it in paragraph 19.5; and	
$IPLR_{SF}$	is, in respect of that Franchisee Year, an amount calculated as follows:	
	$IPR_{SF} \times RPI$	
	where:	
	IPR_{SF}	is the amount specified in the row 2 (IPR_{SF}) of the Annual Short Formation Payment Table;
	RPI	has the meaning given to it in Appendix 1 (Annual Franchise Payments) to Schedule 8.1 (Franchise Payments).

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Table 18		
$((AIL_{SF} – TARGET_{SF}) \times IPLR_{SF}) + ((ACTUAL_{SF} – AIL_{SF}) \times BPLR_{SF})$		
where:		
AIL_{SF}	has the meaning given to it in paragraph 19.5;	
$TARGET_{SF}$	has the meaning given to it in paragraph 19.5;	
$IPLR_{SF}$	has the meaning given to it in paragraph 19.5; and	
$ACTUAL_{SF}$	has the meaning given to it in paragraph 15.5;	
$BPLR_{SF}$	is, in respect of that Franchisee Year, an amount calculated as follows:	
	BPR_{SF} x RPI	
	where:	
	BPR_{SF}	is the amount specified in row 1 (BPR_{SF}) of the Annual Short Formation Payment Table;
	RPI	has the meaning given to it in Appendix 1 (Annual Franchise Payments) to Schedule 8.1 (Franchise Payments).

Table 19	
$((AIL_{SF} – TARGET_{SF}) \times IPLR_{SF}) + (FLOOR_{SF} – AIL_{SF}) \times BPLR_{SF})$	
where:	
AIL_{SF}	has the meaning given to it in paragraph 19.5;
$TARGET_{SF}$	has the meaning given to it in paragraph 19.5;
$IPRL_{SF}$	has the meaning given to it in paragraph 19.5;
$FLOOR_{SF}$	has the meaning given to it in paragraph 19.5; and
$BPLR_{SF}$	has the meaning given to it in Table 18.

19.6 For the purpose of the calculations referred to in this paragraph 19, each of the Annual Cap Performance Level, the Annual Target Performance Level and the Annual Floor Performance Level will be specified as an absolute number not as a percentage (i.e. one point five per cent (1.5%) equals 1.5).

19.7 The maximum amount:

(a) payable by the Secretary of State by way of the Cancellations Performance Sum, the TOC Minute Delay Performance Sum and the Short Formations

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Performance Sum shall, in respect of any Franchisee Year, be limited to an aggregate amount of:

(i) for Cancellations Performance Sum, £[968,000][59] x RPI; and

(ii) for TOC Minute Delay Performance Sum, £[774,000][60] x RPI;

(b) to be incurred as expenditure by the Franchisee by way of Cancellations Performance Sum and TOC Minute Delay Performance Sum, shall, in respect of any Franchisee Year, be limited to an aggregate amount of:

(i) for Cancellations Performance Sum, £[2,100,000][61] x RPI; and

(ii) for TOC Minute Delay Performance Sum, £[1,400,000][62] x RPI; and

(c) to be incurred as expenditure by the Franchisee by way of Short Formation Performance Sum shall, in respect of any Franchisee Year, be limited to £[3,200,000][63] x RPI,

provided that:

(i) in respect of any Franchisee Year of less than thirteen (13) Reporting Periods each of the maximum amounts calculated in accordance with paragraphs 19.7(a), 19.7(b) and 19.7(c) shall be multiplied by the number of whole Reporting Periods in the relevant Franchisee Year and then divided by 13;

(ii) in respect of any Franchisee Year of less than six (6) Reporting Periods no Cancellations Performance Sum and/or TOC Minute Delay Performance Sum shall be payable by the Secretary of State;

(iii) in respect of any Franchisee Year of less than six (6) Reporting Periods no Cancellations Performance Sum, TOC Minute Delay Performance Sum and/or Short Formation Performance Sum shall be incurred by the Franchisee.

19.8 **Required Performance Improvement**

Where following calculation of the Cancellations Performance Sum, the TOC Minute Delay Performance Sum and/or the Short Formation Performance Sum, the Franchisee is required to incur expenditure, the Franchisee shall incur expenditure equal to the amount of the Cancellations Performance Sum, the TOC Minute Delay Performance Sum and/or the Short Formation Performance Sum due from the Franchisee in order to secure:

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59 **Note to Bidders:** DfT to confirm.

60 **Note to Bidders:** DfT to confirm.

61 **Note to Bidders:** DfT to confirm.

62 **Note to Bidders:** DfT to confirm.

63 **Note to Bidders:** DfT to confirm.

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(a) where the Franchisee is obliged to incur expenditure equal to the amount of the Cancellations Performance Sum, an improvement in the Franchisee's performance against the Annual Cancellations Benchmark so that such level is **better than or equal to** the Annual Target Performance Level for that Annual Cancellations Benchmark; and/or

(b) where the Franchisee is obliged to incur expenditure equal to the amount of the TOC Minute Delay Performance Sum, an improvement in the Franchisee's performance against the Annual TOC Minute Delay Benchmark so that such level is **better than or equal to** the Annual Target Performance Level for that Annual TOC Minute Delay Benchmark; and/or

(c) where the Franchisee is obliged to incur expenditure equal to the amount of the Short Formation Performance Sum, an improvement in the Franchisee's performance against the Annual Short Formation Benchmark so that such level is **equal to** the Annual Target Performance Level for the Annual Short Formation Benchmark,

or, in each case, as the Secretary of State may otherwise direct (the **"Required Performance Improvement"**).

19.9 **Action Plans**

(a) Without limiting paragraph 19.8, on each occasion that the Franchisee becomes obliged to incur expenditure equal to the amount of the Cancellations Performance Sum, the TOC Minute Delay Performance Sum and/or the Short Formation Performance Sum to secure a Required Performance Improvement, the Franchisee shall produce a plan which is consistent with its obligations under paragraph 19.8 (the **"Action Plan"**).

(b) The Franchisee shall (i) produce, (ii) obtain the Secretary of State's approval of, and (iii) commence the implementation of the Action Plan within three (3) months after the notification of the results of calculations in accordance with paragraph 17.

(c) The Action Plan shall contain specific tangible action points and indicate in the case of each action point:

(i) how that action will contribute to achieving the Required Performance Improvement;

(ii) where the action is to be implemented;

(iii) when the action is to be commenced and by when it is to be implemented provided always that where any action is expressed to be ongoing the Action Plan shall include specific review dates;

(iv) how performance of the action is to be measured; and

(v) identify the amount of the Cancellations Performance Sum, the TOC Minute Delay Performance Sum and/or the Short Formation Performance Sum associated with each such action.

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(d) The Franchisee shall, except to the extent otherwise agreed by the Secretary of State in advance, implement each Action Plan referred to in this paragraph 19.9 in accordance with its terms.

(e) It is acknowledged by the Franchisee that the approval or lack of approval by the Secretary of State of each Action Plan as contemplated in this paragraph 19.9 shall not relieve the Franchisee of its obligations under this Schedule 7.1 or any other provisions of the Franchise Agreement.

19.10 **Performance Sum Adjustment Date**

Each Cancellations Performance Sum and TOC Minute Delay Performance Sum calculated pursuant to paragraphs 19.3 and 19.4 (respectively) in respect of any Franchisee Year payable by the Secretary of State to the Franchisee shall, subject to paragraph 19.11, be paid by way of adjustment to Franchise Payments on the Performance Sum Adjustment Date.

19.11 **Payments on Termination of the Franchise Agreement**

Upon the termination of the Franchise Agreement:

(a) the Franchisee shall pay to the Secretary of State, by way of adjustment to Franchise Payments, an amount equivalent to the amount of any Cancellations Performance Sum, TOC Minute Delay Performance Sum and/or Short Formation Performance Sum due from the Franchisee and which it has not yet incurred as at the end of the Franchise Period; and

(b) the Secretary of State shall pay to the Franchisee, by way of adjustment to Franchise Payments, an amount equivalent to the amount of any Cancellation Performance Sum and/or TOC Minute Delay Performance Sum payable by the Secretary of State in respect of the final Franchisee Year.

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20. **Determination of the Annual Benchmarks for Franchisee Years that are shorter than thirteen (13) Reporting Periods**

20.1 Where a Franchisee Year is shorter than thirteen (13) Reporting Periods (but no less than six (6) Reporting Periods) the Secretary of State will perform the following calculations for the purposes of determining the Annual Cancellations Benchmark, the Annual TOC Minute Delay Benchmark, the Annual Short Formation Benchmark, the Annual CaSL Target Performance Level and the Annual PPM Target Performance Level relating to that Franchisee Year:

(a) in respect of the Annual Cancellations Benchmark for that Franchisee Year:

Table 22	
$\frac{\sum Ac}{\mathbf{XY}}$	
where:	
$\sum A_c$	is ascertained as follows: (i) for the Annual Cap Performance Level, the sum of the data relevant for each of the Reporting Periods in that Franchisee Year, such data being the data which was used for the purposes of determining the Annual Cap Performance Level in respect of a full Franchisee Year as more particularly set out in the document in the agreed terms marked **ABD**; or (ii) for the Annual Target Performance Level, the sum of the data relevant for each of the Reporting Periods in that Franchisee Year, such data being the data which was used for the purposes of determining the Annual Target Performance Level in respect of a full Franchisee Year as more particularly set out in the document in the agreed terms marked **ABD**; or (iii) for the Annual Floor Performance Level, the sum of the data relevant for each of the Reporting Periods in that Franchisee Year, such data being the data which was used for the purposes of determining the Annual Floor Performance Level in respect of a full Franchisee Year as more particularly set out in the document in the agreed terms marked **ABD**; and
XY	has the meaning given to it in paragraph 1.2.

(b) in respect of the Annual TOC Minute Delay Benchmark for that Franchisee Year:

Table 23	
$\frac{\sum \mathrm{A_{md}}}{\mathrm{AB_{md}}}$	
where:	
$\sum A_{md}$	is: (i) for the Annual Cap Performance Level, the sum of the Minutes Delay attributable to the Franchisee as comprised in the data relevant for each of the Reporting Periods in that

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	Franchisee Year, such Minutes Delay data being the data which was used for the purposes of determining the Annual Cap Performance Level in respect of a full Franchisee Year as more particularly set out in the document in the agreed terms marked **ABD**; or (ii) for the Annual Target Performance Level, the sum of the Minutes Delay attributable to the Franchisee as comprised in the data relevant for each of the Reporting Periods in that Franchisee Year, such Minutes Delay data being the data which was used for the purposes of determining the Annual Target Performance Level in respect of a full Franchisee Year as more particularly set out in the document in the agreed terms marked **ABD**; or (iii) for the Annual Floor Performance Level, the sum of the Minutes Delay attributable to the Franchisee as comprised in the data relevant for each of the Reporting Periods in that Franchisee Year, such Minutes Delay data being the data which was used for the purposes of determining the Annual Floor Performance Level in respect of a full Franchisee Year as more particularly set out in the document in the agreed terms marked **ABD**; and
$\mathbf{AB}_{md}$	is ascertained as follows: $\frac{B}{1000}$ where: B is: (i) for the Annual Cap Performance Level, the sum of the Actual Train Mileage as comprised in the data relevant for each of the Reporting Periods in that Franchisee Year, such Actual Train Mileage data being the data which was used for the purposes of determining the Annual Cap Performance Level in respect of a full Franchisee Year as more particularly set out in the document in the agreed terms marked **ABD**; or (ii) for the Annual Target Performance Level, the sum of the Actual Train Mileage as comprised in the data relevant for each of the Reporting Periods in that Franchisee Year, such Actual Train Mileage data being the data which was used for the purposes of determining the Annual Target Performance Level in respect of a full Franchisee Year as more particularly set out in the document in the agreed terms marked **ABD**; or (iii) for the Annual Floor Performance Level, the sum of the Actual Train Mileage as comprised in the data relevant for each of the Reporting Periods in that Franchisee Year, such Actual Train Mileage data being the data which was used for the purposes of determining the Annual Floor Performance Level in respect of a full Franchisee Year as more particularly set out in the document in the agreed terms marked **ABD**; and

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(c) in respect of the Annual Short Formation Benchmark for that Franchisee Year:

Table 24	
$\frac{\sum Asf}{XY}$	
where:	
$\sum Asf$	is: (i) for the Annual Target Performance Level, the sum of the data relevant for each of the Reporting Periods in that Franchisee Year, such data being the data which was used for the purposes of determining the Annual Target Performance Level in respect of a full Franchisee Year as more particularly set out in the document in the agreed terms marked **ABD**; or (ii) for the Annual Floor Performance Level, the sum of the data relevant for each of the Reporting Periods in that Franchisee Year, such data being the data which was used for the purposes of determining the Annual Floor Performance Level in respect of a full Franchisee Year as more particularly set out in the document in the agreed terms marked **ABD**; and
XY	has the meaning given to it in paragraph 1.2.

(d) in respect of the Annual CaSL Target Performance Level for that Franchisee Year:

Table 25	
$\frac{\sum Ad}{XY}$	
where:	
$\sum Ad$	is: the sum of the data relevant for each of the Reporting Periods in that Franchisee Year, such data being the data which was used for the purposes of determining the Annual CaSL Target Performance Level in respect of a full Franchisee Year as more particularly set out in the document in the agreed terms marked **ABD**; and
XY	has the meaning given to it in paragraph 1.2.

(e) in respect of the Annual PPM Target Performance Level for that Franchisee Year:

Table 26

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$\frac{\sum Ae}{XY}$	
where:	
$\sum A$	is: the sum of the data relevant for each of the Reporting Periods in that Franchisee Year, such data being the data which was used for the purposes of determining the Annual PPM Target Performance Level in respect of a full Franchisee Year as more particularly set out in the document in the agreed terms marked **ABD**; and
XY	has the meaning given to it in paragraph 1.2.

21. **Determination of the Actual CaSL Performance Level and the Actual PPM Performance Level for Franchisee Years that are shorter than thirteen (13) Reporting Periods**

21.1 Where a Franchisee Year is shorter than thirteen (13) Reporting Periods (but no less than six (6) Reporting Periods), the Secretary of State will perform the following calculations for the purposes of determining the Actual CaSL Performance Level and the Actual PPM Performance Level relating to that Franchisee Year:

(a) in respect of the Actual CaSL Performance Level for that Franchisee Year:

Table 27	
$\frac{\sum Af}{XY}$	
where:	
$\sum Af$	is the sum of the figures published by Network Rail in respect of CaSL in respect of the Franchisee for each Reporting Period in that Franchisee Year;
XY	has the meaning given to it in paragraph 1.2.

(b) in respect of the Actual PPM Performance Level for that Franchisee Year:

Table 28	
$\frac{\sum Ag}{XY}$	
where:	
$\sum Ag$	is the sum of the figures published by Network Rail in respect of PPM in respect of the Franchisee for each Reporting Period in that Franchisee Year;
XY	has the meaning given to it in paragraph 1.2.

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21.2 Where a Franchisee Year is shorter than six (6) Reporting Periods, the Secretary of State shall not be required to perform any calculations for the purposes of determining the Actual CaSL Performance Level or the Actual PPM Performance Level relating to that Franchisee Year and the Franchisee's performance in respect of CaSL and PPM in that Franchisee Year shall be disregarded in respect of Schedule 7.1.

22. Network Rail Claim

22.1 The Franchisee shall not include in any claim for compensation from Network Rail under Schedule 8 of the Track Access Agreement any amounts to compensate the Franchisee for any loss suffered or costs incurred as a result of the Franchisee:

(a) not being entitled to receive from the Secretary of State the amounts specified in:

(i) row 1 (PBP_C) or row 2 (PDP_C) of Column 3 (With Multiplier) of the Annual Cancellations Payment Table; or

(ii) row 1 (PBP_{MD}) or row 2 (PDP_{MD}) of Column 3 (With Multiplier) of the Annual TOC Minute Delay Payment Table; and

(b) being required to incur the amounts specified in:

(i) row 1 (PBP_C) or row 2 (PDP_C) of Column 3 (With Multiplier) of the Annual Cancellations Payment Table; or

(ii) row 1 (PBP_{MD}) or row 2 (PDP_{MD}) of Column 3 (With Multiplier) of the Annual TOC Minute Delay Payment Table; and

(c) without prejudice to the Secretary of State's rights under Schedule 10 (Remedies, Events of Default and Termination Events), if the Franchisee receives compensation from Network Rail in respect of the losses and costs referred to in this paragraph 22.1, the Franchisee shall pay such compensation received to the Secretary of State within five (5) Weekdays of receipt.

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APPENDIX 1 TO SCHEDULE 7.1

Cancellations Benchmarks and Annual Cancellations Benchmarks

PART 1 - CANCELLATIONS BENCHMARK TABLE[64]

1. **Start of the Franchise**

The Reporting Period in the cells entitled **"Year 1, Period 1"** shall be the first Reporting Period of the first Franchisee Year of the Franchise Period.

Column 1	Column 2	Column 3	Column 4	Column 5
Reporting Period	**Rail Year**	**Target Performance Level** (% Cancelled)	**Breach Performance Level** (% Cancelled)	**Default Performance Level** (% Cancelled)
Year 1 Period 8	2016/17	0.39	0.73	0.94
Year 1 Period 9	2016/17	0.39	0.72	0.92
Year 1 Period 10	2016/17	0.39	0.71	0.91
Year 1 Period 11	2016/17	0.39	0.70	0.89
Year 1 Period 12	2016/17	0.39	0.69	0.88
Year 1 Period 13	2016/17	0.39	0.68	0.87
Year 2 Period 1	2016/17	0.39	0.67	0.85
Year 2 Period 2	2017/2018	0.39	0.65	0.84
Year 2 Period 3	2017/2018	0.39	0.64	0.82
Year 2 Period 4	2017/2018	0.39	0.63	0.81
Year 2 Period 5	2017/2018	0.39	0.62	0.80
Year 2 Period 6	2017/2018	0.39	0.61	0.78

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[64] **Note to Bidders:** DfT to confirm

Year 2 Period 7	2017/2018	0.38	0.60	0.77
Year 2 Period 8	2017/2018	0.38	0.59	0.75
Year 2 Period 9	2017/2018	0.38	0.58	0.74
Year 2 Period 10	2017/2018	0.38	0.57	0.73
Year 2 Period 11	2017/2018	0.38	0.56	0.71
Year 2 Period 12	2017/2018	0.38	0.55	0.70
Year 2 Period 13	2017/2018	0.37	0.54	0.69
Year 3 Period 1	2017/2018	0.37	0.52	0.67
Year 3 Period 2	2018/2019	0.37	0.51	0.66
Year 3 Period 3	2018/2019	0.37	0.50	0.64
Year 3 Period 4	2018/2019	0.37	0.49	0.63
Year 3 Period 5	2018/2019	0.36	0.48	0.62
Year 3 Period 6	2018/2019	0.36	0.47	0.60
Year 3 Period 7	2018/2019	0.36	0.46	0.59
Year 3 Period 8	2018/2019	0.36	0.45	0.57
Year 3 Period 9	2018/2019	0.36	0.45	0.57
Year 3 Period 10	2018/2019	0.36	0.45	0.57
Year 3 Period 11	2018/2019	0.36	0.45	0.57
Year 3 Period 12	2018/2019	0.36	0.45	0.57
Year 3 Period 13	2018/2019	0.36	0.45	0.57
Year 4 Period 1	2018/2019	0.36	0.44	0.57

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Year 4 Period 2	2019/2020	0.36	0.44	0.57
Year 4 Period 3	2019/2020	0.36	0.44	0.57
Year 4 Period 4	2019/2020	0.36	0.44	0.57
Year 4 Period 5	2019/2020	0.36	0.44	0.57
Year 4 Period 6	2019/2020	0.36	0.44	0.57
Year 4 Period 7	2019/2020	0.36	0.44	0.57
Year 4 Period 8	2019/2020	0.36	0.44	0.57
Year 4 Period 9	2019/2020	0.36	0.44	0.57
Year 4 Period 10	2019/2020	0.36	0.44	0.57
Year 4 Period 11	2019/2020	0.36	0.44	0.57
Year 4 Period 12	2019/2020	0.36	0.44	0.57
Year 4 Period 13	2019/2020	0.36	0.44	0.56
Year 5 Period 1	2019/2020	0.35	0.44	0.56
Year 5 Period 2	2020/2021	0.35	0.44	0.56
Year 5 Period 3	2020/2021	0.35	0.44	0.56
Year 5 Period 4	2020/2021	0.35	0.44	0.56
Year 5 Period 5	2020/2021	0.35	0.43	0.56
Year 5 Period 6	2020/2021	0.35	0.43	0.56
Year 5 Period 7	2020/2021	0.35	0.43	0.55
Year 5 Period 8	2020/2021	0.35	0.43	0.55
Year 5 Period 9	2020/2021	0.35	0.43	0.55

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Year 5 Period 10	2020/2021	0.34	0.43	0.55
Year 5 Period 11	2020/2021	0.34	0.42	0.54
Year 5 Period 12	2020/2021	0.34	0.42	0.54
Year 5 Period 13	2020/2021	0.34	0.42	0.54
Year 6 Period 1	2020/2021	0.34	0.42	0.54
Year 6 Period 2	2021/2022	0.34	0.42	0.54
Year 6 Period 3	2021/2022	0.34	0.42	0.54
Year 6 Period 4	2021/2022	0.34	0.42	0.54
Year 6 Period 5	2021/2022	0.34	0.42	0.53
Year 6 Period 6	2021/2022	0.34	0.42	0.53
Year 6 Period 7	2021/2022	0.34	0.42	0.53
Year 6 Period 8	2021/2022	0.34	0.42	0.53
Year 6 Period 9	2021/2022	0.34	0.42	0.53
Year 6 Period 10	2021/2022	0.34	0.42	0.53
Year 6 Period 11	2021/2022	0.34	0.42	0.53
Year 6 Period 12	2021/2022	0.34	0.42	0.53
Year 6 Period 13	2021/2022	0.34	0.42	0.53
Year 7 Period 1	2021/2022	0.34	0.42	0.53
Year 7 Period 2	2022/2023	0.34	0.42	0.53
Year 7 Period 3	2022/2023	0.34	0.42	0.53
Year 7 Period 4	2022/2023	0.34	0.42	0.53

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Year 7 Period 5	2022/2023	0.34	0.42	0.53
Year 7 Period 6	2022/2023	0.34	0.42	0.53
Year 7 Period 7	2022/2023	0.34	0.42	0.53
Year 7 Period 8	2022/2023	0.34	0.42	0.53
Year 7 Period 9	2022/2023	0.34	0.42	0.53
Year 7 Period 10	2022/2023	0.34	0.42	0.53
Year 7 Period 11	2022/2023	0.34	0.42	0.53
Year 7 Period 12	2022/2023	0.34	0.42	0.53
Year 7 Period 13	2022/2023	0.34	0.42	0.53
Year 8 Period 1	2022/2023	0.34	0.42	0.53
Year 8 Period 2	2023/2024	0.34	0.42	0.53
Year 8 Period 3	2023/2024	0.34	0.42	0.53
Year 8 Period 4	2023/2024	0.34	0.42	0.53
Year 8 Period 5	2023/2024	0.34	0.42	0.53
Year 8 Period 6	2023/2024	0.34	0.42	0.53
Year 8 Period 7	2023/2024	0.34	0.42	0.53
Year 8 Period 8	2023/2024	0.34	0.42	0.53
Year 8 Period 9	2023/2024	0.34	0.42	0.53
Year 8 Period 10	2023/2024	0.34	0.42	0.53
Year 8 Period 11	2023/2024	0.34	0.42	0.53
Year 8 Period 12	2023/2024	0.34	0.42	0.53

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Year 8 Period 13	2023/2024	0.34	0.42	0.53
Year 9 Period 1	2023/2024	0.34	0.42	0.53
Year 9 Period 2	2024/2025	0.34	0.42	0.53
Year 9 Period 3	2024/2025	0.34	0.42	0.53
Year 9 Period 4	2024/2025	0.34	0.42	0.53
Year 9 Period 5	2024/2025	0.34	0.42	0.53
Year 9 Period 6	2024/2025	0.34	0.42	0.53
Year 9 Period 7	2024/2025	0.34	0.42	0.53
Year 9 Period 8	2024/2025	0.34	0.42	0.53
Year 9 Period 9	2024/2025	0.34	0.42	0.53
Year 9 Period 10	2024/2025	0.34	0.42	0.53
Year 9 Period 11	2024/2025	0.34	0.42	0.53
Year 9 Period 12	2024/2025	0.34	0.42	0.53
Year 9 Period 13	2024/2025	0.34	0.42	0.53
Year 10 Period 1	2024/2025	0.34	0.42	0.53
Year 10 Period 2	2025/2026	0.34	0.42	0.53
Year 10 Period 3	2025/2026	0.34	0.42	0.53
Year 10 Period 4	2025/2026	0.34	0.42	0.53
Year 10 Period 5	2025/2026	0.34	0.42	0.53
Year 10 Period 6	2025/2026	0.34	0.42	0.53
Year 10 Period 7 Period 13	2025/2026	0.34	0.42	0.53

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Year 10 Period 8	2025/2026	0.34	0.42	0.53
Year 10 Period 9	2025/2026	0.34	0.42	0.53
Year 10 Period 10	2025/2026	0.34	0.42	0.53
Year 10 Period 11	2025/2026	0.34	0.42	0.53
Year 10 Period 12	2025/2026	0.34	0.42	0.53
Year 10 Period 13	2025/2026	0.34	0.42	0.53
Year 11 Period 1	2025/2026	0.34	0.42	0.53
Year 11 Period 2	2026/2027	0.34	0.42	0.53
Year 11 Period 3	2026/2027	0.34	0.42	0.53
Year 11 Period 4	2026/2027	0.34	0.42	0.53
Year 11 Period 5	2026/2027	0.34	0.42	0.53
Year 11 Period 6	2026/2027	0.34	0.42	0.53
Year 11 Period 7	2026/2027	0.34	0.42	0.53

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PART 2 - ANNUAL CANCELLATIONS BENCHMARK TABLE[65]

Column 1	Column 2	Column 3	Column 4	Column 5
Franchisee Year	**Annual Cap Performance Level** (% Cancelled)	**Annual Target Performance Level** (% Cancelled)	**Annual Floor Performance Level** (% Cancelled)	**Annual CaSL Target Performance Level** (%)
Year 1 (Part - 6 Reporting Periods)	0.32	0.39	0.68	2.28
Year 2	0.30	0.37	0.54	2.26
Year 3	0.29	0.36	0.45	2.26
Year 4	0.29	0.36	0.44	2.24
Year 5	0.28	0.34	0.42	2.23
Year 6	0.27	0.34	0.42	2.23
Year 7	0.27	0.34	0.42	2.24
Year 8	0.27	0.34	0.42	2.24
Year 9	0.27	0.34	0.42	2.24
Year 10 (7 Reporting Periods)	0.27	0.34	0.42	2.24
13 Reporting Periods Extension				
Year 10	0.27	0.34	0.42	2.24
Year 11	0.27	0.34	0.42	2.23

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[65] **Note to Bidders:** DfT to confirm.

PART 3 - ANNUAL CANCELLATIONS PAYMENT TABLE[66]

[* provided that in respect of any Franchisee Year of less than thirteen (13) Reporting Periods PBP_C and/or PPP_C (as applicable) shall be multiplied by the number of whole Reporting Periods in the relevant Franchisee Year and then divided by thirteen (13).]

Column 1	Column 2	Column 3
Payment	**Amount (£)**	**Amount (£)**
	Without Multiplier	With Multiplier
PBP_C	£8,333,333	£16,133,333
PDP_C	£26,250,000	£19,937,500

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[66] **Note to Bidders:** DfT to confirm.

APPENDIX 2 TO SCHEDULE 7.1

TOC Minute Delay Benchmarks and Annual TOC Minute Delay Benchmarks

PART 1 - TOC MINUTE DELAY BENCHMARK TABLE[67]

1. **Start of the Franchise**

The Reporting Period in the cells entitled **"Year 1, Period 1"** shall be the first Reporting Period of the first Franchisee Year of the Franchise Period.

Column 1	Column 2	Column 3	Column 4	Column 5
Reporting Period	**Rail Year**	**Target Performance Level** (relevant Minutes Delay/1000 Train Miles)	**Breach Performance Level** (relevant Minutes Delay/1000 Train Miles)	**Default Performance Level** (relevant Minutes Delay/1000 Train Miles)
Year 1 Period 8	2016/17	8.45	13.75	14.94
Year 1 Period 9	2016/17	8.23	13.57	14.75
Year 1 Period 10	2016/17	8.04	13.4	14.57
Year 1 Period 11	2016/17	7.83	13.23	14.38
Year 1 Period 12	2016/17	7.68	13.06	14.19
Year 1 Period 13	2016/17	7.55	12.88	14.00
Year 2 Period 1	2016/17	7.54	12.71	13.82
Year 2 Period 2	2017/2018	7.53	12.54	13.63
Year 2 Period 3	2017/2018	7.51	12.36	13.44
Year 2 Period 4	2017/2018	7.48	12.19	13.25
Year 2 Period 5	2017/2018	7.45	12.02	13.06

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[67] **Note to Bidders:** DfT to confirm.

Year 2 Period 6	2017/2018	7.44	11.85	12.88
Year 2 Period 7	2017/2018	7.42	11.67	12.69
Year 2 Period 8	2017/2018	7.40	11.5	12.50
Year 2 Period 9	2017/2018	7.38	11.33	12.31
Year 2 Period 10	2017/2018	7.35	11.15	12.12
Year 2 Period 11	2017/2018	7.31	10.98	11.94
Year 2 Period 12	2017/2018	7.29	10.81	11.75
Year 2 Period 13	2017/2018	7.26	10.64	11.56
Year 3 Period 1	2017/2018	7.25	10.46	11.37
Year 3 Period 2	2018/2019	7.24	10.29	11.19
Year 3 Period 3	2018/2019	7.20	10.12	11.00
Year 3 Period 4	2018/2019	7.16	9.95	10.81
Year 3 Period 5	2018/2019	7.14	9.77	10.62
Year 3 Period 6	2018/2019	7.13	9.6	10.43
Year 3 Period 7	2018/2019	7.12	9.43	10.25
Year 3 Period 8	2018/2019	7.11	9.25	10.06
Year 3 Period 9	2018/2019	7.10	9.24	10.04
Year 3 Period 10	2018/2019	7.09	9.23	10.03
Year 3 Period 11	2018/2019	7.09	9.23	10.03
Year 3 Period 12	2018/2019	7.08	9.21	10.02
Year 3 Period 13	2018/2019	7.08	9.21	10.02

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Year 4 Period 1	2018/2019	7.08	9.21	10.02
Year 4 Period 2	2019/2020	7.08	9.21	10.02
Year 4 Period 3	2019/2020	7.09	9.23	10.03
Year 4 Period 4	2019/2020	7.11	9.25	10.06
Year 4 Period 5	2019/2020	7.14	9.29	10.10
Year 4 Period 6	2019/2020	7.13	9.28	10.09
Year 4 Period 7	2019/2020	7.14	9.29	10.10
Year 4 Period 8	2019/2020	7.15	9.31	10.12
Year 4 Period 9	2019/2020	7.18	9.34	10.16
Year 4 Period 10	2019/2020	7.21	9.38	10.20
Year 4 Period 11	2019/2020	7.23	9.41	10.23
Year 4 Period 12	2019/2020	7.22	9.4	10.21
Year 4 Period 13	2019/2020	7.22	9.4	10.21
Year 5 Period 1	2019/2020	7.18	9.34	10.16
Year 5 Period 2	2020/2021	7.18	9.34	10.16
Year 5 Period 3	2020/2021	7.16	9.32	10.13
Year 5 Period 4	2020/2021	7.15	9.31	10.12
Year 5 Period 5	2020/2021	7.13	9.28	10.09
Year 5 Period 6	2020/2021	7.12	9.27	10.07
Year 5 Period 7	2020/2021	7.11	9.25	10.06
Year 5 Period 8	2020/2021	7.09	9.23	10.03

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Year 5 Period 9	2020/2021	7.07	9.2	10.00
Year 5 Period 10	2020/2021	7.05	9.18	9.97
Year 5 Period 11	2020/2021	7.03	9.15	9.95
Year 5 Period 12	2020/2021	7.01	9.12	9.92
Year 5 Period 13	2020/2021	7.02	9.14	9.93
Year 6 Period 1	2020/2021	7.02	9.14	9.93
Year 6 Period 2	2021/2022	7.02	9.14	9.93
Year 6 Period 3	2021/2022	7.01	9.12	9.92
Year 6 Period 4	2021/2022	7.00	9.11	9.90
Year 6 Period 5	2021/2022	6.99	9.1	9.89
Year 6 Period 6	2021/2022	6.99	9.1	9.89
Year 6 Period 7	2021/2022	6.99	9.1	9.89
Year 6 Period 8	2021/2022	6.99	9.1	9.89
Year 6 Period 9	2021/2022	6.99	9.1	9.89
Year 6 Period 10	2021/2022	6.99	9.1	9.89
Year 6 Period 11	2021/2022	6.99	9.1	9.89
Year 6 Period 12	2021/2022	6.99	9.1	9.89
Year 6 Period 13	2021/2022	6.98	9.08	9.87
Year 7 Period 1	2021/2022	6.99	9.1	9.89
Year 7 Period 2	2022/2023	6.99	9.1	9.89
Year 7 Period 3	2022/2023	6.99	9.1	9.89

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Year 7 Period 4	2022/2023	6.99	9.1	9.89
Year 7 Period 5	2022/2023	6.99	9.1	9.89
Year 7 Period 6	2022/2023	6.99	9.1	9.89
Year 7 Period 7	2022/2023	6.99	9.1	9.89
Year 7 Period 8	2022/2023	6.99	9.1	9.89
Year 7 Period 9	2022/2023	6.99	9.1	9.89
Year 7 Period 10	2022/2023	6.99	9.1	9.89
Year 7 Period 11	2022/2023	6.99	9.1	9.89
Year 7 Period 12	2022/2023	6.99	9.1	9.89
Year 7 Period 13	2022/2023	6.99	9.1	9.89
Year 8 Period 1	2022/2023	6.99	9.1	9.89
Year 8 Period 2	2023/2024	6.99	9.1	9.89
Year 8 Period 3	2023/2024	6.99	9.1	9.89
Year 8 Period 4	2023/2024	6.99	9.1	9.89
Year 8 Period 5	2023/2024	6.99	9.1	9.89
Year 8 Period 6	2023/2024	6.99	9.1	9.89
Year 8 Period 7	2023/2024	6.99	9.1	9.89
Year 8 Period 8	2023/2024	6.99	9.1	9.89
Year 8 Period 9	2023/2024	6.99	9.1	9.89
Year 8 Period 10	2023/2024	6.99	9.1	9.89
Year 8 Period 11	2023/2024	6.99	9.1	9.89

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Year 8 Period 12	2023/2024	6.99	9.1	9.89
Year 8 Period 13	2023/2024	6.99	9.1	9.89
Year 9 Period 1	2023/2024	7.00	9.11	9.90
Year 9 Period 2	2024/2025	7.00	9.11	9.90
Year 9 Period 3	2024/2025	6.99	9.1	9.89
Year 9 Period 4	2024/2025	6.99	9.1	9.89
Year 9 Period 5	2024/2025	6.99	9.1	9.89
Year 9 Period 6	2024/2025	6.99	9.1	9.89
Year 9 Period 7	2024/2025	6.98	9.08	9.87
Year 9 Period 8	2024/2025	6.98	9.08	9.87
Year 9 Period 9	2024/2025	6.98	9.08	9.87
Year 9 Period 10	2024/2025	6.97	9.07	9.86
Year 9 Period 11	2024/2025	6.97	9.07	9.86
Year 9 Period 12	2024/2025	6.97	9.07	9.86
Year 9 Period 13	2024/2025	6.96	9.06	9.85
Year 10 Period 1 Period 7	2024/2025	6.97	9.07	9.86
Year 10 Period 2 Period 8	2025/2026	6.97	9.07	9.86
Year 10 Period 3 Period 9	2025/2026	6.97	9.07	9.86
Year 10 Period 4 Period 10	2025/2026	6.97	9.07	9.86
Year 10 Period 5 Period 11	2025/2026	6.97	9.07	9.86
Year 10 Period 6 Period 12	2025/2026	6.97	9.07	9.86

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Year 10 Period 7 Period 13	2025/2026	6.97	9.07	9.86
Year 10 Period 8	2025/2026	6.97	9.07	9.86
Year 10 Period 9	2025/2026	6.97	9.07	9.86
Year 10 Period 10	2025/2026	6.97	9.07	9.86
Year 10 Period 11	2025/2026	6.97	9.07	9.86
Year 10 Period 12	2025/2026	6.97	9.07	9.86
Year 10 Period 13	2025/2026	6.97	9.07	9.86
Year 11 Period 1	2025/2026	6.93	9.02	9.80
Year 11 Period 2	2026/2027	6.93	9.02	9.80
Year 11 Period 3	2026/2027	6.93	9.02	9.80
Year 11 Period 4	2026/2027	6.93	9.02	9.80
Year 11 Period 5	2026/2027	6.93	9.02	9.80
Year 11 Period 6	2026/2027	6.93	9.02	9.80
Year 11 Period 7	2026/2027	6.93	9.02	9.80

WITHDRAWN JANUARY 2026

PART 2 - ANNUAL TOC MINUTE DELAY BENCHMARK TABLE[68]

Column 1	Column 2	Column 3	Column 4	Column 5
Franchisee Year	**Annual Cap Performance Level** (relevant Minutes Delay per 1000 train miles)	**Annual Target Performance Level** (relevant Minutes Delay per 1000 train miles)	**Annual Floor Performance Level** (relevant Minutes Delay per 1000 train miles)	**Annual PPM Target Performance Level** (%)
Year 1 (6 Reporting Periods)	7.03	7.55	12.88	91.52
Year 2	6.76	7.26	10.64	92.11
Year 3	6.60	7.08	9.21	92.13
Year 4	6.73	7.22	9.40	91.99
Year 5	6.54	7.02	9.14	91.97
Year 6	6.50	6.98	9.08	91.97
Year 7	6.51	6.99	9.10	91.97
Year 8	6.51	6.99	9.10	91.98
Year 9	6.48	6.96	9.06	91.98
Year 10 (7 Reporting Periods)	6.49	6.97	9.07	91.97
13 Reporting Periods Extension				
Year 10	6.49	6.97	9.07	91.98
Year 11 (7 reporting periods)	6.49	6.97	9.07	91.98

WITHDRAWN JANUARY 2026

[68] **Note to Bidders:** DfT to confirm.

PART 3 - ANNUAL TOC MINUTE DELAY PAYMENT TABLE[69]

Column 1	Column 2	Column 3
Payment	**Amount (£)**	**Amount (£)**
	Without Multiplier	With Multiplier
PBP_{MD}	£833,333	£1,612,500
PDP_{MD}	£660,377	£501,415

[*provided that in respect of any Franchisee Year of less than thirteen (13) Reporting Periods PBP_{MD} and/or PDP_{MD} shall be multiplied by the number of whole Reporting Periods in the relevant Franchisee Year and then divided by thirteen (13).]

WITHDRAWN JANUARY 2026

[69] **Note to Bidders:** DfT to confirm.

APPENDIX 3 TO SCHEDULE 7.1

Short Formation Benchmark and Annual Short Formation Benchmark Table

PART 1 - SHORT FORMATION BENCHMARK TABLE[70]

1. **Start of the Franchise**

The Reporting Period in the cells entitled **"Year 1, Period 1"** shall be the first Reporting Period of the first Franchisee Year of the Franchise Period.

Column 1	Column 2	Column 3	Column 4	Column 5
Reporting Period	**Rail Year**	**Target Performance Level** (% Short Formed)	**Breach Performance Level** (% Short Formed)	**Default Performance Level** (% Short Formed)
Year 1 Period 8	2016/17	0.00%	0.60%	0.77%
Year 1 Period 9	2016/17	0.00%	0.59%	0.76%
Year 1 Period 10	2016/17	0.00%	0.58%	0.74%
Year 1 Period 11	2016/17	0.00%	0.57%	0.73%
Year 1 Period 12	2016/17	0.00%	0.56%	0.72%
Year 1 Period 13	2016/17	0.00%	0.55%	0.71%
Year 2 Period 1	2016/17	0.00%	0.54%	0.70%
Year 2 Period 2	2017/2018	0.00%	0.53%	0.69%
Year 2 Period 3	2017/2018	0.00%	0.53%	0.68%
Year 2 Period 4	2017/2018	0.00%	0.52%	0.66%
Year 2 Period 5	2017/2018	0.00%	0.51%	0.65%
Year 2	2017/2018	0.00%	0.50%	0.64%

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[70] **Note to Bidders:** DfT to confirm.

Period 6				
Year 2 Period 7	2017/2018	0.00%	0.49%	0.63%
Year 2 Period 8	2017/2018	0.00%	0.48%	0.62%
Year 2 Period 9	2017/2018	0.00%	0.47%	0.61%
Year 2 Period 10	2017/2018	0.00%	0.46%	0.60%
Year 2 Period 11	2017/2018	0.00%	0.45%	0.58%
Year 2 Period 12	2017/2018	0.00%	0.45%	0.57%
Year 2 Period 13	2017/2018	0.00%	0.44%	0.56%
Year 3 Period 1	2017/2018	0.00%	0.43%	0.55%
Year 3 Period 2	2018/2019	0.00%	0.42%	0.54%
Year 3 Period 3	2018/2019	0.00%	0.41%	0.53%
Year 3 Period 4	2018/2019	0.00%	0.40%	0.52%
Year 3 Period 5	2018/2019	0.00%	0.39%	0.50%
Year 3 Period 6	2018/2019	0.00%	0.38%	0.49%
Year 3 Period 7	2018/2019	0.00%	0.37%	0.48%
Year 3 Period 8	2018/2019	0.00%	0.37%	0.47%
Year 3 Period 9	2018/2019	0.00%	0.36%	0.47%
Year 3 Period 10	2018/2019	0.00%	0.36%	0.47%
Year 3 Period 11	2018/2019	0.00%	0.36%	0.47%
Year 3 Period 12	2018/2019	0.00%	0.36%	0.47%
Year 3 Period 13	2018/2019	0.00%	0.36%	0.47%
Year 4	2018/2019	0.00%	0.36%	0.47%

WITHDRAWN JANUARY 2026

Period 1				
Year 4 Period 2	2019/2020	0.00%	0.36%	0.47%
Year 4 Period 3	2019/2020	0.00%	0.36%	0.47%
Year 4 Period 4	2019/2020	0.00%	0.36%	0.47%
Year 4 Period 5	2019/2020	0.00%	0.36%	0.47%
Year 4 Period 6	2019/2020	0.00%	0.36%	0.47%
Year 4 Period 7	2019/2020	0.00%	0.36%	0.47%
Year 4 Period 8	2019/2020	0.00%	0.36%	0.47%
Year 4 Period 9	2019/2020	0.00%	0.36%	0.47%
Year 4 Period 10	2019/2020	0.00%	0.36%	0.47%
Year 4 Period 11	2019/2020	0.00%	0.36%	0.47%
Year 4 Period 12	2019/2020	0.00%	0.36%	0.47%
Year 4 Period 13	2019/2020	0.00%	0.36%	0.47%
Year 5 Period 1	2019/2020	0.00%	0.36%	0.47%
Year 5 Period 2	2020/2021	0.00%	0.36%	0.47%
Year 5 Period 3	2020/2021	0.00%	0.36%	0.47%
Year 5 Period 4	2020/2021	0.00%	0.36%	0.47%
Year 5 Period 5	2020/2021	0.00%	0.36%	0.47%
Year 5 Period 6	2020/2021	0.00%	0.36%	0.47%
Year 5 Period 7	2020/2021	0.00%	0.36%	0.47%
Year 5 Period 8	2020/2021	0.00%	0.36%	0.47%
Year 5	2020/2021	0.00%	0.36%	0.47%

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Period 9				
Year 5 Period 10	2020/2021	0.00%	0.36%	0.47%
Year 5 Period 11	2020/2021	0.00%	0.36%	0.47%
Year 5 Period 12	2020/2021	0.00%	0.36%	0.47%
Year 5 Period 13	2020/2021	0.00%	0.36%	0.47%
Year 6 Period 1	2020/2021	0.00%	0.36%	0.47%
Year 6 Period 2	2021/2022	0.00%	0.36%	0.47%
Year 6 Period 3	2021/2022	0.00%	0.36%	0.47%
Year 6 Period 4	2021/2022	0.00%	0.36%	0.47%
Year 6 Period 5	2021/2022	0.00%	0.36%	0.47%
Year 6 Period 6	2021/2022	0.00%	0.36%	0.47%
Year 6 Period 7	2021/2022	0.00%	0.36%	0.47%
Year 6 Period 8	2021/2022	0.00%	0.36%	0.47%
Year 6 Period 9	2021/2022	0.00%	0.36%	0.47%
Year 6 Period 10	2021/2022	0.00%	0.36%	0.47%
Year 6 Period 11	2021/2022	0.00%	0.36%	0.47%
Year 6 Period 12	2021/2022	0.00%	0.36%	0.47%
Year 6 Period 13	2021/2022	0.00%	0.36%	0.47%
Year 7 Period 1	2021/2022	0.00%	0.36%	0.47%
Year 7 Period 2	2022/2023	0.00%	0.36%	0.47%
Year 7 Period 3	2022/2023	0.00%	0.36%	0.47%
Year 7	2022/2023	0.00%	0.36%	0.47%

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Period 4				
Year 7 Period 5	2022/2023	0.00%	0.36%	0.47%
Year 7 Period 6	2022/2023	0.00%	0.36%	0.47%
Year 7 Period 7	2022/2023	0.00%	0.36%	0.47%
Year 7 Period 8	2022/2023	0.00%	0.36%	0.47%
Year 7 Period 9	2022/2023	0.00%	0.36%	0.47%
Year 7 Period 10	2022/2023	0.00%	0.36%	0.47%
Year 7 Period 11	2022/2023	0.00%	0.36%	0.47%
Year 7 Period 12	2022/2023	0.00%	0.36%	0.47%
Year 7 Period 13	2022/2023	0.00%	0.36%	0.47%
Year 8 Period 1	2022/2023	0.00%	0.36%	0.47%
Year 8 Period 2	2023/2024	0.00%	0.36%	0.47%
Year 8 Period 3	2023/2024	0.00%	0.36%	0.47%
Year 8 Period 4	2023/2024	0.00%	0.36%	0.47%
Year 8 Period 5	2023/2024	0.00%	0.36%	0.47%
Year 8 Period 6	2023/2024	0.00%	0.36%	0.47%
Year 8 Period 7	2023/2024	0.00%	0.36%	0.47%
Year 8 Period 8	2023/2024	0.00%	0.36%	0.47%
Year 8 Period 9	2023/2024	0.00%	0.36%	0.47%
Year 8 Period 10	2023/2024	0.00%	0.36%	0.47%
Year 8 Period 11	2023/2024	0.00%	0.36%	0.47%
Year 8	2023/2024	0.00%	0.36%	0.47%

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Period 12				
Year 8 Period 13	2023/2024	0.00%	0.36%	0.47%
Year 9 Period 1	2023/2024	0.00%	0.36%	0.47%
Year 9 Period 2	2024/2025	0.00%	0.36%	0.47%
Year 9 Period 3	2024/2025	0.00%	0.36%	0.47%
Year 9 Period 4	2024/2025	0.00%	0.36%	0.47%
Year 9 Period 5	2024/2025	0.00%	0.36%	0.47%
Year 9 Period 6	2024/2025	0.00%	0.36%	0.47%
Year 9 Period 7	2024/2025	0.00%	0.36%	0.47%
Year 9 Period 8	2024/2025	0.00%	0.36%	0.47%
Year 9 Period 9	2024/2025	0.00%	0.36%	0.47%
Year 9 Period 10	2024/2025	0.00%	0.36%	0.47%
Year 9 Period 11	2024/2025	0.00%	0.36%	0.47%
Year 9 Period 12	2024/2025	0.00%	0.36%	0.47%
Year 9 Period 13	2024/2025	0.00%	0.36%	0.47%
Year 10 Period 1 Period 7	2024/2025	0.00%	0.36%	0.47%
Year 10 Period 2 Period 8	2025/2026	0.00%	0.36%	0.47%
Year 10 Period 3 Period 9	2025/2026	0.00%	0.36%	0.47%
Year 10 Period 4 Period 10	2025/2026	0.00%	0.36%	0.47%
Year 10 Period 5 Period 11	2025/2026	0.00%	0.36%	0.47%
Year 10 Period 6 Period 12	2025/2026	0.00%	0.36%	0.47%
Year 10 Period 7	2025/2026	0.00%	0.36%	0.47%

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Period 13				
Year 10 Period 8	2025/2026	0.00%	0.36%	0.47%
Year 10 Period 9	2025/2026	0.00%	0.36%	0.47%
Year 10 Period 10	2025/2026	0.00%	0.36%	0.47%
Year 10 Period 11	2025/2026	0.00%	0.36%	0.47%
Year 10 Period 12	2025/2026	0.00%	0.36%	0.47%
Year 10 Period 13	2025/2026	0.00%	0.36%	0.47%
Year 11 Period 1	2025/2026	0.00%	0.36%	0.47%
Year 11 Period 2	2026/2027	0.00%	0.36%	0.47%
Year 11 Period 3	2026/2027	0.00%	0.36%	0.47%
Year 11 Period 4	2026/2027	0.00%	0.36%	0.47%
Year 11 Period 5	2026/2027	0.00%	0.36%	0.47%
Year 11 Period 6	2026/2027	0.00%	0.36%	0.47%
Year 11 Period 7	2026/2027	0.00%	0.36%	0.47%

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PART 2 - ANNUAL SHORT FORMATION BENCHMARK TABLE[71]

Column 1	Column 2	Column 3	Column 4
Franchisee Year	**Annual Target Performance level (%)**	**Annual Intermediate Performance Level (%)**	**Annual Floor Performance Level (%)**
Year 1 (6 Reporting Periods)	0.00%	0.18%	0.55%
Year 2	0.00%	0.17%	0.44%
Year 3	0.00%	0.17%	0.36%
Year 4	0.00%	0.19%	0.36%
Year 5	0.00%	0.17%	0.36%
Year 6	0.00%	0.17%	0.36%
Year 7	0.00%	0.17%	0.36%
Year 8	0.00%	0.17%	0.36%
Year 9	0.00%	0.17%	0.36%
Year 10 (7 Reporting periods)	0.00%	0.17%	0.36%
13 Reporting Periods Extension			
Year 10	0.00%	0.17%	0.36%
Year 11 (7 Reporting Periods)	0.00%	0.17%	0.36%

WITHDRAWN JANUARY 2026

[71] **Note to Bidders:** DfT to confirm.

PART 3 - ANNUAL SHORT FORMATION PAYMENT TABLE[72]

Column 1	Column 2
	Amount (£)
BPR_{SF}	£10,859,294
IPR_{SF}	£6,450,997

[* provided that in respect of any Franchisee Year of less than thirteen (13) Reporting Periods PDP_{SF} (as applicable) shall be multiplied by the number of whole Reporting Period in the relevant Franchisee Year and then divided by thirteen (13).]

WITHDRAWN JANUARY 2026

[72] **Note to Bidders:** DfT to confirm.

SCHEDULE 7.2

National Rail Passenger Surveys, Customer Report and CCIF Scheme

1. Conduct of National Rail Passenger Surveys

1.1 The Franchisee agrees with the Secretary of State that:

(a) the Passengers' Council may measure the level of passenger satisfaction with the Franchise Services through National Rail Passenger Surveys;

(b) the Passengers' Council shall determine how, when (normally twice per annum) and where National Rail Passenger Surveys are to be carried out;

(c) the Franchisee shall grant access on trains or at stations to the Passengers' Council (or its representatives and agents) to carry out National Rail Passenger Surveys;

(d) the Franchisee shall co-operate with the Passengers' Council (in such manner as the Passengers' Council may reasonably request or as the Secretary of State may reasonably direct) in order to enable the Passengers' Council to carry out National Rail Passenger Surveys; and

(e) the Passengers' Council and/or the Secretary of State may, from time to time, publish the results of each National Rail Passenger Survey.

1.2 The Secretary of State shall ensure or shall procure that:

(a) the findings of any National Rail Passenger Survey are made available by the Passengers' Council to the Franchisee within a reasonable period of time after the completion of each such survey and shall use all reasonable endeavours to procure that those findings are made available in a timely manner to enable the Franchisee to make reasonable publicity arrangements (if required); and

(b) if any such survey includes a comparison between its findings and the findings of any equivalent earlier survey, such comparison forms a reasonable basis for monitoring the trends of passenger satisfaction over time.

1.3 If the Passengers' Council ceases to undertake National Rail Passenger Surveys then the relevant National Rail Passenger Survey for the purposes of this Schedule 7.2 shall be such other passenger survey as the Secretary of State may, after consultation with the Franchisee, reasonably determine to be appropriate in the circumstances (the **"Alternative NRPS"**). The provisions of this Schedule 7.2 shall apply in respect of any Alternative NRPS and for these purposes Passengers' Council shall be replaced with such other entity that is responsible for conducting such Alternative NRPS.

2. Consultations

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

(a) passengers, potential passengers, stakeholders and other users of the rail network; and

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(b) persons who are protected by a Disabled People's Protection Policy; and

(c) persons with other protected characteristics within the meaning of the EA,

for the purposes of the Customer and Stakeholder Engagement Strategy, the Customer Report and the CCIF Scheme.

3. **Customer and Stakeholder Engagement Strategy**

3.1 The Franchisee shall:

(a) undertake and complete a review of its Customer and Stakeholder Engagement Strategy during each of the 4th and 7th Franchisee Years; and

(b) provide the Secretary of State with any proposed revisions to the Customer and Stakeholder Engagement Strategy arising out of such review by no later than the end of each such Franchisee Year.

3.2 The aim of such review shall be to update the Customer and Stakeholder Engagement Strategy to reflect lessons learned in the period since the Start Date or the previous review of the Customer and Stakeholder Engagement Strategy (as applicable) and to ensure that the Customer and Stakeholder Engagement Strategy achieves effective passenger engagement. Any revisions to the Customer and Stakeholder Engagement Strategy shall require the consent of the Secretary of State (such consent not to be unreasonably withheld or delayed).

4. **Customer Report**

4.1 The Franchisee shall:

(a) by no later than the Start Date; and

(b) thereafter at least twice each Franchisee Year,

publish the Customer Report in such readily accessible formats as the Secretary of State may reasonably require (including in booklet or other similar hard copy formats, in electronic formats (such as on the Franchisee's website, through social media channels and by email)), in each case in accordance with the Customer and Stakeholder Engagement Strategy and the provisions of paragraph 8 of Schedule 1.4 (Passenger Facing Obligations) and paragraph 5.3 of Schedule 7.3 (Customer Experience Performance).

4.2 The Secretary of State and the Franchisee acknowledge and agree that the first Customer Report published pursuant to paragraph 4.1(b) in each Franchisee Year shall be prepared in respect of the first six (6) Reporting Periods of that Franchisee Year and the second Customer Report published pursuant to paragraph 4.1(b) in each Franchisee Year shall be prepared in respect of the last seven (7) Reporting Periods of that Franchisee Year.

5. **CCIF Scheme**

5.1 No later than three (3) months prior to the start of each CCIF Period the Franchisee shall provide to the Secretary of State details of those initiatives, works or proposals (each a **"CCIF Scheme"**) which the Franchisee proposes to undertake in that CCIF Period in order to resolve or mitigate issues raised with

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the Franchisee through the consultations as carried out pursuant to paragraph 2. The Franchisee shall use all reasonable endeavours to propose, in respect of each CCIF Period, CCIF Schemes with an aggregate projected CCIF Scheme Shortfall of not less than the aggregate of the CCIF Amount for each Franchisee Year in the relevant CCIF Period.

5.2 In relation to each CCIF Scheme proposed by the Franchisee pursuant to paragraph 5.1 the Franchisee shall provide:

(a) details of the specific issues which that CCIF Scheme is intended to resolve or mitigate (including how those issues have been identified) and how that CCIF Scheme will resolve or mitigate those issues; and

(b) fully worked up details of the CCIF Scheme sufficient to enable the Secretary of State to evaluate the same, including:

(i) a timetable for the implementation of that CCIF Scheme, setting out the proposed commencement and completion date of such CCIF Scheme and any other key dates and milestones;

(ii) details of the projected CCIF Scheme Cost; and

(iii) details of the projected CCIF Scheme Revenue.

5.3 The Franchisee shall provide the Secretary of State with such further information in relation to any CCIF Scheme proposed by the Franchisee pursuant to paragraph 5.1 as the Secretary of State may reasonably require.

5.4 A CCIF Scheme proposed by the Franchisee pursuant to paragraph 5.1 shall not be an Approved CCIF Scheme unless and until approved by the Secretary of State pursuant to this paragraph 5.4. Without limitation, the Secretary of State may withhold his approval to any proposed CCIF Scheme which:

(a) has not been identified and/or developed in accordance with the Customer and Stakeholder Engagement Strategy;

(b) is not designed to resolve or mitigate issues raised with the Franchisee through the consultations referred to in paragraph 2;

(c) has a completion date falling later than the end of the relevant CCIF Period;

(d) is projected to generate a Commercial Return or in relation to which the Secretary of State considers the CCIF Scheme Costs (or any part of them) to be too high or disproportionate to the benefits accruing from the CCIF Scheme;

(e) the Franchisee is otherwise funded to undertake; or

(f) in the opinion of the Secretary of State, amounts to actions or steps which the Franchisee is otherwise obliged to take or which any competent train operator should be taking in relation to the operation of the Franchise.

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5.5 Approved CCIF Schemes shall be deemed to be, and treated for the purposes of this Agreement as, Committed Obligations.

5.6 Paragraph 5.8 will apply if:

(a) the aggregate projected CCIF Scheme Shortfall in respect of all Approved CCIF Schemes for any CCIF Period is less than the aggregate of the CCIF Amount for each Franchisee Year in that CCIF Period; or

(b) subject to paragraph 5.7 in any CCIF Period, in the Secretary of State's reasonable opinion, the aggregate of the actual CCIF Scheme Shortfall incurred by the Franchisee during that CCIF Period upon Approved CCIF Schemes is less than the aggregate of the CCIF Amount for each Franchisee Year in that CCIF Period,

in each case the underspend against the aggregate CCIF Amount being the **"CCIF Underspend"**.

5.7 If:

(a) the amount of the CCIF Scheme Costs actually incurred by the Franchisee in relation to any Approved CCIF Scheme exceed the projected CCIF Scheme Costs notified to the Secretary of State pursuant to paragraph 5.2 for such Approved CCIF Scheme, then the amount of the excess shall not amount to CCIF Scheme Cost; or

(b) in the Secretary of State's reasonable opinion, the amount of the CCIF Scheme Revenue actually earned by the Franchisee in relation to any Approved CCIF Scheme is less than the projected CCIF Scheme Revenue notified to the Secretary of State pursuant to paragraph 5.2 for such Approved CCIF Scheme then, for the purposes of paragraph 5.6(b) the actual CCIF Scheme Revenue shall be deemed to be the projected CCIF Scheme Revenue.

5.8 Where this paragraph 5.8 applies the Secretary of State may require:

(a) all or part of the CCIF Underspend to be added to the CCIF Amount for the first Franchisee Year in the subsequent CCIF Period;

(b) the Franchisee to propose further CCIF Schemes using all or part of the CCIF Underspend by such new deadline as the Secretary of State may specify;

(c) the Franchisee to spend all or part of the CCIF Underspend in such manner as the Secretary of State may direct; and/or

(d) the Franchisee to pay all or part of the CCIF Underspend to the Secretary of State,

provided that paragraph 5.8(d) shall automatically apply in respect of the last CCIF Period unless the Secretary of State specifies otherwise.

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5.9 Any Franchise Asset arising as a result of an Approved CCIF Scheme shall be designated as a Primary Franchise Asset and shall not be de-designated as such. Any such Primary Franchise Asset which falls to be valued in accordance with the Supplemental Agreement shall be valued at nil.

6. Customer Service and Satisfaction Data

6.1 As part of each Customer Report to be provided by the Franchisee pursuant to paragraph 4.1 of this Schedule 7.2, the Franchisee shall publish (in such format as the Secretary of State may reasonably require) details of the Franchisee's:

(a) level of adherence to scheduled ticket office opening hours at Stations (so that the Customer Report shows, as a percentage, the proportion of scheduled ticket office opening hours not delivered aggregated across all ticket offices at all Stations); and

(b) performance by reference to such benchmarks as may be agreed between the Franchisee and the ORR as part of the Franchisee's Disabled People's Protection Policy in respect of the Passenger Assistance service operated by the Franchisee,

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 Customer Report, since the Start Date, along with (from the third Customer Report onwards) a comparison with the relevant statistics or results (as applicable) provided for the same Reporting Periods in the previous Franchisee Year.

6.2 Within twenty (20) Weekdays of the publication of each National Rail Passenger Survey carried out by the Passengers' Council during the Franchise Term, the Franchisee shall publish on its web site (in such format as the Secretary of State may reasonably require) details of:

(a) the scores achieved by the Franchisee in such National Rail Passenger Survey; and

(b) the scores achieved by the Franchisee in such National Rail Passenger Survey in respect of passengers' **"overall satisfaction"**.

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

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SCHEDULE 7.3

Customer Experience Performance

1. **Definitions**

1.1 For the purposes of this Schedule 7.3, the following words and expressions shall have the following meanings**:**

"Alternative CES"	has the meaning ascribed to it in paragraph 10.2;
"Average Market Segment Performance Category Score"	has the meaning ascribed to it in paragraph 12.2;
"Average Performance Category Score"	has the meaning ascribed to in paragraph 12.1;
"Average KPI Performance"	has the meaning ascribed to it in paragraph 12.3;
"CE KPI Target"	shall mean for each Key Performance Indicator the target calculated in accordance with paragraph 12.4;
"CE Lower KPI Threshold"	shall mean for each Key Performance Indicator the threshold calculated in accordance with paragraph 12.5;
"CE Margin"	has the meaning ascribed to it in paragraph 13.5;
"CE Performance Category"	means each of the categories specified in the second column in the table at Appendix 1;
"CE Performance Category Target"	means the target for each CE Performance Category in a Reporting Period as specified in the fourth (4th) to twenty-third (23rd) columns in the Table at Appendix 1;
"CE Performance Category Score"	the score for each CE Performance Category in a Reporting Period;
"Customer Experience Survey Methodology" or "CESM"	means the document in the agreed terms marked **CESM**;
"Customer Experience Surveys"	means the surveys to be carried out in accordance with the Customer Experience Survey Methodology to measure the Franchisee's performance against each CE Performance Category;

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"Key Performance Indicator" or "KPI"	means the key performance indicators specified in the first column in the table at Appendix 1;
"Market Segment"	means each of the following market segments: Intercity; Great Eastern; West Anglia; Stansted Express; and Regional, as identified in the Customer Experience Survey Methodology;
"Market Segment Minimum Performance Threshold"	means for each CE Performance Category, in respect of each Market Segment for a Franchisee Year the minimum performance threshold specified in the relevant Table in Appendix 2;
"Market Segment Performance Category Score"	means for each CE Performance Category, in respect of each Market Segment the score in a Reporting Period;
"Performance Review Date"	the date falling at the end of each of the sixth and final Reporting Periods in each Franchisee Year other than the first Franchisee Year; and
"Reserved Obligations"	means any of the Franchisee's obligations listed in Appendix 3.

2. **Conduct of Customer Experience Surveys**

2.1 The Franchisee agrees with the Secretary of State that:

(a) the Passengers' Council may measure the level of passenger satisfaction with the Franchise Services through the Customer Experience Surveys;

(b) the Passengers' Council shall carry out the Customer Experience Surveys in accordance with, and at the times and places specified by the Customer Experience Survey Methodology;

(c) the Franchisee shall grant access on trains or at stations to the Passengers' Council (or its representatives and agents) to carry out the Customer Experience Surveys;

(d) the Franchisee shall co-operate with the Passengers' Council (in such manner as the Passengers' Council may reasonably request or the Secretary of State may reasonably direct) in order to enable the Passengers' Council to carry out the Customer Experience Surveys; and

(e) the Passengers' Council and/or the Secretary of State may, from time to time, publish the results of each Customer Experience Survey.

2.2 The Secretary of State shall ensure or shall procure that the CE Performance Category Scores and the Market Segment Performance Category Scores as assessed by the Customer Experience Surveys for each Reporting Period are

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made available to the Franchisee within a reasonable period of time of the completion of each such survey, and in any case no later than four (4) weeks following the end of the Reporting Period to which the survey relates.

2.3 It is agreed by the Franchisee that, subject to paragraph 10, 11 and 12, the methodology to be adopted by the Passengers' Council in conducting any such Customer Experience Survey shall be as described in the Customer Experience Survey Methodology.

3. Performance against KPIs

3.1 It is agreed by the Secretary of State and the Franchisee that, subject to paragraph 10, 11 and 12 the results of the Customer Experience Surveys carried out by the Passengers' Council in accordance with this Schedule 7.3 shall be used to determine:

(a) the Franchisee's Market Segment Performance Category Scores and CE Performance Category Score in respect of each CE Performance Category in respect of each Reporting Period, as reported by the Passengers' Council in accordance with the Customer Experience Survey Methodology;

(b) the Average Performance Category Scores, calculated in accordance with paragraph 13.1;

(c) the Average Market Segment Performance Category Score, calculated in accordance with paragraph 13.2; and

(d) the Franchisee's Average KPI Performance in respect of each Key Performance Indicator as calculated in respect of each Performance Review Date in accordance with paragraph 13.3.

4. Calculation of performance against Key Performance Indicators

4.1 The Secretary of State shall procure that the Passengers' Council calculates and reports to the Secretary of State and the Franchisee:

(a) the Market Segment Performance Category Scores; and

(b) the CE Performance Category Scores,

to enable the Secretary of State to determine the Franchisee's performance against each:

(c) Market Segment Minimum Performance Threshold; and

(d) CE Performance Category Target,

respectively, in each Reporting Period.

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4.2 The Secretary of State shall within five (5) weeks of each Performance Review Date calculate the performance of the Franchisee against each Key Performance Indicator over the preceding thirteen Reporting Periods ("**Average KPI Performance**") by calculating:

(a) the Average Performance Category Score over the preceding thirteen Reporting Periods as a moving annual average, in accordance with paragraph 13.1;

(b) the Average Market Segment Performance Category Score over the preceding thirteen Reporting Periods as a moving annual average, in accordance with paragraph 13.2;

(c) the Average KPI Performance for each Key Performance Indicator, in accordance with paragraph 13.3;

(d) the CE KPI Target for each Key Performance Indicator, in accordance with paragraph 13.4; and

(e) the CE Lower KPI Threshold for each Key Performance Indicator, in accordance with paragraph 13.5.

4.3 Where in respect of a Key Performance Indicator the Average KPI Performance:

(a) is less than the CE KPI Target for that Key Performance Indicator, paragraph 6 shall apply;

(b) is less than the CE Lower KPI Threshold, then paragraphs 7 and 8 shall apply.

4.4 Where any Average Market Segment Performance Category Score is less than the relevant Market Segment Minimum Performance Threshold for that Franchisee Year then paragraph 7 shall apply.

4.5 For the purposes of undertaking the comparison pursuant to paragraphs 4.3 and 4.4, the value of the Average KPI Performance for a Key Performance Indicator and the value of the Average Market Segment Performance Category Score (as the case may be) shall be rounded to one decimal place with the midpoint (that is, 4.45) rounded upwards (that is, 4.5).

5. Review and Reporting of Performance

5.1 The Franchisee shall at each Franchise Performance Meeting report to the Secretary of State in respect of the Franchisee's performance as measured by the Customer Experience Surveys, and in particular shall provide an explanation in respect of:

(a) any CE Performance Category Score which falls below the CE Performance Category Target for the previous Reporting Period; and

(b) any Market Segment Performance Category Score which falls below the relevant Market Segment Minimum Performance Threshold for the previous Reporting Period.

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5.2 Within thirty (30) Weekdays of each Performance Review Date, the Franchisee shall publish on its web site (in such format as the Secretary of State may reasonably require) details of:

(a) the Average Performance Category Scores achieved by the Franchisee compared to the relevant CE Performance Category Target;

(b) the Average Market Segment Performance Category Scores achieved by the Franchisee; and

(c) the Average KPI Performance achieved by the Franchisee for each Key Performance Indicator compared to the relevant CE KPI Target,

as calculated at that Performance Review Date.

5.3 The Franchisee shall ensure details published pursuant to paragraph 5.2 are also recorded in the subsequent Customer Report which relates to the Reporting Periods to which the Performance Review Date relates, along with:

(a) from the third Customer Report onwards, a comparison with the Average Performance Category Scores, Average Market Segment Performance Category Scores and Average KPI Performance achieved for the same Reporting Periods in the previous Franchisee Year accompanied by a supporting narrative describing the outcomes and implications of the results of such comparison exercise;

(b) a comparison against the applicable CE Performance Category Targets and CE KPI Targets for the Performance Review Date in question accompanied by a supporting narrative describing the outcomes and implications of the results of such comparison exercise;

(c) detail of any remedial work either:

(i) planned by the Franchisee to occur in the period in relation to which the next Customer Report will report to improve the Franchisee's performance in relation to achieving and exceeding the CE Performance Category Targets and CE KPI Targets (for instance, any remedial action pursuant to paragraph 7); or

(ii) undertaken by the Franchisee during the Reporting Periods that have elapsed since the last Reporting Period reported on in the previous Customer Report or, in the case of the first Customer Report, since the Start Date, for the purposes of improving the Franchisee's performance in relation to achieving and exceeding the CE Performance Category Targets and CE KPI Targets; and

(d) details of any other initiatives planned to be implemented by the Franchisee to improve the passenger experience.

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6. **Customer Experience Reimbursement**

6.1 Subject to paragraph 6.2 and 6.3, where at a Performance Review Date any Average KPI Performance is calculated pursuant to paragraph 12.3 as being less than the CE KPI Target for that Key Performance Indicator, then a Customer Experience Reimbursement Amount shall be calculated in accordance with paragraph 14.1.

6.2 Where at that Performance Review Date a Key Performance Indicator meets the CE KPI Target then the Customer Experience Reimbursement Amount in respect of that Key Performance Indicator shall be zero (0).

6.3 In any Reporting Period in which a Performance Review Date does not fall, each Customer Experience Reimbursement Amount shall be zero (0).

6.4 The Total Customer Experience Reimbursement Amount (TCERA) payable by the Franchisee in respect of a Reporting Period shall be the sum of the Customer Experience Reimbursement Amounts calculated for all Key Performance Indicators in accordance with paragraphs 6.1 to 6.3.

6.5 Where the final Franchisee Year is shorter than 13 Reporting Periods then:

(a) there shall be a Performance Review Date ("**Additional Performance Review Date**") no later than six weeks after the last full Reporting Period (or if earlier, on the day that the next Performance Review Date would have fallen after the end of the Franchisee Year); and

(b) the value of TCERA payable by the Franchisee in respect of the final Reporting Period shall be calculated in accordance with paragraph 14.2.

7. **Remedial Action**

7.1 It shall be a contravention of the Franchise Agreement if either:

(a) the Franchise's Average KPI Performance for any Key Performance Indicator is less than the CE Lower KPI Threshold for that Key Performance Indicator; or

(b) any Market Segment Performance Category Score is less than the relevant Market Segment Minimum Performance Threshold for that Franchisee Year,

and in either case the Secretary of State may serve a Remedial Plan Notice in accordance with the provisions of paragraph 2 of Schedule 10.1 (Procedure for remedying a Contravention of the Franchise Agreement).

7.2 For the purposes of paragraph 2 of Schedule 10.1 (Procedure for remedying a Contravention of the Franchise Agreement) the steps to be proposed by the Franchisee pursuant to that paragraph are those which ensure that:

(a) in the case of paragraph 7.1(a), the Franchisee's performance against the relevant Key Performance Indicator is equal to or better than the CE KPI Target for that Key Performance Indicator at subsequent Performance Review Dates; and

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(b) in the case of paragraph 7.1(b), the Franchisee's Market Segment Performance Category Score is equal to or greater than the relevant Market Segment Minimum Performance Threshold applicable at subsequent Performance Review Dates.

8. Reserved Obligations

8.1 Notwithstanding the service of any Remedial Plan Notice pursuant to paragraph 7, where the Average KPI Performance for a Key Performance Indicator is less than the relevant CE Lower KPI Threshold, then the Secretary of State may notify the Franchisee that any of the Reserved Obligations which are identified by the Secretary of State, acting reasonably as being relevant to the achievement of the CE KPI Target for that Key Performance Indicator shall be deemed, from the date of such notice, to be a Committed Obligation for the purposes of this Agreement;

8.2 Where any Reserved Obligation is deemed to be a Committed Obligation pursuant to paragraph 8.1:

(a) Part 2 of Schedule 6.2 shall apply in respect of such Reserved Obligation, as if such a Reserved Obligation were a Committed Obligation in Part 1 of Schedule 6.1, subject to the express terms of this paragraph 8; and

(b) the timescale for delivery of such Reserved Obligation as a Committed Obligation shall commence on the date of such notice.

8.3 Reserved Obligations shall be deemed to be Specimen Schemes for the purposes of Part 2 of Schedule 6.2, and notwithstanding that a Reserved Obligation may not have been deemed a Committed Obligation pursuant to paragraph 8.1 the provisions of paragraph 8 of Schedule 6.2 shall apply such that the Franchisee may propose to undertake an Alternative Scheme in place of such Reserved Obligation. Where, in accordance with paragraph 8 of Schedule 6.2, the Secretary of State approves such Alternative Scheme, then it shall replace the relevant Reserved Obligation and Appendix 2 to Schedule 7.3 shall be amended accordingly.

8.4 The Franchisee acknowledges that any decision by the Secretary of State to not require that a specific Reserved Obligation is delivered as a Committed Obligation pursuant to paragraph 8.1 following a failure to meet a CE Lower KPI Threshold is not a waiver of the Secretary of State's right to require that such Reserved Obligation is delivered following any further failure to meet any relevant CE Lower KPI Threshold.

8.5 The Secretary of State acknowledges that where a Franchisee has already delivered a Reserved Obligation, and provides the Secretary of State with such evidence as the Secretary of State may reasonably require of such delivery of the Reserved Obligation, that such Reserved Obligation shall be deemed to have been implemented as a Committed Obligation and the Secretary of State may only require the Franchisee to deliver any outstanding obligations under such Committed Obligation pursuant to this paragraph 8.

9. Review of Customer Experience Benchmarks

9.1 The Franchisee shall fully and effectively co-operate with the Secretary of State in respect of any review of the Customer Experience Survey Methodology, Market Segment Minimum Performance Thresholds, CE Performance Categories, CE

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Performance Category Targets, CE KPI Targets and/or CE Lower KPI Thresholds and in agreeing the effect of any proposed change to the same.

10. **Changes to Customer Experience Survey**

10.1 If:

(a) at any time during the Franchise Period the methodology adopted in conducting any Customer Experience Survey is, in the reasonable opinion of the Secretary of State, materially inconsistent with the Customer Experience Survey Methdology; and

(b) either:

(i) the Secretary of State reasonably determines that in consequence a revision to any of the Key Performance Indicators, the CE Performance Categories, the CE KPI Targets, the CE Lower KPI Thresholds, the CE Margin or Market Segment Minimum Performance Thresholds, is required in order to hold constant the risk of the Franchisee failing to achieve the CE KPI Targets, the CE Lower KPI Thresholds or the Market Segment Minimum Performance Thresholds; or

(ii) the Secretary of State reasonably determines that certain elements of the survey results arising from such material inconsistency with the Customer Experience Survey Methodology should not be taken into account in determining the CE Performance Category Scores or Market Segment Performance Category Scores in such Reporting Period,

then the Secretary of State shall, after consultation with the Franchisee:

(iii) in relation to a determination made under paragraph 10.1(b)(i) make such revisions to such Key Performance Indicator, CE Performance Categories, CE KPI Targets, CE Lower KPI Thresholds, the CE Margin or Market Segment Minimum Performance Thresholds as he reasonably considers appropriate to hold constant such risk; and/or

(iv) in relation to a determination made under paragraph 10.1(b)(ii) make such revisions to the CE Performance Category Scores or Market Segment Performance Category Scores, as he reasonably considers appropriate to exclude elements of the survey results arising from the material inconsistency with the Customer Experience Survey Methodology.

10.2 If the Passengers' Council ceases to undertake any or all of the Customer Experience Surveys then the relevant Customer Experience Surveys for the purposes of this Schedule 7.3 shall be such other survey or surveys as the Secretary of State may, after consultation with the Franchisee, reasonably determine to be appropriate in the circumstances (the **"Alternative CES"**). The provisions of this Schedule 7.3 shall apply in respect of any Alternative CES and for these purposes "Passengers' Council" shall be replaced with such other entity that is responsible for conducting such Alternative CES.

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11. **Change to Customer Experience Survey Methodology**

If at any time during the Franchise Period the Secretary of State determines that modifications, amendments or updates to the Customer Experience Survey Methodology are required then the Secretary of State may, after consultation with the Franchisee, make such modification, amendments or updates to the Customer Experience Survey Methodology provided that the Secretary of State also makes such revisions to the Key Performance Key Performance Indicators, the CE Performance Categories, the CE Performance Category Targets, the CE KPI Targets, the CE Lower KPI Thresholds, CE Margin or the Market Segment Minimum Performance Thresholds as he reasonably considers appropriate to hold constant the risk to the Franchisee of failing to achieve the CE Performance Category Targets, the CE KPI Targets, the CE Lower KPI Thresholds or the Market Segment Minimum Performance Thresholds.

12. **Policy Changes**

If at any time during the Franchise Period the Secretary of State considers that any change in any policy of the Secretary of State would materially affect the performance of the Franchisee as measured by the Customer Experience Surveys then the Secretary of State shall make such revisions to the Key Performance Key Performance Indicators, the CE Performance Categories, the CE Performance Category Targets, the CE KPI Targets, the CE Lower KPI Thresholds, CE Margin or the Market Segment Minimum Performance Thresholds as the Secretary of State shall agree with the Franchisee (or the Secretary of State shall reasonably determine) are appropriate to hold constant the risk to the Franchisee of failing to achieve the CE Performance Category Targets, CE KPI Targets, the CE Lower KPI Thresholds or the Market Segment Minimum Performance Thresholds.

13. **Calculation of Performance Scores**

13.1 **Calculation of Average Performance Category Score**

For each CE Performance Category (CEPC), the moving annual average score over the preceding thirteen Reporting Periods (RP) (**"Average Performance Category Score"**) shall be calculated in accordance with the following formula:

$APerfCat_{CEPC} = \frac{\sum_{RP=1}^{13}(PerfCat_{RP})}{13}$	
where:	
$\sum_{RP=1}^{13}$	means the sum of the output of the formula for all values of RP from 1 to 13;
$APerfCat_{CEPC}$	is the Average Performance Category Score for CE Performance Category CEPC;
PerfCat	is the CE Performance Category Score for CE Performance Category CEPC in Reporting Period (RP), save that where the calculation is carried out in the sixth Reporting Period in the second

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	Franchisee Year: (A) for the CE Performance Category Scores for the six (6) Reporting Periods prior to the Performance Review Date, PerfCatRP shall be the CE Performance Category Score calculated and reported in accordance with paragraph 4.1; and (B) for the purposes of this calculation only, there shall be deemed to have been a further seven Reporting Periods (such that there are 13 values for PerfCatRP) for which PerfCatRP shall be deemed to be equal to the CE Performance Category Target for CE Performance Category CEPC.

Save that where the Average Performance Category Score for a CE Performance Category is greater than the CE Performance Category Target for that CE Performance Category then such Average Performance Category Score shall be reduced to be equal to the relevant CE Performance Category Target.

13.2 **Calculation of Average Market Segment Performance Category Score**

For each Market Segment Performance Category Score the moving annual average score over the preceding thirteen Reporting Periods (RP) (**"Average Market Segment Performance Category Score"**) shall be calculated in accordance with the following formula:

$AMSPerfCat_{MSPC} = \frac{\sum_{RP=1}^{13}(MSPerfCat_{RP})}{13}$	
where:	
$\sum_{RP=1}^{13}$	means the sum of the output of the formula for all values of RP from 1 to 13;
$AMSPerfCat_{MSPC}$	is the Average Market Sector Performance Category Score for each CE Performance Category in each Market Segment MS;
MSPerfCat	is the Market Segment Performance Category Score for that CE Performance Category in that Market Segment in Reporting Period (RP), save that where the calculation is carried out in the sixth Reporting Period in the second Franchisee Year: (A) for the Market Segment Performance Category Scores for the six (6) Reporting Periods prior to the Performance Review

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	Date, $MSPerfCat_{RP}$ shall be the Market Segment Performance Category Score calculated and reported in accordance with paragraph 4.1; and (B) for the purposes of this calculation only, there shall be deemed to have been a further seven Reporting Periods (such that there are 13 values for $MSPerfCat_{RP}$) for which $MSPerfCat_{RP}$ shall be deemed to be equal to the assumed value for that Market Sector for that CE Performance Category as set-out in the third column (entitled AMSP) of the relevant Table in Appendix 2.

13.3 **Calculation of Average KPI Performance**

The Average KPI Performance for each Key Performance Indicator shall be calculated in accordance with the following formula:

$AKP = \sum_{R=1}^{n} \left(APerfCat_{CEPC_R} \times Weighting_{CEPC_R} \right)$	
where:	
$\sum_{R=1}^{n}$	means the sum of the output of the formula for all values of R from 1 to n, where n is the number of CE Performance Categories for that Key Performance Indicator;
AKP	is the Average KPI Performance for that KPI;
CEPC	is each CE Performance Category for that Key Performance Indicator;
$APerfCat_{CEPC}$	is the Average Performance Category Score calculated for the relevant CE Performance Category CEPC pursuant to paragraph 12.1; and
$Weighting_{CEPC}$	is the weighting for that CE Performance Category CEPC as specified in the third column of the table set out in Appendix 1.

13.4 **Calculation of CE KPI Targets**

The CE KPI Target for a Key Performance Indicator ($CEKPIT_{KPI}$) at a Performance Review Date shall be calculated in accordance with the following formula:

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$CEKPIT_{KPI} = \sum_{R=1}^{n} \left(Target_{CEPC_R} \times Weighting_{CEPC_R} \right)$	
where:	
$\sum_{R=1}^{n}$	means the sum of the output of the formula for all values of R from 1 to n, where n is the number of CE Performance Categories for that Key Performance Indicator;
$Target_{CEPC}$	is the CE Performance Category Target for the relevant CE Performance Category within that KPI at the Performance Review Date;
$Weighting_{CEPC}$	is the Weighting for each CE Performance Category within that KPI at the Performance Review Date; and
CEPC	is each CE Performance Category for that Key Performance Indicator.

13.5 **Calculation of CE Lower KPI Thresholds**

The CE Lower KPI Threshold for a Key Performance Indicator ($CELKPIT_{KPI}$) shall be calculated in accordance with the following formula:

$CELKPIT_{KPI}$ = $CEKPIT_{KPI}$ - CEMargin	
where:	
$CEKPIT_{KPI}$	is the CE KPI Target for that Key Performance Indicator calculated in accordance with paragraph 13.4 above.
CEMargin	is the "CE Margin", which shall be 5.

14. **Calculation of Customer Experience Reimbursement**

14.1 The Customer Experience Reimbursement Amount shall be calculated in accordance with the following formula:

$CERA_{KPI} = \left[\frac{CEKPIT_{KPI} - AKP_{KPI}}{CEKPIT_{KPI} - CELKPIT_{KPI}} \right] \times R$	
where:	
$CERA_{KPI}$	is the Customer Experience Reimbursement

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	Amount for that Key Performance Indicator;
AKP_{KPI}	is the Average KPI Performance for that Key Performance Indicator, save that where AKP_{KPI} is less than $CELKPIT_{KPI}$, AKP_{KPI} shall be deemed to be equal to $CELKPIT_{KPI}$ for the purposes of this calculation only;
$CELKPIT_{KPI}$	is the CE Lower KPI Threshold for that Key Performance Indicator;
$CEKPIT_{KPI}$	is the CE KPI Target for that Key Performance Indicator; and
R	is the maximum reimbursement amount in respect of a Key Performance Indicator which shall be calculated in accordance with the following formula:
	$R = £1{,}500{,}000 \times RPI$
	where:
	RPI: has the meaning given to it in Appendix 1 (Annual Franchise Payments) to Schedule 8.1 (Franchise Payments).

14.2 The value of TCERA payable by the Franchisee in respect of the final Reporting Period shall be calculated as follows:

(a) TCERA shall be calculated by the Secretary of State in accordance with paragraph 6.4 by reference to the last 13 Reporting Periods prior to the Additional Performance Review Date for which CE Performance Category Scores have been provided pursuant to paragraph 4.1;

(b) the value of TCERA payable by the Franchisee in respect of the final Reporting Period shall be calculated in accordance with the following formula:

$FTCERA = TCERA \times \frac{x}{y}$	
where:	
FTCERA	is the final TCERA value for the purposes of Schedule 8.1;
TCERA	is the value of TCERA calculated in accordance with paragraph (a);
x	is the number of Reporting Periods for which CE Performance Category Scores were used for the

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	purposes of calculating TCERA at the Additional Performance Review Date, but not for the calculation of TCERA at any previous Performance Review Date; and
y	is 6 if the final Franchisee Year is less than or equal to six Reporting Periods in length; and 7 if the final Franchisee Year is longer than six Reporting Periods.

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APPENDIX 1 TO SCHEDULE 7.3

Customer Experience Performance

The values for the CE Performance Category Targets are specified in each column by reference to the Performance Review Dates at the end of the period to which such CE Performance Category Targets apply.

			Performance Review Date and Targets																			
			Y1	Y2		Y3		Y4		Y5		Y6		Y7		Y8		Y9		Y10		Y11
			RP13	RP6	RP13	RP6	RP13	RP6	RP13	RP6	RP13	RP6	RP13	RP6	RP13	RP6	RP13	RP6	RP13	RP6	RP13	RPx
KPI	CATEGORIES	Weighting	Oct 16 - Mar 17	Apr 17 - Sep 17	Sep 17 - Mar 18	Apr 18 - Sep 18	Sep 18 - Mar 19	Apr 19 - Sep 19	Sep 19 - Mar 20	Apr 20 - Sep 20	Sep 20 - Mar 21	Apr 21 - Sep 21	Sep 21 - Mar 22	Apr 22 - Sep 22	Sep 22 – Mar 23	Apr 23 - Sep 23	Sep 23 - Mar 24	Apr 24 - Sep 24	Sep 24 - Mar 25	Apr 25 - Sep 25	Sep 25 - Mar 26	April 26 - Sept 26
Customer Experience	Journey Experience Satisfaction	20%	65.0	67.6	67.6	70.3	70.3	72.9	72.9	75.5	75.5	77.8	77.8	77.8	77.8	77.8	77.8	77.8	77.8	77.8	77.8	77.8
	Value for money satisfaction	15%	38.4	40.1	40.1	41.8	41.8	43.4	43.4	45.1	45.1	46.2	46.2	46.2	46.2	46.2	46.2	46.2	46.2	46.2	46.2	46.2
	How well the company dealt with disruption	30%	42.4	47.0	47.0	51.7	51.7	56.3	56.3	61.0	61.0	63.8	63.8	63.8	63.8	63.8	63.8	63.8	63.8	63.8	63.8	63.8
	Your personal security (on board/at stations)	15%	76.1	77.9	77.9	79.6	79.6	81.3	81.3	83.1	83.1	85.4	85.4	85.4	85.4	85.4	85.4	85.4	85.4	85.4	85.4	85.4
	Station Experience Satisfaction	20%	66.2	67.4	67.4	68.6	68.6	69.8	69.8	71.0	71.0	72.2	72.2	72.2	72.2	72.2	72.2	72.2	72.2	72.2	72.2	72.2
Presentation of Facilities	Cleanliness of the inside of the train	20%	80.9	81.7	81.7	82.5	82.5	83.2	83.2	84.0	84.0	84.0	84.0	84.0	84.0	84.0	84.0	84.0	84.0	84.0	84.0	84.0
	Upkeep and repair of the train	10%	79.1	79.8	79.8	80.5	80.5	81.3	81.3	82.0	82.0	82.0	82.0	82.0	82.0	82.0	82.0	82.0	82.0	82.0	82.0	82.0
	Cleanliness of the station	15%	88.6	89.2	89.2	89.8	89.8	90.4	90.4	91.0	91.0	91.0	91.0	91.0	91.0	91.0	91.0	91.0	91.0	91.0	91.0	91.0
	Upkeep and repair of the station	10%	79.8	80.6	80.6	81.4	81.4	82.2	82.2	83.0	83.0	83.0	83.0	83.0	83.0	83.0	83.0	83.0	83.0	83.0	83.0	83.0
	Ticket buying facilities	20%	80.0	80.0	80.0	80.0	80.0	80.0	80.0	80.0	80.0	80.0	80.0	80.0	80.0	80.0	80.0	80.0	80.0	80.0	80.0	80.0
	Provision of information about train times/platforms	25%	85.0	85.0	85.0	85.0	85.0	85.0	85.0	85.0	85.0	85.0	85.0	85.0	85.0	85.0	85.0	85.0	85.0	85.0	85.0	85.0
Staff performance	The attitudes and helpfulness of the staff	100%	91.2	91.7	91.7	92.2	92.2	92.6	92.6	93.0	93.0	93.0	93.0	93.0	93.0	93.0	93.0	93.0	93.0	93.0	93.0	93.0

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APPENDIX 2 TO SCHEDULE 7.3

Market Segment Thresholds

PART 1 : Inter City Market Segment Minimum Performance Threshold

			Franchisee Year ending in March									
KPI	**CE PERFORMANCE CATEGORIES**	**AMSP**	**2018**	**2019**	**2020**	**2021**	**2022**	**2023**	**2024**	**2025**	**2026**	**2027**
Customer Experience	Journey Experience Satisfaction	51.8	51.8	53.4	55.1	56.7	58.5	58.5	58.5	58.5	58.5	58.5
	Value for money satisfaction	34.7	34.7	36.6	38.6	40.6	42.6	42.6	42.6	42.6	42.6	42.6
	How well the company dealt with disruption	39.6	39.6	42.5	45.4	48.3	50.4	50.4	50.4	50.4	50.4	50.4
	Your personal security (on board/at stations)	58.1	58.1	59.0	60.0	60.9	62.0	62.0	62.0	62.0	62.0	62.0
	Station Experience Satisfaction	48.7	48.7	49.5	50.3	52.0	52.0	52.0	52.0	52.0	52.0	52.0
Presentation of Facilities	Cleanliness of the inside of the train	57.2	57.2	57.7	58.3	58.8	58.8	58.8	58.8	58.8	58.8	58.8
	Upkeep and repair of the train	55.9	55.9	56.4	56.9	57.4	57.4	57.4	57.4	57.4	57.4	57.4
	Cleanliness of the station	62.4	62.4	62.9	63.3	63.7	63.7	63.7	63.7	63.7	63.7	63.7
	Upkeep and repair of the station	56.4	56.4	57.0	57.5	58.1	58.1	58.1	58.1	58.1	58.1	58.1
	Ticket buying facilities	56.0	56.0	56.0	56.0	56.0	56.0	56.0	56.0	56.0	56.0	56.0
	Provision of information about train times/platforms	59.5	59.5	59.5	59.5	59.5	59.5	59.5	59.5	59.5	59.5	59.5
Staff performance	The attitudes and helpfulness of the staff	64.2	64.2	64.5	64.8	65.1	65.1	65.1	65.1	65.1	65.1	65.1

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PART 2 : Great Eastern Market Segment Minimum Performance Threshold

KPI	CE PERFORMANCE CATEGORIES	AMSP	Franchisee Year ending in March									
			2018	2019	2020	2021	2022	2023	2024	2025	2026	2027
Customer Experience	Journey Experience Satisfaction	43.1	43.1	45.3	47.5	49.7	51.9	51.9	51.9	51.9	51.9	51.9
	Value for money satisfaction	23.8	23.8	25.0	26.1	27.3	28.5	28.5	28.5	28.5	28.5	28.5
	How well the company dealt with disruption	30.5	30.5	33.1	35.8	38.5	41.6	41.6	41.6	41.6	41.6	41.6
	Your personal security (on board/at stations)	52.2	52.2	53.2	54.3	55.3	56.3	56.3	56.3	56.3	56.3	56.3
	Station Experience Satisfaction	46.2	46.2	46.9	47.6	48.3	49.0	49.0	49.0	49.0	49.0	49.0
Presentation of Facilities	Cleanliness of the inside of the train	57.2	57.2	57.7	58.3	58.8	58.8	58.8	58.8	58.8	58.8	58.8
	Upkeep and repair of the train	55.9	55.9	56.4	56.9	57.4	57.4	57.4	57.4	57.4	57.4	57.4
	Cleanliness of the station	62.4	62.4	62.9	63.3	63.7	63.7	63.7	63.7	63.7	63.7	63.7
	Upkeep and repair of the station	56.4	56.4	57.0	57.5	58.1	58.1	58.1	58.1	58.1	58.1	58.1
	Ticket buying facilities	56.0	56.0	56.0	56.0	56.0	56.0	56.0	56.0	56.0	56.0	56.0
	Provision of information about train times/platforms	59.5	59.5	59.5	59.5	59.5	59.5	59.5	59.5	59.5	59.5	59.5
Staff performance	The attitudes and helpfulness of the staff	64.2	64.2	64.5	64.8	65.1	65.1	65.1	65.1	65.1	65.1	65.1

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PART 3 : West Anglia Market Segment Minimum Performance Threshold

KPI	CE PERFORMANCE CATEGORIES	AMSP	Franchisee Year ending in March									
			2018	2019	2020	2021	2022	2023	2024	2025	2026	2027
Customer Experience	Journey Experience Satisfaction	44.1	44.1	46.0	47.8	49.7	51.6	51.6	51.6	51.6	51.6	51.6
	Value for money satisfaction	25.9	25.9	26.4	26.8	27.3	27.8	27.8	27.8	27.8	27.8	27.8
	How well the company dealt with disruption	30.5	30.5	32.9	35.4	37.8	40.6	40.6	40.6	40.6	40.6	40.6
	Your personal security (on board/at stations)	50.8	50.8	52.3	53.8	55.3	56.8	56.8	56.8	56.8	56.8	56.8
	Station Experience Satisfaction	45.5	45.5	46.4	47.4	48.3	49.4	49.4	49.4	49.4	49.4	49.4
Presentation of Facilities	Cleanliness of the inside of the train	57.2	57.2	57.7	58.3	58.8	58.8	58.8	58.8	58.8	58.8	58.8
	Upkeep and repair of the train	55.9	55.9	56.4	56.9	57.4	57.4	57.4	57.4	57.4	57.4	57.4
	Cleanliness of the station	62.4	62.4	62.9	63.3	63.7	63.7	63.7	63.7	63.7	63.7	63.7
	Upkeep and repair of the station	56.4	56.4	57.0	57.5	58.1	58.1	58.1	58.1	58.1	58.1	58.1
	Ticket buying facilities	56.0	56.0	56.0	56.0	56.0	56.0	56.0	56.0	56.0	56.0	56.0
	Provision of information about train times/platforms	59.5	59.5	59.5	59.5	59.5	59.5	59.5	59.5	59.5	59.5	59.5
Staff performance	The attitudes and helpfulness of the staff	64.2	64.2	64.5	64.8	65.1	65.1	65.1	65.1	65.1	65.1	65.1

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PART 4 : Stansted Express Market Segment Minimum Performance Threshold

KPI	CE PERFORMANCE CATEGORIES	AMSP	Franchisee Year ending in March									
			2018	2019	2020	2021	2022	2023	2024	2025	2026	2027
Customer Experience	Journey Experience Satisfaction	56.0	56.0	57.6	59.3	60.9	62.9	62.9	62.9	62.9	62.9	62.9
	Value for money satisfaction	25.2	25.2	25.7	26.1	26.6	27.6	27.6	27.6	27.6	27.6	27.6
	How well the company dealt with disruption	25.2	25.2	31.5	37.8	44.1	50.4	50.4	50.4	50.4	50.4	50.4
	Your personal security (on board/at stations)	59.9	59.9	60.9	62.0	63.0	64.0	64.0	64.0	64.0	64.0	64.0
	Station Experience Satisfaction	51.1	51.1	52.5	53.9	55.3	56.7	56.7	56.7	56.7	56.7	56.7
Presentation of Facilities	Cleanliness of the inside of the train	57.2	57.2	57.7	58.3	58.8	58.8	58.8	58.8	58.8	58.8	58.8
	Upkeep and repair of the train	55.9	55.9	56.4	56.9	57.4	57.4	57.4	57.4	57.4	57.4	57.4
	Cleanliness of the station	62.4	62.4	62.9	63.3	63.7	63.7	63.7	63.7	63.7	63.7	63.7
	Upkeep and repair of the station	56.4	56.4	57.0	57.5	58.1	58.1	58.1	58.1	58.1	58.1	58.1
	Ticket buying facilities	56.0	56.0	56.0	56.0	56.0	56.0	56.0	56.0	56.0	56.0	56.0
	Provision of information about train times/platforms	59.5	59.5	59.5	59.5	59.5	59.5	59.5	59.5	59.5	59.5	59.5
Staff performance	The attitudes and helpfulness of the staff	64.2	64.2	64.5	64.8	65.1	65.1	65.1	65.1	65.1	65.1	65.1

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PART 5 : Regional Market Segment Minimum Performance Threshold

KPI	CE PERFORMANCE CATEGORIES	AMSP	Franchisee Year ending in March									
			2018	2019	2020	2021	2022	2023	2024	2025	2026	2027
Customer Experience	Journey Experience Satisfaction	52.2	52.2	53.2	54.3	55.3	56.3	56.3	56.3	56.3	56.3	56.3
	Value for money satisfaction	35.4	35.4	36.9	38.4	39.9	41.6	41.6	41.6	41.6	41.6	41.6
	How well the company dealt with disruption	38.5	38.5	43.9	49.2	54.6	60.0	60.0	60.0	60.0	60.0	60.0
	Your personal security (on board/at stations)	58.5	58.5	60.4	62.4	64.4	66.4	66.4	66.4	66.4	66.4	66.4
	Station Experience Satisfaction	48.0	48.0	48.5	49.1	49.7	50.6	50.6	50.6	50.6	50.6	50.6
Presentation of Facilities	Cleanliness of the inside of the train	57.2	57.2	57.7	58.3	58.8	58.8	58.8	58.8	58.8	58.8	58.8
	Upkeep and repair of the train	55.9	55.9	56.4	56.9	57.4	57.4	57.4	57.4	57.4	57.4	57.4
	Cleanliness of the station	62.4	62.4	62.9	63.3	63.7	63.7	63.7	63.7	63.7	63.7	63.7
	Upkeep and repair of the station	56.4	56.4	57.0	57.5	58.1	58.1	58.1	58.1	58.1	58.1	58.1
	Ticket buying facilities	56.0	56.0	56.0	56.0	56.0	56.0	56.0	56.0	56.0	56.0	56.0
	Provision of information about train times/platforms	59.5	59.5	59.5	59.5	59.5	59.5	59.5	59.5	59.5	59.5	59.5
Staff performance	The attitudes and helpfulness of the staff	64.2	64.2	64.5	64.8	65.1	65.1	65.1	65.1	65.1	65.1	65.1

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APPENDIX 3 TO SCHEDULE 7.3

Reserved Obligations

[Note to Bidders: This part will specify the terms of the Reserved Obligations. Where the DfT wishes to contractualise initiatives in the bid as Reserved Obligations, the DfT will provide bidders with drafting which reflects such requirements.]

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SCHEDULE 8

Payments

Schedule 8.1:	Franchise Payments
	Appendix 1: Annual Franchise Payments
	Appendix 2: Figures for Calculation of Annual Franchise Payments
Schedule 8.2:	Profit Share Mechanism
	Appendix 1: Profit Share Thresholds
	Appendix 2: Components of AFA and DFR
Schedule 8.3:	Track Access Adjustments and Station Charge Adjustments
Schedule 8.4:	GDP & CLE Adjustment Payments
	Appendix 1: $DfT_{GDP}RW$
	Appendix 2: Adjusted Target GDP Index
	Appendix 3: $DfT_{CLE}RW$
	Appendix 4: Adjusted Target CLE Index

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SCHEDULE 8.1

Franchise Payments

1. Franchise Payments

1.1 The Franchise Payment for any Reporting Period shall be an amount equal to:

£FP =	PFP + TAA + SCA + CPS + TMDPS + GDPA + $GDPR_1$ + $GDPR_2$ + CLEA + CLER - TCERA - PVA - PVSA - SEOA

where:

£FP	means the Franchise Payment for that Reporting Period payable in pound sterling;

PFP	means $\left(\frac{RPD}{FYD} \times AFP\right)$	
	WHERE:	
	RPD	means the number of days in that Reporting Period;
	FYD[73]	means the number of days in a Franchisee Year in which the Reporting Period occurs provided that in respect of any Reporting Period: (a) occurring during any Franchisee Year in which this Franchise Agreement terminates early pursuant to Schedule 10 (Remedies, Termination and Expiry), FYD shall mean the number of days there would have been in such Franchisee Year had such early termination not occurred; (b) which commences on or after the Start Date, FYD shall be deemed to be the number of days during the period from 16 October 2016 to 31 March 2017 (inclusive); (c) which commences on or after 1 April 2025, FYD shall be deemed to be the number of days during the period from 1 April 2025 to 11 October 2025 (inclusive), if the Secretary of State has not exercised its

[73] This is predicated on a Start Date of 16 October 2016.

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		right to extend the Franchise Agreement pursuant to clause 5.2; (d) which commences on or after 1 April 2025 FYD shall be deemed to be the number of days during the period from 1 April 2025 to 31 March 2026 (inclusive), if the Secretary of State has exercised its right to extend the Franchise Agreement pursuant to clause 5.2; (e) which commences on or after 1 April 2026, FYD shall be deemed to be the number of days during the period from 1 April 2026 to 17 October 2026 (inclusive), if the Secretary of State has exercised his right to extend the Franchise Agreement pursuant to clause 5.2 to or beyond the 1 April 2026;
	AFP	means the Annual Franchise Payment for the Franchisee Year in which that Reporting Period occurs, as determined in accordance with Appendix 1 (Annual Franchise Payments) to Schedule 8.1 (Franchise Payments).

TAA	means any Track Access Adjustment to be made on that Reporting Period's Payment Date;
SCA	means any Station Charge Adjustment to be made on that Reporting Period's Payment Date;
CPS	means any Cancellations Performance Sum on that Reporting Period's Payment Date;
TMDPS	means any TOC Minute Delay Performance Sum on that Reporting Period's Payment Date;
GDPA	means any GDP adjustment payment, determined in accordance with paragraph 3 of Schedule 8.4 (GDP & CLE Adjustment Payments), to be made on that Reporting Period's Payment Date;
$GDPR_1$	means any GDP reconciliation payment, determined in accordance with paragraph 4.2 of Schedule 8.4 (GDP & CLE Adjustment Payments), to be made on that Reporting Period's Payment Date;
$GDPR_2$	means any GDP reconciliation payment, determined in accordance with paragraph 4.5 of Schedule 8.4 (GDP & CLE Adjustment Payments), to be made on that Reporting Period's Payment Date;
CLEA	means any CLE Adjustment Payment payable in accordance with Schedule 8.4 (GDP & CLE Adjustment Payments);

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CLER	means any CLE Reconciliation Payment payable in accordance with Schedule 8.4 (GDP & CLE Adjustment Payments);
TCERA	means the Total Customer Experience Reimbursement Amount calculated in accordance with paragraph 6 of Schedule 7.1 in respect of the previous Reporting Period;
PVA	means the Platform Validator Adjustment calculated in accordance with paragraph 3.1 of Schedule 5.9 (Smart Ticketing);
PVSA	means the Platform Validator Savings Adjustment calculated in accordance with paragraph 3.2 of Schedule 5.9 (Smart Ticketing); and
SEOA	means the SEFT Equipment Opex Adjustment calculated in accordance with paragraph 2.2 of Schedule 5.9 (Smart Ticketing).

1.2 Where a Franchisee Year starts or ends during a Reporting Period, £FP and PFP shall be determined as if references in paragraph 1.1 to a Reporting Period were to each of the separate sections of two such Reporting Periods which fall either side of such Franchisee Year start or end, and the Franchise Payment for such Reporting Period shall be the sum of £FP as determined for each such section of such Reporting Period.

1.3 The Parties agree that:

(a) each of £FP, TAA, SCA, CPS, TMDPS, GDPA, $GDPR_1$, $GDPR_2$, CLEA and CLER may be a positive or negative number;

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

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

2. Payment of Franchise Payments

2.1 The Secretary of State shall notify the Franchisee, no less than seven (7) days prior to the end of each Reporting Period, of the amount of the Franchise Payment payable in respect of that Reporting Period.

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

2.3 The Payment Date for a Reporting Period shall be the last business day of that Reporting Period.

2.4 Each Franchise Payment shall be payable by the Franchisee or, as the case may be, the Secretary of State in the amount notified by the Secretary of State in accordance with paragraph 2.1 on the Payment Date of the Reporting Period to which it relates.

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2.5 Each Franchise Payment shall be made:

(a) by automatic electronic funds transfer in pounds sterling to such bank account in the United Kingdom as the payee of such payment may have previously specified to the payer in writing; and

(b) so that cleared funds are received in that account on or before the due date for payment.

3. Interest

3.1 If either Party fails to pay any amount to the other Party on its due date, it shall in addition pay interest on such amount at the Interest Rate, calculated on a daily basis, from the due date for payment to the date on which payment is made.

3.2 If the amount of any Franchise Payment is agreed or determined to be incorrect and:

(a) either Party has made a payment to the other Party which is greater than it would have made if the amount of the Franchise Payment had been correct, then the recipient shall repay the excess within three Weekdays of the agreement or determination; or

(b) either Party has made a payment to the other Party which is less than it would have made if the amount of the Franchise Payment had been correct, then the payer shall pay the amount of any shortfall to the payee within three (3) Weekdays of the agreement or determination,

together, in each case, with interest on the amount payable at the Interest Rate, calculated on a daily basis from the date on which the Franchise Payment was paid until the date on which such excess amount or shortfall is paid.

4. Disputes under Schedule 8

If either Party disputes the amount of a Franchise Payment, the dispute shall, unless the Parties otherwise agree, be resolved in accordance with the provisions of clause 16 (Governing Law and Jurisdiction) of the Franchise Agreement. Any such dispute shall not affect the obligation of either Party to pay a Franchise Payment notified in accordance with this Schedule 8.1.

5. Industrial Action

The Secretary of State, in his discretion, may at any time decide to reimburse or ameliorate net losses of the Franchisee arising from Industrial Action (however caused and of whatever nature) in circumstances where the Franchisee has demonstrated to the satisfaction of the Secretary of State that it has taken all reasonable steps to avoid the Industrial Action and that, Industrial Action having nevertheless occurred, the Franchisee has taken all reasonable steps to mitigate its effects.

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APPENDIX 1 TO SCHEDULE 8.1

Annual Franchise Payments

The Annual Franchise Payment for any Franchisee Year is an amount equal to:

£AFP =	FXD + (VCRPI x RPI) + (VCAWE x AWE) + (PRPI x RPI) + (RRPI x RPI)

where:

AFP	equals the Annual Franchise Payment in the relevant Franchisee Year;
FXD	means the figure shown in respect of the relevant Franchisee Year in Column 2 of Table 1 (Figures for Calculation of Annual Franchise Payments) set out in Appendix 2;
VCRPI	means the figure shown in respect of the relevant Franchisee Year in Column 3 of Table 1 (Figures for Calculation of Annual Franchise Payments) set out in Appendix 2;
RPI	is the quotient of the Retail Prices Index for the January which immediately precedes the commencement of the relevant Franchisee Year divided by the Retail Prices Index for January 2016 provided that, for the first Franchisee Year, RPI shall be one;
VCAWE	means the figure shown in respect of the relevant Franchisee Year in Column 4 of Table 1 (Figures for Calculation of Annual Franchise Payments) set out in Appendix 2;
AWE	is the quotient of the Average Weekly Earnings for the January which immediately precedes the commencement of the relevant Franchisee Year divided by the Average Weekly Earnings for January 2016 provided that, for the first Franchisee Year, AWE shall be one;
PRPI	means the figure shown in respect of the relevant Franchisee Year in Column 5 of Table 1 (Figures for Calculation of Annual Franchise Payments) set out in Appendix 2; and
RRPI	means the figure shown in respect of the relevant Franchisee Year in Column 6 of Table 1 (Figures for Calculation of Annual Franchise Payments) set out in Appendix 2 (and which case shall always be expressed as a negative number).

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APPENDIX 2 TO SCHEDULE 8.1

Figures for Calculation of Annual Franchise Payments[74]

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
Franchisee Year	**FXD**	**VCRPI**	**VCAWE**	**PRPI**	**RRPI**
Year 1 (Part)					
Year 2					
Year 3					
Year 4					
Year 5					
Year 6					
Year 7					
Year 8					
Year 9					
Year 10 (Part - Core)[75]					
Year 10 (Full Year - Extn)[76]					
Year 11 (Part - Extn)[77]					

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74 **Note to Bidders**: Bidder to populate.

75 The amounts in this row will apply for the purpose of this schedule 8.1 if the extension is not called under clause 5.

76 The amounts in this row will apply for the purpose of this schedule 8.1 if the extension is called under clause 5 but not otherwise.

77 The amounts in this row will apply for the purpose of this schedule 8.1 if the extension is called under clause 5 and extends into the 11 Franchisee Year but not otherwise.

SCHEDULE 8.2

Profit Share Mechanism

1. **Profit Share**

1.1 For the purposes of this Schedule 8.2:

(a) **First Profit Share Threshold**

"**First Profit Share Threshold**" means an amount in respect of any Franchisee Year determined as follows:

FPST x RPI x (NRP/ENRP)

where:

FPST	is the amount prescribed for these purposes in paragraph 1 of Appendix 1 (Profit Share Thresholds) to this Schedule 8.2 in respect of the relevant Franchisee Year;
RPI	has the meaning given to it in Appendix 1 (Annual Franchise Payments) to Schedule 8.1 (Franchise Payments);
NRP	means the whole number of Reporting Periods in that Franchisee Year; and
ENRP[78]	means the expected number of Reporting Periods in that Franchisee Year being 13 Reporting Periods for every Franchisee Year except: (a) for the first Franchisee Year (referred to as Year 1 (Part) in the table set out in paragraph 1 of Appendix 1 to this Schedule 8.2) which shall be the number of Reporting Periods between the Start Date and 31 March 2017; (b) for the tenth Franchisee Year where the Secretary of State has not exercised its right to extend the Franchise Agreement pursuant to clause 5.2 (referred to as Year 10 (Part) in the table set out in paragraph 1 of Appendix 1 to this Schedule 8.2) which shall be the number of Reporting Periods between 1 April 2025 and 11

[78] This and the amounts in appendix 1 are predicated on the basis of a 16 October 2016 Start Date.

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	October 2025; (c) for the eleventh Franchisee Year, where the Secretary of State has exercised its right to extend the Franchisee Agreement pursuant to clause 5.2 until a date on or after 1 April 2026 (referred to as Year 11 (Part - Extn) in the table set out in paragraph 1 of Appendix 1 to this Schedule 8.2), which shall be the number of Reporting Periods between 1 April 2026 and 17 October 2026.

(d) **Second Profit Share Threshold**

"**Second Profit Share Threshold**" means an amount in respect of any Franchisee Year determined as follows:

SPST x RPI x (NRP/ENRP)

where:

SPST	is the amount prescribed for these purposes in paragraph 2 of Appendix 1 (Profit Share Thresholds) to this Schedule 8.2 in respect of the relevant Franchisee Year;
RPI	has the meaning given to it in Appendix 1 (Annual Franchise Payments) to Schedule 8.1 (Franchise Payments); and
NRP	means the whole number of Reporting Periods in that Franchisee Year; and
ENRP[79]	means the expected number of Reporting Periods in that Franchisee Year being 13 Reporting Periods for every Franchisee Year except: (e) for the first Franchisee Year (referred to as Year 1 (Part) in the table set out in paragraph 2 of Appendix 1 to this Schedule 8.2) which shall be the number of Reporting Periods between the Start Date and 31 March 2017; (f) for the tenth Franchisee Year where the Secretary of State has not exercised its right to extend the Franchise Agreement

[79] This and the amounts in appendix 1 are predicated on the basis of a 16 October 2016 Start Date.

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		pursuant to clause 5.2 (referred to as Year 10 (Part) in the table set out in paragraph 2 of Appendix 1 to this Schedule 8.2) which shall be the number of Reporting Periods between 1 April 2025 and 11 October 2025; (g) for the eleventh Franchisee Year, where the Secretary of State has exercised its right to extend the Franchisee Agreement pursuant to clause 5.2 until a date on or after 1 April 2026 (referred to as Year 11 (Part - Extn) in the table set out in paragraph 2 of Appendix 1 to this Schedule 8.2), which shall be the number of Reporting Periods between 1 April 2026 and 17 October 2026.

(h) **Third Profit Share Threshold**

"**Third Profit Share Threshold**" means an amount in respect of any Franchisee Year determined as follows:

TPST x RPI x (NRP/ENRP)

where:

TPST	is the amount prescribed for these purposes in paragraph 3 of Appendix 1 (Profit Share Thresholds) to this Schedule 8.2 in respect of the relevant Franchisee Year;
RPI	has the meaning given to it in Appendix 1 (Annual Franchise Payments) to Schedule 8.1 (Franchise Payments);
NRP	means the whole number of Reporting Periods in that Franchisee Year; and
ENRP[80]	means the expected number of Reporting Periods in that Franchisee Year being 13 Reporting Periods for every Franchisee Year except: (i) for the first Franchisee Year (referred to as Year 1 (Part) in the table set out in paragraph 3 of Appendix 1 to this Schedule 8.2) which shall be the number of Reporting Periods between the Start Date and 31

[80] This and the amounts in appendix 1 are predicated on the basis of a 16 October 2016 Start Date.

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	March 2017; (j) for the tenth Franchisee Year where the Secretary of State has not exercised its right to extend the Franchise Agreement pursuant to clause 5.2 (referred to as Year 10 (Part) in the table set out in paragraph 3 of Appendix 1 to this Schedule 8.2) which shall be the number of Reporting Periods between 1 April 2025 and 11 October 2025; (k) for the eleventh Franchisee Year, where the Secretary of State has exercised its right to extend the Franchisee Agreement pursuant to clause 5.2 until a date on or after 1 April 2026 (referred to as Year 11 (Part - Extn) in the table set out in paragraph 3 of Appendix 1 to this Schedule 8.2), which shall be the number of Reporting Periods between 1 April 2026 and 17 October 2026.

1.2 **Relevant Profit**

"**Relevant Profit**" means, subject to paragraph 1.5, in respect of any Franchisee Year, the total profit of the Franchisee for that Franchisee Year calculated by applying the accounting policies and standards set out in the Record of Assumptions and applied through the Financial Model;

(a) after taking into account in respect of that Franchisee Year:

(i) interest, finance income and finance charges (other than finance items recognised in respect of retirement benefits);

(ii) Franchise Payments including any adjustment by way of GDPA, CLEA, GDP_1, GDP_2 and/or CLER (as the case may be) pursuant to Schedule 8.4 (GDP & CLE Adjustment Payments);

(iii) all extraordinary and exceptional items, as defined under the accounting policies and standards set out in the Record of Assumptions and applied through the Financial Model;

(iv) the Franchisee's normal pension contributions in relation to the Franchise Section and any other pension schemes to the extent connected with the Franchise;

(v) any payments to Affiliates of the Franchisee (including management fees and royalty fees) except to the extent that such payments exceed an amount to be determined as follows:

AFA x RPI

where:

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AFA	is the amount specified in respect of each Franchisee Year in Column 2 of the table set out in paragraph 1 of Appendix 2 (Components of AFA and DFR) to this Schedule 8.2 provided that:	
	(A)	if the Secretary of State does not exercise his right the extend the Franchise Agreement pursuant to clause 5.2 (Duration of the Franchise Agreement) AFA for the Franchisee Year which commences on 1 April 2025 shall be the amount specified in Column 2 of the table set out in paragraph 1 of Appendix 2 (Components of AFA and DFR) to this Schedule 8.2 for the periods referred to as Year 10 (Core - Part);
	(B)	if the Secretary of State exercises his right to extend the Franchise Agreement pursuant to clause 5.2 (Duration of the Franchise Agreement) for the maximum thirteen (13) Reporting Periods permitted by clause 5.2 (Duration of the Franchise Agreement) AFA for:
		(i) the Franchisee Year which commences on 1 April 2025 shall be the amount specified in Column 2 of the table set out in paragraph 1 of Appendix 2 (Components of AFA and DFR) to this Schedule 8.2 for the periods referred to as Year 10 (Full Year - Extn); and
		(ii) the Franchisee Year which commences on 1 April 2026 shall be the amount specified in Column 2 of the table set out in paragraph 1 of Appendix 2 (Components of AFA and DFR) to this Schedule 8.2 for the periods referred to as Year 11 (Part - Extn); or
	(C)	if the Secretary of State exercises the right to extend the Franchise Agreement for less than the maximum thirteen Reporting Periods such that the Franchise Period will expire after 31 March 2025 (but before the last date permitted by clause 5.2), AFA for:
		(i) the Franchisee Year which commences on 1 April 2025 shall be: $AFAE_1/13 \times CRP_1$ Where: $AFAE_1$ means the amount specified in Column 2 of the table set out in paragraph 1 of Appendix 2 (Components of AFA and DFR) to

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		this Schedule 8.2 for the periods referred to as Year 10 (Full Year - Extn); CPR_1 means the number of Reporting Periods by which the Franchise Period has been extended pursuant to clause 5.2 in the period from 1 April 2025 to 31 March 2026;
		(ii) for the Franchisee Year that commences on 1 April 2026 shall be: $AFAE_2/7 \times CRP_2$ $AFAE_2$ means the amount specified in Column 2 of the table set out in paragraph 1 of Appendix 2 (Components of AFA and DFR) to this Schedule 8.2 for the periods referred to as Year 11 (Part - Extn); CPR_2 means the number of Reporting Periods by which the Franchise Period has been extended pursuant to clause 5.2 in the period from 1 April 2026 to 17 October 2026;
RPI	has the meaning given to it in Appendix 1 (Annual Franchise Payments) of Schedule 8.1 (Franchise Payments);	

(vi) any sums payable by or to the Franchisee pursuant to the terms of the Supplemental Agreement; and

(vii) any capital expenditure to the extent that it is recognised as an operating cost in the Annual Audited Accounts and any depreciation on capital expenditure that is recognised as an expense in the Annual Audited Accounts, unless the depreciation policy and assumptions used in the Annual Audited Accounts are different to those set out in the Record of Assumptions and applied through the Financial Model, in which case an adjustment should be made to take account of the depreciation which would have been charged had the policy and assumptions set out in the Record of Assumptions been applied for the relevant Franchisee Year; and

(b) before taking into account in respect of that Franchisee Year:

(i) any taxation on profits including corporation tax;

(ii) shares of the profit of any Affiliate of the Franchisee, except dividends received in cash;

(iii) non cash entries in respect of the Franchise Section and any other pension schemes to the extent connected with the Franchise (excluding accruals or prepayments of any normal pension contributions due);

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(iv) any payment made by the Franchisee consequent upon any breach or contravention of the Franchise Agreement and/or its Licences (including as a consequence of any penalty payment paid or payable pursuant to Section 57A of the Railways Act 1993);

(v) any profit share payments payable to the Secretary of State in relation to any Franchisee Year; and

(vi) fees, remuneration and pension contributions in respect of any director and officers of the Franchisee in excess of an amount to be determined as follows:

DFR x [RPI] OR [AWE][81]

DFR	is the amount specified in respect of each Franchisee Year in Column 2 of the table set out in paragraph 2 of Appendix 2 (Components of AFA and DFR) to this Schedule 8.2 provided that:	
	(A)	if the Secretary of State does not exercise his right the extend the Franchise Agreement pursuant to clause 5.2 (Duration of the Franchise Agreement) AFA for the Franchisee Year which commences on 1 April 2025 shall be the amount specified in Column 2 of the table set out in paragraph 2 of Appendix 2 (Components of AFA and DFR) to this Schedule 8.2 for the periods referred to as Year 10 (Core - Part);
	(B)	if the Secretary of State exercises his right to extend the Franchise Agreement pursuant to clause 5.2 (Duration of the Franchise Agreement) for the maximum thirteen (13) Reporting Periods permitted by clause 5.2 (Duration of the Franchise Agreement) DFR for:
		(i) the Franchisee Year which commences on 1 April 2025 shall be the amount specified in Column 2 of the table set out in paragraph 2 of Appendix 2 (Components of AFA and DFR) to this Schedule 8.2 for the periods referred to as Year 10 (Full Year - Extn); and
		(ii) the Franchisee Year which commences on 1 April 2026 shall be the amount specified in Column 2 of the table set out in paragraph 2 of Appendix 2 (Components of AFA and DFR) to this Schedule 8.2 for the periods referred to as Year 11 (Part - Extn);

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81 **Note to Bidders:** Bidder to select RPI or AWE as appropriate.

	(C)	if the Secretary of State either does not exercise his right to extend the Franchise Agreement pursuant to clause 5.2 or does exercise the right to extend the Franchise Agreement for less than the maximum thirteen Reporting Periods such that the Franchise Period will expire after 31 March 2025 (but before the last date permitted by clause 5.2), DFR for:
		(i) the Franchisee Year which commences on 1 April 2025 shall be: $DFRE_1/13 \times CPR_1$ Where: $DFRE_1$ means the amount specified in Column 2 of the table set out in paragraph 2 of Appendix 2 (Components of AFA and DFR) to this Schedule 8.2 for the periods referred to as Year 10 (Full Year - Extn); CPR_1 means the number of Reporting Periods by which the Franchise Period has been extended pursuant to clause 5.2 in the period from 1 April 2025 to 31 March 2026;
		(ii) for the Franchisee Year that commences on 1 April 2026 shall be: $DFRE_2/13 \times CPR_2$ $DFRE_2$ means the amount specified in Column 2 of the table set out in paragraph 2 of Appendix 2 (Components of AFA and DFR) to this Schedule 8.2 for the periods referred to as Year 11 (Part - Extn); CPR_2 means the number of Reporting Periods by which the Franchise Period has been extended pursuant to clause 5.2 in the period from 1 April 2026 to 17 October 2026;
RPI	has the meaning given to it in Appendix 1 (Annual Franchise Payments) of Schedule 8.1 (Franchise Payments);	
AWE	means $\frac{CAWE}{OAWE}$	
	where: **CAWE** means the Average Weekly Earnings published in the April immediately preceding the commencement of that Franchisee Year; and	

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	OAWE means the Average Weekly Earnings for January 2016

1.3 If the Annual Audited Accounts in respect of any Franchisee Year show that the Relevant Profit for that Franchisee Year exceeds the First Profit Share Threshold then, subject to paragraph 1.5, the Franchisee shall pay to the Secretary of State:

(a) 25% of Relevant Profit in excess of the First Profit Share Threshold but less than or equal to the Second Profit Threshold;

(b) 50% of Relevant Profit in excess of the Second Profit Share Threshold but less than or equal to the Third Profit Threshold; and

(c) 100% of Relevant Profit in excess of the Third Profit Share Threshold.

1.4 Subject to paragraphs 2 and 3 below, payments due under paragraph 1.3 shall be paid as part of the Franchise Payment for the first Reporting Period falling thirty (30) or more days after delivery of the Annual Audited Accounts by the Franchisee to the Secretary of State under paragraph 9.4 of Schedule 11.2 (Management Information) or if there is no such Reporting Period, within thirty (30) days of the date of such delivery.

1.5

(a) If in any Franchisee Year (or any period of twelve (12) consecutive months after the end of the Franchise Period) (the **"Current Franchisee Year"**) the Franchisee receives a compensation or other settlement payment of at least:

two hundred thousand pounds (£200,000) x RPI

arising from a single claim or series of related claims which relate wholly or partly to costs, losses or expenses (including loss of revenue) arising in any other Franchisee Year or Franchisee Years, then the Franchisee shall notify the Secretary of State of such payment as soon as reasonably practicable and for the purposes of this paragraph 1 and notwithstanding its other terms:

(i) the payment which relates to such other Franchisee Year shall be attributed to that other Franchisee Year and not treated as received in the Current Franchisee Year;

(ii) where and to the extent any payments under this paragraph 1 in respect of any other Franchisee Year would have been made or would have been higher had that amount actually been received in that other Franchisee Year, the Franchisee shall pay a reconciliation amount to the Secretary of State within thirty (30) days after delivery of the Annual Audited Accounts that relate to the Current Franchisee Year by the Franchisee to the Secretary of State under paragraph 9.4 of Schedule 11.2 (Management Information) or, if

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there is no further requirement on the Franchisee to deliver Annual Audited Accounts following the end of the Franchise Period, within thirty (30) days of the Franchisee receiving the relevant payment; and

(iii) RPI has the meaning given to it in Appendix 1 (Annual Franchise Payments) of Schedule 8.1 (Franchise Payments).

(b) Where the Secretary of State reasonably considers that in calculating Relevant Profit any particular item or transaction has not been accounted for on a reasonable basis (including where the accounting treatment looks to the form rather than the substance, of the item or transaction) he shall be entitled to require it to be accounted for on such other basis as he may reasonably determine and notify to the Franchisee provided that the Secretary of State shall not be entitled pursuant to this paragraph to alter the accounting policies of the Franchisee from those set out in the Record of Assumptions and applied through the Financial Model.

(c) Without prejudice to paragraph 1.5 (a) where the Annual Audited Accounts in relation to any previous Franchisee Year are subject to adjustment or restatement the Secretary of State shall have a discretion to require the recalculation of Relevant Profit for the relevant Franchisee Year and to require that the Franchisee shall pay to the Secretary of State the amount which is the difference between the profit share actually paid to the Secretary of State pursuant to paragraph 1.3 and the amount that would have been paid had the Relevant Profit been originally calculated on the basis that such adjustment or revision was included in the Annual Audited Accounts. Any payment due to the Secretary of State shall be paid by the Franchisee within thirty (30) days of the Secretary of State notifying the Franchisee that he requires a payment to be made pursuant to this paragraph.

2. **Relevant Profit Report**

2.1 The Franchisee shall, within ten (10) days after delivery of any Annual Audited Accounts under paragraph 9.4 of Schedule 11.2 (Management Information), deliver to the Secretary of State a report (the **"Relevant Profit Report"**) identifying:

(a) the amount of total profit and the adjustments made in the calculation of Relevant Profit pursuant to paragraph 1;

(b) any items falling under paragraph 1.5(a), including details of the allocation across Franchisee Years of such items; and

(c) any adjustments or restatements made in relation to the Annual Audited Accounts in respect of any previous Franchisee Year,

and shall provide such additional information, records or documents as the Secretary of State may reasonably require in relation to such matters.

2.2 The Franchisee and/or the Franchisee's auditors shall include a statement referring to the Relevant Profit in the Annual Audited Accounts. The format of such statement to be agreed with the Secretary of State.

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2.3 If required, the Franchisee's auditors shall provide additional written confirmation to the Secretary of State that the Relevant Profit Report gives a true and fair view of the matters contained within it including the amount of total profit and the adjustments made in the calculation of Relevant Profit.

3. **Payment of Profit Share and Determination by the Secretary of State**

3.1 Any profit share payment pursuant to paragraph 1.3 to be made in respect of the final Franchisee Year shall be determined in accordance with this paragraph 1 but shall be paid within thirty (30) days of the Secretary of State giving written notice to the Franchisee of the amount of such profit share payment.

3.2 If the Franchisee fails to provide the Annual Audited Accounts for the final Franchisee Year within four (4) Reporting Periods of the expiry of the final Franchisee Year pursuant to paragraph 9.4 of Schedule 11.2 (Management Information), the Secretary of State shall be entitled (but not obliged) to determine any Profit Share Adjustment in accordance with this paragraph 1 but by reference to any relevant information available to the Secretary of State at the time of such determination, including any information contained in the latest cumulative, year-to-date Management Accounts or in the Annual Management Accounts.

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APPENDIX 1 TO SCHEDULE 8.2

Profit Share Thresholds

1. **First Profit Share Threshold**

The prescribed amounts for the component of FPST for the relevant Franchisee Year and for the purposes of the definition of First Profit Share Threshold are as set out in the table below:

[**Note to Bidders:** Bidders to Populate]

Franchisee Year	First Profit Share Threshold Amount[82] or FPST
Year 1 (Part)	£[Insert Amount]
Year 2	£[Insert Amount]
Year 3	£[Insert Amount]
Year 4	£[Insert Amount]
Year 5	£[Insert Amount]
Year 6	£[Insert Amount]
Year 7	£[Insert Amount]
Year 8	£[Insert Amount]
Year 9	£[Insert Amount]
Year 10 (Part - Core)	£[Insert Amount]
Year 10 (Full - Extn)	£[Insert Amount]
Year 11 (Part - Extn)	£[Insert Amount]

2. **Second Profit Share Threshold**

The prescribed amounts for the component of SPST for the relevant Franchisee Year and for the purposes of the definition of Second Profit Share Threshold are as set out in the table below:

[**Note to Bidders:** Bidders to Populate]

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82 **Note To Bidders:** The maximum amount to be specified in this Column will be 7.5 **%** of total revenue (being farebox revenue and other income (excluding subsidy)) as provided in the Financial Templates in the ITT.

Franchisee Year	Second Profit Share Threshold Amount[83] or SPST
Year 1 (Part)	£[Insert Amount]
Year 2	£[Insert Amount]
Year 3	£[Insert Amount]
Year 4	£[Insert Amount]
Year 5	£[Insert Amount]
Year 6	£[Insert Amount]
Year 7	£[Insert Amount]
Year 8	£[Insert Amount]
Year 9	£[Insert Amount]
Year 10 (Part - Core)	£[Insert Amount]
Year 10 (Full - Extn)	£[Insert Amount]
Year 11 (Part - Extn)	£[Insert Amount]

3. **Third Profit Share Threshold**

The prescribed amounts for the component of TPST for the relevant Franchisee Year and for the purposes of the definition of Third Profit Share Threshold are as set out in the table below:

[Note to Bidders: Bidders to Populate]

Franchisee Year	Third Profit Share Threshold Amount[84] or TPST
Year 1 (Part)	£[Insert Amount]
Year 2	£[Insert Amount]

[83] **Note To Bidders:** The maximum amount to be specified in this Column will be 9.5 **%** of total revenue (being farebox revenue and other income (excluding subsidy)) as provided in the Financial Templates in the ITT.

[84] **Note To Bidders:** The maximum amount to be specified in this Column will be 12.5 % of total revenue (being farebox revenue and other income (excluding subsidy)) as provided in the Financial Templates in the ITT.

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Franchisee Year	Third Profit Share Threshold Amount[84] or TPST
Year 3	£[Insert Amount]
Year 4	£[Insert Amount]
Year 5	£[Insert Amount]
Year 6	£[Insert Amount]
Year 7	£[Insert Amount]
Year 8	£[Insert Amount]
Year 9	£[Insert Amount]
Year 10 (Part - Core)	£[Insert Amount]
Year 10 (Full - Extn)	£[Insert Amount]
Year 11 (Part - Extn)	£[Insert Amount]

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APPENDIX 2 TO SCHEDULE 8.2

Components of AFA and DFR

1. **AFA**

The amounts for the purposes of the component of AFA in paragraph 1.2 of Schedule 8.2 are set out in the table below:

[Note to Bidders: Bidders to Populate]

Franchisee Year	Component of AFA
Year 1 (Part)	£[Insert Amount]
Year 2	£[Insert Amount]
Year 3	£[Insert Amount]
Year 4	£[Insert Amount]
Year 5	£[Insert Amount]
Year 6	£[Insert Amount]
Year 7	£[Insert Amount]
Year 8	£[Insert Amount]
Year 9	£[Insert Amount]
Year 10 (Part - Core)	£[Insert Amount]
Year 10 (Full - Extn)	£[Insert Amount]
Year 11 (Part - Extn)	£[Insert Amount]

2. **DFR**

The amounts for the purposes of the component of DFR in paragraph 1.2 of Schedule 8.2 are set out in the table below:

[**Note to Bidders**: Bidders to Populate]

Franchisee Year	Component of DFR
Year 1 (Part)	£[Insert Amount]
Year 2	£[Insert Amount]
Year 3	£[Insert Amount]
Year 4	£[Insert Amount]

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Franchisee Year	Component of DFR
Year 5	£[Insert Amount]
Year 6	£[Insert Amount]
Year 7	£[Insert Amount]
Year 8	£[Insert Amount]
Year 9	£[Insert Amount]
Year 10 (Part - Core)	£[Insert Amount]
Year 10 (Full - Extn)	£[Insert Amount]
Year 11 (Part - Extn)	£[Insert Amount]

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SCHEDULE 8.3

Track Access Adjustments and Station Charge Adjustments

1. Track Access Adjustments

1.1 The Track Access Adjustment to be made in respect of any Reporting Period shall be determined in accordance with the following formula:

$$TAA = (GCA - W) \times \frac{RPD}{FYD}$$

where:

TAA	means the Track Access Adjustment to be made in that Reporting Period;
GCA	is the value of **"GC"** for the Franchisee Year in which the Reporting Period falls under Part 3A of Schedule 7 of the Track Access Agreement;
W	is the value of **"Wt"** for the Franchisee Year in which the Reporting Period falls under Part 2 of Schedule 7 of the Track Access Agreement;
RPD	means the number of days in that Reporting Period; and
FYD	means the number of days in the Franchisee Year in which that Reporting Period falls,

except that, where a Reporting Period falls during two (2) Franchisee Years, TAA shall be determined as if the references to Reporting Period were to each of the two periods within such Reporting Period which fall wholly within one (1) of such Franchisee Years and the Track Access Adjustment to be made in that Reporting Period shall reflect the sum of TAA as determined for each such period.

1.2 The Franchisee shall notify the Secretary of State upon becoming aware that any Track Access Adjustment is to be made and shall supply such information as the Secretary of State may require in relation thereto. The Franchisee shall exercise its rights under the Track Access Agreement in such manner and take such other action as the Secretary of State may reasonably require in connection with any related payment thereunder (including in relation to any agreement of the amount of any such payment and including submitting any relevant dispute to any relevant dispute resolution procedures). The Franchisee shall not, without the consent of the Secretary of State, agree or propose to agree a value for **"Wt"** or **"GC"** under Parts 2 or 3A of Schedule 7 of the Track Access Agreement.

1.3 The Franchisee shall provide such evidence of payment as the Secretary of State may require (including any certificates) for the purpose of determining the value of W and GCA under paragraph 1.1.

1.4 If no value is ascertained for W or GCA prior to the date on which the Franchise Payment for the relevant Reporting Period is determined, then a Track Access

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Adjustment shall only be determined to the extent such values can be ascertained at such time and, when such values are subsequently ascertained, adjustment shall be made to reflect the full Track Access Adjustment for such Reporting Period.

1.5 The values of W and GCA when used in the computation in paragraph 1.1 shall be taken to exclude any input Value Added Tax which is recoverable in respect of the payments they represent by the Franchisee under Sections 24 to 26 of the Value Added Tax Act 1994.

1.6 References in this paragraph 1 to **"Wt"** and **"GC"** and Parts 2 and 3A of Schedule 7 of the Track Access Agreement shall be deemed also to be references to such other provisions, and such other algebra under any such other provisions, of any Track Access Agreement as the Secretary of State may reasonably consider have an equivalent effect, or are intended to fulfil the same function, as **"Wt"** or **"GC"** and Parts 2 or 3A of Schedule 7 of the Track Access Agreement to which the Franchisee is a party on the Start Date.

2. **Station Charge Adjustment**

2.1 The following provisions of this paragraph 2 shall not apply in relation to any Station or each other Franchisee Access Station for which the applicable Station Access Conditions is the one entitled **"National Station Access Conditions 2011 (FRI Leases) (England and Wales)"**.

2.2 The Station Charge Adjustment to be made in respect of any Reporting Period shall be the aggregate of the Individual Station Charge Adjustments as determined in accordance with the following formula for each Station and each other Franchisee Access Station:

$$\mathrm{ISCA} = \mathrm{L} \times \frac{\mathrm{RPD}}{\mathrm{FYD}}$$

where:

ISCA	means the Individual Station Charge Adjustment for the relevant station for that Reporting Period;
L	is the value of **"Lt"** for the Franchisee Year in which the Reporting Period falls under: (a) if the relevant station is not an Independent Station, Condition F11.2 of the Station Access Conditions entitled **"National Station Access Conditions 2013 (England and Wales) (incorporating amendments with effect from 1 April 2014)"** relating to such station; or (b) if the relevant station is an Independent Station, Condition 42.3 of the Independent Station Access Conditions relating to that Independent Station,

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	in each case, to the extent that value represents an amount payable to or by Network Rail or any other relevant Facility Owner by or to the Franchisee on its own behalf under the relevant Access Agreement (excluding any amount payable to Network Rail by the Franchisee in its capacity as Facility Owner of a station on behalf of a beneficiary which is party to an Access Agreement in respect of a Station);
RPD	means the number of days in that Reporting Period; and
FYD	means the number of days in the Franchisee Year in which that Reporting Period falls except that, where a Reporting Period falls during two Franchisee Years, the Station Charge Adjustment shall be determined as if the references to Reporting Period were to each of the two periods within such Reporting Period which fall wholly within one of such Franchisee Years and the Station Charge Adjustment for such Reporting Period shall be the sum of the Station Charge Adjustment as determined for each such period.]

2.3 The Franchisee shall notify the Secretary of State upon becoming aware that any Station Charge Adjustment is to be made and shall supply such information as the Secretary of State may require in relation thereto. The Franchisee shall exercise such rights as it may have under any Access Agreement in such manner and take such other action as the Secretary of State may reasonably require in connection with any related payment thereunder (including in relation to any agreement of the amount of any such payment and including submitting any relevant dispute to any relevant dispute resolution procedures). The Franchisee shall not, without the consent of the Secretary of State, agree or propose to agree a value for **"Lt"** under any relevant Access Agreement.

2.4 The Franchisee shall provide such evidence of payment as the Secretary of State may require (including any certificates) for the purpose of determining the value of L under paragraph 2.2.

2.5 If no value is ascertained for L prior to the date on which the Franchise Payment for the relevant Reporting Period is determined, then a Station Charge Adjustment shall only be determined to the extent such values can be ascertained at such time and, when such values are subsequently ascertained, an adjustment shall be made to reflect the full Station Charge Adjustment for such Reporting Period.

2.6 The value of L when used in the computation in paragraph 2.2 shall be taken to exclude any input Value Added Tax which is recoverable in respect of the payments they represent by the Franchisee under Sections 24 to 26 of the Value Added Tax Act 1994.

2.7 For the purposes of this paragraph 2, **"Independent Station"** shall mean, at any time, any station of which Network Rail is the Facility Owner at that time.

2.8 References in this paragraph 2 to **"Lt"**, Condition F11.2 of the Station Access Conditions entitled **"National Station Access Conditions 2013 (England and Wales) (incorporating amendments with effect from 1 April 2014)""** and Condition 42.3 of the Independent Station Access Conditions shall be deemed also to be references to such other provisions, and such other algebra under any

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such other provisions, of any relevant station access conditions as the Secretary of State may reasonably consider have an equivalent effect, or are intended to fulfil the same function as, **"Lt"** and Condition F11.2 of the Station Access Conditions entitled **"National Station Access Conditions 2013 (England and Wales) (incorporating amendments with effect from 1 April 2014)"** and Condition 42.3 of the Independent Station Access Conditions which are in effect on the Start Date.

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SCHEDULE 8.4

GDP & CLE Adjustment Payments

Part 1

1. **Purpose and Application of Schedule**

1.1 This Schedule 8.4 sets out the formulae to be used to calculate the value of **GDPA, GDPR$_1$, GDPR$_2$, CLEA and CLER** for the purposes of Schedule 8.1 (Franchise Payments).

1.2 The provisions of this Schedule 8.4 shall survive the expiry or earlier termination of the Franchise Agreement, in the case of an early termination irrespective of the reason for such termination.

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Part 2

GDP Risk Adjustment Payment

2. **Definitions**

2.1 For the purposes of this Schedule 8.4:

"Adjusted Actual GDP Index" (expressed in the formulae in this Schedule 8.4 as GDP^{C}_{A}) means, in respect of each Franchisee Year, the figure calculated for that Franchisee Year in accordance with paragraph 4.3;

"Adjusted Target GDP Index" (expressed in the formulae in this Schedule 8.4 as GDP^{C}_{T}) means, in respect of each Franchisee Year, the figure specified for that Franchisee Year in the column headed **"GDP^{C}_{T}"** in Appendix 2 (Adjusted Target GDP Index);

"Base Year GDP" (expressed in the formulae in this Schedule 8.4 as GDP_B) means, at the time of any calculation pursuant to paragraph 4.3, 5.2 and 5.5, the sum of the GDP (ABMI) Figures most recently published by the Office for National Statistics for the quarters ending at the end of each of June 2014, September 2014, December 2014 and March 2015;

"Current Year GDP" means, in respect of a Franchisee Year, the sum of the GDP (ABMI) Figures most recently published (as at the time of any calculation pursuant to paragraph 4.3, 5.2 and 5.5) by the Office for National Statistics in respect of each quarter of the Franchisee Year, being those figures published for the quarters ending at the end of each of June, September, December and March of that Franchisee Year;

"GDP Adjustment Payment" (expressed in this Schedule 8.4 as **"GDPA"**) means, in respect of each Franchisee Year, the figure calculated in accordance with paragraph 4.2 or paragraph 6.1 (as applicable) which shall be due in accordance with paragraph 4.5 and payable in accordance with Schedule 8.1 (Franchise Payments);

"GDP (ABMI) Figures" means the **"Gross Domestic Product at Market Prices in Chained Volume Measure, Seasonally Adjusted in £m"** output figures as published by the Office for National Statistics for the quarters ending at the end of each March, June, September and December of each year or, if such figures cease to be published or there is, in the reasonable opinion of the Secretary of State, a material change in the basis on which those figures are calculated or if, at any relevant time, there is a delay in the publication of those figures, such other gross domestic product figures as the the Parties may agree or the Secretary of State shall reasonably determine together with such changes as may be appropriate to this Schedule 8.4 to reflect any such reasonable replacement measure;

"GDP Nil Band Lower" means, in respect of each Franchisee Year, the figure specified in column 6 headed **"GDP Nil Band Lower"** of the table in Appendix 2 (Adjusted Target GDP Index) in respect of that Franchisee Year;

"GDP Nil Band Upper" means, in respect of each Franchisee Year, the figure specified in column 7 headed **"GDP Nil Band Upper"** of the table in Appendix 2 (Adjusted Target GDP Index) in respect of that Franchisee Year;

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"GDP Reconciliation Payments" (expressed in this Schedule 8.4 as **"GDPR"**$_1$ and $GDPR_2$) means the reconciliations to the GDP Adjustment Payment payable in respect of the relevant Franchisee Year, calculated in accordance with paragraph 5 and/or paragraph 6 (as applicable);

"$GDPR_1$ Reconciliation Date" has the meaning given to it in paragraph 5.1; and

"$GDPR_2$ Reconciliation Date" has the meaning given to it in paragraph 5.4.

3. **GDP Adjustment Payment**

3.1 If, in respect of any Franchisee Year:

(a) Adjusted Actual GDP Index and Adjusted Target GDP Index are the same; or

(b) Adjusted Actual GDP Index for that Franchisee Year is equal to or greater than the GDP Nil Band Lower figure for that Franchisee Year but less than or equal to the GDP Nil Band Upper figure for that Franchisee Year,

GDPA in respect of that Franchisee Year shall be zero.

However, $GDPR_1$ and/or $GDPR_2$ may be greater or less than zero in respect of that Franchisee Year as a result of a reconciliation made in accordance with paragraph 5 or paragraph 6.

3.2 Subject to paragraph 3.1(b), if, in respect of any Franchisee Year:

(a) Adjusted Actual GDP Index is less than Adjusted Target GDP Index, GDPA will be a positive number for the purposes of Schedule 8.1 (Franchise Payments); or

(b) Adjusted Actual GDP Index is greater than Adjusted Target GDP Index, GDPA will be a negative number for the purposes of Schedule 8.1 (Franchise Payments).

3.3 The Office for National Statistics publishes the GDP (ABMI) Figures by quarters and calendar years. In respect of each Franchisee Year, the GDP (ABMI) Figures to be used for the purposes of calculating GDPA, $GDPR_1$ and $GDPR_2$ will be the sum of those GDP (ABMI) Figures published in respect of (a) quarter 2 (ending in June), (b) quarter 3 (ending in September), (c) quarter 4 (ending in December), in each case, of the calendar year in which the relevant Franchisee Year starts and (d) quarter 1 (ending in March) of the following calendar year.

3.4 As the GDP (ABMI) Figures used in the calculation of Base Year GDP may be refined and/or rebased by the Office for National Statistics from time to time following their initial publication, the most recently published GDP (ABMI) Figures in respect of the quarters ending June 2014, September 2014, December 2014 and March 2015. shall be used to determine Base Year GDP for the purpose of calculating Adjusted Actual GDP Index.

3.5 As the GDP (ABMI) Figures used in the calculation of Current Year GDP for each Franchisee Year may be revised by the Office for National Statistics from time to time following their initial publication, two reconciliation payments shall, subject to paragraph 6, be calculated in respect of each Franchisee Year in accordance

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with paragraph 5, to adjust for the difference between the amount of GDPA already paid in respect of each Franchisee Year and the amount of GDPA which would have been payable in respect of that Franchisee Year had the GDP (ABMI) Figures used in the calculation of Current Year GDP and Base Year GDP been those most recently published at the $GDPR_1$ Reconciliation Date or the $GDPR_2$ Reconciliation Date (as the case may be).

3.6 The GDP (ABMI) Figures as at the date of this Franchise Agreement are specified in [2013] prices. During the Franchise Period the Office for National Statistics may rebase to a different base year. If it does so, the rebased GDP (ABMI) Figures shall be used for the purpose of of calculating the Adjusted Actual GDP Index. The final GDPA and reconciliation payments to be made at the end of the Franchise Period shall be calculated in accordance with paragraph 6.

3.7 If the final Franchisee Year ends other than on 31 March:

(a) there shall be a pro-rata adjustment to $DfT_{GDP}RW$ for that Franchisee Year in accordance with paragraph 6.1; and

(b) there shall be no change to the figures for the Adjusted Target GDP Index or the figures used to calculate the Adjusted Actual GDP Index.

4. GDP Adjustment Payments (GDPA)

4.1 GDP Nil Band

The GDP Adjustment Payment for a Franchisee Year shall be zero if the Adjusted Actual GDP Index for that Franchisee Year is equal to or greater than the GDP Nil Band Lower figure for that Franchisee Year but less than or equal to the GDP Nil Band Upper figure for that Franchisee Year.

4.2 GDP Adjustment Payments outside the GDP Nil Band

Where paragraph 4.1 does not apply for a Franchisee Year, the GDP Adjustment Payment payable for that Franchisee Year shall be an amount calculated in accordance with the following formula:

$$GDPA = DfT_{GDP}RW \times \left[\frac{(GDP^{C}_{A}) - A}{(GDP^{C}_{T})} \right] \times RPI$$

Where:

$DfT_{GDP}RW$	is, subject to paragraph 5, the figure shown in respect of the relevant Franchisee Year in: (a) column 4 of the table in Appendix 1 ($DfT_{GDP}1RW$) where GDP^{C}_{A} is greater than GDP^{C}_{T}; or (b) column 5 of the table in Appendix 1 ($DfT_{GDP}2RW$) where GDP^{C}_{A} is less than GDP^{C}_{T}.
GDP^{C}_{A}	is the Adjusted Actual GDP Index for the relevant Franchisee Year;
GDP^{C}_{T}	is the Adjusted Target GDP Index for the relevant Franchisee Year;
A	means the figure determined in accordance with paragraph 4.4 for the relevant Franchisee Year; and

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RPI	has the meaning given to it in Schedule 8.1 (Annual Franchise Payments).

4.3 Calculating Adjusted Actual GDP Index (GDP^{C}_{A})

The Adjusted Actual GDP Index for a Franchisee Year shall be an amount calculated in accordance with the following paragraph:

$$GDP^{C}_{A} = \left[\frac{GDP_{y}}{GDP_{B}}\right]^{c}$$

where:

c	means [1.15][85];
GDP_{y}	is Current Year GDP for the relevant Franchisee Year;
GDP_{B}	is Base Year GDP.

The Adjusted Actual GDP Index shall be specified as a decimal (to 4 decimal places) and where Adjusted Actual GDP Index is negative, it shall be specified as a positive number less than 1.

4.4 Calculating the relevant GDP threshold (A)

The figure A for a Franchisee Year shall be:

(a) the GDP Nil Band Upper figure for that Franchisee Year, where GDP^{C}_{A} is greater than the GDP Nil Band Upper figure for that Franchisee Year; or

(b) the GDP Nil Band Lower figure for that Franchisee Year, where GDP^{C}_{A} is less than the GDP Nil Band Lower figure for that Franchisee Year.

4.5 Payment

Where an amount of GDPA is payable in respect of a Franchisee Year, GDPA shall be payable in accordance with Schedule 8.1 (Franchise Payments) as a single annual payment on the first Payment Date to occur following the date falling fifteen (15) days after publication of the GDP (ABMI) Figures published as part of the Office for National Statistics second estimate of GDP for quarter one, relating to the final quarter of the relevant Franchisee Year (such date of publication being the **"Second Estimate Date"**), or where there is no Payment Date which occurs following the date falling fifteen (15) days after the Second Estimate Date, not later than thirty (30) days after the Second Estimate Date.

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[85] **Note to Bidders:** as set out in the ITT, the elasticity of GDP is subject to review and update by the DfT.

5. **GDP Reconciliation Payments ($GDPR_1$ and $GDPR_2$)**

First Reconciliation - $GDPR_1$

5.1 Subject to paragraph 6, $GDPR_1$ for a Franchisee Year shall be calculated based on the GDP (ABMI) Figures in respect of that Franchisee Year published in the UK Quarterly National Accounts for quarter one in the year following the Second Estimate Date (as defined in paragraph 4.5) for that Franchisee Year (the **"$GDPR_1$ Reconciliation Date"**).

5.2 $GDPR_1$ for a Franchisee Year shall be an amount equal to:

(a) the amount which GDPA would have been for that Franchisee Year if:

(i) Current Year GDP for that Franchisee Year had been calculated using the UK Quarterly National Accounts for Q1 GDP (ABMI) Figures in respect of that Franchisee Year available at the $GDPR_1$ Reconciliation Date; and

(ii) Base Year GDP had been calculated using the most recently published GDP (ABMI) Figures available at the $GDPR_1$ Reconciliation Date;

minus

(b) GDPA for that Franchisee Year.

5.3 If $GDPR_1$ is:

(a) a negative number, $GDPR_1$ will be a negative number for the purpose of Schedule 8.1 (Franchise Payments); or

(b) a positive number, $GDPR_1$ will be a positive number for the purpose of Schedule 8.1 (Franchise Payments).

Second Reconciliation - $GDPR_2$

5.4 Subject to paragraph 6, $GDPR_2$ for a Franchisee Year shall be calculated based on the GDP (ABMI) Figures in respect of that Franchisee Year published in the UK Quarterly National Accounts for quarter one in the year following the $GDPR_1$ Reconciliation Date (the **"$GDPR_2$ Reconciliation Date"**).

5.5 $GDPR_2$ for a Franchisee Year shall be an amount equal to:

(a) the amount which GDPA would have been for that Franchisee Year if:

(i) Current Year GDP for that Franchisee Year had been calculated using the UK Quarterly National Accounts for Q1 GDP (ABMI) Figures in respect of that Franchisee Year available at the $GDPR_2$ Reconciliation Date; and

(ii) Base Year GDP had been calculated using the most recently published GDP (ABMI) Figures available at the $GDPR_2$ Reconciliation Date;

minus

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(b) the sum of GDPA and any $GDPR_1$ for that Franchisee Year.

5.6 If $GDPR_2$ is:

(a) a negative number, $GDPR_2$ will be a negative number for the purpose of Schedule 8.1 (Franchise Payments); or

(b) a positive number, $GDPR_2$ will be a positive number for the purpose of Schedule 8.1 (Franchise Payments).

5.7 **Payment of any $GDPR_1$ or $GDPR_2$**

Where an amount of $GDPR_1$ or $GDPR_2$ is payable for a Franchisee Year, such amount shall be payable in accordance with Schedule 8.1 (Franchise Payments) as a single annual payment on the first Payment Date to occur following the date falling fifteen (15) days after publication of the refined GDP (ABMI) Figures referred to in paragraph 5.2(a) or 5.5(a) (as applicable) or as set out in paragraph 6 (the **"GDP Publication Date"**) or, where there is no Payment Date which occurs following the date falling fifteen (15) days after the GDP Publication Date, not later than fifteen (15) days after the GDP Publication Date.

6. **Final Adjustments / Reconciliations**

Final Year

6.1 GDPA for the final Franchisee Year (including in the event of an early termination) shall be calculated and payable in accordance with paragraph 4 provided that, if such final Franchisee Year ends other than on 31 March, for the purpose of calculating GDPA for that final Franchisee Year:

(a) $DfT_{GDP}RW$ shall be adjusted on a pro-rata basis to reflect the number of days by which the number of days in the final Franchisee Year was less than 365 (or in a leap year, 366); and

(b) no other component of GDPA referred to in the formula in paragraph 4.2 shall be adjusted to reflect that the final Franchisee Year ended other than on 31 March, and

GDPA for the final Franchisee Year shall be payable in accordance with paragraph 4.5.

6.2 No $GDPR_1$ or $GDPR_2$ payment shall be payable in respect of the final Franchisee Year.

Penultimate Year

6.3 $GDPR_1$ for the penultimate Franchisee Year shall be calculated and payable in accordance with paragraph 5.2 and payable in accordance with paragraph 5.7 provided that, if the final Franchisee Year ends other than on 31 March, in paragraph 5.2(a) the words:

(a) **"at the $GDPR_1$ Reconciliation Date"**

shall be deemed to be replaced by the following words:

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(b) **"in the month in which GDPA is calculated for the final Franchisee Year"**.

6.4 No $GDPR_2$ payment shall be payable in respect of the penultimate Franchisee Year.

Year before Penultimate Year

6.5 $GDPR_2$ for the Franchisee Year immediately prior to the penultimate Franchisee Year shall be calculated in accordance with paragraph 5.5 and payable in accordance with paragraph 5.7 provided that, where the final Franchisee Year ends other than on 31 March, in paragraph 5.5(a) the words:

(a) **"at the GDPR2 at the Reconciliation Date"**

shall be deemed to be replaced by:

(b) **"in the month in which GDPA is calculated for the final Franchisee Year"**.

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Part 3

CLE Adjustment Payment

7. Definitions

7.1 For the purposes of this Schedule 8.4:

"Adjusted Actual CLE Index" (expressed in the formulae in this Schedule 8.4 as CLE^{C}_{A}) means, in respect of each Franchisee Year, the figure calculated for that Franchisee Year in accordance with paragraph 9.3;

"Adjusted Target CLE Index" (expressed in the formulae in this Schedule 8.4 as CLE^{C}_{T}) means, in respect of each Franchisee Year, the figure specified for that Franchisee Year in the column headed **"CLE^{C}_{T}"** in Appendix 4 (Adjusted Target CLE Index);

"APS Workplace Analysis Figures" has the meaning given to it in paragraph 8.3;

"Base Year CLE" (expressed in the formulae in this Schedule 8.4 as CLE_{B}) means, at the time of any calculation pursuant to paragraph 9.3 and 10.2, the CLE (APS) Figures incorporating the APS Workplace Analysis Figures most recently published by the Office for National Statistics for the 4 quarters preceding 31 March 2015;

"CLE Adjustment Payment" (expressed in this Schedule 8.4 as **"CLEA"**) means, in respect of each Franchisee Year, the figure calculated in accordance with paragraph 9.2 or paragraph 11.1 (as applicable) which shall be due in accordance with paragraph 9.5 and payable in accordance with Schedule 8.1 (Franchise Payments);

"CLE (APS) Figures" means the aggregate output figures in respect of the London Boroughs of Camden, City of London, Hackney, Islington, Kensington & Chelsea, Lambeth, Newham, Tower Hamlets, Southwark and Westminster for the 4 quarters preceding 31 March as published in the "**APS Workplace Analysis Figures"** within the first four (4) months of the following Franchisee Year;

"CLE Reconciliation Payment" (expressed in this Schedule 8.4 as **"CLER"**) means the reconciliation to the CLE Adjustment Payment payable in respect of the relevant Franchisee Year, calculated in accordance with paragraph 10 and/or paragraph 11 (as applicable);

"CLER Reconciliation Date" has the meaning given to it in paragraph 10.1;

"CLE Nil Band Lower" means, in respect of each Franchisee Year, the figure specified in column 6 headed **"CLE Nil Band Lower"** of the table in Appendix 4 (Adjusted Target CLE Index) in respect of that Franchisee Year;
"CLE Nil Band Upper" means, in respect of each Franchisee Year, the figure specified in column 7 headed **"CLE Nil Band Upper"** of the table in Appendix 4 (Adjusted Target CLE Index) in respect of that Franchisee Year; and

"Current Year CLE" means, in respect of a Franchisee Year, the CLE (APS) Figures most recently published (as at the time of any calculation pursuant to paragraph 9.3 and 10.2) by the Office for National Statistics in respect of the 4 quarters preceding 31 March of that Franchisee Year.

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8. **CLE Adjustment Payment**

8.1 If, in respect of any Franchisee Year:

(a) Adjusted Actual CLE Index and Adjusted Target CLE Index are the same; or

(b) Adjusted Actual CLE Index for that Franchisee Year is equal to or greater than the CLE Nil Band Lower figure for that Franchisee Year but less than or equal to the CLE Nil Band Upper figure for that Franchisee Year,

CLEA in respect of that Franchisee Year shall be zero.

However, $CLER_1$ may be greater or less than zero in respect of that Franchisee Year as a result of a reconciliation made in accordance with paragraph 10 or paragraph 11.

8.2 Subject to paragraph 8.1(b), if, in respect of any Franchisee Year:

(a) Adjusted Actual CLE Index is less than Adjusted Target CLE Index, CLEA will be a positive number for the purposes of Schedule 8.1 (Franchise Payments); or

(b) Adjusted Actual CLE Index is greater than Adjusted Target CLE Index, CLEA will be a negative number for the purposes of Schedule 8.1 (Franchise Payments).

8.3 The Office for National Statistics publishes the **"Annual Population Survey – Workplace Analysis"** output figures **("APS Workplace Analysis Figures**") from which the CLE (APS) Figures are derived for the 4 quarters preceding the end of March each year.

8.4 In the event that the Office of National Statistics revises the basis upon which the APS Workplace Analysis Figures are determined, the Parties may agree or the Secretary of State shall reasonably determine, such amendments that are appropriate to deal with the changes to the basis upon which the APS Workplace Analysis Figures are determined, to the provisions of this Part 3 (including any revisions to the tables set out in appendix 2 or 4) of Schedule 8.4 so that risk apportioned between the Secretary of State and the Franchise in respect of CLE (APS Figures) within this part 3 of this Schedule 8.4 is held constant.

8.5 In determining what amendments to this Part 3 are required pursuant to paragraph 8.4, the Secretary of State shall take into account any guidance, explanatory papers and revised output figures issued by, or on behalf of, the Office of National Statistics in respect of the relevant revision to the basis of the APS Workplace Analysis Figures.

8.6 If the APS Workplace Analysis Figures cease to be published or there is, in the reasonable opinion of the Secretary of State, a material change in the basis on which those figures are calculated or if, at any relevant time, there is a delay in the publication of those figures, such other central London employment figures to be substituted for the APS Workplace Analysis Figures as the the Parties may agree or the Secretary of State shall reasonably determine together with such other changes as may be appropriate to this Schedule 8.4 to reflect any such reasonable replacement measure.

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8.7 In respect of each Franchisee Year, the CLE (APS) Figures to be used for the purposes of calculating CLEA and CLER will be the CLE (APS) Figures determined following the publication of the APS Workplace Analysis Figures for the 4 quarters preceding 31 March.

8.8 As the APS Workplace Analysis Figures which, pursuant to paragraph 7.3, forms the basis of the CLE (APS) Figures used in the calculation of Current Year CLE for each Franchisee Year may be revised by the Office for National Statistics from time to time following initial publication, a reconciliation payment shall, subject to paragraph 11, be calculated in respect of each Franchisee Year in accordance with paragraph 10, to reflect the difference between the amount of CLEA already paid in respect of that Franchisee Year and the amount of CLEA which would have been payable in respect of that Franchisee Year had the CLE (APS) Figures used in the calculation of Current Year CLE and Base Year CLE been those most recently published at the CLER Reconciliation Date.

8.9 The final CLEA and reconciliation payments to be made at the end of the Franchise Period will be calculated in accordance with paragraph 11.

8.10 If the final Franchisee Year ends other than on 31 March:

(a) there shall be a pro-rata adjustment to $DfT_{CLE}RW$ for that Franchisee Year in accordance with paragraph 11.1; and

(b) there shall be no change to the figures for the Adjusted Target CLE Index or the figures used to calculate the Adjusted Actual CLE Index.

9. CLE Adjustment Payments (CLEA)

9.1 CLE Nil Band

The CLE Adjustment Payment for a Franchisee Year shall be zero if the Adjusted Actual CLE Index for that Franchisee Year is equal to or greater than the CLE Nil Band Lower figure for that Franchisee Year but less than or equal to the CLE Nil Band Upper figure for that Franchisee Year.

9.2 CLE Adjustment Payments outside the CLE Nil Band

Where paragraph 9.1 does not apply for a Franchisee Year, the CLE Adjustment Payment payable for that Franchisee Year shall be an amount calculated in accordance with the following formula:

$$\mathbf{CLEA = DfT_{CLE}RW \times \left[\frac{(CLE^{C}_{A}) - A}{(CLE^{C}_{T})} \right] \times RPI}$$

Where:

$DfT_{CLE}RW$	is, subject to paragraph 10, the figure shown in respect of the relevant Franchisee Year in: (a) column 4 of the table in Appendix 3 ($DfT_{CLE}1RW$) where CLE^{C}_{A} is greater than CLE^{C}_{T}; or (b) column 5 of the table in Appendix 3 ($DfT_{CLE}2RW$)

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	where CLE^{C}_{A} is less than CLE^{C}_{T}.
CLE^{C}_{A}	is the Adjusted Actual CLE Index for the relevant Franchisee Year;
CLE^{C}_{T}	is the Adjusted Target CLE Index for the relevant Franchisee Year;
A	means the figure determined in accordance with paragraph 9.4 for the relevant Franchisee Year; and
RPI	has the meaning given to it in Schedule 8.1 (Annual Franchise Payments).

9.3 **Calculating Adjusted Actual CLE Index (CLE^{C}_{A})**

The Adjusted Actual CLE Index for a Franchisee Year shall be an amount calculated in accordance with the following paragraph:

$$CLE^{C}_{A} = \left[\frac{(CLE_{y})}{CLE_{B}} \right]^{c}$$

where:

c	means [1.25][86];
CLE_{y}	is Current Year CLE for the relevant Franchisee Year;
CLE_{B}	is Base Year CLE.

The Adjusted Actual CLE Index shall be specified as a decimal (to 4 decimal places) and where Adjusted Actual CLE Index is negative, it shall be specified as a positive number less than 1.

9.4 **Calculating the relevant CLE threshold (A)**

The figure A for a Franchisee Year shall be:

(a) the CLE Nil Band Upper figure for that Franchisee Year, where CLE^{C}_{A} is greater than the CLE Nil Band Upper figure for that Franchisee Year; or

(b) the CLE Nil Band Lower figure for that Franchisee Year, where CLE^{C}_{A} is less than the CLE Nil Band Lower figure for that Franchisee Year.

9.5 **Payment**

Where an amount of CLEA is payable in respect of a Franchisee Year, CLEA shall be payable in accordance with Schedule 8.1 (Franchise Payments) as a single annual payment on the first Payment Date to occur following the date falling fifteen (15) days after publication of the APS Workplace Analysis Figures which form the basis of the CLE (APS) Figures by the Office for National Statistics

[86] **Note to Bidders:** as set out in the ITT, the elasticity of CLE is subject to review and update by the DfT.

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(within the first four (4) months of the following Franchisee Year), relating to the final quarter of the relevant Franchisee Year (such date of publication being the **"CLE Estimate Date"**), or where there is no Payment Date which occurs following the date falling fifteen (15) days after the CLE Estimate Date, not later than thirty (30) days after the CLE Estimate Date.

10. **CLE Reconciliation Payment (CLER)**

Reconciliation - CLER

10.1 CLER for a Franchisee Year (including, in the final Franchisee Year, in respect of CLEA for the penultimate Franchisee Year, if applicable) shall be calculated based on the CLE (APS) Figures in respect of that Franchisee Year which incorporate the APS Workplace Analysis Figures used to calculate the CLEA payable pursuant to paragraph 9.5 that have been revised and re-published by the Office for National Statistics within twelve (12) months of the CLE Estimate Date ("**Revised CLE (APS) Figures**" for that Franchisee Year (the **"CLER Reconciliation Date"**). If no Revised CLE APS Figures are published within such twelve (12) months, no CLER shall be payable for the relevant Franchisee Year.

10.2 CLER for a Franchisee Year shall be an amount equal to:

(a) the amount which CLEA would have been for that Franchisee Year if:

(i) Current Year CLE for that Franchisee Year had been calculated using the APS Workplace Analysis Figures which form the basis of the CLE (APS) Figures in respect of that Franchisee Year available at the CLER Reconciliation Date; and

(ii) Base Year CLE had been calculated using the most recently published Annual Population Survey – Workplace Analysis Figures which form the basis of the CLE (APS) Figures available at the CLER Reconciliation Date;

minus

(b) CLEA for that Franchisee Year.

10.3 If CLER is:

(a) a negative number, CLER will be a negative number for the purpose of Schedule 8.1 (Franchise Payments); or

(b) a positive number, CLER will be a positive number for the purpose of Schedule 8.1 (Franchise Payments).

10.4 **Payment of any CLER**

Where an amount of CLER is payable for a Franchisee Year, such amount shall be payable in accordance with Schedule 8.1 (Franchise Payments) as a single annual payment on the first Payment Date to occur following the date falling fifteen (15) days after publication of the revised APS Workplace Analysis Figures which form the basis of the CLE (APS) Figures referred to in paragraph 10.2(a) (the **"CLE Publication Date"**) or, where there is no Payment Date which occurs following the date falling fifteen (15) days after the CLE Publication Date, not later than fifteen (15) days after the CLE Publication Date.

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11. **Final Adjustments / Reconciliations**

11.1 CLEA for the final Franchisee Year (including in the event of an early termination) shall be calculated and payable in accordance with paragraph 9 provided that, if such final Franchisee Year ends other than on 31 March, for the purpose of calculating CLEA for that final Franchisee Year:

(a) $DfT_{CLE}RW$ shall be adjusted on a pro-rata basis to reflect the number of days by which the number of days in the final Franchisee Year was less than 365 (or in a leap year, 366); and

(b) no other component of CLEA referred to in the formula in paragraph 9.2 shall be adjusted to reflect that the final Franchisee Year ended other than on 31 March, and

CLEA for the final Franchisee Year shall be payable in accordance with paragraph 9.5.

11.2 No CLER payment shall be payable in respect of the final Franchisee Year.

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APPENDIX 1 TO SCHEDULE 8.4

$DfT_{GDP}RW$[87]

Column 1	Column 2	Column 3	Column 4	Column 5
Year	**Franchisee Year**	**$DfT_{GDP}R$**	**$DfT_{GDP}1RW$ (95% of DfTGDPR)**	**$DfT_{GDP}2RW$ (95% of DfTGDPR)**
1 (part)	2016/17			
2	2017/18			
3	2018/19			
4	2019/20			
5	2020/21			
6	2021/22			
7	2022/23			
8	2023/24			
9	2024/25			
10 (core - part)	2025/26			
10 (full year - extn)	2025/26			
11 (part - extn)	2026/27			

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[87] **Note to Bidders:** DfT to confirm. As set out in the ITT, these figures will be subject to review and update by the DfT.

APPENDIX 2 TO SCHEDULE 8.4

Adjusted Target GDP Index[88]

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
Year	Franchisee Year	GDP Index value	c	GDP^{c}_{T}	GDP Nil Band Lower GDPcT - 0.02	GDP Nil Band Upper GDPcT + 0.014
-1	2014/15					
0	2015/16					
1	2016/17					
2	2017/18					
3	2018/19					
4	2019/20					
5	2020/21					
6	2021/22					
7	2022/23					
8	2023/24					
9	2024/25					
10	2025/26					

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[88] **Note to Bidders**: DfT to confirm. As set out in the ITT, these figures will be subject to review and update by the DfT.

11	2026/27					

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APPENDIX 3 TO SCHEDULE 8.4

$DfT_{CLE}RW$[89]

Column 1	Column 2	Column 3	Column 4	Column 5
Year	Franchisee Year	$DfT_{CLE}R$	$DfT_{CLE}1RW$ (85% of DfTCLER)	$DfT_{CLE}2RW$ (95% of DfTCLER)
1 (part)	2016/17			
2	2017/18			
3	2018/19			
4	2019/20			
5	2020/21			
6	2021/22			
7	2022/23			
8	2023/24			
9	2024/25			
10 (core - part)	2025/26			
10 (full year - extn)	2025/26			
11 (part - extn)	2026/27			

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[89] **Note to Bidders:** DfT to confirm. As set out in the ITT, these figures will be subject to review and update by the DfT.

APPENDIX 4 TO SCHEDULE 8.4

Adjusted Target CLE Index[90]

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
Year	Franchisee Year	CLE Index value	c	CLE^{c}_{T}	CLE Nil Band Lower CLEcT - 0.02	CLE Nil Band Upper CLEcT + 0.013
-1	2014/15					
0	2015/16					
1	2016/17					
2	2017/18					
3	2018/19					
4	2019/20					
5	2020/21					
6	2021/22					
7	2022/23					
8	2023/24					
9	2024/25					

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[90] **Note to Bidders:** DfT to confirm. As set out in the ITT, these figures will be subject to review and update by the DfT.

10	2025/26					
11	2026/27					

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SCHEDULE 9

Changes and Variations

Schedule 9.1:	Financial and Other Consequences of Change
	Appendix 1: Definition of Threshold Amount
	Appendix 2: Agreement or Determination of Revised Inputs
Schedule 9.2:	Identity of the Financial Model
Schedule 9.3:	Variations to the Franchise Agreement and Incentivising Beneficial Changes
Schedule 9.4:	Secretary of State Risk Assumptions

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SCHEDULE 9.1

Financial and Other Consequences of Change

1. Purpose and Application of Schedule

1.1 This Schedule 9.1 sets out:

(a) the circumstances in which the occurrence of a Change will result in an adjustment to the Franchise Payments and/or the Benchmarks and/or the Annual Benchmarks and wherever in Schedule 9 reference is made to **"adjustment to Franchise Payments"** such reference shall be construed to include (unless the context otherwise requires)the restatement of the values of FPST, SPST and TPST as specified in respect of each Franchise Year in paragraphs 1, 2 and 3 (respectively) of Appendix 1 (Profit Share Thresholds) to Schedule 8.2 (Profit Share Mechanism)] (**"Profit Share Components"**);

(b) the process by which that adjustment to the Franchise Payments and/or the Benchmarks and/or the Annual Benchmarks will be determined and effected; and

(c) provisions dealing with the responsibility for costs incurred by the Franchisee in connection with any audit of the Run of the Financial Model and its results.

1.2 Schedule 9.2 (Identity of the Financial Model) contains provisions dealing with the Financial Model which are relevant to the operation of this Schedule 9.1.

1.3 This Schedule 9.1 shall apply in relation to a Change where:

(a) there are good reasons for considering that the relevant Change will be a Qualifying Change; or

(b) there are good reasons for considering that the relevant Change together with other Changes will be part of an Aggregated Qualifying Change; and

(c) the required notice(s) has/have been given in accordance with paragraph 1.4; and/or

(d) the Parties have agreed that this Schedule 9.1 will apply and there should be a Run of the Financial Model and/or a Review of the Benchmarks and/or the Annual Benchmarks even though the required notices have not been given).

1.4 The notice requirements are that:

(a) subject to paragraph 1.4(b), a Party must have notified the other that it considers that the Change will be a Qualifying Change and that it requires a Run of the Financial Model and/or a review of the Benchmarks and/or the Annual Benchmarks in respect of that Change:

(i) within six (6) months of the notification or agreement of that Change if it is a Variation pursuant to paragraph 1.1 of Schedule 9.3 (Variations to the Franchise Agreement and Incentivising Beneficial Changes); or

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(ii) within six (6) months of becoming aware of it, if it is any other type of Change; and

(b) in the case of an Aggregated Qualifying Change, a Party must have notified the other:

(i) after an individual Change occurs, within the time limits stated in paragraphs 1.4(a)(i) or 1.4(a)(ii), that it reserves the right to count that Change towards an Aggregated Qualifying Change; and

(ii) within six (6) months of the occurrence of the last Change which that Party considers will trigger an Aggregated Qualifying Change, that the Party requires a Run of the Financial Model and/or a review of the Benchmarks and/or the Annual Benchmarks in respect of the Changes comprised in that Aggregated Qualifying Change. The notice must identify each of the Changes included in the Aggregated Qualifying Change.

1.5 References in the remainder of this Schedule 9.1 and in Schedule 9.2 (Identity of the Financial Model) to a **"Change"** are to a Change in respect of which the requirements in paragraph 1.3 have been satisfied.

2. **Timescales**

2.1 Where this Schedule 9.1 applies, any resulting restatement of the Annual Franchise Payment Components and the Profit Share Components, the Benchmarks and/or the Annual Benchmarks (as applicable) shall be made in accordance with this Schedule 9.1:

(a) where it is reasonably practicable to do so, at least three (3) Reporting Periods prior to the Change; or

(b) where the timescale in paragraph 2.1(a) is not reasonably practicable, as soon as reasonably practicable after that.

2.2 If paragraph 2.1(b) applies and it is not reasonably practicable for the restatement of the Annual Franchise Payment Components and the Profit Share Components to be made before the Change occurs, then paragraph 9 (Estimated Revisions) shall apply.

3. **How any adjustments to Franchise Payments will be established**

3.1 The adjustments, if any, to the Franchise Payments to be made in respect of any Change shall be established by:

(a) establishing those Model Changes and/or Revised Inputs required to take account of the Change; then

(b) applying those Model Changes and/or Revised Inputs to the Financial Model before performing a Run of the Financial Model to generate the New Results; then

(c) restating the Annual Franchise Payment Components and the Profit Share Components by substituting the New Results for the Old Results (so that, to the extent that the New Results and the Old Results are different, this will result in an adjustment to the Franchise Payments),

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in each case, subject to and in accordance with the terms more particularly described in this Schedule 9.1.

4. **How Model Changes and/or Revised Inputs will be established**

4.1 The Parties shall agree or the Secretary of State shall reasonably determine the Revised Inputs and (if any) the Model Changes.

4.2 **"Revised Inputs"** means:

(a) the data that the Financial Model utilised in order to produce the Old Results, as such data is recorded in the Financial Model released by the Secretary of State pursuant to either of paragraphs 2.1(d) or 2.2 of Schedule 9.2 (Identity of the Financial Model) for the purposes of the Run of the Financial Model; but

(b) amended, whether by way of increase, reduction or other alterations to such data, (if at all) only as the Parties may agree or the Secretary of State may reasonably determine is required by the provisions of Appendix 2 (Agreement or Determination of Revised Inputs) to this Schedule 9.1 in respect of a Change.

4.3 **"Model Changes"** means any changes that the Parties may agree or the Secretary of State may reasonably determine are required to the Financial Model and/or the Operational Model, as released by the Secretary of State pursuant to either of paragraphs 2.1(d) or 2.2 of Schedule 9.2 (Identity of the Financial Model), for the purposes of the Run of the Financial Model, as a consequence of and in order to give effect to the Revised Inputs.

4.4 The Secretary of State shall provide a written statement of the Revised Inputs and any Model Changes to the Franchisee for the purposes of paragraph 7 promptly after they have been agreed or determined.

5. **Changes to Benchmarks and/or Annual Benchmarks**

5.1 This paragraph 5 shall apply if either Party has given notice to the other that it considers that a Change has or will have, in that Party's reasonable opinion, a material effect on the risk of the Franchisee failing to satisfy the requirements of any Benchmark and/or Annual Benchmark (whether in terms of increasing or reducing that risk).

5.2 Any notice referred to in paragraph 5.1 shall be given as soon as reasonably practicable and in any event before the Parties have agreed or the Secretary of State has reasonably determined the Revised Inputs in respect of the Change.

5.3 Where this paragraph 5 applies, the relevant Benchmarks and/or Annual Benchmarks shall be revised to the extent that such revision is reasonably considered to be necessary to hold constant the risk of the Franchisee failing to satisfy the requirements of that Benchmark and/or Annual Benchmarks. The Parties shall agree or the Secretary of State shall reasonably determine any such revision(s).

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5.4 For the purposes of any revision to the Benchmarks and/or Annual Benchmarks under this paragraph 5, regard may be had to:

(a) any relevant assumptions in the Record of Assumptions (as proposed to be updated to reflect the relevant Change) and the contents of an Operational Model; and/or

(b) any other information,

to the extent they are relevant to the consideration of whether a revision is reasonably considered to be appropriate to take account of the Change.

6. **Run of the Financial Model following agreement or determination of the Revised Inputs and Model Changes**

6.1 When the Revised Inputs and Model Changes (if any) are agreed or determined there shall be a Run of the Financial Model.

6.2 The Run of the Financial Model shall be performed after making any Model Changes and utilising the Revised Inputs and shall be performed by:

(a) the Franchisee promptly on receiving notification of the Revised Inputs and any Model Changes from the Secretary of State pursuant to paragraph 4.4 or within such period of time as the Secretary of State shall reasonably determine; or

(b) the Secretary of State if the Franchisee fails to do so. In these circumstances, the Franchisee shall reimburse to the Secretary of State the Secretary of State's costs of performing the Run of the Financial Model.

6.3 The Party that performs the Run of the Financial Model pursuant to paragraph 6.2 shall provide the non performing Party with a reasonable opportunity to be in attendance and shall promptly notify such other Party of the New Results.

6.4 Where there is more than one Change, Runs of the Financial Model in respect of such Changes shall (unless otherwise agreed or the Secretary of State reasonably determines) be undertaken in the order in which such Changes occur. For this purpose, the order of occurrence will be determined by reference to the earliest date from which the Franchise Payments are reasonably expected to require adjustment as a result of the restatement of the Annual Franchise Payment Components and the Profit Share Components triggered by a Change. This will be as agreed between the Parties or in the absence of agreement be reasonably determined by the Secretary of State.

7. **Certification or Audit of the New Results**

7.1 The Secretary of State, as soon as reasonably practicable after receiving or generating the New Results pursuant to paragraph 6.3, shall either:

(a) certify to the Franchisee his approval of the New Results; or

(b) notify the Franchisee that he requires the Run of the Financial Model and its results to be audited by an independent auditor appointed by the Secretary of State with the approval (not to be unreasonably withheld) of the Franchisee.

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7.2 For the purposes of paragraph 7.1(b), the requirement for an audit is one that requires the auditor either to certify:

(a) that the New Results have been produced by applying the Revised Inputs (as provided to the Franchisee by the Secretary of State pursuant to paragraph 4.4) to the Financial Model after making the Model Changes (as provided to the Franchisee by the Secretary of State pursuant to paragraph 4.4); or

(b) the New Results themselves, by itself applying the Revised Inputs (as provided to the Franchisee by the Secretary of State pursuant to paragraph 4.4) to the Financial Model after making the Model Changes (as provided to the Franchisee by the Secretary of State pursuant to paragraph 4.4).

7.3 The Parties shall procure that any auditor is, as soon as reasonably practicable after his appointment, able to discharge the audit requirements.

7.4 The results as certified by the Secretary of State pursuant to paragraph 7.1 or by the auditor pursuant to paragraph 7.2 shall be final and binding on the Parties, except in the case of manifest error.

7.5 The Secretary of State may stipulate (on or before the date on which the Secretary of State approves or the auditor certifies the results of the Run of the Financial Model) in respect of a Change that the restated Annual Franchise Payment Components and the Profit Share Components are to apply for a limited period of time only (the **"Initial Period"**), with provision thereafter, if appropriate, for a further Run of the Financial Model with new Revised Inputs and/or Model Changes based on information available at that time.

8. **Costs of Audit**

8.1 This paragraph deals with the costs incurred by the Franchisee in connection with any audit required by the Secretary of State pursuant to paragraph 7.

8.2 The costs of any audit required under paragraph 7.1(b) shall be met by the Secretary of State subject to the following:

(a) the costs of the audit shall be met entirely by the Franchisee in the case of a Change falling within any of the following sub-paragraphs within the definition of Change:

(i) a Charge Variation;

(ii) an event set out in any Secretary of State Risk Assumption specified in Schedule 9.4 (Secretary of State Risk Assumptions);and

(b) the costs of the audit shall be met entirely by the Franchisee:

(i) where,

(A) the New Results produced by applying the Revised Inputs to the Financial Model after making the Model Changes (if any); or

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(B) the New Results themselves,

were incorrect as a result of manifest error by the Franchisee; and

(c) where paragraph 8.2(a) and/or 8.2(b) do not apply, the Secretary of State shall only be responsible for the reasonable costs reasonably incurred of the Franchisee in connection with the audit, and the Franchisee shall comply with the Secretary of State's reasonable directions in connection with the audit which may include a requirement for a competitive tender for the appointment of the auditor.

9. **Restatement of Annual Franchise Payment Components and/or Benchmarks and/or Annual Benchmarks and/or Profit Share Components**

9.1 When the New Results have been certified by the Secretary of State or the auditor in accordance with paragraph 7 then:

(a) if:

(i) there is any difference between the Old Results and the New Results; and

(ii) the New Results are such that the Change:

(A) meets the criteria for a Qualifying Change; or

(B) with other Changes meets the criteria for an Aggregated Qualifying Change,

the Annual Franchise Payment Components and the Profit Share Components shall be restated in the amounts of the New Results; and

(b) if any changes to the Benchmarks and/or Annual Benchmarks have been agreed or determined in accordance with paragraph 5, the Benchmarks and/or Annual Benchmarks shall be restated to give effect to those changes.

9.2 Subject to paragraph 9.3, the restatement of the Annual Franchise Payment Components and the Profit Share Components shall have effect on and from the date on which the Secretary of State or the auditor certifies the results of the Run of the Financial Model.

9.3 If and to the extent that:

(a) the application of the New Results in respect of the then current or any earlier Franchisee Year would result in any change to the amount of any payments already made between the Secretary of State and the Franchisee; and

(b) that change in payments is not already taken into account in any Reconciliation Amount payable pursuant to paragraph 10.11,

then a reconciliation payment shall be paid by the Franchisee or the Secretary of State (as the case may be). The payment shall be made on the first Payment Date which falls more than seven (7) days after agreement or determination of

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the amount of the reconciliation payment required (or if there is no such Payment Date, within fourteen (14) days after such agreement or determination).

9.4 Following the certification of the New Results by the Secretary of State or the auditor in accordance with paragraph 7, **"$DfT_{GDP}R$"** as specified in Column 3 of Appendix 1 (DfTRW) and "**$DfT_{CLE}R$**" of Appendix 3 to Schedule 8.4 (GDP Adjustment Payments) shall be adjusted to reflect the adjustment to **"PRRPI"** in accordance with the following formula and for each Franchisee Year in respect of which the change to PRRPI applies:

New $DfT_{GDP}R$ = $DfT_{GDP}R$ x (PRRPInew/PRRPIold)

Where:

New $DfT_{GDP}R$ is, in respect of a Franchisee Year, the figure to be included in Column 3 of Appendix 1 ($DfT_{GDP}R$) of Schedule 8.4 (GDP & CLE Adjustment Payments) in place of the figure included for DfTR in Column 3 in Appendix 1 ($DfT_{GDP}R$) of Schedule 8.4 (GDP & CLE Adjustment Payments);

$DfT_{GDP}R$ is, in respect of a Franchisee Year, the figure included for DfTR in Column 3 in Appendix 1 ($DfT_{GDP}R$) of Schedule 8.4 (GDP & CLE Adjustment Payments) at the time to certification of the New Results;

PRRPInew is, in respect of a Franchisee Year, the figure for PRRPI for that Franchisee Year in the New Results; and

PRRPIold is, in respect of a Franchisee Year, the figure for PRRPI for that Franchisee Year in the Old Results.

New $DfT_{CLE}R$ = $DfT_{CLE}R$ x (PRRPInew/PRRPIold)

Where:

New $DfT_{CLE}R$ is, in respect of a Franchisee Year, the figure to be included in Column 3 of Appendix 3 ($DfT_{CLE}R$) of Schedule 8.4 (GDP & CLE Adjustment Payments) in place of the figure included for DfTR in Column 3 in Appendix 3 ($DfT_{CLE}R$) of Schedule 8.4 (GDP & CLE Adjustment Payments);

$DfT_{CLE}R$ is, in respect of a Franchisee Year, the figure included for DfTR in Column 3 in Appendix 1 ($DfT_{CLE}R$) of Schedule 8.4 (GDP & CLE Adjustment Payments) at the time to certification of the New Results;

PRRPInew is, in respect of a Franchisee Year, the figure for PRRPI for that Franchisee Year in the New Results; and

PRRPIold is, in respect of a Franchisee Year, the figure for PRRPI for that Franchisee Year in the Old Results.

9.5 Following calculation of New $DfT_{GDP}R$ and New $DfT_{CLE}R$ by the Secretary of State in accordance with this paragraph 9.4, the Secretary of State shall issue a replacement Appendix 1 ($DfT_{GDP}R$) and Appendix 2 ($DfT_{CLE}R$) of Schedule 8.4

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(GDP & CLE Adjustment Payments) which, in respect of each Franchisee Year, shall specify:

(a) New $DfT_{GDP}R$ in Column 3 of that appendix as **"$DfT_{GDP}R$"** and ninety five per cent (95%) of New $DfT_{GDP}R$ in Column 4 (being "**$DfT_{GDP}R1W$**") and ninety per cent (95%) of New $DfT_{GDP}R$ in Column 5 (being "DfT **$DfT_{GDP}R2W$**") of that appendix, together being **"$DfT_{GDP}RW$"**; and

(b) New $DfT_{CLE}R$ in Column 3 of that appendix as **"$DfT_{CLE}R$"** and eighty five per cent (85%) of New $DfT_{CLE}R$ in Column 4 (being "**$DfT_{CLE}R1W$**") and ninety five per cent (95%) of New $DfT_{GDP}R$ in column 5 (being "**$DfT_{CLE}R2W$**") of that appendix, together being **"$DfT_{CLE}RW$"**;

and such replacement appendices shall replace the existing appendices without further act.

10. **Estimated Revisions**

10.1 This paragraph 10 applies where there is or is to be a Change before there is a Run of the Financial Model in respect of it. It provides a mechanism for interim adjustments in Franchise Payments pending the final agreement or determination of those adjustments under this Schedule 9.1.

10.2 Where this paragraph 10 applies, the Secretary of State shall make the Estimated Revisions described in paragraph 10.3:

(a) if the Franchisee requests the Secretary of State to do so at the same time as requesting a Run of the Financial Model in respect of the Change under paragraph 1.4; or

(b) if the Secretary of State otherwise agrees or chooses (in his discretion) to do so.

10.3 The estimated revisions are the Secretary of State's estimates of the New Results which will apply once the process in paragraphs 4 to 9 of this Schedule 9.1 has been completed in respect of the Change (the **"Estimated Revisions"**). For the avoidance of doubt, Revised Inputs are not made in order to generate or take account of the Estimated Revisions.

10.4 The estimates referred to in paragraph 10.3 will be such estimates as the Secretary of State, acting reasonably, makes having regard to the time and the information available to him at the time the estimates fall to be made, provided always that it is acknowledged that:

(a) the purpose of the estimates is to enable provision to be made in respect of adjustments to the Annual Franchise Payment Components and the Profit Share Components before full information about the Change is available and/or full consideration of the nature and extent of Revised Inputs and/or Model Changes has been undertaken;

(b) it may not be reasonably practicable in all circumstances for the Secretary of State to take into account in such an estimate all actual or potential impacts of a Change. Where the Secretary of State is aware that there are any such actual or potential impacts which he has not taken into account, he shall notify the Franchisee of them when notifying the Estimated Revisions pursuant to paragraph 10.2; and

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(c) the Secretary of State shall be entitled to adjust any Estimated Revision notified pursuant to paragraph 10.2 to the extent he reasonably considers appropriate if at any time:

(i) the Secretary of State becomes aware of any new or revised information which would, if it had been available to him at the time he made his original estimate, have resulted in him making a different Estimated Revision; and

(ii) it is reasonable to revise the Estimated Revision having regard to the likely period of delay prior to the Run of the Financial Model in respect of the relevant Change.

10.5 In the circumstances described in paragraph 10.2 and paragraph 10.4(c), the Annual Franchise Payment Components and the Profit Share Components shall be restated in the amounts and values of the Estimated Revisions, and Franchise Payments shall be paid accordingly until the Run of the Financial Model has taken place and its results have been put into effect.

10.6 The Secretary of State shall use all reasonable endeavours to notify the Franchisee of the Estimated Revisions required by paragraph 10.2 at least two (2) Reporting Periods before he considers the Change is likely to occur. If, having exercised all reasonable endeavours, the Secretary of State cannot provide two (2) Reporting Periods' notice, he shall provide such notification as soon as reasonably practicable afterwards.

10.7 The restatement of the Annual Franchise Payment Components and the Profit Share Components referred to in paragraph 10.5 shall have effect on and from:

(a) the date on which the Secretary of State notifies the Franchisee of the Estimated Revisions; or

(b) such other date as the Secretary of State, acting reasonably, may notify the Franchisee as the date on which the Secretary of State considers the Estimated Revisions should reasonably take effect, consistent with the matters taken into account by the Secretary of State in estimating the Estimated Revisions.

10.8 No estimate made by the Secretary of State pursuant to this paragraph 10 shall prejudice the Secretary of State's subsequent determination of any Revised Input or Model Change pursuant to paragraph 4.

10.9 Subject to paragraph 10.10, where adjustments to Franchise Payments have resulted from the operation of paragraph 10.5 then, as soon as reasonably practicable after the certification of the New Results following the related Run of the Financial Model, the Parties shall agree or the Secretary of State shall reasonably determine the difference (the "**Reconciliation Amount**") between:

(a) the total amount of Franchise Payments paid or to be paid to which adjustments have been made pursuant to the operation of paragraph 10.5; and

(b) the total amount of the Franchise Payments, as determined by that Run of the Financial Model, in respect of the same period as the period over which the adjusted Franchise Payments referred to in paragraph 10.9(a) have been paid or are to be paid.

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10.10 If a Change is agreed or determined not to be a Qualifying Change or not to be part of an Aggregated Qualifying Change with or without any Run of the Financial Model having been performed, the Reconciliation Amount shall be the total amount of the adjustments to Franchise Payments which have resulted from the operation of paragraph 10.5.

10.11 The Reconciliation Amount shall be paid:

(a) by the Franchisee to the Secretary of State where the Estimated Revisions resulted in an overpayment of Franchise Payments by the Secretary of State to the Franchisee or an underpayment of Franchise Payments by the Franchisee to the Secretary of State compared with:

(i) the amount of the Franchise Payments described in paragraph 10.9(b); or

(ii) where paragraph 10.10 applies, the amount of the unrestated Franchise Payments over the same period; and

(b) by the Secretary of State to the Franchisee where the Estimated Revisions resulted in an underpayment of Franchise Payments by the Secretary of State to the Franchisee or an overpayment of Franchise Payments by the Franchisee to the Secretary of State compared with:

(i) the amount of the Franchise Payments described in paragraph 10.9(b); or

(ii) where paragraph 10.10 applies, the amount of the unrestated Franchise Payments over the same period.

In either case, such payment shall be made on the first Payment Date which falls more than seven (7) days after agreement or determination (or if none, within fourteen (14) days after such agreement or determination).

10.12 For the purposes of paragraph 10.9, 10.10 and 10.11, references to Franchise Payments shall include any profit share payments made under Schedule 8.2 (Profit Share Mechanism).

11. Information

The Franchisee shall promptly, having regard to the other timescales anticipated in this Schedule 9.1, provide to the Secretary of State such information as the Secretary of State may request for the purpose of enabling the Secretary of State to exercise his rights and comply with his obligations pursuant to this Schedule 9.1.

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APPENDIX 1 TO SCHEDULE 9.1

Definition of Threshold Amount

"Threshold Amount" means £900,000 (pounds sterling nine hundred thousand) subject to indexation as follows:

£900,000 (nine hundred thousand pounds sterling) x RPI	
Where:	
RPI	shall have the meaning given to it in Appendix 1 (Annual Franchise Payments) of Schedule 8.1 (Franchise Payments).

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APPENDIX 2 TO SCHEDULE 9.1

Agreement or Determination of Revised Inputs

1. The Parties shall agree or the Secretary of State shall reasonably determine the Revised Inputs that are required in respect of a Change:

   (a) on the basis of the general adjustments and/or assumptions referred to in paragraph 2;

   (b) on the basis of the assumptions in the Record of Assumptions as added to and/or amended (if at all) in accordance with paragraph 3;

   (c) so as to provide for profit in accordance with paragraph 5;

   (d) so as to give effect to the provisions of paragraph 6 in relation to indexation;

   (e) so as to give effect to the provisions of paragraph 8 in relation to Cancellations Performance Sum and TOC Minute Delay Performance Sum; and

   (f) so as to give effect to the provisions of paragraph 9 in relation to the Train Service Requirement,

   provided that if there is any inconsistency between the assumptions in the Record of Assumptions described in paragraph (b) above and any other of the requirements of this paragraph 1, those other requirements shall prevail, unless the Secretary of State (acting reasonably) otherwise elects.

2. **General Adjustments / Assumptions**

2.1 Revised Inputs are to be agreed between the Parties or reasonably determined by the Secretary of State on the basis that:

   (a) any increase in costs relating to a Change; and/or

   (b) any reduction in revenues relating to a Change,

   that is attributable to any activities, actions or omissions of the Franchisee which are not permitted under, or would otherwise constitute a contravention of, the terms of the Franchise Agreement, is to be disregarded.

2.2 Revised Inputs are to be agreed between the Parties or reasonably determined by the Secretary of State on the basis that:

   (a) any reduction in costs relating to a Change; and/or

   (b) any increase in revenues relating to a Change,

   that is attributable to any activities, actions or omissions of the Franchisee which are not permitted under, or would otherwise constitute a contravention of, the terms of the Franchise Agreement, is to be taken into account.

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2.3 Revised Inputs are also to be agreed between the Parties or reasonably determined by the Secretary of State on the basis that:

(a) the Franchisee will use all reasonable endeavours to:

(i) reduce any costs that may arise or income that may be foregone; and

(ii) increase any revenue that may arise and avoid any cost that may be avoided,

as a consequence of a Change; and

(b) any requirement for borrowing in respect of Capital Expenditure by the Franchisee is dealt with in accordance with paragraph 3 of Schedule 9.3 (Variations to the Franchise Agreement and Incentivising Beneficial Changes).

2.4 Where and as directed to do so by the Secretary of State (acting reasonably) the Franchisee shall undertake one or more competitive tendering exercises for the purposes of ascertaining the likely level of any costs relating to a Change which are relevant to a Revised Input.

3. **Assumptions in the Record of Assumptions**

3.1 The Parties shall (unless to do so would be contrary to paragraph 2) agree or the Secretary of State shall reasonably determine Revised Inputs that are in accordance with the assumptions that are contained in the Record of Assumptions, as added to or modified pursuant to paragraph 3.2 or paragraph 3.3.

3.2 Where the Secretary of State reasonably considers that the assumptions contained in the Record of Assumptions are ambiguous or that additional assumptions are required in relation to circumstances not dealt with by the assumptions in the Record of Assumptions, the Parties shall agree or the Secretary of State shall reasonably determine the assumptions or additional assumptions to be utilised for this purpose.

3.3 Where the Secretary of State reasonably considers that:

(a) a Change is likely to result in an increase in either or both of the costs of the Franchisee and the revenues of the Franchisee; and

(b) an assumption relevant to the Change contained in the Record of Assumptions does not accord with what would be achievable by, or experienced by, an economic and efficient Franchisee,

then the Parties shall agree or the Secretary of State shall reasonably determine a modification to the assumption so that, as modified, it does accord with what would be achievable by, or experienced by, an economic and efficient Franchisee.

4. **Traction Electricity Charges**

4.1 This paragraph 4 applies only in relation to Charge Variations.

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4.2 In agreeing or determining Revised Inputs, no adjustment shall be made in respect of a Charge Variation to the extent that Charge Variation relates, directly or indirectly and however it may be effected, to the Traction Electricity Charge payable by the Franchisee pursuant to any Track Access Agreement. For this purpose (and subject to clause 1.1(k) of this Agreement), the Traction Electricity Charge is the component of the Track Charges (as defined in the Track Access Agreement) identified as such in any Track Access Agreement or any similar arrangement under which the Franchisee pays for traction current consumed by rolling stock vehicles operated by or on behalf of the Franchisee.

5. **Revised Input for Profit**

5.1

(a) Where a Change is forecast to result in an increase to the Franchisee's revenue in a Franchisee Year, the Parties shall agree or the Secretary of State shall reasonably determine Revised Inputs in relation to profit that provide for an increase in the amount of profit in any Franchisee Year equal to [INSERT AGREED PROFIT MARGIN][91] of the forecast increase in revenue for that Franchisee Year; and/or

(b) Where a Change is forecast to result in a reduction in the Franchisee's revenue in a Franchisee Year, the Parties shall agree or the Secretary of State shall reasonably determine Revised Inputs in relation to profit that provide for a decrease in the amount of profit in any Franchisee Year equal to the lower of:

(i) the percentage specified in paragraph 5.1(a); or

(ii) the average profit margin in the current Business Plan for the remaining Franchise Term,

of the forecast reduction in revenue for that Franchisee Year.

5.2 In agreeing or determining Revised Inputs in relation to profit in respect of any Change, the Parties or the Secretary of State shall effect such change (if any) in the amount attributable to profit in paragraph 5.1 as they agree or the Secretary of State reasonably determines to reflect:

(a) the risk for the Franchisee in continuing to operate the Franchise on the terms of the Franchise Agreement after and as a result of the Change; and

(b) the likelihood of:

(i) material benefit from such Change arising after expiry of the Franchise Term; and

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91 **Note to Bidders:** Populate so that paragraph 5.1(a) is consistent with the profit margin stated in your financial model.

(ii) material detriment from such Change arising prior to the expiry of the Franchise Term.

5.3 In agreeing or determining Revised Inputs for the purposes of any Protected Proposal, the Parties or the Secretary of State shall effect such change (if any) to the amount attributable to profit as they agree or the Secretary of State reasonably determines:

(a) fairly rewards the Franchisee for proposing the Protected Proposal; and

(b) reasonably incentivises the Franchisee to propose further Protected Proposals,

by sharing with the Franchisee a reasonable amount of the additional profit that is expected to arise from implementing the Protected Proposal.

5.4 Schedule 14.7 (Incentivising Long Term Investment) sets out the Secretary of State's guidance on how he approaches incentivising long term investment. Nothing in Schedule 14.7 (Incentivising Long Term Investment) is intended to limit or be limited by, the provisions of paragraph 2.2 of Schedule 14.4 (Designation of Franchise Assets).

6. Indexation

In agreeing or determining Revised Inputs, the Parties shall apply the following principles in connection with indexation. For each relevant item of data in the Financial Model in respect of which a Revised Input is agreed or determined to be required:

(a) the Parties shall agree or the Secretary of State shall reasonably determine, having regard to the particular facts of the Change, the base date at which that item is priced; and

(b) that item shall be deflated by reference to the original base date and index (if any) relevant to that item in the Financial Model.

7. Route Efficiency Benefit Share / REBS Mechanism

7.1 No Revised Inputs shall be made to reflect:

(a) any amount payable by or to the Franchisee in respect of Route Efficiency Benefit Share or REBS; or

(b) any change in the basis on which Route Efficiency Benefit Share or REBS is calculated or is to be paid (including any change which may require amounts in respect of Route Efficiency Benefit Share to be payable by as well as payable to the Franchisee).

8. Cancellations Performance Sum and TOC Minute Delay Performance Sum

In agreeing or determining Revised Inputs, no adjustment shall be made to the Financial Model to reflect any change in the amount of the Cancellations Performance Sum or the TOC Minute Delay Performance payable either by the Secretary of State or the Franchisee and arising from the exercise by the Secretary of State of his rights pursuant to paragraph 1.9 of Schedule 7.1 (Performance Benchmarks). For example if prior to such exercise the Franchisee

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would have been entitled to receive a Cancellations Performance Sum of one hundred pounds (£100) for a particular level of performance against the Annual Cancellations Benchmark and after such exercise the Franchisee would only be entitled to receive a Cancellations Performance Sum of fifty pounds (£50) for achieving the same level of performance, no adjustment shall be made to the Financial Model to reflect this.

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SCHEDULE 9.2

Identity of the Financial Model

1. Franchisee's Obligations

1.1 The Franchisee shall deliver two copies of each of the Financial Model, the Operational Model and the Record of Assumptions (each such copy in electronic format on CD-ROM or other appropriate electronic medium) together with hard format copies of the output template of the Financial Model in the format set out in the document in the agreed terms marked FF (the Escrow Documents) to the Secretary of State in the agreed form, accompanied by a notice that the Escrow Documents are to be Placed in Escrow.

1.2 The Franchisee shall deliver the Escrow Documents to the Secretary of State in accordance with paragraph 1.1:

(a) on the date of the Franchise Agreement;

(b) within seven (7) days of the Start Date, but updated only as strictly necessary for any elapsed time between the actual Start Date and the date assumed to be the Start Date in the Initial Business Plan; and

(c) within seven (7) days of any approval or audit of a Run of the Financial Model as provided for in paragraph 7 of Schedule 9.1 (Financial and Other Consequences of Change), but updated with the Revised Inputs and any Model Changes together with an updated Record of Assumptions and copies of both the modified and unmodified Financial Model.

1.3 The Franchisee or, as the case may be, the Franchisee shall deliver with each such deposit of the Escrow Documents all of the following information to the extent that it is relevant:

(a) details of the Escrow Documents deposited (including full filename and version details, any details required to access the Escrow Documents including media type, backup command/software used, compression used, archive hardware and operating system details);

(b) the names and contact details of persons who are able to provide support in relation to accessing and interpreting the Escrow Documents; and

(c) if required by the Secretary of State, a certificate from independent auditors approved by the Secretary of State, confirming that the deposited version of the Escrow Documents is in the agreed form in accordance with paragraph 1.1 or (as the case may be) is in accordance with paragraphs 1.2(a), 1.2(b) or 1.2(c).

2. Secretary of State's Obligations

2.1 The Secretary of State shall:

(a) within three (3) days following receipt, acknowledge receipt to the Franchisee of any version of the Escrow Documents delivered to him for the purposes of being Placed in Escrow;

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(b) save as provided under paragraph 2.1(c), store each copy of the Escrow Documents in a different physical location from any other copy of each such document and use all reasonable endeavours to ensure that each copy of the Escrow Documents is at all times kept in a safe and secure environment. In so doing the Secretary of State shall be deemed to have Placed in Escrow the Escrow Documents for the purposes of the Franchise Agreement;

(c) notify the Franchisee if he becomes aware at any time during the term of the Franchise Agreement that any copy of the Escrow Documents or part thereof stored in a particular location has been lost, damaged or destroyed. In such an event, the Secretary of State shall be permitted to create a new copy of the Escrow Documents or part thereof from the other copy Placed in Escrow and shall within seven (7) days notify the Franchisee accordingly and afford it the right to make reasonable inspections in order to satisfy itself that a "complete and accurate" copy has been made. Following the making of such a new copy of the Escrow Documents, the Secretary of State shall retain all copies of the Escrow Documents in accordance with paragraph 2.1(b);

(d) within seven (7) days of receipt of a notice from the Franchisee stating that the Escrow Documents are required for the purposes of a Run of the Financial Model in relation to any Change, or should the Secretary of State himself so decide that the Escrow Documents are required by the Franchisee or by the Secretary of State for such purposes release one copy of the Escrow Documents accordingly and retain one copy of the Escrow Documents in escrow in accordance with paragraph 2.1(b);

(e) maintain a record of any release of any copy of any version of the Escrow Documents made, including details of any version released and the date of release as well as the identity of the person to whom the Escrow Documents are released;

(f) have no obligation or responsibility to any person whatsoever to determine the existence, relevance, completeness, accuracy, effectiveness or any other aspect of the Escrow Documents; and

(g) not be liable for any loss, damage or destruction caused to the Franchisee arising from any loss of, damage to or destruction of the Escrow Documents.

2.2 If the Franchisee fails to perform a Run of the Financial Model pursuant to paragraph 6.2(a) of Schedule 9.1 (Financial and Other Consequences of Change) or fails to return the copy of the Escrow Documents released pursuant to paragraph 2.1(d):

(a) such failure to perform or to return the released copy to the Secretary of State shall be a contravention of the Franchise Agreement;

(b) the Secretary of State may release the other copy of the Escrow Documents Placed in Escrow and take a copy thereof (the **"Replacement Copy"**) in order that the Secretary of State may perform a Run of the Financial Model pursuant to paragraph 6.2(a) of Schedule 9.1 (Financial and Other Consequences of Change);

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(c) once copied, the second copy of the Escrow Documents released pursuant to this paragraph 2.2 shall be Placed in Escrow; and

(d) once the Run of the Financial Model has been approved or audited as provided for in paragraph 7 of Schedule 9.1 (Financial and Other Consequences of Change), two copies of the Replacement Copy shall also be Placed in Escrow.

Nothing in this Schedule 9.2 shall prevent the Secretary of State or the Franchisee each retaining for their working use one or more copies of any of the Escrow Documents Placed in Escrow provided that no such working copy shall (unless otherwise explicitly agreed by the parties) be regarded as a copy released from Escrow for the purposes of this Schedule 9.2 or any Run of the Financial Model.

3. Errors in Escrow Documents

3.1 Any feature of the Escrow Documents which is in the reasonable opinion of the Secretary of State an error will be addressed as follows:

(a) if rectification of such an error would (as the case may be) over the Franchise Term result in a net increase in the amount of Franchise Payments payable by the Secretary of State to the Franchisee or a net decrease in the amount of Franchise Payments payable by the Franchisee to the Secretary of State then such error shall be rectified provided that there shall not be a restatement of the values of the Annual Franchise Payment Components and the Profit Share Components;

(b) if rectification of such an error would (as the case may be) over the Franchise Term result in a net decrease in the amount of Franchise Payments payable by the Secretary of State to the Franchisee or a net increase in the amount of Franchise Payments payable by the Franchisee to the Secretary of State then such error shall be rectified and the values of the Annual Franchise Payment Components and the Profit Share Components shall be restated where appropriate;

(c) a record of the error shall be noted in the Record of Assumptions and, if applicable, the Financial Model; and

as soon as reasonably practicable after the date of the rectification of the error, the Franchisee shall (unless otherwise agreed by the Secretary of State) deliver to the Secretary of State a certificate from independent auditors approved by the Secretary of State confirming that the error has been rectified as required by this paragraph 3 and is now in the agreed form in accordance with paragraphs 1.1, 1.2(a), 1.2(b) or 1.2(c) as the case may be.

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SCHEDULE 9.3

Variations to the Franchise Agreement and Incentivising Beneficial Changes

1. Variations to the Franchise Agreement and Incentivising Beneficial Changes

1.1 The terms of the Franchise Agreement may be varied as follows but not otherwise:

(a) by the Secretary of State as contemplated where relevant in the Invitation to Tender in relation to:

(i) any aspect of the Franchise Services; and/or

(ii) any provision of the Franchise Agreement other than those provisions specified in paragraph 1.2,

by service of a notice on the Franchisee referring to this paragraph 1.1(a) and setting out the variation to the terms of the Franchise Agreement; and

(b) in relation to any other provision of the Franchise Agreement, by agreement in writing between the Parties to that effect,

(each a "**Variation**").

1.2 Without prejudice to the Secretary of State's rights under paragraph 1.1(a), the terms of each of:

(a) clause 5 (Duration of the Franchise Agreements) of this Agreement;

(b) Schedules 8 (Payments), 9 (Changes and Variations), 10 (Remedies, Events of Default and Termination Events), 12 (Financial Covenants and Bonds), 14 (Preservation of Assets) and clauses 7 (Assignment), 10 (Cumulative Rights and Remedies), 11 (Dispute Resolution), 12 (Notices), 13 (Set-Off) and 14 (Miscellaneous Provisions); and

(c) the definitions set out at clause 3 (Definitions) of this Agreement insofar as such affect the respective rights and obligations of the Secretary of State and the Franchisee pursuant to the provisions referred to at (a) and (b) above,

shall not be varied at any time other than in accordance with the terms of this Franchise Agreement or with the agreement of the Parties.

1.3 The Secretary of State shall, to the extent reasonably practicable, allow the Franchisee a reasonable opportunity to make representations to the Secretary of State concerning any Variation to be made in accordance with paragraph 1.1(a), prior to making any such Variation.

1.4 The Secretary of State may:

(a) issue, revise and withdraw from time to time procedures that he requires to be followed for the purposes of orderly consideration of Variations. This will include for the purpose of establishing in relation to any Change whether it is a Qualifying Change; and

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(b) require the Franchisee to provide any information that the Secretary of State reasonably requires for this purpose (including in relation to prospective change to profit, costs and revenue as a consequence of proceeding with the Variation).

1.5 Procedures issued pursuant to paragraph 1.4 may provide for indicative iterations of Runs of the Financial Model in relation to one or more Changes that the Secretary of State is considering and may also provide for any number of Changes to be grouped together as a single Change for the purposes of agreeing or determining Revised Inputs and then performing a Run of the Financial Model.

1.6 Procedures issued pursuant to paragraph 1.4 shall have contractual effect between the Parties in accordance with their terms.

1.7 The Franchisee may notify the Secretary of State of any proposal for a Variation by notice setting out the proposed method of implementing such Variation including:

(a) the timescale for doing so;

(b) the effect (if any) on the timing of the performance of its other obligations under the Franchise Agreement;

(c) the impact of effecting the proposed Variation on the provision of the Franchise Services and the Franchisee's proposals as to how to minimise such impact; and

(d) the financial consequences of implementing the Variation proposed by the Franchisee in terms of the Revised Inputs that the Franchisee considers the Variation would require.

2. **Protected Proposals**

2.1 Where the Franchisee proposes a Variation in sufficient detail for it to be apparent that its implementation is likely to result in an increase in the overall profitability of the Franchisee through costs saving measures (a **"Protected Proposal"**), the Secretary of State may not proceed with the Protected Proposal or seek to implement the substance of it by proposing a Variation of his own without complying with the provisions of paragraph 2 (General Adjustments/Assumptions), paragraph 5 (Revised Input for Profit) of Appendix 2 (Agreement or Determination of Revised Inputs) to Schedule 9.1 (Financial and Other Consequences of Change).

2.2 The Franchisee and the Secretary of State acknowledge that the Franchisee may during the Franchise Term identify actions that could be taken by the Franchisee to achieve savings and improved financial performance and that such actions may if implemented give rise to a Change under the terms of this Agreement which, if it is a Qualifying Change, will give a financial benefit to the Secretary of State. It is further acknowledged that it is appropriate for the Franchisee to seek to identify such actions for the purposes of improving the cost effective delivery of railway passenger services.

2.3 To incentivise the Franchisee to seek to identify such actions it is agreed that the Franchisee may approach the Secretary of State with a proposal to take an action that would constitute a Change on the basis that if such a Change occurred and was a Qualifying Change in agreeing or determining Revised Inputs the Parties or

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the Secretary of State would effect such change (if any) to the amount attributable to profit as they agree or the Secretary of State reasonably determines:

(a) fairly rewards the Franchisee for proposing the Change; and

(b) reasonably incentivises the Franchisee to propose further Changes that achieve savings and/or improved financial performance by sharing with the Franchisee a reasonable amount of the additional profit that is expected to arise from implementing the relevant Change.

2.4 The Secretary of State shall have an unfettered discretion as to whether or not to agree such a proposal but if he does so agree and a Qualifying Change in consequence occurs then in agreeing or determining Revised Inputs the provisions referred to in paragraph 2.3 above shall apply.

3. Capital Expenditure

3.1 Capital Expenditure Threshold

The Franchisee shall notify the Secretary of State promptly if it reasonably expects that a Change to which paragraph 1 or 2 relates would require it to incur, singly or in aggregate with other Changes from time to time, Capital Expenditure in excess of one per cent (1%) of its annual Turnover as disclosed by its latest available Annual Audited Accounts and, when so notified, the Secretary of State shall either:

(a) withdraw (or direct the Franchisee to withdraw) the Change;

(b) undertake to meet the excess through additional funding as and when such Capital Expenditure is incurred; or

(c) direct the Franchisee to use all reasonable endeavours to borrow or otherwise raise the money required to fund any Change on commercial terms and at rates which are consistent with market conditions at the time, unless borrowing or otherwise raising such money would result in the Franchisee failing to comply with the financial covenants contained in Schedule 12 (Financial Covenants and Bonds).

3.2 Franchisee to Seek Finance

If the Secretary of State elects to require the Franchisee to use all reasonable endeavours as described in paragraph 3.1(a)(iii) then the Franchisee shall:

(a) seek finance from a representative range of lending institutions and other financial institutions including those which at that time provide finance to the Franchisee and the Parent;

(b) if it is unable to raise funding, provide the Secretary of State with all information the Secretary of State may reasonably require in relation to the efforts made by the Franchisee and the reasons for a failure to raise additional finance;

(c) so far as it is able (having used all reasonable efforts to do so), the Franchisee shall provide to the Secretary of State letters from lenders and financiers it has approached for finance stating their reasons for refusing

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to provide it and if the Secretary of State so requires, arrange and attend meetings with them for the Secretary of State to discuss those reasons; and

(d) if funding is not available, or is not available on terms that the Secretary of State considers to be commercial terms or at rates which are consistent with market conditions at that time the Secretary of State may:

(i) withdraw the Change; or

(ii) undertake to fund the Capital Expenditure as and when such Capital Expenditure is incurred.

3.3 **Treatment of Borrowings in Revised Inputs**

In calculating the Revised Inputs for the purposes of any Change referred to in this paragraph 3, the Franchisee shall account for the Capital Expenditure in accordance with GAAP, taking into account the basis on which such Capital Expenditure has been financed.

3.4 **Meaning of Capital Expenditure**

The expression **"Capital Expenditure"** when used in this Schedule 9.3 refers to the nature of the expenditure incurred by the Franchisee and, accordingly, does not include expenditure incurred under operating leases.

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SCHEDULE 9.4

Secretary of State Risk Assumptions

1. **ERTMS**

It shall be a Change if there is a material change to the actual implementation plans (including the relevant timescales for the delivery of such plans) adopted by Network Rail in respect of the ERTMS Programme when compared to the plans as specified in the Network Rail ERTMS Implementation Plan and, as a result, after taking into account any compensation that the Franchisee is entitled to claim whether under Schedule 4 of the Track Access Agreement, Condition G.2 of the Network Code or otherwise (and for these purposes it shall be assumed that the Track Access Agreement complies with the provisions of paragraph 11.2 of Schedule 13.1 (Rail Industry Initiatives)), the Franchisee is financially better off than would otherwise have been the case.

2. **Crossrail**[92]

From the Passenger Change Date in May 2019 those Crossrail Services which operated between Shenfield, Gidea Park, Ilford and Liverpool Street High Level prior to such date are not diverted to operate to Paddington through the Crossrail Central Core with a residual Crossrail Service of four trains per hour between Gidea Park and Liverpool Street High Level in the weekday peak periods in accordance with the Crossrail May 2019 Timetable.

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[92] **Note to Bidders -** the calculation of any Change arising from this SOSRA will be based on Bidder's response to the worked example B required in Section 6.7.1 of the ITT. The drafting will be amended as necessary to tie in with this response.

SCHEDULE 10

Remedies, Events of Default and Termination Events

Schedule 10.1:	Procedure for remedying a Contravention of the Franchise Agreement
Schedule 10.2:	Procedure for Events of Default and Termination Events
Schedule 10.3:	Force Majeure and Business Continuity
Schedule 10.4:	Liability

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SCHEDULE 10.1

Procedure for remedying a Contravention of the Franchise Agreement

1. **Contraventions of the Franchise Agreement**

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

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

2. **Remedies for Contraventions of the Franchise Agreement**

If the Secretary of State is satisfied that the Franchisee is contravening or is likely to contravene any term of the Franchise Agreement he may serve a notice on the Franchisee requiring it to propose such steps as the Franchisee considers appropriate for the purpose of securing or facilitating compliance with the term in question (a **"Remedial Plan Notice"**).

3. **Remedial Plan Notices**

3.1 Each Remedial Plan Notice shall specify the following:

(a) the term or terms of the Franchise Agreement that the Secretary of State is satisfied that the Franchisee is contravening or is likely to contravene (each a **"Relevant Term"**); and

(b) the time period (**"Remedial Plan Period"**) within which the Secretary of State requires the Franchisee to provide an appropriate plan for the purpose of facilitating or securing compliance with such Relevant Term (a **"Remedial Plan"**).

4. **Remedial Plans**

4.1 If the Secretary of State issues a Remedial Plan Notice, the Franchisee shall submit a Remedial Plan to the Secretary of State within the Remedial Plan Period.

4.2 Each Remedial Plan shall set out:

(a) the Relevant Term which has caused such Remedial Plan to be required;

(b) an explanation of the reasons for the contravention or likely contravention of the Relevant Term;

(c) the steps proposed for the purposes of securing or facilitating compliance with the Relevant Term; and

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(d) the time period within which the Franchisee proposes to implement those steps.

5. **Remedial Agreements**

5.1 If the Secretary of State is satisfied that the matters within such Remedial Plan referred to in paragraphs 4.2(c) and (d) are appropriate (with or without further modification as the Parties may agree) he may require the Franchisee to enter into a supplemental agreement (the **"Remedial Agreement"**) with the Secretary of State to implement those matters.

5.2 It is a term of the Franchise Agreement that the Franchisee (at its own cost) complies with each Remedial Agreement in accordance with its terms.

6. **Effect of Force Majeure Event on a Remedial Agreement**

6.1 Without prejudice to the operation of paragraph 2.1 of Schedule 10.2 (Procedure for Events of Default and Termination Events), the following provisions shall apply in relation to Force Majeure Events affecting the Franchisee's performance of their obligations pursuant to a Remedial Agreement:

(a) the Franchisee shall give written notice to the Secretary of State promptly after the Franchisee becomes aware (and in any event within 24 hours after becoming aware) of the occurrence or likely occurrence of a Force Majeure Event which will or is likely to affect the Franchisee's ability to comply with a Remedial Agreement within the period specified therein;

(b) each notice submitted in accordance with paragraph 6.1(a) shall state the extent or likely extent of the relevant Force Majeure Event and, in the case of a Force Majeure Event which has not occurred at such time, the reasons why the Franchisee considers it likely to occur;

(c) the Franchisee shall use, and shall continue to use, all reasonable endeavours to avoid or reduce the effect or likely effect of any Force Majeure Event on its ability to comply with any Remedial Agreement; and

(d) subject to the Franchisee having complied with its obligations under paragraphs 6.1(a) to 6.1(c) (inclusive) the Franchisee shall be entitled to a reasonable extension of the remedial period applicable to a Remedial Agreement in order to take account of the effect of a Force Majeure Event which has occurred on the Franchisee's ability to comply with that Remedial Agreement.

7. **Monitoring by the Secretary of State**

7.1 Following the occurrence of a contravention of the Franchise Agreement, the Secretary of State may at his option (but shall not be obliged to) commence or increase the level and/or frequency of monitoring (whether by inspection, audit or otherwise) of the Franchisee's performance of any relevant obligations until such time as the Franchisee demonstrates, to the Secretary of State's reasonable satisfaction, that it is capable of performing and will perform such obligations as required by the Franchise Agreement.

7.2 The Franchisee shall co-operate fully with the Secretary of State in relation to the monitoring referred to in paragraph 7.1.

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7.3 The results of such monitoring will be reviewed at each Franchise Performance Meeting held pursuant to Schedule 11.1 (Franchise Performance Meetings).

7.4 The Franchisee shall compensate the Secretary of State for all reasonable costs incurred by the Secretary of State in carrying out such monitoring.

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SCHEDULE 10.2

Events of Default and Termination Events

1. **Definition of Events of Default**

Each of the following is an **"Event of Default"**:

1.1 **Insolvency**

(a) **Administration:** Any step being taken by any person with a view to the appointment of an administrator to the Franchisee, the Parent, any Bond Provider or the Guarantor;

(b) **Insolvency:** Any of the Franchisee, the Parent, any Bond Provider or the Guarantor stopping or suspending or threatening to stop or suspend payment of all or, in the reasonable opinion of the Secretary of State, a material part of (or of a particular type of) its debts, or being unable to pay its debts, or being deemed unable to pay its debts under Section 123(1) or (2) of the Insolvency Act 1986 except that in the interpretation of this paragraph the words **"it is proved to the satisfaction of the court that"** in sub-section (1)(e) and sub-section (2) of Section 123 shall be deemed to be deleted;

(c) **Arrangements with Creditors:** The directors of the Franchisee, the Parent, any Bond Provider or the Guarantor making any proposal under Section 1 of the Insolvency Act 1986, or any of the Franchisee, the Parent, any Bond Provider or the Guarantor proposing or making any agreement for the deferral, rescheduling or other readjustment (or proposing or making a general assignment or an arrangement or composition with or for the benefit of creditors) of all or, in the reasonable opinion of the Secretary of State, a material part of (or of a particular type of) its debts, or a moratorium being agreed or declared in respect of or affecting all or, in the reasonable opinion of the Secretary of State, a material part of (or of a particular type of) its debts;

(d) **Security Enforceable:** Any expropriation, attachment, sequestration, execution or other enforcement action or other similar process affecting any property of the Franchisee or the whole or a substantial part of the assets or undertaking of the Franchisee, the Parent, any Bond Provider or the Guarantor, including the appointment of a receiver, administrative receiver, manager or similar person to enforce that security;

(e) **Stopping Business/Winding-Up:** Any step being taken by the Franchisee, the Parent, any Bond Provider or Guarantor with a view to its winding-up or any person presenting a winding-up petition or any of the Franchisee, the Parent, any Bond Provider or Guarantor ceasing or threatening to cease to carry on all or, in the reasonable opinion of the Secretary of State, a material part of its business, except for the purpose of and followed by a reconstruction, amalgamation, reorganisation, merger or consolidation on terms approved by the Secretary of State before that step is taken;

(f) **Railway Administration Order:** A railway administration order being made in relation to the Franchisee under Sections 60 to 62 of the Act; and

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(g) **Analogous Events:** Any event occurring which, under the Law of any relevant jurisdiction, has an analogous or equivalent effect to any of the events listed in this paragraph 1.1,

subject, in the case of any relevant event occurring in relation to a Bond Provider where no such other Event of Default has occurred and is unremedied or continuing at such time, to a period of twenty (20) Weekdays having elapsed in order to allow the Franchisee to replace the relevant Bond Provider.

1.2 **Non-payment**

The Franchisee failing to pay to the Secretary of State any amount due under the Franchise Agreement within twenty eight (28) days of the due date for such payment.

1.3 **Change of Control**

A Change of Control other than in accordance with the prior consent of the Secretary of State pursuant to clause 8 (Change of Control and Facilitation Fee).

1.4 **Revocation of Licence**

Revocation of any Licence required to be held by the Franchisee in order to comply with its obligations under the Franchise Agreement.

1.5 **Safety Certificate and Safety Authorisation**

The Safety Certificate and/or Safety Authorisation of the Franchisee being withdrawn or terminated.

1.6 **Passenger Service Performance**

Except in respect of any Reporting Period falling within a Initial Reporting Period, the Franchisee's performance in relation to any Benchmark is equal to or worse than the Default Performance Level for that Benchmark for:

(a) any three (3) consecutive Reporting Periods;

(b) any four (4) Reporting Periods within a period of thirteen (13) consecutive Reporting Periods; or

(c) any five (5) Reporting Periods within a period of twenty six (26) consecutive Reporting Periods.

1.7 **Non-compliance with Remedial Agreements and Orders under the Act**

(a) Non-compliance by the Franchisee with a Remedial Agreement, where such non-compliance is reasonably considered by the Secretary of State to be material.

(b) Non-compliance by the Franchisee with:

(i) a provisional order;

(ii) a final order;

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(iii) a penalty; or

(iv) any other order made relating to contravention of either a relevant condition or requirement (as defined in Section 55 of the Act) or another order,

in each case made by the Secretary of State under the Act.

(c) Non-compliance by the Franchisee with any enforcement notice issued to it by the Secretary of State pursuant to Section 120 of the Act.

(d) Non-compliance by the Franchisee with:

(i) a provisional order;

(ii) a final order;

(iii) any other order made pursuant to Section 55 of the Act,

in each case made by the ORR and relating to a contravention by the Franchisee of condition 27 of its Licence in respect of Stations.

1.8 **Financial Ratios**

Breach by the Franchisee of either or both of the Financial Ratios specified in paragraph 2 of Schedule 12 (Financial Covenants and Bonds).

1.9 **Breach of Law**

(a) It becoming unlawful for the Franchisee to provide all or, in the reasonable opinion of the Secretary of State, a material part of the Passenger Services or to operate all or, in the reasonable opinion of the Secretary of State, a material number of the Stations or Depots (except to the extent not required under the Franchise Agreement);

(b) The Franchisee or any of the directors or senior managers of the Franchisee being convicted of manslaughter, fraud or any other indictable criminal offence in each case relating directly to the provision and operation of the Franchise Services; or

(c) The Franchisee being, in the reasonable opinion of the Secretary of State, in material non-compliance with a prohibition or enforcement order (or the equivalent thereof) issued by the ORR pursuant to its safety functions. If the Franchisee makes an appeal against such prohibition or enforcement order (or such equivalent thereof) in accordance with its terms, no Event of Default shall have occurred under this paragraph 1.9(c) until such appeal has been determined to be unsuccessful.

1.10 **Contravention of Other Obligations**

The occurrence of the following:

(a) the Franchisee contravening to an extent which is reasonably considered by the Secretary of State to be material any one or more of its obligations under the Franchise Agreement (other than such non-performance or non-

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compliance as may constitute an Event of Default under the provisions of this Schedule 10.2 other than this paragraph 1.10);

(b) the service by the Secretary of State on the Franchisee of a written notice specifying:

(i) such contravention; and

(ii) to the extent the contravention is capable of being remedied, the reasonable period within which the Franchisee is required to so remedy; and

(c) the Franchisee:

(i) contravening such obligation or obligations again to an extent which is reasonably considered by the Secretary of State to be material; or

(ii) permitting the contravention to continue; or

(iii) if the contravention is capable of remedy, failing to remedy such contravention within such period as the Secretary of State has specified in the notice served pursuant to paragraph 1.10(b)(ii).

1.11 **Non-membership of Inter-Operator Schemes**

The Franchisee ceasing to be a member of, or ceasing to participate in or to be party to, any of the Inter-Operator Schemes, or having its membership or participation therein suspended.

1.12 **Bonds**

(a) Any Performance Bond or Season Ticket Bond ceasing to be a legal, valid and binding obligation on the relevant Bond Provider (other than in accordance with its terms) or it otherwise becoming unlawful or impossible for such Bond Provider to perform its obligations thereunder;

(b) A failure by the Franchisee to procure the provision to the Secretary of State of a Performance Bond (or Performance Bonds provided pursuant to paragraph 4.3 of Schedule 12 (Financial Covenants and Bonds)) which individually or in aggregate fulfil the requirements of Schedule 12 (Financial Covenants and Bonds); or

(c) A failure by the Franchisee to procure the provision to the Secretary of State of a Season Ticket Bond which fulfils the requirements of Schedule 12 (Financial Covenants and Bonds).

1.13 **Key Contracts**

Termination of any Key Contract, or the failure by the Franchisee to take all reasonable steps to enter into an appropriate replacement contract prior to the scheduled expiry date of any Key Contract, except where requested by the Secretary of State or to the extent that the Franchisee has demonstrated to the reasonable satisfaction of the Secretary of State that for the duration of the Franchise Term:

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(a) it is no longer necessary for it to be party to such Key Contract; or

(b) it has made adequate alternative arrangements in order to be able to continue to provide and operate the Franchise Services.

1.14 **Funding Deed**

A failure by the Franchisee or the Guarantor to comply with their respective obligations under the Funding Deed.

1.15 **Rolling Stock Leases**

A failure by the Franchisee to enter into a new Rolling Stock Lease in accordance with paragraph 2.5 of Schedule 1.6 (The Composition of the Train Fleet) in respect of substitute rolling stock vehicles which meet the requirements of paragraph 2.1(d) of Schedule 1.6 (The Composition of the Train Fleet).

1.16 **Key Performance Indicator**

The Franchisee's performance in respect of a Key Performance Indicator is such that the Average KPI Performance for that Key Performance Indicator is less than the CE Lower KPI Threshold for that Key Performance Indicator at two (2) or more Performance Review Dates within any three (3) consecutive Performance Review Dates.

2. **Definition of Termination Events**

Each of the following is a **"Termination Event"**:

2.1 any Force Majeure Event continues with the effect of preventing the Franchisee from delivering, wholly or mainly, the Passenger Services for more than six (6) consecutive months; or

2.2 the warranty given by the Franchisee pursuant to paragraph 6.1 of Schedule 12 (Financial Covenants and Bonds) is materially untrue; or

2.3 the Franchisee commits a material breach of its obligation to notify the Secretary of State of any Occasion of Tax Non-Compliance in respect of any Affected Party (as defined in paragraph 6.3 of Schedule 12 (Financial Covenants and Bonds)) as required by paragraph 6.2(a) of Schedule 12 (Financial Covenants and Bonds); or

2.4 the Franchisee fails to provide details of proposed mitigating factors as required by paragraph 6.2(b) of Schedule 12 (Financial Covenants and Bonds) which in the reasonable opinion of the Secretary of State, are acceptable.

3. **Provisions Relating to Events of Default**

The occurrence of an Event of Default shall constitute a contravention of the Franchise Agreement by the Franchisee and the provisions of Schedule 10.1 (Procedure for Remedying a Contravention of the Franchise Agreement) shall apply.

4. **Notification of Event of Default**

The Franchisee shall notify the Secretary of State as soon as reasonably practicable on, and in any event within twenty four (24) hours of, it becoming

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aware of the occurrence of an Event of Default or an event which is likely to result in the occurrence of an Event of Default. The Franchisee shall take such action or steps as the Secretary of State may require to remedy any Event of Default or potential Event of Default.

5. **Termination Notices**

5.1 The Secretary of State may, on and at any time after the occurrence of:

(a) (subject to paragraphs 5.2 and 5.3) an Event of Default which:

(i) is unremedied or continuing; and

(ii) the Secretary of State considers to be material; or

(b) a Termination Event specified in paragraph 2.1 of this Schedule 10.2 which is unremedied or continuing; or

(c) a Termination Event specified in paragraph 2.2 of this Schedule 10.2,

terminate the Franchise Agreement by serving a Termination Notice on the Franchisee. The Franchise Agreement shall terminate with effect from the date specified in any such Termination Notice.

5.2 The Secretary of State may not serve a Termination Notice in respect of an Event of Default in relation to which a Remedial Plan Notice has been issued until the Remedial Plan Period has expired.

5.3 The Secretary of State may not serve a Termination Notice in respect of an Event of Default for which the Franchisee is implementing a Remedial Agreement in accordance with its terms.

6. **Consequences of Termination or Expiry**

6.1 Upon termination of the Franchise Agreement (whether through default or effluxion of time or otherwise) the obligations of the Parties shall cease except for:

(a) any obligations arising as a result of any antecedent contravention of the Franchise Agreement;

(b) any obligations which are expressed to continue in accordance with the terms of the Franchise Agreement; and

(c) any other obligations which give effect to such termination or to the consequences of such termination or which otherwise apply (expressly or impliedly) on or after such termination.

6.2 Nothing in this paragraph 6 shall prevent the Secretary of State from bringing an action against the Franchisee in connection with the termination of the Franchise Agreement prior to the expiry of the Franchise Term.

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SCHEDULE 10.3

Force Majeure and Business Continuity

1. Definition of Force Majeure Events

The following events shall constitute **"Force Majeure Events"**, subject to the conditions specified in paragraph 2 being satisfied:

(a) the Franchisee or any of its agents or subcontractors is prevented or restricted by Network Rail (including by virtue of the implementation of any Contingency Plan) from gaining access to any section or part of track (including any track running into, through or out of a station). For the purposes of this paragraph 1:

(i) references to a party being prevented or restricted from gaining access to any section or part of track shall mean that such party is not permitted to operate any trains on the relevant section or part of track, or is only permitted to operate a reduced number of trains from that which it was scheduled to operate;

(ii) references in paragraph 1(a)(i) to the operation of trains include scheduled empty rolling stock vehicle movements; and

(iii) Contingency Plan means a contingency plan (as defined in the Railway Operational Code or where the Railway Operational Code ceases to exist such other replacement document of a similar or equivalent nature which contains a definition of contingency plan similar to that contained in the Railway Operational Code) implemented by and at the instigation of Network Rail, or such other contingency or recovery plan as the Secretary of State may agree from time to time;

(b) the Franchisee or any of its agents or subcontractors is prevented or restricted by Network Rail or any Facility Owner (other than a Facility Owner which is an Affiliate of the Franchisee) from entering or leaving:

(i) any station or part thereof (excluding any prevention or restriction from gaining access to any section or part of track running into, through or out of a station); or

(ii) any depot or part thereof (including the movement of trains on tracks within any depot but excluding any prevention or restriction from gaining access to any track outside such depot running into or out of that depot);

(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,

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and, in each case, the greater of two (2) Rolling Stock Units and ten (10) per cent of all rolling stock vehicles used by the Franchisee in the provision of the Passenger Services in relation to any Service Group are unavailable for use in the provision of the Passenger Services as a result of the occurrence of such event;

(d) the Franchisee prevents or restricts the operation of any train on safety grounds provided that:

(i) the Franchisee has, either before or as soon as reasonably practicable after initiating such prevention or restriction, sought the confirmation of the ORR in exercise of its safety functions, or any relevant other body with statutory responsibility for safety in the circumstances, of the necessity of such prevention or restriction; and

(ii) if and to the extent that the ORR, or other relevant body with statutory responsibility for safety in the circumstances, in exercise of its safety functions indicates that such prevention or restriction is not necessary, then no Force Majeure Event under this paragraph 1(d) shall continue in respect of that restriction or prevention after the receipt of such indication from the ORR or other relevant body;

(e) act of God, war damage, enemy action, terrorism or suspected terrorism, riot, civil commotion or rebellion (together **"Emergency Events"**) or the act of any government instrumentality (including the ORR but excluding the Secretary of State) in so far as the act of government instrumentality directly relates to any of the Emergency Events, provided that there shall be no Force Majeure Event under this paragraph 1(e) by reason of:

(i) the suicide or attempted suicide of any person that does not constitute an act of terrorism;

(ii) the activities of the police, fire service, ambulance service or other equivalent emergency service that are not in response to acts of terrorism or suspected terrorism; or

(iii) an act of God which results in the Franchisee or its agents or subcontractors being prevented or restricted by Network Rail from gaining access to any relevant section or part of track;

(f) any strike or other Industrial Action by any or all of the employees of the Franchisee or any or all of the employees of:

(i) Network Rail;

(ii) the operator of any other railway facility; or

(iii) any person with whom the Franchisee has a contract or arrangement for the lending, seconding, hiring, contracting out or supervision by that person of train drivers, conductors, other train crew or station or depot staff used by the Franchisee in the provision of the Franchise Services,

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or of the agents or sub-contractors of any such person listed in paragraphs 1(f)(i) to 1(f)(iii).

2. **Conditions to Force Majeure Events**

2.1 The occurrence, and continuing existence of a Force Majeure Event shall be subject to satisfaction of the following conditions:

(a) the period of such prevention or restriction shall be deemed to commence with effect from the first occasion on which the Franchisee is prevented or restricted from operating a train on such section or part of track and must continue for more than twelve (12) consecutive hours;

(b) the Franchisee notifies the Secretary of State within two (2) Weekdays of it becoming aware or, if circumstances dictate, as soon as reasonably practicable thereafter, of:

(i) the occurrence or likely occurrence of the relevant event; and

(ii) the effect or the anticipated effect of such event on the Franchisee's performance of the Passenger Services;

(c) at the same time as the Franchisee serves notification on the Secretary of State under paragraph 2.1(b), it informs the Secretary of State of the steps taken and/or proposed to be taken by the Franchisee to prevent the occurrence of, and/or to mitigate and minimise the effects of, the relevant event and to restore the provision of the Passenger Services;

(d) the relevant event did not occur as a result of:

(i) any act or omission to act by the Franchisee or its agents or subcontractors, save that in respect of the occurrence of Industrial Action in accordance with paragraph 1(f), the provisions of paragraph 2.2 apply; or

(ii) the Franchisee's own contravention of, or default under, the Franchise Agreement, any Access Agreement, Rolling Stock Related Contract, Property Lease or any other agreement;

(e) the Franchisee used and continues to use all reasonable endeavours to avert or prevent the occurrence of the relevant event and/or to mitigate and minimise the effects of such event on its performance of the Passenger Services and to restore the provision of the Passenger Services as soon as reasonably practicable after the onset of the occurrence of such event; and

(f) the Franchisee shall, to the extent reasonably so requested by the Secretary of State, exercise its rights and remedies under any relevant agreement to prevent the occurrence or recurrence of any such event and to obtain appropriate redress and/or compensation from any relevant person.

2.2 Where:

(a) Industrial Action in accordance with paragraph 1(f) occurs as a result of an act or omission to act by the Franchisee or its agents or subcontractors;

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(b) the Secretary of State reasonably believes that it was reasonable for the Franchisee, its agents or subcontractors (as the case may be) so to act or omit to act; and

(c) the other conditions specified in paragraph 2.1 have been satisfied,

such occurrence shall be a Force Majeure Event.

3. Consequences of Force Majeure Events

3.1 The Franchisee shall not be responsible for any failure to perform any of its obligations under the Franchise Agreement, nor shall there be any contravention of the Franchise Agreement if and to the extent that such failure is caused by any Force Majeure Event.

3.2 If any Force Majeure Event continues, with the effect of preventing the Franchisee from delivering, wholly or mainly, the Passenger Services for more than six consecutive months, it shall be a Termination Event in accordance with paragraph 3.1 of Schedule 10.3 (Events of Default and Termination Events).

4. Business Continuity

4.1 Obligation to Produce a BCP

(a) Within one (1) month following the Start Date the Franchisee shall produce and provide to the Secretary of State a written Business Continuity Plan in respect of the Franchise Services and the people, facilities and assets used to provide them which is consistent with the requirements of ISO 22301.

(b) Within one (1) month of the end of each Franchisee Year the Franchisee shall provide to the Secretary of State a certificate addressed to the Secretary of State and signed by a statutory director of the Franchisee confirming that the Business Continuity Plan is consistent with the requirements of the ISO 22301.

4.2 No Relief under Force Majeure

(a) Nothing in paragraph 3 will relieve the Franchisee from its obligations under this Franchise Agreement to create, implement and operate the Business Continuity Plan.

(b) If a Force Majeure Event affecting the Franchisee occurs which is an event or circumstance that is within the scope of the Business Continuity Plan, then paragraph 3.1 will only apply to that Force Majeure Event to the extent that the impacts of that Force Majeure Event would have arisen even if:

(i) the Franchisee had complied with this paragraph 4; and

(ii) the Business Continuity Plan had been fully and properly implemented and operated in accordance with this paragraph 4 and the terms of the Business Continuity Plan in respect of that Force Majeure Event.

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SCHEDULE 10.4

Liability

1. Exclusion of Liability

1.1 Liability with respect to Passengers and Third Parties

(a) The Franchisee hereby acknowledges that the Secretary of State will not be responsible for the actions of the Franchisee or any Affiliate of the Franchisee and that, except as expressly provided in the Franchise Agreement, the Franchisee shall provide and operate the Franchise Services at its own cost and risk without recourse to the Secretary of State or government funds or guarantees.

(b) The Franchisee, on demand, shall hold the Secretary of State fully protected and indemnified in respect of all losses, liabilities, costs, charges, expenses, actions, proceedings, claims or demands incurred by or made on the Secretary of State in connection with any death, personal injury, loss or damage suffered by passengers or by any third party using or affected by the Franchise Services which is caused or contributed to by the Franchisee, any Affiliate of the Franchisee, or any employee, agent, contractor or sub-contractor of the Franchisee or of any Affiliate of the Franchisee.

1.2 Liability of the Secretary of State

Neither the Secretary of State nor any of his officers, agents or employees shall in any circumstances be liable to the Franchisee for any loss or damage caused by the negligent exercise of any powers reserved to the Secretary of State under the Franchise Agreement, except to the extent that such negligence also constitutes a contravention of an obligation of the Secretary of State under the Franchise Agreement. The Franchisee may not recover from the Secretary of State or any of his officers, agents, or employees any amount in respect of loss of profit or consequential loss.

2. Review or Monitoring by the Secretary of State

2.1 The Secretary of State may for his own purposes (whether under the Franchise Agreement or under any other arrangement or otherwise and whether before or after the date of the Franchise Agreement) monitor or review any proposals, plans or projects (or any aspect thereof) of the Franchisee under the Franchise Agreement, but no review, enquiry, comment, statement, report or undertaking, made or given by or on behalf of the Secretary of State during such review or monitoring (and no failure to undertake, make or give any review, enquiry, comment or statement) shall operate to exclude or relieve either Party from or reduce or otherwise affect the obligations of such Party under the Franchise Agreement.

2.2 The exercise by or on behalf of the Secretary of State of (or, as the case may be, any failure to exercise) any of his functions, rights or obligations in respect of any review or monitoring process shall not in any way impose any liability, express or implied, on the Secretary of State to any other Party save to the extent that the exercise (or failure to exercise) of any of such functions, rights or obligations results in a contravention by the Secretary of State of an express provision of the Franchise Agreement and the Secretary of State does not make or give any

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representation or warranty, either express or implied, as to whether any proposal, plan or project will enable either Party to comply with its obligations under the Franchise Agreement.

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SCHEDULE 11

Franchise Performance Meetings and Management Information

Schedule 11.1:	Franchise Performance Meetings
Schedule 11.2:	Management Information
	Appendix 1: Environmental Information
	Appendix 2: Operational Information
	Appendix 3: Summary - Reporting and other requirements relating to the Maintenance and Provision of Information and Records

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SCHEDULE 11.1

Franchise Performance Meetings

1. Franchise Performance Meetings

1.1

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

(b) The Franchisee shall ensure that:

(i) each of its representatives at all Franchise Performance Meetings have full power and authority delegated to them by the Franchisee to act and to make binding decisions on behalf of the Franchisee and shall include such directors and/or senior managers of the Franchisee as the Secretary of State may require; and

(ii) representatives of the Parent (which shall include such directors and/or senior managers of the Parent as the Secretary of State may require) attend every quarterly Franchise Performance Meeting.

1.2 The Franchisee shall prepare and present such reports to each Franchise Performance Meeting as the Secretary of State may reasonably request. The Franchisee's obligations under this paragraph 1.2 are subject to the Franchisee receiving at least twenty eight (28) days' notice of the requirement to prepare and present any such report.

1.3 No comment or failure to comment nor any agreement or approval, implicit or explicit by the Secretary of State at such meetings will relieve the Franchisee of any of its obligations under the Franchise Agreement. The Franchisee shall only be relieved of any of its obligations under the Franchise Agreement through the signed written agreement of the Secretary of State.

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SCHEDULE 11.2

Management Information

1. Corporate Information

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

(a) its name;

(b) its business address and registered office;

(c) its directors and company secretary;

(d) its auditors;

(e) its trading name or names; and

(f) to the best of the Franchisee's knowledge and belief, having made due and diligent enquiry, the identity of all persons holding, separately or acting by agreement, directly or indirectly, the right to cast more than twenty per cent (20%) of the votes at general meetings of the Franchisee.

1.2 The Franchisee shall inform the Secretary of State of any material change or proposed material change in its business (including the employment or the termination of employment of any Key Personnel, the termination of any Key Contract and any litigation or other dispute which may have a material effect on its business) and any material change in or restructuring of the capitalisation or financing of the Franchisee, the Parent or the Guarantor.[93]

2. Information About Assets Used In The Franchise

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

(a) for each Primary Franchise Asset or other asset which is the subject of, or operated under, a Key Contract:

(i) the progress and completion of all work described in the maintenance schedules and manuals;

(ii) all operating manuals (including any safety related regulations); and

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[93] **Note to Bidders:** Where the immediate parent of the Franchisee is a joint venture company, DfT may customise provisions such that it applies to the Franchisee, such immediate parent of the Franchisee and the ultimate parents.

(iii) all permits, licences, certificates or other documents required to operate such asset; and

(iv) a printed or electronic list of all assets owned by the Franchisee from time to time (excluding, unless otherwise requested by the Secretary of State, any office furniture and consumable items).

3. Identification of Key Personnel and Provision of Organisation Chart

3.1 The Franchisee shall identify and provide to the Secretary of State a schedule of Key Personnel who shall be employed by the Franchisee in the performance of the Franchise Agreement. This shall include but not be limited to the following persons:

(a) a managing director whose role will include the overall management of the operation of the Franchise Services;

(b) a train service delivery director, whose role will include responsibility for ensuring compliance by the Franchisee with Schedule 7.1 (Performance Benchmarks);

(c) a safety director, whose role will include responsibility for ensuring that the Franchisee complies with its legal obligations in relation to the Franchise Services including the Safety Certificate; and

(d) a finance director, whose role will include responsibility in relation to the Financial Model.

3.2 The Franchisee shall identify a director whose responsibilities include overseeing, at a strategic level, the Franchisee's interface with the Secretary of State in relation to Sections 119 to 121 (inclusive) of the Act and co-ordinating relevant activities and delivery of counter terrorist security on behalf of the Franchisee in connection with the Franchisee's compliance with relevant instructions issued by the Secretary of State under Section 119 of the Act from time to time. Such board level director shall be identified by job title in the organisation chart referred to in paragraph 3.3 and shall be deemed part of the Key Personnel.

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

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

4.1 The Franchisee shall provide to the Secretary of State the information specified in the Appendices to this Schedule 11.2 at the times specified therein.

4.2 The Appendices to this Schedule 11.2 shall be interpreted in accordance with any guidance issued by the Secretary of State from time to time for that purpose.

5. Maintenance of Records

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

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5.2 Each record required to be maintained by the Franchisee in accordance with this Schedule 11.2 shall be held for a period of six (6) years following the date on which such record was required to be created.

5.3 References to records in this Schedule 11.2 shall include records maintained under any Previous Franchise Agreement to the extent that such records relate to services equivalent to the Franchise Services and the Franchisee has access to them (which it shall use all reasonable endeavours to secure).

5.4 The Franchisee shall not be responsible for any records maintained under any Previous Franchise Agreement, as referred to in paragraph 5.3, being true, complete and up to date. As soon as reasonably practicable after becoming aware that any such records are not true, complete and up to date, the Franchisee shall take all reasonable steps to remedy any such deficiency, and shall thereafter maintain such records in accordance with paragraph 5.1.

6. **Right to Inspect**

6.1 The Franchisee shall, if requested by the Secretary of State, allow the Secretary of State and his representatives and advisers:

(a) to inspect and copy any records referred to in this Schedule 11.2 and the Secretary of State may verify any such records; and

(b) to inspect and copy at any reasonable time any books, records and any other material kept by or on behalf of the Franchisee and/or its auditors and any assets (including the Franchise Assets) used by the Franchisee in connection with the Franchise Services.

6.2 The Franchisee shall make available to the Secretary of State, his representatives and advisers the information referred to in paragraph 6.1 and grant or procure the grant of such access (including to or from third parties) as the Secretary of State, his representatives and advisers shall reasonably require in connection therewith. The obligation of the Franchisee under this paragraph 6.2 shall include an obligation on the Franchisee to grant or procure the grant of such access to premises (including third party premises) where the information referred to in paragraph 6.1 is kept by or on behalf of the Franchisee.

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

6.4 If any inspection reveals that information previously supplied to the Secretary of State was, in the reasonable opinion of the Secretary of State, inaccurate in any material respect or if such inspection reveals any other contravention of the Franchisee's obligations under the Franchise Agreement which the Secretary of State considers to be material, the costs of any such inspection shall be borne by the Franchisee.

7. **Information to the Passengers' Council and Local Authorities**

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

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8. **Periodic Update Reports**

8.1 The Franchisee shall (including in accordance with the requirements of paragraph 5.1 of Part 2 (Special Terms related to Committed Obligations) of Schedule 6.2 (Committed Obligations)) prepare and submit to the Secretary of State a periodic report in each Reporting Period containing such information as the Secretary of State may reasonably specify on or after commencement of this Agreement or from time to time in accordance with paragraph 8.2 below for the previous quarter, or such other period as may be reasonably required and disaggregated to the extent that the Secretary of State shall require.

8.2 The Franchisee's obligations under this paragraph 8.2 are subject to the Franchisee receiving at least twenty eight (28) days' notice of:

(a) the requirement to prepare any such report; and

(b) any amendments required to the contents of such report.

9. **Financial And Operational Information**

9.1 **Accounting Records**

The Franchisee shall prepare and at all times during the Franchise Term maintain true, up to date and complete accounting records as are required to be kept under Section 386 of the Companies Act 2006. Such records shall be prepared on a consistent basis for each Reporting Period.

9.2 **Reporting Period Financial Information**

(a) The Franchisee shall deliver to the Secretary of State, within ten (10) Weekdays of the end of each Reporting Period:

(i) Management Accounts for such Reporting Period, setting out a cashflow statement, profit and loss account and balance sheet for that Reporting Period and cumulatively for the Franchisee Year to date;

(ii) Written confirmation that the Management Accounts, to the best of the knowledge, information and belief of the board of directors of the Franchisee, contain a true and accurate reflection of the current assets and liabilities of the Franchisee (including contingent assets or liabilities and known business risks and opportunities) and, to the extent that they do not, identify in a written report relevant issues in reasonable detail and provide such further information that the Secretary of State shall reasonably require in relation; and

(iii) In circumstances where the Franchisee was in a Lock-up Period during such Reporting Period, written confirmation from a statutory director of the Franchisee that the Franchisee has complied with the restrictions applicable during a Lock-up Period pursuant to paragraph 3 of Schedule 12 (Financial Covenants and Bonds).

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(b) The Management Accounts shall also set out:

(i) sufficient information to enable the Secretary of State to calculate Actual Operating Costs and Modified Revenue on a cumulative basis for the previous thirteen (13) Reporting Periods;

(ii) the ratio of the Franchisee's:

(A) Total Modified Revenue to its Total Actual Operating Costs; and

(B) Total Forecast Modified Revenue to its Total Forecast Operating Costs,

together with supporting information showing how the Franchisee has calculated such ratios including a breakdown of the Modified Revenue, Forecast Modified Revenue, Actual Operating Cost and Forecast Operating Costs for each of the Reporting Periods used for the purposes of the calculation of the ratios pursuant to this paragraph 9.2(b);

(iii) a comparison of the Franchisee's financial performance during such period against the forecast provided by the Franchisee in the then current Business Plan;

(iv) a comparison of the Franchisee's cumulative financial performance during the Franchisee Year in which such period occurs against the forecast referred to in paragraph 9.2(b)(iii);

(v) a detailed statement and a detailed and comprehensive written explanation of any material differences between such Management Accounts and the forecast referred to in paragraph 9.2(b)(iii);

(vi) where the level of financial performance reported in the Management Accounts is, in the reasonable opinion of the Secretary of State, materially worse than forecast by the Franchisee in its current Business Plan, the Secretary of State may require the Franchisee to prepare and submit to him, as soon as reasonably practicable, a Financial Action Plan to ensure that the level of financial performance forecast in its current Business Plan for the remainder of the currency of that Business Plan is achieved and the Franchisee shall use all reasonable endeavours to implement such Financial Action Plan; and

(vii) a detailed statement and explanation of any Agreed Funding Commitment and PCS Advances (each as defined in the Funding Deed) provided during such Reporting Period and any repayments made during such Reporting Period in respect of (i) previously provided Agreed Funding Commitments as against the Funding Plan (as defined in the Funding Deed) and (ii) PCS Advances.

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9.3 **Quarterly Financial Information**

(a) Within twenty (20) Weekdays after the end of the third (3rd), sixth (6th), ninth (9th) and twelfth (12th) Reporting Periods in each Franchisee Year, the Franchisee shall deliver to the Secretary of State the following information:

(i) an updated version of the profit and loss forecast, cash flow forecast and forecast balance sheet provided in accordance with paragraph 10.1(iv) together with a detailed and comprehensive written explanation as to any changes in such forecast from the previous forecast provided pursuant to the provisions of this Schedule 11.2, for each of the following thirteen (13) Reporting Periods; and

(ii) a statement of calculation demonstrating the Franchisee's performance against each of the financial covenants in paragraph 2 of Schedule 12 (Financial Covenants and Bonds) at the beginning of each Reporting Period and a forecast of performance against such covenants for each of the following thirteen (13) Reporting Periods.

(b) Where any Reporting Period falls partly within one Franchisee Year and partly within another, the results for each section of such Reporting Period falling either side of such Franchisee Year end shall be prepared on an accruals basis for each such section of such Reporting Period.

9.4 **Annual Financial Information**

(a) Within fifteen (15) Weekdays of the end of each Franchisee Year, the Franchisee shall deliver to the Secretary of State its Annual Management Accounts for that Franchisee Year.

(b) The Franchisee shall deliver to the Secretary of State:

(i) in respect of any Franchisee Year other than the final Franchisee Year, its Annual Financial Statements for that Franchisee Year within three (3) Reporting Periods of the end of that Franchisee Year; and

(ii) in respect of the final Franchisee Year, its Annual Financial Statements for the period from the start of that Franchisee Year to the end of the Franchise Period within three (3) Reporting Periods of the end of the Franchise Term,

each together with a reconciliation to the Management Accounts for the same period.

(c) Within four (4) Reporting Periods after the end of each Franchisee Year, the Franchisee shall deliver to the Secretary of State the following information:

(i) certified true copies of its annual report and Annual Audited Accounts for that Franchisee Year, together with copies of all related directors' and auditors' reports;

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(ii) a reconciliation to the Management Accounts for the same period in a format to be agreed with the Secretary of State;

(iii) a statement from the Franchisee's auditors confirming compliance with the financial covenants in paragraph 2 of Schedule 12 (Financial Covenants and Bonds); and

(iv) a statement from the Franchisee (signed by a statutory director of the Franchisee) confirming compliance with the reporting requirements of paragraph 9.2(b)(vii) of this Schedule.

9.5 **Accounting Standards and Practices**

(a) Each set of Management Accounts and Annual Management Accounts shall:

(i) be in the formats set out in the document in the agreed terms marked FF or in such other format as the Secretary of State may reasonably specify from time to time;

(ii) be prepared consistently in accordance with the Franchisee's normal accounting policies, details of which shall be supplied on request to the Secretary of State; and

(iii) identify to the reasonable satisfaction of the Secretary of State, any changes in such accounting policies from those polices that were applied in preparing each of the profit and loss account, the cashflow projection and the balance sheet contained in the Financial Model Placed in Escrow on the date of the Franchise Agreement.

(b) Each set of Annual Financial Statements and Annual Audited Accounts shall:

(i) be prepared and audited in accordance with GAAP, consistently applied and in accordance with the Companies Act 2006; and

(ii) give a true and fair view of:

(A) the state of affairs, profits and financial condition of the Franchisee for the period covered by such accounts; 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 Franchisee, such revenue to be disaggregated by reference to revenue derived by the Franchisee from:

(i) the sale of tickets;

(ii) income received from Network Rail pursuant to Schedule 4 and Schedule 8 to the Track Access Agreement;

(iii) car park revenue; and

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(iv) other income;

(C) or to such other level of disaggregation as may be notified to the Franchisee by the Secretary of State from time to time) derived by the Franchisee in respect of that Franchisee Year.

9.6 **Parent and Guarantor Accounts**

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

9.7 **Secretary of State Audit of calculations provided pursuant to paragraph 9.2(b)(ii)**

(a) Without prejudice to paragraph 2.2 of Schedule 12 (Financial Covenants and Bonds) or to any other rights of the Secretary of State under the Franchise Agreement, the Secretary of State and his representatives shall be permitted to inspect at any time the books, records and any other material kept by or on behalf of the Franchisee in order to check or audit any item contained in or relating to the Management Accounts in so far as they relate to the statement of calculations required by paragraph 9.2(b)(ii) of this Schedule 11.2 and any other matter in connection with the Franchisee's obligations under paragraph 2 of Schedule 12 (Financial Covenants and Bonds).

(b) The Franchisee shall make available to the Secretary of State and his representatives such information and grant such access or procure the grant of such access (including to or from third parties) as they shall reasonably require in connection with any audit to be carried out pursuant to paragraph 9.7(a). If any audit carried out pursuant to paragraph 9.7(a) reveals, in the reasonable opinion of the Secretary of State, any material inaccuracy in the Management Accounts (but only in so far as such accounts relate to the statement of calculations required by paragraph 9.2(b)(ii)) then the Secretary of State may exercise its rights as described in paragraphs 2.2(c) or 2.2(d) of Schedule 12 (Financial Covenants and Bonds) and the Franchisee shall pay all reasonable costs of any such audit as a monitoring cost pursuant to paragraph 7.4 of Schedule 10.1 (Procedure for Remedying a Contravention of the Franchise Agreement).

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10. **Business Plans**

10.1 **Initial Business Plan**

(a) Within one (1) Reporting Period of the Start Date, the Franchisee shall deliver to the Secretary of State its Initial Business Plan, describing its planned activities for each Franchisee Year during the Franchise Term, which shall include:

(i) a description as to how the Franchisee will meet its obligations under the Franchise Agreement for the Franchise Term, supported by operational plans demonstrating this;

(ii) details of any investments proposed to be made or procured by the Franchisee in relation to the Franchise Services during the Franchise Term;

(iii) a summary of the Franchisee's plans for marketing and developing the Franchise Services; and

(iv) a profit and loss forecast, cash flow forecast and forecast balance sheet for each of the twenty six (26) Reporting Periods following the Start Date, together with a list of assumptions on the basis of which each such forecast has been prepared.

10.2 **Annual Business Plans**

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

(i) the Secretary of State shall be entitled to copies of such periodic plans as he shall reasonably determine; and

(ii) any such periodic plans shall be deemed to be Annual Business Plans for the purposes of this paragraph 10.2.

(b) The Franchisee shall, at the same time as it submits the Annual Business Plan to the Secretary of State in accordance with paragraph 10.2 (or to the extent that no Annual Business Plan is submitted to the Parent in any Franchisee Year, not more than three (3) Reporting Periods and not less than one (1) Reporting Period prior to the start of each Franchisee Year), provide to the Secretary of State:

(i) a revised profit and loss forecast, cash flow forecast and forecast balance sheet for each of the thirteen (13) Reporting Periods in the

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relevant Franchisee Year and each subsequent Franchisee Year of the Franchise Period; and

(ii) an annual improvement plan providing:

(A) details of any new technologies, processes, developments and/or proposals which could improve the provision of the Franchise Services, reduce the cost of providing the Franchise Services or enable the Franchise Services to be provided more efficiently;

(B) an analysis of the impact of any technologies, processes, developments and/or proposals that are proposed in relation to the Franchise Services, including analyses of the costs of and timescale for effecting such changes and the impact on the provision of the Franchise Services;

(C) details of those technologies, processes, developments and/or proposals which the Franchisee proposes to implement during the relevant Franchisee Year; and

(D) an analysis of the technologies, processes, developments and/or proposals which the Franchisee implemented in the previous Franchisee Year including details of any cost reductions and/or efficiency gains arising from the same and a reconciliation to the annual improvement plan for that previous Franchisee Year.

(c) The Secretary of State may at any time require the Franchisee to produce a Business Action Plan in respect of any aspect of the Business Plan. Such Business Action Plan may include steps relating to:

(i) timetable and service pattern development;

(ii) Station facility improvement;

(iii) performance management improvement;

(iv) customer service improvement; and

(v) improvements in the quality of service delivery or the efficiency of delivery of the Franchise Services.

(d) The Franchisee shall comply with any guidance issued by the Secretary of State about how and with whom any consultation on the content of a Business Action Plan is to take place.

(e) Any proposal in a Business Action Plan shall only be implemented if and to the extent that the Secretary of State decides it is appropriate to do so and subject to any conditions which he may impose.

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11. **Safety Information**

11.1 **Safety**

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

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

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

12. **Further Information**

12.1 The Franchisee shall:

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

(b) procure that each Affiliate of the Franchisee complies with paragraph 12.1(a) in respect of any information, records or documents that relate to its dealings with the Franchisee in connection with the Franchisee's performance of its obligations under the Franchise Agreement.

12.2 The information referred to in paragraph 12.1 shall include:

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

(b) in so far as the Franchisee has or is able to obtain the same, any other agreement contract or arrangement which may be associated with the procurement, leasing, financing or maintenance of any such rolling stock vehicles;

(c) any agreement for the manufacture or supply of any rolling stock vehicles; or

(d) any arrangements for the securitisation of any lease granted in respect of such rolling stock vehicles.

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

(a) the information required to be provided under this Schedule 11.2 more frequently than set out in this Schedule 11.2;

(b) the information required to be provided under this Schedule 11.2, or, in the Secretary of State's discretion, more detailed financial information, at any time in connection with the re-letting of the Franchise; and

(c) such unaudited accounts under such accounting policies as may be prescribed by the Secretary of State, acting reasonably, from time to time.

13. Information from Third Parties

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

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

13.3 The obligations of the Franchisee under this Schedule 11.2 to provide information to the Secretary of State shall not apply if the Secretary of State notifies the Franchisee that he has received the relevant information directly from any other person (including Network Rail or RSP). The Franchisee shall, if the Secretary of State so requests, confirm or validate any such information which is received from any such other person.

13.4 The Franchisee shall promptly advise the Secretary of State of any changes that are to be made to its systems or processes or the systems and processes of the RSP that will, in the reasonable opinion of the Franchisee and the Franchisee, materially affect the continuity of any of the records that are provided pursuant to this Schedule 11.2. Any such advice shall include an assessment of the materiality of the relevant change.

14. Compatibility of Information

14.1 All financial, operational or other information, and any data and records required to be provided to the Secretary of State under the Franchise Agreement shall be provided, if so requested by the Secretary of State, in a form compatible with the Secretary of State's electronic data and records systems on the Start Date, as modified from time to time in accordance with paragraph 3 of Schedule 13.1 (Rail Industry Initiatives).

14.2 The Franchisee shall ensure that the interconnection of such systems or the provision of such information, data and records to the Secretary of State under the Franchise Agreement will not result in any infringement of any third party Intellectual Property Rights to which its systems or such information, data or records may be subject.

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15. **Environmental Information**

15.1 **Environmental Information Data Collection Plan**

(a) The Franchisee shall, by no later than three (3) months after the Start Date, provide a report to the Secretary of State setting out:

(i) which measures included in the Dataset the Franchisee is unable to provide, despite using reasonable endeavours to do so (**"Excluded Data"**);

(ii) for each item of Excluded Data, the technical, operational or commercial reason why the Franchisee is unable to provide the Excluded Data; and

(iii) a plan (**"Environmental Data Collection Plan"**) detailing, in relation to each item of Excluded Data, the actions which the Franchisee would need to take in order to be able to provide such Excluded Data, the Franchisee's best estimate of the cost of taking such action and the date by which, if such actions were taken, the Franchisee would be able to begin providing such Excluded Data to the Secretary of State.

(b) The Dataset, excluding any measures which the Secretary of State agrees, acting reasonably, that the Franchisee is, despite using reasonable endeavours, unable to provide, shall be referred to as the **"Initial Dataset"**.

(c) The Secretary of State may require:

(i) the Franchisee to implement the Environmental Data Collection Plan in whole or in part; and/or

(ii) the Franchisee to take such other actions as, in the reasonable opinion of the Secretary of State, would enable the Franchisee to provide any item of Excluded Data,

following which the relevant item of Excluded Data will form part of the Initial Dataset.

(d) Where the Franchisee is:

(i) undertaking works, whether at a Station or Depot or in respect of rolling stock;

(ii) procuring rolling stock; or

(iii) taking any other action which could enable the Franchisee to provide any items of Excluded Data in a cost effective manner,

the Franchisee will use reasonable endeavours to do so in a manner which would enable the Franchisee to provide any relevant item of Excluded Data (and any item of Excluded Data which the Franchisee becomes able to provide as a result will, with effect from the date on which the Franchisee becomes able to provide the same, form part of the Initial Dataset).

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(e) With effect from the Start Date the Franchisee shall measure and collect the data included in the Initial Dataset.

(f) The Franchisee may, in its discretion, measure and collect additional data provided that the minimum required under the Initial Dataset is adhered to and the Franchisee will co-operate with the Secretary of State to seek to identify improvements in the efficiency and/or cost effectiveness of the collection of the data in the Dataset.

(g) The Franchisee shall ensure that the form of measurement of the Initial Dataset enables it to report a consolidated periodic or annual usage figure to the Secretary of State as specified for each measure in paragraph 1 of Appendix 1 to this Schedule 11.2.

15.2 **Environmental Impact Monitoring Report and Environmental Impact Monitoring Audit**

(a) The Franchisee shall submit to the Secretary of State a report setting out the result of the data collection of the Initial Dataset required by this paragraph 15 in accordance with the applicable granularity and regularity specified in paragraph 1 of Appendix 1 to this Schedule 11.2 (the **"Environmental Impact Monitoring Report"**) within three (3) months following the end of each Franchisee Year.

(b) The Franchisee shall procure a suitably qualified independent body (such independent body to be appointed only with the prior written approval of the Secretary of State) to undertake an annual independent written audit of the data provided in the Environmental Impact Monitoring Report and the collection methodology of the Initial Dataset in respect of each Franchisee Year (the **"Environmental Impact Monitoring Audit"**).

(c) The Franchisee shall procure that the independent body appointed pursuant to paragraph 15.2(b) includes in the Environmental Impact Monitoring Audit:

(i) a retrospective assessment (covering the Franchisee Year to which the audit relates) of the Franchisee's data collection methodology and level of data granularity carried out in accordance with this paragraph 15.2 and any recommendations by the independent body in respect of such methodology;

(ii) a verification of the accuracy of past data submissions made in respect of the Initial Dataset and as summarised in the Environmental Impact Monitoring Report; and

(iii) an assessment of the Franchisee's proposed data collection methodology and level of data granularity for the following Franchisee Year's data collection, and

(iv) where the independent body has identified as part of its audit any errors, discrepancies or concerns with any of the items described in paragraphs 15.2(c)(i) to (iii) above, whether these are, in the reasonable opinion of the independent body undertaking the audit material or minor errors, discrepancies or concerns.

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(d) The Franchisee shall submit a copy of the Environmental Impact Monitoring Audit to the Secretary of State at the same time as Environmental Impact Monitoring Report is submitted in accordance with paragraph 15.2(a) above.

(e) Where the Environmental Impact Monitoring Audit highlights errors, discrepancies or concerns with any of the items described in paragraphs 15.2(c)(i) to (iii) above, the Franchisee shall, at the Franchisee's cost:

(i) **in the case of minor errors, discrepancies or concerns which are capable of rectification without material additional expenditure** - rectify such minor errors, discrepancies or concerns and resubmit the relevant Environmental Impact Monitoring Report updated to address these to the Secretary of State as soon as reasonably practicable, and in any event within ten (10) Weekdays, following the date of the submission of the Environmental Impact Monitoring Audit to the Secretary of State so that there is a complete and accurate record of the data in question;

(ii) **in the case of material errors, discrepancies or concerns which are capable of rectification -** rectify such material errors, discrepancies or concerns and resubmit the relevant Environmental Impact Monitoring Report updated to address these to the Secretary of State as soon as reasonably practicable, and in any event within ten (10) Weekdays, following the date of submission of the Environmental Impact Monitoring Audit to the Secretary of State so that there is a complete and accurate record of the data in question; and

(iii) **in the case of concerns in relation to the Franchisee's data collection methodology and level of data granularity for the forthcoming Franchisee Year's data collection –** make such amendments to such methodology as recommended in the Environmental Impact Monitoring Audit so as to address those concerns.

16. Environmental Impact Targets

16.1 Environmental Impact Targets set by the Secretary of State

The Secretary of State sets out in paragraph 2 of Appendix 1 of this Schedule 11.2 the targets for improving the environmental performance of the Franchise (the **"Environmental Impact Targets"**), and the Franchisee shall meet such Environmental Impact Targets during the Franchise Period.

16.2 Performance against the Environmental Impact Targets

(a) For each Franchisee Year the Secretary of State shall determine the Franchisee's performance against each Environmental Impact Target on an annual basis (within two (2) Reporting Periods of receipt of the Environmental Impact Monitoring Report) by comparing:

(i) **for traction carbon emissions:** the Franchisee's performance set out in the Environmental Impact Monitoring Report (as updated following the Environmental Impact Monitoring Audit) against the

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relevant Environmental Impact Target for the relevant Franchisee Year, in accordance with the annual trajectory specified in the Sustainable Development Strategy;

(ii) **for non-traction energy use:** the Franchisee's performance as set out in the Environmental Impact Monitoring Report (as updated following the Environmental Impact Monitoring Audit) against the relevant Environmental Impact Targets;

(iii) **for waste:** the Franchisee's performance as set out in the Environmental Impact Monitoring Report (as updated following the Environmental Impact Monitoring Audit) against the relevant Environmental Impact Targets;

(iv) **for mains water:** for the second (2nd) Franchisee Year, the number of automatic water meters installed against the total number of water meters. These details shall be reported by the Franchisee within three (3) months of the end of the second (2nd) Franchisee Year. For subsequent Franchisee Years, the Franchisee's performance as set out in the Environmental Impact Monitoring Report (as updated following the Environmental Impact Monitoring Audit) against the relevant Environmental Impact Targets.

(b) For the purposes of undertaking the comparison pursuant to paragraph 16.2(a), the results referred to in paragraphs 16.2(a)(i) to (iii) (as the case may be) shall be rounded up to one decimal place with the midpoint (that is, 4.45) rounded upwards (that is, 4.5).

(c) As soon as reasonably practicable following the Start Date and in any event within six (6) months of the Start Date, the Franchisee shall produce and provide to the Secretary of State for approval an implementation plan for the duration of the Franchise Period which is capable of achieving each of the Environmental Impact Targets each Franchisee Year (as such implementation plan may be revised in accordance with paragraph 16.3 (the **"Environmental Impact Targets Plan"**)).

(d) Following the Secretary of State's approval, the Franchisee shall use all reasonable endeavours to implement the Environmental Impact Targets Plan (including any such plan which is revised in accordance with paragraph 16.2(e)) in order to achieve the Environmental Impact Targets.

(e) Notwithstanding the requirements of this paragraph 16.2, the Franchisee shall review its then current Environmental Impact Targets Plan and revise such plan as necessary by the end of the fifth (5th) Franchisee Year to ensure that such plan, in the reasonable opinion of the Secretary of State, is capable of achieving each Environmental Impact Target in each Franchisee Year.

16.3 **Remedial Actions**

(a) In the event that an Environmental Impact Target is not met in any Franchisee Year, the Franchisee shall as soon as reasonably practicable produce and provide to the Secretary of State a revised Environmental Impact Targets Plan which, in the reasonable opinion of the Secretary of State, is capable of achieving the Environmental Impact Targets.

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(b) The Franchisee shall use all reasonable endeavours to implement the revised Environmental Impact Targets Plan, which shall be the Environmental Impact Targets Plan for the purposes of the Franchise Agreement.

16.4 **Publication**

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

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APPENDIX 1 TO SCHEDULE 11.2

1. **Environmental Impact Monitoring Dataset**

Environmental Impact Monitoring Dataset SUBJECT (UNIT)		GRANULARITY	REGULARITY
TRACTION	EC4T (kWh)	Breakdown per distinct fleet - metered	Four (4) week period
	EC4T (kWh)	Breakdown per distinct fleet - unmetered	Four (4) week period
	Gas-oil (litres)	Breakdown per distinct fleet	Four (4) week period
NONTRACTION	Electricity (kWh)	Total	Four (4) week period or monthly
	Gas (kWh)	Total	Four (4) week period or monthly
	Gas-oil (litres)	Total	Four (4) week period or monthly
CARBON	Scope 1 emissions (tonnes)	Total	Annual
	Scope 2 emissions (tonnes)	Total	Annual
	Embodied carbon in new infrastructure projects over the amount set out in paragraph 10.3(b) of Schedule 13.1 (Rail Industry Initiatives)	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

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Environmental Impact Monitoring Dataset SUBJECT (UNIT)		GRANULARITY	REGULARITY
ENVIRONMENTAL MANAGEMENT SYSTEM	Enforcement/information Notices	Total	Annual
	Environmental fines or prosecutions	Total	Annual
	Environmental incidents reported through EMS	Total	Annual
	Environmental training records % personnel briefed/trained	Total	Annual

2. **Environmental Impact Targets**

Targets	Traction Carbon Emissions	Non-Traction Energy Use	Waste	Mains Water
	Meet the annual traction carbon trajectory for CO_2E per vehicle/km to be populated by Bidders as required under Sub-Plan 1.2 (Fleet Strategy) of the ITT.	For the first (1st) Franchisee Year is a reduction in kilowatt hours (kWh) of two point five per cent (2.5%) against the 2014 baseline figure of 36,795,922 kWh. For each subsequent Franchisee Year, a reduction in kilowatt hours (kWh) of two point five per cent (2.5%) against the preceding Franchisee Year.	From the end of the second (2nd) Franchisee Year, the Franchisee must send zero waste to landfill and must recycle or prepare for re-use, ninety per cent (90%) of waste (by weight) per Franchisee Year.	By the end of the second (2nd) Franchisee Year, the Franchisee must install automatic meter readings (AMR) for all water meters, where practicable. The Franchisee shall determine a baseline of water consumption by the end of the third (3rd) Franchisee Year, such baseline to be agreed with the Secretary of State. The Franchisee shall develop a target to reduce water consumption against the agreed baseline referred to above by the end of the fourth (4th) Franchisee Year, such target to be agreed with the Secretary of State.

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APPENDIX 2 TO SCHEDULE 11.2

Operational Information

Information about the Performance of the Franchisee

1. The Franchisee shall at all times during the Franchise Term maintain records in relation to its operational performance under the Franchise Agreement, covering the areas and the information described in this Appendix 2. Such information shall include details as to whether or not any curtailment, diversion, delay or failure to attain any connection is attributable, in the Franchisee's opinion, to either a Force Majeure Event or the implementation of a Service Recovery Plan.

2. The Franchisee shall, subject to paragraph 3, provide to the Secretary of State the information set out in the following tables at the frequency specified in the Column of each such table headed **"When information to be provided"**.

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

   (a) such level of disaggregation (including by Route or Service Group) as is reasonably specified by the Secretary of State; and

   (b) any particular day, week or other longer period as is reasonably specified by the Secretary of State.

4. The following key shall apply to the table in this Appendix 2:

   A = Information to be provided on or before any Passenger Change Date;

   B = Information to be provided for every Reporting Period within ten (10) Weekdays of the last day of each Reporting Period; and

   C = Information to be provided annually within ten (10) Weekdays of the last day of each Franchisee Year.

   Table 1 - Operational Information

Information to be provided	**Information (format)**[94]	**When information to be provided**
Number of Passenger Services		
Number of Passenger Services in the Timetable	[number]	B

[94] **Note to Bidders:** Bidder to populate.

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Information to be provided	Information (format)[94]	When information to be provided
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 Cancellation attributable to the Franchisee's implementation of a Service Recovery Plan	[number]	B
Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Partial Cancellation attributable to the Franchisee's implementation of a Service Recovery Plan	[number]	B
Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Network Rail Cancellation	[number]	B
Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Network Rail Partial Cancellation	[number]	B
Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Disputed Cancellation	[number]	B
Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Disputed Partial Cancellation	[number]	B
Number of Disputed Cancellations and Disputed Partial Cancellations for the twelve (12) preceding Reporting Periods for which the attribution remains in dispute between Network Rail and the Franchisee	[minutes]	B

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Information to be provided	Information (format)[94]	When information to be provided
Number of Disputed Cancellations and Disputed Partial Cancellations from the twelve (12) preceding Reporting Periods for which disputed attribution has been resolved or determined since the Franchisee's previous report pursuant to paragraph 2.1 of Schedule 7.1 (Performance Benchmarks) including whether each relevant Disputed Cancellation and/or Disputed Partial Cancellation was attributed to Network Rail or to the Franchisee	[minutes]	B
Where there is a difference between the Timetable and the Plan of the Day on any day the following: (a) the fact of such difference; and (b) the number of: (i) Passenger Services affected; and (ii) Cancellations or Partial Cancellations which would have arisen if the Timetable on that day had been the same as the Plan of the Day	[number]	B
Where there is a difference between the Plan of the Day and the Enforcement Plan of the Day on any day: (a) the fact of such difference; (b) the number of: (i) Passenger Services affected; and (ii) Cancellations or Partial Cancellations which would have arisen if the Plan of the Day had been the same as the Enforcement Plan of the Day	[number]	B

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Information to be provided	Information (format)[94]	When information to be provided
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
Short Formation		
Number of Short Formation Peak Passenger Services that have less than the required Passenger Carrying Capacity specified in the Train Plan	[number]	B
Number of Short Formation Peak Passenger Services that have less than the required Passenger Carrying Capacity specified in the Train Plan attributable to the Franchisee's implementation of a Service Recovery Plan	[number]	B
Number of Short Formation Peak Passenger Services that have less than the required Passenger Carrying Capacity specified in the Train Plan attributable to the occurrence of a Force Majeure Event	[number]	B
Number of Short Formation Peak Passenger Services scheduled (excluding Cancellations or Partial Cancellations)	[number]	B
Minutes Delay and Punctuality		
Number of Minutes Delay attributable to the Franchisee	[minutes]	B
Number of Minutes Delay attributable to Network Rail;	[minutes]	B

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Information to be provided	Information (format)[94]	When information to be provided
Number of Minutes Delay attributable to any other Train Operator	[minutes]	B
Number of Minutes Delay for such Reporting Period for which the attribution is in dispute between Network Rail and the Franchisee	[minutes]	B
Number of Minutes Delay for the twelve (12) preceding Reporting Periods for which the attribution remains in dispute between Network Rail and the Franchisee	[minutes]	B
Number of Minutes Delay from the twelve (12) preceding Reporting Periods for which disputed attribution has been resolved or determined since the Franchisee's previous report pursuant to paragraph 9.1 of Schedule 7.1 (Performance Benchmarks) and the number of such Minutes Delay attributed to each of the Franchisee and Network Rail as a result of such resolution or determination	[minutes]	B
Number of Minutes Delay attributed to the occurrence of a Force Majeure Event	[minutes]	B
Train Mileage		
Planned Train Mileage	[mileage]	A
Actual Train Mileage	[mileage]	B
Actual Train Mileage using Driver Controlled Operation	[mileage]	B

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APPENDIX 3 TO SCHEDULE 11.2

Summary - Reporting and other requirements relating to the Maintenance and Provision of Information and Records

This Appendix contains a summary of the obligations on the Franchisee throughout this Agreement in respect of the provision of information to the Secretary of State . This summary is for guidance only.

Reference	Summary of Obligation
Paragraph 12.2(a) of Schedule 1.1 (Franchise Services and Service Development).	Requirement for Franchisee to notify Secretary of State of the exercise of timetable development rights.
Paragraph 17.2 of Schedule 1.1 (Franchise Services and Service Development).	Requirement for Franchisee to provide informed opinion in respect of a new or amended Train Service Requirement.
Paragraph 7.4 of Schedule 1.2 (Operating Obligations).	Reporting requirements in respect of the requirement to actively manage NR's performance of its contractual relationship with the Franchisee i.e. reviewing delivery of local output commitment by NR and co-operating with NR in the development of a Performance Strategy Plan and any recovery plans necessary.
Paragraphs 8 and 9 of Schedule 1.4 (Passenger Facing Obligations)	Requirements to publish performance data and complaints and handling data.
Paragraph 11 of Schedule 1.7 (Stations).	Requirement to maintain and provide records regarding Station improvement measures and measures taken to improve Station environments.
Paragraph 2.2(e) of Schedule 2.2 (Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases)	Obligation to provide justification of the Franchisee's proposed rolling stock maintenance strategy and provision of analysis of whole life costs.
Paragraph 3.5(b) of Schedule 2.2 (Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases).	Requirement to produce a Delayed Cascade Mitigation Plan.
Paragraph 4 of Schedule 4 (Accessibility and Inclusivity).	Recording of obligations relating to persons with disabilities.
Paragraphs 1 and 2 of Schedule 5.8 (Fares Regulation Information and Monitoring)	Requirement to record and monitor Prices and Child Prices of Commuter Fares and Protected Fares.

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Reference	Summary of Obligation
Paragraph 5 of Schedule 6.2 (Committed Obligations) Part 2 (Special Terms related to Committed Obligations)	Requirement to provide such evidence of compliance with Committed Obligations as the Secretary of State may request.
Paragraph 2 of Schedule 7.1 (Performance Benchmarks)	Reporting requirements relating to Cancellations Benchmarks and Annual Cancellations Benchmarks.
Paragraph 9 of Schedule 7.1 (Performance Benchmarks)	Reporting requirements relating to TOC Minute Delay Benchmarks and Annual TOC Minute Delay Benchmarks.
Paragraph 15 of Schedule 7.1 (Performance Benchmarks)	Reporting requirements relating to Short Formation Benchmarks and Annual Short Formation Benchmark.
Paragraph 18.6 of Schedule 7.1 (Performance Benchmarks)	Reporting requirements relating to the implementation of a Service Recovery Plan.
Paragraph 19.9 of Schedule 7.1 (Performance Benchmarks)	Requirement to produce an Action Plan to secure a Required Performance Improvement.
Paragraph 3 of Schedule 7.2 (National Rail Passenger Surveys, Customer Report and CCIF Scheme)	Requirement to provide to the Secretary of State any proposed revisions to the Customer and Stakeholder Engagement Strategy.
Paragraph 4.1 of Schedule 7.2 (National Rail Passenger Surveys, Customer Report and CCIF Scheme)	Requirement to produce and publish a Customer Report.
Paragraph 5.1-5.3 of Schedule 7.2 (National Rail Passenger Surveys, Customer Report and CCIF Scheme)	Requirement to provide details of any CCIF Scheme proposed by the Franchisee.
Paragraph 6.1 of Schedule 7.2 (National Rail Passenger Surveys, Customer Report and CCIF Scheme)	Requirement to publish details of the Franchisee's level of adherence to scheduled ticket office opening hours and performance in respect of Passenger Assistance service.
Paragraph 6.2 and 6.3 of Schedule 7.2 (National Rail Passenger Surveys, Customer Report and CCIF Scheme)	Requirement to publish NRPS scores achieved by the Franchisee.
Paragraph 2 of Schedule 8.2 (Profit Share Mechanism)	Requirements relating to Relevant Profit Reports.
Paragraphs 3 to 4.2 of Schedule 10.1 (Procedure for remedying a Contravention of the Franchise Agreement)	Obligation to provide certain information in a Remedial Plan/Remedial Plan Notice.

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Reference	Summary of Obligation
Paragraph 4 of Schedule 10.3 (Force Majeure and Business Continuity)	Requirement to provide a Business Continuity Plan.
Paragraph 8 of Schedule 13.1 (Rail Industry Initiatives)	Requirement to provide breakdown of SMEs.
Paragraph 9 of Schedule 13.1 (Rail Industry Initiatives)	Requirement to provide record of apprenticeships offered.
Paragraph 10.1(f) of Schedule 13.1 (Rail Industry Initiatives)	Obligation to provide an improvement plan in respect of the targets against the Sustainable Development Strategy.
Paragraph 10.1(d) of Schedule 13.1 (Rail Industry Initiatives)	Requirement to submit a copy of the assessment report produced by an independent body in respect of performance against the Rail Safety and Standard's Board's Sustainable Development Self-Assessment Framework.
Paragraph 10.1(h) of Schedule 13.1 (Rail Industry Initiatives)	Obligation to provide progress reports in respect of delivering a sustainable franchise.
Paragraph 10.1(j) of Schedule 13.1 (Rail Industry Initiatives)	Requirement on the Franchisee to publish its Sustainable Development Strategy on the request of the Secretary of State.
Paragraph 10.2(b) of Schedule 13.1 (Rail Industry Initiatives)	Requirement to provide copies of the certification audit reports and a copy of the ISO50001 Energy Review
Paragraph 12.6 of Schedule 13.1 (Rail Industry Initiatives)	Requirement to provide the Secretary of State with a report on the performance of the Mobile Communications Services.
Paragraphs 2.1 and 3 of Schedule 15.1 (Reletting Provisions);	Obligation to provide certain information to the Secretary of State in respect of a reletting of the franchise.
Paragraph 1.1 of Schedule 15.3 (Handover Package)	Requirement to produce and maintain the Handover Package
Paragraph 2 of Schedule 15.3 (Handover Package)	Requirement to provide a director's certificate in each Franchise Year
Paragraph 9 of Schedule 15.4 (Provisions Applying on and after Termination)	Requirement to provide passenger numbers information, CRM Data and Yield Management Data on expiry of the Franchise Period.
Paragraph 2.2 of Appendix 2 (Form of	Obligation to prepare and provide a net

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Reference	Summary of Obligation
Supplemental Agreement) to Schedule 15.4 (Provisions Applying on and after Termination)	asset statement under the supplemental agreement.

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SCHEDULE 12

Financial Covenants and Bonds

Schedule 12:	Financial Covenants and Bonds
	Appendix 1 to Schedule 12: Form of Performance Bond
	Appendix 2 to Schedule 12: Form of Season Ticket Bond

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SCHEDULE 12

Financial Covenants and Bonds

1. **Obligations**

Except to the extent that the Secretary of State may otherwise agree from time to time, the Franchisee shall not:

(a) incur any liability or financial indebtedness except in the ordinary course of providing and operating the Franchise Services;

(b) make any loan or grant any credit, or have or permit to subsist any loan or any credit, to any person (other than the deposit of cash with a Bank as permitted under paragraph (d) or to an employee in the ordinary course of its business);

(c) create or permit to subsist any Security Interest over any of its assets or property or give any guarantee or indemnity to or for the benefit of any person or otherwise assume liability or become obliged (actually or contingently) in respect of any obligation of any other person, in each case other than in the ordinary course of the business of providing and operating the Franchise Services; or

(d) create or acquire any subsidiary or make or have any investment in any other entity, except for the deposit of cash with a Bank.

2. **Financial Ratios**

2.1 The Franchisee covenants that as at the end of each Reporting Period during the Franchise Term:

(a) the ratio of its Modified Revenue to its Actual Operating Costs during the Preceding thirteen (13) Reporting Periods of the Franchise Term (or, prior to the end of the thirteenth such Reporting Period, during all preceding Reporting Periods) will equal or exceed the ratio of 1.050:1; and

(b) the ratio of its Forecast Modified Revenue to its Forecast Operating Costs for the next thirteen (13) Reporting Periods (or, where there are less than thirteen (13) Reporting Periods remaining in the Franchise Term, for all such remaining Reporting Periods) will equal or exceed the ratio of 1.050:1; and

for the purposes of this paragraph 2 Preceding thirteen (13) Reporting Periods means the Reporting Period just ended and the preceding twelve (12) Reporting Periods of the Franchise Term.

2.2 If:

(a) in respect of any Reporting Period, the Franchisee fails pursuant to paragraph 9.2(b) of Schedule 11.2 (Management Information) to provide a statement of calculation of performance against the covenants set out in paragraph 2.1(b) for each of the next thirteen (13) Reporting Periods (or, where there are less than thirteen (13) Reporting Periods remaining in the Franchise Term, for all such remaining Reporting Periods) following any such Reporting Period; or

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(b) the Secretary of State reasonably considers that any particular item of Forecast Modified Revenue or Forecast Operating Cost used for the purposes of determining the Franchisee's performance against the covenants set out in paragraph 2.1(b) has not been accounted for on a reasonable basis (including where the accounting treatment looks to the form rather than the substance),

then the Secretary of State may:

(c) in the circumstances referred to in paragraph 2.2(a) above reasonably determine the ratio of the Forecast Modified Revenue and Forecast Operating Cost on the basis of information available to him; or

(d) in the circumstances referred to in paragraph 2.2(b) above require any such particular item of Forecast Modified Revenue or Forecast Operating Cost to be adjusted in a manner which is fair and reasonable and, so far as reasonably determinable, on the basis on which such particular item of Forecast Modified Revenue or Forecast Operating Cost should have been accounted for by the Franchisee as reasonably determined by the Secretary of State,

in either case after having exercised his rights under paragraph 9.7 of Schedule 11.2 (Management Information) to the extent that he considers appropriate in the circumstances for the purpose of making any such reasonable determination.

3. **Breach of Financial Ratios**

3.1 The Franchisee shall not during any Lock-up Period, do any of the following without the Secretary of State's consent:

(a) declare or pay any dividend (equity or preference) or make any other distribution including surrendering any taxable losses to any of its Affiliates or pay any of its Affiliates in respect of taxable losses that they wish to surrender to the Franchisee, without the prior written consent of the Secretary of State;

(b) pay management charges to any of its Affiliates in excess of those specified in the Initial Business Plan; or

(c) make payment under any intra-group borrowings,

provided that, during the Lock-up Period, the Franchisee may repay any borrowing and/or make any payment in respect of interest accrued on such borrowing, in each case relating to the Agreed Funding Commitment in accordance with the Funding Plan (each as defined in the Funding Deed).

3.2 **"Lock-up Period"** means any period from the time when either of the ratios referred to in paragraphs 2.1(a) and 2.1(b) falls below the ratio of 1.070:1 until the time at which the Secretary of State is satisfied that the relevant ratio is again above the ratio of 1.070:1.

3.3 Failure by the Franchisee at any time to comply with either of the ratios referred to in paragraph 2.1 shall be an Event of Default under paragraph 1.8 of Schedule 10.2 (Procedure for Events of Default and Termination Events).

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4. **Performance Bond**

4.1 The Franchisee shall procure that there shall be a valid and effective Performance Bond in place with effect from the date of the Franchise Agreement, and the Franchisee shall procure that there shall be a valid and effective Performance Bond in place:

(a) throughout the Franchise Period; and

(b) for a period that is the later of the date:

(i) falling one (1) month after the determination of the Purchase Price (as defined in any Supplemental Agreement) under the Supplemental Agreement; and

(ii) that is seven (7) Reporting Periods after the end of the Franchise Period.

The provisions of this paragraph 4.1 shall survive the termination of the Franchise Agreement.

4.2 Each Performance Bond shall:

(a) be substantially in the form of Appendix 1 (Form of Performance Bond) to this Schedule 12;

(b) be issued by a Bond Provider;

(c) in the case of the Initial Performance Bond, have a value of fifteen million pounds (£15,000,000), and in the case of any Replacement Performance Bond, have a value equal to the amount determined under paragraph 4.4; and

(d) have a minimum duration of three (3) years.

4.3 **Provision of Replacement Performance Bond**

(a) The Franchisee may replace the then current Performance Bond at any time.

(b) The Franchisee shall replace each Performance Bond at least six (6) months prior to its scheduled expiry with a Replacement Performance Bond.

(c) If at any time the Secretary of State reasonably considers the Bond Provider under the then current Performance Bond to be unacceptable, the Secretary of State may require the Franchisee within twenty (20) Weekdays to procure the execution and delivery of a new Performance Bond by a Bond Provider acceptable to the Secretary of State.

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4.4 **Amount of Replacement Performance Bond**

The value of any Replacement Performance Bond shall be as follows:

(a) in relation to the first Replacement Performance Bond, an amount which is fifteen million pounds (£15,000,000) x RPI; and

(b) in relation to each subsequent Replacement Performance Bond an amount which is the amount of the Replacement Performance Bond that it is replacing x RPI,

and, for the purpose of this paragraph 4.4, RPI shall be the quotient of the Retail Prices Index for the month for which the Retail Prices Index has most recently been determined on the date on which the Franchisee is to replace the Performance Bond divided by the Retail Prices Index for the month in which the Performance Bond that is being replaced was required to be delivered to the Secretary of State.

4.5 **Demands under the Performance Bond**

(a) The Performance Bond shall be on terms that it is payable without further enquiry by the Bond Provider to the Secretary of State in full in London on first written demand by the Secretary of State on the Bond Provider, certifying as to any one or more of the following:

(i) that the Franchise Agreement has:

(A) either terminated or expired and, in either case, in circumstances where there are liabilities or obligations outstanding from the Franchisee to the Secretary of State; and/or

(B) terminated solely as a consequence of the occurrence of one or more Events of Default or a Termination Event of a type described in paragraph 2.2 of Schedule 10.2 (Procedure for Events of Default and Termination Events) or pursuant to Clause 4.2(b) or 4.3(b) of the Conditions Precedent Agreement in circumstances where the Secretary of State has incurred or expects to incur additional costs in connection with early termination of the Franchise;

(ii) that a railway administration order has been made in relation to the Franchisee pursuant to Sections 60 to 62 of the Act;

(iii) the occurrence of an Event of Default:

(A) under paragraph 1.12(a) of Schedule 10.2 (Procedure for Events of Default and Termination Events) in relation to the Performance Bond; or

(B) under paragraph 1.12(b) of Schedule 10.2 (Procedure for Events of Default and Termination Events),

whether or not the Franchise Agreement is, or is to be, terminated as a result thereof;

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(iv) that the Franchisee has failed to perform or comply with its obligations under any Supplemental Agreement;

(v) that the Franchisee has failed to provide a replacement Performance Bond complying with this paragraph 4 at least six (6) months prior to the scheduled expiry of the existing Performance Bond; or

(vi) the Franchisee has failed to procure the execution and delivery of a new Performance Bond by a Bond Provider acceptable to the Secretary of State when required to do so in accordance with paragraph 4.3(c).

(b) If the Secretary of State makes a demand under the Performance Bond, he shall, within a reasonable period, account to the Franchisee for the proceeds of such Performance Bond less the amount of the losses, liabilities, costs or expenses which, in the reasonable opinion of the Secretary of State, the Secretary of State or a Successor Operator has incurred or suffered or may be reasonably likely to incur or suffer including as a result of:

(i) early termination of the Franchise Agreement; and/or

(ii) any failure by the Franchisee to perform or comply with any of its obligations to the Secretary of State under the Franchise Agreement or to a Successor Operator under the Supplemental Agreement.

(c) Nothing in paragraph 4.5(b) shall oblige the Secretary of State to account to the Franchisee for the proceeds of such Performance Bond in the circumstances described in paragraphs 4.5(a)(iii), 4.5(a)(v) or 4.5(a)(vi) until such time as the Franchisee has procured a replacement Performance Bond which complies with the requirements of paragraph 4.

4.6 **Characteristics of Performance Bond Provider**

(a) In determining whether a Bond Provider under any replacement Performance Bond is acceptable, the Secretary of State may exercise his discretion and shall not be obliged to accept a Bond Provider accepted under any previous Performance Bond.

(b) The Franchisee shall provide such information relating to any Bond Provider or proposed Bond Provider as the Secretary of State may require from time to time.

4.7 **Provision of more than one Performance Bond**

The Franchisee shall be permitted subject to the prior consent of the Secretary of State (such consent not to be unreasonably withheld or delayed) to meet its obligations to provide a valid and effective Performance Bond by providing up to three valid and effective Performance Bonds, the aggregate value of which at all times is equal to the value determined under paragraph 4.4. With the exception of the value of each individual Performance Bond the provisions of the Franchise Agreement in relation to the Performance Bond shall be deemed to apply separately in relation to each such Performance Bond. Where more than one Performance Bond is provided the Secretary of State shall have a discretion as to

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whether to make a demand under some or all of such Performance Bonds and the extent to which he accounts for the proceeds of each such Performance Bond in accordance with the provisions of paragraph 4.5(b).

5. Season Ticket Bond

5.1 Provision of Season Ticket Bond

The Franchisee shall procure that, for each Franchisee Year throughout the Franchise Term and during the relevant call period specified in Clauses 4 and 5 of the Season Ticket Bond, there shall be in place a valid and effective Season Ticket Bond substantially in the form of Appendix 2 (Form of Season Ticket Bond) to this Schedule 12.

5.2 Provision of Replacement Season Ticket Bond

No later than one (1) Reporting Period before the expiry of each Bond Year, the Franchisee shall provide to the Secretary of State (or procure that the Secretary of State receives) a Season Ticket Bond for the following Bond Year:

(a) substantially in the form of Appendix 2 (Form of Season Ticket Bond) to this Schedule 12 (or in any other form acceptable to the Secretary of State in his discretion);

(b) duly executed and delivered by a Bond Provider acceptable to the Secretary of State; and

(c) in an amount determined in accordance with paragraph 5.3.

5.3 Amount of Season Ticket Bond

The amount of any Season Ticket Bond shall vary for each Reporting Period during the Bond Year to which the Season Ticket Bond relates in accordance with the following formula:

$$STBA = STL \; x \; \frac{((RPI \; x \; 100) + k}{100} \; x \; Z$$

where:

STBA equals the amount of the Season Ticket Bond in the relevant Reporting Period;

STL equals in respect of such Reporting Period:

(a) the maximum amount which would be payable by the Franchisee in respect of Season Ticket Fares under and in accordance with a Supplemental Agreement and paragraph 3.3 of Schedule 15.4 (Provisions Applying on and after Termination) and the rights and liabilities of the Franchisee relating to an obligation of carriage under the terms of any Season Ticket Fares which were transferred under a Transfer Scheme relating to that Supplemental Agreement to a Successor Operator at that time; and

(b) the Stored Credit Balance which would be held by the Franchisee,

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if the Franchise Agreement were to terminate on any day during the Reporting Period (the **"Relevant Reporting Period"**) falling thirteen (13) Reporting Periods before such Reporting Period,

provided that for these purposes only:

(i) Season Ticket Fares shall mean any Season Ticket Fare which expires more than seven (7) days after it first comes into effect;

(ii) the Start Date shall be assumed, where relevant, to have occurred before the commencement of the Relevant Reporting Period; and

(iii) if STL cannot reasonably be determined at the time at which the Franchisee is required under paragraph 5.4 to provide its estimate of the amount of the relevant Season Ticket Bond (including because the Relevant Reporting Period has not yet occurred), the Relevant Reporting Period shall be the Reporting Period falling twenty six (26) Reporting Periods before the Reporting Period in the relevant Bond Year;

RPI equals the quotient of the Retail Prices Index for the month for which the Retail Prices Index has most recently been determined at the time the Franchisee is required under paragraph 5.4 to provide its estimate of the amount of the relevant Season Ticket Bond divided by the Retail Prices Index for the month falling twelve (12) months before such month;

k has the value attributed to it in Schedule 5 (Fares) for the Fare Year in which the Reporting Period in the relevant Bond Year falls; and

Z equals +1 or, if the Relevant Reporting Period falls twenty six (26) Reporting Periods before such Reporting Period, an amount equal to:

$$\frac{(RPI\ x 100) + 100}{100}$$

where RPI and k are determined for the twelve (12) months and the Fare Year preceding the twelve (12) months and the Fare Year for which RPI and k are respectively determined above.

5.4 The Franchisee shall supply to the Secretary of State, not later than three (3) Reporting Periods before the end of each Bond Year, its estimate of the amount of the Season Ticket Bond for each Reporting Period during the following Bond Year and shall supply such details as the Secretary of State may request in connection therewith.

5.5 The Franchisee and the Secretary of State shall endeavour to agree the amount of such Season Ticket Bond by no later than two (2) Reporting Periods before the end of each Bond Year. If the Parties are unable to agree the amount of the Season Ticket Bond in respect of any Reporting Period during the following Bond Year, the matter shall be resolved in accordance with the Dispute Resolution Rules.

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5.6 If the amount of the Season Ticket Bond for each Reporting Period during a Bond Year has not been agreed two (2) Reporting Periods before the end of the preceding Bond Year, then, until the amount is agreed or determined in accordance with the Dispute Resolution Rules, the amount thereof shall be the amount determined by the Secretary of State.

5.7 The Secretary of State and the Franchisee may agree to increase or reduce the amount covered or required to be covered under a Season Ticket Bond from time to time.

5.8 **Demands under the Season Ticket Bond**

(a) The Season Ticket Bond shall be on terms that it is payable without further enquiry by the Bond Provider to the Secretary of State in full in London on first written demand by the Secretary of State on the Bond Provider, certifying as to any one or more of the following:

(i) that the Franchise Agreement has terminated or expired;

(ii) that a railway administration order has been made in relation to the Franchisee pursuant to Sections 60 to 62 of the Act; or

(iii) that an Event of Default:

(A) under paragraph 1.12(a) of Schedule 10.2 (Procedure for Events of Default and Termination Events) in relation to the Season Ticket Bond; or

(B) under paragraph 1.12(c) of Schedule 10.2 (Procedure for Events of Default and Termination Events),

has occurred (whether or not the Franchise Agreement is, or is to be, terminated as a result thereof).

(b) If the Secretary of State makes a demand under the Season Ticket Bond, he shall account to the Franchisee for the proceeds of such Season Ticket Bond remaining following settlement of all liabilities or obligations of the Franchisee in respect of any Season Ticket Fares and/or Stored Credit Balance that may be transferred or is transferred whether under a Transfer Scheme (or otherwise) to a Successor Operator.

5.9 **Characteristics of Season Ticket Bond Provider**

(a) In determining whether a Bond Provider under any replacement Season Ticket Bond is acceptable, the Secretary of State may exercise his discretion and shall not be obliged to accept a Bond Provider accepted under any previous Season Ticket Bond.

(b) The Franchisee shall provide such information relating to any Bond Provider or proposed Bond Provider as the Secretary of State may require from time to time.

(c) The Secretary of State agrees that, subject to receipt of a Season Ticket Bond in an amount determined in accordance with paragraph 5.3 in respect of any Bond Year, he shall release the relevant Bond Provider from any liability under the Season Ticket Bond provided in relation to the

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preceding Bond Year on the expiry of such Bond Year, provided that no Event of Default has occurred and is unremedied or continuing.

5.10 **Meaning of Reporting Period**

References in this paragraph 5 to a Reporting Period shall be construed, where the Franchisee so requests and the Secretary of State consents (such consent not to be unreasonably withheld), to be references to each consecutive seven (7) day period (or such other period as may be agreed) during such Reporting Period. The Franchisee may only make such a request in respect of a maximum of two (2) Reporting Periods in each Bond Year and only where the amount of the Season Ticket Bond over any such period would, in the reasonable opinion of the Franchisee, differ materially if determined by reference to such seven (7) day periods.

6. **Tax compliance**

6.1 The Franchisee represents and warrants that as at the Start Date, it has notified the Secretary of State in writing of any Occasions of Tax Non-Compliance where the Franchisee (including where the Franchisee is an unincorporated joint venture or consortium, the members of that unincorporated joint venture or consortium) is the Affected Party (as defined in paragraph 6.3 below) or any litigation that it is involved in that is in connection with any Occasions of Tax Non Compliance where the Franchisee (including where the Franchisee is a joint venture or consortium, the members of that joint venture or consortium) is the Affected Party.

6.2 If, at any point during the Franchise Term, an Occasion of Tax Non-Compliance occurs in relation to any Affected Party, the Franchisee shall:

(a) notify the Secretary of State in writing of such fact within five (5) Weekdays of its occurrence; and

(b) promptly provide to the Secretary of State:

(i) details of the steps which the Affected Party is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and

(ii) such other information in relation to the Occasion of Tax Non-Compliance as the Secretary of State may reasonably require.

6.3 For the purposes of this paragraph 6, the following defined terms shall have the following meanings:

"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

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Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under s.132A Social Security Administration Act 1992;

"General Anti-Abuse Rule" means:

(a) the legislation in Part 5 of the Finance Act 2013; and

(b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;

"Halifax Abuse Principle" means the principle explained in the CJEU Case C-255/02 Halifax and others;

"Occasion of Tax Non-Compliance" means, in respect of the Franchisee (including where Franchisee is an unincorporated joint venture or consortium, the members of that unincorporated joint venture or consortium) or the Franchisee (such party being the "Affected Party"):

(a) any tax return of the Affected Party submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 is found 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; and

"Relevant Tax Authority" means HM Revenue & Customs, or, if applicable, a tax authority in the jurisdiction in which the

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Affected Party is established.

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APPENDIX 1 TO SCHEDULE 12

Form of Performance Bond

[DOCUMENT "PB" - PERFORMANCE BOND]

Dated 20[●]

[BOND PROVIDER]

_____

Performance Bond

_____

Secretary of State for Transport
33 Horseferry Road
London SW1P 4DR

WITHDRAWN JANUARY 2026

To: Secretary of State for Transport
33 Horseferry Road
London
SW1P 4DR
(the Secretary of State)

Whereas:

We are informed that you have entered into a franchise agreement dated [ ] (the **"Franchise Agreement"**) with [**name of Franchisee**] (the **"Franchisee"**). Pursuant to the Franchise Agreement the Franchisee will provide certain railway passenger services.

We are further informed that the Franchise Agreement requires that the Secretary of State receives a duly executed performance bond in the amount of [***To be populated for the duration of the Bond in accordance with paragraph 4.4 of Schedule 12***] (the **"Bond Value"**) to secure the performance by the Franchisee of and its compliance with their respective obligations under the Franchise Agreement and any Supplemental Agreement.

Accordingly:

We hereby unconditionally and irrevocably undertake to pay to you in full in London, immediately upon receipt of your first written demand on us in the form set out in the Schedule and, without further enquiry, the sum specified therein. Such written demand shall state:

(a) the Call Event (as defined in Clause 2 hereof) that has occurred; and

(b) the date of occurrence of such Call Event.

You may call on us for the whole or part of the amount of our liability hereunder and you may make any number of calls on us up to a maximum aggregate amount of the Bond Value. All sums payable hereunder shall be paid free of any restriction or condition and free and clear of and (except to the extent required by law) without any deduction or withholding, whether for or on account of tax, by way of set-off or otherwise.

1. The undertaking given by us above shall operate provided that:

   (a) our maximum liability shall be limited to a sum or sums not exceeding in the aggregate the amount of the Bond Value or such lesser amount as you may notify us of from time to time in writing, separately from any demand, shall constitute the Bond Value of this Bond; and

   (b) notwithstanding anything contained herein, our liability hereunder shall expire on the earlier of:

      (i) the date falling six (6) months after the date on which any railway administration order is made in relation to the Franchisee pursuant to Sections 60 to 62 of the Railways Act 1993; and

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(ii) the later of:

(A) the date falling one (1) month after the determination of the Purchase Price (as defined in any Supplemental Agreement) under each relevant Supplemental Agreement; and

(B) the date falling seven (7) Reporting Periods after the end of the Franchise Period; and

(C) the end of the Franchise Term; and

(iii) [◆][95],

except in respect of any written demand for payment complying with all the requirements hereof which is received by us on or before such date for either the Bond Value, or for such lesser amount which, when aggregated with any previous demands, amounts to the Bond Value or less, after which date this undertaking shall be void whether returned to us or not.

2. Call Event means, in this Bond, any of:

(a) the termination or expiry of the Franchise Agreement in circumstances where there are liabilities or obligations outstanding from the Franchisee to the Secretary of State;

(b) the termination of the Franchise Agreement solely as a consequence of the occurrence of one or more Events of Default or a Termination Event of a type described in paragraph 2.2 of Schedule 10.2 (Procedure for Events of Default and Termination Events) or pursuant to Clause 4.2(b) or 4.3(b) of the Conditions Precedent Agreement in circumstances where the Secretary of State has incurred or expects to incur additional costs in connection with early termination of the East Anglia franchise;

(c) the making of a railway administration order in relation to the Franchisee pursuant to Sections 60 to 62 of the Railways Act 1993;

(d) the occurrence of an Event of Default under the Franchise Agreement in respect of:

(i) paragraph 1.12(a) of Schedule 10.2 (Procedure for Events of Default and Termination Events) of the Franchise Agreement in relation to the Performance Bond; or

(ii) paragraph 1.12(b) of Schedule 10.2 (Procedure for Events of Default and Termination Events) of the Franchise Agreement,

whether or not the Franchise Agreement is, or is to be, terminated as a result thereof;

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95 **Note to Bidders:** Insert date that is date at least three years after the date of the Bond.

(e) the failure by the Franchisee to perform or comply with its obligations under any Supplemental Agreement;

(f) the failure by the Franchisee to provide the Secretary of State with a replacement Performance Bond which complies with paragraph 4 of Schedule 12 (Financial Covenants and Bonds) of the Franchise Agreement at least six (6) months prior the scheduled expiry of the existing Performance Bond; or

(g) the failure by the Franchisee to procure the execution and delivery of a new Performance Bond by a Bond Provider in favour of and acceptable to the Secretary of State when required to do so in accordance with paragraph 4.3(c) of Schedule 12 (Financial Covenants and Bonds) of the Franchise Agreement.

3. This undertaking is made to you, your successors and your assigns.

4. This undertaking shall not be discharged or released by time, indulgence, waiver, alteration or release of, or in respect to, the obligations of the Franchisee under the Franchise Agreement or any Supplemental Agreement or any other circumstances that might operate as a release of a guarantor at law or in equity.

5. You may make demand or give notice to us under this Bond in writing by hand or facsimile transmission to us as follows:

Address: [Bond Provider's address]

Facsimile Number: [Bond Provider's fax number]

6. References in this Bond to the Franchise Agreement and the Supplemental Agreement are to the Franchise Agreement and any Supplemental Agreement as amended from time to time.

7. Where used in this Bond, capitalised terms have the same meanings as in the Franchise Agreement.

8. This Bond shall be governed by and construed in accordance with the laws of England and Wales.

Executed as a deed this [**day and month**] of [**year**].

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SCHEDULE TO THE PERFORMANCE BOND

SPECIMEN DEMAND NOTICE

To: [**name and address of Bond Provider**]

[**date of demand notice**]

We refer to the performance bond issued by you on [**date of Bond**] (the **"Performance Bond"**) in connection with the franchise agreement (the **"Franchise Agreement"**) entered into between the Secretary of State for Transport (the **"Secretary of State"**) and [**name of "Franchisee"**] (the **"Franchisee"**) on [**Franchise Agreement signature date**].

We hereby notify you that the following Call Event (as defined in the Performance Bond) occurred on [**date of occurrence of Call Event**]: [**delete as appropriate**].

[The Franchise Agreement has [terminated/expired] on [**date of termination/expiry**] in circumstances where there are liabilities or obligations outstanding from the Franchisee to the Secretary of State.]

[The Franchise Agreement has terminated solely as a consequence of the occurrence of one or more Events of Default on [**date of termination**] in circumstances where the Secretary of State has incurred or expects to incur additional costs in connection with the termination of the [**name of franchise**] franchise.]

[A railway administration order has been made in relation to the Franchisee pursuant to Sections 60 to 62 of the Railways Act 1993.]

[That an Event of Default under the Franchise Agreement has occurred under:

[(a) paragraph 1.12(a) of Schedule 10.2 (Procedure for Events of Default and Termination Events) of the Franchise Agreement in relation to the Performance Bond; or]

[(b) paragraph 1.12(b) of Schedule 10.2 (Procedure for Events of Default and Termination Events) of the Franchise Agreement.]]

[The Franchise Agreement has terminated pursuant to Clause 4.2(b) or 4.3(b) of the Conditions Precedent Agreement in circumstances where the Secretary of State has incurred or expects to incur additional costs in connection with early termination of the [name of franchise] franchise.]

[The Franchisee has failed to perform or comply with its obligations under any Supplemental Agreement.]

[The Franchisee has failed to provide a replacement Performance Bond (as described in the Franchise Agreement) complying with paragraph 4 of Schedule 12 (Financial Covenants and Bonds) of the Franchise Agreement at least six (6) months prior to the scheduled expiry of the existing Performance Bond.]

[The Franchisee has failed to procure the execution and delivery of a new Performance Bond by a Bond Provider acceptable to the Secretary of State when required to do so in accordance with paragraph 4.3(c) of Schedule 12 (Financial Covenants and Bonds) of the Franchise Agreement.]

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We hereby demand immediate payment from you of [specify alternative amount if not Bond Value] or the Bond Value, whichever is smaller.

Please arrange for immediate payment of the relevant amount as follows:

[**account details to which Bond monies to be paid into**]

Where used in this Notice, capitalised terms have the same meanings as in the Franchise Agreement.

For and on behalf of

Secretary of State for Transport

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APPENDIX 2 TO SCHEDULE 12

Form of Season Ticket Bond

DOCUMENT "STB" - SEASON TICKET BOND

Dated 20[●]

[BOND PROVIDER]

_____

Season Ticket Bond

_____

Secretary of State for Transport
33 Horseferry Road
London SW1P 4DR

WITHDRAWN JANUARY 2026

To: Secretary of State for Transport
33 Horseferry Road
London
SW1P 4DR
(the **"Secretary of State"**)

Whereas:

We are informed that you have entered into a franchise agreement dated [ ] (the **"Franchise Agreement"**) with [**name of Franchisee**] (the **"Franchisee"**) under which the Franchisee will provide certain railway passenger services.

We are further informed that the Franchise Agreement requires that the Secretary of State receives a duly executed season ticket bond to secure the performance by the Franchisee of and its compliance with its obligations under the Franchise Agreement and any Supplemental Agreement.

Accordingly:

We hereby unconditionally and irrevocably undertake to pay to you in full in London, immediately upon receipt of your first written demand on us in the form set out in Schedule 1 (Specimen Demand Notice) and, without further enquiry, the sum specified therein. Such written demand shall state:

(a) the Call Event (as defined in Clause 2) that has occurred; and

(b) the date of occurrence of such Call Event.

You may call on us for the whole or part of the amount of our liability hereunder and you may make any number of calls on us up to a maximum aggregate amount of the Bond Value (as defined in Clause 3). All sums payable hereunder shall be paid free and clear of any restriction or condition and free and (except to the extent required by law) without any deduction or withholding, whether for or on account of tax, by way of set-off or otherwise.

1. The undertaking given by us above shall operate provided that:

   (a) our maximum liability shall be limited to a sum or sums not exceeding in the aggregate the amount of the Bond Value on the date of occurrence of the Call Event stated in your written demand on us; and

   (b) you may only call on us (whether on one or more occasions) in relation to one Call Event, such Call Event to be determined by reference to the first written demand which is received by us in the form set out in Schedule 1 (Specimen Demand Notice).

2. Call Event means, in this Bond, any of:

   (a) the termination or expiry of the Franchise Agreement;

   (b) the making of a railway administration order in relation to the Franchisee pursuant to Sections 60 to 62 of the Railways Act 1993; or

   (c) the occurrence of an Event of Default under paragraph 1.12(a) (in relation to a Season Ticket Bond) or paragraph 1.12(c) of Schedule 10.2 (Procedure for Events of Default and Termination Events) of the Franchise

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Agreement (whether or not the Franchise Agreement is, or is to be, terminated as a result thereof).

3. Bond Value shall mean, in respect of any date, the amount specified in Schedule 2 (Bond Value) as being the value of this Bond for such date (provided that for these purposes the date of occurrence of the Call Event specified in Clause 2(c) shall be deemed to be the last date for which a Bond Value is assigned under Schedule 2 (Bond Value) of this Bond).

4. Notwithstanding anything contained herein, but subject to Clause 5, our liability hereunder in respect of any Call Event shall expire no later than the end of the Franchise Term and:

4.1 in relation to a Call Event specified in Clauses 2(a) and 2(b), at noon (London time) on the date falling three (3) business days after the date of occurrence of such Call Event (business day being a day on which banks are open for business in the City of London); and

4.2 in relation to any other Call Event, on the day falling one (1) month after the last date for which a Bond Value is assigned under Schedule 2 of this Bond unless you notify us in writing prior to the relevant expiry time that the relevant Call Event has occurred (whether or not you call on us at the same time under this Bond).

5. If you do notify us under Clause 4 our liability shall expire on:

5.1 if the Call Event in respect of which you may call on us under this Bond is the termination of the Franchise Agreement, the date falling one (1) month after the determination of the Purchase Price (as defined in the Supplemental Agreement) under each relevant Supplemental Agreement;

5.2 if the Call Event in respect of which you may call on us under this Bond is the making of a railway administration order in relation to the Franchisee pursuant to Sections 60 to 62 of the Railways Act 1993, the date falling three (3) months after the making of such railway administration order; or

5.3 if the Call Event in respect of which you may call on us under this Bond is the occurrence of an Event of Default under paragraph 1.12(a) (in relation to a Season Ticket Bond) or paragraph 1.12(c) of Schedule 10.2 (Procedure for Events of Default and Termination Events) of the Franchise Agreement (whether or not the Franchise Agreement is, or is to be, terminated as a result thereof), the date falling one (1) month after your notification to us under Clause 4,

except, in each case, in respect of any written demand for payment complying with all the requirements hereof which is received by us on or before the relevant date, after which date this undertaking shall be void whether returned to us or not.

6. This undertaking is made to you, your successors and your assigns.

7. This undertaking shall not be discharged or released by time, indulgence, waiver, alteration or release of, or in respect to, the obligations of the Franchisee under the Franchise Agreement or any Supplemental Agreement or any other circumstances that might operate as a release of a guarantor at law or in equity.

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8. You may make demand or give notice to us under this Bond in writing by hand or facsimile transmission to us as follows:

   Address: [Bond Provider's address]

   Facsimile Number: [Bond Provider's fax number]

9. References in this Bond to the Franchise Agreement and the Supplemental Agreement are to the Franchise Agreement and the Supplemental Agreement as amended from time to time and terms defined therein shall have the same meaning in this Bond.

10. Where used in this Bond, capitalised terms have the same meanings as in the Franchise Agreement.

11. This Bond shall be governed by and construed in accordance with the laws of England and Wales.

Executed as a deed this [**day and month**] of [**year**].

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SCHEDULE 1 TO THE SEASON TICKET BOND

SPECIMEN DEMAND NOTICE

To: [**Name and address of Bond Provider**]

[**date of demand notice**]

We refer to the season ticket bond issued by you on [**date of Bond**] (the **"Season Ticket Bond"**) in connection with the franchise agreement (the **"Franchise Agreement"**) entered into between the Secretary of State for Transport (the **"Secretary of State"**) and [**name of Franchisee**] (the **"Franchisee"**) on [**Franchise Agreement signature date**].

We hereby notify you that the following Call Event (as defined in the Season Ticket Bond) occurred on [**date of occurrence of Call Event**]: [**delete as appropriate**].

[The Franchise Agreement [terminated][expired] on [**date of [termination][expiry]**].

[A railway administration order has been made in relation to the Franchisee pursuant to Sections 60 to 62 of the Railways Act 1993.]

[An Event of Default occurred under paragraph 1.12(a) (in relation to a Season Ticket Bond) or paragraph 1.12(c) of Schedule 10.2 (Procedure for Events of Default and Termination Events) of the Franchise Agreement.]

We hereby demand immediate payment from you of [specify alternative amount if not Bond Value] or the Bond Value, whichever is smaller.

Please arrange for immediate payment of the relevant amount as follows:

[**account details to which Bond monies to be paid into**]

Where used in this Notice, capitalised terms have the same meanings as in the Franchise Agreement.

For and on behalf of

Secretary of State for Transport

WITHDRAWN JANUARY 2026

SCHEDULE 2 TO THE SEASON TICKET BOND

Bond Value

Call Event occurring in Reporting Period	Bond Value
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	

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SCHEDULE 13

Rail Industry Initiatives

Schedule 13.1:	Rail Industry Initiatives
	Appendix to Schedule 13.1: Community Rail Partnerships
Schedule 13.2:	Innovation Obligations
	Appendix to Schedule 13.2

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SCHEDULE 13.1

Rail Industry Initiatives

1. British Transport Police

1.1 The Franchisee shall give due consideration to any request by the British Transport Police to provide suitable accommodation (including additional or alternative accommodation) or facilities at Stations to enable the British Transport Police to effectively perform the services owed to the Franchisee under any contract or arrangement entered into between the British Transport Police and the Franchisee.

1.2 The Franchisee shall:

(a) work with the British Transport Police to:

(i) reduce crime and anti-social behaviour on the railway;

(ii) reduce minutes lost to police-related disruption;

(iii) increase passenger confidence with personal security on train and on station;

(b) work in partnership with the British Transport Police and conduct an annual assessment of the security and crime risk at all Stations and across the Franchise generally;

(c) co-operate with the British Transport Police to provide it with access to records and/or systems maintained by the Franchisee which relate to lost property to enable the British Transport Police to have access to such information when dealing with items reported to them as lost;

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

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

2. Community Rail Partnerships

2.1 The Franchisee shall become a member of and shall continue to participate in the Community Rail Partnerships relevant to the Passenger Services, including but not limited to the Community Rail Partnerships listed in the table in the Appendix to this Schedule 13.1 (and any successor Community Rail Partnerships). As part of such participation the Franchisee shall appoint a senior Franchisee Employee as its community rail manager whose duties shall include:

(a) supporting Community Rail Partnerships;

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(b) ensuring managerial focus within the Franchisee's organisation to enable the Franchisee meet its CRP obligations; and

(c) lead on the Franchisee's development of community rail projects.

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

(a) co-operate with the Secretary of State, Network Rail, ACoRP, local transport authorities and/or any other person as the Secretary of State may nominate for the purposes of developing and furthering the success of Community Rail Partnerships;

(b) co-operate with, establish and/or participate in any Community Rail Partnership;

(c) provide technical support in respect of timetable specification for Community Rail Partnerships, including providing appropriate journey and revenue data; and

(d) co-operate in the development of the Secretary of State's initiatives to examine:

(i) options for a more cost effective delivery of the railway passenger services operated on any Community Rail Route (such options to include changes in working practices of the relevant Franchise Employees, reducing rolling stock lease costs and maximising opportunities for obtaining local funding of development at relevant stations and developing new ways of maintaining and renewing relevant railway infrastructure); and

(ii) the actual costs incurred in operating, maintaining and renewing the infrastructure relevant for such Community Rail Route.

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

2.4 The Secretary of State may at any time, by proposing a Variation pursuant to paragraph 1.1(a) of Schedule 9.3 (Variations to the Franchise Agreement and Incentivising Beneficial Changes), require the Franchisee to develop and/or implement any changes to the Franchise Services and/or the transfer of any Franchise Services to another Train Operator in order to deliver either of the initiatives that were examined pursuant to paragraph 2.2(d).

2.5 The Franchisee shall become a member and shall continue to participate in the Department for Transport's National Community Rail Steering Group, or any successor body.

2.6 Within three (3) months of the Start Date in respect of the first Franchisee Year and no later than three (3) months before the start of each subsequent Franchisee Year, the Franchisee shall provide to the Secretary of State a report (**"Community Rail Report"**) setting out the distribution of the CRP Amount in full amongst the Community Rail Partnerships identified in paragraphs 2.1 and 2.2.

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2.7 The Community Rail Report shall contain the following information:

(a) a statement confirming that the Franchisee's distribution of funds to the Community Rail Partnerships takes account of the Secretary of State's then current published Community Rail Development Strategy;

(b) a statement confirming that the Franchisee has discussed the funding of the Community Rail Partnerships with ACoRP and has taken sufficient account of ACoRP's views;

(c) confirmation that the Franchisee has discussed with all Community Rail Partnerships the aims and needs of such partnerships and the funding required to achieve these;

(d) a table setting out the relevant portions of the CRP Amount which are to be paid to each Community Rail Partnership (on a non-indexed basis) over the next three (3) years (it being acknowledged that these amounts are likely to be different for each Community Rail Partnership);

(e) a report on the activities undertaken by the Franchise pursuant to paragraph 2.3 of this Schedule 13; and

(f) such further information as the Secretary of State may from time to time request.

2.8 The Franchisee shall within thirty (30) days of the commencement of each Franchisee Year, make the relevant payments totalling the CRP Amount to each of the Community Rail Partnerships identified in the Community Rail Report for that year.

2.9 The Franchisee shall hold an annual full-day conference for Community Rail Partnership officers and station adopters in conjunction with ACoRP to encourage the spread of best practice and to communicate plans for franchise development. The first such conference shall be held within six (6) months of the Start Date.

2.10 The Franchisee shall devise and implement in collaboration with relevant Community Rail Partnerships a **"station adopters scheme"** under which members of the local community can **"adopt"** a local Station and engage in activities such as:

(a) promotion of the Passengers Services calling at the Station;

(b) monitoring and reporting faults, damage and anti-social and criminal behaviour;

(c) carrying out minor Station cleaning and maintenance tasks and the development and cultivation of station gardens.

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

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

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3. **Development of Industry Systems**

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

4. **Co-operation with Industry Schemes**

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

5. **Co-operation with Local Authority Increment Schemes and Decrement Schemes**

Without prejudice to its other obligations to the Secretary of State pursuant to this Agreement the Franchisee shall fully and effectively co-operate with relevant Local Authorities and act reasonably and in good faith in its engagement with each of them in relation to any Local Authority Increment Schemes and/or Local Authority Decrement Schemes proposed by a Local Authority during the Franchise Term.

6. **Co-operation with Network Rail and Alliancing**

6.1 The Franchisee shall:

(a) use all reasonable endeavours to work with Network Rail to identify ways in which cooperation between the Franchisee and Network Rail can be enhanced, costs can be reduced and closer working and alignment of incentives can improve value for money within the parameters of this Agreement; and

(b) use all reasonable endeavours to enter into an alliance agreement with Network Rail as soon as reasonably practicable following the Start Date and in any event by no later than the date that is [six (6) months] from the Start Date. The alliance agreement to be entered into by the Franchisee pursuant to this paragraph 6.1(b) shall be of the type that will not require the Franchisee's obligations under the Franchise Agreement to be varied in any way and shall include ways in which Network Rail and the Franchisee can work together to:

(i) deliver safety improvements;

(ii) deliver improvements in operational performance of the Passenger Services (including improvements to service quality); and

(iii) develop joint initiatives and projects that deliver value for money for the railway.

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6.2 Where the Franchisee considers pursuant to its obligations under paragraph 6.1 above that it is appropriate to enter into an alliance agreement with Network Rail that would require its obligations under this Agreement to be varied (an **"Alliance Agreement"**) it may make a proposal for the Secretary of State to consider. The Franchisee agrees that any such proposal (unless otherwise agreed by the Secretary of State) shall:

(a) be for the purposes of improved delivery of some or all of the following:

(i) the efficient and cost effective operation of some or all of the network over which the Passenger Services operate;

(ii) the efficient and cost effective maintenance of some or all of the network over which the Passenger Services operate;

(iii) the efficient and cost effective renewal of some or all of the network over which the Passenger Services operate;

(iv) the efficient and cost effective delivery of some or all enhancement projects on the network over which the Passenger Services operate; and

(v) such other infrastructure enhancement projects as may be agreed by the Franchisee and Network Rail and approved by the Secretary of State during the Franchise Term;

(b) be on terms which are commercially fair and reasonable so that:

(i) the incentives of the Franchisee and Network Rail are more effectively aligned in a way that gives a reasonable expectation that the matters subject to the alliance will be delivered in a more efficient and effective way;

(ii) the financial and operational risk of the Franchisee arising out of the operation of the Franchise is not unreasonably increased (including through the agreement of appropriate limitations of liability); and

(iii) the Secretary of State has rights to require the termination of the Alliance Agreement in appropriate circumstances including so that the term of the alliance is aligned with the Franchise Term and liabilities do not accrue to any Successor Operator.

6.3 The Franchisee shall provide such information, updates and reports on the progress of its negotiation with Network Rail as the Secretary of State shall reasonably require and meet with the Secretary of State to discuss the progress of the negotiations when reasonably requested to do so.

6.4 On reaching agreement in principle with Network Rail on the terms of an Alliance Agreement the Franchisee shall present the draft Alliance Agreement to the Secretary of State for approval and shall not enter into any such agreement without the prior written consent of the Secretary of State (which he shall have an unfettered discretion to withhold).

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

(a) the Secretary of State being satisfied that such Alliance Agreement is consistent with the provisions of paragraph 6.2(b) above;

(b) the Franchisee agreeing to a fair and reasonable allocation of the gain from such alliance being passed to the Secretary of State (whether through profit share or otherwise) consistent with the role of the Secretary of State in funding the railway network; and

(c) the Franchisee entering into a deed of amendment to the Franchise Agreement in a form reasonably determined by the Secretary of State.

7. Route Efficiency Benefit Share Mechanism / REBS Mechanism

7.1 The Franchisee shall obtain the prior consent of the Secretary of State prior to exercising any rights it may have under the Track Access Agreement or otherwise to opt out from the Route Efficiency Benefit Share Mechanism.

7.2 Where a Train Operator under a Previous Franchise Agreement has exercised its rights under a track access agreement to opt out from the Route Efficiency Benefit Share Mechanism the Franchisee shall take all steps necessary to ensure that it opts back into the Route Efficiency Benefit Share Mechanism including through agreement of a new Track Access Agreement or a variation of an existing Track Access Agreement.

8. Small and Medium-sized Enterprises

8.1 The Franchisee shall at all times keep accurate and complete records of its use of and interaction with SMEs in delivering the Franchise Services.

8.2 By no later than 31 January in each year (and within one (1) month of the end of the Franchise Period) the Franchisee shall deliver to the Secretary of State a breakdown of the number of SMEs used by the Franchisee in providing the Franchise Services during the calendar year (or part thereof) which ended on the immediately preceding 31 December or at the end of the Franchise Period (as applicable).

9. Apprenticeships

9.1 The Franchisee shall at all times keep accurate and complete records of the training and apprenticeships offered by the Franchisee and/or its immediate UK-based supply chain in delivering the Franchise Services.

9.2 By no later than 31 January in each year (and within one (1) month of the end of the Franchise Period) the Franchisee shall deliver to the Secretary of State a breakdown of the number of training and apprenticeships offered by the Franchisee and/or its supply chain in providing the Franchise Services during the calendar year (or part thereof) which ended on the immediately preceding 31 December or at the end of the Franchise Period (as applicable).

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10. Sustainability and other related initiatives

10.1 Sustainable Development Strategy

(a) By no later than six (6) months following the Start Date, the Franchisee shall consult with the RSSB and such other Stakeholders as agreed between the Secretary of State and the Franchisee (or, in the absence of agreement, such Stakeholders as the Secretary of State shall determine) in order to agree:

(i) key priority sustainable development areas;

(ii) the outcomes associated with such key priority and sustainable development areas;

(iii) the annual traction carbon trajectory (CO_2E/vehicle km) for the duration of the Franchise Term; and

(iv) target levels according to the Rail Safety and Standards Board Sustainable Development Self-Assessment Framework that will be reached by the end of third (3rd) and sixth (6th) Franchisee Years.

(b) The Franchisee shall develop the Sustainable Development Strategy to reflect such consultation and the Franchisee shall propose and agree a final version of the Sustainable Development Strategy with the RSSB and the Secretary of State by no later than twelve (12) months after the Start Date for the purposes of the Franchise Agreement. Such agreed strategy shall be the Sustainable Development Strategy for the purposes of the Franchise Agreement, provided that in the absence of agreement between the parties of the Sustainable Development Strategy shall be the strategy determined by the Secretary of State (acting reasonably).

(c) The Franchisee shall at all times comply with the Sustainable Development Strategy. Any amendments to the Sustainable Development Strategy must be agreed by the Secretary of State.

(d) By no later than three (3) months following the end of the third (3rd) and sixth (6th), the Franchisee shall procure a suitably qualified independent body (such independent body to be appointed only with the prior written approval of the Secretary of State) to undertake an assessment of performance against the Rail Safety and Standards Board's Sustainable Development Self-Assessment Framework and produce a report in respect of such assessment, such assessment to review performance against the targets set out in the Sustainable Development Strategy.

(e) The Franchisee shall submit a copy of the assessment report produced by the independent body pursuant to paragraph 10.1(d) to the Secretary of State within six (6) months following the end of the third (3rd) and sixth (6th) Franchisee Year.

(f) Where the assessment report identifies a significant shortfall against the targets set out in the Sustainable Development Strategy, the Franchisee must as soon as reasonably practicable and in any event within two (2) months, produce an improvement plan which, in the reasonable opinion of the Secretary of State, is capable of achieving the targets set out within the Sustainable Development Strategy.

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(g) The Franchisee shall use all reasonable endeavours to implement the improvement plan referred to in paragraph 10.1(f) and improve its performance against the targets set out in the Sustainable Development Strategy against the agreed timeframes for performance as set out in the revised Sustainable Development Strategy.

(h) The Franchisee shall, within three (3) months following the end of each Franchisee Year, provide to the Secretary of State a report showing:

(i) progress against the outcomes in key priority sustainable development areas;

(ii) progress on development of Franchisee Employees to ensure they have the skills and knowledge required to deliver a sustainable franchise; and

(iii) proposed revisions to the Sustainable Development Strategy (such revisions to include those revisions reflecting feedback and advice from Stakeholders, and which have been consulted on with RSSB).

(i) The Franchisee shall obtain the Secretary of State's consent to any amendments to the Sustainable Development Strategy proposed pursuant to paragraph 10.1(h)(iii) before such amendments are adopted and the Sustainable Development Strategy updated.

(j) On request by the Secretary of State, the Franchisee shall publish (in such form as the Secretary of State may reasonably determine):

(i) all or any part of its Sustainable Development Strategy; and/or

(ii) all or any of the information described in paragraphs 10.1(h)(i) to (h)(iii).

10.2 **Environmental Management and Sustainability Accreditation**

(a) The Franchisee shall, by no later than the date which is eighteen (18) months after the Start Date, attain and, at all times thereafter, maintain certification pursuant to ISO14001:2004 and ISO50001:2011 or equivalent standards.

(b) The Franchisee shall provide the Secretary of State with copies of the certification audit reports and a copy of their ISO50001 Energy Review within four (4) weeks of their certification and each subsequent recertification during the Franchise Period.

10.3 **Sustainable Construction**

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

(a) which are either being funded by the Franchisee or in respect of which the Franchisee has design responsibility; and

(b) in respect of which the total capital cost exceeds two hundred and fifty thousand pounds (£250,000) (indexed by the Retail Prices Index in the same way as variable costs are indexed in Appendix 1 (Annual Franchise Payments) to Schedule 8.1 (Franchise Payments)),

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

11. ERTMS Programme

11.1 ERTMS Programme

(a) The Franchisee shall co-operate in good faith with the relevant third parties involved in the implementation of the ERTMS Programme (including Network Rail and any relevant ROSCO) with the intention of ensuring the timely, efficient and cost effective development and implementation of the ERTMS Programme.

(b) The Parties agree and acknowledge that Network Rail shall be responsible for the capitals costs of implementing the infrastructure elements of the ERTMS Programme and the National Joint ROSCO Project.

(c) The Parties agree and acknowledge that the Secretary of State shall be responsible for the Fleet Fitment and Mobilisation Costs of implementing the ERTMS Programme.

(d) The Franchisee shall prepare the Franchisee ERTMS Plan and submit such plan to the Secretary of State within six (6) months of the Start Date (and keep such plan under review and provide an updated plan to the Secretary of State on a quarterly basis).

(e) The Franchisee shall ensure that the Franchisee ERTMS Plan is prepared so that it is consistent with the Network Rail ERTMS Implementation Plan. The Franchisee shall include within the Franchisee ERTMS Plan details of how the Franchisee will deliver those activities which the Franchisee is responsible under the ERTMS Programme including:

(i) the Franchisee's team responsible for delivering the Franchisee's responsibilities under the ERTMS Programme, including the team's structure and how it is integrated into the overall governance of the Franchisee's organisation;

(ii) milestones for ERTMS entering into service operations;

(iii) milestones for and requirements for obtaining approvals, consents and certification for fitment of ERTMS equipment;

(iv) milestones and requirements for the installation, testing and commissioning of any relevant ERTMS equipment;

(v) milestones and requirements for the training of Franchisee Employees who are drivers, rolling stock maintenance staff and other relevant Franchisee Employees, and training of any other rolling stock maintenance providers;

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(vi) any requirements in respect of the readiness of depot and stabling points;

(vii) details of mobilisation activities and issues including the on-going maintenance of any ERTMS equipment; and

(viii) confirmation that there will be no impact on the overall performance of the Franchise including the Benchmarks and/or the Annual Benchmarks.

(f) The Franchisee shall comply with the terms of the Franchisee ERTMS Plan, as prepared and amended in accordance with this Schedule 13.1.

(g) The Franchisee shall provide a copy of the Franchisee ERTMS Plan to Network Rail at the request of the Secretary of State (acting reasonably) subject to redactions agreed by both Parties.

(h) The Secretary of State may request from the Franchisee such other information in relation to the implementation of the Franchisee ERTMS Plan, including additional progress reports and the latest Franchisee ERTMS Plan (as at the date of such request), as the Secretary of State may reasonably require to satisfy himself that that the Franchisee ERTMS Plan is robust and deliverable and that the Franchisee is co-operating with the implementation of the ERTMS Programme.

(i) The Franchisee shall as soon as reasonably practicable and in any event within five (5) Weekdays following the date of receipt by the Franchisee of any such request under paragraph 11.1(h), provide such information to the Secretary of State.

(j) The Franchisee shall, upon reasonable notice, attend any meeting as the Secretary of State may reasonably require for the purposes of discussing and explaining the Franchisee ERTMS Plan (including progress on the implementation of such plan).

(k) If at any time the Secretary of State considers that the Franchisee has not complied or is not likely to comply with its obligations in this paragraph 11 he may at his discretion, and entirely without prejudice to his other rights consequent upon the relevant contravention, serve a Remedial Plan Notice pursuant to paragraph 2 of Schedule 10.1 (Procedure for Remedying a Contravention of the Franchise Agreement).

11.2 **Network Change Compensation Claims**

(a) The Franchisee shall use all reasonable endeavours to ensure that any Track Access Agreement that it enters into with Network Rail reflects the following principles:

(i) there will be no right for the Franchisee to claim compensation from Network Rail under Condition G.2 of the Network Code in relation to the direct or indirect consequences of any and all impacts on the Passenger Services due to the implementation of the ERTMS Programme except in the circumstances provided in 11.2(a)(ii) (**"Network Change Compensation Claims"**); and

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(ii) the Franchisee will have the right to claim under Condition G.2 of the Network Code for any additional costs (which for these purposes shall include any loss of revenue which the Franchisee is entitled to claim thereunder) it incurs where there is a material change to the actual implementation plans (including the relevant timescales for the delivery of such plans) adopted by Network Rail in respect of the ERTMS Programme when compared to the plans as specified in the Network Rail ERTMS Implementation Plan except where such material change is wholly attributable to the actions or inactions of the Franchisee.

(b) If and to the extent that the Track Access Agreement entered into by the Franchisee does not reflect any of the principles set out in paragraph 11.2(a) including as a result of:

(i) the Franchisee not being able to obtain the ORR's approval to any such terms; or

(ii) the Franchisee not complying with its obligations under paragraph 11.2(a) and entirely without prejudice to the other rights the Secretary of State may have under the Franchise Agreement consequent upon a contravention by the Franchisee of the provisions of paragraph 11.2(a),

then the Franchisee shall immediately pay to the Secretary of State (as a debt), an amount equal to any amounts received by the Franchisee from Network Rail in respect of any Network Change Compensation Claim(s).

(c) Any amounts payable by the Franchisee to the Secretary of State pursuant to this paragraph 11.2 shall be paid on the next Payment Date following receipt by the Franchisee of any such amounts from Network Rail or where no such Payment Date exists shall be paid within thirty (30) days of receipt by the Franchisee of any such amounts from Network Rail.

12. Minimum Wi-Fi Service Requirements on Trains

[**Note to Bidders**: Paragraph 12 (together with the ITT) sets out the minimum terms and conditions for Wi-Fi provision in the Franchise Agreement. Where the DfT wishes to contractualise Wi-Fi initiatives submitted in the bid as Committed Obligations, the DfT will provide bidders with drafting which reflects such requirements. The DfT will include such initiatives in Schedule 6.2 (Committed Obligations) including any further details on the implementation and installation of the winning bidder's proposed Wi-Fi solution.]

12.1 For the purposes of this paragraph 12, the following definitions shall apply:

"**Ethernet**" means a system for connecting a number of computer systems to form a local area network, with protocols to control the passing of information and to avoid simultaneous transmission by two or more systems, in accordance with the IEEE 802.3 standard;

"**Free of Charge**" shall mean:

(i) the passenger does not have to pay directly or indirectly to use the Mobile Communication Services on an ad-hoc or on-going basis; and

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(ii) the use of the Mobile Communication Services by the passenger is independent of any Wi-Fi or cellular minutes or Wi-Fi or cellular data allowances (such as 3G or 4G mobile broadband) the individual passenger may have through any subscription with one or more telecommunication internet service providers or mobile network operators;

"MCS Backstop Date" means by no later than [31 December 2019];[96]

"**MCS Equipment**" means the equipment including the hardware, data communications cabling, power, equipment racks, external aerials and cabling required for the Mobile Communications Services;

"**MCS Report**" has the meaning given to it in paragraph 12.6;

"**MCS Route Signal Survey**" has the meaning set out in paragraph 12.12; and

"**Train to Internet Coverage**" means the availability of one or more commercial networks (such as 3G or 4G high speed packet access provided by third party mobile network operators) and/or any alternative network solutions installed along the rail network upon which the Passenger Services operate to work together with the MCS Equipment installed on trains to permit access to the internet.

12.2 By no later than the MCS Backstop Date and throughout the remainder of the Franchise Period, the Franchisee shall provide the Mobile Communication Services in both first class and Standard Class Accommodation on all its Train Fleet used for the provision of Passenger Service.

12.3 The Mobile Communication Services procured by the Franchisee pursuant to paragraph 12.2 shall comply with the Minimum Wi-Fi Service Requirements and be provided Free of Charge to all passengers who use the Passenger Services.

12.4 For the purposes of this paragraph 12, the "**Minimum Wi-Fi Service Requirements**" shall, subject to paragraph 12.5, include as follows:

(a) wireless internet services which are capable of allowing passengers to browse web pages on the internet and send and receive mails electronically through any mobile, tablet or computer device they may use for this purpose; and

(b) subject to the availability of the Train to Internet Coverage, the wireless internet services shall be available for use by passengers at all times for the duration of each passenger's journey.

12.5 To ensure an acceptable, reliable non-discriminatory service is offered to any passenger, the Franchisee shall be permitted:

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[96] **Note to Bidders:** Bidders to populate - If an earlier date for the fitment of the Train Equipment is offered by the Bidder in its bid, provisions should be amended to include such earlier date. Any requirements over and above the minimum requirements may be contractualised by the Secretary of State in this Schedule 13.1 or in Schedule 6.2 (Committed Obligations).

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(a) to dynamically manage the available bandwidth on an active user or select vehicles basis as required, in accordance with a fair-usage policy to be published by the Franchisee; and

(b) to filter the type of services which may be accessed by a passenger using the Mobile Communication Services, including by restricting passenger access to video and audio streaming services, peer-to-peer file sharing and inappropriate content.

12.6 The Franchisee shall monitor the performance of the Mobile Communication Services for the purposes of providing to the Secretary of State a report on the performance of the Mobile Communication Services, and such report shall be submitted to the Secretary of State [one month after the end of each Franchisee Year][97] or on such other more frequent basis as is agreed between the Secretary of State and the Franchisee (the "**MCS Report**").

12.7 The MCS Report shall include information on the:

(a) customer usage statistics in respect of the applicable period including:

(i) the number of passengers using the Mobile Communication Services;

(ii) the average duration (in minutes and seconds) of connections to the Mobile Communication Services; and

(iii) the average data received and transmitted;

(b) statistics on the availability of the Mobile Communication Services including the duration of any significant periods of time during which the Mobile Communication Services were not available, the reason for such unavailability and the action taken by the Franchisee in respect of such unavailability; and

(c) information on the average internet speed (in megabits per second) and the average latency figures (in milliseconds) experienced by passengers in respect of each connected device which is using the Mobile Communication Services, by route, together with any factors which, in the Franchisee's reasonable opinion, have affected and/or contributed to such average internet speed and latency figures.

12.8 Where, in the Secretary of State's reasonable opinion, the performance of the Mobile Communication Services reported in the MCS Report is poor, or has changed significantly between Reporting Periods, the Franchisee shall provide reasons for such poor performance and/or fluctuating performance (as applicable) to the Secretary of State, together with any remedial or mitigating action that the Franchisee proposes to take in respect of the poor and/or fluctuating performance of the Mobile Communication Services.

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97 **Note to Bidders**: Bidders to populate – Bidder may only amend this provision to provide more frequent reporting than that specified in this provision.

12.9 By the MCS Backstop Date[98], the Franchisee shall procure that all rolling stock vehicles comprised in its Train Fleet and used for the provision of the Passenger Services are fitted with the MCS Equipment as is necessary to ensure compliance with the requirements of this paragraph 12.

12.10 Any MCS Equipment procured by the Franchisee in accordance with paragraph 12.9 shall, subject to paragraph 12.11, form a through rolling stock unit Ethernet backbone including inter-carriage connectivity capable of gigabit tramsmission speeds.

12.11 Where any rolling stock vehicle comprised in the Train Fleet as at the Start Date is already fitted with through rolling stock unit Ethernet backbones that are not compliant with the requirements of paragraphs 12.10 but are capable of complying with the other requirements of this paragraph 12, the Franchisee shall be permitted to retain these cables and the provisions of paragraphs 12.10 shall not apply in respect of such rolling stock vehicle.

12.12 **MCS Route Signal Survey**

(a) The Franchisee shall undertake a signal-strength survey of all Routes ("**MCS Route Signal Survey**") for the purposes of the Mobile Communications Services to determine the likely Train to Internet Coverage, data speeds, coverage and availability of data services to trains on that Route to establish a non-binding baseline for determining the likely:

(i) per passenger data connection speeds;

(ii) typical latencies; and

(iii) the number of simultaneous Wi-Fi connected passengers that can be supported.

(b) The MCS Route Signal Survey shall be undertaken as part of the initial planning and design activities associated with the implementation of the Mobile Communication Services and installation of the MCS Equipment or as the Secretary of State reasonably directs.

(c) A report and data in respect of the MCS Route Signal Survey shall be shared with the Secretary of State by the Franchisee in an appropriate format that will not require specialist software to access or interpret. The Franchisee shall grant to the Secretary of State a perpetual, non-exclusive, irrevocable, world-wide, paid-up, royalty-free licence to use, copy, modify, transmit, distribute and publish the MCS Route Signal Survey for any purpose, and such licence shall be transferrable and/or capable of being sub-licensed.

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98 **Note to Bidders**: Bidders to populate If an earlier date for the fitment of the Wi-Fi Train Equipment is offered by the Bidder in its bid, provisions should be amended to include such earlier date.

12.13 The Franchisee shall:

(a) market the availability of Mobile Communication Services to passengers via:

(i) the Franchisee's public webpage, together with terms and conditions, a fair-usage policy and "how to use the service guides"; and

(ii) on-board physical notices, for example, a notice which reads: "Free Wi-Fi Available Here";

(b) ensure all branding of the Mobile Communication Services is that of the Franchisee.

12.14 The provisions of paragraphs 5, 6, 8 and 9 of Part 2 (Special Terms related to Committed Obligations) of Schedule 6.2 (Committed Obligations) shall apply in respect of the obligations of the Franchisee specified in this paragraph 13, provided that references to a 'Committed Obligation' in paragraphs 5, 6, 8 and 9 of Part 2 (Special Terms related to Committed Obligations) of Schedule 6.2 (Committed Obligations) shall be construed as references to the Franchisee's obligations under this paragraph 13 in respect of the Mobile Communication Services.

13. **HS2 Projects**

13.1 The Franchisee shall from the Start Date until the completion of the HS2 Project fully and effectively co-operate and engage constructively with all relevant parties responsible for the delivery of the HS2 Project with the intention of assisting in the timely, efficient and cost effective implementation and delivery of the HS2 Project in a manner which provides the best overall solution for the network. To the extent that the HS2 Project leads to the Franchisee having rights under railway industry procedures including Network Change or Station Change the Franchisee shall not act in a way designed to directly or indirectly prevent, prejudice or frustrate the delivery of the HS2 Project and the Franchisee shall not unreasonably raise any objection under any railway industry procedure including Network Change or Station Change. It is acknowledged that the Franchisee may make reasonable objections with a view to mitigating the impact of the HS2 Project and their implementation on passengers and the Franchise Services, while recognising the need for the HS2 Project to be able to be undertaken in a reasonable manner.

13.2 The Franchisee shall provide such information in respect of the HS2 Project as the Secretary of State may reasonably request from time to time.

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APPENDIX TO SCHEDULE 13.1

Community Rail Partnerships

	Community Partnership	**Rail Line / Services forming Partnership**
(a)	Community Rail Norfolk	Bittern Line – Norwich to Cromer & Sheringham Wherry Lines – Norwich to Great Yarmouth & Lowestoft
(b)	East Suffolk Lines CRP	East Suffolk Lines – Ipswich to Lowestoft & Felixstowe
(c)	Essex & South Suffolk CRP	Sunshine Coast – Colchester to Clacton & Walton

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SCHEDULE 13.2

Innovation Obligations

1. Provision of Innovation Strategy

1.1 The Franchisee shall at all times comply with its Innovation Strategy.

1.2 By the second anniversary of the Start Date and thereafter every two (2) years, the Franchisee shall submit to the Secretary of State for approval (such approval not to be unreasonably withheld) a revised Innovation Strategy updated in accordance with the requirements of paragraph 1.3.

1.3 Each update to the Innovation Strategy made in accordance with paragraph 1.2 must have regard to the following core requirements:

(a) how the Franchisee has developed, and proposes to develop during the Franchise Term, its innovation capability, including leadership, employees, systems and processes, and how progress is measured;

(b) how the Franchisee has utilised, and proposes to utilise during the Franchise Term, effective techniques for capturing ideas from employees, passengers, the community, industry partners and the supply chain; and,

(c) how, during the Franchise Term, the Franchisee will partner and collaborate with other organisations and seek third party funding (where appropriate) in order to assist bringing new technologies, processes, business models and products to the rail market, that are viable for implementation during the Franchise Term.

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SCHEDULE 14

Preservation of Assets

Schedule 14.1:	Maintenance of Franchise
Schedule 14.2:	Maintenance of Operating Assets
Schedule 14.3:	Key Contracts
	Appendix: List of Key Contracts
Schedule 14.4:	Designation of Franchise Assets
	Appendix: List of Primary Franchise Assets
Schedule 14.5:	Dealing with Franchise Assets
Schedule 14.6:	Residual Value Mechanism
	Appendix to Schedule 14.6: List of the RV Assets
Schedule 14.7	Incentivising Long Term Investment

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SCHEDULE 14.1

Maintenance of Franchise

1. Maintenance as a going concern

1.1 The Franchisee shall maintain and manage the business of providing the Franchise Services so that, to the greatest extent possible and practicable:

(a) the Franchisee is able to perform its obligations under the Franchise Agreement; and

(b) a Successor Operator would be able to take over the business of providing the Franchise Services immediately at any time.

1.2 The Franchisee's obligation under paragraph 1.1 shall include an obligation to ensure that any computer and information technology systems of the Franchisee shared in whole or in part with Affiliates or third parties can be operated by a Successor Operator as a stand alone system without continued reliance on such Affiliates or other third parties immediately from the date of termination of the Franchise Agreement without any reduction in functionality or any increase in maintenance or support costs to the Successor Operator (this obligation being without prejudice to any requirement for the Franchisee to obtain consent to such arrangements relating to sharing computer and information technology systems from the Secretary of State).

1.3 The Franchisee shall use all reasonable endeavours to ensure that such Successor Operator would have immediate access to all Franchise Employees and Primary Franchise Assets for such purpose.

1.4 The Franchisee shall maintain and manage the business of providing the Franchise Services on the basis that such business will be transferred, in the manner contemplated under the Franchise Agreement, as a going concern at the end of the Franchise Period to, and continued immediately thereafter by, a Successor Operator.

1.5 The Franchisee shall use all reasonable endeavours to ensure that an appropriate number of employees (having sufficient skills, qualifications and experience) will transfer by operation of Law to any Successor Operator following the expiry of the Franchise Period and in so doing shall plan for the recruitment and training of Franchise Employees to continue up until the end of the Franchise Term.

1.6 The Franchisee shall comply with all reasonable requirements of the Secretary of State to obtain or maintain the property and rights that a Successor Operator would require, or that it would be convenient for it to have, on the basis that the same will transfer by operation of Law to any Successor Operator following the expiry of the Franchise Term.

2. Post-Franchise timetables

2.1 Both prior to and following the selection of a Successor Operator (whether a franchisee or otherwise and whether or not subject to the satisfaction of any conditions), the Franchisee shall:

(a) co-operate with, where a Successor Operator has been appointed, that Successor Operator, or where not, the Secretary of State; and

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(b) take such steps as may reasonably be requested by the Secretary of State,

so as to ensure the continuity of, and orderly handover of control over of the Franchise Services.

2.2 The steps that the Secretary of State may reasonably request the Franchisee to take pursuant to paragraph 2.1 include:

(a) participating in any timetable development process that takes place during the Franchise Period, but which relates to any timetable period applying wholly or partly after the expiry of the Franchise Term (**"Successor Operator Timetable"**), including bidding for and securing any Successor Operator Timetable, whether or not:

(i) the Successor Operator has been identified; or

(ii) there is in place an Access Agreement relating to the period over which that Successor Operator Timetable is intended to be operated;

(b) using reasonable endeavours to seek amendments to and/or extensions of Access Agreements which can be transferred to the Successor Operator on expiry of the Franchise Period;

(c) assisting the Secretary of State or the Successor Operator (as the case may be) in the preparation and negotiation of any new Access Agreement relating to any Successor Operator Timetable; and/or

(d) entering into that Access Agreement in order to secure the relevant priority bidding rights required by the Successor Operator to operate that Successor Operator Timetable, provided that the Franchisee shall not be required to enter into any such Access Agreement unless the Secretary of State has first provided to it confirmation in writing that he will include that Access Agreement in any Transfer Scheme pursuant to paragraph 3.1 of Schedule 15.4 (Provisions Applying on and after Termination).

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SCHEDULE 14.2

Maintenance of Operating Assets

1. Operating Assets

1.1 The Franchisee shall maintain, protect and preserve the assets (including any Intellectual Property Rights or intangible assets) employed in the performance of its obligations under the Franchise Agreement (the **"Operating Assets"**) in good standing or good working order, subject to fair wear and tear.

1.2 The Franchisee shall carry out its obligations under paragraph 1.1 so that the Operating Assets may be transferred at the end of the Franchise Period to a Successor Operator and used by such Successor Operator in the provision or operation of similar services to the Franchise Services.

1.3 Where any Operating Asset is lost, destroyed or otherwise beyond repair, the Franchisee shall replace the Operating Asset with property, rights or liabilities in modern equivalent form to the Operating Asset to be replaced. The Franchisee shall at all times maintain an appropriate volume of Spares, and/or an appropriate level of access to Spares from a third party, to enable it to perform its obligations under the Franchise Agreement.

1.4 The Secretary of State may at any time require the Franchisee to provide to the Secretary of State a schedule specifying the condition of any asset or class of assets that he specifies for this purpose. Such schedule shall cover such aspects of asset condition as the Secretary of State may reasonably require. If the Parties are unable to agree the content of such schedule of condition, either Party may refer the dispute for resolution in accordance with the Dispute Resolution Rules. Until such dispute is resolved, the Franchisee shall comply with the Secretary of State's requirements in respect of such schedule of condition.

1.5 The Franchisee shall keep vested in it at all times during the Franchise Period all Franchise Assets designated as such pursuant to Schedule 14.4 (Designation of Franchise Assets) as it may require in order to comply with:

(a) the Licences;

(b) any contracts of employment with Franchise Employees;

(c) any relevant Fares;

(d) any Key Contracts; and

(e) any applicable safety legislation regulations or safety standards and the Safety Certificate,

in order to ensure that the Secretary of State may designate such assets as Primary Franchise Assets.

2. Brand Licence and Branding

2.1 Brand Licences

The Franchisee shall comply with its obligations under each of the Brand Licences.

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2.2 **Branding**

Subject to any applicable obligations or restrictions on the Franchisee (including the terms of the Rolling Stock Leases), the Franchisee may apply registered or unregistered trade marks (including company names, livery and other distinctive get-up) to any assets owned or used by it in the operation and provision of the Franchise Services.

(a) Subject to paragraphs 2.2(c) and (g), the Franchisee may:

(i) in respect of unregistered Marks, provide or procure the provision of an irrevocable undertaking to any relevant Successor Operator to the effect that neither it nor the owner of the Marks will enforce such rights as it may have or may in the future have in respect of such Marks against such Successor Operator and its successors; and

(ii) in respect of registered Marks, grant or procure the grant of an irrevocable licence to use such Marks to such Successor Operator and its successors.

(b) Any such licence or undertaking under paragraph 2.2(a) shall be in such form as the Secretary of State shall reasonably require except that the terms of any such licence and, to the extent appropriate, any such undertaking shall accord with the provisions of paragraph 8.3 of Schedule 15.4 (Provisions Applying on and after Termination).

(c) Subject to paragraph 2.2(g), to the extent that:

(i) the Franchisee does not provide a relevant undertaking or licence in accordance with paragraph 2.2(a);

(ii) the Secretary of State considers the relevant Marks to be so distinctive or otherwise such that a Successor Operator could not reasonably be asked to use the relevant assets to which the Marks are applied; or

(iii) the Franchisee has not otherwise removed or covered such Marks in such a way as may be reasonably acceptable to the Secretary of State prior to the expiry of the Franchise Period,

then the Franchisee shall pay to the relevant Successor Operator such amount as may be agreed between the Franchisee and such Successor Operator, as being the reasonable cost (including any Value Added Tax for which credit is not available under Sections 25 and 26 of the Value Added Tax Act 1994) of covering such Marks or otherwise removing all indications of or reference to the Marks in a manner reasonably acceptable to the Secretary of State. Such amount shall not in any event exceed the cost to the Successor Operator of replacing such Marks with its own. If the Franchisee and the relevant Successor Operator fail to agree such cost within twenty eight (28) days of the expiry of the Franchise Period, the Franchisee shall submit such dispute for resolution in accordance with such dispute resolution procedures as the Secretary of State may require.

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(d) The amount to be paid to a Successor Operator under paragraph 2.2(c) may include the reasonable cost of:

(i) removing or covering Marks from the exterior of any rolling stock vehicle;

(ii) removing or covering interior indications of the Marks including upholstery and carpets;

(iii) replacing or covering all station or other signs including bill boards; and

(iv) otherwise ensuring that such removal, covering or replacement is effected with all reasonable care and in such manner that the relevant assets may reasonably continue to be used by a Successor Operator in the provision of the Franchise Services.

(e) The Franchisee shall, in addition to making a payment under paragraph 2.2(c) grant or procure the grant of a licence or undertaking complying with paragraphs 2.2(a) and (b) except that such licence shall only be for such period as may be agreed between the Franchisee and the Successor Operator as being reasonably required by the Successor Operator to remove the Marks from all relevant assets without causing excessive disruption to the operation of services similar to the Franchise Services provided by such Successor Operator. If such period cannot be agreed, the Franchisee shall submit such dispute for resolution in accordance with such dispute resolution procedures as the Secretary of State may require.

(f) The Secretary of State shall determine at or around the end of the Franchise Period, and after consultation with the Franchisee, the maximum liability of the Franchisee under paragraph 2.2(c) and the maximum length of licence or undertaking under paragraph 2.2(e).

(g) The provisions of paragraphs 2.2(a) to 2.2(f) shall not apply to the extent that the relevant asset is not to be used by a Successor Operator in the provision of services similar to the Franchise Services. The Secretary of State shall notify the Franchisee as soon as he becomes aware of whether or not any such asset is to be so used.

2.3 **Non-designation of New Brands**

The Secretary of State agrees not to designate as a Primary Franchise Asset any registered or unregistered trade mark which is developed by the Franchisee.

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SCHEDULE 14.3

Key Contracts

1. Key Contracts

1.1 The provisions of this Schedule 14.3 apply to all contracts designated as Key Contracts from time to time.

1.2 The Key Contracts as at the date of the Franchise Agreement are set out in the Appendix (List of Key Contracts) to this Schedule 14.3. The Franchisee shall, in respect of any category of agreement, contract, licence or other arrangement which, by virtue of the provisions of this paragraph 1.2, is a Key Contract and to which the Franchisee, as at date of the Franchisee Agreement, is not already a party:

(a) inform the Secretary of State from time to time of any such agreement, contract, licence or other arrangement which it may be intending to enter into; and

(b) the provisions of paragraph 5.1 shall apply in respect of any such agreement, contract, licence or other arrangement.

1.3 Without prejudice to the provisions of paragraphs 2, 3 and 4 of this Schedule 14.3, the Appendix (List of Key Contracts) to this Schedule 14.3 shall be amended as considered necessary from time to time to take account of any:

(a) designation by the Secretary of State of any actual or prospective agreement, contract, licence or other arrangement or any category of agreement, contract, licence or other arrangement, to which or under which the Franchisee is (or may become) a party or a beneficiary pursuant to paragraph 2 of this Schedule 14.3; or

(b) de-designation by the Secretary of State of any Key Contract pursuant to paragraph 3 of this Schedule 14.3; or

(c) re-designation by the Secretary of State pursuant to paragraph 4 of this Schedule 14.3.

1.4 The Franchisee shall enter into any and all Key Contracts which are necessary for the Franchise Agreement to continue in accordance with clause 5.2 (Duration of the Franchise Agreement).

2. Designation of Key Contracts

2.1 Where the Secretary of State considers that it is reasonably necessary for securing the continued provision of the Franchise Services or the provision of services similar to the Franchise Services by a Successor Operator in accordance with the Franchise Agreement, he may make a designation pursuant to paragraph 2.2.

2.2 The Secretary of State may at any time, by serving notice on the Franchisee, designate as a Key Contract:

(a) any actual or prospective agreement, contract, licence or other arrangement; and/or

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(b) any category of agreement, contract, licence or other arrangement, to which or under which the Franchisee is (or may become) a party or a beneficiary,

with effect from the date specified in such notice.

2.3 Key Contracts may include any agreement, contract, licence or other arrangement whether in written, oral or other form, whether formal or informal and whether with an Affiliate of the Franchisee or any other person and may include any arrangement for the storage of assets (including electronic systems or Computer Systems) or accommodation of employees.

3. **De-designation of Key Contracts**

The Secretary of State may at any time, by serving a notice on the Franchisee, de-designate any Key Contract from continuing to be a Key Contract with effect from the date specified in such notice.

4. **Re-designation of Key Contracts**

The Secretary of State may at any time, by serving notice on the Franchisee, re-designate as a Key Contract anything which has ceased to be designated as a Key Contract in accordance with paragraph 3 with effect from the date specified in such notice.

5. **Direct Agreements**

5.1 Unless the Secretary of State otherwise agrees, or unless directed to do so by the ORR, the Franchisee shall not enter into any prospective Key Contract unless the counterparty to that prospective Key Contract:

(a) is a Train Operator; or

(b) has entered into a Direct Agreement with the Secretary of State in respect of that prospective Key Contract, providing on a basis acceptable to the Secretary of State, amongst other things, for the continued provision of the Passenger Services and/or the continued operation of the Stations and Depots in the event of:

(i) breach, termination or expiry of such Key Contract;

(ii) termination or expiry of the Franchise Agreement; or

(iii) the making of a railway administration order in respect of the Franchisee.

5.2 Where the Secretary of State designates or re-designates as a Key Contract:

(a) any agreement, contract, licence or other arrangement to which the Franchisee is already a party; or

(b) any category of agreement, contract, licence or other arrangement where the Franchisee is already a party to a contract, licence or other arrangement which, by virtue of the Secretary of State's designation or re-designation, is classified in such category,

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the Franchisee shall use all reasonable endeavours to assist the Secretary of State in entering into a Direct Agreement as envisaged by paragraph 5.1(b).

5.3 The Franchisee shall pay to the Secretary of State an amount equal to any losses, costs, liabilities, charges or expenses which may be suffered or incurred by the Secretary of State under the provisions of any Direct Agreement and which may be notified to the Franchisee as a result of, or in connection with:

(a) any breach by the Franchisee of the terms of the Key Contract to which the relevant Direct Agreement relates; or

(b) any unsuccessful claim being brought by the Franchisee against the counterparty of any such Key Contract in relation to the termination of such Key Contract.

6. Emergencies

Where any emergency may arise in connection with the provision and operation of the Franchise Services, the Franchisee:

6.1 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;

6.2 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;

6.3 shall promptly inform the Secretary of State of any such emergency and contracts, licences or other arrangements which it proposes to enter into; and

6.4 shall take such action in relation to such emergency, contracts, licences or other arrangements as the Secretary of State may request.

7. No Amendment

The Franchisee shall not without the prior consent of the Secretary of State (which shall not be unreasonably withheld) vary, or purport to vary, the terms or conditions of any Key Contract at any time, unless directed to do so by the ORR.

8. Replacement of Key Contracts

The Franchisee shall, prior to the scheduled expiry date of any Key Contract (or, if earlier, such other date on which it is reasonably likely that such Key Contract will terminate), take all reasonable steps to enter into an appropriate replacement contract (whether with the counterparty to the existing Key Contract or not) and shall comply with the reasonable instructions of the Secretary of State in relation to such replacement contract.

9. Termination of Key Contracts

The Franchisee shall, to the extent so requested by the Secretary of State, exercise its right to terminate any Key Contract on the Expiry Date.

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APPENDIX TO SCHEDULE 14.3

List of Key Contracts

The following items have as at the date of the Franchise Agreement been agreed between the Parties to be Key Contracts:

1. any Access Agreement to which the Franchisee is a party other than in its capacity as a Facility Owner;

2. any Property Lease and all side agreements relating to such relevant Property Lease;

3. any Rolling Stock Related Contract including the Rolling Stock Leases listed in Table 1 and Table 2 and Table 3 of the Appendix to Schedule 1.6 (The Composition of the Train Fleet);

4. any contract for the maintenance and renewal works at Stations including any:

4.1 framework delivery contracts for the provision of building and civil engineering works, mechanical and electrical works at Stations; and

4.2 side agreements with Network Rail relating to maintenance and renewal works at Stations;

5. any contract or arrangement for the lending, seconding, hiring, contracting out, supervision, training, assessment, or accommodation by another Train Operator or other third party of any train drivers, conductors or other train crew used by the Franchisee in the provision of the Passenger Services;

6. any contract or arrangement for the subcontracting or delegation to another Train Operator or other third party of the provision of any of the Passenger Services (whether or not the consent of the Secretary of State is required to such subcontracting or delegation under paragraph 4 of Schedule 1.1 (Franchise Services and Service Development));

7. any contract or arrangement with a Train Operator or other third party (other than an Access Agreement) for the provision to the Franchisee of train dispatch, performance or supervision of platform duties, security activities, evacuation procedures, advice or assistance to customers, assistance to disabled customers, operation of customer information systems, cash management or ticket issuing systems administration;

8. any contract or arrangement with a Train Operator or other third party for the provision of breakdown or recovery, and track call services to assist in the provision of the Passenger Services;

9. any contract or arrangement for the supply of spare parts or Spares;

10. any contract or arrangement for the maintenance of track and other related infrastructure;

11. any licences of Marks to the Franchisee;

12. any licence of any CRM System or Yield Management System; and

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13. any contract or arrangement for the provision or lending of Computer Systems (other than the CRM System and Yield Management System) used by the Franchisee for the delivery of the Franchise Services and any MCS Contract.

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SCHEDULE 14.4

Designation of Franchise Assets

1. Franchise Assets

1.1 Subject to paragraph 1.2, all property, rights and liabilities of the Franchisee from time to time during the Franchise Period shall be designated as Franchise Assets and shall constitute Franchise Assets for the purposes of Section 27(11) of the Act.

1.2 The rights and liabilities of the Franchisee in respect of the following items shall not be designated as Franchise Assets and shall not constitute franchise assets for the purposes of Section 27(11) of the Act:

(a) any contracts of employment;

(b) the Franchise Agreement and any Transfer Scheme or Supplemental Agreement;

(c) the Ticketing and Settlement Agreement;

(d) any sums placed on deposit with a bank or other financial institution;

(e) such other property, rights and liabilities as the Franchisee and the Secretary of State may agree from time to time or as the Secretary of State may de-designate as Franchise Assets under paragraph 10.2; and

(f) any Rolling Stock Leases.

2. Primary Franchise Assets and Investment Assets

2.1 The following property, rights and liabilities shall (to the extent that they constitute Franchise Assets) be designated as Primary Franchise Assets with effect from the following dates:

(a) the property, rights and liabilities listed as such in the table in the Appendix (List of Primary Franchise Assets) to this Schedule 14.4 (which constitute Primary Franchise Assets agreed between the Parties as at the date of the Franchise Agreement), on the Start Date;

(b) any additional property, rights and liabilities designated under paragraph 3 during the Franchise Period, on the date of such designation;

(c) any property or right which is vested in the Franchisee and used for the purpose of maintaining, replacing, repairing or renewing any property designated as Primary Franchise Assets and which forms or replaces part or all of such designated property on completion of such maintenance, replacement, repair or renewal, on the date of its use for such purpose;

(d) the rights and liabilities of the Franchisee under any Key Contract designated under paragraph 5, on the date of such designation;

(e) the rights and liabilities of the Franchisee in respect of the terms of any Fare or Discount Card designated under paragraph 6, on the date of such designation;

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(f) any CRM Data and/or Yield Management Data and, to the extent that any CRM System and/or Yield Management System is the property of the Franchisee, such CRM System and/or Yield Management System on the later of the Start Date and:

(i) in relation to CRM Data or Yield Management Data, the date on which such CRM Data or Yield Management Data (as applicable) is collected; or

(ii) in relation to any such CRM System or Yield Management System, the date on which such CRM System or Yield Management System is created,

save, in relation to CRM Data and Yield Management Data, any data in respect of which the Data Subject has not consented to such data being disclosed and Processed by any Successor Operator and/or the Secretary of State;

(g) any licence of any CRM System and/or Yield Management System, on the date of such licence;

(h) an RV Asset on the date in which such RV Asset is brought into operational use as specified in the applicable Certification of Completion; and

(i) Actual Passenger Demand information (and all Intellectual Property Rights in respect of the same), on the date such information is supplied to the Secretary of State pursuant to paragraph 1.1 of Schedule 1.5 (Information about Passengers).

2.2 **Investment Assets**

(a) On each Investment Asset Request Date the Franchisee shall provide to the Secretary of State a list of all Franchise Assets acquired since the Start Date (in the case of the first such list) or the previous Investment Asset Request Date (in the case of subsequent lists) which it wishes the Secretary of State to designate as Investment Assets. Such list shall clearly identify each relevant Franchise Asset, its purpose, specification, usual location, acquisition price, any ongoing charge payable by the Franchisee in relation to the Franchise Asset and any other asset upon which the operation of the Franchise Asset is dependent. The Franchisee shall provide such additional information as the Secretary of State shall reasonably request in relation to any such Franchise Asset.

(b) The Franchisee shall not be permitted to nominate as Investment Assets without the prior written consent of the Secretary of State (which the Secretary of State shall have an unfettered discretion as to whether or not to give) Franchise Assets which:

(i) individually have an acquisition cost exceeding two million pounds (£2,000,000);

(ii) when aggregated with the Franchise Assets already designated as Investment Assets in a Franchisee Year have an aggregate acquisition cost exceeding five million pounds (£5,000,000) (apportioned proportionately where a Franchisee Year is less than thirteen (13) Reporting Periods;

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(iii) when aggregated with Franchise Assets already designated as Investment Assets during the Franchise Term have an aggregate acquisition cost exceeding fifteen million pounds (£15,000,000); or

(iv) are already designated as Primary Franchise Assets (including for the avoidance of doubt an RV Asset).

(c) The Secretary of State shall designate any Franchise Asset nominated by the Franchisee as an Investment Asset within three (3) months of the Investment Asset Request Date unless he serves notice on the Franchisee of designation of such Franchise Asset as a Primary Franchise Asset in accordance with paragraph 3 of this Schedule 14.4 or if in his reasonable opinion such Franchise Asset:

(i) is an information technology or computer system which is of a specification which, in the reasonable opinion of the Secretary of State, materially limits its utility to a Successor Operator including because it is constructed to a bespoke specification of or otherwise intended to work with the systems of the Parent or any company of which the Parent has Control; or

(ii) has had branding applied to it which renders it unsuitable for continued use by a Successor Operator; or

(iii) is not reasonably appropriate for the purposes of delivering the Franchise Services in a reasonable, proper and cost effective manner.

(d) The Franchisee acknowledges the definition of Franchise Assets and agrees not to put forward for designation as an Investment Asset any asset not falling within such definition including, without limitation, accounting entries and assets in which the Franchisee does not have title.

(e) On the final Investment Asset Request Date the Franchisee shall in addition to the list referred to in paragraph 2.2(a) also provide an additional list in two parts confirming:

(i) in part 1 of such additional list which Investment Assets that have already been designated as such should be designated as Primary Franchise Assets and not be capable of de-designation as such without the prior agreement of the Franchisee and which Investment Assets should not be capable of being designated as Primary Franchise Assets without the prior agreement of the Franchisee and the Secretary of State; and

(ii) in part 2 of such additional list which Franchise Assets which the Franchisee is proposing should be designated as Investment Assets should be designated as Primary Franchise Assets and not be capable of de-designation as such without the prior agreement of the Franchisee and which should not be capable of being designated as Primary Franchise Assets without the prior agreement of the Franchisee and the Secretary of State in both cases only if such Franchise Assets are designated as Investment Assets in accordance with paragraphs 2.2(a) to 2.2(c).

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(f) The Secretary of State shall comply with the requirement of the Franchisee set out in the list referred to in paragraph 2.2(e)(i) above. The Secretary of State shall comply with the requirements of the Franchisee in the list referred to in paragraph 2.2(e)(ii) above in relation to any Franchise Assets on such list which are actually designated by the Secretary of State as Investment Assets in accordance with paragraphs 2.2(a) to 2.2(c) but not otherwise. This paragraph is without prejudice to the other rights of the Secretary of State to designate Franchise Assets as Primary Franchise Assets.

3. **Designation of Additional Primary Franchise Assets**

Subject to paragraph 2.2(f) the Secretary of State may at any time and from time to time during the Franchise Period, by serving notice on the Franchisee, designate any or all of the Franchise Assets as Primary Franchise Assets. Such designation shall take effect from the delivery of such notice and may refer to all or certain categories of property, rights or liabilities. Any such notice shall specify the reasons for such designation. On or before designation of any Franchise Asset as a Primary Franchise Asset, the Secretary of State may agree not to subsequently de-designate such Primary Franchise Asset without the prior written consent of the Franchisee. If the Secretary of State so agrees, the notice designating the relevant Franchise Asset as a Primary Franchise Asset shall state that the Secretary of State shall not de-designate such Primary Franchise Asset without the prior written consent of the Franchisee.

4. **Designation during last twelve (12) months of Franchise Period**

If the Secretary of State designates a Franchise Asset as a Primary Franchise Asset under paragraph 3 at any time during the last twelve (12) months of the Franchise Period then, within twenty eight (28) days of such designation, the Secretary of State may de-designate such Primary Franchise Asset by serving notice on the Franchisee provided that, in relation to any Primary Franchise Asset in respect of which the Secretary of State agreed pursuant to paragraph 3 that he would not de designate without the prior written consent of the Franchisee, such consent has been obtained. Such de-designation shall take effect upon delivery of such notice.

5. **Designation of Key Contracts as Primary Franchise Assets**

The Secretary of State shall, subject to paragraphs 1.2(b) and 7, be entitled to designate any Key Contract as a Primary Franchise Asset at any time during the Franchise Period by serving notice on the Franchisee. Such designation shall take effect from delivery of such notice.

6. **Designation of Fares and Discount Cards**

The Secretary of State may designate any Fare or Discount Card as a Primary Franchise Asset at any time during the Franchise Period by serving a notice on the Franchisee. Such designation shall take effect from delivery of such notice.

7. **Rights and Liabilities**

The Secretary of State, in designating the rights and liabilities of the Franchisee (whether under a particular contract or other arrangement) as a Primary Franchise Asset may, in his discretion, elect to designate some but not all of the rights and liabilities under a particular contract or other arrangement, or to

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designate only those rights and liabilities arising after or otherwise relating to a period after a particular time (including the period after the expiry of the Franchise Period) or to those relating only to the Franchise Services or a particular part thereof.

8. **Disputes over Designation**

8.1 The Franchisee may object in writing to the Secretary of State to any designation pursuant to paragraph 3 or 4.

8.2 Such objection may be made solely on the grounds that the designation of the relevant property, rights or liabilities specified in the objection is not, in the Franchisee's opinion, reasonably necessary to secure the continued provision of the Franchise Services by a Successor Operator on the expiry of the Franchise Period on a basis reasonably acceptable to the Secretary of State or to facilitate the transfer to such Successor Operator of the provision of the Franchise Services at such time.

8.3 Any such objection may only be made within twenty eight (28) days of a designation made more than twelve (12) months prior to the end of the Franchise Period or fourteen (14) days of a designation made during the last twelve (12) months of the Franchise Period.

8.4 The Secretary of State shall respond to any such objection as soon as reasonably practicable and shall take account of any representations made by the Franchisee regarding the use of the relevant Primary Franchise Asset otherwise than in the provision and operation of the Franchise Services.

8.5 If the Franchisee's objection cannot be resolved by agreement within a period of fourteen (14) days from the date of submission of that objection, the Franchisee may refer the dispute for resolution in accordance with the Dispute Resolution Rules.

8.6 Any body duly appointed to resolve such dispute shall determine whether or not the designation of the relevant property, rights or liabilities was reasonably necessary for securing that the Franchise Services may continue to be provided by a Successor Operator on the expiry of the Franchise Period on a basis reasonably acceptable to the Secretary of State or otherwise facilitating the transfer of the provision of the Franchise Services at such time, and accordingly whether or not they should cease to be so designated.

8.7 If any dispute as to any designation pursuant to paragraph 3 remains outstanding on the expiry of the Franchise Period, then such dispute shall be deemed to cease immediately before the expiry of the Franchise Period and the relevant Franchise Assets shall continue to be designated as Primary Franchise Assets on and after the expiry of the Franchise Period.

9. **Provision of Information to the Secretary of State**

9.1 The Franchisee shall provide such information as the Secretary of State may reasonably require in order to satisfy the Secretary of State that any Franchise Assets which are to be designated as Primary Franchise Assets after the Start Date under this Schedule 14.4 will at the time of such designation be vested in the Franchisee. Such information may include details of any Security Interests over such property, rights and liabilities.

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9.2 The Franchisee shall further provide such information as to the property, rights and liabilities of the Franchisee as the Secretary of State may reasonably require in connection with the designation of Primary Franchise Assets. Such information shall be supplied to the Secretary of State within such timescale as the Secretary of State may reasonably require.

10. De-Designation of Franchise Assets and Primary Franchise Assets

10.1 The Secretary of State and the Franchisee may agree in writing at any time during the Franchise Period that a Franchise Asset shall cease to be so designated as a Franchise Asset or that a Primary Franchise Asset shall cease to be so designated as a Primary Franchise Asset, and the relevant Franchise Asset or Primary Franchise Asset (as the case may be) shall cease to be designated upon such agreement coming into effect.

10.2 The Secretary of State may in addition at any time during the Franchise Period, by serving notice on the Franchisee, cause a Franchise Asset which is not a Primary Franchise Asset to cease to be so designated as a Franchise Asset. Such Franchise Asset shall cease to be so designated on the date specified in such notice.

10.3 The Secretary of State may in addition, at any time during the Franchise Period, by serving notice on the Franchisee, cause a particular Primary Franchise Asset to cease to be designated as such provided that, in relation to any Primary Franchise Asset in respect of which the Secretary of State agreed pursuant to paragraph 3 that he would not de designate without the prior written consent of the Franchisee, such consent has been obtained. Such Primary Franchise Asset shall cease to be so designated on the date specified in such notice. Such right may be exercised, in respect of any rights and liabilities in respect of a Fare or Discount Card, at any time and, in respect of any other Primary Franchise Asset, no later than one (1) year prior to the expiry of the Franchise Term.

11. Amendment of the Appendix to this Schedule 14.4

The table in the Appendix (List of Primary Franchise Assets) to this Schedule 14.4 shall be amended as the Secretary of State considers necessary or desirable from time to time to take account of designation and de-designation of Primary Franchise Assets pursuant to this Schedule 14.4.

12. Spares

The obligation of the Franchisee to maintain, preserve and protect the Operating Assets (as such term is defined in paragraph 1.1 of Schedule 14.2 (Maintenance of Operating Assets)) under Schedule 14.2 (Maintenance of Operating Assets) shall, in respect of Spares, include the obligation to replace any Spare which has been designated as a Primary Franchise Asset, which subsequent to its designation ceases to be part of the stock of Spares available to the Franchisee for use in the provision of the Franchise Services, with an equivalent Spare of equal or better quality than the Spare so replaced.

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APPENDIX TO SCHEDULE 14.4

List of Primary Franchise Assets[99]

[Note to Bidders: List of Primary Franchise Assets to be updated on a periodic basis]

Description of Primary Franchise Asset	Commitment not to de-designate
Lease in respect of the lease of land at Stowmarket (used for carpark) between (1) Suffolk County Council and (2) London Eastern Railway Limited (as transferred to the Franchisee).	Yes
A Lease in respect of land at Station Road, Marks Tey made between (1) Essex County Council and (2) London Eastern Railway Limited, dated 9 March 2011.	Yes
A Lease in respect of Ground Floor, Solar House, Romford Road, Stratford made with Rainham Steel Investments Limited, dated 3 June 2011.	Yes
Station Lease for all Stations except Stansted airport station and Harwich International Station, dated 5 February 2012.	Yes
Station Lease for Stansted Airport Station dated 5 February 2012.	Yes
Station Lease for Harwich International Station dated 5 February 2012.	Yes
Sub-sub-under lease of premises at Orient Way, Temple Mills, Londonmade between (1) the Secretary of State for Transport and (2) Abellio Greater Anglia and registered at the Land Registry under the number EGL343651, dated 5 February 2012.	Yes

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[99] **Note to Bidders:** To be populated by Bidder/DfT.

Lease agreement with GE Capital dated 29 October 2013 for 30 x Shere TVMs.	No
Bilateral agreement relating to land at Ilford Depot with Crossrail Ltd dated 13 May 2013.	Yes
Lease with ING Lease (UK) Ltd for 28 S&B TVMs to 28 Sept 2017 (as amended).	Yes
Lease of Suite C & D, The Octagon, Colchester with Shay Property Investments dated 31 March 2014 to 30 Apr 19.[100]	No.
Depot Access Agreement in relation to Ilford and associated Collateral Agreement & Amendment according to CTOC with Bombardier Transportation UK Ltd dated 5 February 2012 (as amended on 9 August 2013).	Yes
Running Maintenance Facility at London Ilford Depot with Rail for London dated 9 August 201.	Yes
Depot Access Agreement – London Ilford Depot with Rail for London dated 9 August 2013.	Yes
Facility Charge for Shenfield station decked car park with Network Rail Infrastructure Ltd dated 17 July 2014.	No
Framework Compensation Agreement relating to GSM-R with Network Rail in relation to York Way dated 17 June 2011.	Yes
Direct Agreement between (1) Rail for London and (2) Abellio Greater Anglia Ltd, dated 29 May 2015.	Yes
Train Service Agreement between (1) London Overground Operations Ltd and (2) Abellio Greater Anglia Ltd and dated 29 May 2015.	Yes
Depot Access Agreement between London Overground Operations Ltd (1) and Abellio	Yes

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[100] **Note to Bidders** - a Break clause exists from 15 October 2017, but requires 6 months prior notice.

Greater Anglia Ltd (2) and dated 29 May 2015.	
Lea Valley Fares Agreement between (1) Transport Trading Ltd and (2) Abellio Greater Anglia (2) and dated 29 May 2015.	Yes
Umbrella Agreement relating to land at Ilford Depot, with Network Rail Infrastructure, dated 13 May 2013.	
The cab simulators for the following classes of the Train Fleet: (i) Class 170 (company asset number LER c00108); (ii) Class 315 (company asset number LER 00108); and (iii) Class 379 (company asset number LER 10001)	Yes
£665k Cycle Fund – the remaining amount of this fund and all Cycle Parking and CCTV assets procured with this fund	

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SCHEDULE 14.5

Dealing with Franchise Assets

1. Assets not Designated as Primary Franchise Assets

1.1 This paragraph 1 relates to any Franchise Assets that are property or rights and are not designated as Primary Franchise Assets.

1.2 For the purposes of Section 27(3) of the Act, the Secretary of State consents to the Franchisee:

(a) transferring or agreeing to transfer any such Franchise Assets or any interests in, or right over, any such Franchise Assets; and

(b) creating or extinguishing, or agreeing to create or extinguish, any interest in, or right over, any such Franchise Assets.

2. Liabilities not Designated as Primary Franchise Assets

2.1 This paragraph 2 relates to any liabilities which are not designated as Primary Franchise Assets.

2.2 For the purposes of Section 27(3) of the Act, the Secretary of State consents to the Franchisee entering into any agreement under which any such liability is released or discharged, or transferred to another person.

3. Franchise Assets and Primary Franchise Assets

3.1 This paragraph 3 relates to Franchise Assets (whether or not designated as Primary Franchise Assets) which are property or rights.

3.2 The Secretary of State hereby consents to the installation of Spares which have been designated as Primary Franchise Assets on any rolling stock vehicles. Any Spare which is so installed shall cease to be so designated on such installation.

3.3 For the purposes of Section 27(3) of the Act, the Secretary of State hereby consents to the Franchisee creating or agreeing to create any Security Interest over any of these Franchise Assets to the extent that the terms of any such Security Interest provided that:

(a) if the relevant Franchise Asset becomes the subject of a transfer scheme made under Section 12 and Schedule 2 of the Railways Act 2005, it shall be fully and automatically released from the relevant Security Interest immediately before the coming into force of such transfer scheme;

(b) if the relevant Franchise Asset is assigned, novated or otherwise transferred to another person pursuant to and in accordance with the Franchise Agreement, it shall be fully and automatically released from the relevant Security Interest immediately before such assignment, novation or transfer; and

(c) such Security Interest shall not be enforced or enforceable until the date on which such Franchise Asset ceases to be designated as a Franchise Asset.

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4. **Prohibition on Other Security Interests**

The Franchisee shall not create or agree to create a Security Interest over any Franchise Asset except on the terms permitted under paragraph 3.3.

5. **Miscellaneous**

The Franchisee shall promptly inform the Secretary of State of any Security Interest arising at any time over any of its property or rights and shall provide the Secretary of State with such information in relation thereto as he may reasonably require.

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SCHEDULE 14.6

Residual Value Mechanism

1. Provisions relating to RV Assets

1.1 The provisions of paragraphs 3, 4, 7, 8 and 10 to 12 of Schedule 14.4 (Designation of Franchise Assets) (inclusive) shall not apply in respect of any RV Asset.

1.2 De-Designation of RV Assets as Primary Franchise Assets

The Secretary of State may, at any time during the Franchise Period, by serving notice on the Franchisee cause a particular RV Asset designated as a Primary Franchise Asset pursuant to paragraph 2.1(h) of Schedule 14.4 (Designation of Franchise Assets) to cease to be designated as such on the occurrence of any of the following:

(a) such RV Asset is lost, destroyed or otherwise beyond repair after the date upon which it is designated as a Primary Franchise Asset pursuant to paragraph 2.1(h) of schedule 14.4 (Designation of Franchise Assets) and such RV Asset is not replaced; or

(b) the Secretary of State and the Franchisee agree in writing at any time during the Franchise Period that such RV Asset shall cease to be so designated as a Primary Franchise Asset; or

(c) for an RV Asset that is a Network Rail Fixture Asset the applicable Station Access Conditions or Depot Access Conditions are amended at any time after the date of designation of such RV Asset such that the Franchisee ceases to be responsible under the applicable Station Access Conditions or Depot Access Conditions (as the case may be) for the maintenance, repair and renewal of such RV Asset.

Such RV Asset shall cease to be designated as a Primary Franchise Asset with effect from the date specified in any notice served by the Secretary of State pursuant to this paragraph 1.2 and the table in the Appendix to Schedule 14.6 (List of the RV Assets) shall be deemed to be amended and thereafter shall be amended to take account of any such de-designation.

1.3 Process for issue of a Certificate of Completion for RV Assets

(a) Within twenty (20) days of the date upon which an RV Asset is brought into operational use the Franchisee shall provide to the Secretary of State such information as is required by the Secretary of State for, and in the detail needed for demonstrating that such RV Asset has been brought into operational use and evidencing the actual capital cost incurred by the Franchisee on the procurement of such RV Asset including the following:

(i) the information described in paragraph 9 of Schedule 14.4 (Designation of Franchise Assets), including such information as the Secretary of State may require pursuant to paragraph 9.2 of Schedule 14.4 (Designation of Franchise Assets);

(ii) information which shows the actual date upon which such RV Asset was brought into operational use (including photographic evidence

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or any other kind of record which shows that such RV Asset has been brought into operational use);

(iii) in respect of an RV Asset that is a Network Rail Fixture Asset, written confirmation from Network Rail that:

(A) such RV Asset will be owned by the Franchise and remain the unencumbered asset of the Franchisee for the duration of the asset life of such RV Asset or the duration of the Franchise Period (whichever is the shorter);

(B) the Franchisee has the responsibility under the Station Access Conditions or the Depot Access Conditions (as the case may be) applicable in relation to such Station or Depot (as the case may be) to maintain, repair and renew such RV Asset from the date upon which such RV Asset property is brought into operational use for the duration of the asset life of such RV Asset or the duration of the Franchise Period (whichever is the shorter);

(iv) information evidencing the actual capital cost of procuring such RV Asset (including receipts and other supporting evidence);

(v) information which shows that such RV Asset satisfies the requirements of the Committed Obligations to which it relates; and

(vi) the information required by paragraph 1.5; and

(vii) such other information as the Secretary of State may reasonably require for the purposes of satisfying himself that such RV Asset has been brought into operational use by a date that is no later than four (4) years after the Start Date and verifying the actual capital costs incurred by the Franchisee on the procurement of such RV Asset.

(b) Subject to receipt of the information required in paragraph 1.3(a) and none of the events described in paragraph 1.2 having occurred, the Secretary of State shall issue to the Franchisee a certificate of completion (**"Certificate of Completion"**) which shall specify for the purposes of this Agreement the date upon which the relevant RV Asset was brought into operational use provided that nothing in this paragraph 1.3(b) shall oblige the Secretary of State to issue a Certificate of Completion in respect of any RV Asset:

(i) if the Secretary of State, acting reasonably is not satisfied that such RV Asset will at the time of such designation be vested in the Franchisee;

(ii) if the Secretary of State reasonably determines that such RV Asset does not satisfy the requirements of the Committed Obligation to which it relates;

(iii) that is brought into operational use on a date that is later than the date which is four (4) years after the Start Date; or

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(iv) where the confirmation from Network Rail referred in paragraph 1.3(a)(iii) has not been issued.

(c) The Secretary of State may, prior to the issue of a Certificate of Completion in respect of an RV Asset, exercise his rights under paragraph 6 of Schedule 11.2 (Management Information) to inspect an RV Asset for the purposes of satisfying himself that such RV Asset satisfies the requirements of the Committed Obligation to which it relates.

1.4 **Adjustments to the Transfer Value**

If:

(a) the Franchise Agreement is extended as contemplated in clause 5 then the Secretary of State shall adjust the RV Asset Transfer Value applicable to each RV Asset by depreciating each such RV Asset on a straight line basis from the date specified for such RV Asset in column 3 of the Appendix to this Schedule 14.6 ("**Planned Delivery Date**") until the end of the Franchise Period (as extended) and so that:

(i) the Revised RV Asset Transfer Value will be the residual value of the RV Asset following such depreciation as at the end of the Franchise Period (as extended) or, if the RV Asset has been fully depreciated on that basis at that time, nil; and

(ii) from the date of the extension of the Franchise Agreement Column 2 of the table in the Appendix to this Schedule 14.6 (List of the RV Assets) shall be deemed to be and shall be restated in the amounts of the Revised RV Asset Transfer Value; or

(b) the actual capital cost incurred by the Franchisee in procuring any RV Asset is less than the amount specified in Column 5 of the table in the Appendix to this Schedule 14.6 (List of the RV Assets) in respect of any such RV Asset, then:

(i) the Secretary of State shall with effect from the date upon which a Certificate of Completion is issued in respect of such RV Asset adjust the RV Transfer Value applicable to such RV Asset by using the same principles as were specified in the Financial Model and Record of Assumption for the calculation of the initial RV Transfer Value except that actual capital cost for such RV Asset shall replace the capital cost specified for such RV Asset in Column 5 of the table of the Appendix to this Schedule 14.6 (List of the RV Assets) in order to calculate the Revised RV Asset Transfer Value; and

(ii) Column 2 of the table in the Appendix to this Schedule 14.6 (List of the RV Assets) shall, from the date of any such adjustment be deemed to be restated and shall be restated in the amounts of the Revised RV Asset Transfer Value.

(c) For the purposes of this paragraph 1.4:

(i) **"RV Asset Transfer Values"** means each of the transfer values relating to the RV Assets as specified in Column 2 of the table in the Appendix to this Schedule 14.6 (List of RV Assets);

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(ii) **"Revised RV Asset Transfer Values"** means each of the RV Asset Transfer Values as adjusted by the Secretary of State in accordance with the provisions of paragraph 1.4(a) or paragraph 1.4(b) (as applicable).

1.5 **Maintenance Requirements for RV Assets**

At the same time as the Franchisee provides the information required pursuant to paragraph 1.3(a) in respect of any RV Asset, the Franchisee shall submit to the Secretary of State a schedule of condition specifying the condition of such RV Asset as at the date upon which such RV Asset was brought into operational use as specified in the applicable Certificate of Completion. Such schedule of condition must be approved by the Secretary of State and shall be in respect of such aspects of an RV Asset as the Secretary of State may reasonably require. The Franchisee shall ensure that each RV Asset is maintained, preserved and protected in at least the same condition, subject to fair wear and tear, as specified in the applicable schedule of condition as approved by the Secretary of State in respect of such RV Asset pursuant to this paragraph 1.5. In respect of any RV Asset that is a Network Rail Fixture Asset the Franchisee shall ensure that any schedule of condition prepared as required by this paragraph 1.5 shall comply with the Franchisee's maintenance obligations relating to such Network Rail Fixture Asset under the applicable Station Access Conditions and/or Depot Access Conditions (as the case may be).

1.6 Subject to paragraph 1.7, where the Franchisee has failed to demonstrate to the reasonable satisfaction of the Secretary of State that it has complied with its maintenance obligations in paragraph 1.5 in respect of any RV Asset then the Secretary of State may by notice in writing to the Franchisee require that the RV Asset Transfer Value payable by a Successor Operator required pursuant to the Supplemental Agreement to pay to the Franchisee the RV Asset Transfer Value for such RV Asset (**"Relevant Successor Operator"**) is adjusted downwards by an amount that is equal to the amount that is agreed by the Franchisee and the Relevant Successor Operator (or on failure to agree, as reasonably determined by the Secretary of State) as being the amount reasonably expected to be incurred by the Relevant Successor Operator for putting such RV Asset in the condition required pursuant to paragraph 1.5.

1.7 The provisions of paragraph 1.6 shall not apply in circumstances where the Franchisee and the Relevant Successor Operator agree that the Franchisee shall either:

(a) rectify any relevant non-compliance with the requirements of paragraph 1.5; or

(b) indemnify the Relevant Successor Operator (the form of such indemnity to be in a form that is acceptable to the Relevant Successor Operator) against the reasonable costs of putting the relevant RV Asset in the condition required by paragraph 1.5.

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APPENDIX TO SCHEDULE 14.6

List of the RV Assets

Column 1	Column 2	Column 3	Column 4	Column 5
Description of the RV Assets[101]	**RV Asset Transfer Value (£)**[102]	**Planned Delivery Date**[103]	**Is RV Asset a Network Rail Fixture Asset (Yes/No)**[104]	**Capital Cost (£)**[105]

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101 **Note to Bidders:** Bidder to populate - Description of assets to be populated by bidders. Assets to be included in the table must comply with each of the principles set out in Section 5.1.10 of the ITT.

102 **Note to Bidders:** Bidder to populate - Bidder to include the residual value of the asset listed in Column 1 of the table, such value to be determined in accordance with the principles set out in Section 5.1.10 of the ITT.

103 **Note to Bidders:** Bidder to populate - The date in which the asset listed in Column 1 is to be delivered and brought into use is to be specified by the bidder in this column. Such date shall be no later than the end of the 4th Franchise Year.

104 **Note to Bidders:** Bidder to populate.

105 **Note to Bidders:** Bidder to populate - The capital cost specified in this Column shall comply with the requirements for capital costs as set out in Section 5.1.10 of the ITT.

SCHEDULE 14.7

Incentivising Long Term Investment

This Schedule sets out the Secretary of State's guidance on how he approaches incentivising long term investment. Nothing in this Schedule is intended to limit or be limited by the provisions of paragraph 2.2 of Schedule 14.4 (Designation of Franchise Assets).

1. The Secretary of State wishes to encourage the Franchisee to:

   (a) improve the efficiency;

   (b) reduce the cost; and

   (c) enhance the revenue earning potential of the delivery of services to passengers,

   from the commencement of the Franchise, through the Franchise Term and into the successor franchises.

2. It is recognised however that the Franchise Term may be perceived to be a barrier to undertaking investment or change programmes where:

   (a) the time scale for implementation limits the benefit to the Franchisee; or

   (b) the business case for such investment or change has a payback period longer than the Franchise Term.

3. In this context investment or change may be considered to encompass:

   (a) capital investments undertaken solely by the Franchisee;

   (b) capital investments undertaken by the Franchisee in association with others;

   (c) total or partial substitution of certain train services by bus services where an enhanced service level could be provided for reduced cost or where the provision of bus services improves the overall capacity of the network or delivers other benefits;

   (d) changes in working practices of the Franchisee's employees;

   (e) changes in the contracted roles and responsibilities between the Franchisee and its major suppliers; and

   (f) operational changes.

4. Accordingly, the Franchisee is encouraged to propose schemes that seek to achieve the objectives set out in paragraph 1 for consideration by the Secretary of State during the Franchise Term.

5. In considering the Franchisee's proposals for any investment or change proposed to be undertaken, the Secretary of State will recognise:

   (a) the capital cost and proposed payment profile;

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(b) legitimate costs of the Franchisee in developing, procuring, delivering and project managing the project;

(c) the life of any capital assets and the duration of the benefits stream arising;

(d) the remaining Franchise Term and the projected payback period;

(e) the benefits associated with undertaking the investment early rather than waiting until the Franchise is re-let;

(f) the risks of cost overrun or under performance of the projected benefits;

(g) a profit element for undertaking the project commensurate with the risks of the proposed project; and

(h) alternative benefit sharing arrangements which could be based on:

(i) a capital lump sum when the expenditure is incurred;

(ii) an enhanced Franchise Payment over the Franchise Term;

(iii) a balloon payment on expiry of the Franchise which allocates a proportion of future benefits to the Franchisee;

(iv) an ongoing payment if the benefits materialise after the Franchise Term; and/or

(v) any combination of any of paragraphs 5(h)(i) to 5(h)(iv) inclusive.

6. In evaluating the Franchisee's proposals for any investment or change proposed to be undertaken and to enable best value for money to be obtained from third party financiers, the Secretary of State shall also give consideration to the appropriateness of the provision, by the Secretary of State, of an undertaking (or other form of comfort) pursuant to Section 54 of the Act.

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SCHEDULE 15

Obligations Associated with Termination

Schedule 15.1:	Reletting Provisions
Schedule 15.2:	Last Twelve (12) or Thirteen (13) months of Franchise Period and other conduct of business provisions
Schedule 15.3:	Handover Package
	Appendix: Form of Handover Package
Schedule 15.4:	Provisions Applying on and after Termination
	Appendix 1: Form of Transfer Scheme
	Appendix 2: Form of Supplemental Agreement

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SCHEDULE 15.1

Reletting Provisions

1. Reletting of Franchise

1.1 The Franchisee acknowledges that the Secretary of State may wish, at or before the expiry of the Franchise Period, either to invite persons to tender for the right to provide all or some of the Passenger Services under a franchise agreement or alternatively to enter into a franchise agreement in respect of all or some of the Passenger Services without having gone through a tendering process.

1.2 The Franchisee further acknowledges that the Secretary of State has in certain circumstances a duty under Section 30 of the Act to secure the continued provision of services equivalent to the Passenger Services on expiry or termination of the Franchise Agreement. The Franchisee accordingly accepts and agrees to the restrictions and obligations imposed on it under Part 1 (Franchise Services) of Schedule 1.1 (Franchise Services and Service Development), Schedule 14 (Preservation of Assets) and this Schedule 15 (Obligations Associated with Termination).

2. Preparation for Reletting

2.1 The Franchisee shall, if so requested by the Secretary of State:

(a) provide the Secretary of State and his representatives and advisers with access to officers, the Franchise Employees and all books, records and other materials kept by or on behalf of the Franchisee in connection with the Franchise Services (including electronic or magnetic records, any CRM System and any Yield Management System) for the purpose of assisting such representatives and advisers:

(i) to prepare reports or other documents in connection with any invitation to potential Successor Operators to tender for the right and obligation to operate all or any of the Franchise Services;

(ii) to prepare invitations to other potential franchisees to tender for the right and obligation to provide any other railway passenger services or operate any other additional railway asset; or

(iii) to enter into any franchise agreement or other agreement (including any agreement entered into by the Secretary of State in fulfilment of his duties under Section 30 of the Act) relating to the services equivalent to the Franchise Services, without undergoing a tendering process,

provided that the exercise of such access rights by the Secretary of State and his representatives and advisers shall not unduly interfere with the continuing provision and operation of the Franchise Services by the Franchisee; and

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(b) at its own cost, publish and display such publicity and promotional material and notices as the Secretary of State may provide to the Franchisee for the purposes of informing passengers of any matters relating to the Tendering/Reletting Process including:

(i) the commencement of any Tendering/Reletting Process;

(ii) making passengers aware of any consultation being undertaken by the Secretary of State in relation to any such Tendering/Reletting Process; and

(iii) informing passengers of the outcome of any Tendering/Reletting Process.

(c) The obligation to publish and display pursuant to paragraph 2.1(b) shall mean making the relevant publicity and promotional material and notices available to passengers by such means as the Secretary of State may reasonably require including by displaying publicity and promotional material and notices at Stations and on trains, publishing relevant information in any reports published to passengers or including such information in any leaflets, newspapers or other promotional material published to passengers by the Franchisee from time to time.

3. **Data Site Information**

3.1 The Franchisee shall make available to the Secretary of State and his representatives and advisers such Data Site Information (as defined at paragraph 3.5) 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 such request.

3.2 The Franchisee shall prepare and present such information in such manner (including in disaggregated form) as the Secretary of State may require, and shall provide such assistance as the Secretary of State may require in connection with the verification of such information.

3.3 The Franchisee shall provide such confirmation in relation to the accuracy of:

(a) the contents of the documents referred to in paragraph 2.1; and

(b) any Data Site Information uploaded to such electronic data site as the Secretary of State may require pursuant to paragraph 3.4,

in each case, as the Secretary of State shall require from time to time.

3.4 The Franchisee shall upload such Data Site Information as the Secretary of State may require to such electronic data site as he may specify and shall make a sufficient number of appropriate staff available for that purpose. The Franchisee shall ensure that such staff are trained in the use of such data site (such training to be at the expense of the Secretary of State). For the avoidance of doubt, the Data Site Information required by the Secretary of State under this paragraph may cover the entire Franchise Period or any part of it.

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3.5 **"Data Site Information"** means information relating to any of the following:

(a) the Franchise or the Franchisee, any Affiliate of the Franchisee or their respective businesses (including their audited and management accounts, asset registers and contract lists);

(b) past and present demand for the Franchise Services or any similar services (including passenger count data, Yield Management Data and CRM Data);

(c) information required to be provided by the Franchisee pursuant to Schedule 1.5 (Information about Passengers);

(d) the total revenue (being all revenue whatsoever from any source obtained from any commercial or non-commercial activity or undertaking of the Franchisee) received or which the Franchisee expects to receive during the Franchise Period;

(e) the Franchisee's safety authorisation, safety certificate or safety management system (in each case as defined in the Safety Regulations);

(f) any other safety matter;

(g) the arrangements contained within the Railways Pension Scheme, the Pension Trust, the Franchise Section, or any other pension arrangement in respect of employees of the Franchisee or employees of any person who was a franchisee or franchise operator in relation to a Previous Franchise Agreement;

(h) the management structure of the Franchisee's business (including organograms and any planned changes);

(i) employees and contractors (including details of responsibilities, job title, remuneration, grade, qualifications and any other personnel records);

(j) terms and conditions of employment and human resources policies;

(k) public and working timetables;

(l) driver, other train crew and rolling stock diagrams;

(m) rolling stock (including train and vehicle miles, restrictions of use, fleet examinations and servicing, fleet performance, casualty data and any relevant reports);

(n) any station (including any leases, documents of title, maintenance arrangements, station facilities, plans and contingency or security plans relating to any station);

(o) health and safety and environmental information;

(p) copies of contracts (including Access Agreements, policies of insurance, property, rolling stock and other leases, catering contracts, contracts for outsourced services, and rolling stock maintenance and spares contracts);

(q) Network Rail charges and requirements (including rules of the route/plan);

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(r) any information technology system (hardware or software) used or owned by the Franchisee or any Affiliate of the Franchisee (including any software licences);

(s) performance data;

(t) customer service (including staffing levels, call volumes and opening hours);

(u) fares and fares baskets;

(v) relationships with stakeholders (including minutes of meetings with unions, Passenger Transport Executives, local authorities or Transport for London); or

(w) any other matter which the Secretary of State may specify from time to time,

and in this paragraph 3.5 the term **"employee"** includes any person engaged by the Franchisee pursuant to a contract of personal service.

3.6 The Franchisee shall:

(a) comply with its obligations under paragraph 2.1 or this paragraph 3 promptly and in any case in accordance with any reasonable timetable with which the Secretary of State requires the Franchisee by notice in writing to comply;

(b) where the Secretary of State raises with the Franchisee any query in relation to any Data Site Information, make a full and substantive response to such query within five (5) Weekdays. Such response shall include any further information requested by the Secretary of State in relation to such query; and

(c) nominate a person to whom:

(i) all queries or requests for information pursuant to paragraph 3.6(b);

(ii) requests for access to premises pursuant to paragraph 5; and

(iii) requests for access to employees,

shall be addressed and who shall be responsible for complying with any such queries or requests for information and such requests for access to employees and premises. The Franchisee shall notify the Secretary of State (his representatives and advisers) of the name and contact details of such person.

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3.7 In connection with any proposal (whether or not yet finalised) to enter into separate franchise agreements and/or other agreements with more than one Successor Operator, each relating to some only of services equivalent to the Franchise Services (whether or not together with other railway passenger services) at or following the end of the Franchise Period, the Franchisee agrees and acknowledges that the Secretary of State may require:

(a) that the Franchisee provides the Secretary of State with additional information and reports and analysis in respect of such Service Groups as the Secretary of State may specify. This may include:

(i) information relating to the operational and financial performance of the Franchisee in relation to such Service Groups; and

(ii) identification of those employees, assets and liabilities which relate to such Service Groups together with an indication of the extent to which the same are shared between the operation of different Service Groups; and

(b) subject to paragraph 3.8, that the Franchisee reorganises the business of providing services equivalent to the Franchise Services in order to facilitate the transfer anticipated by this Schedule 15.1 on an ongoing basis of the business of providing the Franchise Services within each of such Service Groups to separate Successor Operators. This may include, to the extent reasonably practicable:

(i) the re-organisation of personnel such that an appropriate number of employees (having sufficient skills, qualifications and experience) will transfer by operation of Law to each Successor Operator of each such Service Group; and/or

(ii) entering into additional or clarificatory contractual or other arrangements so that the Successor Operator of each such Service Group will have the necessary assets and rights to operate the Franchise Services within that Service Group; and

(c) that the Franchisee uploads Data Site Information to more than one data site.

3.8 Subject to paragraph 3.9, the Secretary of State shall reimburse any reasonable out-of-pocket expenses that the Franchisee may incur in complying with its obligations under this paragraph 3.

3.9 Without prejudice to any other rights the Secretary of State may have (under the Franchise Agreement or otherwise) in respect of any contravention by the Franchisee of its obligations under this paragraph 3, if the Secretary of State is of the reasonable opinion that the Franchisee does not have sufficient resources to enable its compliance with its obligations under this paragraph 3 he may:

(a) require the Franchisee (at its own cost) to employ; or

(b) after notification to the Franchisee, employ,

such suitable additional resource as may be required to ensure that the Franchisee can comply with its obligations under this paragraph 3. The Franchisee shall reimburse to the Secretary of State, by way of adjustment to Franchise

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Payments, any proper costs (including staff costs) incurred by him in the employment of any such additional resource pursuant to paragraph (b).

3.10 To the extent reasonably practicable, prior to taking any of the actions referred to in paragraph 3.9, the Secretary of State shall allow the Franchisee a reasonable opportunity to make representations to him concerning the exercise by the Secretary of State of his rights under paragraph 3.9 but the Secretary of State shall not be obliged by those representations to refrain from exercising any of the actions specified under paragraph 3.9.

4. Non-Frustration of Transfer to Successor Operator

4.1 The Franchisee shall take no action or steps which is or are designed, directly or indirectly:

(a) to prevent, prejudice or frustrate the transfer as a going concern of the business of providing the Franchise Services at the end of the Franchise Period to a Successor Operator; or

(b) to avoid, frustrate or circumvent any provision of the Franchise Agreement (including in particular the provisions of Schedule 14 (Preservation of Assets) and this Schedule 15) which is included in whole or in part for the purpose of preventing any such preventive, prejudicial or frustrating action or steps.

4.2 Subject to the restrictions set out in paragraph 4.1 and the other provisions of the Franchise Agreement, the Franchisee may take such action as it may require for the purposes of bidding to become, or becoming, a Successor Operator.

5. Inspection Rights at premises used for the provision of the Franchise Services

5.1 Without limiting any other rights of the Secretary of State under the Franchise Agreement and subject to paragraph 5.2, the Franchisee shall, if so requested by the Secretary of State, permit the Secretary of State (or his nominee, which for these purposes shall include potential Successor Operators including potential bidders who have expressed an interest in tendering for the right and obligation to operate any or all of the Franchise Services) to have such access to premises owned or occupied by the Franchisee or any of its Affiliates (including Stations and Depots and which for these purposes shall include any premises used in connection with the provision of the Franchise Services by the Franchisee or any of its Affiliates) as the Secretary of State may reasonably require in connection with any Tendering/Reletting Process including for the purposes of inspecting such premises (including the taking of inventories) and undertaking such surveys as may be necessary or desirable for the purposes of ascertaining the condition of any such premises.

5.2 The Secretary of State shall use reasonable endeavours to ensure that any access rights required pursuant to paragraph 5.1 shall be undertaken so as not to unduly interfere with the continuing provision and operation of the Franchise Services by the Franchisee.

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SCHEDULE 15.2

Last Twelve (12) or Thirteen (13) months of Franchise Period and other conduct of business provisions

1. Last Twelve (12) or Thirteen (13) Month Period

1.1 Where reference is made in the Franchise Agreement to the last twelve (12) or thirteen (13) months of the Franchise Period, such period shall be deemed to commence on the earliest of the following dates:

(a) the date which is twelve (12) or thirteen (13) months, as the case may be, prior to the Expiry Date or if the actual date of expiry of the Franchise Period is known the date which is twelve (12) or thirteen (13) months prior to that date;

(b) the date on which the Secretary of State notifies the Franchisee that such period of twelve (12) or thirteen (13) months shall be deemed to commence on the grounds that the Secretary of State reasonably considers that an Event of Default may occur within the following twelve (12) months; or

(c) the date on which the Secretary of State notifies the Franchisee that such period of twelve (12) or thirteen (13) months shall be deemed to commence on the grounds that the Secretary of State considers it reasonably likely that the Franchise Agreement will be terminated by agreement between the Parties within such period.

1.2 Any such period (which may be longer or shorter than twelve (12) or thirteen (13) months, as the case may be) shall expire on the Expiry Date or, if earlier:

(a) in the case of periods commencing under paragraph 1.1(b) or 1.1(c), the date falling twelve (12) or thirteen (13) months after the date of any notice under paragraph 1.1(b) or 1.1(c); or

(b) such earlier date as the Secretary of State may determine.

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2. **Terms of Employment of Existing Employees**

2.1 The Franchisee shall not, and shall secure that each other relevant employer shall not, without the prior consent of the Secretary of State (which shall not be unreasonably withheld), vary or purport or promise to vary the terms or conditions of employment of any Franchise Employee (in particular, the Franchisee shall not promise to make any additional payment or provide any additional benefit or vary any term or condition relating to holiday, leave or hours to be worked) where such variation or addition:

(a) takes effect in the last twelve (12) months of the Franchise Period unless it is in the ordinary course of business and, when aggregated with any other variation or addition which takes effect during such period, represents an increase in the remuneration of a Franchise Employee of no more than the amount determined in accordance with the following formula:

$$\frac{MAWE + JAWE + SAWE + DAWE}{4}$$

where:

MAWE	is the change in the Average Weekly Earnings between March in the preceding twelve (12) months and the corresponding March one (1) year before, expressed as a percentage;
JAWE	is the change in the Average Weekly Earnings between June in the preceding twelve (12) months and the corresponding June one (1) year before, expressed as a percentage;
SAWE	is the change in the Average Weekly Earnings between September in the preceding twelve (12) months and the corresponding September one year before, expressed as a percentage; and
DAWE	is the change in the Average Weekly Earnings between December in the preceding twelve (12) months and the corresponding December one (1) year before, expressed as a percentage;

(b) wholly or partly first takes effect after the end of the Franchise Period;

(c) results in any such employment not being terminable by the Franchisee or other relevant employer within six (6) months of the expiry of the Franchise Period;

(d) relates to a payment or the provision of a benefit triggered by termination of employment;

(e) relates to the provision of a benefit (excluding base salary) which any such employee will or may have a contractual right to receive after the expiry of the Franchise Period; or

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(f) prevents, restricts or hinders any such employee from working for a Successor Operator or from performing the duties which such employee performed for the Franchisee.

It is agreed that the Franchisee will be permitted to make a decrease in the remuneration of any Franchise Employee that takes effect in the last twelve (12) months of the Franchise Period without first obtaining the consent of the Secretary of State in circumstances where such decrease is in the ordinary course of business and when aggregated with any other variation which takes effect during such period, represents a decrease in the remuneration of a Franchise Employee of no more than the amount determined in accordance with the formula contained in paragraph 2.1(a) where a calculation pursuant to such formula gives rise to a negative percentage. In any other circumstances the prior consent of the Secretary of State will be required to any decrease in the remuneration of a Franchise Employee in the last twelve (12) months of the Franchise Period.

2.2 Without limiting the foregoing, the Franchisee shall consult the Secretary of State as soon as reasonably practicable in any circumstances in which the Secretary of State's consent under paragraph 2.1 may be required. Further, it shall always be deemed to be reasonable for the Secretary of State to withhold his consent to a variation or addition which is prohibited without such consent under paragraph 2.1(a) provided the Secretary of State:

(a) makes an overall increase in Franchise Payments equal to the amount of the direct net losses suffered by the Franchisee on the days when the Passenger Services are affected by Industrial Action taken by the Franchise Employees which is a consequence of a refusal by the Secretary of State to agree to the variation or addition; and

(b) agrees that, to the extent that the Franchisee would otherwise be in contravention of the Franchise Agreement as a consequence of the Industrial Action referred to in this paragraph 2.2, no such contravention shall have occurred, save where such contravention relates to safety requirements.

2.3 The expression **"promise to vary"** when used in paragraph 2.2 includes any offer or indication of willingness to vary (whether or not such offer or willingness is made conditional upon obtaining the Secretary of State's consent).

3. Terms of Employment of New Employees

The Franchisee shall not, and shall secure that each other relevant employer shall not, without the prior consent of the Secretary of State (which shall not be unreasonably withheld), create or grant, or promise to create or grant, terms or conditions of employment for any Franchise Employee where the employment of such Franchise Employee by the Franchisee or such other relevant employer may commence on or after the Start Date if and to the extent that:

(a) such terms or conditions are, in the reasonable opinion of the Franchisee, materially different from the terms or conditions of employment of equivalent or nearest equivalent Franchise Employees at the date on which such employment is scheduled to commence; and

(b) if such terms or conditions were granted to such equivalent Franchise Employees already employed by the Franchisee by way of variation to

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their terms or conditions of employment, the Franchisee would be in contravention of paragraph 2.1.

4. **Changes in Numbers and Total Cost of Employees**

Subject to and excluding any increase in the remuneration of Franchise Employees permitted under paragraph 2.1, the Franchisee shall not, and shall secure that each other relevant employer shall not, without the prior written consent of the Secretary of State (which shall not be unreasonably withheld) increase or decrease in the last twelve (12) months of the Franchise Period the number of Franchise Employees such that:

(a) the total number of Franchise Employees or the total cost per annum to the Franchisee and each other relevant employer of employing all Franchise Employees is increased; or

(b) the total number of Franchise Employees is decreased,

in each case, by more than five per cent (5%) during such period of twelve (12) months provided that where the last twelve (12) or thirteen (13) months of the Franchise Period has been deemed to have commenced under paragraph 1.1 and the period of the restriction contemplated by this paragraph 4 lasts longer than twelve (12) months such restriction shall apply in respect of the longer period.

5. **Fares**

5.1 **Reduction in Prices of Fares**

(a) During the last thirteen (13) months of the Franchise Period the Franchisee shall not, without the prior written consent of the Secretary of State (not to be unreasonably withheld), set the Price or Child Price of or sell (except to the extent required to do so under the terms of the Ticketing and Settlement Agreement as a result of the Price or Child Price of a Fare being set by another person) any Fare which would entitle the purchaser of such Fare to travel on all or any of the Passenger Services after the Franchise Period for an amount which is less than the Price or the Child Price of that Fare immediately before the commencement of such thirteen (13) month period or, in the case of a new Fare, the Price of its nearest equivalent immediately before the commencement of such period.

(b) Paragraph 5.1(a) shall not prevent the Franchisee from giving any discount or reduction to which the purchaser of a Fare may be entitled by virtue of:

(i) presenting a Discount Card (or any equivalent replacement thereof) issued by the Franchisee before the commencement of such thirteen (13) month period and to which the purchaser would have been entitled before the commencement of such period;

(ii) presenting a Discount Card issued by another train operator;

(iii) the Passenger's Charter or the passenger's charter of any other train operator; or

(iv) any relevant conditions of carriage.

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(c) The Franchisee shall procure that persons acting as its agent (except persons acting in such capacity by virtue of having been appointed under Parts II to VI of Chapter 9 of the Ticketing and Settlement Agreement or by being party to the Ticketing and Settlement Agreement) shall comply with the provisions of paragraph 5.1(a) to the extent that such provisions apply to the selling of Fares by the Franchisee.

5.2 **Percentage Allocations**

(a) Except to the extent that the Secretary of State may consent from time to time (such consent not to be unreasonably withheld), the Franchisee shall not, in the last thirteen (13) Reporting Periods of the Franchise Period, take any action or step which may result in its Percentage Allocation (as defined in the Ticketing and Settlement Agreement) in respect of any Rail Product (as defined in the Ticketing and Settlement Agreement) being reduced.

(b) The Franchisee shall notify the Secretary of State before taking any such action or step in the last thirteen (13) Reporting Periods of the Franchise Period and upon becoming aware of any other person proposing to take any action or step which may have the same effect. The Franchisee shall take such action as the Secretary of State may reasonably request in order to prevent any such reduction, including submitting any dispute to any relevant dispute resolution procedures.

5.3 **Restrictions in respect of Sale of Advance Purchase Train-specific Fares**

(a) It is acknowledged that the Franchisee will make available for sale prior to the end of the Franchise Period Advance Purchase Train-specific Fares which are valid for travel after the end of the Franchise Period.

(b) In making such Advance Purchase Train-specific Fares available for purchase the Franchisee shall not change its commercial practice in terms of the number of such Advance Purchase Train-specific Fares made available or the Passenger Services on which they are valid for use when compared with its previous commercial practice in respect of Advance Purchase Train-specific Fares valid for travel prior to the end of the Franchise Period.

(c) The Franchisee will be permitted to take into account reasonable seasonal factors in determining its previous commercial practice. In assessing reasonableness, account will be taken of the Franchisee's practice in addressing such seasonal factors in the corresponding period in the previous year.

6. **Voting on Scheme Councils**

6.1 Subject to paragraph 7.4, during the last twelve (12) months of the Franchise Period the Franchisee shall give the Secretary of State reasonable notice of:

(a) any meeting of:

(i) a scheme council of an Inter-Operator Scheme on which the Franchisee is represented; or

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(ii) a scheme management group of any Inter-Operator Scheme:

(A) in which the Franchisee has a permanent position; or

(B) where the Franchisee employs a member of such group;

(b) the resolutions to be voted upon at any such meeting; and

(c) the Franchisee's voting intentions.

6.2 Subject to paragraph 7, the Franchisee shall vote at any such meeting in the manner required by the Secretary of State.

7. **Successor Operator**

7.1 Where the Franchisee has been notified by the Secretary of State that a Successor Operator has been selected (whether a franchisee or otherwise and whether or not such selection is conditional), the Franchisee shall give such Successor Operator reasonable notice of:

(a) any meeting referred to in paragraph 6.1(a);

(b) any resolutions to be voted upon at any such meeting where such resolutions might reasonably be considered to affect the interests of such Successor Operator; and

(c) the Franchisee's voting intentions.

7.2 The Franchisee shall discuss with the Successor Operator in good faith with a view to agreeing the way the Franchisee should vote on the resolutions referred to in paragraph 7.1(b). In the absence of any agreement, the Franchisee shall, as soon as reasonably practicable thereafter, having regard to the deadline for voting on such resolutions, refer the matter to the Secretary of State for determination.

7.3 The Secretary of State shall reasonably determine the way the Franchisee should vote on any resolutions referred to him in accordance with paragraph 7.2, having regard to the transfer of the Franchise Services as a going concern at the end of the Franchise Period.

7.4 Where paragraph 7 applies, the Franchisee shall vote at any meeting referred to in paragraph 6.1(a) in accordance with any agreement pursuant to paragraph 7.2 or determination pursuant paragraph 7.3.

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SCHEDULE 15.3

Handover Package

1. Handover Package Status

1.1 The Franchisee shall:

(a) on or before the Start Date, provide to the Secretary of State:

(i) the Handover Package; and

(ii) a letter in a form approved by and addressed to the Secretary of State confirming the details of any insurer providing insurance to the Franchisee and authorising the insurer (and any relevant broker) to release any insurance-related information to any of the Secretary of State, a Successor Operator or its agent on demand;

(b) maintain the Handover Package and update it at least every three (3) Reporting Periods; and

(c) in respect of the information required pursuant to paragraph 1.1(a)(ii), supply revised information and/or letters to the Secretary of State as and when required in order to ensure that such information and letters remain accurate and up to date.

1.2 The Franchisee shall ensure that any Successor Operator will have immediate access to the Handover Package on the expiry of the Franchise Period.

1.3 The Franchisee shall also ensure that the Key Contacts List is provided to the Secretary of State within twenty four (24) hours of the receipt of any Termination Notice.

1.4 From the date that the Station Asset Management Plan is created pursuant to paragraph 1 of Schedule 1.7 (Stations) the Franchisee shall update the Handover Package to include the Station Asset Management Plan (and a copy of all previous Station Asset Management Plans) and shall supply updated versions of the Station Asset Management Plan whenever such plan is updated in accordance with paragraphs 1.6 and 1.7 of Schedule 1.7 (Stations).

2. Director's Certificate

Once in each Franchisee Year, the Franchisee shall provide to the Secretary of State a certificate signed by a nominated and duly authorised director of the Franchisee, addressed to the Secretary of State, which confirms that the Handover Package contains the information and objects specified in the Appendix (Form of Handover Package) to this Schedule 15.3 and that such information is accurate as at the date of the certificate.

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APPENDIX TO SCHEDULE 15.3

Form of Handover Package

1. **Property**

A list of all property owned, leased, operated or occupied by the Franchisee which shall include the address and contact telephone number of each property. Where applicable, the list will also include the name, address and telephone number of the lessor and/or the party which has granted authority to use or occupy the property, and any relevant reference numbers applicable to that lease or occupation.

2. **Contracts**

A printed or electronic list (in a format acceptable to the Secretary of State) of all contracts (sales, purchases or otherwise including leases and licences) between the Franchisee and the counterparty or counterparties to each such contract, showing the name, address and telephone number of each counterparty; the contract reference number of the Franchisee and each counterparty (if any); and the contract price/value, term and expiry date. This requirement shall apply to all contracts unless otherwise agreed by the Secretary of State.

3. **Systems**

A list of the electronic systems in use by the Franchisee, together with the name, office address and telephone number of the Franchisee's Information Technology Manager (or the holder of any equivalent post) who is responsible for administration of each such system.

4. **Daily Operations**

A printed or electronic list (in a format acceptable to the Secretary of State) of all assets owned or operated by the Franchisee, together with their location.

5. **Insurance**

A list of the names, addresses and telephone numbers of all insurers and any relevant broker providing insurance to the Franchisee, together with the relevant policy numbers and other references and details of any outstanding claims or unresolved disputes.

6. **Safety Certificate**

A complete copy of the Safety Certificate, an electronic copy of the Franchisee's application for the Safety Certificate (in Microsoft Word format or such other format as is acceptable to the Secretary of State) and full details of the Franchisee's safety management system in place to support the Safety Certificate.

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SCHEDULE 15.4

Provisions Applying on and after Termination

1. Novation of Access Agreements on Termination of the Franchise Agreement

1.1 The Franchisee shall, to the extent so requested by the Secretary of State on termination of the Franchise Agreement, in relation to any Access Agreement to which it is a party, novate its interest under any relevant Access Agreement (and any related Collateral Agreement) to the Secretary of State or as he may direct.

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

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

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

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

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

1.4 The Franchisee shall, on the occurrence of the circumstances specified in paragraph 1.1 in relation to any other Train Operator who is a party to an Access Agreement to which the Franchisee is also party, agree to the novation of the relevant Train Operator's interest under the relevant Access Agreement to the Secretary of State or as he may direct, subject, to the extent applicable, to the consent of the ORR. The provisions of paragraph 1.3 shall apply to any such novation.

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

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2. **Co-operation with Successor Operator**

2.1 In order to ensure the continuity of, and an orderly handover of control over, the Franchise Services, the Franchisee shall co-operate with:

(a) where a Successor Operator has been appointed, such Successor Operator; or

(b) where a Successor Operator has not been so appointed, the Secretary of State,

and shall take such steps as may be reasonably requested by the Secretary of State in connection therewith.

2.2 In satisfaction of its obligations under paragraph 2.1, the Franchisee shall make appropriately skilled and qualified Franchise Employees reasonably available to attend such meetings with the Secretary of State, the Successor Operator, Network Rail, any rolling stock lessor and/or and other relevant third party as are reasonably required in order to determine:

(a) those actions that are required in order to facilitate such continuity and orderly handover, in particular those actions arising under, but not limited to, the following agreements:

(i) Access Agreements;

(ii) Property Leases;

(iii) agreements in relation to Shared Facilities;

(iv) Rolling Stock Leases;

(v) Rolling Stock Related Contracts;

(vi) any other Key Contract; and

(b) without prejudice to the Secretary of State's rights under this Schedule 15.4, those rights and liabilities as may be specified in any Transfer Scheme.

3. **Transfer of Primary Franchise Assets**

3.1 **Option Arrangements**

(a) The Secretary of State hereby grants to the Franchisee the right to require the Secretary of State to make, and the Franchisee hereby grants to the Secretary of State the right to make, a Transfer Scheme in accordance with Section 12 and Schedule 2 of the Railways Act 2005 for the transfer of any or all Primary Franchise Assets on the expiry of the Franchise Period.

(b) On or within fourteen (14) days before the expiry of the Franchise Period:

(i) either Party may serve notice on the other Party specifying the Primary Franchise Assets to be transferred; and

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(ii) the other Party may (within such timescale) serve a subsequent notice specifying any additional Primary Franchise Assets to be transferred.

(c) The Secretary of State may (and shall if required by the Franchisee) make one or more such Transfer Schemes for the transfer of the Primary Franchise Assets specified in any such notice within fourteen (14) days after service of such notice (except in relation to any such Primary Franchise Assets which are, in accordance with Schedule 14.4 (Designation of Franchise Assets), de-designated as such prior to the end of the Franchise Period).

(d) Any Franchise Assets or Primary Franchise Assets which are not so transferred shall cease to be designated as such fourteen (14) days after service of such notice.

3.2 **Supplemental Agreement**

Without prejudice to the duties, powers, rights and obligations of the Secretary of State under the Railways Act 2005 in respect of any Transfer Scheme, any Transfer Scheme shall impose on the Franchisee and the transferee an obligation to enter into an agreement substantially in the form of the Supplemental Agreement which shall provide for the determination of amounts to be paid in respect of the property, rights and liabilities which are transferred under such Transfer Scheme. The Franchisee shall enter into any such Supplemental Agreement and shall comply with its obligations thereunder.

3.3 **Payment of Estimated Transfer Price**

(a) The Secretary of State may require the Franchisee to pay to any transferee under a Transfer Scheme, or may require any such transferee to pay to the Franchisee, on the day on which the Transfer Scheme comes into force such sum as the Secretary of State may determine should be so paid having regard to:

(i) his estimate of the sum likely to be paid under the relevant Supplemental Agreement in respect of the Primary Franchise Assets being transferred under the relevant Transfer Scheme;

(ii) his estimate of any other sums likely to be paid thereunder;

(iii) the financial condition of the Franchisee and the transferee and whether any estimate so paid would be likely to be repaid, if in excess of the sums eventually payable thereunder; and

(iv) such other matters as the Secretary of State may consider appropriate.

(b) The Franchisee shall pay to any such transferee the sum determined by the Secretary of State in accordance with paragraph 3.3(a) on the day on which the relevant Transfer Scheme comes into force.

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3.4 **Possession of Franchise Assets**

On the coming into force of a Transfer Scheme, the Franchisee shall deliver up to the Secretary of State (or his nominee) possession of the Primary Franchise Assets transferred under such Transfer Scheme.

4. **Associated Obligations on Termination**

4.1 **Assistance in Securing Continuity**

(a) In order to facilitate the continuity of the Franchise Services on expiry of the Franchise Period, the Franchisee shall take such steps, both before and after the expiry of the Franchise Period, as the Secretary of State may reasonably require, to assist and advise any Successor Operator in providing and operating the Franchise Services.

(b) In particular, the Franchisee shall provide any Successor Operator with such records and information relating to or connected with the Franchise Services as the Secretary of State may reasonably require (other than confidential financial information but including all records relating to the Franchise Employees).

4.2 **Access**

On the expiry of the Franchise Period, the Franchisee shall grant the Secretary of State and his representatives such access as the Secretary of State may reasonably request to any property owned, leased or operated by the Franchisee at such time, for the purpose of facilitating the continued provision of the Franchise Services.

4.3 **Key Contracts**

(a) The Franchisee shall provide such assistance to any Successor Operator as the Secretary of State may reasonably require in ensuring that, pursuant to any Direct Agreements, such Successor Operator may enter into (or enjoy the benefit of) contracts equivalent to the relevant Key Contracts (or part thereof).

(b) In satisfaction of its obligations under paragraph 4.3(a), the Franchisee shall terminate, surrender, cancel or undertake not to enforce its rights under any Key Contract (or part thereof) provided that nothing in this paragraph shall require the Franchisee to undertake not to enforce any rights under a Key Contract relating to the period prior to the expiry of the Franchise Period.

4.4 **Change of Name**

The Franchisee shall cease to use any trade marks which are licensed to the Franchisee under any of the Brand Licences forthwith upon expiry of the Franchise Period and shall take all necessary steps to change any company name which incorporates any such marks as soon as practicable.

4.5 **Property Leases**

(a) The Franchisee shall, on the expiry of the Franchise Period, if requested by the Secretary of State, assign its interest under all or any Property Leases

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to the Secretary of State or as he may direct, subject where applicable to the agreement of any other party to such Property Lease or the ORR.

(b) Such assignment shall be on such terms as the Secretary of State may reasonably require, including:

(i) that the Franchisee shall not be released from any accrued but unperformed obligation, the consequences of any antecedent breach of a covenant or obligation in the Property Leases or any liability in respect of any act or omission under or in relation to the Property Lease prior to, or as at the date of, any such assignment (except to the extent that the Secretary of State or his nominee agrees to assume responsibility for such unperformed obligation, such liability or the consequences of such breach in connection with the relevant assignment); and

(ii) that neither the Secretary of State nor his nominee shall be obliged, in connection with such assignment, to agree to assume responsibility for any unperformed obligation, liability or consequences of a breach referred to in paragraph 4.5(b)(i), and the Franchisee shall indemnify the Secretary of State or his nominee, as the case may be, on demand, on an after-tax basis against any costs, losses, liabilities or expenses suffered or incurred in relation thereto.

(c) The Franchisee shall, on the occurrence of any of the circumstances specified in paragraph 4.5(a) in relation to any other Train Operator who is a party to a Property Lease to which the Franchisee is also party, agree to the assignment of such Train Operator's interest under the relevant Property Lease to the Secretary of State or as he may direct, subject, where applicable, to the consent of Network Rail. The provisions of paragraph 4.5(b) shall apply to any such assignment.

(d) The Franchisee shall notify the Secretary of State on becoming aware of any circumstances which might lead to the Secretary of State being able to require the Franchisee to assign its interest or agree to the assignment of another Train Operator's interest under this paragraph 4.

5. **Actions required immediately on Handover**

5.1 The Franchisee shall immediately on the expiry of the Franchise Period make available to the Secretary of State:

(a) information as to the status of each purchase order or contract, including its award date, anticipated delivery date, confirmation of receipt of goods or services and the payment records for each purchase order, together with any matters in dispute with the appointed subcontractor and, to the extent that the Franchisee is a subcontractor to another Train Operator, equivalent information in respect of that Train Operator; and

(b) information concerning any contract necessary for the continued operation of the Franchise where a procurement or bidding process has been initiated.

5.2 The Franchisee agrees that the Secretary of State or his agents may have access to and use free of charge any information contained in any Computer System or

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in hard copy format as he sees fit (for the purposes of continuing the operation of the Franchise Services).

6. **Maintenance Records**

The Franchisee shall immediately on expiry of the Franchise Period provide to the Secretary of State:

(a) records of the status of the maintenance of the rolling stock vehicles used in the provision of the Passenger Services;

(b) records of the status of the maintenance of any lifting equipment;

(c) a list of any deferred maintenance; and

(d) records of the status of the maintenance of any depot or station which is a Franchise Asset,

including the extent of completion of examinations and the modification status of each such rolling stock vehicle

7. **Ticketing Arrangements**

The Franchisee shall provide immediately on expiry of the Franchise Period a statement certifying:

(a) all ticketing transactions with the public or credit card agencies that are in process and not yet complete, together with any allocations on multi-modal travel with other agencies or local authorities;

(b) the extent of any outstanding claims with ticketing settlement agencies;

(c) refund arrangements (whether under the Passenger's Charter or not) with members of the public or other Train Operators or ticketing settlement agencies that are in process and not yet complete; and

(d) commissions owed and/or due.

8. **Franchisee's Intellectual Property**

8.1

(a) On the expiry of the Franchise Period, the Franchisee will grant to any Successor Operator licences of any Intellectual Property Rights which:

(i) is owned by or licensed to the Franchisee;

(ii) was not owned by or licensed to it immediately prior to the Start Date;

(iii) has not been designated as a Primary Franchise Asset;

(iv) does not represent or constitute a Mark; and

(v) may, in the reasonable opinion of the Secretary of State, be necessary for any Successor Operator to operate the Franchise

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Services on an efficient and economic basis after the expiry of the Franchise Period.

(b) When agreeing the terms on which Intellectual Property Rights is to be licensed to it, the Franchisee shall use all reasonable endeavours to ensure that such terms include the right to sub-license such Intellectual Property Rights in accordance with this paragraph 8. The Franchisee shall not enter into a licence that does not include such a provision without first obtaining the Secretary of State's prior written consent (such consent not to be unreasonably withheld).

8.2

(a) Any such licence shall be granted to the relevant Successor Operator for such period as the Secretary of State may determine to be reasonably necessary for the purpose of securing continuity of the provision of the Franchise Services and shall be free of charge and royalty-free for a period of one (1) month or less.

(b) If such licence is for a period in excess of one month, the grant of the licence shall be subject to payment of a reasonable royalty (backdated to the expiry of the Franchise Period) on the basis of a willing licensor and licensee entering into a licence on comparable terms to similar licences of such Intellectual Property Rights. If the Franchisee and the relevant Successor Operator are unable to agree such royalty, the Franchisee shall submit such dispute for resolution in accordance with such dispute resolution rules as the Secretary of State may require.

8.3 Any such licence shall be in such form as the Secretary of State shall reasonably determine and shall:

(a) be non-exclusive and limited to use solely for the purposes of the provision and operation of the Franchise Services and will not provide for any right to use such Intellectual Property Rights for any other purpose (including its marketing or exploitation for any other purpose);

(b) be terminable on material breach by the Successor Operator;

(c) contain an indemnity from the Franchisee to the effect that to the best of its knowledge and belief it owns the relevant Intellectual Property Rights or has the right to license it and the licensing of it and the subsequent use of the Intellectual Property Rights will not infringe any third party Intellectual Property Rights; and

(d) require the Successor Operator, to the extent that it relates to any trade marks, to use such trade marks in such manner as may reasonably be required by the Franchisee provided that it shall not be reasonable for the Franchisee to require any such trade mark to be used in a manner materially different from its use during the Franchise Period.

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9. **Information about Passengers**

The Franchisee shall immediately on the expiry of the Franchise Period make available to the Secretary of State and/or his nominee:

(a) passenger numbers information specified in paragraph 1 of Schedule 1.5 (Information about Passengers), in such format and to such level of disaggregation as the Secretary of State and/or his nominee may reasonably require;

(b) the CRM Data and Yield Management Data.

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APPENDIX 1 TO SCHEDULE 15.4

Form of Transfer Scheme

Dated 20[◆]

TRANSFER SCHEME

OF

THE SECRETARY OF STATE FOR TRANSPORT

MADE PURSUANT TO SCHEDULE 2 OF THE RAILWAYS ACT 2005

IN FAVOUR OF

[SUCCESSOR OPERATOR]

IN RESPECT OF

CERTAIN PROPERTY, RIGHTS AND LIABILITIES

OF

[FRANCHISEE]

Secretary of State for Transport
33 Horseferry Road
London SW1P 4DR

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TRANSFER SCHEME

Whereas:

(A) [Franchisee] (the **"Transferor"**) has been providing certain services for the carriage of passengers by railway and operating certain stations and light maintenance depots pursuant to a franchise agreement with the Secretary of State for Transport (the **"Secretary of State"**) dated [◆] (the **"Franchise Agreement"**).

(B) The Franchise Agreement terminated or is to terminate on [◆]and [Successor Operator] (the **"Transferee"**) is to continue the provision of all or part of such services or the operation of all or some of such stations and light maintenance depots under a new franchise agreement or in connection with the performance or exercise of the duties and powers of the Secretary of State to secure the provision of such services or the operation of such stations or light maintenance depots.

(C) Certain property, rights and liabilities of the Transferor which were designated as franchise assets for the purpose of the Franchise Agreement are to be transferred to the Transferee under a transfer scheme made by the Secretary of State under Section 12 and Schedule 2 of the Railways Act 2005.

The Secretary of State, in exercise of the powers conferred on him by Schedule 2 of the Railways Act 2005, hereby makes the following scheme:

1. **Definitions and Interpretation**

In this Transfer Scheme functions has the meaning ascribed to it in the Railways Act 2005 and relevant enactment has the meaning ascribed to it in paragraph 6 of Schedule 2 of the Railways Act 2005.

2. **Transfer of Property, Rights and Liabilities**

With effect from [◆] the property, rights and liabilities of the Transferor specified or described in the Schedule shall be transferred to, and vest in, the Transferee.

3. **Statutory Functions**

Subject to any amendment to the relevant enactment which comes into force on or after the date on which this Transfer Scheme is made, there shall be transferred to the Transferee all the functions of the Transferor under any relevant enactments if and to the extent that any such relevant enactment:

(a) relates to any property which is to be transferred by this Transfer Scheme; or

(b) authorises the carrying out of works designed to be used in connection with any such property or the acquisition of land for the purpose of carrying out any such works.

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4. **Supplemental Agreement**

Each of the Transferor and the Transferee shall enter into the Supplemental Agreement (as defined in the Franchise Agreement) on the coming into force of this Transfer Scheme.

This Transfer Scheme is made by the Secretary of State on [◆].

THE CORPORATE SEAL OF THE SECRETARY OF STATE FOR TRANSPORT IS HEREUNTO AFFIXED:

Authenticated by authority of the Secretary of State for Transport

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SCHEDULE TO THE TRANSFER SCHEME

[***List relevant Franchise Assets to be transferred to Successor Operator***]

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APPENDIX 2 TO SCHEDULE 15.4

Form of Supplemental Agreement

Dated 20[◆]

[*OUTGOING FRANCHISEE*]

- and -

[*SUCCESSOR OPERATOR*]

SUPPLEMENTAL AGREEMENT

to the transfer scheme dated [◆] made by the Secretary of State for Transport in respect of certain property rights and liabilities of [**OUTGOING FRANCHISEE**]

Secretary of State for Transport
33 Horseferry Road
London SW1P 4DR

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THIS SUPPLEMENTAL AGREEMENT is made on [◆] 20[◆]

BETWEEN:

(1) **[OUTGOING FRANCHISEE]** whose registered office is at [**registered office**] (the **"Transferor"**); and

(2) **[SUCCESSOR OPERATOR]** whose registered office is at [**registered office**] (the **"Transferee"**).

WHEREAS

(A) The Transferor has been providing certain services and the carriage of passengers by railway and operating certain stations and light maintenance depots pursuant to a franchise agreement with the Secretary of State for Transport (the **"Secretary of State"**) dated [◆] (the **"Franchise Agreement"**).

(B) The Franchise Agreement terminated or is to terminate on [◆] and the Transferee has been selected by the Secretary of State to continue the provision of all or part of such services pursuant either to a franchise agreement with the Secretary of State or arrangements made with the Secretary of State in connection with the Secretary of State's duties and powers.

(C) Certain property, rights and liabilities of the Transferor are to be transferred to the Transferee pursuant to a transfer scheme made by the Secretary of State on [◆] under Section 12 and Schedule 2 of the Railways Act 2005 (the **"Transfer Scheme"**).

(D) This Agreement is supplemental to the Transfer Scheme and sets out certain terms between the Transferor and the Transferee in relation to the transfer of such property, rights and liabilities under the Transfer Scheme and the transfer of certain other property, rights and liabilities at the same time.

IT IS AGREED THAT:

1. **DEFINITIONS AND INTERPRETATION**

Definitions

1.1 The following words and expressions shall have the following meaning:

"Business" means such of the undertaking or part of the undertaking of the Transferor prior to the Transfer Date as may be continued by the Transferee after the Transfer Date;

"Credit" has the meaning assigned to that term under the Ticketing and Settlement Agreement;

"Debit" has the meaning assigned to that term under the Ticketing and Settlement Agreement;

"Estimated Completion Payment" has the meaning ascribed to that term in Clause 2.1;

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"Net Asset Statement" means the statement to be drawn up pursuant to Clause 2.2;

"Net Asset Value" means the aggregate of the amounts of the Relevant Franchise Assets, the Relevant Contract Liabilities, the Relevant Debits and Credits and the Relevant Employee Liabilities as shown in the Net Asset Statement agreed or determined pursuant to Clause 2.2;

"Purchase Price" has the meaning ascribed to that term in Clause 2.1;

"Relevant Contract Liabilities" means such rights and liabilities of the Transferor as may be transferred to the Transferee on the expiry of the Franchise Period in relation to any Licence, Access Agreement or Property Lease under paragraphs 1 and 4.5 of Schedule 15.4 (Provisions Applying on and after Termination) of the Franchise Agreement;

"Relevant Debits and Credits" means such Debits and Credits of the Transferor which relate to Fares sold before the Transfer Date and which may be received by the Transferee as a result of Clause 11-33 of the Ticketing and Settlement Agreement;

"Relevant Employee Liabilities" means such rights and liabilities of the Transferor (or any other relevant employer or person) under any contracts of employment relating to the Relevant Employees which have been or are to be transferred to the Transferee by virtue of the operation of Law (including the Transfer Regulations);

"Relevant Employees" means all persons employed in the Business immediately before the Transfer Date (whether employed by the Transferor or otherwise) whose contract of employment has been or is to be transferred to the Transferee by virtue of the operation of Law (including the Transfer Regulations) or any other person employed at any time in the Business in respect of whom liabilities arising from a contract of employment or employment relationship have or will be transferred by virtue of the operation of Law (including the Transfer Regulations);

"Relevant Franchise Assets" means such of the property, rights and liabilities that are legally or beneficially owned by the Transferor and which are or are to be transferred to the Transferee under the Transfer Scheme;

"Reporting Accountants" means such firm of accountants as may be selected by agreement between the parties within four (4) weeks of the preparation of the Net Asset Statement or, in the absence of such agreement, selected by the Secretary of State upon the request of either party;

"Season Ticket Fare" means a Fare which entitles the purchaser to make an unlimited number of journeys in any direction during the period for which, and between the stations and/or the zones for which, such Fare is valid;

"Stored Credit Balance" means any monetary amount held by the Franchisee which a passenger can apply at a future date to the purchase of a Fare (stored in any medium);

"Taxation" comprises all forms of taxation, duties, contributions and levies of the United Kingdom whenever imposed and (except in so far as attributable to

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the unreasonable delay or default of the Transferee) all penalties and interest relating thereto;

"TOGC" has the meaning assigned to that term in Clause 6.2;

"Transfer Date" means the date and, where relevant, the time on or at which the Transfer Scheme comes into force;

"Transfer Regulations" means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended, replaced or substituted from time to time);

"Transferring Assets and Liabilities" has the meaning assigned to that term in Clause 2.1; and

"Undisclosed Employee" has the meaning assigned to that term in Clause 7.1(d).

Construction and Interpretation

1.2 In this Agreement terms and expressions defined in the Franchise Agreement shall have the same meaning and the terms **"contract of employment"**, **"collective agreement"**, **"employee representatives"** and **"trade union"** shall have the same meanings respectively as in the Transfer Regulations.

2. TRANSFER PRICE

2.1 Amount and Payment

The price for the transfer of:

(a) the Relevant Franchise Assets;

(b) the Relevant Contract Liabilities;

(c) the Relevant Debits and Credits; and

(d) the Relevant Employee Liabilities,

(together the **"Transferring Assets and Liabilities"**) shall (subject to adjustment as expressly provided in this Agreement) be an amount equal to the Net Asset Value (the **"Purchase Price"**). The sum of £**[amount]**, as determined under paragraph 3.3 of Schedule 15.4 (Provisions Applying on and after Termination) of the Franchise Agreement (the **"Estimated Completion Payment"**) shall be paid in immediately available funds by the Transferor to the Transferee, or by the Transferee to the Transferor, as determined under paragraph 3.3 of Schedule 15.4 (Provisions Applying on and after Termination) of the Franchise Agreement, on the Transfer Date. On determination of the Purchase Price a balancing payment (if any) shall be made by the Transferor to the Transferee or the Transferee to the Transferor (as the case may be) in accordance with Clause 2.1.

2.2 Net Asset Statement

The Transferee shall procure that, as soon as practicable and in any event not later than two (2) months following the Transfer Date, there shall be drawn up a

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statement showing a true and fair view of the aggregate of the amount of each separate asset and liability of the Transferring Assets and Liabilities as at the Transfer Date.

2.3 The Net Asset Statement shall be:

(a) drawn up in the manner described in the Schedule;

(b) prepared on such basis as would enable the Transferee's auditors, if so requested, to give an unqualified audit report thereon to the effect that it had been drawn up in accordance with the schedule; and

(c) presented, initially as a draft, to the Transferor immediately following its preparation for review in conjunction with its auditors.

2.4 If the Transferor and the Transferee have failed to agree the Net Asset Statement within four (4) weeks following such presentation, the matter shall be referred to the Reporting Accountants who shall settle and complete the Net Asset Statement as soon as practicable and shall determine the amount of the Net Asset Value as shown by the Net Asset Statement.

2.5 **Adjustment of Price**

If the Purchase Price exceeds or is less than the Estimated Completion Payment, the Transferee shall pay to the Transferor or, as the case may be, the Transferor shall pay to the Transferee, in either case within fourteen (14) days of the agreement or determination of the Net Asset Value, an amount equal to such excess or deficiency together in either case with interest thereon calculated from the Transfer Date at the Interest Rate.

3. **REFERENCES TO THE REPORTING ACCOUNTANTS**

Whenever any matter is referred under this Agreement to the decision of the Reporting Accountants:

(a) the Reporting Accountants shall be engaged jointly by the parties on the terms set out in this Agreement and otherwise on such terms as shall be agreed, provided that neither party shall unreasonably (having regard, amongst other things, to the provisions of this Agreement) refuse its agreement to terms proposed by the Reporting Accountants or by the other party. If the terms of engagement of the Reporting Accountants have not been settled within fourteen (14) days of their appointment having been determined (or such longer period as the parties may agree) then, unless one party is unreasonably refusing its agreement to those terms, such accountants shall be deemed never to have been appointed as Reporting Accountants, save that the accountants shall be entitled to their reasonable expenses under Clause 3(d), and new Reporting Accountants shall be selected in accordance with the provisions of this Agreement;

(b) if Reporting Accountants acting or appointed to act under this Agreement resign, withdraw, refuse to act, or are disqualified for any reason from performing their duties then, except as may be agreed between the parties, the parties shall appoint a replacement in accordance with the definition of Reporting Accountants;

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(c) the Reporting Accountants shall be deemed to act as experts and not as arbitrators;

(d) the Reporting Accountants shall have power to allocate their fees and expenses for payment in whole or in part by any party at their discretion. If not otherwise allocated they shall be paid as to half by the Transferor and as to half by the Transferee;

(e) each of the parties shall promptly on request supply to the Reporting Accountants all such documents and information as they may require for the purpose of the reference;

(f) the decision of the Reporting Accountants shall (in the absence of objection on the grounds of any manifest error discovered within fourteen (14) days of the issue of their decision) be conclusive and binding (and in accordance with Clause 3(g) below) and shall not be the subject of any appeal by way of legal proceeding or arbitration or otherwise; and

(g) without prejudice to Clauses 3(a) to 3(f) above, either party may, prior to or during the course of the reference to the Reporting Accountants, seek a declaration from the court on a relevant point of law, including but not limited to a point of legal interpretation. Upon such application for a declaration being issued and served all applicable time limits relative to the reference to the Reporting Accountant shall be stayed pending the outcome of such application (including any appeal). The Reporting Accountants are bound to make their determination in a manner consistent with the findings of the Court.

4. **WARRANTY**

The Transferor warrants and represents to the Transferee that the Relevant Contract Liabilities and the Relevant Franchise Assets are, to the extent they are property or rights, transferring to the Transferee free and clear of all Security Interests.

5. **INTEREST**

If the Transferor or the Transferee defaults in the payment when due of any sum payable under this Agreement (whether determined by agreement or pursuant to an order of a court or otherwise) the liability of the Transferor or the Transferee (as the case may be) shall be increased to include interest on such sum from the date when such payment is due until the date of actual payment (after as well as before judgement) at a rate equal to the Interest Rate. Such interest shall accrue from day to day.

6. **VALUE ADDED TAX**

6.1 All amounts under this Agreement are expressed as exclusive of Value Added Tax where Value Added Tax is applicable.

6.2 The Transferor and the Transferee shall use all reasonable endeavours to secure that the transfer of the Transferring Assets and Liabilities is treated for Value Added Tax purposes as the transfer of a business as a going concern (**"TOGC"**) and accordingly as neither a supply of goods nor a supply of services for the purposes of Value Added Tax.

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6.3 If HM Revenue & Customs direct that the transfer of the Transferring Assets and Liabilities cannot be treated as a TOGC, the Transferor shall provide the Transferee with a copy of such direction within five (5) days of receipt thereof by the Transferor.

6.4 The Transferee shall thereafter pay upon the receipt of a valid tax invoice the amount of any Value Added Tax which as a result of that direction may be chargeable on the transfer of the Transferring Assets and Liabilities. If the aforementioned direction was issued as a result of any action or inaction of the Transferee then the Transferee shall in addition to the Value Added Tax indemnify the Transferor for any penalties and interest that may be incurred upon receipt of such evidence from HM Revenue & Customs.

6.5 If the Transferee considers the direction issued by HM Revenue & Customs referred to in Clause 6.3 to be incorrect then, without prejudice to the Transferee's obligation under Clause 6.4 to pay to the Transferor the amount of any Value Added Tax which as a result such direction may be chargeable on the transfer of the Transferring Assets and Liabilities, the Transferee may, within thirty (30) days of receipt of such direction by the Transferor, give notice to the Transferor that it requires the Transferor to appeal such direction. Upon requesting such an appeal the Transferee agrees to indemnify the Transferor for all reasonable costs that the Transferor may incur in taking such action upon receipt of evidence of those costs. If such an appeal is successful the Transferor agrees to reimburse the Transferee for such reasonable costs and penalties and interest to the extent that those costs have been reimbursed by HM Revenue & Customs.

6.6 If any amount paid by the Transferee to the Transferor in respect of Value Added Tax pursuant to this Agreement is subsequently found to have been paid in error the Transferor shall issue a valid tax credit note for the appropriate sum to the Transferee and promptly repay such amount to the Transferee.

6.7 If any amount is payable by the Transferor to the Transferee in respect of the transfer of the Relevant Franchise Assets, Relevant Contract Liabilities, Relevant Debits and Credits and Relevant Employee Liabilities pursuant to this Agreement, Clauses 6.3 to 6.6 inclusive shall apply mutatis mutandis to such payment substituting Transferor for Transferee and vice versa.

6.8 All of the records referred to in Section 49 of the Value Added Tax Act 1994 relating to the Business (being the purchase records) shall be retained by the Transferor and the Transferor shall undertake to the Transferee to:

(a) preserve those records in such manner and for such periods as may be required by law; and

(b) give the Transferee as from the Transfer Date reasonable access during normal business hours to such records and to take copies of such records.

7. EMPLOYEES

7.1 Transfer Regulations

The parties accept that, to the extent that the undertaking or part of the undertaking of the Transferor is continued by the Transferee after the Transfer Date, this Agreement and the transfer of the Business which is effected in

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connection with the Transfer Scheme are governed by the Transfer Regulations and the following provisions shall apply in connection therewith:

(a) the contract of employment of each of the Relevant Employees (save, to the extent provided by the Transfer Regulations, insofar as such contract relates to any occupational pension scheme) shall be transferred to the Transferee with effect from the Transfer Date which shall be the **"time of transfer"** under the Transfer Regulations and the Transferee shall employ each such Relevant Employee on the terms of those contracts of employment (save, to the extent provided by the Transfer Regulations, insofar as such contract relates to any occupational pension scheme) with effect from the Transfer Date;

(b) the Transferor shall perform and discharge all its obligations in respect of all the Relevant Employees for its own account up to and including the Transfer Date including, without limitation, discharging all wages and salaries of the Relevant Employees, all employer's contributions to any relevant occupational pension scheme and all other costs and expenses related to their employment (including, without limitation, any Taxation, accrued holiday pay, accrued bonus, commission or other sums payable in respect of service prior to the close of business on the Transfer Date) and shall indemnify the Transferee and keep the Transferee indemnified against each and every action, proceeding, liability (including, without limitation, any Taxation), cost, claim, expense (including, without limitation, reasonable legal fees) or demand arising from the Transferor's failure so to discharge;

(c) the Transferor shall indemnify the Transferee and keep the Transferee indemnified against each and every action, proceeding, cost, claim, liability (including, without limitation, any Taxation), expense (including, without limitation, reasonable legal fees) or demand which relates to or arises out of any act or omission by the Transferor or any other event or occurrence prior to the Transfer Date and which the Transferee may incur in relation to any contract of employment or collective agreement concerning one or more of the Relevant Employees pursuant to the provisions of the Transfer Regulations or otherwise including, without limitation, any such matter relating to or arising out of:

(i) the Transferor's rights, powers, duties and/or liabilities (including, without limitation, any Taxation) under or in connection with any such contract of employment or collective agreement, which rights, powers, duties and/or liabilities (as the case may be) are or will be transferred to the Transferee in accordance with the Transfer Regulations; or

(ii) anything done or omitted before the Transfer Date by or in relation to the Transferor in respect of any such contract of employment or collective agreement or any Relevant Employee, which is deemed by the Transfer Regulations to have been done or omitted by or in relation to the Transferee save where the thing done or omitted to be done before the Transfer Date relates to the Transferee's failure to comply with its obligations referred to in Clause 7.4;

(d) if any contract of employment or collective agreement which is neither disclosed in writing to the Transferee by the Transferor prior to the Transfer Date nor made available to the Secretary of State under

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Schedule 15.3 (Handover Package) of the Franchise Agreement prior to the Transfer Date shall have effect as if originally made between the Transferee and any employee (the **"Undisclosed Employee"**) or a trade union or employee representatives as a result of the provisions of the Transfer Regulations (without prejudice to any other right or remedy which may be available to the Transferee):

(i) the Transferee may, upon becoming aware of the application of the Transfer Regulations to any such contract of employment or collective agreement terminate such contract or agreement forthwith;

(ii) the Transferor shall indemnify the Transferee against each and every action, proceeding, cost, claim, liability (including, without limitation, any Taxation), expense (including, without limitation, reasonable legal fees) or demand relating to or arising out of such termination and reimburse the Transferee for all costs and expenses (including, without limitation, any Taxation) incurred in employing such employee in respect of his employment following the Transfer Date; and

(iii) the Transferor shall indemnify the Transferee in respect of any Undisclosed Employee on the same terms mutatis mutandis as the Transferor has indemnified the Transferee in respect of a Relevant Employee pursuant to the terms of Clauses 7.1(b) and 7.1(c); and

(e) the Transferor shall indemnify the Transferee and keep the Transferee indemnified against each and every action, proceeding, cost, claim, liability (including without limitation, any Taxation) expense (including, without limitation, reasonable legal fees) or demand which relates to or arises out of any dismissal (including, without limitation, constructive dismissal) by the Transferor of any employee (not being a Relevant Employee) and which the Transferee may incur pursuant to the provisions of the Transfer Regulations.

7.2 **Transferee's Indemnities**

The Transferee shall indemnify the Transferor and keep the Transferor indemnified against each and every action, proceeding, liability (including, without limitation, any Taxation), cost, claim, loss, expense (including reasonable legal fees) and demand arising out of or in connection with:

(a) any substantial change in the working conditions of the Relevant Employees to his or her detriment or any of them occurring on or after the Transfer Date;

(b) the change of employer occurring by virtue of the Transfer Regulations and/or the Franchise Agreement being significant and detrimental to any of the Relevant Employees;

(c) the employment by the Transferee on or after the Transfer Date of any of the Relevant Employees other than on terms (including terms relating to any occupational pension scheme) at least as good as those enjoyed prior to the Transfer Date or the termination of the employment of any of them on or after the Transfer Date; or

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(d) any claim by any Relevant Employee (whether in contract or in tort or under statute (including the Treaty of the European Community or European Union and any Directives made under the Secretary of State of any such Treaty or any successor thereof)) for any remedy (including, without limitation, for unfair dismissal, redundancy, statutory redundancy, equal pay, sex or race discrimination) as a result of any act or omission by the Transferee after the Transfer Date.

7.3 The Transferee shall indemnify the Transferor and keep the Transferor indemnified against each and every action, proceeding, liability, cost, claim, loss, expense (including reasonable legal fees) and demand which arises as a result of it not providing or not having provided, in accordance with its obligations under the Transfer Regulations, the Transferor in writing with such information and at such time as will enable the Transferor to carry out its duties under Regulation 13(2)(d) and 13(6) of the Transfer Regulations concerning measures envisaged by the Transferee in relation to the Relevant Employees.

7.4 **Details of Relevant Employees**

Without prejudice to the Transferor's duties under the Transfer Regulations, the Transferor warrants to the Transferee that it has (to the extent not made available to the Secretary of State under Schedule 15.4 (Provisions Applying on and after Termination) of the Franchise Agreement prior to the Transfer Date) provided the Transferee prior to the Transfer Date with full particulars of:

(a) each Relevant Employee, including name, sex, and the date on which continuity of employment began for each Relevant Employee for statutory purposes;

(b) terms and conditions of employment of each such person;

(c) all payments, benefits or changes to terms and conditions of employment promised to any such person;

(d) dismissals of Relevant Employees or termination of employment effected within twelve (12) months prior to the Transfer Date including the Transfer Date;

(e) all agreements or arrangements entered into in relation to the Relevant Employees between the Transferor, any Affiliate of the Transferor or any other relevant employer and any trade union or association of trade unions or organisation or body of employees including employee representatives and elected representatives; and

(f) all strikes or other Industrial Action taken by any Relevant Employee within twelve (12) months prior to the Transfer Date including the Transfer Date.

7.5 The Transferor and Transferee shall deliver to each of the Relevant Employees letters in an agreed form from the Transferor and Transferee as soon as is practicable after the execution of this Agreement (to the extent not already delivered prior to the Transfer Date).

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8. MISCELLANEOUS PROVISIONS

8.1 Variations in Writing

No variation of this Agreement shall be effective unless in writing and signed by duly authorised representatives of the parties.

8.2 Partial Invalidity

If any provision in this Agreement shall be held to be void, illegal, invalid or unenforceable, in whole or in part, under any enactment or rule of law, such provision or part shall to that extent be deemed not to form part of this Agreement but the legality, validity and enforceability of the remainder of this Agreement shall not be affected.

8.3 Further Assurance

Each of the parties agrees to execute and deliver all such further instruments and do and perform all such further acts and things as shall be necessary or expedient for the carrying out of the provisions of this Agreement.

8.4 Notices

Any notice or other communication requiring to be given or served under or in connection with this Agreement shall be in writing and shall be sufficiently given or served if delivered or sent to the registered office of the recipient or:

(a) in the case of the Transferor to [name of Transferor] at:

[**address**]

[**fax**]

Attention: [**name**]

(b) in the case of the Transferee to [name of Transferee] at:

[**address**]

[**fax**]

Attention: [**name**]

Any such notice or other communication shall be delivered by hand or sent by courier, fax or prepaid first class post. If sent by courier or fax such notice or communication shall conclusively be deemed to have been given or served at the time of despatch. If sent by post such notice or communication shall conclusively be deemed to have been received two (2) Weekdays from the time of posting.

8.5 Counterparts

This Agreement may be executed in any number of counterparts each of which shall be deemed an original, but all the counterparts shall together constitute one and the same instrument.

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8.6 **Third Parties**

This Agreement does not create any rights under the Contracts (Rights of Third Parties) Act 1999 which is enforceable by any person who is not a party to it.

8.7 **Governing Law**

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

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

SIGNED FOR AND ON BEHALF OF THE **[TRANSFEROR]**:

DIRECTOR:

DIRECTOR/SECRETARY:

SIGNED FOR AND ON BEHALF OF THE **[TRANSFEREE]**:

DIRECTOR:

DIRECTOR/SECRETARY:

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SCHEDULE TO THE SUPPLEMENTAL AGREEMENT

Net Asset Statement

The Net Asset Statement shall be drawn up (except to the extent otherwise agreed by the Transferor and the Transferee) in accordance with accounting principles generally accepted in the United Kingdom and such that the Transferring Assets and Liabilities are valued on the following basis:

1. Rights and liabilities relating to an obligation of carriage under the terms of any Fare shall be valued in accordance with the following formula:

$$(C - D)\,x\,\frac{A}{B} + E$$

where:

C equals the Credit (exclusive of any Valued Added Tax) received by the Transferor in respect of the Fare provided that:

(a) such Credit shall be deemed not to include any reduction in respect of a discount allowed to the purchaser of the Fare pursuant to the Passenger's Charter or any other passenger's charter of the Transferor;

(b) if the Fare is a Season Ticket Fare, such Credit shall be the New Credit (as defined in the Ticketing and Settlement Agreement) relating to that Season Ticket Fare on the Transfer Date if different to the Credit that was in fact received by the Transferor in respect of such Season Ticket Fare;

(c) such Credit shall be net of any Private Settlement Credit (as defined in the Ticketing and Settlement Agreement) arising in respect of that Fare; and

(d) such Credit shall be deemed to exclude any Credit received by the Transferor in respect of any commission due to it in respect of the sale of such Fare (provided that for these purposes the amount of such commission shall not exceed the National Standard Rate of Commission (as defined in the Ticketing and Settlement Agreement) in respect of the Fare);

D equals the Debit (exclusive of any Value Added Tax) received by the Transferor in respect of the commission due in respect of the sale of the Fare (provided that for these purposes the amount of such commission shall not exceed the National Standard Rate of Commission (as defined in the Ticketing and Settlement Agreement) in respect of the Fare);

$\frac{A}{B}$ equals:

(a) in the case of a Season Ticket Fare, the number of journeys which the purchaser of the Fare is estimated to make from (and including) the Transfer Date to (and including) the last day on

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which the Fare is valid (including any extensions to its original period of validity) divided by the total number of journeys which the purchaser of the Fare is estimated to make with that Fare (as determined in each case in accordance with Schedule 28 of the Ticketing and Settlement Agreement);

(b) in the case of any other Fare which entitles the holder thereof to make more than two journeys, the number of days for which the Fare continues to be valid after the Transfer Date (including any extensions to its original period of validity) divided by the total number of days for which such Fare is valid on issue (except to the extent that it can reasonably be estimated what proportion of the journeys which could be made on issue of the Fare have not been made prior to the Transfer Date); or

(c) in the case of any other Fare, zero; and

E equals, if $\frac{A}{E}$ is greater than zero:

the amount of any discount to which it can be reasonably estimated that the purchaser of the Fare would be entitled pursuant to the Passenger's Charter or any other passenger's charter of the Transferor on purchasing an equivalent Fare on the expiry of the relevant Fare,

and for these purposes a Credit or Debit shall be deemed to be received when the relevant Fare is Accepted for Clearing (as defined in the Ticketing and Settlement Agreement).

2. Rights and liabilities relating to an Excess Fare, Reservation or Upgrade (as such terms are defined in the Ticketing and Settlement Agreement) shall be valued at zero unless such Excess Fare, Reservation or Upgrade involves more than two journeys, in which case they shall be valued in accordance with paragraph 1 and references to Fare in paragraph 1 shall be construed accordingly.

3. Rights and liabilities under a Discount Card shall be valued in accordance with the following formula:

$$(C - D) x \frac{A}{B}$$

where:

C equals the Credit (exclusive of any Value Added Tax) received by the Transferor in respect of the Discount Card;

D equals the Debit (exclusive of any Value Added Tax) received by the Transferor in respect of the commission due in respect of the sale of the Discount Card (provided that for these purposes the amount of such commission shall not exceed the National Standard Rate of Commission (as defined in the Ticketing and Settlement Agreement) in respect of the Discount Card); and

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$\frac{A}{E}$ equals the number of days for which the Discount Card continues to be valid after the Transfer Date (including any extensions to its original period of validity) divided by the total number of days for which such Discount Card is valid on issue, or in the case of any Discount Card listed in Schedules 12 or 39 of the Ticketing and Settlement Agreement on the Start Date, zero,

and for these purposes a Credit or Debit shall be deemed to be received when the relevant Discount Card is Accepted for Clearing (as defined in the Ticketing and Settlement Agreement).

4. Relevant Debits and Credits shall be valued at the full amount of such Debits and Credits (inclusive of any Value Added Tax) but excluding any Debits and Credits arising in respect of Adjustment Amounts (as defined in the Ticketing and Settlement Agreement) which are received by the Transferee in respect of a change to the Credit which is used to value any relevant Season Ticket Fare under paragraph 1 of this Schedule to the extent such Adjustment Amounts (as defined in the Ticketing and Settlement Agreement) relate to a period after the Transfer Date.

5. Rights and liabilities in respect of any contract, lease, licence or other equivalent arrangement (excluding rights and liabilities valued under paragraphs 1 to 4) shall be valued at nil except to the extent that the relevant rights and liabilities include matters specified in the left hand Column of the following table, which shall be valued on the basis specified in the right hand Column of the following table:

Rights and Liabilities	**Value**
Any accrued rights to receive payment	Monetary amounts so accrued, subject to any provision being made for payment not being received from any other person
Any right to receive payment in respect of goods and/or services provided by the Transferor prior to the Transfer Date where the due date for such payment is after the Transfer Date	Amount payable under such contract, lease, licence or other equivalent arrangement for the goods and/or services so provided by the Transferor, subject to any provision being made for payment not being received from any other person
Any accrued liabilities to make payment	Monetary amounts so accrued
Any liability to make payment in respect of goods and/or services provided to the Transferor prior to the Transfer Date where the due date for such payment is after the Transfer Date	Amount payable under such contract, lease, licence or other equivalent arrangement for the goods and/or services provided to the Transferor

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Rights and Liabilities	Value
Any rights in respect of which payment has already been made by the Transferor	Monetary amounts so paid, subject to any provision being made for such rights not being exercisable against any other person
Any liabilities in respect of which payment has already been received by the Transferor	Monetary amounts so received
Any liability resulting from any breach of or failure by the Transferor to comply with the terms of any such contract, lease, licence or other equivalent arrangement	Amount of such liability or, to the extent that such amount is not ascertained, the parties reasonable estimate of the amount of such liability

6. CRM Data, Yield Management Data and Actual Passenger Demand information (and all Intellectual Property Rights in respect of the same) shall be valued at nil.

7. The Stored Credit Balance held by the Franchisee at the Transfer Date shall be valued at the monetary amount so held.

8. Any asset arising as a result of an Approved CCIF Scheme shall be valued at nil.

9. Any ITSO equipment (including smartcard and ITSO Certified Smartmedia readers and ITSO database) and any Intellectual Property Rights associated with that ITSO equipment transferred from the Transferor to the Transferee pursuant to the Transfer Scheme shall be valued at nil.

10. Any RV Asset shall be valued at an amount that is equivalent to the RV Asset Transfer Value of such RV Asset as specified in Column 2 of the table in the Appendix (List of the RV Assets) to Schedule 14.6 (Residential Value Mechanism) of the Franchise Agreement, as such RV Asset Transfer Value may be adjusted or deemed to have been adjusted pursuant to paragraphs 1.4 or 1.6 of Schedule 14.6 (Residual Value Mechanism) of the Franchise Agreement.

11. Any other property, rights or liabilities shall be valued on the basis of a willing vendor and purchaser and ongoing usage within the railway industry.

12. Any liability resulting from a breach of or failure by the Franchisee to comply with its obligations under the Franchise Agreement to ensure that at the end of the Franchise Term the Standard of Repair is complied with shall be valued at an amount that is equal to the amount of such liability or, to the extent that such amount is not ascertained, the parties reasonable estimate of the amount of such liability.

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SCHEDULE 16

Pensions

Schedule 16:	Pensions
	Appendix to Schedule 16: List of Shared Costs Sections

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SCHEDULE 16

Pensions

1. **Definitions**

Unless otherwise defined in the Franchise Agreement, terms used in this Schedule 16 shall have the meanings given to them in the Railways Pension Scheme.

2. **Franchise Section**

The Franchisee shall participate in and become the Designated Employer in relation to the Shared Cost Sections of the Railway Pension Scheme as specified in the Appendix to this Schedule (together the **"Franchise Sections"**) in respect of the Franchise Services. Subject to paragraphs 3 and 4.2(a)(iii) membership of a Franchise Section will be offered to each employee of a Franchisee only.

3. **Closed Schemes**

3.1 Subject to any requirements of Her Majesty's Revenue and Customs, the Franchisee shall take any necessary steps (including entering into any relevant deed of participation) to allow Closed Scheme Employees to continue in membership of the British Railways Superannuation Fund or the BR (1974) Pension Fund in accordance with their terms during the Franchise Period.

3.2 For the purposes of this paragraph 3, Closed Scheme Employees means such of the employees of the Franchisee who were, immediately prior to the commencement of their employment with the Franchisee, members of either of the British Railways Superannuation Fund or the BR (1974) Pension Fund.

4. **Variations in benefits, contributions and investment**

4.1 If a Franchisee is considering making a proposal that falls within the scope of paragraphs 4.2(a) to 4.2(g) inclusive, it shall promptly consult with the Secretary of State in relation to that proposal prior to putting such a proposal to the Pensions Committee of any Franchise Section, the Trustee of the Railways Pension Scheme (the **"Trustee"**), or to any trade union. The Franchisee must otherwise consult in good time with the Secretary of State in relation to any proposal falling within the scope of paragraphs 4.2(a) to 4.2(g) inclusive.

4.2 Separately and in addition to complying with its obligations under paragraph 4.1, the Franchisee shall not, without the prior written consent of the Secretary of State (which may be given on such terms and subject to such conditions as the Secretary of State thinks fit):

(a) restructure or change the composition of the earnings of employees of the Franchisee in such a way as to increase the part of those earnings which qualifies as pensionable earnings under the rules of the Railways Pension Scheme applicable to any Franchise Section (the **"Franchise Section Rules"**) or take any action (or consent to the taking of any action) which could detrimentally affect the funding of any Franchise Section, including varying or providing different or additional benefits under that Franchise Section or promising to do so, unless this change:

(i) is required by Law; or

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(ii) only affects benefits payable in respect of past service of members of that Franchise Section and on or prior to the effective date of the change the Franchisee pays an additional cash payment to the Trustee which, in the opinion of the Actuary, meets in full the additional funding cost imposed on that Franchise Section; or

(iii) would not lead to substantial changes in the funding of any Franchise Section and is the result of the normal application of the Franchise Section Rules in the ordinary day to day running of the business of the Franchise, for example, where individual employees are, from time to time promoted or transferred to higher paid or different employment which has a different composition of earnings;

(b) make or consent to any proposal to change any of the provisions of the Pension Trust in respect of the Franchise Sections unless the change is required by Law;

(c) provide retirement, death or life assurance benefits in respect of any of its employees other than under any Franchise Section or as provided in paragraph 3;

(d) omit to provide the above-mentioned benefits in respect of its employees save that, without prejudice to any rights which any such employee may otherwise have, the Franchisee shall not under this Schedule 16 be obliged for the purposes of the Franchise Agreement to offer such benefits to any employee employed on a fixed term contract of twelve (12) months or less;

(e) take any action (or consent to the taking of any action) which could affect the contributions payable by Participating Employers under any Franchise Section, including exercising any discretion allowed to the Franchisee as Designated Employer arising out of any actuarial valuation of a Franchise Section, and varying or providing different or additional benefits under the Franchise Sections in respect of future service, unless such action is required by Law;

(f) close a Franchise Section to new members; or

(g) take (or omit to take) any action which could result in any Franchise Section being wound up, in whole or in part.

4.3 The Franchisee shall consult with the Secretary of State on:

(a) any proposal made by the Trustee to change the statement of investment principles applicable to any Franchise Section; and

(b) any proposal to alter the rate of contributions payable by the Franchisee or its employees under a new Schedule of contributions for the Franchise Section.

4.4 With respect to any proposal falling within the scope of paragraph 4.3(a) or 4.3(b), the Franchisee shall also consult with the Trustee on the basis of any response it receives from the Secretary of State in relation to any such proposal.

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5. **Funding liabilities**

5.1 The Franchisee shall pay the employer contributions required under the Schedule of contributions applicable to each Franchise Section (or either of the British Railways Superannuation Fund or the BR (1974) Pension Fund in which it participates) in respect of the Franchise Term subject to the provisions of paragraph 5.2 below.

5.2 Where, during the Franchise Term, Franchise Services are aggregated or disaggregated by the Secretary of State (for example, as a result of remapping) and, as a consequence, a Franchise Section of which the Franchisee is the Designated Employer is required to accept a transfer in or to make a transfer out of members, the Secretary of State shall ensure that the Franchisee has no liability for any resulting deterioration immediately arising in the funding level of the Franchise Section measured in accordance with the Franchise Sections' technical provisions in Part 3 of the Pensions Act 2004, or for any amount arising under Article 7(4) of the Railway Pensions (Protection and Designation of Schemes) Order 1994. Notwithstanding the above the Secretary of State shall have no liability for any future deterioration in the funding levels of the Franchise Section linked to such transfer in or out of members.

6. **Discharge of obligations**

6.1 The Secretary of State may at any time during the Franchise Term seek information from the Trustee with a view to satisfying himself that the Franchisee and the other Participating Employers (if any) have fully discharged their respective obligations under the Railways Pension Scheme, including their obligations in respect of the payment of contributions to any Franchise Section.

6.2 The Franchisee shall, at its expense, promptly provide such information in relation to any Franchise Section, including actuarial advice and information, as the Secretary of State may from time to time request and shall authorise and consent to the Trustee doing so.

6.3 The Franchisee shall, in respect of the Franchise Term, use all reasonable endeavours to provide to the Secretary of State:

(a) within one (1) month of the expiry of each Franchisee Year; and

(b) at other times as soon as practicable following a request by the Secretary of State,

a certificate signed by the Trustee in relation to the Franchise Sections stating either that the Franchisee has fully complied with its obligations under the Railways Pensions Scheme, including its obligation to contribute to the Franchise Sections or, if it has not so complied, stating the extent to which it has not done so. Where the certificate is given pursuant to paragraph 6.3(a), it shall cover the relevant Franchisee Year. Where the certificate has been given pursuant to paragraph 6.3(b), it shall cover such period as the Secretary of State shall specify.

6.4 If the Trustee does not certify under paragraph 6.3 in relation to the Franchise Sections that the Franchisee has fully complied with its obligations under the Railways Pension Scheme or if the Secretary of State otherwise reasonably considers that the Franchisee has not complied with such obligations, the Secretary of State may adjust Franchise Payments payable under Schedule 8

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(Payments) by an amount which is, in his opinion, no greater than the amount of any contribution that the Franchisee has thereby failed to make or avoided making.

6.5 The Secretary of State may, under paragraph 6.4, continue to make such adjustments to Franchise Payments payable under Schedule 8 (Payments) until such time as he reasonably determines that the relevant contributions have been made in full by the Franchisee. Following that determination, any amounts so withheld by the Secretary of State shall become payable (without interest) on the next day on which a Franchise Payment becomes payable under Schedule 8 (Payments), being a day which falls no less than seven (7) days after such determination or, if there is no such day, fourteen (14) days after the date of such determination. To the extent that the Secretary of State has not so determined within four (4) weeks after the expiry of the Franchise Period, the Franchisee's right to receive the amount so withheld under the Franchise Agreement shall lapse and the Secretary of State shall not be obliged to pay such amount.

7. Termination of Franchise

The Secretary of State shall at the end of the Franchise Period ensure that the Franchisee has no liability for any deficit in the Franchise Sections (other than for contributions due and payable by the Franchisee to the Franchise Sections for any period prior to the end of the Franchise Term) and shall have no right to benefit from any surplus which may exist in the Franchise Sections. For the avoidance of doubt, this paragraph 7 shall apply where the Franchise Services are either aggregated or disaggregated (for example, as a result of remapping).

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APPENDIX TO SCHEDULE 16

List of Shared Costs Sections

Shared Costs Sections
Anglia Railways Shared Cost Section
London Eastern Railway (West Anglia) Shared Cost Section
Greater Eastern Railway Shared Cost Section

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SCHEDULE 17

Confidentiality and Freedom of Information

Schedule 17:	Confidentiality and Freedom of Information

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SCHEDULE 17

Confidentiality and Freedom of Information

1. Confidentiality

Subject to the provisions of the Act, the Transport Act, the Railways Act 2005, the Environmental Information Regulations, the Freedom of Information Act (and any code of practice or other guidance related to the same) and paragraphs 2 to 8 of this Schedule 17 inclusive, each Party shall hold in confidence all documents, materials and other information, whether technical or commercial, supplied by or on behalf of the other Party (including all documents and information supplied in the course of proceedings under the Dispute Resolution Rules or the rules of any other dispute resolution procedures to which a dispute is referred in accordance with the Franchise Agreement) (all together the **"Confidential Information"**) and shall not, except with the other Party's prior written authority, publish or otherwise disclose any Confidential Information otherwise than as expressly provided for in the Franchise Agreement unless or until the recipient Party can demonstrate that any such document, material or information is in the public domain through no fault of its own and through no contravention of the Franchise Agreement, whereupon to the extent that it is in the public domain this obligation shall cease.

2. Disclosure of Confidential Information

2.1 Each Party may disclose any data or information acquired by it under or pursuant to the Franchise Agreement or information relating to a dispute arising under the Franchise Agreement without the prior written consent of the other Party if such disclosure is made in good faith:

(a) to any Affiliate of such Party or outside consultants or advisers of such Affiliate, upon obtaining from such Affiliate and/or such outside consultants or advisers of such Affiliate an undertaking of confidentiality equivalent to that contained in paragraph 1;

(b) to any outside consultants or advisers engaged by or on behalf of such Party and acting in that capacity, upon obtaining from such consultants or advisers an undertaking of confidentiality equivalent to that contained in paragraph 1;

(c) to any lenders, security trustee, bank or other financial institution (and its or their advisers) from which such Party is seeking or obtaining finance, upon obtaining from any such person an undertaking of confidentiality equivalent to that contained in paragraph 1;

(d) to the extent required by Law or pursuant to an order of any court of competent jurisdiction or under the Dispute Resolution Rules or the rules of any other dispute resolution procedures to which a dispute is referred in accordance with the Franchise Agreement or the rules of a recognised stock exchange or a formal or informal request of any taxation authority;

(e) to any insurer, upon obtaining from such insurer an undertaking of confidentiality equivalent to that contained in paragraph 1;

(f) to any director, employee or officer of such Party, to the extent necessary to enable such Party to perform its obligations under the Franchise

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Agreement or to protect or enforce its rights under the Franchise Agreement; or

(g) by the Franchisee, to the ORR, the Passengers' Council or a Local Authority.

2.2 The Secretary of State may disclose the Confidential Information of the Franchisee:

(a) on a confidential basis to any Central Government Body for any proper purpose of the Secretary of State or of the relevant Central Government Body;

(b) to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;

(c) to the extent that the Secretary of State (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;

(d) on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in paragraph 2.2(a) of this Schedule 17 (including any benchmarking organisation) for any purpose relating to or connected with the Franchise;

(e) on a confidential basis for the purpose of the exercise of its rights under this Agreement, including but not limited to its right of audit, assessment or inspection pursuant to paragraph 6 of Schedule 11.2 (Management Information) and its rights pursuant to Schedule 15.1 (Reletting Provisions);

(f) on a confidential basis to a Local Authority or other relevant Stakeholder to the extent that the Secretary of State (acting reasonably) deems such disclosure necessary or appropriate for the purposes of the development and/or implementation of any proposal promoted by (or on behalf of) such Local Authority or other relevant Stakeholder in relation to the provision of additional, varied and/or extended Passenger Services, introduction of new stations or enhancements to Stations or other infrastructure schemes which impact on the Franchise; or

(g) on a confidential basis to a proposed successor, transferee or assignee of the Secretary of State in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Agreement,

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Secretary of State under this paragraph 2.2 of this Schedule 17.

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3. **Publication of Certain Information**

3.1 Notwithstanding the provisions of paragraph 1, the Secretary of State may publish (whether to the press, the public or to one or more individuals, companies or other bodies, including to any prospective Successor Operator) in such form and at such times as he sees fit, the following (irrespective of whether the same was provided to the Secretary of State by the Franchisee or a third party):

(a) any or all of the Franchise Documents provided that the Secretary of State will, prior to publishing the same, redact from any Franchise Document any information contained therein which the Secretary of State and the Franchisee agree or failing which the Secretary of State determines, in his absolute discretion, is exempt from disclosure in accordance with the provisions of the Freedom of Information Act and/or the Environmental Information Regulations;

(b) the amount of any Franchise Payments payable under the Franchise Agreement and the aggregate amount of Franchise Payments paid in each year under the Franchise Agreement;

(c) such information as the Secretary of State may consider reasonably necessary to publish in connection with the performance of his functions in relation to any Closure or proposed Closure;

(d) the amount of any payments by the Franchisee under the Passenger's Charter;

(e) such information (including CRM Data and Yield Management Data) as may reasonably be required in connection with any Tendering/Reletting Process or the retendering or reletting of any other railway passenger services, provided that such information may only be published during the period of, or during the period leading up to, such retendering or reletting;

(f) any reports and accounts delivered to him under Schedule 13 (Rail Industry Initiatives) including any analyses, statistics and other information derived from such reports and accounts;

(g) the results of any monitoring or measurement of the performance of the Franchisee in the provision of the Franchise Services (including any information provided under Schedule 11 (Franchise Performance Meetings and Management Information));

(h) the results, on a Service Group, Route, station or other comparable basis, of any calculation of passenger numbers under Schedule 1.5 (Information about Passengers);

(i) the results of any survey under Schedule 7.2 (National Rail Passenger Surveys, Customer Report and CCIF Scheme);

(j) the results of any assessment or inspection under Schedule 11.2 (Management Information);

(k) details of the Franchisee's plans and performance in respect of safety;

(l) such information as the Secretary of State may reasonably require to include in his annual report in respect of the Franchisee provided that, in

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preparing that report, the Secretary of State shall have regard to the need for excluding, so far as is practicable, the matters specified in paragraphs (a) and (b) of Section 71(2) of the Act for this purpose, taking references in those paragraphs to the ORR as references to the Secretary of State; and

(m) such information as the Secretary of State may reasonably require to publish at or around the expiry or possible termination of the Franchise Period in order to secure continuity of the provision and operation of the Franchise Services.

3.2 Without prejudice to any other provision of this Schedule 17, the Secretary of State may publish any other information relating to the Franchisee if he has previously notified the Franchisee and the Franchisee does not demonstrate to the reasonable satisfaction of the Secretary of State within fourteen (14) days of such notification that the publication of such information would, in the reasonable opinion of the Franchisee, have a material adverse effect on its business. If the Franchisee attempts so to demonstrate to the Secretary of State but he is not so satisfied, the Secretary of State shall allow seven (7) more days before publishing the relevant information.

4. Service Development Information

Nothing in this Schedule 17 shall be deemed to prohibit, prevent or hinder, or render either Party liable for, the disclosure by either Party to Network Rail, the ORR, other Train Operators, any operators of services for the carriage of goods by rail, the Passengers' Council and/or any Local Authority of any information relating to the development of the Train Service Requirement in accordance with Schedule 1.1 (Franchise Services and Service Development).

5. Publication by Secretary of State

Nothing in this Schedule 17 shall be deemed to prohibit, prevent or hinder, or render the Secretary of State liable for, the disclosure of any information by the Secretary of State to the ORR, the Parliamentary Commissioner for Administration, a Minister of the Crown, any department of the government of the United Kingdom, the Scottish Parliament, the National Assembly of Wales, the Mayor of London, the Greater London Authority or any department or officer of any of them or of information which is otherwise disclosed for the purpose of facilitating the carrying out of his functions.

6. Provision of Information to the ORR

The Franchisee hereby authorises the Secretary of State to provide to the ORR, to the extent so requested by the ORR, such information as may be provided to the Secretary of State in relation to the Franchisee under the Franchise Agreement.

7. Disclosure by Comptroller and Auditor General

The parties recognise that the Comptroller and Auditor General may, in pursuance of his functions under the Exchequer and Audit Department Act 1921, the National Audit Act 1983 and the Government Resources and Accounts Act 2000, disclose information which he has obtained pursuant to those Acts and which a Party to the Franchise Agreement would not be able to disclose otherwise than under this Schedule 17.

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8. **Continuing obligation**

This Schedule 17 (and any other provisions necessary to give effect hereto) shall survive the termination of the Franchise Agreement, irrespective of the reason for termination.

9. **Freedom of Information - General Provisions**

9.1 The Franchisee acknowledges and shall procure that its agents and subcontractors acknowledge that the Secretary of State is subject to the requirements of the Freedom of Information Act and the Environmental Information Regulations and accordingly the Franchisee shall and shall procure that its agents and subcontractors shall assist and co-operate with the Secretary of State to enable the Secretary of State to comply with his information disclosure obligations under the Freedom of Information Act and/or the Environmental Information Regulations.

9.2 Notwithstanding paragraph 10 (Redactions), the Franchisee shall and shall procure that its agents and subcontractors shall:

(a) transfer to the Secretary of State any Requests for Information received by the Franchisee (or its agents or subcontractors) as soon as practicable and in any event within two (2) Weekdays of receiving any such Request for Information;

(b) provide the Secretary of State with a copy of all information in its (or their) possession or power in the form that the Secretary of State requires within five (5) Weekdays of the Secretary of State's request (or within such other period as he may specify); and

(c) provide all necessary assistance as reasonably requested by the Secretary of State to enable him to respond to any Request for Information within the time for compliance set out in Section 10 of the Freedom of Information Act or Regulation 5 of the Environmental Information Regulations as applicable.

9.3 The Secretary of State shall be responsible for determining in his absolute discretion, and notwithstanding any other provision in the Franchise Agreement or any other agreement, whether Confidential Information (as such term is defined in paragraph 1 of this Schedule 17) and/or any other information is exempt from disclosure in accordance with the provisions of the Freedom of Information Act and/or the Environmental Information Regulations.

9.4 The Franchisee shall not and shall procure that its agents and subcontractors shall not respond directly to any Request for Information unless expressly authorised to do so by the Secretary of State.

9.5 The Franchisee acknowledges and shall procure that its agents and subcontractors acknowledge that notwithstanding any provision to the contrary in the Franchise Agreement the Secretary of State may be obliged under the Freedom of Information Act and/or the Environmental Information Regulations and any related Code of Practice or other guidance to disclose information concerning the Franchisee and/or its agents and subcontractors:

(a) in certain circumstances without consulting the Franchisee (or its agents and/or subcontractors where applicable); or

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(b) following consultation with the Franchisee and having taken its views into account (and the views of its agents and/or subcontractors where applicable),

provided always that where applicable the Secretary of State shall in accordance with the provisions of the Freedom of Information Act and/or the Environmental Information Regulations take reasonable steps where appropriate to give the Franchisee advance notice or failing that to draw the disclosure to the Franchisee's attention after any such disclosure.

10. **Redactions**

10.1 Subject to paragraph 9 (Freedom of Information - General Provisions), by no later than the date which is:

(a) four (4) weeks after the date of this Agreement (in respect of the Franchise Documents referred to in paragraph (a) of the definition thereof);

(b) thirty (30) days after the date of notification by the Secretary of State to the Franchisee of another agreement that is required for publication (in respect of the Franchise Documents referred to in paragraph (b) of the definition thereof; and

(c) thirty (30) days after the date of any document varying the terms of any Franchise Document,

the Franchisee will provide to the Secretary of State details of any provisions of the Franchise Documents or any such variation which the Franchisee believes are exempt from disclosure in accordance with the provisions of the Freedom of Information Act, the Environmental Information Regulations and/or Section 73(3) of the Act (the **"Redactions"**).

10.2 For each such Redaction the Franchisee should specify:

(a) the exact text of the Franchise Document or variation that the Franchisee proposes is redacted;

(b) whether the Franchisee proposes that the Redaction applies in relation to the publication of the relevant Franchise Document or variation on the website of the Department for Transport, on the register required to be maintained by the Secretary of State pursuant to Section 73 of the Act or on both such website and such register;

(c) the reasons why the Franchisee believes that the proposed Redaction is justified in accordance with the Freedom of Information Act, the Environmental Information Regulations and/or Section 73(3) of the Act.

10.3 The Secretary of State shall consult with the Franchisee in relation to the Franchisee's proposed Redactions (provided that the same are provided to the Secretary of State in accordance with paragraph 10.1). If the Secretary of State and the Franchisee are unable to agree upon any proposed Redaction, the Secretary of State shall be entitled to determine, in his absolute discretion, whether or not to make such proposed Redaction. If the Franchisee does not provide its proposed Redactions to the Secretary of State in accordance with

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paragraph 10.1, the Franchisee shall be deemed to have consented to publication of the relevant document without any Redactions.

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