

Dated

26 March 2014

**The Secretary of State for Transport
and
Northern Rail Limited
and
Transport for Greater Manchester
and
Merseyside Passenger Transport Executive
and
South Yorkshire Passenger Transport Executive
and
Tyne & Wear Passenger Transport Executive
and
West Yorkshire Passenger Transport Executive**

THE NORTHERN INTERIM FRANCHISE AGREEMENT

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THIS AGREEMENT is dated

2014

Between

- (1) **THE SECRETARY OF STATE FOR TRANSPORT**, whose principal place of business is at Great Minster House, 33 Horseferry Road, London SW1P 4DR (**Secretary of State**);
- (2) **NORTHERN RAIL LIMITED**, whose registered office is at Serco House, 16 Bartley Wood Business Park, Bartley Way, Hook, Hampshire RG27 9UY and whose registered number is 04619954 (**Franchisee**);
- (3) **TRANSPORT FOR GREATER MANCHESTER** an executive body of the Greater Manchester Combined Authority established by the Greater Manchester Combined Authority Order 2011 (SI 211 No 908) whose principal place of business is at 2 Piccadilly Place, Manchester M1 3BG;
- (4) **MERSEYSIDE PASSENGER TRANSPORT EXECUTIVE**, whose principal place of business is at Merseytravel, 1 Mann Island, Liverpool L3 1BP;
- (5) **SOUTH YORKSHIRE PASSENGER TRANSPORT EXECUTIVE**, whose principal place of business is at 11 Broad Street West, Sheffield S1 2BQ;
- (6) **TYNE & WEAR PASSENGER TRANSPORT EXECUTIVE**, whose principal place of business is at Nexus House, 33 St James' Boulevard, Newcastle Upon Tyne NE1 4AX; and
- (7) **WEST YORKSHIRE PASSENGER TRANSPORT EXECUTIVE**, whose principal place of business is at Wellington House, 40/50 Wellington Street, Leeds LS1 2DE,

(any one of Transport for Greater Manchester (TfGM), the Merseyside Passenger Transport Executive (MPTE), the South Yorkshire Passenger Transport Executive (SYPTe), the Tyne & Wear Passenger Transport Executive (T&WPTE) and the West Yorkshire Passenger Transport Executive (WYPTE) being an "**Executive**").

Whereas;

- (A) The Secretary of State and each Executive wish to appoint a franchisee to provide railway passenger services within their Northern Franchise and expect their franchisee, 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.
- (B) The Franchisee wishes to be appointed as the Secretary of State's and the Executives' franchisee for their Northern 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.
- (C) The Executives are each a party to this Agreement as permitted pursuant to Section 13(4) of the Railways Act 2005.
- (D) The Secretary of State has approved pursuant to Section 13(6) of the Railways Act 2005 the entry by each of the respective Executives into this Agreement and the Conditions Precedent Agreement.
- (E) The following provisions of this Agreement are intended to reflect and give effect to the matters referred to in Recitals (A) and (B).

1 CONSTRUCTION AND INTERPRETATION

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

- 1.1.1 words and expressions defined in Part I of the Act have the same meanings when used therein provided that, except to the extent expressly stated, "railway" shall not have the wider meaning attributed to it by Section 81(2) of the Act;
- 1.1.2 words and expressions defined in the Interpretation Act 1978 have the same meanings when used in the this Agreement;
- 1.1.3 the words "include", "including" and "in particular" are to be construed without limitation;
- 1.1.4 references to any person include its successors, transferees or assignees;
- 1.1.5 without prejudice to any Executive's rights under clauses 6.5 and 13 of the Side Agreement, paragraph 3 of Schedule 1.5 (Information about Passengers), paragraph 2 of Schedule 10.5 (Liability), Schedule 13.2 (Information) and paragraph 14 of Schedule 19 (Other Provisions), the references to:
- (a) any right or obligation of an Executive shall, to the extent that such right or obligation relates to, or its exercise or performance is capable of affecting, the provision of Station Services or Passenger Services, be construed, so as to confer rights to or impose obligations on such Executive only in respect of:
 - (i) the Executive Passenger Services; or
 - (ii) the Station Services in respect of the TfGM Stations, MPTE Stations, SYPTE Stations, T&WPTE Stations and the WYPTE Stations;
 - (b) an "affected Executive" or "relevant Executive" are references, in the case of:
 - (i) any obligation to provide information to or to consult with such Executive, to an Executive that has an interest in such information or consultation because such information or consultation concerns the Executive Passenger Services or the Executive Stations of such Executive; and
 - (ii) any decision, action or omission of another party to the this Agreement, the ORR, the Secretary of State, Network Rail or any third party to any Inter-Operator Scheme, to an Executive whose rights and/or obligations under this Agreement are affected by any such decision, action or omission;
- 1.1.6 the words "subsidiary", "subsidiary undertaking" and "parent undertaking" have the same meaning in this Agreement as in Section 1162 of the Companies Act 2006;
- 1.1.7 references to documents "in the agreed terms" are references to documents initialled by or on behalf of the Secretary of State, the Executives and the Franchisee (as appropriate). As at the date of this Agreement the documents "in the agreed terms" are as follows;
- (a) the Financial Model marked "FF";
 - (b) the Power of Attorney marked "PoA";
 - (c) the Protected Fares Document marked "PFD";
 - (d) the Record of Assumptions marked "RoA";
 - (e) the Service Quality Requirements marked "SQR";
 - (f) the Initial Business Plan marked "IBP";
 - (g) the Service Level Commitment marked "SLC";

- (h) the Train Plan marked "TP"; and
 - (i) the Property Leases marked "SL" and "DL" (as appropriate);
- 1.1.8 references in any of the agreements comprising the Franchise Agreement to Recitals, clauses, Schedules, Parts, paragraphs and Appendices are to Recitals, clauses, Schedules, Parts of Schedules, paragraphs of Schedules and Appendices of Schedules of that agreement, unless expressly specified to the contrary, and the Schedules and Appendices form part of the agreement in which they appear;
- 1.1.9 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;
- 1.1.10 headings and references to headings shall be disregarded in construing this Agreement;
- 1.1.11 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;
- 1.1.12 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;
- 1.1.13 references to any particular provisions of any agreement or any other documents 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;
- 1.1.14 words importing the masculine gender include the feminine and vice-versa, and words in the singular include the plural and vice-versa;
- 1.1.15 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", "consent", "endorse", "approve", "waive", "certify" or "determine" and other cognate expressions shall be construed accordingly;
- 1.1.16 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;
- 1.1.17 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 constructed accordingly;
- 1.1.18 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;
- 1.1.19 references to stations at which any train calls include stations at which such train commences or terminates its journey;
- 1.1.20 references to "railway passenger services" are to be construed subject to Section 40 of the Railways Act 2005;

- 1.1.21 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;
- 1.1.22 references in lower case letters to terms defined in clause 2 of this Agreement 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;
- 1.1.23 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;
- 1.1.24 references to sums of money being expended by the Franchisee shall be to such sums exclusive of Value Added Tax;
- 1.1.25 references to the words "shall not be liable" are to be construed as meaning that no contravention of this Agreement and no Event of Default shall arise as a result of the matter to which such words relate;
- 1.1.26 references to a "contravention of this Agreement" (and cognate expressions) are to be construed as meaning a breach of the Franchise Agreement;
- 1.1.27 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; and
- 1.1.28 references to "working days" are to be construed as meaning the relevant number of Weekdays.
- 1.2 This Agreement and the Conditions Precedent Agreement together constitute a single agreement, which is a "franchise agreement" for the purposes of the Act.

2 DEFINITIONS

- 2.1 In this Agreement, except to the extent the context otherwise requires, the following words and expressions have the following meanings:

2010 Nominal Ticket Sales has the meaning given to it in paragraph 3 of Schedule 5.4 (Regulation of Fares Basket Values);

2010 Ticket Revenue has the meaning given to it in paragraph 4.1 of Schedule 5.4 (Regulation of Fares Basket Values);

16 - 25's Railcard means a Discount Card issued under the Discount Fare Scheme referred to in paragraph 3.2 of the Appendix (List of Transport, Travel and Other Schemes) to Schedule 2.5 (Transport, Travel and Other Schemes);

Access Agreement has the meaning given to the term "access agreement" in Section 83(1) of the Act;

Act means the Railways Act 1993 (as modified, amended or replaced by the Transport Act 2000, the Transport Safety Act 2003 and the Railways Act 2005) and any regulations or orders made thereunder;

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); and

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

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

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

(B) depreciation;

(C) amortisation; and

(D) 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 operating expenses, including the types of expenses set out in paragraphs (a)(i) to (iv) inclusive, provisions and deferred income balances; but

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

Actual Passenger Demand has the meaning given to it in paragraph 1 of Schedule 1.5 (Information about Passengers);

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

Additional Revenue Initiative means the initiative set out in paragraph 2 of Part 3 of Schedule 1.6 (Additional Revenue Initiative);

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;

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 19 (Other Provisions)); or
- (b) a party has become aware of (in the case of any other kind of Change),

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

- (i) the net present value of the adjustment in Franchise Payments which would result from a Run of the Financial Model 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;

¹**Allerton Depot Lease** has the meaning given to such term in paragraph 1.2.2(a) of Schedule 9.3 (Secretary of State Risk Assumptions);

²**Allerton Enhancements** has the meaning given to such term in paragraph 12.7.1 of Part 2 to Schedule 1.6 (Committed Obligations);

³**"Allerton Maintenance Outputs"** means the ability to carry out routine maintenance and examination work on a rolling stock fleet allocated to Allerton Depot of the following composition:

- (a) **twenty eight (28) Class 156 diesel multiple units at all times during the Franchise Term;**
- (b) **in respect of Class 319 four car electric multiple units, at least**
 - (i) **sixteen (16) of such units on or before the end of the third quarter in 2015 (being 30 September 2015); and**
 - (ii) **twenty (20) of such units on or before the end of the fourth quarter in 2015 (being 31 December 2015);**

assuming that such ability to maintain and examine such specified number of Class 156 and 319 units is not constrained by any requirement to maintain, examine or stable any other rolling stock in areas of Allerton depot used for rolling stock maintenance and examination. For the avoidance of doubt this definition shall not constrain the Franchisee's ability to use Allerton Depot to maintain, examine or stable other types of rolling stock at Allerton Depot;

Alliance Agreement has the meaning given to it in paragraph 11.2 of Schedule 13.2 (Information);

Ancillary Service means any service specified in paragraph 5 of Schedule 1.7 (Franchise Services);

¹ Date of new insertion 17/06/2015

² Date of new insertion 17/06/2015

³ Date of new insertion 13/05/2015

Annual Audited Accounts means the accounts of the Franchisee which:

- (a) comply with paragraph 3.11 of Schedule 13.2 (Information); and
- (b) are delivered to the Secretary of State by the Franchisee in accordance with paragraph 3.9 of Schedule 13.2 (Information) and certified by its auditors as fair and true;

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

- (a) comply with paragraph 3.12 of Schedule 13.2 (Information);
- (b) give a fair and true view of the amount of Revenue earned by the Franchisee during any Franchisee Year (or part thereof); and
- (c) contain:
 - (i) a breakdown of the amount of Revenue referred to in paragraph (b), identifying the amount earned of each revenue flow specified in the definition of Revenue; and
 - (ii) any explanatory notes which the Franchisee reasonably believes would assist the Secretary of State; and
- (d) are delivered to the Secretary of State by the Franchisee in accordance with paragraph 3.7 of Schedule 13.2 (Information);

Annual Management Accounts means the management accounts of the Franchisee which:

- (a) comply with paragraph 3.11 of Schedule 13.2 (Information); and
- (b) are delivered to the Secretary of State by the Franchisee in accordance with paragraph 3.6 of Schedule 13.2 (Information);

Annual Season Ticket means a Season Ticket Fare which is valid in Standard Class Accommodation from (and including) the day on which it first comes into effect until (but excluding) the day which falls 12 months after such day;

Anticipated Franchise Commencement Date means 1 April 2014;

⁴“Arcturus Deed of Amendment” means the deed of amendment to the Franchise Agreement dated 19 March 2015;

⁵“Arcturus Start Date” means the date of the Arcturus Deed of Amendment;

ATOC means the Association of Train Operating Companies including any of its successors and assigns;

Assisted Passenger Reservation System means the system known as the Assisted Passenger Reservation System as described in the Code of Practice as published in September 2010 (version 2 – valid from 1 September 2010);

Average Weekly Earnings or **"AWE"** 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;

⁴ Date of new insertion 13/05/2015

⁵ Date of new insertion 13/05/2015

Bank means a person which has a permission under Part IV A of the Financial Services and Markets Act 2000 as updated by the Financial Services Act 2012 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 PMU Cancellations Benchmarks, PMU Capacity Benchmarks, and PMU Service Delivery Benchmarks;

Benchmark Table means, in relation to:

- (a) the PMU Cancellations Benchmarks, any table set out in Appendix 1 to Schedule 7.1 (Performance Benchmarks);
- (b) the PMU Capacity Benchmarks, any table set out in Appendix 2 (PMU Capacity Benchmark Tables) to Schedule 7.1; and
- (c) the PMU Service Delivery Benchmarks, any table set out in Appendix 4 (PMU Service Delivery Benchmark Tables) to Schedule 7.1;

Bid Profit Stream means the estimated total operating profit of the Franchisee from the date that the Change of Control (as defined in paragraph 2.3 of Schedule 10.3 (Events of Default) 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 Updated Business Plan) calculated in real terms as at the date of the Change of Control and applying the prevailing discount rate per annum (in real terms) stated in HM Treasury's "Green Book Appraisal Guidelines" (such rate being 3.5 per cent per annum (in real terms) as at the date of this Agreement);

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

Bond Year means the period beginning on the Franchise Commencement Date and ending at the end of the first Reporting Period to end in March 2015 and any subsequent period of 13 Reporting Periods beginning on the day after the end of the preceding Bond Year provided that:

- (a) the Franchisee and the Secretary of State may agree to vary the Reporting Period in which a Bond Year ends from time to time; and
- (b) the last Bond Year shall expire on the expiry of the Franchise Period and may be a period of less than 13 Reporting Periods unless otherwise agreed;

Brand Licence means a licence between the Secretary of State (or any company wholly owned by the Secretary of State) and the Franchisee or any Executive and the Franchisee in respect of any registered or unregistered trade marks, including the licences set out in paragraph 5 of Appendix 2 (List of Conditions Precedent Documents) to the Conditions Precedent Agreement;

Breach Performance Level means, in relation to a Benchmark for any Reporting Period, the number set out in column 3 of the Benchmark Table relating to that Benchmark and in the row of that table for that Reporting Period;

Business Action Plan means an action plan produced by the Franchisee in relation to the delivery of any outcome anticipated by its Business Plan, in accordance with paragraph 2.7 of Schedule 13.2 (Information);

Business Continuity Plan has the meaning given to it in paragraph 4.1 of Schedule 10.4 (Force Majeure);

Business Plan means the Initial Business Plan or any Updated Business Plan, as the context requires, to be delivered in accordance with paragraphs 2.1 to 2.9 of Schedule 13.2 (Information);

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

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 Systems 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;

Cancellation means a Passenger Service:

- (a) which is included in the Plan of the Day and which is cancelled and attributed to the Franchisee pursuant to its Track Access Agreement;
- (b) which is included in the Plan of the Day and which operates less than 50 per cent. of its scheduled mileage for reasons attributed to the Franchisee pursuant to its Track Access Agreement; or
- (c) which is omitted from the Plan of the Day, or included in it in a modified form that does not enable the Franchisee to operate more than 50 per cent. of such Passenger Service's scheduled mileage, without the Franchisee discharging its obligations under Schedule 1.2 (Operating Obligations) in relation thereto;

Cancellations and Significant Lateness (CaSL) means the measure of the proportion of trains (expressed as a percentage of Passenger Services which are scheduled to be provided under the Plan of the Day) which are cancelled, or arrive significantly late at their final scheduled destination measured on the basis that for this purpose, "significantly late" means arriving thirty minutes or more after the scheduled public arrival time at destination, as produced and/or published by Network Rail or the Office for Rail Regulation;

Capacity Benchmark means any of the performance levels in respect of the capacity operated in delivering the Monitored Passenger Services as set out in the Capacity Benchmark Table;

Capacity Benchmark Table means the table set out in Part 1 of Appendix 2 (Capacity Benchmark Table) to Schedule 7.1 (Performance Benchmarks);

Capital Expenditure has the meaning given to it in paragraph 2.4 of Schedule 19 (Other Provisions);

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

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

Change means:

- (a) a change to the Service Level Commitment previously in force pursuant to the issue of a new Service Level Commitment in accordance with paragraph 10.1 of Schedule 1.1 (Service Development);
- (b) the occurrence of a change to the railway passenger services required to be operated by another franchisee or franchise operator by direction of the Secretary of State which may reasonably be expected to have a material effect on the provision of the Passenger Services;

- (c) any action that the Franchisee is required to take pursuant to paragraph 15.1.1 and/or 15.1.2 of Schedule 1.1;
- (d) a change effected pursuant to paragraph 6 of Schedule 1.2 (Operating Obligations), including as a result of any action that the Franchisee is required to take pursuant to paragraph 8.1.1 of Schedule 1.2 in respect of any Strategy or plan referred to in paragraph 8.1.1 of Schedule 1.2 published, endorsed or varied by the Secretary of State after the Franchise Commencement Date;
- (e) a change to the Secretary of State's standards in respect of alternative transport arrangements, as referred to in paragraph 8.2.2 of Schedule 1.2, from the Secretary of State's standards which are current as at the date of signature of this Agreement;
- (f) not used;
- (g) the exercise by the Secretary of State of his rights pursuant to paragraph 18.2 of Schedule 13 (Information and Industry Initiatives);
- (h) not used;
- (i) if and whenever 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;
- (j) if and whenever the Secretary of State approves an amendment or proposed amendment to an Inter-Operator Scheme, as referred to in paragraph 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;
- (k) not used;
- (l) the imposition, subject to the provisions of paragraph 2.6 of Schedule 4.2 (Persons with Disabilities and Disability Discrimination), of any increased access charges in respect of EA Requirements at stations at which the Passenger Services call, other than stations where the Franchisee is Facility Owner;
- (m) if and whenever the Secretary of State exercises its 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);
- (n) if and whenever 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;
- (o) if and whenever there is a Charge Variation;
- (p) the exercise by the Secretary of State of his rights pursuant to paragraph 1.8 of Schedule 7.1 (Performance Benchmarks);
- (q) if and whenever there is a Change of Law (excluding any Change of Law to the extent that results in an adjustment to the Franchise Payments pursuant to Schedule 8.4 (Track Access Adjustments and Station Charge Adjustments));
- (r) not used;
- (s) not used;
- (t) not used;

- (u) a Variation to the terms of this Agreement pursuant to paragraph 1 of Schedule 19 (Other Provisions);
- (v) any 2 or more of the foregoing that the Secretary of State groups together in accordance with any procedures issued by it pursuant to paragraph 1.5 of Schedule 19 (Other Provisions); or
- (w) the Secretary of State exercises his rights pursuant to paragraph 2.5.2 of Schedule 2.2 (Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases);

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

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

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

Charge Variation means a variation:

- (a) to a Relevant Agreement; and
- (b) which is effected as a result of a Charging Review (including any variation effected 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 Franchise Commencement Date or any Replacement Agreement which is deemed to be a Relevant Agreement in accordance with the definition of that term;
 - (ii) Condition F11.5 of the Franchise Station Access Conditions in relation to any station which is not an Independent Station; and
 - (iii) Condition 42.5 of the Independent Station Access Conditions in relation to any station which is an Independent Station;
- (b) the following by the ORR of the procedure in Schedule 4A of the Act;
- (c) the exercise by the ORR of any of its powers or the following of any other procedure, which, in the Secretary of State's reasonable opinion:
- (i) has an equivalent effect to; or
 - (ii) is intended to fulfil the same function as,
- any of the powers referred to in paragraphs (a) or (b) in relation to any Relevant Agreement. 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 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 materially different from those generally applicable to the Passenger Services; and/or
- (e) for which the departure time, journey time and calling pattern are 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;

Cheap Day Return Fare means a Fare which:

- (a) entitles the purchaser to make a journey in each direction in Standard Class Accommodation between the stations and/or the zones for which such Fare is valid;
- (b) expires no earlier than 0200 on the day after the day of the outward journey or, if later, the time the relevant return journey may be completed if commenced before 0200;
- (c) is subject to a restriction that it is not valid for an outward journey commencing prior to a specified time on a Weekday, where the specified time is, unless otherwise agreed by the Secretary of State and TfGM, no later than 0930; and

- (d) unless otherwise agreed by the Secretary of State, is without further restrictions as to the time of day for which such Fare is valid;

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;

City Line Station means any station on the lines from Liverpool Lime Street to Hough Green, Newton-le-Willows and Garswood, being as follows:

Liverpool Lime Street, Edge Hill, Wavertree Technology Park, Broad Green, Roby, Huyton, Whiston, Rainhill, Lea Green, St Helens Junction, Earlestown, Newton-le-Willows, Mossley Hill, West Allerton, Allerton, Hunts Cross, Halewood, Hough Green, Prescot, Eccleston Park, Thatto Heath, St Helens Central and Garswood;

“Class 156 Daily Hire Agreement” means the agreement to be entered into between the Franchisee and the TPE Franchisee pursuant to paragraph 14.4 to Schedule 1.6 (Committed Obligations) for the daily hire of Class 156 units to the TPE Franchisee for the purpose of operating Passenger Services between Blackpool North and Manchester Airport;

Closed Scheme Employees has the meaning given to it in paragraph 2.2 of Schedule 16 (Pensions);

Closed Schemes has the meaning given to it in paragraph 2.2 of Schedule 16 (Pensions);

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

Code of Practice means the code of practice for protecting the interests of users of railway passenger services or station services who have disabilities, as prepared, revised from time to time and published by the Secretary of State pursuant to Section 71B of the Act;

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

Committed Obligations means any of the Franchisee’s obligations listed in Schedule 1.6 (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 services;

Community Rail Route means any part of the railway network predominantly used for the provision of local and community passenger services and designated as such by the Secretary of State from time to time;

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 parties hereto dated the date hereof, specifying the conditions precedent effecting the Franchise Agreement;

Conditions Precedent Review Date means 27 March 2014;

⁶ Date of new insertion 13/05/2015

⁷**“Conductor Training Amount” means the sum of ⁸**;

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 Franchise Commencement 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 1.1.1(d) of Schedule 10.4 (Force Majeure);

Contract Manager means a person appointed by the Franchisee to undertake the responsibilities of such person set out in Schedule 11 (Agreement Management Provisions);

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) 30 per cent. or more of the share capital or issued share capital of, or of the voting power in, that person or any other person which Controls that person;
 - (ii) (such part of the issued share capital of that person or any other person which Controls that person as would, if the whole of the income of such person were distributed, entitle him to receive 30 per cent. or more of the amount so distributed; or
 - (iii) such rights as would, in the event of the winding-up of that person or any other person which Controls that person or in any other circumstances, entitle him to receive 30 per cent. or more of the assets of such person which would then be available for distribution;

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

Current Franchisee Accounting Year has the meaning given to it in paragraph 2.4.1 of Part 2 to Schedule 8.1 (Franchise Payments);

Dataset means Appendix 6 (Environmental Impact Monitoring Dataset) to Schedule 13 (Information and Industry Initiatives) as the same may be amended from time to time by the Secretary of State (acting reasonably);

⁷ Date of new insertion 13/05/2015

⁸ Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

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

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

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

Data Site Information has the meaning given to it in paragraph 2.2.5 of Schedule 15.1 (Reletting Provisions);

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

Deed of Undertaking means the agreement so entitled dated on or around the date of this Agreement between:

- (a) the Secretary of State;
- (b) Serco Holdings Limited;
- (c) Abellio Transport Holdings Limited; and
- (d) the Franchisee,

and entered into by the parties as part of their proposal to secure the provision and operation of the Franchise Services;

Default Performance Level means, in relation to a Benchmark for any Reporting Period, the numbers set out in column 4 of the Benchmark Table 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 2.7.3 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 (Alternative Transport) to Schedule 4.2 (Persons with Disabilities and Disability Discrimination);

Depot means a depot in respect of which the Franchisee is and remains a party to a Depot Lease;

Depot Lease means:

- (a) any lease of a Depot to which the Franchisee is a party as at the Franchise Commencement Date; or
- (b) any other lease of a depot in relation to which the Franchisee becomes the Facility Owner at any time during the Franchise Period;

Designated Employer has the meaning given to it in the Pension Trust;

Destination Station has the meaning given to it in paragraph 2.2 of Appendix 2 (Alternative Transport) to Schedule 4.2 (Persons with Disabilities and Disability Discrimination);

Direct Agreement means any agreement made, or to be made, from time to time between the Secretary of State and the counterparty of a Key Contract in relation to such Key Contract, including any agreement entered into by the Secretary of State under Schedule 14.3 (Key Contracts);

Disabled People's Protection Policy means the Franchisee's policy for the protection of persons with disabilities which the Franchisee is required to establish and review from time to time in accordance with the conditions of its Licences in respect of the operation of railway passenger services and/or stations;

Disabled Person is a reference to a person who has a disability under the EA;

Disabled Person's Reporting System means the system known as the Disabled Person's Reporting System (forming part of the national rail "Computer Reservation System") as described in the Code of Practice as at the date of this Agreement;

Disaster means, other than those specified in paragraphs 1.1.1 or 1.1.2 of Schedule 10.4 (Force Majeure Events), any unplanned interruption or event which significantly prevents or impairs the ability of the Franchisee to provide the Franchise Services (in whole or in part) or the ability of the Franchisee to operate systems or equipment relevant to the provision of the Franchise Services (in whole or in part);

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

Discount Fare Scheme means:

- (a) a discount fares scheme set out in paragraph 4 of the Appendix (List of Transport, Travel and Other Schemes) to Schedule 2.5 (Transport, Travel and Other Schemes); or
- (b) any other discount fare scheme approved from time to time by the Secretary of State for the purposes of Section 28 of the Act,

in each case until such time as it may cease to be approved by the Secretary of State for the purposes of Section 28 of the Act;

Dispute Resolution Rules means the procedures for the resolution of disputes known as "The Railway Industry Dispute Resolution Rules", as amended from time to time in accordance with the terms thereof;

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

⁹"Driver Training Amount" means the sum of ¹⁰;

¹¹"DRS Agreement" means the agreement to be entered into between the Franchisee and Direct Rail Services Limited pursuant to paragraph 14.4 to Schedule 1.6 (Committed Obligations) for the provision of two sets of coaches with locomotives each set to comprise at least three Mark 2f standard class ("TSO") coaches;

EA means the Equality Act 2010;

EA Claim has the meaning given to it in paragraph 3.1 of Schedule 4.2 (Persons with Disabilities and Disability Discrimination);

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

¹²Electric Services has the meaning given to such term in paragraph 12.1 of Part 2 to Schedule 1.6 (Committed Obligations);

¹³EMU Costs Wash-Up has the meaning given to such term in paragraph 12.4.2 of Part 2 to Schedule 1.6 (Committed Obligations);

⁹ Date of new insertion 13/05/2015

¹⁰ Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹¹ Date of new insertion 13/05/2015

¹² Date of new insertion 17/06/2015

¹³ Date of new insertion 17/06/2015

¹⁴**EMU Verification Report has the meaning given to such term in paragraph 12.4.1 of Part 2 to Schedule 1.6 (Committed Obligations);**

Environmental Data Implementation Plan has the meaning given in paragraph 18.1.3 of Schedule 13.2 (Information);

Environmental Information Regulations means the Environmental Information Regulations 2004;

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 6.1.2 of Schedule 5.7 (Changes to Fares and Fares Regulation);

Escrow Documents has the meaning given to it 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 (as defined in paragraph 2.3 of Schedule 10.3 (Events of Default)) 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;
 - (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 Northern Franchise, excluding accruals or prepayments of any normal pension contributions due; and
 - (ii) after taking into account:
 - (A) Franchise Payments;
 - (B) all extraordinary and exceptional items, as defined under GAAP;
 - (C) the Franchisee's normal pension contributions in relation to the Franchisee Section and any other pension schemes to the extent connected with the Northern Franchise;

¹⁴ Date of new insertion 17/06/2015

- (D) any payments to Affiliates of the Franchisee (including management fees and royalty fees) except to the extent that such payments exceed the relevant cumulative value of AFA as set out in Appendix 2 to Schedule 8.1; and
 - (E) any sums capitalised in relation to maintenance expenditure on rolling stock or other capital equipment; and
- (iii) calculate amounts in real terms as at the date of the Change of Control and apply the prevailing discount rate per annum (in real terms) stated in HM Treasury's "Green Book Appraisal Guidelines" (such rate being as at the date of the Franchise Agreement 3.5 per cent per annum (in real terms));

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

Evening Peak means the period between 1600 and 1900 during a Weekday, or such continuous evening period as the Secretary of State may specify from time to time;

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

Excluded Data has the meaning given in paragraph 18.1.1 of Schedule 13.2 (Information);

Executive Franchise Payment means, in relation to any Executive, the amount determined as such in accordance with paragraph 1.1 of Part 3 to Schedule 8.1 (Franchise Payments);

Executive Passenger Service means a Passenger Service:

- (a) derived from the service specification that each Executive:
 - (i) provided to the Secretary of State pursuant to a consultation under Section 13(1) of the Railways Act 2005 and agreed between the Secretary of State and the relevant Executive pursuant to Section 13(3) of the Railways Act 2005; or
 - (ii) agreed with the Franchisee pursuant to Section 13(4) of the Railways Act 2005,

in each case annotated and referred to as services supported or sponsored by the relevant Executive within each "Route" section in the Service Level Commitment as at the date of this Agreement; or

- (b) designated by the Secretary of State as such from time to time;

Executive Rolling Stock Vehicles means those rolling stock vehicles that are specifically branded using the registered or unregistered trademarks or livery of any Executive;

Executive Share means any of Greater Manchester Share, Merseyside Share, South Yorkshire Share, Tyne & Wear Share or West Yorkshire Share;

Executive Station means:

- (a) any station in respect of which the Franchisee is and remains a party to a Station Lease which is listed in paragraph 4.2 of Appendix 2 (List of Conditions Precedent Documents) to the Conditions Precedent Agreement; or
- (b) any New Station designated by the Secretary of State as an Executive Station at which the Franchisee becomes the Facility Owner;

Expiry Date means:

- (a) 01:59:59 on 7 February 2016;

- (b) the date to which this Agreement is continued in accordance with paragraph 2.2 of Schedule 18 (Franchise Continuation);

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

Fare means:

- (a) for the purposes of:
- (i) Schedules 5.3 (Allocation of Fares to Fares Baskets) to 5.8 (Fares Regulation Information and Monitoring) (inclusive); and
 - (ii) the definitions of PTE Fare, Protected Fare, Return Fare, Single Fare, Protected Weekly Season Ticket, Protected Return Fare and paragraph (b) of the definition of Season Ticket Fare only,

a Fare (as that term is defined in paragraph (b) below) which is:

- (A) (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;
 - (B) sold under the Travelcard Agreement; or
 - (C) a Cross-London Ticket (as defined in the Through Ticketing (Non-Travelcard) Agreement); and
- (b) for all other purposes, the right, exercisable against one or more Train Operators, subject to any applicable rights or restrictions and the payment of the relevant price, to make one or more journeys on the network or to carry on such a journey an item of luggage or an animal (where this right does not arise under the relevant conditions of carriage except on the payment of a fee) and, where applicable, to obtain goods or services from a person;

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

Fares Basket means the Protected Fares Basket, the TfGM Fares Basket, the MPTE Fares Basket, the SYPTE Fares Basket, the T&WPTE Fares Basket or the WYPTE Fares Basket;

Fares Document means any of the Protected Fares Document, the TfGM Fares Document, the MPTE Fares Document, the SYPTE Fares Document, the T&WPTE Fares Document and the WYPTE 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 3.3.6 of Schedule 13.2 (Information), where the level of its financial performance specified in the Management Accounts is worse than forecast by the Franchisee in its current Business Plan;

Financial Model means the Franchisee's financial model deposited with the Secretary of State on the date of this Agreement in the agreed terms marked "FF" and as subsequently revised in each case in accordance with Schedule 9.1 (Financial and Other Consequences of Change) and 9.2 (Identity of the Financial Model);

Fixed Train Plan means the table of services set out in Part 3 of Appendix 2 (Capacity Benchmark Tables) to Schedule 7.1 (Performance Benchmarks);

First Profit Share Threshold has the meaning given to it in paragraph 2.1 of Part 2 to Schedule 8.1 (Franchise Payments);

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

Force Majeure Event means any of the events described as such in paragraph 1 of Schedule 10.4 (Force Majeure) where the conditions specified in paragraph 2 of Schedule 10.4 are satisfied;

Forecast Modified Revenue means, in relation to any Reporting Period, the items specified in the definition of Modified Revenue, as most recently forecast for that Reporting Period pursuant to paragraph 3.4 of Schedule 13.2 (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 3.4 of Schedule 13.2 (Information);

Forecast Passenger Demand means the forecast by the Franchisee pursuant to paragraph 7.1 of Schedule 1.1 (Service Development) and as updated pursuant to paragraph 1.4 of Schedule 1.5 (Information about Passengers) 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 and for 5 years following the date of the forecast, even if such 5 year period extends beyond the Franchise Term;

Fourth Profit Share Threshold has the meaning given to it in paragraph 2.1 of Part 2 to Schedule 8.1 (Franchise Payments);

Franchise Agreement means the agreement between the parties hereto, dated the date hereof, which constitutes a single agreement together with the Conditions Precedent Agreement and this 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 this Agreement, cease to be so designated;

Franchise Commencement Date means the date and, where relevant, the time stated in the Certificate of Commencement as being the date on which (and, where relevant, the time at which) the Franchisee is to commence operating the Franchise Services;

Franchise Documents means:

- (a) the Franchise Agreement, Deed of Undertaking and any other agreements signed as part of the award of the Northern Franchise; and
- (b) any agreement entered into or provided to the Secretary of State in accordance with the Conditions Precedent Agreement;

Franchise Employee means:

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

- (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 Letting Process Agreement means the agreement so entitled dated 26 June 2013 between:

- (a) the Secretary of State;
- (b) Serco Holdings Limited;
- (c) Abellio Transport Holdings Limited; and
- (d) the Franchisee,

and entered into by the parties as part of their proposal to secure the provision and operation of the Franchise Services;

Franchise Manager means a person appointed by the Secretary of State to undertake the responsibilities of such person set out in Schedule 11 (Agreement Management Provisions);

Franchise Payment means, a payment being either a Secretary of State Franchise Payment or an Executive Franchise Payment (as the case may be) which is determined in accordance with Parts 2 and 3 of Schedule 8.1 (Franchise Payments);

Franchise Performance Meeting means a meeting between the Secretary of State, the Executives and the Franchisee to be held in each Reporting Period in accordance with paragraph 5 of Schedule 11 (Agreement Management Provisions);

Franchise Period means the period commencing on the Franchise Commencement Date and ending on the Expiry Date or, if earlier, the date of termination of this Agreement pursuant to clause 2.2.2 of the Conditions Precedent Agreement or Schedule 10 (Remedies, Termination and Expiry);

Franchise Sections has the meaning given to it in paragraph 1 of Schedule 16 (Pensions);

Franchise Services means such of the Passenger Services, the Light Maintenance Services, the Station Services and the Ancillary Services as the Franchisee may provide or operate from time to time, including any of such services as the Franchisee may delegate or subcontract or otherwise secure through any other person from time to time in accordance with this Agreement;

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

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

Franchise Wide means throughout the geographical area in which the Franchisee operates Passenger Services;

Franchise Wide Cancellations Benchmark means the performance level in respect of Cancellations and Partial Cancellations set out in the Franchise Wide Cancellations Benchmark Table;

Franchise Wide Cancellations Benchmark Table means the table set out in Part 6 of Appendix 1 (Cancellation Benchmark Tables) to Schedule 7.1 (Performance Benchmarks);

Franchise Wide Capacity Benchmark means the performance level in respect of the capacity operated in delivering the Passenger Services set out in the Franchise Wide Capacity Benchmark Table;

Franchise Wide Capacity Benchmark Table means the table set out in Part 2 of Appendix 2 (Capacity Benchmark Tables) to Schedule 7.1 (Performance Benchmarks);

Franchise Wide Service Delivery Benchmark means the performance level in respect of Minutes Delay attributable to the Franchisee set out in the Franchise Wide Service Delivery Benchmark Table;

Franchise Wide Service Delivery Benchmark Table means the table set out in Part 6 of Appendix 4 (Service Delivery Benchmark Tables) to Schedule 7.1 (Performance Benchmarks);

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

Franchisee Accounting Reference Period means each of the following periods:

- (a) 1 April 2014 to 3 January 2015;
- (b) 4 January 2015 to 9 January 2016; and
- (c) 10 January 2016 to 1 April 2016,

except that the last Franchisee Accounting Reference Period shall end on the last day of the Franchise Period and any subsequent periods set out above shall be disregarded for the purposes of this definition;

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

Franchisee Year means any period of 12 months during the Franchise Period beginning on 1 April in any year, except that the first and last such periods may be for a period of less than 12 months and the first such period shall begin on the Franchise Commencement Date and end on 31 March 2015 and the last such period shall end on the last day of the Franchise Period;

Freedom of Information Act means the Freedom of Information Act 2000;

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

Greater Manchester Share means Transport for Greater Manchester's share of the value of PFP determined in accordance with paragraph 1 of Part 2 of Schedule 8.2 (Annual Franchise Payments/Apportionment of Payments);

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

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;

Improvement Plan has the meaning given to it in paragraph 3.15.2 of Schedule 13.2 (Information);

Improvement Plan Performance Level means, in relation to a Benchmark for any Reporting Period, the number set out in column 2 of the Benchmark Table relating to that Benchmark and in the row of that table for that Reporting Period;

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

Independent Station has the meaning given to it in paragraph 2.7 of Schedule 8.4 (Track Access Adjustments and Station Charge Adjustments);

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

Individual Station Charge Adjustment has the meaning given to it in paragraph 2.2 of Schedule 8.4 (Track Access Adjustments and Station Charge Adjustments);

Industrial Action has the meaning given to it in paragraph 1.1.6 of Schedule 10.4 (Force Majeure);

Initial Business Plan means the business plan (in the agreed terms and marked IBP) to be provided by the Franchisee to the Secretary of State on the date of signature of this Agreement, as described in paragraph 2.1 of Schedule 13.2 (Information), including any adjusted version of such plan resubmitted to the Secretary of State in accordance with paragraph 2.2 of that Schedule);

Initial Dataset has the meaning given in paragraph 18.1 of Schedule 13.2 (Information);

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;

Integrated Transport Schemes means those schemes which relate to the integration of any other form of transport with the Franchise Services:

- (a) listed in the Appendix (List of Transport, Travel and Other Schemes) to Schedule 2.5 (Transport, Travel and Other Schemes); or
- (b) designated as such in accordance with paragraph 1.1 of Schedule 2.5;

Integrated Transport Smartcard Organisation means the organisation created by passenger transport executives, bus operators and Train Operators for the development and promotion of smartcards for use on transport;

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 this Agreement remains unpaid;

Inter-Operator Schemes means:

- (a) the schemes, agreements and/or contracts set out in paragraph 5 of the Appendix (List of Transport, Travel and Other Schemes) to Schedule 2.5 (Transport, Travel and Other Schemes) which have been approved by the Secretary of State and which relate to arrangements between the Franchisee and other participants in the railway industry;
- (b) such other scheme, agreement and/or contract of a similar or equivalent nature as may from time to time during the Franchise Period amend, replace or substitute, in whole or in part, any of such schemes, agreements and/or contracts; and
- (c) any Discount Fare Scheme;

Joint Performance Improvement Plan has the meaning given to it in the Network Code;

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

Key Contract means:

- (a) each agreement and contract listed in the Appendix (List of Key Contracts) to Schedule 14.3 (Key Contracts) as at the date of this 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,

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

Key Personnel means at a minimum those persons referred to in paragraph 3.4 of Schedule 11 (Agreement Management Provisions);

Lancashire & Cumbria Performance Management Unit means the Routes depicted and described in the following Figure and Table and including the Stations and Depots specified in paragraph 6 of the Conditions Precedent Agreement:

Route Description	Service Code
Ormskirk – Preston	351
Blackpool South, Preston, Blackburn Colne	350
Manchester, Preston & Blackburn, Clitheroe & Carlisle	239
Preston & Lancaster – Barrow-in-Furness	354
Barrow-in-Furness – Millorm	358

Route Description	Service Code
Whitehaven – Carlisle	358
Barrow-in-Furness – Carlisle	358
Blackpool North – Preston – Manchester Piccadilly / Victoria	355
Preston/Lancaster – Morecambe / Heysham	352
Liverpool Lime Street to Wigan North Western and Preston via Huyton and St Helens Central (St Helens Line)	249



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 4 of Schedule 1.7 (Franchise Services) which may be provided by the Franchisee at the Depots and Stations;

Local Authority means:

- (a) in England, a county council, a district council, a unitary authority, a passenger transport executive, a London borough council, the common council of the City of London, or a council which is established under the Local Government Act 1992 and which is either an authority responsible for expenditure on public passenger transport services within the meaning of Section 88 of the Transport Act 1985 or a local authority for the purposes of Section 93 of the Transport Act 1985;
- (b) in Wales, a county council, a district council or a council which is established under the Local Government Act 1972 or the Local Government (Wales) Act 1994;

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

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

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;

Major Projects has the meaning given to it in the Network Code;

Managed Station means Leeds, Liverpool Lime Street and Manchester Piccadilly or any other station used in connection with the provision of the Franchise Services where Network Rail 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 Franchise Commencement Date and to be used for or in connection with the provision of the Franchise Services;

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

- (a) comply with paragraph 3.1 of Schedule 13.2 (Information); and
- (b) are delivered to the Secretary of State by the Franchisee in accordance with paragraphs 3.2 and 3.3 of Schedule 13.2;

Manchester Traincard means the fare of that name which as at the date hereof appears in the GMPTE section of the fares manuals and systems of the RSP;

Manchester & Liverpool Performance Management Unit means the Routes depicted and described in the following Figure and Table and including the Stations and Depots specified in paragraph 6 of the Conditions Precedent Agreement:

Route Description (North)	Service Code	Route Description (South)	Service Code
Warrington Bank Quay / Runcorn / Helsby – Ellesmere Port / Chester	291	Manchester / Stockport – Macclesfield – Stoke-on-Trent	231
Liverpool Lime Street and Manchester Piccadilly / Airport Warrington Central	236, 248, 299	Manchester Piccadilly – Sheffield via New Mills Central	226

Kirkby/Southport – Wigan – Bolton / Atherton and Manchester Victoria	224, 225, 240	Rose Hill/Hyde Loop, Marple New Mills Central and Chinley to Manchester Piccadilly	226
Clitheroe – Blackburn – Preston / Manchester Victoria	349	Manchester and Wilmslow – Crewe	232, 233
Blackburn, Bolton and Manchester Victoria	223	Stockport – Stalybridge	227
Rochdale, Shaw & Compton, Oldham and Manchester Victoria and Rochdale to Manchester via Castleton	222, 242	Buxton / Hazel Grove – Manchester	228
Manchester to Stalybridge, Marsden and Huddersfield	220	Hazel Grove – Manchester	228
Liverpool Lime Street and Manchester Victoria, Warrington Bank Quay or Wigan North Western via Huyton and Earlestown	220, 297, 298	Chester to Altrincham, Stockport and Manchester	229
Liverpool Lime Street to Manchester Airport via Hough Green, Warrington Central and Manchester Piccadilly	299	Alderley Edge / Wilmslow to Manchester Airport, Heald Green, Stockport & Manchester	232, 233
		Hadfield / Glossop and Manchester Piccadilly	230

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;

Merseyside Share means the Merseyside Passenger Transport Executive's share of the value of PFP determined in accordance with paragraph 1 of Part 2 of Schedule 8.2 (Reporting Period Franchise Payments/ Apportionment of Payments);

Metrocard means the fare of that name which as at the date hereof appears in the West Yorkshire Passenger Transport Executive section of the fares manuals and systems of the RSP;

Minor Works has the meaning given to it in paragraph 2.7.1 of Schedule 4.2 (Persons with Disabilities and Disability Discrimination);

Minor Works' Budget means £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

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

Minor Works Budget x RPI

where RPI has the meaning given to it in Schedule 8.2 (Reporting Period Franchise Payments/Apportionment of 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 2.7.1 of Schedule 4.2 (Persons with Disabilities and Disability Discrimination);

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, in each case pursuant to the Track Access Agreement and disregarding any minutes of delay that are imputed to Passenger Services that were cancelled;

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

Modified Revenue means:

- (a) the sum of:
- (i) the Franchisee's total revenue for the period being reviewed as stated in its profit and loss account (including all amounts received or receivable from the Secretary of State); and
 - (ii) the opening cash balance for the period being reviewed, excluding:
 - (A) any cash held for the exclusive purpose of the provision of the Season Ticket Bond or the Performance Bond; and
 - (B) the proportion of income recognised in the profit and loss account relating to deferred income from season ticket sales released in such period being reviewed; and
- (b) either:
- (i) plus any reduction in total debtors over such period (where total debtors are gross of any bad debts provision or write off and exclude any Tax-related and capital-related debtors); or
 - (ii) less any increase in total debtors over such period (where total debtors are gross of any bad debts provision or write off and exclude any Tax-related and capital-related debtors);

¹⁵**Mods Maximum Amount** has the meaning given to such term in paragraph 12.2.3 of Part 2 to Schedule 1.6 (Committed Obligations);

Monitored Passenger Service means a Passenger Service proposed by the Franchisee and approved by the Secretary of State and the Executives as representing a service listed in the Fixed Train Plan;

¹⁵ Date of new insertion 17/06/2015

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, the period between 0700 and 0930 during a Weekday, or such continuous morning period as the Secretary of State may specify from time to time;

MPTE Fare means any:

- (a) Single Fare; or
- (b) Return Fare,

which is valid for use only on the Railway Passenger Services and not on any other form of transport, including bus, tram or light rail, for a journey between any City Line Station and any other City Line Station;

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MPTE Fares Basket means the grouping of every MPTE Fare:

- (a) 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);
- (b) by the Secretary of State from time to time in accordance with Schedule 5.7 (Changes to Fares and Fares Regulation); and
- (c) set out in the MPTE Fares Document;

MPTE Fares Document means the document to be issued by the Secretary of State (and as the same may be amended from time to time) in accordance with Schedule 5.7 (Changes to Fares and Fares Regulation);

MPTE Station means the Stations listed in paragraph 4.2(b) of Appendix 2 of the Conditions Precedent Agreement;

National Passenger Survey means a passenger satisfaction survey which may be carried out by or on behalf of the Secretary of State as described in paragraph 2 of Schedule 1.5 (Information about Passengers);

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

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 Code means the document now 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 any party referred to in the definition of "Network Rail" other than Network Rail Infrastructure Limited;

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 at 90 York Way, London N1 9AG; and
 - (ii) any successor in title to the network or any relevant railway facility; or
- (b) any new or other sections of network or any relevant new or other railway facilities, the owner (if different);

New Insurance Arrangements shall have the meaning given to it in paragraph 2.2.2 of Schedule 2.2 (Security of Access Assets, Rolling Stock Leases, Station and Depot Leases);

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

New Station means:

- (a) a station not served by railway passenger services as at June 2003, but which has since that time been, or is subsequently, served by railway passenger services which have been, or are

subsequently to be, included in the Timetable or in another relevant Train Operator's timetable; and/or

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

Non-Executive Passenger Service means a Passenger Service other than an Executive Passenger Service;

Non-Executive Station means:

- (a) any station in respect of which the Franchisee is and remains a party to a Station Lease which is listed in paragraph 4.1 of Appendix 2 (List of Conditions Precedent Documents) to the Conditions Precedent Agreement; or
- (b) any New Station designated by the Secretary of State as a Non-Executive Station at which the Franchisee becomes the Facility Owner;

Non-Fares Basket Fare means a Fare that has been designated as such by the Secretary of State pursuant to paragraph 2.1 of Schedule 5.3 (Allocation of Fares to Fares Baskets);

Northern Franchise means the rights tendered by way of a direct award under Regulation EC1370/2007 by the Secretary of State in July 2013 to operate railway passenger services to and from and between places within the North of England under the terms and conditions set out in this Agreement;

Northern Line Station means any station on the lines from:

- (a) Ormskirk to Liverpool;
- (b) Southport to Liverpool to Hunts Cross; and
- (c) Kirkby Merseyside to Liverpool,

being as follows:

Aigburth, Ainsdale, Aintree, Bank Hall, Birkdale, Blundellsands & Crosby, Bootle New Strand, Bootle Oriel Road, Brunswick, Cressington, Fazakerley, Formby, Freshfield Merseyside, Garston Merseyside, Hall Road, Hightown, Hillside, Hunts Cross, Kirkby Merseyside, Kirkdale, Liverpool Central, Liverpool Moorfields, Maghull, Old Roan, Orrell Park, Rice Lane, Sandhills, Seaforth & Litherland, Southport, Spital, St Michaels, Wallasey Grove Road, Walton Merseyside, Waterloo Merseyside, Aughton Park, Ormskirk and Town Green;

¹⁶NW DMUs has the meaning given to such term in paragraph 12.5 of Part 2 to Schedule 1.6 (Committed Obligations);

¹⁷NW Electrics means arrangements for the introduction and operation of NW Electrics EMUs in the North West during the term of the iFA and the redeployment of NW DMUs;

¹⁸NW Electrics EMUs means the 14 (fourteen) Class 319 Electric Multiple Units leased by the Franchisee pursuant to the Porterbrook Lease;

¹⁶ Date of new insertion 17/06/2015

¹⁷ Date of new insertion 17/06/2015

¹⁸ Date of new insertion 17/06/2015

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

Off-Peak Passenger Services means Passenger Services other than Peak Passenger Services;

Old Results means, in relation to any Change, the following, as produced in accordance with Schedule 9.1 (Financial and other Consequences of Change) following the Run of the Financial Model in respect of the immediately preceding Change, or, in relation to the first Change only, the following as at the date hereof: the values of "FXD", "VCRPI", "VCAWE", PRPI and "RRPI" to be specified for each Franchisee Year in the Appendix (Figures for Calculation of Reporting Period Franchise Payments) to Schedule 8.2 (Reporting Period Franchise Payments/Apportionment of Payments);

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

Operational Model means the operational model in the agreed terms and marked OM of:

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

Opt Out Effective Date has the meaning given to it in paragraph 12.1 of Schedule 19 (Other Provisions);

Opt Out Notice has the meaning given to it in paragraph 12.1 of Schedule 19 (Other Provisions);

ORR means the Office for Rail Regulation established by Section 15 of the Railways and Transport Safety Act 2003 and having duties and obligations as set out in the Act;

Parent means any person which Controls the Franchisee provided that for the purposes of paragraph 5.2 of Schedule 11 Parent shall be each of Nedrailways BV (registered number 30182392) and Serco Group Plc (registered number 02048608);

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

- (a) misses a stop;
- (b) completes fifty per cent. (50%) or more, but less than one hundred per cent. (100%) of its scheduled journey; or
- (c) arrives at its final destination scheduled in the Timetable more than one hundred and twenty (120) minutes late, in each case, for reasons which are attributed to the Franchisee pursuant to its Track Access Agreement;

Participating Employer has the meaning given to it in the Pension Trust;

passenger carrying capacity means, in relation to a Passenger Service, the capacity of the rolling stock vehicles (as stated in Appendix 1 (The Train Fleet) to Schedule 1.1 (Service Development)) 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 Information Plan has the meaning given to it in paragraph 7 of the Service Quality Requirements;

Passenger Services means the Franchisee's railway passenger services specified in any Timetable and/or in any 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 this Agreement;

Passenger Transport Area means the area for which the Passenger Transport Authority is prescribed as the passenger transport authority under Section 9 of the Transport Act 1968;

Passenger Transport Area Station means a station in the Passenger Transport Area at which Executive Passenger Services call other than a Station;

Passenger Transport Authority means, as the context requires, any one of Transport for Greater Manchester, Merseyside Passenger Transport Authority, South Yorkshire Passenger Transport Authority, Tyne & Wear Passenger Transport Authority and West Yorkshire Passenger Transport Authority;

Passenger's Charter means the Franchisee's service commitments to its passengers set out in Appendix 1 to Schedule 1.4 (Passenger Facing Obligations), as amended or replaced from time to time with the prior written consent of the Secretary of State in accordance with paragraph 4 of Schedule 1.4 (Passenger Facing Obligations);

Passenger's Charter Guidelines means the document of the same name issued by or on behalf of the Secretary of State containing the methodology for compiling performance statistics and Passenger's Charter compensation, as amended or replaced from time to time by the Secretary of State after consultation with the Franchisee and with other franchisees whose franchise agreements contain a similar or equivalent obligation for consultation;

Passenger's Charter Statistics means the record of the Franchisee's performance against the standards specified in the Passenger's Charter for each Reporting Period as published in accordance with paragraph 4.9 of Schedule 1.4 (Passenger Facing Obligations);

Passengers' Council means the passengers' council established under Section 19 of the Railways Act 2005 (as amended);

Payment Date means the date for the payment of Franchise Payments in accordance with paragraph 1.4 of Part 1 of Schedule 8.1 (Franchise Payments);

Peak means the Morning Peak and/or the Evening Peak;

Peak Passenger Service means any Passenger Service operated in the Peak;

Pension Trust means the pension trust governing the Railways Pension Scheme;

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

Performance Bond means the performance bond to be provided to the Secretary of State in the form set out in Appendix 1 (Form of Performance Bond) to Schedule 12 (Financial Obligations and Covenants), as replaced or amended from time to time in accordance with Schedule 12;

Performance Management Unit means any of Lancashire & Cumbria Performance Management Unit, Manchester & Liverpool Performance Management Unit, South & East Yorkshire Performance Management Unit, Tyne, Tees & Wear Performance Management Unit and West & North Yorkshire Performance Management Unit;

Permitted Aggregate Increase has the meaning given to it in paragraph 4.2 of Schedule 5.4 (Regulation of Fares Basket Values);

Permitted Individual Increase has the meaning given to it in paragraph 2.2 of Schedule 5.5 (Regulation of Individual Fares and T&WPTE 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 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 hereof;
 - (ii) adjusted to the extent necessary to reflect any time elapsed between the actual Franchise Commencement Date and the date assumed to be the Franchise Commencement Date in the Initial Business Plan;
 - (iii) audited following a Run of the Financial Model and updated with any Revised Inputs; and
- (b) in respect of the Operational Model, delivery of:
 - (i) the Operational Model dated the date hereof;
 - (ii) the Operational Model adjusted to the extent necessary to reflect any time elapsed between the actual Franchise Commencement Date and the date assumed to be the Franchise Commencement Date in the Initial Business Plan;
 - (iii) the inputs to the Financial Model derived therefrom following an audit of the Run of the Financial Model; and
- (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 specified in the Timetable or as notified to the Franchisee by Network Rail from time to time, scheduled to be operated on that day;

PMU Cancellations Benchmark means any of the performance levels in respect of Cancellations and Partial Cancellations set out in any of the PMU Cancellations Benchmark Tables;

PMU Cancellations Benchmark Table means any of the tables set out in parts 1 to 5 of Appendix 1 (Cancellations Benchmark Tables) to Schedule 7.1 (Performance Benchmarks);

PMU Service Delivery Benchmark means any of the performance levels in respect of Minutes Delay attributable to the Franchisee set out in any of the PMU Service Delivery Benchmark Tables;

PMU Service Delivery Benchmark Table means any of the tables set out in parts 1 to 5 of Appendix 4 (Service Delivery Benchmark Tables) to Schedule 7.1 (Performance Benchmarks);

¹⁹**Porterbrook** means *Porterbrook Leasing Company Limited (company number 2912662) whose registered office is as Ivatt House, 7, the Point, Pinnacle Way, Derby DE24 8ZS;*

²⁰**Porterbrook Arcturus Lease** means *the lease between Porterbrook and the Franchisee dated on or about the Arcturus Start Date and relating to the Project Arcturus EMUs the terms*

¹⁹ Date of insertion 17/06/2015

²⁰ Date of new insertion 13/05/2015

of which have been approved by the Secretary of State as required pursuant to paragraph 2.1 of Schedule 2.2 (Security of Access Assets, Rolling Stock Leases, Station and Depot Leases);

²¹Porterbrook Lease means the lease between Porterbrook and the Franchisee dated on or about the date of this Deed and relating to the NW Electrics EMUs the terms of which have been approved by the Secretary of State as required pursuant to paragraph 2.1 of Schedule 2.2 (Security of Access Assets, Rolling Stock Leases, Station and Depot Leases);

²²Post Enhancement Rent has the meaning given to such term in paragraph 1.2.2(b) of Schedule 9.3 (Secretary of State Risk Assumptions);

Power of Attorney means the power of attorney in favour of the Secretary of State to be executed and delivered by the Franchisee in the agreed terms and marked POA;

PR2013 means the 2013 periodic review carried out by the ORR in respect of the period 1 April 2014 to 31 March 2019;

²³Pre-Enhancement Rent has the meaning given to such term in paragraph 1.2.2(a) of Schedule 9.3 (Secretary of State Risk Assumptions);

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

Preliminary Run of the Financial Model means the operation of the Financial Model in respect of any proposed Change pursuant to paragraph 5.1 of Schedule 9.1 (Financial Consequences of a Change) of this Agreement;

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

Previous Passenger Services means

- (a) any railway passenger services operated under a Previous Franchise Agreement that is the same or substantially the same as any Passenger Service in terms of departure and arrival time and stopping patterns; and
- (b) if no such railway passenger service is found under paragraph (a) such other railway passenger services operated under a Previous Franchise Agreement which is similar in terms of departure and arrival times and stopping patterns to the Passenger Services as the Secretary of State may reasonably determine;

Previous Performance Level means the level of performance actually achieved in relation to the Previous Passenger Services;

Price means, in respect of any Fare, the price of such Fare before the deduction of any applicable discount to which a purchaser may be entitled, as notified to RSP in accordance with Schedule 5 to the Ticketing and Settlement Agreement;

Primary Franchise Assets means:

- (a) the property, rights and liabilities of the Franchisee listed in the Appendix to Schedule 14.4 (Designation of Franchise Assets); and

²¹ Date of insertion 17/06/2015

²² Date of insertion 17/06/2015

²³ Date of insertion 17/06/2015

- (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 this Agreement, cease to be so designated;

Principal Stations means on each anniversary of the Franchise Commencement Date the 300 Stations which, in the previous Reporting Year for which RSP ticket sales data is available, account for the highest number of originating journeys on the Passenger Services;

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

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

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

Profit Share Reconciliation Amount has the meaning given to it in paragraph 2.5 of Part 2 of Schedule 8.1 (Franchise Payments);

24“Project Arcturus EMUs” means the six (6) Class 319 Electric Multiple Units leased by the Franchisee pursuant to the Porterbrook Arcturus Lease;

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 each lease of the facilities set out in paragraph 4 of Appendix 2 (List of Conditions Precedent Documents) to the Conditions Precedent Agreement 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 Regulation); and
- (d) set out in the Protected Fares Document;

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

Protected Proposal has the meaning given to it in paragraph 1.9 of Schedule 19 (Other Provisions);

²⁴ Date of new insertion 13/05/2015

Protected Return Fare means:

- (a) in respect of a Fare for a Flow for which there was a Saver Return Fare in February 2010, a Return Fare for each such Flow in respect of which the Franchisee is entitled from time to time to set the Price or Child Price under the Ticketing and Settlement Agreement, subject to the following additional rights and restrictions:
 - (i) it shall be valid for no less than one month;
 - (ii) it shall be valid all day on a Saturday or Sunday and from no later than 1030 on any other day;
 - (iii) it need not be valid for any journey:
 - (A) beginning between 1500 and 1900 on any day other than a Saturday or Sunday;
 - (B) where such journey begins from a London Station or any station between London and Reading station, Watford station, Luton station, or Stevenage station (inclusively); and
 - (C) which is in a direction away from London; or
- (b) in respect of a Fare for a Flow for which there was no Saver Return Fare in February 2010, a Return Fare for each such Flow in respect of which the Franchisee is entitled 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 PTE Fare;

Protected Weekly Season Ticket means a Weekly Season Ticket for any Flow for which there was a weekly season ticket in the fares manuals and systems of the RSP in February 2010 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 PTE Fare;

PTE Fare means a TfGM Fare, an MPTE Fare, a SYPTTE Fare, a T&WPTE Fare or a WYPTE Fare (as applicable);

PTE Fares Document means TfGM Fares Document, MPTE Fares Document, SYPTTE Fares Document, T&WPTE Fares Document or WYPTE Fares Document (as applicable);

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

Publication Expenditure has the meaning given to it in paragraph 1.8 of Schedule 1.4 (Passenger facing Obligations);

Public Performance Measure or PPM means the measure of 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 punctually at their final scheduled destination in the Plan of the Day measured on the basis that:

- (a) for this purpose, "punctually" means within four (4) minutes fifty nine (59) seconds of the scheduled arrival time as shown in the Plan of the Day; and
- (b) any train which is a Cancellation will be regarded as not arriving punctually;

and as such measure is produced and/or published by Network Rail or the ORR;

Qualifying Change means a Change which:

- (a) following a Run of the Financial Model in accordance with Schedule 9 (Changes) results in adjustments in Franchise Payments over the remaining life of this 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 this Agreement that rate is 3.5 % per annum; and
- (b) this 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 Safety and Standards Board means Rail Safety and Standards Board Limited, a company registered in England with registered number 04655675 whose registered office is at Block 2, Angel Square, 1 Torrens Street, London EC1V 1NY;

Railmaster means the fare of that name which as at the date hereof appears in the South Yorkshire Passenger Transport Executive section of the fares manuals and systems of the RSP;

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 Operation 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 9.9 of Schedule 9.1 (Financial and Other Consequences of Change);

Record of Assumptions means a document prepared by the Franchisee in the agreed terms and marked ROA or revised in accordance with Schedule 9 (Changes) and Placed in Escrow providing:

- (a) detailed assumptions, explanations of assumptions and parameters underlying the inputs to 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;

Reference Fare has the meaning given to it in paragraph 6.1.1 of Schedule 5.7 (Changes to Fares and Fares Regulation);

Reference Flow has the meaning given to it in paragraph 6.1.1 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 TfGM Fares, MPTE Fares, SYPTTE Fares, T&WPTE Fares, WYPTE Fares or Protected Fares (as applicable) for the financial year which ended 31st March 2010, subject to any change in the reference period in accordance with paragraph 3.1.1 of Schedule 5.7 (Changes to Fares and Fares Regulations);

²⁵**Refurb Maximum Amount** has the meaning given to such term in paragraph 12.3.2 of Part 2 to Schedule 1.6 (Committed Obligations);

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 and T&WPTE 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 and T&WPTE 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 2.2 of Schedule 2.5 (Transport, Travel and Other Schemes);

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

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

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

Relevant Days has the meaning given to it in paragraph 2.2.1 of Schedule 15.2 (Last 12 or 13 Months of Franchise Period);

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

Relevant Profit has the meaning given to it in paragraph 2.1 of part 2 to Schedule 8.1 (Franchise Payments);

relevant Reporting Period has, for the purposes of paragraph 5.3 of Schedule 12 (Financial Obligations and Covenants) only, the meaning given to it in that paragraph;

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

²⁵ Date of new insertion 17/06/2015

Remedial Agreement has the meaning given to it in paragraph 4.1 of Schedule 10.1 (Remedial Plans and Remedial Agreement);

Remedial Plan has the meaning given to it in paragraph 2.1.2 of Schedule 10.1 (Remedial Plans and Remedial Agreement);

Remedial Plan Notice has the meaning given to it in paragraph 1.1 of Schedule 10.1 (Remedial Plans and Remedial 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 2.2.2 of Schedule 9.2 (Identity of the Financial Model);

Reporting Accountants means KPMG, 1 Canada Square, Canary Wharf, London E14 5AG or as otherwise agreed in accordance with a Supplemental Agreement;

Reporting Period means:

- (a) for the purposes of the Season Ticket Bond, any consecutive 7-day period or any other period, each within a Reporting Period (as defined in paragraph (b)) agreed in accordance with paragraph 5.12 of Schedule 12 (Financial Obligations and Covenants); or
- (b) for all other purposes, a period of 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 Franchise Commencement 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 on the last day of the Franchise Period;

Reporting Period Franchise Payment means, in relation to any Reporting Period, the amount determined in accordance with Part 1 of Schedule 8.2 (Reporting Period Franchise Payments/Apportionment of Payments);

Reporting Period Payment Components means the values of "FXD", "VCRPI", "VCAWE", "PRPI" and "RRPI" specified for each Reporting Period in the table set out in Appendix 2 (Figures for Calculation of Reporting Period Franchise Payment) to Schedule 8.2 (Reporting Period Franchise Payment);

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

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

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;

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

Revenue means the gross revenue (without any deduction for operating costs or charges except for commission charged to revenue in the normal course of business) of the Franchisee, as stated in the audited or management accounts and statements submitted to the Secretary of State in accordance with Schedule 13.2 (Information), relating to:

- (a) railway passenger services;
- (b) the provision of catering services on any Passenger Service;
- (c) charging for the use of station car parks;
- (d) other revenue directly related to passenger demand for railway passenger services;
- (e) payments to the Franchisee by Network Rail under Schedule 4 to the Track Access Agreement;
- (f) the "MRE" element of any payments to the Franchisee by Network Rail as provided for under Schedule 8 to the Track Access Agreement, net of MRE payments to Network Rail thereunder;
- (g) the revenue element of any payments to the Franchisee by Network Rail under Condition G of the Network Code; and
- (h) retail commission,

but shall not include any Franchise Payment. References in paragraphs (e), (f) and (g) to Schedules to the Track Access Agreement, the Network Code and/or to particular provisions of those Schedules or the Network Code shall be deemed to include any other provisions of, or incorporated in, any Track Access Agreement which the Secretary of State reasonably considers have an equivalent effect or are intended to fulfil the same function;

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

Rolling Stock Lease means any agreement for the leasing of rolling stock vehicles to which the Franchisee is a party as at the Franchise Commencement 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;

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

Route Efficiency Benefit Share Mechanism or REBS means the route-level efficiency benefit sharing mechanism introduced by the ORR in its determination for the control period commencing on 1 April 2014 or any similar arrangement under which the benefits of any outperformance (or downsides

of failure to achieve efficiency targets) are to be shared between Network Rail and train operators at route level;

Route Utilisation Strategy means any route utilisation strategy notified to the Franchisee by the Secretary of State on or before the Franchise Commencement Date or as developed by the Secretary of State from time to time and notified to the Franchisee for the purposes of this Agreement;

RSP means Rail Settlement Plan Limited;

Rules of the Plan has the meaning given to the term "Timetable Planning Rules" in the Network Code;

Run of the Financial Model means an operation of the Financial Model with the Revised Inputs and which complies with the requirements of Schedule 9.1 (Financial and Other Consequences of Change);

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, including stations, under its control;

Safety Certificate means the certificate issued by the ORR under the Safety Regulations, certifying its acceptance of the Franchisee's safety management system (as defined in those regulations) and the provisions adopted by the Franchisee to meet the requirements that are necessary to ensure safe operation on the Routes;

Safety Regulations means The Railways and Other Guided Transport Systems (Safety) Regulations 2006;

Saver Return Fare means a return fare which is shown as a saver fare in the fares manuals and systems of the RSP as at the date of such manuals;

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

Season Ticket Fare means:

- (a) for the purposes of Schedule 12 (Financial Obligations and Covenants) and the definition of Season Ticket Bond only, a Fare which entitles the purchaser to make an unlimited number of journeys in any direction during the period for which, and between the stations and/or the zones for which, such Fare is valid; and
- (b) for all other purposes, a Fare which entitles the purchaser to make, without further restriction except as to class of accommodation, an unlimited number of journeys in any direction during the period for which, and between the stations and/or the zones for which, such Fare is valid, and which:
 - (i) in relation to TfGM Fares includes the Manchester Traincard;
 - (ii) in relation to SYPTE Fares includes the Railmaster; and
 - (iii) in relation to WYPTE Fares includes the Metrocard;

Second Profit Share Threshold has the meaning given to it in paragraph 2.1 of Part 2 to Schedule 8.1 (Franchise Payments);

Secretary of State Franchise Payment means, in relation to any Reporting Period, the amount determined as such in accordance with paragraph 1.1 of Part 2 of Schedule 8.1 (Franchise Payments);

Secretary of State Share means the Secretary of State's share of the value of PFP determined in accordance with paragraph 1.4 of Part 2 of Schedule 8.2 (Reporting Period Franchise Payments/Apportionment of Payments);

Security Breach has the meaning given to it in paragraph 6.3.3 of Schedule 1.5 (Information about Passengers);

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

Service Group has the meaning given to it in the Passenger's Charter when used in relation to the Passenger's Charter, and when used in this Agreement it has the meaning given to it in the Track Access Agreement, or as specified by the Secretary of State from time to time;

Service Level Commitment means the service level commitment more particularly described in paragraph 1 of Schedule 1.1 (Service Development) and the first such Service Level Commitment in the agreed terms SLC and any other service level commitment developed in accordance with Schedule 1.1;

Service Quality Plan means a plan that sets out how the Franchisee proposes to meet a Service Quality Requirement that it has previously failed to meet, including a timescale for rectification;

Service Quality Reporting Period means a period of three (3) consecutive Reporting Periods during the Franchise Term commencing on the Franchise Commencement Date;

Service Quality Requirement means any of the requirements for a minimum service level more particularly set out in the agreed terms and marked SQR;

Service Recovery Plan means, in the event of a prevention or restriction of access to the track or a section of the track (howsoever caused) which results in any Cancellation, Partial Cancellation, and/or any Passenger Service being operated with less passenger carrying capacity than the passenger

carrying capacity specified for such Passenger Service in the Train Plan, a plan implemented by the Franchisee:

- (a) to minimise the disruption arising from such prevention or restriction of access by operating during such period of disruption, the best possible level of service given such disruption, including by:
 - (i) keeping service intervals to reasonable durations;
 - (ii) keeping extended journey times to reasonable durations; and
 - (iii) managing any resulting overcrowding;
- (b) to:
 - (i) return the level of service to that level specified in the Timetable as soon as reasonably practicable; and
 - (ii) prior to the attainment of the level of service specified in paragraph (b)(i), operate any reduced level of service agreed with 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 2009” or any document of a similar or equivalent nature; and
- (d) where the particulars of such plan in relation to the requirements of paragraphs (a) and (b) have been:
 - (i) agreed at an initial and, where required, subsequent telephone conference between the Franchisee, 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 1.1.1(a) of Schedule 10.4 (Force Majeure);

Settlement Proposal has the meaning given to it in paragraph 3.2 of Schedule 4.2 (Persons with Disabilities and Disability Discrimination);

Shares means the Secretary of State Share, the Greater Manchester Share, the Merseyside Share, the South Yorkshire Share, the Tyne & Wear Share and the West Yorkshire Share;

Side Agreement means the agreement between the Secretary of State and each of the Executives dated the date hereof;

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 ten (10) minutes;
- (d) changes to clockface (or near clockface) service patterns (meaning the provision of railway passenger services at a specified time or times relative to the hour); and/or

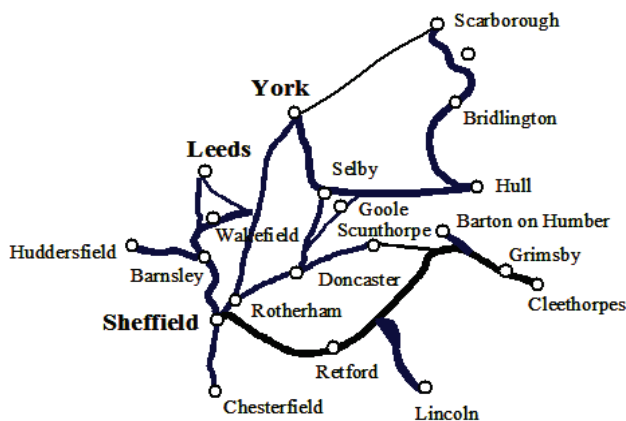
- (e) significant changes to journey times and/or key connections at the Station or at other stations at which relevant railway passenger services call;

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

Small and Medium-sized Enterprises ("SME") has the meaning given to it in the Companies Act 2006 (as amended);

South & East Yorkshire Performance Management Unit means the Routes depicted and described in the following Figure and Table and including the Stations and Depots specified in paragraph 6 of the Conditions Precedent Agreement:

Route Description	Service Code
York – Moorthorpe – Sheffield	845
York – Selby – Hull	806
Sheffield – Wakefield – Leeds	853
Cleethorpes – Barton-on-Humber	826
Sheffield – Retford-Lincoln / Cleethorpes	804
Doncaster – Goole (Local services)	816
Huddersfield – Denby Dale	803
Sheffield – Doncaster (Local)	807
Doncaster – Scunthorpe	825
Sheffield – Barnsley – Darton	802
Sheffield – Denby Dale – Huddersfield	803
Sheffield – Hull	808
Scarborough / Bridlington – Hull	838
Sheffield / Doncaster – Moorthorpe	807
Sheffield – Kiveton Park – Gainsborough / Cleethorpes	804, 805
Doncaster – Thorne North (Local)	816
Nottingham-Sheffield-Leeds	856



South Yorkshire Share means the South Yorkshire Passenger Transport Executive's share of the value of PFP determined in accordance with paragraph 1 of Part 2 of Schedule 8.2 (Reporting Period Franchise Payments/ Apportionment of Payments);

Spares means parts and components of rolling stock vehicles which are available for the purpose of carrying out maintenance services on rolling stock vehicles;

Stakeholder means the Passengers' Council and any relevant Local Authority (excluding any Executive or other passenger transport executive) and organisations who can reasonably be considered to have a legitimate and proper interest in the Passenger Services including Community Rail Partnerships representing Community Rail Routes designated as such by the Secretary of State;

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

Station means a Non-Executive Station or an Executive Station;

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

Station Charge Adjustment means any adjustment to payments under an Access Agreement determined in accordance with paragraph 2 of Schedule 8.4 (Track Access Adjustments and Station Charge Adjustments);

Station Lease means:

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

Station Service means any service specified in paragraph 3 of Schedule 1.7 (Franchise Services) which may be provided by the Franchisee at the Stations;

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

Stored Credit Balance means any monetary amount held by the Franchisee which a passenger can apply at a future date to the purchase of a Fare (and stored in any medium);

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 this Agreement;

Successor Operator Timetable has the meaning given to it in paragraph 8.1 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 law affecting such supplemental agreement or other change of

circumstances between the date of this Agreement and the date on which the relevant Transfer Scheme is made and subject further to paragraph 3.2 of Schedule 15.4;

SYPTE Fare means any:

- (a) Single Fare;
- (b) Return Fare;
- (c) Weekly Season Ticket;
- (d) Monthly Season Ticket;
- (e) Quarterly Season Ticket; or
- (f) Annual Season Ticket,

which is valid for use only on the Railway Passenger Services and not on any other form of transport, including bus, tram or light rail, for a journey where the origin and destination stations are both SYPTE Stations;

SYPTE Fares Basket means the grouping of SYPTE Fares:

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

SYPTE Fares Document means the document to be issued by the Secretary of State (and as the same may be amended from time to time) in accordance with Schedule 5.7 (Changes to Fares and Fares Regulation);

SYPTE Station means:

- (a) for the purposes of Schedule 5 (Fares) and the definition of SYPTE Fare only, any of the following stations:
Adwick, Barnsley, Bentley, Bolton-on-Deane, Chapelton, Conisbrough, Darnall, Darton, Denby Dale, Dodworth, Doncaster, Dore, Elsecar, Goldthorpe, Hatfield & Stainforth, Kirk Sandall, Kiveton Bridge, Kiveton Park, Meadowhall, Mexborough, Moorthorpe, Penistone, Rotherham Central, Sheffield, Silkstone Common, South Elmsall, Swinton, Thorne North, Thorne South, Thurnscoe, Wombwell and Woodhouse; and
- (b) for all other purposes the stations listed in paragraph 4.2(c) of Appendix 2 of the Conditions Precedent Agreement;

Target Passenger Demand means:

- (a) the greater of Actual Passenger Demand or Forecast Passenger Demand; or
- (b) as directed by the Secretary of State (with the consent of the relevant Executive (such consent not to be unreasonably withheld or delayed) in respect of the Executive Passenger Services), either:

- (i) the lower of such levels of passenger demand; or
- (ii) any intermediate level of passenger demand;

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

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

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

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

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

TfGM Fare means any:

- (a) Single Fare;
- (b) Return Fare;
- (c) Cheap Day Return Fare;
- (d) Weekly Season Ticket;
- (e) Monthly Season Ticket;
- (f) Quarterly Season Ticket; or
- (g) Annual Season Ticket,

which is valid for use only on the Railway Passenger Services and not on any other form of transport, including bus, tram or light rail (but including any such Fare where the origin or destination station is stated to be Manchester Central Zone regardless of whether such Fare is valid for use on any other form of transport within Manchester City Centre), for a journey where the origin and destination stations are both TfGM Stations, including where the origin or destination station is stated to be Manchester Central Zone;

TfGM Fares Basket means the grouping of TfGM 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 or TfGM from time to time in accordance with Schedule 5.7 (Changes to Fares and Fares Regulation); and
- (d) set out in the TfGM Fares Document;

TfGM Fares Document means the document to be issued by the Secretary of State (and as the same may be amended from time to time) in accordance with Schedule 5.7 (Changes to Fares and Fares Regulation);

TfGM Station means:

- (a) for the purposes of Schedule 5 (Fares) and the definition of TfGM Fare, any passenger railway station within the Greater Manchester Metropolitan County (as defined in the Local Government Act 1972) together with Dinting, Disley, Glazebrook, Glossop, Hadfield and New Mills Newtown stations; and
- (b) for all other purposes, the Stations listed in paragraph 4.2(a) of Appendix 2 of the Conditions Precedent Agreement;

Third Profit Share Threshold has the meaning given to it in paragraph 2.1 of Part 2 to Schedule 8.1 (Franchise Payments);

Threshold Amount means for any Franchisee Year, an amount, whether positive or negative, which is determined in accordance with the following formula:

$$TA = FAT \times RPI$$

where:

TA is the Threshold Amount for any Franchisee Year;

FAT is the amount for the relevant Franchisee Year specified in column 2 of the table in Schedule 9.4 (Component of FAT)

RPI is ascertained as follows:

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

where:

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

ORPI means the Retail Prices Index for January 2014,

provided that, for the first Franchisee Year RPI shall be 1;

Through Ticketing (Non-Travelcard) Agreement means the agreement of that name referred to in paragraph 5.5 of the Appendix to Schedule 2.5 (List of 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, published by the Franchisee at the Stations and at other stations in accordance with paragraphs 1 and 2 of Schedule 1.4 (Passenger Facing Obligations) containing the departure and arrival times of:

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

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

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

²⁶***“TPE Franchisee” means First Keolis Trans Pennine Limited and any successor operator directly or indirectly to any part of the franchise services operated by the TPE Franchisee;***

Track Access Adjustment means any adjustment to payments under a Track Access Agreement determined in accordance with paragraph 1 of Schedule 8.4 (Track Access Adjustments and Station Charge Adjustments);

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

Train Fleet means the rolling stock vehicles specified in or required by Appendix 1 (The Train Fleet) to Schedule 1.1 (Service Development) and any other rolling stock vehicles the Secretary of State consents to in accordance with paragraph 16 of Schedule 1.1 (Service Development) from time to time;

Train Mileage means, in relation to any period, the aggregate train mileage covered during such period by each train used in the provision of the Passenger Services (excluding, any train mileage

²⁶ Date of new insertion 13/05/2015

covered as a result of positioning or other movements of rolling stock vehicles outside the Timetable) and Train Miles shall be construed accordingly;

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

Train Plan means:

- (a) the plan and/or diagram of the Franchisee for the operation of trains and train formations under the Timetable set out in the document in the agreed terms marked "TP"; and
- (b) any other train plan developed in accordance with Schedule 1.1 (Service Development),

except that when used in Schedule 7.1 (Performance Benchmarks), it shall have the meaning given to it in paragraph 2.16 of Schedule 7.1;

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

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 or 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 this Agreement and the date on which such scheme is made;

Transport Act means the Transport Act 2000;

Transport Direct means the website offering free information for door to door travel for both public transport and car journeys around Great Britain;

Travelcard Agreement means the agreement of that name referred to in paragraph 5.4 of the Appendix (List of Transport, Travel and Other Schemes) to Schedule 2.5 (Transport, Travel and Other Schemes);

²⁷“Tripartite Hire Agreement” means the agreement entered into or to be entered into which is ancillary to the Class 156 Daily Hire Agreement between Porterbrook, the Franchisee and the TPE Franchisee.

TSI means any Technical Standard for Interoperability with which the Franchisee is required to comply pursuant to Directives EU 96/48 and EU 2001/16 and related legislation;

Turnaround Time means the time specified in the Train Plan between the completion of a Passenger Service in accordance with the Timetable and the commencement of the next Passenger Service in accordance with the Timetable on the same day using some or all of the same rolling stock vehicles;

Turnover means, in relation to any period, the aggregate revenue (excluding any applicable Value Added Tax) accruing to the Franchisee from the sale of Fares and the receipt of Franchise Payments during such period;

T&WPTE Fare means a Fare for a Flow in either direction between the following stations:

- (a) Newcastle - Sunderland;
- (b) Newcastle - Heworth; or

²⁷ Date of new insertion 13/05/2015

(c) Heworth – Sunderland;

T&WPTE Fares Basket means the grouping of every T&WPTE Fare as set out in the T&WPTE Fares Document;

T&WPTE Fares Document means the document to be issued by the Secretary of State (and as the same may be amended from time to time) in accordance with Schedule 5.7 (Changes to Fares and Fares Regulation);

T&WPTE Season Ticket Fare means a T&WPTE Fare which entitles the purchaser to make, without further restriction except as to class of accommodation, an unlimited number of journeys in any direction during the period for which, and between the stations and/or the zones for which, such T&WPTE Fare is valid;

T&WPTE Station means:

- (a) for the purposes of Schedule 5 (Fares) only, Sunderland, Heworth or Newcastle stations; and
- (b) for all other purposes, the stations listed in paragraph 4.2(d) of Appendix 2 of the Conditions Precedent Agreement;

Tyne, Tees & Wear Performance Management Unit means the Routes depicted and described in the following Figure and Table and including the Stations and Depots specified in paragraph 6 of the Conditions Precedent Agreement:

Route Description	Service Code
Chathill & Morpeth – Newcastle	794
Newcastle – Carlisle	793
Newcastle – Hexham	796
Newcastle – MetroCentre	796
Newcastle – Middlesbrough	792
Newcastle – Darlington	791
Bishop Auckland – Darlington	801
Darlington – Saltburn	791, 801
Middlesbrough – Whitby	800
Newcastle – Sunderland	792



Tyne & Wear Share means the Tyne & Wear Passenger Transport Executive's share of the value of PFP determined in accordance with paragraph 1 of Part 2 of Schedule 8.2 (Reporting Period Franchise Payments/ Apportionment of Payments);

Updated Business Plan means the revised business plan to be provided prior to the start of each Franchisee Year (other than the first Franchisee Year) in accordance with paragraph 2.4 of Schedule 13.2 (Information) and in the form specified in Appendix 5 to Schedule 13.2 (Updated Business Plan);

Value means the Projected Revenue of a Fares Basket for any Fare Year;

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

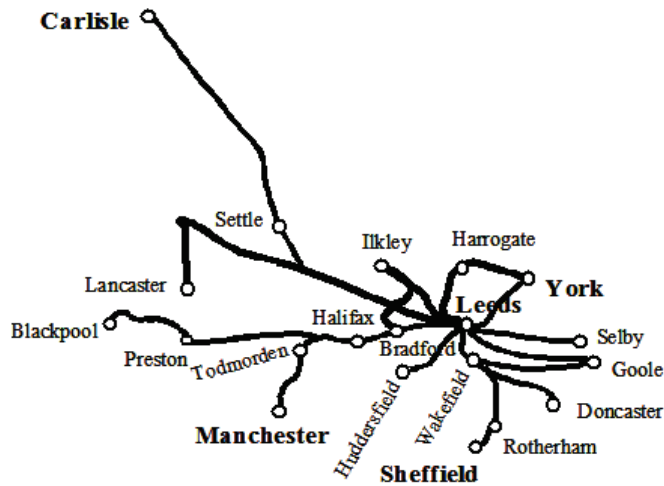
Variation means a variation to the terms of this Agreement pursuant to paragraph 1 of Schedule 19 (Other Provisions);

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 7 days after such day;

West & North Yorkshire Performance Management Unit means the Routes depicted and described in the following Figure and Table and including the Stations and Depots specified in paragraph 6 of the Conditions Precedent Agreement:

Route Description	Service Code
Huddersfield – Wakefield	868
Leeds / Wakefield Knottingley – Goole	841
Leeds – Micklefield – York / Selby	835, 837
Leeds – Horsforth / Harrogate – York	830
Leeds – Halifax – Hebden Bridge – Manchester	871
Leeds / Bradford – Ilkley	819, 821
Leeds / Bradford – Skipton (Local)	818, 820, 870
Leeds – Huddersfield	874
Leeds / Wakefield - Knottingley	822, 841
Marsden – Huddersfield	220
Leeds – Horsforth	830
Leeds – Blackpool	737
Carlisle – Leeds	151
Leeds – Halifax – Walsden	868, 871
Leeds – Wakefield – South Elmsall / Moorthorpe	810, 824
Leeds – Lancaster – Morecambe	869



West Yorkshire Share means the West Yorkshire Passenger Transport Executive's share of the value of PFP determined in accordance with paragraph 1 of Part 2 of Schedule 8.2 (Reporting Period Franchise Payments/ Apportionment of Payments);

Wirral Line Station means any station on the lines from:

- (a) Chester to Liverpool Central;
- (b) Ellesmere Port to Liverpool Central;
- (c) Liverpool Moorfields to Chester;
- (d) Liverpool Moorfields to Ellesmere Port;
- (e) Liverpool Moorfields to New Brighton;
- (f) Liverpool Moorfields to West Kirby;
- (g) New Brighton to Liverpool Central; and
- (h) West Kirby to Liverpool Central;

being as follows:

Bache, Bebington, Bidston, Birkenhead Central, Birkenhead Hamilton Square, Birkenhead North, Birkenhead Park, Bromborough, Bromborough Rake, Capenhurst, Chester, Conway Park, Eastham Rake, Ellesmere Port, Green lane, Hooton, Hoylake, Leasowe, Little Sutton, Liverpool James Street, Liverpool Lime Street (Low Level), Manor Road, Meols, Moreton, Merseyside, New Brighton, Overpool, Port Sunlight, Rock Ferry, Wallesey Village and West Kirby;

WYPTE Fare means any:

- (a) Single Fare;
- (b) Return Fare;
- (c) Weekly Season Ticket;
- (d) Monthly Season Ticket;
- (e) Quarterly Season Ticket; or

- (f) Annual Season Ticket,

which is valid for use (i) (unless such WYPTE Fare is a Metrocard) only on the Railway Passenger Services and not on any other form of transport, including bus, tram or light rail and (ii) for a journey where the origin and destination stations are both WYPTE Stations or, in the case of a WYPTE Fare which is a Metrocard, valid for use for journeys between zones comprising of WYPTE Stations only;

WYPTE Fares Basket means the grouping of WYPTE Fares:

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

WYPTE Fares Document means the document to be issued by the Secretary of State (and as the same may be amended from time to time) in accordance with Schedule 5.7 (Changes to Fares and Fares Regulation);

WYPTE Station means:

- (a) for the purposes of Schedule 5 (Fares) and the definition of WYPTE Fare only, any of the following stations:

Baildon, Batley, Ben Rhydding, Berry Brow, Bingley, Bradford Forster Square, Bradford Interchange, Bramley, Brighouse, Brockholes, Burley Park, Burley-in-Wharfedale, Castleford, Cottingley, Cross Gates, Crossflatts, Deighton, Denby Dale, East Garforth, Featherstone, Fitzwilliam, Frizinghall, Garforth, Guiseley, Halifax, Headingley, Hebden Bridge, Honley, Horsforth, Ilkley, Keighley, Knottingley, Leeds, Lockwood, Marsden, Menston, Micklefield, Mirfield, Moorthorpe, Morley, Mytholmroyd, New Pudsey, Normanton, Outwood, Pontefract Monkhill, Pontefract Tanshelf, Ravensthorpe, Saltaire, Sandal & Agbrigg, Shepley, Shipley, Slaithwaite, South Elmsall, Sowerby Bridge, Steeton & Silsden, Stocksmoor, Streethouse, Todmorden, Wakefield Kirkgate, Wakefield Westgate, Walsden, and Woodlesford; and
- (b) for all other purposes, the stations listed in paragraph 4.2(e) of Appendix 2 of the Conditions Precedent Agreement;

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; and

Yield Management Systems 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.

3 COMMENCEMENT

3.1 The clauses of this Agreement and the provisions listed in clauses 3.1.1 to 3.1.16 (inclusive) shall take effect and be binding upon each of the Secretary of State, the Executives and the Franchisee immediately upon signature of this Agreement:

- 3.1.1 not used;
- 3.1.2 paragraph 2 of Schedule 2.2 (Security of Access Assets, Rolling Stock Leases, Station and Depot Leases);
- 3.1.3 paragraph 2 of Schedule 2.3 (Third Party Delivery of Passenger Services and Other Franchisees);
- 3.1.4 paragraph 4.3 of Schedule 4.2 (Persons with Disabilities and Disability Discrimination);
- 3.1.5 Schedule 5.1 (Purpose, Structure and Construction);
- 3.1.6 Schedule 5.3 (Allocation of Fares to Fares Baskets);
- 3.1.7 Schedule 5.7 (Changes to Fares and Fares Regulation);
- 3.1.8 Schedule 9 (Changes);
- 3.1.9 Schedule 10 (Remedies, Termination and Expiry);
- 3.1.10 paragraphs 1 to 3 (inclusive) of Schedule 11 (Agreement Management Provisions);
- 3.1.11 paragraph 4 of Schedule 12 (Financial Obligations and Covenants);
- 3.1.12 paragraphs 1, 5, 6, 7 and 8 of Schedule 13.2 (Information);
- 3.1.13 Schedule 14.3 (Key Contracts);
- 3.1.14 Schedule 17 (Confidentiality and Freedom of Information);
- 3.1.15 Schedule 19 (Other Provisions); and
- 3.1.16 Schedule 20 (Executives Passenger Services).

3.2 The other provisions of this Agreement shall take effect and become binding upon the parties on the Franchise Commencement Date.

4 TERM

This Agreement shall terminate on the Expiry Date or on the date of any earlier termination pursuant to clause 2.2.1 of the Conditions Precedent Agreement or pursuant to Schedule 10 (Remedies, Termination and Expiry).

5 FRANCHISEE'S OBLIGATIONS

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

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

- 5.3 The Franchisee shall co-operate with the Secretary of State and each Executive 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 RELATIONSHIP WITH PREVIOUS FRANCHISE AGREEMENT

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

7 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 this Agreement with any person is on bona fide arm's length terms.

8 COMPLIANCE WITH LAWS

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

9 ESTABLISHMENT OF COMBINED AUTHORITIES

References to a Passenger Transport Authority includes reference to the relevant Combined Authority (established or to be established during the Term). Where an Executive is dissolved by the establishment of a Combined Authority, either the establishment order of the Combined Authority will transfer the rights and obligations of that Executive to the Combined Authority, or the Parties will work together to ensure that the rights and obligations of that Executive are transferred to the Combined Authority.

10 ENTIRE AGREEMENT

- 10.1 The Franchise Agreement between the Parties to this Agreement and the following side letters of even date relating to:
- 10.1.1 Schedule 16 (Pensions);
 - 10.1.2 Schedule 12 (Replacement Bonds);
 - 10.1.3 Schedule 13.2 (Information Provision);
 - 10.1.4 Schedule 2.2 (Rolling Stock Cascade);
 - 10.1.5 Schedule 7.1 (Benchmarks);
 - 10.1.6 Schedule 13.2 (Rail Safety Group);
 - 10.1.7 Schedule 1.1 (Target Passenger Demand);

- 10.1.8 Season Ticket Bonds Side Letter;
- 10.1.9 Ticket Office Staffing Side Letter;
- 10.1.10 ARI Side Letter; and
- 10.1.11 PPM Side Letter,

contain all the terms which the Parties have agreed in relation to the subject matter of this Agreement and supersede all prior written or oral agreements, representations or understandings between the Parties in relation to such subject matter.

- 10.2 The Franchisee hereby acknowledges that the Franchise Agreement has not been entered into wholly or partly in reliance on, nor has the Franchisee been given any warranty, statement, promise or representation other than as expressly set out in the Franchise Agreement. To the extent that any such warranties, statements, promises or representations have been given, the Franchisee unconditionally and irrevocably waives any claim, rights or remedies which it might otherwise have had in relation to them.
- 10.3 Nothing in this clause 10 will exclude any liability which one party would otherwise have to the other parties in respect of statements made fraudulently.
- 10.4 The Franchisee hereby acknowledges and agrees with the Secretary of State (for itself and as trustee for each of the other persons referred to therein) to the disclaimer of liability which is contained in the section entitled "Important Notice" contained in the Request for Proposal.
- 10.5 The Franchisee represents and warrants to the Secretary of State and to the Executives subject only to the matters fairly disclosed to the Secretary of State in writing (and accepted by him) or expressly provided for under the terms of this Agreement that all information, representations or other matters of fact communicated in writing to the Secretary of State and/or his advisers by the Franchisee, its directors, officers, employees, servants or agents in connection with the entering into of the Franchise Agreement were all (at the date submitted to the Secretary of State) and remain, in all material respects, true, accurate and not misleading.

11 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, except as expressly set out in this Agreement.

In witness whereof the parties hereto have executed this Agreement the day and year first before written.

The Corporate Seal
of **THE SECRETARY OF STATE FOR
TRANSPORT**
is hereunto affixed

SEAL Reference No. 8251

Authenticated by authority of THE SECRETARY OF
STATE FOR TRANSPORT:

Simon Lydiard

Signed for and on behalf of **NORTHERN RAIL LIMITED**

Director:

Alex Hynes

The Common Seal of
TRANSPORT FOR GREATER MANCHESTER
is hereunto affixed in the presence of

SEAL Reference No. 4649

Authorised Signatory:
(signature and name in capitals)

J Lamonte

Authorised Signatory:
(signature and name in capitals)

S Warrener

The Common Seal
of **MERSEYSIDE PASSENGER TRANSPORT EXECUTIVE**
is hereunto affixed

SEAL Reference No. 1207

Authorised Signatory:
(signature and name in capitals)

L Outram

The Common Seal of **SOUTH YORKSHIRE PASSENGER
TRANSPORT EXECUTIVE** is hereunto affixed

SEAL Reference No. 1908

Authorised Signatory:
(signature and name in capitals)

S C Davenport

~~Authorised Signatory:
(signature and name in capitals)~~

The Common Seal of
**TYNE & WEAR PASSENGER TRANSPORT
EXECUTIVE** is hereunto affixed

SEAL

Authorised Signatory:
(signature and name in capitals)

John Fenwick

The Corporate Seal
of **WEST YORKSHIRE PASSENGER TRANSPORT
EXECUTIVE** is hereunto affixed

SEAL Reference No. 2014/10

Authorised Signatory:
(signature and name in capitals)

N Winney

~~Authorised Signatory:
(signature and name in capitals)~~

SCHEDULE 1 - PASSENGER SERVICE OBLIGATIONS

- Schedule 1.1 Service Development
 - Appendix 1: The Train Fleet
 - Appendix 2: Service Development Additional Factors
 - Appendix 3: Not used
- Schedule 1.2 Operating Obligations
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- Schedule 1.4 Passenger Facing Obligations
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- Schedule 1.6 Committed Obligations
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- Schedule 1.8 Major Projects

Conformed Copy

SCHEDULE 1.1 - SERVICE DEVELOPMENT

1 SERVICE LEVEL COMMITMENT – PURPOSE AND RESPONSIBILITY

1.1 A Service Level Commitment is the means by which the Secretary of State specifies the level, frequency, maximum journey times and stopping patterns of the railway passenger services, including Executive Passenger Services, that the Franchisee is to:

1.1.1 seek Train Slots for from Network Rail; and

1.1.2 operate pursuant to the Timetable issued by Network Rail at the end of its timetable development process.

1.2 Not used.

1.3 The Service Level Commitment as at the date of this Agreement is in the agreed terms marked SLC.

1.4 A Service Level Commitment may be expressed in whole or in part at any level of generality or to any level of detail the Secretary of State considers appropriate.

2 TRAIN PLAN – PURPOSE AND RESPONSIBILITY

2.1 A Train Plan is the means by which the Franchisee expresses its proposed allocation of the passenger carrying capacity of its Train Fleet to meet passenger demand for the railway passenger services it is to operate.

2.2 The Franchisee shall submit to the Secretary of State and each Executive a Train Plan in respect of each Service Level Commitment and, subsequently, in respect of each Timetable in accordance with this Schedule 1.1.

2.3 In preparing a Train Plan in respect of a Service Level Commitment, the Franchisee shall do so by reference to the timetable that it envisages operating in order to comply with that Service Level Commitment.

2.4 The Train Plan for the Timetable as at the Franchise Commencement Date is in the agreed terms marked TP.

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

2.5.1 its start point and departure time;

2.5.2 its terminating point and arrival time;

2.5.3 the class of rolling stock vehicles that the allocated train is to have;

2.5.4 the passenger carrying capacity that the allocated train, as formed, is to have;

2.5.5 the indicative formation of those trains allocated in accordance with paragraph 2.5.4 which have a Target Passenger Demand greater than 75 per cent. of their passenger carrying capacity;

2.5.6 its Actual Passenger Demand most recently determined in accordance with Schedule 1.5 (Information about Passengers); and

2.5.7 its Forecast Passenger Demand.

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

3 TRAIN FLEET

3.1 The Franchisee's Train Fleet as at the Franchise Commencement Date is as set out in Appendix 1 (The Train Fleet).

3.2 The Franchisee shall comply with its obligations under:

3.2.1 paragraph 16 concerning changes to the composition and characteristics of the Train Fleet; and

3.2.2 paragraph 2 of Schedule 2.2 (Security of Access Assets, Rolling Stock Leases, Station and Depot Leases) with respect to the Train Fleet.

4 SERVICE LEVEL DEVELOPMENT

4.1 The Franchisee agrees to co-operate with the Secretary of State and each Executive to develop the Service Level Commitment in accordance with this Schedule 1.1.

5 PROCEDURE

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

5.2 The Franchisee and each Executive agrees that the Secretary of State may stipulate any reasonable procedural arrangements and timescales that are to be followed by the Secretary of State, each Executive and the Franchisee for these purposes (which shall be consistent with any relevant standard railway industry processes for timetable development) and that the Secretary of State may amend any such stipulation.

5.3 The Secretary of State agrees to consult each Executive (where relevant and in any event in the case of an Executive Passenger Service) and the Franchisee as far as reasonably practicable prior to stipulating or amending any such procedural arrangements and timescales in accordance with paragraph 5.2.

5.4 Any stipulation by the Secretary of State pursuant to paragraph 5.2:

5.4.1 shall be at the reasonable discretion of the Secretary of State;

5.4.2 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 19 (Other Provisions)) in conjunction with a Service Level Commitment;

5.4.3 may contain reasonable procedural arrangements and timescales to be followed by the parties in relation to changes to Executive Passenger Services proposed or required by an Executive under paragraph 15 of Schedule 19 (Other Provisions) in order to ensure effective development of the Service Level Commitment and the Train Plan pursuant to this Schedule 1.1; and

5.4.4 may provide for iterations of drafts of any Service Level Commitment, Train Plan or Timetable and for indicative Runs of the Financial Model in relation thereto.

5.5 Any procedural arrangements and timescales stipulated by the Secretary of State pursuant to paragraph 5.2 shall have contractual effect between the Franchisee, each Executive and the Secretary of State in accordance with the terms of such stipulation.

6 CONSULTATION WITH THE EXECUTIVES

6.1 As and when required by the Secretary of State pursuant to paragraph 5.2, the Franchisee shall consult with each Executive for the purpose of considering:

6.1.1 the aspirations of each Executive for:

- (a) its Executive Passenger Services; or
- (b) other railway passenger services,

whether or not such services are specified in such Executive's "Local Transport Plan" and whether or not such Executive has proposed or intends to propose a change to its Executive Passenger Services under paragraph 14 of Schedule 19 (Other Provisions);

6.1.2 any matters arising from the interaction between the Executive Passenger Services of any Executive and:

- (a) other Passenger Services;
- (b) railway passenger services of other Train Operators;
- (c) services for the carriage of goods by rail; and
- (d) other modes of transport;

6.1.3 the Forecast Passenger Demand for its Executive Passenger Services;

6.1.4 the deployment of the relevant Executive Rolling Stock Vehicles used in the operation of any Passenger Services within the relevant Passenger Transport Area, or otherwise;

6.1.5 the changes (if any) that the Secretary of State ought to make to the Benchmarks and Franchise Wide Benchmarks pursuant to paragraph 3.2 of Schedule 7.1 (Performance Benchmarks); and

6.1.6 any other matter which such Executive reasonably considers is relevant to the development of the Service Level Commitment.

6.2 The Franchisee shall:

6.2.1 have due regard to any views expressed by any Executive in respect of the matters referred to in paragraph 6.1; and

6.2.2 set out its response to such views in its informed opinion required pursuant to this paragraph 6 in the manner anticipated by paragraph 7.

7 FRANCHISEE'S SERVICE DEVELOPMENT OPINIONS

7.1 As and when required by the Secretary of State pursuant to paragraph 5.2, the Franchisee shall provide to the Secretary of State, and in respect of the Executive Passenger Services each Executive:

7.1.1 its informed estimate of Forecast Passenger Demand, in such format and to such level of disaggregation as the Secretary of State or each Executive (as the case may be) may reasonably require in order to assist the Secretary of State's or each Executive's (as the case may be) decision-making on future service level commitments, infrastructure, station and rolling stock vehicle investment, the best use of the network and the alleviation of overcrowding;

7.1.2 its informed opinion as to any changes to the current Service Level Commitment which:

- (a) should be made in order to deliver an optimal range of railway passenger service patterns relative to Target Passenger Demand; and
- (b) could be implemented and operated without additional resources or an adjustment to the Franchise Payments,

and any such opinion shall identify the extent to which the Franchisee considers that the obligations contained in paragraph 7.7 might prejudice the delivery of an optimal range of railway passenger service relative to Target Passenger Demand;

7.1.3 its informed opinion as to any changes to the current Service Level Commitment which:

- (a) would deliver an optimal range of railway passenger service patterns in accordance with paragraph 7.1.2(a); and
- (b) could only be implemented and operated with additional resources and/or an adjustment to the Franchise Payments, together with an explanation as to:
 - (i) what additional resources and/or adjustments are necessary to make such changes; and
 - (ii) why such additional resources and/or adjustments are necessary,

and any such opinion shall identify the extent to which the Franchisee considers that the obligations contained in paragraph 7.7 contribute to the need for additional resources and/or adjustments to Franchise Payments in order to implement and operate the changes suggested by the Franchisee pursuant to this paragraph 7.1.3;

7.1.4 its informed opinion as to any changes that the Secretary of State ought to make to the Benchmarks and the Franchise Wide Benchmarks pursuant to paragraph 3.2 of Schedule 7.1 (Performance Benchmarks); and

7.1.5 a draft of the Train Plan that it considers that each set of proposed changes to the Service Level Commitment would require.

7.2 At the same time as the Franchisee provides its informed opinion to the Secretary of State and each Executive pursuant to paragraph 7.1, it shall also provide to the Secretary of State and each Executive a summary of any aspirations of any Executive it has had regard to, pursuant to paragraph 6.1, describing each such Executive aspiration and identifying:

7.2.1 if and in what way the Franchisee has accommodated such aspirations as a change to the current Service Level Commitment in its opinion; and

7.2.2 if the Franchisee has not accommodated such aspirations in its opinion, the reasons why.

7.3 The Franchisee shall provide its opinion to the Secretary of State and to the relevant Executive (in the case of an Executive Passenger Service) as to Service Level Commitment changes and prepare its draft Train Plan with due regard to:

7.3.1 any Route Utilisation Strategy and any other strategy published by the Secretary of State;

7.3.2 the views of any Executive expressed pursuant to paragraph 6;

7.3.3 the additional factors set out in Appendix 2 (Service Development Additional Factors); and

7.3.4 any other constraints or considerations (including affordability constraints and value for money considerations) that the Secretary of State has notified to it.

- 7.4 The Franchisee shall prepare its Train Plan so as to operate the entire Train Fleet in delivering Passenger Services during each Peak, save for any reasonable planning requirements for:
- 7.4.1 the allocation of Hot Standbys; or
 - 7.4.2 other rolling stock vehicles to be out of service due to maintenance requirements, Mandatory Modifications or any other reasons agreed with the Secretary of State (such agreement not to be unreasonably withheld).
- 7.5 The Franchisee shall, subject always to the requirements of paragraphs 7.6 and 7.7, which in the case of conflict shall take priority, in preparing its Train Plan, use all reasonable endeavours to:
- 7.5.1 provide for the Executive Rolling Stock Vehicles allocated to any Executive to be used predominantly in the operation of the Executive Passenger Services of such Executive; and
 - 7.5.2 ensure that the Rolling Stock allocated for the provision of the Executive Passenger Services has at least the reliability, capability and objective quality as the Rolling Stock allocated to such Executive Passenger Services specified in the May 2013 Train Plan.
- 7.6 Subject to paragraph 7.7 (which in the case of conflict shall take priority) the Franchisee shall also, in preparing its Train Plan, unless the Secretary of State otherwise agrees, use all reasonable endeavours to:
- 7.6.1 provide for passenger carrying capacity on each Passenger Service that meets as a minimum the Target Passenger Demand;
 - 7.6.2 provide passengers with a reasonable expectation of a seat:
 - (a) on boarding in respect of any Off-Peak Passenger Service; and
 - (b) twenty (20) minutes after boarding (or such other time period as the Secretary of State may stipulate) in respect of any Peak Passenger Service.
- 7.7 Unless the Secretary of State otherwise directs the Franchisee (or the relevant Executive otherwise agrees) the Franchisee shall in preparing its Train Plan:
- 7.7.1 In the case of the Executive Passenger Services relating to Transport for Greater Manchester ("**TfGM Passenger Services**"), ensure that the Train Plan provides:
 - (a) at least the level of passenger capacity in Standard Class Accommodation during the Peak that was provided in relation to the equivalent passenger services pursuant to the May 2013 Train Plan; and
 - (b) that the allocation of the Train Fleet to the provision of the TfGM Passenger Services during the Peak, as set out in the Train Plan, is not reduced in overall terms below that applicable in the May 2013 Train Plan;
 - 7.7.2 in the case of the Executive Passenger Services relating to the South Yorkshire Passenger Transport Executive ("**SYPTe Passenger Services**"), ensure that the allocation of the Train Fleet to the provision of the SYPTe Passenger Services during the Peak, as set out in the Train Plan, is not reduced in overall terms below that applicable in the May 2013 Train Plan; and
 - 7.7.3 in the case of the Executive Passenger Services relating to the West Yorkshire Passenger Transport Executive ("**WYPTE Passenger Services**") ensure that the Train Plan provides:
 - (a) at least the level of passenger carrying capacity in Standard Class Accommodation during the Peak that was provided in relation to the equivalent passenger services pursuant to the May 2013 Train Plan; and

- (b) that the allocation of the Train Fleet to the provision of the WYPTE Passenger Services during the Peak, as set out in the Train Plan, is not reduced in overall terms below that applicable in the May 2013 Train Plan.

7.8 If at the time it prepares its Train Plan, having exercised all reasonable endeavours, the Franchisee is unable to prepare a Train Plan having the passenger carrying capacity and meeting the reasonable expectations referred to in paragraph 7.6, then subject to paragraph 7.7 (which in the case of conflict shall take priority) the Train Plan shall specify the best allocation of rolling stock vehicles to Passenger Services that is reasonably practicable with a view to:

7.8.1 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;

7.8.2 ensuring, so far as possible, that such excess is not unduly concentrated on any particular Route or Passenger Service; and

7.8.3 minimising, so far as is possible, the extent to which passengers are required to stand:

(a) on boarding in the case of any Off-Peak Passenger Service; and

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

7.9 Where paragraph 7.8 applies, the Franchisee shall propose to the Secretary of State and each affected Executive:

7.9.1 such changes to the Train Plan and/or to the Service Level Commitment ; and

7.9.2 any other actions,

that it considers would most efficiently address the shortfall in passenger carrying capacity and meet Target Passenger Demand. Such proposal shall also include the Franchisee's informed opinion on the extent to which the obligations contained in paragraph 7.7 prejudice the Franchisee's ability to comply with its obligations in paragraph 7.6 or 7.8. It shall also identify any changes to the Train Plan prepared by the Franchisee pursuant to Paragraph 7.8 which would be required if the Franchisee was not obliged to give priority to the obligation contained in paragraph 7.7.

Costs relating to sub optimisation

7.10 If the Franchisee believes that compliance with one or more of its obligations under paragraphs 7.5.1, 7.5.2 and/or paragraph 7.7 would prevent the Franchisee operating an optimal range of Passenger Services relative to Target Passenger Demand and would result in the Franchisee suffering a Net Adverse Effect that it would not otherwise suffer, then the Franchisee shall make a written submission to each Executive to which such obligations are owed setting out:

7.10.1 the relevant obligation or obligations of the Franchisee in relation to that Executive;

7.10.2 how the Passenger Services could be optimised relative to Target Passenger Demand if that Executive, and to the extent necessary the other Executives, were to waive the performance by the Franchisee of the obligation or obligations identified in paragraph 7.10.1;

7.10.3 the type of rolling stock vehicles and/or the passenger carrying capacity that the Franchisee proposes to allocate to or provide in relation to that Executive's Executive Passenger Services if that Executive were to waive performance by the Franchisee of the obligation or obligations identified in paragraph 7.10.1;

7.10.4 the estimated Net Adverse Effect that would be suffered by the Franchisee (on the basis that the Franchisee would use all reasonable endeavours to minimise such Net Adverse Effect) in each Reporting Period during which the Train Plan is implemented if that Executive does

not waive performance by the Franchisee of the obligation or obligations identified in paragraph 7.10.1 and the other Executives do not waive the Franchisee's performance of its obligations under paragraphs 7.5.1, 7.5.2 and/or paragraph 7.7; and

- 7.10.5 the terms on which, if the Executive decided not to waive the performance by the Franchisee of the obligation or obligations identified in paragraph 7.10.2 and instead pay the Franchisee in accordance with paragraph 7.14,
- (a) the Franchisee would report to the Executive on its performance of the obligation or obligations specified in paragraph 7.10.1; and
 - (b) the amount of the estimated Net Adverse Effect would be allocated between the affected Executives and correlated to the Franchisee's performance of the obligation or obligations specified in paragraph 7.10.1,

and which shall be accompanied by such evidence of the nature and amount of the estimated Net Adverse Effect as is reasonably available to the Franchisee. The Franchisee shall use its reasonable endeavours to ensure that any submission made under this paragraph 7.10 is made in a manner which is consistent with any relevant standard railway industry processes and timescales for timetable development.

- 7.11 The Franchisee shall provide, at the request of an Executive to which it has made a written submission under paragraph 7.10, such further information as the Executive may reasonably require in order to verify the accuracy of the estimated Net Adverse Effect set out in the submission or the basis for the allocation thereof between affected Executives, provided that such request is received by the Franchisee no later than ten (10) working days from the date the Executive receives or is deemed to receive the Franchisee's written submission (the "**Request Date**"). The Franchisee shall provide, to the extent reasonably practicable, the information requested by the Executive no later than ten (10) working days from the date of such request. On and from the Request Date an Executive may reasonably request further information to assist it in verifying the accuracy of the estimated Net Adverse Effect or the basis of the allocation thereof between affected Executives and the Franchisee shall act reasonably in considering whether to provide such requested information.

- 7.12 Without prejudice to paragraph 7.14, where an Executive to which the Franchisee has made a written submission under paragraph 7.10 does not agree the amount of the estimated Net Adverse Effect set out in the submission or the allocation thereof to the Executive it shall notify the Franchisee by the later of:

7.12.1 ten (10) working days of receipt of the written submission; and

7.12.2 five (5) working days of the Executive receiving any further information requested under paragraph 7.11,

setting out its reasons for not agreeing the amount of the estimated Net Adverse Effect or the allocation thereof between affected Executives. Where the Franchisee and the Executive acting in good faith do not agree on the amount of the estimated Net Adverse Effect and the allocation thereof to the Executive within five (5) working days of such notification, then the disputed matters may be referred by either of them for independent expert determination in accordance with the following provisions:

- (a) the identity of the independent expert shall be agreed between the Franchisee and the Executive or, if they cannot decide as to the identity of the independent expert within three (3) working days, such expert will be appointed, on the application of either of them, by the President of the Institute of Chartered Accountants in England and Wales;
- (b) Part C (as amended by Part D and as may be subsequently amended) of the Dispute Resolution Rules shall be applied to the dispute as if references to the arbitrator and the arbitration were references to the independent expert and the independent expert determination respectively;

- (c) the independent expert shall deliver his determination and the reasons for it within fifty six (56) days of his appointment; and
- (d) the independent expert's decision shall be final and binding save where a court holds it to be so clearly erroneous on fact that it would be unconscionable for it to stand.

Where the Franchisee does not receive a notice from the Executive by the dates specified in this paragraph 7.12, the Executive shall be deemed to have agreed the amount of the estimated Net Adverse Effect and the allocation thereof to the Executive as set out in the submission made by the Franchisee pursuant to paragraph 7.10.

7.13 If any dispute referred to independent expert determination pursuant to paragraph 7.12 (a "**Dispute**") raises issues or facts which are substantially the same as or connected with issues or facts raised in any other disputes to which the Franchisee is a party (a "**Related Dispute**") the following provisions shall apply:

7.13.1 if no independent expert has been appointed in connection with the Dispute or the Related Dispute the Franchisee may by notice to the relevant Executives require the Dispute to be referred for determination by the independent expert appointed or to be appointed in respect of any such Related Dispute(s); and

7.13.2 if no independent expert has been appointed in connection with a Related Dispute the Franchisee may by notice to the relevant Executives require the Related Dispute(s) to be referred for determination by the independent expert appointed or to be appointed in respect of any such Dispute.

7.14 An Executive to whom the Franchisee has made a written submission under paragraph 7.10 shall notify the Franchisee within forty (40) working days of receipt of the submission (or, if later, within ten (10) working days of receipt of any further information that has been reasonably requested by the Executive within ten (10) working days of receipt of such submission) whether it:

7.14.1 agrees to waive the performance by the Franchisee of the obligation or obligations set out in the written submission so as to enable the Franchisee to achieve the optimisation set out therein; or

7.14.2 does not agree to waive the performance by the Franchisee of such obligation or obligations and instead agrees to pay to the Franchisee, as an addition to the Executive Franchise Payment payable by that Executive in respect of each Reporting Period during which the relevant Train Plan is implemented, either:

(a) (where the quantum of the estimated Net Adverse Effect and the allocation thereof to the Executive has been agreed by the Executive and the Franchisee or deemed to have been agreed) the Executive's allocation of the estimated Net Adverse Effect suffered by the Franchisee in each such Reporting Period as set out in the written submission or as has otherwise been agreed between the Executive and the Franchisee; or

(b) (without prejudice to paragraph 7.15 and where the quantum of the estimated Net Adverse Effect or the allocation thereof to the Executive has not been agreed by the Executive and the Franchisee) the Executive's allocation (if any) of the estimated Net Adverse Effect (if any) suffered by the Franchisee in each Reporting Period as determined by an independent expert under paragraph 7.12 or as may otherwise subsequently be agreed between the Executive and the Franchisee.

7.15 Where the Franchisee has not been notified by an Executive in accordance with paragraph 7.14 by the specified dates then the Executive shall be deemed to have agreed to waive the performance by the Franchisee of the obligations or obligations set out in the Franchisee's submission so as to enable the Franchisee to achieve the optimisation set out therein.

7.16 Where:

7.16.1 an Executive to whom the Franchisee has made a written submission under paragraph 7.10 has not agreed to waive the performance of the obligation or obligations set out in the submission by the Franchisee; and

7.16.2 the amount of the estimated Net Adverse Effect and/or the allocation thereof to the Executive has not been either agreed or resolved by expert determination prior to the end of the first such Reporting Period on which the Train Plan becomes operational,

then the Executive shall make an appropriate retrospective payment to the Franchisee within ten (10) working days of such estimated Net Adverse Effect and/or the allocation thereof to the Executive being agreed or determined and paragraph 7.14.2(b) shall apply to all subsequent Reporting Periods for which the Train Plan is effective provided that where the Net Adverse Effect is determined as being zero or less than zero no payment shall be due from the Executive or (for the avoidance of doubt) from the Franchisee to the Executive.

7.17 Where the Franchisee reasonably considers that the process set out in paragraphs 7.10 to 7.16 is inconsistent with any relevant standard industry processes and timescales for timetable development and/or any procedural arrangements and timescales stipulated by the Secretary of State under paragraph 5.2 then the Franchisee shall notify the Secretary of State and each Executive of its opinion and the parties shall act in good faith to revise the process set out in paragraphs 7.10 to 7.16 to make it consistent with such industry processes and procedural arrangements as soon as reasonably practicable.

7.18 For the purposes of paragraph 7.10 to 7.16 the term “**Net Adverse Effect**” means the aggregate of:

7.18.1 the difference between the Costs which would be incurred by the Franchisee during the period in which the relevant Train Plan is to be implemented if the relevant Executive (and to the extent necessary the other Executives) waived performance by the Franchisee of the obligation or obligations set out in the Franchisee’s submission and the Costs which would be incurred by the Franchisee if the relevant Executive (and to the extent necessary the other Executives) did not waive performance of such obligation or obligations (on the basis that any reduction in Costs arising from such waiver shall have a positive value and any increase in Costs arising from such waiver shall have a negative value); and

7.18.2 the difference between the Revenue relating to the relevant railway passenger services that would be derived by the Franchisee during the period in which the relevant Train Plan is to be implemented if the relevant Executive (and to the extent necessary the other Executives) waived performance of the obligation or obligations set out in the Franchisee’s submission and the Revenue relating to the relevant railway passenger services which would be derived by the Franchisee if the relevant Executive (and to the extent necessary the other Executives) did not waive performance of such obligation or obligations (on the basis that any increase in such revenues arising from such waiver shall have a positive value and any decrease in such revenues arising from such waiver shall have a negative value).

7.19 For the purposes of paragraph 7.18 the term “**Costs**” shall mean:

7.19.1 rolling stock costs including rolling stock operational and maintenance costs payable by the Franchisee;

7.19.2 staff costs including train crew costs and other employment related costs payable by the Franchisee;

7.19.3 access charges payable by the Franchisee; and

7.19.4 other administrative, financial, and/or operational costs payable by the Franchisee.

8 DRAFT SERVICE LEVEL COMMITMENT

8.1 As and when required pursuant to paragraph 5.2, the Secretary of State shall provide to the Franchisee:

8.1.1 its draft Service Level Commitment;

8.1.2 its opinion on any changes that the Secretary of State reasonably considers are required to the Train Plan for such Train Plan:

(a) to satisfy the capacity requirements referred to in paragraphs 7.6 and 7.7; or

(b) to satisfy the capacity requirements referred to in paragraphs 7.8 and 7.9 if the Secretary of State reasonably considers that the capacity requirements referred to in paragraph 7.6 and 7.7 cannot be met; and

8.1.3 its opinion of any changes that are required to the Benchmarks and the Franchise Wide Benchmarks pursuant to paragraph 3.2 of Schedule 7.1 (Performance Benchmarks)

and in providing its opinion under paragraph 8.1.2 the Secretary of State may direct the Franchisee that it need not comply with paragraph 7.7 in relation to the Train Plan.

9 INDICATIVE TIMETABLE AND CONSULTATION

9.1 If and to the extent that the Franchisee reasonably considers that any Service Level Commitment issued by the Secretary of State pursuant to this Schedule 1.1 contains insufficient information to enable it to perform its obligations under this Schedule 1.1, it shall promptly notify the Secretary of State and the Secretary of State shall provide such further information as is reasonably required.

9.2 The Franchisee shall, as and when required pursuant to paragraph 5.2, provide the Secretary of State and each affected Executive with a summary (in such form as the Secretary of State may specify) of any material changes that it would expect there to be to the Passenger Services from the current Timetable if the Secretary of State's draft Service Level Commitment and its proposed Train Plan were to be implemented.

9.3 Notwithstanding any consultation the Secretary of State might separately undertake in respect of the draft Service Level Commitment issued pursuant to paragraph 8, the Franchisee shall:

9.3.1 as soon as reasonably practicable after:

(a) first providing a summary to the Secretary of State pursuant to paragraph 9.2, give all Stakeholders notice and consult them in respect of the changes to the Passenger Services specified in such summary; and

(b) sending or receiving any correspondence in respect of such notice or consultation, provide the Secretary of State with copies of such correspondence;

9.3.2 take due account of such bodies' views that are submitted to the Franchisee in accordance with the procedural stipulations pursuant to paragraph 5.2 and the guidance referred to in paragraph 9.3.4;

9.3.3 inform the Secretary of State of any material changes that it would expect there to be to such draft Service Level Commitment if the views of such bodies were accommodated in such draft Service Level Commitment; and

9.3.4 comply with such reasonable requirements and guidance as the Secretary of State may notify to it from time to time in respect of giving notice to and consulting such Stakeholders in accordance with this paragraph 9.3.

10 SERVICE LEVEL COMMITMENT

- 10.1 The Secretary of State shall, in accordance with paragraph 5.2, issue to the Franchisee the Service Level Commitment that it requires the Franchisee to operate and notice of the changes (if any) to the Benchmarks and the Franchise Wide Benchmarks that the Secretary of State will make pursuant to paragraph 3.2 of Schedule 7.1 (Performance Benchmarks).
- 11 TIMETABLE DEVELOPMENT RIGHTS
- 11.1 The Franchisee shall:
- 11.1.1 use all reasonable endeavours to amend and/or enter into such Access Agreements as may be necessary or desirable from time to time to obtain the timetable development rights that it requires to secure a Timetable that enables it to operate railway passenger services that comply with the Service Level Commitment; and
 - 11.1.2 if requested by the Secretary of State, surrender any Timetable Development Rights that the Secretary of State considers the Franchisee no longer requires.
- 11.2 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 Service Level Commitment in accordance with its obligations under paragraph 14.
- 11.3 Unless the Secretary of State otherwise directs, the Franchisee shall, for the purposes of securing a Timetable that complies with the Service Level Commitment, exercise its rights under the Track Access Agreement (including the Network Code) to object, to make representations and to withhold consent in respect of any actual or proposed act or omission by Network Rail in relation to such agreement in respect of its Timetable Development Rights.
- 11.4 Subject to the Franchisee complying with its obligations under paragraph 11.3, it shall not be liable for any failure to secure a Timetable that enables the Franchisee to operate railway passenger services that comply with the Service Level Commitment, to the extent that such failure is caused by:
- 11.4.1 the Franchisee's Timetable Development Rights being inadequate to enable it to secure the requisite Train Slots, provided that the Franchisee has exercised all reasonable endeavours to obtain the requisite timetable development rights in accordance with paragraph 11.1;
 - 11.4.2 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;
 - 11.4.3 Network Rail exercising its other rights from time to time under the Track Access Agreement or the Network Code; or
 - 11.4.4 the exercise by the ORR of its powers pursuant to Section 22C of the Act.
- 11.5 If the Secretary of State does not consider that the Franchisee has taken sufficient steps under paragraph 11.3, it may require the Franchisee to exercise its rights referred to in paragraph 11.3 in such manner as the Secretary of State reasonably considers appropriate in the circumstances, including:
- 11.5.1 disputing any actual or proposed act or omission by Network Rail in respect of any Timetable Development Rights; and
 - 11.5.2 submitting such dispute to any relevant dispute resolution arrangements or procedures and appealing against any award or determination under such arrangements or procedures, including to the ORR.
- 11.6 The Secretary of State shall, to the extent reasonably practicable, allow the Franchisee a reasonable opportunity to make representations to the Secretary of State concerning the exercise by the Franchisee of any of its rights referred to in paragraph 11.3 before requiring the Franchisee to take any action referred to in paragraph 11.5.

11.7 If and to the extent that the Franchisee is not able to secure a Timetable enabling it to operate railway passenger services that comply with the Service Level Commitment as a result of it not being able to obtain the timetable development rights that it requires for that purpose, the Secretary of State shall issue to the Franchisee a Service Level Commitment in the form required by paragraph 11.7.1, which shall operate between the parties only for the purpose referred to in paragraph 11.7.2:

11.7.1 the Service Level Commitment issued pursuant to this paragraph 11.7 shall be in a form that:

- (a) would enable the Franchisee to secure a Timetable in compliance with it by exercise of the Timetable Development Rights that the Franchisee does have or would have had the Franchisee properly performed its obligations under this Agreement; and
- (b) in all other respects, is the same as the immediately preceding Service Level Commitment issued to the Franchisee by the Secretary of State; and

11.7.2 any Service Level Commitment issued pursuant to this paragraph 11.7 shall, for the purpose of Schedule 9 (Changes) only, stand in place of the immediately preceding Service Level Commitment issued to the Franchisee by the Secretary of State.

12 CERTIFICATION AND NOTIFICATION BY FRANCHISEE OF TIMETABLE BIDS

12.1 Before exercising any Timetable Development Right to bid for Train Slots, the Franchisee shall provide a certificate addressed to the Secretary of State confirming that its proposed exercise of that Timetable Development Right will be compliant with its obligation specified in paragraph 11.2.

12.2 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 12.1 is a true and accurate confirmation of compliance with its obligation specified in paragraph 11.2. The Secretary of State agrees that the certificate will be acceptable if:

12.2.1 such certificate confirms that the Franchisee has used assurance processes approved by the Secretary of State; and

12.2.2 the Franchisee has demonstrated its compliance with the Service Level Commitment by using such assurance processes.

12.3 The Franchisee shall:

12.3.1 keep the Secretary of State and each Executive fully informed of any discussions with Network Rail in relation to the matters referred to in this Schedule 1.1 which may have a material bearing on the ability of the Franchisee to deliver the Service Level Commitment 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 each Executive; and

12.3.2 update any notification under this paragraph 12.3 and/or certification under paragraph 12.1 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.

13 OBLIGATIONS IN RELATION TO OTHER TRAIN OPERATORS

13.1 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:

13.1.1 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;

- 13.1.2 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
- 13.1.3 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).

14 FINALISING THE TRAIN PLAN

- 14.1 The Franchisee shall submit its Train Plan to the Secretary of State and each Executive as soon as reasonably practicable after Network Rail has published the working timetable on which the Timetable is to be based.
- 14.2 The Secretary of State may notify the Franchisee of:
 - 14.2.1 any respect in which it considers that the Train Plan does not comply with the requirements of this Schedule 1.1; and
 - 14.2.2 any revisions that the Secretary of State requires to address such non-compliance,and the Franchisee shall revise the Train Plan in accordance with the Secretary of State's requirements.
- 14.3 If the Franchisee considers that any of the revisions that the Secretary of State requires pursuant to paragraph 14.2.2 are not required for the Train Plan to comply with this Schedule 1.1 then:
 - 14.3.1 it shall nevertheless make such revisions;
 - 14.3.2 it may subsequently refer the question as to whether such revisions were so required for resolution in accordance with such dispute resolution procedure as it and the Secretary of State may agree or, in the absence of agreement, in accordance with the Dispute Resolution Rules; and
 - 14.3.3 following determination of any such dispute, the parties shall take such steps as are required to give effect to such determination.

15 PROVISIONS RELATING TO ACCESS AGREEMENTS AND PROPERTY LEASES

- 15.1 Where the Secretary of State considers it requisite for the purposes of better securing the delivery of railway passenger services under this Agreement, or any other franchise agreement, or for the better achievement by it of any of its statutory purposes, the Secretary of State may require the Franchisee:
 - 15.1.1 to exercise or refrain from exercising 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
 - 15.1.2 subject to the consent of the counterparty thereto, to assign, novate or surrender its rights under any Access Agreement or Property Lease.
- 15.2 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:
 - 15.2.1 where the approval of the ORR is required under the Act, not less than ten (10) business days before the submission to the ORR; and

- 15.2.2 where no such approval is required, not less than ten (10) business days prior to entering into such amendment or Access Agreement.
- 15.3 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:
- 15.3.1 to notify or consult with the Secretary of State on any matter or proposal relating to that Access Agreement or Property Lease; and
- 15.3.2 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.
- 15.4 If and to the extent that:
- 15.4.1 the Secretary of State exercises its rights pursuant to paragraph 15.1;
- 15.4.2 the Franchisee's compliance with the Secretary of State's requirements pursuant to paragraph 15.1 would lead to the unavoidable consequence of the Franchisee contravening any other terms of this Agreement or the occurrence of an Event of Default; and
- 15.4.3 the Franchisee duly complies with such requirements,
- no such contravention of this Agreement or Event of Default shall have occurred.
- 16 CHANGES TO THE TRAIN FLEET
- 16.1 The Franchisee shall maintain the composition of the Train Fleet during the Franchise Term, unless the Secretary of State otherwise agrees, such that there are no changes to the Train Fleet, including changes:
- 16.1.1 to the classes or types;
- 16.1.2 to the interior configurations; or
- 16.1.3 which may reduce the journey time capabilities,
- of any rolling stock vehicles specified in the Train Fleet.
- 16.2 Without prejudice to the Secretary of State's right pursuant to paragraph 2.1 of Schedule 2.2 (Security of Access Assets, Rolling Stock Leases, Station and Depot Leases) to impose conditions on its consent to the entry into by the Franchisee, the exercise of any option by the Franchisee in respect of, or any proposed amendment to, any Rolling Stock Related Contract, the Franchisee shall procure that:
- 16.2.1 the rolling stock vehicles specified in Table 1 to Appendix 1 (The Train Fleet) to Schedule 1.1:
- (a) are deployed in the provision of the Passenger Services in accordance with the Train Plan prevailing from time to time; and
- (b) when so deployed, have the characteristics specified in Table 1 to Appendix 1,
- on and from the Franchise Commencement Date until the relevant dates specified in column 5 of Table 1 to Appendix 1;
- 16.2.2 any substitute rolling stock vehicles which form part of the Train Fleet and which are deployed in the provision of the Passenger Services in accordance with the Train Plan prevailing from

time to time, have the characteristics specified in paragraph 1.1.2 of Appendix 1 to Schedule 1.1;

16.2.3 Not used; and

16.2.4 any other additional rolling stock vehicles which form part of the Train Fleet and which are deployed in the provision of the Passenger Services in accordance with the Train Plan prevailing from time to time, have the characteristics specified in paragraph 1.1.3 of Appendix 1 to Schedule 1.1.

16.3 During the Franchise Term, the Franchisee shall advise the Secretary of State and any affected Executive of any rolling stock vehicles damaged beyond economic repair or likely to be unavailable for service for a period of 3 consecutive Reporting Periods or more.

16.4 If any change is made to the Train Fleet in accordance with this paragraph 16, the Secretary of State may, after consulting the Franchisee and the affected Executive, notify the Franchisee and the affected Executive of the passenger carrying capacity of any rolling stock vehicles or class of rolling stock vehicles comprising the Train Fleet following such change.

17 SECRETARY OF STATE'S STATEMENT OF SERVICE LEVEL COMMITMENT CHANGES

17.1 Any requirement for the Secretary of State to issue a draft or final Service Level Commitment may be satisfied by it issuing a draft or final statement of how the existing Service Level Commitment is to be changed.

18 THE TIMETABLE AND THE WORKING TIMETABLE

18.1 Any specification of railway passenger services in a Service Level Commitment shall (unless the Secretary of State states to the contrary) be regarded as relating to how those services are to be provided for in the National Rail Timetable that Network Rail publishes for passengers, and not how they are to be provided for in the working timetable that Network Rail issues to industry parties at the conclusion of its timetable development process.

18.2 Accordingly, the Franchisee's obligations specified in paragraph 11.2 shall be construed as an obligation to secure the requisite Train Slots in the working timetable to be issued by Network Rail at the conclusion of its timetable development process that will permit the Franchisee to operate railway passenger services that comply with the Service Level Commitment provided for in the relevant Timetable.

18.3 The Franchisee shall ensure, for each period between two consecutive Passenger Change Dates during the Franchise Term, that the Timetable for such period is not materially different from the relevant working timetable issued by Network Rail at the conclusion of its timetable development process.

APPENDIX 1 TO SCHEDULE 1.1 - THE TRAIN FLEET

1 THE COMPOSITION OF THE TRAIN FLEET

1.1 The Train Fleet consists of:

1.1.1 the rolling stock vehicles specified in Table 1, with the capacity characteristics referred to there, until the lease expiry dates referred to there;

1.1.2 following any such lease expiry, substitute rolling stock vehicles having:

- (a) at least the capacity specified in respect of the original rolling stock vehicles being substituted; and
- (b) reliability, capability and objective quality that is at least equal to the reliability, capability and objective quality of the original rolling stock vehicles being substituted; and

1.1.3 from the dates specified in Table 2, the additional rolling stock vehicles referred to against these dates having:

- (a) at least the capacity specified in respect of any original rolling stock vehicles that are, in the reasonable opinion of the Secretary of State, most similar to such additional rolling stock vehicles; and
- (b) reliability, capability and objective quality that is, in the reasonable opinion of the Secretary of State, at least equal to the reliability, capability and objective quality of any original rolling stock vehicles that are, in the reasonable opinion of the Secretary of State, most similar to such additional rolling stock vehicles.

TABLE 1

Class of vehicle	Number of trains and unit configuration	Capacity of vehicles			Owner/Lessor	Lease expiry date(s)
		Seats	Standing	Total		
142	29 x 2 car	106	31	137	Angel Trains	7 February 2016
142	28 x 2 car	114	23	137	Angel Trains	7 February 2016
142	5 x 2 car	121	16	137	Angel Trains	7 February 2016
142	17 x 2 car	114	23	137	Angel Trains	7 February 2016
144	13 x 2 car	99	49	148	Porterbrook	7 February 2016
144	10 x 3 car	157	65	222	Porterbrook	7 February 2016
150/1	18 x 2 car	124	80	204	Angel Trains	7 February 2016
150/1	14 x 2 car	124	80	204	Angel Trains	7 February 2016
150/2	4 x 2 car	131	67	198	Angel Trains	7 February 2016

Class of vehicle	Number of trains and unit configuration	Capacity of vehicles			Owner/Lessor	Lease expiry date(s)
		Seats	Standing	Total		
150/2	11 x 2 car	131	67	198	Porterbrook	7 February 2016
150/2	11 x 2 car	149	49	198	Angel Trains	7 February 2016
153	8 x 1 car	73	25	98	Porterbrook	7 February 2016
153	10 x 1 car	75	23	98	Angel Trains	7 February 2016

Class of vehicle	Number of trains and unit configuration	Capacity of vehicles			Owner/Lessor	Lease expiry date(s)
		Seats	Standing	Total		
		Seats	Standing	Total		
155	7 x 2 car	160	60	220	Porterbrook	7 February 2016
156	18 x 2 car	146	78	224	Porterbrook	7 February 2016
156	24 x 2 car	152	72	224	Angel Trains	7 February 2016
158	6 x 2 car	138	81	219	Angel Trains	7 February 2016
158	4 x 2 car	138	81	219	Angel Trains	7 February 2016
158	17 x 2 car	138	81	219	Angel Trains	7 February 2016
158/0	8 x 3 car	207	122	329	Porterbrook	7 February 2016
158/9	10 x 2 car	142	77	219	WYPTE	7 February 2016
321	3 x 4 car	309	113	422	WYPTE	7 February 2016
322	5 x 4 car	309	113	422	European Rail Finance Limited	7 February 2016
323	3 x 3 car	259	98	357	Porterbrook	7 February 2016
323	14 x 3 car	289	68	357	Porterbrook	7 February 2016
333	16 x 4 car	360	107	467	Angel Trains	7 February 2016

TABLE 2^{28 29}

Lease/Hire Agreement Commencement Dates	Class of vehicle	Number of trains and unit configuration	Capacity of unit or three Mark 2(f) locomotive hauled set as the case may be			Owner/Lessor	Lease/Hire Agreement ex
			Seats	Standing	Total		
1 st May 2014	319	14 x 4 car	300	109	409	Porterbrook	7 th February 2016, with op periods to 6 th March 2016
19 th January 2015	319	6 x 4 car	297	73	370	Porterbrook	7 th February 2016, with op periods to 6 th March 2016
17 th May 2015	Locomotive hauled Mark 2(f) TSO coaches	Two sets each comprising three Mark 2(f) TSO coaches. A set may also comprise a DBSO driving vehicle	216	73	289	Direct Rail Services Limited	These vehicles are provided pursuant to the DRS Agreement locomotives

²⁸ Date of new insertion 17/06/2015

²⁹ Date of change 13/05/2015

APPENDIX 2 TO SCHEDULE 1.1 - SERVICE DEVELOPMENT ADDITIONAL FACTORS

- 1 The Franchisee, in formulating its opinion in respect of any changes to the Service Level Commitment in accordance with paragraph 7.1 of Schedule 1.1 (Service Development), in addition to having regard to any Route Utilisation Strategy or any other Strategy published by the Secretary of State pursuant to paragraph 7.3.1 of Schedule 1.1 (Service Development), the views of any Executive expressed pursuant to paragraph 6 of Schedule 1.1 (Service Development) and any other constraints or considerations notified to it pursuant to paragraph 7.3.4 of Schedule 1.1 (Service Development), shall also have regard to:
- 1.1 Actual Passenger Demand;
 - 1.2 the latest Forecast Passenger Demand;
 - 1.3 the revenue and cost consequences of operating railway passenger services on the Routes;
 - 1.4 opportunities to reduce the incidence of disruption caused by the Franchisee, Network Rail, other Train Operators, freight operators and/or other industry parties;
 - 1.5 operational constraints and measures that might be taken to address such constraints;
 - 1.6 the appropriateness of the Train Fleet to the Routes;
 - 1.7 service calling patterns and journey times;
 - 1.8 changes in circumstances local to the stations at which the Passenger Services call which may affect Forecast Passenger Demand;
 - 1.9 the effect of the Service Level Commitment on the railway passenger services operated by other Train Operators and/or freight operators;
 - 1.10 interchange and inter modal opportunities;
 - 1.11 Stakeholder aspirations (including such aspirations as are expressed or are likely to be expressed in any "Local Transport Plans");
 - 1.12 the likelihood of special events generating sufficient passenger demand to support the provision of railway passenger services by the Franchisee to or from such special events;
 - 1.13 the impact of Major Projects or restrictions of use that may affect Forecast Passenger Demand; and
 - 1.14 such other matters as the Secretary of State may notify to the Franchisee from time to time.

APPENDIX 3 TO SCHEDULE 1.1 – NOT USED

Conformed Copy

SCHEDULE 1.2 - OPERATING OBLIGATIONS

1 DAILY OPERATING OBLIGATION

- 1.1 Not used.
- 1.2 The Franchisee agrees to use all reasonable endeavours to operate on each day of the Franchise Term those of its Passenger Services as are set out in the Plan of the Day for that day, with at least the passenger carrying capacity specified in the Train Plan.
- 1.3 The Franchisee agrees to use all reasonable endeavours to operate during the Peak the entire Train Fleet in delivering each Peak Passenger Service, save for any reasonable requirements:
 - 1.3.1 for the deployment of Hot Standbys; or
 - 1.3.2 for other rolling stock vehicles to be out of service due to maintenance requirements, Mandatory Modifications or for any other reason agreed with the Secretary of State (such agreement not to be unreasonably withheld).
- 1.4 The Franchisee agrees to use all reasonable endeavours to operate the Train Fleet in accordance with the Service Quality Requirement.
- 1.5 The Franchisee shall not remove any rolling stock vehicle from service with a view to distorting the results of any audit carried out in accordance with Schedule 7.2 (Service Quality Requirement).
- 1.6 The Franchisee shall ensure that its performance in respect of each Performance Management Unit, in each Reporting Period, calculated as a moving annual average in accordance with Schedule 7.1 (Performance Benchmarks), does not exceed (that is, is neither equal to or worse than) each Breach Performance Level in respect of that Reporting Period for each such Performance Management Unit. It shall be a contravention by the Franchisee of the terms of this Agreement if its performance exceeds (that is, is equal to or worse than) any Breach Performance Level in respect of any of the Performance Management Units in any Reporting Period.

2 THE TRAIN PLAN

- 2.1 References in this Schedule 1.2 are to the Train Plan as issued by the Franchisee to the Secretary of State pursuant to paragraph 14.1 of Schedule 1.1 (Service Development), and as amended:
 - 2.1.1 to comply with any requirements of the Secretary of State pursuant to paragraph 14.2 of Schedule 1.1; or
 - 2.1.2 pursuant to paragraph 3.

3 AMENDMENTS TO THE TRAIN PLAN

- 3.1 The Franchisee shall use all reasonable endeavours to propose to the Secretary of State and each affected Executive from time to time any amendments that it considers should be made to the Train Plan to better match the passenger carrying capacity of the Train Fleet to Target Passenger Demand, having regard to:
 - 3.1.1 any foreseeable differences that there may be between the Timetable and any Plan of the Day; and
 - 3.1.2 any material alteration in Target Passenger Demand, subsequent to the issue of the Train Plan, that is:
 - (a) observable from the most recent determination of Actual Passenger Demand in accordance with paragraph 1 of Schedule 1.5 (Information about Passengers); or

- (b) attributable to seasonal or exceptional factors;

and in so doing the Franchisee shall also identify the extent to which such proposed amendments conflict with the obligations contained in paragraph 7.7 of Schedule 1.1 (Service Development).

The Franchisee shall amend the Train Plan in accordance with the Secretary of State's response to its proposal.

- 3.2 The Franchisee may, subject to complying with the provisions of Schedule 1.1 (Service Development) in respect of the preparation of Train Plans, propose amendments to the Train Plan for the purposes of optimising Passenger Services relative to Target Passenger Demand or for the purposes of achieving improved operational efficiency or performance. The Franchisee shall consult with the Secretary of State and each affected Executive with regard to such proposed amendments. Subject to paragraph 3.3 below the Secretary of State shall permit the Franchisee to amend the Train Plan if it is reasonably satisfied that the proposed amendments are for the purposes of optimising Passenger Services relative to Target Passenger Demand or for the purposes of improving operational efficiency or performance and that the amended Train Plan has been prepared in compliance with the provisions of Schedule 1.1 (Service Development) in respect of the preparation of Train Plans.
- 3.3 The provisions of paragraphs 7.10 to 7.19 of Schedule 1.1 (Service Development) will apply where the Franchisee proposes amendments to the Train Plan under paragraph 3.2 that would conflict with the requirements of paragraphs 7.5.2. and/or 7.7 of Schedule 1.1 (Service Development).
- 3.4 Where there are short-notice factors or exceptional factors affecting passenger demand to which the Franchisee reasonably considers that it should respond before it is able to make a proposal to the Secretary of State and each affected Executive in accordance with paragraph 3.1, it may amend the Train Plan prior to the submission of its proposal, but shall notify the Secretary of State and each affected Executive as soon as reasonably practicable afterwards and shall subsequently amend the Train Plan in accordance with the Secretary of State's response to such amendment.
- 3.5 The obligation to use all reasonable endeavours to propose amendments to the Train Plan to better match the passenger carrying capacity of the Train Fleet to Target Passenger Demand is an obligation to use all reasonable endeavours to propose amendments which would either:
 - 3.5.1 provide for passenger carrying capacity on each Passenger Service that is at least equal to the Target Passenger Demand for that Passenger Service; or
 - 3.5.2 provide the best allocation of rolling stock vehicles to Passenger Services that is reasonably practicable so as to:
 - (a) minimise the amount by which Target Passenger Demand exceeds the provision of passenger carrying capacity on the affected Passenger Services;
 - (b) ensure, so far as is possible, that the excess of Target Passenger Demand is not unduly concentrated on any particular Route or Passenger Service; and
 - (c) minimise the extent to which passengers are required to stand:
 - (i) on boarding in respect of any Off-Peak Passenger Service; and
 - (ii) twenty (20) minutes after boarding (or such other time period as the Secretary of State may stipulate) in respect of any Peak Passenger Service.
- 3.6 If the Secretary of State does not consider that the Franchisee has exercised all reasonable endeavours to make proposals as required by paragraph 3.1, the Secretary of State may require the Franchisee to amend the Train Plan in accordance with its requirements.

4 TIMETABLE CHANGES PROPOSED BY NETWORK RAIL

4.1 The Franchisee shall notify the Secretary of State and each affected Executive promptly after being notified by Network Rail that Network Rail has decided or proposes to:

4.1.1 omit from the Plan of the Day Passenger Services that are included in the Timetable; or

4.1.2 reschedule in the Plan of the Day Passenger Services from their scheduling in the Timetable,

to the extent that any such decision or proposal may materially (having regard to both duration and scale) prejudice the Franchisee's ability to deliver the Timetable with the passenger carrying capacity stipulated in a Train Plan which satisfies the requirements of paragraphs 3.1 and 3.5.

4.2 The Franchisee shall explain in such notification the way in which, in its opinion, such omission or rescheduling may materially prejudice the Franchisee's ability to deliver the Timetable with the passenger carrying capacity stipulated in a Train Plan which satisfies the requirements of paragraphs 3.1 and 3.5.

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

4.4 Where the actual or proposed omission or rescheduling of Passenger Services is one which may materially prejudice the Franchisee's ability to deliver the Timetable with the passenger carrying capacity stipulated in a Train Plan which satisfies the capacity requirements of paragraphs 3.1 and 3.5 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 object, to make representations and to withhold consent in respect of any actual or proposed omission or rescheduling of Passenger Services by Network Rail.

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

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

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

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

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

5 TIMETABLE CHANGES PROPOSED BY THE FRANCHISEE

5.1 The Franchisee agrees, subject to paragraph 5.2, not to propose to Network Rail:

5.1.1 the addition to the Plan of the Day of any railway passenger services which are not included in the Timetable;

- 5.1.2 the omission from the Plan of the Day of any Passenger Services included in the Timetable; or
- 5.1.3 the rescheduling in the Plan of the Day of any Passenger Services from their scheduling in the Timetable,

without the Secretary of State's prior consent.

5.2 Paragraph 5.1 shall not apply to additional railway passenger services to be operated to meet passenger demand that the Franchisee anticipates from special events (and any related omissions and/or rescheduling of Passenger Services) which:

- 5.2.1 when operated, still permit the Franchisee to deliver the Timetable with the passenger carrying capacity stipulated in a Train Plan which satisfies the requirements of paragraphs 3.1 and 3.5;
- 5.2.2 are consistent with any Route Utilisation Strategy or any other strategy of the Secretary of State; and
- 5.2.3 are compliant with any framework that the Secretary of State may issue for the planning and operation of railway passenger services.

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

- 5.3.1 which it has identified pursuant to paragraph 1.12 of Appendix 2 (Service Development Additional Factors) to Schedule 1.1 (Service Development);
- 5.3.2 which are not already provided for in the Plan of the Day; and
- 5.3.3 which comply with the requirements of paragraph 5.2,

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

5.4 The Franchisee shall notify each affected Executive in respect of any proposal pursuant to paragraph 5.1 at the same time as it seeks the Secretary of State's consent thereto.

6 TIMETABLE CHANGES REQUESTED BY THE SECRETARY OF STATE

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

- 6.1.1 the addition to the Plan of the Day of any railway passenger services that are not included in the Timetable;
- 6.1.2 the omission from the Plan of the Day of any Passenger Services that are included in the Timetable; and/or
- 6.1.3 the rescheduling in the Plan of the Day of any Passenger Services from their scheduling in the Timetable.

7 ADDITIONAL RAILWAY PASSENGER SERVICES

7.1 The Franchisee agrees not to operate any railway passenger services other than those:

- 7.1.1 required or permitted pursuant to this Schedule 1.2; or

7.1.2 operated on behalf of any other Train Operator where the Secretary of State has approved the sub-contracting of the operation of such railway passenger services to the Franchisee.

8 OBLIGATIONS OF THE FRANCHISEE IN THE EVENT OF DISRUPTION TO RAILWAY PASSENGER SERVICES

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

8.1.1 without prejudice to any other provision of this Schedule 1.2, notify the Secretary of State and the relevant Executive promptly where such disruption would materially (having regard to both duration and scale) prejudice the Franchisee's ability to deliver the Timetable;

8.1.2 use reasonable endeavours to act in accordance with any Strategy or plan published or endorsed by the Secretary of State in relation to such disruption notified to it by the Secretary of State from time to time;

8.1.3 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:

(a) 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

(b) is reasonably necessary as a result of the cause or the location of the disruption; and

8.1.4 provide or secure the provision of alternative transport arrangements in accordance with paragraph 8.2.

8.2 The Franchisee shall use all reasonable endeavours to secure the provision of alternative transport arrangements to enable passengers affected by the disruption referred to in paragraph 8.1 to complete their intended journeys in accordance with this paragraph 8.2. In particular, the Franchisee shall use all reasonable endeavours to:

8.2.1 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;

8.2.2 without prejudice to its obligations in paragraph 8.2.1, comply with any standards issued by the Secretary of State from time to time in respect of such alternative transport arrangements;

8.2.3 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;

8.2.4 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;

8.2.5 provide sufficient alternative transport capacity for the reasonably foreseeable demand for the disrupted Passenger Services; and

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

- 9 OBLIGATION TO USE ALL REASONABLE ENDEAVOURS
- 9.1 Any obligation in this Schedule 1.2 on the part of the Franchisee to use all reasonable endeavours to operate railway passenger services shall include an obligation to:
- 9.1.1 ensure (so far as it is able to do so) the provision of the Passenger Services as set out in the Plan of the Day in ordinary operating conditions;
 - 9.1.2 take reasonable measures to avoid and/or reduce the impact of any disruption to the Franchise Services having regard to all the circumstances, including the reasonably foreseeable risks arising from the matters referred to in paragraph 9.2; and
 - 9.1.3 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 9.4), having regard to all the circumstances.
- 9.2 The matters to which the Franchisee is to have regard pursuant to paragraph 9.1.2 shall include:
- 9.2.1 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;
 - 9.2.2 default by, or restrictions imposed by, suppliers to the Franchisee;
 - 9.2.3 shortages of appropriately skilled or qualified Franchise Employees;
 - 9.2.4 disputes with Franchise Employees;
 - 9.2.5 the availability of the Train Fleet, having regard to maintenance requirements and any Mandatory Modifications;
 - 9.2.6 establishing reasonable Turnaround Time allowances for enabling or disabling (as appropriate) any part of a train, the rostering of any train crew, the servicing or cleaning of any rolling stock vehicles in accordance with the Service Quality Requirement; and
 - 9.2.7 failures of rolling stock vehicles in service and contingency arrangements (including Hot Standbys and rescue traction).
- 9.3 For the purpose of taking measures in respect of any disruption to the Franchise Services in accordance with paragraph 9.1.2 and assessing the extent of any risk referred to in paragraph 9.1.2 shall and any such risk's reasonable foreseeability, regard shall be had both:
- 9.3.1 to the historical levels of incidence of disruption in the operation of:
 - (a) the Franchise Services;
 - (b) similar services both by the Franchisee and/or its predecessors; and
 - (c) other services of a type similar to the Franchise Services; and
 - 9.3.2 to potential changes in circumstances which may affect those levels.
- 9.4 The steps to which paragraph 9.1.3 refers include:
- 9.4.1 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;
 - 9.4.2 undertaking a weekly review of:

- (a) the ten (10) most common causes of delay to the Passenger Services; and
- (b) the ten (10) causes of delay to the Passenger Services with the longest duration (to the extent not already reviewed in accordance with paragraph 9.4.2(a)),

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

- 9.4.3 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 9.4.2(a) and (b) and seeking to identify and implement actions that reduce the delay effect of such events;
 - 9.4.4 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 Secretary of State and the Franchisee;
 - 9.4.5 regularly monitoring (at least every Reporting Period) the delivery of local output commitments made by Network Rail and using reasonable endeavours to specify and develop such local output commitments;
 - 9.4.6 as and when required by Network Rail, co-operating with Network Rail in improving the accuracy of future timetables by providing access to trains, other facilities or information;
 - 9.4.7 co-operating with Network Rail in other delay management initiatives, including such as the use of virtual general managers and, where appropriate, the establishments of integrated control centres;
 - 9.4.8 regularly reviewing (at least every Reporting Period) the imposition and clearance of temporary speed restrictions;
 - 9.4.9 regularly reviewing (at least every Reporting Period) the timely and efficient handover and hand-back of possessions; and
 - 9.4.10 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.
- 9.5 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 Rules of the Plan.
- 9.6 To the extent not already provided for in this Agreement, the Franchisee shall use all reasonable endeavours to ensure the performance by Network Rail of its obligations under any relevant agreement including, where appropriate or where requested by the Secretary of State, enforcing its rights against Network Rail under any such agreement.
- 9.7 When and to the extent reasonably requested by the Secretary of State, the Franchisee shall provide to the Secretary of State and the affected Executive evidence of the steps taken by it in order to comply with its obligations under this paragraph 9.

SCHEDULE 1.3 - ADDITIONAL SERVICE SPECIFICATIONS

- 1 NOT USED
- 2 REVENUE COLLECTION AND PROTECTION AGAINST TICKETLESS TRAVEL
 - 2.1 The Franchisee shall, within four (4) Reporting Periods of the Franchise Commencement Date, provide to the Secretary of State and each Executive:
 - 2.1.1 a report which measures the level of ticketless travel and fare evasion on the Passenger Services. The report shall include an analysis of its findings and shall detail:
 - (a) where incidences of ticketless travel and fare evasion are greatest on the Routes;
 - (b) which stations (if any) have no or minimal revenue-protection measures; and
 - (c) the Franchisee's opinion as to whether there is any correlation between such ticketless travel and fare evasion and high crime areas both within and outside the railway environment; and
 - 2.1.2 a plan to reduce ticketless travel and fare evasion in a cost-effective manner. The plan shall include measurable targets for reducing incidences of ticketless travel and fare evasion for the remainder of the Franchise Term. The plan shall also contain the following elements:
 - (a) the estimated costs and benefits of measures requiring material capital expenditure to reduce the level of ticketless travel and fare evasion in the thirteen (13) Reporting Periods following the date of the plan; and
 - (b) any operational initiatives not requiring material capital expenditure that might be undertaken to:
 - (i) reduce the incidences of ticketless travel and fare evasion;
 - (ii) improve the Franchisee's awareness of the incidences of ticketless travel and fare evasion; and
 - (iii) improve the Franchisee's understanding of the ways in which the incidences of ticketless travel and fare evasion can be reduced.
 - 2.2 The Franchisee shall:
 - 2.2.1 implement the plan to be provided in accordance with paragraph 2.1.2 and report to the Secretary of State and each Executive every three (3) Reporting Periods on such implementation and any progress against such plan's targets;
 - 2.2.2 review such plan annually and make such revisions as are appropriate to further reduce, in a cost-effective manner, incidences of ticketless travel and fare evasion over the remainder of the Franchise Term; and
 - 2.2.3 implement such revised plan and report to the Secretary of State and each Executive in accordance with paragraph 2.2.1 as if such revised plan was referred to therein.
 - 2.3 If the Franchisee introduces a smartcard scheme for use by passengers, whether on a permanent or trial basis, it shall ensure that any such scheme is compliant with any specification and operating requirement of the Integrated Transport Smartcard Organisation.
 - 2.4 The Franchisee shall undertake such action as the Secretary of State may reasonably require in connection with the introduction of smart ticketing on the network and to co-operate with the Executives and other stakeholders in connection with the implementation of smart ticketing. The

Secretary of State shall bear the reasonable costs of the Franchisee in implementing any smart ticketing requirements that are requested by the Secretary of State.

Conformed Copy

SCHEDULE 1.4 - PASSENGER FACING OBLIGATIONS

1 PUBLISHING THE TIMETABLE

The First Timetable

1.1 The Franchisee shall publish on the Franchise Commencement Date:

1.1.1 the Timetable:

- (a) at each staffed Station, by making the relevant information available upon request and free of charge in one (1) or more booklets or in other similar form;
- (b) at each Station, by display on information displays;
- (c) at each Franchisee Access Station, by providing to the operator of each such station the departure and arrival times of the Passenger Services that call at each such station and the principal Connections to any other transport services relevant to each such station in the same forms as are specified in paragraphs 1.1.1(a) and (b); and
- (d) on the Franchisee's website; and

1.1.2 the timetables of other Train Operators at Stations, in accordance with paragraph 1.4.

Timetable Revisions and Alterations

1.2 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:

1.2.1 in the case of booklets, at least four (4) weeks before the changes come into effect;

1.2.2 in the case of information displays, no later than the day before the changes come into effect;

1.2.3 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

1.2.4 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:

1.3.1 subject to paragraph 1.4, display posters at each Station advising passengers of all significant alterations between any two (2) Passenger Change Dates to railway passenger services calling at that Station, no later than four (4) weeks in advance of the date on which the alterations come into effect; and

1.3.2 provide posters to the operators of Franchisee Access Stations, advising passengers of all significant alterations between any two (2) Passenger Change Dates to the Passenger Services which call at such Franchisee Access Stations, in sufficient time for such information to be published by such operators within the time limit provided for in paragraph 1.3.1.

Other Train Operators' Timetables

- 1.4 The Franchisee shall also comply with the requirements of paragraphs 1.1 to 1.3 inclusive in respect of any other Train Operator's timetable at each Station where the railway passenger services of such other Train Operator are scheduled to call:
- 1.4.1 within the time limits specified in paragraphs 1.2 and 1.3 where such other Train Operator delivers to the Franchisee the relevant information in sufficient time for the Franchisee to so publish; and
- 1.4.2 as soon as reasonably practicable thereafter where such other Train Operator delivers the relevant information late to the Franchisee.

Executives' Timetable Information

- 1.5 In publishing details of any Executive Passenger Service in the Timetable in accordance with paragraphs 1.1 and 1.2 and publishing the information referred to in paragraph 1.3 at Stations at which such services call, the Franchisee shall comply with the reasonable timetable publication requirements of each Executive, subject to, in respect of an Executive:
- 1.5.1 such Executive:
- (a) providing to the Franchisee equivalent materials to the materials specified in paragraphs 1.1 to 1.3 inclusive; or
- (b) instructing the Franchisee of its requirements in respect of the information specified in paragraphs 1.1 to 1.3 inclusive,
- in sufficient time for such materials or information to be published by the Franchisee within the time limits provided for in paragraphs 1.2 and 1.3; and
- 1.5.2 paragraphs 1.8 and 1.9.

Verification of Executives' Timetable Information

- 1.6 Subject to paragraphs 1.8 and 1.9, the Franchisee shall, in respect of the Executive Passenger Services of any Executive, at its own cost, co-operate with such Executive in confirming the accuracy of the information concerning such Executive Passenger Services contained in any timetable proposed to be published by that Executive.

Advertising and Promotion of Executive Passenger Services

- 1.7 Subject to paragraphs 1.8 and 1.9, the Franchisee shall in respect of the Executive Passenger Services of any Executive, at its own cost:
- 1.7.1 co-operate with such Executive in respect of such Executive's advertising and promotion of such services at the relevant Executive Stations and/or Non Executive Stations within the Passenger Transport Area relevant to it including by:
- (a) attending meetings with such Executive; and
- (b) assisting such Executive with the co-ordination of advertising and promotional activities;
- 1.7.2 publish as such Executive may direct at such Executive Stations and/or Non-Executive Stations within the Passenger Transport Area any advertising and promotional materials as such Executive may reasonably require; and

- 1.7.3 use all reasonable endeavours to make available as directed by such Executive such advertising and promotional materials as it may reasonably require at all Passenger Transport Area Stations.

Franchisee’s Maximum Publication Expenditure

1.8 The Franchisee shall not be obliged to incur more than the amount specified in paragraph 1.9 in any Franchisee Year in respect of meeting any individual Executive’s timetable information and promotion requirements under paragraphs 1.5, 1.6 and 1.7 (the "**Publication Expenditure**"). Publication Expenditure for the purposes of this paragraph 1.8 shall:

1.8.1 include expenditure directly incurred by the Franchisee for the purposes of compliance with the Franchisee’s obligations under paragraphs 1.5, 1.6 and/or 1.7 and demonstrated to have been so incurred to the reasonable satisfaction of such Executive; and

1.8.2 exclude any expenditure incurred by any Franchise Employees, including time spent, in the performance, publication, advertising and promotional activities which could reasonably be discharged incidentally to the performance by such employees of their other duties.

1.9 The Publication Expenditure shall be determined in accordance with the following formula:

PE = A x RPI

where:

PE equals the Publication Expenditure;

A equals ³⁰

RPI is the quotient of the Retail Prices Index for the March which immediately precedes the commencement of the relevant Franchisee Year divided by the Retail Prices Index for the March 2004, provided that, for the period between the Franchise Commencement Date and the date of commencement of the first complete Franchisee Year the Publication Expenditure shall be the amount of Publication Expenditure derived from the above formula divided by thirteen (13) and multiplied by the number of complete Reporting Periods between the Franchise Commencement Date and the date of commencement of the first complete Franchisee Year.

The Publication Expenditure shall be divided proportionately between each Executive using the following formula:

where

$$PE \times \left[\frac{X}{Y} \right]$$

PE equals the Publication Expenditure;

X is, in respect of the first Franchisee Year, the scheduled train miles of such Executive’s Passenger Services as stated in the Timetable in force as at the Franchise Commencement Date, and, in respect of each subsequent Franchisee Year, is the scheduled train miles of such Executive’s Passenger Services as stated in the Timetable in force as at the last day of the previous Franchisee Year; and

Y is, in respect of the first Franchisee Year, the scheduled train miles of all the Executive Passenger Services as stated in the Timetable in force as at the Franchise Commencement Date, and, in respect of each subsequent Franchisee Year, is the scheduled train miles of all

³⁰ Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

the Executive Passenger Services provided as stated in the Timetable in force as at the last day of the previous Franchisee Year.

Advertising and Promotion of Passenger Services

- 1.10 The Franchisee may advertise and promote the Passenger Services at Executive Stations in a manner reasonably consistent with the relevant Executive's requirements for advertising and promotion of the relevant Executive Passenger Services in accordance with paragraph 1.7.

National Rail Timetable and National Rail Enquiry Scheme

- 1.11 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.

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

1.12.1 the Timetable; and

1.12.2 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 LATE TIMETABLE CHANGES

- 2.1 Save in respect of significant alterations, for which the provisions of paragraphs 1.3 and 1.12 shall apply, the Franchisee shall inform passengers, so far as possible on seven (7) days' prior notice, if it will be unable to operate its trains in accordance with the Timetable. Such information shall include any revised Timetable or travelling arrangements.

- 2.2 Such information shall be provided by:

2.2.1 revising or adding to the information displays referred to in paragraph 1.1;

2.2.2 notifying the operators of the Franchisee Access Stations, as appropriate, including by providing such operators with revised posters;

2.2.3 complying with the reasonable directions of any Executive pursuant to paragraph 1.5; and

2.2.4 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

Agents of the Franchisee

3.1 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):

3.1.1 for Fares whose:

- (a) Prices are regulated under Schedule 5.4 (Regulation of Fares Basket Values) and Schedule 5.5 (Regulation of Individual Fares and T&WPTE Fares) including, without limitation T&WPTE Fares, sell or offer to sell at prices no greater than the Prices set for such Fares from time to time in accordance with Schedule 5.4 and Schedule 5.5 unless otherwise agreed by the Secretary of State or in relation to a PTE Fare, the Secretary of State and the relevant Executive; and
- (b) Child Prices are regulated under Schedule 5.4 and Schedule 5.5 including, without limitation, T&WPTE 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 Schedule 5.4 and Schedule 5.5 unless otherwise agreed by the Secretary of State or in relation to a PTE Fare, the Secretary of State and the relevant Executive;

3.1.2 for Fares whose Child Price has been set pursuant to paragraph 2.1 of Schedule 5.2 (Franchisee's Obligation to Create Fares) or paragraph 4 of Schedule 5.5 sell or offer to sell such Fares to any person under the age of sixteen (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 - 25's Railcard (as amended or replaced from time to time) and whose purchase was made without condition unless otherwise agreed by the Secretary of State or in relation to a PTE Fare, the Secretary of State and the relevant Executive; and

3.1.3 for all Fares:

- (a) 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 or in relation to a PTE Fare, the Secretary of State and the relevant Executive (such consent not to be unreasonably withheld). In relation to T&WPTE Fares, T&WPTE shall not require the Franchisee to do anything which is inconsistent with this paragraph 3.1.3(a); and
- (b) comply with the provisions of paragraph 3 of Schedule 15.2 (Last 12 or 13 Months of Franchise Period) to the extent they apply to the selling of Fares by the Franchisee.

Restrictions on Sales

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

3.2.1 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;

3.2.2 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 Protected Fare or PTE Fare (as the case may be) and, in relation to the issue of a Season Ticket Fare, the completion of such identity card as the Franchisee or, in the case of a T&WPTE Season Ticket Fare, T&WPTE, may reasonably require; and

3.2.3 shall not be required to pay an amount in respect of a seat reservation or other similar right which it may be compulsory for such purchaser to have in order to make a journey with such PTE Fare or Protected Fare (as the case may be) on a Passenger Service.

- 3.3 The Franchisee shall procure that for any:
- 3.3.1 Protected Return Fare, Single Fare which is a PTE Fare or Return Fare which is a PTE 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
 - 3.3.2 Protected Weekly Season Ticket or Season Ticket Fare which is a PTE 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).

- 3.4 Where the Franchisee sets a limit on the number of PTE Fares or Protected Fares that may be used on any particular train, such limit shall be the greater of:
- 3.4.1 the number of seats in Standard Class Accommodation on such train; and
 - 3.4.2 the capacity of Standard Class Accommodation of the rolling stock vehicles comprising such train according to Appendix 1 (The Train Fleet) to Schedule 1 (Service Development).
- 3.5 The Franchisee shall not sell 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. In relation to T&WPTE Fares, T&WPTE shall not require the Franchisee to do anything which is inconsistent with this paragraph 3.5.

Additional Ancillary Services

- 3.6 The Franchisee shall, subject to paragraphs 3.1 and 8, and in relation to T&WPTE Fares, to paragraph 3.8 of Schedule 5.5 (Regulation of Individual Fares and T&WPTE Fares) be entitled to charge a purchaser of any PTE Fare or Protected Fare for any additional services:
- 3.6.1 which are ancillary to the railway passenger service for which such PTE Fare or Protected Fare (as the case may be) was purchased (including, charges in respect of car parking or catering services); and
 - 3.6.2 which such purchaser is not obliged to purchase;

Sale of Fares for travel on Bank Holidays

- 3.7 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

Content

- 4.1 The Franchisee shall:
- 4.1.1 publish its Passenger's Charter:
 - (a) in substantially the form set out in Appendix 1 (Form of Passenger's Charter) to this Schedule 1.4; and

(b) in accordance with the requirements specified in paragraph 4.3;

4.1.2 review the need for changes to the Passenger's Charter at least every three (3) years, in consultation with each Executive and 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

4.1.3 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).

Publishing the Passenger's Charter

4.3 The Franchisee shall publicise its Passenger's Charter by:

4.3.1 providing copies to the Secretary of State, each Executive and the Passengers' Council at least 7 days before it comes into effect;

4.3.2 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;

4.3.3 sending a copy, free of charge, to any person who requests it; and

4.3.4 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 Franchise Commencement 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 Franchise Commencement Date.

4.4 The Franchisee shall also provide at each staffed Station the 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.

Passenger's Charter Payments

4.6 The Franchisee shall:

4.6.1 make all payments and all extensions to Fares; and

4.6.2 provide all discounts on the price of Fares,

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).

4.7 Where the Franchisee is the Lead Retailer at a Station, it shall comply with paragraph 4.4 in respect of the provision of the passenger's charters of other Train Operators.

4.8 The Franchisee shall use all reasonable endeavours:

4.8.1 to comply with any other obligations, statements and representations; and

4.8.2 to meet any other standards or targets of performance, as are comprised in its Passenger's Charter from time to time.

Passenger's Charter Statistics

- 4.9 The Franchisee shall:
- 4.9.1 prepare the Passenger's Charter Statistics (in accordance with the Passenger's Charter Guidelines);
 - 4.9.2 publish the Passenger's Charter Statistics (and the passenger's charter statistics of other Train Operators whose trains call at any Stations) in a format approved by the Secretary of State on information displays at all staffed Stations by midnight on the Saturday following the end of each Reporting Period. The Passenger's Charter Statistics to be displayed shall relate to the Service Groups serving such Stations;
 - 4.9.3 display the Passenger's Charter Statistics relating to each Service Group on its website by midnight on the Saturday following the end of each Reporting Period; and
 - 4.9.4 at the same time, provide copies of its Passenger's Charter Statistics to the Secretary of State, each Executive and the Passengers' Council.
- 4.10 The obligation under paragraph 4.9.2 to display any other Train Operator's statistics is subject to the provision of such statistics to the Franchisee by such other Train Operators.
- 4.11 The Franchisee shall provide Passenger's Charter Statistics in a format approved by the Secretary of State to the operators of Franchisee Access Stations in sufficient time for the information to be displayed by such other operators within the time limits specified in paragraph 4.9.

Audit of the Passenger's Charter Statistics

- 4.12 The Franchisee shall procure that:
- 4.12.1 the Passenger's Charter Statistics published in accordance with paragraphs 4.9 and 4.11 are audited by an independent person or persons acceptable to the Secretary of State;
 - 4.12.2 the audit is conducted at least once every thirteen (13) Reporting Periods; and
 - 4.12.3 details of the methodology and the results of the audit are provided to the Secretary of State and each Executive within twenty eight (28) days of receipt by the Franchisee.
- 4.13 If any audit reveals inaccuracies in the data and information used to measure the performance of the Franchisee, the Franchisee shall:
- 4.13.1 ensure so far as reasonably practicable that the production of such inaccurate data and information is not repeated;
 - 4.13.2 as soon as reasonably practicable implement any corrections to such inaccurate data and information (including on a retrospective basis for the previous thirteen (13) Reporting Periods) and publish revised Passenger's Charter Statistics reflecting such corrections in the manner specified in paragraph 4.9; and
 - 4.13.3 insofar as any inaccuracies in data and information result in compensation that was not given to passengers when it should have been given, so far as reasonably possible make such compensation available.

5 NOT USED

6 LOST PROPERTY

The Franchisee shall comply with any code of practice issued by ATOC from time to time in respect of the handling of lost property.

7 BICYCLES

- 7.1 The Franchisee shall, so far as is reasonably practical and subject to the availability of appropriate space on any rolling stock vehicles in the Train Fleet, ensure that reasonable facilities for the transport of bicycles on such rolling stock vehicles are made available, at reasonable charges (if any) or, in relation to the Executive Passenger Services, any lower charge specified by any Executive (including no charge), to passengers using the Passenger Services.
- 7.2 The Franchisee shall, so far as is reasonably practical and subject to the availability of appropriate space at Stations, ensure that reasonable facilities to enable the secure storage of bicycles at Stations are made available, at reasonable charges (if any) or, in relation to the Executive Passenger Services, any lower charge specified by any Executive (including no charge), to passengers using the Passenger Services.
- 7.3 The Franchisee shall not, except to the extent the Secretary of State otherwise agrees, cease to provide the level of facilities for the carriage and storage of bicycles on the rolling stock vehicles used in the provision of the Passenger Services as at the Franchise Commencement Date.
- 7.4 Except to the extent that the Secretary of State otherwise agrees, having regard to, amongst other things, the likely use of such facilities (such agreement not to be unreasonably withheld), any new rolling stock vehicles which are procured directly or indirectly by the Franchisee shall include reasonable facilities for the carriage and storage of bicycles.
- 7.5 Notwithstanding any of the above, the Franchisee shall not be in contravention of any of its obligations under this paragraph 7 if the reason for its failure to comply with any such obligation is the use by it on any particular occasion of some or all space otherwise available to cyclists and/or bicycles for the carriage and/or accommodation of wheelchairs and/or wheelchair users and/or those passengers travelling with such wheelchair users.

8 CAR PARKING AT EXECUTIVE STATIONS

- 8.1 The Franchisee shall, subject to paragraph 3 of Schedule 20 (Executive Passenger Services), only be entitled to introduce or vary car parking charges at Executive Stations with the prior consent of the relevant Executive.

9 NOT USED.

10 STATUTORY NOTICES

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

APPENDIX 1 TO SCHEDULE 1.4 - FORM OF PASSENGER'S CHARTER

Passenger's Charter

Issue 5

1. Introduction

Each Train Operating Company (TOC) is required to produce a Passenger's Charter that sets out the commitments that it makes to its customers. The key elements of the Passenger's Charter are:

- a statement from the TOC of its intentions
- standards of service covering punctuality and reliability
- what passengers can expect – for example on telephone enquiries and booking services, reservations, availability of catering, provision for passengers with disabilities
- what passengers can expect if things go wrong
- compensation arrangements for single/return and weekly season ticket holders for one-off delays or for monthly or longer season ticket holders if performance drops below the expected standards
- a list of contacts for passenger complaints and comment
- we will also provide copies of other relevant train operators' Passenger's Charters at the staffed stations that we operate (to the extent that they are made available by other operators).

This Charter is a statement of our commitment to provide the safe and high-quality service you have the right to expect. We publish it so that you know the standards we are determined to achieve. To monitor how well we are doing, our performance is measured by carrying out regular surveys of your opinion.

Our mission is to deliver local railway services that really work for everyone.

To help you, the passenger, to have a clear understanding of the services you can expect to receive, we have produced this Passenger's Charter that sets out our commitments.

Our services are supported by five Passenger Transport Executives (PTEs) –

- Merseyside PTE, Merseytravel
- Transport for Greater Manchester PTE (TfGM)
- West Yorkshire PTE (Metro)
- South Yorkshire PTE (SYPTe)
- Tyne & Wear PTE, Nexus.

The Charter applies to all services operated by Northern including those in PTE areas.

Working in partnership with Network Rail and other train operators we continually strive to improve the punctuality and reliability of your trains and we will continue to work with train operators and operators of other forms of transport to provide a seamless national rail network and an integrated service.

Our Passenger's Charter covers:

- presentation of timetable information

- arrangements for passengers with disabilities
- customer service when you change trains
- help during train service disruptions
- lost property
- customer complaints, including comments involving two or more operators
- cycling by train
- station signage.

This Charter is an evolving document and we review it in conjunction with the Department for Transport (DfT), Passenger Focus and PTEs. We also welcome your views on content. All comments should be sent to Customer Relations; see 'How to Contact Us' for contact details.

Copies of this Charter are available at staffed stations served by our trains or from the address below:

FREEPOST RLSL-ABEC-BGUU

Customer Relations team

Northern Rail Limited

First Floor

The Travel Centre

City Railway Station

Leeds

LS1 4DY

It is also available to view on our website at northernrail.org

Other operators using our staffed stations may also provide copies of their Passenger's Charter at that station.

This Passenger's Charter does not affect your legal rights as set out in the National Rail Conditions of Carriage. The National Rail Conditions of Carriage can be viewed online at nationalrail.co.uk.

2. The informed customer

At the station

We aim to provide comprehensive, accurate and timely train information. Timetable information will be displayed on the platforms and concourse areas of each Northern station. At larger Northern stations, customer information screens and public address systems will also provide information.

We provide free pocket timetables and other advertising and information material for you to take away at all staffed stations at which our services call and from rail-appointed travel agents.

Advance information informing customers of changes to services as a result of Bank Holidays or planned engineering work will be produced at least four weeks in advance. Such information will be displayed at relevant stations. We will try to keep disruption to a minimum.

Northern staff, both at stations and on trains, are able to answer enquiries and provide help and advice.

Online

Website: Information about Northern services, including current train running information and ticket buying facilities can be accessed from our website northernrail.org.

As much notice as possible will be provided in the event of unplanned or emergency train alterations. Information will also be given on the live departures page of the National Rail Enquiries (NRE) website nationalrail.co.uk.

When new timetables are introduced, we will ensure that they are available at least four weeks prior to their commencement.

Times when a station is staffed will be displayed on notices at that station and are also shown on our website at northernrail.org and the NRE website at nationalrail.co.uk.

Twitter: If you use Twitter, you can follow our helpful advice and travel updates on our account @northernrailorg. We cannot guarantee an immediate response, but we will always try to respond to any questions as soon as we can. Up to the minute information about disruption can be found @NRE_Northern.

By phone

NRE provides comprehensive timetable and ticket information on all rail services. It can be contacted by telephoning 08457 48 49 50, twenty four hours a day.

A textphone service is available on 0845 60 50 600.

Real-time train running information can be obtained on Traintracker, by telephoning 0871 200 49 15. Alterations to services due to engineering work and at Bank Holidays are normally available up to 12 weeks in advance. All calls are charged at local call rate and may be monitored.

3. Buying a ticket

A full range of tickets is available from the ticket office at a Northern station. Tickets can be purchased by cash and by most major debit and credit cards (excluding Electron and Solo type cards), Rail Warrants and National Rail travel vouchers. All Northern services have only standard class accommodation.

We will serve you in an impartial, accurate and efficient way. We will always try to sell you the most appropriate ticket for your journey whether or not you are travelling on Northern services. When purchasing a rail ticket for immediate travel, we will try to ensure you will not have to wait more than five minutes in busy periods and three minutes at all other times.

The opening hours of the ticket office will be displayed at each station. We will display details of busy times at ticket offices to help you avoid delays. If you wish to make a reservation or purchase a ticket in advance of travelling this information will enable you to choose a quieter time in which to do this. We will undertake frequent checks to ensure that the above standards are being achieved.

Tickets may be purchased from our website at northernrail.org. We do not charge any card or booking fees. Tickets purchased online can be posted or collected at stations with ticket on departure machines. Please check our website at northernrail.org for full delivery and collection options.

If you are boarding at a station that has an open ticket office, you must purchase your tickets before you get on the train. This also applies if you are boarding at a station equipped with a self service ticket machine. If the ticket machine is not working, or you cannot use the machine, or the ticket office is closed, you must buy a ticket from the conductor on the train at the earliest opportunity. If you board a train without a ticket at a station where ticket purchasing facilities are available the conductor will only sell you the full price single or return fare and you will not be entitled to any discounts or special terms which would otherwise apply. Where fraudulent travel is involved, it is our policy to seek criminal prosecution.

As part of our commitment to making sure that we provide the service you expect, we need to make sure that all our customers are paying the appropriate fare for the journey they are making. In addition to our on-train conductors we also deploy ticket inspectors who will make random checks of tickets. These staff are there to demonstrate to our fare-paying customers that we are doing everything possible to ensure others do not fail to pay. Where there is evidence of an intention to avoid payment, we will seek criminal prosecution.

If you decide not to use a ticket you have bought, you can apply for a refund where you purchased your ticket within 28 days of the expiry date shown on the ticket.

We will normally charge an administration fee of £10, unless we have been at fault. Tickets purchased from a travel agent or via another operator's telesales must be returned to the issuing office for refund. Special conditions apply to Advance purchase products.

However, if your train is delayed or cancelled and you decide not to travel, you will be entitled to a full immediate refund. You may apply at any booking office, regardless of the ticket type and where it was bought.

4. Customers with disabilities or restricted mobility

Northern aims to make its services accessible to all, including those customers with disabilities or restricted mobility. Our Making Rail Accessible guide sets out the services that disabled customers can expect when travelling with Northern.

A copy of this is available free of charge to customers at all staffed Northern stations, by writing to or telephoning our Customer Relations team, or on our website at northernrail.org. It is also available in large print, Braille and audio format by contacting our Customer Relations team.

Our commitment includes:

- a) The availability of a telephone booking assistance service to ensure that customers are met and assisted throughout their journey. In order to ensure that the best service is available, we advise customers to give at least 24 hours notice.
- b) If it is not possible to give notice it may still be possible to help you.
- c) The special contact telephone number for assistance is: Freephone 08081 56 16 06 or Textphone 08456 045 608. 08:00 to 20:00 Monday to Saturday, including Bank holidays, 09:00 to 17:00 Sunday*

*There is a recorded message outside these hours.

Or you can e-mail your request to assistance@northernrail.org.

- d) We will consider appropriate compensation if assistance arrangements made in advance for travel on Northern services and for Northern stations are not provided.
- e) All our trains carry wheelchair ramps and our staff are trained to use them.
- f) All of our trains have space for one wheelchair, whether manual or electric, of standard dimensions (up to 120cm by 67cm). However, other types of powered vehicles cannot be carried. Scooters will only be carried if they can be folded by the customer and carried on board by the customer, then stowed, similar to a piece of luggage. Further details are contained in our Making Rail Accessible leaflet or can be obtained by contacting our freephone helpline on 08081 56 16 06.
- g) Northern accepts the National Disabled Persons Railcard that offers price reductions of up to a third on a range of rail tickets.
- h) Northern's services call at over 500 stations and levels of accessibility and assistance vary considerably. Details are available by ringing our freephone assistance helpline on 08081 56 16 06.

- i) Northern will consult disabled people and with agencies who represent disabled people to improve the provision of information and better understand access requirements.
- j) We endorse and are committed to adopting the services, standards and guidance contained in the Department for Transport's Code of Practice entitled 'Train and Station Services for Disabled Passengers'.
- k) Northern is pleased to support the Guide Dogs Travel Charter which can be found at guidedogs.org.uk/whatwedo/access/accesstravelcharter
- l) Northern will provide all customer service staff with Accessibility and Equality training.

5. Station standards and facilities

We will maintain our stations in a good condition and to a high standard of cleanliness. We promise that frequent inspections will be carried out to ensure these standards are maintained. We report the results of our inspections to the DfT and PTEs.

All customer service staff at our stations will be easily identifiable and will present a good image, wearing full uniform including name badges.

We will use our reasonable endeavours to ensure that a public telephone is provided on, or in the immediate vicinity of all Northern stations. We will, where possible, provide real-time information about train services at Northern stations by means of public address and/or information screens. Alternatively, passengers may request information by means of a Help Point or freephone hotline where provided.

Toilets, where provided at Northern stations, will be cleaned frequently and kept in good order.

We will display notices at stations giving details of our address and telephone number, facilities available at the station, details of other nearby public transport and taxis, and details of how to complain, firstly to Northern and, if not satisfied, to Passenger Focus.

6. Train service standards and facilities

We will review the train service we offer regularly. The emphasis will be on improving the reliability and capacity of train services and reducing journey times wherever possible.

Northern plan services so that customers boarding trains should be able to obtain a seat at off-peak times in normal circumstances. Customers should not have to stand on our trains outside of peak times unless they choose to, and at peak times for no more than 20 minutes. Where customers do need to stand, the number doing so should not exceed 35% of the seating capacity. Where our projections of future demand suggest that these standards will not be met we will consult with the DfT and PTEs to discuss with them the most appropriate solutions.

Northern operates a 'turn-up and go' policy and does not offer a reservation facility, for any purpose, for travel on any Northern service. This means a reservation cannot be made for a seat, a bicycle space or a wheelchair space.

We will maintain our trains in a good condition and to a high standard of cleanliness. Frequent inspections will be carried out to ensure these standards are maintained. We report the results of our inspections to the DfT and PTEs.

All customer service staff on our trains will be easily identifiable and will present a good image, wearing full uniform including name badges. They will keep you informed during your journey and help with any problems, should they occur.

We will provide Rail Security Teams who will patrol trains on selected routes. Northern operates a Crimestoppers partnership, allowing anti-social behaviour to be reported via a freephone number, 0800 555 111. This number is operational 24 hours a day, 7 days a week.

We will continue to aim for improved standards of punctuality and reliability. We will publish our reliability and punctuality figures for the previous four weeks and year at Northern staffed stations every four weeks. These figures will be independently audited every year.

Our reliability commitment requires us to operate at least 99% of services in the published timetable.

Our punctuality standards for arrival at final destination are as follows:

- short-distance services (punctuality) – We aim that at least 91 out of every 100 trains (91%) will arrive at their final destination within five minutes of the time shown in our timetables
- long-distance services (punctuality) - We aim that at least 91 out of every 100 trains (91%) will arrive at their final destination within 10 minutes of the time shown in our timetables.

Sundays are not included for the purpose of calculating punctuality and reliability performance.

Certain causes of delay are outside of our control and are not included when calculating punctuality and reliability performance for compensation purposes. These include vandalism, security alerts and exceptionally severe weather conditions that similarly affect other modes of transport and where no special pre-advertised emergency timetable has been in operation.

Essential planned engineering work sometimes takes place at weekends and late at night. This may mean that services are changed. Information will be provided at local stations at least four weeks before any planned changes to services in your area.

Where engineering work or other disruptions prevent us from providing our normal rail services a bus service may be provided instead. We regret that, on buses, we will not be able to carry prams, pushchairs, bicycles or wheelchairs that do not fold up. Alternative accessible transport will be provided if required for disabled passengers who are unable to access a bus.

In severe weather, trains often continue to run when roads and airports are closed. However, when speeds are reduced, delays can build up and schedules may be disrupted.

Emergency timetables may be used depending on weather forecasts or local conditions. We will give you as much notice as we can before these emergency timetables come into force.

7. Safety

Northern is committed to running a safe and secure railway and to ensuring that appropriate resources are available to do so. We will protect the health and safety of our customers, staff, contractors and the general public who may be affected by our activities, and will ensure that property and the environment are protected as far as possible.

The ways in which we identify, control and minimise hazards and risks are set out in Northern's Safety Management System, which is externally certificated to BS OHSAS 18001. This is supported by measurable actions to improve health and safety which are documented in our 2011 – 2013 Health and Safety Strategy and the supporting Health and Safety Plan which is produced annually and reviewed regularly.

8. Environmental

Northern is committed to minimising our impact on the environment and creating a low carbon business and is dedicated to the continual improvement of our environmental performance. Our approach is set out in our Environmental Sustainability Strategy available through the website.

Our main aims are:

- to promote rail as the sustainable alternative to the private car
- to reduce our carbon footprint by efficient use of energy across the business

- to minimise waste production and increase recycling
- to procure goods and services that do not adversely impact on the environment
- to operate a corporate Environmental Management System certified to ISO14001 and ISO50001. In this way we manage all our potential environmental impacts. This is supported by measurable actions which are reviewed regularly

9. Smoking policy

For your comfort and in accordance with the law all Northern trains and stations are designated as no-smoking areas. This includes the use of e-cigarettes and other cigarette substitutes

10. If things go wrong

We recognise that passengers want to know what is happening when things go wrong. Our staff on our trains and at stations will help by providing as much information as they can to passengers.

In cases of severe disruption, Northern will, at its discretion, provide alternative transport to ensure you reach your final destination. In exceptional circumstances, hotel accommodation may be provided.

If a delay to a Northern service adds an hour or more to your journey, we will offer you National Rail travel vouchers to the value of at least 50% of the fare you paid for that journey. This also applies to weekly season ticket holders. The vouchers are available for use on Northern and other train operators' services.

Separate arrangements for season ticket holders of one month or longer are shown in Section 11 below.

In the event that you write to us and the claim is actually against another Operator, we will ensure that your letter is sent on to the appropriate party, and advise you of this.

If you purchase a ticket for your journey and the train you plan to catch is delayed or cancelled, or your reservation is not honoured and you decide not to travel, you will be given a full refund if you return your unused ticket to any ticket office. Please note your right to receive a refund may be restricted by partial use of your ticket.

11. Season ticket holders

Season ticket holders have made a long-term commitment to Northern on the basis of the statements made in this Charter. Therefore the price you pay on renewal of your season ticket is linked closely to our performance.

The Northern network is divided into Service Groups. These are outlined in Table 1.

If, for your Service Group, Northern's average punctuality or reliability falls below the percentage shown in the columns identified as "Penalty/Trigger %" in Table 1, in respect of the preceding twelve months, holders of season tickets valid for longer than one month will receive a 5% discount on renewal within four weeks for a similar journey and period.

If both punctuality and reliability performance fail to meet these thresholds in respect of the preceding twelve months, season ticket holders will be given a 10% discount on renewal.

These discounts will be paid for the relevant Service Group to holders of PTE multi-modal tickets as detailed in Table 2 below and those rail-only tickets issued by all PTEs. Where two or more Service Groups are covered by such PTE-issued tickets only one 5% discount in respect of punctuality and one 5% discount in respect of reliability (or the one combined 10% discount for both punctuality and reliability) will apply for any period to which discounts apply.

Service Group	Reliability Target %	Reliability Penalty Trigger %	Punctuality Target %	Punctuality Penalty Trigger %
Tyne Tees and Wear Short distance: Newcastle – Hexham Newcastle – Chathill Newcastle – Metrocentre Bishop Auckland – Darlington – Saltburn/Hartlepool Long distance: Newcastle – Saltburn via Durham Hexham – Newcastle – Middlesbrough via Sunderland Newcastle – Carlisle Middlesbrough – Whitby	99	98	91	88
Lancashire and Cumbria Short Distance Blackpool North – Carlisle (Dalesrail) Colne/Blackburn – Preston – Blackpool North/South Preston – Ormskirk Preston/Lancaster – Morecambe/Heysham Preston/Lancaster – Barrow Barrow – Millom – Whitehaven – Carlisle Long distance: Liverpool – Wigan North Western – Preston – Blackpool North Manchester Piccadilly/Victoria – Bolton/Atherton Blackpool North	99	98	91	88
West & North Yorks Inter-urban Short distance: Leeds – Harrogate/Knaresborough Leeds – Harrogate – York Leeds – Selby Leeds – York Leeds – Halifax/Hebden Bridge/Huddersfield via Bradford Interchange Long distance: Leeds – Carlisle Leeds – Blackpool North Leeds – Manchester Victoria Leeds – Morecambe	99	98	91	88
West & North Yorks Local Short distance: Leeds – Moorthorpe – Sheffield Leeds – Shipley – Bradford Forster Square Leeds – Ilkley Bradford Forster Square – Skipton Bradford Forster Square – Ilkley Wakefield – Knottingley Leeds – Doncaster Leeds – Knottingley – Goole Leeds – Skipton Leeds – Huddersfield/Marsden/Hebden Bridge via Dewsbury	99	98	91	88
South & East Yorks Inter-urban	99	98	91	88

<p>Short distance: York – Selby/Hull Sheffield – Doncaster/Adwick/Scunthorpe via Rotherham Central Sheffield – Hull Doncaster – Thorne North/Goole Doncaster – Scunthorpe Hull – Bridlington – Scarborough</p>				
<p>South & East Yorks Local Short distance: Cleethorpes – Barton-on-Humber Huddersfield – Sheffield Leeds – Barnsley – Sheffield (all stops) Long distance: Leeds – Barnsley – Sheffield (fast trains) Sheffield – Pontefract – York Sheffield – Lincoln/Cleethorpes Leeds – Nottingham</p>	99	98	91	88
<p>North Manchester Short distance: Manchester Victoria – Huddersfield Manchester Piccadilly/Manchester Victoria – Bolton/Wigan Wallgate Manchester Piccadilly/Manchester Victoria – Bolton – Wigan Wallgate – Southport Manchester Victoria – Atherton – Wigan Wallgate/Southport Rochdale – Wigan Wallgate – Kirkby Manchester Victoria – Rochdale – Todmorden Manchester Oxford Road/Manchester Victoria/Bolton/Blackburn – Clitheroe Clitheroe – Morecambe (via Blackburn and Preston) Liverpool – Manchester Victoria – Rochdale</p>	99	98	91	88
<p>Merseyrail City Lines Short distance: Manchester Piccadilly/Oxford Road – Irlam – Glazebrook – Warrington Central Manchester Airport – Liverpool Lime Street (via Earlestown or Warrington Central) Liverpool Lime Street – Warrington Bank Quay/Ellesmere Port Ellesmere Port/Helsby – Warrington Liverpool Lime Street – Wigan North Western (via St Helens or Earlestown) Liverpool L St – Earlestown – Newton-le-Willows – Manchester Victoria/Oxford Road Liverpool Lime Street – Warrington Central</p>	99	98	91	88
<p>South Manchester Short distance: Manchester Piccadilly – Marple/Rose Hill (via Reddish North or Guide Bridge) Manchester Oxford Road/Piccadilly – New Mills Central/Stockport – Chinley/Sheffield Manchester Piccadilly – Hazel Grove Manchester Piccadilly – Buxton</p>	99	98	91	88

Manchester Piccadilly – Altrincham – Northwich – Chester Manchester Piccadilly – Glossop – Hadfield Manchester Oxford Road/Piccadilly – Macclesfield – Stoke-on-Trent Manchester Piccadilly – Manchester Airport Manchester Piccadilly – Crewe				
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Passenger Transport Executive	Ticket Type	Notes
Transport for Greater Manchester	County Card, Train Card	Grater Manchester Travel; Ltd. season tickets
Merseyside Passenger Transport Executive - Merseytravel	TRIO, TRIO Plus	
West Yorkshire Passenger Transport Executive - METRO	MetroCard	
Tyne and Wear Passenger Transport Executive – Nexus	Network Travel	
South Yorkshire Passenger Transport Executive - SYPTE	Travelmaster	

Compensation for holders of weekly season tickets is the same as for an individual journey. Season ticket holders not renewing their tickets may request the discount in the form of National Rail travel vouchers.

12. Bicycles

Northern serves stations in some of the most beautiful countryside in the UK. We would like to welcome you and your bicycle to Northern's stations. We will work to improve facilities at our stations for cyclists, for example by providing cycle racks.

Cyclists may take a bicycle on any train operated by Northern where space permits. Most trains can only accommodate, at most, two bicycles. There will be no extra charge for bringing your bicycle on a Northern train.

Bicycle spaces cannot be reserved on any Northern train. Space is allocated on a first come, first served basis and is subject to space being available. Only one accompanied bicycle per person will be allowed, in the interests of other customers.

Motorised cycles (either petrol or electric), tandems, tricycles and 'Rann' type trailers cannot be conveyed.

If you would like assistance for cycle-related matters, please contact us using the following options;

Telephone 08081 56 16 06 (freephone)

Textphone 08456 045 608

Email assistance@northernrail.org

13. Lost property

If you lose something on a train or at a station you can make an enquiry at your nearest staffed station or telephone the Northern Customer Relations team on 0845 00 00 125.

If something is handed in to Northern, we will:

- try to contact the owner, if they can be identified
- give a receipt to the person who handed the item in, if they ask for one

- keep the item for three months (unless it is something that will decay, like food) and keep a record of it.

14. How to contact us

We value what you have to say and by passing on your opinions, you will help us to improve.

We do our best to give you the quality of service you have the right to expect. Our aim is to achieve customer satisfaction by improving our services in response to your comments.

Northern will provide information in the format and at intervals required by the DfT on the number of comments and complaints received, and our performance in dealing with them, to the DfT, PTEs and Passenger Focus, when requested.

If you wish to make any comment or complaint, please contact the Customer Relations team as follows:

Telephone 0845 00 00 125

Textphone 08456 045 608

(calls are charged at local rates for these numbers from anywhere in Britain)

Email customer.relations@northernrail.org

Address FREEPOST RL5L-ABEC-BGUU

Customer Relations team,

Northern Rail Limited,

First Floor

The Travel Centre

City Railway Station

Leeds,

LS1 4DY

Staff on our trains and at our stations can provide you with contact details for the Customer Relations team. Notices providing contact information are also provided on our trains.

15. Seeking your views

Northern actively seeks your comments and opinions. Regular feedback will enable us to introduce improvements. We will achieve this by undertaking market research to establish your expectations and tell us how you think we are performing.

Shortcomings identified between expectations and current performance will be targeted and acted upon.

16. Contacting Passenger Focus

At Northern, we will always do our best to satisfy all complaints. If we fail and you wish to take the matter further you can refer it to Passenger Focus. Passenger Focus is the official, independent watchdog for rail passengers, set up to protect and promote passengers' interests. They push for service improvements,

provide free, impartial advice and can take up complaints on your behalf with train operating companies and service providers if you are not satisfied with those companies' response.

The contact details for Passenger Focus are:

Telephone: 0300 123 2350

Fax: 0845 850 1392

Email: advice@passengerfocus.org.uk

Address:

Passenger Focus

Freepost RRRE-ETTC-LEET

PO Box 4257

Manchester

M60 3AR

passengerfocus.org.uk

Confirmed Copy

APPENDIX 2 TO SCHEDULE 1.4 – NOT USED

Conformed Copy

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 or any Executive provide information to the Secretary of State or such Executive (as appropriate) on the extent of the use by passengers of the Passenger Services (provided that the rights of any Executive under this paragraph 1.1 will be limited to information relating to such Passenger Services which commence or terminate in or pass through the Passenger Transport Area of such Executive. In particular and when so requested, the Franchisee shall provide information relating to:

1.1.1 the number of passengers travelling in each class of accommodation:

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

1.1.2 the times of the day, week or year at which passengers travel; and

1.1.3 the type of Rolling Stock Unit used in each case,

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

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

1.2.1 on each Passenger Service;

1.2.2 on each Route; and

1.2.3 at any station or between any stations,

by using the technology specified in paragraph 1.7. 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 throughout the Franchise Period. The Secretary of State acting reasonably shall have the right to obtain such other information that the Franchisee has which may provide a more detailed or accurate view of the extent of use by passengers of the Passenger Services including information about ingress and egress of passengers at ticket gates at Stations.

1.3 The Franchisee shall provide to the Secretary of State and the relevant Executives all of the information generated by the technology specified in paragraph 1.7 including the information specified in paragraph 1.1:

1.3.1 using such systems, in such a format and to such level of disaggregation as the Secretary of State may reasonably require including by directly uploading such information into such database maintained by the Secretary of State;

1.3.2 at a frequency and within timescales that the Secretary of State may reasonably request pursuant to paragraph 1.1;

1.3.3 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; and

- 1.3.4 the Parties acknowledge that the information supplied under paragraph 1.1 above, may constitute Confidential Information to which Schedule 17 (Confidentiality and Freedom of Information) applies.
- 1.4 The information specified in paragraph 1.1 shall:
- 1.4.1 in the case of information provided by the Franchisee to the Secretary of State, be in such format and to such level of disaggregation as the Secretary of State may reasonably require in order to assist the Secretary of State's decision-making on infrastructure, station and rolling stock vehicle investment, the best use of the network and the alleviation of overcrowding;
- 1.4.2 in the case of information provided by the Franchisee to any Executive, be in such format and to such level of disaggregation as such Executive may reasonably require in order to assist such Executive in keeping under review railway passenger services; and
- 1.4.3 be provided by the Franchisee to the Secretary of State or any Executive, in each case within fourteen (14) days of any request by the Secretary of State or such Executive pursuant to paragraph 1.1.
- 1.5 At the same time as the Franchisee provides any information in accordance with paragraph 1.1, it shall (if the Secretary of State or any Executive requests it to do so):
- 1.5.1 update any Forecast Passenger Demand accordingly in the same format and to the same level(s) of disaggregation as the Secretary of State or any Executive (as the case may be) required pursuant to paragraph 1.4.1 or 1.4.2 (as the case may be); and
- 1.5.2 notify the Secretary of State and such Executive of any such update.
- 1.6 Manual Passenger Counts
- 1.6.1 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.
- 1.6.2 The Franchisee shall supply the details of any such counts undertaken to the Secretary of State, as soon as reasonably practicable but within 6 weeks from the date of completion of such counts, in such form as the Secretary of State may stipulate including by directly inputting data into such database maintained by the Secretary of State.
- 1.6.3 The Secretary of State shall be entitled to audit such counts (whether by specimen checks at the time of such counts, verification of proper compliance with the manner approved by him or otherwise). In the event that such audit reveals, in the reasonable opinion of the Secretary of State, a material error, or a reasonable likelihood of material error, in such counts, the Secretary of State may require the counts to be repeated or the results adjusted as he considers appropriate, and in these circumstances the Franchisee shall pay to the Secretary of State the costs of any such audits.
- 1.7 Technology for Obtaining the Information Referred to in Paragraph 1.2
- 1.7.1 The technology to be used for the purpose of paragraph 1.2 shall be:
- (a) Infodev APC system;
- (b) fitted to at least twenty-five per cent. (25%) of each class of rolling stock included in the Train Fleet from time to time; and

- (c) deployed by the Franchisee so that each individual service described in the week day Train Plan (which shall not include the Train Plan for a Saturday or Sunday) is counted at least four (4) times in each year provided that ninety-five per cent. (95%) of such individual services are counted at least once in each twelve-week period.

1.7.2 The Franchisee shall comply with its obligation under sub paragraph 1.7.1 (a) above by no later than the Franchise Commencement Date.

2 NATIONAL PASSENGER SURVEYS

2.1 The Franchisee agrees with the Secretary of State that:

2.1.1 the Passengers' Council may measure the level of passenger satisfaction with the Franchise Services through National Passenger Surveys;

2.1.2 the Passengers' Council shall determine how, when (normally twice per annum) and where National Passenger Surveys are to be carried out;

2.1.3 the Franchisee shall grant access on trains or at stations to the Passengers' Council (or its representatives and agents) to carry out National Passenger Surveys;

2.1.4 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 Passenger Surveys; and

2.1.5 the Passengers' Council and/or the Secretary of State may, from time to time, publish the results of each National Passenger Survey.

2.2 The Secretary of State shall or shall procure that:

2.2.1 the findings of any National Passenger Survey are made available by the Passengers' Council to the Franchisee within a reasonable period of time after the completion of each such survey and shall use all reasonable endeavours to procure that those findings are made available in a timely manner to enable the Franchisee to comply with its obligations under sub-paragraph 2.3; and

2.2.2 if any such survey includes a comparison between its findings and the findings of any equivalent earlier survey, such comparison forms a reasonable basis for monitoring the trends of passenger satisfaction over time.

2.3 The Franchisee shall, as soon as reasonably practicable after such information is made available to the Franchisee in accordance with sub-paragraph 2.2, publicise its performance by displaying such information at all of the Stations and on its website.

2.4 The Franchisee shall co-operate with Passenger Focus or similar bodies to carry out National Passenger Surveys.

2.5 Not used.

2.6 If the Passengers' Council ceases to undertake National Passenger Surveys then the relevant National Passenger Survey for the purposes of this paragraph 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 NPS**"). The provisions of this paragraph 2 shall apply in respect of any Alternative NPS and for these purposes Passengers' Council shall be replaced with such other entity that is responsible for conducting such Alternative NPS.

3 EXECUTIVE SURVEYS

- 3.1 Any Executive may, at its own cost and in such manner as that Executive determines, conduct surveys or related research, with access to the services and stations referred to in paragraph 3.2, in relation to matters relevant to its statutory functions.
- 3.2 The Franchisee shall, upon reasonable notice, allow any Executive for the purpose of enabling such Executive to carry out such surveys or related research, reasonable access to:
- 3.2.1 the Executive Passenger Services relevant to such Executive;
 - 3.2.2 where relevant to such services, continuations thereof;
 - 3.2.3 the Executive Stations relevant to such Executive;
 - 3.2.4 any Non-Executive Passenger Services which operate within the Passenger Transport Area relevant to such Executive, subject to the prior consent of the Franchisee (such consent not to be unreasonably withheld or delayed); and
 - 3.2.5 any Non-Executive Stations at which any Executive Passenger Services relevant to such Executive call, subject to the prior consent of the Franchisee (such consent not to be unreasonably withheld or delayed).

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:
- 4.1.1 obtained on terms such that the Franchisee shall be the Data Controller of such data; and
 - 4.1.2 the property of the Franchisee.
- 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:
- 4.3.1 the Franchisee to disclose such CRM Data to any Successor Operator and/or the Secretary of State; and
 - 4.3.2 any such Successor Operator to process such CRM Data in the manner contemplated by paragraph 4.2.

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 4.1.1, 4.2, 4.3 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.
- 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:
- 6.2.1 ensure that CRM Data is Processed fairly and lawfully (in accordance with part 1 of Schedule 1 of the Data Protection Act);
 - 6.2.2 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
 - 6.2.3 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:
- 6.3.1 the Franchisee shall procure that any CRM Data Processor which it appoints shall:
 - (a) 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
 - (b) 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;
 - 6.3.2 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:
 - (a) 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;
 - (b) 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
 - (c) (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;
 - 6.3.3 the Franchisee shall procure that any CRM Data Processor which it appoints shall:
 - (a) 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 ("**Security Breach**") and, pursuant to this the Franchisee shall promptly notify the Secretary of State of all Security Breaches by itself or by the CRM Data Processor (the Franchisee hereby acknowledges that whilst the Secretary of State is not Data Controller in respect of the CRM Data, the Secretary of State's

legitimate interests given its duties under the Act may be affected in the event of a Security Breach and as such the Secretary of State wishes to be notified of the same); and

- (b) promptly provide the Franchisee on request with all reasonable information, assistance and cooperation 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;
- 6.3.4 the Franchisee shall, and shall procure that any CRM Data Processor which it appoints shall, at all times take reasonable steps to ensure the reliability of its/their personnel who have access to the CRM Data and ensure they are aware of the obligations of the Franchisee or the CRM Data Processor (as appropriate) in relation to the same; and
- 6.3.5 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:
- (a) (in the case of the Franchisee) the Secretary of State; or
 - (b) (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 European Economic Area the Standard Contractual Clauses for Data Processors established in Third Countries pursuant to the Commission Decision (2010/87/EU) of 5 February 2010 under the EU Directive (95/46/EC).

SCHEDULE 1.6 - COMMITTED OBLIGATIONS

Part 1 - Preliminary

1 REASONABLE ENDEAVOURS

Where in this Schedule 1.6 Franchisee is obliged to use all reasonable endeavours to do or procure that something is done by a certain date then, without prejudice to such obligation, if the same is not achieved by the date specified in respect of such obligation under Appendix 1 of this Schedule 1.6 Franchisee shall be required to consult with Secretary of State and if required by the Secretary of State use all reasonable endeavours to do or procure that the obligation in question is fulfilled as soon as possible thereafter.

2 EXPENDITURE

For the avoidance of doubt all amounts which the Franchisee has committed (whether unconditionally or otherwise) pursuant to this Schedule 1.6 to expend in connection with improvements to network or stations shall be in addition to any expenditure made by Network Rail as part of its infrastructure improvement or maintenance programme. Where any category of expenditure described in this Schedule 1.6 is referred to in more than one expenditure commitment set out in this Schedule 1.6 expenditure on such category shall not be counted more than once in assessing compliance by the Franchisee with such expenditure commitments.

3 CONTINUING PROVISION

Where the Franchisee is obliged under this Schedule 1.6 to provide, implement or install something (whether a service, facility or otherwise) the Franchisee shall ensure that once the same is provided, implemented or installed that it continues to be provided and made available (and where relevant, effectively maintained) for the remainder of the Franchise Period unless the contrary is expressly stated.

4 FUND

Where the Franchisee is obliged under this Schedule 1.6 to set up a fund in connection with a particular obligation, the Franchisee shall not be obliged to spend the whole amount towards satisfying the obligation if the obligation can be satisfied (to the satisfaction of the Secretary of State) using a lesser sum (and such amount shall include any equipment, installation, removal and/or relocation costs incurred by the Franchisee, as well as any costs incurred in developing plans and consulting with third parties to obtain any necessary consents). If the Franchisee spends less than the entire amount of the fund set up in connection with a particular obligation, the Secretary of State shall determine whether the Underspend should be: (a) transferred into another fund set up under this Schedule 1.6; or (b) paid to the Secretary of State or; (c) used in connection with another scheme or schemes to provide benefits to passengers using the Franchisee's services. If the Franchisee believes that it is reasonably likely to spend less than the entire amount of the fund set up in connection with a particular obligation, it shall notify the Secretary of State accordingly. For the purposes of this paragraph 4, "Underspend" means an amount equivalent to the difference between: (i) the amount actually spent in satisfying a particular obligation under this Schedule 1.6; and (ii) the amount of the fund which the Franchisee is required to set up for such obligation.

5 DESIGNATION AS PRIMARY FRANCHISE ASSET

Where the Franchisee is required to install new equipment in connection with paragraph 8.5 of Part 2 of this Schedule 1.6, as a condition of the installation of such the Secretary of State:

- 5.1 shall designate such equipment as a Primary Franchise Asset;
- 5.2 undertakes not to de-designate such equipment as a Primary Franchise Asset for during the term of this Agreement,

and for the purposes of the Supplemental Agreement, the equipment referred to in paragraph 8.5 shall be valued at the cost of the equipment forming the display screens less the applicable depreciation from the date of their installation.

6 SECRETARY OF STATE RESPONSE TO PROPOSALS

Where, in paragraphs 8.5, 8.8 and 8.10 of Part 2 of this Schedule 1.6:

6.1 the Secretary of State is required to provide his views on a list or plan received from the Franchisee within one (1) month; and

6.2 the Secretary of State is not able to provide his views within such timescale,

the Secretary of State and the Franchisee shall meet as soon as reasonably practicable and shall seek to agree revised timescales for the implementation of the relevant Committed Obligation (and the list or plan proposed by the Franchisee shall be updated accordingly).

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Part 2– Committed Obligations

1 PUBLIC PERFORMANCE MEASURE

- 1.1 The Franchisee shall ensure that the percentage for the Public Performance Measure measured as a moving annual average for each Reporting Period falling between the dates specified in the left hand column of the table below exceeds or is at the percentage stated in the right hand of the table below for such period.

Dates	Percentage %
From 1 April 2014 to end of Franchise Term	88.2

- 1.2 In addition and without prejudice to its obligation in paragraph 1.1 the Franchisee shall use reasonable endeavours, taking steps within its control and working with its industry partners (including Network Rail) and taking into account the resources that are available to it, to improve performance so that the percentage for the Public Performance Measure measured as a moving annual average for each Reporting Period falling between the dates specified in the left hand column of the table below exceeds or is at the percentage stated in the right hand of the table below for such period.

Dates	Percentage %
From 1 April 2014 to end of Franchise Term	92.3

- 1.3 If :

- 1.3.1 at any time and from time to time there is a Change to the Service Level Commitment previously in force; and
- 1.3.2 the Secretary of State reasonably considers that a revision to the percentages set out in the tables in paragraph 1.1 and 1.2 is required to hold constant the risk of the Franchisee failing to satisfy the requirements of paragraphs 1.1 and 1.2

then the Secretary of State shall make such revisions to the percentages in paragraphs 1.1 and 1.2 as he reasonably considers appropriate to hold constant such risk. The Secretary of State shall immediately notify the Franchisee of the revised percentages.

2 NATIONAL PASSENGER SURVEYS

The Franchisee shall use reasonable endeavours, taking steps within its control and working with its industry partners (including Network Rail), to increase customer satisfaction, as determined by the National Passenger Survey to the levels identified in the table below.

Dates	Wave	Percentage %
From 1 April 2014 to end of Franchise Term	Spring 2015	80
From 1 April 2014 to end of Franchise Term	Autumn 2015	81

3 NOT USED.

4 NOT USED.

5 PERFORMANCE INITIATIVES

5.1 Without prejudice to its obligations under Schedule 1.2 (Operating Obligations) and Schedule 7.1 (Performance Benchmarks) and in order to improve the Public Performance Measure in respect of the Northern Franchise through better co-operation and liaison with Network Rail the Franchisee hereby agrees to use all reasonable endeavours to develop, agree and implement with Network Rail a plan (the "**Joint Performance Improvement Plan**" or the "**Performance Strategy Plan**", as the case may be).

5.2 Where it has not yet been adopted at the date of this Agreement the Franchisee shall use reasonable endeavours to work with Network Rail on the adoption of the plan set out in paragraph 5.1 including suggestions for developing a revised trajectory for the Public Performance Measure. The Secretary of State and the Franchisee agree that the percentage set out in the table in paragraph 1.2 above shall be updated to reflect the revised trajectory for the Public Performance Measure as more particularly described in the Joint Performance Improvement Plan or the Performance Strategy Plan (as the case may be) agreed with Network Rail and referred to in paragraph 5.1.

5.3 The Secretary of State agrees that, where it is reasonable and proper for him to do so and at the request of the Franchisee, he shall use any influence he may have on Network Rail in order to assist the Franchisee in respect of the Franchisee's implementation of the Joint Performance Improvement Plan or Performance Strategy Plan, as the case may be.

6 BICYCLE USERS FORUM

6.1 The Franchisee shall maintain throughout the Franchise Period a forum dedicated to passengers who use bicycles ("**Bicycle Users Forum**").

6.2 Subject to paragraph 7 of Schedule 1.4 (Passenger Facing Obligations), the Bicycle Users Forum will have the objective of maximising the facilities for, and the promotion of, the use of bicycles and pedestrian access to Stations, and for the accompanied carriage of bicycles on Passenger Services.

6.3 The Bicycle Forum will be chaired by a representative of the Franchisee and will include invited representatives from the Executives, other Local Authorities, Sustrans, Network Rail and relevant interest groups.

6.4 The Bicycle Users Forum will:

6.4.1 identify and where relevant transfer best practice and knowledge from relevant experience in both Great Britain and the Netherlands;

6.4.2 seek to harmonise existing efforts to improve the accessibility of the Northern Franchise for cyclists and pedestrians;

6.4.3 identify sources of funding necessary to implement programmes that would encourage cyclists and pedestrians to use the Passenger Services; and

6.4.4 without prejudice to the Franchisee's obligations under paragraph 7 of Schedule 1.4 (Passenger Facing Obligations) the Franchisee will, within two years of the Franchise Commencement Date, review the charging policy for the storage and carriage of cycles at Stations and on Passenger Services and if appropriate (after consultation with the relevant Executives and the Secretary of State) propose changes to the charging policy which would, in the reasonable opinion of the Franchisee, provide funding for implementation of initiatives developed in accordance with the Bicycle Users Forum's objective.

6.5 The parties acknowledge that improvements to provisions for users of bicycles and pedestrians arising from the Bicycle Users Forum will properly be limited by considerations of value for money and affordability.

7 COMMUNITY RAIL PARTNERSHIPS

7.1 The Franchisee shall, co-operate with the Secretary of State, Network Rail, the Association of Community Rail Partnership and/or any other person as the Secretary of State may nominate in the development of the initiative to examine:

7.1.1 options for a more cost effective delivery of the railway passenger services operated on any Community Rail Route (such options to include changes in work practices of the relevant Franchise Employees, reducing rolling stock lease costs and maximising opportunities for obtaining local funding of development at relevant stations, developing new ways of maintaining and renewing relevant railway infrastructure);

7.1.2 the actual costs incurred in operating, maintaining and renewing the infrastructure relevant for such Community Rail Route.

7.2 The Secretary of State may at any time, by proposing a Variation pursuant to paragraph 1.1.1 of Schedule 19 (Other Provisions) require the Franchisee to develop and/or implement any changes to Franchise Services and/or transfer of any Franchise Service to another Train Operator in order to deliver any of the initiatives that were examined pursuant to paragraph 7.1.

7.3 The Franchisee shall provide an amount of ³¹ per Franchisee Year (or a pro rata amount for a Franchisee Year which is less than a year) of funding to those Community Rail Routes funded under the Previous Franchise Agreement.

8 MARKETING/FARES PROMOTION

Marketing Plan

8.1 On or before 1 June 2014 (and after discussion with the Secretary of State, relevant Executives and relevant Stakeholders) the Franchisee shall develop a marketing plan which sets out the Franchisee's plans for the development and implementation of the Northern Franchise brand. The Franchisee shall implement such plan from 1 July 2014.

8.2 At the request of the Secretary of State, the Franchisee shall provide an update on progress made in the implementation of such plan (including against any targets contained in such plan) at each Franchise Performance Meeting.

Joint Promotion of Passenger Services

8.3 The Franchisee shall use all reasonable endeavours to enter into agreements for the joint promotion of the Passenger Services with at least fifty per cent. (50%) of the "Rail Partnerships" and "Rail Development Companies" related to the Franchisee's activities and who are members of the Association of Community Rail Partnerships.

Customer Information

8.4 The Franchisee shall publish at the Principal Stations, by making available to passengers, customer information which includes the following:

8.4.1 a regional network map;

³¹ Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

- 8.4.2 an outline of the Passenger Services provided by the Franchisee;
- 8.4.3 an outline of the Station Services provided by the Franchisee;
- 8.4.4 a summary of the bus and taxi interchange facilities and services;
- 8.4.5 an example for Fares available to key destinations; and
- 8.4.6 information on how to obtain train times and Fares by telephone, internet or from information centres and local libraries.

Display Screens

- 8.5 Subject to paragraph 8.6, the Franchisee shall install customer information display screens at one hundred (100) station locations during the Franchise Term. The Franchisee shall: (1) submit a list of proposed station locations and supporting information for each station to the Secretary of State by no later than 1 July 2014; (2) consult with the Secretary of State in respect of its proposals, the Secretary of State shall provide his views by not later than one (1) month after receiving the list from the Franchisee; and (3) acting reasonably, take into account the views of the Secretary of State in finalising its proposals.
- 8.6 The Franchisee shall use all reasonable endeavours to obtain:
 - 8.6.1 any required, necessary or desirable third party consents or approvals for the installation, removal and/or redistribution (as the case may be) of any relevant equipment in connection with its obligation under paragraph 8.5 (including any consents required from Network Rail or any local authority);
 - 8.6.2 any required, necessary or desirable consents or approvals, including from the users of a particular station at which it is proposed to install and/or remove (as the case may be) the relevant equipment; and
 - 8.6.3 the consent and/or approval of the ORR and/or Network Rail to the extent that this may be required,

and if the Franchisee is unable to obtain any such consent and/or approval, having used all reasonable endeavours to do so, it shall notify the Secretary of State. The Secretary of State and the Franchisee shall then seek to agree alternative station location(s) at which to install an equivalent number of customer information display screens as proposed in accordance with paragraph 8.5. If no such alternative station location is reasonably practicable, the Secretary of State and the Franchisee shall seek to agree an alternative use for the funds which would have been spent on installing the customer information display screens (as set out in the Franchisee's plan in paragraph 8.5) on other passenger benefit schemes.

Merseyrail Fares

- 8.7 The Franchisee shall offer for sale to passengers the same range of tickets (including "Saveaway" and "Trio") as is available at the Franchise Commencement Date at Stations operated by Merseyrail Electrics 2002 Ltd.

Innovative Technologies

- 8.8 The Franchisee shall provide a plan setting out how the amounts referred to in paragraph 8.9 will be spent. The Franchisee shall: (1) submit such plan to the Secretary of State by no later than 1 July 2014; (2) consult with the Secretary of State in respect of the plan, the Secretary of State shall provide his views by not later than one (1) month after receiving the list from the Franchisee; and (3) take into account the views of the Secretary of State in finalising its proposals.
- 8.9 The Franchisee shall:

- 8.9.1 set up a fund of ³² to invest in equipment to support information provision to customers at stations on the Cumbrian Coast line; and
- 8.9.2 set up a fund of ³³ to invest in equipment to support information provision to customers at stations which are not on the Cumbrian Coast line, including the trial of Wi-Fi (with only a reasonable amount of the total fund being spent on any such trial) to provide customer information on customers' smartphones at up to eighty (80) stations.

Improved Ticket Purchase Facilities and Advance-Purchase Train-specific Fares

- 8.10 The Franchisee shall develop a plan demonstrating how the amount referred to in paragraph 8.11 will be spent. The Franchisee shall: (1) submit such plan to the Secretary of State by no later than 1 July 2014; (2) consult with the Secretary of State in respect of the plan, the Secretary of State shall provide his views by not later than one (1) month after receiving the list from the Franchisee; and (3) take into account the views of the Secretary of State in finalising its proposals.
- 8.11 The Franchisee shall set up a fund of ³⁴ to invest in:
- 8.11.1 m-ticketing through a mobile ticketing trial on two (2) routes (to be determined in the Franchisee's absolute discretion);
- 8.11.2 increasing website functionality; and
- 8.11.3 increasing the usability of Ticket Vending Machines.
- 8.12 The Franchisee shall extend the availability of Advance-Purchase Train-specific Fares through the development and promotion of more advanced products.

Mobile Connectivity Project

- 8.13 The Franchisee shall reasonably co-operate with the Secretary of State and Network Rail in the development of Network Rail's mobile connectivity project, which aims to improve the availability, capability and reliability of on-board mobile communications (for both voice and data) including on the routes on which the Franchisee operates.

9 SECTOR IDENTIFICATION

- 9.1 The Franchisee shall use all reasonable endeavours to develop and implement ways, within the scope of industry systems and resources available to the Franchisee, to better manage and promote distinct market sectors within the Passenger Services operated by the Franchisee.
- 9.2 The Franchisee shall provide a proposal to the Secretary of State on how the Franchisee's business structure may be adapted to better serve the distinct market sectors which it has identified. Such proposal shall describe:
- 9.2.1 the steps which will need to be taken to implement the adapted business structure;
- 9.2.2 any likely costs and efficiencies which will be incurred or delivered as a consequence of implementing the adapted business structure;

³²Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

³³ Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

³⁴ Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

9.2.3 how consistencies could be delivered through implementing the adapted business structure;
and

9.2.4 how the adapted business structure will deliver value for money,

and the Franchisee shall deliver such proposal to the Secretary of State by 31 October 2014.

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10 ENVIRONMENTAL INITIATIVES

10.1 The Franchisee shall develop a plan demonstrating how the amount referred to in paragraph 10.2 will be spent. Such plan shall be submitted to the Secretary of State for approval (such approval not to be unreasonably withheld or delayed) by no later than 1 May 2014.

10.2 The Franchisee shall set up a fund of ³⁵ to invest in a range of low cost measures to reduce energy consumption, reduce resource usage and prevent pollution.

10.3 The Franchisee shall use reasonable endeavours to reduce the amount of:

10.3.1 traction energy;

10.3.2 non-traction energy; and

10.3.3 water,

which it consumes and is billed for in the performance of its obligations under this Agreement by 0.5% each year (as calculated on a year-on-year basis). Without prejudice to paragraph 10.2, this paragraph shall not require the Franchisee to spend any additional money in connection with the matters set out herein.

11 DELAY REPAY

11.1 The Franchisee shall submit a report to the Secretary of State setting out its assessment of the practical and financial implications of implementing a Delay Repay scheme by no later than 1 November 2014.

11.2 The Secretary of State shall have a period of three (3) months to evaluate and respond to the report delivered pursuant to paragraph 11.1, stating whether or not Delay Repay is to be implemented in accordance with the report prepared by the Franchisee pursuant to paragraph 11.1.

11.3 In the event that the Secretary of State requires the Franchisee to implement a Delay Repay scheme, such implementation shall constitute a Qualifying Change notwithstanding that the Threshold Amount may not be met and such change shall be implemented by either: (1) 1 April 2015; or (2) in accordance with the timescales set out in the report prepared by the Franchisee pursuant to paragraph 11.1 if the Secretary of State (acting reasonably) so determines.

11.4 In this paragraph 11, "**Delay Repay**" means a scheme offering enhanced compensation to passengers as a result of poor performance.

12³⁶. NW ELECTRICS

Introduction of new EMUs

12.1 *The Franchisee shall:*

12.1.1 *enter into the Porterbrook Lease;*

12.1.2 *exercise its rights in the Porterbrook Lease to procure that the first NW Electric EMU shall be made available by Porterbrook for engineering staff familiarisation and driver traction conversion on 1 May 2014, unit number 2 on 1 August 2014, unit number 3 on 1 September 2014 and unit number 4 on 1 October 2014; and*

³⁵ Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

³⁶ Date of new insertion 17/06/2015

12.1.3 phase the NW Electrics EMUs into specific services (the "Electric Services") on the relevant Passenger Change Date set out below:

<i>Passenger Change Date</i>	<i>Electric Services</i>
<i>December 2014</i>	<i>2 units in traffic operating 1 Liverpool Lime Street to Wigan North West and 1 Liverpool Lime Street to Manchester Airport diagram (4 units in fleet)</i>
<i>May 2015</i>	<i>8 units in traffic operating as above and in addition, Liverpool Lime Street to Manchester Victoria diagrams (10 units in fleet in aggregate)</i>
<i>December 2015</i>	<i>12 units operating as above and in addition, Liverpool Lime Street to Warrington Bank Quay diagrams (14 units in fleet in aggregate)</i>

The parties acknowledge the detailed cascade for the NW Electric EMUs being as set out in Appendix 4 to this Schedule 1.6

12.2 *EMU modification*

12.2.1 *The Franchisee shall undertake modification of the NW Electrics EMUs before their introduction into service which shall entail the Franchisee procuring a programme for alterations to the door controls of the NW Electrics EMUs to enable the conductor to control the opening and closing of doors at the rear compartment and at intermediate doors.*

12.2.2 *The parties shall work together on a joint communications strategy in respect of the alterations for door controls for the NW Electrics EMUs as specified in paragraph 12.2.1.*

12.2.3 *In respect of the modifications referred to in paragraph 12.2.1, the Secretary of State acknowledges that the Franchise Payments have been adjusted to include an amount of ³⁷ to fund such works (to cover both external costs and any internal management costs, in each case where evidenced to have been reasonably and properly incurred) (the "Mods Maximum Amount") subject to the EMU Costs Wash-Up.*

12.2.4 *The Secretary of State agrees that the Franchisee shall not be required to install passenger counting equipment on the NW Electrics EMUs and the Franchisee shall not (in relation to the NW Electrics EMUs only), be in breach or contravention of any obligations in paragraphs 1.2 or 1.7 (Information about Passengers) of this Agreement.*

12.3 *EMU refurbishment*

12.3.1 *The Franchisee shall fit exterior vinyl covering to the NW Electrics EMUs prior to them entering into service. Any interior refurbishment of the NW Electric EMUs shall be at the discretion and sole cost of the Franchisee.*

³⁷ Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

12.3.2 *In respect of the exterior vinyl covering works referred to in paragraph 12.3.1, the Secretary of State acknowledges that the Franchise Payments have been adjusted to include an amount of³⁸ per vehicle to fund such works (where evidenced to have been reasonably and properly incurred) (the "Refurb Maximum Amount") subject to the EMU Costs Wash-Up.*

12.4 *Verification and EMU Costs Wash-Up*

12.4.1 *In respect of the modifications referenced in paragraphs 12.2.1 and 12.3.1, and subject to limb (c) below, on the date that is the later of 7 (seven) days after the date on which:*

- (a) the final NW Electrics EMU has been modified; and*
- (b) the final NW Electrics EMU has been refurbished; or*
- (c) if earlier, the end of the Franchise Period,*

the Franchisee shall report to the Secretary of State its progress with completing the modifications of the NW Electric EMUs and/or the refurbishment of the NW Electrics EMUs (as the case may be) (the "EMU Verification Report"), and such report shall include sufficient information and evidence to account for the costs reasonably and properly incurred by the Franchisee in delivering the NW Electrics EMU modifications and refurbishments pursuant to paragraphs 12.2.1 and 12.3.1 (as the case may be). The Secretary of State shall be entitled to request such further information and evidence in relation to such modifications or refurbishment works or activities as he may reasonably require.

12.4.2 *To the extent that, following the provision of the EMU Verification Report (and/or such further evidence as may be requested by the Secretary of State pursuant to paragraph 12.4.1), the aggregate costs reasonably and directly incurred in respect of the Franchisee's implementation of the modification of the NW Electrics EMUs are lower than the Mods Maximum Amount or the Refurb Maximum Amount (as applicable) which has been paid and/or has been modelled for payment to the Franchisee (as the case may be), then*

- (a) in the case of paragraphs 12.4.1 (a) and/or (b) above, the Secretary of State shall be entitled to deduct any such difference from the Franchise Payment falling to be paid; or*
- (b) in the case of paragraph 12.4.1 (c) above, the Franchisee shall pay to the Secretary of State such difference without set-off, deduction or withholding,*

at least 7 (seven) days after the date on which such amount has been determined (the amount of such payment being the "EMU Costs Wash-Up"). In the event of any dispute between the parties, the Secretary of State shall reasonably determine the amount of the EMU Costs Wash-Up.

12.5 *Diesel Units*

12.5.1 *The parties acknowledge and agree that certain diesel multiple units (the "NW DMUs") will be displaced from the Passenger Services on which they are currently running as the NW Electrics EMUs are introduced into service.*

12.5.2 *The Franchisee shall redeploy those NW DMUs to:*

³⁸ Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

- (a) *provide one NW DMU for use on Todmorden curve services and the Franchisee shall use all reasonable endeavours to enter in to a separate agreement with Lancashire County Council in respect of such NW DMU and shall use all reasonable endeavours to procure that Lancashire County Council enters into a direct agreement with the Secretary of State in respect of such NW DMU;*
- (b) *maximise capacity on certain other services including Bolton corridor capacity provision resulting from electrification works; and*
- (c) *improve resilience on other services,*

provided in the case of 12.5.2 (b) and (c) above that the Franchisee shall not redeploy such NW DMUs without consulting with the Secretary of State and taking the reasonable opinions of the Secretary of State into account in such redeployment.

12.5.3 *The Secretary of State may instruct the Franchisee to redeploy the NW DMUs in any way. In such case, a Qualifying Change shall arise notwithstanding that the Threshold Amount may not have been met.*

12.6 Additional Drivers, Conductors and Engineering Staff

12.6.1 *The Franchisee has recruited drivers and shall recruit such number of additional drivers to support a training programme for the NW Electrics EMUs as it considers appropriate, acting reasonably.*

12.6.2 *The Franchisee shall recruit conductors and a conductor team manager to support a training programme for the NW Electrics EMUs. The Franchisee shall also recruit engineering staff to be based at Allerton Depot. The Secretary of State has agreed to fund these posts through amended Franchise Payments.*

12.6.3 *In relation to paragraphs 12.6.1 and 12.6.2, the Secretary of State and the Franchisee agree that although specific staff numbers have been provided for in the Franchise Payments in relation to numbers of drivers, conductors and engineering staff, the overarching obligation in paragraph 12.1 on this Franchisee is to deliver the Electric Services by the Passenger Change Dates specified and the Franchisee is responsible for absolute staff numbers required to achieve that output.*

12.7 Allerton Depot

12.7.1 *It is acknowledged that Network Rail is leading a project for the enhancement of Allerton Depot that will involve, inter alia, the energisation of the overhead electrified system, alterations to trackwork, the extension of the servicing shed and improvements to the carriage washing arrangements (the "Allerton Enhancements"). The Franchisee will use all reasonable endeavours to work with Network Rail to achieve the implementation of the Allerton Enhancements in line with the agreed project plan. The parties agree that use of all reasonable endeavours in this context shall mean:*

- (a) *regular meeting attendance by the Franchisee at project meetings in relation to NW Electrics;*
- (b) *reviewing and commenting on any project plans of Network Rail; and*
- (c) *any and all such other actions or activities as may reasonably be required to achieve the desired outcome PROVIDED ALWAYS THAT the Franchisee shall not be expected to incur any material additional costs or expenditure in relation to any such actions or activities.*

³⁹13 [not used]

⁴⁰14 Project Arcturus

Introduction of further cascaded Class 319 EMUs

14.1 The Franchisee shall:

14.1.1 enter into the Porterbrook Arcturus Lease; and

14.1.2 use all reasonable endeavours to introduce the Project Arcturus EMUs into use delivering the Passenger Services from the dates set out below:

Date	Electric Services
17th May 2015	Two Project Arcturus EMUs diagrammed to be in traffic on each Weekday delivering the Passenger Services and on any day that is not a Weekday diagrammed to be in traffic as reasonably required in accordance with the requirements of this Agreement.
5th October 2015	Five Project Arcturus EMUs diagrammed to be in traffic on each Weekday delivering the Passenger Services and on any day that is not a Weekday diagrammed to be in traffic as reasonably required in accordance with the requirements of this Agreement.

It is agreed that in complying with its obligations under paragraph 12.1.3 to deploy the NW Electrics EMUs and its obligations under this paragraph 14.1.2 the Franchisee shall be permitted to diagram and deploy NW Electrics EMUs and Project Arcturus EMUs as a single integrated fleet.

14.2 Project Arcturus EMU modification and refurbishment and passenger counting

14.2.1 The Franchisee shall undertake modification of the Project Arcturus EMUs before their introduction into service which shall entail the Franchisee procuring a programme for alterations to the door controls of the Project Arcturus EMUs to enable the conductor to control the opening and closing of doors at the rear compartment and at intermediate doors. In addition the Project Arcturus EMUs shall be refurbished to the same specification as the NW Electrics EMUs.

³⁹ Date of new insertion 13/05/2015

⁴⁰ Date of new insertion 13/05/2015

14.2.2 *The Secretary of State agrees that the Franchisee shall not be required to install passenger counting equipment on the Project Arcturus EMUs or the rolling stock hired pursuant to the DRS Agreement and the Franchisee shall not (in relation to the Project Arcturus EMUs and the rolling stock hired pursuant to the DRS Agreement), be in breach or contravention of any obligations in paragraphs 1.2 or 1.7 of Schedule 1.5 (Information about Passengers) of this Agreement.*

14.3 *Training*

14.3.1 ⁴¹

14.3.2 ⁴²

14.3.3 ⁴³

14.4 *Class 156 Daily Hire and DRS Agreement*

14.4.1 *The Franchisee shall on or before the date of the Arcturus Deed of Amendment enter into:*

- (a) the DRS Agreement;*
- (b) the Class 156 Daily Hire Agreement; and*
- (c) the Tripartite Hire Agreement; and*

14.4.2 *The Franchisee agrees and undertakes to:-*

- (a) observe and comply with all the conditions and obligations on its part contained in each of the DRS Agreement, the Class 156 Daily Hire Agreement and the Tripartite Hire Agreement;*
- (b) not vary, agree to vary, waive performance of, terminate or in any other way deal with or change the terms of either of any of the DRS Agreement, the Class 156 Daily Hire Agreement and the Tripartite Hire Agreement without the prior consent of the Secretary of State;*
- (c) to enter into replacements for the Class 156 Daily Hire Agreement on materially the same commercial terms with a successor operator who becomes the franchisee of all or part of the services provided by the TPE*

⁴¹ Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁴² Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁴³ Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

Franchisee except to the extent that the Secretary of State otherwise directs; and

- (d) if it enters into any replacement for the Class 156 Daily Hire Agreement pursuant to paragraph (c) above to enter into replacements for the Tripartite Hire Agreement on materially the same commercial terms with a successor operator who becomes the franchisee of all or part of the services provided by the TPE Franchisee and Porterbrook.*

14.5 Provision of Class 156 unit for training purposes

The Franchisee shall make available one Class 156 Unit to the TPE Franchisee for traction conversion training on every day between 5th March 2015 and 14th May 2015 inclusive.

14.6 Staff Deployment

The Franchisee shall:

- 14.6.1 deploy six additional platform staff to assist passengers in changing trains at Preston station with effect from the date upon which the Timetable is altered in September 2015; and*
- 14.6.2 deploy six additional revenue protection staff primarily on locomotive hauled trains provided pursuant to the DRS Agreement with effect from the date upon which the Timetable is altered in May 2015*

14.7 PPM and NPS

14.7.1

- (a) If the Public Performance Measure measured as a moving annual average for each Reporting Period is less than 88.2% and the Franchisee would consequently be in breach of paragraph 1.1 of Part 2 to Schedule 1.6 of the Franchise Agreement (Committed Obligations) the Secretary of State shall consider the extent to which this is a result of the impacts of the arrangements contemplated by this paragraph 14. If the Secretary of State determines that but for such impacts the Public Performance Measure measured as a moving annual average for a relevant Reporting Period would be equal to or greater than 88.2% then the Franchisee shall be deemed not to be in breach or contravention of this Agreement.*
- (b) If the Public Performance Measure measured as a moving annual average for each Reporting Period is less than 92.3% in considering whether the Franchisee has complied with its reasonable endeavours obligation pursuant to paragraph 1.1 of Part 2 to Schedule 1.6 of the Franchise Agreement (Committed Obligations) the Secretary of State shall take reasonable and proper account of the extent to which this was a result of the arrangements contemplated by this paragraph 14.*

14.7.2 *If customer satisfaction levels measured by the National Passengers Survey are less than the relevant percentages specified in paragraph 2 of Part 2 to Schedule 1.6 of the Franchise Agreement (Committed Obligations) in considering whether the Franchisee has complied with its reasonable endeavours obligation pursuant to such paragraph the Secretary of State shall take reasonable and proper account of the extent to which the failure to achieve the relevant percentage was a result of the impacts of the amendments to the Franchise Agreement made by the Arcturus Deed of Amendment.*

⁴⁴15. Project Arcturus Disruptive Events

15.1 *The Secretary of State and the Franchisee acknowledge and agree that:*

the arrangements contemplated by paragraph 14 assume that:

(i) Network Rail will undertake a programme of improvement works at Allerton Depot so that Allerton Depot is reasonably able to deliver the Allerton Maintenance Outputs (the “Allerton Depot Programme Delivery Assumption”); and

(A) ⁴⁵

(b) if Network Rail has not completed its programme of improvement works to allow the Allerton Depot Programme Delivery Assumption to be met, reasonable and appropriate steps should be taken by the Franchisee to mitigate the impact of the Allerton Maintenance Outputs not being available;

(c) if any of the Trained Staff Assumptions are not correct, reasonable and appropriate steps should be taken by the Franchisee to mitigate the impact of the assumed numbers of trained drivers and/or conductors not being available; and

(d) where the Allerton Depot Programme Delivery Assumption is not met, paragraphs 15.4 and 15.5 shall apply.

15.2 *With effect from the Arcturus Start Date, the Franchisee shall regularly review the Allerton Depot Programme Delivery Assumption and the Trained Staff Assumptions and shall consider whether such assumptions will be met. If at any point after the Arcturus Start Date the Franchisee does not remain reasonably confident that the Allerton Depot Programme Delivery Assumption and/or the Trained Staff Assumptions will be met:*

(a) the Franchisee shall notify the Secretary of State;

⁴⁴ Date of new insertion 13/05/2015

⁴⁵ Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

- (b) *as soon as reasonably practicable after the date of the notification referred to in paragraph (a), the Franchisee and the Secretary of State shall meet and (each acting reasonably) shall discuss how to best address the Franchisee's concerns relating to the Allerton Depot Programme Delivery Assumption and/or the Trained Staff Assumption (as the case may be) not being met; and*
- (c) *the Franchisee and the Secretary of State may agree or (if the Secretary of State and the Franchisee are unable to agree) the Secretary of State may reasonably require that the Franchisee shall prepare and deliver to the Secretary of State a review setting out:*
- (i) *whether there are any steps which may be taken by the Franchisee to increase (to a reasonable level) its confidence that the Allerton Depot Programme Delivery Assumption and/or the Trained Staff Assumptions (as the case may be) will be met;*
 - (ii) *an assessment of the relevant implications (including financial implications) of the steps identified in paragraph (i);*
 - (iii) *(where it is reasonably able to provide the same) its forecast for when Network Rail is likely to complete the relevant works so that the Allerton Depot Programme Delivery Assumption is likely to be met;*
 - (iv) *(where it is reasonably able to provide the same) its forecast for if and when the Trained Staff Assumptions are likely to be met;*
 - (v) *any material concerns or conditions associated with the forecasts provided pursuant to paragraphs (iii) and (iv); and*
 - (vi) *(where it does not remain reasonably confident that Network Rail will complete the relevant works so that the Allerton Depot Programme Delivery Assumption will be met) the steps which the Secretary of State may reasonably be expected to take to facilitate the Franchisee in securing alternative depot facilities,*

and in connection with such review the Franchisee shall also:

- (A) *provide such additional information as the Secretary of State may reasonably request in relation to the contents of each such review; and*
- (B) *(if required by the Secretary of State) meet with him to discuss the contents of each such review, either as part of a scheduled franchise management meeting or at a specifically arranged meeting.*

15.3 *If the Franchisee does not remain reasonably confident that the Allerton Depot Programme Delivery Assumption and/or the Trained Staff Assumptions will be met and has submitted a review to the Secretary of State in accordance with paragraph 15.2:*

- (a) *the Secretary of State and the Franchisee shall use reasonable endeavours to agree within two weeks of the date of submission of such review by the Franchisee (or by such other date as the parties may agree) an Assumptions Action Programme (as more particularly described in paragraph (b)). If the parties fail to agree an Assumptions Action Programme within two weeks or such other date as may be agreed by the parties the Secretary of State shall have the right to reasonably determine the Assumptions Action Programme;*
- (b) *the “Assumptions Action Programme” shall be a programme of actions intended to mitigate the impacts of: (i) Network Rail not delivering the Allerton Depot Programme Delivery Assumption; and/or (ii) the Trained Staff Assumptions no longer being correct (as the case may be); and*
- (c) *following agreement of the Assumptions Action Programme or it being reasonably determined by the Secretary of State:*
 - (i) *the Franchisee shall use all reasonable endeavours to implement the Assumptions Action Programme in accordance with its terms (other than those parts of the Assumptions Action Programme which relate to the Secretary of State, as contemplated by paragraph (ii) below); and*
 - (ii) *(where the Assumptions Action Programme includes steps which the Secretary of State intends to take to facilitate the Franchisee in securing alternative depot facilities) the Secretary of State shall use all reasonable endeavours to implement those parts of the Assumptions Action Programme which relate to him in accordance with its terms.*

15.4 *If the Franchisee is required to implement an Assumptions Action Programme as a consequence of the Allerton Depot Programme Delivery Assumption not being met, this shall constitute a Qualifying Change notwithstanding that the Threshold Amount may not be met. In accordance with the Change mechanism set out in Schedule 9 (Changes) in determining the Revised Inputs for such Qualifying Change full account shall be taken of any cost savings which may accrue to the Franchisee so that it is not overcompensated in consequence.*

15.5 *If the Franchisee is required to implement an Assumptions Action Programme as a consequence of the Allerton Depot Programme Delivery Assumption not being met and such requirement has been caused by the Franchisee not acting in accordance with its obligations pursuant to clause 5.1 of this Agreement, the Secretary of State shall have the right to require that:*

- (a) *where the Franchisee is wholly and exclusively responsible for the Allerton Depot Programme Delivery Assumption not being met, there is no Change; or*
- (b) *where the Franchisee is partly responsible for the Allerton Depot Programme Delivery Assumption not being met or it has not acted in accordance with its obligations pursuant to clause 5.1 of this Agreement the impacts of relevant actions or inactions of the Franchisee shall not be taken into account in determining the*

Revised Inputs for such Qualifying Change to the extent that to do so would be to compensate the Franchisee in relation to adverse impacts that it was responsible for.

15.6

- (a) *Where the Allerton Depot Programme Delivery Assumption is not met in circumstances which are beyond the reasonable control of the Franchisee, it shall not be required to comply with its obligations under paragraph 14.1.2 of Part 2 of Schedule 1.6 (Committed Obligations) (and the Franchisee shall not be in breach or contravention of this Agreement if it does not comply with such obligations in such circumstances) to the extent that such circumstances prevent it from doing so.***
- (b) *Where any Trained Staff Assumption is incorrect in circumstances where, for reasons arising after Arcturus Start Date that are beyond the reasonable control of the Franchisee, it has not been able to make sufficient drivers or conductors available to be trained, it shall not be required to comply with its obligations under paragraph 14.1.2 or 14.3.1 of Part 2 of Schedule 1.6 (Committed Obligations) (and the Franchisee shall not be in breach or contravention of this Agreement if it does not comply with such obligations in such circumstances) to the extent that such circumstances prevent it from doing so.***

Conformed

Part 3 - Additional Revenue Initiative

This Part 3 of Schedule 1.6 contains the Additional Revenue Initiative which the Secretary of State has determined should be implemented by the Franchisee during the Franchise Term and the terms applicable to that Additional Revenue Initiative.

1 TERMS APPLICABLE TO THE ADDITIONAL REVENUE INITIATIVE

1.1 In relation to the Additional Revenue Initiative, following the date of this Agreement:

1.1.1 The Secretary of State and each Executive shall (acting reasonably in so doing), where reasonably requested by the Franchisee in relation to the Additional Revenue Incentive, seek to obtain those necessary consents and approvals which are within their control and which may be required for the Franchisee to implement the Additional Revenue Initiative. The Franchisee shall use reasonable endeavours to assist the Secretary of State and each Executive in obtaining such consents and approvals.

1.1.2 The Franchisee shall (acting reasonably in so doing) seek to obtain such other necessary consents and approvals which may be required in addition to those required under paragraph 1.1.1 and the Secretary of State and any relevant Executive shall use reasonable endeavours to assist the Franchisee in obtaining such consents and approvals to the extent appropriate having regard to their respective functions and duties.

Nothing in this paragraph 1.1 shall apply to the Secretary of State or any Executive in respect of any matter which may be referred to them in a capacity other than as a party under this Agreement.

1.2 If, for any reason outside of its control, the Franchisee is unable to implement the Additional Revenue Initiative:

1.2.1 the Franchisee shall promptly advise the Secretary of State of the reason(s) for it not being able to implement the Additional Revenue Initiative;

1.2.2 the Franchisee shall not be obliged to implement the Additional Revenue Initiative;

1.2.3 the Franchisee shall not be in contravention or breach of this Agreement as a consequence of being unable to implement the Additional Revenue Initiative; and

1.2.4 any provisions in this Agreement which specifically relate to the intention to implement the Additional Revenue Initiative (including in relation to net benefit, cost and revenue implications of implementing the Additional Revenue Initiative) shall be reversed and a Qualifying Change shall be deemed to have occurred notwithstanding that the Threshold Amount may not be met.

2 INTRODUCTION OF EVENING PEAK RESTRICTIONS

2.1 This Additional Revenue Initiative relates to the introduction by the Franchisee of restrictions on ticket validity during the Evening Peak by no later than 30 September 2014 (such date being subject to the requirements of paragraph 1), provided that the Franchisee may limit the introduction of such restrictions to journeys from major population centres if the Franchisee reasonably considers such limitation:

2.1.1 is feasible; and

2.1.2 will have a minimal impact on the overall net benefit of implementing this Additional Revenue Initiative.

APPENDIX 3 TO SCHEDULE 1.6 - PROGRAMME OF COMMITTED OBLIGATIONS

- 1 The Franchisee shall ensure that the Committed Obligations specified in part 2 of Schedule 1.6 (Committed Obligations) are fulfilled on or before the dates specified in the right hand column of the table below in respect of such obligation.

Committed Obligation reference	Due Date
Paragraph 1 (<i>Public Performance Measure</i>) of part 2 of Schedule 1.6 (<i>Committed Obligations</i>).	As specified in paragraph 1.1 and paragraph 1.2.
Paragraph 5 (<i>Performance Initiatives</i>) of part 2 of Schedule 1.6 (<i>Committed Obligations</i>).	As specified in paragraph 5.
Paragraph 6 (<i>Bicycle Users Forum</i>) of part 2 of Schedule 1.6 (<i>Committed Obligations</i>).	As specified in paragraph 6.
Paragraph 7 (<i>Community Rail Partnerships</i>) of part 2 of Schedule 1.6 (<i>Committed Obligations</i>).	Ongoing from Franchise Commencement Date.
Paragraph 8 (<i>Marketing</i>) of part 2 of Schedule 1.6 (<i>Committed Obligations</i>).	In respect of paragraph: 8.1, as specified in that paragraph; 8.3, ongoing from Franchise Commencement Date; 8.4, on or before 1 May 2014; 8.5, as specified in that paragraph; 8.7, on or before 1 April 2014; 8.8, as specified in that paragraph; 8.9, on or before 1 April 2014; 8.10, as specified in that paragraph; 8.11, before the last day of the Franchise Term; 8.12 before the last day of the Franchise Term.
Paragraph 9 (<i>Sectorisation</i>) or part 2 of Schedule 1.6 (<i>Committed Obligations</i>).	As specified in paragraph 9.
Paragraph 10 (<i>Environmental Initiatives</i>) or part 2 of Schedule 1.6 (<i>Committed Obligations</i>).	10.1, as specified in that paragraph; 10.2 before the last day of the Franchise Term; 10.3, ongoing from Franchise Commencement Date.
Paragraph 11 (<i>Delay Repay</i>) or part 2 of Schedule 1.6 (<i>Committed Obligations</i>).	11.1 as specified in that paragraph; 11.3 as specified in that paragraph.

⁴⁶Appendix 4 to Schedule 1.6 –NW Electrics EMU Cascade

For the purposes of paragraphs 12.1 and 12.9.1 of Part 2 to Schedule 1.6, the dates that each of the NW Electrics EMUs will be made available to the Franchisee are:

Unit number	Date of cascade
1	01/05/2014
2	01/08/2014
3	01/09/2014
4	01/10/2014
5	01/02/2015
6	01/02/2015
7	01/03/2015
8	01/03/2015
9	01/04/2015
10	01/04/2015
11	01/07/2015
12	01/07/2015
13	01/07/2015
14	01/07/2015

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⁴⁶ Date of new insertion 17/06/2015

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⁴⁷Appendix 5 to Schedule 1.6 – Project Arcturus EMU Cascade

The dates that the Project Arcturus EMUs will be made available to the Franchisee are:

Units	Date of cascade
Two Units available	1 st April 2015
A further four Units available (making six in total available from this date)	1 st July 2015

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⁴⁷ Date of new insertion 13/05/2015

SCHEDULE 1.7 – FRANCHISE SERVICES

1 FRANCHISE SERVICES

The Franchisee may at all times during the Franchise Term provide and operate the Franchise Services specified in this Schedule 1.7 and the Passenger Services.

2 RESTRICTIONS RELATING TO FRANCHISE SERVICES

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

2.2 Such consent shall not be unreasonably withheld where the other business or activity proposed to be carried on by the Franchisee could not reasonably be so carried on by an Affiliate of the Franchisee unless, in the Secretary of State's reasonable opinion, such additional business or activity:

2.2.1 might prejudice the continuity of the provision of the Franchise Services by a Successor Operator at the end of the Franchise Term; or

2.2.2 might result in additional liabilities and obligations being assumed by such a Successor Operator.

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

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

2.4.1 provide or operate any railway passenger services other than the Passenger Services or Charter Services;

2.4.2 operate any stations or light maintenance depots other than the Stations and Depots; or

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

(a) Network Rail; or

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

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

3 STATION SERVICES

3.1 The Station Services shall comprise:

3.1.1 the provision of any services to persons at the Stations listed in paragraphs 4.1 and 4.2 of Appendix 2 (List of Conditions Precedent Documents) to the Conditions Precedent Agreement or to Train Operators whose trains call at such Stations, provided that such services:

- (a) are made available only or principally to passengers alighting from or joining trains calling at such Stations and to such Train Operators;
- (b) 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;
- (c) 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
- (d) may include car parking; and

3.1.2 the provision of access to any person under an Access Agreement at the Stations listed in paragraphs 4.1 and 4.2 of Appendix 2 to the Conditions Precedent Agreement.

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

4 LIGHT MAINTENANCE SERVICES

4.1 Light Maintenance Services shall comprise:

- 4.1.1 the provision of access to any other person under an Access Agreement;
- 4.1.2 the carrying out of inspections of rolling stock vehicles;
- 4.1.3 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;
- 4.1.4 replacement of failed components and consumables on rolling stock vehicles;
- 4.1.5 the preparation of rolling stock vehicles for service;
- 4.1.6 the stabling or other temporary holding of rolling stock vehicles;
- 4.1.7 the refuelling of rolling stock vehicles;
- 4.1.8 the replenishment of water tanks; and
- 4.1.9 the cleaning of the exterior or the interior of rolling stock vehicles,

in each case for itself and/or other Train Operators, at the Stations and at the Depots listed in paragraphs 4.1 to 4.3 inclusive of Appendix 2 (List of Conditions Precedent Documents) to the Conditions Precedent Agreement.

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

5 ANCILLARY SERVICES

5.1 The Franchisee may carry out the following Ancillary Services:

- 5.1.1 the selling, lending or hiring of any goods or rights and the provision of any services (whether for a charge or not) on any train used in the provision of the Passenger Services where such goods or services are sold or provided principally for consumption or use on the relevant train, including the sale of any Fares, meals, light refreshments, newspapers, magazines, books, entertainment materials or phone cards;

- 5.1.2 the provision of any service at any station which, if provided on a train used in the provision of the Passenger Services, would fall within paragraph 5.1.1 or which, if provided at a Station, would fall within paragraph 3 and which, in each case, is made available only or principally to persons at such Stations who either are about to travel or have recently travelled on a train used in the provision of the Passenger Services;
- 5.1.3 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);
- 5.1.4 the lending, seconding, hiring or contracting out during any Reporting Period to another person or persons (whether for a charge or not) of:
- (a) up to one per cent. (1%) of the number of Franchise Employees as at the Franchise Commencement Date, for over ninety per cent (90%) of their normal working hours during such Reporting Period (including on a full-time basis); and
 - (b) up to one per cent. (1%) of any other Franchise Employees as at the Franchise Commencement Date,

provided that this paragraph shall not apply to any employee lent, seconded, hired or contracted out under any of paragraphs 5.1.1 to 5.1.3 inclusive and 5.1.5 to 5.1.16 inclusive, or engaged in any other activity which is permitted under this Schedule 1.7;

- 5.1.5 any heavy maintenance of rolling stock vehicles which does not fall within the Light Maintenance Services on behalf of any other person at the following Depots, 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 Franchise Commencement Date:
- (a) Heaton;
 - (b) Neville Hill;
 - (c) Newton Heath; and
 - (d) Allerton;
- 5.1.6 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 signature of this 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;
- 5.1.7 the selling, in conjunction with any Fare, of any other rights which entitle the purchaser thereof to:
- (a) travel on any other train or light rail service;
 - (b) travel on any aircraft;
 - (c) travel on any shipping or ferry service;
 - (d) travel on any bus; or
 - (e) attend any event or attraction or enter any location;

- 5.1.8 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 such operators' trains;
- 5.1.9 the provision of telephone information relating to railway passenger services within Great Britain to passengers;
- 5.1.10 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;
- 5.1.11 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;
- 5.1.12 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);
- 5.1.13 such other activity or business as may be reasonably necessary for the purpose of providing any other Franchise Services or complying with this Agreement, provided that it could not reasonably be carried out by or through an Affiliate of the Franchisee;
- 5.1.14 the subleasing to any other person of the following property which is not comprised in a Station or Depot:
- (a) Aintree House, York Place, Leeds;
 - (b) Northern House, Rougier Street, York;
 - (c) Square One (Ground Floor), 4 Travis Street, Manchester;
 - (d) Arundel Court, Arundel Street, Sheffield;
 - (e) Europa House, Ferensway, Hull; and
 - (f) Second and part Third Floor, 13-14 South Parade, Leeds;
- 5.1.15 the provision or operation of Charter Services, subject to the Train Mileage of such Charter Services not exceeding in any Reporting Period two per cent. (2%) of the scheduled Train Mileage of Passenger Services provided by the Franchisee in such Reporting Period;
- 5.1.16 the provision of consultancy services reasonably ancillary to the provision of the other Franchise Services; and
- 5.1.17 any services or activity not falling within paragraphs 3, 4 or 5.1.1 to 5.1.16, subject to the gross value of any such services or activity (excluding any attribution of costs) not exceeding ⁴⁸ per annum each and in aggregate no more than ⁴⁹ per annum in each Franchisee Year,

⁴⁸ Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁴⁹ Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

provided that in the second and each subsequent Franchisee Year, these amounts will be adjusted in accordance with the following formula:

Adjusted Amount = Original Amount x RPI

where RPI is the quotient of the Retail Prices Index for the March which immediately precedes the commencement of the relevant Franchisee Year divided by the Retail Prices Index for March 2004.

6 AFFILIATES OF THE FRANCHISEE

Nothing in this Schedule 1.7 shall restrict any Affiliate of the Franchisee from having an interest in or participating in any business or activity.

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SCHEDULE 1.8 - MAJOR PROJECTS

1 IMPLEMENTATION OF MAJOR PROJECTS

- 1.1 The Franchisee shall co-operate with Network Rail, the Secretary of State and any other relevant party in connection with each Major Project.
- 1.2 The Franchisee shall co-operate with Network Rail in Network Rail's endeavours to obtain all necessary consents required for the carrying out of each Major Project, including any approval of any major project under Part D of the Network Code and any network change under Part G of the Network Code, in each case relating to the relevant Major Project.
- 1.3 The Franchisee's obligations under paragraphs 1.1 and 1.2 shall not require it to take or omit to take, nor excuse it from taking or omitting to take, any action that would be prejudicial to:
- 1.3.1 proper performance of its obligations under this Agreement; or
 - 1.3.2 the pursuit of reasonable profit from the proper performance of its obligations under this Agreement.

2 NOTIFICATION TO THE SECRETARY OF STATE OF A NETWORK CHANGE PROPOSAL

- 2.1 The Franchisee shall immediately notify the Secretary of State upon receiving any notification from Network Rail (including pursuant to Part D or Part G of the Network Code) of any proposal to implement a Major Project.
- 2.2 If and to the extent requested by the Secretary of State, the Franchisee shall:
- 2.2.1 consult the Secretary of State in advance in respect of any response or proposal which the Franchisee is required or otherwise proposes to make to Network Rail relating to that Major Project; and
 - 2.2.2 provide to the Secretary of State copies of any notices, correspondence or other information exchanged between Network Rail and the Franchisee in respect of that Major Project.

SCHEDULE 2 - ASSETS, LEASES, THIRD PARTIES, OTHER FRANCHISE OPERATIONS AND SCHEMES

- Schedule 2.1 Asset Vesting and Transfer
- Schedule 2.2 Security of Access Assets, Rolling Stock Leases, Station and Depot Leases
- Schedule 2.3 Third Party Delivery of Passenger Services and Other Franchisees
- Schedule 2.4 Other Franchise Operations
- Schedule 2.5 Transport, Travel and Other Schemes
- Appendix: 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:
- 1.1.1 enter into any new Property Lease; or
 - 1.1.2 effect any amendment to any Property Lease, except to the extent that the Franchisee is required to do so by virtue of any station or depot access conditions to which it is a party.
- 1.2 In respect of any new Property Leases with Network Rail, the Franchisee shall enter into such Property Leases:
- 1.2.1 with the intent that Section 31 of the Act shall apply to such leases; and
 - 1.2.2 substantially in the agreed terms marked SL and DL (as appropriate).
- 1.3 In respect of any assignment or amendment of any Property Lease to which Section 31 of the Act applied on its grant, each of the Secretary of State and the Franchisee acknowledge that it is their intention that Section 31 of the Act shall continue to apply to such assigned or amended lease.

SCHEDULE 2.2 – SECURITY OF ACCESS ASSETS, 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 this Agreement, for which the provisions of paragraph 1 of Schedule 15.4 (Provisions Applying on and after Termination) apply:

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

1.1.2 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 a Property Lease,

novate its interest under any relevant Access Agreement (and any related Collateral Agreement) to the Secretary of State or as it 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:

1.3.1 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

1.3.2 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 1.3.1,

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 it may direct, subject, to the extent applicable, to the consent of the ORR. The provisions of paragraph 1.3 shall apply to any such novation.

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

2 ROLLING STOCK RELATED CONTRACTS AND INSURANCE ARRANGEMENTS

2.1 The Franchisee shall not:

2.1.1 execute any Rolling Stock Related Contract;

2.1.2 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

2.1.3 amend or waive the terms of any Rolling Stock Related Contract,

without, in each case, the prior written consent of the Secretary of State (not to be unreasonably withheld) and shall supply a copy of all draft and, immediately following the execution, all executed Rolling Stock Related Contracts (including any agreement amending any Rolling Stock Related Contract) to the Secretary of State.

2.1A The Franchisee shall also (and not related to any approval or consent rights that the Secretary of State may have under paragraph 2.1 or otherwise), provide such other information or documentation relating to such Rolling Stock Related Contract and/or the relevant rolling stock as the Secretary of State may reasonably request (which may include offer letters (original and final), the terms proposed by any person providing finance in relation to the relevant rolling stock (including cash flows), any agreement (in whatever form) to which the Franchisee (or an Affiliate of the Franchisee) is a party and which relates to the relevant rolling stock, information relating to capital allowances, details of any changes in the terms (including rentals) on which the relevant rolling stock is proposed to be leased compared to the terms on which such rolling stock was previously leased, a detailed justification of the Franchisee's proposed maintenance strategy for the relevant rolling stock and/or the Franchisee's analysis of the whole life costs of the relevant rolling stock) to the Secretary of State PROVIDED THAT where the information or documentation so requested by the Secretary of State is not held by the Franchisee, the Franchisee shall not be required to prepare or produce such information or documentation itself but shall use reasonable endeavours to obtain the relevant information or documentation from a third party (including any person from whom the Franchisee leases rolling stock).

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

2.2.1 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 Franchise Commencement Date; or

2.2.2 enter into any new insurance arrangements after the Franchise Commencement Date which relate to rolling stock vehicles used or to be used by it in the provision of the Passenger Services ("**New Insurance Arrangements**").

2.3 Not used.

2.4 The Franchisee shall, in addition, if it enters into any new insurance arrangements, use all reasonable endeavours to ensure that the relevant insurers waive their rights of subrogation against any Train Operator which may have equivalent insurance arrangements providing for a similar waiver of rights of subrogation against the Franchisee, whether on a reciprocal basis or otherwise.

2.5 Without limiting paragraph 2.1, where the rolling stock to be leased by the Franchisee under any Rolling Stock Lease is Cascaded Rolling Stock the Secretary of State may:

2.5.1 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

2.5.2 where the Secretary of State requires such a provision to be included in the relevant Rolling Stock Lease, if a Relevant Delay occurs, require the Franchisee to make the Cascaded Rolling Stock available for use by the Prior Train Operator during such period as the Secretary of State may require.

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

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

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

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

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

2.6

2.6.1 Where the Secretary of State exercises his right pursuant to paragraph 2.5.2 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.

2.6.2 Where there is a Change pursuant to paragraph 2.6.1 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 2.6.1 shall not apply.

2.6.3 Where there is a Change pursuant to paragraphs 2.6.1 or 2.6.2 and any such Change is a Qualifying Change there shall be a further Change (which shall be a Qualifying Change irrespective of whether such Change meets the requirements of the definition of Qualifying Change) on the date that the last Cascaded Rolling Stock ceases to be retained by the Prior Train Operator.

2.7

2.7.1 Where the Secretary of State exercises his right pursuant to paragraph 2.5.2 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.

2.7.2 The Franchisee shall notify the Secretary of State as soon as reasonably practicable if it becomes aware of any material risk that a Relevant Delay will occur. If a Relevant Delay does occur the Franchisee shall use all reasonable endeavours to mitigate the impact on the delivery of the Franchise Services of the unavailability of the Cascaded Rolling Stock at the expected time including by identifying and proposing value for money alternative sources of replacement rolling stock.

- 2.7.3 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:
- (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 Benchmarks; and
 - (c) the likely impact of options within it for existing and future passenger journeys and journey opportunities.

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

3 ASSIGNMENT OF PROPERTY LEASES DURING FRANCHISE TERM

- 3.1 The Franchisee shall (other than on termination of this Agreement, for which the provisions of paragraph 4.6 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 it may direct, subject where applicable to the agreement of any other party to such Property Lease or the ORR.
- 3.2 Such assignment shall be on such terms as the Secretary of State may reasonably require, including:
- 3.2.1 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
 - 3.2.2 that neither the Secretary of State nor his nominee shall be obliged, in connection with such assignment, to agree to assume responsibility for any unperformed obligation, liability or consequences of a breach referred to in paragraph 3.2.1, and the Franchisee shall indemnify the Secretary of State or his nominee, as the case may be, on an after-tax basis against any costs, losses, liabilities or expenses suffered or incurred in relation thereto.
- 3.3 The Franchisee shall, on the occurrence of any of the circumstances specified in paragraph 3.1 in relation to any other Train Operator who is a party to a Property Lease to which the Franchisee is also party, agree to the assignment of such Train Operator's interest under the relevant Property Lease to the Secretary of State or as it may direct, subject, where applicable, to the consent of Network Rail. The provisions of paragraph 3.2 shall apply to any such assignment.
- 3.4 The Franchisee shall notify the Secretary of State on becoming aware of any circumstances which might lead to the Secretary of State being able to require the Franchisee to assign its interest or agree to the assignment of another Train Operator's interest under this paragraph 3.

4 STATION AND DEPOT LEASES

4.1 The Franchisee shall at all times enforce its rights under each Station Lease and Depot Lease.

4.2 The Franchisee shall not:

4.2.1 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;

4.2.2 assign all or part of its interest under any Station Lease or Depot Lease; or

4.2.3 sublet the whole or substantially the whole of the property comprised in any Station Lease or Depot Lease,

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

5 STATION SUBLEASES

5.1 Unless the Secretary of State agrees otherwise, the Franchisee shall not sublet to any of its Affiliates any part of the property comprised in any Property Lease except on terms that any such subletting:

5.1.1 (other than any subletting to an Affiliate which is a Train Operator) is terminable without compensation immediately upon the termination of this Agreement; and

5.1.2 is excluded from the provisions of Part II of the Landlord and Tenant Act 1954 and the Tenancy of Shops (Scotland) Act 1949.

5.2 If so requested by the Secretary of State, the Franchisee shall:

5.2.1 extend each Station Sublease on the same terms for such period as the Secretary of State may request (including a period equivalent to the franchise term of the Train Operator who is the lessee under such Station Sublease); and

5.2.2 if such Station Sublease terminates (which for the purposes of this paragraph 5.2.2 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.

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

SCHEDULE 2.3 – THIRD PARTY DELIVERY OF PASSENGER SERVICES AND OTHER FRANCHISEES

1 SUBCONTRACTING ANY PASSENGER SERVICES

- 1.1 Subject to paragraph 1.2, the Franchisee may not subcontract or delegate the provision of the Passenger Services without the prior written consent of the Secretary of State.
- 1.2 The Franchisee may subcontract or delegate the provision of the Passenger Services, provided that:
- 1.2.1 the Secretary of State receives prior written notice of any such subcontracting or delegation;
 - 1.2.2 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;
 - 1.2.3 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;
 - 1.2.4 the Train Mileage of the Passenger Services so delegated or subcontracted does not exceed 5 per cent. of the aggregate scheduled Train Mileage of the Franchisee in any Reporting Period; and
 - 1.2.5 the Franchisee continues to perform its obligations under Schedule 1.1 (Service Development) in respect of any subcontracted or delegated services.
- 1.3 Any such subcontracting or delegation shall not relieve the Franchisee from any of its obligations under this Agreement, including its obligations under this paragraph 1 and Schedule 14 (Preservation of Assets).

2 OTHER FRANCHISEES

- 2.1 If the franchise agreement of another franchisee terminates or a railway administration order is made in respect of another franchisee, the Franchisee shall co-operate with any reasonable request of the Secretary of State to ensure:
- 2.1.1 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
 - 2.1.2 that the benefit of any arrangements between the Franchisee and such other franchisee which were designated as a Key Contract under such franchise agreement immediately prior to its termination or to a railway administration order being made will continue to be provided to any successor Train Operator or to the railway administrator.
- 2.2 The benefit of any arrangements of the type referred to in paragraph 2.1.2 shall be provided on substantially the same terms as previously obtained by the relevant franchisee, subject to clause 7 and paragraph 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 was terminated or the date on which the relevant railway administration order was made which were, in the Secretary of State's reasonable opinion, to the material detriment of such franchisee's business. The benefit of such arrangements shall be provided for such period as the Secretary of State may reasonably require to allow the relevant Train Operator or railway administrator to renegotiate such arrangements or make alternative arrangements.
- 2.3 The Franchisee shall notify the Secretary of State of its intention to terminate any contract with any other Train Operator which is designated as a "Key Contract" under that Train Operator's franchise agreement and shall give that Train Operator sufficient notice to enable it to make suitable alternative

arrangements for its passengers without causing disruption to the railway passenger services provided by such Train Operator.

- 2.4 If the franchise agreement of another franchisee terminates in contemplation of the entry into or entry into effect of a new franchise agreement with the same franchisee in respect of all or a material part of the relevant railway passenger services, the Franchisee shall waive any event of default or other right it may have to terminate any agreement with such franchisee arising out of such termination, provided that the entry into or entry into effect of such new franchise agreement takes place.
- 2.5 References in this paragraph 2 to a franchisee include references to any franchise operator of that franchisee.

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SCHEDULE 2.4 – OTHER FRANCHISE OPERATIONS

1 ROLLING STOCK TESTING AND COMMISSIONING

1.1 The Franchisee shall, to the extent reasonably requested by the Secretary of State and subject to payment of any 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, Network Rail or the Secretary of State) in connection with the testing and commissioning of new rolling stock vehicles or any new equipment to be fitted to rolling stock vehicles (whether such rolling stock vehicles are new or otherwise). Such co-operation shall not unreasonably disrupt the provision and operation of the Franchise Services and may include:

1.1.1 the movement of test trains within and around depots;

1.1.2 making available suitably qualified personnel to operate test trains along the Routes and provide information on the Routes;

1.1.3 making Train Slots available for such purposes;

1.1.4 granting or procuring the grant of access to the third party and its representatives to any relevant facilities; and

1.1.5 the delivery of rolling stock vehicles to specific locations.

2 RESTRICTIONS ON CLOSURES OF RAILWAY PASSENGER SERVICES OR RAILWAY FACILITIES

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

2.1.1 cease to operate;

2.1.2 cease to secure the operation of; or

2.1.3 propose to terminate the use of,

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

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

3 RESTRICTIONS ON DE-STAFFING STATIONS

3.1 If the Franchisee proposes to take any step on or after the Franchise Commencement Date which would result in a Station:

3.1.1 ceasing to be staffed at all times of the day at which railway passenger services are scheduled to call; or

3.1.2 being staffed at times which are less than the scheduled staffing times at the Franchise Commencement Date,

it shall provide at least 8 weeks' written notice of such proposal to the Secretary of State, the relevant Executive and the relevant Passengers' Council.

3.2 The Franchisee shall have regard to the views and representations of the Secretary of State, the relevant Executive and the Passengers' Council before implementing any proposals pursuant to paragraph 3.1.

4 ROYAL TRAIN

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

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

- 4.2.1 running a "sweeper" train in front of the royal train;
- 4.2.2 having spare locomotives on standby as rescue traction; and/or
- 4.2.3 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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SCHEDULE 2.5 - TRANSPORT, TRAVEL AND OTHER SCHEMES

1 INTEGRATED TRANSPORT SCHEMES

- 1.1 The Franchisee shall participate in and comply with its obligations under the Integrated Transport Schemes listed in paragraph 1 of Appendix 1 (List of Transport, Travel and Other Schemes), including by co-operating in the implementation of any smart card technology pursuant to any such Integrated Transport Scheme.
- 1.2 As and when required by the Secretary of State, the Franchisee shall co-operate with any schemes proposed by any Executive or third party (including any Stakeholder) and which relate to the integration of any other form of transport with the Franchise Services, including by co-operating in the implementation of any smart card technology pursuant to any such Integrated Transport Scheme. If the Secretary of State reasonably considers that the Franchisee's participation in any such scheme would have no adverse financial effect on the Franchisee, the Secretary of State shall be entitled, but not obliged, to designate any such scheme as an Integrated Transport Scheme.
- 1.3 If and to the extent that the Secretary of State designates any further integrated transport scheme or proposed scheme as an Integrated Transport Scheme for the purposes of this paragraph 1, then the Franchisee shall participate in and comply with its obligations under such scheme and take such other steps as the Secretary of State may reasonably require.
- 1.4 The Secretary of State shall consult the Franchisee before designating any scheme an Integrated Transport Scheme under paragraph 1.3 and shall allow the Franchisee a reasonable opportunity to make representations to it with respect to any such designation.

2 LOCAL AUTHORITY CONCESSIONARY TRAVEL SCHEMES

2.1 The Franchisee shall:

2.1.1 subject to paragraph 2.2, participate in and comply with its obligations under:

- (a) the concessionary travel schemes set out in paragraph 2 of Appendix 1 (List of Transport, Travel and Other Schemes); and
- (b) any other concessionary travel scheme which the Franchisee is required to participate in during the Franchise Term pursuant to paragraph 2.1.2,

including by co-operating in the implementation of any smart card technology pursuant to any such concessionary travel scheme; and

2.1.2 subject to paragraph 2.3, if so requested by the Secretary of State, participate in and comply with its prospective obligations under:

- (a) any concessionary travel scheme set out in paragraph 2 of Appendix 1 to this Schedule 2.5, the terms of which have been amended since the date of signature of this Agreement; and
- (b) such other concessionary travel schemes as any relevant Local Authority may require or request it to participate in.

2.2 Subject to the terms of the relevant concessionary travel scheme, the Franchisee shall be entitled to cease to participate in any scheme referred to in paragraph 2.1.1 where, in the reasonable opinion of the Secretary of State:

2.2.1 the Franchisee's continuing participation in such scheme; and/or

2.2.2 the obligations assumed by the relevant Local Authority in connection therewith,

would fail to render the Franchisee financially no worse off, to the extent required by and in accordance with the reimbursement arrangements applying to such scheme under Part II of the Travel Concession Schemes Regulations 1986 (SI 1986/77) (the “**Regulations**”).

2.3 The Secretary of State shall not require the Franchisee to participate in any scheme referred to in paragraph 2.1.2 where the Secretary of State is reasonably satisfied that:

2.3.1 the reimbursement arrangements with respect to the Franchisee’s participation in any such scheme; and/or

2.3.2 the obligations to be assumed by such Local Authority in connection therewith,

would fail to render the Franchisee financially no worse off as a result of such participation, to the extent required by and in accordance with the reimbursement arrangements applying to such scheme under Part II of the Regulations.

2.4 The Secretary of State shall consult the Franchisee before making any request of the Franchisee to participate in any amended or new concessionary travel scheme pursuant to paragraph 2.1.2 and shall allow the Franchisee a reasonable opportunity to make representations to it with respect to any such participation.

2.5 The Franchisee shall supply to the Secretary of State, in respect of any concessionary travel schemes referred to in paragraph 2.1, such information within such period as the Secretary of State may reasonably require for the purposes of determining whether or not the Franchisee is or will be financially no worse off as a consequence of its participation in any such scheme, and/or the obligations assumed by such Local Authority in connection therewith.

2.6 If the Secretary of State and the Franchisee are unable to agree whether the Franchisee will be financially no worse off, the Secretary of State and the Franchisee may resolve such dispute in accordance with the Dispute Resolution Rules.

3 MULTI-MODAL FARES SCHEMES

3.1 The Franchisee shall:

3.1.1 subject to paragraph 3.2, participate in and comply with its obligations under:

- (a) the multi-modal fares schemes set out in paragraph 3 of Appendix 1 (List of Transport, Travel and Other Schemes); and
- (b) any other multi-modal fares scheme which the Franchisee is required to participate in during the Franchise Term pursuant to paragraph 3.1.2;

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

3.1.2 subject to paragraph 3.3, if so requested by the Secretary of State, participate in and comply with its prospective obligations under:

- (a) any multi-modal fares scheme set out in paragraph 3 of Appendix 1, the terms of which have been amended since the date of signature of this Agreement; and
- (b) such other multi-modal fares schemes as any relevant Local Authority may require or request it to participate in.

3.2 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 3.1.1 where, in the reasonable opinion of the Secretary of State:

3.2.1 the Franchisee's continuing participation in such scheme; and/or

3.2.2 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.

3.3 The Secretary of State shall not require the Franchisee to participate in any scheme referred to in paragraph 3.1.2 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 Secretary of State in connection therewith, would fail, by way of distribution of income or otherwise, to render the Franchisee financially no worse off.

3.4 In determining whether the Franchisee shall, pursuant to paragraph 3.2, continue to participate or, pursuant to paragraph 3.3, participate in any multi-modal fares scheme, the Secretary of State shall construe the term financially no worse off to mean:

3.4.1 in respect of any multi-modal fares scheme set out in paragraph 3 of Appendix 1, that the Franchisee incurs no greater financial loss than the financial loss (if any) incurred by the Franchisee at the Franchise Commencement 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;

3.4.2 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 3 of Appendix 1, that the Franchisee incurs no greater financial loss than the financial loss (if any) incurred by the Franchisee at the Franchise Commencement 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

3.4.3 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 3 of Appendix 1, 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).

3.5 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 3.1.2 and shall allow the Franchisee a reasonable opportunity to make representations to it with respect to any such participation.

3.6 The Franchisee shall supply to the Secretary of State, in respect of any multi-modal fares schemes referred to in paragraph 3.1 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.

3.7 If the Secretary of State and the Franchisee are unable to agree whether the Franchisee will be financially no worse off, the Secretary of State and the Franchisee may resolve such dispute in accordance with the Dispute Resolution Rules.

4 DISCOUNT FARE SCHEMES

4.1 The Franchisee shall participate in and comply with its obligations under the Discount Fares Schemes set out in paragraph 4 of Appendix 1 (List of Transport, Travel and Other Schemes).

4.2 If the Secretary of State:

4.2.1 effects, or proposes to effect, an amendment to a Discount Fare Scheme;

4.2.2 introduces any new Discount Fare Scheme; or

4.2.3 ceases to approve a Discount Fare Scheme,

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

4.3 The Secretary of State shall provide a reasonable opportunity to the Franchisee to make representations to it before amending, introducing or ceasing to approve a Discount Fare Scheme pursuant to paragraph 4.2.

4.4 The Franchisee shall supply to the Secretary of State, in respect of any Discount Fare Scheme referred to in paragraph 4.2, such information within such period as the Secretary of State may reasonably require for the purposes of determining the financial effect of any such amendment, intended amendment, introduction or cessation of approval.

5 INTER-OPERATOR SCHEMES

5.1 The Franchisee shall participate in and comply with its obligations under and the terms of each of the Inter-Operator Schemes set out in paragraph 5 of Appendix 1 (List of Transport, Travel and Other Schemes).

5.2 Without limiting paragraphs 5.1 and 5.3 the Franchisee agrees to be bound by Parts IV and V of Chapter 4 of the Ticketing and Settlement Agreement and shall not amend, or agree or propose to amend, the Ticketing and Settlement Agreement without the prior written consent of the Secretary of State.

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

5.4 The Franchisee shall:

5.4.1 provide reasonable notice to the Secretary of State and any affected Executive of any proposal to amend any Inter-Operator Scheme which it intends to make or of which it receives notification and which is reasonably likely materially to affect the provision of the Franchise Services; and

5.4.2 have regard to the Secretary of State's and such Executive's views in respect of any such proposal.

5.5 If an amendment is effected or proposed to be effected to an Inter-Operator Scheme which requires the consent or approval of the Secretary of State in accordance with the terms thereof, such amendment shall be treated as a Change to the extent and only to the extent that the Franchisee makes a saving as a consequence of such amendment or proposed amendment.

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

1 INTEGRATED TRANSPORT SCHEMES

None

2 LOCAL AUTHORITY CONCESSIONARY TRAVEL SCHEMES

2.1 Transport for Greater Manchester: Concessionary Fares Scheme (free, discounted price or flat fares for elderly, disabled and young persons).

2.2 Merseyside Passenger Transport Executive: Concessionary Fares Scheme (free or discounted price travel for elderly, disabled and young persons).

2.3 West Yorkshire Passenger Transport Executive: Concessionary Fares Scheme (free or discounted price travel for senior citizens, blind, disabled and students).

2.4 South Yorkshire Passenger Transport Executive: Concessionary Fares Scheme.

2.5 Tyne & Wear Passenger Transport Executive: Concessionary Fare Scheme.

2.6 Education season ticket schemes also operate with the following:

Lancashire County Council, Cheshire County Council, Derbyshire County Council, and Cumbria County Council.

2.7 Concessionary schemes with the following bodies:

Durham County Council, North Lincolnshire County Council, North East Lincolnshire County Council, Hull City Council and Derbyshire County Council.

2.8 Scholar Season Ticket schemes with the following authorities:

North Lincolnshire County Council, North East Lincolnshire County Council, West Yorkshire Passenger Transport Executive, Lincolnshire County Council, North Yorkshire County Council (one scheme on the Whitby branch line and one relating to the Esk Valley Rail Partnership), Northumberland County Council, Hull City Council.

3 MULTI-MODAL FARES SCHEMES

3.1 Transport for Greater Manchester:

3.1.1 County Cards (Greater Manchester Travelcards Limited season tickets);

3.1.2 Metrolink tickets (Metro and train);

3.1.3 Wayfarer tickets (bus, Metro and train);

3.1.4 Day Saver (Off peak Rover ticket with bus, train and tram combinations); and

3.1.5 Rail Ranger.

3.2 Merseyside Passenger Transport Executive:

TRIO, TRIO Plus, Rail Pass and Saveaway- Multi-modal season tickets and off peak Rovers.

3.3 West Yorkshire Passenger Transport Executive:

3.3.1 Metrocards/M-Cards;

- 3.3.2 Metro Dayrover tickets (daily off-peak);
 - 3.3.3 Not used; and
 - 3.3.4 Metrorover tickets (half-price travel for the unemployed).
- 3.4 Tyne & Wear Passenger Transport Executive:
Network Travel tickets .
- 3.5 South Yorkshire Passenger Transport Executive
- 3.5.1 Travelmaster (Multi modal Season tickets and off peak Rovers);
 - 3.5.2 Railmaster.
- 3.6 Derbyshire County Council
Derbyshire Wayfarer - off peak Rover
- 4 DISCOUNT FARE SCHEMES
- 4.1 ATOC Disabled Persons Railcard Scheme dated 23 July 1995 between the participants named therein;
 - 4.2 ATOC Young Persons Railcard Scheme dated 23 July 1995 between the participants named therein; and
 - 4.3 ATOC Senior Railcard Scheme dated 23 July 1995 between the participants named therein.
- 5 INTER-OPERATOR SCHEMES
- 5.1 ATOC Staff Travel Scheme dated 23 July 1995 between the participants named therein;
 - 5.2 Ticketing and Settlement Agreement;
 - 5.3 ATOC LRT Scheme dated 23 July 1995 between the participants named therein;
 - 5.4 Travelcard Agreement dated 15 October 1995 between London Regional Transport and the parties named therein;
 - 5.5 Through Ticketing (Non-Travelcard) Agreement dated 15 October 1995 between London Regional Transport and the parties named therein; and
 - 5.6 National Rail Enquiry Scheme dated 11 June 1996 between the participants named therein.

SCHEDULE 3 – NOT USED

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SCHEDULE 4 - MAINTAINING AND ENHANCING STATIONS, DEPOTS AND TRAINS

Schedule 4.1 Not Used

Schedule 4.2 Persons with Disabilities and Disability Discrimination

Appendix: Minor Works

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SCHEDULE 4.1 – NOT USED

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SCHEDULE 4.2 - PERSONS WITH DISABILITIES AND DISABILITY DISCRIMINATION

1 RELATIONSHIP WITH OTHER OBLIGATIONS RELATING TO PERSONS WITH DISABILITIES

1.1 The Franchisee acknowledges that its obligations in this Schedule 4.2 are in addition to and do not limit its obligations to comply with:

1.1.1 the EA;

1.1.2 any applicable condition(s) in any of its Licences (including in respect of persons with disabilities); and

1.1.3 any other of the requirements of this Agreement.

1.2 This Schedule 4.2 sets out:

1.2.1 specific arrangements which apply in respect of physical alterations to stations to facilitate accessibility and use by Disabled Persons; and

1.2.2 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:

2.1.1 there is limited funding available to the Secretary of State to assist franchisees and/or franchise operators with the carrying out of those works;

2.1.2 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

2.1.3 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 will:

2.2.1 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 2.1.3 by providing to the Secretary of State:

(a) information concerning the usage of Stations (including, where and to the extent reasonably practicable, usage of Stations by Disabled Persons); and

(b) advice as to the most economic way in which accessibility for Disabled Persons could, in the Franchisee's reasonable opinion, be improved at Stations;

2.2.2 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

2.2.3 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:

- (a) any such additional funding which it secures; and
- (b) the terms on which such additional funding has been granted.

2.3 In participating in any multi-modal fares scheme or Integrated Transport Schemes, the Franchisee shall, subject to paragraphs 1 and 3 of Schedule 2.5 (Transport, Travel and Other Schemes), 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:

2.4.1 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

2.4.2 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 its 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 2.1.3, together with any other available sources of funding described in paragraph 2.2.3. 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:

2.5.1 the Secretary of State shall make such adjustment to the Franchise Payments; and

2.5.2 the Franchisee shall spend such additional funds:

- (a) in order to comply with the EA Requirements referred to in paragraph 2.4.2; and
- (b) 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 station at which the Passenger Services are permitted to call under this Agreement, provided that the Franchisee:

2.6.1 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

2.6.2 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:

- 2.7.1 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:
- (a) may, but shall not necessarily include, the Minor Works described in Appendix 1 (Minor Works) of this Schedule 4.2;
 - (b) shall not include any works which Network Rail, the Franchisee or any other person has a separate obligation to carry out, except where:
 - (i) such obligation is an obligation of the Franchisee under the EA; or
 - (ii) the inclusion of such works would lead to the acceleration of the timescale for their completion and the Secretary of State gives its consent pursuant to paragraph 2.7.1(c);
 - (c) shall only include works other than those permitted by paragraphs 2.7.1(a) and (b) with the prior consent of the Secretary of State; and
 - (d) must comply with the standards provided for in the Code of Practice, unless otherwise agreed with the prior consent of the Secretary of State;
- 2.7.2 as soon as reasonably practicable (and in any event within four (4) months) after the Franchise Commencement Date and thereafter before the start of each Franchisee Year:
- (a) develop a Minor Works' Programme and consult with the Disabled Persons Transport Advisory Committee, Passengers' Council and in respect of the Executive Stations each affected Executive in relation thereto;
 - (b) in conjunction with its activities in paragraph 2.7.2(a), and, consistent with its obligations under paragraph 2.2.2, liaise with Network Rail and other Train Operators as necessary with regard to the determination and implementation of each Minor Works' Programme; and
 - (c) following the consultation and liaison described in paragraphs 2.7.2(a) and (b), obtain the Secretary of State's prior approval (such approval not to be unreasonably withheld) of each Minor Works' Programme;
- 2.7.3 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);
- 2.7.4 report progress to the Secretary of State, and in respect of the Executive Stations each affected Executive, in determining and carrying out the Minor Works' Programme no less than once every three (3) Reporting Periods; and
- 2.7.5 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 during the Franchise Period 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:

- 3.1.1 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;
- 3.1.2 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:
- (a) any defence or appeal required by the Secretary of State; and/or
 - (b) compliance with the Secretary of State's instructions in accordance with paragraph 3.1.3; and
- 3.1.3 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 3.1.2 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 proposal 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 a 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:
- 3.4.1 the difference between such an award and the figure set out in the Settlement Proposal; and
 - 3.4.2 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 3.1.2.
- 3.5 The Secretary of State shall not have any obligation to make the payments described in paragraphs 3.1.2 or 3.4 where it is determined or, if no declaration or determination by the court on this point has been sought or made, the Secretary of State, in his reasonable opinion, considers that the Franchisee has not taken such steps as it is reasonable, in all the circumstances of the case, for it to take to provide a reasonable alternative method of making services at the Station accessible to Disabled Persons.
- 4 SPECIFIC ADDITIONAL OBLIGATIONS RELATING TO PERSONS WITH DISABILITIES.
- 4.1 Not Used.
- 4.2 The Franchisee shall establish and implement procedures necessary to:
- 4.2.1 record the making of reservations for seating accommodation for and/or the provision of assistance to, persons with disabilities which are made through the Assisted Passenger Reservation System (or whatever system may replace it from time to time for the purposes of the Secretary of State's Guidance on Disabled People's Protection Policies) and where the Franchisee is responsible for making the reservation and/or delivering the seating accommodation or assistance reserved. Any helpline established by the Franchisee for the

purposes of making reservations for seating accommodation for and/or the provision of assistance to, persons with disabilities shall be provided free of charge;

4.2.2 record whether such seating accommodation and/or assistance is actually provided; and

4.2.3 provide such records to the Secretary of State on his request.

4.3 Where the Franchisee's Disabled People's Protection Policy:

4.3.1 has been established before the date of this Agreement; and

4.3.2 has not been revised and approved by the Secretary of State to take into account the Secretary of State's most recent published Guidance on Disabled People's Protection Policies as at the date of this Agreement,

the Franchisee shall within six (6) months of the date of this Agreement revise its Disabled People's Protection Policy such that it complies with that guidance, and obtain the Secretary of State's approval of the revised version.

4.4 The Franchisee shall comply with the requirements set out in Appendix 2 (Alternative Transport) of this Schedule 4.2 in respect of the provision of alternative means of transportation for persons with disabilities.

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APPENDIX 1 TO SCHEDULE 4.2 - 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 fifteen (15) millimetres) which do not comply with the Code of Practice; or
 - 2.2 less than three (3) steps,
from the entrances to booking halls or platforms to enable those facilities to have step-free access.
- 3 Providing contrasting manifestations on glazed areas where contrasting manifestations do not currently exist.
- 4 Providing additional handrails around the station where handrails do not currently exist and where the Franchisee reasonably believes they may be required by a Disabled Person.
- 5 Providing new accessible stair nosings where stair nosings do not currently exist.
- 6 Providing new tactile surfaces, including at the top and bottom of flights of steps (but excluding at platform edges) where tactile surfaces do not currently exist.
- 7 Providing additional seating that is accessible to Disabled Persons, but not replacing existing seating.
- 8 Providing induction loops for ticket office windows where induction loops do not currently exist.
- 9 Replacing non-standard fittings with fittings that are compliant with the Code of Practice in existing disabled toilets, which would include replacing non-standard fittings in respect of toilet bowls and sinks, but would not include making major changes to plumbing or to the dimensions of the toilet area.
- 10 Providing dropped kerbs at drop off/set down points or station car parks to enable access/egress thereto where dropped kerbs do not currently exist.
- 11 Marking out existing car-parking bays for use by persons with disabilities which comply with the Code of Practice, where such car parking bays do not currently comply.

APPENDIX 2 TO SCHEDULE 4.2 - ALTERNATIVE TRANSPORT

- 1 References in this Appendix to passengers are references to passengers with disabilities who are wheelchair users or otherwise severely mobility impaired.
- 2 Subject to paragraph 4, where:
 - 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 alternative transport for that passenger in accordance with paragraph 3.
- 3 The Franchisee shall provide alternative transport for the passenger referred to in paragraph 2:
 - 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 are subject to:
 - 4.1 a reasonable prior notice of the passenger's requirement for alternative transport; and
 - 4.2 the availability of suitable alternative transport (provided that the Franchisee has used all reasonable endeavours to ensure that it has arrangements in place to meet requirements for the provision of such alternative transport).

SCHEDULE 5 - FARES

- Schedule 5.1 Purpose, Structure and Construction
- Schedule 5.2 Franchisee's Obligation to Create Fares
- Schedule 5.3 Allocation of Fares to Fares Baskets
- Schedule 5.4 Regulation of Fares Basket Values
- Schedule 5.5 Regulation of Individual Fares and T&WPTF Fares
- Schedule 5.6 Exceeding the Regulated Value, Regulated Price or Regulated Child price
- Schedule 5.7 Changes to Fares and Fare Regulations
- Schedule 5.8 Fares Regulation Information and Monitoring

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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 Protected Fares and PTE Fares (other than T&WPTE Fares) are created in accordance with the Ticketing and Settlement Agreement and appropriate restrictions are placed on the Franchisee's ability to Create Fares.

Purpose of Fares Regulation

- 1.2 The purpose of Schedules 5.3 (Allocation of Fares to Fares Baskets) to 5.8 (Fares Regulation Information and Monitoring) (inclusive) is to provide for the regulation of Fares by:

1.2.1 the Secretary of State pursuant to Section 28 of the Act; and

1.2.2 the Executives pursuant to Section 13(4) of the Railways Act 2005.

- 1.3 For the purposes of regulating Fares, each Fare that is to be regulated shall be allocated in accordance with this Schedule 5 to one of the following Fares Baskets:

1.3.1 the Protected Fares Basket;

1.3.2 the TfGM Fares Basket;

1.3.3 the MPTE Fares Basket;

1.3.4 the SYPTE Fares Basket;

1.3.5 the T&WPTE Fares Basket; and

1.3.6 the WYPTE Fares Basket.

- 1.4 The regulation of Fares places a limit on the Price or Child Price of each Fare that is allocated to a Fares Basket (other than T&WPTE Fares). The limit on the Price or Child Price of each such Fare is set by reference to:

1.4.1 the overall increase of Prices and Child Prices of all such Fares in a Fares Basket; and

1.4.2 the individual increase in Price and Child Price of each such Fare in the Fares Basket.

- 1.5 Subject to the more detailed provisions of Schedules 5.4 (Regulation of Fares Basket Values) and 5.5 (Regulation of Individual Fares and T&WPTE Fares):

1.5.1 the overall increase of Prices and Child Prices of all Fares in a Fares Basket (other than T&WPTE Fares and WYPTE Fares) may not exceed RPI + k per cent. per annum in respect of each Fare Year;

1.5.2 the increase in the Price or the Child Price of any individual Fare in a Fares Basket (other than T&WPTE Fares) may not exceed RPI + k + 2 per cent. per annum in respect of each Fare Year; and

1.5.3 subject to paragraph 2 of Schedule 20 (Executive Passenger Services) T&WPTE may specify the Prices and Child Prices to be set for T&WPTE Fares and are required to compensate the Franchisee if the overall increase of Prices and Child Prices of all T&WPTE Fares in the T&WPTE Fares Basket is less than RPI + k per cent. per annum in respect of each Fare Year; and

1.5.4 the overall increase of Prices and Child Fares of all Fares in the WYPTE Fares Basket may not exceed RPI + k per cent.

1.6 The Secretary of State and the Executives may alter these limits, and other aspects of the regulation of Fares, in accordance with the more detailed provisions of Schedule 5.7 (Changes to Fares and Fares Regulation).

2 STRUCTURE OF SCHEDULE 5

2.1 Schedule 5.2 (Franchisee's Obligation to Create Fares) sets out or refers to the Franchisee's obligations to Create Fares.

2.2 Schedule 5.3 (Allocation of Fares to Fares Baskets) sets out the allocation of Fares to Fares Baskets.

2.3 Schedule 5.4 (Regulation of Fares Basket Values) sets out the limits applicable to the overall increase in Prices and Child Prices of all Fares in a Fares Basket (other than T&WPTE Fares).

2.4 Schedule 5.5 (Regulation of Individual Fares and T&WPTE Fares) sets out the limits applicable to the increase in the Price or Child Price of any individual Fare in a Fares Basket (other than T&WPTE Fares) and sets out the obligations of the Franchisee and T&WPTE in respect of T&WPTE Fares.

2.5 Schedule 5.6 (Exceeding the Regulated Value, Regulated Price or Regulated Child Price) sets out the consequences of the Franchisee exceeding:

2.5.1 the Regulated Value of any Fares Basket (other than the T&WPTE Fares Basket); or

2.5.2 the Regulated Price or Regulated Child Price of any Fare (other than a T&WPTE Fare).

2.6 Schedule 5.7 (Changes to Fares and Fares Regulation) sets out the Secretary of State's and each Executive's ability to vary the forgoing provisions.

2.7 Schedule 5.8 (Fares Regulation Information and Monitoring) sets out Fares regulation information and monitoring provisions.

3 CONSTRUCTION

References to "Fare"

3.1 For the purposes of:

3.1.1 Schedule 5.2 (Franchisee's Obligation to Create Fares), Fare shall have the wide meaning given to it in paragraph (b) of that definition; and

3.1.2 Schedules 5.3 (Allocation of Fares to Fares Baskets) to 5.8 (Fares Regulation Information and Monitoring) (inclusive), Fare shall have the narrow meaning given to it in paragraph (a) 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.

Fares Documents

3.3 In the event of an immaterial inconsistency between the Fares, the maximum Price or Child Price (as the case may be) for any Fare recorded by RSP in 2010 or the 2010 Nominal Ticket Sales:

3.3.1 described in or determined in accordance with this Schedule 5; and

3.3.2 described in the relevant Fares Document,

the relevant Fares Document shall prevail.

3.4 In the event of a material inconsistency between the Fares, the maximum Price or Child Price (as the case may be) for any Fare recorded by RSP in 2010 or the 2010 Nominal Ticket Sales:

3.4.1 described in or determined in accordance with this Schedule 5; and

3.4.2 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 (other than a T&WPTE Fare) shall be satisfied by the Franchisee Creating either:

3.5.1 a Fare which is only valid for use by persons under the age of 16; or

3.5.2 a Fare which is valid for use:

(a) by any person at a price; and

(b) only by persons under the age of sixteen (16) and at a discounted price relative to the price set pursuant to paragraph 3.5.2(a).

New Stations

3.6 Subject to paragraph 3.2, the Secretary of State may, in respect of any New Station, and each Executive may, in respect of any New Station within such Executive's Passenger Transport Area, include within the definitions of:

3.6.1 Fares Basket;

3.6.2 Protected Fare; and

3.6.3 PTE Fare,

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

SCHEDULE 5.2 - FRANCHISEE'S OBLIGATION TO CREATE FARES

1 CREATION OF PROTECTED FARES AND PTE FARES

- 1.1 The Franchisee shall ensure that each Protected Fare and each PTE Fare (other than T&WPTE Fares) has been Created, to the extent it is entitled to do so under the terms of the Ticketing and Settlement Agreement.
- 1.2 The Franchisee's obligations in relation to the Creation of T&WPTE Fares are, amongst other things, set out in paragraph 3 of Schedule 5.5 (Regulation of Individual Fares and T&WPTE Fares).

2 RESTRICTIONS ON CREATION OF FARES

- 2.1 The Franchisee shall set the Child Price for any Fare so that that Fare may be purchased by or for a person under the age of sixteen (16) for an amount which is no greater than the lowest amount that would be paid if that person were the holder of a Young Person's Railcard (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). In relation to T&WPTE Fares, T&WPTE shall not require the Franchisee to do anything which is inconsistent with this paragraph 2.2.

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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 Franchise Commencement Date the Secretary of State shall allocate each Protected Fare and each PTE Fare to the relevant Fares Basket in accordance with this Schedule 5.3.

1.2 Subject to paragraph 2:

1.2.1 every Protected Fare shall be allocated by the Secretary of State to the Protected Fares Basket;

1.2.2 every TfGM Fare shall be allocated by the Secretary of State to the TfGM Fares Basket;

1.2.3 every SYPTE Fare shall be allocated by the Secretary of State to the SYPTE Fares Basket; and

1.2.4 every WYPTE Fare shall be allocated by the Secretary of State to the WYPTE Fares Basket.

1.3 Every MPTE Fare shall be allocated by the Secretary of State to the MPTE Fares Basket.

1.4 Every T&WPTE Fare shall be allocated by the Secretary of State to the T&WPTE Fares Basket.

2 DESIGNATION OF NON-FARES BASKET FARES

2.1 On or prior to the Franchise Commencement Date, the Secretary of State shall:

2.1.1 separately rank, in descending order according to their Gross Revenue for the financial year which ended 31st March 2010:

(a) all Protected Fares;

(b) all TfGM Fares;

(c) all SYPTE Fares; and

(d) all WYPTE Fares;

2.1.2 aggregate, following such ranking:

(a) those Protected Fares with the lowest Gross Revenue, until the total of the aggregated Gross Revenue of such fares accounts for up to 5 per cent. of the aggregate Reference Revenue of all Protected Fares;

(b) those TfGM Fares with the lowest Gross Revenue, until the total of the aggregated Gross Revenue of such fares accounts for up to 5 per cent. of the aggregate Reference Revenue of all TfGM Fares;

(c) those SYPTE Fares with the lowest Gross Revenue, until the total of the aggregated Gross Revenue of such fares accounts for up to 5 per cent. of the aggregate Reference Revenue of all SYPTE Fares; and

(d) those WYPTE Fares with the lowest Gross Revenue, until the total of the aggregated Gross Revenue of such fares accounts for up to 5 per cent. of the aggregate Reference Revenue of all WYPTE Fares; and

2.1.3 designate, following such aggregation:

- (a) those Protected Fares referred to in paragraph 2.1.2(a) as Non-Fares Basket Fares;
- (b) those TfGM Fares referred to in paragraph 2.1.2(b) as Non-Fares Basket Fares;
- (c) those SYPTE Fares referred to in paragraph 2.1.2(c) as Non-Fares Basket Fares;
and
- (d) those WYPTE Fares referred to in paragraph 2.1.2(d) as Non-Fares Basket Fares.

2.2 Without prejudice to the Secretary of State's and to each Executive's right to require the content of a Fares Basket to change at any time prior to the Franchise Commencement 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 Regulations), any Protected Fare, TfGM Fare, SYPTE Fare or WYPTE Fare that is designated as a Non-Fares Basket Fare shall not be allocated to the relevant Fares Basket. For the avoidance of doubt, MPTE Fares and T&WPTE Fares shall not be designated as Non-Fares Basket Fares.

2.3 The Secretary of State may de-designate any Non-Fares Basket Fare pursuant to paragraphs 1.1 to 1.3 of Schedule 5.7 (Changes to Fares and Fares Regulation).

2.4 TfGM, SYPTE or WYPTE may de-designate any relevant Non-Fares Basket Fare pursuant to paragraph 1.1 or 1.3 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

The Franchisee shall procure that the Value of a Fares Basket (other than the T&WPTE 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 for any Fare Year shall be the aggregate of the Projected Revenue at that time for that Fare Year of each Fare in that Fares Basket.

3 PROJECTED REVENUE

Subject to the provisions of Schedule 5.7 (Changes to Fares and Fares Regulation) the Projected Revenue of any Fare for any Fare Year shall be an amount equal to:

P X 2010 Nominal Ticket Sales

where:

P is the Price or Child Price (as the case may be) of that Fare at that time; and

2010 Nominal Ticket Sales is the number of nominal ticket sales of that Fare for 2010, ascertained as follows:

$\frac{A}{B}$

where:

A is the aggregate Gross Revenue recorded by RSP as attributable to sales of that Fare for the financial year which ended 31 March 2010; and

B is the Price or Child Price (as the case may be) for that Fare recorded by RSP in February 2010.

4 REGULATED VALUE

4.1 Subject to the provisions of Schedule 5.7 (Changes to Fares and Fares Regulation) the Regulated Value of a Fares Basket for any Fare Year shall be an amount equal to:

2010 Nominal Ticket Sales x PPAI

where:

2010 Nominal Ticket Sales is the aggregate Gross Revenue recorded by RSP as attributable to sales of all Fares in that Fare Basket for the financial year which ended 31 March 2010

PPAI

is:

in respect of the Fare Year commencing 1st January 2011, the Permitted Aggregate Increase for that Fare Year; and

in respect of each Fare year commencing on or after 1st January 2012, the product of the Permitted Aggregate Increase for each Fare Year between that Fare Year and the Fare year which begins on 1st January 2011 (inclusively).

4.2 The Permitted Aggregate Increase in any Fare Year shall be an amount equal to:

$$\text{PAI} = \frac{(100 \times \text{RPI}) + k}{100}$$

where:

PAI is the Permitted Aggregate Increase in that Fare Year;

RPI is an amount equal to:

$$\frac{\text{RPI} - 1}{\text{RPI} - 2}$$

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 an amount equal to 0 for Fare Year commencing on 1 January 2014 and is equal to +1 for any Fare Year thereafter.

5 APPLICATION TO T&WPTE FARES BASKET

For the avoidance of doubt, except as provided in paragraph 3.9 of Schedule 5.5 (Regulation of Individual Fares and T&WPTE Fares), this Schedule 5.4 shall not apply to the T&WPTE Fares Basket.

SCHEDULE 5.5 – REGULATION OF INDIVIDUAL FARES AND T&WPTE 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:

1.1.1 any Protected Fare included in the Protected Fares Basket;

1.1.2 any TfGM Fare included in the TfGM Fares Basket;

1.1.3 any MPTE Fare;

1.1.4 any SYPTTE Fare included in the SYPTTE Fares Basket; and

1.1.5 any WYPTE Fare included in the WYPTE Fares Basket,

in any Fare Year does not exceed the Regulated Price or Regulated Child Price (as the case may be) for each such Fare in that Fare Year.

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:

2.1.1 **Preceding Year Ticket Price + £0.10p;** and

2.1.2 **Preceding Year Ticket Price x PII**

where:

Preceding Year Ticket Price for the Fare Year commencing 1 January 2011, is the maximum Price or Child Price (as the case may be) for that Fare recorded by RSP in 2010 or, for any subsequent Fare Year, 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) for such Fare 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 determined in accordance with the following formula:

$$\text{PII} = \frac{(100 \times \text{RPI}) + k + 2}{100}$$

where:

PII is the Permitted Individual Increase in that Fare Year;

RPI is an amount equal to:

$$\frac{\text{RPI} - 1}{\text{RPI} - 2}$$

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 an amount equal to 0 for Fare Year commencing on 1 January 2014 and is equal to +1 for any Fare Year thereafter.

2.3 Where:

2.3.1 the Franchisee sets the Price or Child Price (as the case may be) of any Protected Fare or PTE Fare (other than a T&WPTE Fare) in any Fare Year; and

2.3.2 the Secretary of State reasonably determines that the Price or Child Price (as the case may be) of such Protected Fare or PTE Fare (other than a T&WPTE 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 the 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 such preceding Fare Year.

3 T&WPTE

3.1 Subject to paragraph 2.2 of Schedule 20 (Executive Passenger Services) the Franchisee shall comply with its obligations under this paragraph 3, when Creating or setting the Price or Child Price for any T&WPTE Fare or otherwise.

3.2 T&WPTE shall specify to the Franchisee all T&WPTE Fares and the Price and Child Price of all T&WPTE Fares and the Franchisee shall, to the extent it is entitled to do so under the terms of the Ticketing and Settlement Agreement, ensure that such T&WPTE Fares are Created and that such Prices and Child Prices are charged in respect of each such T&WPTE Fare. The Price and Child Price of all T&WPTE Fares specified to the Franchisee shall be in multiples of 5p except in the case of a T&WPTE Season Ticket Fare when it shall be in multiples of 10p.

3.3 If from time to time T&WPTE wishes to alter its specification of T&WPTE Fares and/or the Price and Child Price of any T&WPTE Fares it may make a further specification in terms of paragraph 3.2. Once such further specification has been made the Franchisee shall, to the extent it is entitled to do so under the terms of the Ticketing and Settlement Agreement, ensure that such alterations are given effect.

3.4 If T&WPTE wishes to Create Temporary Fares, T&WPTE shall specify to the Franchisee such Temporary Fares and the Price and Child Price thereof and the Franchisee shall thereafter follow the procedures set out in the Ticketing and Settlement Agreement in respect of such Temporary Fares and the Franchisee shall, to the extent it is entitled to do so under the terms of the Ticketing and Settlement Agreement, ensure that such Temporary Fares are Created and that the Prices and Child Prices thereof specified by T&WPTE are charged in respect of such Temporary Fares. The provisions of paragraphs 3.2 to 3.6 of Schedule 1.4 (Passenger Facing Obligations) shall apply to Temporary Fares in the same way as they apply to other T&WPTE Fares.

3.5 The Price and Child Price of all T&WPTE Fares specified in the T&WPTE Fares Document shall be deemed to have been specified by T&WPTE to the Franchisee for the purposes of paragraph 3.2 as at the Franchise Commencement Date.

3.6 T&WPTE acknowledges that it is aware of the terms of the Ticketing and Settlement Agreement.

3.7 Nothing in this paragraph 3 shall prevent the giving by the Franchisee of any discount or reduction to which the purchaser of a T&WPTE Fare may be entitled by virtue of:

- 3.7.1 presenting a Discount Card issued by the Franchisee or a Train Operator pursuant to any scheme in force at the Franchise Commencement Date or to the operation of Law or any other Discount Card permitted by T&WPTE;
 - 3.7.2 the Passenger's Charter or the passenger's charter of any other Train Operator; or
 - 3.7.3 any relevant conditions of carriage.
- 3.8 The charges for the carriage of bicycles and other accompanied items on T&WPTE Executive Passenger Services and for the parking of cars, bicycles and any other vehicles at car parks at T&WPTE Stations under the control of the Franchisee shall be nil, unless otherwise specified by T&WPTE from time to time.
- 3.9 Paragraph 3.10 shall apply if at any time the Value of the T&WPTE Fares Basket is less than the Regulated Value of the T&WPTE Fares Basket for that Fare Year. For the purposes of this paragraph 3.9 and paragraph 3.10, the Value and the Regulated Value of the T&WPTE Fares Basket shall be calculated in accordance with Schedule 5.4 (Regulation of Fares Basket Values).
- 3.10 Where this paragraph 3.10 applies, T&WPTE shall compensate the Franchisee for the amount of revenue lost by the Franchisee as a result of the Value of the T&WPTE Fare Basket being less than the Regulated Value of the T&WPTE Fares Basket. In calculating the amount of revenue so lost by the Franchisee consideration shall be given to:
- 3.10.1 the actual pattern of travel on the relevant Railway Passenger Services at the relevant time; and
 - 3.10.2 the effect upon demand for the relevant Railway Passenger Services of the Value of the T&WPTE Fares Basket being less than the Regulated Value of the T&WPTE Fares Basket.

Any compensation payable by T&WPTE under this paragraph 3.10 in respect of any Reporting Period shall be added to the Tyne & Wear Share for such Reporting Period and shall not be a Change. T&WPTE and the Franchisee may resolve any dispute in relation to any compensation payable under this paragraph 3.10 in accordance with the Dispute Resolution Rules.

- 3.11 Tickets which are valid for travel on Tyne & Wear Metro on the T&WPTE Flows (being those Flows referred to in the definition of T&WPTE Fare) shall be accepted by the Franchisee, without further charge, for travel on the Passenger Services on the T&WPTE Flows.
 - 3.12 T&WPTE shall reimburse the Franchisee with the amount of any additional direct costs (excluding any costs ordinarily incurred as a result of a change in the price of a T&WPTE Fare) incurred by the Franchisee as a result of any change in the specification of a T&WPTE Fare, provided that no such reimbursement shall be made where such reimbursement would in any Franchisee Year amount to less than £50,000. Any amounts payable by T&WPTE under this paragraph 3.12 shall be added to the Tyne & Wear Share and shall not be a Change.
 - 3.13 For the avoidance of doubt, the provisions of paragraphs 1 and 2 of this Schedule 5.5 shall not apply to T&WPTE Fares.
- 4 THROUGH FARES BETWEEN CITY LINE STATIONS AND NORTHERN OR WIRRAL LINE STATIONS

Where the Franchisee is the Lead Operator in respect of a Flow in either direction between any City Line Station and any Northern Line Station or Wirral Line Station, the Franchisee shall not set the Price or Child Price of any Fare between any City Line Station and any Northern Line Station or Wirral Line Station in either direction at an amount which is greater than the sum of the Price or Child Price (as the case may be) of the same or equivalent Fare for that part of the journey which is between City Line Stations and the Price or the Child Price (as the case may be) of the same or equivalent Fare for that part of the journey which is between Northern Line Stations and/or Wirral Line Stations.

**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 any Fares Basket:

1.1.1 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 5.4 from such date; and

1.1.2 the Secretary of State may adjust the Franchise Payments by an amount equivalent in its opinion to the sum of:

(a) 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; and

(b) 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:

1.2.1 shall not be treated as a Change; and

1.2.2 shall be without prejudice to any other rights or remedies of the Secretary of State under the Act or this 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 Value) if and to the extent that:

1.3.1 the Value of any PTE Fares Basket exceeds its Regulated Value in any Fare Year;

1.3.2 such excess is caused by the Price or Child Price of any relevant PTE Fare being set pursuant to the terms of the Ticketing and Settlement Agreement by another person (other than an Affiliate); and

1.3.3 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 PTE Fares in any relevant PTE Fares Basket so as to avoid the Value of any relevant PTE 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 year, the Price or Child Price of any PTE Fare in any relevant PTE Fares Basket which it is entitled to set pursuant to the terms of the Ticketing and Settlement Agreement, unless, following such increase, the Franchisee would, otherwise than under paragraph 1.3, comply with the provisions of paragraph 1 of Schedule 5.4 in relation to the relevant PTE 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 PTE Fare at any time during that Fare Year, or any subsequent 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 and T&WPTE Fares):

2.1.1 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 from such date; and

2.1.2 the Secretary of State may adjust Franchise Payments by an amount equivalent in his opinion to the sum of:

(a) 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; and

(b) 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:

2.2.1 shall not be a Change; and

2.2.2 shall be without prejudice to any other rights or remedies of the Secretary of State under the Act or this Agreement in respect of such contravention.

3 APPLICATION TO T&WPTE FARES

For the avoidance of doubt, but subject to paragraph 2.3 of Schedule 20 (Executive Passenger Services) this Schedule 5.6 shall not apply to the T&WPTE Fares Basket or the T&WPTE Fares.

SCHEDULE 5.7 – CHANGES TO FARES AND FARES REGULATION

1 CHANGES TO FARES BASKETS

1.1 The Secretary of State or the relevant Executive (as the case may be) may require the content of any Fares Basket to change in accordance with the following:

1.1.1 where the Secretary of State (in respect of any Fares Basket) or TfGM, SYPTTE or WYPTTE (in respect of the relevant PTE Fares Basket) 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:

(a) 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

(b) have been included in the relevant Fares Basket,

1.1.2 the Secretary of State or the relevant Executive (as the case may be) may de-designate any relevant Non-Fares Basket Fare and include such Non-Fares Basket Fare in the relevant Fares Basket;

1.1.3 where any PTE Fare for a Flow has been included in a PTE Fares Basket, the Secretary of State (in respect of any PTE Fares Basket) or TfGM, SYPTTE or WYPTTE (in respect of the relevant PTE Fares Basket) may require the inclusion in the relevant PTE Fares Basket of any Weekly Season Ticket, Monthly Season Ticket, Quarterly Season Ticket, Annual Season Ticket, unrestricted Single Fare or unrestricted Return Fare that existed on that Flow in February 2010.

1.2 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 a Protected Weekly Season Ticket that existed on that Flow in February 2010.

1.3 Where the Secretary of State changes the Reference Revenue and/or the Gross Revenue of any Fare pursuant to paragraph 3.1.1 and/or 3.1.2 then, in relation to the Fares Basket in which such Fare is or could be included and without limiting paragraphs 1.1 and 1.2:

1.3.1 the Secretary of State may make any of the changes to such Fares Basket contemplated by paragraph 1.1 or 1.2; and/or

1.3.2 the relevant Executive make any of the changes to such Fares Basket contemplated by paragraph 1.1; and/or

1.3.3 the Secretary of State may 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 Franchise Commencement Date) of paragraph 2 of Schedule 5.3 (Allocation of Fares to Fares Baskets).

1.4 The Secretary of State or the relevant Executive (as the case may be) shall serve notice on the Franchisee:

1.4.1 at any time prior to the Franchise Commencement Date; and

1.4.2 thereafter, no later than the commencement of any Fares Setting Round,

to require any Fare to be included in a Fares Basket or designating any Fare as a Non-Fares Basket Fare pursuant to paragraph 1.1 to 1.3 (as applicable).

2 CHANGES TO THE 2010 NOMINAL TICKET SALES

2.1 The Franchisee may, in the event of significant changes to the pattern of travel on the Passenger Services during the Franchise Term, apply to the Secretary of State in relation to any Protected Fares or to the Secretary of State and the relevant Executive in relation to any PTE Fares, for the value of factors A and/or B in the formula for determining the 2010 Nominal Ticket Sales in paragraph 3 of Schedule 5.4 (Regulation of Fares Basket Values) to be adjusted in respect of any such Fares to take account of such changes, such that:

2.1.1 the value of factor A is re-calculated by using the Gross Revenue in respect of the sales of the relevant Fares for the most recently completed period of 12 months ending 31 March; and/or

2.1.2 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 and the relevant Executive 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 and the relevant Executive shall be entitled to impose conditions upon any such acceptance, including that the value of both factors A and B are adjusted and/or that the value of factors A and/or B are adjusted in respect of any or all Fares in the relevant Fares Basket.

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

3.1 The Secretary of State may (with the prior approval of the relevant Executive(s) where the alteration affects the regulation of any PTE Fares), by notice served on the Franchisee no later than the date of commencement of any Fares Setting Round, require:

3.1.1 the Reference Revenue of all Protected Fares, TfGM Fares, SYPTE Fares and/or WYPTE Fares to be re calculated for the purposes of paragraph 2 of Schedule 5.3 (Allocation of Fares to Fares Baskets) by reference to a different reference period than the financial year ended 31st March 2010; and/or

3.1.2 the Gross Revenue of all Protected Fares, TfGM Fares, SYPTE Fares and/or WYPTE Fares to be re calculated for the purposes of paragraph 2 of Schedule 5.3 (Allocation of Fares to Fares Baskets) by reference to a different reference period than the financial year ended 31st March 2010; and/or

3.1.3 the value of factor A in the formula for determining the 2010 Nominal Ticket Sales in paragraph 3 of Schedule 5.4 (Regulation of Fares Basket Values) to be re calculated in respect of any Fare by reference to a different reference period than the financial year ended 31st March 2010; and/or

3.1.4 the value of factor B in the formula for determining the 2010 Nominal Ticket Sales in paragraph 3 of Schedule 5.4 (Regulation of Fares Basket Values) to be re calculated in respect of any Fare by reference to a different reference date other than February 2010; and/or

3.1.5 the 2010 Ticket Revenue in respect of any Fares Basket to be re calculated for the purpose of paragraph 4 of Schedule 5.4 (Regulation of Fares Basket Values) by reference to a different reference period than the financial year ended 31st March 2010.

3.2 Where, in accordance with paragraph 3.1.5, the 2010 Ticket Revenue in respect of any Fares Basket is re calculated by reference to a different reference period, the value of "PPAI" in paragraph 4 of Schedule 5.4 (Regulation of Fares Basket Values) shall be determined solely by reference to the product of the Permitted Aggregate Increase for each Fare Year beginning after the end of such reference period.

- 3.3 Any revision pursuant to paragraph 3.1 or 3.2 shall take effect upon commencement of the next Fare Year to commence after the Fares Setting Round referred to in paragraph 3.1.

4 CHANGES TO PRICES

The Franchisee may request permission from the Secretary of State, and in relation to any Executive Passenger Services, the Secretary of State and the relevant Executive from time to time to increase any Prices or Child Prices beyond the levels permitted under Schedules 5.4 (Regulation of Fares Basket Values) and 5.5 (Regulation of Individual Fares and T&WPTE Fares) in connection with any proposed or actual improvement in any aspect of the Passenger Services relating to such Fares. The Secretary of State and the relevant Executive shall act reasonably in relation to any such request but shall not under any circumstances be obliged to accept any such request in whole or in part.

5 CHANGES TO FARES REGULATION

- 5.1 The parties agree that the Secretary of State shall (with the prior approval of the relevant Executives(s) where the alteration affects the regulation of any PTE Fares) have the power at any time and on more than one occasion during the Franchise Term to alter the obligations of, and restrictions on, the Franchisee under Schedules 5.2 (Franchisee's Obligation to Create Fares) to 5.8 (Fares Regulation Information and Monitoring) inclusive for any Fare Year, or part thereof (including alteration of the value of k under paragraph 4.2 of Schedule 5.4 (Regulation of Fares Basket Values) and/or paragraph 2.2 of Schedule 5.5 (Regulation of Individual Fares and T&WPTE Fares) and/or alteration of the value of f under paragraph 2.2 of Schedule 5.5 (Regulation of Individual Fares and T&WPTE Fares)). The exercise by the Secretary of State of his powers under this paragraph 5 shall be a Change.

- 5.2 Without limiting paragraph 15 of Schedule 19 (Other Provisions), each Executive's rights to approve the exercise by the Secretary of State of his rights under this paragraph 5 shall be subject always to the Secretary of State's right under paragraph 15 of Schedule 19 (Other Provisions) to implement any proposed revised service specification including in relation to the regulation of Fares relating to the operation of the Executive Passenger Services and the Executive Stations of the relevant Executive.

6 CHANGES TO COMPULSORY INTER-AVAILABLE FLOWS

- 6.1 Where:

6.1.1 pursuant to Clauses 4-7 of the Ticketing and Settlement Agreement, the consent of the Secretary of State is requested for the abolition of a Compulsory Inter-available Flow (the "**Reference Flow**") in respect of which any Fare Created would be a PTE Fare or a Protected Fare (the "**Reference Fare**"); and

6.1.2 a Flow exists, which, in the Secretary of State's opinion, is substantially similar to the Reference Flow (the Equivalent Flow),

the Secretary of State may, as a condition of granting his consent to the abolition of the Reference Flow, by written notice to the Franchisee, require any Fare Created in respect of the Equivalent Flow which has substantially the same characteristics as the Reference Fare to be included in a Fares Basket (the Equivalent Fare).

- 6.2 The Secretary of State shall not issue any such notice in respect of an Equivalent Fare unless the provisions of such notice have first been approved by the Ticketing and Settlement Scheme Council (as defined in the Ticketing and Settlement Agreement) or a delegate of such council.

- 6.3 The Price and Child Price of any Equivalent Fare in the first Fare Year in which it is to be introduced shall be no greater than the maximum permitted Price or Child Price in that Fare Year of the relevant Reference Fare, as if such Reference Fare had not been abolished.

7 CHANGE OF LEAD OPERATOR / MAJOR FLOW OPERATOR

- 7.1 The Franchisee shall not without the Secretary of State's prior approval, agree to any request under the Ticketing and Settlement Agreement that it cease to be Lead Operator in respect of any Flow.

7.2 The Franchisee shall inform the Secretary of State if it becomes the Lead Operator in respect of any Flow. Upon the Franchisee becoming the Lead Operator in respect of any Flow, the Secretary of State may, without limiting paragraph 3, exercise his rights under 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:

8.1.1 any allocation of Fares to any Fares Basket pursuant to Schedule 5.3 (Allocation of Fares to Fares Baskets); or

8.1.2 any subsequent adjustment thereof pursuant to this Schedule 5.7,

the Secretary of State shall set out in the Protected Fares Document and/or the relevant PTE 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 and the relevant Executive.

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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 (and, in respect of any PTE Fares, to the relevant Executive) 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 or the relevant Executive (as applicable) may reasonably require) of the Prices and Child Prices of the Protected Fares and/or PTE Fares it is intending to set.
- 1.2 The Franchisee shall notify, or procure the notification to, the Secretary of State (and, in respect of any PTE Fares, to the relevant Executive) of any proposed increase to the Price or Child Price of any Protected Fare or any PTE 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 (or the relevant Executive) 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 (and, in respect of any PTE Fares, to the relevant Executive), 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 Protected Fare and/or PTE Fare for each such Fares Setting Round.

2 MONITORING

- 2.1 The Franchisee shall provide to the Secretary of State (and, in respect of any PTE Fares, to the relevant Executive):
 - 2.1.1 such access as the Secretary of State or the relevant Executive (as applicable) may require to information pertaining to the Prices or Child Prices of Protected Fares and PTE Fares from time to time; and
 - 2.1.2 such further information as the Secretary of State or the relevant Executive 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 (and, in respect of any PTE Fares, to the relevant Executive) written confirmation from a statutory director of the Franchisee of whether the Franchisee has complied with its obligations under this Schedule 5 during each such Fares Setting Round.
- 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 5.3 (Allocation of Fares to Fares Baskets) to this Schedule 5.8 (inclusive).

SCHEDULE 6 – NOT USED

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SCHEDULE 7 - PERFORMANCE BENCHMARKS/KEY PERFORMANCE INDICATORS

- Schedule 7.1 Performance Benchmarks
 - Appendix 1: Cancellations Benchmark Tables
 - Appendix 2: Capacity Benchmark Tables
 - Appendix 3: Network Rail Benchmark Tables
 - Appendix 4: Service Delivery Benchmark Tables
- Schedule 7.2 Service Quality Requirements

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SCHEDULE 7.1 - PERFORMANCE BENCHMARKS

1 BENCHMARKS

- 1.1 The PMU Cancellations Benchmarks are set out in parts 1 to 5 of Appendix 1 (Cancellations Benchmark Tables).
- 1.2 The Capacity Benchmarks are set out in part 1 of Appendix 2 (Capacity Benchmark Tables).
- 1.3 Not Used.
- 1.4 The PMU Service Delivery Benchmarks are set out in parts 1 to 5 of Appendix 4 (Service Delivery Benchmark Tables).
- 1.5 The Franchise Wide Cancellations Benchmark is set out in part 6 of Appendix 1 (Cancellations Benchmark Tables).
- 1.6 The Franchise Wide Capacity Benchmark is set out in part 2 of Appendix 2 (Capacity Benchmark Tables).
- 1.7 Not Used.
- 1.8 The Secretary of State may at any time after a Charging Review vary, on giving not less than three (3) months' notice, any of the 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 1.8, the relevant Benchmark Tables shall be deemed to have been amended accordingly.

2 INFORMATION PROVISIONS

PMU Cancellations Benchmarks

- 2.1 At the end of each Reporting Period the Franchisee shall, in accordance with the relevant requirements of Appendix 3 (Operational Information) to Schedule 13.2 (Information), report:
 - 2.1.1 to the Secretary of State in respect of each Performance Management Unit; and
 - 2.1.2 to each affected Executive in respect of the Performance Management Units relevant to such Executive,

the total number of Cancellations or Partial Cancellations in that Reporting Period. In addition to its obligations in this paragraph 2.1, the Franchisee shall, at the Secretary of State's request, provide to the Secretary of State the information required in this paragraph 2.1 in respect of the relevant and/or preceding Reporting Periods on a franchise wide level to enable the Secretary of State to analyse the Franchisee's performance towards the Franchise Wide Cancellations Benchmark.
- 2.2 For each Reporting Period, the Secretary of State shall calculate a moving annual average of the Franchisee's performance within any Performance Management Unit against the PMU Cancellations Benchmark relevant to such Performance Management Unit in accordance with the following formula:

$$\frac{A + D}{13}$$

where:

A is ascertained as follows:

$$\frac{B \times 100}{C}$$

where:

B is the total number of Cancellations or Partial Cancellations of Passenger Services operated within that Performance Management Unit during that Reporting Period, on the basis that:

- (a) a Cancellation shall count as 1;
- (b) a Partial Cancellation shall count as 0.5; and
- (c) any Cancellations or Partial Cancellations within that Performance Management Unit 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 Franchise has complied with paragraph 1 of Appendix 3 (Operational Information) to Schedule 13.2 (Information), be disregarded in determining such total number;

C is the total number of Passenger Services scheduled to be operated in that Performance Management Unit during that Reporting Period, disregarding any Cancellations or Partial Cancellations within that Performance Management Unit during that Reporting Period which were caused by:

- (a) the Franchisee's implementation of a Service Recovery Plan during that Reporting Period; or
- (b) the occurrence or continuing effect of a Force Majeure Event; and

D is the sum of the values of A in each of the twelve (12) preceding Reporting Periods.

Capacity Benchmarks

2.3 At the end of each Reporting Period the Franchisee shall, in accordance with the relevant requirements of Appendix 3 (Operational Information) to Schedule 13.2 (Information), report:

2.3.1 to the Secretary of State; and

2.3.2 to each Executive,

the total number of Monitored Passenger Services in that Reporting Period operated with less than the minimum passenger carrying capacity specified for the service listed in the Fixed Train Plan which that Monitored Passenger Service represents. In addition to its obligations in this paragraph 2.3, the Franchisee shall, at the Secretary of State's request, provide to the Secretary of State or the relevant Executives, details of typical loadings, formations as planned by the Franchisee, and formations actually provided, for any Passenger Service operated by the Franchisee.

2.4 For each Reporting Period, the Secretary of State shall calculate a moving annual average of the Franchisee's performance against the Capacity Benchmark in accordance with the following formula:

$$\frac{A + D}{13}$$

where:

A is ascertained as follows:

$$\frac{B \times 100}{C}$$

where:

B is the total number of Monitored Passenger Services Franchise Wide in that Reporting Period which were operated with less than the minimum passenger carrying capacity specified for the service listed in the Fixed Train Plan which that Monitored Passenger Service represents as set out in Part 3 of Appendix 2 to this Schedule 7.1, disregarding any such Monitored Passenger Service which was operated in that way as a result of:

- (a) the Franchisee's implementation of a Service Recovery Plan during that Reporting Period; or
- (b) the occurrence or continuing effect of a Force Majeure Event;

C is the total number of Monitored Passenger Services scheduled to be operated Franchise Wide during that Reporting Period, disregarding, if the Franchise has complied with paragraph 1 of Appendix 3 (Operational Information) to Schedule 13.2 (Information), any Passenger Services operated with less passenger carrying capacity than the minimum passenger carrying capacity specified for the service listed in the Fixed Train Plan which that Monitored Passenger Service represents as a result of:

- (a) the Franchisee's implementation of a Service Recovery Plan during that Reporting Period; or
- (b) the occurrence or continuing effect of a Force Majeure Event; and

D is the sum of the values of A in each of the twelve (12) preceding Reporting Periods.

2.5 If and to the extent that any Monitored Passenger Service is operated with passenger carrying capacity in excess of the minimum passenger carrying capacity specified for the service listed in the Fixed Train Plan which that Monitored Passenger Service represents, the excess capacity shall be disregarded for the purposes of the calculation referred to in paragraph 2.4.

2.6 Any Monitored Passenger Service that is the subject of a Cancellation or a Partial Cancellation shall be disregarded altogether for the purposes of the calculations referred to in paragraph 2.4.

2.7 In performing the calculations in 2.1 to 2.4, the Franchisee and the Secretary of State shall use the total capacity of vehicles specified in Appendix 1 to Schedule 1.1 to determine the passenger carrying capacity of each rolling stock vehicle within the Train Fleet.

PMU Service Delivery Benchmark

2.8 At the end of each Reporting Period the Franchisee shall, in accordance with the relevant requirements of Appendix 3 (Operational Information) to Schedule 13.2 (Information), report to the Secretary of State, relating to each Performance Management Unit and to each affected Executive in respect of the Performance Management Units relevant to it, the total number of Minutes Delay:

2.8.1 in that Reporting Period attributable to the Franchisee and Network Rail;

- 2.8.2 in that Reporting Period for which the attribution is in dispute between Network Rail and the Franchisee;
- 2.8.3 from the twelve (12) preceding Reporting Periods for which the attribution remains in dispute; and
- 2.8.4 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 2.8, and the number of such Minutes Delay attributed to each of the Franchisee and Network Rail as a result of such resolution or determination.

In addition to its obligations in this paragraph 2.8, the Franchisee shall, at the Secretary of State's request, provide to the Secretary of State the information required in this paragraph 2.8 in respect of the relevant and/or preceding Reporting Periods on a franchise wide level to enable the Secretary of State to analyse the Franchisee's performance towards the Franchise Wide Service Delivery Benchmark.

2.9 For each Reporting Period, the Secretary of State shall calculate a moving annual average of the Franchisee's performance against:

- 2.9.1 not used;
- 2.9.2 the PMU Service Delivery Benchmark relating to each Performance Management Unit by calculating the sum of the number of Minutes Delay that are attributable to the Franchisee:

- (a) in such Reporting Period; and
- (b) in the twelve (12) preceding Reporting Periods,

and dividing the sum by thirteen (13).

2.10 In performing the calculations pursuant to paragraph 2.9.2, the Secretary of State shall disregard any Minutes Delay that are caused by the occurrence or continuing effect of a Force Majeure Event.

2.11 Where the attribution of any Minutes Delay is in dispute between Network Rail and the Franchisee at the end of a Reporting Period the Secretary of State shall, for the purpose of performing the calculations referred to in paragraph 2.9, allocate any disputed Minutes Delay between the Franchisee and Network Rail in the proportions of:

A to B

where:

A is the total number of undisputed Minutes Delay from the twelve (12) preceding Reporting Periods that are attributable to the Franchisee; and

B is the total number of undisputed Minutes Delay from the twelve (12) preceding Reporting Periods that are attributable to Network Rail.

2.12 The Franchisee agrees with the Secretary of State to comply with the requirements of the Track Access Agreement in respect of Minutes Delay attribution.

First twelve Reporting Periods of the Franchise Term

2.13 For as long as fewer than thirteen (13) Reporting Periods have elapsed following the Franchise Commencement Date, the Secretary of State shall, for the purposes of performing the calculations referred to in paragraphs 2.2, 2.4 and 2.9.2, assume performance at the Previous Performance Level in respect of the relevant Reporting Periods (up to a maximum of twelve (12) Reporting Periods) that precede the Franchise Commencement Date.

Calculations

- 2.14 The Secretary of State shall perform the calculations referred to in paragraphs 2.2, 2.4 and 2.9 rounded to two (2) decimal places, with the midpoint (that is, 11.115) rounded upwards (that is, 11.12).

Notice of Performance Results

- 2.15 As soon as reasonably practicable after the end of each Reporting Period, the Secretary of State shall notify:
- 2.15.1 the Franchisee of the results of the calculations performed pursuant to this paragraph 2; and
- 2.15.2 each Executive of the results of the calculation of the Franchisee's performance in respect of the Performance Management Unit relevant to such Executive, or Franchise Wide information in respect of the Capacity Benchmark.

Further Performance Information, Records and Documents

- 2.16 The Franchisee shall provide to any Executive such further information, records or documents relating to the Franchisee's performance under this Schedule 7.1 as such Executive reasonably requests.
- 2.17 The Franchisee shall submit to the Secretary of State and each Executive on each occasion that a Train Plan is submitted in accordance with Schedule 1.1, a proposed list of Monitored Passenger Services to be treated as representing services listed in the Fixed Train Plan.
- 2.18 Before it shall take effect as representing for the time being services listed in the Fixed Train Plan, the proposed list of Monitored Passenger Services shall be approved in writing by the Secretary of State, the Franchisee and the Executives.

3 BENCHMARK ADJUSTMENTS

3.1

- 3.1.1 Each PMU Network Rail Benchmark and each PMU Service Delivery Benchmark for any Reporting Period commencing next after a Passenger Change Date; and
- 3.1.2 the Franchise Wide Service Delivery Benchmark following each Passenger Change Date shall be revised as follows:

$$NB = OB \times \frac{NM}{OM}$$

where:

- NB** is the new PMU Service Delivery Benchmark or Franchise Wide Service Delivery Benchmark (as the case may be) after revision in accordance with this paragraph 3.1;
- OB** is the old PMU Service Delivery Benchmark or Franchise Wide Service Delivery Benchmark (as the case may be) prior to revision in accordance with this paragraph 3.1;
- NM** is the scheduled Train Mileage of the Passenger Services in the Timetable immediately after the Passenger Change Date; and
- OM** is the scheduled Train Mileage of the Passenger Services in the Timetable immediately before the Passenger Change Date.

3.2 If:

- 3.2.1 there is a Change to the Service Level Commitment previously in force; and
- 3.2.2 the Secretary of State reasonably considers that any revision to:
 - (a) any PMU Service Delivery Benchmark and/or the Franchise Wide Service Delivery Benchmark (as the case may be) pursuant to paragraph 3.1 is insufficient; and/or
 - (b) any PMU Cancellations Benchmark, any Capacity Benchmark, the Franchise Wide Cancellations Benchmark and/or the Franchise Wide Capacity Benchmark (as the case may be) is necessary;

to hold constant the risk of the Franchisee failing to satisfy the requirements of such Benchmark, then the Secretary of State shall make such revisions to such PMU Service Delivery Benchmark, the Franchise Wide Service Delivery Benchmark (as the case may be) and/or such PMU Cancellations Benchmark, Capacity Benchmark, the Franchise Wide Cancellations Benchmark and/or the Franchise Wide Capacity Benchmark (as the case may be) as it reasonably considers appropriate to hold constant such risk.

- 3.3 The Secretary of State shall notify the Franchisee and each affected Executive of any revision to any Benchmark or Franchise Wide Benchmark (as the case may be) made pursuant to paragraph 3.2 in accordance with the procedural stipulations pursuant to paragraph 5.2 of Schedule 1.1 (Service Development).

4 PERFORMANCE LEVELS

- 4.1 The Franchisee shall use reasonable endeavours, working in collaboration with Network Rail, to support delivery of the industry PPM and CaSL targets (as set by the ORR) for the relevant route, including using reasonable endeavours to deliver any other performance trajectories set in relation to the above.
- 4.2 Not used.

Consequences for Poor Performance

- 4.3 The consequences of the Franchisee's performance exceeding (that is, equalling or being worse than) the Improvement Plan Performance Levels relating to each Benchmark are set out in paragraph 3.15 of Schedule 13.2 (Information).
- 4.4 The Franchisee shall, subject to paragraph 1.6 of Schedule 1.2 (Operating Obligations) in respect of paragraph 4.4.3, procure that in each Reporting Period the moving annual average of:
 - 4.4.1 Cancellations and Partial Cancellations (calculated in accordance with paragraph 2.2) does not exceed (that is, is neither equal to nor worse than) either the Breach Performance Levels or the Default Performance Levels specified in the cells relating to each such Reporting Period in each PMU Cancellations Benchmark Table;
 - 4.4.2 Monitored Passenger Services operated with less passenger carrying capacity than the minimum passenger carrying capacity specified for the service listed in the Fixed Train Plan which that Monitored Passenger Service represents (calculated in accordance with paragraph 2.4) do not exceed (that is, is neither equal to nor worse than) either the Breach Performance Levels or the Default Performance Levels specified in the cells relating to such Reporting Period in the Capacity Benchmark Table; and
 - 4.4.3 Minutes Delay occurring in respect of the Passenger Services which are attributable to the Franchisee (calculated in accordance with paragraph 2.9) does not exceed (that is, is neither equal to nor worse than) either the Breach Performance Levels or the Default Performance Levels specified in the cells relating to such Reporting Period in each PMU Service Delivery Benchmark Table.

4.5 Certain consequences of the Franchisee's performance exceeding (that is, equalling or being worse than):

4.5.1 the Breach Performance Levels relating to each:

- (a) PMU Cancellations Benchmark;
- (b) Capacity Benchmark; and
- (c) PMU Service Delivery Benchmark,

are set out in Schedule 10 (Remedies, Termination and Expiry); and

4.5.2 the Default Performance Levels relating to each Benchmark are set out in Schedule 10.

5 RIGHT OF ASSESSMENT /INSPECTION

5.1 The provisions of paragraph 7 of Schedule 11 (Agreement Management Provisions) shall apply to records kept by or on behalf of the Franchisee that relate to any information supplied by the Franchisee to the Secretary of State or each Executive pursuant to paragraphs 2.1, 2.3 and 2.8.

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APPENDIX 1 TO SCHEDULE 7.1 – CANCELLATIONS BENCHMARK TABLE

Part 1- PMU Cancellations Benchmark Table - Lancashire & Cumbria

Column 1		Column 2	Column 3	Column 4
		Improvement Plan Performance Level	Breach Performance Level	Default Performance Level
Reporting Period		(% Cancelled)	(% Cancelled)	(% Cancelled)
Year 1, Period 1*	2014/2015	1.36	1.45	1.64
Year 1, Period 2	2014/2015	1.36	1.45	1.64
Year 1, Period 3	2014/2015	1.36	1.45	1.64
Year 1, Period 4	2014/2015	1.36	1.45	1.64
Year 1, Period 5	2014/2015	1.36	1.45	1.64
Year 1, Period 6	2014/2015	1.36	1.45	1.64
Year 1, Period 7	2014/2015	1.36	1.45	1.64
Year 1, Period 8	2014/2015	1.36	1.45	1.64
Year 1, Period 9	2014/2015	1.36	1.45	1.64
Year 1, Period 10	2014/2015	1.36	1.45	1.64
Year 1, Period 11	2014/2015	1.36	1.45	1.64
Year 1, Period 12	2014/2015	1.36	1.45	1.64
Year 1, Period 13	2014/2015	1.36	1.45	1.64
Year 2, Period 1	2015/2016	1.36	1.45	1.64
Year 2, Period 2	2015/2016	1.36	1.45	1.64
Year 2, Period 3	2015/2016	1.36	1.45	1.64
Year 2, Period 4	2015/2016	1.36	1.45	1.64
Year 2, Period 5	2015/2016	1.36	1.45	1.64
Year 2, Period 6	2015/2016	1.36	1.45	1.64
Year 2, Period 7	2015/2016	1.36	1.45	1.64
Year 2, Period 8	2015/2016	1.36	1.45	1.64
Year 2, Period 9	2015/2016	1.36	1.45	1.64
Year 2, Period 10	2015/2016	1.36	1.45	1.64
Year 2, Period 11	2015/2016	1.36	1.45	1.64

* where Reporting Period 1 2014/15 is the Reporting Period which commences on the Franchise Commencement Date (1 April 2014).

Part 2 - PMU Cancellations Benchmark Table - Manchester & Liverpool

Column 1		Column 2	Column 3	Column 4
Reporting Period		Improvement Plan Performance Level	Breach Performance Level	Default Performance Level
		(% Cancelled)	(% Cancelled)	(% Cancelled)
Year 1, Period 1*	2014/2015	0.92	0.99	1.12
Year 1, Period 2	2014/2015	0.92	0.99	1.12
Year 1, Period 3	2014/2015	0.92	0.99	1.12
Year 1, Period 4	2014/2015	0.92	0.99	1.12
Year 1, Period 5	2014/2015	0.92	0.99	1.12
Year 1, Period 6	2014/2015	0.92	0.99	1.12
Year 1, Period 7	2014/2015	0.92	0.99	1.12
Year 1, Period 8	2014/2015	0.92	0.99	1.12
Year 1, Period 9	2014/2015	0.92	0.99	1.12
Year 1, Period 10	2014/2015	0.92	0.99	1.12
Year 1, Period 11	2014/2015	0.92	0.99	1.12
Year 1, Period 12	2014/2015	0.92	0.99	1.12
Year 1, Period 13	2014/2015	0.92	0.99	1.12
Year 2, Period 1	2015/2016	0.92	0.99	1.12
Year 2, Period 2	2015/2016	0.92	0.99	1.12
Year 2, Period 3	2015/2016	0.92	0.99	1.12
Year 2, Period 4	2015/2016	0.92	0.99	1.12
Year 2, Period 5	2015/2016	0.92	0.99	1.12
Year 2, Period 6	2015/2016	0.92	0.99	1.12
Year 2, Period 7	2015/2016	0.92	0.99	1.12
Year 2, Period 8	2015/2016	0.92	0.99	1.12
Year 2, Period 9	2015/2016	0.92	0.99	1.12
Year 2, Period 10	2015/2016	0.92	0.99	1.12
Year 2, Period 11	2015/2016	0.92	0.99	1.12

* where Reporting Period 1 2014/15 is the Reporting Period which commences on the Franchise Commencement Date (1 April 2014).

Part 3 - PMU Cancellations Benchmark Table - South & East Yorkshire

Column 1		Column 2	Column 3	Column 4
Reporting Period		Improvement Plan Performance Level	Breach Performance Level	Default Performance Level
		(% Cancelled)	(% Cancelled)	(% Cancelled)
Year 1, Period 1*	2014/2015	0.61	0.65	0.74
Year 1, Period 2	2014/2015	0.61	0.65	0.74
Year 1, Period 3	2014/2015	0.61	0.65	0.74
Year 1, Period 4	2014/2015	0.61	0.65	0.74
Year 1, Period 5	2014/2015	0.61	0.65	0.74
Year 1, Period 6	2014/2015	0.61	0.65	0.74
Year 1, Period 7	2014/2015	0.61	0.65	0.74
Year 1, Period 8	2014/2015	0.61	0.65	0.74
Year 1, Period 9	2014/2015	0.61	0.65	0.74
Year 1, Period 10	2014/2015	0.61	0.65	0.74
Year 1, Period 11	2014/2015	0.61	0.65	0.74
Year 1, Period 12	2014/2015	0.61	0.65	0.74
Year 1, Period 13	2014/2015	0.61	0.65	0.74
Year 2, Period 1	2015/2016	0.61	0.65	0.74
Year 2, Period 2	2015/2016	0.61	0.65	0.74
Year 2, Period 3	2015/2016	0.61	0.65	0.74
Year 2, Period 4	2015/2016	0.61	0.65	0.74
Year 2, Period 5	2015/2016	0.61	0.65	0.74
Year 2, Period 6	2015/2016	0.61	0.65	0.74
Year 2, Period 7	2015/2016	0.61	0.65	0.74
Year 2, Period 8	2015/2016	0.61	0.65	0.74
Year 2, Period 9	2015/2016	0.61	0.65	0.74
Year 2, Period 10	2015/2016	0.61	0.65	0.74
Year 2, Period 11	2015/2016	0.61	0.65	0.74

* where Reporting Period 1 2014/15 is the Reporting Period which commences on the Franchise Commencement Date (1 April 2014).

Part 4 - PMU Cancellations Benchmark Table - Tyne, Tees & Wear

Column 1		Column 2	Column 3	Column 4
Reporting Period		Improvement Plan Performance Level	Breach Performance Level	Default Performance Level
		(% Cancelled)	(% Cancelled)	(% Cancelled)
Year 1, Period 1*	2014/2015	0.86	0.92	1.04
Year 1, Period 2	2014/2015	0.86	0.92	1.04
Year 1, Period 3	2014/2015	0.86	0.92	1.04
Year 1, Period 4	2014/2015	0.86	0.92	1.04
Year 1, Period 5	2014/2015	0.86	0.92	1.04
Year 1, Period 6	2014/2015	0.86	0.92	1.04
Year 1, Period 7	2014/2015	0.86	0.92	1.04
Year 1, Period 8	2014/2015	0.86	0.92	1.04
Year 1, Period 9	2014/2015	0.86	0.92	1.04
Year 1, Period 10	2014/2015	0.86	0.92	1.04
Year 1, Period 11	2014/2015	0.86	0.92	1.04
Year 1, Period 12	2014/2015	0.86	0.92	1.04
Year 1, Period 13	2014/2015	0.86	0.92	1.04
Year 2, Period 1	2015/2016	0.86	0.92	1.04
Year 2, Period 2	2015/2016	0.86	0.92	1.04
Year 2, Period 3	2015/2016	0.86	0.92	1.04
Year 2, Period 4	2015/2016	0.86	0.92	1.04
Year 2, Period 5	2015/2016	0.86	0.92	1.04
Year 2, Period 6	2015/2016	0.86	0.92	1.04
Year 2, Period 7	2015/2016	0.86	0.92	1.04
Year 2, Period 8	2015/2016	0.86	0.92	1.04
Year 2, Period 9	2015/2016	0.86	0.92	1.04
Year 2, Period 10	2015/2016	0.86	0.92	1.04
Year 2, Period 11	2015/2016	0.86	0.92	1.04

* where Reporting Period 1 2014/15 is the Reporting Period which commences on the Franchise Commencement Date (1 April 2014).

Part 5 - PMU Cancellations Benchmark Table - West & North Yorkshire

Column 1		Column 2	Column 3	Column 4
Reporting Period		Improvement Plan Performance Level	Breach Performance Level	Default Performance Level
		(% Cancelled)	(% Cancelled)	(% Cancelled)
Year 1, Period 1*	2014/2015	0.51	0.55	0.62
Year 1, Period 2	2014/2015	0.51	0.55	0.62
Year 1, Period 3	2014/2015	0.51	0.55	0.62
Year 1, Period 4	2014/2015	0.51	0.55	0.62
Year 1, Period 5	2014/2015	0.51	0.55	0.62
Year 1, Period 6	2014/2015	0.51	0.55	0.62
Year 1, Period 7	2014/2015	0.51	0.55	0.62
Year 1, Period 8	2014/2015	0.51	0.55	0.62
Year 1, Period 9	2014/2015	0.51	0.55	0.62
Year 1, Period 10	2014/2015	0.51	0.55	0.62
Year 1, Period 11	2014/2015	0.51	0.55	0.62
Year 1, Period 12	2014/2015	0.51	0.55	0.62
Year 1, Period 13	2014/2015	0.51	0.55	0.62
Year 2, Period 1	2015/2016	0.51	0.55	0.62
Year 2, Period 2	2015/2016	0.51	0.55	0.62
Year 2, Period 3	2015/2016	0.51	0.55	0.62
Year 2, Period 4	2015/2016	0.51	0.55	0.62
Year 2, Period 5	2015/2016	0.51	0.55	0.62
Year 2, Period 6	2015/2016	0.51	0.55	0.62
Year 2, Period 7	2015/2016	0.51	0.55	0.62
Year 2, Period 8	2015/2016	0.51	0.55	0.62
Year 2, Period 9	2015/2016	0.51	0.55	0.62
Year 2, Period 10	2015/2016	0.51	0.55	0.62
Year 2, Period 11	2015/2016	0.51	0.55	0.62

* where Reporting Period 1 2014/15 is the Reporting Period which commences on the Franchise Commencement Date (1 April 2014).

Part 6 - Franchise Wide Cancellations Benchmark Table

Column 1	Column 2
Reporting Period	Franchise Wide Cancellations Benchmark (%)
Every Reporting Period during the Continuation Review Period	0.91%

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APPENDIX 1 TO SCHEDULE 7.1 – CAPACITY BENCHMARK TABLES

Part 1

Column 1		Column 2	Column 3	Column 4
Reporting Period		Improvement Plan Performance Level	Breach Performance Level	Default Performance Level
Year 1, Period 1*	2014/2015	6.45	6.90	7.80
Year 1, Period 2	2014/2015	6.45	6.90	7.80
Year 1, Period 3	2014/2015	6.45	6.90	7.80
Year 1, Period 4	2014/2015	6.45	6.90	7.80
Year 1, Period 5	2014/2015	6.45	6.90	7.80
Year 1, Period 6	2014/2015	6.45	6.90	7.80
Year 1, Period 7	2014/2015	6.45	6.90	7.80
Year 1, Period 8	2014/2015	6.45	6.90	7.80
Year 1, Period 9	2014/2015	6.45	6.90	7.80
Year 1, Period 10	2014/2015	6.45	6.90	7.80
Year 1, Period 11	2014/2015	6.45	6.90	7.80
Year 1, Period 12	2014/2015	6.45	6.90	7.80
Year 1, Period 13	2014/2015	6.45	6.90	7.80
Year 2, Period 1	2015/2016	6.45	6.90	7.80
Year 2, Period 2	2015/2016	6.45	6.90	7.80
Year 2, Period 3	2015/2016	6.45	6.90	7.80
Year 2, Period 4	2015/2016	6.45	6.90	7.80
Year 2, Period 5	2015/2016	6.45	6.90	7.80
Year 2, Period 6	2015/2016	6.45	6.90	7.80
Year 2, Period 7	2015/2016	6.45	6.90	7.80
Year 2, Period 8	2015/2016	6.45	6.90	7.80
Year 2, Period 9	2015/2016	6.45	6.90	7.80
Year 2, Period 10	2015/2016	6.45	6.90	7.80
Year 2, Period 11	2015/2016	6.45	6.90	7.80

* where Reporting Period 1 2014/15 is the Reporting Period which commences on the Franchise Commencement Date (1 April 2014).

Part 2 – Franchise Wide Capacity Benchmark Table

Column 1	Column 2
Reporting Period	Franchise Wide Capacity Benchmark (%)
Every Reporting Period during the Continuation Review Period	6.00

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Part 3 - Fixed Train Plan (only Monday to Friday services are monitored)

Train ID	Depart	From	To	Arrive	Minimum Formation (unit type/s)	Minimum Passenger Carrying Capacity
2C35FA	05:19	Preston	Carlisle	09:21	150	219
1B15GZ	05:29	Blackpool North	York	08:16	150	219
2H81GZ	05:50	Carlisle	Leeds	08:37	156	219
2C33FA	05:58	Barrow-in-Furness	Carlisle	08:35	150	219
2M04FA	06:03	Leeds	Manchester Victoria	07:43	150	219
2U02FA	06:13	Leeds	Manchester Victoria	07:53	142+142	274
2E03GZ	06:17	Manchester Victoria	Selby	08:37	158	219
2J40FA	06:19	Blackpool North	Manchester Victoria	07:47	156	219
2A00FA	06:23	Southport	Manchester Airport	07:53	142+142	274
2F04FD	06:23	Buxton	Wigan North Western	08:16	150/1	219
2B02GZ	06:26	Doncaster	Leeds	07:14	150/1	219
1Y70GP	06:26	Chesterfield	Leeds	07:51	150/1	219
1B17GZ	06:28	Blackpool North	York	09:21	158/8	219
2N12GZ	06:28	Sheffield	Leeds	07:44	144+142	274
2H13FA	06:30	Stoke-on-Trent	Manchester Piccadilly	07:27	323	357
2L12GZ	06:30	Worksop	Leeds	08:25	150	219
2M06FA	06:37	Leeds	Manchester Victoria	08:17	158(2) +158(2)	438
2L09GZ	06:38	Leeds	Sheffield	07:58	144(3)	219
2H15GY	06:41	Skipton	Leeds	07:23	156	219
2E05GZ	06:43	Manchester Victoria	Selby	08:53	150+150	438
2H81FA	06:48	Manchester Piccadilly	Manchester Piccadilly	08:00	156	219
2J04GD	06:48	Marsden	Leeds	07:38	158/9	219
2C23GV	06:50	Scarborough	Doncaster	09:32	158	219
2C07GZ	06:50	York	Leeds	08:16	150+153	317
1J01FA	06:52	Southport	Manchester Victoria	08:08	150+153	317
2N95FA	06:53	Buxton	Blackpool North	09:16	150	219
2H04FA	06:53	Blackpool North	Hazel Grove	08:45	150	219
2U01GZ	06:58	Manchester Victoria	Leeds	08:33	158/8	219
2C05GZ	07:00	Knaresborough	Leeds	07:49	153+155	317
2H75FA	07:00	Hadfield	Manchester Piccadilly	07:41	150	219
2F61FA	07:02	Blackpool North	Liverpool Lime Street	08:35	156	219
2H83FA	07:02	Manchester Piccadilly	Manchester Piccadilly	08:25	323	357
1L74GZ	07:03	Retford	Leeds	08:49	142	137
2F06GZ	07:04	Goole	Leeds	08:18	150	219
1B20FA	07:06	York	Blackpool North	1001	150	219
2J06FA	07:02	Halifax	Leeds	07:56	158	219
2J54FA	07:07	Clitheroe	Manchester Victoria	08:25	153+150	317

2H17GY	07:07	Skipton	Leeds	07:49	333/0	357
2M08FA	07:08	Leeds	Manchester Victoria	08:37	155	219
2B40GZ	07:08	Doncaster	Leeds	08:02	322	467
2A01GN	07:08	Chathill	Newcastle	08:20	156	219
2F27FA	07:09	Manchester Victoria	Liverpool Lime Street	08:13	156	219
2B33GA	07:10	Huddersfield	Sheffield	08:29	144	137
2V07GY	07:10	Ilkley	Leeds	07:38	150	219
2W62FA	07:11	Kirkby	Rochdale	08:51	142+142	274
2S15FA	07:12	Sheffield	Manchester Piccadilly	08:33	150	219
1H43FA	07:13	Liverpool Lime Street	Manchester Airport	08:22	156	219
2U04FA	07:13	Leeds	Manchester Victoria	08:53	144(3)	219
1J22GV	07:14	Bridlington	Sheffield	09:26	142	137
2N14GZ	07:15	Sheffield	Leeds	08:35	153+150	317
2W24FA	07:15	Wigan Wallgate	Stalybridge	08:18	150	219
2E74GZ	07:16	Liverpool Lime Street	Huddersfield	09:12	150	219
2E07GZ	07:17	Manchester Victoria	Leeds	08:57	158	219
2H17FA	07:17	Stoke-on-Trent	Manchester Piccadilly	08:21	323	357
2H85FA	07:18	Manchester Piccadilly	Manchester Piccadilly	08:39	323	357
2J42FA	07:18	Blackpool North	Manchester Victoria	08:47	156	219
2H19GY	07:20	Skipton	Leeds	08:03	333	467
2A02FA	07:21	Southport	Manchester Airport	08:53	150+150	438
2D33GY	07:22	Ilkley	Bradford Forster Square	07:56	333	467
2H29FA	07:22	Crewe	Salford Crescent	08:44	142+142	274
2J00FA	07:22	Wigan North Western	Manchester Victoria	08:12	150	219
2M12FA	07:23	Selby	Manchester Victoria	09:30	158	219
2H07FA	07:24	Buxton	Manchester Piccadilly	08:25	156	219
2B04GZ	07:26	Doncaster	Leeds	08:14	321/9	467
2H46FA	07:26	Liverpool Lime Street	Manchester Oxford Road	08:36	150	219
2S11GY	07:27	Skipton	Bradford Forster Square	08:05	333/0	467
2R54GZ	07:29	Adwick	Sheffield	08:18	142	137
2W64GD	07:30	Huddersfield	Leeds	08:29	150	219
2H27FA	07:30	Alderley Edge	Manchester Piccadilly	07:58	142	137
2M57FA	07:33	Huddersfield	Manchester Victoria	08:31	150+142	356
2H99GY	07:34	Skipton	Leeds	08:17	322	467
2M10FA	07:37	Leeds	Manchester Victoria	09:08	150	219
2V09GY	07:37	Ilkley	Leeds	08:09	333	467
2F59FA	07:38	Wigan North Western	Liverpool Lime Street	08:28	150	219
2J56FA	07:40	Clitheroe	Manchester Victoria	08:52	150	219
1F92FA	07:38	Manchester Airport	Liverpool Lime Street	08:59	156	219
2C09GZ	07:42	Knaresborough	Leeds	08:32	144(2)+144(2)	274

2O65GD	07:43	Selby	Wakefield Westgate	10:10	155+153	317
2F87FA	07:44	Todmorden	Wigan Wallgate	09:15	150	219
2A62FA	07:46	Manchester Airport	Manchester Piccadilly	08:11	323	357
2H21GY	07:46	Skipton	Leeds	08:30	333	467
2E09GZ	07:48	Manchester Victoria	Selby	09:53	155	219
2H05FA	07:48	Hazel Grove	Manchester Piccadilly	08:09	156	219
2H87FA	07:48	Manchester Piccadilly	Manchester Piccadilly	09:02	150	219
2T87GZ	07:48	York	Leeds	08:35	142+142	274
2H09FA	07:49	Buxton	Manchester Piccadilly	08:37	150	219
2D35GY	07:48	Ilkley	Bradford Square Forster	08:21	333	467
2A82FA	07:53	Alderley Edge	Manchester Piccadilly	08:42	150	219
2H21FB	07:56	Crewe	Manchester Piccadilly	08:45	323	357
2B06GZ	07:56	Doncaster	Leeds	08:42	158+153	317
2V71GY	07:57	Ilkley	Leeds	08:26	322	467
2C67GZ	07:57	Knaresborough	Leeds	08:40	150+153	317
2H11FB	07:57	Stoke-on-Trent	Manchester Piccadilly	08:56	156	219
2F63FA	07:58	Wigan North Western	Liverpool Lime Street	08:50	156	219
2J76FA	07:59	Southport	Stalybridge	09:29	142	137
2P23GY	07:59	Bradford Square Forster	Leeds	08:24	333	467
1J02FA	08:00	Wigan Wallgate	Manchester Victoria	08:38	150	219
2S13GY	08:02	Skipton	Bradford Square Forster	08:39	333	467
2M59FA	08:02	Huddersfield	Manchester Victoria	08:52	150	219
2V11GY	08:05	Ilkley	Leeds	08:35	333	467
2H19FA	08:06	Macclesfield	Manchester Piccadilly	08:42	156	219
1J23GV	08:08	Bridlington	Sheffield	10:20	158	219
1B22FA	08:12	York	Blackpool North	1101	158	219
2J08GD	08:13	Huddersfield	Leeds	08:52	150	219
2H23GY	08:14	Skipton	Leeds	08:56	333	467
2R56GZ	08:15	Adwick	Sheffield	09:05	142	137
2C11GZ	08:14	Harrogate	Leeds	08:52	150+142	356
2F08GZ	08:16	Knottingley	Leeds	08:54	150	219
2V13GY	08:15	Ilkley	Leeds	08:44	333	467
2H06FA	08:21	Preston	Hazel Grove	09:45	150	219
2F33FA	08:22	Stalybridge	Liverpool Lime Street	09:43	150	219
2B08GZ	08:26	Doncaster	Leeds	09:14	150	219
2P25GY	08:26	Bradford Square Forster	Leeds	08:49	333	467
2N22FA	08:32	Hazel Grove	Preston	09:50	150	219
2H25GY	08:41	Skipton	Leeds	09:22	333	467

2V15GY	08:40	Ilkley	Leeds	09:11	150	219
2C34FB	14:20	Carlisle	Barrow-in-Furness	17:01	156	219
1B33GZ	14:29	Blackpool North	York	17:20	158	219
2E37GZ	14:48	Manchester Victoria	Selby	16:54	150	219
2C38FB	15:12	Carlisle	Preston	19:31	156	219
2J48FB	15:20	Blackpool North	Manchester Victoria	16:47	150	219
2H90FC	15:23	Preston	Buxton	17:24	150	219
2A18FA	15:24	Southport	Manchester Airport	16:53	156	219
2R31GZ	15:24	Lincoln	Adwick	17:41	142/0	137
2C33FD	15:29	Buxton	Barrow-in-Furness	18:56	156	219
1B35GZ	15:29	Blackpool North	York	18:18	158/8	219
2N84FB	15:36	Liverpool Parkway South	Blackpool North	17:21	150/1	219
2E72HP	15:46	Liverpool Lime Street	Huddersfield	17:42	156/2	219
2E41GZ	15:48	Manchester Victoria	Selby	17:53	158/8	219
2P75GZ	15:19	Scunthorpe	Lincoln	18:06	142	137
2F83FF	16:03	Manchester Airport	Southport	17:37	150/1	219
2L46GZ	16:06	Sheffield	Leeds	17:25	150	219
2M44FA	16:07	Leeds	Manchester Victoria	17:32	150	219
1B38FA	16:08	York	Blackpool North	19:00	158	219
2S40GY	16:11	Bradford Square Forster	Skipton	16:50	333	467
2R97GA	16:12	York	Hull	17:27	158	219
1Y44GA	16:17	Nottingham	Leeds	18:18	158	219
2J26FB	16:16	Liverpool Lime Street	Manchester Victoria	17:19	150	219
2B23GZ	16:20	Leeds	Doncaster	17:07	158	219
2J40FC	16:20	Blackpool North	Manchester Victoria	17:47	156	219
2M34FV	16:22	Newcastle	Whitehaven	19:25	156	219
2H94FC	16:22	Preston	Buxton	18:14	150	219
2N57FB	16:23	Manchester Victoria	Clitheroe	17:45	156	219
2E43GZ	16:24	Manchester Victoria	Leeds	17:57	158	219
2C76GX	16:25	Lincoln	Hull	19:50	142	137
2H54GY	16:26	Leeds	Skipton	17:10	333	467
2E70GT	16:27	Manchester Victoria	Huddersfield	17:12	156	219
2C46GZ	16:29	Leeds	York	17:47	142+150	356
2N99FC	16:29	Buxton	Blackpool North	18:55	156	219
2M77FA	16:30	Huddersfield	Manchester Victoria	17:19	150	219
2N20FB	16:30	Hazel Grove	Preston	17:51	156+153	317
2P59GY	16:31	Bradford Square Forster	Leeds	16:53	333	467
2V46GY	16:32	Leeds	Ilkley	17:00	333	467
2H87FB	16:35	Manchester Piccadilly	Manchester Piccadilly	17:48	150	219
2B54GA	16:36	Sheffield	Huddersfield	17:50	150	219
2N88FB	16:36	Liverpool Parkway South	Blackpool North	18:23	150	219
2M46FA	16:37	Leeds	Manchester Victoria	18:08	155	219

2S44GY	16:40	Bradford Square	Forster	Skipton	17:19	150	219	
1F91FB	16:41	Manchester Airport		Liverpool Lime Street	17:48	156	219	
1W46GZ	16:41	Sheffield		Bridlington	19:01	158	219	
1F01FA	16:42	Stalybridge		Southport	18:15	150+142	317	
2A91FB	16:46	Manchester Piccadilly		Crewe	17:46	150/1	219	
2E76HP	16:46	Liverpool Lime Street		Huddersfield	18:43	150/1	219	
2E45GZ	16:48	Manchester Victoria		Selby	18:53	155/1	219	
2K12EC	16:48	Manchester Piccadilly		Stoke-on-Trent	17:41	150/1	219	
2N33GZ	16:48	Leeds		Sheffield	18:02	144/3	219	
2H27FE	16:50	Crewe		Manchester Piccadilly	17:42	150	219	
2H56GY	16:56	Leeds		Skipton	17:40	333	467	
2B41GZ	16:57	Leeds		Doncaster	17:45	322	467	
2C48GZ	16:59	Leeds		Knaresborough	17:45	155	219	
2H89FB	16:59	Manchester Piccadilly		Manchester Piccadilly	18:14	150	219	
2N91FD	16:59	Buxton		Blackpool North	19:15	156	219	
2P79GZ	16:19	Scunthorpe		Lincoln	19:07	158	219	
2A32GN	17:27	Metro Centre		Chathill	18:46	156	219	
2N58FB	17:00	Manchester Victoria		Clitheroe	18:19	150	219	
2V48GY	17:02	Leeds		Ilkley	17:29	333	467	
2F87FF	17:03	Manchester Airport		Southport	18:35	150	219	
2K22FE	17:03	Manchester Piccadilly		Crewe	18:01	323/0	357	
1Y49EA	17:05	Leeds		Nottingham	19:02	158	219	
2L50GZ	17:06	Sheffield		Leeds	18:25	144(3)	219	
2M48FA	17:07	Leeds		Manchester Victoria	18:32	158	219	
2K14EC	17:10	Manchester Deansgate		Stoke-on-Trent	18:08	150	219	
2P62GY	17:10	Leeds		Bradford Square	Forster	17:30	333	467
2S42GY	17:11	Bradford Square	Forster	Skipton	17:50	156	219	
1B40FA	17:13	York		Blackpool North	19:00	158	219	
2C50GZ	17:13	Leeds		Knaresborough	18:01	144(3)	219	
2U24FA	17:13	Leeds		Manchester Victoria	18:54	144(2)+144(3)	356	
2N34GZ	17:14	Sheffield		Leeds	18:31	144(3)	219	
2H81FC	17:15	Manchester Piccadilly		Manchester Piccadilly	18:34	150	219	
2D72GY	17:16	Bradford Square	Forster	Ilkley	17:51	150	219	
2F25GZ	17:16	Leeds		Goole	18:26	153+150	317	
2V50GY	17:16	Leeds		Ilkley	17:42	156	219	
2E47GZ	17:18	Manchester Victoria		Leeds	18:57	155	219	
2B25GZ	17:20	Leeds		Doncaster	18:07	321	467	
2W83GD	17:23	Leeds		Huddersfield	18:31	142+142	274	

2W86GD	17:23	Huddersfield	Leeds	18:31	144(2)	137
2H58GY	17:26	Leeds	Skipton	18:10	321	467
2N70FC	17:27	Liverpool Lime Street	Preston	18:31	156	219
2R83GY	17:27	Sheffield	Doncaster	18:06	144	219
2T94GN	17:28	Leeds	York	18:10	150	219
2C52GZ	17:29	Leeds	York	18:45	150+142	356
2L57GZ	17:32	Leeds	Sheffield	18:56	144 (3)	219
2F89FF	17:36	Manchester Victoria	Wigan Wallgate	18:22	156	219
2P64GY	17:37	Leeds	Bradford Forster Square	17:58	156	219
1L71GD	17:37	Leeds	Sheffield	18:38	158	219
2B56GA	17:36	Sheffield	Huddersfield	18:57	144(3)	219
2H83FC	17:37	Manchester Piccadilly	Manchester Piccadilly	19:02	150	219
2M50FA	17:37	Leeds	Manchester Victoria	19:09	158	219
2K24FE	17:38	Manchester Piccadilly	Crewe	18:26	150	219
2S46GY	17:38	Bradford Forster Square	Skipton	18:17	150	219
2H98FC	17:39	Wigan Wallgate	Buxton	19:24	156	219
1F02FA	17:40	Manchester Victoria	Southport	18:55	150+142	219
2H94GD	17:41	Leeds	Skipton	18:24	322	467
2E49GZ	17:43	Manchester Victoria	York	19:52	155	219
2J47GD	17:43	Leeds	Sheffield	19:42	144(3)	219
2C72GZ	17:44	Leeds	Knaresborough	18:26	142+142	274
2N72FC	17:42	Liverpool Lime Street	Blackpool North	19:22	156	219
2A92FB	17:46	Manchester Piccadilly	Crewe	18:46	150	219
2K22GZ	17:46	Leeds	Selby	18:23	158	219
2V70GY	17:47	Leeds	Ilkley	18:16	322	467
2K16EC	17:48	Manchester Piccadilly	Stoke-on-Trent	18:42	150	219
2N35GZ	17:48	Leeds	Sheffield	19:00	158	219
1L94GZ	17:50	Sheffield	Leeds	18:51	142	137
2H96FC	17:52	Manchester Piccadilly	Buxton	18:54	156+150	438
2H60GY	17:56	Leeds	Skipton	18:40	333	219
2C54GZ	17:59	Leeds	Knaresborough	18:45	155	219
2H85FC	17:59	Manchester Piccadilly	Manchester Piccadilly	19:16	150	219
2F27GZ	18:00	Leeds	Knottingly	18:35	150	219
2N59FB	18:00	Manchester Victoria	Clitheroe	19:14	150	219
2N74FC	18:01	Liverpool Lime Street	Preston	19:15	156	219
2V54GY	18:02	Leeds	Ilkley	18:35	333	467
2H96FY	18:06	Leeds	Carlisle	20:52	158	219
2K26FE	18:08	Manchester Piccadilly	Crewe	19:00	150	219
2M52FA	18:08	Leeds	Manchester Victoria	19:32	158	219
2N36GZ	18:16	Sheffield	Leeds	19:30	142	137

2E51GZ	18:21	Manchester Victoria	Leeds	19:57	155	219
2H62GY	18:26	Leeds	Skipton	19:10	333	467
2E78GT	18:27	Manchester Victoria	Huddersfield	19:12	156	219
2C56GZ	18:29	Leeds	York	19:48	144 ⁽²⁾ +144 ⁽³⁾	356
2V56GY	18:32	Leeds	Ilkley	19:00	333	467
2A93FB	18:46	Manchester Piccadilly	Alderley Edge	19:31	150	219
2K18EC	18:48	Manchester Piccadilly	Stoke-on-Trent	19:42	150	219
2H90FD	18:52	Manchester Piccadilly	Buxton	19:51	150	219
2H64GY	18:54	Leeds	Skipton	19:35	150	219
2C70GZ	18:59	Leeds	Knaresborough	19:45	150	219

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APPENDIX 1 TO SCHEDULE 7.1 – NOT USED

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APPENDIX 2 TO SCHEDULE 7.1 – SERVICE DELIVERY BENCHMARK TABLES

Part 1- PMU Service Delivery Benchmark Table – Lancashire & Cumbria

Column 1		Column 2	Column 3	Column 4
Reporting Period		Improvement Plan Performance Level	Breach Performance Level	Default Performance Level
		(Minutes Delay)	(Minutes Delay)	(Minutes Delay)
Year 1, Period 1*	2014/2015	7,300	7,810	8,820
Year 1, Period 2	2014/2015	7,300	7,810	8,820
Year 1, Period 3	2014/2015	7,300	7,810	8,820
Year 1, Period 4	2014/2015	7,300	7,810	8,820
Year 1, Period 5	2014/2015	7,300	7,810	8,820
Year 1, Period 6	2014/2015	7,300	7,810	8,820
Year 1, Period 7	2014/2015	7,300	7,810	8,820
Year 1, Period 8	2014/2015	7,300	7,810	8,820
Year 1, Period 9	2014/2015	7,300	7,810	8,820
Year 1, Period 10	2014/2015	7,300	7,810	8,820
Year 1, Period 11	2014/2015	7,300	7,810	8,820
Year 1, Period 12	2014/2015	7,300	7,810	8,820
Year 1, Period 13	2014/2015	7,300	7,810	8,820
Year 2, Period 1	2015/2016	7,300	7,810	8,820
Year 2, Period 2	2015/2016	7,300	7,810	8,820
Year 2, Period 3	2015/2016	7,300	7,810	8,820
Year 2, Period 4	2015/2016	7,300	7,810	8,820
Year 2, Period 5	2015/2016	7,300	7,810	8,820
Year 2, Period 6	2015/2016	7,300	7,810	8,820
Year 2, Period 7	2015/2016	7,300	7,810	8,820
Year 2, Period 8	2015/2016	7,300	7,810	8,820
Year 2, Period 9	2015/2016	7,300	7,810	8,820
Year 2, Period 10	2015/2016	7,300	7,810	8,820
Year 2, Period 11	2015/2016	7,300	7,810	8,820

* where Reporting Period 1 2014/15 is the Reporting Period which commences on the Franchise Commencement Date (1 April 2014).

Part 2- PMU Service Delivery Benchmark Table – Manchester & Liverpool

Column 1		Column 2	Column 3	Column 4
Reporting Period		Improvement Plan Performance Level	Breach Performance Level	Default Performance Level
		(Minutes Delay)	(Minutes Delay)	(Minutes Delay)
Year 1, Period 1*	2014/2015	21,160	22,640	25,590
Year 1, Period 2	2014/2015	21,160	22,640	25,590
Year 1, Period 3	2014/2015	21,160	22,640	25,590
Year 1, Period 4	2014/2015	21,160	22,640	25,590
Year 1, Period 5	2014/2015	21,160	22,640	25,590
Year 1, Period 6	2014/2015	21,160	22,640	25,590
Year 1, Period 7	2014/2015	21,160	22,640	25,590
Year 1, Period 8	2014/2015	21,160	22,640	25,590
Year 1, Period 9	2014/2015	21,160	22,640	25,590
Year 1, Period 10	2014/2015	21,160	22,640	25,590
Year 1, Period 11	2014/2015	21,160	22,640	25,590
Year 1, Period 12	2014/2015	21,160	22,640	25,590
Year 1, Period 13	2014/2015	21,160	22,640	25,590
Year 2, Period 1	2015/2016	21,160	22,640	25,590
Year 2, Period 2	2015/2016	21,160	22,640	25,590
Year 2, Period 3	2015/2016	21,160	22,640	25,590
Year 2, Period 4	2015/2016	21,160	22,640	25,590
Year 2, Period 5	2015/2016	21,160	22,640	25,590
Year 2, Period 6	2015/2016	21,160	22,640	25,590
Year 2, Period 7	2015/2016	21,160	22,640	25,590
Year 2, Period 8	2015/2016	21,160	22,640	25,590
Year 2, Period 9	2015/2016	21,160	22,640	25,590
Year 2, Period 10	2015/2016	21,160	22,640	25,590
Year 2, Period 11	2015/2016	21,160	22,640	25,590

* where Reporting Period 1 2014/15 is the Reporting Period which commences on the Franchise Commencement Date (1 April 2014).

Part 3 - PMU Service Delivery Benchmark Table – South & East Yorkshire

Column 1		Column 2	Column 3	Column 4
Reporting Period		Improvement Plan Performance Level	Breach Performance Level	Default Performance Level
		(Minutes Delay)	(Minutes Delay)	(Minutes Delay)
Year 1, Period 1*	2014/2015	7,930	8,490	9,590
Year 1, Period 2	2014/2015	7,930	8,490	9,590
Year 1, Period 3	2014/2015	7,930	8,490	9,590
Year 1, Period 4	2014/2015	7,930	8,490	9,590
Year 1, Period 5	2014/2015	7,930	8,490	9,590
Year 1, Period 6	2014/2015	7,930	8,490	9,590
Year 1, Period 7	2014/2015	7,930	8,490	9,590
Year 1, Period 8	2014/2015	7,930	8,490	9,590
Year 1, Period 9	2014/2015	7,930	8,490	9,590
Year 1, Period 10	2014/2015	7,930	8,490	9,590
Year 1, Period 11	2014/2015	7,930	8,490	9,590
Year 1, Period 12	2014/2015	7,930	8,490	9,590
Year 1, Period 13	2014/2015	7,930	8,490	9,590
Year 2, Period 1	2015/2016	7,930	8,490	9,590
Year 2, Period 2	2015/2016	7,930	8,490	9,590
Year 2, Period 3	2015/2016	7,930	8,490	9,590
Year 2, Period 4	2015/2016	7,930	8,490	9,590
Year 2, Period 5	2015/2016	7,930	8,490	9,590
Year 2, Period 6	2015/2016	7,930	8,490	9,590
Year 2, Period 7	2015/2016	7,930	8,490	9,590
Year 2, Period 8	2015/2016	7,930	8,490	9,590
Year 2, Period 9	2015/2016	7,930	8,490	9,590
Year 2, Period 10	2015/2016	7,930	8,490	9,590
Year 2, Period 11	2015/2016	7,930	8,490	9,590

* where Reporting Period 1 2014/15 is the Reporting Period which commences on the Franchise Commencement Date (1 April 2014).

Part 4 - PMU Service Delivery Benchmark Table – Tyne, Tees & Wear

Column 1		Column 2	Column 3	Column 4
Reporting Period		Improvement Plan Performance Level	Breach Performance Level	Default Performance Level
		(Minutes Delay)	(Minutes Delay)	(Minutes Delay)
Year 1, Period 1*	2014/2015	3,040	3,250	3,670
Year 1, Period 2	2014/2015	3,040	3,250	3,670
Year 1, Period 3	2014/2015	3,040	3,250	3,670
Year 1, Period 4	2014/2015	3,040	3,250	3,670
Year 1, Period 5	2014/2015	3,040	3,250	3,670
Year 1, Period 6	2014/2015	3,040	3,250	3,670
Year 1, Period 7	2014/2015	3,040	3,250	3,670
Year 1, Period 8	2014/2015	3,040	3,250	3,670
Year 1, Period 9	2014/2015	3,040	3,250	3,670
Year 1, Period 10	2014/2015	3,040	3,250	3,670
Year 1, Period 11	2014/2015	3,040	3,250	3,670
Year 1, Period 12	2014/2015	3,040	3,250	3,670
Year 1, Period 13	2014/2015	3,040	3,250	3,670
Year 2, Period 1	2015/2016	3,040	3,250	3,670
Year 2, Period 2	2015/2016	3,040	3,250	3,670
Year 2, Period 3	2015/2016	3,040	3,250	3,670
Year 2, Period 4	2015/2016	3,040	3,250	3,670
Year 2, Period 5	2015/2016	3,040	3,250	3,670
Year 2, Period 6	2015/2016	3,040	3,250	3,670
Year 2, Period 7	2015/2016	3,040	3,250	3,670
Year 2, Period 8	2015/2016	3,040	3,250	3,670
Year 2, Period 9	2015/2016	3,040	3,250	3,670
Year 2, Period 10	2015/2016	3,040	3,250	3,670
Year 2, Period 11	2015/2016	3,040	3,250	3,670

* where Reporting Period 1 2014/15 is the Reporting Period which commences on the Franchise Commencement Date (1 April 2014).

Part 5 - PMU Service Delivery Benchmark Table – West & North Yorkshire

Column 1		Column 2	Column 3	Column 4
Reporting Period		Improvement Plan Performance Level	Breach Performance Level	Default Performance Level
		(Minutes Delay)	(Minutes Delay)	(Minutes Delay)
Year 1, Period 1*	2014/2015	16,490	17,640	19,940
Year 1, Period 2	2014/2015	16,490	17,640	19,940
Year 1, Period 3	2014/2015	16,490	17,640	19,940
Year 1, Period 4	2014/2015	16,490	17,640	19,940
Year 1, Period 5	2014/2015	16,490	17,640	19,940
Year 1, Period 6	2014/2015	16,490	17,640	19,940
Year 1, Period 7	2014/2015	16,490	17,640	19,940
Year 1, Period 8	2014/2015	16,490	17,640	19,940
Year 1, Period 9	2014/2015	16,490	17,640	19,940
Year 1, Period 10	2014/2015	16,490	17,640	19,940
Year 1, Period 11	2014/2015	16,490	17,640	19,940
Year 1, Period 12	2014/2015	16,490	17,640	19,940
Year 1, Period 13	2014/2015	16,490	17,640	19,940
Year 2, Period 1	2015/2016	16,490	17,640	19,940
Year 2, Period 2	2015/2016	16,490	17,640	19,940
Year 2, Period 3	2015/2016	16,490	17,640	19,940
Year 2, Period 4	2015/2016	16,490	17,640	19,940
Year 2, Period 5	2015/2016	16,490	17,640	19,940
Year 2, Period 6	2015/2016	16,490	17,640	19,940
Year 2, Period 7	2015/2016	16,490	17,640	19,940
Year 2, Period 8	2015/2016	16,490	17,640	19,940
Year 2, Period 9	2015/2016	16,490	17,640	19,940
Year 2, Period 10	2015/2016	16,490	17,640	19,940
Year 2, Period 11	2015/2016	16,490	17,640	19,940

* where Reporting Period 1 2014/15 is the Reporting Period which commences on the Franchise Commencement Date (1 April 2014).

Part 6 - Franchise Wide Service Delivery Benchmark Table

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SCHEDULE 7.2 – SERVICE QUALITY REQUIREMENTS

1 INTRODUCTION

- 1.1 This Schedule 7.2 provides for:
- 1.1.1 the Service Quality Requirements which apply during the Franchise Term;
 - 1.1.2 the responsibilities, including reporting requirements of the Franchisee;
 - 1.1.3 the audits that may be carried out by the Secretary of State;
 - 1.1.4 the rights of the Executives to carry out audits;
 - 1.1.5 the remedies available to the Secretary of State if the Franchisee does not meet the Service Quality Requirements; and
 - 1.1.6 the remedies available to the Secretary of State if the Franchisee fails to submit a Service Quality Plan when required to do so or implement any Service Quality Plan in accordance with its terms.

2 SERVICE QUALITY ARRANGEMENTS

Service Quality Reporting

- 2.1 The Franchisee shall manage its business in a manner compatible with meeting the Service Quality Requirements, provided that nothing in this Schedule 7.2 shall require the Franchisee to employ an internal or external management reporting system in addition to good management practice at the level of granularity set out for the individual items in the Service Quality Requirements.

Service Quality Plans

- 2.2 Any Service Quality Plan submitted under paragraph 4.1.2 requires approval by the Secretary of State. The Secretary of State and the Franchisee shall act in good faith to agree the Service Quality Plan and in the event that no such agreement can be reached, the Secretary of State shall reasonably determine the Service Quality Plan.
- 2.3 The Franchisee shall implement any Service Quality Plan agreed with or determined by the Secretary of State pursuant to paragraph 2.2 in accordance with its terms.

Service Quality at Franchisee Access Stations

- 2.4 The Franchisee shall use all reasonable endeavours to enforce any rights it may have under any Access Agreement in respect of any Franchisee Access Station, in order that any services equivalent to the Franchise Services that are provided by the Facility Owner at any Franchisee Access Station are provided at a level of service quality that is consistent with the Service Quality Requirements.

3 AUDITING

- 3.1 The Secretary of State, and his employees and agents on his behalf (which may include (without limitation) the Executives), shall have the right (at his own cost) to carry out his own independent audits of the extent to which the Franchisee is meeting the Service Quality Requirements, in addition to any further independent audits he may carry out pursuant to paragraph 6.1 of Schedule 10.1 (Remedial Plans and Remedial Agreements).
- 3.2 The Franchisee shall cooperate with the Secretary of State, and his employees and agents (which may include (without limitation) the Executives) on his behalf, in permitting the Secretary of State to exercise his rights under paragraph 3.1.
- 3.3 The Secretary of State shall use all reasonable endeavours to ensure that the persons employed in undertaking independent audits, carry out such audits diligently and objectively.

- 3.4 The Secretary of State shall use all reasonable endeavours to notify the Franchisee of the result of any independent audit that is undertaken within any Service Quality Reporting Period no later than the last day of such Service Quality Reporting Period where any such audit is conducted five days or more prior to the last day of such Service Quality Reporting Period. Otherwise, the Secretary of State shall notify the Franchisee as soon as reasonably practicable thereafter.
- 3.5 The Franchisee shall grant such access to the facilities under its control as is necessary to enable the Secretary of State and the Secretary of State's employees and agents on his behalf to exercise his independent audit rights under paragraph 3.1.
- 3.6 In carrying out any independent audit the Secretary of State shall, subject to paragraph 3.7, ensure that his employees or agents:
- 3.6.1 are appropriately trained and briefed with respect to any location-specific safety rules and regulations; and
- 3.6.2 obey any location-specific rules and regulations in respect of security and access.
- 3.7 The Franchisee shall provide notice from time to time of current location-specific access, security and safety rules and regulations to the Secretary of State, his employees or agents for the purpose of ensuring that the Secretary of State, his employees and agents can carry out the Secretary of State's auditing rights in an efficient, secure and safe manner.

4 REPORTING ARRANGEMENTS FOR THE FRANCHISEE

- 4.1 The Franchisee shall:
- 4.1.1 notify the Secretary of State of any material and persistent failure by the Franchisee to meet the Service Quality Requirements over the course of the Service Quality Reporting Period no later than seven days after each Service Quality Reporting Period; and
- 4.1.2 promptly submit to the Secretary of State a Service Quality Plan where it is required to notify the Secretary of State under paragraph 4.1.1.
- 4.2 Each Service Quality Plan shall detail:
- 4.2.1 the material and persistent failure to meet the Service Quality Requirements in respect of which it has been submitted;
- 4.2.2 the remedial actions that the Franchisee intends to take, including the resources (if any) it intends to allocate, in order to ensure that its future performance in respect of the Service Quality Requirements will be met; and
- 4.2.3 the anticipated time it will take to achieve the objective referred to in paragraph 4.2.2.

5 REMEDIES AVAILABLE TO THE SECRETARY OF STATE

Contraventions

- 5.1 It shall be a contravention of the Franchise Agreement if:
- 5.1.1 the Franchisee fails to meet the Service Quality Requirements in all material respects;
- 5.1.2 the Franchisee fails to submit a Service Quality Plan in accordance with paragraph 4.1.2; or
- 5.1.3 the Franchisee fails to implement a Service Quality Plan in accordance with its terms.

- 5.2 Without prejudice to the provisions of paragraph 2.11 of Schedule 10.3 (Events of Default and Termination Event), no Event of Default shall have occurred if any of the circumstances referred to in paragraph 5.1 occur.

Results of independent audits

- 5.3 Subject to paragraph 5.5, the results of any independent audits that are carried out in specific response to the occurrence of any of the circumstances described in paragraphs 5.1.1 to 5.1.3 inclusive and/or any audit carried out by the Executives pursuant to paragraph 6 shall be included in the notification pursuant to paragraph 4.1.1 of the Franchisee's performance against the relevant Service Quality Requirements.
- 5.4.1 Only the results of those audits:
- 5.4.1 carried out pursuant to paragraph 6.1 of Schedule 10 (Remedial Plans and Remedial Agreements) in specific response to the occurrence of any of the circumstances described in paragraphs 5.1.1 to 5.1.3 inclusive; and/or
- 5.4.2 carried out by the Executives pursuant to paragraph 6; and
- 5.4.3 notified by the Secretary of State to the Franchisee by the end of the relevant Service Quality Reporting Period during which they were conducted,
- shall be included in the notification for the relevant Service Quality Reporting Period pursuant to paragraph 4.1.1.

Franchisee right to make representations

- 5.5 The Franchisee shall have the right to:
- 5.5.1 inspect the results of any independent audit carried out by the Secretary of State pursuant to this Schedule 7.2; and/or
- 5.5.2 inspect the results of any audit carried out by the Executive pursuant to paragraph 6; and/or
- 5.5.3 make representations to the Secretary of State in respect of any of those results of any such audits referred to in paragraphs 5.5.1 or 5.5.2.
- 5.6 The Secretary of State shall have regard to, but not be bound by, any representation made by the Franchisee pursuant to paragraph 5.5.3.

6 RIGHTS OF THE EXECUTIVES

- 6.1 The Executives shall be entitled to undertake their own audit at any stage during the Franchise Term to ensure that the Franchisee is satisfying the Service Quality Requirements or such other requirements as may be agreed between the Executives and the Franchisee. The Franchisee will use its reasonable endeavours to assist the Executives in any such audit exercise including providing reasonable access to its stations and trains.

SCHEDULE 8- PAYMENTS

- Schedule 8.1 Franchise Payments
 - Part 1: General Provisions Applicable to Franchise Payments
 - Part 2: Secretary of State Franchise Payments
 - Part 3: Executive Franchise Payments
 - Appendix 1: Profit Share Thresholds
 - Appendix 2: Components of AFA and DFR
- Schedule 8.2 Annual Franchise Payments/Apportionment of Payments
 - Part 1: Annual Franchise Payments
 - Part 2: Annual Franchise Payments/Apportionment of Payments
 - Appendix 1: Not Used
 - Appendix 2: Figures for Calculation of Annual Franchise Payments
- Schedule 8.3 Miscellaneous Payment Provisions
- Schedule 8.4 Track Access Adjustments and Station Charge Adjustments

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SCHEDULE 8.1 - FRANCHISE PAYMENTS

Part 1 - General provisions applicable to Franchise Payments

- 1.1 The Secretary of State shall notify the Franchisee, and each of the Executives, no less than seven (7) days prior to the end of each Reporting Period, of the amount of the Secretary of State Franchise Payment and each of the Executive Franchise Payments payable in respect of that Reporting Period.
- 1.2 Each such notification shall set out in reasonable detail how the Secretary of State Franchise Payment and the Executive Franchise Payment have been calculated.
- 1.3 Where participation in a Route Efficiency Benefit Share Mechanism is made available to the Franchisee under a Track Access Agreement, the Franchisee must elect not to participate in such mechanism for all of its routes. Should the Franchisee for any reason fail to comply with this requirement and participate in such a mechanism, then the Secretary of State reserves the right to fully recover from the Franchisee any financial benefits paid to it under the mechanism and the Franchisee agrees that the Secretary of State shall be entitled to receive details of those benefits from Network Rail or any other relevant party.
- 1.4 The payment date for a Reporting Period shall be the last business day of that Reporting Period.
- 1.5 Each Secretary of State Franchise Payment and each Executive Franchise Payment shall be payable in the amount notified by the Secretary of State in accordance with paragraph 1.1 on the payment date of the Reporting Period to which it relates.
- 1.6 Each Secretary of State Franchise Payment and each Executive Franchise Payment shall be made:
- 1.6.1 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; and
- 1.6.2 so that cleared funds are received in that account on or before the due date for payment.
- 1.7 If any party disputes the amount of a Franchise Payment, the dispute shall be resolved in accordance with the Dispute Resolution Rules but shall not affect the obligation of any party to pay a Franchise Payment notified in accordance with paragraph 1.1.
- 1.8 If any party fails to pay any amount to the relevant 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.
- 1.9 If the amount of any Franchise Payment is agreed or determined to be incorrect and:
- 1.9.1 any party has made a payment to any other party which is greater than it would have made if the amount of the Franchise Payment had been correct, then the recipient shall repay the excess within three (3) business days of the agreement or determination; or
- 1.9.2 any party has made a payment to the any 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) business days of the agreement or determination,
- together, in each case, with interest on the amount payable at the Interest Rate, calculated on a daily basis from the date on which the Franchise Payment was paid until the date on which such excess amount or shortfall is paid.
- 1.10 The payment obligations of the Secretary of State and each of the Executives under this Schedule 8 are several. None of them shall have any liability in respect of the performance or non performance of any one or more of the others of them, nor shall the Franchisee be entitled to withhold from any

payment to any party to this Agreement any amount that is owing from or payable by any other party to the Franchisee.

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Part 2 – Secretary of State Franchise Payment

1 SECRETARY OF STATE FRANCHISE PAYMENTS

1.1 The Secretary of State Franchise Payment for any Reporting Period shall be an amount equal to:

$$\text{£AuFP} = \text{AS} + \text{TAA} + \text{SCA}$$

where:

£AuFP means the Franchise Payment payable by the Secretary of State to the Franchisee or the Franchisee to the Secretary of State (as the case may be) for that Reporting Period;

AS means the Secretary of State Share of the value of PFP as determined pursuant to paragraph 1 of Part 2 of Schedule 8.2 (Reporting Period Franchise Payments/Appportionment of 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.

1.2 Where a Franchisee Year starts or ends during a Reporting Period, £AuFP shall be determined as if references in paragraph 1.1 to a Reporting Period were to each of the separate sections of two (2) such Reporting Periods which fall either side of such Franchisee Year 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 Secretary of State and the Franchisee both agree that each of £AuFP, AS, TAA and SCA may have a positive or negative value.

1.4 The Secretary of State shall pay to the Franchisee any Franchise Payment which has a positive value and the Franchisee shall pay to the Secretary of State any Franchise Payment which has a negative value in accordance with the payment provisions set out in Part 1 of Schedule 8.1 (Franchise Payments).

2 PROFIT SHARE

2.1 For the purposes of this paragraph 2:

First Profit Share Threshold means an amount in respect of any Franchisee Accounting Year determined as follows:

$$\text{PST1} = \text{RPPST1} \times \text{RPI}$$

where:

PST1 means the First Profit Share Threshold for that Franchisee Accounting Year;

RPPST1 means the sum of the amounts specified in paragraph 1 of Appendix 1 (Profit Share Thresholds) to this Schedule 8.1 for each Reporting Period falling within the relevant Franchisee Accounting Year provided that where only part of a Reporting Period falls within that Franchisee Accounting Year, for the purposes of the calculation of RPPST1 the amount specified for that Reporting Period in paragraph 1 of Appendix 1 (Profit Share Thresholds) to this Schedule 8.1 shall be divided by the number of days in the relevant Reporting Period and multiplied by the number of days in the relevant Reporting Period which fall within the relevant Franchisee Accounting Year; and

RPI has the meaning given to it in Schedule 8.2 (Reporting Period Franchise Payments).

Second Profit Share Threshold means an amount in respect of any Franchisee Accounting Year determined as follows:

$$\text{PST2} = \text{RPPST2} \times \text{RPI}$$

where:

PST2 means the Second Profit Share Threshold for that Franchisee Accounting Year;

RPPST2 means the sum of the amounts specified in paragraph 2 of Appendix 1 (Profit Share Thresholds) to this Schedule 8.1 for each Reporting Period falling within the relevant Franchisee Accounting Year provided that where only part of a Reporting Period falls within that Franchisee Accounting Year, for the purposes of the calculation of RPPST2 the amount specified for that Reporting Period in paragraph 2 of Appendix 1 (Profit Share Thresholds) to this Schedule 8.1 shall be divided by the number of days in the relevant Reporting Period and multiplied by the number of days in the relevant Reporting Period which fall within the relevant Franchisee Accounting Year; and

RPI has the meaning given to it in Schedule 8.2 (Reporting Period Franchise Payments).

Third Profit Share Threshold means an amount in respect of any Franchisee Accounting Year determined as follows:

$$\text{PST3} = \text{RPPST3} \times \text{RPI}$$

where:

PST3 means the Third Profit Share Threshold for that Franchisee Accounting Year;

RPPST3 means the sum of the amounts specified in paragraph 3 of Appendix 1 (Profit Share Thresholds) to this Schedule 8.1 for each Reporting Period falling within the relevant Franchisee Accounting Year provided that where only part of a Reporting Period falls within that Franchisee Accounting Year, for the purposes of the calculation of RPPST3 the amount specified for that Reporting Period in paragraph 3 of Appendix 1 (Profit Share Thresholds) to this Schedule 8.1 shall be divided by the number of days in the relevant Reporting Period and multiplied by the number of days in the relevant Reporting Period which fall within the relevant Franchisee Accounting Year; and

RPI has the meaning given to it in Schedule 8.2 (Reporting Period Franchise Payments).

Fourth Profit Share Threshold means an amount in respect of any Franchisee Accounting Year determined as follows:

$$\text{PST4} = \text{RPPST4} \times \text{RPI}$$

where:

PST4 means the Fourth Profit Share Threshold for that Franchisee Accounting Year;

RPPST4 means the sum of the amounts specified in paragraph 4 of Appendix 1 (Profit Share Thresholds) to this Schedule 8.1 for each Reporting Period falling within the relevant Franchisee Accounting Year provided that where only part of a Reporting Period falls within that Franchisee Accounting Year, for the purposes of the calculation of RPPST4 the amount specified for that Reporting Period in paragraph 4 of Appendix 1 (Profit Share Thresholds) to this Schedule 8.1 shall be divided by the number of days in the relevant Reporting Period and multiplied by the number of days in the relevant Reporting Period which fall within the relevant Franchisee Accounting Year; and

RPI has the meaning given to it in Schedule 8.2 (Reporting Period Franchise Payments).

Relevant Profit means, subject to paragraph 2.4, in respect of any Franchisee Accounting Year, the total profit of the Franchisee for that Franchisee Accounting Year calculated by applying the accounting policies and standards set out in the Record of Assumptions and applied through the Financial Model:

- (a) after taking into account in respect of that Franchisee Accounting Year:
 - (i) interest, finance income and finance charges (other than finance items recognised in respect of retirement benefits);
 - (ii) Franchise Payments;
 - (iii) all extraordinary and exceptional items, as defined under the accounting policies and standards set out in the Record of Assumptions and applied through the Financial Model;
 - (iv) the Franchisee's normal pension contributions in relation to the Franchise Section and any other pension schemes to the extent connected with the Northern 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:

AFA is the sum of the amounts specified in column 2 of the table set out in paragraph 1 of Appendix 2 to this Schedule 8.1 (Franchise Payments) for each Reporting Period falling within the relevant Franchisee Accounting Year provided that where only part of a Reporting Period falls within that Franchisee Accounting Year, for the purposes of the calculation of AFA the amount specified for that Reporting Period in column 2 of the table set out in paragraph 1 of Appendix 2 to this Schedule 8.1 (Franchise Payments) shall be divided by the number of days in the relevant Reporting Period and multiplied by the number of days in the relevant Reporting Period which fall within the relevant Franchisee Accounting Year; and

RPI has the meaning given to it in the definition of Threshold Amount;

and, for the avoidance of doubt, no adjustment shall be made for payments to Affiliates for: (i) rail replacement bus costs under the performance regime in the Track Access Agreement, (ii) corporation tax payments made by the Affiliate on the Franchisee's behalf and (iii) settlement of annual insurance premiums paid by the Affiliate on the Franchisee's behalf;

- (vi) any sums payable by or to the Franchisee pursuant to the terms of the Supplemental Agreement; and
 - (vii) any capital expenditure to the extent that it is recognised as an operating cost in the Annual Audited Accounts and any depreciation on capital expenditure that is recognised as an expense in the Annual Audited Accounts, unless the depreciation policy and assumptions used in the Annual Audited Accounts are different to those set out in the Record of Assumptions and applied through the Financial Model, in which case an adjustment should be made to take account of the depreciation which would have been charged had the policy and assumptions set out in the Record of Assumptions been applied for the relevant Franchisee Accounting Year; and
- (b) before taking into account in respect of that Franchisee Accounting Year:
 - (i) any taxation on profits including corporation tax;

- (ii) shares of the profit of any Affiliate of the Franchisee, except dividends received in cash;
- (iii) non cash entries in respect of the Franchise Section and any other pension schemes to the extent connected with the Northern Franchise, excluding accruals or prepayments of any normal pension contributions due;
- (iv) any payment made by the Franchisee consequent upon any breach or contravention of the Franchise Agreement and/or its Licence (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 Accounting 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

where:

DFR is the sum of the amounts specified in column 2 of the table set out in paragraph 2 of Appendix 2 to this Schedule 8.1 (Franchise Payments) for each Reporting Period falling within the relevant Franchisee Accounting Year provided that where only part of a Reporting Period falls within that Franchisee Accounting Year, for the purposes of the calculation of DFR the amount specified for that Reporting Period in column 2 of the table set out in paragraph 2 of Appendix 2 to this Schedule 8.1 (Franchise Payments) shall be divided by the number of days in the relevant Reporting Period and multiplied by the number of days in the relevant Reporting Period which fall within the relevant Franchisee Accounting Year; and

RPI has the meaning given to it in the definition of Threshold Amount.

Where the calculation of Relevant Profit requires account to be taken of amounts prescribed in the Financial Model or the Record of Assumptions by reference to Franchisee Years rather than Franchisee Accounting Years the Secretary of State shall reasonably determine any calculation required to apply such amounts on a pro rata basis by reference to Franchisee Accounting Years.

2.2 If the Annual Audited Accounts in respect of any one or more Franchisee Reporting Years or, in the case of the Franchisee Accounting Year ending on the Expiry Date, the Management Accounts for each Reporting Period in that Franchisee Accounting Year, show that the Relevant Profit for a Franchisee Accounting Year exceeds the First Profit Share Threshold then, in relation to that Franchisee Accounting Year, the Franchisee shall pay to the Secretary of State:

2.2.1 ⁵⁰ of Relevant Profit in excess of the First Profit Share Threshold but less than or equal to the Second Profit Share Threshold;

2.2.2 ⁵¹ of Relevant Profit in excess of the Second Profit Share Threshold but less than or equal to the Third Profit Share Threshold;

⁵⁰ Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁵¹ Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

2.2.3 ⁵² of Relevant Profit in excess of the Third Profit Share Threshold but less than or equal to the Fourth Profit Share Threshold; and

2.2.4 ⁵³ of Relevant Profit in excess of the Fourth Profit Share Threshold.

2.3 Subject to paragraphs 2.5 and 2.6 below, payments due under paragraph 2.2 shall be paid as part of the Franchise Payment for the first Reporting Period falling thirty (30) or more days after delivery of the relevant Annual Audited Accounts or the Management Accounts for the final Reporting Period in the Franchisee Accounting Year ending on the Expiry Date (as applicable) by the Franchisee to the Secretary of State under paragraphs 3.2 or 3.9 of Schedule 13.2 (Information) as applicable or if there is no such Reporting Period, within thirty (30) days of the date of such delivery.

2.4

2.4.1 If in any Franchisee Accounting Year (or any period of twelve (12) consecutive months after the end of the Franchise Period) (the “**Current Franchisee Accounting Year**”) the Franchisee receives a compensation or other settlement payment of at least ⁵⁴ x RPI arising from a single claim or series of related claims which relate wholly or partly to costs, losses or expenses (including loss of revenue) arising in any other Franchisee Accounting Year or Franchisee Accounting Years, then the Franchisee shall notify the Secretary of State of such payment as soon as reasonably practicable and for the purposes of this paragraph 3 and notwithstanding its other terms:

(a) the payment which relates to such other Franchisee Accounting Year shall be attributed to that other Franchisee Accounting Year and not treated as received in the Current Franchisee Accounting Year;

(b) where and to the extent any payments under this paragraph 3 in respect of any other Franchisee Accounting Year would have been made or would have been higher had that amount actually been received in that other Franchisee Accounting Year, the Franchisee shall pay a reconciliation amount to the Secretary of State within thirty (30) days after delivery of the Annual Audited Accounts that relate to the Current Franchisee Accounting Year by the Franchisee to the Secretary of State under paragraph 3.9 of Schedule 13.2 (Information) or, if there is no further requirement on the Franchisee to deliver Annual Audited Accounts following the end of the Franchise Period, within thirty (30) days of the Franchisee receiving the relevant payment; and

(c) RPI has the meaning given to it in Schedule 8.2 (Reporting Period Franchise Payments/Apportionment of Payments).

2.4.2 If in any period of twelve (12) consecutive months after the end of the Franchise Period the Franchisee makes a compensation or other settlement payment of at least ⁵⁵ x RPI arising from a single claim or series of related claims which relate wholly or partly to any other Franchisee Accounting Year or Franchisee Accounting Years, then the Franchisee shall notify the Secretary of State of such payment as soon as reasonably practicable and for the purposes of this paragraph 2 and notwithstanding its other terms:

⁵² Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁵³ Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁵⁴ Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁵⁵ Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

- (a) the payment which relates to such other Franchisee Accounting Year shall be attributed to that other Franchisee Accounting Year;
- (b) where and to the extent any payments under this paragraph 3 in respect of any other Franchisee Accounting Year would not have been made or would have been lower had that amount actually been paid in that other Franchisee Accounting Year, the Secretary of State shall pay a reconciliation amount to the Franchisee within thirty (30) days of the receipt by the Secretary of State of the Franchisee's notice; and
- (c) RPI has the meaning given to it in Schedule 8.2 (Reporting Period Franchise Payments).

2.4.3 Where the Secretary of State reasonably considers that in calculating Relevant Profit, or the proportion of Relevant Profit relating to any Reporting Period, 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.

2.4.4 Without prejudice to paragraph 2.4.1 where the Annual Audited Accounts in relation to any previous Franchisee Reporting Year are subject to adjustment or restatement the Secretary of State shall have a discretion to require the recalculation of Relevant Profit for the relevant Franchisee Accounting Year(s) 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 2.2 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.

2.5 The Franchisee shall, within ten (10) days after delivery of any Annual Audited Accounts under paragraph 3.9 of Schedule 13.2 (Information), deliver to the Secretary of State a report identifying:

2.5.1 the amount of total profit and the adjustments made in the calculation of Relevant Profit pursuant to this paragraph 2;

2.5.2 any items falling under paragraph 2.4.1, including details of the allocation across Franchisee Accounting Years of such items;

2.5.3 any adjustments or restatements made in relation to the Annual Audited Accounts in respect of any previous Franchisee Accounting Year; and

2.5.4 where such Annual Audited Accounts relate to the Franchisee Reporting Year in which the Expiry Date falls, the difference between:

- (a) the amount of profit share previously calculated in respect of the Franchisee Accounting Year ending on the Expiry Date in accordance with paragraph 2.2 using the Management Accounts; and

- (b) the amount of profit share calculated in respect of the Franchisee Accounting Year ending on the Expiry Date in accordance with paragraph 2.2 using such Annual Audited Accounts,

(the "**Profit Share Reconciliation Amount**"),

and shall provide such additional information, records or documents as the Secretary of State shall reasonably require in relation to such matters (including an unqualified written report from the Franchisee's auditors which confirms that any such report gives a true and fair view of the matters

contained within it including the amount of total profit and the adjustments made in the calculation of Relevant Profit).

- 2.6 Any profit share payment pursuant to paragraph 2.2 to be made in respect of the final Franchisee Accounting Year:
- 2.6.1 shall be determined in accordance with this paragraph 2 but shall be paid within thirty (30) days of the Secretary of State giving written notice to the Franchisee of the amount of such profit share payment; and
- 2.6.2 shall be subject to a reconciliation following delivery of the Annual Audited Accounts for the Franchisee Reporting Year in which the Expiry Date falls such that the Franchisee or the Secretary of State (as applicable) shall pay the Profit Share Reconciliation Amount to the other no later than thirty (30) days after delivery of the report referred to in paragraph 2.5.
- 2.7 If the Franchisee fails to provide the Annual Audited Accounts for the final Franchisee Reporting Year within five (5) months of the expiry of the final Franchisee Reporting Year pursuant to paragraph 3.7 of Schedule 13.2 (Information), the Secretary of State shall be entitled (but not obliged) to determine any Profit Share Adjustment in accordance with this paragraph 2 (including any reconciliation pursuant to paragraph 2.6) 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.

Conformed

Part 3 – Executive Franchise Payments

1 EXECUTIVE FRANCHISE PAYMENTS

1.1 The Executive Franchise Payment for an Executive and for any Reporting Period shall be an amount equal to:

$$\text{£EFP} = \text{ES} + \text{Z}$$

where:

£EFP means the Executive Franchise Payment relevant for that Reporting Period;

ES means the relevant Executive Share of the value of PFP as determined pursuant to paragraph 1 of Part 2 of Schedule 8.2 (Reporting Period Franchise Payments/Appportionment of Payments);

Z means the relevant Executive's proportion of the additional payments to be made by such Executive pursuant to paragraphs 7.13 of Schedule 1.1 (Service Development) (including any Retrospective Payment) which shall have a positive value.

1.2 The Executives and the Franchisee each agree that each of £EFP and ES may have a positive or negative value.

1.3 Each Executive shall pay to the Franchisee any Executive Franchise Payment in respect of that Executive which has a positive value and the Franchisee shall pay to the relevant Executive any such Executive Franchise Payment which has a negative value in accordance with the payment provisions set out in Part 1 of Schedule 8.1 (Franchise Payments).

APPENDIX 1 TO SCHEDULE 8.1 – PROFIT SHARE THRESHOLDS

- 1 The prescribed amounts for the component RPPST1 for each Reporting Period and for the purposes of the definition of First Profit Share Threshold are as set out in the table below:

Reporting Period	RPPST1 (£) ⁵⁶
Period 1 2014/15*	
Period 2 2014/15	
Period 3 2014/15	
Period 4 2014/15	
Period 5 2014/15	
Period 6 2014/15	
Period 7 2014/15	
Period 8 2014/15	
Period 9 2014/15	
Period 10 2014/15	
Period 11 2014/15	
Period 12 2014/15	
Period 13 2014/15	
Period 1 2015/16	
Period 2 2015/16	
Period 3 2015/16	
Period 4 2015/16	
Period 5 2015/16	
Period 6 2015/16	
Period 7 2015/16	
Period 8 2015/16	
Period 9 2015/16	
Period 10 2015/16	
Period 11 2015/16	
Period 12 2015/16	
Period 13 2015/16	

* where Reporting Period 1 2014/15 is the Reporting Period which commences on the Franchise Commencement Date (1 April 2014).

- 2 The prescribed amounts for the component RPPST2 for each Reporting Period and for the purposes of the definition of Second Profit Share Threshold are as set out in the table below:

⁵⁶ Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

Reporting Period	RPPST2 (£) ⁵⁷
Period 1 2014/15*	
Period 2 2014/15	
Period 3 2014/15	
Period 4 2014/15	
Period 5 2014/15	
Period 6 2014/15	
Period 7 2014/15	
Period 8 2014/15	
Period 9 2014/15	
Period 10 2014/15	
Period 11 2014/15	
Period 12 2014/15	
Period 13 2014/15	
Period 1 2015/16	
Period 2 2015/16	
Period 3 2015/16	
Period 4 2015/16	
Period 5 2015/16	
Period 6 2015/16	
Period 7 2015/16	
Period 8 2015/16	
Period 9 2015/16	
Period 10 2015/16	
Period 11 2015/16	
Period 12 2015/16	
Period 13 2015/16	

* where Reporting Period 1 2014/15 is the Reporting Period which commences on the Franchise Commencement Date (1 April 2014).

- 3 The prescribed amounts for the component RPPST3 for each Reporting Period and for the purposes of the definition of Third Profit Share Threshold are as set out in the table below:

Reporting Period	RPPST3 (£) ⁵⁸
Period 1 2014/15*	
Period 2 2014/15	

⁵⁷ Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁵⁸ Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

Reporting Period	RPPST3 (£) ⁵⁸
Period 3 2014/15	
Period 4 2014/15	
Period 5 2014/15	
Period 6 2014/15	
Period 7 2014/15	
Period 8 2014/15	
Period 9 2014/15	
Period 10 2014/15	
Period 11 2014/15	
Period 12 2014/15	
Period 13 2014/15	
Period 1 2015/16	
Period 2 2015/16	
Period 3 2015/16	
Period 4 2015/16	
Period 5 2015/16	
Period 6 2015/16	
Period 7 2015/16	
Period 8 2015/16	
Period 9 2015/16	
Period 10 2015/16	
Period 11 2015/16	
Period 12 2015/16	
Period 13 2015/16	

* where Reporting Period 1 2014/15 is the Reporting Period which commences on the Franchise Commencement Date (1 April 2014).

- 4 The prescribed amounts for the component RPPST4 for each Reporting Period and for the purposes of the definition of Fourth Profit Share Threshold are as set out in the table below:

Reporting Period	RPPST4 (£) ⁵⁹
Period 1 2014/15*	
Period 2 2014/15	
Period 3 2014/15	
Period 4 2014/15	
Period 5 2014/15	
Period 6 2014/15	

⁵⁹ Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

Reporting Period	RPPST4 (£) ⁵⁹
Period 7 2014/15	
Period 8 2014/15	
Period 9 2014/15	
Period 10 2014/15	
Period 11 2014/15	
Period 12 2014/15	
Period 13 2014/15	
Period 1 2015/16	
Period 2 2015/16	
Period 3 2015/16	
Period 4 2015/16	
Period 5 2015/16	
Period 6 2015/16	
Period 7 2015/16	
Period 8 2015/16	
Period 9 2015/16	
Period 10 2015/16	
Period 11 2015/16	
Period 12 2015/16	
Period 13 2015/16	

* where Reporting Period 1 2014/15 is the Reporting Period which commences on the Franchise Commencement Date (1 April 2014).

APPENDIX 2 TO SCHEDULE 8.1 – COMPONENTS OF AFA AND DFR

1 The amounts for the purposes of the component of AFA in paragraph 2.1(a)(v) of Schedule 8.1 (Franchise Payments) are set out in the table below:

Reporting Period	Component of AFA (£) ⁶⁰
Period 1 2014/15*	
Period 2 2014/15	
Period 3 2014/15	
Period 4 2014/15	
Period 5 2014/15	
Period 6 2014/15	
Period 7 2014/15	
Period 8 2014/15	
Period 9 2014/15	
Period 10 2014/15	
Period 11 2014/15	
Period 12 2014/15	
Period 13 2014/15	
Period 1 2015/16	
Period 2 2015/16	
Period 3 2015/16	
Period 4 2015/16	
Period 5 2015/16	
Period 6 2015/16	
Period 7 2015/16	
Period 8 2015/16	
Period 9 2015/16	
Period 10 2015/16	
Period 11 2015/16	
Period 12 2015/16	
Period 13 2015/16	

* where Reporting Period 1 2014/15 is the Reporting Period which commences on the Franchise Commencement Date (1 April 2014).

2 The amounts for the purposes of the component of DFR in paragraph 2.1(b)(vi) of Schedule 8.1 (Franchise Payments) are set out in the table below:

⁶⁰ Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

Reporting Period	Component of DFR (£) ⁶¹
Period 1 2014/15*	
Period 2 2014/15	
Period 3 2014/15	
Period 4 2014/15	
Period 5 2014/15	
Period 6 2014/15	
Period 7 2014/15	
Period 8 2014/15	
Period 9 2014/15	
Period 10 2014/15	
Period 11 2014/15	
Period 12 2014/15	
Period 13 2014/15	
Period 1 2015/16	
Period 2 2015/16	
Period 3 2015/16	
Period 4 2015/16	
Period 5 2015/16	
Period 6 2015/16	
Period 7 2015/16	
Period 8 2015/16	
Period 9 2015/16	
Period 10 2015/16	
Period 11 2015/16	
Period 12 2015/16	
Period 13 2015/16	

* where Reporting Period 1 2014/15 is the Reporting Period which commences on the Franchise Commencement Date (1 April 2014).

⁶¹ Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

SCHEDULE 8.2 – REPORTING PERIOD FRANCHISE PAYMENTS/APPORTIONMENT OF PAYMENTS

Part 1- Reporting Period Franchise Payments

1 The Reporting Period Franchise Payment for any Franchisee Year is an amount equal to:

$$\text{RFPF} = \text{FXD} + (\text{VCRPI} \times \text{RPI}) + (\text{VCAWE} \times \text{AWE}) + \text{PRPI} \times \text{RPI} - (\text{RRPI} \times \text{RPI})$$

where:

RFPF equals the Reporting Period Franchise Payment in the relevant Reporting Period;

FXD means the figure shown in respect of the relevant Reporting Period in column 2 of the table set out in Appendix 2 (Figures for Calculation of Reporting Period Franchise Payments) to this Schedule 8.2;

VCRPI means the figure shown in respect of the relevant Reporting Period in column 3 of the table set out in Appendix 2 (figures for calculation of Reporting Period Franchise Payments) to this Schedule 8.2;

RPI is the quotient of the Retail Prices Index for the January which immediately precedes the commencement of the relevant Franchisee Year (being the Franchisee Year in which the relevant Reporting Period falls) divided by the Retail Prices Index for January 2013 provided that, for any Reporting Period commencing prior to 1 April 2014, RPI shall be one (1);

VCAWE means the figure shown in respect of the relevant Reporting Period in column 4 of the table set out in Appendix 2 (figures for calculation of Reporting Period Franchise Payments) to this Schedule 8.2;

AWE is the quotient of the Average Weekly Earnings Index for the January which immediately precedes the commencement of the relevant Franchisee Year (being the Franchisee Year in which the relevant Reporting Period falls) divided by the Average Earnings Index for January 2013 provided that, for any Reporting Period commencing prior to 1 April 2014, AWE shall be one (1);

PRPI means the figure shown in respect of the relevant Reporting Period in column 5 of the table set out in Appendix 2 (figures for calculation of Reporting Period Franchise Payments) to this Schedule 8.2; and

RRPI means the figure shown in respect of the relevant Reporting Period in column 6 of the table set out in Appendix 2 (figures for calculation of Reporting Period Franchise Payments) to this Schedule 8.2.

Part 2- Apportionment of Payments

2 APPORTIONMENT OF VALUE OF PFP

2.1 The Shares for the purposes of paragraph 1.1 of part 2 of Schedule 8.1 (Franchise Payments) and paragraph 1.1 of part 3 of Schedule 8.1 shall be a proportion of the value of PFP where:

$$\text{PFP} = \text{RPFP}$$

where:

RPFP means the Reporting Period Franchise Payment for the relevant Reporting Period, as determined in accordance with this Schedule 8.2;

except that where a Franchisee Year starts or ends during a Reporting Period, PFP shall be determined as if references in paragraph 1.1 to a Reporting Period were to each of the separate sections of two (2) such Reporting Periods which fall either side of such Franchisee Year end, and the value of PFP for such Reporting Period shall be the sum of PFP as determined for each such section of such Reporting Period.

2.2 Subject to paragraph 12 of Schedule 9.1 (Financial and other Consequences of Change) the proportion of PFP payable by the Secretary of State and each of the Executives shall be determined by the Secretary of State in accordance with paragraphs 1.3 and 1.4 and notified to each of the parties on the Franchise Commencement Date.

2.3 Subject to paragraph 12 of Schedule 9.1 (Financial and other Consequences of Change) the Share payable by each of the Executives shall be determined by the Secretary of State using the following formula:

$$\text{PFP} \times \frac{\text{A}}{\text{B}}$$

where:

A is the scheduled train miles of such Executive's Passenger Services as at the Franchise Commencement Date; and

B is the scheduled train miles of all Passenger Services as at the Franchise Commencement Date.

2.4 Subject to paragraph 6 of Schedule 9.1 (Financial Consequences of Change) the Secretary of State's Share shall equal the balance of PFP after deducting the Shares of each Executive as determined pursuant to paragraph 1.3.

APPENDIX 1 TO SCHEDULE 8.2 – NOT USED

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**APPENDIX 2 TO SCHEDULE 8.2 – FIGURES FOR CALCULATION OF REPORTING PERIOD
FRANCHISE PAYMENTS⁶²**

Figures for Calculation of Reporting Period Franchise Payments (£)

Expressed in real terms

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
Reporting Period	FXD	VCRPI	VCAWE	PRPI	RRPI
Period 1 2014/15*					
Period 2 2014/15					
Period 3 2014/15					
Period 4 2014/15					
Period 5 2014/15					
Period 6 2014/15					
Period 7 2014/15					
Period 8 2014/15					
Period 9 2014/15					
Period 10 2014/15					
Period 11 2014/15					
Period 12 2014/15					
Period 13 2014/15					
Period 1 2015/16					
Period 2 2015/16					
Period 3 2015/16					
Period 4 2015/16					

⁶² Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
Period 5 2015/16					
Period 6 2015/16					
Period 7 2015/16					
Period 8 2015/16					
Period 9 2015/16					
Period 10 2015/16					
Period 11 2015/16					
Period 12 2015/16					
Period 13 2015/16					

*where Reporting Period 1 2014/15 is the Reporting Period which commences on the Franchise Commencement Date (1 April 2014).

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SCHEDULE 8.3 – MISCELLANEOUS PAYMENT PROVISIONS

- 1 Not Used
- 2 Not Used
- 3 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 he 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.
- 4 All sums payable by any party under this Agreement shall be paid free and clear of any deductions, withholdings, set-offs or counter-claims, save only as may be required by Law or as expressly permitted or required under this Agreement.

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SCHEDULE 8.4 - 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:

$$\text{TAA} = (\text{GCA}-\text{W}) \times \frac{\text{RPD}}{\text{FYD}}$$

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 (2) periods within such Reporting Period which fall wholly within one of such Franchisee Years and the Track Access Adjustment to be made in that Reporting Period shall reflect the sum of TAA as determined for each such period.

- 1.2 The Franchisee shall notify the Secretary of State upon becoming aware that any Track Access Adjustment is to be made and shall supply such information as the Secretary of State may require in relation thereto. The Franchisee shall exercise its rights under the Track Access Agreement in such manner and take such other action as the Secretary of State may reasonably require in connection with any related payment thereunder (including in relation to any agreement of the amount of any such payment and including submitting any relevant dispute to any relevant dispute resolution procedures). The Franchisee shall not, without the consent of the Secretary of State, agree or propose to agree a value for "Wt" or "GC" under Part 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 Adjustment shall only be determined to the extent such value can be ascertained at such time and, when such value is subsequently ascertained, adjustment shall be made to reflect the full Track Access 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 Part 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" and "GC" and Part 2 and 3A of Schedule 7 of the Track Access Agreement to which the Franchisee is a party on the Franchise Commencement Date.

2 STATION CHARGE ADJUSTMENT

- 2.1 Not used.
- 2.2 The Station Charge Adjustment to be made in respect of any Reporting Period shall be the aggregate of the Individual Station Charge Adjustments as determined in accordance with the following formula for each Station and each other station at which the Passenger Services call:

$$\text{ISCA} = (\text{L}-\text{P}) \times \frac{\text{RPD}}{\text{FYD}}$$

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 1996 (England and Wales)" relating to such station; or
- (b) if the relevant station is an Independent Station, Condition 42.3 of the Independent Station Access Conditions relating to that Independent Station,

in each case, to the extent that value represents an amount payable to or by Network Rail or any other relevant Facility Owner by or to the Franchisee on its own behalf under the relevant Station Lease or 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 that Station);

P is the value of "Pt" for the Franchisee Year in which the Reporting Period falls under:

- (a) if the relevant station is not an Independent Station, Condition F11.2 of the Franchise Station Access Conditions entitled "National Station Access Conditions 1996 (England and Wales)" relating to such station; or
- (b) if the relevant station is an Independent Station, Condition 42.3 of the Independent Station Access Conditions relating to that Independent Station,

in each case, to the extent that value represents an amount payable to or by Network Rail or any other relevant Facility Owner by or to the Franchisee on its own behalf under the relevant Station Lease or 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 that 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 (2) Franchisee Years, the Station Charge Adjustment shall be determined as if the references to Reporting Period were to each of the two (2) periods within such Reporting Period which fall wholly within one (1) 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 relevant Station Lease or Access Agreement in such manner and take such other action as the Secretary of State may reasonably require in connection with any related payment thereunder (including in relation to any agreement of the amount of any such payment and including submitting any relevant dispute to any relevant dispute resolution procedures). The Franchisee shall not, without the consent of the

Secretary of State, agree or propose to agree a value for "Lt" or "Pt" under any relevant Station Lease or 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 and P under paragraph 2.2.
- 2.5 If no value is ascertained for any of L or P prior to the date on which the Franchise Payment for the relevant Reporting Period is determined, then a Station Charge Adjustment shall only be determined to the extent such values can be ascertained at such time and, when such values are subsequently ascertained, an adjustment shall be made to reflect the full Station Charge Adjustment for such Reporting Period.
- 2.6 The values of L and P 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 any station of which Network Rail may from time to time be the Facility Owner.
- 2.8 References in this paragraph 2 to "Lt", "Pt", Condition F11.2 of the Franchise Station Access Conditions entitled "National Station Access Conditions 1996 (England and Wales)" and Condition 42.3 of the Independent Station Access Condition shall be deemed also to be references to such other provisions, and such other algebra under any such other provisions, of any relevant station access conditions as the Secretary of State may reasonably consider have an equivalent effect, or are intended to fulfil the same function as, "Lt", "Pt" and Condition F11.2 of the Franchise Station Access Conditions and Condition 42.3 of the Independent Station Access Conditions which are in effect on the Franchise Commencement Date.

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SCHEDULE 9 - CHANGES

- Schedule 9.1 Financial and Other Consequences of Change
 - Appendix 1: Summary Flow Chart
 - Appendix 2: Agreement or Determination of Revised Inputs
 - Annex to Appendix 2: Incentivising Long-Term Investment
- Schedule 9.2 Identity of the Financial Model
- Schedule 9.3 Not Used
- Schedule 9.4 Component of FAT: Definition of Threshold Amount

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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:
- 1.1.1 the circumstances in which the occurrence of a Change will result in an adjustment to the Franchise Payments and/or the Benchmarks; and
- 1.1.2 the process by which that adjustment to the Franchise Payments and/or the Benchmarks will be determined and effected; and
- 1.1.3 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:
- 1.3.1A that Change is a consequence of either:
- (a) the Secretary of State amending the value of k for the purposes of Schedule 5.4 and is a Change in accordance with paragraph (m) of that definition; and/or
- (b) the ORR's determination of charges for the control period commencing on 1 April 2014 and is a Change in accordance with paragraph (o) of that definition,
- notwithstanding that such a Change may not meet the Threshold Amount (either on its own or with other Changes as part of an Aggregated Qualifying Change), it shall be deemed to be a Qualifying Change for the purposes of this Schedule 9;
- 1.3.1 there are good reasons for considering that that Change will be a Qualifying Change or, with other Changes, part of an Aggregated Qualifying Change; and
- 1.3.2 the required notice(s) has/have been given in accordance with paragraph 1.4 (or the parties have agreed that this Schedule 9.1 will apply and there should be a Run of the Financial Model, and/or a review of the Benchmarks even though the required notices have not been given).
- 1.4 The notice requirements are:
- 1.4.1 subject to paragraph 1.4.2, a party must have notified the other that it considers that the Change will be a Qualifying Change and that it requires a Run of the Financial Model and/or a review of the Benchmarks in respect of that Change:
- (a) within 6 months of the notification or agreement of that Change if it is a Variation pursuant to paragraph 1.1 of Schedule 19 (Other Provisions); or
- (b) within 6 months of becoming aware of it, if it is any other type of Change; and
- 1.4.2 in the case of an Aggregated Qualifying Change, a party must have notified the other:
- (a) after an individual Change occurs, within the time limits stated in 1.4.1(a) or 1.4.1(b), that it reserves the right to count that Change towards an Aggregated Qualifying Change; and
- (b) within 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 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.
- 1.6 Appendix 1 (Summary Flow Chart) to this Schedule 9.1 contains a flow chart summary of the process described in this Schedule 9.1. This is for guidance only and if there are any inconsistencies between this flow chart and any other of the contents of Schedule 9 (Changes), the latter shall apply.
- 1.7 For the avoidance of doubt:
- 1.7.1 PR2013 shall not be prevented from being a Charging Review and/or the effect of PR2013 on any Relevant Agreement shall not be prevented from being a Charge Variation in each case for the purpose of this Agreement as a result of the fact that:
- (a) PR2013 is or may be concluded prior to the date of the Franchise Agreement; and/or
 - (b) any Relevant Agreement entered into by the Franchisee, or to which the Franchisee otherwise becomes a party by Transfer Scheme or otherwise, reflects the outcome of PR2013 (as opposed to any such Relevant Agreement being varied to reflect the outcome of PR2013 after the Franchisee becomes a party to it),

provided that the Request for Proposal (where relevant, as amended) did not require the Franchisee to submit its bid for the Northern Franchise on the basis of the outcome of PR2013 or the 2013 Fares Review.

2 TIMESCALES

- 2.1 Where this Schedule 9.1 applies, any resulting restatement of the Reporting Period Payment Components and/or the Benchmarks (as applicable) shall be made in accordance with this Schedule:
- 2.1.1 where it is reasonably practicable to do so, at least three Reporting Periods prior to the Change; or
- 2.1.2 where the timescale in 2.1.1 is not reasonably practicable, as soon as reasonably practicable after that.
- 2.2 If paragraph 2.1.2 applies and it is not reasonably practicable for the restatement of the Reporting Period Payment Components to be made before the Change occurs, then paragraph 9 (Estimated Revisions) shall apply.

3 HOW ANY ADJUSTMENTS TO FRANCHISE PAYMENTS WILL BE ESTABLISHED

- 3.1 The adjustments, if any, to the Franchise Payments to be made in respect of any Change shall be established by:
- 3.1.1 establishing those Model Changes and/or Revised Inputs required to take account of the Change; then
- 3.1.2 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
- 3.1.3 restating the Reporting Period Payment Components, by substituting the New Results for the Old Results (so that, to the extent that the New Results and the Old Results are different, this will result in an adjustment to the Franchise Payments),

in each case, subject to and in accordance with the terms more particularly described in this Schedule 9.1.

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

4.1 The parties shall agree or the Secretary of State shall reasonably determine the Revised Inputs and (if any) the Model Changes.

4.2 Revised Inputs means:

4.2.1 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 2.1.1 or 2.2 of Schedule 9.2 (Identity of the Financial Model) for the purposes of the Run of the Financial Model; but

4.2.2 amended, whether by way of increase, reduction or other alterations to such data, (if at all) only as the parties may agree or the Secretary of State may reasonably determine is required by the provisions of Appendix 2 to this Schedule 9.1 in respect of a Change.

4.3 Model Changes means: any changes that the parties may agree or the Secretary of State may reasonably determine are required to the Financial Model and/or the Operational Model, as released by the Secretary of State pursuant to either of paragraphs 2.1.4 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 6 promptly after they have been agreed or determined.

5 CHANGES TO BENCHMARKS

5.1 This paragraph 5 shall apply if either party has given notice to the other that it considers that a Change has or will have, in that party's reasonable opinion, a material effect on the risk of the Franchisee failing to satisfy the requirements of any Benchmark (whether in terms of increasing or reducing that risk).

5.2 Any notice pursuant to paragraph 5.1 shall be given as soon as reasonably practicable and in any event before the parties have agreed or the Secretary of State has reasonably determined the Revised Inputs in respect of the Change.

5.3 Where this paragraph 5 applies, the relevant Benchmarks shall be revised to the extent that such revision is reasonably considered to be appropriate to hold constant the risk of the Franchisee failing to satisfy the requirements of that Benchmark. The parties shall agree or the Secretary of State shall reasonably determine any such revision(s).

5.4 For the purposes of any revision to the Benchmarks under this paragraph 5, regard may be had to:

5.4.1 any relevant assumptions in the Record of Assumptions; and/or

5.4.2 the contents of an Operational Model; and/or

5.4.3 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:
- 6.2.1 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
- 6.2.2 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 Reporting Period Payment Components triggered by a Change. This will be as agreed between the parties or in the absence of agreement be reasonably determined by the Secretary of State.
- 7 CERTIFICATION OR AUDIT OF THE NEW RESULTS
- 7.1 The Secretary of State, as soon as reasonably practicable after receiving or generating the New Results pursuant to paragraph 6.2, shall either:
- 7.1.1 certify to the Franchisee his approval of the New Results; or
- 7.1.2 notify the Franchisee that he requires the Run of the Financial Model and its results to be audited by an independent auditor appointed by the Secretary of State with the approval (not to be unreasonably withheld) of the Franchisee.
- 7.2 For purposes of paragraph 7.1, the requirement for an audit is one that requires the auditor either to certify:
- 7.2.1 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
- 7.2.2 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 Reporting Period Payment Components are to apply for a limited period of time only (the

“Initial Period”), with provision thereafter, if appropriate, for a further Run of the Financial Model with new Revised Inputs and/or Model Changes based on information available at that time.

8 RESTATEMENT OF REPORTING PERIOD PAYMENT COMPONENTS AND/OR BENCHMARKS

8.1 When the New Results have been certified by the Secretary of State or the auditor in accordance with paragraph 7 then:

8.1.1 if:

- (a) there is any difference between the Old Results and the New Results; and
- (b) the New Results are such that the Change:
 - (i) meets the criteria for a Qualifying Change; or
 - (ii) with other Changes meets the criteria for an Aggregated Qualifying Change,the Reporting Period Payment Components shall be restated in the amounts of the New Results; and

8.1.2 if any changes to the Benchmarks have been agreed or determined in accordance with paragraph 5, the Benchmarks shall be restated to give effect to those changes.

8.2 Subject to paragraph 8.3, the restatement of the Reporting Period Payment Component shall have effect on and from the date on which the Secretary of State or the auditor certifies the results of the Run of the Financial Model.

8.3 If and to the extent that:

8.3.1 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

8.3.2 that change in payments is not already taken into account in any Reconciliation Amount payable pursuant to paragraph 9.9,

then a reconciliation payment shall be paid by the Franchisee or the Secretary of State (as the case may be). The payment shall be made on the first Payment Date after agreement or determination of the amount of the reconciliation payment required (or if there is no such Payment Date, within 14 days after such agreement or determination).

9 ESTIMATED REVISIONS

9.1 This paragraph 9 applies where there is or is to be a Change before there is a Run of the Financial Model in respect of it. It provides a mechanism for interim adjustments in Franchise Payments pending the final agreement or determination of those adjustments under this Schedule.

9.2 Where this paragraph 9 applies, the Secretary of State shall make the Estimated Revisions described in paragraph 9.3:

9.2.1 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

9.2.2 if the Secretary of State otherwise agrees or chooses (in his discretion) to do so.

9.3 The Estimated Revisions are the Secretary of State's estimates of the New Results which will apply once the process in paragraphs 4 - 8 of this Schedule 9.1 has been completed in respect of the

Change. For the avoidance of doubt, Revised Inputs are not made in order to generate or take account of the Estimated Revisions.

- 9.4 The estimates referred to in paragraph 9.3 will be such estimates as the Secretary of State, acting reasonably, makes having regard to the time and the information available to him at the time the estimates fall to be made provided always that it is acknowledged that:
- 9.4.1 the purpose of the estimates is to enable some provision to be made in respect of adjustments to the Reporting Period Payment Components before full information about the Change is available and/or full consideration of the nature and extent of Revised Inputs and/or Model Changes has been undertaken;
- 9.4.2 it may not be reasonably practicable in all circumstances for the Secretary of State to take into account in such an estimate all actual or potential impacts of a Change. Where the Secretary of State is aware that there are any such actual or potential impacts which he has not taken into account, he shall notify the Franchisee of them when notifying the Estimated Revisions pursuant to paragraph 9.2; and
- 9.4.3 the Secretary of State shall be entitled to adjust any Estimated Revision notified pursuant to paragraph 9.2 to the extent he reasonably considers appropriate if at any time:
- (a) 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
- (b) it is reasonable to revise the Estimated Revision having regard to the likely period of delay prior to the Run of the Financial Model in respect of the relevant Change.
- 9.5 In the circumstances described in paragraph 9.2 and paragraph 9.4.3, the Reporting Period Payment Components shall be restated in the amounts and values of the Estimated Revisions, and Franchise Payments shall be paid accordingly until the Run of the Financial Model has taken place and its results have been put into effect.
- 9.6 The Secretary of State shall use all reasonable endeavours to notify the Franchisee of the Estimated Revisions required by paragraph 9.2 at least two (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.
- 9.7 The restatement of the Reporting Period Payment Components referred to in paragraph 9.5 shall have effect on and from:
- 9.7.1 the date on which the Secretary of State notifies the Franchisee of the Estimated Revisions; or
- 9.7.2 such other date as the Secretary of State, acting reasonably, may notify the Franchisee as the date on which the Secretary of State considers the Estimated Revisions should reasonably take effect, consistent with the matters taken into account by the Secretary of State in estimating the Estimated Revisions.
- 9.8 No estimate made by the Secretary of State pursuant to this paragraph 9 shall prejudice the Secretary of State's subsequent determination of any Revised Input or Model Change pursuant to paragraph 4.
- 9.9 Subject to paragraph 9.10, where adjustments to Franchise Payments have resulted from the operation of paragraph 9.5 then, as soon as reasonably practicable after the certification of the New Results following the related Run of the Financial Model, the parties shall agree or the Secretary of State shall reasonably determine the difference (the "**Reconciliation Amount**") between:
- 9.9.1 the total amount of Franchise Payments paid or to be paid to which adjustments have been made pursuant to the operation of paragraph 9.5; and

9.9.2 the total amount of the Franchise Payments, as determined by that Run of the Financial Model, in respect of the same period as the period over which the adjusted Franchise Payments referred to in paragraph 9.9.1 have been paid or are to be paid.

9.10 If a Change is agreed or determined not to be a Qualifying Change or not to be part of an Aggregated Qualifying Change with or without any Run of the Financial Model having been performed, the Reconciliation Amount shall be the total amount of the adjustments to Franchise Payments which have resulted from the operation of paragraph 9.5.

9.11 The Reconciliation Amount shall be paid:

9.11.1 by the Franchisee to the Secretary of State and/or the Executives (as appropriate in relation their share) where the Estimated Revisions resulted in an overpayment of Franchise Payments by the Secretary of State and/or the Executives (as the case may be) to the Franchisee or an underpayment of Franchise Payments by the Franchisee to the Secretary of State and/or the Executives (as the case may be) compared with:

- (a) the amount of the Franchise Payments described in paragraph 9.9.2; or
- (b) where paragraph 9.10 applies, the amount of the unrestated Franchise Payments over the same period; and

9.11.2 by the Secretary of State and/or the Executives (as appropriate in relation their share) to the Franchisee where the Estimated Revisions resulted in an underpayment of Franchise Payments by the Secretary of State and/or the Executives (as the case may be) to the Franchisee or an overpayment of Franchise Payments by the Franchisee to the Secretary of State and/or the Executives (as the case may be) compared with:

- (a) the amount of the Franchise Payments described in paragraph 9.9.2; or
- (b) where paragraph 9.10 applies, the amount of the unrestated Franchise Payments over the same period,

in either case, such payment shall be made on the first Payment Date after agreement or determination (or if none, within fourteen (14) days after such agreement or determination).

10 INFORMATION

The Franchisee shall promptly, having regard to the other timescales anticipated in this Schedule 9.1, provide to the Secretary of State such information as the Secretary of State may request for the purpose of enabling the Secretary of State to exercise his rights and comply with his obligations pursuant to this Schedule 9.1.

11 COSTS

11.1 This paragraph deals with the costs incurred by the Franchisee in connection with any audit required by the Secretary of State pursuant to paragraph 7.

11.2 The costs of any audit required under paragraph 7.1.2 shall be met by the Secretary of State subject to the following:

11.2.1 the costs of the audit shall be met entirely by the Franchisee in the case of a Change resulting from a Charge Variation; and

11.2.2 where paragraph 11.2.1 does not apply, the Secretary of State shall only be responsible for the reasonable costs of the Franchisee in connection with the audit, and the Franchisee shall comply with the Secretary of State's reasonable directions in connection with the audit which may include a requirement for a competitive tender for the appointment of the auditor.

12 EFFECT ON CHANGES ON SHARES OF REPORTING PERIOD FRANCHISE PAYMENTS PAYABLE BY THE SECRETARY OF STATE AND THE EXECUTIVES

12.1 Where a Change is a Qualifying Change and the Reporting Period Franchise Payment for any Reporting Period determined in accordance with Part 1 of Schedule 8.2 (Reporting Period Franchise Payment/Appportionment of Payments) is increased or decreased as a result of a Qualifying Change, the Shares of PFP payable by the Secretary of State and each of the Executives pursuant to Part 2 of Schedule 8.2 (Reporting Period Franchise Payments/Appportionment of Payments) shall be revised and determined by the Secretary of State on the following basis:

12.1.1 in the case of a Qualifying Change that had been implemented solely as a consequence of an Executive requiring it to be implemented pursuant to paragraph 14 of Schedule 19 (Other Provisions) only the Share of that Executive shall be increased or decreased as a consequence of the Change;

12.1.2 in the case of any other Qualifying Change, the shares payable by each of the Secretary of State and/or the Executives shall be adjusted in a fair and equitable manner, which shall where relevant be commensurate with the extent to which the Change affects and/or relates to (including by way of changing forecast costs and revenues) the Executive Passenger Services and/or the Executive Stations of an Executive (in the case of an Executive) and other Passenger Services and/or Stations (in the case of the Secretary of State) and separate Runs of the Financial Model shall, where appropriate, be carried out in order to identify the individual financial consequences of changes to the operation of Executive Passenger Services and/or Executive Stations of each of the Executives and/or changes to the operation of other Passenger Services and/or Stations, as an aid to determining the consequential adjustments to be made to such Shares.

12.2 Where a Change is not a Qualifying Change but the Change has a material effect on:

12.2.1 the operation of the Executive Passenger Services and/or Executive Stations of more than one of the Executives; or

12.2.2 the operation of the Executive Passenger Services and/or Executive Stations of at least one of the Executives and the operation of other Passenger Services and/or Stations,

then the Shares of PFP payable by the Secretary of State and each of the Executives pursuant to Part 2 of Schedule 8.2 (Reporting Period Franchise Payment/Appportionment of Payments) shall be revised and determined by the Secretary of State in a fair and equitable manner commensurate with the extent to which the Change affects and/or relates to (including by way of changing forecast costs and revenues) Executive Passenger Services and/or Executive Stations of an Executive (in the case of an Executive) and other Passenger Services and/or Stations (in the case of the Secretary of State) and separate Runs of the Financial Model shall, where appropriate, be carried out in order to identify the individual financial consequences of changes to the operation of Executive Passenger Services and/or Executive Stations of each of the Executives and any changes to the operation of other Passenger Services and/or Stations, as an aid to determining the consequential adjustments to be made to such Shares.

12.3 The Secretary of State shall notify the Franchisee and each of the Executives of the revised Shares under paragraph 12.1 or paragraph 12.2 in good time before the revised Shares take effect.

12.4 If any Executive is dissatisfied with the way in which the Secretary of State has determined the revised Shares under paragraph 12.1 or 12.2 and the Executive seeks to further adjust the revised Shares by agreement with the Secretary of State then:

12.4.1 the Secretary of State's determination shall prevail until such time as the Secretary of State agrees that the revised Shares require further adjustment; and

12.4.2 where the Shares are subsequently determined by the Secretary of State to require further adjustment an appropriate retrospective adjustment payment shall be made between the Secretary of State and the relevant Executive(s) or between relevant Executives (as the case

may be) and the Franchisee shall not be entitled to any retrospective additional payment from the secretary of State or any Executive or be obliged to reimburse any overpayment to the Secretary of State or any Executive.

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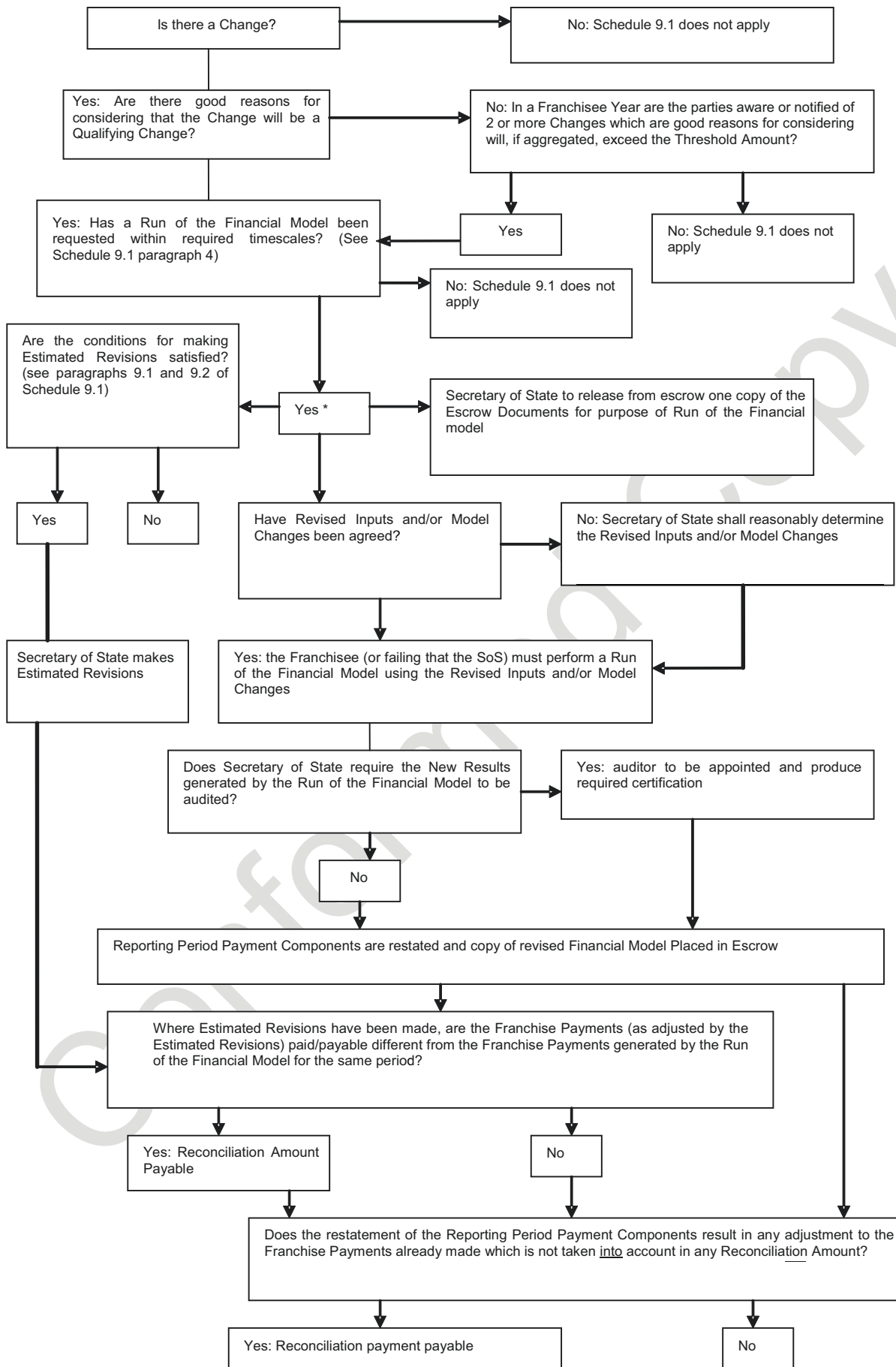
APPENDIX 1 TO SCHEDULE 9.1 – SUMMARY FLOW CHART

See next page

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This summary is for guidance only. If there are any inconsistencies with the other contents of Schedule 9.1 or 9.2 (including any Appendix), those other contents shall apply.

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APPENDIX 2 TO SCHEDULE 9.1 – AGREEMENT OR DETERMINATION OF REVISED INPUTS

1 REVISED INPUTS

The parties shall agree or the Secretary of State shall reasonably determine the Revised Inputs that are required in respect of a Change:

- 1.1 on the basis of the general adjustments and/or assumptions referred to in paragraph 2;
- 1.2 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;
- 1.3 so as to provide for Traction Electricity Charges in accordance with paragraph 4;
- 1.4 so as to provide for profit in accordance with paragraph 5; and
- 1.5 so as to give effect to the provisions of paragraph 6 in relation to indexation,

provided that if there is any inconsistency between the assumptions in the Record of Assumptions described in paragraph 1.2 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:

2.1.1 any increase in costs relating to a Change; and/or

2.1.2 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:

2.2.1 any reduction in costs relating to a Change; and/or

2.2.2 any increase in revenues relating to a Change,

that is attributable to any activities, actions or omissions of the Franchisee which are not permitted under, or would otherwise constitute a contravention of, the terms of the Franchise Agreement, is to be taken into account.

2.3 Revised Inputs are also to be agreed between the parties or reasonably determined by the Secretary of State on the basis that:

2.3.1 the Franchisee will use all reasonable endeavours to:

(a) reduce any costs that may arise or income that may be foregone; and

(b) increase any revenue that may arise and avoid any cost that may be avoided,

as a consequence of a Change; and

2.3.2 any requirement for borrowing in respect of Capital Expenditure by the Franchisee is dealt with in accordance with paragraph 2 of Schedule 19 (Other Provisions).

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:

3.3.1 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

3.3.2 an assumption relevant to the Change contained in the Record of Assumptions does not accord with what would be achievable by, or experienced by, an economic and efficient franchisee,

then the parties shall agree or the Secretary of State shall reasonably determine a modification to the assumption so that, as modified, it does accord with what would be achievable by, or experienced by, an economic and efficient franchisee.

4 TRACTION ELECTRICITY CHARGES

4.1 This paragraph 4 applies only in relation to Charge Variations.

4.2 In agreeing or determining Revised Inputs, no adjustment shall be made in respect of a Charge Variation to the extent that Charge Variation relates, directly or indirectly and however it may be effected, to the Traction Electricity Charge payable by the Franchisee pursuant to any Track Access Agreement. For this purpose (and subject to clause 1.1.1 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

5.1.1 Where a Change is forecast to result in an increase to the Franchisee's costs 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 ⁶³ of the forecast increase in cost for that Franchisee Year; and/or

5.1.2 Where a Change is forecast to result in a reduction in the Franchisee's costs 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:

⁶³ Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

- (a) the percentage specified in paragraph 5.1.1; or
- (b) the average profit margin in the current Business Plan for the remaining Franchise Term,

of the forecast reduction in cost for that Franchisee Year.

5.1.3 For the purposes of paragraphs 5.1.1 and 5.1.2 there shall be no Revised Input in relation to profit where any such Change is a Charge Variation except for the insertion of a line in the Financial Model required to neutralise the effect on the absolute amount of profit in £ for £ terms which the other adjustments to the other inputs would otherwise have, such that there is no change in the absolute amount of profit as a result of the Charge Variation.

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:

5.2.1 the risk for the Franchisee in continuing to operate the Northern Franchise on the terms of the Franchise Agreement after and as a result of the Change; and

5.2.2 the likelihood of:

- (a) material benefit from such Change arising after expiry of the Franchise Term; and
- (b) 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:

5.3.1 fairly rewards the Franchisee for proposing the Protected Proposal; and

5.3.2 reasonably incentivises the Franchisee to propose further Protected Proposals,

by sharing with the Franchisee a reasonable amount of the additional profit that is expected to arise from implementing the Protected Proposal.

5.4 The Annex (Incentivising Long Term Investment) to this Appendix 2 sets out the Secretary of State's guidance on how he approaches incentivising long term investment.

6 INDEXATION

In agreeing or determining Revised Inputs, the parties shall apply the following principles in connection with indexation. For each relevant item of data in the Financial Model in respect of which a Revised Input is agreed or determined to be required:

6.1.1 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

6.1.2 that item shall be deflated by reference to the original base date and index (if any) relevant to that item in the Financial Model.

7 EFFICIENCY BENEFIT SHARE

No Revised Inputs will be made to reflect:

7.1.1 any amount payable by or to the Franchisee in respect of Efficiency Benefit Share; or

7.1.2 any change in the basis on which Efficiency Benefit Share is calculated or is to be paid (including any change which may require amounts in respect of Efficiency Benefit Share to be payable by as well as payable to the Franchisee).

For this purpose (and subject to clause 1.1.1 of this Agreement), Efficiency Benefit Share is the component of Track Charges (as defined in the Track Access Agreement) identified as such in any Track Access Agreement or similar arrangement under which benefits of any outperformance of efficiency targets (or risk of failure to achieve efficiency targets) are to be shared between Network Rail and train operators.

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ANNEX TO APPENDIX 2 TO SCHEDULE 9.1 – INCENTIVISING LONG TERM INVESTMENT

This Appendix sets out the Secretary of State's guidance on how he approaches incentivising long term investment.

- 1 The Secretary of State wishes to encourage the Franchisee to:
 - 1.1 improve the efficiency;
 - 1.2 reduce the cost; and
 - 1.3 enhance the revenue earning potential of the delivery of services to passengers,
from the commencement of the Northern 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:
 - 2.1 the time scale for implementation limits the benefit to the Franchisee; or
 - 2.2 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:
 - 3.1 capital investments undertaken solely by the Franchisee;
 - 3.2 capital investments undertaken by the Franchisee in association with others;
 - 3.3 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;
 - 3.4 changes in working practices of the Franchisee's employees;
 - 3.5 changes in the contracted roles and responsibilities between the Franchisee and its major suppliers;
and
 - 3.6 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:
 - 5.1 the capital cost and proposed payment profile;
 - 5.2 legitimate costs of the Franchisee in developing, procuring, delivering and project managing the project;
 - 5.3 the life of any capital assets and the duration of the benefits stream arising;
 - 5.4 the remaining Franchise Term and the projected payback period;
 - 5.5 the benefits associated with undertaking the investment early rather than waiting until the Northern Franchise is re-let;

- 5.6 the risks of cost overrun or under performance of the projected benefits;
- 5.7 a profit element for undertaking the project commensurate with the risks of the proposed project; and
- 5.8 alternative benefit sharing arrangements which could be based on:
 - 5.8.1 a capital lump sum when the expenditure is incurred;
 - 5.8.2 an enhanced Franchise Payment over the Franchise Term;
 - 5.8.3 a balloon payment on expiry of the Northern Franchise which allocates a proportion of future benefits to the Franchisee;
 - 5.8.4 an on-going payment if the benefits materialise after the Franchise Term; and/or
 - 5.8.5 any combination of any of paragraphs 5.8.1 to 5.8.4 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 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) together with hard format copies of the output template of the Financial Model in the format set out in the document in agreed terms marked FF (the "**Escrow Documents**") to the Secretary of State in the agreed form, accompanied by a notice that the Escrow Documents are to be Placed in Escrow.
- 1.2 The Franchisee shall deliver the Escrow Documents in accordance with paragraph 1.1 of this Schedule 9.2:
- 1.2.1 on the date of the Franchise Agreement;
 - 1.2.2 within seven days of the Franchise Commencement Date, but updated only as strictly necessary for any elapsed time between the actual Franchise Commencement Date and the date assumed to be the Franchise Commencement Date in the Initial Business Plan; and
 - 1.2.3 within seven days of any approval or audit of a Run of the Financial Model as provided for in paragraph 7 of Schedule 9.1 (Financial and Other Consequences of Change), but updated with the Revised Inputs and any Model Changes.
- 1.3 The Franchisee shall deliver with each such deposit of the Escrow Documents all of the following information to the extent that it is relevant:
- 1.3.1 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);
 - 1.3.2 the names and contact details of persons who are able to provide support in relation to accessing and interpreting the Escrow Documents; and
 - 1.3.3 if required by the Secretary of State, a certificate from independent auditors approved by the Secretary of State, confirming that the deposited version of the Escrow Documents is in the agreed form in accordance with paragraph 1.2.1 or (as the case may be) is in accordance with paragraphs 1.2.2 or 1.2.3.

2 SECRETARY OF STATE'S OBLIGATIONS

- 2.1 The Secretary of State shall:
- 2.1.1 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;
 - 2.1.2 save as provided under paragraph 2.1.3, 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;
 - 2.1.3 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 2.1.2;

- 2.1.4 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 (1) copy of the Escrow Documents accordingly and retain one (1) copy of the Escrow Documents in escrow in accordance with paragraph 2.1.2;
- 2.1.5 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;
- 2.1.6 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
- 2.1.7 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 6.2.1 of Schedule 9.1 (Financial and Other Consequences of Change) or fails to return the copy of the Escrow Documents released pursuant to paragraph 2.1.4:

- 2.2.1 such failure to perform or to return the released copy to the Secretary of State shall be a contravention of the Franchise Agreement;
- 2.2.2 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 6.2.1 of Schedule 9.1 (Financial and Other Consequences of Change);
- 2.2.3 once copied, the second copy of the Escrow Documents released pursuant to this paragraph 2.2 shall be Placed in Escrow; and
- 2.2.4 once the Run of the Financial Model has been approved or audited as provided for in paragraph 7 of Schedule 9.1 (Financial and Other Consequences of Change), two (2) copies of the Replacement Copy shall also be Placed in Escrow.
- 2.2.5 Nothing in this Schedule 9.2 shall prevent the Secretary of State or the Franchisee each retaining for their working use one (1) 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:
 - 3.1.1 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 and/or the Executives (as the case may be) to the Franchisee or a net decrease in the amount of Franchise Payments payable by the Franchisee to the Secretary of State and/or the Executives (as the case may be) then such error shall be rectified provided that there shall not be a restatement of the values of the Reporting Period Payment Components;
 - 3.1.2 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

and/or the Executives (as the case may be) to the Franchisee or a net increase in the amount of Franchise Payments payable by the Franchisee to the Secretary of State and/or the Executives (as the case may be) then such error shall be rectified and the values of the Reporting Period Payment Components shall be restated where appropriate;

- 3.1.3 a record of the error shall be noted in the Record of Assumptions and, if applicable, the Financial Model; and
- 3.1.4 as soon as reasonably practicable after the date of the rectification of the error, the Franchisee shall (unless otherwise agreed by the Secretary of State) deliver to the Secretary of State a certificate from independent auditors approved by the Secretary of State confirming that the error has been rectified as required by this paragraph 3 and is now in the required form in accordance with paragraph 1.2.1, 1.2.2 or 1.2.3 as the case may be.

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SCHEDULE 9.3 - SECRETARY OF STATE RISK ASSUMPTIONS⁶⁴

1. Secretary of State Risk Assumptions

A Qualifying Change shall occur if and whenever any of the events set out below occur during the Franchise Term:

- 1.1** *The Network Rail programme of electrification that supports the Electric Services is not completed in time to implement the introduction into service of one or more of the NW Electrics EMUs according to the cascade schedule set out in Appendix 4 to Schedule 1.6, PROVIDED ALWAYS THAT the Franchisee has used all reasonable endeavours to manage its relationship with Network Rail and to mitigate the impact of any delay;*
- 1.2** *The NW Electrics EMUs cascade schedule set out in Appendix 4 to Schedule 1.6 does not take place as set out in that Appendix and/or is otherwise delayed due to matters outside of the Franchisee's control PROVIDED ALWAYS THAT the Franchisee has used all reasonable endeavours to manage its relationships with Porterbrook and others to mitigate the impact of any delay; and*
- 1.3**
- 1.3.1** *In relation to paragraph 12.7 of Part 2 to Schedule 1.6 (Committed Obligations), if there is a material delay to the implementation of the of the Allerton Enhancements beyond 31 July 2014 such that there is a material adverse effect on the Franchisee delivering the Electric Services on the relevant Passenger Change Dates pursuant to paragraph 12.1.3 of Part 2 to Schedule 1.6 (Committed Obligations) PROVIDED ALWAYS THAT the Franchisee can demonstrate to the reasonable satisfaction of the Secretary of State that:*
- (a) *any acts or omissions of the Franchisee and/or any Franchisee Employee have not caused or contributed to the delay of the implementation of the Allerton Enhancements and the Franchisee and/or any Franchisee Employee could not have avoided such delay by taking steps which they might reasonably be expected to have taken, without incurring material costs and/or expenditure;*
- (b) *the Franchisee has used all reasonable endeavours to manage its relationship with Network Rail and to mitigate the impact of any delay including, using all reasonable endeavours to agree a contingency plan with Network Rail and other industry parties;*
- (c) *the time lost and/or relief from the obligations under this Agreement claimed could not reasonably be expected to be mitigated or recovered by the Franchisee using standards, practices, methods and procedures (as practised in the United Kingdom) and conforming to Legislation and exercising that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced franchisee or franchise operator engaged in a similar type of undertaking without incurring material expenditure; and*
- (e) *the Franchisee is using reasonable endeavours to perform its obligations under this Agreement.*
- 1.3.2** *Following the Allerton Enhancements, there is a difference between the Pre-Enhancement Rent and the Post Enhancement Rent.*

⁶⁴ Date of new insertion 17/06/2015

For the purposes of this paragraph 1.3.2:

- (a) **"Pre-Enhancement Rent" means the amounts as more particularly set out in Table 85 in the Record of Assumptions applicable at the date of this Deed (which does not reflect NW Electrics) as being payable by the Franchisee under any lease (or until there is a lease, under any agreement for lease or other arrangement with Network Rail relating to the Franchisee's occupation and use of the Allerton Depot) in respect of Allerton Depot during the Franchise Term (such lease, agreement or arrangement the "Allerton Depot Lease"); and**
- (b) **"Post Enhancement Rent" means the actual amounts payable by the Franchisee under the Allerton Depot Lease in respect of the Franchisee's occupation and use of Allerton Depot during the Franchise Term, such amounts comprising of the following (or amounts which reasonably correspond to the following):**

 - (i) **property rent;**
 - (ii) **equipment rent;**
 - (iii) **land rent (if any); and**
 - (iv) **any amounts payable under any connection agreement associated with the Allerton Depot; and**
- (c) **It is agreed that for the purposes of the Qualifying Change in this paragraph 1.3.2, the only Revised Input shall be the substitution of the Pre-Enhancement Rent with the Post Enhancement Rent PROVIDED ALWAYS THAT the Franchisee can demonstrate to the Secretary of State's satisfaction that any such difference is:**

 - (i) **direct and necessary consequence of the Allerton Enhancements and introduction of the NW Electrics EMUs; and**
 - (ii) **at all times the Franchisee has taken all reasonable steps, through negotiation or otherwise, to mitigate the amount of any increased charges.**

1.3.3 Following the Allerton Enhancements, if and to the extent that there is a requirement for the Franchisee to pay for the repair, maintenance and/or upgrade of any overhead line electrification equipment as part of any Allerton Lease or otherwise.

⁶⁵2. Secretary of State Risk Assumptions – Project Arcturus

Notwithstanding that the Threshold Amount may not be met a Qualifying Change shall occur if and whenever any of the events set out below occur during the Franchise Term:

2.1 the Project Arcturus EMUs cascade schedule set out in Appendix 5 to Schedule 1.6 does not take place as set out in that Appendix and/or is otherwise delayed due to matters outside of the Franchisee's control PROVIDED ALWAYS THAT the Franchisee has used all reasonable endeavours to manage its relationships with Porterbrook and others to mitigate the impact of any delay;

⁶⁵ Date of new insertion 13/05/2015

2.2 *there is a material delay to:*

2.2.1 *the energisation of the overhead catenary in relation to any of the:*

- (i) the route between Huyton and Wigan; and*
- (ii) the route between Ordsall Lane and the east end of Manchester Victoria station; or*

2.2.2 *the grant of any necessary or appropriate permissions or consents from ORR or Network Rail to enable the Franchisee to operate Passenger Services with electric rolling stock on such routes,*

in the case of the route between Huyton and Wigan beyond 27th March 2015 and in the case of the route between Ordsall Lane and the east end of Manchester Victoria station beyond 9th May 2015 such that there is a material adverse effect on the Franchisee introducing the Project Arcturus EMUs in accordance with paragraph 14.1.2 of Part 2 to Schedule 1.6 (Committed Obligations),

PROVIDED ALWAYS THAT:

- (a) the Franchisee can demonstrate to the reasonable satisfaction of the Secretary of State that:*
 - (i) any acts or omissions of the Franchisee and/or any Franchisee Employee have not caused or contributed to the delay of the implementation of any of the circumstances set out in paragraphs 2.3.1 to 2.3.3 and the Franchisee and/or any Franchisee Employee could not have avoided such delay by taking steps which they might reasonably be expected to have taken, without incurring material costs and/or expenditure;*
 - (ii) the Franchisee has used all reasonable endeavours to manage its relationship with Network Rail and to mitigate the impact of any delay including by using all reasonable endeavours to agree a contingency plan with Network Rail and other industry parties and efficiently diagramming the Train Fleet in response to relevant circumstances;*
 - (iii) the time lost and/or relief from the obligations under this Agreement claimed could not reasonably be expected to be mitigated or recovered by the Franchisee using standards, practices, methods and procedures (as practised in the United Kingdom) and conforming to Legislation and exercising that degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and*

experienced franchisee or franchise operator engaged in a similar type of undertaking without incurring material expenditure;

(iv) the Franchisee has used all reasonable endeavours to pursue relevant rights to obtain compensation under railway industry procedures including Network Change, and

(v) the Franchisee is using all reasonable endeavours to perform its obligations under this Agreement; and

(b) the Franchisee shall not be compensated more than once in relation to the same loss pursuant to this paragraph 2.”

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SCHEDULE 9.4 – COMPONENT OF FAT: DEFINITION OF THRESHOLD AMOUNT

Franchisee Year	FAT Amount (£ real)⁶⁶
Year 1	
Year 2	
Year 2 (part)	

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⁶⁶ Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

SCHEDULE 10 - REMEDIES, TERMINATION AND EXPIRY

- Schedule 10.1 Remedial Plans and Remedial Agreements
- Schedule 10.2 Termination and Expiry
- Schedule 10.3 Events of Default and Termination Events
- Schedule 10.4 Force Majeure
- Schedule 10.5 Liability

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SCHEDULE 10.1 – REMEDIAL PLANS AND REMEDIAL AGREEMENTS

1 REMEDIES FOR CONTRAVENTIONS OF THIS AGREEMENT

- 1.1 If the Secretary of State is satisfied that the Franchisee is contravening or is likely to contravene any term of this Agreement it 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).

2 CONTENTS OF REMEDIAL PLAN NOTICES

- 2.1 Each Remedial Plan Notice shall specify the following:

2.1.1 the term or terms of this Agreement that the Secretary of State is satisfied that the Franchisee is contravening or is likely to contravene (each a Relevant Term); and

2.1.2 the time period within which the Secretary of State requires the Franchisee to provide an appropriate plan for the purpose of facilitating or securing compliance with any Relevant Term (a "**Remedial Plan**").

3 CONTENTS OF REMEDIAL PLANS

- 3.1 If the Secretary of State issues a Remedial Plan Notice, the Franchisee shall submit a Remedial Plan to the Secretary of State within the period specified in such Remedial Plan Notice.

- 3.2 Each Remedial Plan shall set out:

3.2.1 the Relevant Term which has caused a Remedial Plan to be required;

3.2.2 an explanation of the reasons for the contravention or likely contravention of the Relevant Term;

3.2.3 the steps proposed for the purposes of securing or facilitating compliance with the Relevant Term; and

3.2.4 the time period within which the Franchisee proposes to implement those steps.

4 REMEDIAL AGREEMENTS

- 4.1 If the Secretary of State is satisfied that the matters referred to in paragraph 3.2.3 and 3.2.4 are appropriate (with or without further modification as the Secretary of State and the Franchisee may agree) it may require the Franchisee to enter into a supplemental agreement (the "**Remedial Agreement**") with the Secretary of State to implement those matters.

- 4.2 It is a term of this Agreement that the Franchisee (at its own cost) complies with the Remedial Agreement in accordance with its terms.

5 EFFECT OF FORCE MAJEURE EVENT

- 5.1 Without prejudice to the operation of paragraph 3.2 of Schedule 10.4 (Force Majeure), the following provisions shall apply in relation to Force Majeure Events affecting performance of a Remedial Agreement:

5.1.1 the Franchisee shall give written notice to the Secretary of State and the affected Executive promptly after it becomes aware (and in any event within 24 hours after becoming aware) of the occurrence or likely occurrence of a Force Majeure Event which will or is likely to affect the Franchisee's ability to comply with a Remedial Agreement within the period specified therein;

- 5.1.2 each notice submitted in accordance with paragraph 5.1.1 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;
- 5.1.3 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
- 5.1.4 subject to the Franchisee having complied with its obligations under paragraphs 5.1.1 to 5.1.3 (inclusive) the Franchisee shall be entitled to a reasonable extension of the remedial period applicable to a Remedial Agreement in order to take account of the effect of a Force Majeure Event which has occurred on the Franchisee's ability to comply with any Remedial Agreement.

6 OCCURRENCE OF A CONTRAVENTION

- 6.1 Without prejudice to its rights under Schedule 7.2 (Service Quality Requirements), following the occurrence of a contravention of this Agreement, each of the Secretary of State and any Executive may at its 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 obligation until such time as the Franchisee demonstrates, to the Secretary of State's or such Executive's reasonable satisfaction (as the case may be), that it is capable of performing and will perform such obligation as required by this Agreement.
- 6.2 The Franchisee shall co-operate fully with the Secretary of State and any Executive in relation to such monitoring referred to in paragraph 6.1.
- 6.3 The results of such monitoring will be reviewed at each Franchise Performance Meeting held pursuant to Schedule 11 (Agreement Management Provisions).
- 6.4 The Franchisee shall compensate the Secretary of State and/or any Executive, as the case may be, for all reasonable costs incurred by such party in carrying out such monitoring.

SCHEDULE 10.2 - TERMINATION AND EXPIRY

1 TERMINATION NOTICES

1.1 The Secretary of State may, on and at any time after the occurrence of:

1.1.1 (subject to paragraphs 1.2 and 1.3) an Event of Default which:

(a) is unremedied or continuing; and

(b) which the Secretary of State considers to be material; or

1.1.2 a Termination Event specified in paragraph 3.1 of Schedule 10.3 (Events of Default and Termination Events) which is unremedied or continuing; or

1.1.3 a Termination Event specified in paragraph 3.2 of Schedule 10.3 (Events of Default and Termination Events),

terminate this Agreement by serving a Termination Notice on the Franchisee. This Agreement shall terminate with effect from the date specified in any such Termination Notice.

1.2 The Secretary of State shall copy any Termination Notice to the Executives as soon as reasonably practicable after service of such on the Franchisee in accordance with paragraph 1.1.

1.3 The Secretary of State may not serve a Termination Notice in respect of an Event of Default in relation to which a Remedial Plan Notice has been issued until the period has expired within which the Franchisee is required to deliver to the Secretary of State the Remedial Plan specified in such Remedial Plan Notice.

1.4 The Secretary of State may not serve a Termination Notice in respect of an Event of Default for which the Franchisee is implementing a Remedial Agreement in accordance with its terms.

2 CONSEQUENCES OF TERMINATION OR EXPIRY

2.1 Upon termination of this Agreement (whether through default or effluxion of time or otherwise) the obligations of the parties shall cease except for:

2.1.1 any obligations arising as a result of any antecedent contravention of this Agreement;

2.1.2 any obligations which are expressed to continue in accordance with the terms of this Agreement; and

2.1.3 any other obligations which give effect to such termination or to the consequences of such termination or which otherwise apply (expressly or impliedly) on or after such termination.

2.2 Nothing in this paragraph 2 shall prevent the Secretary of State from bringing an action against the Franchisee in connection with the termination of this Agreement prior to the expiry of the Franchise Term.

SCHEDULE 10.3 - EVENTS OF DEFAULT AND TERMINATION EVENTS

1 PROVISIONS RELATING TO EVENTS OF DEFAULT

Contravention

- 1.1 The occurrence of an Event of Default shall constitute a contravention of this Agreement by the Franchisee.

Notification of Event of Default

- 1.2 The Franchisee shall notify the Secretary of State as soon as reasonably practicable on, and in any event within 24 hours of, it becoming aware of the occurrence of an Event of Default or an event which is likely to result in the occurrence of an Event of Default. The Franchisee shall take such action or steps as the Secretary of State may require to remedy any Event of Default or potential Event of Default.

Consequences of Event of Default

- 1.3 On the occurrence of an Event of Default, the provisions of Schedule 10.1 (Remedial Plans) shall also apply.

2 EVENTS OF DEFAULT

Each of the following is an Event of Default:

2.1 Insolvency

- 2.1.1 **Administration:** Any step being taken by any person with a view to the appointment of an administrator of the Franchisee or the Parent or any Bond Provider under Part II of the Insolvency Act 1986;
- 2.1.2 **Insolvency:** Any of the Franchisee or the Parent or Bond Provider stopping or suspending or threatening to stop or suspend payment of all or, in the reasonable opinion of the Secretary of State, a material part of (or of a particular type of) its debts, or being unable to pay its debts, or being deemed unable to pay its debts under Section 123(1) or (2) of the Insolvency Act 1986 except that in the interpretation of this paragraph the words "it is proved to the satisfaction of the court that" in sub-section (1)(e) and sub-section (2) of Section 123 shall be deemed to be deleted;
- 2.1.3 **Arrangements with Creditors:** The directors of the Franchisee or the Parent or any Bond Provider making any proposal under Section 1 of the Insolvency Act 1986, or any of the Franchisee or the Parent or any Bond Provider proposing or making any agreement for the deferral, rescheduling or other readjustment (or proposing or making a general assignment or an arrangement or composition with or for the benefit of creditors) of all or 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 a material part of (or of a particular type of) its debts;
- 2.1.4 **Security Enforceable:** Any step being taken to enforce security over or a distress, execution or other similar process being levied or served against any property of the Franchisee or the whole or a substantial part of the assets or undertaking of the Franchisee, the Parent or any Bond Provider, including the appointment of a receiver, administrative receiver, manager or similar person to enforce that security;
- 2.1.5 **Stopping Business/Winding-Up:** Any step being taken by the Franchisee, the Parent or any Bond Provider with a view to its winding-up or any person presenting a winding-up petition or any of the Franchisee or the Parent or any Bond Provider ceasing or threatening to cease to carry on all or 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;

2.1.6 **Railway Administration Order:** A railway administration order being made in relation to the Franchisee under Sections 60 to 62 of the Act; and

2.1.7 **Analogous Events:** Any event occurring which, under the Law of any relevant jurisdiction, has an analogous or equivalent effect to any of the events listed in this paragraph 2.1,

unless, in the case of paragraphs 2.1.1, 2.1.4 and 2.1.5, the relevant petition, proceeding or other step is being actively contested in good faith by the relevant person with recourse to all appropriate resources and procedures and such person has adequate funds to discharge the relevant debt and subject, in the case of any relevant event occurring in relation to a Bond Provider where no other Event of Default has occurred and is unremedied or continuing at such time, to a period of twenty (20) business days having elapsed in order to allow the Franchisee to replace the relevant Bond Provider.

Non-payment

2.2 The Franchisee failing to pay to the Secretary of State any amount due under this Agreement within twenty eight (28) days of the due date for such payment.

Change of Control

2.3 Otherwise than in accordance with a prior consent of the Secretary of State given under paragraph 4 of this Schedule 10.3, a change occurring in the identity of any one person, or two or more persons acting by agreement, who may Control the Franchisee on and from the date of this Agreement and during the Franchise Term, which shall include a person, or two or more persons acting by agreement, ceasing to Control the Franchisee at any time during the Franchise Term, whether or not any other person Controls the Franchisee at the same time (any such change a “**Change of Control**”) and for the purposes of this paragraph 2.3, two or more persons shall be deemed to be acting by agreement in relation to the Franchisee if, assuming the Franchisee was a target company as defined in the Companies Act 2006, such persons would be under an obligation to disclose an interest in shares in such company by virtue of an agreement between such persons.

Revocation of Licence

2.4 Revocation of any Licence required to be held by the Franchisee in order to comply with its obligations under this Agreement.

Safety Certificate and Safety Authorisation

2.5 The Safety Certificate or Safety Authorisation of the Franchisee being withdrawn or terminated.

Passenger Service Performance

2.6 The Franchisee’s performance in relation to any Benchmark contravenes the Default Performance Level for that Benchmark for:

2.6.1 any three (3) consecutive Reporting Periods;

2.6.2 any four (4) Reporting Periods within a period of thirteen (13) consecutive Reporting Periods; or

2.6.3 any five (5) Reporting Periods within a period of twenty four (24) consecutive Reporting Periods.

Remedial Agreements and Enforcement Orders

2.7

2.7.1 Non-compliance by the Franchisee with a Remedial Agreement, where such non-compliance is reasonably considered by the Secretary of State to be material.

2.7.2 Non-compliance by the Franchisee with:

- (a) a provisional order;
- (b) a final order;
- (c) a penalty; or
- (d) 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.

2.8 Not used.

Financial Ratios

2.9 Breach by the Franchisee of either or both of the financial ratios specified in paragraph 2 of Schedule 12 (Financial Obligations and Covenants).

Breach of Law

2.10

2.10.1 It is unlawful for the Franchisee to provide all or a material part of the Passenger Services or to operate all or a material number of the Stations or Depots (except to the extent not required so to do under this Agreement).

2.10.2 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.

2.10.3 The Franchisee being, in the reasonable opinion of the Secretary of State, in material non-compliance with a prohibition or enforcement order (or the equivalent thereof) issued by the ORR pursuant to its safety functions. If the Franchisee makes an appeal against such prohibition or enforcement order (or such equivalent thereof) in accordance with its terms, no Event of Default shall have occurred under this paragraph 2.10.3 until such appeal has been determined to be unsuccessful.

Contravention of Other Obligations

2.11 The occurrence of the following:

2.11.1 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 this Agreement (other than such non-performance or non-compliance as may constitute an Event of Default under the provisions of this Schedule 10.3 other than this paragraph 2.11);

2.11.2 the service by the Secretary of State on the Franchisee of a written notice specifying:

- (a) such contravention; and
- (b) to the extent the contravention is capable of being remedied, the reasonable period within which the Franchisee is required to so remedy; and

2.11.3 the Franchisee contravening such obligation or obligations again to an extent which is reasonably considered by the Secretary of State to be material or permitting the contravention to continue or, if the contravention is capable of remedy, failing to remedy such contravention within such period as the Secretary of State has specified in the notice served pursuant to paragraph 2.11.2(b).

Non-membership of Inter-Operator Schemes

2.12 The Franchisee ceasing to be a member of, or ceasing to participate in or to be party to, any of the Inter-Operator Schemes, or having its membership or participation therein suspended.

Bonds

2.13

2.13.1 Any Performance Bond or Season Ticket Bond ceasing to be a legal, valid and binding obligation on the relevant Bond Provider (other than in accordance with its terms) or it otherwise becoming unlawful or impossible for any Bond Provider to perform its obligations thereunder;

2.13.2 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 4.9 of Schedule 12 (Financial Obligations and Covenants)) which individually or in aggregate fulfils the requirements of Schedule 12 (Financial Obligations and Covenants); or

2.13.3 A failure by the Franchisee to procure the provision to the Secretary of State a Season Ticket Bond which fulfils the requirements of Schedule 12 (Financial Obligations and Covenants).

Key Contracts

2.14 Termination 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 it is no longer necessary for it to be party to such Key Contract or that it has made adequate alternative arrangements in order to be able to continue to provide and operate the Franchise Services.

2.15 A failure by the Franchisee or the Parent to comply with their respective obligations under the Deed of Undertaking.

2.16 A failure by the Franchisee to enter into a new Rolling Stock Lease in accordance with paragraph 16.2 (Changes to the Train Fleet) of Schedule 1.1 (Service Development) in respect of substitute rolling stock vehicles which meet the requirements of paragraph 1.1.2 of Appendix 1 (The Train Fleet) of Schedule 1.1 (Service Development).

3 TERMINATION EVENTS

The Secretary of State may terminate this Agreement in accordance with Schedule 10.2 (Termination and Expiry) if:

3.1 any Force Majeure Event continues with the effect of preventing the Franchisee from delivering, wholly or mainly, the Passenger Services for more than six (6) consecutive months; or

3.2

- 3.2.1 the warranty given by the Franchisee pursuant to paragraph 6.1 of Schedule 12 (Financial Obligations and Covenants) is materially untrue; or
- 3.2.2 the Franchisee commits a material breach of its obligation to notify the Secretary of State of any Occasion of Tax Non-Compliance as required by paragraph 6.2.1 of Schedule 12 (Financial Obligations and Covenants); or
- 3.2.3 the Franchisee fails to provide details of proposed mitigating factors as required by paragraph 6.2.2 of Schedule 12 (Financial Obligations and Covenants) which in the reasonable opinion of the Secretary of State, are acceptable,

each a “**Termination Event**”.

4 FACILITATION FEE

- 4.1 The Franchisee may, at any time, apply to the Secretary of State for his consent to a Change of Control (as such term is defined pursuant to paragraph 2.3).
- 4.2 The Secretary of State may require the Franchisee to pay a fee in consideration of the grant of such consent (the “**Facilitation Fee**”).
- 4.3 The Secretary of State may require the Franchisee to pay an additional fee in respect of the staff, professional and other costs incurred by the Secretary of State in connection with the Franchisee’s application (the “**Administration Fee**”). The Administration Fee shall be payable whether or not the Secretary of State consents to the proposed Change of Control.
- 4.4 On or after submitting such application to the Secretary of State, the Franchisee will provide, and will procure that the seller and the buyer provide, the Secretary of State with such documentation and information as the Secretary of State may require to assess such application and the amount of the Facilitation Fee. Without limiting paragraphs 4.9 or 4.10, it shall be deemed to be reasonable for the Secretary of State to delay or withhold consent to the Change of Control where any such documentation is not provided.
- 4.5 The Facilitation Fee shall be a sum equal to the greater of:
 - 4.5.1 one million pounds sterling (£1,000,000); or
 - 4.5.2 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.
- 4.6 The Administration Fee shall be determined by the Secretary of State on the basis of:
 - 4.6.1 the aggregate time spent by officials within the Secretary of State’s Department on matters relating to such application;
 - 4.6.2 the Secretary of State’s hourly scale rates for such officials, as varied from time to time; and
 - 4.6.3 the aggregate costs and disbursements, including where applicable VAT and professional costs, incurred by the Secretary of State in connection with such application.
- 4.7 Any determination by the Secretary of State for the purposes of paragraphs 4.5 or 4.6 shall in the absence of manifest error be final and binding as between the Secretary of State and the Franchisee (but without prejudice to the requirement of the Secretary of State to reasonably determine the Estimated Profit Stream).
- 4.8 Any consent by the Secretary of State to a Change of Control may be given subject to such conditions as the Secretary of State sees fit and the Franchisee shall, as applicable, comply with, and/or procure that the seller and/or the buyer comply with, any such conditions.

- 4.9 The Secretary of State shall have absolute discretion as to the grant of consent to any Change of Control and may accordingly refuse such consent for any reason he sees fit.
- 4.10 The Secretary of State shall have no liability whatever to the Franchisee in respect of any refusal of consent to a Change of Control, any delay in providing such consent, or any condition of such consent.

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SCHEDULE 10.4 - FORCE MAJEURE

1 FORCE MAJEURE EVENTS

1.1 The following events shall constitute Force Majeure Events, subject to the conditions specified in paragraph 2 being satisfied:

1.1.1 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:

- (a) 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;
- (b) 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;
- (c) references in paragraphs 1.1.1(a) and 1.1.1(b) to the operation of trains include scheduled empty rolling stock vehicle movements; and
- (d) 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 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;

1.1.2 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:

- (a) 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
- (b) any depot or part thereof (including the movement of trains on tracks within any depot but excluding any prevention or restriction from gaining access to any track outside such depot running into or out of that depot);

1.1.3 any of the following events occurs:

- (a) a programme of Mandatory Modifications commences;
- (b) any Rolling Stock Units are damaged by fire, vandalism, sabotage or a collision and are beyond repair or beyond economic repair; or
- (c) a government authority prevents the operation of Rolling Stock Units on the grounds of safety,

and, in each case, the greater of two (2) Rolling Stock Units and ten per cent. (10%) of all rolling stock vehicles used by the Franchisee in the provision of the Passenger Services in relation to any Service Group are unavailable for use in the provision of the Passenger Services as a result of the occurrence of such event;

1.1.4 the Franchisee prevents or restricts the operation of any train on safety grounds provided that:

- (a) 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 other body with statutory responsibility for safety in the circumstances, of the necessity of such prevention or restriction; and
- (b) if and to the extent that the ORR or other relevant body with statutory responsibility for safety in the circumstances, in exercise of its safety functions indicates that such prevention or restriction is not necessary, then no Force Majeure Event under this paragraph 1.1.4 shall continue in respect of that restriction or prevention after the receipt of such indication from the ORR or other relevant body;

1.1.5 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 Acts, provided that there shall be no Force Majeure Event under this paragraph 1.1.5 by reason of:

- (a) the suicide or attempted suicide of any person that does not constitute an act of terrorism;
- (b) 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
- (c) 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; and

1.1.6 any strike or other Industrial Action by any or all of the employees of the Franchisee or any or all of the employees of:

- (a) Network Rail;
- (b) the operator of any other railway facility; or
- (c) 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 (except where such contract or arrangement is with an Affiliate of the Franchisee),

or of the agents or sub-contractors of any such person listed in paragraphs 1.1.6(a) to (c) and for the purposes of this paragraph Industrial Action shall include any concerted action taken in connection with the employment of such employees (whether or not that action involves any breach of such employees' conditions of employment, and including any action taken in furtherance of a dispute, or with a view to improving the terms of employment of the relevant employees or by way of support for any other person) subject always, in the case of any unofficial Industrial Action, to the Franchisee being able to demonstrate the occurrence of such unofficial Industrial Action to the reasonable satisfaction of the Secretary of State.

2 CONDITIONS TO FORCE MAJEURE EVENTS

2.1 The occurrence, and continuing existence of a Force Majeure Event shall be subject to satisfaction of the following conditions:

2.1.1 in relation to an event occurring under paragraph 1.1.1, that event has continued for more than twelve (12) consecutive hours;

- 2.1.2 the Franchisee notifies the Secretary of State within two (2) business days of it becoming aware of:
- (a) the occurrence or likely occurrence of the relevant event; and
 - (b) the effect or the anticipated effect of such event on the Franchisee's performance of the Passenger Services;
- 2.1.3 at the same time as the Franchisee serves notification on the Secretary of State under paragraph 2.1.2, 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;
- 2.1.4 the relevant event did not occur as a result of:
- (a) 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 1.1.6, the provisions of paragraph 2.2 apply; or
 - (b) the Franchisee's own contravention of, or default under, this Agreement, any Access Agreement, Rolling Stock Lease, Property Lease or any other agreement;
- 2.1.5 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
- 2.1.6 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 or compensation from any relevant person.

2.2 Where:

- 2.2.1 Industrial Action in accordance with paragraph 1.1.6 occurs as a result of an act or omission to act by the Franchisee or its agents or subcontractors;
- 2.2.2 the Secretary of State reasonably believes that it was reasonable for the Franchisee, its agents or subcontractors (as the case may be) to take or omit to take such act; and
- 2.2.3 the other conditions specified in paragraph 2.1 have been satisfied, such occurrence shall be a Force Majeure Event.

3 CONSEQUENCES OF FORCE MAJEURE EVENTS

On Obligations

- 3.1 The Franchisee shall not be responsible for any failure to perform any of its obligations under this Agreement, nor shall there be any contravention of this Agreement if and to the extent that such failure is caused by any Force Majeure Event.
- 3.2 If any Force Majeure Event continues, with the effect of preventing the Franchisee from delivering, wholly or mainly, the Passenger Services for more than six (6) consecutive months, it shall be a Termination Event in accordance with paragraph 3 of Schedule 10.3 (Events of Default and Termination Events).

On Payments

3.3 Following the occurrence of a Force Majeure Event, the payment of Franchise Payments shall continue unaffected.

4 BUSINESS CONTINUITY

4.1 Within one (1) month following the Franchise Commencement Date the Franchisee shall produce and provide to the Secretary of State a written business continuity plan in respect of the Franchise Services and the people, facilities and assets used to provide them, that is adequate to minimise the effect of and deal promptly and efficiently with any Disaster (a "**Business Continuity Plan**") and which will as a minimum:

4.1.1 reflect the degree of skill, care, foresight and prudence which can reasonably be expected from a highly experienced and competent operator of railway passenger services;

4.1.2 use what the industry would (at the relevant time) regard as the best generally accepted processes, techniques and materials; and

4.1.3 comply with all Laws.

4.2 The Franchisee shall, at all times, maintain and comply with the Business Continuity Plan, and ensure that it is, at all times, able to implement the Business Continuity Plan immediately upon an event occurring which the Business Continuity Plan is expressed to cover, or reasonably can be expected to cover.

4.3 The Franchisee shall update the Business Continuity Plan as required during the Term.

4.4 The Franchisee will, on request, provide a copy of the Business Continuity Plan to the Secretary of State and will provide to the Secretary of State any other information that the Secretary of State may reasonably require in relation thereto.

4.5 Nothing in this paragraph 4 will relieve the Franchisee from its obligations under this Franchise Agreement to create, implement and operate the Business Continuity Plan. Accordingly, if a Force Majeure Event affecting the Franchisee occurs which is an event or circumstance that is within the scope of the Business Continuity Plan, or would have been had the Franchisee and/or Business Continuity Plan complied with this paragraph 4, then paragraph 4.1 will only apply to that Force Majeure Event to the extent that the impacts of that Force Majeure Event would have arisen even if the Business Continuity Plan had complied with paragraph 4 and had been fully and properly implemented and operated in accordance with paragraph 4 and the terms of the Business Continuity Plan in respect of that Force Majeure Event.

SCHEDULE 10.5 - LIABILITY

1 EXCLUSION OF LIABILITY

Liability with respect to Passengers and Third Parties

- 1.1 The Franchisee hereby acknowledges that neither the Secretary of State nor the Executives will be responsible for the actions of the Franchisee or any Affiliate of the Franchisee and that, except as expressly provided in this Agreement, the Franchisee shall provide and operate the Franchise Services at its own cost and risk without recourse to the Secretary of State, the Executives or government funds or guarantees. The Franchisee shall hold the Secretary of State and the Executives 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 or any Executive 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.

Liability of Secretary of State

- 1.2 Neither the Secretary of State nor any of its 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 this Agreement, except to the extent that such negligence also constitutes a contravention of an obligation of the Secretary of State under this Agreement. The Franchisee may not recover from the Secretary of State or any of its officers, agents, or employees any amount in respect of loss of profit or consequential loss.
- 1.3 The Secretary of State shall have no liability to the Franchisee in respect of obligations which are, or are expressed to be, those of any Executive under this Agreement.

Liability of any Executive

- 1.4 Neither any Executive nor any of its 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 such Executive under this Agreement, except to the extent that such negligence also constitutes a contravention of an obligation of such Executive under this Agreement. The Franchisee may not recover from such Executive or any of its officers, agents, or employees any amount in respect of loss of profit or other consequential loss.
- 1.5 No Executive shall have any liability to the Franchisee in respect of obligations which are, or are expressed to be, those of the Secretary of State or any other Executive under this Agreement.

Liability Several

- 1.6 The obligations of the Secretary of State and the Executives under this Agreement shall be several.

2 REVIEW OR MONITORING BY THE SECRETARY OF STATE AND/OR THE EXECUTIVE

- 2.1 Each of the Secretary of State and/or any Executive may for its own purposes (whether under this Agreement or under any other arrangement or otherwise and whether before or after the date of this Agreement) monitor or review any proposals, plans or projects (or any aspect thereof) of the Franchisee under this Agreement, but no review, enquiry, comment, statement, report or undertaking, made or given by or on behalf of the Secretary of State and/or such Executive 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 any party from or reduce or otherwise affect the obligations of such party under this Agreement.
- 2.2 The exercise by or on behalf of each of the Secretary of State and/or any Executive of (or, as the case may be, any failure to exercise) any of its 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 or such Executive 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 or such Executive of an express provision of this Agreement and the Secretary of State or such Executive does not make or give any representation or warranty, either express or implied, as to whether any proposal, plan or project will enable any party to comply with its obligations under this Agreement.

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SCHEDULE 11 - AGREEMENT MANAGEMENT PROVISIONS

1 SECRETARY OF STATE'S FRANCHISE MANAGER

1.1 The Secretary of State shall appoint a competent Franchise Manager whose responsibilities shall include:

1.1.1 to manage this Agreement;

1.1.2 to monitor the Franchisee's performance of its obligations under this Agreement; and

1.1.3 to facilitate the fulfilment of the Secretary of State's obligations under this Agreement to each Executive and the Franchisee.

1.2 Not used.

1.3 Except in cases of emergency, or as a consequence of the proper exercise of disciplinary procedures of the Secretary of State, the Secretary of State shall give each Executive point of contact and the Contract Manager reasonable notice of a proposal to replace the Franchise Manager.

2 EACH EXECUTIVE'S POINT OF CONTACT

2.1 Each Executive shall notify each of the other parties to this Agreement of the appropriate contact person or persons who shall be responsible for the management and implementation of this Agreement (but who shall not have the power to amend this Agreement) on behalf of such Executive.

2.2 Where appropriate, the notification to be sent by each Executive pursuant to paragraph 2.1 shall identify the responsibilities of each contact person or persons in relation to specific provisions of this Agreement.

2.3 Except in cases of emergency, or as a consequence of the proper exercise of disciplinary procedures of the Executive, each Executive shall give each of the other parties to this Agreement reasonable notice of the replacement of, or of any change to any previously notified responsibilities of, any such contact person or persons.

3 FRANCHISEE'S CONTRACT MANAGER

3.1 The Franchisee shall appoint a competent Contract Manager whose responsibilities shall include:

3.1.1 to manage this Agreement on behalf of the Franchisee;

3.1.2 to ensure that the necessary resources within the Franchisee's organisation are made available expeditiously for the performance of the Franchisee's obligations under this Agreement;

3.1.3 to ensure that any necessary sub-contracts are placed and managed so that the requirements of this Agreement are fully met; and

3.1.4 to facilitate the Franchisee in fulfilling its obligations under this Agreement to the Secretary of State and the Executives.

3.2 Not used.

3.3 Except in cases of emergency, or as a consequence of the proper exercise of disciplinary procedures of the Franchisee, a minimum of one (1) month's notice must be given to the Franchise Manager and each Executive's appropriate point of contact of a proposal to replace the Contract Manager.

- 3.4 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 this Agreement. This shall include but not be limited to the following persons:
- 3.4.1 a Contract Manager;
 - 3.4.2 a train service delivery manager, whose role will include responsibility for ensuring compliance by the Franchisee with Schedule 7.1 (Performance Benchmarks);
 - 3.4.3 a safety manager, whose role will include responsibility for ensuring that the Franchisee complies with its legal obligations in relation to the Franchise Services including the Safety Certificate and Safety Authorisation; and
 - 3.4.4 a finance manager, whose role will include responsibility in relation to the Financial Model.
- 3.5 On or before the Franchise Commencement Date, the Franchisee shall provide to the Secretary of State and the Executives 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 NOT USED
- 5 FRANCHISE PERFORMANCE MEETINGS
- 5.1
- 5.1.1 The Secretary of State, the Franchisee and the Executives (to the extent referred to in paragraph 5.1.5) shall hold a Franchise Performance Meeting once in each Reporting Period at a time and location notified to the Executives and the Franchisee by the Secretary of State.
 - 5.1.2 At each Franchise Performance Meeting:
 - (a) the Secretary of State, the Franchisee and the Executives shall review the operational performance of the Franchisee; and
 - (b) the Secretary of State and the Franchisee shall review the financial performance of the Franchisee.
 - 5.1.3 Each Franchise Performance Meeting shall be minuted by the Franchise Manager and the minutes shall be published within seven (7) business days of each such meeting.
 - 5.1.4 The Franchise Manager shall chair all Franchise Performance Meetings.
 - 5.1.5 Each Executive shall have the right to attend a Franchise Performance Meeting to the extent such meeting or part thereof relates to:
 - (a) the operation or performance of:
 - (i) Executive Passenger Services relevant to it;
 - (ii) Executive Stations relevant to it;
 - (iii) Passenger Services which operate within the Passenger Transport Area relevant to it; or
 - (iv) Passenger Transport Area Stations; or
 - (b) any adjustment to the Executive Share relating to any such Executive.

- 5.2 The Franchisee shall ensure that each of its representatives at all Franchise Performance Meetings have full power and authority delegated to them by the Franchisee to act and to make binding decisions on behalf of the Franchisee and shall include such directors and/or senior managers of the Franchisee and the Parent as the Secretary of State may require.
- 5.3 Each Franchise Performance Meeting shall, if the Secretary of State requires, include the following agenda items:
- 5.3.1 confirmation of the accuracy of the minutes of the previous Franchise Performance Meeting;
 - 5.3.2 service delivery performance by the Franchisee by reference to the Benchmarks;
 - 5.3.3 service quality performance against Schedule 7.2 (Service Quality Requirements);
 - 5.3.4 not used;
 - 5.3.5 compliance by the Franchisee with its obligations under Schedule 13.2 (Information);
 - 5.3.6 any Remedial Plans and/or Remedial Agreements discussed at a previous Franchise Performance Meeting and any suggested improvements to the Franchisee's performance;
 - 5.3.7 not used;
 - 5.3.8 a review of the progress of the implementation of the Committed Obligations or any Variations previously authorised;
 - 5.3.9 not used;
 - 5.3.10 outstanding correspondence and identification of matters in dispute and actions towards resolution;
 - 5.3.11 any obligations of the Franchisee which the Secretary of State and/or any Executive is monitoring following a contravention of this Agreement;
 - 5.3.12 a review of the progress of decisions on authorisation of Variations or Changes, and any new or proposed Variations or Changes;
 - 5.3.13 any outstanding action of the Secretary of State identified in previous Franchise Performance Meetings;
 - 5.3.14 any outstanding action of any Executive identified in previous Franchise Performance Meetings; and
 - 5.3.15 such other matters as may from time to time be determined to be necessary by the Franchisee, the Secretary of State or any Executive.
- 5.4 No later than the third (3rd) business day prior to each Franchise Performance Meeting, the Franchisee shall provide:
- 5.4.1 to the Secretary of State, in accordance with any guidance the Secretary of State may issue to the Franchisee from time to time, a report detailing the Franchisee's performance with respect to the items referred to in paragraphs 5.3.2 to 5.3.12 inclusive and paragraph 5.3.15 (if appropriate); and
 - 5.4.2 to each Executive a report detailing the Franchisee's performance with respect to the items referred to:
 - (a) in paragraphs 5.3.2, 5.3.3, 5.3.6, 5.3.7, 5.3.8, 5.3.10, 5.3.11, 5.3.12 and 5.3.14 (if appropriate); and

- (b) in paragraph 5.3.5 in respect of compliance by the Franchisee with its obligations under Schedule 13.2 (Information) to the extent that such compliance relates to information to which each Executive is entitled pursuant to paragraph 2.6 therein,

each such report to be in accordance with any guidance the Secretary of State may issue to the Franchisee from time to time.

5.5 The Franchisee shall prepare and present such additional reports to each Franchise Performance Meeting as the Secretary of State or any Executive (as the case may be) may reasonably request. The Franchisee's obligations under this paragraph 5.5 are subject to the Franchisee receiving at least 28 days' notice of the requirement to prepare and present any such additional report.

5.6 No comment or failure to comment nor any agreement or approval, implicit or explicit by the Secretary of State and/or any Executive at such meetings will relieve the Franchisee of any of its obligations under this Agreement.

6 MEETINGS WITH EACH EXECUTIVE

Executive Operational Meetings

6.1 The Franchisee shall, in addition to attending Franchise Performance Meetings, attend and participate in such further meetings as any Executive may reasonably require for the purpose of discussing with such Executive, and/or with members or representatives of the relevant Passenger Transport Authority, or such other persons as such Executive reasonably considers fit:

6.1.1 the operation and performance of the Executive Passenger Services relevant to that Executive;

6.1.2 the operation and performance of the other Passenger Services which operate within the Performance Management Unit relevant to that Executive to the extent the operation and performance of such other Passenger Services has a bearing on the operation and performance of the Executive Passenger Services referred to in paragraph 6.1.1;

6.1.3 the operation and performance of the Executive Stations relevant to that Executive;

6.1.4 the operation and performance of the Passenger Transport Area Stations to the extent the operation and performance of such stations has a bearing on the operation and performance of the Executive Passenger Services referred to in paragraph 6.1.1; or

6.1.5 any other matter which is likely to have a significant effect on such services or stations, the operation and performance of the Executive Passenger Services referred to in paragraph 6.1.1.

6.2 Each Executive shall give reasonable notice to the Franchisee of each such meeting other than in the case of any meeting which such Executive reasonably considers necessary in the event of an emergency.

7 RIGHT OF ASSESSMENT OR INSPECTION

7.1 The Franchisee shall, if requested by the Secretary of State, allow the Secretary of State and his representatives and advisers:

7.1.1 to inspect and copy any records referred to in Schedule 13.2 (Information) and the Secretary of State may verify any such records; and

7.1.2 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.

- 7.2 The Franchisee shall make available to the Secretary of State, his representatives and advisers the information referred to in paragraph 7.1 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 7.2 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 7.1 is kept by or on behalf of the Franchisee.
- 7.3 The Secretary of State shall be permitted to take photographs, film or make a video recording, or make any other kind of record of any such inspection.
- 7.4 If any inspection reveals that information previously supplied to the Secretary of State was in any material respect inaccurate or if such inspection reveals any other material contravention of the Franchisee's obligations under this Agreement, the costs of any such inspection shall be borne by the Franchisee.

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SCHEDULE 12 - FINANCIAL OBLIGATIONS AND COVENANTS

1 OBLIGATIONS

- 1.1 Except to the extent that the Secretary of State may otherwise agree from time to time, the Franchisee shall not:
- 1.1.1 incur any liability or financial indebtedness except in the ordinary course of providing and operating the Franchise Services;
 - 1.1.2 make any loan or grant any credit, or have or permit to subsist any loan or any credit, to any person (other than the deposit of cash with a Bank as permitted under paragraph 1.1.4 or to an employee in the ordinary course of its business);
 - 1.1.3 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
 - 1.1.4 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:
- 2.1.1 the ratio of its Modified Revenue to its Actual Operating Costs during the preceding six (6) 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
 - 2.1.2 the ratio of its Forecast Modified Revenue to its Forecast Operating Costs for the next six (6) 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
 - 2.1.3 for the purposes of this paragraph 2 "preceding six (6) Reporting Periods" means the Reporting Period just ended and the preceding five (5) Reporting Periods of the Franchise Term.
- 2.2 If:
- 2.2.1 in respect of any Reporting Period, the Franchisee fails pursuant to paragraph 3.3.2 of Schedule 13.2 (Information) to provide a statement of calculation of performance against the covenants set out in paragraph 2.1.2 for each of the next six (6) Reporting Periods (or, where there are less than six (6) Reporting Periods remaining in the Franchise Term, for all such remaining Reporting Periods) following any such Reporting Period; or
 - 2.2.2 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 2.1.2 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:

- (a) in the circumstances referred to in paragraph 2.2.1 above reasonably determine the ratio of the Forecast Modified Revenue and Forecast Operating Cost on the basis of information available to him; or

- (b) in the circumstances referred to in paragraph 2.2.2 above require any such particular item of Forecast Modified Revenue or Forecast Operating Cost to be adjusted in a manner which is fair and reasonable and, so far as reasonably determinable, on the basis on which such particular item of Forecast Modified Revenue or Forecast Operating Cost should have been accounted for by the Franchisee as reasonably determined by the Secretary of State,

in either case after having exercised his rights under paragraph 3.16 of Schedule 13.2 (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:

- 3.1.1 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;
- 3.1.2 make payment of any management charges to any of its Affiliates in excess of those specified in the Business Plan; or
- 3.1.3 make payment under any intra-group borrowings.

3.2 "**Lock-up Period**" means any period from the time when either of the ratios referred to in paragraphs 2.1.1 and 2.1.2 falls below the ratio of 1.07:1 until the time at which the Secretary of State is satisfied that the relevant ratio is again above the ratio of 1.07:1.

3.3 Failure by the Franchisee at any time to comply with either of the ratios referred to in paragraph 2.1 shall be an Event of Default under paragraph 2.9 of Schedule 10.3 (Events of Default and Termination Events).

4 PERFORMANCE BOND

Provision of Initial Performance Bond

4.1 The Franchisee shall procure that there shall be a valid and effective Performance Bond:

- 4.1.1 with effect:
 - (a) from the date of this Agreement;
 - (b) throughout the Franchise Term; and
 - (c) for a period of 7 Reporting Periods after the end of the Franchise Period;
- 4.1.2 substantially in the form of Appendix 1 (Form of Performance Bond) to this Schedule 12;
- 4.1.3 with a minimum duration of two (2) years; and
- 4.1.4 having a value equal to the amount determined under paragraph 4.4.

Provision of Replacement Performance Bond

- 4.2 The Franchisee may replace the Performance Bond at any time, provided that the Secretary of State receives a replacement Performance Bond:
- 4.2.1 substantially in the form of Appendix 1 to this Schedule 12 (Form of Performance Bond) (or in any other form acceptable to the Secretary of State in his discretion);
 - 4.2.2 duly executed and delivered by a Bond Provider acceptable to the Secretary of State;
 - 4.2.3 with a minimum duration of two (2) years; and
 - 4.2.4 in an amount determined in accordance with paragraph 4.4.
- 4.3 The Franchisee shall replace any Performance Bond at least six (6) months prior to its scheduled expiry with a replacement that complies with the requirements of paragraph 4.2.

Amount of Performance Bond

- 4.4 The amount of any Performance Bond shall be ⁶⁷.

Demands under the Performance Bond

4.5

- 4.5.1 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 1 or more of the following:
- (a) that this Agreement has:
 - (i) either terminated early or expired and, in either case, there are liabilities or obligations outstanding from the Franchisee to the Secretary of State; or
 - (ii) 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 3.2 of Schedule 10.3 (Events of Default and Termination Events) in circumstances where the Secretary of State has incurred or expects to incur additional costs in connection with early termination of the Northern Franchise;
 - (b) that a railway administration order has been made in relation to the Franchisee pursuant to Sections 60 to 62 of the Act;
 - (c) that an Event of Default:
 - (i) under paragraph 2.13.1 of Schedule 10.3 (Events of Default and Termination Events) in relation to the Performance Bond; or
 - (ii) under paragraph 2.13.2 of Schedule 10.3,has occurred (whether or not this Agreement is, or is to be, terminated as a result thereof);
 - (d) the Franchisee has failed to perform or comply with its obligations under any Supplemental Agreement;

⁶⁷ Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

- (e) that the Franchisee has failed to provide a replacement Performance Bond complying with this paragraph 4; or
- (f) that the Franchisee has failed to procure the execution and delivery of a new Performance Bond by a Bond Provider acceptable to the Secretary of State when required to do so in accordance with paragraph 4.8.

4.5.2 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:

- (a) early termination of this Agreement; and/or
- (b) any failure by the Franchisee to perform or comply with any of its obligations to the Secretary of State under this Agreement or to a Successor Operator under the Supplemental Agreement.

Characteristics of Performance Bond Provider

- 4.6 In determining whether a Bond Provider under any replacement Performance Bond is acceptable, the Secretary of State may exercise its discretion and shall not be obliged to accept a Bond Provider accepted under any previous Performance Bond.
- 4.7 The Franchisee shall provide such information relating to any Bond Provider or proposed Bond Provider as the Secretary of State may require from time to time.
- 4.8 If at any time the Secretary of State reasonably considers the Bond Provider under the then current Performance Bond to be unacceptable, the Secretary of State may require the Franchisee within 20 business days to procure the execution and delivery of a new Performance Bond by a Bond Provider acceptable to the Secretary of State. This applies:
 - 4.8.1 notwithstanding the other provisions of this paragraph 4; and
 - 4.8.2 irrespective of the scheduled expiry date of the then current Performance Bond.

Provision of more than one Performance Bond

- 4.9 The Franchisee shall be permitted subject to the prior consent of the Secretary of State (such consent not to be unreasonably withheld or delayed) to meet its obligations to provide a valid and effective Performance Bond by providing up to three (3) valid and effective Performance Bonds the aggregate value of which at all times is equal to the value determined under paragraph 4.4. With the exception of the value of each individual Performance Bond the provisions of this Agreement in relation to the Performance Bond shall be deemed to apply separately in relation to each such Performance Bond. Where more than one (1) Performance Bond is provided the Secretary of State shall have a discretion as to whether to make a demand under 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 4.5.2.

5 SEASON TICKET BOND

Provision of Season Ticket Bond

- 5.1 The Franchisee shall procure that, for each Franchisee Year following and with effect from the Franchise Commencement Date and at all times 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).

Provision of Replacement Season Ticket Bond

- 5.2 No later than 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:
- 5.2.1 substantially in the form of Appendix 2 to this Schedule 12 (or in any other form acceptable to the Secretary of State in his discretion);
 - 5.2.2 duly executed and delivered by a Bond Provider acceptable to the Secretary of State; and
 - 5.2.3 in an amount determined in accordance with paragraph 5.3.

Amount of Season Ticket Bond

- 5.3 The amount of any Season Ticket Bond shall vary for each Reporting Period during the Bond Year to which the Season Ticket Bond relates in accordance with the following formula:

$$\text{STBA} = \text{STL} \times \frac{((\text{RPI} \times 100) + k) \times Z}{100}$$

where:

STBA equals the amount of the Season Ticket Bond in the relevant Reporting Period;

STL equals, in respect of such Reporting Period, the maximum amount which would be payable by the Franchisee and the Stored Credit Balance which would be held by the Franchisee:

- (a) if this Agreement were to terminate on any day during the Reporting Period (the relevant "Reporting Period") falling thirteen (13) Reporting Periods before such Reporting Period; and
- (b) in respect of Season Ticket Fares under and in accordance with a Supplemental Agreement and paragraph 3.3 of Schedule 15.4 (Provisions Applying on and after Termination) and the rights and liabilities of the Franchisee relating to an obligation of carriage under the terms of any Season Ticket Fares which were designated as Primary Franchise Assets and transferred under a Transfer Scheme relating to that Supplemental Agreement to a Successor Operator at that time, provided that for these purposes only:
 - (i) Season Ticket Fares shall mean any Season Ticket Fare which expires more than seven (7) days after it first comes into effect;
 - (ii) the Franchise Commencement 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:

$$\frac{(\text{RPI} \times 100) + k}{100}$$

where RPI and k are determined for the twelve (12) months and the Fare Year preceding the twelve (12) months and the Fare Year for which RPI and k are respectively determined above.

- 5.4 The Franchisee shall supply to the Secretary of State, not later than three (3) Reporting Periods before the end of each Bond Year, its estimate of the amount of the Season Ticket Bond for each Reporting Period during the following Bond Year and shall supply such details as the Secretary of State may request in connection therewith.
- 5.5 The Franchisee and the Secretary of State shall endeavour to agree the amount of such Season Ticket Bond by no later than two (2) Reporting Periods before the end of each Bond Year. If the parties are unable to agree the amount of the Season Ticket Bond in respect of any Reporting Period during the following Bond Year, the matter shall be resolved in accordance with the Dispute Resolution Rules.
- 5.6 If the amount of the Season Ticket Bond for each Reporting Period during a Bond Year has not been agreed two (2) Reporting Periods before the end of the preceding Bond Year, then, until the amount is agreed or determined in accordance with the Dispute Resolution Rules, the amount thereof shall be the amount determined by the Secretary of State.
- 5.7 The Secretary of State and the Franchisee may agree to increase or reduce the amount covered or required to be covered under a Season Ticket Bond from time to time.

Demands under the Season Ticket Bond

- 5.8
- 5.8.1 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 (1) or more of the following:
- (a) that this Agreement has terminated or expired;
 - (b) that a railway administration order has been made in relation to the Franchisee pursuant to Sections 60 to 62 of the Act; or
 - (c) that an Event of Default:
 - (i) under paragraph 2.13.1 of Schedule 10.3 (Events of Default and Termination Events) in relation to the Season Ticket Bond; or
 - (ii) under paragraph 2.13.3 of Schedule 10.3,
- has occurred (whether or not this Agreement is, or is to be, terminated as a result thereof).
- 5.8.2 If the Secretary of State makes a demand under the Season Ticket Bond, it 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 the Season Ticket Fares and/or Stored Credit Balance that were designated as Primary Franchise Assets and transferred under a Transfer Scheme to a Successor Operator within a reasonable period.

Characteristics of Season Ticket Bond Provider

- 5.9 In determining whether a Bond Provider under any replacement Season Ticket Bond is acceptable, the Secretary of State may exercise his discretion and shall not be obliged to accept a Bond Provider accepted under any previous Season Ticket Bond.
- 5.10 The Franchisee shall provide such information relating to any Bond Provider or proposed Bond Provider as the Secretary of State may require from time to time.
- 5.11 The Secretary of State agrees that, subject to receipt of a Season Ticket Bond in an amount determined in accordance with paragraph 5.3 in respect of any Bond Year, it shall release the relevant Bond Provider from any liability under the Season Ticket Bond provided in relation to the preceding Bond Year on the expiry of such Bond Year, provided that no Event of Default has occurred and is unremedied or continuing.

Meaning of Reporting Period

- 5.12 References in this paragraph 5 to a Reporting Period shall be construed, where the Franchisee so requests and the Secretary of State consents (such consent not to be unreasonably withheld) to be references to each consecutive seven (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 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 Franchise Commencement Date, it has notified the Secretary of State in writing of any Occasions of Tax Non-Compliance or any litigation that it is involved in that is in connection with any Occasions of Tax Non Compliance.
- 6.2 If, at any point during the Franchise Term, an Occasion of Tax Non-Compliance occurs, the Franchisee shall:
- 6.2.1 notify the Secretary of State in writing of such fact within five (5) business days of its occurrence; and
- 6.2.2 promptly provide to the Secretary of State:
- (a) details of the steps which the Franchisee is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
- (b) 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:

Occasion of Tax Non-Compliance means:

- (a) any tax return of the Franchisee submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 to be incorrect as a result of:
- (i) a Relevant Tax Authority successfully challenging the Supplier under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;

- (ii) the failure of an avoidance scheme which the Franchisee was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the DOTAS or any equivalent or similar regime; and/or
- (b) any tax return of the Franchisee submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise, on or after 1 April 2013 to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Franchise Commencement Date or to a civil penalty for fraud or evasion;

DOTAS means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HM Revenue & Customs of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under s.132A Social Security Administration Act 1992;

General Anti-Abuse Rule means:

- (a) the legislation in Part 5 of the Finance Act 2013; and
- (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;

Halifax Abuse Principle means the principle explained in the CJEU Case C-255/02 Halifax and others;

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

Relevant Tax Authority means HM Revenue & Customs, or, if applicable, a tax authority in the jurisdiction in which the Franchisee is established.

APPENDIX 1 TO SCHEDULE 12 - FORM OF PERFORMANCE BOND

[DOCUMENT "PB" PERFORMANCE BOND]

Dated

20[•]

[BOND PROVIDER]

PERFORMANCE BOND

Secretary of State for Transport
33 Horseferry Road
London SW1P 4DR

Conformed Copy

To: Secretary of State for Transport
33 Horseferry Road
London
SW1P 4DR
(the "**Secretary of State**")

WHEREAS:

- (a) you have entered into a franchise agreement dated 18 October 2004 (the "**Original Franchise Agreement**") with (1) Northern Rail Limited of Fifth Floor Northern House, 9 Rougier Street, York YO1 6HZ, United Kingdom (the "**Franchisee**"); (2) Greater Manchester Passenger Transport Executive; (3) Merseyside Passenger Transport Executive; (4) South Yorkshire Passenger Transport Executive; (5) Tyne & Wear Passenger Transport Executive; and (6) West Yorkshire Passenger Transport Executive and which is due to expire on 1 April 2014 at 01:59; and
- (b) you intend entering into an interim franchise agreement dated on or before 1 April 2014 (the "**Interim Franchise Agreement**") with (1) the Franchisee; (2) Transport for Greater Manchester; (3) Merseyside Passenger Transport Executive; (4) South Yorkshire Passenger Transport Executive; (5) Tyne & Wear Passenger Transport Executive; and (6) West Yorkshire Passenger Transport Executive which is due to expire at 01:59 on 7 February 2016, subject to any later date to which it is extended in accordance with its terms,

under which the Franchisee will provide certain railway passenger services (together the "**Franchise Agreements**").

The Franchise Agreements require you to receive a duly executed performance bond in the amount of ⁶⁸ the "Bond Value") to secure the performance by the Franchisee of and its compliance with its obligations under the Franchise Agreements and any applicable Supplemental Agreement under either of the Franchise Agreements (together the "**Supplemental Agreements**").

Accordingly:

This duly executed performance bond (the "**New Performance Bond**") shall from the date of its execution replace and supersede the Performance Bond number [●] provided to you in respect of the Original Franchise Agreement and [dated [●]] [last amended by a deed executed by us on [●]] (the "**Original Performance Bond**").

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 at the date of occurrence of the Call Event. 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:

⁶⁸ Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

- 1.1 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
- 1.2 notwithstanding anything contained herein, our liability hereunder shall expire on the earlier of:
- 1.2.1 the date falling six months after the date on which any railway administration order is made in relation to the Franchisee pursuant to Sections 60 to 62 of the Railways Act 1993; and
- 1.2.2 where the Original Franchise Agreement has been terminated or expires and the Interim Franchise Agreement has either not been entered into or has been terminated before the Franchise Commencement Date under the Interim Franchise Agreement, the later of:
- (a) the date falling one month after the determination of the Purchase Price (as defined in the Supplemental Agreement under the Original Franchise Agreement) under the Supplemental Agreement under the Original Franchise Agreement; and
 - (b) the date falling seven Reporting Periods after the end of the Franchise Period (as defined in the Original Franchise Agreement); and
 - (c) the end of the Franchise Term (as defined in the Original Franchise Agreement); and
- 1.2.3 where the Original Franchise Agreement has been terminated or expires and the Interim Franchise Agreement has either not been entered into or has been terminated before the Franchise Commencement Date under the Interim Franchise Agreement, the date falling 7 Reporting Periods after the Franchise Term (as defined in the Original Franchise Agreement);
- 1.2.4 where the Original Franchise Agreement has been terminated or expires and the Interim Franchise Agreement has been entered into and remains in force at the Franchise Commencement Date (as defined in the Interim Franchise Agreement):
- (a) the date falling one month after the determination of the Purchase Price (as defined in the Supplemental Agreement under the Interim Franchise Agreement) under the Supplemental Agreement under the Interim Franchise Agreement; and
 - (b) the date falling seven Reporting Periods after the end of the Franchise Period (as defined in the Interim Franchise Agreement); and
 - (c) the end of the Franchise Term (as defined in the Interim Franchise Agreement); and
- 1.2.5 where the Original Franchise Agreement has been terminated or expired and the Interim Franchise Agreement has been entered into and remains in force at the Franchise Commencement Date (as defined in the Interim Franchise Agreement), the date falling 7 Reporting Periods after the Franchise Term (as defined in the Interim Franchise Agreement),
- 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:

- 2.1 the termination (otherwise than by expiry) of the Original Franchise Agreement in circumstances where there are liabilities or obligations outstanding from the Franchisee to the Secretary of State;
- 2.2 the expiry of the Original Franchise Agreement in circumstances where there are liabilities or obligations outstanding from the Franchisee to the Secretary of State and the Interim Franchise Agreement has either not been entered into or has been terminated before the Franchise Commencement Date under the Interim Franchise Agreement;

- 2.3 the termination of the Original Franchise Agreement solely as a consequence of the occurrence of one or more Events of Default in circumstances where the Secretary of State has incurred or expects to incur additional costs in connection with termination of the Northern franchise;
- 2.4 the termination or expiry of the Interim Franchise Agreement in circumstances where there are liabilities or obligations outstanding from the Franchisee to the Secretary of State;
- 2.5 the termination of the Interim 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 3.2 of Schedule 10.3 (Events of Default and Termination Events) in circumstances where the Secretary of State has incurred or expects to incur additional costs in connection with termination of the Northern franchise;
- 2.6 the making of a railway administration order in relation to the Franchisee pursuant to Sections 60 to 62 of the Railways Act 1993;
- 2.7 the occurrence of an Event of Default under either Franchise Agreement in respect of:
- 2.7.1 paragraph 2.13(a) of Schedule 10.3 (Events of Default and Termination Event) of the Original Franchise Agreement in relation to the Performance Bond; or
 - 2.7.2 paragraph 2.13.1 of Schedule 10.3 (Events of Default and Termination Events) of the Interim Franchise Agreement in relation to the Performance Bond; or
 - 2.7.3 paragraph 2.13(b) of Schedule 10.3 (Events of Default and Termination Event) of the Original Franchise Agreement; or
 - 2.7.4 paragraph 2.13.2 of Schedule 10.3 (Events of Default and Termination Events) of the Interim Franchise Agreement,
- whether or not the relevant Franchise Agreement is, or is to be, terminated as a result thereof;
- 2.8 the failure by the Franchisee to perform or comply with its obligations under any applicable Supplemental Agreement under either of the Franchise Agreements;
- 2.9 the failure by the Franchisee to provide the Secretary of State with a replacement Performance Bond which complies with paragraph 4 of Schedule 12 (Financial Obligations and Covenants) of the relevant Franchise Agreement; or
- 2.10 the failure by the Franchisee to procure the execution and delivery of a new Performance Bond by a Bond Provider in favour of and acceptable to the Secretary of State when required to do so in accordance with paragraph 4.8 of Schedule 12 (Financial Obligations and Covenants) of either of the relevant Franchise Agreements.
- 3 This undertaking is made to you, your successors and your assigns, subject to written notice of assignment being given to us.
- 4 This undertaking shall not be discharged or released by time, indulgence, waiver, alteration or release of, or in respect to, the obligations of the Franchisee under either Franchise Agreement or any applicable Supplemental Agreements or any other circumstances that might operate as a release of a guarantor at law or in equity.
- 5 You may make demand or give notice to us under this Bond in writing by hand, by post, by courier or by facsimile transmission to us as follows:
- Address: [Bond Provider's address and fax number]
- 6 References in this Bond to the Franchise Agreements and the Supplemental Agreements are to the Franchise Agreements and any Supplemental Agreements as amended from time to time.

- 7 Where used in this Bond, capitalised terms have the same meanings as in the respective Franchise Agreements and words in the singular include the plural and vice-versa.
- 8 This Bond shall be governed by and construed in accordance with the laws of England and Wales.

Executed as a deed this [day and month] of [year].

Conformed Copy

SCHEDULE TO THE PERFORMANCE BOND - SPECIMEN DEMAND NOTICE

To: [name and address of Bond Provider]

[date of demand notice]

We refer to the performance bond issued by you on [date of Bond] (the "**Performance Bond**") in connection with:

- (a) a franchise agreement dated 18 October 2004 (the "**Original Franchise Agreement**") between: (1) the Secretary of State for Transport (the "**Secretary of State**"); (2) Northern Rail Limited (the "**Franchisee**"); (3) Greater Manchester Passenger Transport Executive; (4) Merseyside Passenger Transport Executive; (5) South Yorkshire Passenger Transport Executive; (6) Tyne & Wear Passenger Transport Executive; and (7) West Yorkshire Passenger Transport Executive; and
- (b) an interim franchise agreement dated [●] (the "**Interim Franchise Agreement**") between (1) the Secretary of State; (2) the Franchisee and (3) Transport for Greater Manchester; (4) Merseyside Passenger Transport Executive; (5) South Yorkshire Passenger Transport Executive; (6) Tyne & Wear Passenger Transport Executive; and (7) West Yorkshire Passenger Transport Executive.

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 termination (otherwise than by expiry) of the Original Franchise Agreement in circumstances where there are liabilities or obligations outstanding from the Franchisee to the Secretary of State;]

[the expiry of the Original Franchise Agreement in circumstances where there are liabilities or obligations outstanding from the Franchisee to the Secretary of State and the Interim Franchise Agreement has either not been entered into or has been terminated before the Franchise Commencement Date under the Interim Franchise Agreement;]

[the termination of the Original Franchise Agreement solely as a consequence of the occurrence of one or more Events of Default in circumstances where the Secretary of State has incurred or expects to incur additional costs in connection with termination of the Northern franchise;]

[the termination or expiry of the Interim Franchise Agreement in circumstances where there are liabilities or obligations outstanding from the Franchisee to the Secretary of State;]

[the termination of the Interim Franchise Agreement solely as a consequence of the occurrence of one or more Events of Default or a Termination Event of a type described in paragraph 3.2 of Schedule 10.3 (Events of Default and Termination Events) in circumstances where the Secretary of State has incurred or expects to incur additional costs in connection with termination of the Northern franchise;]

[the making of a railway administration order in relation to the Franchisee pursuant to Sections 60 to 62 of the Railways Act 1993;]

[the occurrence of an Event of Default under either Franchise Agreement in respect of:

- (i) paragraph 2.13(a) of Schedule 10.3 (Events of Default and Termination Event) of the Original Franchise Agreement in relation to the Performance Bond; or
- (ii) paragraph 2.13.1 of Schedule 10.3 (Events of Default and Termination Events) of the Interim Franchise Agreement in relation to the Performance Bond; or
- (iii) paragraph 2.13(b) of Schedule 10.3 (Events of Default and Termination Event) of the Original Franchise Agreement; or
- (iv) paragraph 2.13.2 of Schedule 10.3 (Events of Default and Termination Events) of the Interim Franchise Agreement,

whether or not the relevant Franchise Agreement is, or is to be, terminated as a result thereof;]

[the failure by the Franchisee to perform or comply with its obligations under any applicable Supplemental Agreement under either of the Franchise Agreements;]

[the failure by the Franchisee to provide the Secretary of State with a replacement Performance Bond which complies with paragraph 4 of Schedule 12 (Financial Obligations and Covenants) of the relevant Franchise Agreement;]

[the failure by the Franchisee to procure the execution and delivery of a new Performance Bond by a Bond Provider in favour of and acceptable to the Secretary of State when required to do so in accordance with paragraph 4.8 of Schedule 12 (Financial Obligations and Covenants) of either of the relevant Franchise Agreements;]

We hereby demand immediate payment from you of [specify alternative amount if not Bond Value] or the Bond Value (being the sum of ⁶⁹, whichever is smaller.

Please arrange for immediate payment of the relevant amount as follows:

[account details to which Bond monies to be paid into]

Where used in this Notice, capitalised terms have the same meanings as in the respective Franchise Agreements and words in the singular include the plural and vice-versa.

For and on behalf of
Secretary of State for Transport

⁶⁹ Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

APPENDIX 2 TO SCHEDULE 12 - FORM OF SEASON TICKET BOND

[DOCUMENT "STB" SEASON TICKET BOND]

Dated

20[●]

[BOND PROVIDER]

Season Ticket Bond

Secretary of State for Transport
33 Horseferry Road
London SW1P 4DR

To: Secretary of State for Transport
33 Horseferry Road
London
SW1P 4DR
(the Secretary of State)

Whereas:

We are informed that (i) you have entered into a franchise agreement dated 18 October 2004 (the "**Franchise Agreement**") and (ii) you are intending to enter into a new franchise agreement on or before 1 April 2014 (the "**New Franchise Agreement**"), in each case with Northern Rail Ltd. Fifth Floor Northern House, 9 Rougier Street, York YO1 6HZ, United Kingdom (the "**Franchisee**") with Transport for Greater Manchester, Merseyside Passenger Transport Executive, South Yorkshire Passenger Transport Executive, Tyne & Wear Passenger Transport Executive and West Yorkshire Passenger Transport Executive under which the Franchisee will provide certain railway passenger services.

We are further informed that the Franchise Agreement and the New Franchise Agreement require that the Secretary of State receives a duly executed season ticket bond to secure the performance by the Franchisee of and its compliance with certain of its obligations under the Franchise Agreement, the New Franchise Agreement and any Supplemental Agreement.

Accordingly:

We hereby unconditionally and irrevocably undertake to pay to you in full in London, immediately upon receipt of your first written demand on us in the form set out in Schedule 1 and, without further enquiry, the sum specified therein. Such written demand shall state:

- (a) the Call Event (as defined in clause 2) that has occurred; and
- (b) the date of occurrence of such Call Event.

You may call on us for the whole or part of the amount of our liability hereunder and you may make any number of calls on us up to a maximum aggregate amount of the Bond Value (as defined in clause 3). All sums payable hereunder shall be paid free of any restriction or condition and free and clear of and (except to the extent required by law) without any deduction or withholding, whether for or on account of tax, by way of set-off or otherwise.

1 The undertaking given by us above shall operate provided that:

- 1.1 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

- 1.2 you may only call on us (whether on one or more occasions) in relation to one Call Event, such Call Event to be determined by reference to the first written demand which is received by us in the form set out in Schedule 1.
- 2 Call Event means, in this Bond, any of:
- 2.1 the date that is the earlier of: (i) the date of termination or expiry of the New Franchise Agreement; (ii) if the New Franchise Agreement is not entered into, the date of termination or expiry of the Franchise Agreement; and (iii) 31 March 2015;
- 2.2 the making of a railway administration order in relation to the Franchisee pursuant to Sections 60 to 62 of the Railways Act; or
- 2.3 the occurrence of an Event of Default under paragraph 2.13.1 (in relation to a Season Ticket Bond) or 2.13.3 of Schedule 10.3 (Events of Default and Termination Events) of the Franchise Agreement or the New Franchise Agreement (as applicable) (whether or not the Franchise Agreement or the New Franchise Agreement (as applicable) is, or is to be, terminated as a result thereof).
- 3 Bond Value shall mean, in respect of any date, the amount specified in Schedule 2 as being the value of this Bond for such date (provided that for these purposes the date of occurrence of the Call Event specified in clause 2.3 shall be deemed to be the last date for which a Bond Value is assigned under Schedule 2 of this Bond).
- 4 Notwithstanding anything contained herein, but subject to clause 5, our liability hereunder in respect of any Call Event shall expire no later than the end of the Franchise Term and:
- 4.1 in relation to a Call Event specified in clauses 2.1 and 2.2, at noon (London time) on the date falling three business days after the date of occurrence of such Call Event (business day being a day on which banks are open for business in the City of London); and
- 4.2 in relation to any other Call Event, on the day falling one month after the last date for which a Bond Value is assigned under Schedule 2 of this Bond unless you notify us in writing prior to the relevant expiry time that the relevant Call Event has occurred (whether or not you call on us at the same time under this Bond).
- 5 If you do notify us under clause 4 our liability shall expire on:
- 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 or the New Franchise Agreement (as applicable), the date falling one 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 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 2.13.1 (in relation to a Season Ticket Bond) or paragraph 2.13.3 of Schedule 10.3 (Events of Default and Termination Events) of the Franchise Agreement or the New Franchise Agreement (as applicable) (whether or not the Franchise Agreement or the New Franchise Agreement (as applicable) is, or is to be, terminated as a result thereof), the date falling one month after your notification to us under clause 4,
- except, in each case, in respect of any written demand for payment complying with all the requirements hereof which is received by us on or before the relevant date, after which date this undertaking shall be void whether returned to us or not.
- 6 This undertaking is made to you, your successors and your assigns.

7 This undertaking shall not be discharged or released by time, indulgence, waiver, alteration or release of, or in respect to, the obligations of the Franchisee under the Franchise Agreement or any Supplemental Agreement or any other circumstances that might operate as a release of a guarantor at law or in equity.

8 You may make demand or give notice to us under this Bond in writing by hand or facsimile transmission to us as follows:

Address: [Bond Provider's address]

Facsimile Number: [Bond Provider's fax number]

9 References in this Bond to the Franchise Agreement, the New Franchise Agreement and the Supplemental Agreement are to the Franchise Agreement, the New 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 or the New Franchise Agreement (as applicable).

11 This Bond shall be governed by and construed in accordance with the laws of England and Wales.

Executed as a deed this [day and month] of [year].

SCHEDULE 1 TO THE SEASON TICKET BOND - SPECIMEN DEMAND NOTICE

To: [Name and address of Bond Provider]
[date of demand notice]

We refer to the season ticket bond issued by you on [date of Bond] (the Season Ticket Bond) in connection with the franchise agreement dated 18 October 2004 (the "**Franchise Agreement**") and the new franchise agreement dated [New Franchise Agreement signature date] (the "**New Franchise Agreement**"), in each case entered into [or to be entered into] between the Secretary of State for Transport (the "**Secretary of State**"), Transport for Greater Manchester, Merseyside Passenger Transport Executive, South Yorkshire Passenger Transport Executive, Tyne & Wear Passenger Transport Executive, West Yorkshire Passenger Transport Executive and [name of Franchisee] (the "**Franchisee**").

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] [and the New Franchise Agreement was not entered into]].

[The New Franchise Agreement [terminated][expired] on [date of [termination][expiry]].

[A railway administration order has been made in relation to the Franchisee pursuant to Sections 60 to 62 of the Railways Act 1993.]

[An Event of Default occurred under paragraph 2.13.1 (in relation to a Season Ticket Bond) or paragraph 2.13.3 of Schedule 10.3 (Events of Default and Termination Events) of the [Franchise Agreement][New 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 or the New Franchise Agreement (as applicable).

For and on behalf of
Secretary of State for Transport

SCHEDULE 2 TO THE SEASON TICKET BOND - BOND VALUE

Call Event occurring in Reporting Period	Bond Value
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	

[Dates to be specified]

Conformed Copy

SCHEDULE 13 - FRANCHISE MANAGEMENT AND INFORMATION OBLIGATIONS

Schedule 13.1	Not Used
Schedule 13.2	Information
Appendix 1:	Efficient Franchisee
Appendix 2:	Key Assets
Appendix 3:	Operational Information
Appendix 4:	Passenger Journeys, Miles and Earnings Information
Appendix 5:	Updated Business Plan
Appendix 6:	Environmental Impact Monitoring Dataset

Conformed Copy

SCHEDULE 13.1 - NOT USED

Conformed Copy

SCHEDULE 13.2 - INFORMATION

1 GENERAL INFORMATION

Corporate Information

1.1 The Franchisee shall provide the following information to the Secretary of State and the Executives on or before the Franchise Commencement Date and shall notify the Secretary of State and the Executives of any change to such information within twenty one (21) days of such change:

1.1.1 its name;

1.1.2 its business address and registered office;

1.1.3 its directors and company secretary;

1.1.4 its auditors;

1.1.5 its trading name or names; and

1.1.6 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:

1.2.1 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, any litigation or other dispute which may have a material effect on its business) and any material change in or restructuring of the capitalisation or financing of the Franchisee or the Parent; and

1.2.2 each Executive of any employment or termination of employment of any Key Personnel.

Operational and Performance-related Information to be provided by the Franchisee

1.3 The Franchisee shall provide to the Secretary of State and the Executives the information specified in the Appendices to this Schedule 13.2 at the times specified therein.

1.4 The Appendices to this Schedule 13.2 shall be interpreted in accordance with any guidance issued by the Secretary of State from time to time for that purpose.

Maintenance of Records

1.5 The Franchisee shall maintain true, up to date and complete records of all of the information required to be provided by the Franchisee under this Agreement.

1.6 Each record required to be maintained by the Franchisee in accordance with this Schedule 13.2 shall be held for a period of six (6) years following the date on which such record was required to be created.

1.7 References to records in this Schedule 13.2 shall include records maintained under any Previous Franchise Agreement to the extent that such records relate to the Franchise Services and the Franchisee has access to them (which it shall use all reasonable endeavours to secure).

1.8 The Franchisee shall not be responsible for any records maintained under any Previous Franchise Agreement, as referred to in paragraph 1.7, being true, up to date and complete. As soon as reasonably practicable after becoming aware that any such records are not true, complete and up to

date, the Franchisee shall take all reasonable steps to remedy any such deficiency, and shall thereafter maintain such records in accordance with paragraph 1.5.

Information to Stakeholders

- 1.9 The Franchisee shall comply with any reasonable requests and guidance issued by the Secretary of State from time to time in respect of the provision of information to and co-operation and consultation with Stakeholders.

2 BUSINESS PLANS

Initial Business Plan

- 2.1 On or before the date of this Agreement, the Franchisee shall deliver to the Secretary of State and, subject to paragraph 2.8, the Executives, its Initial Business Plan, describing its planned activities for each Franchisee Year during the Franchise Term, which shall include:
- 2.1.1 a description as to how the Franchisee will be able to meet its obligations under this Agreement for the Franchise Term, supported by operational plans demonstrating this;
 - 2.1.2 details of any investments proposed to be made or procured by the Franchisee in relation to the Franchise Services during the Franchise Term;
 - 2.1.3 a summary of the Franchisee's plans for marketing and developing the Franchise Services;
 - 2.1.4 not used; and
 - 2.1.5 a profit and loss forecast, cash flow forecast and forecast balance sheet for each of the first thirteen (13) Reporting Periods following the Franchise Commencement Date, together with a list of assumptions on the basis of which each such forecast has been prepared.

2.2 Not Used.

2.3 Not Used.

Updated Business Plans

- 2.4 The Franchisee shall:
- 2.4.1 notify the Secretary of State as soon as reasonably practicable if the business outlook or prospective financial results of the Franchisee are likely to be materially different from those specified in the most recent Business Plan; and
 - 2.4.2 within one (1) month of any request by the Secretary of State following receipt of a notification in accordance with paragraph 2.4.1, supply the Secretary of State and, subject to paragraph 2.8, the Executives, with a revised Updated Business Plan for the remainder of the Franchise Term which reflects the latest view of its business.

Provisions relating to Business Plans

- 2.5 The Franchisee shall:
- 2.5.1 comply with any guidance issued by the Secretary of State from time to time as to its reasonable requirements for the format of any Business Plan about how and with whom any consultation on the content of any Business Plan is to take place. The contents and assumptions to be included in any Business Plan, shall, unless the Secretary of State and the Franchisee otherwise agree, be consistent with the Record of Assumptions; and

- 2.5.2 attend such meetings and make such presentations as the Secretary of State shall request in connection with any Business Plan. Each of the Executives shall be entitled to attend such meetings at the discretion of the Secretary of State.
- 2.6 The Franchisee shall not be relieved of any of its obligations under this Agreement as a result of any comment or failure to comment by the Secretary of State or any Executive on any Business Plan or any agreement with or approval, implicit or explicit, of any Business Plan by the Secretary of State or any Executive at any time.
- 2.7 The Secretary of State may at any time require the Franchisee to produce a Business Action Plan in respect of any aspect of any Business Plan. Such Business Action Plan may include steps relating to:
- 2.7.1 timetable and service pattern development;
 - 2.7.2 station facility improvement;
 - 2.7.3 performance management improvement;
 - 2.7.4 customer service improvement; and
 - 2.7.5 improvements in the quality of service delivery or the efficiency of delivery of the Franchise Services.
- 2.7A Any Executive may at any time require the Franchisee to produce a Business Action Plan in respect of the following items contained in any Business Plan to which such Executive has access:
- 2.7A.1 timetable development;
 - 2.7A.2 operational performance management improvement;
 - 2.7A.3 customer service improvement; and
 - 2.7A.4 improvements in the quality of service delivery or the efficiency of delivery of the Executive Passenger Services relevant to such Executive.

Executive Entitlement

- 2.8 Where any reference is made in this paragraph 2 to the provision of any Business Plan to any Executive by the Franchisee, such Executive shall only be entitled to:
- 2.8.1 the information referred to in paragraphs 2.1.1, 2.1.2 and 2.1.3; and
 - 2.8.2 not used.

Secretary of State Approval

- 2.9 Any proposal in a Business 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 he may impose.

3 FINANCIAL AND OPERATIONAL INFORMATION

Accounting Records

- 3.1 The Franchisee shall prepare and at all times during the Franchise Term maintain true, up to date and complete accounting records as are required to be kept under Section 386 of the Companies Act 2006. Such records shall be prepared on a consistent basis for each Reporting Period.

Reporting Period Financial Information

- 3.2 The Franchisee shall deliver to the Secretary of State, within two (2) weeks of the end of each Reporting Period:
- 3.2.1 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;
 - 3.2.2 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 thereto; and
 - 3.2.3 in circumstances where the Franchisee was in a Lock-up Period during such Reporting Period, written confirmation from a statutory director of the Franchisee that the Franchisee has complied with the restrictions applicable during a Lock-up Period pursuant to paragraph 3 of Schedule 12 (Financial Obligations and Covenants).
- 3.3 The Management Accounts shall also set out:
- 3.3.1 sufficient information to enable the Secretary of State to calculate Actual Operating Costs and Modified Revenue on a cumulative basis for the previous 6 Reporting Periods;
 - 3.3.2 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 3.3.2;
 - 3.3.3 a comparison of the Franchisee's performance during such period against the forecast provided by the Franchisee in the then current Business Plan;
 - 3.3.4 a comparison of the Franchisee's cumulative performance during the Franchisee Year in which such period occurs against the forecast referred to in paragraph 3.3.3;
 - 3.3.5 a detailed statement and explanation of any material difference between such Management Accounts and the forecast referred to in paragraph 3.3.3; and
 - 3.3.6 where the level of financial performance specified in the Management Accounts is, in the reasonable opinion of the Secretary of State, materially worse than forecast by the Franchisee in its current Business Plan, the Secretary of State may require the Franchisee to prepare and submit to him, as soon as reasonably practicable, a Financial Action Plan to ensure that the level of financial performance forecast in its current Business Plan for the remainder of the currency of that Business Plan is achieved and the Franchisee shall use all reasonable endeavours to implement such Financial Action Plan.

Quarterly Financial Information

- 3.4 Within four (4) weeks after the end of the 3rd, 6th, 9th and 12th Reporting Periods in each Franchisee Year, the Franchisee shall deliver to the Secretary of State the following information:

- 3.4.1 an updated version of the profit and loss forecast, cash flow forecast and forecast balance sheet provided in accordance with paragraph 2.1.1, for each of the following thirteen (13) Reporting Periods; and
 - 3.4.2 a statement of calculation demonstrating the Franchisee's performance against each of the financial covenants in paragraph 2 of Schedule 12 (Financial Obligations and Covenants) and a forecast of performance against such covenants for the following thirteen (13) Reporting Periods.
- 3.5 Where any Reporting Period falls partly within one (1) Franchisee Year and partly within another, the results for each section of such Reporting Period falling either side of such Franchisee Year end shall be prepared on an accruals basis for each such section of such Reporting Period.

Annual Financial Information

- 3.6 Within three (3) weeks of the end of each Franchisee Year, the Franchisee shall deliver to the Secretary of State its Annual Management Accounts for that Franchisee Year.
- 3.7 The Franchisee shall deliver to the Secretary of State:
- 3.7.1 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
 - 3.7.2 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 Period.
- 3.8 Not Used.
- 3.9 Within four (4) Reporting Periods after the end of each Franchisee Accounting Reference Period, the Franchisee shall deliver the following information:
- 3.9.1 to the Secretary of State and the Executives, certified true copies of its annual report and Annual Audited Accounts for that Franchisee Accounting Reference Period, together with copies of all related directors' and auditors' reports;
 - 3.9.2 to the Secretary of State, a reconciliation to the Management Accounts for the same period; and
 - 3.9.3 to the Secretary of State, a statement from the Franchisee's auditors confirming compliance with the financial covenants in paragraph 2 of Schedule 12 (Financial Obligations and Covenants).
- 3.10 Within four (4) Reporting Periods after the end of each Franchisee Year, the Franchisee shall deliver to the Secretary of State a reconciliation between the Franchisee's Revenue as stated in its Annual Audited Accounts and the Annual Financial Statements.

Accounting Standards and Practices

- 3.11 Each set of Management Accounts and Annual Management Accounts shall be:
- 3.11.1 drawn up in a form consistent with the Franchisee's profit and loss account, cashflow projection and balance sheets contained in the Financial Model (or such form as may reasonably be required from time to time by the Secretary of State); and
 - 3.11.2 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 any changes to which shall be notified to the Secretary of State on submission of such accounts.

3.12 Each set of Annual Financial Statements and Annual Audited Accounts shall:

3.12.1 be prepared and audited in accordance with GAAP, consistently applied and in accordance with the Companies Act 2006; and

3.12.2 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 the sale of tickets, income received from Network Rail pursuant to Schedule 4 and Schedule 8 to the Track Access Agreement and other income (including car park revenue) or to such other level of disaggregation as may be notified to the Franchisee by the Secretary of State from time to time) derived by the Franchisee in respect of that Franchisee Year.

Parent Accounts

3.13 The Franchisee shall in addition deliver to, or procure delivery to, the Secretary of State, certified true copies of the annual reports and audited accounts of the Parent, together with copies of all related directors' and auditors' reports, within five (5) Reporting Periods of the end of each accounting reference period of the Parent or, if the Parent is domiciled outside England and Wales, the equivalent documents in the jurisdiction of residence of the Parent.

3.14 Not Used.

Improvement Plans for exceeding Improvement Plan Performance Levels

3.15 If and whenever the Franchisee's performance:

3.15.1 in respect of a Reporting Period, calculated as a moving annual average in accordance with Schedule 7.1 (Performance Benchmarks), exceeds (that is, is equal to or worse than) the Improvement Plan Performance Level for any Benchmark, the Franchisee shall promptly notify the Secretary of State and the affected Executive of that fact; and

3.15.2 in relation to any Benchmark exceeds (that is, is equal to or worse than) the Improvement Plan Performance Level for that Benchmark for any two consecutive Reporting Periods the Franchisee shall:

- (a) prepare and provide to the Secretary of State and such Executive a plan that it proposes to implement to ensure that its future performance does not exceed (that is, is neither equal to or worse than) the Improvement Plan Performance Level (an "**Improvement Plan**"). The Franchisee shall have due regard to any comments provided by the Secretary of State and such Executive in relation to the Improvement Plan and may amend the Improvement Plan as may be considered necessary (and consistent with its obligation under this paragraph 3.15.2(a));
- (b) implement such Improvement Plan; and
- (c) advise the Secretary of State and such Executive from time to time of the results of the implementation of such Improvement Plan.

Secretary of State Audit of calculations provided pursuant to paragraph 3.3.2 of this Schedule 13.2 (Information)

- 3.16 Without prejudice to paragraph 2.2 of Schedule 12 (Financial Obligations and Covenants) or to any other rights of the Secretary of State under this Agreement, the Secretary of State and his representatives shall be permitted to inspect at any time the books, records and any other material kept by or on behalf of the Franchisee in order to check or audit any item contained in or relating to the Management Accounts in so far as they relate to the statement of calculations required by paragraph 3.3.2 of this Schedule 13.2 and any other matter in connection with the Franchisee's obligations under paragraph 2 of Schedule 12 (Financial Obligations and Covenants).
- 3.17 The Franchisee shall make available to the Secretary of State and his representatives such information and grant such access or procure the grant of such access (including to or from third parties) as they shall reasonably require in connection with any audit to be carried out pursuant to paragraph 3.13. If any audit carried out pursuant to paragraph 3.13 reveals, in the reasonable opinion of the Secretary of State, any material inaccuracy in the Management Accounts (but only in so far as such accounts relate to the statement of calculations required by paragraph 3.3.2) then the Secretary of State may exercise its rights as described in paragraphs 2.2.1 or 2.2.2 of Schedule 12 (Financial Obligations and Covenants) and the Franchisee shall pay all reasonable costs of any such audit as a monitoring cost pursuant to paragraph 1.1 of Schedule 10.1 (Remedial Plans and Remedial Agreements).

4 SAFETY INFORMATION

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

5 FURTHER INFORMATION

- 5.1 The Franchisee shall:
- 5.1.1 deliver to the Secretary of State, or procure the delivery to the Secretary of State of, such information, records or documents as the Secretary of State may request within such period as the Secretary of State may reasonably require and which relates to or is connected with the Franchisee's performance of this Agreement; and
 - 5.1.2 procure that each Affiliate of the Franchisee complies with paragraph 5.1.1 in respect of any information, records or documents that relate to its dealings with the Franchisee in connection with the Franchisee's performance of this Agreement.
- 5.2 The information referred to in paragraph 5.1.1 shall include:
- 5.2.1 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;
 - 5.2.2 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;
 - 5.2.3 any agreement for the manufacture or supply of any rolling stock vehicles; or

5.2.4 any arrangements for the securitisation of any lease granted in respect of such rolling stock vehicles.

5.3 The Secretary of State may require the Franchisee to provide:

5.3.1 the information required to be provided under this Schedule 13.2 more frequently than set out in this Schedule 13.2;

5.3.2 the information required to be provided under this Schedule 13.2, or, in the Secretary of State's discretion, more detailed financial information, at any time in connection with the re-letting of the Northern Franchise; and

5.3.3 such unaudited accounts under such accounting policies as may be prescribed by the Secretary of State, acting reasonably, from time to time.

6 CONTRAVENTIONS OF THIS AGREEMENT

6.1 The Franchisee shall notify the Secretary of State, so far as possible before it may occur and in any event as soon as reasonably practicable thereafter, of any contravention by the Franchisee of any provision of this Agreement. This includes where the Franchisee is under an obligation to use all reasonable endeavours to achieve a particular result by a particular time, where such result is not achieved by such time.

6.2 The Franchisee shall notify any relevant Executive, 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 this Agreement where such contravention affects:

6.2.1 the performance of the Executive Passenger Services; or

6.2.2 the operation of or quality of facilities at the Executive Stations, relevant to such Executive.

6.3 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 this Agreement.

7 INFORMATION FROM THIRD PARTIES

7.1 The Franchisee shall, if the Secretary of State and/or any Executive so requests, use all reasonable endeavours to ensure that the Secretary of State and/or such Executive (as the case may be) 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 and/or such Executive (as the case may be) is entitled to have access, or of which the Secretary of State and/or such Executive (as the case may be) is entitled to receive a copy under this Agreement.

7.2 The Franchisee shall, if the Secretary of State and/or any Executive so requests, procure the provision by RSP to the Secretary of State and/or such Executive (as the case may be) 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. Such obligation shall be subject to the payment by the Secretary of State and/or such Executive (as the case may be) of the costs incurred by RSP in providing such information.

7.3 The obligations of the Franchisee under this Schedule 13.2 to provide information to the Secretary of State and/or any Executive (as the case may be) shall not apply if the Secretary of State and/or such Executive (as the case may be) notifies the Franchisee that it has received the relevant information directly from any other person (including Network Rail or RSP). The Franchisee shall, if the Secretary of State and/or such Executive (as the case may be) so requests, confirm or validate any such information which is received from any such other person.

7.4 The Franchisee shall promptly advise the Secretary of State and/or any Executive (as the case may be) of any changes that are to be made to its systems or processes or the systems and processes of the RSP that will, in the reasonable opinion of the Franchisee, materially affect the continuity of any of the records that are provided pursuant to this Schedule 13.2. Any such advice shall include an assessment of the materiality of the relevant change.

8 COMPATIBILITY OF INFORMATION

8.1 All financial, operational or other information, and any data and records required to be provided to the Secretary of State under this 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 Franchise Commencement Date, as modified from time to time in accordance with paragraph 9.

8.2 The Franchisee shall ensure that the interconnection of such systems or the provision of such information, data and records to the Secretary of State under this Agreement will not result in any infringement of any third party intellectual property rights to which its systems or such information, data or records may be subject.

9 DEVELOPMENT OF INDUSTRY SYSTEMS

9.1 The Franchisee shall actively co-operate, in a manner consistent with it being a responsible Train Operator of the Northern Franchise, with Network Rail, the Secretary of State, the ORR and all other relevant railway industry bodies and organisations in relation to the development of anything that can reasonably be considered to be a railway industry system including systems in relation to the attribution of train delay, the allocation of revenue and the collection and dissemination of industry wide information.

10 CO-OPERATION WITH VARIOUS SCHEMES

10.1 The Franchisee shall co-operate (in good faith) with the Secretary of State, the relevant Local Authority and/or any other affected railway industry parties in the development and the implementation of initiatives relating to its participation in Integrated Transport Schemes, multi-modal fares schemes and Transport Direct (the "**Industry Schemes**"), where such Industry Schemes relate to the Northern Franchise.

11 CO-OPERATION WITH NETWORK RAIL AND ALLIANCING

11.1 The Franchisee shall use all reasonable endeavours to work with Network Rail:

11.1.1 with much closer engagement and cooperation in combination with shared incentives in an effort to reduce the industry net cost;

11.1.2 to deliver efficiency and performance improvements in relation to the network upon which the Passenger Services are operated for the benefit of all stakeholders;

11.1.3 to develop a greater understanding of whole-industry costs involved in operating regional and local rail routes;

11.1.4 to identify opportunities where joint action can address safety issues more effectively;

11.1.5 to maintain the required levels of asset stewardship at reduced overall industry cost through collaboration on planning and priorities;

11.1.6 to assess opportunities for the parties to provide discrete services to each other for improved value-for-money;

11.1.7 to identify opportunities to improve the passenger experience and to maximise industry value from key stations;

- 11.1.8 to identify opportunities to increase overall levels of passenger satisfaction; and
- 11.1.9 to review and learn from each other in order to provide a basis for replicating lessons learned elsewhere on the national rail network,

in each case in respect of certain schemes identified by the Franchisee and Network Rail from time to time.

11.2 The Secretary of State acknowledges and agrees that an alliance agreement in a similar form to the alliance agreement entered into between the Franchisee and Network Rail during the term of the Previous Franchise Agreement shall satisfy the Franchisee's obligations under paragraph 11.1 (an "**Alliance Agreement**").

11.3 If:

11.3.1 the Franchisee proposes to enter into any amendment to the Alliance Agreement with Network Rail; and

11.3.2 such amendment is reasonably likely to either:

- (a) require an amendment to this Franchise Agreement; or
- (b) affect the ability of the Franchisee to perform its obligations under this Franchise Agreement,

on reaching agreement in principle with Network Rail on the amendments to be made to the Alliance Agreement, the Franchisee shall present the draft amended alliance agreement to the Secretary of State for approval and shall not enter into any such amendments without the prior written consent of the Secretary of State (which he shall have an unfettered discretion to withhold).

11.4 The Parties agree that the Secretary of State has the right to require the termination of any Relevant Agreement under the Alliance Agreement (as the term "**Relevant Agreement**" is defined in the Alliance Agreement) approved under paragraph 11.2 or any Alliance Agreement which may be approved under paragraph 11.3 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 it being agreed that such termination should be on commercially fair and reasonable terms.

11.5 If the Franchisee proposes to enter into a new alliance agreement which is different in any material respects to the Alliance Agreement, the provisions of paragraphs 11.3 and 11.4 shall apply as if the new alliance agreement was an amendment to the Alliance Agreement to which paragraphs 11.3.1 and 11.3.2 applied

12 SUSTAINABLE CONSTRUCTION

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

12.1.1 which are either being funded by the Franchisee or in respect of which the Franchisee has design responsibility; and

12.1.2 in respect of which the total capital cost exceeds £250,000 (indexed by the Retail Prices Index in the same way as variable costs are indexed in Schedule 8.2 (Annual Franchise Payments)),

the Franchisee shall use reasonable endeavours to achieve at least an "excellent" rating from an accredited assessor using Building Research Establishment environmental assessment methodology (or an equivalent recognised standard) at both the design stage and the post-construction stage unless the Secretary of State (acting reasonably) agrees that the relevant project is not of a suitable scale or type to be so assessed.

13 ENVIRONMENTAL MANAGEMENT AND SUSTAINABILITY ACCREDITATION

The Franchisee shall, by no later than the date which is 18 months after the Franchise Commencement Date, attain and, at all times thereafter, maintain accreditation pursuant to ISO14001 and ISO50001 or equivalent standards.

14 COMMUNITY RAIL PARTNERSHIPS

14.1 The Franchisee shall, at the request of the Secretary of State, co-operate with the Secretary of State, Network Rail, the 'Association of Community Rail Partnerships', the relevant Community Rail Partnership and/or any other person as the Secretary of State may nominate in the development of the Secretary of State's initiatives in relation to options for a more cost effective delivery of the railway passenger services operated on any Community Rail Route.

15 STATION INVESTMENT

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

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

15.2.1 attend meetings with the Secretary of State and/or such third party to discuss such opportunities;

15.2.2 provide the Franchisee's opinion on those opportunities;

15.2.3 review and comment on implementation timetables and programmes for any such opportunities; and

15.2.4 use all reasonable endeavours to achieve any necessary amendments to any Station Leases in order to facilitate the implementation of those opportunities.

16 SMALL AND MEDIUM-SIZED ENTERPRISES

16.1 The Franchisee shall at all times keep accurate and complete records of its use of and interaction with SMEs in delivering the Franchise Services.

16.2 By no later than 31 January in each year (and within one month of the end of the Franchise Period) the Franchisee shall deliver to the Secretary of State a breakdown of the number of SMEs used by the Franchisee in providing the Franchise Services during the calendar year (or part thereof) which ended on the immediately preceding 31 December or at the end of the Franchise Period (as applicable).

17 APPRENTICESHIPS

17.1 The Franchisee shall at all times keep accurate and complete records of the training and apprenticeships offered by the Franchisee and/or its supply chain in delivering the Franchise Services.

17.2 By no later than 31 January in each year (and within one month of the end of the Franchise Period) the Franchisee shall deliver to the Secretary of State a breakdown of the number of 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).

18 ENVIRONMENTAL IMPACT MONITORING, DATA COLLECTION AND CONTRACTUAL TARGETS

- 18.1 The Franchisee shall, by no later than 3 months after the Franchise Commencement Date, provide a report to the Secretary of State setting out:
- 18.1.1 which measures included in the Dataset the Franchisee is unable to provide, despite using reasonable endeavours to do so ("**Excluded Data**");
 - 18.1.2 for each item of Excluded Data, the technical, operational or commercial reason why the Franchisee is unable to provide the Excluded Data; and
 - 18.1.3 a plan ("**Environmental Data Implementation Plan**") detailing, in relation to each item of Excluded Data, the actions which the Franchisee would need to take in order to be able to provide such Excluded Data, the Franchisee's best estimate of the cost of taking such action and the date by which, if such actions were taken, the Franchisee would be able to begin providing such Excluded Data to the Secretary of State.

The Dataset, excluding any measures which the Secretary of State agrees, acting reasonably, that the Franchisee is, despite using reasonable endeavours, unable to provide, shall be referred to as the "**Initial Dataset**".

- 18.2 The Secretary of State may require:
- 18.2.1 the Franchisee to implement the Environmental Data Implementation Plan in whole or in part; and/or
 - 18.2.2 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.

- 18.3 Where the Franchisee is:
- 18.3.1 undertaking works, whether at a station or depot or in respect of rolling stock;
 - 18.3.2 procuring rolling stock; or
 - 18.3.3 taking any other action which could enable the Franchisee to provide any item of Excluded Data in a cost effective manner,

the Franchisee will use reasonable endeavours to do so in a manner which would enable the Franchisee to provide any relevant item of Excluded Data.

- 18.4 With effect from the date which is three (3) months after the Franchise Commencement Date, the Franchisee shall measure, collect and provide to the Secretary of State in accordance with this paragraph 18, that data included on the Initial Dataset so as to allow the Secretary of State and the Franchisee to understand the current environmental performance of the Northern Franchise and any potential for improvement in terms of environmental impact.
- 18.5 The Franchisee may, in its discretion, measure and collect additional data provided that the minimum required Initial Dataset is adhered to and the Franchisee will co-operate with the Secretary of State to seek to identify improvements in the efficiency and/or cost effectiveness of the collection of the data in the Initial Dataset.
- 18.6 The Franchisee shall ensure that the form of measurement of the Initial Dataset enables it to report a consolidated quarterly or annual (as applicable) usage figure to the Secretary of State for each reporting quarter or Franchisee Year (as applicable).
- 18.7 The Franchisee shall submit to the Secretary of State a report setting out the result of the data collection required by this paragraph 18 within four (4) weeks following the end of each: (i) reporting quarter during the Franchise Period; and (ii) Franchisee Year (as applicable).

- 18.8 For the purpose of this paragraph 18 “reporting quarters” are 1st April to 30th June, 1st July to 30th September, 1st October to 31st December and 1st January to 31st March. The first reporting quarter of the Franchise Period for the purpose of the report shall begin on the Franchise Commencement Date and end on the last day of the reporting quarter in which the Franchise Commencement Date falls, and the final quarter shall end on the last day of the Franchise Period.
- 18.9 The Franchisee shall submit the report required by paragraph 18.7 above to the Secretary of State in such format as the Secretary of State may (acting reasonably) from time to time specify. Such report will include the actual quarterly or annual results (as applicable) and, with effect from:
- 18.9.1 the first reporting quarter which commences at least fifteen (15) months after the Franchise Commencement Date; and
- 18.9.2 in respect of any measure which, as a result of an amendment to the Initial Dataset, the Franchisee subsequently becomes obliged to report against, the first reporting quarter which commences at least twelve (12) months after the date on which the Franchisee first became obliged to report against that measure,
- the average of the results for the relevant reporting quarter and the previous three (3) reporting quarters (“**Moving Annual Average**”).

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APPENDIX 1 TO SCHEDULE 13.2 - EFFICIENT FRANCHISEE

1 INFORMATION ABOUT THE EFFICIENCY OF THE FRANCHISEE

1.1 The Franchisee shall:

1.1.1 at all times during the Franchise Term maintain records in relation to its efficiency in respect of its obligations under this Agreement, covering the areas and the information described in this Appendix 1; and

1.1.2 subject to paragraph 1.2, provide to:

- (a) 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" by reference to each Performance Management Unit;
- (b) each Executive the information set out in Tables 1, 2, 4 and 5 at the frequency specified in the column of such tables headed "When information to be provided" by reference to any Performance Management Unit relevant to it; and
- (c) each Executive, in respect of the Executive Passenger Services relevant to such Executive, the information set out in Table 3A at the frequency specified in the column of such tables headed "When information to be provided".

1.2 When so requested by the Secretary of State or any Executive, the Franchisee shall make such information available for review by the Secretary of State or such Executive (as the case may be) by reference to:

1.2.1 such other level of disaggregation (including by Route or Service Group) as is specified by the Secretary of State or such Executive (as the case may be) from time to time; and

1.2.2 any particular day, week or other longer period as is specified by the Secretary of State or such Executive (as the case may be) from time to time.

1.3 The following key shall apply to the tables in this Appendix 1:

- A** Information in respect of each period shall be provided not later than ten (10) days after the relevant Passenger Change Date;
- B** Information to be provided for every Reporting Period within ten (10) days of the last day of each Reporting Period; and
- C** Information to be provided annually within ten (10) days of the last day of each Franchisee Year.

Table 1 - Rolling Stock Vehicles

Information to be provided	Class of Rolling Stock Vehicle			When information to be provided
	Class [aaa]	Class [bbb]	Class [xxx]	
Number of rolling stock vehicles in the Train Fleet	[number]	[number]	[number]	A
Number of rolling stock vehicles scheduled to be in service in peak hour as a percentage of the	[%]	[%]	[%]	A

Information to be provided	Class of Rolling Stock Vehicle			When information to be provided
	Class [aaa]	Class [bbb]	Class [xxx]	
number of rolling stock vehicles in the Train Fleet				
Number of rolling stock vehicle hours scheduled in service per Reporting Period as a percentage of number of rolling stock vehicles in the Train Fleet x 24 hours x 28 days (total rolling stock vehicle hours)	[%]	[%]	[%]	A
Total standard time scheduled preventative maintenance rolling stock vehicle hours per Reporting Period as a percentage of total rolling stock vehicle hours	[%]	[%]	[%]	A

- 1.4 Where trains operated by the Franchisee consist of locomotive(s) and coaches, the Franchisee shall separate the information provided for locomotive(s) and coaches.

Table 2 - Information related to Efficiency of Operation

Information to be provided	When information to be provided
Total passenger journey kilometres divided by total staff hours plus contractor hours	A
Number of scheduled diagrams per Reporting Period divided by the number of drivers employed	A
The number of depot maintenance employees (including train maintenance staff and supervisory and administrative staff at the relevant depot) divided by the number of rolling stock vehicles in the Train Fleet	A
Scheduled driving/train crew in service time compared to total employed driver/train crew time expressed as a percentage	A
Total number of employees divided by the number of rolling stock vehicles in the Train Fleet	A
Number of indirect employees (head office, management and supervisory and administrative staff) relative to the number of direct employees (drivers, train crew, station staff and train maintainers), expressed as a percentage	A

Table 3 - Financial Efficiency Ratios

Information to be provided	When information to be provided
Total cost of service operations (all Franchisee's costs excluding head office, management and supervisory and administrative staff costs and head office lease and facilities costs) divided by total scheduled vehicle miles	A
Total maintenance cost (including depot costs, spare parts replacement train maintenance staff and depot supervisory costs, interior and exterior cleaning costs, depot maintenance costs excluding any vehicle fuel costs) divided by total scheduled vehicle miles	A
Total cost (sum of all Franchisee's costs) divided by total number of total passenger journey kilometres	A
Total cost of service operations (all Franchisee's costs excluding head office, management and supervisory and administrative staff costs and head office lease and facilities costs) divided by total passenger journeys	A
Administrative costs (head office, management and supervisory and administrative staff costs and head office lease and facilities costs) divided by total scheduled vehicle miles	A
Total fares revenue divided by the total number of total passenger journey kilometres	A
Ticket selling and revenue protection costs as a percentage of total revenue. Ticket selling and revenue protection costs shall include ticket office staff costs, ticket machine and ticket validation equipment maintenance costs, ticket procurement and ticket costs, revenue protection staff costs (less penalty fare (if any) receipts), costs associated with RSP and Ticketing and Settlement Agreement compliance, and commissions paid to third parties in respect of ticket sales	A
Percentage of ticket sales revenue collected by ticket office staff	A
Percentage of ticket sales revenue collected by on train staff	A
Percentage of ticket sales revenue collected by automatic ticket machines	A
Percentage of total revenue obtained from season tickets	A

Table 3A - Financial Efficiency Ratios in respect of the Executive Passenger Services

Information to be provided	When information to be provided
Total cost of service operations for the Executive Passenger Services (all Franchisee's costs in delivering such Executive Passenger Services excluding head office, management and supervisory and administrative staff costs and head office lease and facilities costs) divided by total scheduled vehicle miles for such Executive Passenger Services	A
Total maintenance cost for the delivery of the Executive Passenger Services (including, where appropriate, depot costs, spare parts replacement train maintenance staff and depot supervisory costs, interior and exterior cleaning costs, depot maintenance costs excluding any vehicle fuel costs) divided by total scheduled vehicle miles for such Executive Passenger Services	A
Total cost for the delivery of the Executive Passenger Services (sum of all Franchisee's costs in respect of the Executive Passenger Services) divided by	A

Information to be provided	When information to be provided
total number of total passenger journey kilometres for such Executive Passenger Services	
Total cost of service operations for the delivery of the Executive Passenger Services (all Franchisee's costs in respect of the delivery of the Executive Passenger Services excluding head office, management and supervisory and administrative staff costs and head office lease and facilities costs) divided by total passenger journeys for such Executive Passenger Services	A
Administrative costs directly incurred in the delivery of the Executive Passenger Services (including, where appropriate, head office, management and supervisory and administrative staff costs and head office lease and facilities costs) divided by total scheduled vehicle miles for such Executive Passenger Services	A
Total fares revenue for the Executive Passenger Services divided by the total number of total passenger journey kilometres for such Executive Passenger Services	A
Ticket selling and revenue protection costs in respect of the Executive Passenger services as a percentage of total revenue for such Executive Passenger Services. Ticket selling and revenue protection costs shall, where appropriate, include ticket office staff costs, ticket machine and ticket validation equipment maintenance costs, ticket procurement and ticket costs, revenue protection staff costs (less penalty fare (if any) receipts), costs associated with RSP and Ticketing and Settlement Agreement compliance, and commissions paid to third parties in respect of ticket sales	A
Percentage of ticket sales revenue for the Executive Passenger Services collected by ticket office staff	A
Percentage of ticket sales revenue for the Executive Passenger Services collected by on train staff	A
Percentage of ticket sales revenue for the Executive Passenger Services collected by automatic ticket machines	A
Percentage of total revenue in respect of the Executive Passenger Services obtained from season tickets	A

Table 4 - Safety

Information to be provided	When information to be provided
Accidents reported as follows: <ul style="list-style-type: none"> • Staff accidents should be normalised by per 1,000 staff; and • Public accidents should be normalised by per million customer journeys 	C

Table 5 - HR Information

Information to be provided	When information to be provided
Evidence of Franchisee's vision, company goals and HR Strategy that supports it	C

Information to be provided	When information to be provided
Evidence of a human resource database capable of informing the operation of the Franchisee and supporting the production of a manpower plan	C
Evidence of a 5 year manpower plan, rolling forward and updated annually	C
Evidence of working towards "Investors in People" accreditation	C
Evidence of a performance management process applicable to all staff	C
Evidence of an objective, transparent and fair recruitment process	C
Evidence of analysis of employment and recruitment data by gender, ethnic category, disability function and grade	C
Evidence of analysis of turnover by cause, retirement, dismissal, redundancy, ill health, retirement, death	C
Evidence of succession planning, identification of prospective "hot spots" and actions taken to address them	C
Evidence of a diversity plan and impact of implementing it	C
Evidence of historical and current data on salaries, earnings, hours of work, overtime worked, free day/rest day working, and other main terms and conditions for all key grade groups	C
Evidence of benchmark comparator data	C
Evidence of non-financial reward and recognition initiatives	C
Evidence of a competence framework in place based on national occupational standards	C
Evidence of an assessment and verification framework to enable the delivery of NVQs and SVQs	C
Evidence of a structured induction programme (supported by hard data) incorporating a railway industry perspective to all new entrants	C
Evidence (supported by hard data (numbers / %)) of staff with NVQs / SVQs (or equivalent externally recognised qualification) by grade against target	C
Evidence (supported by hard data (numbers / %)) of structured training and development for "Strategic", "Supervisory" and "Operational" managers as well as the wider workforce	C
Evidence of a collective "consultation and bargaining framework"	C
Evidence (supported by hard data (numbers / %)) of people days lost through Industrial Action and a record of Industrial Action short of strike action	C
Evidence of an annual staff attitude survey	C
Evidence of actions taken arising from feedback received from the staff attitude survey	C
Evidence of company links to the community through its staff	C
Evidence of a company communication and briefing strategy	C
Evidence of a robust process of briefing, core briefing material and 2-way communication and feedback	C
Evidence of staff hours lost through sickness and other absence	C
Evidence of staff hours lost through training	C

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APPENDIX 2 TO SCHEDULE 13.2 - KEY ASSETS

1 INFORMATION ABOUT ASSETS USED IN THE NORTHERN FRANCHISE

1.1 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:

1.1.1 for each Primary Franchise Asset or other asset which is the subject of, or operated under, a Key Contract:

- (a) the progress and completion of all work described in the maintenance schedules and manuals;
- (b) all operating manuals (including any safety related regulations); and
- (c) all permits, licences, certificates or other documents required to operate such asset; and

1.1.2 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).

1.2 The Franchisee shall provide copies of:

1.2.1 the records referred to in paragraph 1.1.1 to the Secretary of State; and

1.2.2 the records referred to in paragraph 1.1.2 to the Secretary of State and each Executive, when requested to do so from time to time by the party entitled to receive such records.

APPENDIX 3 TO SCHEDULE 13.2 - OPERATIONAL INFORMATION

- 1 INFORMATION ABOUT THE PERFORMANCE OF THE FRANCHISEE
- 1.1 The Franchisee shall at all times during the Franchise Term maintain records in relation to its operational performance under this Agreement, covering the areas and the information described in this Appendix 3. Such information shall include details as to whether or not any curtailment, diversion, delay or failure to attain any connection is attributable, in the Franchisee's opinion, to either a Force Majeure Event or the implementation of a Service Recovery Plan.
- 1.2 The Franchisee shall, subject to paragraph 1.3, provide to the Secretary of State and each Executive the information set out in the following table at the frequency specified in the column of each such table headed "When information to be provided" by reference to:
- 1.2.1 in respect of the Secretary of State, each Performance Management Unit; and
- 1.2.2 in respect of any Executive, any Performance Management Unit relevant to it.
- 1.3 When so requested by the Secretary of State or any Executive, the Franchisee shall, within such reasonable period as the Secretary of State or any Executive may specify, make such information available for review by the Secretary of State or such Executive (as the case may be) by reference to:
- 1.3.1 such other level of disaggregation (including by Route or Service Group) as is specified by the Secretary of State or such Executive (as the case may be) from time to time; and
- 1.3.2 any particular day, week or other longer period as is reasonably specified by the Secretary of State or such Executive (as the case may be) from time to time.
- 1.4 The following key shall apply to the Table in this Appendix 3:
- A** Information in respect of each period shall be provided not later than ten (10) days after the relevant Passenger Change Date
- B** Information to be provided for every Reporting Period within twenty (20) days of the last day of each Reporting Period; and
- C** Information to be provided annually within ten (10) days of the last day of each Franchisee Year.
- 1.5 For the purpose of this Appendix 3, a business day is any day between Monday to Friday (inclusive) excluding public holidays.

Table - Operational Information per Reporting Period

Information to be provided per Reporting Period	Information (format)	When information to be provided
Number of Passenger Services		
Number of Passenger Services in the Timetable	[number]	B
Number of Cancellations and Partial Cancellations		
Number of Passenger Services in the Plan of the Day which were the subject of a Cancellation	[number]	B
Number of Passenger Services in the Plan of the Day which were the subject of a Partial Cancellation	[number]	B
Number of Passenger Services in the Plan of the Day which were the subject of a Cancellation	[number]	B

Information to be provided per Reporting Period	Information (format)	When information to be provided
attributable to the Franchisee's implementation of a Service Recovery Plan		
Number of Passenger Services in the 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
Any instance of 50 per cent. or more of the Passenger Services in the Timetable being the subject of a Cancellation on any day on any line or route or in any Service Group	[number]	Within 2 business days of the occurrence
Where there is a difference between the Timetable and the Plan of the Day on any day which is attributable to the introduction, removal or alteration of a Passenger Service by the Franchisee (or with the agreement of the Franchisee in contravention of its obligations under Schedule 1 (Passenger Service Obligations)), the following: (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 Timetable on that day had been the same as the Plan of the Day	[number]	B
Number of Passenger Services in the Plan of the Day which were the subject of a cancellation and which satisfied the conditions of the term Cancellation, except that such cancellations occurred for reasons attributable to the occurrence of a Force Majeure Event	[number]	B
Number of Passenger Services in the Plan of the Day which were the subject of a partial cancellation and which satisfied the conditions of the term Partial Cancellation, except that such partial cancellations occurred for reasons attributable to the occurrence of a Force Majeure Event	[number]	B
Number of Passenger Services in the Plan of the Day which were the subject of a cancellation and which satisfied the conditions of the term Cancellation, except that such cancellations occurred for reasons attributable to the exercise by Network Rail of its rights pursuant to the Track Access Agreement	[number]	B
Number of Passenger Services in the Plan of the Day which were the subject of a partial cancellation and which satisfied the conditions of the term Partial Cancellation, except that such partial cancellations occurred for reasons attributable to the exercise by Network Rail of its rights pursuant to the Track Access Agreement	[number]	B
Capacity		

Information to be provided per Reporting Period	Information (format)	When information to be provided
Number of Monitored Passenger Services that have less than the required minimum passenger carrying capacity specified in the Fixed Train Plan	[number]	B
Number of Monitored Passenger Services that have less than the required minimum passenger carrying capacity specified in the Fixed Train Plan attributable to the Franchisee's implementation of a Service Recovery Plan	[number]	B
Number of Monitored Passenger Services that have less than the required minimum passenger carrying capacity specified in the Fixed Train Plan attributable to the occurrence of a Force Majeure Event	[number]	B
Minutes Delay and Punctuality		
Number of Minutes Delay attributable to the Franchisee	[minutes]	B
Number of Minutes Delay attributable to Network Rail	[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 12 preceding Reporting Periods for which the attribution remains in dispute between Network Rail and the Franchisee	[minutes]	B
Number of Minutes Delay from the 12 preceding Reporting Periods for which the attribution remains in dispute between Network Rail and the Franchisee	[minutes]	B
Number of Minutes Delay from the 12 preceding Reporting Periods for which disputed attribution has been resolved or determined since the Franchisee's previous report pursuant to paragraph 2.7 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
Passenger Services arriving at terminus stations less than 5 minutes late (or 10 minutes late in the case of designated long distance services) as a percentage of total number of scheduled passenger service arrivals at terminus stations	[%]	B
Average duration of delay per delayed Passenger Service	[minutes]	B
Number of Passenger Services in the Timetable which arrive at their scheduled final destination:	[number]	B

Information to be provided per Reporting Period	Information (format)	When information to be provided
(a) Early (b) On time (c) 1 to 4.59 minutes late (d) 5 to 9.59 minutes late (e) 10 to 14.59 minutes late (f) 15 to 19.59 minutes late (g) 20 to 29.59 minutes late (h) 30 to 59.59 minutes late (i) 60 or more minutes late, measured against scheduled arrival time of such Passenger Services in the Timetable (any Passenger Services which suffers a Cancellation will be recorded as having arrived at destination 20 to 29.59 minutes late)		
Passenger delay per Passenger Service	[minutes]	A
Train Mileage		
Aggregate Train Mileage scheduled in the Timetable	[mileage]	B
Aggregate Train Mileage operated	[mileage]	B
Passenger's Charter Information		
In respect of each Charter Group (and in each case, consistent with the Passenger's Charter Guidelines) for such Reporting Period:		B
(a) the number of Passenger Services planned for the purpose of the Passenger's Charter;	[number]	

APPENDIX 4 TO SCHEDULE 13.2 - PASSENGER JOURNEYS, MILES AND EARNINGS INFORMATION

1 INFORMATION ABOUT JOURNEY NUMBERS AND EARNINGS

1.1 The Franchisee shall:

1.1.1 at all times during the Franchise Term maintain records in relation to the information specified in the following table; and

1.1.2 subject to paragraph 1.2, provide such information to the Secretary of State at the frequency specified in the column of such table headed "When information to be provided" by reference to each Performance Management Unit.

1.2 When so requested by the Secretary of State, the Franchisee shall make such information available for review by the Secretary of State by reference to:

1.2.1 such other level of disaggregation (including by Route or Service Group) as is specified by the Secretary of State from time to time; and

1.2.2 any particular day, week or other longer period as is specified by the Secretary of State from time to time.

1.3 The following key shall apply to the Table in this Appendix 4:

A Information to be provided on or before any Passenger Change Date;

B Information to be provided for every Reporting Period within ten (10) days of the last day of each Reporting Period; and

C Information to be provided annually within ten (10) days of the last day of each Franchisee Year.

Table Passenger Journey Information

Information to be provided	Information (format)	When information to be provided
Number of national passenger rail journeys (meaning the number of journeys by passengers from the station where such passengers join the railway passenger services to the station where such passengers exit the railway passenger services). A national passenger rail journey may encompass more than one passenger rail train journey (meaning the number of journeys by passengers on any one train between stations, which travel may form the whole or part of a national passenger rail journey)	[number]	B
Number of passenger rail train journeys	[number]	B
Number of passenger miles (meaning the total number of passengers transported over the distance of one mile on the Passenger Services)	[number / mileage]	B
Earnings (meaning all income received from passengers. Earnings shall not be limited to income from Fares)	[£]	B
Farebox income (meaning income from Fares which are valid for travel on the Passenger Services, or	[£]	B

Information to be provided	Information (format)	When information to be provided
having such other meaning as the Secretary of State may determine from time to time in its reasonable discretion)		
Other passenger revenue (meaning Earnings less Farebox income)	[£]	B

- 1.4 Where the information referred to in this Appendix 4 is held in a system operated by RSP (or any other system), the Franchisee may fulfil its obligations under paragraph 1.1 by procuring that the Secretary of State shall be granted access free of charge to such records in a readily accessible manner and in a format acceptable to the Secretary of State.
- 1.5 The Franchisee shall advise the Secretary of State of any changes made to its systems or processes or those of RSP which materially change or affect the continuity of the records maintained pursuant to this Appendix 4. Such advice shall include an assessment of the materiality of the relevant change.

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APPENDIX 5 TO SCHEDULE 13.2 - UPDATED BUSINESS PLAN

AGREED FORM: UPDATED BUSINESS PLAN

The Updated Business Plan should have sections covering the following areas:

1 Executive Summary

2 Background

Introduction

Franchise Objectives

Present Position vis a vis Business Model

Purpose of This Document

3 The Market and Developing the Northern Franchise

Market Analysis

Competitor Analysis

Demographics

Economic Assumptions

Traffic Forecasts

Prospects for the current year (Franchisee's financial year)

Strengths, Weaknesses, Opportunities and Threats ('SWOT') Analysis

4 Running the Business

4.1 Key Issues and Activities/Outputs in previous year

Revenue

Marketing Strategy

Performance

Customer Service/Satisfaction

On-Board Services

Fleet

Stations

4.2 Safety and Security

Update on provisions of Safety and Security at Stations

4.3 Measuring Performance Against Targets

Key Performance Indicators or Critical Success Factors

Review Process

4.4 Financial

Income

Costs

Investment

Cash Flow, Profit and Balance Sheets

Risks and Sensitivities

Outlook for the following two years (Franchisee's financial years)

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APPENDIX 6 TO SCHEDULE 13.2 – ENVIRONMENTAL IMPACT MONITORING DATASET

SUBJECT (UNIT)		GRANULARITY	FREQUENCY
TRACTION	EC4T (kWh)	Total/breakdown per distinct fleet	Quarterly
	Gas-oil (kWh)	Total/breakdown per distinct fleet	Quarterly
	Gas-oil (litres)	Total/breakdown per distinct fleet	Quarterly
	Traction (kWh)	Total	Quarterly
	kWh or litres/vehicle mile	Total/breakdown per distinct fleet	Quarterly
NON-TRACTION	Electricity (kWh) totals and per site	Total/breakdown per individual site	Quarterly
	Gas (kWh)	Total/breakdown per individual site	Quarterly
	Gas-oil (kWh)	Total/breakdown per individual site	Quarterly
	Gas-oil (litres)	Total/breakdown per individual site	Quarterly
	Total non-traction (kWh)	Total	Quarterly
ENERGY OUTPUTS	Traction (kWh ppj)	Total/breakdown per distinct fleet	Quarterly
	Traction (kWh ppkm)	Total/breakdown per distinct fleet	Quarterly
	Non Traction (kWh ppj)	Total/breakdown per individual site	Quarterly
	Non Traction (kWh ppkm)	Total/breakdown per individual site	Quarterly
	EPC rating	All locations	12 months after start of franchise and then any changes
	kWh/m ²	All locations	Annual
CARBON	Carbon footprint (tonnes)	Total	Annual
	Scope 1 emissions (tonnes)	Total	Annual
	Scope 2 emissions (tonnes)	Total	Annual
	Traction (kg CO ₂)	Total	Quarterly
	Traction (kg CO ₂ ppj)	Total/breakdown per distinct fleet	Quarterly
	Traction (kg CO ₂ ppkm)	Total/breakdown per distinct fleet	Quarterly
	Non traction (kg CO ₂)	Total	Quarterly
	Non Traction (kg CO ₂ ppj)	Total/breakdown per individual site	Quarterly
	Non Traction (kg CO ₂ ppkm)	Total/breakdown per individual site	Quarterly
WATER	Mains Water consumption (m ³)	Total/breakdown per individual site	Annual
	Water recycled including rainwater use(m ³)	Total/breakdown per individual site	Annual
	Recycling rate (%)	Total/breakdown per individual site	Annual

WASTE	Waste generated (tonnes)	Total/per individual site/per individual waste stream	Quarterly
	Waste recycled (tonnes)	Total/per individual site/per individual waste stream	Quarterly
	Recycling rate (%)	Total/per individual site/per individual waste stream	Quarterly
	Waste to landfill (tonnes)	Total/per individual site/per individual waste stream	Quarterly
ENVIRONMENTAL MANAGEMENT SYSTEM	Customer complaints for environmental issues	Customer complaints for environmental issues	Annual
	Environmental fines or prosecutions	Environmental fines or prosecutions	Annual
	Corrective actions in EMS audits	Corrective actions in EMS audits	Annual
	Average time to close out corrective actions	Average time to close out corrective actions	Annual
	Environmental incidents reported through EMS	Environmental incidents reported through EMS	Annual
	Environmental training records % personnel briefed/trained	Environmental training records % personnel briefed/trained	Annual
	Performance in benchmarking indices e.g. EFQM, BiTC, SD tool	Performance in benchmarking indices e.g. EFQM, BiTC, SD tool	Annual

SCHEDULE 14 - PRESERVATION OF ASSETS

- Schedule 14.1 Maintenance of Franchise
- Schedule 14.2 Maintenance of Operation 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 Dealings with Franchise Assets

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SCHEDULE 14.1 - MAINTENANCE OF FRANCHISE

Maintenance as going concern

- 1 The Franchisee shall maintain and manage the business of providing the Franchise Services so that, to the greatest extent possible and practicable:
 - 1.1 the Franchisee is able to perform its obligations under this Agreement; and
 - 1.2 a Successor Operator would be able to take over the business of providing the Franchise Services immediately at any time.
- 2 The Franchisee's obligation under paragraph 1 shall include an obligation to ensure that any computer and information technology systems of the Franchisee shared in whole or in part with Affiliates or third parties can be operated by a Successor Operator as a stand alone system without continued reliance on such Affiliates or other third parties immediately from the date of termination of this Agreement without any reduction in functionality or any increase in maintenance or support costs to the Successor Operator (this obligation being without prejudice to any requirement for the Franchisee to obtain consent to such arrangements relating to sharing computer and information technology systems from the Secretary of State).
- 3 The Franchisee shall use all reasonable endeavours to ensure that such Successor Operator would have immediate access to all Franchise Employees and Primary Franchise Assets for such purpose.
- 4 The Franchisee shall maintain and manage the business of providing the Franchise Services on the basis that such business will be transferred, in the manner contemplated under this Agreement, as a going concern at the end of the Franchise Period to, and continued immediately thereafter by, a Successor Operator.
- 5 The Franchisee shall use all reasonable endeavours to ensure that an appropriate number of employees (having sufficient skills, qualifications and experience) will transfer by operation of Law to any Successor Operator following the Expiry of the Franchise Period.
- 6 The Franchisee shall comply with all reasonable requirements of the Secretary of State to obtain or maintain the property and rights that a Successor Operator would require, or that it would be convenient for it to have, on the basis that the same will transfer by operation of Law to any Successor Operator following the Expiry of the Franchise Period.

Post-Franchise timetables

- 7 Both prior to and following the selection of a Successor Operator (whether a Franchisee or otherwise and whether or not subject to the satisfaction of any conditions), the Franchisee shall:
 - 7.1 co-operate with, where a Successor Operator has been appointed, that Successor Operator, or where not, the Secretary of State; and
 - 7.2 take such steps as may reasonably be requested by the Secretary of State, so as to ensure the continuity of, and orderly handover of control over of the Franchise Services.
- 8 The steps that the Secretary of State may reasonably request the Franchisee to take pursuant to paragraph 6 include:
 - 8.1 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:
 - 8.1.1 the Successor Operator has been identified; or

- 8.1.2 there is in place an Access Agreement relating to the period over which that Successor Operator Timetable is intended to be operated;
- 8.2 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;
- 8.3 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
- 8.4 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 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 or intangible assets but excluding any Stations in so far as their assets stewardship is subject to the terms of a Licence) employed in the performance of its obligations under this 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 this 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 it specifies for this purpose. Such schedule shall cover such aspects of asset condition as the Secretary of State may reasonably require. If the Secretary of State and the Franchisee are unable to agree the content of such schedule of condition, either of them 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:
- 1.5.1 the Licences;
 - 1.5.2 any contracts of employment with Franchise Employees;
 - 1.5.3 any relevant Fares;
 - 1.5.4 any Key Contracts; and
 - 1.5.5 any applicable safety legislation regulations or safety standards and the Safety Case, in order to ensure that the Secretary of State may designate such assets as Primary Franchise Assets.

2 BRAND LICENCES AND BRANDING

Brand Licences

- 2.1 The Franchisee shall comply with its obligations under each of the Brand Licences.

Branding

- 2.2 Subject to any applicable obligations or restrictions on the Franchisee (including the terms of the Rolling Stock Leases), the Franchisee:
- 2.2.1 may apply at its own cost registered or unregistered trade marks (including company names, livery and other distinctive get-up) to:

- (a) any assets used by it predominantly in the operation and provision of any Executive Passenger Services with the consent of the relevant Executive (such consent not to be unreasonably withheld); and
- (b) any other assets owned or used by it in the operation and provision of the Franchise Services;

2.2.2 shall use all reasonable endeavours to apply at the Secretary of State's cost such 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 or provision of the Franchise Services as the Secretary of State may direct.

2.3

2.3.1 Subject to paragraphs 2.3.3 and 2.3.7, the Franchisee may:

- (a) 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
- (b) 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.

2.3.2 Any such licence or undertaking under paragraph 2.3.1 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 paragraphs 8.1.1(a) to (d) of Schedule 15.4 (Provisions Applying on and after Termination).

2.3.3 Subject to paragraph 2.3.7, to the extent that:

- (a) the Franchisee does not provide a relevant undertaking or licence in accordance with paragraph 2.3.1;
- (b) 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
- (c) 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.

2.3.4 The amount to be paid to a Successor Operator under paragraph 2.3.3 may include the reasonable cost of:

- (a) removing or covering Marks from the exterior of any rolling stock vehicle;
- (b) removing or covering interior indications of the Marks including upholstery and carpets;

- (c) replacing or covering all station or other signs including bill boards; and
- (d) 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.

2.3.5 The Franchisee shall, in addition to making a payment under paragraph 2.3.3, grant or procure the grant of a licence or undertaking complying with paragraphs 2.3.1 and 2.3.2 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.

2.3.6 The Secretary of State shall determine at or around the end of the Franchise Period, and after consultation with the Franchisee and, where relevant, the Executives, the maximum liability of the Franchisee under paragraph 2.3.3 and the maximum length of licence or undertaking under paragraph 2.3.5.

2.3.7 The provisions of paragraphs 2.3.1 to 2.3.6 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 it becomes aware of whether or not any such asset is to be so used.

Non-designation of New Brands

2.4 The Secretary of State agrees not to designate as a Primary Franchise Asset any registered or unregistered trade mark which is developed by the Franchisee.

SCHEDULE 14.3 - KEY CONTRACTS

1 KEY CONTRACTS

1.1 The provisions of this Schedule 14.3 apply to all Key Contracts from time to time.

1.2 The Key Contracts as at the date of this 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:

1.2.1 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

1.2.2 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:

1.3.1 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

1.3.2 de-designation by the Secretary of State of any Key Contract pursuant to paragraph 3 of this Schedule 14.3; or

1.3.3 re-designation by the Secretary of State pursuant to paragraph 4 of this Schedule 14.3.

2 DESIGNATION OF KEY CONTRACTS

2.1 Where the Secretary of State considers that it is reasonably necessary for securing the continued provision of the Franchise Services or the provision of services similar to the Franchise Services by a Successor Operator in accordance with this Agreement, it 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:

2.2.1 any actual or prospective agreement, contract, licence or other arrangement; and/or

2.2.2 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 lawfully 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:

5.1.1 is a Train Operator; or

5.1.2 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:

(a) breach, termination or expiry of such Key Contract;

(b) termination or expiry of this Agreement; or

(c) 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:

5.2.1 any agreement, contract, licence or other arrangement to which the Franchisee is already a party; or

5.2.2 any category of agreement, contract, licence or other arrangement where the Franchisee is already a party to a contract, licence or other arrangement which, by virtue of the Secretary of State's designation or re-designation, is classified in such category,

the Franchisee shall use all reasonable endeavours to assist the Secretary of State in entering into a Direct Agreement as envisaged by paragraph 5.1.2.

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 which may be notified to the Franchisee as a result of, or in connection with:

5.3.1 any breach by the Franchisee of the terms of the Key Contract to which the relevant Direct Agreement relates; or

5.3.2 any unsuccessful claim being brought by the Franchisee against the counterparty of any such Key Contract in relation to the termination of such Key Contract.

6 EMERGENCIES

6.1 Where any emergency may arise in connection with the provision and operation of the Franchise Services, the Franchisee:

6.1.1 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;

6.1.2 need not procure that the relevant counterparty enters into a Direct Agreement in respect of such contracts or uses all reasonable endeavours to assist the Secretary of State in entering into the same;

6.1.3 shall promptly inform the Secretary of State of any such emergency and contracts, licences or other arrangements which it proposes to enter into; and

6.1.4 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 or delayed) vary, or purport to vary, the terms or conditions of any Key Contract at any time, unless lawfully 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 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 1 TO SCHEDULE 14.3 – LIST OF KEY CONTRACTS

The following items have been agreed between the Secretary of State and the Franchisee to be Key Contracts:

- 1 Any Access Agreement to which the Franchisee is a party other than in its capacity as a Facility Owner.
- 2 Any Property Lease.
- 3 Any Rolling Stock Related Contract including the Rolling Stock Leases listed in Table 1 and Table 2 of Appendix 1 to Schedule 1.1 (The Train Fleet).
- 4 Any contract or arrangement for the lending, seconding, hiring, contracting out, supervision, training, assessment, or accommodation by another Train Operator of any train drivers, conductors or other train crew used by the Franchisee in the provision of the Passenger Services.
- 5 Any contract or arrangement for the subcontracting or delegation to another Train Operator of the provision of any of the Passenger Services (whether or not the consent of the Secretary of State is required to such subcontracting or delegation under paragraph 1 of Schedule 2.3 (Third Party Delivery of Passenger Services and Other Franchisees)).
- 6 Any contract or arrangement with a Train Operator (other than an Access Agreement) for the provision to the Franchisee of train dispatch, performance or supervision of platform duties, security activities, evacuation procedures, advice or assistance to customers, assistance to disabled customers, operation of customer information systems, cash management or ticket issuing systems administration.
- 7 Any contract or arrangement with a Train Operator for the provision of breakdown or recovery, and track call services to assist in the provision of the Passenger Services.
- 8 Any contract or arrangement for the supply of spare parts or Spares.
- 9 Any contract or arrangement for the maintenance of track and other related infrastructure.
- 10 Any licences of Marks to the Franchisee.
- 11 Any licence of any CRM System or Yield Management System.
- 12 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.

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:

1.2.1 any contracts of employment;

1.2.2 this Agreement and any Transfer Scheme or Supplemental Agreement;

1.2.3 the Ticketing and Settlement Agreement;

1.2.4 any sums placed on deposit with a bank or other financial institution;

1.2.5 such other property, rights and liabilities as the Franchisee and 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

1.2.6 any Rolling Stock Leases.

2 PRIMARY FRANCHISE ASSETS

2.1 The following property, rights and liabilities shall (to the extent that they constitute Franchise Assets) be designated as Primary Franchise Assets with effect from the following dates:

2.1.1 the property, rights and liabilities listed in the Appendix (List of Primary Franchise Assets) to this Schedule 14.4 (which constitutes a list of Primary Franchise Assets agreed between the Secretary of State and the Franchisee as at the date of this Agreement), on the Franchise Commencement Date;

2.1.2 any additional property, rights and liabilities designated under paragraph 3 during the Franchise Period, on the date of such designation;

2.1.3 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;

2.1.4 the rights and liabilities of the Franchisee under any Key Contract designated in accordance with paragraph 3 of Schedule 14.3 (Key Contracts), on the date of such designation;

2.1.5 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;

2.1.6 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 Franchise Commencement Date and:

(a) 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

(b) 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; and

2.1.7 any licence of any CRM System and/or Yield Management System, on the date of such licence.

3 DESIGNATION OF ADDITIONAL PRIMARY FRANCHISE ASSETS

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 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 1.2.2 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 other arrangement) as a Primary Franchise Asset may, in its discretion, elect to designate some but not all of the rights and liabilities under a particular contract or other arrangement, or to designate only those rights and liabilities arising after or otherwise relating to a period after a particular time (including the period after the expiry of the Franchise Period) or to those relating only to the Franchise Services or a particular part thereof.

8 DISPUTES OVER DESIGNATION

8.1 The Franchisee may object 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 derogation 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 Anybody duly appointed to resolve such dispute shall determine whether or not the designation of the relevant property, rights or liabilities was reasonably necessary for securing that the Franchise Services may continue to be provided by a Successor Operator on the expiry of the Franchise Period on a basis reasonably acceptable to the Secretary of State or otherwise facilitating the transfer of the provision of the Franchise Services at such time, and accordingly whether or not they should cease to be so designated.
- 8.7 If any dispute as to any designation pursuant to paragraph 3 or 4 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 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 Franchise Commencement Date under this Schedule 14.4 will at the time of such designation be vested in the Franchisee. Such information may include details of any Security Interests over such property, rights and liabilities.
- 9.2 The Franchisee shall further provide such information as to the property, rights and liabilities of the Franchisee as the Secretary of State may reasonably require in connection with the designation of Primary Franchise Assets. Such information shall be supplied to the Secretary of State within such timescale as the Secretary of State may reasonably require.
- 10 DE-DESIGNATION OF FRANCHISE ASSETS AND PRIMARY FRANCHISE ASSETS
- 10.1 The Secretary of State and the Franchisee may agree 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 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 SPARES

The obligation of the Franchisee to maintain, preserve and protect Primary Franchise Assets under this Schedule 14.4 shall, in respect of Spares, include the obligation to replace any Spare which has been designated as a Primary Franchise Asset, which subsequent to its designation ceases to be part of the stock of Spares available to the Franchisee for use in the provision of the Franchise Services, with an equivalent Spare of equal or better quality than the Spare so replaced.

12 AMENDMENT OF THE APPENDIX TO THIS SCHEDULE 14.4

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.

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APPENDIX 1 TO SCHEDULE 14.4 – LIST OF PRIMARY FRANCHISE ASSETS

The following items have as at the date of this Agreement been agreed between the Secretary of State and the Franchisee to be Primary Franchise Assets:

1.1 EQUIPMENT AT NEWTON HEATH

NH 0131 – NH0134 & NH0172: Somer vehicle lifting jacks and consoles (2 sets).

NH 503 – Air system flushing machine.

Simret brake meter.

Schlumberger NRN radio test box.

FA 01 – Forklift attachment for lifting engines.

FA 02- Forklift attachment for lifting gearboxes.

FA 03, FA 03/1 – Forklift attachment for lifting alternators.

MC1 – Wheelset lifting beam.

434/5/6/7 – Bodyside lifting bracket for 142's.

1.2 EQUIPMENT AT LONGSIGHT

Simret brake meter.

2 Diagnostic LCB cards for Holec 323 traction equipment.

1.3 PARKEON TICKET VENDING MACHINES

94 Parkeon Ticket Vending Machines leased from GE Capital Equipment Finance Ltd and located at various stations operated by the Franchisee (Reference: Letter from Berry Sas (Department for Transport) to Stephen Bond (Northern Rail Limited) and GE Capital Equipment Finance Limited regarding the designation of Lease for 94 TVMs as Primary Franchise Assets and dated 7 November 2013).

1.4 FUEL HEDGE

Fuel Hedge Contract between the franchisee and Britannic Trading Limited (Reference: Letter from Berry Sas (Department for Transport) to Richard Allan (Northern Rail) and Britannic Trading Limited regarding the designation of PFA contract and dated 6 December 2013).

⁷⁰1.5 DRS AGREEMENT

The DRS Agreement between the Franchisee and Direct Rail Services dated 19 March 2015."

⁷⁰ Date of new insertion 13/05/2015

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:

1.2.1 transferring or agreeing to transfer any such Franchise Assets or any interests in, or right over, any such Franchise Assets; and

1.2.2 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:

3.3.1 if the relevant Franchise Asset becomes the subject of a transfer scheme made under Schedule 21 of the Transport Act, it shall be fully and automatically released from the relevant Security Interest immediately before the coming into force of such transfer scheme;

3.3.2 if the relevant Franchise Asset is assigned, novated or otherwise transferred to another person pursuant to and in accordance with this Agreement, it shall be fully and automatically released from the relevant Security Interest immediately before such assignment, novation or transfer; and

3.3.3 such Security Interest shall not be enforced or enforceable until the date on which such Franchise Asset ceases to be designated as a Franchise Asset.

4 PROHIBITION ON OTHER SECURITY INTERESTS

The Franchisee shall not create or agree to create a Security Interest over any Franchise Asset except on the terms permitted under paragraph 3.3.1.

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 it may reasonably require.

SCHEDULE 15 - OBLIGATIONS ASSOCIATED WITH TERMINATION

- Schedule 15.1 Reletting Provisions
- Schedule 15.2 Last 12 or 13 Months of Franchise Period
- Schedule 15.3 Handover Package
 - Appendix: Form of Handover Package
- Schedule 15.4 Provisions Applying on and after Termination
 - Appendix 1: Form of Transfer Scheme
 - Appendix 2: Form of Supplemental Agreement

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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 (including the Franchisee) to tender for the right to provide all or some of the Passenger Services under a Franchise Agreement or alternatively to enter into a Franchise Agreement in respect of the Passenger Services without having gone through a tendering process.
- 1.2 The Franchisee further acknowledges that the Secretary of State has in certain circumstances a duty under Section 30 of the Act to secure in the provision of the Passenger Services on expiry or the termination of this Agreement. The Franchisee accordingly accepts and agrees to the restrictions and obligations imposed on it under Schedule 1.7 (Franchise Services), Schedule 14 (Preservation of Assets) and this Schedule 15.

2 PREPARATION FOR RELETTING

- 2.1 The Franchisee shall, if so requested by the Secretary of State, 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:

- 2.1.1 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;
- 2.1.2 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
- 2.1.3 to enter into any franchise agreement or other agreement (including any agreement entered into by the Secretary of State in fulfilment of his duties under Section 30 of the Act) relating to the Franchise Services, without undergoing a tendering process,

provided that the exercise of such access rights by the Secretary of State and his representatives and advisers shall not unduly interfere with the continuing provision and operation of the Franchise Services by the Franchisee.

2.2

- 2.2.1 The Franchisee shall make available to the Secretary of State and his representatives and advisers such Data Site Information (as defined at paragraph 2.2.5) as they shall reasonably require in connection with the matters referred to in paragraph 2.1.
- 2.2.2 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.
- 2.2.3 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 2.2.4,

in each case, as the Secretary of State shall require from time to time.

2.2.4 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.

2.2.5 "**Data Site Information**" means information relating to any of the following:

- (a) the Northern 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);

- (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 2.2.5 the term "**employee**" includes any person engaged by the Franchisee pursuant to a contract of personal service.

2.2.6 The Franchisee shall:

- (a) comply with its obligations under paragraph 2.1 or this paragraph 2.2 promptly and in any case in accordance with any reasonable timetable with which the Secretary of State requires the Franchisee by notice in writing to comply;
- (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) working days. 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 2.2.6(b);
 - (ii) requests for access to premises pursuant to paragraph 4; and
 - (iii) requests for access to employees,

shall be addressed and who shall be personally responsible for complying with any such queries or requests for information and such requests for access to employees and premises. The Franchisee shall notify the Secretary of State (his representatives and advisers) of the name and contact details of such person.

2.3 In connection with any proposal (whether or not yet finalised) to enter into separate franchise agreements and/or other agreements with more than one Successor Operator, each relating to some only of the Franchise Services (whether or not together with other railway passenger services) at or following the end of the Franchise Period, the Franchisee agrees and acknowledges that the Secretary of State may require:

2.3.1 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:

- (a) information relating to the operational and financial performance of the Franchisee in relation to such Service Groups; and
- (b) 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

2.3.2 subject to paragraph 2.4, that the Franchisee reorganises the business of providing the Franchise Services in order to facilitate the transfer anticipated by this Schedule 15.1 on an ongoing basis of the business of providing the Franchise Services within each of such Service Groups to separate Successor Operators. This may include, to the extent reasonably practicable:

- (a) 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
- (b) 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

2.3.3 that the Franchisee uploads Data Site Information to more than one data site.

2.4 Subject to paragraph 2.5, the Secretary of State shall reimburse any reasonable out-of-pocket expenses that the Franchisee may incur in complying with its obligations under this paragraph 2.

2.5 Without prejudice to any other rights the Secretary of State may have (under the Franchise Agreement or otherwise) in respect of any contravention by the Franchisee of its obligations under this paragraph 2, if the Secretary of State is of the reasonable opinion that the Franchisee does not have sufficient resources to enable its compliance with its obligations under this paragraph 2, he may:

2.5.1 require the Franchisee (at its own cost) to employ; or

2.5.2 after notification to the Franchisee, employ,

such suitable additional resource as may be required to ensure that the Franchisee can comply with its obligations under this paragraph 2. The Franchisee shall reimburse to the Secretary of State, by way of adjustment to Franchise Payments, any proper costs (including staff costs) incurred by him in the employment of any such additional resource pursuant to paragraph 2.5.2.

2.6 To the extent reasonably practicable, prior to taking any of the actions referred to in paragraph 2.5, the Secretary of State shall allow the Franchisee a reasonable opportunity to make representations to him concerning the exercise by the Secretary of State of his rights under paragraph 2.5 but the Secretary of State shall not be obliged by those representations to refrain from exercising any of the actions specified under paragraph 2.5.

3 NON-FRUSTRATION OF TRANSFER TO SUCCESSOR OPERATOR

3.1 The Franchisee shall take no action or steps which is or are designed, directly or indirectly:

3.1.1 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

3.1.2 to avoid, frustrate or circumvent any provision of this 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.

3.2 Subject to the restrictions set out in paragraph 3.1 and the other provisions of this Agreement, the Franchisee may take such action as it may require for the purposes of bidding to become, or becoming, a Successor Operator.

4 INSPECTION RIGHTS AT PREMISES USED FOR THE PROVISION OF THE FRANCHISE SERVICES

- 4.1 Without limiting any other rights of the Secretary of State under the Franchise Agreement and subject to paragraph 4.2, the Franchisee shall, if so requested by the Secretary of State, permit the Secretary of State (or his nominee, which for these purposes shall include potential Successor Operators or 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 the retendering or reletting of the Northern Franchise or any part thereof including for the purposes of inspecting such premises (including the taking of inventories) and undertaking such surveys as may be necessary or desirable for the purposes of ascertaining the condition of any such premises.
- 4.2 The Secretary of State shall use reasonable endeavours to ensure that any access rights required pursuant to paragraph 4.1 shall be undertaken so as not to unduly interfere with the continuing provision and operation of the Franchise Services by the Franchisee.

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SCHEDULE 15.2 – LAST 12 OR 13 MONTHS OF FRANCHISE PERIOD

1 LAST 12 OR 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 (notwithstanding the fact that such period is longer than twelve (12) or thirteen (13) months) be deemed to commence on the Franchise Commencement Date.
- 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.

2 FRANCHISE EMPLOYEES

Terms of Employment of Existing Employees

- 2.1 The Franchisee shall not, and shall secure that each other relevant employer shall not, without the prior consent of the Secretary of State (which shall not be unreasonably withheld or delayed), 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:

- 2.1.1 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:

$$\frac{\text{MAWE} + \text{JAWE} + \text{SAWE} + \text{DAWE}}{4}$$

where:

MAWE is the increase in the Average Weekly Earnings Index between March in the preceding twelve (12) months and the corresponding March one (1) year before, expressed as a percentage;

JAWE is the increase in the Average Weekly Earnings Index between June in the preceding twelve (12) months and the corresponding June one (1) year before, expressed as a percentage;

SAWE is the increase in the Average Weekly Earnings Index between September in the preceding twelve (12) and the corresponding September one (1) year before, expressed as a percentage; and

DAWE is the increase in the Average Weekly Earnings Index between December in the preceding twelve (12) and the corresponding December one (1) year before, expressed as a percentage;

- 2.1.2 wholly or partly first takes effect after the end of the Franchise Period;
- 2.1.3 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;
- 2.1.4 relates to a payment or the provision of a benefit triggered by termination of employment;
- 2.1.5 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

- 2.1.6 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) 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 2.1.2 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) 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 its consent to a variation or addition which is prohibited without such consent under paragraph 2.1.1 provided the Secretary of State:

2.2.1 makes an overall increase in Franchise Payments equal to the amount of the direct net losses suffered by the Franchisee on the days ("**Relevant 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

2.2.2 agrees that during the Relevant Days there shall be no application of the regime by which the Franchisee is required to make payments to the Secretary of State in respect of poor performance to the extent that such poor performance is a consequence of the Industrial Action referred to in paragraph 2.2.1. Further, to the extent that the Franchisee may be in contravention of this Agreement (excluding contraventions in relation to safety requirements) as a consequence of the Industrial Action referred to in this paragraph, such contravention shall be waived by the Secretary of State.

- 2.3 The Franchisee shall consult with 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. The expression "promise to vary" when used in paragraph 2.1 includes any offer or indication of willingness to vary (whether or not such offer or willingness is made conditional upon obtaining the Secretary of State's consent).

Terms of Employment of New Employees

- 2.4 The Franchisee shall not, and shall secure that each other relevant employer shall not, without the prior consent of the Secretary of State (which shall not be unreasonably withheld or delayed), 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 Franchise Commencement Date if and to the extent that:

2.4.1 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

2.4.2 if such terms or conditions were granted to such equivalent Franchise Employees already employed by the Franchisee by way of variation to their terms or conditions of employment, the Franchisee would be in contravention of paragraph 2.1.

Changes in Numbers and Total Cost of Employees

- 2.5 Subject to and excluding any increase in the remuneration of Franchise Employees permitted under paragraph 2.1, the Franchisee shall not, and shall secure that each other relevant employer shall not, without the prior written consent of the Secretary of State (which shall not be unreasonably withheld

or delayed) increase or decrease in the last twelve (12) months of the Franchise Period the number of Franchise Employees such that:

- 2.5.1 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
- 2.5.2 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.

3 FARES

Reduction in Prices of Fares

3.1

3.1.1 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.

3.1.2 Paragraph 3.1.1 shall not prevent the Franchisee from giving any discount or reduction to which the purchaser of a Fare may be entitled by virtue of:

- (a) presenting a Discount Card (or any equivalent replacement thereof) issued by the 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;
- (b) presenting a Discount Card issued by another train operator;
- (c) the Passenger's Charter or the passenger's charter of any other train operator; or
- (d) any relevant conditions of carriage.

3.1.3 The Franchisee shall procure that persons acting as its agent (except persons acting in such capacity by virtue of having been appointed under Parts II to VI of Chapter 9 of the Ticketing and Settlement Agreement or by being party to the Ticketing and Settlement Agreement) shall comply with the provisions of paragraph 3.1.1 to the extent that such provisions apply to the selling of Fares by the Franchisee.

Percentage Allocations

3.2

3.2.1 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.

3.2.2 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.

3.3

3.3.1 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.

3.3.2 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.

3.3.3 The Franchisee will be permitted to take into account reasonable seasonal factors in determining its previous commercial practice. In assessing reasonableness, account will be taken of the Franchisee's practice in addressing such seasonal factors in the corresponding period in the previous year.

4 INTER-OPERATOR SCHEMES

Voting on Scheme Councils

4.1 Subject to paragraph 4.3, during the last twelve (12) months of the Franchise Period the Franchisee shall give the Secretary of State reasonable notice of:

4.1.1 any meeting of:

- (a) a scheme council of an Inter-Operator Scheme on which the Franchisee is represented; or
- (b) a scheme management group of any Inter-Operator Scheme:
 - (i) in which the Franchisee has a permanent position; or
 - (ii) where the Franchisee employs a member of such group;
- (c) the resolutions to be voted upon at any such meeting; and
- (d) the Franchisee's voting intentions.

4.2 Subject to paragraph 4.3, the Franchisee shall vote at any such meeting in the manner required by the Secretary of State.

Successor Operator

4.3 Where the Franchisee has been notified by the Secretary of State that a Successor Operator has been selected (whether a franchisee or otherwise and whether or not such selection is conditional), the Franchisee shall give such Successor Operator reasonable notice of:

4.3.1 any meeting referred to in paragraph 4.1.1;

4.3.2 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

4.3.3 the Franchisee's voting intentions.

- 4.4 The Franchisee shall discuss with the Successor Operator in good faith with a view to agreeing the way the Franchisee should vote on the resolutions referred to in paragraph 4.3.2. In the absence of any agreement, the Franchisee shall, as soon as reasonably practicable thereafter, having regard to the deadline for voting on such resolutions, refer the matter to the Secretary of State for determination.
- 4.5 The Secretary of State shall reasonably determine the way the Franchisee should vote on any resolutions referred to it in accordance with paragraph 4.4, having regard to the transfer of the Franchise Services as a going concern at the end of the Franchise Period.
- 4.6 Where paragraph 4.3 applies, the Franchisee shall vote at any meeting referred to in paragraph 4.1.1 in accordance with any agreement pursuant to paragraph 4.4 or determination pursuant paragraph 4.5.

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SCHEDULE 15.3 - HANDOVER PACKAGE

1 HANDOVER PACKAGE STATUS

1.1 The Franchisee shall:

1.1.1 on or before the Franchise Commencement Date, provide to the Secretary of State:

- (a) the Handover Package; and
- (b) 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;

1.1.2 maintain the Handover Package and update it at least every three (3) Reporting Periods; and

1.1.3 in respect of the information required pursuant to paragraph 1.1.1(b), 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 and shall accordingly agree with the Secretary of State from time to time a location at which such Handover Package should be kept which, unless otherwise agreed, shall be the offices of a solicitor approved by the Secretary of State.

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.

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) and that such information and letters remain accurate and up to date. The Franchisee shall make the Handover Package available for inspection or audit by the Secretary of State or his representative whenever requested.

3 HANDOVER PACKAGE INFORMATION

3.1 Without prejudice to the preceding provisions of this Schedule 15.3, the Franchisee shall provide to the Secretary of State the following information and letters, and shall 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:

3.1.1 details of the location of the Handover Package, which details shall include one or more contact name, address and telephone number enabling contact during, and outside, normal office hours with persons authorised and able to release the Handover Package;

3.1.2 a letter in a form approved by the Secretary of State:

- (a) from the Franchisee to the Secretary of State confirming that an irrevocable instruction has been given to the solicitor holding (or other persons authorised by the Secretary of State for such purpose) the Handover Package that any of the Secretary of State, a Successor Operator or its agent, is entitled at any time to require access to and delivery of the Handover Package on demand, and confirming the Secretary of State's right to audit the Handover Package at any time; and

- (b) from the solicitor holding the Handover Package (or other person authorised by the Secretary of State for such purpose) to the Secretary of State confirming that he or she will release the Handover Package to any of the Secretary of State, a Successor Operator or its agent, on demand, and confirming that the Handover Package will be made available for the purposes of auditing its contents when so required by the Secretary of State;
- 3.1.3 a list of all key contacts, as set out in the Appendix (Form of Handover Package); and
- 3.1.4 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.

Conformed Copy

APPENDIX 1 TO SCHEDULE 15.3 – FORM OF HANDOVER PACKAGE

1 Key Contacts

A list of key contacts to include all directors (statutory or otherwise) and all managers with responsibility for a department/function within the Franchisee's business. This must include operations, commercial, personnel and public affairs departments (or in each case their nearest equivalents). This list must include the name, address, home, office and mobile telephone numbers, and a brief description of the person's role and responsibilities in the business.

2 Property

A list of all property owned, leased, operated or occupied by the Franchisee which shall include the address, telephone number 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.

3 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.

4 Systems

A list of the electronic systems in use by the Franchisee, together with the name of the Franchisee's Information Technology Manager (or the holder of any equivalent post), office address and telephone number who is responsible for administration of each such system.

5 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.

6 Insurance

A list of the names, addresses and telephone numbers of all insurers and any relevant broker providing insurance to the Franchisee, together with the relevant policy numbers and other references and details of any outstanding claims or unresolved disputes.

SCHEDULE 15.4 - PROVISIONS APPLYING ON AND AFTER TERMINATION

1 NOVATION OF ACCESS AGREEMENTS ON TERMINATION OF THIS AGREEMENT

1.1 The Franchisee shall, to the extent so requested by the Secretary of State on termination of this 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:

1.3.1 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 Secretary of State and the Franchisee 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

1.3.2 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 1.3.1,

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

1.4 The Franchisee shall, on the occurrence of any of the circumstances specified in paragraph 1.1 in relation to any other Train Operator who is a party to an Access Agreement to which the Franchisee is also party, agree to the novation of the relevant Train Operator's interest under the relevant Access Agreement to the Secretary of State or as he may direct, subject, to the extent applicable, to the consent of the ORR. The provisions of paragraph 1.3 shall apply to any such novation.

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

2 CO-OPERATION WITH SUCCESSOR OPERATOR

2.1 In order to ensure the continuity of, and an orderly handover of control over, the Franchise Services, the Franchisee shall co-operate with:

2.1.1 where a Successor Operator has been appointed, such Successor Operator; or

2.1.2 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:

2.2.1 not used;

2.2.2 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) Share Facility Agreements;
 - (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

Option Arrangements

3.1

- 3.1.1 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.
- 3.1.2 On or within fourteen (14) days before the expiry of the Franchise Period:
 - (a) either party may serve notice on the other party specifying the Primary Franchise Assets to be transferred; and
 - (b) the other party may (within such timescale) serve a subsequent notice specifying any additional Primary Franchise Asset to be transferred.
- 3.1.3 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.
- 3.1.4 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.

Supplemental Agreement

- 3.2 Without prejudice to the duties, powers, rights and obligations of the Secretary of State under the Railways Act 2005 in respect of any Transfer Scheme, any Transfer Scheme shall impose on the Franchisee and the transferee an obligation to enter into an agreement substantially in the form of the Supplemental Agreement which shall provide for the determination of amounts to be paid in respect of the property, rights and liabilities which are transferred under such Transfer Scheme. The Franchisee shall enter into any such Supplemental Agreement and shall comply with its obligations thereunder.

Payment of Estimated Transfer Price

3.3

3.3.1 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:

- (a) its 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;
- (b) its estimate of any other sums likely to be paid thereunder;
- (c) 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
- (d) such other matters as the Secretary of State may consider appropriate.

3.3.2 The Franchisee shall pay to any such transferee the sum determined by the Secretary of State in accordance with paragraph 3.3.1 on the day on which the relevant Transfer Scheme comes into force.

Possession of Franchise Assets

3.4 On the coming into force of a Transfer Scheme, the Franchisee shall deliver up to the Secretary of State (or its nominee) possession of the Primary Franchise Assets transferred under such Transfer Scheme.

4 ASSOCIATED OBLIGATIONS ON TERMINATION

Assistance in Securing Continuity

4.1

4.1.1 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.

4.1.2 In particular, the Franchisee shall provide any Successor Operator with such records and information relating to or connected with the Franchise Services as the Secretary of State may reasonably require (other than confidential financial information but including all records relating to the Franchise Employees).

Access

4.2 On the expiry of the Franchise Period, the Franchisee shall grant the Secretary of State and its representatives such access as the Secretary of State may reasonably request to any property owned, leased or operated by the Franchisee at such time, for the purpose of facilitating the continued provision of the Franchise Services.

Key Contracts

4.3

4.3.1 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).

- 4.3.2 In satisfaction of its obligations under paragraph 4.3.1, the Franchisee shall terminate, surrender, cancel or undertake not to enforce its rights under any Key Contract (or part thereof) provided that nothing in this paragraph shall require the Franchisee to undertake not to enforce any rights under a Key Contract relating to the period prior to the expiry of the Franchise Period.

Change of Name

- 4.4 The Franchisee shall cease to use any trade marks which are licensed to the Franchisee under any of the Brand Licences forthwith upon expiry of the Franchise Period and shall take all necessary steps to change any company name which incorporates any such marks as soon as practicable.
- 4.5 Not Used.

Property Leases

- 4.6
- 4.6.1 The Franchisee shall, on the expiry of the Franchise Period, if requested by the Secretary of State, assign its interest under all or any Property Leases to the Secretary of State or as he may direct, subject where applicable to the agreement of any other party to such Property Lease or the ORR.
- 4.6.2 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 4.6.2(a), 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.
- 4.6.3 The Franchisee shall, on the occurrence of any of the circumstances specified in paragraph 4.6.1 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 4.6.2 shall apply to any such assignment.
- 4.6.4 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 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:

5.1.1 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

5.1.2 information concerning any contract necessary for the continued operation of the franchise where a procurement or bidding process has been initiated.

5.2 The Franchisee agrees that the Secretary of State or his agents may have access to and use free of charge any information contained in any computer system or in hard copy format as he sees fit (for the purposes of continuing the operation of the Franchise Services).

6 MAINTENANCE RECORDS

6.1 The Franchisee shall immediately on expiry of the Franchise Period provide:

6.1.1 records of the status of the maintenance of the rolling stock vehicles used in the provision of the Passenger Services;

6.1.2 records of the status of the maintenance of any lifting equipment;

6.1.3 a list of any deferred maintenance; and

6.1.4 records of the status of the maintenance of any depot or station which is a Franchise Asset, including the extent of completion of examinations and the modification status of each such rolling stock vehicle.

7 TICKETING ARRANGEMENTS

7.1 The Franchisee shall provide immediately on expiry of the Franchise Period a statement certifying:

7.1.1 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;

7.1.2 the extent of any outstanding claims with ticketing settlement agencies;

7.1.3 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

7.1.4 commissions owed and/or due.

8 FRANCHISEE'S INTELLECTUAL PROPERTY

8.1

8.1.1 On the expiry of the Franchise Period, the Franchisee will grant to any Successor Operator licences of any intellectual property which:

(a) is owned by or licensed to the Franchisee;

(b) was not owned by or licensed to it immediately prior to the Franchise Commencement Date;

(c) has not been designated as a Primary Franchise Asset;

(d) does not represent or constitute a Mark; and

- (e) which may, in the reasonable opinion of the Secretary of State, be necessary for any Successor Operator to operate the Franchise Services on an efficient and economic basis after the expiry of the Franchise Period.

8.1.2 When agreeing the terms on which intellectual property is to be licensed to it, the Franchisee shall use all reasonable endeavours to ensure that such terms include the right to sub-license such intellectual property in accordance with this paragraph 8.1. The Franchisee shall not enter into a licence that does not include such a provision without first obtaining the Secretary of State's prior written consent (such consent not to be unreasonably withheld).

8.2

8.2.1 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.

8.2.2 If such licence is for a period in excess of one (1) month, the grant of the licence shall be subject to payment of a reasonable royalty (backdated to the expiry of the Franchise Period) on the basis of a willing licensor and licensee entering into a licence on comparable terms to similar licences of such intellectual property. If the Franchisee and the relevant Successor Operator are unable to agree such royalty, the Franchisee shall submit such dispute for resolution in accordance with such dispute resolution rules as the Secretary of State may require.

8.3 Any such licence shall be in such form as the Secretary of State shall reasonably determine and shall:

8.3.1 be non-exclusive and limited to use solely for the purposes of the provision and operation of the Franchise Services and will not provide for any right to use such intellectual property for any other purpose (including its marketing or exploitation for any other purpose);

8.3.2 be terminable on material breach by the Successor Operator;

8.3.3 contain an indemnity from the Franchisee to the effect that to the best of its knowledge and belief it owns the relevant intellectual property or has the right to license it and the licensing of it and the subsequent use of the intellectual property will not infringe any third party intellectual property rights; and

8.3.4 require the Successor Operator, to the extent that it relates to any trade marks, to use such trade marks in such manner as may reasonably be required by the Franchisee provided that it shall not be reasonable for the Franchisee to require any such trade mark to be used in a manner materially different from its use during the Franchise Period.

9 INFORMATION ABOUT PASSENGERS

The Franchisee shall immediately on the expiry of the Franchise Period make available to the Secretary of State and/or his nominee:

9.1 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; and

9.2 the CRM Data and Yield Management Data.

APPENDIX 1 TO SCHEDULE 15.4 - FORM OF TRANSFER SCHEME

Form of Transfer Scheme

Dated _____ 20[•]

TRANSFER SCHEME

OF

THE SECRETARY OF STATE FOR TRANSPORT

MADE PURSUANT TO SCHEDULE 2 OF THE RAILWAYS ACT 2005

IN FAVOUR OF

[SUCCESSOR OPERATOR]

IN RESPECT OF

CERTAIN PROPERTY, RIGHTS AND LIABILITIES

OF

[FRANCHISEE]

Secretary of State for Transport
33 Horseferry Road
London SW1P 4DR

TRANSFER SCHEME

Whereas:

- (A) [Franchisee] (the Transferor) has been providing certain services for the carriage of passengers by railway and operating certain stations and light maintenance depots pursuant to a franchise agreement with the Secretary of State for Transport (the Secretary of State), Transport for Greater Manchester, Merseyside Passenger Transport Executive, South Yorkshire Passenger Transport Executive, Tyne & Wear Passenger Transport Executive and West Yorkshire Passenger Executive 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 Schedule 2 of the Railways Act 2005.

The Secretary of State, in exercise of the powers conferred on him by Schedule 2 of the Railways Act 2005, hereby makes the following scheme:

1. Definitions and Interpretation

In this Transfer Scheme functions has the meaning ascribed to it in the Railways Act 2005 and relevant enactment has the meaning ascribed to it in paragraph 6 of Schedule 2 of the Railways Act 2005.

2. Transfer of Property, Rights and Liabilities

With effect from [_____] the property, rights and liabilities of the Transferor specified or described in the Schedule shall be transferred to, and vest in, the Transferee.

3. Statutory Functions

Subject to any amendment to the relevant enactment which comes into force on or after the date on which this Transfer Scheme is made, there shall be transferred to the Transferee all the functions of the Transferor under any relevant enactments if and to the extent that any such relevant enactment:

- (a) relates to any property which is to be transferred by this Transfer Scheme; or
- (b) authorises the carrying out of works designed to be used in connection with any such property or the acquisition of land for the purpose of carrying out any such works.

4. Supplemental Agreement

Each of the Transferor and the Transferee shall enter into the Supplemental Agreement (as defined in the Franchise Agreement) on the coming into force of this Transfer Scheme.

This Transfer Scheme is made by the Secretary of State on [_____] .

THE CORPORATE SEAL
OF THE SECRETARY OF
STATE FOR TRANSPORT
IS HEREUNTO AFFIXED:



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

Conformed Copy

SCHEDULE TO THE TRANSFER SCHEME

[List relevant Franchise Assets to be transferred to Successor Operator]

Conformed Copy

APPENDIX 2 TO SCHEDULE 15.4

Form of Supplemental Agreement

Dated _____ 20[•]

[OUTGOING FRANCHISEE]

and

[SUCCESSOR OPERATOR]

SUPPLEMENTAL AGREEMENT

to the transfer scheme dated [•] made
by the Secretary of State for Transport in respect of
certain property rights and liabilities of
[OUTGOING FRANCHISEE]

*Secretary of State for Transport
33 Horseferry Road
London SW1P 4DR*

This Supplemental Agreement is made on [_____] 20[___]

BETWEEN

[OUTGOING FRANCHISEE] whose registered office is at [registered office] (the “**Transferor**”); and

[SUCCESSOR OPERATOR] whose registered office is at [registered office] (the “**Transferee**”).

WHEREAS

- (A) The Transferor has been providing certain services and the carriage of passengers by railway and operating certain stations and light maintenance depots pursuant to a franchise agreement with the Secretary of State for Transport (the “**Secretary of State**”), Transport for Greater Manchester, Merseyside Passenger Transport Executive, South Yorkshire Passenger Transport Executive, Tyne & Wear Passenger Transport Executive and West Yorkshire Passenger Executive 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 Schedule 2 of the Railways Act 2005 (the “**Transfer Scheme**”).
- (D) This Agreement is supplemental to the Transfer Scheme and sets out certain terms between the Transferor and the Transferee in relation to the transfer of such property, rights and liabilities under the Transfer Scheme and the transfer of certain other property, rights and liabilities at the same time.

IT IS AGREED THAT

1 DEFINITIONS AND INTERPRETATION

Definitions

1.1 The following words and expressions shall have the following meaning:

“**Business**” means such of the undertaking or part of the undertaking of the Transferor prior to the Transfer Date as may be continued by the Transferee after the Transfer Date;

“**Credit**” has the meaning assigned to that term under the Ticketing and Settlement Agreement;

“**Debit**” has the meaning assigned to that term under the Ticketing and Settlement Agreement;

“**Estimated Completion Payment**” has the meaning ascribed to that term in clause 2.1;

“**Net Asset Statement**” means the statement to be drawn up pursuant to clause 2.2;

“**Net Asset Value**” means the aggregate of the amounts of the Relevant Franchise Assets, the Relevant Contract Liabilities, the Relevant Debits and Credits and the Relevant Employee Liabilities as shown in the Net Asset Statement agreed or determined pursuant to clause 2.2;

“**Purchase Price**” has the meaning ascribed to that term in clause 2.1;

“**Relevant Contract Liabilities**” means such rights and liabilities of the Transferor as may be transferred to the Transferee on the expiry of the Franchise Period in relation to any Licence, Access

Agreement or Property Lease under paragraphs 1 and 4.5 of Schedule 15.4 (Provisions Applying on and after Termination) of the Franchise Agreement;

"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 weeks of the preparation of the Net Asset Statement or, in the absence of such agreement, selected by the Secretary of State upon the request of either party;

"Season Ticket Fare" means a Fare which entitles the purchaser to make an unlimited number of journeys in any direction during the period for which, and between the stations and/or the zones for which, such Fare is valid;

"Stored Credit Balance" means any monetary amount held by the Franchisee which a passenger can apply at a future date to the purchase of a Fare (stored in any medium);

"Taxation" comprises all forms of taxation, duties, contributions and levies of the United Kingdom whenever imposed and (except in so far as attributable to the unreasonable delay or default of the Transferee) all penalties and interest relating thereto;

"TOGC" has the meaning assigned to that term in clause 6.2;

"Transfer Date" means the date and, where relevant, the time on or at which the Transfer Scheme comes into force;

"Transfer Regulations" means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended, replaced or substituted from time to time);

"Transferring Assets and Liabilities" has the meaning assigned to that term in clause 2.1; and

"Undisclosed Employee" has the meaning assigned to that term in clause 7.1.4.

Construction and Interpretation

- 1.2 In this Agreement terms and expressions defined in the Franchise Agreement shall have the same meaning and the terms **"contract of employment"**, **"collective agreement"**, **"employee representatives"** and **"trade union"** shall have the same meanings respectively as in the Transfer Regulations.

2 TRANSFER PRICE

Amount and Payment

2.1 The price for the transfer of:

2.1.1 the Relevant Franchise Assets;

2.1.2 the Relevant Contract Liabilities;

2.1.3 the Relevant Debits and Credits; and

2.1.4 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 of the Franchise Agreement, on the Transfer Date. On determination of the Purchase Price a balancing payment (if any) shall be made by the Transferor to the Transferee or the Transferee to the Transferor (as the case may be) in accordance with clause 2.5.

Net Asset Statement

2.2 The Transferee shall procure that, as soon as practicable and in any event not later than two (2) months following the Transfer Date, there shall be drawn up a statement showing a true and fair view of the aggregate of the amount of each separate asset and liability of the Transferring Assets and Liabilities as at the Transfer Date.

2.3 The Net Asset Statement shall be:

2.3.1 drawn up in the manner described in the Schedule;

2.3.2 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

2.3.3 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.

Adjustment of Price

2.5 If the Purchase Price exceeds or is less than the Estimated Completion Payment, the Transferee shall pay to the Transferor or, as the case may be, the Transferor shall pay to the Transferee, in either case within 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:

- 3.1.1 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 3.1.4, and new Reporting Accountants shall be selected in accordance with the provisions of this Agreement;
- 3.1.2 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;
- 3.1.3 the Reporting Accountants shall be deemed to act as experts and not as arbitrators;
- 3.1.4 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;
- 3.1.5 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;
- 3.1.6 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 3.1.7 below) and shall not be the subject of any appeal by way of legal proceeding or arbitration or otherwise; and
- 3.1.7 without prejudice to clauses 3.1.1 to 3.1.6 above, either party may, prior to or during the course of the reference to the Reporting Accountants, seek a declaration from the court on a relevant point of law, including but not limited to a point of legal interpretation. Upon such application for a declaration being issued and served all applicable time limits relative to the reference to the Reporting Accountant shall be stayed pending the outcome of such application (including any appeal). The Reporting Accountants are bound to make their determination in a manner consistent with the findings of the court.

4 WARRANTY

The Transferor warrants and represents to the Transferee that the Relevant Contract Liabilities and the Relevant Franchise Assets are, to the extent they are property or rights, transferring to the Transferee free and clear of all Security Interests.

5 INTEREST

If the Transferor or the Transferee defaults in the payment when due of any sum payable under this Agreement (whether determined by agreement or pursuant to an order of a court or otherwise) the liability of the Transferor or the Transferee (as the case may be) shall be increased to include interest on such sum from the date when such payment is due until the date of actual payment (after as well as before judgement) at a rate equal to the Interest Rate. Such interest shall accrue from day to day.

6 VALUE ADDED TAX

- 6.1 All amounts under this Agreement are expressed as exclusive of Value Added Tax where Value Added Tax is applicable.
- 6.2 The Transferor and the Transferee shall use all reasonable endeavours to secure that the transfer of the Transferring Assets and Liabilities is treated for Value Added Tax purposes as the transfer of a

business as a going concern (“**TOGC**”) and accordingly as neither a supply of goods nor a supply of services for the purposes of Value Added Tax.

- 6.3 If HM Revenue & Customs direct that the transfer of the Transferring Assets and Liabilities cannot be treated as a TOGC, the Transferor shall provide the Transferee with a copy of such direction within five days of receipt thereof by the Transferor.
- 6.4 The Transferee shall thereafter pay upon the receipt of a valid tax invoice the amount of any Value Added Tax which as a result of that direction may be chargeable on the transfer of the Transferring Assets and Liabilities. If the aforementioned direction was issued as a result of any action or inaction of the Transferee then the Transferee shall in addition to the Value Added Tax indemnify the Transferor for any penalties and interest that may be incurred upon receipt of such evidence from HM Revenue & Customs.
- 6.5 If the Transferee considers the direction issued by HM Revenue & Customs referred to in clause 6.3 to be incorrect then, without prejudice to the Transferee's obligation under clause 6.4 to pay to the Transferor the amount of any Value Added Tax which as a result such direction may be chargeable on the transfer of the Transferring Assets and Liabilities, the Transferee may, within 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 The Transferor shall on the Transfer Date deliver to the Transferee such of those records referred to in Section 49 of the Value Added Tax Act 1994 as relate exclusively to the Business on condition that the Transferee undertakes to preserve those records in such manner and for such periods as may be required by law.
- 6.9 Subject to HM Revenue & Customs so permitting, all of the records referred to in Section 49 of the Value Added Tax Act 1994 relating to the Business (being the purchase records) shall be retained by the Transferor and the Transferor shall undertake to the Transferee to:
- 6.9.1 preserve those records in such manner and for such periods as may be required by law; and
- 6.9.2 give the Transferee as from the Transfer Date reasonable access during normal business hours to such records and to take copies of such records.

7 EMPLOYEES

Transfer Regulations

- 7.1 The parties accept that, to the extent that the undertaking or part of the undertaking of the Transferor is continued by the Transferee after the Transfer Date, this Agreement and the transfer of the Business which is effected in connection with the Transfer Scheme are governed by the Transfer Regulations and the following provisions shall apply in connection therewith:
- 7.1.1 the contract of employment of each of the Relevant Employees (save insofar as such contract relates to any occupational pension scheme) shall be transferred to the Transferee with effect from the Transfer Date which shall be the "time of transfer" under the Transfer Regulations

and the Transferee shall employ each such Relevant Employee on the terms of those contracts of employment (save insofar as such contract relates to any occupational pension scheme) with effect from the Transfer Date;

- 7.1.2 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;
- 7.1.3 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:
- (a) 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
 - (b) 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;
- 7.1.4 if any contract of employment or collective agreement which is neither disclosed in writing to the Transferee by the Transferor prior to the Transfer Date nor made available to the Secretary of State under Schedule 15.3 (Handover Package) of the Franchise Agreement prior to the Transfer Date shall have effect as if originally made between the Transferee and any employee (the Undisclosed Employee) or a trade union or employee representatives as a result of the provisions of the Transfer Regulations (without prejudice to any other right or remedy which may be available to the Transferee):
- (a) 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;
 - (b) 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
 - (c) 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 7.1.2 and 7.1.3; and

- 7.1.5 the Transferor shall indemnify the Transferee and keep the Transferee indemnified against each and every action, proceeding, cost, claim, liability (including without limitation, any Taxation) expense (including, without limitation, reasonable legal fees) or demand which relates to or arises out of any dismissal (including, without limitation, constructive dismissal) by the Transferor of any employee (not being a Relevant Employee) and which the Transferee may incur pursuant to the provisions of the Transfer Regulations.

Transferee's Indemnities

- 7.2 The Transferee shall indemnify the Transferor and keep the Transferor indemnified against each and every action, proceeding, liability (including, without limitation, any Taxation), cost, claim, loss, expense (including reasonable legal fees) and demand arising out of or in connection with:
- 7.2.1 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;
 - 7.2.2 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;
 - 7.2.3 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
 - 7.2.4 any claim by any Relevant Employee (whether in contract or in tort or under statute (including the Treaty of the European Community or European Union and any Directives made under the Secretary of State of any such Treaty or any successor thereof)) for any remedy (including, without limitation, for unfair dismissal, redundancy, statutory redundancy, equal pay, sex or race discrimination) as a result of any act or omission by the Transferee after the Transfer Date.
- 7.3 The Transferee shall indemnify the Transferor and keep the Transferor indemnified against each and every action, proceeding, liability, cost, claim, loss, expense (including reasonable legal fees) and demand which arises as a result of it not providing or not having provided, in accordance with its obligations under the Transfer Regulations, the Transferor in writing with such information and at such time as will enable the Transferor to carry out its duties under Regulation 10(2)(d) and 10(6) of the Transfer Regulations concerning measures envisaged by the Transferee in relation to the Relevant Employees.

Details of Relevant Employees

- 7.4 The Transferor warrants to the Transferee that it has (to the extent not made available to the Secretary of State under Schedule 15.4 (Provisions Applying on and after Termination) of the Franchise Agreement prior to the Transfer Date) provided the Transferee prior to the Transfer Date with full particulars of:
- 7.4.1 each Relevant Employee, including name, sex, and the date on which continuity of employment began for each Relevant Employee for statutory purposes;
 - 7.4.2 terms and conditions of employment of each such person;
 - 7.4.3 all payments, benefits or changes to terms and conditions of employment promised to any such person;
 - 7.4.4 dismissals of Relevant Employees or termination of employment effected within 12 months prior to the Transfer Date including the Transfer Date;
 - 7.4.5 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

7.4.6 all strikes or other Industrial Action taken by any Relevant Employee within twelve (12) months prior to the Transfer Date including the Transfer Date.

7.5 The Transferor and Transferee shall deliver to each of the Relevant Employees letters in an agreed form from the Transferor and Transferee as soon as is practicable after the execution of this Agreement (to the extent not already delivered prior to the Transfer Date).

8 MISCELLANEOUS PROVISIONS

Variations in Writing

8.1 No variation of this Agreement shall be effective unless in writing and signed by duly authorised representatives of the parties.

Partial Invalidity

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

Further Assurance

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

Notices

8.4 Any notice or other communication requiring to be given or served under or in connection with this Agreement shall be in writing and shall be sufficiently given or served if delivered or sent to the registered office of the recipient or:

8.4.1 in the case of the Transferor to [name of Transferor] at:

[address]

Attention: [name]

8.4.2 in the case of the Transferee to [name of Transferee] at:

[address]

Attention: [name]

8.5 Any such notice or other communication shall be delivered by hand or sent by courier or prepaid first class post. If sent by courier such notice or communication shall conclusively be deemed to have been given or served at the time of despatch. If sent by post such notice or communication shall conclusively be deemed to have been received two (2) business days from the time of posting.

Counterparts

8.6 This Agreement may be executed in any number of counterparts each of which shall be deemed an original, but all the counterparts shall together constitute one and the same instrument.

Third Parties

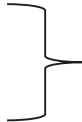
8.7 This Agreement does not create any rights under the Contracts (Rights of Third Parties) Act 1999 which is enforceable by any person who is not a party to it.

Governing Law

8.8 This Agreement shall be governed by and construed in accordance with the laws of England and Wales and the parties irrevocably agree that the courts of England and Wales are to have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Agreement.

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

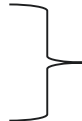
SIGNED FOR AND ON
BEHALF OF THE
[TRANSFEROR]



DIRECTOR:

DIRECTOR/SECRETARY:

SIGNED FOR AND ON
BEHALF OF THE
[TRANSFeree]



DIRECTOR:

DIRECTOR/SECRETARY:

Confirmed Copy

SCHEDULE TO THE SUPPLEMENTAL AGREEMENT

Net Asset Statement

The Net Asset Statement shall be drawn up (except to the extent otherwise agreed by the Transferor and the Transferee) in accordance with accounting principles generally accepted in the United Kingdom and such that the Transferring Assets and Liabilities are valued on the following basis:

1. Rights and liabilities relating to an obligation of carriage under the terms of any Fare shall be valued in accordance with the following formula:

$$(C - D) \times \frac{A + E}{B}$$

where:

C equals the Credit (exclusive of any Valued Added Tax) received by the Transferor in respect of the Fare provided that:

- (a) such Credit shall be deemed not to include any reduction in respect of a discount allowed to the purchaser of the Fare pursuant to the Passenger's Charter or any other passenger's charter of the Transferor;
- (b) if the Fare is a Season Ticket Fare, such Credit shall be the New Credit (as defined in the Ticketing and Settlement Agreement) relating to that Season Ticket Fare on the Transfer Date if different to the Credit that was in fact received by the Transferor in respect of such Season Ticket Fare;
- (c) such Credit shall be net of any Private Settlement Credit (as defined in the Ticketing and Settlement Agreement) arising in respect of that Fare; and
- (d) such Credit shall be deemed to exclude any Credit received by the Transferor in respect of any commission due to it in respect of the sale of such Fare (provided that for these purposes the amount of such commission shall not exceed the National Standard Rate of Commission (as defined in the Ticketing and Settlement Agreement) in respect of the Fare);

D equals the Debit (exclusive of any Value Added Tax) received by the Transferor in respect of the commission due in respect of the sale of the Fare (provided that for these purposes the amount of such commission shall not exceed the National Standard Rate of Commission (as defined in the Ticketing and Settlement Agreement) in respect of the Fare);

$\frac{A}{B}$ equals:

- (a) in the case of a Season Ticket Fare, the number of journeys which the purchaser of the Fare is estimated to make from (and including) the Transfer Date to (and including) the last day on which the Fare is valid (including any extensions to its original period of validity) divided by the total number of journeys which the purchaser of the Fare is estimated to make with that Fare (as determined in each case in accordance with Schedule 28 of the Ticketing and Settlement Agreement);
- (b) in the case of any other Fare which entitles the holder thereof to make more than two (2) 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 $\frac{A}{B}$ is greater than zero:

the amount of any discount to which it can be reasonably estimated that the purchaser of the Fare would be entitled pursuant to the Passenger's Charter or any other passenger's charter of the Transferor on purchasing an equivalent Fare on the expiry of the relevant Fare.

2. Rights and liabilities relating to an Excess Fare, Reservation or Upgrade (as such terms are defined in the Ticketing and Settlement Agreement) shall be valued at zero unless such Excess Fare, Reservation or Upgrade involves more than two (2) journeys, in which case they shall be valued in accordance with paragraph 1 and references to Fare in paragraph 1 shall be construed accordingly.
3. Rights and liabilities under a Discount Card shall be valued in accordance with the following formula:

$$(C - D) \times \frac{A}{B}$$

where:

C equals the Credit (exclusive of any Value Added Tax) received by the Transferor in respect of the Discount Card;

D equals the Debit (exclusive of any Value Added Tax) received by the Transferor in respect of the commission due in respect of the sale of the Discount Card (provided that for these purposes the amount of such commission shall not exceed the National Standard Rate of Commission (as defined in the Ticketing and Settlement Agreement) in respect of the Discount Card); and

A/B equals the number of days for which the Discount Card continues to be valid after the Transfer Date (including any extensions to its original period of validity) divided by the total number of days for which such Discount Card is valid on issue, or in the case of any Discount Card listed in Schedules 12 or 39 of the Ticketing and Settlement Agreement on the Franchise Commencement Date, zero,

and for these purposes a Credit or Debit shall be deemed to be received when the relevant Discount Card is Accepted for Clearing (as defined in the Ticketing and Settlement Agreement).

4. Relevant Debits and Credits shall be valued at the full amount of such Debits and Credits (inclusive of any Value Added Tax) but excluding any Debits and Credits arising in respect of Adjustment Amounts (as defined in the Ticketing and Settlement Agreement) which are received by the Transferee in respect of a change to the Credit which is used to value any relevant Season Ticket Fare under paragraph 1 of this Schedule to the extent such Adjustment Amounts relate to a period after the Transfer Date.
5. Rights and liabilities in respect of any contract, 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

Any accrued rights to receive payment

Any right to receive payment in respect of goods and/or services provided by the Transferor prior

VALUE

Monetary amounts so accrued, subject to any provision being made for payment not being received from any other person

Amount payable under such contract, lease, licence or other equivalent arrangement for the goods and/or services so provided by the

to the Transfer Date where the due date for such payment is after the Transfer Date	Transferor, subject to any provision being made for payment not being received from any other person
Any accrued liabilities to make payment	Monetary amounts so accrued
Any liability to make payment in respect of goods and/or services provided to the Transferor prior to the Transfer Date where the due date for such payment is after the Transfer Date	Amount payable under such contract, lease, licence or other equivalent arrangement for the goods and/or services provided to the Transferor
Any rights in respect of which payment has already been made by the Transferor	Monetary amounts so paid, subject to any provision being made for such rights not being exercisable against any other person
Any liabilities in respect of which payment has already been received by the Transferor	Monetary amounts so received
Any liability resulting from any breach of or failure by the Transferor to comply with the terms of any such contract, lease, licence or other equivalent arrangement	Amount of such liability or, to the extent that such amount is not ascertained, the parties reasonable estimate of the amount of such liability

6. CRM Data and Yield Management Data 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 other property, rights or liabilities shall be valued on the basis of a willing vendor and purchaser and ongoing usage within the railway industry.

Conformed COPY

SCHEDULE 16 - PENSIONS

1 FRANCHISE SECTIONS

The Franchisee shall participate in and become the Designated Employer in relation to the Northern (ex-North East) Section and the Northern (ex-North West) Section of the Railways Pension Scheme (the "**Franchise Sections**") in respect of the Franchise Services. Subject to paragraphs 2 and 3.2.4 membership of a Franchise Section will be offered to each employee of a Franchisee only.

2 CLOSED SCHEMES

2.1 Subject to any requirements of Her Majesty's Revenue and Customs, the Franchisee shall take any necessary steps (including entering into any relevant deed of participation) to allow Closed Scheme Employees to continue in membership of the British Railways Superannuation Fund or the BR (1974) Pension Fund in accordance with their terms during the Franchise Period.

2.2 For the purposes of this paragraph 2, Closed Scheme Employees means such of the employees of the Franchisee who were, immediately prior to the commencement of their employment with the Franchisee, members of either of the British Railways Superannuation Fund or the BR (1974) Pension Fund.

3 VARIATIONS IN BENEFITS, CONTRIBUTIONS AND INVESTMENT

3.1 If a Franchisee is considering making a proposal that it considers would fall within the scope of paragraphs 3.2.1 to 3.2.7 inclusive, it shall promptly consult with the Secretary of State in relation to that proposal prior to putting such a proposal to the Pensions Committee of any Franchise Section, the Trustee of the Railways Pension Scheme (the "**Trustee**"), or to any trade union. The Franchisee must otherwise consult in good time with the Secretary of State in relation to any proposal it considers would fall within the scope of paragraphs 3.2.1 to 3.2.7 inclusive.

3.2 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):

3.2.1 restructure or change the composition of the earnings of employees of the Franchisee in such a way as to increase the part of those earnings which qualifies as pensionable earnings under the Rules applicable to any Franchise Section or take any action (or consent to the taking of any action) which could detrimentally affect the funding of any Franchise Section, including varying or providing different or additional benefits under that Franchise Section or promising to do so, unless this change:

(a) is required by Law; or

(b) 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

(c) would not lead to substantial changes in the funding of any Franchise Section and is the result of the normal application of that Franchise Section's Rules in the ordinary day to day running of the business of the Northern 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;

3.2.2 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;

3.2.3 provide retirement, death or life assurance benefits in respect of any of its employees other than under any Franchise Section or as provided in paragraph 2;

- 3.2.4 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 this Agreement to offer such benefits to any employee employed on a fixed term contract of twelve (12) months or less;
 - 3.2.5 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;
 - 3.2.6 close a Franchise Section to new members; or
 - 3.2.7 take (or omit to take) any action which could result in any Franchise Section being wound up, in whole or in part.
- 3.3 The Franchisee shall consult with the Secretary of State on:
- 3.3.1 any proposal made by the Trustee to change the statement of investment principles applicable to any Franchise Section; and
 - 3.3.2 any proposal to alter the rate of contributions payable by the Franchisee or its employees under a new schedule of contributions for the Franchise Section.
- 3.4 The Franchisee shall also consult with the Trustee on the basis of any response it receives from the Secretary of State in relation to any such proposal.

4 FUNDING LIABILITIES

- 4.1 The Franchisee shall pay the employer contributions required under the schedule of contributions applicable to each Franchise Section and either of the British Railways Superannuation Fund or the BR (1974) Pension Fund in which it participates in respect of the Franchise Term subject to the provisions of paragraph 4.2 below.
- 4.2 Where, during the Franchise Term, Franchise Services are aggregated or disaggregated by the Secretary of State (for example, as a result of remapping) and, as a consequence, a Franchise Section of which the Franchisee is the Designated Employer is required to accept a transfer in or to make a transfer out of members, the Secretary of State shall ensure that the Franchisee has no liability for any resulting deterioration immediately arising in the funding level of the Franchise Section measured in accordance with the Franchise Sections' technical provisions in Part 3 of the Pensions Act 2004, or for any amount arising under article 7(4) of the Railway Pensions (Protection and Designation of Schemes) Order 1994. Notwithstanding the above the Secretary of State shall have no liability for any future deterioration in the funding levels of the Franchise Section linked to such transfer in or out of members.

5 DISCHARGE OF OBLIGATIONS

- 5.1 The Secretary of State may at any time during the Franchise Term seek information from the Trustee with a view to satisfying himself that the Franchisee and the other Participating Employers (if any) have fully discharged their respective obligations under the Railways Pension Scheme, including their obligations in respect of the payment of contributions to any Franchise Section.
- 5.2 The Franchisee shall, at its expense, promptly provide such information in relation to any Franchise Section, including actuarial advice and information, as the Secretary of State may from time to time request and shall authorise and consent to the Trustee doing so.
- 5.3 The Franchisee shall, in respect of the Franchise Term, use all reasonable endeavours to provide to the Secretary of State:

5.3.1 within one (1) month of the expiry of each Franchisee Year; and

5.3.2 at other times as soon as practicable following a request by the Secretary of State,

a certificate signed by the Trustee in relation to the Franchise Sections stating either that the Franchisee has fully complied with its obligations under the Railways Pensions Scheme, including its obligation to contribute to the Franchise Sections or, if it has not so complied, stating the extent to which it has not done so. Where the certificate is given pursuant to paragraph 5.3.1, it shall cover the relevant Franchisee Year; where the certificate has been given pursuant to paragraph 5.3.2, it shall cover such period as the Secretary of State shall specify.

5.4 If the Trustee does not certify under paragraph 5.3 in relation to the Franchise Sections that the Franchisee has fully complied with its obligations under the Railways Pension Scheme or if the Secretary of State otherwise reasonably considers that the Franchisee has not complied with such obligations, the Secretary of State may withhold from any Franchise Payments payable by him under Schedule 8 (Payments) by an amount which is, in his opinion, no greater than the amount of any contribution that the Franchisee has thereby failed to make or avoided making.

5.5 The Secretary of State may, under paragraph 5.4, continue to make such adjustments to Franchise Payments payable under Schedule 8 (Payments) until such time as he reasonably determines that the relevant contributions have been made in full by the Franchisee. Following that determination, any amount withheld shall become payable (without interest) on the next day on which a Franchise Payment becomes payable under Schedule 8 (Payments), being a day which falls no less than seven days after such determination or, if there is no such day, fourteen (14) days after the date of such determination. To the extent that the Secretary of State has not so determined within four weeks after the expiry of the Franchise Period, the Franchisee's right to receive the amount so withheld under this Agreement shall lapse and the Secretary of State shall not be obliged to pay such amount.

6 TERMINATION OF FRANCHISE

The Secretary of State shall at the end of the Franchise Term ensure that the Franchisee has no liability for any deficit in the Franchise Sections (other than for contributions due and payable by the Franchisee to the Franchise Sections for any period prior to the end of the Franchise Term) and shall have no right to benefit from any surplus which may exist in the Franchise Sections. For the avoidance of doubt, this paragraph 6 shall apply where the Franchise Services are either aggregated or disaggregated (for example, as a result of remapping).

7 DEFINITIONS

Unless otherwise defined in this Agreement, terms used in this Schedule 16 shall have the meanings given to them in the Railways Pension Scheme.

SCHEDULE 17 - CONFIDENTIALITY AND FREEDOM OF INFORMATION

1 CONFIDENTIALITY

Subject to the provisions of the Act, the Transport Act, the Railways Act 2005, the Environmental Information Regulations, the Freedom of Information Act (and any code of practice or other guidance related to the same) and paragraphs 2 to 9 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 relevant 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 this Agreement) (all together the "**Confidential Information**") and shall not, except with the relevant party's prior written authority, publish or otherwise disclose the same otherwise than as expressly provided for in this 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 this 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 this Agreement or information relating to a dispute arising under this Agreement without the prior written consent of the relevant party if such disclosure is made in good faith:

- 2.1.1 to any Affiliate of such party or outside consultant or advisers of such Affiliates, 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;
- 2.1.2 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;
- 2.1.3 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;
- 2.1.4 to the extent required by Law or pursuant to an order of any court of competent jurisdiction or under the Dispute Resolution Rules or the rules of any other dispute resolution procedures to which a dispute is referred in accordance with this Agreement or the rules of a recognised stock exchange or a formal or informal request of any taxation authority;
- 2.1.5 to any insurer, upon obtaining from such insurer an undertaking of confidentiality equivalent to that contained in paragraph 1;
- 2.1.6 to any director, employee or officer of such party, to the extent necessary to enable such party to perform its obligations under this Agreement or to protect or enforce its rights under this Agreement;
- 2.1.7 by the Franchisee to the ORR, the Passengers' Council or a Local Authority; or
- 2.1.8 by the Secretary of State (with the consent of the Franchisee (such consent not to be unreasonably withheld or delayed)) to relevant Executives and their consultants and advisors, upon obtaining from the Executive, consultant or advisor (as the case may be) as undertaking of confidentiality equivalent to that contained in paragraph 1.

3 PUBLICATION OF CERTAIN INFORMATION

3.1 Notwithstanding the provisions of paragraph 1, the Secretary of State and/or any Executive may publish (in each case, whether to the press, the public or to one (1) or more individuals, companies or other bodies, including to any prospective Successor Operator) in such form and at such times as

each sees fit, the following (irrespective of whether the same was provided to the Secretary of State and/or such Executive by the Franchisee or a third party):

- 3.1.1 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;
 - 3.1.2 the amount of any Franchise Payments payable under this Agreement and the aggregate amount of Franchise Payments paid in each year under this Agreement;
 - 3.1.3 such information as the Secretary of State may consider reasonably necessary to publish in connection with the performance of its functions in relation to any Closure or proposed Closure;
 - 3.1.4 any Passenger's Charter Statistics and the amount of any payments by the Franchisee under the Passenger's Charter;
 - 3.1.5 such information (including CRM Data and Yield Management Data) as may reasonably be required in connection with the retendering or reletting of the Northern Franchise or any part thereof, or the retendering or reletting of any other railway passenger service provided that such information may only be published during the period of, or during the period leading up to, such retendering or reletting;
 - 3.1.6 any reports and accounts delivered to the Secretary of State and/or any Executive under Schedule 13.2 (Information) including any analyses, statistics and other information derived from such reports and accounts;
 - 3.1.7 the results of any monitoring or measurement of the performance of the Franchisee in the provision of the Franchise Services (including any information provided under Schedule 11 (Agreement Management Provisions));
 - 3.1.8 the results, on a Performance Management Unit, Service Group, Route, station or other comparable basis, of any calculation of passenger numbers under Schedule 1.5 (Information about Passengers);
 - 3.1.9 the results of any survey under Schedule 1.5 (Information about Passengers);
 - 3.1.10 the results of any assessment or inspection under Schedule 11 (Agreement Management Provisions);
 - 3.1.11 details of the Franchisee's plans and performance in respect of safety;
 - 3.1.12 not used;
 - 3.1.13 subject to Section 75(3) of the Act, such information as the Secretary of State may reasonably require to include in his annual report in respect of the Franchisee;
 - 3.1.14 such information as the Secretary of State may reasonably require to publish at or around the expiry or possible termination of the Franchise Period in order to secure continuity of the provision and operation of the Franchise Services; and
 - 3.1.15 such passenger information as such Executive reasonably requires.
- 3.2 Without prejudice to any other provision of this Schedule 17, the Secretary of State and/or any Executive may publish any other information relating to the Franchisee if the Secretary of State and/or such Executive has previously notified the Franchisee and the Franchisee does not demonstrate to

the reasonable satisfaction of the Secretary of State and/or such Executive within fourteen (14) days of such notification that the publication of such information would be materially detrimental to its business. If the Franchisee attempts so to demonstrate to the Secretary of State and/or such Executive but any such party is not so satisfied, the Secretary of State and/or such Executive 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 any party liable for, the disclosure by any party to Network Rail, the ORR, other Train Operators, any operators of services for the carriage of goods by rail and/or any Stakeholder of any information relating to the development of the Service Level Commitment in accordance with Schedule 1.1 (Service Development).

5 PUBLICATION BY SECRETARY OF STATE

Nothing in this Schedule 17 shall be deemed to prohibit, prevent or hinder, or render the Secretary of State liable for, the disclosure of any information by the Secretary of State to the ORR, the Parliamentary Commissioner for Administration, a Minister of the Crown, any department of the government of the United Kingdom, the Scottish Parliament, the National Assembly of Wales, the Mayor of London, the Greater London Authority or any department or officer of any of them or of information which is otherwise disclosed for the purpose of facilitating the carrying out of its functions. The Secretary of State may, in his discretion, also make such information available to any Executive.

6 PUBLICATION BY ANY EXECUTIVE

6.1 Nothing in this Schedule 17 shall be deemed to prohibit, prevent or hinder, or render any Executive liable for, the disclosure of information by it to any party for the purpose of discharging such Executive's statutory duties (in particular under the Transport Act 1983), provided that where information is made available to such Executive pursuant to Schedule 13.2 (Information) (other than information falling within paragraph 3) which the Franchisee reasonably believes could, if made public, cause the Franchisee commercial damage, the Franchisee may so notify such Executive and such Executive shall treat the information as commercially sensitive.

6.2 The information referred to in paragraph 6.1 shall not be disclosed to any Passenger Transport Authority by any method of transmission to which members of the public may have access and each Executive shall use all reasonable endeavours to ensure that such information is not discussed in any session of a meeting of the relevant Passenger Transport Authority to which members of the public have access or reports of which may be made available to members of the public.

7 PROVISION OF INFORMATION TO 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 this Agreement.

8 DISCLOSURE BY COMPTROLLER AND AUDITOR GENERAL

8.1 The parties recognise:

8.1.1 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 this Agreement would not be able to disclose otherwise than under this Schedule 17; and

8.1.2 the provisions of the Local Government Act 1999 in respect of best value reviews and the publication of objective performance plans and the possibility of any Executive being designated as a best value authority for the purposes of the Local Government Act 1999.

9 CONTINUING OBLIGATION

This Schedule 17 (and any other provisions necessary to give effect hereto) shall survive the termination of this Agreement, irrespective of the reason for termination.

10 FREEDOM OF INFORMATION - GENERAL PROVISIONS

10.1 The Franchisee acknowledges and shall procure that its agents and subcontractors acknowledge that the Secretary of State and the Executives are 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 cooperate with the Secretary of State and Executives to enable the Secretary of State and Executives to comply with any information disclosure obligation under the Freedom of Information Act and/or the Environmental Information Regulations.

10.2 The Franchisee shall and shall procure that its agents and subcontractors shall:

10.2.1 transfer to the Secretary of State and/or an Executive any Requests for Information received by the Franchisee (or its agents or subcontractors) as soon as practicable and in any event within two (2) working days of receiving any such Request for Information;

10.2.2 provide the Secretary of State and/or an Executive with a copy of all information in its (or their) possession or power in the form that the Secretary of State and/or an Executive requires within five (5) working days of the Secretary of State and/or an Executive's request (or within such other period as they may specify); and

10.2.3 provide all necessary assistance as reasonably requested by the Secretary of State and/or an Executive to enable them 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.

10.3 The Secretary of State and/or an Executive shall be responsible for determining in their absolute discretion, and notwithstanding any other provision in this 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.

10.4 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 and/or an Executive (as appropriate).

10.5 The Franchisee acknowledges and shall procure that its agents and subcontractors acknowledge that notwithstanding any provision to the contrary in this Agreement the Secretary of State and/or an Executive 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:

10.5.1 in certain circumstances without consulting the Franchisee (or its agents and/or subcontractors where applicable); or

10.5.2 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 and/or an Executive 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.

11 REDACTIONS

11.1 By no later than the date which is:

11.1.1 four (4) weeks after the date of this Agreement (in respect of the Franchise Documents referred to in paragraph (a) of the definition thereof);

11.1.2 thirty (30) days after the date on which the Certificate of Commencement is issued (in respect of the Franchise Documents referred to in paragraph (b) of the definition thereof); and

11.1.3 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 ("**Redactions**").

11.2 For each such Redaction the Franchisee should specify:

11.2.1 the exact text of the Franchise Document or variation that the Franchisee proposes is redacted;

11.2.2 whether the Franchisee proposes that the Redaction applies in relation to the publication of the relevant Franchise Document or variation on the website of the Department for Transport, on the register required to be maintained by the Secretary of State pursuant to Section 73 of the Act or on both such website and such register; and

11.2.3 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.

11.3 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 11.1). If the Secretary of State and the Franchisee are unable to agree upon any proposed Redaction, the Secretary of State shall be entitled to determine, in his absolute discretion, whether or not to make such proposed Redaction. If the Franchisee does not provide its proposed Redactions to the Secretary of State in accordance with paragraph 11.1, the Franchisee shall be deemed to have consented to publication of the relevant document without any Redactions.

SCHEDULE 18 - FRANCHISE CONTINUATION

- 1 Not Used
- 2 CONTINUATION FOR ADDITIONAL TWO (2) REPORTING PERIODS.
 - 2.1 Subject to paragraph 2.2, this Agreement shall expire at 01:59 on Sunday 7th February 2016.
 - 2.2 If the Secretary of State gives notice to the Franchisee and the Executives not less than three (3) months before this Agreement is due to expire in accordance with paragraph 2.1, this Agreement shall continue after such date on the terms set out in this Agreement for not less than one (1) and not more than two (2) Reporting Periods, as the Secretary of State may stipulate.
Key Contracts
 - 2.3 The Franchisee shall enter into any and all Key Contracts which are necessary for this Agreement to continue in accordance with paragraph 2.2 of this Schedule 18.

Conformed Copy

SCHEDULE 19 - OTHER PROVISIONS

- 1 VARIATIONS TO THIS AGREEMENT AND INCENTIVISING BENEFICIAL CHANGES
- 1.1 The terms of this Agreement may be varied as follows but not otherwise:
- 1.1.1 by the Secretary of State, in relation to:
- (a) any aspect of the Franchise Services; and
 - (b) any provision of this Agreement other than those provisions specified in paragraph 1.2,
- by service of a notice on the other parties hereto referring to this paragraph 1.1.1 and setting out the variation to the terms of this Agreement;
- 1.1.2 by the Secretary of State and the Franchisee, to the extent such variation does not have an adverse effect on any Executive Passenger Services or Executive Stations, by agreement between such parties and service of a notice on the Executives, referring to this paragraph 1.1.2 and setting out the variation to the terms of this Agreement; and
- 1.1.3 in relation to any other provision of this 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, the terms of each of:
- 1.2.1 clause 4 (Term) of this Agreement;
 - 1.2.2 Schedules 8 (Franchise Payments), 9 (Changes), 10 (Remedies, Termination and Expiry), 12 (Financial Obligations and Covenants), 14 (Preservation of Assets), 18 (Franchise Continuation) and this Schedule 19;
 - 1.2.3 the definitions set out at clause 2 (Definitions) of this Agreement in so far as such affect the respective rights and obligations of the Secretary of State and the Franchisee pursuant to the provisions referred to at paragraphs 1.2.1 and 1.2.2 above,
- shall not be varied at any time other than in accordance with the terms of this Agreement or with the agreement of the parties.
- 1.3 The Secretary of State shall, to the extent reasonably practicable, allow the Franchisee and any affected Executive a reasonable opportunity to make representations to the Secretary of State concerning any Variation to be made in accordance with paragraph 1.1.1, prior to making any such Variation.
- 1.4 The Secretary of State may:
- 1.4.1 issue, revise and withdraw from time to time procedures that it 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
 - 1.4.2 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 (1) 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:
- 1.7.1 the time scale for doing so;
 - 1.7.2 the effect (if any) on the timing of the performance of its other obligations under this Agreement;
 - 1.7.3 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
 - 1.7.4 the financial consequences of implementing the proposed Variation proposed by the Franchisee in terms of the Revised Inputs that the Franchisee considers the Variation would require.
- 1.8 Not used.
- 1.9 Where the Franchisee proposes a Variation in sufficient detail for it to be apparent that its implementation is likely to result in an increase in the overall profitability of the Franchisee through costs saving measures (a "**Protected Proposal**"), the Secretary of State may not proceed with the Protected Proposal or seek to implement the substance of it by proposing a Variation of its own without complying with the provisions of paragraph 9 of Schedule 9.1 (Consequences of Change).
- 1.10
- 1.10.1 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.
 - 1.10.2 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 Change Adjustments the parties or the Secretary of State would effect such change (if any) to the amount attributable to profit as they agree or the Secretary of State reasonably determines:
 - (a) fairly rewards the Franchisee for proposing the Change; and
 - (b) reasonably incentivises the Franchisee to propose further Changes that achieve savings and/or improved financial performance by sharing with the Franchisee a reasonable amount of the additional profit that is expected to arise from implementing the relevant Change.
 - 1.10.3 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 Change Adjustments the provisions referred to in sub paragraph 1.10.2 above shall apply.

2 CAPITAL EXPENDITURE

Capital Expenditure Threshold

2.1 The Franchisee shall notify the Secretary of State promptly if it reasonably expects that a Change to which paragraph 1 relates would require it to incur, singly or in aggregate with other Changes from time to time, Capital Expenditure in excess of one per cent (1%) of its annual Turnover in any Franchisee Year as disclosed by its latest available audited accounts and, when so notified, the Secretary of State shall either:

2.1.1 withdraw the Change;

2.1.2 undertake to meet the excess through additional funding as and when such Capital Expenditure is incurred; or

2.1.3 direct the Franchisee to use all reasonable endeavours to borrow or otherwise raise the money required to fund any Change on commercial terms and at rates which are consistent with market conditions at the time, unless borrowing or otherwise raising such money would result in the Franchisee failing to comply with the financial covenants contained in Schedule 12 (Financial Obligations and Covenants).

Franchisee to Seek Finance

2.2 If the Secretary of State elects to require the Franchisee to use all reasonable endeavours as described in paragraph 2.1.3 then the Franchisee shall:

2.2.1 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;

2.2.2 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;

2.2.3 so far as it is able (having used all reasonable endeavours to do so), the Franchisee shall provide to the Secretary of State letters from lenders and financiers it has approached for finance stating their reasons for refusing to provide it and if the Secretary of State so requires, arrange and attend meetings with them for the Secretary of State to discuss those reasons; and

2.2.4 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:

(a) withdraw the Change; or

(b) undertake to fund the Capital Expenditure as and when such Capital Expenditure is incurred.

Treatment of Borrowings in Revised Inputs

2.3 In calculating the Revised Inputs for the purposes of any Change referred to in this paragraph 2, the Franchisee shall account for the Capital Expenditure in accordance with GAAP, taking into account the basis on which such Capital Expenditure has been financed.

Meaning of Capital Expenditure

- 2.4 The expression Capital Expenditure when used in this Schedule 19 refers to the nature of the expenditure incurred by the Franchisee and, accordingly, does not include expenditure incurred under operating leases.

3 RIGHTS CUMULATIVE

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

4 DISPUTES

Disputes under this Agreement

- 4.1 Wherever this Agreement provides that the Secretary of State may reasonably determine any matter, the Franchisee may, unless this 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.
- 4.2 Where any party is entitled, pursuant to the terms of this Agreement, to refer a dispute arising out of or in connection with this 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.
- 4.3 Where, in the absence of an express provision in this Agreement entitling it to do so, either party wishes to refer a dispute arising out of or in connection with this Agreement to arbitration pursuant to the Dispute Resolution Rules, the following process shall apply:
- 4.3.1 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;
 - 4.3.2 the other party shall respond within twenty (20) working days of service of the notice confirming whether or not referral of the dispute to arbitration is agreed. In the absence of any response, the referral to arbitration shall be deemed not to have been agreed;
 - 4.3.3 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;
 - 4.3.4 in the event that the parties do not agree to refer to arbitration then it shall be resolved or determined in accordance with clause 11 of this Agreement; and
 - 4.3.5 nothing in this paragraph 4.3 shall preclude either party from commencing, continuing or otherwise taking any step by way of litigation in pursuit of the resolution or determination of the dispute unless an agreement is reached to refer the dispute to arbitration.
- 4.4 The arbitrator in any dispute referred for resolution or determination under the Dispute Resolution Rules shall be a suitably qualified person chosen by agreement between the parties to such dispute 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 parties to the relevant dispute or, in default of agreement as to the arbitrator or as to such panel, selected on the application of any party by the President of the Law Society or the President of the Institute of Chartered Accountants in England and Wales from time to time (or such other person to whom they may delegate such selection).

Disputes under Other Agreements

- 4.5 The Franchisee shall notify the Secretary of State and each Executive 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 this 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.
- 4.6 Such notification shall be made both:
- 4.6.1 at the time of such submission (and such submission shall include reasonable details of the nature of the dispute); and
- 4.6.2 at the time of the resolution of the dispute (whether or not subject to appeal) (and such submission shall include reasonable details of the result of the dispute, any associated award and whether it is subject to appeal).
- 4.7 The Franchisee shall provide such further details of any dispute referred to in paragraph 4.5 as the Secretary of State or any Executive (as the case may be) may reasonably request from time to time.

5 NOTICES

5.1 Notices

- 5.1.1 Any notice, notification or other communication under or in connection with the matters specified in Schedule 10.2 (Termination and Expiry), Schedule 18 (Franchise Continuation) or any dispute under or in connection with this Agreement shall be 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 to the other party.

Name: Department for Transport
Address: Great Minster House, 33 Horseferry Road, London SW1P 4DR
Email: franchise.notices@dft.gsi.gov.uk
Attention: The Secretary of State, care of Director Rail-Commercial
(Copy to Haydon Walker, Commercial Manager)

Name: Northern Rail Limited
Address: Northern House, 7-9 Rougier Street, York YO1 6HZ
Email: alex.hynes@northernrail.org
Attention: Alex Hynes, Managing Director
(Copy to Richard Allan, Commercial Director)

Name: Transport for Greater Manchester
Address: 2 Piccadilly Place, Manchester, M1 3BG
Email: jon.lamonte@tfgm.com
Attention: Jon Lamonte, Chief Executive
(Copy to Steve Warrener)

Name: South Yorkshire Passenger Transport Executive
Address: 11, Broad Street West, Sheffield, S1 2BQ
Email: ben.still@sypte.co.uk
Attention: Ben Still, Interim Director General
(Copy to Steve Davenport)

Name: NEXUS Tyne & Wear Passenger Transport Executive
Address: Nexus House, St James' Boulevard, Newcastle Upon Tyne NE1 4AX
Email: b.garner@nexus.org.uk
Attention: Bernard Garner, Director General

Name: West Yorkshire Passenger Transport Executive
Address: Wellington House, 40-50 Wellington Street, Leeds LS1 2DE
Email: david.hoggarth@wypte.gov.uk
Attention: David Hoggarth, Director, Development

Name: Merseyside Passenger Transport Executive
Address: Number 1 Mann Island, Liverpool L3 1BP
Email: david.brown@merseytravel.gov.uk
Attention: David Brown, Chief Executive

5.1.2 Any other notice, notification or other communication under or in connection with this Agreement shall be delivered:

- (a) in accordance with paragraph 5.1.1; or
- (b) by electronic data transfer, except that it shall be marked for the attention of the Contract Manager, the Franchise Manager or the relevant Executive's point of contact, as appropriate.

Deemed Receipt

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

5.2.1 if sent by hand or recorded delivery, when delivered;

5.2.2 if sent by pre-paid first class post, from and to any place within the United Kingdom, three (3) business days after posting unless otherwise proven; and

5.2.3 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).

6 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, this 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).

7 SET OFF

7.1 The Secretary of State may set off against any amounts payable by it under this Agreement:

7.1.1 any outstanding amounts or liabilities payable or due to it under this Agreement;

7.1.2 any other amount payable to or due to the Secretary of State under or in relation to this Agreement; and

7.1.3 any monetary penalty payable under the Act.

7.2 Each Executive may set off against any amounts payable or due by any of them to the Franchisee under this Agreement any outstanding amounts or liabilities payable or due to them by the Franchisee under this Agreement.

8 MISCELLANEOUS PROVISIONS

Waivers

8.1

8.1.1 A party may at any time waive any obligation owed to it by any other party under this Agreement and the obligations of the parties hereunder shall be construed accordingly.

8.1.2 No waiver by any party of any default by any other party in the performance of such party's obligations under this 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 this 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 this Agreement shall prevent any further exercise of such right or remedy or the exercise of any other right or remedy.

Time Limits

8.2 Where in this Agreement any obligation of a party is required to be performed within a specified time limit (including an obligation to use all reasonable endeavours or best endeavours to secure a particular result within such time limit) that obligation shall be deemed to continue after the expiry of such time limit if such party fails to comply with that obligation (or secure such result, as appropriate) within such time limit.

Partial Invalidity

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

Further Assurance

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

Rights of Third Parties

8.5

8.5.1 Subject to paragraph 5 of Schedule 20 (Executive Passenger Services), a person who is not a party to this Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement except to the extent set out in this paragraph 8.5.

8.5.2 Any Successor Operator or potential Successor Operator nominated by the Secretary of State and notified to the Franchisee for the purposes of this paragraph 8.5 may enforce and rely on the provisions of Schedule 15 (Obligations Associated with Termination) to the same extent as if it were a party but subject to paragraphs 8.5.3 and 8.5.4.

8.5.3 This Agreement may be terminated, and any term may be amended or waived, in each case in accordance with the terms of this Agreement, without the consent of any person nominated under paragraph 8.5.2.

8.5.4 The person nominated under paragraph 8.5.2 shall only be entitled to enforce and rely on Schedule 15 to the extent determined by the Secretary of State (whether at the time of nomination or at any other time) and, to the extent that any such person is entitled to enforce

and rely on Schedule 15 (Obligations Associated with Termination), any legal proceedings in relation thereto must be commenced within one (1) year of the expiry of the Franchise Period and any such person shall not be entitled to enforce or rely on Schedule 15 (Obligations Associated with Termination) to the extent that it has consented to any particular act or omission of the Franchisee which may constitute a contravention of Schedule 15 (Obligations Associated with Termination) or has been afforded a reasonable opportunity to indicate to the Franchisee that it is not so consenting and has not so indicated (the extent of such reasonable opportunity to be determined by the Secretary of State unless otherwise agreed).

Secretary of State's Consent or Approval

8.6 Where any provision of this 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 it considers appropriate, which may include the adjustment of any of the terms of this Agreement.

9 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 this Agreement in accordance with their terms in the exercise of the Secretary of State's rights under Schedule 10 (Remedies, Termination and Expiry).

10 CURRENCY

If at any time the Bank of England or other competent monetary authority of the United Kingdom or competent organ of H.M. Government of the United Kingdom recognises the Euro as lawful currency and tender of the United Kingdom, the Secretary of State may, by reasonable notice to the Franchisee and the Franchisee may by reasonable notice to the Secretary of State, elect that all payment obligations arising under this Agreement shall be denominated and/or constituted in Euros on the basis that all outstanding amounts and obligations previously denominated and/or constituted in pounds sterling shall be translated into Euros at the exchange rate applied or recognised by the United Kingdom authority or organ which granted recognition of the Euro for the purpose of such translation on the date on which it granted recognition of the Euro.

11 SECTION 13 RAILWAYS ACT 2005

11.1 The Secretary of State gives his approval, under section 13(6) of the Railways Act 2005, to each of the Executives entering into this Agreement for purposes in connection with the provision of:

11.1.1 services for the carriage of passengers by railways; and

11.1.2 station services

as permitted pursuant to section 13(4) of the Railways Act 2005.

12 OPT OUT BY AN EXECUTIVE

Opt Out Notice

12.1 Any Executive may serve notice on the Secretary of State and the Franchisee in accordance with this paragraph 12 to opt out of this Agreement (an "**Opt Out Notice**"). Any Opt Out Notice shall specify the date from which the relevant Executive will opt out (the "**Opt Out Effective Date**").

- 12.2 Subject to paragraph 12.3:
- 12.2.1 an Opt Out Notice may be served on the Secretary of State and the Franchisee at any time during the Franchise Period; and
 - 12.2.2 the Opt Out Effective Date specified in any such Opt Out Notice shall be 1st April in any Franchisee Year and which shall be no less than three (3) months from the date of the Opt Out Notice.

- 12.3 Where an Executive has not received on or before 31st December in any financial year, reasonably satisfactory confirmation from the Secretary of State of funding in respect of the Executive Passenger Services relevant to such Executive for the next financial year, such Executive may specify in any Opt Out Notice it serves in accordance with paragraph 12.1 that the Opt Out Effective Date shall be one (1) month from the date of such Opt Out Notice.

Effect on Secretary of State

- 12.4 Following service of an Opt Out Notice in accordance with this paragraph 12 and as from any Opt Out Effective Date, the Secretary of State shall:
- 12.4.1 enjoy the rights of the relevant Executive under this Agreement; and
 - 12.4.2 perform all the obligations and discharge all the liabilities of the relevant Executive under this Agreement,

which would arise after such Opt Out Effective Date.

- 12.5 As from any Opt Out Effective Date, references to the relevant Executive shall be construed accordingly.

Effect on Executive Rights and Obligations

- 12.6 Following service of an Opt Out Notice in accordance with this paragraph 12 and as from any Opt Out Effective Date, the Franchisee shall release and discharge the relevant Executive from:
- 12.6.1 further performance of such Executive's obligations under this Agreement, save as herein expressly provided; and
 - 12.6.2 all claims and demands in respect of this Agreement,

which arise after such Opt Out Effective Date.

- 12.7 The Franchisee may not, without the written consent of the Secretary of State, release and discharge any Executive from:
- 12.7.1 performance of such Executive's obligations under this Agreement, save as expressly provided in this Agreement; and
 - 12.7.2 all claims and demands in respect of this Agreement, which arise prior to any Opt Out Effective Date.

Effect on the Franchisee

- 12.8 Following service of an Opt Out Notice in accordance with this paragraph 12 and as from any Opt Out Effective Date the Franchisee shall:
- 12.8.1 perform and discharge all its duties and obligations under this Agreement; and

- 12.8.2 be bound by the terms of this Agreement in favour of the Secretary of State as if the Secretary of State was a party to this Agreement from the date of its signature in place of the relevant Executive.
- 12.9 The Secretary of State shall have the right to pursue all claims and demands in respect of this Agreement:
- 12.9.1 which arise on or after the relevant Opt Out Effective Date; and
- 12.9.2 which the relevant Executive would have been entitled to make, but for the service of the relevant Opt Out Notice.
- 12.10 Any Executive that serves an Opt Out Notice in accordance with this paragraph 12 shall continue to have the right to pursue any claim or demand which arose prior to the Opt Out Effective Date specified in such Opt Out Notice. Such Executive shall keep the Secretary of State informed in respect of any such claims or demands.
- 13 EXECUTIVE NOT PARTY TO THIS AGREEMENT
- 13.1 Where an Executive is not party to this Agreement, with respect to that Executive, the Executive Passenger Services and Executive Stations which relate to that Executive the Franchisee shall, subject to Schedule 20 (Executive Passenger Services):
- 13.1.1 perform and discharge all of its duties and obligations under this Agreement;
- 13.1.2 be bound by the terms of this Agreement in favour of the Secretary of State as if the reference to that Executive was a reference to the Secretary of State.
- 14 RIGHTS OF EXECUTIVES TO REQUIRE CHANGES
- 14.1 Each of the Executives shall be entitled to submit proposals to the Secretary of State and to the Franchisee for revised service specifications effecting changes to the operation of their Executive Passenger Services and their Executive Stations including, where appropriate, proposals to:
- 14.1.1 alter the requirements in respect of the use of the Executive Rolling Stock at paragraph 7.5.1 of Schedule 1.1 (Service Development) and the specification of rolling stock used to provide the Executive Passenger Services at paragraph 7.5.2 of Schedule 1.1 (Service Development);
- 14.1.2 alter the requirements in respect of the specification of capacity provided on the Executive Passenger Services contained at paragraph 7.7 of Schedule 1.1 (Service Development);
- 14.1.3 alter the Service Level Commitment or Train Plan, the Service Quality Requirements and the regulation of Fares relating to the Executive Passenger Services and/or Executive Stations; and
- 14.1.4 alter or vary any other provision of this Agreement relating to the operation of the Executive Passenger Services and/or Executive Stations,
- in any such case, to the extent that the Executive would have been entitled to include such service specifications (as proposed to be revised) in its response to any consultation by the Secretary of State in respect of the Northern Franchise pursuant to section 13(1) of the Railways Act 2005.
- 14.2 Except to the extent otherwise provided in this paragraph, the Secretary of State shall, where required by the relevant Executive, ensure that proposals made under paragraph 14.1 are implemented as soon as is reasonably practicable, where applicable, by amending or varying:
- 14.2.1 the requirements in respect of the use of the Executive Rolling Stock at paragraph 7.5.1 of Schedule 1.1 (Service Development) and the specification of rolling stock used to provide

the Executive Passenger Services contained in paragraph 7.5.2 of Schedule 1.1 (Service Development) in order to give effect to any proposal under paragraph 14.1.1;

- 14.2.2 the requirements in respect of the specification of capacity provided on the Executive Passenger Services contained in paragraph 7.7 of Schedule 1.1 (Service Development) in order to give effect to any proposal under paragraph 14.1.2;
- 14.2.3 the Service Level Commitment, Train Plan, Service Quality Requirements or the regulation of Fares relating to the Executive Passenger Services in order to give effect to any proposal under paragraph 14.1.3; and
- 14.2.4 any other provision of this Agreement pursuant to paragraph 1.1 of this Schedule 19 in order to give effect to any proposal under paragraph 14.1.4.

Any implementation of such proposed revised service specification shall, where relevant, be a Change.

14.3 The Secretary of State may not be required by an Executive to ensure the implementation of any proposals submitted by it under paragraph 14.1:

- 14.3.1 if or to the extent that such implementation would have an adverse effect on the exercise of any powers of the Scottish Ministers with respect to the provision of services for the carriage of passengers or goods by railway (whether inside or outside the relevant Executive's Passenger Transport Area);
- 14.3.2 if or to the extent that such implementation would have an adverse effect on the provision of services for the carriage of passengers or goods by railway (whether inside or outside the relevant Executive's Passenger Transport Area);
- 14.3.3 if or to the extent that such implementation would increase the amount of any expenditure of the Secretary of State under agreements or other arrangements entered into (in accordance with a franchise agreement) with:
 - (a) the Franchisee or any other franchisee; or
 - (b) any franchise operator; or
 - (c) any servant, agent or independent contractor of the Franchisee or any other franchisee or franchise operator.

14.4 When submitting proposals to the Secretary of State and to the Franchisee under paragraph 14.1 the relevant Executive shall set out:

- 14.4.1 the date or dates by which it is proposed that the proposals would be implemented; and
- 14.4.2 the particulars of the proposed revised service specifications, so far as reasonably practicable in sufficient detail so as to enable, if the implementation of the proposals would be likely to constitute a Qualifying Change, the Revised Inputs relevant to such proposed Qualifying Change to be agreed or determined pursuant to paragraph 6 of Schedule 9.1 (Financial and other Consequences of Change).

14.5 The Secretary of State and the Franchisee shall co-operate as reasonably required by an Executive in exploring the feasibility and financial impact of any proposals that the Executive has submitted or is considering submitting under paragraph 14.1 and following the submission of any proposals under that paragraph shall provide to the Executive any information in their possession that the Executive reasonably requires in relation to those proposals, including information relevant to any consequential changes to the Franchisee's profits, costs and revenues and other information and the agreement or determination of Revised Inputs in circumstances where the implementation of the proposals would be likely to constitute or cause a Qualifying Change.

- 14.6 The provisions of paragraph 7 (Right of Assessment or Inspection) of Schedule 11 (Agreement Management Provisions) shall apply to records kept by or on behalf of the Franchisee that relate to any information supplied by the Franchisee to an Executive pursuant to paragraph 14.4 on the basis that the relevant Executive shall be entitled to exercise the rights of the Secretary of State under that paragraph.
- 14.7 The Secretary of State shall, at the request of an Executive that has submitted proposals under paragraph 14.1, require the Franchisee to perform a Run of the Financial Model pursuant to paragraph 6 of Schedule 9.1 (Financial Consequences of Change) in order to enable the Executive to assess the financial consequences (if any) of any of those proposals in which case:
- 14.7.1 in agreeing (or determining) the Revised Inputs for the Preliminary Run of the Financial Model pursuant to paragraph 4 of Schedule 9.1 (Financial Consequences of Change) the Secretary of State shall act in accordance with the reasonable directions of the Executive and shall ensure that due account is taken of any grant or capital funding proposed to be made available to the Franchisee by the Executive if the proposals are implemented;
- 14.7.2 the Secretary of State shall, as soon as reasonably practicable after receiving the results of the Run of the Financial Model, notify the Executive of the results (together with such supporting information as the Executive may reasonably require in order to assess and interpret the results) and the consequential change (if any) to the Executive's Share were the Executive to require the proposals to be implemented; and
- 14.7.3 where required by the Executive, the Secretary of State shall require the Run of the Financial Model to be audited under paragraph 7 of Schedule 9.1 (Financial Consequences of Change) (and the Executives hereby agree that, in accordance with paragraph 7.4 of that Schedule, the results as certified by the auditor shall be final and binding except in the case of manifest error),

and for the avoidance of doubt an Executive may request successive or separate Runs of the Financial Model to be performed in relation to one or more proposals for revised service specifications submitted under paragraph 14.1 and may also request any number of such proposals to be grouped together as a single prospective Change for the purposes of agreeing or determining Revised Inputs and then performing a Run of the Financial Model.

- 14.8 Where an Executive resolves whether or not to require the implementation of any proposals submitted by it under paragraph 14.1 it shall notify the Secretary of State and the Franchisee as soon as reasonably practicable that it requires the implementation of such proposals or that it does not require such implementation. This shall not prevent the Executive from subsequently proposing and/or requiring the implementation of the same or similar proposals.
- 14.9 It is:
- 14.9.1 acknowledged by the parties that the Secretary of State and each of the Executives may agree (or that as between them it may be determined) to amend or replace paragraph 14.3.3, so as to include a different provision (the "**Replacement Provision**") setting out circumstances in which the Secretary of State may not be required by an Executive to ensure the implementation of any proposals submitted by it under paragraph 14.1;
- 14.9.2 agreed by the parties that the Secretary of State may by notice to the Franchisee (copied to the Executives) amend this Agreement by inserting the Replacement Provision in place of paragraph 14.3.3. The Secretary of State's notice under this paragraph shall set out the Replacement Provision, and the date (and time) from which the amendment to this Agreement shall be effective.

15 RIGHT OF THE SECRETARY OF STATE TO AMEND EXECUTIVE SERVICE SPECIFICATIONS

- 15.1 The Secretary of State shall be entitled to submit proposals to any Executive and to the Franchisee for revised service specifications effecting changes to the operation of the Executive Passenger

Services and the Executive Stations of the relevant Executive including, where appropriate, proposals to alter or vary the:

- 15.1.1 requirements in respect of the use of the Executive Rolling Stock at paragraph 7.5.1 of Schedule 1.1 (Service Development) and the specification of rolling stock used to provide the Executive Passenger Services at paragraph 7.5.2 of Schedule 1.1 (Service Development);
 - 15.1.2 requirements in respect of the specification of capacity provided on the Executive Passenger Services contained at paragraph 7.7 of Schedule 1.1 (Service Development);
 - 15.1.3 Service Level Commitment or Train Plan, the Service Quality Requirements and the regulation of Fares relating to the Executive Passenger Services and/or the Executive Stations; and
 - 15.1.4 any other provision of this Agreement relating to the operation of the Executive Passenger Services and/or the Executive Stations.
- 15.2 The Secretary of State will, after consulting in relation to the proposed revised service specification with the relevant Executive and having due regard to its views, be entitled to implement the proposed revised service specification as soon as reasonably practicable, where applicable, by amending or varying:
- 15.2.1 the requirements in respect of the use of the Executive Rolling Stock at paragraph 7.5.1 of Schedule 1.1 (Service Development) and the specification of rolling stock used to provide the Executive Passenger Services contained in paragraph 7.5.2 of Schedule 1.1 (Service Development) in order to give effect to any proposal under paragraph 15.1.1;
 - 15.2.2 the requirements in respect of the specification of capacity provided on the Executive Passenger Services contained in paragraph 7.7 of Schedule 1.1 (Service Development) in order to give effect to any proposal under paragraph 15.1.2;
 - 15.2.3 the Service Level Commitment, Train Plan, Service Quality Requirements or the regulation of Fares relating to the Executive Passenger Services in order to give effect to any proposal under paragraph 15.1.3; and
 - 15.2.4 any other provision of this Agreement pursuant to paragraph 1.1 of Schedule 19 (Other Provisions) in order to give effect to any proposal under paragraph 15.1.4.

Any implementation of such proposed revised service specification shall, where relevant, be a Change.

- 15.3 Where an Executive is entitled to require revised service specifications to be implemented in respect of Executive Passenger Services or Executive Stations pursuant to paragraph 14, the Secretary of State agrees that it shall not exercise his rights under this paragraph 15 in a manner which would have the effect of reversing in whole or in part or otherwise materially prejudicing the implementation of such revised service specification provided that nothing in this paragraph shall prevent the Secretary of State, at a later date, from exercising its rights under paragraph 15 where there has been a material change of circumstance since the implementation of any Executive's revised service specification and such material change in circumstance reasonably justifies the exercise of such rights by the Secretary of State.

16 NON DISCRIMINATION

- 16.1 The Franchisee will not discriminate in seeking offers in relation to, or in awarding, a contract for the purchase or hire of goods on the grounds:
- 16.1.1 of nationality, against a person who is a national of and established in a relevant State; or
 - 16.1.2 that the goods to be supplied under the contract originate in another relevant State.

16.2 For the purpose of this Clause, “**relevant State**” has the meaning given in the Public Contracts Regulations 2006.

Conformed Copy

SCHEDULE 20 – EXECUTIVE PASSENGER SERVICES

1 NOT USED

2 FARES

2.1 Where the relevant Executive is not a party to this Agreement or has served an Opt Out Notice, the provisions of paragraph 1.5.3 of Schedule 5.1 (Purpose, Structure and Construction) shall not apply to it and paragraphs 1.5.1 and 1.5.2 of Schedule 5.1 (Purpose, Structure and Construction) (as the case may be) shall apply instead.

2.2 Where the relevant Executive is not a party to this Agreement or has served an Opt Out Notice, the provisions of paragraph 3 of Schedule 5.5 (Regulation of Individual Fares and T&WPTE Fares) shall not apply to it and T&WPTE Fares shall be regulated in accordance with paragraphs 1 and 2 of Schedule 5.5 (Regulation of Individual Fares and T&WPTE Fares).

2.3 Where the relevant Executive is not a party to this Agreement or has served an Opt Out Notice, the provisions of paragraph 2 of Schedule 5.6 (Exceeding the Regulated Value, Regulated Price or Regulated Child Price) shall not apply to it and T&WPTE Fares shall be regulated in accordance with paragraphs 1 to 3 of Schedule 5.6 (Exceeding the Regulated Value, Regulated Price or Regulated Child Price).

3 CAR PARKING AT EXECUTIVE STATIONS

3.1 Where an Executive is not a party to this Agreement or has served an Opt Out Notice, the Franchisee shall require the prior consent of the Secretary of State to introduce or vary the car parking charges at any relevant Executive Station applicable to that Executive.

4 EXECUTIVE PASSENGER SERVICES

4.1 Where an Executive is not a party to this Agreement or has served an Opt Out Notice, the Franchisee's obligation to operate Executive Passenger Services and to serve Executive Stations which relate to that Executive shall be reviewed by the Franchisee and the Secretary of State and the Secretary of State shall have the right to indicate which services are no longer required to be provide by the Franchisee (such services being indicated in the Service Level Commitment).For this avoidance of doubt, this will be a Change.

5 NOT USED

ⁱ By virtue of a derogation the Secretary of state has granted the franchise operator a derogation request against paragraph 1.2 of Sch 1.4 for additional time for publication of timetable booklets.

Start date: 17/04/2015

End date: 02/05/2015