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13 October 2020

(1) The Secretary of State for Transport
(2) XC Trains Limited

DIRECT AWARD FRANCHISE AGREEMENT
relating to
Cross Country Franchise

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¹ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

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THIS AGREEMENT is dated

October 2020

BETWEEN:

- (1) **THE SECRETARY OF STATE FOR TRANSPORT**, whose principal address is at 33 Horseferry Road, London SW1P 4DR (the "**Secretary of State**"); and
- (2) **XC TRAINS LIMITED** (Company Number: 04402048), whose registered office is at C/O Arriva Plc 1 Admiral Way, Doxford International, Business Park, Sunderland, SR3 3XP (the "**Franchisee**").

BACKGROUND:

- (A) The Secretary of State and the Franchisee were parties to the Previous Franchise Agreement pursuant to which the Franchisee provided the Previous Passenger Services. The Previous Franchise Agreement expires at 01:59 on 18 October 2020 and the Parties have agreed that the Franchise Services will be provided by the Franchisee pursuant to this Agreement during the period from the Start Date until the Expiry Date. The Secretary of State has issued a Statement of Policy dated March 2013 on the exercise of the Secretary of State's power under section 26(1) of the Railways Act 1993 (as amended) which confirms that the person who is appointed as a franchisee to provide the Franchise Services under a franchise agreement need not be selected from among those who submit tenders in response to an invitation to tender.
- (B) The Secretary of State wishes to appoint a franchisee to provide railway passenger services within the Franchise and expects a franchisee, on the terms of the Franchise Agreement, actively to seek, in all reasonable business ways, greatly improved performance over the Franchise Term from its employees, its Train Fleet and other assets, and from the Infrastructure Manager and its other suppliers, so as to deliver to the passenger the best railway passenger service that can be obtained from the resources that are available to it.
- (C) The Franchisee wishes to be appointed as the Secretary of State's franchisee for the Franchise and intends, on the terms of this Agreement, actively to seek, in all reasonable business ways, greatly improved performance over the Franchise Term from its employees, its Train Fleet and other assets, and from the Infrastructure Manager and its other suppliers, so as to deliver to the passenger the best railway passenger service that can be obtained from the resources that are available to it.
- (D) The commercial basis of this Agreement assessed by the Secretary of State as being appropriate to the particular circumstances of the Franchise is that revenue and cost risk will be retained by the Secretary of State except as otherwise provided in this Agreement with the Franchisee being able to earn a performance fee, pursuant to the terms of this Agreement.
- (E) The Parties have agreed terms on which the Franchisee shall provide the Franchise Services and wish to record their agreement. The following provisions of this Agreement are intended to reflect and give effect to the matters referred to in Recitals (A) and (D) inclusive.

1. **INTERPRETATION**

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

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

- (b) words and expressions defined in the Interpretation Act 1978 have the same meanings when used in the Franchise Agreement;
- (c) references to "**Parties**" shall mean the Secretary of State and the Franchisee (and references to a "**Party**" shall mean the Secretary of State or the Franchisee as the context requires);
- (d) the words "**include**", "**including**" and "**in particular**" are to be construed without limitation;
- (e) references to any "**person**" include its successors, transferees or assignees;
- (f) the words "**subsidiary**", "**subsidiary undertaking**" and "**parent undertaking**" each have the same meaning in the Franchise Agreement as in section 1162 of the Companies Act 2006;
- (g) references in any of the agreements comprising the Franchise Agreement to Recitals, clauses, Schedules, Parts of Schedules, paragraphs of Schedules and Appendices to Schedules are to Recitals, clauses, Schedules, Parts of Schedules, paragraphs of Schedules and Appendices to Schedules of that agreement, unless expressly specified to the contrary, and the Schedules and Appendices form part of the agreement in which they appear;
- (h) references in any Schedule in any of the agreements comprising the Franchise Agreement to a Part, paragraph or Appendix are references to a Part, paragraph or Appendix of that Schedule (or the relevant Part of a Schedule), unless expressly specified to the contrary;
- (i) headings and references to headings shall be disregarded in construing the Franchise Agreement;
- (j) references to any enactment include any subordinate legislation made from time to time under such enactment and are to be construed as references to that enactment as for the time being amended or modified or to any enactment for the time being replacing or amending it and references to any subordinate legislation are to be construed as references to that legislation as for the time being amended or modified or to any legislation for the time being replacing or amending it;
- (k) references to an agreement or any other document shall be construed as referring to that agreement or document as from time to time supplemented, varied, replaced, amended, assigned or novated;
- (l) references to any particular provisions of any agreement or any other document shall be construed to include any other provisions of, or incorporated in, that agreement or other document which the Secretary of State reasonably considers have an equivalent effect or are intended to fulfil the same function;
- (m) amendments to or variations of contracts or arrangements include assignments, novations or other transfers of rights and/or obligations (in whole or in part) under such contracts or arrangements;
- (n) words importing the masculine gender include the feminine and vice-versa, and words in the singular include the plural and vice-versa;
- (o) wherever provision is made for the giving or issuing of any notice, endorsement, consent, approval, waiver, certificate or determination by any person, unless otherwise specified, such notice, endorsement, consent, approval, waiver, certificate or determination shall be in writing and the words "**notify**", "**endorse**", "**consent**",

“approve”, “waive”, “certify” or “determine” and other cognate expressions shall be construed accordingly;

- (p) references to materials, information, data and other records shall be to materials, information, data and other records whether stored in electronic, written or other form;
- (q) references to the Franchisee bidding for Train Slots or a Timetable shall mean the final action incumbent on the Franchisee under the Network Code to confirm to the Infrastructure Manager its interests in the Train Slots to which that confirmation relates, and **“bid”** shall be construed accordingly;
- (r) references to the period of validity of any Fare are references to its period of validity excluding any rights of any purchaser thereof to extend such period under the Passenger's Charter, any equivalent document, or the terms and conditions attaching to such Fare (including any applicable conditions of carriage) in the event of the cancellation or delay of any of the railway passenger services for which such Fare is valid;
- (s) references to **“railway passenger services”** are to be construed subject to section 40 of the Railways Act 2005;
- (t) references to the **“provision of railway passenger services”** include the organisation of the relevant train movements and making the necessary arrangements with the Infrastructure Manager or any other relevant Facility Owner;
- (u) references in lower case letters to terms defined in clause 3 (*Definitions*) shall be construed, where relevant, as being references to the terms defined as such in a franchise agreement or relevant agreement made under section 30 of the Act or section 6 of the Railways Act 2005 with any other Train Operator;
- (v) references to sums of money being expended by the Franchisee shall be to such sums exclusive of Value Added Tax;
- (w) the words **“shall not be liable”** are to be construed as meaning that no contravention of the Franchise Agreement and no Event of Default shall arise as a result of the occurrence of the matter to which such words relate;
- (x) references to a **“contravention of the Franchise Agreement”** or a **“contravention”** (and cognate expressions) are to be construed as meaning **a breach of the Franchise Agreement**;
- (y) wherever provision is made for the Franchisee to **“procure”** or **“ensure”** the delivery of an obligation under the Franchise Agreement, unless otherwise specified, that provision shall be construed as a primary obligation on the Franchisee to deliver that obligation;
- (z) references to **“profit”** shall be construed as meaning profit before corporation tax, determined in accordance with GAAP; and
- (aa) references to **“process”** or **“processing”** or **“processed”** are to be construed in accordance with the Data Protection Legislation for the purposes of Schedule 1.5 (Information about Passengers), paragraph 2.1 of Schedule 14.4 (Designation of Franchise Assets), paragraph 9 of Schedule 13.1 (Apprenticeships) and paragraph 11 (Data Protection) of Schedule 17 (Confidentiality, Freedom of Information and Data Protection).

- 1.2 Where there is a requirement on the Franchisee to **“fully and effectively co-operate”** with one (1) or more other third parties with regard to an objective, that requirement relates to the quality

of co-operation to be provided by the Franchisee taking into account and subject to the response of the other third parties concerned. It does not indicate an obligation on the Franchisee beyond co-operation, relating to the funding of detailed design and development of an infrastructure project, actual delivery or subsequent operation (including in each case performance cost and revenue effects). It does indicate that the Franchisee shall participate actively in relation to the relevant objective including through the application of management time and internal resources, correspondence and attendance at meetings, in each case as the Franchisee reasonably considers in all of the circumstances to be an appropriate use of its resources and effective to achieve the relevant objective.

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

1.4 Notwithstanding any other provisions of this Agreement:

(a) the following words and expressions contained in clause 3 (Definitions) shall be disapplied:

- (i) Commuter Fares;
- (ii) Commuter Fares Basket;
- (iii) Commuter Fares Document or CFD;
- (iv) CPAY;
- (v) Depot;
- (vi) Depot Lease or DL;
- (vii) London Station;
- (viii) Pay As You Go Agreement;
- (ix) PAYG Peak Fare;
- (x) PAYG Off-Peak Fare;
- (xi) PAYG Zone;
- (xii) Station;
- (xiii) Station Lease or SL; and
- (xiv) Suburban Station;

(b) the provisions of this Franchise Agreement shall be disapplied to the extent that:

- (i) such provisions (including Schedule 5) relate to Commuter Fares, the Commuter Fares Basket and the Commuter Fares Document and all applicable definitions relating thereto; and
- (ii) such provisions relate to the words and/or expressions set out at clause 1.4(a).

2. AGREED DOCUMENTS

- 2.1 References to documents **"in the agreed terms"** are references to documents initialled by or on behalf of the Secretary of State and the Franchisee.
- 2.2 As at the date of this Agreement, the documents **"in the agreed terms"** are as follows:

BTP	BTP Methodology;
CA	Collateral Agreement;
CFD	Commuter Fares Document;
CSES	Customer & Stakeholder Engagement Strategy;
DSMI	Data Site Monitor and Index;
EP	Expenses Policy;
FF	Financial Formats;
FM	Financial Model;
FPR	Franchisee’s Procurement Rules;
IB	Initial Budget;
OM	Operational Model;
PC	Passenger's Charter;
PFCS	Performance Fee Calculation Spreadsheet;
PMD	Performance Methodology Document;
PFD	Protected Fares Document;
POA	Power of Attorney;
PSM	Passenger Survey Methodology;
ROA	Record of Assumptions;
TP	Train Plan;
TSR	Train Service Requirement (TSR 1/TSR 2); and
TTSM	Ticketless Travel Survey Methodology.

3. DEFINITIONS

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

"2019 Nominal Ticket Sales"	has the meaning given to it in paragraph 3 of Schedule 5.4 (<i>Regulation of Fares Basket Values</i>);
"2019 Ticket Revenue"	has the meaning given to it in paragraph 4 of Schedule 5.4 (<i>Regulation of Fares Basket Values</i>);

"Access Agreement"	has the meaning given to the term "access agreement" in section 83(1) of the Act;
"Accessibility Panel"	means the regular forum of disabled passengers, including users of assisted travel, which the Franchisee must operate and consult on accessibility issues by virtue of section B5 of the Accessible Travel Policy Guidance;
"Accessible Travel Policy"	means the Franchisee's policy for accessible travel which the Franchisee is required to establish and review from time to time in accordance with the conditions of its Licences in respect of the operation of railway passenger services and/or stations;
"Accessible Travel Policy Guidance"	means the <i>"Accessible Travel Policy: Guidance for Train and Station Operators"</i> , published by the ORR in July 2019;
"Accrued Claims"	has the meaning given to it in paragraph 1A of Schedule 8.1A (<i>Franchise Payments</i>);
"Accrued Disallowable Costs"	has the meaning given to it in paragraph 1A of Schedule 8.1A (<i>Franchise Payments</i>);
"Accrued Revenue Foregone"	has the meaning given to it in paragraph 1A of Schedule 8.1A (<i>Franchise Payments</i>);
"Act"	means the Railways Act 1993 (as modified, amended or replaced by the Transport Act 2000, the Railways Act 2005 and the Deregulation Act 2015) and any regulations or orders made thereunder;
"Action Plan"	has the meaning given to it in paragraph 9.1(e) of Schedule 7.1 (<i>Operational Performance</i>);
"Actual All Cancellations Performance Level"	has the meaning given to it in paragraph 1.1 of Schedule 7.1 (<i>Operational Performance</i>);
"Actual Capex"	means the actual Capital Expenditure of the Franchisee in the relevant period;
"Actual Consist Data"	means information as to the type of individual vehicles of rolling stock in the Train Fleet which are actually used to form a train on any particular Passenger Service and the manner in which they are configured, which may or may not be the same as the Scheduled Consist Data for the same service;
"Actual Costs"	means the actual Costs of the Franchisee in the relevant period;
"Actual Revenue"	means the actual Revenue of the Franchisee in the relevant period;

“Actual Passenger Demand”	has the meaning given to it in paragraph 1.1 of Schedule 1.5 (<i>Information about Passengers</i>);
“Actual T-3 Performance Level”	has the meaning given to it in paragraph 1.1 of Schedule 7.1 (<i>Operational Performance</i>);
“Actual T-15 Performance Level”	has the meaning given to it in paragraph 1.1 of Schedule 7.1 (<i>Operational Performance</i>);
“Actual Train Mileage”	means the actual train mileage operated during each Reporting Period by each train used in the provision of the Passenger Services (excluding any actual train mileage operated as a result of positioning or other movements of rolling stock vehicles outside the Timetable) and “Actual Train Miles” shall be construed accordingly;
“Actuary”	has the meaning given to it in the Pension Trust;
“Additional Boxing Day Services”	has the meaning given to it in paragraph 2.1 (b) of Part 2 (<i>Mandatory Franchise Specific Obligations</i>) of Schedule 6.1 (<i>Franchise Specific Obligations</i>);
“Additional CRPs”	has the meaning given to it in paragraph 3.1 of Part 1 (<i>Committed Obligations</i>) of Schedule 6.2 (<i>Committed Obligations</i>);
“Additional HST Power Cars”	has the meaning given to it in paragraph 30.1 of Part 1 (<i>Committed Obligations</i>) of Schedule 6.2 (<i>Committed Obligations</i>);
“Administration Fee”	has the meaning given to it in clause 8.5 (<i>Change of Control and Facilitation Fee</i>);
“Advance Purchase Train-specific Fares”	has the meaning given to it under the Ticketing and Settlement Agreement;
“Affected Party”	has the meaning given to it in paragraph 6.3 of Schedule 12 (<i>Financial Covenants and Bonds</i>);
“Affected Service Quality Area”	has the meaning given to it in paragraph 2.1 of Schedule 7.3 (<i>Service Quality Regime</i>);
“Affected Service Quality Indicator”	has the meaning given to it in paragraph 2.1 of Schedule 7.3 (<i>Service Quality Regime</i>);
“Affiliate”	means, in respect of any person (“A”): <ul style="list-style-type: none"> (i) any person which A Controls or which Controls A; or (ii) any person which is Controlled by any other Affiliate of A; and <p>and for the purpose of this definition none of Network Rail or NR or HS2 Limited shall be construed as being an affiliate of the Secretary of State;</p>

"Aggregated Costs and Revenues Liabilities"	has the meaning given to it in paragraph 9.9 of Schedule 8.1A (<i>Franchise Payments</i>);
"Agreement"	means clauses 1 to 17 and Schedules 1 to 17 including any Appendices and Annexes as varied from time to time;
"All Cancellations"	means the sum of Cancellations, Partial Cancellations, Network Rail Cancellations and Network Rail Partial Cancellations relating to the Franchise as produced and/or published by Network Rail;
"All Cancellation Figures"	means the moving annual average percentage published by Network Rail in respect of All Cancellation, rounded to two (2) decimal places;
"All Cancellations Measure"	has the meaning given to it in paragraph 1.1 of Schedule 7.1 (<i>Operational Performance</i>);
"All Cancellations Performance Amount"	has the meaning given to it paragraph 1 of Schedule 8.1B (<i>Performance Payments</i>);
"All Cancellations Table"	has the meaning given to it in paragraph 1.1 of Schedule 7.1 (<i>Operational Performance</i>);
"Alternative Fare"	has the meaning given to it in paragraph 1.1 of Schedule 6.5 (<i>Additional Operating Contract Obligations</i>);
"Alternative NRPS"	has the meaning given to such term in paragraph 2.6 of Schedule 7.2 (<i>Customer Experience and Engagement</i>);
"Ancillary Service"	means any service specified in paragraph 4 of Part 1 (<i>Franchise Services</i>) of Schedule 1.1 (<i>Franchise Services and Service Development</i>);
"Annual Audited Accounts"	means the accounts of the Franchisee which: <ul style="list-style-type: none"> (a) comply with paragraph 9.5(b) of Schedule 11.2 (<i>Management Information</i>); and (b) are delivered to the Secretary of State by the Franchisee in accordance with paragraph 9.4(b) of Schedule 11.2 (<i>Management Information</i>) and certified by the Franchisee's auditors as true and fair;
"Annual Business Plan"	means the plan to be provided by the Franchisee to the Secretary of State in accordance with paragraph 10.2 of Schedule 11.2 (<i>Management Information</i>);

- “Annual Fares Plan”** has the meaning given to it in paragraph 1.1 of Schedule 6.5 (*Additional Operating Contract Obligations*);
- “Annual Management Accounts”** means the management accounts of the Franchisee which:
- (a) comply with paragraph 9.5(a) of Schedule 11.2 (*Management Information*); and
 - (b) are delivered to the Secretary of State by the Franchisee in accordance with paragraph 9.4(a) of Schedule 11.2 (*Management Information*);
- “Annual Season Ticket”** means a Season Ticket Fare which is valid in Standard Class Accommodation from (and including) the day on which it first comes into effect until (but excluding) the day which falls twelve (12) months after such day;
- “Applicable Fares Plan”** has the meaning given to it in paragraph 1.1 of Schedule 6.5 (*Additional Operating Contract Obligations*);
- “Apprenticeship”** means (as the context requires) an individual apprenticeship pursuant to:
- (a) an apprenticeship programme operated by the Franchisee:
 - (i) in connection with an apprenticeships framework listed on the Federation for Industry Sector Skills & Standards’ “Frameworks Library” (as located at the date of this Agreement at: <http://www.afo.sscalliance.org/frameworkslibrary/>); and
 - (ii) in compliance with the “Specification of Apprenticeship Standards for England” pursuant to the Apprenticeships, Skills, Children and Learning Act 2009; and/or
 - (b) an apprenticeship programme operated by the Franchisee pursuant to (and in accordance with applicable requirements of) such statutory apprenticeships system as may be introduced in replacement of, or in variation or addition to, the apprenticeships frameworks system described in paragraphs (a)(i) and (ii) above,
- and references to **“Apprenticeships”** shall be construed accordingly;

“Apprenticeships Data Collection Form”

means the excel table provided by the Secretary of State and populated by the Franchisee and included within the Skills and Leadership Strategy specifying in relation to each Franchisee Year the number of Apprenticeships to be commenced in such Franchisee Year, the number of such Apprenticeships at each of level 1 – 8, the role and skills category within which each such Apprenticeship falls and other information as the table may be amended or replaced with the prior written consent of the Secretary of State following a review of the Skills and Leadership Strategy pursuant to paragraph 9 of Schedule 13.1 (*Rail Industry Initiatives and Co-operation*);

“Apprenticeships Requirement”

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

“Approved Affiliate Contract”

has the meaning given to it in paragraph 1A of Schedule 8.1A (*Franchise Payments*);

“Approved CCI Scheme”

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

“Approved D&I Strategy”

means such D&I Strategy as agreed by the Parties;

“Arriva IP Assignment”

means the deed of assignment proposed to be entered into, subject to agreement on its terms, between the date of this Agreement and the Start Date from (1) Arriva Plc and (2) the Franchisee (as assignors) to (3) the Secretary of State (as assignee) in relation to certain Intellectual Property Rights relating to the Cross Country Railway Brand;

“Average Weekly Earnings”

means the United Kingdom average weekly earnings measure excluding bonuses as published from time to time by the Office for National Statistics or, if such measure shall cease to be published or if, in the reasonable opinion of the Secretary of State, there is a material change in the basis of such measure, such other alternative index as the Secretary of State may, after consultation with the Franchisee, determine to be appropriate in the circumstances;

“Backstop Date”

has the meaning given to it in paragraph 28.2(b) of Part 3 (*Franchise Specific Obligations*) of Schedule 6.1 (*Franchise Specific Obligations*);

“BAME”

means Black, Asian and Minority Ethnic;

“Bank”

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

"Bank Holiday"	means any day other than a Saturday or Sunday on which banks in the City of London are not open for business;
"Base Cash Position"	has the meaning given to it in paragraph 1A of Schedule 8.1A (<i>Franchise Payments</i>);
"Benchmark"	means any of the TOC on Self Cancellations Benchmark, the TOC Minute Delay Benchmark or the Short Formation Benchmark (as the context may require);
"Bespoke Trackside Provision"	has the meaning given to it in paragraph 2.1 (<i>Definitions</i>) of Part 1 (<i>Previous Franchisee's Committed Obligations</i>) of Schedule 6.1 (<i>Franchise Specific Obligations</i>);
"Bond Longstop Date"	has the meaning given to it in paragraph 4.1(b)(iii) of Schedule 12 (<i>Financial Covenants and Bonds</i>);
"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: <ul style="list-style-type: none"> (a) a Bank; or (b) an insurance company, in each case with the Relevant Credit Rating;
"Bond Year"	means the period beginning on the Start Date and ending on 31 March 2021 and any subsequent period of thirteen (13) Reporting Periods beginning on the day after the end of the preceding Bond Year provided that: <ul style="list-style-type: none"> (a) the Franchisee and the Secretary of State may agree to vary the Reporting Period in which a Bond Year ends from time to time; and (b) the last Bond Year shall expire on the expiry of the Franchise Period and may be a period of less than thirteen (13) Reporting Periods;
"Boxing Day Services"	has the meaning given to it in paragraph 2.1 (a) of Part 2 (<i>Mandatory Franchise Specific Obligations</i>) of Schedule 6.1 (<i>Franchise Specific Obligations</i>);
"Brand Licence"	means each and all of the following: <ul style="list-style-type: none"> (a) the Trade Mark Licence dated 10 November 2007 between the Secretary of State and the Franchisee which was entered into with effect from the commencement of the franchise agreement between the Parties dated 11 November 2007; and

- (b) any variation to the Trade Mark Licence referred to at (a) above, between the Secretary of State and the Franchisee, whether entered into before or after the Start Date of this Agreement;
- (c) any other licence between the Secretary of State (or any company wholly owned by the Secretary of State) and the Franchisee in respect of any registered or unregistered trademarks and related Intellectual Property Rights, including those which are listed in Appendix 1 (List of Trade Marks) of Schedule 14.2 (Maintenance of Operating Assets and Branding) that the Franchisee may be permitted to use in relation to the Franchise Services;

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

“British Transport Police” means the British Transport Police Authority and the British Transport Police Force created pursuant to section 18 and section 20 of the Railways and Transport Safety Act 2003 (or any successor or successors to its statutory policing functions);

“Budget” means together:

- (a) the periodic cost and revenues budget; and
- (b) the periodic capex budget,

which, as at the Start Date is the Initial Budget, and thereafter as such budget may be updated from time to time in accordance with paragraph 8 of Schedule 8.1A (*Franchise Payments*) (and the term Budget shall be construed accordingly);

“Budgeted Capex” means the Capital Expenditure budgeted to be incurred by the Franchisee in a Reporting Period and specified in the then current Budget as agreed or determined pursuant to paragraph 8 of Schedule 8.1A (*Franchise Payments*);

“Budgeted Costs” means the Costs budgeted to be incurred by the Franchisee in each Reporting Period and specified in the then current Budget as agreed or determined pursuant to paragraph 8 of Schedule 8.1A (*Franchise Payments*);

“Buildings Research Establishment Environmental Assessment Method” or “BREEAM” means the internationally recognised environmental assessment method and rating system for buildings developed by Building Research Establishment Limited or any other standard which is generally recognised as having replaced it;

"Business Action Plan"	means an action plan produced by the Franchisee in relation to the delivery of any aspect of the Franchise Services (including in respect of any outcome anticipated by its Business Plan, in accordance with paragraph 10.2(c) of Schedule 11.2 (<i>Management Information</i>));
"Business Continuity Plan" or "BCP"	means a business continuity and disaster recovery plan (including a Force Majeure Events recovery plan) required to be produced, maintained and implemented by the Franchisee in accordance with the requirements of paragraph 4 of Schedule 10.3 (<i>Force Majeure and Business Continuity</i>);
"Business Plan"	means the Initial Business Plan or any Annual Business Plan, as the context requires, to be delivered in accordance with paragraphs 10.1 and 10.2 of Schedule 11.2 (<i>Management Information</i>);
"Cancellation"	means a Passenger Service: <ul style="list-style-type: none"> (a) which is included in the Enforcement Plan of the Day and which is cancelled for reasons attributed to the Franchisee pursuant to its Track Access Agreement; or (b) which is included in the Enforcement Plan of the Day and which operates less than fifty per cent (50%) of its scheduled mileage (as prescribed in the Enforcement Plan of the Day) for reasons attributed to the Franchisee pursuant to its Track Access Agreement;
"Cancellations Figures"	means the number of: <ul style="list-style-type: none"> (a) Cancellations and Partial Cancellations; and (b) Network Rail Cancellations and Network Rail Partial Cancellations, in each case, relating to the Passenger Services operated in each Reporting Period;
"Capacity Mitigation Proposal"	has the meaning given to it in paragraph 15.1 of Part 2 (<i>Service Development</i>) of Schedule 1.1 (<i>Franchise Services and Service Development</i>);
"Capital Expenditure"	has the meaning given to it in paragraph 1A of Schedule 8.1A (<i>Franchise Payments</i>);
"Cascaded Rolling Stock"	has the meaning given to it in paragraph 3.1 of Schedule 2.2 (<i>Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases</i>);
"Cash Balance"	means in respect to any Weekday during the Franchise Term, the Franchisee's actual cash balance excluding the value of Season Ticket suspense

liabilities as at the end of business hours on the previous Weekday;

"CCI Amount"	has the meaning given to it in paragraph 1.1 of Schedule 7.2 (<i>Customer Experience and Engagement</i>);
"CCI Period"	means each of the following periods: <ul style="list-style-type: none"> (a) 1 June 2021 – 31 March 2022; (b) 1 April 2022 – 31 March 2023; and (c) 1 April 2023 – Expiry Date;
"CCI Programme"	has the meaning given to it in paragraph 1.1 of Schedule 7.2 (<i>Customer Experience and Engagement</i>);
"CCI Scheme"	has the meaning given to it in paragraph 1.1 of Schedule 7.2 (<i>Customer Experience and Engagement</i>);
"CCI Scheme Cost"	has the meaning given to it in paragraph 1.1 of Schedule 7.2 (<i>Customer Experience and Engagement</i>);
"CCI Scheme Margin"	has the meaning given to it in paragraph 1.1 of Schedule 7.2 (<i>Customer Experience and Engagement</i>);
"CCI Scheme Revenue"	means in respect of any CCI Scheme, the revenue earned by the Franchisee from that CCI Scheme;
"CCI Scheme Shortfall"	means, in relation to a CCI Scheme, the amount (if any) by which the CCI Scheme Revenue is less than the aggregate of the CCI Scheme Costs and the CCI Scheme Margin;
"CCI Scheme Underspend"	has the meaning given to it in paragraph 11.6 of Schedule 7.2 (<i>Customer Experience and Engagement</i>);
"CCTV Guidance"	means the Rail Delivery Group's <i>"National Rail & Underground Closed Circuit Television (CCTV)"</i> guidance, the British Transport Police's <i>"Output requirements from CCTV Systems"</i> guidance, Home Office's <i>"Surveillance Camera Code of Practice June 2013"</i> , each as updated from time to time and any other guidance reasonably required by the Secretary of State;
"C-DAS"	has the meaning given to it in paragraph 5.1 of Part 3 (<i>Franchise Specific Obligations</i>) of Schedule 6.1 (<i>Franchise Specific Obligations</i>);

“Ceased Services”

has the meaning given to it in paragraph 2.1 of Schedule 7.3 (*Service Quality Regime*);

“Ceiling Cash Position”

has the meaning given to it in paragraph 1A of Schedule 8.1A (*Franchise Payments*);

“Central Government Body”

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

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

“Change”

means if and whenever any of the following occurs:

- (a) **NOT USED;**
- (b) a Charge Variation;
- (c) a Change of Law;
- (d) a change to the Train Services Requirement previously in force pursuant to the issue of an amended or new Train Service Requirement in accordance with paragraph 16.6 of Schedule 1.1 (*Franchise Services and Service Development*);
- (e) the Franchisee is required to take any action pursuant to paragraph 19.1(a) and/or paragraph 19.1(b) of Schedule 1.1 (*Franchise Services and Service Development*);
- (f) the Secretary of State effects an amendment to a Discount Fare Scheme, introduces a new Discount Fare Scheme or ceases to approve a Discount Fare Scheme for the purposes of section 28 of the Act;
- (g) the Secretary of State approves an amendment or proposed amendment to an Inter-Operator Scheme, as referred to in paragraph 4.5 of Schedule 2.5 (*Transport, Travel and Other Schemes*) to the extent and only to the extent that the Franchisee makes a saving as a consequence of such amendment or proposed amendment;

- (h) **NOT USED;**
- (i) the Secretary of State exercises the Secretary of State's power pursuant to paragraph 5 of Schedule 5.7 (*Changes to Fares and Fares Regulation*) to alter the obligations of and restrictions on the Franchisee under Schedule 5 (*Fares and Smart Ticketing*);
- (j) the Franchisee is obliged to charge Value Added Tax on a Fare or there is an increase or decrease in the rate of Value Added Tax which it must charge on such Fare, in either case due to a change in the Value Added Tax treatment of the provision of Passenger Services;
- (k) the exercise by the Secretary of State of the Secretary of State's rights pursuant to paragraph 1.11 (*Charging Review*) of Schedule 7.1 (*Operational Performance*);
- (l) the exercise by the Secretary of State of the Secretary of State's rights pursuant to paragraph 15.1(c) (*Environmental Information Data Collection Plan*) of Schedule 11.2 (*Management Information*);
- (m) **NOT USED;**
- (n) **NOT USED;**
- (o) a Variation to the terms of the Franchise Agreement pursuant to paragraph 1.1 of: Schedule 9.3 (*Variations to the Franchise Agreement*);
- (p) the Start Date is a date that is later than 02:00 on 18 October 2020 for reasons solely attributable to any act or omission by the Secretary of State;
- (s) **NOT USED;**
- (t) **NOT USED;**
- (u) **NOT USED;**
- (v) (i) the Secretary of State issues a TDR Amendment pursuant to paragraph 12.8 (TDR Amendments) of Schedule 1.1 (Franchise Services and Service Development) in the circumstances described in paragraph 12.10(b); or
- (ii) the circumstances contemplated in paragraph 12.11(b) of Schedule 1.1

- (w) the exercise by the Secretary of State of the Secretary of State's rights pursuant to paragraph 10 of Schedule 6.5 (*Additional Operating Contract Obligations*);
- (x) **NOT USED**;
- (y) **NOT USED**;
- (z) **NOT USED**;
- (za) the implementation of instructions given by the Secretary of State in relation to the transfer of the Midlands Local Services to another Train Operator pursuant to paragraph 2.3 of Part 4 (*Bespoke Obligations*) of Schedule 6.1 (*Franchise Specific Obligations*);
- (zaA) a Rolling Stock Change;
- (zaB) the exercise by the Secretary of State of the Secretary of State's rights pursuant to paragraph 3.2(b) (as described paragraph 3.3), and/or the circumstances described in paragraphs 3.4 and/or 3.5 (*Cascaded Rolling Stock and Delayed Cascade Mitigation Plan*), in each case of Schedule 2.2 (*Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases*);
- (zaC) the exercise by the Secretary of State of the Secretary of State's rights pursuant to paragraphs 2.4A, 2.5, 2.5A and/or 2.5B of Schedule 8.1B (*Performance Payments*) (in each case, where Schedule 9.1 (*Financial and Other Consequences of Change*) shall apply in the manner described in such paragraphs);
- (zaD) the exercise by the Secretary of State of the Secretary of State's rights pursuant to paragraph 8.4 of Schedule 8.1B (*Performance Payments*);
- (zaE) the circumstances described in paragraph 1.5(b) of Schedule 5.11 arising (*Fares, Ticketing and Retail Reform*);
- (zaF) if the Secretary of State exercises their discretion in accordance with paragraph 5.3(c) of Schedule 6.7 (*Co-Operation and Industrial Relations*) to determine that there is a Change (and in such case, in the manner described in such paragraph);

(zaG) if the circumstances in paragraph 5.4(d) of Schedule 6.7 (*Co-Operation and Industrial Relations*) arise (and in such case, in the manner described in such paragraph);

(zaH) if the circumstances in paragraph 11A.2 (c) or (d) of Schedule 13.1 (*Rail Industry Initiatives and Co-operation*) arise; or

(zb) any two or more of the foregoing that the Secretary of State groups together in accordance with any procedures issued by the Secretary of State pursuant to paragraph 1.4 of Schedule 9.3 (*Variations to the Franchise Agreement*) occur;

“Change of Control”

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

“Change of Law”

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

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

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

- (i) excluding any changes in Taxation;
- (ii) excluding any changes which were foreseeable at the date of the Franchise Agreement, and for this purpose, but without limitation, there shall be regarded as foreseeable any Legislation which on the date of the Franchise Agreement has been published:
 - (A) in a draft parliamentary bill as part of a government departmental consultation paper;
 - (B) in a parliamentary bill;
 - (C) in a draft statutory instrument; or
 - (D) as a proposal in the Official Journal of the European Union except to the extent that such proposal is intended to apply

solely within member states
other than the United Kingdom,

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

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

“Charge Variation”

means a variation:

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

“Charging Review”

means:

- (a) the exercise by the ORR of its powers under:
 - (i) Part 7 of Schedule 7 of the Track Access Agreement to which the Franchisee is a Party on the Start Date or any Replacement Agreement which is or is deemed to be a Relevant Agreement in accordance with the definition of that term;
 - (ii) Condition F11.4 (*Review of Long Term Charge*) of the Station Access Conditions in relation to any station which is not an Independent Station; or
 - (iii) Condition F12.4 (*Review of Access Generally*) of the Station Access Conditions in relation to any station which is not an Independent Station; or
 - (iv) Condition 42.4 (*Review of the Long Term Charge*) of the Independent Station Access Conditions in relation to

any station which is an Independent Station or a Station;

- (b) the following by the ORR of the procedure in Schedule 4A of the Act;
- (c) the exercise by the ORR of any of its powers or the following of any other procedure, which, in the Secretary of State's reasonable opinion:
 - (i) has an equivalent effect to; or
 - (ii) is intended to fulfil the same function as,

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

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

“Charter Service”

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

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

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

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

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

“Child Price”

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

“Class 170 Improvement Works”

has the meaning given to it paragraph 19.1 of Part 1 (*Committed Obligations*) of Schedule 6.2 (*Committed Obligations*);

“Closed Scheme Employees”

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

“Closure”

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

“CMA”

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

“Code of Practice”

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

“Collaborative Working Performance Payment” or “CWPP”

has the meaning given to it paragraph 1 of Schedule 8.1B (*Performance Payments*);

“Collective Agreement”

has the meaning given to it in paragraph 1.1 of Part 2 of Schedule 6.7 (*Co-Operation and Industrial Relations*);

“Combined Ticket”

has the meaning given to it in paragraph 3.1 of Schedule 5.8 (*Fares Regulation Information and Monitoring*);

“Combined Ticket Notification”	has the meaning given to it in paragraph 3.2 of Schedule 5.8 (<i>Fares Regulation Information and Monitoring</i>);
“Commercial Return”	means where the CCI Scheme Revenue equals or exceeds the aggregate of the CCI Scheme Costs and the CCI Scheme Margin;
“Commitment”	has the meaning given to it in clause 15.1(b) (<i>Competition</i>);
“Committed Obligations” or “COs”	means any of the Franchisee's obligations listed in Part 1 (<i>Committed Obligations</i>) of Schedule 6.2 (<i>Committed Obligations</i>) or any other obligation of the Franchisee expressed as a Committed Obligation under the Franchise Agreement;
“Community Rail Network”	means the Community Rail Network whose principle place of business is The Old Water Tower, Huddersfield Railway Station, St Georges Square, Huddersfield, HD1 1JF or any successor body whose purpose is to support Community Rail Partnerships;
“Community Rail Partnership”	means any not for profit organisation of the same name that has an interest in the development of responsive and good quality railway passenger services;
“Community Rail Report”	has the meaning given to it in paragraph 2.6 of Schedule 13.1 (<i>Rail Industry Initiatives and Co-operation</i>);
“Community Rail Route”	means any Route in respect of which the Secretary of State determines that any relevant Community Rail Partnership has an interest;
“Community Rail Strategy”	means the Community Rail Development Strategy (as may be updated from time to time) published in November 2018 and which provides a broad framework within which local rail lines can support their communities;
“Commuter Fare”	means any: <ul style="list-style-type: none"> (a) Weekly Season Ticket, Monthly Season Ticket, Quarterly Season Ticket and Annual Season Ticket (and their equivalent products compliant with the ITSO Specification) between each London Station and any other such station or other Suburban Station; and (b) unrestricted Single Fare and unrestricted Return Fare (and their equivalent products compliant with the ITSO Specification) between each London Station; and

- (c) unrestricted Single Fare and unrestricted Return Fare (and their equivalent products compliant with the ITSO Specification) from each Suburban Station to each London Station (but not in the other direction); and
- (d) PAYG Peak Fare or PAYG Off Peak Fare (and their equivalent products compliant with the ITSO Specification) between each London Station and any other such station (and the CPAY equivalent fares),

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

“Commuter Fares Basket”

means the grouping of Commuter Fares:

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

“Commuter Fares Document”

means the document in the agreed terms marked **“CFD”** as the same may be amended from time to time in accordance with Schedule 5.7 (*Changes to Fares and Fares Regulation*);

“COMPASS”

has the meaning given to it in paragraph 5.1 of Part 3 (*Franchise Specific Obligations*) of Schedule 6.1 (*Franchise Specific Obligations*);

“Competition Authority”

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

“Competition Event”

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

“Competition Event Notice”

has the meaning given to it in clause 15.5 (*Competition*);

“Compulsory Inter-available Flow”

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

“Computer System”

means computer hardware and computer software, including licensed third party software and data protocols;

“Confidential Information”

has the meaning given to it in paragraph 1 of Schedule 17 (*Confidentiality, Freedom of Information and Data Protection*);

“Connection”

means a connection (however described) between any of the Passenger Services provided by the Franchisee and any other railway passenger service provided by the Franchisee or any other Train Operator or any bus, ferry or shipping service and cognate phrases shall be construed accordingly;

“Contingency Plan”

has the meaning given to it in paragraph 1(a)(iv) of Schedule 10.3 (*Force Majeure and Business Continuity*);

“Continuation Document”

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

“Contract Manager”

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

“Control”

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

- (a) has the power to appoint and/or remove all or the majority of the members of the board of directors or other governing body of:
 - (i) A;
 - (ii) any person who has equivalent rights over A; or
 - (iii) any person who A has equivalent rights over;
- (b) has the power to direct the affairs and policies of:
 - (i) A;

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

as a result of which he would, if the whole of the income of such persons were distributed, be entitled to receive twenty-five per cent (25%) or more of the amount so distributed; or
 - (iii) such rights as would, in the event of the winding-up or other analogous event in respect of:
 - (A) A;
 - (B) any person who has equivalent rights over A; or
 - (C) any person who A has equivalent rights over,

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

and **“Controlled”** shall be construed accordingly;

“Control Centres”

has the meaning given to it in paragraph 1A. of Part 1 of Schedule 6.7 (*Co-Operation and Industrial Relations*);

“Controller”

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

“Controlled Emission Toilet” or “CET”

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

“Costs”

means costs and expenses stated in the Franchisee’s profit and loss account (including accruals and prepayments recognised in the reporting period in which the related costs are incurred) but excluding:-

- (a) Franchise Payments (which shall include (for the avoidance of doubt) the value of any Fixed Fee and Performance Payments);
- (b) corporation tax and deferred tax charge in the Franchisee’s profit and loss account;
- (c) any accounting transaction included in the Management Accounts, Annual Management Accounts or Annual Audited Accounts but which does not require the Franchisee to make a cash payment including notional pensions accounting adjustments, the accounting impact of financial instrument revaluations and depreciation and amortisation (other than where that depreciation or amortisation has the prior agreement of the Secretary of State);
- (d) Capital Expenditure;

provided that:

- (i) if the Franchisee’s profit and loss account includes any cost(s) in respect of right of use assets treated in accordance with IFRS16 (the “IFRS16 Cost”), then for the purpose of this definition the amount for each IFRS16 Cost shall be deemed to be replaced (for the purposes of this definition and all related consequential purposes under this Agreement) with the amount which would have applied if the cost had been treated on a cash basis, as such cost is incurred in

accordance with the relevant contractual arrangements, rather than in accordance with IFRS16; and

- (ii) for the avoidance of doubt, any liability of the Franchisee to the Secretary of State arising under or in connection with the Previous Franchise Agreement shall not be treated as or give rise to a cost or expense for the purpose of the Franchisee’s profit and loss account;

“Count Equipment”

means any load-weigh, infrared, CCTV or other type of equipment as may from time to time be installed on any train in the Train Fleet for the purposes of (amongst other things) passenger counting, including that specified in paragraph 3 of Schedule 1.5 (*Information about Passengers*);

“COVID-19 Guidance and Regulation”

has the meaning given to it paragraph 1 of Schedule 8.1B (*Performance Payments*);

“CPAY”

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

“CPAY Agreement”

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

“Creating”

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

“CRM Data”

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

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

“CRM Data Obligations”

has the meaning given to it in paragraph 4.4 of Schedule 1.5;

“CRM System”

means any system (whether a Computer System or otherwise) for the collection of CRM Data and/or onto which CRM Data is input, processed and/or held as

such system may be amended or altered from time to time;

"CRP Amount"	means the sum of [REDACTED²] (Indexed) (reduced pro-rata in respect of any Franchisee Year of less than three hundred and sixty five (365) days);
"Cross Country Railway Brand"	has the meaning given to it in paragraph 4.1 of Schedule 14.2 (<i>Maintenance of Operating Assets and Branding</i>);
"Customer and Stakeholder Engagement Strategy" or "CSES"	means the Customer and Stakeholder Engagement Strategy in the agreed terms marked CSES and any replacement Customer and Stakeholder Engagement Strategy revised in accordance with paragraphs 9.2-9.4 (<i>Customer and Stakeholder Engagement Strategy</i>) of Schedule 7.2 (<i>Customer Experience and Engagement</i>);
"Customer Experience Performance Payment" or "CEPP"	has the meaning given to it paragraph 1 of Schedule 8.1B (<i>Performance Payments</i>);
"Customer Information Team"	has the meaning given to it in paragraph 2.1 (<i>Definitions</i>) of Part 1 (<i>Previous Franchisee's Committed Obligations</i>) of Schedule 6.1 (<i>Franchise Specific Obligations</i>);
"Customer Report"	means a report in the format and providing the information specified in the Customer and Stakeholder Engagement Strategy published in accordance with paragraph 10.1 (<i>Customer Report</i>) of Schedule 7.2 (<i>Customer Experience and Engagement</i>);
"Customer Service Quality Inspection"	has the meaning given to it in paragraph 2.1 of Schedule 7.3 (<i>Service Quality Regime</i>);
"Cyber Information Sharing Platform"	has the meaning given to it in paragraph 17.1 of Schedule 13.1 (<i>Rail Industry Initiatives and Co-operation</i>);
"Cyber Security Information Sharing Strategy" or "CSISS"	has the meaning given to it in paragraph 17.1 of Schedule 13.1 (<i>Rail Industry Initiatives and Co-operation</i>);
"D&I Annual Report"	means a report produced by the Franchisee developed in accordance with paragraph 9B.3(e) of Schedule 13.1 (<i>Rail Industry Initiatives and Co-operation</i>) in respect of the previous twelve (12) months or, if shorter, the period since the Start Date;

² 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

“D&I Annual Reporting Date”

means the date on which the Franchisee must provide the D&I Annual Report to the Secretary of State as stated in the D&I Strategy, provided that if this date, in any Franchisee Year, occurs after the expiry of the Franchise Period then the D&I Annual Reporting Date shall be one (1) month before the expiry of the Franchise Period;

“D&I Champion”

means the director or senior executive that is accountable and responsible for implementing the D&I Strategy and ensuring that the Franchisee complies with its obligations relating to diversity and inclusion (excluding the obligations in paragraph 9B.4));

“D&I Characteristics KPIs”

means the KPIs set out in the Franchisee’s D&I Strategy used to assess the impact of the Franchisee’s initiatives on diversity at different levels of the workforce and in connection with different characteristics (including gender, age, ethnicity and disability) compared to the region and/or nationally;

“D&I Improvement Plan”

has the meaning given to it in paragraph 9B.7 (Improvement and Remedial Plans) of Schedule 13.1 (Rail Industry Initiatives and Co-operation);

“D&I Initiatives KPIs”

means the KPIs set out in the Franchisee’s D&I Strategy used to measure its performance against diversity initiatives and policies, which may include KPIs along the following lines:

- (a) the number of positive action initiatives implemented and maintained by the Franchisee;
- (b) the number of adverts in targeted publications;
- (c) membership of diversity and inclusion networks and forums;
- (d) the percentage of staff trained annually in diversity and inclusion;
- (e) the number of line managers completing diversity and inclusion training;
- (f) the number of members of the board of directors completing diversity and inclusion training; and
- (g) the number of diversity and inclusion training sessions;

“D&I Strategy”	means the Franchisee’s diversity and inclusion strategy developed in accordance with paragraph 9B.1 of Schedule 13.1 (Rail Industry Initiatives and Co-operation) (substantially in the form set out in Appendix 2 (D&I Strategy Framework) to Schedule 13.1 (Rail Industry Initiatives and Co-operation)) and references to the D&I Strategy shall include the Approved D&I Strategy
“Dataset”	means the data specified in Appendix 1 (<i>Environmental Information</i>) to Schedule 11.2 (<i>Management Information</i>) as the same may be amended from time to time by the Secretary of State (acting reasonably);
“Data Protection Act”	means the Data Protection Act 2018;
“Data Protection Legislation”	means all Laws relating to data protection, the Processing of Personal Data and privacy in force from time to time including the Data Protection Act 2018, (for so long as and to the extent that the law of the European Union has legal effect in the United Kingdom) the GDPR, and, to extent that they are applicable, the Privacy and Electronic Communications (EC Directive) Regulations 2003 (as may be amended by the proposed Regulation on Privacy and Electronic Communications);
“Data Subject”	has the meaning given to it in the Data Protection Legislation;
“Data Site Information”	has the meaning given to it in paragraph 3.1 (<i>Data Site Information</i>) of Schedule 15.1 (<i>Reletting Provisions</i>);
“Data Site Monitor and Index” or “DSMI”	has the meaning given to it in paragraph 3.1 (<i>Data Site Information</i>) of Schedule 15.1 (<i>Reletting Provisions</i>);
“Default Performance Level”	means, in relation to a Benchmark for any Reporting Period, the number set out in the relevant Column of the Enforcement Cancellation Benchmark Table, Enforcement TOC Minute Delay Benchmark Table and Enforcement Short Formation Benchmark Table to Schedule 7.1 (<i>Operational Performance</i>) and in the row of that table for that Reporting Period;
“Delay Attribution Principles and Rules”	means the version of the document known as the Delay Attribution Principles and Rules referenced in the Network Code;
“Delayed Cascade Mitigation Plan”	has the meaning given to it in paragraph 3.9 of Schedule 2.2 (<i>Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases</i>);

“Departure Station”	has the meaning given to it in paragraph 2.2 of Appendix 2 (<i>Accessible Transport Arrangements</i>) to Schedule 4 (<i>Accessibility and Inclusivity</i>);
“Depot”	means a depot in respect of which the Franchisee has entered into a Depot Lease;
“Depot Access Conditions”	has the meaning given to it in the relevant Access Agreement to which it relates;
“Depot Lease” or “DL”	means: <ul style="list-style-type: none"> (a) NOT USED; or (b) any lease of a depot in relation to which the Franchisee becomes the Facility Owner at any time during the Franchise Period;
“Derivative Output”	means Intellectual Property Rights that are derived from or generated by the RPC Database or the Preliminary Database when querying such database (which includes, but is not limited to, the format of all reports and analysis);
“Designated CO Primary Franchise Assets”	has the meaning given to it in paragraph 9.1 (<i>Designation of Assets comprised in COs as Primary Franchise Assets</i>) of Part 2 (<i>Special Terms related to the Committed Obligations</i>) to Schedule 6.2 (<i>Committed Obligations</i>);
“Designated Employer”	has the meaning given to it in the Pension Trust;
“Destination Station”	has the meaning given to it in paragraph 2.2 of Appendix 2 (<i>Accessible Transport Arrangements</i>) to Schedule 4 (<i>Accessibility and Inclusivity</i>);
“Devolved Body”	has the meaning given to it in paragraph 2.1 of Schedule 7.3 (<i>Service Quality Regime</i>);
“Direct Agreement”	means any agreement made, or to be made, from time to time between the Secretary of State and the counterparty of a Key Contract in relation to such Key Contract, including any agreement entered into by the Secretary of State under Schedule 14.3 (<i>Key Contracts</i>);
“Direct Award Collateral Agreement”	means the agreement between the Secretary of State and the Franchisee regulating the rights and obligations of the Parties in the event that a legal challenge is successfully raised as a result of the entering into of this Agreement;
“Disabled Person”	is a reference to a person who has a disability as defined in the EA;

“Disabled Persons Transport Advisory Committee”

means the committee with that name established under section 125 of the Transport Act 1985 and its statutory successors;

“Disallowable Costs”

means any Costs or Capital Expenditure which are described within Appendix 1 (*Disallowable Costs*) to Schedule 8.1A (*Franchise Payments*) save that such Costs or Capital Expenditure shall not be considered “Disallowable Costs” where such Costs or Capital Expenditure are expressly included within the Budget, up to the amount so specified in the Budget for that Cost or Capital Expenditure provided that the inclusion of any such Costs or Capital Expenditure in a Budget on one (1) occasion shall not of itself constitute an acceptance that it will be reasonable for any equivalent or similar Cost or Capital Expenditure to be included in a revised Budget;

“Discount Card”

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

“Discount Fare Scheme”

has the meaning given to it in paragraph 3 of Appendix 1 (*List of Transport, Travel and Other Schemes*) to Schedule 2.5 (*Transport, Travel and Other Schemes*);

“Dispute Handling Plan”

has the meaning given to it in paragraph 1.1 of Part 2 of Schedule 6.7 (*Co-Operation and Industrial Relations*);

“Dispute Handling Policy”

has the meaning given to it in paragraph 1.1 of Part 2 of Schedule 6.7 (*Co-Operation and Industrial Relations*);

“Dispute Resolution Rules”

means the procedures for the resolution of disputes known as **“The Railway Industry Dispute Resolution Rules”**, as amended from time to time in accordance with the terms thereof. The rules are available at <http://accessdisputesrail.org/RIDR/RIDR Rules.pdf>(or such other applicable web address that is adopted from time to time);

“Disputed Cancellation”

means a Passenger Service:

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

in either case, in circumstances where attribution of responsibility for the same is, at the relevant time, in dispute between Network Rail and the Franchisee pursuant to the Track Access Agreement;

"Disputed Partial Cancellation"	means a Passenger Service which is included in the Enforcement Plan of the Day and which: <ul style="list-style-type: none"> (a) misses a stop; or (b) completes fifty per cent (50%) or more, but less than one hundred per cent (100%) of its scheduled mileage as prescribed in the Enforcement Plan of the Day, <p>in either case, in circumstances where attribution of responsibility for the same is, at the relevant time, in dispute between Network Rail and the Franchisee pursuant to the Track Access Agreement;</p>
"DOTAS"	has the meaning given to it in paragraph 6.3 of Schedule 12 (<i>Financial Covenants and Bonds</i>);
"DRACAS"	has the meaning given to it in paragraph 5.1 of Part 3 (<i>Franchise Specific Obligations</i>) of Schedule 6.1 (<i>Franchise Specific Obligations</i>);
"Draft Action Plan"	has the meaning given to it in paragraph 1.1 of Schedule 7.1 (<i>Operational Performance</i>);
"Draft Marketing Plan"	has the meaning given to it in paragraph 1.1 of Schedule 6.5 (<i>Additional Operating Contract Obligations</i>);
"EA"	means the Equality Act 2010;
"East West Rail Scheme"	means a scheme to re-establish a rail link between Cambridge and Oxford to improve connections between East Anglia and central, southern and western England;
"EEA state"	has the meaning given to it in clause 14.9 (<i>Non-Discrimination</i>);
"Efficient Operator"	means a notional train operator, having the same commercial, regulatory and operational arrangements as the Franchisee and being subject to the same operational circumstances, which is a party to a franchise agreement in equivalent terms to the Franchise Agreement which complies with its obligations under such franchise agreement and the Licences in a timely, efficient and economical manner and with the degree of skill, diligence, prudence and foresight which can be expected from a skilled and experienced train operator so that in this context costs are minimised and revenues maximised to the greatest extent reasonably practicable;
"Electricity Shore Supply"	has the meaning given to it in paragraph 18.1 of Part 1 (<i>Committed Obligations</i>) of Schedule 6.2 (<i>Committed Obligations</i>);

"EMA"	means the emergency measures agreement that amended the terms of the Previous Franchise Agreement;
"EMA Start Date"	means the date that the EMA took effect, being 1 April 2020;
"Emergency Events"	has the meaning given to it in paragraph 1(e) of Schedule 10.3 (<i>Force Majeure and Business Continuity</i>);
"Emergency Working Capital Payment"	has the meaning given to it in paragraph 1A of Schedule 8.1A (<i>Franchise Payments</i>);
"Employment Agreement"	has the meaning given to it in paragraph 1.1 of Part 2 of Schedule 6.7 (<i>Co-Operation and Industrial Relations</i>);
"Employment Policy Framework"	has the meaning given to it in paragraph 1.1 of Part 2 of Schedule 6.7 (<i>Co-Operation and Industrial Relations</i>);
"EMV"	has the meaning given to it in paragraph 1.1 of Schedule 5.9 (<i>Smart Ticketing</i>);
"Enduring Branding"	has the meaning given to it in paragraph 4.1 of Schedule 14.2 (<i>Maintenance of Operating Assets and Branding</i>);
"Enforcement Benchmark"	has the meaning given to it in paragraph 1.1 of Schedule 7.1 (<i>Operational Performance</i>);
"Enforcement Plan of the Day"	<p>means the Plan of the Day except for any:</p> <ul style="list-style-type: none"> (a) additions to such Plan of the Day of any railway passenger services which are not included in the Timetable; (b) omissions from such Plan of the Day of any Passenger Services included in the Timetable; and/or (c) rescheduling in such Plan of the Day of any Passenger Services from their scheduling in the Timetable, <p>in each case:</p> <ul style="list-style-type: none"> (iii) as proposed by the Franchisee in breach of its obligations in paragraph 4 of Schedule 1.2 (<i>Operating Obligations</i>); or (ii) as agreed by the Franchisee in breach of its obligations in paragraph 3 of Schedule 1.2 (<i>Operating Obligations</i>);

“Enforcement Short Formation Benchmark”	has the meaning given to it in paragraph 1.1 of Schedule 7.1 (<i>Operational Performance</i>);
“Enforcement Short Formation Benchmark Table”	has the meaning given to it in paragraph 1.1 of Schedule 7.1 (<i>Operational Performance</i>);
“Enforcement TOC on Self Cancellations Benchmark”	has the meaning given to it in paragraph 1.1 of Schedule 7.1 (<i>Operational Performance</i>);
“Enforcement TOC on Self Cancellations Benchmark Table”	has the meaning given to it in paragraph 1.1 of Schedule 7.1 (<i>Operational Performance</i>);
“Enforcement TOC Minute Delay Benchmark”	has the meaning given to it in paragraph 1.1 of Schedule 7.1 (<i>Operational Performance</i>);
“Enforcement TOC Minute Delay Benchmark Table”	has the meaning given to it in paragraph 1.1 of Schedule 7.1 (<i>Operational Performance</i>);
“Enhanced Disability Awareness Training”	means training compliant with the requirements set out in section 4, paragraph B6 of the Accessible Travel Policy Guidance;
“Enhanced Fee Band Performance Level”	has the meaning given to it in paragraph 1.1 of Schedule 7.1 (<i>Operational Performance</i>);
“Environment Manager”	has the meaning given to it in paragraph 2.1 (<i>Definitions</i>) of Part 1 (<i>Previous Franchisee's Committed Obligations</i>) of Schedule 6.1 (<i>Franchise Specific Obligations</i>);
“Environmental Data Collection Plan”	has the meaning given to it in paragraph 15.1(a)(iii) of Schedule 11.2 (<i>Management Information</i>);
“Environmental Impact Monitoring Audit”	has the meaning given to it in paragraph 15.2(b) of Schedule 11.2 (<i>Management Information</i>);
“Environmental Impact Monitoring Report”	has the meaning given to it in paragraph 15.2(a) of Schedule 11.2 (<i>Management Information</i>);
“Environmental Information Regulations”	means the Environmental Information Regulations 2004 together with any guidance and/or codes of practice issued by the Information Commissioner or any relevant Central Government Body in relation to such Regulations;
“Equivalent Fare”	has the meaning given to it in paragraph 6.1 of Schedule 5.7 (<i>Changes to Fares and Fares Regulation</i>);
“Equivalent Flow”	has the meaning given to it in paragraph 6.1(b) of Schedule 5.7 (<i>Changes to Fares and Fares Regulation</i>);
“ERTMS”	means the European Rail Traffic Management System;

“Escrow Documents”	means those documents and other items referred to in paragraph 1.1 of Schedule 9.2 (<i>Identity of the Financial Model (Escrow Documents)</i>);
“ETCS”	has the meaning given to it in paragraph 5.1 of Part 3 (<i>Franchise Specific Obligations</i>) of Schedule 6.1 (<i>Franchise Specific Obligations</i>);
“EU Merger Regulation”	has the meaning given to it in clause 15.2 (a) (<i>Competition</i>);
“Evening Peak”	means, in relation to any Passenger Service, the period between 1600 and 1859 (inclusive) during a Weekday or such other continuous three hour period between 1200 and 2359 (inclusive) as the Secretary of State may specify from time to time;
“Evening Peak Service”	means a Passenger Service which departs from Birmingham New Street Station in the Evening Peak;
“Event of Default”	means any of the events set out in paragraph 1 (<i>Definition of Events of Default</i>) of Schedule 10.2 (<i>Events of Default and Termination Events</i>);
“Event Steering Groups”	has the meaning given to it in paragraph 1A. of Part 1 of Schedule 6.7 (<i>Co-Operation and Industrial Relations</i>);
“Excluded Data”	has the meaning given to it in paragraph 15.1(a)(i) (<i>Environmental Information</i>) of Schedule 11.2 (<i>Management Information</i>);
“Expected Fee Band Performance Level”	has the meaning given to it in paragraph 1.1 of Schedule 7.1 (<i>Operational Performance</i>);
“Expenses Policy” or “EP”	means the Franchisee’s policy in respect of expenses in the agreed terms;
“Expiry Date”	means the later of: <ul style="list-style-type: none"> (a) 01:59 on 15 October 2023; or (b) NOT USED; (c) any such later date to which the Franchise Agreement is continued in accordance with clause 5.2 (<i>Additional Reporting Periods</i>);
“Facilitation Fee”	has the meaning given to it in clause 8.4 (<i>Change of Control and Facilitation Fee</i>);
“Facility Owner”	has the meaning given to the term facility owner in section 17(6) of the Act;
“Fare”	means: <ul style="list-style-type: none"> (a) the right, exercisable against one or more Train Operators, subject to any applicable

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

- (b) for the purposes only of Schedule 5.3 (*Allocation of Fares to Fares Baskets*) to Schedule 5.8 (*Fares Regulation Information and Monitoring*) (inclusive) and the definitions of Commuter Fare, Protected Fare, Return Fare, Single Fare, Protected Weekly Season Ticket, Protected Return Fare and paragraph (b) of the definition of Season Ticket Fare, a Fare as defined under paragraph (a) that is:
 - (i) valid for a journey or journeys on the Passenger Services included in the Timetable or other railway passenger services which are required to be included in another relevant Train Operator's passenger timetable by the Secretary of State;
 - (ii) sold under the Travelcard Agreement; or
 - (iii) a Cross London Ticket (as defined in the Through Ticketing (Non Travelcard) Agreement); or
 - (iv) sold under the Pay As You Go Agreement utilising TTL smart media as defined in such agreement;

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

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

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

"Fares Plan" means the Initial Fares Plan or any Annual Fares Plan (as the context requires), such Annual Fares Plan being as delivered to the Franchisee to the Secretary of State in each Franchisee Year as required by paragraph 10.3 of Schedule 6.5 (*Additional Operating Contract Obligations*);

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

"Fares, Ticketing and Retail Trials"

has the meaning given to it in paragraph 1.1 of Schedule 5.10 (*Trials*);

"Feedback"

has the meaning given to it in paragraph 2.1 (*Definitions*) of Part 1 (*Previous Franchisee's Committed Obligations*) of Schedule 6.1 (*Franchise Specific Obligations*);

"Feedback Report"

has the meaning given to it in paragraph 2.1 (*Definitions*) of Part 1 (*Previous Franchisee's Committed Obligations*) of Schedule 6.1 (*Franchise Specific Obligations*);

"Final Balance Sheet"

means the balance sheet included in the Franchisee's Annual Audited Accounts for the last Franchisee Year of the Franchise Period (provided pursuant to paragraph 9.4(b) of Schedule 11.2 (*Management Information*)) in which:-

- (a) the only amounts owed to the Franchisee are amounts owed by the Secretary of State and any incidental debtor which the Secretary of State may determine for this purpose; and
- (b) the only creditors of the Franchisee are the Secretary of State, the Parent and any incidental creditor which the Secretary of State may determine for this purpose;

"Final Franchisee Year"

means the Franchisee Year ending on the last day of the Franchise Period;

"Financial Action Plan"

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

"Financial and Commercial Data"

has the meaning given to it in paragraph 1A. of Part 1 of Schedule 6.7 (*Co-Operation and Industrial Relations*);

"Financial Conduct Authority"

means the UK Financial Conduct Authority of 25 The North Colonnade, Canary Wharf, London E14 5HS and with company registered number 01920623 or such other regulatory body which may succeed or replace it from time to time;

"Financial Formats" or "FF"

means the Franchisee's financial formats in the agreed terms marked "**FF**";

"Financial Measures Performance Payment"

has the meaning given to it paragraph 1 of Schedule 8.1B (*Performance Payments*);

"Financial Model" or "FM"

means the Franchisee's financial model in the agreed terms marked "**FM**" deposited with the Secretary of State on the date of the Franchise Agreement in

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

"First Extension Period"	has the meaning given to it in clause 5.2 (a);
"First Quarter"	has the meaning given to it in paragraph 1A of Schedule 8.1A (<i>Franchise Payments</i>);
"First Reporting Period"	has the meaning given to it in paragraph 1A of Schedule 8.1A (<i>Franchise Payments</i>);
"First Working Capital Payment" or "FWCP"	has the meaning given to it in paragraph 1A of Schedule 8.1A (<i>Franchise Payments</i>);
"Fixed Fee" or "FF"	has the meaning given to it in paragraph 1A of Schedule 8.1A (<i>Franchise Payments</i>);
"Fixed Fee and Performance Payment" or "FFPP"	means the Franchise Payment Component calculated in accordance with paragraph 15 of Schedule 8.1A (<i>Franchise Payments</i>) comprising of the Fixed Fee and the Performance Payment;
"Floor Cash Position"	means [REDACTED ³](excluding the value of Season Ticket suspense liabilities) or such other value as the Secretary of State may determine in accordance with paragraph 12.8 of Schedule 8.1A (<i>Franchise Payments</i>);
"Forecast Closing Cash Position"	means, with respect to a Reporting Period, the Franchisee's forecast working capital position (excluding the Franchise Payment to be paid in that Reporting Period and excluding the value of Season Ticket suspense liabilities) as at the last day of that Reporting Period and taking into account the Franchisee's latest Management Accounts;
"Forecasted Revenue"	means the Revenue forecasted to be generated by the Franchisee in each Reporting Period and specified in the then current Budget;
"Flow"	has the meaning given to it in the Ticketing and Settlement Agreement;
"FNPO Network"	means the Freight and National Passenger Operators network;
"Force Majeure Event"	means any of the events described as such in paragraph 1 of Schedule 10.3 (<i>Force Majeure and Business Continuity</i>) where the conditions specified in paragraph 2 of Schedule 10.3 (<i>Force Majeure and Business Continuity</i>) are satisfied;

³ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

"Forecast Passenger Demand"

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

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

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

"Franchise"

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

"Franchise Agreement"

means this Agreement and the Direct Award Collateral Agreement which together constitute a single agreement and which is a **"franchise agreement"** for the purposes of the Act;

"Franchise Assets"

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

"Franchise Data Breach"

means any Personal Data Breach or any infringement of the rights afforded to a Data Subject under the Data Protection Legislation relating in whole or in part to CRM Data and/or Franchise Employees which is notified to or otherwise comes to the attention of the Information Commissioner (defined below) whether by way of the Franchisee in its capacity as Data Controller, by any affected Data Subject, by any other person whatsoever, or in any other way, and which results in the Information Commissioner having any material engagement with the Franchisee in respect of the same (which shall mean any correspondence, request, direction or other form of engagement with the Franchisee in connection with a Personal Data Breach or the infringement of rights other than:

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

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

“Franchise Documents” means:

- (a) this Agreement;
- (b) **NOT USED;**
- (c) the Direct Award Collateral Agreement;
- (d) the Funding Deed;
- (e) the Train Service Requirement; and
- (f) any other agreement signed by the Franchisee at the time of the award of the Franchise which is in the possession of the Secretary of State and which is notified by the Secretary of State to the Franchisee as being required for publication;

“Franchise Employee” means:

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

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

“Franchise Manager”	means a person appointed from time to time by the Secretary of State to fulfil certain duties including to manage the Franchise Agreement on behalf of the Secretary of State and to monitor the Franchisee's performance of its obligations under the Franchise Agreement;
“Franchise Payment”	means, in relation to any Reporting Period, the amount determined in accordance with paragraph 1.1 of Schedule 8.1A (<i>Franchise Payments</i>);
“Franchise Payment Component”	has the meaning given to it in paragraph 1A of Schedule 8.1A (<i>Franchise Payments</i>);
“Franchise Performance Meeting”	means a meeting between the Secretary of State and the Franchisee to be held in accordance with paragraph 1 of Schedule 11.1 (<i>Franchise Performance Meetings</i>);
“Franchise Period”	means the period commencing on the Start Date and ending on the Expiry Date or, if earlier, the date of termination of the Franchise Agreement pursuant to Schedule 10 (<i>Remedies, Events of Default and Termination Events</i>);
“Franchise Sections”	has the meaning given to it in paragraph 2 of Schedule 16.1 (<i>Railways Pension Scheme</i>);
“Franchise Section Rules”	has the meaning given to it in paragraph 4.2(a) of Schedule 16.1 (<i>Railways Pension Scheme</i>);
“Franchise Services”	means such of the Passenger Services, the Light Maintenance Services and the Ancillary Services as the Franchisee may provide or operate from time to time, including any of such services as the Franchisee may delegate or subcontract or otherwise secure through any other person from time to time in accordance with the Franchise Agreement;
“Franchise Term”	means the period commencing on the Start Date and expiring on the Expiry Date;
“Franchisee Access Station”	means any station at which the Passenger Services call (other than any Station);

“Franchisee FI Contact”

has the meaning given to it in paragraph 1A. of Part 1 of Schedule 6.7 (*Co-Operation and Industrial Relations*);

“Franchisee Initiatives”

has the meaning given to it in paragraph 1A. of Part 1 of Schedule 6.7 (*Co-Operation and Industrial Relations*);

“Franchisee WRR Contact”

means a Franchise Employee with appropriate seniority to oversee and facilitate the Franchisee’s compliance with its obligations pursuant to paragraph 5A of Schedule 13.1 (*Rail Industry Initiatives and Co-Operation*);

“Franchisee Year”

means:

- (a) for the purposes of this Franchise Agreement other than Schedule 8.1A (Franchise Payments) and Schedule 11.2 (Management Information) and subject to limb (b) of this definition, any period of twelve (12) months during the Franchise Period, beginning on 1 April and ending on 31 March, except that the first and last Franchise Years may be for a period of less than twelve (12) months and the first Franchise Year shall begin on the Start Date and the last Franchise Year shall end on the last day of the Franchise Period;
- (b) for the purposes only of Schedule 8.1A (Franchise Payments) and Schedule 11.2 (Management Information) and any other provision to the extent required by the context, any period of twelve (12) months, beginning on 1 April and ending on 31 March, except that the first and last Franchise Years may be for a period of less than twelve (12) months and the first Franchise Year shall begin on the Start Date and the last Franchise Year shall end on the last day of the Reporting Period in which the last Franchise Payment required to be made in accordance with Schedule 8.1A is so made;

“Franchisee’s Procurement Rules” or “FPR”

means Franchisee’s policy in respect of the procurement of goods and services in the agreed terms;

“Freedom of Information Act” or “FOIA”

means the Freedom of Information Act 2000 together with any guidance and/or codes of practice issued by the Information Commissioner or any relevant Central Government Body in relation to the Freedom of Information Act 2000;

“FTR Co-operation Requirement”

has the meaning given to it in paragraph 1.1 of Schedule 5.11 (*Fares, Ticketing and Retail Reform*);

"Funding Deed"	means the deed made between the Secretary of State, the Franchisee and the Guarantor dated on or about the date of the Franchise Agreement specifying arrangements relating to the funding for the Franchisee by the Guarantor and giving rights to the Secretary of State in relation to such funding;
"Further Industry Initiatives"	has the meaning given to it in paragraph 1A. of Part 1 of Schedule 6.7 (<i>Co-Operation and Industrial Relations</i>);
"Future Initiative"	has the meaning given to it in paragraph 1A. of Part 1 of Schedule 6.7 (<i>Co-Operation and Industrial Relations</i>);
"Future Initiative Notice" or "FIN"	has the meaning given to it in paragraph 1A. of Part 1 of Schedule 6.7 (<i>Co-Operation and Industrial Relations</i>);
"GAAP"	means generally accepted accounting principles in the United Kingdom, as derived from and including the accounting requirements of the Companies Act 2006, 'Financial Reporting Standards 100, 101 and 102', abstracts issued by the Urgent Issues Task Force of the Accounting Standards Board and, where appropriate, International Financial Reporting Standards and the listing rules of the Financial Conduct Authority, in each case, as amended from time to time;
"GDPR"	means the General Data Protection Regulation (Regulation (EU) 2016/679);
"General Anti-Abuse Rule"	has the meaning given to it in paragraph 6.3 of Schedule 12 (<i>Financial Covenants and Bonds</i>);
"Geographical Area"	means that area of Great Britain bounded by a reasonably drawn line running through the railway stations at the following places: <ul style="list-style-type: none"> (a) Aberdeen; (b) Edinburgh; (c) Dunbar; (d) Newcastle; (e) York; (f) Doncaster; (g) Sheffield; (h) Nottingham; (i) Peterborough; (j) March; (k) Ely; (l) Stansted Airport; (m) March; (n) Stamford; (o) Leicester; (p) Coventry;

(q) Banbury;
 (r) Oxford;
 (s) Reading;
 (t) Guildford;
 (u) Basingstoke;
 (v) Southampton Central;
 (w) Brockenhurst;
 (x) Bournemouth;
 (y) Southampton Airport Parkway;
 (z) Reading;
 (aa) Bath Spa;
 (bb) Taunton;
 (cc) Exeter St David's;
 (dd) Paignton;
 (ee) Plymouth;
 (ff) Penzance;
 (gg) Newquay;
 (hh) Weston-super-Mare;
 (ii) Cardiff Central;
 (jj) Gloucester;
 (kk) Cheltenham Spa;
 (ll) Birmingham New Street;
 (mm) Wolverhampton;
 (nn) Stafford;
 (oo) Crewe;
 (pp) Stockport;
 (qq) Manchester Piccadilly;
 (rr) Macclesfield;
 (ss) Stoke-on-Trent;
 (tt) Stafford;
 (uu) Burton on Trent;
 (vv) Derby;
 (ww) Sheffield;
 (xx) Wakefield Westgate;
 (yy) Leeds;
 (zz) York;
 (aaa) Darlington;
 (bbb) Morpeth;
 (ccc) Edinburgh;
 (ddd) Motherwell;
 (eee) Glasgow Central;
 (fff) Kirkaldy;
 (ggg) Cupar;
 (hhh) Dundee;
 (iii) Aberdeen,

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

“Get Into Programme”

has the meaning given to it in paragraph 9A.1(a) of Schedule 13.1 (*Rail Industry Initiatives and Co-Operation*);

“Good and Efficient Operator”

means in the context of all other relevant provisions of this Agreement, a notional train operator:

- (a) having the same commercial, regulatory and operational arrangements as the Franchisee and being subject to the same operational circumstances;
- (b) which is a party to an agreement in equivalent terms to the Franchise Agreement, with performance targets and standards equivalent to those set out in Schedule 8.1B (Performance Payments) of the Franchise Agreement, which complies with its obligations under such agreement and the Licences in a timely, efficient and economical manner;
- (c) with the degree of skill, diligence, prudence and foresight which can be expected from a skilled and experienced train operator so that in this context costs and revenues are optimised in combination to the greatest extent reasonably practicable, adopting a reasonable balance in respect of short, medium and longer term consequences for the relevant franchise; and
- (d) without limiting (a) to (c), in the context of the winding down of the Franchisee’s affairs in the period following the end of the Franchise Period, a notional train operator as described in paragraphs (a) to (c), seeking to maximise the receipts from debtors and minimise costs and payments to creditors in the realisation of its assets and discharge of its liabilities so as to ensure the largest possible available sum for distribution to its shareholders within a reasonable time, following the end of the operational period of its Franchise Agreement, provided that the Secretary of State shall be entitled for the purpose of this provision by notice to the Franchisee from time to time to direct the period which is to be regarded as a reasonable period for this purpose;]

“Great Western Route Modernisation”

has the meaning given to it in paragraph 26.1 of Part 3 (*Franchise Specific Obligations*) of Schedule 6.1 (*Franchise Specific Obligations*);

“Gross Revenue”

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

"Guarantor"	has the meaning given to it under the Funding Deed;
"Halifax Abuse Principle"	has the meaning given to it in paragraph 6.3 of Schedule 12 (<i>Financial Covenants and Bonds</i>);
"Handover Package"	has the meaning giving to it in paragraph 1.1(a)(i) of Schedule 15.3 (<i>Handover Package</i>);
"High Speed Services"	means the Passenger Services which will use the HS2 Network for some part of their route and are operated by the high speed rolling stock;
"High Speed Start Date"	means the date on which the Passenger Services commence operation in accordance with the Integrated Services TSR;
"Hot Standby"	means any rolling stock vehicle specified in the Train Plan which: <ul style="list-style-type: none"> (a) is operationally ready to provide the Passenger Services in the Timetable; (b) is not already assigned to the delivery of any Passenger Service in the Timetable; and (c) will only be used to deliver such Passenger Services if: <ul style="list-style-type: none"> (i) a rolling stock vehicle scheduled to deliver such Passenger Services is unable to so deliver; and (ii) Actual Passenger Demand could only be met by the deployment in service of such rolling stock vehicle;
"HS2 Limited"	means High Speed Two (HS2) Limited, a company registered in England with registered number 06791686 whose registered office is at 2 Snowhill, Queensway, Birmingham, B4 6GA or such other entity as may be appointed infrastructure manager in relation to the HS2 Network from time to time;
"HS2 Network"	means the network in respect of which HS2 Limited is the Facility Owner;
"HS2 Project"	means the project for the construction and development of a high speed railway from London to Birmingham, Manchester and Leeds known as "HS2" or "High Speed 2" and all related infrastructure works including the enabling works at London Euston Station;
"HS2 Shadow Operator"	means the entity appointed by the Secretary of State to act as shadow operator for the development and delivery of High Speed Services, and the recast of conventional services associated with the introduction of the High Speed Services, being the

West Coast Partnership franchise operator or any successor shadow operator appointed by the Secretary of State from time to time;

"HS2 TSS Options Report"	has the meaning given to it in paragraph 13.3 of Schedule 13.1 (<i>Rail Industry Initiatives and Co-operation</i>);
"Incident Response Plan"	has the meaning given to it in paragraph 16.1 of Schedule 13.1 (<i>Rail Industry Initiatives and Co-operation</i>);
"Improvement Initiatives"	has the meaning given to it in paragraph 1A. of Part 1 of Schedule 6.7 (<i>Co-Operation and Industrial Relations</i>);
"Incremental Output Statement Charge"	means the charge to which that description is commonly given, first introduced into Relevant Agreements in April 2001;
"Independent Service Quality Audit"	has the meaning given to it in paragraph 2.1 of Schedule 7.3 (<i>Service Quality Regime</i>);
"Independent Station Access Conditions"	has the meaning given to it in the Access Agreement to which it relates;
"Indexed"	means indexation in accordance with paragraph 17.2 of Schedule 8.1A (Franchise Payments) and "Indexation" shall be construed accordingly;
"Industrial Action"	means any concerted action taken in connection with the employment of any employees of the Franchisee or of any of the employees of persons listed in paragraphs 1(f)(i) to 1(f)(iii) of Schedule 10.3 (<i>Force Majeure and Business Continuity</i>) (whether or not that action involves any breach of such employees' conditions of employment, and including any action taken in furtherance of a dispute, or with a view to improving the terms of employment of the relevant employees or by way of support for any other person) subject always, in the case of any unofficial industrial action, to the Franchisee being able to demonstrate the occurrence of such unofficial industrial action to the reasonable satisfaction of the Secretary of State;
"Industry Schemes"	has the meaning given to it in paragraph 4 of Schedule 13.1 (<i>Rail Industry Initiatives and Co-operation</i>);
"Information Commissioner"	has the same meaning as "Commissioner" in section 3 of the Data Protection Act;
"Infrastructure Manager"	means: Network Rail;
"Infrastructure Project"	has the meaning given in paragraph 9.1 of Part 3 (<i>Franchise Specific Obligations</i>) of Schedule 6.1 (<i>Franchise Specific Obligations</i>);

“Initial Budget”	means together: (a) the periodic cost and revenues budget; and (b) the periodic capex budget, in the agreed terms as at the Start Date;
“Initial Business Plan”	means the business plan to be provided by the Franchisee to the Secretary of State as described in paragraph 10.1 of Schedule 11.2 (<i>Management Information</i>);
“Initial Dataset”	has the meaning given in paragraph 15.1(b) of Schedule 11.2 (<i>Management Information</i>);
“Initial Fares Plan”	means the fares plan to be provided by the Franchisee to the Secretary of State in accordance with the requirements of Paragraph 10.3 of Schedule 6.5 (<i>Additional Operating Contract Obligations</i>);
“Initial Performance Bond”	means the performance bond issued or to be issued on or prior to the date of this Agreement by a Bond Provider to the Secretary of State which complies with the requirements of paragraph 4.2 of Schedule 12 (<i>Financial Covenants and Bonds</i>);
“Initial Permanent Fare”	has the meaning given to it in the Ticketing and Settlement Agreement;
“Initial TOC on Self Cancellations Calculation”	has the meaning given to it in paragraph 1.1 of Schedule 7.1 (<i>Operational Performance</i>);
“Initial TOC Minute Delay Calculation”	has the meaning given to it in paragraph 1.1 of Schedule 7.1 (<i>Operational Performance</i>);
“In-Scope Matters”	has the meaning given to it in paragraph 1.1 of Part 2 of Schedule 6.7 (<i>Co-Operation and Industrial Relations</i>);
“Inspections”	has the meaning given to it in paragraph 5.1 of Schedule 15.1 (<i>Reletting Provisions</i>);
“Institute of Asset Management”	means The Institute of Asset Management, a company limited by guarantee, registered with company number 05056259 with registered office Woodlands Grange, Woodlands Lane, Bradley Stoke, Bristol, BS32 4JY or its successors;
“Integrated Control Centres Implementation Plan”	has the meaning given to it in paragraph 1A. of Part 1 of Schedule 6.7 (<i>Co-Operation and Industrial Relations</i>);
“Integrated Control Centres Initiative”	has the meaning given to it in paragraph 1A. of Part 1 of Schedule 6.7 (<i>Co-Operation and Industrial Relations</i>);

"Integrated Services TSRs"	means any train service requirement which requires the operation of High Speed Services as developed by the Secretary of State and provided to the HS2 Operator;
"Intellectual Property Rights"	means all intellectual and industrial property rights of any kind including (without limitation) patents, supplementary protection certificates, rights in Know-How, registered trademarks, registered designs, unregistered design rights, unregistered trademarks, trade names, logos, get-up, domain names, URLs and social media handles, rights to prevent passing off or unfair competition, copyright and related rights (whether in drawings, plans, specifications, designs and computer software or otherwise), moral rights, database rights, topography rights, any rights in any invention, discovery or process, and applications for and rights to apply for any of the foregoing, in each case in the United Kingdom and all other countries in the world and together with all renewals, extensions, continuations, divisions, reissues, re-examinations and substitutions;
"Interest Rate"	means a rate equivalent to two per cent (2%) per annum above the base lending rate published by Royal Bank of Scotland plc (or such other bank as the Secretary of State may, after consultation with the Franchisee, determine from time to time) during any period in which an amount payable under the Franchise Agreement remains unpaid;
"Inter-Operator Schemes"	means the list of schemes in paragraph 4 of Appendix 1 (<i>List of Transport, Travel and Other Schemes</i>) to Schedule 2.5 (<i>Transport, Travel and Other Schemes</i>);
"International Organisation for Standardisation"	means the international standard setting body known as "ISO" or any such successor body;
"Intervention"	has the meaning given to it in clause 15.1 (e) (<i>Competition</i>);
"ISO14001:2015"	means the standard that is set by the International Organisation for Standardisation which specifies requirements for an environmental management system to enable an organization to develop and implement a policy and objectives which takes into account legal requirements and other requirements to which the organization subscribes, and information about significant environmental aspects or any equivalent standard which is generally recognised as having replaced it;
"ISO50001:2011"	means the standard that is set by the International Organisation for Standardisation which specifies requirements for establishing, implementing,

maintaining and improving an energy management system, whose purpose is to enable an organization to follow a systematic approach in achieving continual improvement of energy performance, including energy efficiency, energy use and consumption or any equivalent standard which is generally recognised as having replaced it;

“ISO50001 Energy Review” means the Energy Review as defined in paragraph 4.4.3 of ISO50001:2011, or any same or similar review from an equivalent standard which is generally recognised as having replaced it;

“ISO55001:2014” means the standard that is produced by the International Organisation for Standardisation which specifies requirements for an asset management system within the context of the organisation or any equivalent Standard which is generally recognised as having replaced it;

“ISO 22301:2012” means the standard that is set by the International Organisation for Standardisation which specifies requirements for the development, implementation, operation, monitoring, review and maintenance of a business continuity planning process, or any equivalent standard which is generally recognised as having replaced it;

“ITSO Ltd” has the meaning given to it in paragraph 1.1 of Schedule 5.9 (*Smart Ticketing*);

“ITSO Specification” means the common specification issued by ITSO Ltd and which enables the use of interoperable Smart Media in transport and other areas;

“ITSO Certified Smart Media” means the contactless smartcards, devices or other media designed to hold fare and travel information with the monetary or other value encoded which have been certified by ITSO Ltd;

“ITSO Operating Licence” has the meaning given to it in paragraph 1.1 of Schedule 5.9 (*Smart Ticketing*);

“ITSO Smart Media Ticketing Scheme” has the meaning given to it in paragraph 1.1 of Schedule 5.9 (*Smart Ticketing*);

“Key Contacts List” means a list of the following Franchise Employees:

- (a) all directors (statutory or otherwise);
- (b) all managers with responsibility for a department/function within the Franchisee's business;
- (c) all managers in the operations, commercial, personnel and public affairs departments or in each case their nearest equivalents; and

(d) all Key Personnel,

which contains the name, office address, office telephone number, business mobile telephone number and a brief description of the person's role and responsibilities in the business;

“Key Contract”

means:

- (a) each agreement and contract listed in Appendix 1 (*List of Key Contracts*) to Schedule 14.3 (*Key Contracts*) as at the date of the Franchise Agreement; and
- (b) any other agreement, contract, licence or other arrangement to which the Franchisee is a party or under which the Franchisee is the beneficiary from time to time which is designated as such pursuant to Schedule 14.3 (*Key Contracts*),

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

“Key Personnel”

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

“Know-How”

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

“Law”

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

“Lead Operator”

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

“Legislation”

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

“Licences”

means such licences and/or statements of national regulatory provisions granted or to be granted under

applicable law as the Franchisee may be required from time to time to hold under the Act or under the Railway (Licensing of Railway Undertakings) Regulations 2005 in order to provide or operate the Franchise Services;

“Licence Accessibility Obligations”

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

“Light Maintenance Service”

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

“Local Authority”

means:

- (a) in England, a county council, a district council, a unitary authority, a passenger transport executive, a London borough council, the common council of the City of London, or a council which is established under the Local Government Act 1992 and which is either an authority responsible for expenditure on public passenger transport services within the meaning of section 88 of the Transport Act 1985 or a local authority for the purposes of section 93 of the Transport Act 1985;
- (b) in Wales, a county council, a district council or a council which is established under the Local Government Act 1972 or the Local Government (Wales) Act 1994;
- (c) in Scotland, the Strathclyde Passenger Transport Executive, or a district council or a unitary authority which is established under the Local Government (Scotland) Act 1973 or the Local Government, etc. (Scotland) Act 1994;
- (d) in London, the Mayor of London and Transport for London established under the Greater London Authority Act 1999;
- (e) a combined authority created pursuant to the Local Democracy, Economic Development and Construction Act 2009;
- (f) any local enterprise partnership;
- (g) any other body or council replacing any of the above from time to time; and
- (h) any other body or instrument of local or regional government specified by the Secretary of State from time to time;

“Lock-up Period”	has the meaning given to it in paragraph 3.2 of Schedule 12 (<i>Financial Covenants and Bonds</i>);
“London Station”	means any station served by the Railway Passenger Services in the Zones and any Zone to or from which a passenger may travel from or to such station;
“Long Distance Route”	means any route which is not a Regional Route;
“Long Term Charge”	has the meaning given to it in the Station Access Conditions;
“Maintenance Contract”	means any contract or arrangement to which the Franchisee is a party, which includes the carrying out for the Franchisee of any maintenance work (including Light Maintenance Services) or service provision in respect of rolling stock vehicles used by the Franchisee in the provision of the Passenger Services or for the enforcement of warranties or other rights against a manufacturer in respect of any such rolling stock vehicles;
“Maintenance Cost Change”	has the meaning given to it paragraph 3.3(c) of Schedule 8.1B (<i>Performance Payments</i>);
“Major Flow Operator”	has the meaning given to it in the Ticketing and Settlement Agreement;
“Managed Station”	means any station used in connection with the provision of the Franchise Services where the Infrastructure Manager is the Facility Owner or becomes the Facility Owner during the Franchise Period;
“Managed Station Area”	means the premises comprising part or parts of a Managed Station to be occupied by the Franchisee on or after the Start Date and to be used for or in connection with the provision of the Franchise Services;
“Management Accounts”	means, in relation to any Reporting Period, the Franchisee's management accounts which: <ul style="list-style-type: none"> (a) comply with paragraph 9.5(a) of Schedule 11.2 (<i>Management Information</i>); and (b) are required to be delivered to the Secretary of State by the Franchisee in accordance with paragraphs 9.2(a) and 9.2(b) of Schedule 11.2 (<i>Management Information</i>);
“Mandate”	has the meaning given to it in paragraph 1.1 of Part 2 of Schedule 6.7 (<i>Co-Operation and Industrial Relations</i>);
“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;
"Marketing Plan"	has the meaning given to it in paragraph 1.1 of Schedule 6.5 (<i>Additional Operating Contract Obligations</i>);
"Marketing Team"	has the meaning given to it in paragraph 1.1 of Schedule 6.5 (<i>Additional Operating Contract Obligations</i>);
"Marketing Year"	has the meaning given to it in paragraph 1.1 of Schedule 6.5 (<i>Additional Operating Contract Obligations</i>);
"Material Discrepancies"	has the meaning given to it in paragraph 2.1 of Schedule 7.3 (<i>Service Quality Regime</i>);
"Maximum Performance Payment Amount"	has the meaning given to it paragraph 1 of Schedule 8.1B (<i>Performance Payments</i>);
"MCS Equipment"	has the meaning given to it in paragraph 2.1 (<i>Definitions</i>) of Part 1 (<i>Previous Franchisee's Committed Obligations</i>) of Schedule 6.1 (<i>Franchise Specific Obligations</i>);
"MCS External Connectivity"	has the meaning given to it in paragraph 2.1 (<i>Definitions</i>) of Part 1 (<i>Previous Franchisee's Committed Obligations</i>) of Schedule 6.1 (<i>Franchise Specific Obligations</i>);
"MCS Report"	has the meaning given to it in paragraph 2.1 (<i>Definitions</i>) of Part 1 (<i>Previous Franchisee's Committed Obligations</i>) of Schedule 6.1 (<i>Franchise Specific Obligations</i>);
"MCS Route Signal and Capacity Survey"	has the meaning given to it in paragraph 2.1 (<i>Definitions</i>) of Part 1 (<i>Previous Franchisee's Committed Obligations</i>) of Schedule 6.1 (<i>Franchise Specific Obligations</i>);
"Midlands Local Services"	means Passenger Services operating solely between: <ul style="list-style-type: none"> (a) Birmingham - Leicester; and/or (b) Birmingham - Nottingham, or as otherwise specified by the Secretary of State;
"Minimum Wi-Fi Service"	has the meaning given to it in paragraph 2.1 (<i>Definitions</i>) of Part 1 (<i>Previous Franchisee's Committed Obligations</i>) of Schedule 6.1 (<i>Franchise Specific Obligations</i>);
"Minister for Accessibility Issues"	means the minister responsible for, amongst other things, accessibility across all modes of transport, or

	a minister that takes accessibility issues in their portfolio (as the case may be);
“Minister of the Crown”	has the meaning given to it in section 8(1) of the Minister of the Crown Act 1975;
“Minutes Delay”	means the minutes of delay to the Passenger Services that are attributed to the Franchisee or the Infrastructure Manager (as the case may be) pursuant to the Track Access Agreement and disregarding any minutes of delay that are imputed to Passenger Services that were cancelled;
“Mobile Communication Services”	has the meaning given to it in paragraph 2.1 (<i>Definitions</i>) of Part 1 (<i>Previous Franchisee's Committed Obligations</i>) of Schedule 6.1 (<i>Franchise Specific Obligations</i>);
“Modernising Rail”	means the work in relation to modernising the retail of train tickets that is being developed pursuant to and in accordance with the ‘Memorandum of Understanding for Modernising Rail’ between the Secretary of State and the RDG dated 29 July 2020;
“MOIRA”	means the model which comprises the timetable/revenue tool used to provide inputs into the revenue model;
“Monthly Season Ticket”	means a Season Ticket Fare which is valid in Standard Class Accommodation from (and including) the day it first comes into effect until (but excluding) the day which falls one (1) month after such day;
“Morning Peak”	means, in relation to any Passenger Service, the period between 0700 and 0959 (inclusive) during a Weekday or such other continuous three hour period between 0600 and 1159 (inclusive) as the Secretary of State may specify from time to time;
“Morning Peak Service”	means a Passenger Service which arrives at Birmingham New Street Station in the Morning Peak;
“MyDay Mobile Application”	has the meaning given to it in paragraph 2.1 (<i>Definitions</i>) of Part 1 (<i>Previous Franchisee's Committed Obligations</i>) of Schedule 6.1 (<i>Franchise Specific Obligations</i>);
“Mystery Shopper Inspection”	has the meaning given to it paragraph 7.1 of Part 1 (<i>Committed Obligations</i>) of Schedule 6.2 (<i>Committed Obligations</i>);
“National Community Rail Steering Group”	means the National Community Rail Steering Group administered by the Department for Transport, or such successor organisation;

“National Cyber Security Centre”

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

“National Joint ROSCO Project”

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

“National Rail Enquiry Scheme”

means the telephone information scheme run by RDG, providing information to customers regarding rail journeys throughout the country;

“National Rail Passenger Survey”

means a passenger satisfaction survey in respect of the Franchise Services to be carried out by the Passengers' Council as described in paragraph 2 of Schedule 7.2 (*Customer Experience and Engagement*) and shall include any Alternative NRPS as referred to in paragraph 2.6 of Schedule 7.2 (*Customer Experience and Engagement*);

“National Rail Timetable”

means the passenger timetable published by Network Rail (currently twice per annum) specifying the timings and stopping patterns of all passenger railway services in Great Britain;

“Network Change”

has the meaning given to it in the Network Code;

“Network Code”

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

“NR”

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

“Network Rail”

means in respect of:

- (a) the network or any relevant facility (other than the HS2 Network):
 - (i) Network Rail Infrastructure Limited, a company registered in England with registered number 02904587 whose registered office is 1 Eversholt Street, London NW1 2DN; and
 - (ii) any successor in title to the network or any relevant railway facility; or

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

“Network Rail Asset Management Policy”

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

“Network Rail Cancellation”

means a Passenger Service:

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

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

“Network Rail Collateral Agreement” or “NRCA”

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

“Network Rail Data”

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

“Network Rail Partial Cancellation”

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

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

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

"Network Services Directorate of Network Rail"	has the meaning given to it in paragraph 1A. of Part 1 of Schedule 6.7 (<i>Co-Operation and Industrial Relations</i>);
"Network Rail's Traction Electricity Rules"	means the document entitled " <i>Traction Electricity Rules</i> " as published by the ORR;
"New Facilities"	has the meaning given to it in paragraph 2.1 of Schedule 7.3 (<i>Service Quality Regime</i>);
"New Insurance Arrangements"	has the meaning given to it in paragraph 2.4(b) of Schedule 2.2 (<i>Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases</i>);
"New Services"	has the meaning given to it in paragraph 2.1 of Schedule 7.3 (<i>Service Quality Regime</i>);
"New Station"	means: <ul style="list-style-type: none"> (a) a station not served by railway passenger services as at February 2003, but which has since that time been, or is subsequently, served by railway passenger services which have been, or are subsequently to be, included in the Timetable or in another relevant Train Operator's timetable; and/or (b) if the Secretary of State requires, a station, other than a Station, at which, with the consent of the Secretary of State (whether by amendment to the Franchise Agreement or otherwise) railway passenger services operated by the Franchisee call;
"New Revenue Incentive Measure"	has the meaning given to it paragraph 1 of Schedule 8.1B (<i>Performance Payments</i>);
"Newly Utilised Class 170"	has the meaning given to it paragraph 20.1 of Part 1 (<i>Committed Obligations</i>) of Schedule 6.2 (<i>Committed Obligations</i>);
"Nil Fee Band Performance Level"	has the meaning given to it in paragraph 1.1 of Schedule 7.1 (<i>Operational Performance</i>);
"NJRP ROSCOs"	means the rolling stock leasing companies, participating in the National Joint ROSCO Project, being Eversholt Rail (UK) Limited, Porterbrook Leasing Company Limited and Angel Trains Limited;
"Nominee"	has the meaning given to it in paragraph 5.1 of Schedule 15.1 (<i>Reletting Provisions</i>);
"Non Fares Basket Fare"	means a Fare that is designated as such by the Secretary of State pursuant to paragraph 2.1 of Schedule 5.3 (<i>Allocation of Fares to Fares Baskets</i>) and which has not been de-designated as such

pursuant to paragraph 1.1 of Schedule 5.7 (*Changes to Fares and Fares Regulation*);

“Non-Recoverable Costs”	means any costs and expenses incurred by the Franchisee during a Reporting Period (as stated in the Franchisee's profit and loss account for that Reporting Period) which are inconsistent with the definitions of Costs and Capital Expenditure;
“Notified Fault”	has the meaning given to it in paragraph 9.1 of Schedule 1.4 (<i>Passenger Facing Obligations</i>);
“NR Data Sharing Objectives”	has the meaning given to it in paragraph 1A. of Part 1 of Schedule 6.7 (<i>Co-Operation and Industrial Relations</i>);
“NR Data Sharing Strategy”	has the meaning given to it in paragraph 1A. of Part 1 of Schedule 6.7 (<i>Co-Operation and Industrial Relations</i>);
“NR Managed Stations”	has the meaning given to it in paragraph 1A. of Part 1 of Schedule 6.7 (<i>Co-Operation and Industrial Relations</i>);
“NRPS Benchmark”	has the meaning given to it in paragraph 1.1 of Schedule 7.2 (<i>Customer Experience and Engagement</i>);
“NRPS Benchmark Table”	has the meaning given to it in paragraph 1.1 of Schedule 7.2 (<i>Customer Experience and Engagement</i>);
“NRPS Improvement”	has the meaning given to it in paragraph 1.1 of Schedule 7.2 (<i>Customer Experience and Engagement</i>);
“NRPS Measure”	has the meaning given to it in paragraph 1.1 of Schedule 7.2 (<i>Customer Experience and Engagement</i>);
“NRPS Nil Band Level”	has the meaning given to it in paragraph 1.1 of Schedule 7.2 (<i>Customer Experience and Engagement</i>);
“NRPS Service Group”	has the meaning given to it in paragraph 1.1 of Schedule 7.2 (<i>Customer Experience and Engagement</i>);
“Occasion of Tax Non-Compliance”	has the meaning given to it in paragraph 6.3 of Schedule 12 (<i>Financial Covenants and Bonds</i>);
“Off-Peak Passenger Service”	means a Passenger Service that is not a Morning Peak Service or an Evening Peak Service;
“On Time”	means the percentage of recorded station stops called at within 59 seconds of the planned time

relating to the Franchise as produced and/or published by Network Rail;

"On Time Figures"	means the moving annual average percentage published by Network Rail in respect of On Time, rounded to two (2) decimal places;
"One Team Stations Implementation Plan"	has the meaning given to it in paragraph 1A. of Part 1 of Schedule 6.7 (<i>Co-Operation and Industrial Relations</i>);
"One Team Stations Initiative"	has the meaning given to it in paragraph 1A. of Part 1 of Schedule 6.7 (<i>Co-Operation and Industrial Relations</i>);
"Online Community"	has the meaning given to it in paragraph 2.1 (<i>Definitions</i>) of Part 1 (<i>Previous Franchisee's Committed Obligations</i>) of Schedule 6.1 (<i>Franchise Specific Obligations</i>);
"Operating Assets"	means all assets (including any Intellectual Property Rights or intangible assets) employed by the Franchisee in the performance of the Franchisee's obligations under the Franchise Agreement;
"Operational Data"	has the meaning given to it in paragraph 1A. of Part 1 of Schedule 6.7 (<i>Co-Operation and Industrial Relations</i>);
"Operational Model" or "OM"	<p>means the following models in the agreed terms marked "OM":</p> <ul style="list-style-type: none"> (a) not used; (b) the performance model; (c) all cost models; and (d) any other relevant models that have generated input to the Financial Model;
"Operational Performance Payment" or "OPP"	has the meaning given to it paragraph 1 of Schedule 8.1B (<i>Performance Payments</i>);
"Original Rolling Stock"	has the meaning given to it in paragraph 2.1(a) of Schedule 1.6 (<i>The Rolling Stock</i>);
"ORR"	means the Office of Rail and Road established by section 15 of the Railways and Transport Safety Act 2003 and having duties and obligations as set out in the Act;
"Other Passenger Route Within the Geographical Area"	means any route which is not a Route but is a route in the Geographical Area over which a passenger train operator other than the Franchisee operates passenger services included in the National Rail Timetable;

"Parent"	means Deutsche Bahn AG (Company Number HRB50000B) and having its registered office at Potsdamer Platz 2, 10785 Berlin, Berlin, Germany;
"Partial Cancellation"	means a Passenger Service which is included in the Enforcement Plan of the Day and which: <ul style="list-style-type: none"> (a) misses a stop; or (b) completes fifty per cent (50%) or more, but less than one hundred per cent (100%) of its scheduled mileage as prescribed in the Enforcement Plan of the Day, in 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;
"Pass Rate"	has the meaning given to it in paragraph 2.1 of Schedule 7.3 (<i>Service Quality Regime</i>);
"Passenger Assistance"	means the passenger assistance service provided by train operating companies and referred to by the ORR as "Passenger Assist" , as such service may be further described by the ORR from time to time at: http://orr.gov.uk/info-for-passengers/passengers-with-disabilities (or such other applicable web address that is adopted by the ORR for these purposes from time to time);
"Passenger Benefits Plan"	has the meaning given to it in paragraph 1.2 of Part 1 (<i>Committed Obligations</i>) of Schedule 6.2 (<i>Committed Obligations</i>);
"Passenger Carrying Capacity"	means, in relation to a Passenger Service, the capacity of the vehicles (as stated in Schedule 1.6 (<i>The Rolling Stock</i>) or determined by the Secretary of State in accordance with paragraph 3.4 of Schedule 1.6 (<i>The Rolling Stock</i>)) from which the Passenger Service is formed;
"Passenger Change Date"	means a date upon which significant changes may be made to the Timetable in accordance with or by virtue of the Network Code;
"Passenger Services"	means the Franchisee's railway passenger services as specified in any Timetable and/or Plan of the Day including those railway passenger services which the Franchisee may delegate or subcontract or otherwise secure through any other person from time to time in accordance with the Franchise Agreement;
"Passenger Services Enhancement Options"	has the meaning given to it in paragraph 10.1 (a) of Part 3 (<i>Franchise Specific Obligations</i>) of Schedule 6.1 (<i>Franchise Specific Obligations</i>);

"Passenger Survey Methodology" or "PSM"	has the meaning given to it in paragraph 2.4 of Schedule 7.2 (<i>Customer Experience and Engagement</i>);
"Passenger's Charter" or "PC"	means the Franchisee's service commitments to its passengers in the agreed terms marked PC , as amended or replaced from time to time with the prior written consent of the Secretary of State in accordance with paragraph 4 of Schedule 1.4 (<i>Passenger Facing Obligations</i>);
"Passenger's Charter Guidance"	means the document called "Guidance on passenger's charter compensation for Crosscountry proposer based on baseline guidance on passenger's charter compensation version 10", dated 25 February 2019 and provided by the Secretary of State;
"Passengers' Council"	means the passengers' council established under section 19 of the Railways Act 2005 (as amended by The Passengers' Council (Non-Railway Functions) Order 2010). The Passengers' Council shall be generally known as "Transport Focus" from 30 March 2015;
"Passport"	means the confirmation awarded by the Secretary of State to a successful applicant that their application meets the requirements set out in the documentation relating to the OJEU Notice (reference no: 2015/S 189-34364);
"Passport Holder"	means, during the validity period of the relevant Passport, a successful applicant to whom a Passport has been awarded;
"Pay As You Go Agreement"	means an agreement dated 16 October 2009 between Transport Trading Limited and train operators operating in London enabling joint ticketing and the acceptance of each other's tickets using smart media technology under the name "Pay as You Go" ;
"PAYG Peak Fare"	means a Fare which is a Permanent Fare and which entitles the purchaser to make a single journey under the Pay As You Go Agreement in Standard Class Accommodation between and within the PAYG Zones for which the fare is valid, at any time;
"PAYG Off-Peak Fare"	means a Fare which is a Permanent Fare and which entitles the purchaser to make a single journey under the Pay As You Go Agreement in Standard Class Accommodation between and within the PAYG Zones for which the fare is valid, at any time on Saturdays and Sundays and at such times as the Franchisee may designate on Mondays to Fridays (where such Fare need not be valid between 06:30 and 09:30 or between 16.00 and 19.00 but must be valid at all

	other times) and which may take into account the different directions of travel;
"PAYG Zone"	means the Stations within the "PAYG Area" (as such is defined in the PAYG Agreement) or otherwise included in part 1 (PAYG Acceptance) of schedule 3 (Operation of PAYG) of the Pay As You Go Agreement (as such is amended from time to time);
"Payment Date"	means the date for the payment of Franchise Payments in accordance with paragraph 2.3 of Schedule 8.1A (<i>Franchise Payments</i>);
"Peak"	means the Morning Peak and the Evening Peak;
"Peak Passenger Service"	means, as the case may be, a Morning Peak Service or an Evening Peak Service;
"Pension Trust"	means the pension trust governing the Railways Pension Scheme;
"Pensions Committee"	has the meaning given to it in the Railways Pension Scheme;
"Percentage Allocation"	has the meaning given to it in the Ticketing and Settlement Agreement (and references to "Percentage Allocations" shall be construed accordingly);
"Performance Assessment Period"	means a Franchisee Year;
"Performance Assessment Period Review"	means a review carried out (or to be carried out) with respect to a Performance Assessment Period in accordance with Appendix 2 (<i>Performance Assessment Period Review</i>) of Schedule 8.1B;
"Performance Assessment Period Review Checklist"	has the meaning given to it paragraph 1 of Schedule 8.1B (<i>Performance Payments</i>);
"Performance Assessment Period Review Meeting"	has the meaning given to it paragraph 1 of Schedule 8.1B (<i>Performance Payments</i>);
"Performance Bond"	means the Initial Performance Bond and any Replacement Performance Bond, which in each case, shall comply with the requirements of paragraph 4.2 of Schedule 12 (<i>Financial Covenants and Bonds</i>);
"Performance Fee Calculation Spreadsheet"	means the spreadsheet used in the calculation of the Performance Payment in the agreed terms;
"Performance Improvement Management System"	has the meaning given to it in paragraph 1A. of Part 1 of Schedule 6.7 (<i>Co-Operation and Industrial Relations</i>);
"Performance Methodology Document"	means the document prepared by the Secretary of State in the agreed terms setting out the proposed

	methodology in respect of performance payments as at the Start Date;
“Performance Payment” or “PP”	means, in relation to each Franchisee Year, the amount determined in accordance with paragraph 2.4 of Schedule 8.1B (<i>Performance Payments</i>);
“Performance Payment Component”	has the meaning given to it in: <ul style="list-style-type: none"> (a) Appendix 1 to Schedule 8.1B (<i>Performance Payments</i>) during the Scorecard Methodology Period; (b) paragraph 2.6 of Schedule 8.1B (<i>Performance Payments</i>) during the Quantified Target Methodology Period, as the context requires;
“Performance Strategy Plan”	means any joint plan, which the Franchisee and Network Rail are party to, which has been designed to achieve the performance objectives set out in Part L of the Network Code (and/or other objectives related to train service reliability and punctuality as agreed by the Infrastructure Manager and the Franchisee);
“Periodic Adjustment”	has the meaning given to it in paragraph 1A of Schedule 8.1A (<i>Franchise Payments</i>);
“Periodic Budgeted Capex Payment” or “PBCP”	has the meaning given to it in paragraph 1A of Schedule 8.1A (<i>Franchise Payments</i>);
“Periodic Finance Review Meeting”	has the meaning given to it in paragraph 1A of Schedule 8.1A (<i>Franchise Payments</i>);
“Periodic Franchise Payment” or “PFP”	has the meaning given to it in paragraph 1A of Schedule 8.1A (<i>Franchise Payments</i>);
“Permanent Fare”	has the meaning given to it in the Ticketing and Settlement Agreement;
“Permitted Aggregate Increase” or “PAI”	has the meaning given to it in paragraph 4.2 of Schedule 5.4 (<i>Regulation of Fares Basket Values</i>);
“Permitted Individual Increase” or “PII”	has the meaning given to it in paragraph 2.2 of Schedule 5.5 (<i>Regulation of Individual Fares</i>);
“Personal Data”	has the meaning given to it in the Data Protection Legislation;
“Personal Data Breach”	has the meaning given to it in the Data Protection Legislation;
“Placed in Escrow”	means: <ul style="list-style-type: none"> (a) in respect of the Financial Model, delivery of the Financial Model:

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

“Plan”

has the meaning given to it in paragraph 14.2 (c) of Schedule 13.1 (*Rail Industry Initiatives and Co-operation*);

“Plan of the Day”

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

“Planned Train Mileage”

means the aggregate train mileage planned during each Reporting Period by each train used in the provision of the Passenger Services (excluding, any

train mileage planned as a result of positioning or other movements of rolling stock vehicles outside the Timetable);

"Power of Attorney" or "POA"	means the power of attorney granted by the Franchisee in favour of the Secretary of State in the agreed terms marked " POA ";
"Preceding thirteen (13) Reporting Periods"	has the meaning given to it in paragraph 2.1 of Schedule 12 (<i>Financial Covenants and Bonds</i>);
"Preceding Year Ticket Price"	has the meaning given to it in paragraph 2.1 of Schedule 5.5 (<i>Regulation of Individual Fares</i>);
"Pre-condition"	has the meaning given to it in paragraph 8.1 of Part 2 (<i>Special Terms related to the Committed Obligations</i>) Schedule 6.2 (<i>Committed Obligations</i>);
"Preliminary Database"	means such database as may reasonably be put in place by the Secretary of State prior to making any RPC Database available to the Franchisee, as part of the development of the RPC Database;
"Previous Customer Report"	means, in relation to a Customer Report, the Customer Report published by the Franchisee immediately prior to that Customer Report;
"Previous Franchise Agreement"	means a franchise agreement dated 28 September 2016 under which services equivalent to the Franchise Services (or a material proportion thereof) were provided by the Previous Franchisee on or about the day prior to the Start Date;
"Previous Franchisee"	means XC Trains Limited (Company Number 4402048), whose registered office is at C/O Arriva PLC, 1 Admiral Way, Doxford International Business Park, Sunderland SR3 3XP;
"Previous Passenger Services"	means: <ul style="list-style-type: none"> (a) any railway passenger services operated under a Previous Franchise Agreement that is the same or substantially the same as any Passenger Service in terms of departure and arrival times and stopping patterns; and (b) if no such railway passenger service is found under paragraph (a) such other railway passenger services operated under a Previous Franchise Agreement which is similar in terms of departure and arrival times and stopping patterns to the Passenger Services as the Secretary of State may reasonably determine;
"Previous Performance Level"	has the meaning given to it in paragraph 1.1 of Schedule 7.1 (<i>Operational Performance</i>);

"Price"	means, in respect of any Fare, the price of such Fare before the deduction of any applicable discount to which a purchaser may be entitled, as notified to RSP in accordance with Schedule 5 (<i>Fares and Smart Ticketing</i>) to the Ticketing and Settlement Agreement;
"Primary Delay"	means a delay that is attributed as "Primary Delay" in accordance with the Delay Attribution Principles and Rules;
"Primary Franchise Assets"	means: <ul style="list-style-type: none"> (a) the property, rights and liabilities of the Franchisee listed in Appendix 1 (<i>List of Primary Franchise Assets</i>) to Schedule 14.4 (<i>Designation of Franchise Assets</i>); and (b) any other property, rights and liabilities of the Franchisee which is or are designated as such pursuant to Schedule 14.4 (<i>Designation of Franchise Assets</i>), but excluding such property, rights or liabilities as may, in accordance with the terms of the Franchise Agreement, cease to be so designated;
"The Prince's Trust"	has the meaning given to it in paragraph 9A.1(a) of Schedule 13.1 (<i>Rail Industry Initiatives and Co-Operation</i>);
"Prior Train Operator"	has the meaning given to it in paragraph 3.1 of Schedule 2.2 (<i>Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases</i>);
"PRM TSI"	means the EU's Regulation (EU) No 1300/2014 of 18 November 2014 (as amended from time to time) on the technical specifications for interoperability relating to accessibility of the European Union's rail system for persons with disabilities and persons with reduced mobility;
"Processor"	has the meaning given to it in the Data Protection Legislation;
"Programme of Communication"	has the meaning given to it in paragraph 25.1 of Part 3 (<i>Franchise Specific Obligations</i>) Schedule 6.1 (<i>Franchise Specific Obligations</i>);
"Projected Revenue"	means the revenue in any Fare Year which is projected to be attributable to any Fare, determined in accordance with paragraph 3 of Schedule 5.4 (<i>Regulation of Fares Basket Values</i>);
"Property Lease"	means any Depot Lease, any lease in respect of a Managed Station Area, any lease in respect of the Shared Facilities or any Station Lease and any agreement or lease of a similar or equivalent nature

(whether in respect of any such facility or otherwise) which the Franchisee may enter into with a person who has an interest in a network or a railway facility which is to be used for or in connection with the provision or operation of the Franchise Services;

“Proposed Reform Activity” has the meaning given to it in paragraph 1.2 of Schedule 5.11 (*Fares, Ticketing and Retail Reform*);

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

“Protected Proposal” has the meaning given to it in paragraph 2 of Schedule 9.3 (*Variations to the Franchise Agreement*);

“Protected Return Fare” means in respect of a Fare for a Flow:

- (a) for which there was a Saver Return Fare in February 2003, a Return Fare for each such Flow in respect of which the Franchisee is entitled or obliged from time to time to set the Price under the Ticketing and Settlement Agreement, subject to the following additional rights and restrictions:
 - (i) it shall be valid for no less than one (1) month;
 - (ii) it shall be valid all day on a Saturday or Sunday and from no later than 1030 on any other day;
 - (iii) it need not be valid for any journey;

- (A) beginning between 1500 and 1900 on any day other than a Saturday or Sunday;
 - (B) where such journey begins from a London Station or any station between any London Station and Reading station, Watford station, Luton station, or Stevenage station (inclusively); and
 - (C) which is in a direction away from London; or
- (b) for which there was no Saver Return Fare in February 2003, a Return Fare for each such Flow in respect of which the Franchisee is entitled or obliged from time to time to set the Price under the Ticketing and Settlement Agreement,

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

“Protected Weekly Season Ticket”

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

“Public Communication Service Provider”

has the meaning given to it in paragraph 2.1 (*Definitions*) of Part 1 (*Previous Franchisee’s Committed Obligations*) of Schedule 6.1 (*Franchise Specific Obligations*);

“Public Sector Operator”

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

“Quantified Target Methodology”

has the meaning given to it paragraph 1 of Schedule 8.1B (*Performance Payments*);

“Quantified Target Methodology Period”

has the meaning given to it paragraph 1 of Schedule 8.1B (*Performance Payments*);

“Quarter” or “Quarterly”

a period of 3 consecutive Reporting Periods ending at the end of the 3rd, 6th and 9th Reporting Periods in a Franchisee Year or a period of 4 consecutive Reporting Periods ending at the end of the 13th Reporting Period of a Franchisee Year (and **“Quarterly”** shall be interpreted accordingly);

“Quarterly Finance Review Meeting”	has the meaning given to it in paragraph 1A of Schedule 8.1A (<i>Franchise Payments</i>);
“Quarterly Season Ticket”	means a Season Ticket Fare which is valid in Standard Class Accommodation from (and including) the day it first comes into effect until (but excluding) the day which falls three (3) months after such day;
“Rail Delivery Group” or “RDG”	means the Rail Delivery Group Limited (company number 08176197) (including any of its successors and assigns) whose principal place of business is at 2nd Floor, 200-202 Aldersgate Street, London EC1A 4HD, which is responsible for preserving and enhancing the benefits for passengers of Britain’s national rail network policy formulation and communications on behalf of the whole rail industry;
“Rail Franchise”	has the meaning given to it in clause 15.1(f) (<i>Competition</i>);
“Rail Industry Sustainable Development Principles”	means the principles which were published by the Rail Safety and Standards Board in February 2009 as amended from time to time;
“Rail Product”	has the meaning given to it in the Ticketing and Settlement Agreement and references to “Rail Products” shall be construed accordingly;
“Rail Safety and Standards Board” or “RSSB”	means Rail Safety and Standards Board Limited, a company registered in England with registered number 04655675 whose registered office is at The Helicon, 4th Floor, One South Place, London, EC2M 2RB;
“Rail Safety and Standards Board Sustainable Development Self-Assessment Framework”	means the online self-assessment framework against the Rail Industry Sustainable Development Principles published by the Rail Safety and Standards Board;
“Railway Group”	means the committee responsible for cross industry co-ordination in respect of rail safety legislation and industry safety standards chaired by the Rail Safety and Standards Board;
“Railway Operational Code”	has the meaning given to it in Condition H of the Network Code;
“Railway Passenger Services”	means, for the purposes of Schedule 5 (<i>Fares and Smart Ticketing</i>) only, services for the carriage of passengers by railway which are provided by a person who is bound by the Ticketing and Settlement Agreement, or any part of it, and including the Franchisee and any other Train Operator from time to time;

“Railways Pension Scheme”

means the pension scheme established by the Railways Pension Scheme Order 1994 (No. 1433);

“RDG Guidance on Emergency Planning, Knowledge, Understanding and Responsibilities”

has the meaning given to it in paragraph 16.1 of Schedule 13.1 (*Rail Industry Initiatives and Co-operation*);

“Reactionary Delay”

has the meaning given to it paragraph 1 of Schedule 8.1B (*Performance Payments*);

“Reactionary Minutes Delay”

has the meaning given to it in paragraph 1A. of Part 1 of Schedule 6.7 (*Co-Operation and Industrial Relations*);

“Record of Assumptions” or “ROA”

means a document in the agreed terms marked **ROA** prepared by the Franchisee (and/or, where Schedule 9.1 (*Financial and Other Consequences of Change*) applies) as may be revised in accordance with Schedule 9 (*Changes and Variations*) and Placed in Escrow providing:

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

“Redactions”

has the meaning given to it in paragraph 10.1 of Schedule 17 (*Confidentiality, Freedom of Information and Data Protection*);

“Reference Fare”

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

“Reference Flow”

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

“Reference Revenue”

means the aggregate Gross Revenue recorded by RSP as attributable to sales of all Commuter Fares or Protected Fares for the period of twelve (12) months which ended 31 March 2019 or such other reference period as the Secretary of State may require pursuant to paragraph 3.1(a) of Schedule 5.7 (*Changes to Fares and Fares Regulation*);

“Regional Route”

means any of the following routes singly or in combination, in whole or in part:

- (a) Birmingham-Leicester;
- (b) Birmingham-Nottingham;
- (c) Cardiff-Birmingham; and
- (d) Birmingham-Standed Airport;

“Regulated Child Price”

means the Child Price that is permitted to be charged by the Franchisee in respect of any Fare in any Fare Year as specified in paragraph 1.3 of Schedule 5.5 (*Regulation of Individual Fares*);

“Regulated Price”

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

“Regulated Qualifications Framework”

means the Regulated Qualifications Framework introduced by Ofqual on 1 October 2015 as located at the date of this Agreement at <https://www.gov.uk/find-a-regulated-qualification>;

“Regulated Value”

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

“Regulations”

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

“Relevant Agreement”

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

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

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

“Relevant Credit Rating”

means a credit rating of:

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

“Relevant Delay”

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

“Relevant Documents”

has the meaning given to it in paragraph 11.2 of Schedule 4 (*Accessibility and Inclusivity*);

“Relevant Employer”

has the meaning given to it in paragraph 1.1 of Part 2 of Schedule 6.7 (*Co-Operation and Industrial Relations*);

“Relevant Measure”

has the meaning given to it paragraph 1.1 of Schedule 9.1 (*Financial and Other Consequences of Change*);

“Relevant Rectification Period”

has the meaning given to it in paragraph 2.1 of Schedule 7.3 (*Service Quality Regime*);

“Relevant Reporting Period”

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

“Relevant Rolling Stock”

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

“Relevant Tax Authority”

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

“Relevant Term”

has the meaning given to it in paragraph 3.1(a) of Schedule 10.1 (*Procedure for remedying a Contravention of the Franchise Agreement*);

"Remedial Agreement"	has the meaning given to it in paragraph 5.1 of Schedule 10.1 (<i>Procedure for remedying a Contravention of the Franchise Agreement</i>);
"Remedial Plan"	has the meaning given to it in paragraph 3.1(b) of Schedule 10.1 (<i>Procedure for remedying a Contravention of the Franchise Agreement</i>);
"Remedial Plan Notice"	has the meaning given to it in paragraph 2 of Schedule 10.1 (<i>Procedure for remedying a Contravention of the Franchise Agreement</i>);
"Replacement Agreement"	means an agreement entered into as a replacement for any Relevant Agreement;
"Replacement Performance Bond"	means any performance bond issued or to be issued following the issue of the Initial Performance Bond by a Bond Provider to the Secretary of State which complies with the requirements of paragraph 4.2 of Schedule 12 (<i>Financial Covenants and Bonds</i>);
"Reporting Period"	means: <ul style="list-style-type: none"> (a) for the purposes of the Season Ticket Bond, any consecutive seven (7) day period or any other period, each within a Reporting Period (as defined in paragraph (b)) agreed in accordance with paragraph 5.10 of Schedule 12 (<i>Financial Covenants and Bonds</i>); or (b) for all other purposes, a period of twenty eight (28) days, provided that: <ul style="list-style-type: none"> (i) the first such period during the Franchise Period shall exclude any days up to but not including the Start Date; (ii) the first and last such period in any Reporting Year may be varied by up to seven (7) days by notice from the Secretary of State to the Franchisee; (iii) each such period shall start on the day following the last day of the preceding such period; and (iv) the last such period during the Franchise Period shall end at the end of the Franchise Period;
"Reporting Year"	means a period normally commencing on 1 April in each calendar year, comprising thirteen (13) consecutive Reporting Periods;

“Request for Information”	means a request for information or an apparent request under the Freedom of Information Act or the Environmental Information Regulations;
“Request for Proposal” or “RfP”	means the request for proposal dated 20 January 2020 issued by the Secretary of State as part of the procurement process pursuant to which the Franchise Agreement was entered into;
“Required Establishment”	has the meaning given to it in paragraph 1A. of Part 1 of Schedule 6.7 (<i>Co-Operation and Industrial Relations</i>);
“Required Performance Improvement”	has the meaning given to it in paragraph 26.1 of Schedule 7.1 (<i>Operational Performance</i>);
“Rest Day Working Payment”	means payments to Franchisee staff, including all payroll costs made in respect of such staff working on their designated Rest Days, including salary, holiday entitlement, employers national insurance and pensions contributions (whereby “Rest Days” occur from Monday to Saturday inclusive, and exclude Sundays);
“Rest Day Working Performance Payment” or “RDWPP”	means, in relation to each Franchisee Year (during the Quantified Target Methodology Period), the amount (forming part of the FMPP) determined in accordance with paragraph 3.2 of Schedule 8.1B (<i>Performance Payments</i>);
“Return Fare”	means a Fare which entitles the purchaser to make, without further restrictions as to the time of day for which the Fare is valid, a journey in each direction in Standard Class Accommodation between the stations and/or the zones for which such Fare is valid and which expires no earlier than 0200 hours on the day after the day of the outward journey or, if later, the time the relevant return journey may be completed if commenced before 0200 hours;
“Revenue”	<p>means the gross total revenue of the Franchisee received or receivable as stated in the Franchisee’s profit and loss account but excluding:</p> <p>Franchise Payments (which shall include (for the avoidance of doubt) the value of any Fixed Fee and Performance Payments); and</p> <p>(a) any accounting transaction included in the Management Accounts, Annual Management Accounts or Annual Audited Accounts but which does not result in the Franchisee receiving a cash payment including notional pensions accounting adjustments and the accounting impact of financial instrument revaluations;</p>

- (b) any accounting transaction included in the Management Accounts, Annual Management Accounts or Annual Audited Accounts but which does not result in the Franchisee receiving a cash payment including notional pensions accounting adjustments and the accounting impact of financial instrument revaluations;

“Revenue Foregone”

means an amount equal to the amount of Revenue or other value which was not received or receivable by the Franchisee including:

- (c) the:
 - (i) debts or other receivables waived, not collected or written off; and/or
 - (ii) value of any other asset not realised in whole or in part,

but which would have been receivable and received or otherwise realised by the Franchisee if it had acted as a Good and Efficient Operator; and
- (d) subject always to paragraph 6 (No Double Recovery) of Schedule 8.1A (Franchise Payments), the amount by which the Purchase Price (as defined in Clause 2.1 of the Supplemental Agreement) receivable by the Franchisee is lower than it would have been but for the Franchisee:
 - (i) incurring Disallowable Costs; and/or
 - (ii) otherwise acting other than as Good and Efficient Operator;

save where, in respect of both (a) and (b) above, such Revenue is not received or receivable as a result of the Franchisee acting in accordance with the instructions of the Secretary of State;

“Reward and People Principles”

has the meaning given to it in paragraph 1.1 of Part 2 of Schedule 6.7 (*Co-Operation and Industrial Relations*);

“RM3P”

has the meaning given to it in paragraph 1A. of Part 1 of Schedule 6.7 (*Co-Operation and Industrial Relations*);

“Rolling Stock Change”

has the meaning given to it in paragraph 3A.1 of Schedule 1.6 (The Rolling Stock);

“Rolling Stock Lease”

means any agreement for the leasing of rolling stock vehicles to which the Franchisee is a party as at the

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

"Rolling Stock Related Contract"	means any Rolling Stock Lease, Maintenance Contract or Technical Support Contract;
"Rolling Stock Units"	has the meaning given to it in paragraph 1(c) of Schedule 10.3 (<i>Force Majeure and Business Continuity</i>);
"ROSCO"	means any company leasing rolling stock vehicles to the Franchisee under a Rolling Stock Lease;
"Route"	means any route specified in the Timetable over which the Franchisee has permission to operate the Passenger Services pursuant to any Track Access Agreement;
"Route Map"	means a map (which may be a topological map) showing each of the Routes and each Other Passenger Route Within the Geographical Area meeting the requirements set out in paragraph 10 of Schedule 1.4 (<i>Passenger Facing Obligations</i>);
"RPC Database"	means a database to be provided by the Secretary of State pursuant to and on the terms of paragraph 7.1 of Schedule 1.5 (<i>Information about Passengers</i>) containing rail passenger counts information and providing analytical reporting tools or such other functionality as the Secretary of State may decide from time to time;
"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;
"RSP"	means Rail Settlement Plan Limited;
"RSPS3002"	has the meaning given to it in paragraph 1.1 of Schedule 5.9 (<i>Smart Ticketing</i>);
"Safeguarding on Rail Audit"	means the principles and measures to protect vulnerable children and adults at risk on rail transport, published by the British Transport Police

against which the Franchisee will be assessed (as amended or replaced from time to time);

- “Safeguarding Strategy”** means a safeguarding strategy to promote and enforce the principles and measures set out in the Safeguarding on Rail Audit and approved by the British Transport Police;
- “Safety Authorisation”** means the authorisation issued by the ORR under the Safety Regulations authorising the Franchisee's safety management system (as defined in those regulations) and the provisions adopted by the Franchisee to meet the requirements that are necessary to ensure safe design, maintenance and operation of the relevant infrastructure on the Routes;
- “Safety Certificate”** means the certificate issued by the ORR under the Safety Regulations, certifying its acceptance of the Franchisee's safety management system (as defined in those regulations) and the provisions adopted by the Franchisee to meet the requirements that are necessary to ensure safe operation on the Routes;
- “Safety Regulations”** means the Railways and Other Guided Transport Systems (Safety) Regulations 2006 (as amended pursuant to the Railways and Other Guided Transport Systems (Safety) (Amendment) Regulations 2006);
- “Saver Return Fare”** means a return fare which is shown as a saver fare in the systems of the RSP as at the date of each Fares Setting Round;
- “Scheduled Consist Data”** means information as to the type of individual vehicles of rolling stock that have been scheduled by the Franchisee to form a train in the Train Fleet for any particular Passenger Service and the manner in which they are scheduled to be configured;
- “Scorecard”** means, in respect of a Performance Assessment Period, a scorecard completed (or, as the case may be, to be completed) by the Secretary of State in accordance with paragraph 5 (*Performance Assessment Period Review Scoring*) of Appendix 2 (*Performance Assessment Period Review*) to Schedule 8.1B (*Performance Payments*);
- “Scorecard Criterion”** means each criterion set out in Appendix 4 (*Scorecard Criteria*) of Schedule 8.1B (*Performance Payments*), in respect of which the Franchisee's performance shall be measured (in whole or in part) in relation to a Performance Payment Component and for which a score shall be awarded in the Scorecard (and **“Scorecard Criteria”** means the plural of Scorecard Criterion);
- “Scorecard Methodology”** has the meaning given to it paragraph 1 of Schedule 8.1B (*Performance Payments*);

"Scorecard Methodology Period"	has the meaning given to it paragraph 1 of Schedule 8.1B (<i>Performance Payments</i>);
"Scottish Ministers"	has the meaning given to it in paragraph 21.1 (<i>Scottish Ministers</i>) of Part 3 (<i>Franchise Specific Obligations</i>) of Schedule 6.1 (<i>Franchise Specific Obligations</i>);
"Season Ticket Bond"	means the season ticket bond to be provided to the Secretary of State in respect of the Franchisee's liabilities under certain Fares and Season Ticket Fares in the form set out in Appendix 2 (<i>Template Form of Season Ticket Bond</i>) to Schedule 12 (<i>Financial Covenants and Bonds</i>) and such other bond as may replace it from time to time under Schedule 12 (<i>Financial Covenants and Bonds</i>);
"Season Ticket Fare"	means: <ul style="list-style-type: none"> (a) for the purposes of Schedule 12 (<i>Financial Covenants and Bonds</i>) and the definition of Season Ticket Bond only, a Fare which entitles the purchaser to make an unlimited number of journeys in any direction during the period for which, and between the stations and/or the zones for which, such Fare is valid; and (b) for all other purposes, a Fare which entitles the purchaser to make, without further restriction except as to class of accommodation, an unlimited number of journeys in any direction during the period for which, and between the stations and/or the zones for which, such Fare is valid;
"Seating and Assistance Provisions"	has the meaning given to it in paragraph 4.2 of Schedule 4 (<i>Accessibility and Inclusivity</i>);
"Second Extension Period"	has the meaning given to it in clause 5.2 (b);
"Secretary of the Access Disputes Committee"	means the person appointed as the secretary of the Access Disputes Committee from time to time;
"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 Track Access Agreement or as specified by the Secretary of State from time to time;
"Service Quality Area"	has the meaning given to it in paragraph 2.1 of Schedule 7.3 (<i>Service Quality Regime</i>);

“Service Quality Failure”	has the meaning given to it in paragraph 2.1 of Schedule 7.3 (<i>Service Quality Regime</i>);
“Service Quality Improvement”	has the meaning given to it in paragraph 2.1 of Schedule 7.3 (<i>Service Quality Regime</i>);
“Service Quality Indicator”	has the meaning given to it in paragraph 2.1 of Schedule 7.3 (<i>Service Quality Regime</i>);
“Service Quality Inspection”	has the meaning given to it in paragraph 2.1 of Schedule 7.3 (<i>Service Quality Regime</i>);
“Service Quality Performance Payment” or “SQPP”	means, in relation to each Franchisee Year, the amount determined in accordance with paragraph 6 of Schedule 8.1B (<i>Performance Payments</i>);
“Service Quality Regime” or “SQR”	has the meaning given to it in paragraph 2.1 of Schedule 7.3 (<i>Service Quality Regime</i>);
“Service Quality Schedules”	has the meaning given to it in paragraph 2.1 of Schedule 7.3 (<i>Service Quality Regime</i>);
“Service Quality Trains Rectification Evidence”	has the meaning given to it in paragraph 2.1 of Schedule 7.3 (<i>Service Quality Regime</i>);
“Service Recovery Plan”	<p>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:</p> <ul style="list-style-type: none"> (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: <ul style="list-style-type: none"> (i) keeping service intervals to reasonable durations; (ii) keeping extended journey times to reasonable durations; and (iii) managing any resulting overcrowding; (b) to: <ul style="list-style-type: none"> (i) return the level of service to that level specified in the Timetable as soon as reasonably practicable; and (ii) prior to the attainment of the level of service specified in paragraph (b)(i) operate any reduced level of service

agreed with the Infrastructure Manager for the purpose of minimising such disruption pursuant to paragraph (a);

- (c) in accordance with the principles of service recovery set out in the **“Approved Code of Practice: Contingency Planning for Train Service Recovery - Service Recovery 2013”** or any document of a similar or equivalent nature; and
- (d) where the particulars of such plan in relation to the requirements of paragraphs (a) and (b) have been:
 - (i) agreed at an initial and, where required, subsequent telephone conference between the Franchisee, the Infrastructure Manager and any other affected Train Operator; and
 - (ii) on each occasion, recorded in an official control log by the relevant Region Control Manager of the Infrastructure Manager,

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

“Shared Facilities”

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

“Short Formation Benchmark”

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

“Short Formation Benchmark Table”

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

“Short Formation Figures”

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

“Significant Alterations”

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

- (a) the addition or removal of railway passenger services;
- (b) changes to stopping patterns or destinations or origin;

- (c) changes of timings for first/last trains by more than 10 minutes;
- (d) **NOT USED**; and/or
- (e) significant changes to journey times and/or key connections at the Stations or at other stations at which relevant railway passenger services call by more than 20 minutes;

“Single Fare”

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

“SKA Rating Standard”

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

“Skills and Leadership Strategy”

means the skills and leadership strategy of the Franchisee required to be implemented pursuant to paragraph 9 of Schedule 13.1 (*Rail Industry Initiatives and Co-operation*) as it may be revised pursuant to such paragraph;

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

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

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

The three categories are:

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

“Smart Media”

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

- (a) digital barcodes;

- (b) a barcode printed on paper either by customers (e.g. at home, office) or by franchisee staff at stations or on board trains;
- (c) ITSO Certified Smart Media;
- (d) contactless payment media (cEMVs);
- (e) Oyster (TfL’s smartcard); and
- (f) any of the above formats stored and presented on a portable electronic device;

“Smart Ticketing Scheme” has the meaning given to it in paragraph 1.1 of Schedule 5.9 (*Smart Ticketing*);

“Smart Media Target” has the meaning given to it in paragraph 1.1 of Schedule 5.9 (*Smart Ticketing*);

“Social Media Plan” has the meaning given to it in paragraph 10.2 of Schedule 4 (*Accessibility and Inclusivity*);

“SoS Audits” has the meaning given to it in paragraph 2.1 of Schedule 7.3 (*Service Quality Regime*);

“SoS Claim” means all losses, liabilities, costs, damages and expenses that the Secretary of State does or will incur or suffer (including any such losses, liabilities, costs, damages and expenses that are unliquidated or which are contingent):-

- (a) as a consequence of any breach, negligence or other default of the Franchisee under or in connection with the Franchise Agreement and/or any agreement ancillary to this Agreement, including the Supplemental Agreement, the Direct Award Collateral Agreement (and/or a Transfer Agreement pursuant to (and as defined in) the Direct Award Collateral Agreement); and/or
- (b) in respect of any matter for which the Franchisee is to indemnify the Secretary of State pursuant to this Agreement or any agreement ancillary to this Agreement, including the Supplemental Agreement the Direct Award Collateral Agreement (and/or a Transfer Agreement pursuant to (and as defined in) the Direct Award Collateral Agreement);

“SoS Nominee” has the meaning given to it in paragraph 2.1 of Schedule 7.3 (*Service Quality Regime*);

“SoS Service Quality Inspection” has the meaning given to it in paragraph 2.1 of Schedule 7.3 (*Service Quality Regime*);

“SoS Service Quality Inspection Period”	has the meaning given to it in paragraph 2.1 of Schedule 7.3 (<i>Service Quality Regime</i>);
“Spares”	means parts and components of rolling stock vehicles which are available for the purpose of carrying out maintenance services on rolling stock vehicles;
“Special Categories of Personal Data”	has the meaning given to it in the Data Protection Legislation;
“Special Events Manager”	has the meaning given to it paragraph 5.1 of Part 1 (<i>Committed Obligations</i>) of Schedule 6.2 (<i>Committed Obligations</i>);
“Specifically Included Change of Law”	has the meaning given to it in the definition of Change of Law;
“Specified Additional Rolling Stock”	has the meaning given in paragraph 2.1(b) of Schedule 1.6 (<i>The Rolling Stock</i>);
“Specified Industry Initiatives”	has the meaning given to it in paragraph 1A. of Part 1 of Schedule 6.7 (<i>Co-Operation and Industrial Relations</i>);
“Specified Obligation”	has the meaning given to it in paragraph 28.1 of Part 3 (<i>Franchise Specific Obligations</i>) of Schedule 6.1 (<i>Franchise Specific Obligations</i>);
“Sponsor”	has the meaning given to it in paragraph 12.1 of Part 3 (<i>Franchise Specific Obligations</i>) of Schedule 6.1 (<i>Franchise Specific Obligations</i>);
“SQR Benchmark”	has the meaning given to it in paragraph 2.1 of Schedule 7.3 (<i>Service Quality Regime</i>);
“SQR Customer Service”	has the meaning given to it in paragraph 2.1 of Schedule 7.3 (<i>Service Quality Regime</i>);
“SQR Customer Service Benchmark”	has the meaning given to it in paragraph 2.1 of Schedule 7.3 (<i>Service Quality Regime</i>);
“SQR Management System”	has the meaning given to it in paragraph 2.1 of Schedule 7.3 (<i>Service Quality Regime</i>);
“SQR Register”	has the meaning given to it in paragraph 2.1 of Schedule 7.3 (<i>Service Quality Regime</i>);
“SQR Train”	has the meaning given to it in paragraph 2.1 of Schedule 7.3 (<i>Service Quality Regime</i>);
“SQR Train Benchmark”	has the meaning given to it in paragraph 2.1 of Schedule 7.3 (<i>Service Quality Regime</i>);
“Stakeholder”	means the Passengers' Council and any relevant Local Authority and organisations who can reasonably be considered to have a legitimate and proper interest in the Passenger Services including Community Rail Partnerships representing

Community Rail Routes accredited as such by the Secretary of State;

“Stakeholder Communications Team”

has the meaning given to it in paragraph 2.1 (*Definitions*) of Part 1 (*Previous Franchisee's Committed Obligations*) of Schedule 6.1 (*Franchise Specific Obligations*);

“Stakeholder Plan”

has the meaning given to it in paragraph 2.1 (*Definitions*) of Part 1 (*Previous Franchisee's Committed Obligations*) of Schedule 6.1 (*Franchise Specific Obligations*);

“Standard Class Accommodation”

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

“Standard Occupational Classification Codes”

means the codes published in the Standard Occupational Classification 2010 as provided by the Office for National Statistics which can be found at <https://www.ons.gov.uk/methodology/classification/sandstandards/standardoccupationalclassificationsoc/soc2010/soc2010volume2thestructureandcodingindex>;

“Start Date”

means the time and date on which the Franchisee is to commence operating the Franchise Services, which shall be the later of:

- (a) 02:00 on 18 October 2020;
- (b) **NOT USED**; or
- (c) **NOT USED**;

“Start Date Franchise Payment”

has the meaning given to it in paragraph 1A of Schedule 8.1A (*Franchise Payments*);

“Station”

means:

- (a) any station in respect of which the Franchisee has entered into a Station Lease; or
- (b) any New Station at which the Franchisee becomes the Facility Owner;

“Station Access Conditions”

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

“Station Change”

has the meaning given to the term **“Proposal for Change” or “Proposal”** under the relevant Station Access Conditions (as the case may be);

“Station Lease” or “SL”

means:

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

“Station 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);

“Subcontractor”

has the meaning given to it in paragraph 7.3 (b) of Schedule 1.5 (*Information about Passengers*);

“Suburban Station”

means any station which is not a London Station and which is listed below or is closer to London than (and on the same line as) the following stations:

- (a) Shoeburyness;
- (b) Southend Victoria;
- (c) Southminster;
- (d) Marks Tey (excluding Sudbury branch);
- (e) Audley End (excluding Stansted Airport);
- (f) Ashwell & Morden;
- (g) Arlesey;
- (h) Harlington;
- (i) Bletchley (excluding Bedford branch);
- (j) Aylesbury;
- (k) Haddenham & Thame Parkway;
- (l) Twyford (including Henley branch);
- (m) Windsor & Eton Riverside;
- (n) Earley;
- (o) Fleet;
- (p) Alton;
- (q) Witley;
- (r) Christ's Hospital;
- (s) Brighton (excluding Coastway);
- (t) East Grinstead;
- (u) Crowborough;
- (v) Wadhurst;
- (w) Paddock Wood (including the line between Strood and Paddock Wood);
- (x) Maidstone East;

- (y) Canterbury East; and
- (z) Margate;

“Successor Operator”

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

“Successor Operator Timetable”

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

“Suicide Prevention Strategy”

means the ‘From Crisis to Care’ strategy document for the period 2016-2019 (as amended or replaced from time to time) published by the British Transport Police;

“Suicide Prevention Duty Holders’ Group’s 9 Point Plan”

means the best practice plan established and published by the “cross-industry suicide prevention group”, setting out nine deliverables aimed at suicide reduction (as amended or replaced from time to time);

“Supplemental Agreement”

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

“Sustainable Development Strategy”

means the Franchisee's strategy for sustainable development for the Franchise as developed by the Previous Franchisee pursuant to paragraph 17.1(b) of Schedule 13 (*Information and Industry Initiatives*) of the Previous Franchise Agreement and as updated by the Franchisee pursuant to paragraph 17.1 of Schedule 13 (*Information and Industry Initiatives*) of the Previous Franchise Agreement and paragraph 10.1(a) of Schedule 13.1 (*Rail Industry Initiatives and Co-operation*) (as the case may be) including as a minimum: the matters listed in paragraph 17.1(a) of Schedule 13 (*Information and Industry Initiatives*) of the Previous Franchise Agreement or paragraph 10.1(a) of Schedule 13.1 (*Rail Industry Initiatives and Co-operation*) (as

applicable), key aims, resources, risks and details of how sustainable development will be embedded in the governance of the Franchise and investment decisions (as revised from time to time);

“T-3 Measure”

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

“T-3 Performance Amount”

has the meaning given to it paragraph 1 of Schedule 8.1B (*Performance Payments*);

“T-3 Table”

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

“T-15 Measure”

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

“T-15 Performance Amount”

has the meaning given to it paragraph 1 of Schedule 8.1B (*Performance Payments*);

“T-15 Table”

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

“Target Passenger Demand”

means the higher of Actual Passenger Demand and Forecast Passenger Demand or any other level of passenger demand specified by the Secretary of State not being greater than the higher of Actual Passenger Demand or Forecast Passenger Demand;

“Target Ticketless Travel Benchmark”

means, as the context requires, the benchmarks in respect of the Ticketless Travel Rate for:

- (a) the Ticketless Travel Expected Fee Performance Level; and
- (b) the Ticketless Travel Enhanced Fee Performance Level,

in each case, as specified in table 2 at paragraph 3.4.2 of Schedule 8.1B (*Performance Payments*) and which may be adjusted in accordance with paragraph 6A of Schedule 6.5 (*Additional Operating Contract Obligations*);

“Taxation”

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

“TD Academy Board”

has the meaning given to it in paragraph 1A. of Part 1 of Schedule 6.7 (*Co-Operation and Industrial Relations*);

“TD Academy Objectives”

has the meaning given to it in paragraph 1A. of Part 1 of Schedule 6.7 (*Co-Operation and Industrial Relations*);

"TD Academy Plan"	has the meaning given to it in paragraph 1A. of Part 1 of Schedule 6.7 (<i>Co-Operation and Industrial Relations</i>);
"TD Academy Stakeholders"	has the meaning given to it in paragraph 1A. of Part 1 of Schedule 6.7 (<i>Co-Operation and Industrial Relations</i>);
"TDR Amendment"	has the meaning given to it in paragraph 12.8 of Part 2 (<i>Service Development</i>) of Schedule 1.1 (<i>Franchise Services and Service Development</i>);
"Technical Support Contract"	means a contract for technical support to which the Franchisee is a party, relating to the rolling stock vehicles used in the provision of the Passenger Services;
"Tendering/Reletting Process"	means either of the processes described in paragraph 1.1 and 1.2 of Schedule 15.1 (<i>Reletting Provisions</i>);
"Termination Event"	has the meaning given to it in paragraph 2 of Schedule 10.2 (<i>Events of Default and Termination Events</i>);
"Termination Notice"	means a notice from the Secretary of State to the Franchisee terminating the Franchise Agreement following an Event of Default or a Termination Event in accordance with Schedule 10.2 (<i>Events of Default and Termination Events</i>);
"Third Party Data"	means any information, data and materials that may be provided to the Secretary of State by any third party that relates to the Franchisee and which the Secretary of State decides (in the Secretary of State's absolute discretion) to add to the RPC Database;
"Through Ticketing (Non-Travelcard) Agreement"	means the agreement of that name referred to in paragraph 4.1(e) of Appendix 1 (<i>List of Transport, Travel and Other Schemes</i>) to Schedule 2.5 (<i>Transport, Travel and Other Schemes</i>);
"Ticketing and Settlement Agreement"	means the Ticketing and Settlement Agreement dated 23 July 1995 between RSP, the Franchisee and the other Train Operators named therein, as amended from time to time with the approval of the Secretary of State;
"Ticketless Travel Enhanced Fee Performance Level"	has the meaning given to it paragraph 1 of Schedule 8.1B (<i>Performance Payments</i>);
"Ticketless Travel Expected Fee Performance Level"	has the meaning given to it paragraph 1 of Schedule 8.1B (<i>Performance Payments</i>);
"Ticketless Travel Performance Amount"	has the meaning given to it paragraph 1 of Schedule 8.1B (<i>Performance Payments</i>);

“Ticketless Travel Performance Payment” or “TTPP”

has the meaning given to it paragraph 1 of Schedule 8.1B (*Performance Payments*);

“Ticketless Travel Rate”

means for any Ticketless Travel Survey Period, that proportion (expressed as a percentage to three decimal places) of revenue estimated by the Ticketless Travel Survey Period to be associated with passengers travelling on the Passenger Services without a valid permission to travel;

“Ticketless Travel Survey”

means:

- (a) **NOT USED**; and
- (b) for the purposes of Schedule 6.5 (*Additional Operating Contract Obligations*) the survey carried out by or on behalf of the Secretary of State in each Ticketless Travel Survey Period for the purposes to determine the Ticketless Travel Rate for such period;

“Ticketless Travel Survey Methodology” or “TTSM”

means the document in the agreed terms marked **TTSM**;

“Ticketless Travel Survey Period”

means such day or days as are determined by the Secretary of State falling within each of the following periods:

- (a) for the purposes of Schedule 6.5 (*Additional Operating Contract Obligations*)
 - (i) the first to the sixth Reporting Period (inclusive) to fall in any Performance Calculation Year; and
 - (ii) the seventh to the thirteenth Reporting Period (inclusive) to fall in any Performance Calculation Year); and
- (b) **NOT USED**;

“Time to 3 Minutes” or “T-3” or “Time to 3”

means the percentage of recorded station stops called at within three (3) minutes of the planned time relating to the Franchise as produced and/or published by Network Rail;

“Time to 15 Minutes” or “T-15” or “Time to 15”

means the percentage of recorded station stops called at within fifteen (15) minutes of the planned time relating to the Franchise as produced and/or published by Network Rail;

“Time to 3 Minutes Figures”

means the moving annual average percentage published by Network Rail in respect of Time to 3 Minutes, rounded to two (2) decimal places;

“Time to 15 Minutes Figures”

means the moving annual average percentage published by Network Rail in respect of

Time to 15 Minutes, rounded to two (2) decimal places;

“Timetable”

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

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

“Timetable Development Rights”

means all or any of the rights of the Franchisee under any Track Access Agreement to:

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

“Timetable Planning Rules”

has the meaning given to it in the Network Code;

“Timetabled Services”

means any particular Passenger Service characterised by the day of the week (including Saturday and Sunday), time of day, origin station and destination and calling pattern which is scheduled to operate (for example, the 8:11 service departing Leeds Station to Plymouth Station on a Sunday etc.);

“Timetabling and Train Planning Compliance Investigation”

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

"TMR"	has the meaning given to it paragraph 12.1 of Part 1 (<i>Committed Obligations</i>) Schedule 6.2 (<i>Committed Obligations</i>);
"TOC Minute Delay Benchmark"	has the meaning given to it in paragraph 1.1 of Schedule 7.1 (<i>Operational Performance</i>);
"TOC Minute Delay Benchmark Table"	has the meaning given to it in paragraph 1.1 of Schedule 7.1 (<i>Operational Performance</i>);
"TOC Minute Delay Performance Amount"	has the meaning given to it paragraph 1 of Schedule 8.1B (<i>Performance Payments</i>);
"TOC Minute Delay Re-Calculation"	has the meaning given to it in paragraph 1.1 of Schedule 7.1 (<i>Operational Performance</i>);
"TOC on Self Cancellations Benchmark"	means any of the performance levels in respect of Cancellations and/or Partial Cancellations set out in the TOC on Self Cancellations Benchmark Table;
"TOC on Self Cancellations Benchmark Table"	has the meaning given to it in paragraph 1.1 of Schedule 7.1 (<i>Operational Performance</i>);
"TOC on Self Cancellations Performance Amount"	has the meaning given to it paragraph 1 of Schedule 8.1B (<i>Performance Payments</i>);
"TOC on Self Cancellations Re-Calculation"	has the meaning given to it in paragraph 1.1 of Schedule 7.1 (<i>Operational Performance</i>);
"Track Access Agreement"	means each Access Agreement between Infrastructure Manager and the Franchisee which permits the Franchisee to provide the Passenger Services on track operated by the Infrastructure Manager;
"Trade Union"	has the meaning given to it in paragraph 1.1 of Part 2 of Schedule 6.7 (<i>Co-Operation and Industrial Relations</i>);
"Train Crew Numbers Data"	has the meaning given to it in paragraph 1A. of Part 1 of Schedule 6.7 (<i>Co-Operation and Industrial Relations</i>);
"Train Driver Academy" or "TD Academy"	has the meaning given to it in paragraph 1A. of Part 1 of Schedule 6.7 (<i>Co-Operation and Industrial Relations</i>);
"Train Fleet"	means: <ul style="list-style-type: none"> (a) the rolling stock vehicles described in or required by Schedule 1.6 (<i>The Rolling Stock</i>); and (b) any other rolling stock vehicles the Secretary of State consents to, or requires, in accordance with paragraph 3 or paragraph 3A

(as the context requires) of Schedule 1.6 (*The Rolling Stock*);

“Train Operator”	means a franchisee or franchise operator, either of which operate railway passenger services pursuant to a franchise agreement or a Public Sector Operator;
“Train Plan” or “TP”	has the meaning given to it in paragraph 10 of Part 2 (<i>Service Development</i>) of Schedule 1.1 (<i>Franchise Services and Service Development</i>);
“Train Service Quality Inspection”	has the meaning given to it in paragraph 2.1 of Schedule 7.3 (<i>Service Quality Regime</i>);
“Train Service Requirement” or “TSR”	means the train service requirement more particularly described in paragraph 9 of Part 2 (<i>Service Development</i>) of Schedule 1.1 (<i>Franchise Services and Service Development</i>) as such train service requirement may subsequently be amended or replaced in accordance with Schedule 1.1 (<i>Franchise Services and Service Development</i>);
“Train Slots”	has the meaning given to it in the Network Code;
“Transaction”	has the meaning given to it in clause 15.1(g) (<i>Competition</i>);
“Transfer Scheme”	means a transfer scheme made by the Secretary of State under section 12 and Schedule 2 of the Railways Act 2005 (or equivalent statutory provision) pursuant to paragraph 3.1 of Schedule 15.4 (<i>Provisions applying on and after Termination</i>), being substantially in the form of Appendix 1 (<i>Template Form of Transfer Scheme</i>) to Schedule 15.4 (<i>Provisions applying on and after Termination</i>), but subject to such amendments as the Secretary of State may make thereto as a result of any change of Law affecting such transfer scheme or other change of circumstances between the date of the Franchise Agreement and the date on which such scheme is made;
“Transport Act”	means the Transport Act 2000;
“Transport for London” or “TfL”	means Transport for London as established under the Greater London Authority Act 1999;
“Transport for Scotland”	means the national transport agency of Scotland created on 1 January 2006 which is an Executive Agency of the Scottish Government and accountable to Scottish Ministers.
“Transport for the North”	means the sub-national transport body established for the North of England pursuant to regulation 3 of the Sub-national Transport Body (Transport for the North) Regulations 2018 (SI 2018/103);

“Transport for Wales”	means a company wholly owned by Welsh Ministers to deliver transport projects in Wales;
“Transport for West Midlands”	means the function of the West Midlands Combined Authority which is responsible for transport infrastructure and the co-ordination of public transport in the West Midlands (in succession to “Centro”);
“Transport Infrastructure Skills Strategy”	means the document of that name launched by the Department for Transport on 28 January 2016 (as located at the date of this Agreement at: https://www.gov.uk/government/publications/transport-infrastructure-skills-strategy-building-sustainable-skills);
“Travelcard Agreement”	means the agreement of that name referred to in paragraph 4.1(d) of Appendix 1 (<i>List of Transport, Travel and Other Schemes</i>) to Schedule 2.5 (<i>Transport, Travel and Other Schemes</i>);
“Traveline”	means the website available at: http://www.traveline.info (or such other applicable address that is adopted from time to time) which is provided by the partnership of transport companies, local authorities and passenger groups which have come together to bring the information on routes and timers for door to door travel by bus, rail, tube, tram, coach and ferry around Great Britain;
“Trustee”	has the meaning given to it in paragraph 4.1 of Schedule 16.1 (<i>Railways Pension Scheme</i>);
“TSI”	means any Technical Standard for Interoperability with which the Franchisee is required to comply pursuant to Directives EU 96/48 and EU 2001/16 and related legislation;
“Turnaround Time”	means the time specified in the Train Plan between the completion of a Passenger Service in accordance with the Timetable and the commencement of the next Passenger Service in accordance with the Timetable on the same day using some or all of the same rolling stock vehicles;
“Turnover”	means, in relation to any period, the aggregate revenue (excluding any applicable Value Added Tax) accruing to the Franchisee from the sale of Fares, other revenue and the receipt of Franchise Payments during such period;
“Underspend”	has the meaning given to it in paragraph 3(a) of Part 2 (<i>Special Terms related to the Committed Obligations</i>) of Schedule 6.2 (<i>Committed Obligations</i>);

“Undisputed Cancellation”	has the meaning given to it in paragraph 1.1 of Schedule 7.1 (<i>Operational Performance</i>);
“Undisputed Network Rail Cancellation”	has the meaning given to it in paragraph 1.1 of Schedule 7.1 (<i>Operational Performance</i>);
“Undisputed Network Rail Partial Cancellation”	has the meaning given to it in paragraph 1.1 of Schedule 7.1 (<i>Operational Performance</i>);
“Undisputed Partial Cancellation”	has the meaning given to it in paragraph 1.1 of Schedule 7.1 (<i>Operational Performance</i>);
“Unreimbursed Disallowable Costs”	has the meaning given to it in paragraph 1A of Schedule 8.1A (<i>Franchise Payments</i>);
“Unrepresented Employees”	has the meaning given to it in paragraph 1.1 of Part 2 of Schedule 6.7 (<i>Co-Operation and Industrial Relations</i>);
“Value”	means at any time the aggregate of the Projected Revenue of each Fare in a Fares Basket at that time;
“Value Added Tax”	means value added tax as provided for in the Value Added Tax Act 1994;
“Variation”	means a variation to the terms of the Franchise Agreement pursuant to paragraph 1.1 of Schedule 9.3 (<i>Variations to the Franchise Agreement</i>);
“Voyager Fleet”	means the class 220 rolling stock vehicles and the class 221 rolling stock vehicles that are comprised within the Train Fleet;
“Voyager Maintenance Costs”	has the meaning given to it paragraph 1 of Schedule 8.1B (<i>Performance Payments</i>);
“Voyager Maintenance Cost Efficiency Performance Payment” or “VMCEPP”	has the meaning given to it paragraph 1 of Schedule 8.1B (<i>Performance Payments</i>);
“Voyager Rolling Stock Unit”	has the meaning given to it paragraph 4.1 of Part 1 (<i>Committed Obligations</i>) of Schedule 6.2 (<i>Committed Obligations</i>);
“Voyager TSA”	has the meaning given to it paragraph 1 of Schedule 8.1B (<i>Performance Payments</i>);
“Weekday”	means any day other than a Saturday, a Sunday or a Bank Holiday;
“Weekly Season Ticket”	means a Season Ticket Fare which is valid in Standard Class Accommodation from (and including) the day it first comes into effect until (but excluding) the day which falls seven (7) days after such day;

"Welsh Ministers"	has the meaning given to it in paragraph 20.1 (<i>Welsh Ministers</i>) of Part 3 (<i>Franchise Specific Obligations</i>) of Schedule 6.1 (<i>Franchise Specific Obligations</i>);
"West Midlands Rail Executive"	means West Midlands Rail Limited (No. 08991160) whose registered office is at 16 Summer Lane, Birmingham B19 3SD who are a partnership of local transport authorities that have plans to gain greater influence and control over local rail services, leading to the creation of a fully devolved West Midlands Rail Contract;
"Williams Rail Review"	means the root and branch review of Britain's railway, independently chaired by Keith Williams;
"WMGRC"	means the West Midlands Grand Rail Collaboration, a partnership of Network Rail, train service operators and the West Midlands Rail Executive, providing collegiate responsibility for the delivery of rail services to customers in the West Midlands travel to work area, intended to enable operators to meet shared objectives and rigorous new standards on key issues;
"Workers"	has the meaning given to it in paragraph 1.1 of Part 2 of Schedule 6.7 (<i>Co-Operation and Industrial Relations</i>);
"Working Capital Payment"	means the Franchise Payment Component calculated in accordance with paragraph 12.3 of Schedule 8.1A (<i>Franchise Payments</i>);
"Working Capital Repayment"	means the Franchise Payment Component calculated in accordance with paragraph 13.2 of Schedule 8.1A (<i>Franchise Payments</i>);
"Yield Management Data"	means data collected by or on behalf of the Franchisee for the purpose of or in connection with managing or setting the prices at which any tickets for travel on the Passenger Services are sold and/or any quotas and/or restrictions applying to such tickets including: <ul style="list-style-type: none"> (a) the number of passengers travelling upon any particular Passenger Service; (b) the ticket types held by such passengers; (c) the prices paid by such passengers for such tickets; and (d) the dates and/or times between which such tickets were made available to purchase at such prices;
"Yield Management System"	means any system (whether a Computer System or otherwise) for the collection of Yield Management

Data and/or onto which Yield Management Data is input, processed and/or held as such system may be amended or altered from time to time; and

“Zone”

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

4. COMMENCEMENT

4.1 All the clauses of this Agreement (save for clause 15 (*Competition*)) and the following Schedules of this Agreement shall take effect and be binding upon each of the Secretary of State and the Franchisee immediately upon signature of this Agreement:

- (a) paragraph 8 (*Subcontracting any Passenger Services*) of Schedule 1.1 (*Franchise Services and Service Development*);
- (b) paragraph 9 (*Train Service Requirement - Purpose and Responsibility*) of Schedule 1.1 (*Franchise Services and Service Development*);
- (c) paragraph 10 (*Train Plan*) of Schedule 1.1 (*Franchise Services and Service Development*);
- (d) paragraph 14.4 (*Finalising the Train Plan*) of Schedule 1.1 (*Franchise Services and Service Development*);
- (e) paragraph 4.3 (*Publishing the Passenger’s Charter*) of Schedule 1.4 (*Passenger Facing Obligations*);
- (f) Schedule 2.1 (*Asset Vesting and Transfer*);
- (g) paragraph 2 (*Rolling Stock Related Contracts and Insurance Arrangements*) and paragraph 3 (*Cascaded Rolling Stock and Delayed Cascade Mitigation Plan*) of Schedule 2.2 (*Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases*);
- (h) paragraph 1 (*Other Franchisees*) of Schedule 2.3 (*Other Franchisees*);
- (i) paragraph 4.3 (*Specific additional obligations relating to people with disabilities*) of Schedule 4 (*Accessibility and Inclusivity*);
- (j) Schedule 5.1 (*Purpose, Structure and Construction*);
- (k) Schedule 5.3 (*Allocation of Fares to Fares Baskets*);
- (l) Schedule 5.7 (*Changes to Fares and Fares Regulation*);
- (m) Schedule 5.9 (*Smart Ticketing*);
- (n) Schedule 6.4 (*Alliances*);
- (o) paragraph 10 of Schedule 7.2 (*Customer Experience and Engagement*);
- (p) Schedule 9 (*Changes and Variations*);

- (q) Schedule 10 (*Remedies, Events of Default and Termination Events*);
 - (r) paragraphs 1 (*Corporate Information*), 3 (*Identification of Key Personnel and Provision of Organisation Chart*), 5 (*Maintenance of Records*), 6 (*Right to inspect*) and 8 (*Periodic Update Reports*) of Schedule 11.2 (*Management Information*);
 - (s) paragraph 4 (*Performance Bond*) of Schedule 12 (*Financial Covenants and Bonds*);
 - (t) paragraph 2.8 (*Community Rail Partnerships*) of Schedule 13.1 (*Rail Industry Initiatives and Co-operation*);
 - (u) not used;
 - (v) Schedule 14.3 (*Key Contracts*);
 - (w) Schedule 15.1 (*Reletting Provisions*);
 - (x) paragraph 1.1 (*Handover Package Status*) of Schedule 15.3 (*Handover Package*); and
 - (y) Schedule 17 (*Confidentiality, Freedom of Information and Data Protection*).
- 4.2 The other provisions of this Agreement (including clause 15 (*Competition*)) shall take effect and become binding upon the Parties on the Start Date.

5. DURATION OF THE FRANCHISE AGREEMENT

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

5.2 **Additional Reporting Periods**

- (a) If the Secretary of State gives notice to the Franchisee by no later than 23:59 on 23 July 2023, the Franchise Agreement shall continue after such date on the terms set out in the Franchise Agreement for (subject to clause 5.2(c) below) for such number of Reporting Periods, as the Secretary of State may stipulate (being not less than one (1) Reporting Period) ("**First Extension Period**").
- (b) If the Secretary of State gives notice to the Franchisee not less than three (3) months before the date on which the First Extension Period is due to expire in accordance with clause 5.2 (a) the Franchise Agreement shall continue after such date on the terms set out in the Franchise Agreement for (subject to clause 5.2(c) below) such number of Reporting Periods, as the Secretary of State may stipulate (being not less than one (1) Reporting Period) ("**Second Extension Period**").
- (c) Notwithstanding the provisions of clause 5.2 (a) and 5.2 (b), the maximum aggregate combined duration of the First Extension Period and Second Extension Period shall not exceed thirteen (13) Reporting Periods.

5.3 **NOT USED.**

6. GENERAL OBLIGATIONS

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

6.2 Any obligation on the part of the Franchisee to use "**all reasonable endeavours**" shall:

(a) extend to consequent obligations adequately to plan and resource its activities, and to implement those plans and resources, with all due efficiency and economy; and

(b) **NOT USED.**

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

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

6.5 Any obligation on the part of the Franchisee to use "all reasonable endeavours" shall include a requirement to act as a Good and Efficient Operator.

6.6 Anything done or omitted to be done by the Franchisee under or in relation to or during the term of the Previous Franchise Agreement shall be regarded for the purpose of the Franchise Agreement as if it had been done or omitted to be done by the Franchisee under or in relation to and (only to the extent necessary to give effect to this clause) during the term of the Franchise Agreement. Without limiting the generality of this clause 6.6 any contravention of the Previous Franchise Agreement shall be a contravention of the Franchise Agreement, in so far as necessary to ensure that the Secretary of State shall have the same rights under and in respect of the Franchise Agreement in respect of that contravention as it would have had under or in respect of the Previous Franchise Agreement had the Previous Franchise Agreement continued in force. The Secretary of State agrees not to take any action to enforce or terminate the Franchise Agreement in respect of any Event of Default which may have existed or been alleged to exist at the Start Date.

6.7 **NOT USED.**

7. **ASSIGNMENT**

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

8. **CHANGE OF CONTROL AND FACILITATION FEE**

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

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

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

- 8.4 The Secretary of State may require the Franchisee to pay a fee in consideration of the grant of such consent (the "**Facilitation Fee**").
- 8.5 The Secretary of State may require the Franchisee to pay an additional fee in respect of the staff, professional and other costs incurred by the Secretary of State in connection with the Franchisee's application (the "**Administration Fee**"). The Administration Fee shall be payable whether or not the Secretary of State consents to the proposed Change of Control.
- 8.6 On or after submitting such application to the Secretary of State, the Franchisee shall provide, and will procure that the seller and the buyer provide, the Secretary of State with such documentation and information as the Secretary of State may require to assess such application and the amount of the Facilitation Fee. Without limiting clauses 8.11 or 8.12, it shall be deemed to be reasonable for the Secretary of State to delay or withhold consent to the Change of Control where any such documentation is not provided.
- 8.7 The Facilitation Fee shall be a sum equal to one million pounds sterling (£1,000,000).
- 8.8 The Administration Fee shall be determined by the Secretary of State on the basis of:
- (a) the aggregate time spent by officials within the Secretary of State's Department on matters relating to such application;
 - (b) the Secretary of State's hourly scale rates for such officials, as varied from time to time; and
 - (c) the aggregate costs and disbursements, including where applicable VAT and professional costs, incurred by the Secretary of State in connection with such application.
- 8.9 Any determination by the Secretary of State for the purposes of clause 8.8 shall in the absence of manifest error be final and binding as between the Secretary of State and the Franchisee.
- 8.10 Any consent by the Secretary of State to a Change of Control may be given subject to such conditions as the Secretary of State sees fit and the Franchisee shall, as applicable, comply with, and/or procure that the seller and/or the buyer comply with, any such conditions.
- 8.11 The Secretary of State shall have absolute discretion as to the grant of consent to any Change of Control and may accordingly refuse such consent for any reason that the Secretary of State sees fit.
- 8.12 The Secretary of State shall have no liability whatever to the Franchisee in respect of any refusal of consent to a Change of Control, any delay in providing such consent, or any condition of such consent.
- 8.13 The Parties acknowledge and agree that the Franchisee shall under no circumstances be entitled to reimbursement, pursuant to Schedule 8.1A or otherwise, of any Facilitation Fee or Administration Fee Administration Fee paid by it under the terms of this clause 8.

9. **COMPLIANCE WITH LAWS**

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

10. **CUMULATIVE RIGHTS AND REMEDIES**

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

damages in respect of contraventions of the Franchise Agreement or pursue any available remedies under general Law.

11. DISPUTE RESOLUTION PROCEDURE

11.1 *Disputes under the Franchise Agreement*

- (a) Wherever the Franchise Agreement provides that the Secretary of State may reasonably determine any matter, the Franchisee may, unless the Franchise Agreement expressly provides otherwise, dispute whether a determination made by the Secretary of State is reasonable, but the Secretary of State's determination shall prevail unless and until it is agreed or found to have been unreasonable.
- (b) Where either Party is entitled, pursuant to the terms of the Franchise Agreement, to refer a dispute arising out of or in connection with the Franchise Agreement for resolution or determination in accordance with the Dispute Resolution Rules, then such dispute shall, unless the Parties otherwise agree and subject to any duty of the Secretary of State under section 55 of the Act, be resolved or determined by arbitration pursuant to the Dispute Resolution Rules.
- (c) Where, in the absence of an express provision in the Franchise Agreement entitling it to do so, either Party wishes to refer a dispute arising out of or in connection with the Franchise Agreement to arbitration pursuant to the Dispute Resolution Rules, the following process shall apply:
- (i) the Party seeking to refer to arbitration shall serve a written notice upon the other Party stating (i) the nature and circumstances of the dispute, (ii) the relief sought including, to the extent possible, an indication of any amount(s) claimed, and (iii) why it is considered that the dispute should be resolved by way of arbitration rather than litigation;
 - (ii) the other Party shall respond within twenty (20) Weekdays of service of the notice confirming whether or not referral of the dispute to arbitration is agreed. In the absence of any response, the referral to arbitration shall be deemed not to have been agreed;
 - (iii) in the event that the Parties agree to refer the dispute to arbitration then it shall be resolved or determined in accordance with the Dispute Resolution Rules;
 - (iv) in the event that the Parties do not agree to refer the dispute to arbitration then it shall be resolved or determined in accordance with clause 17 (*Governing Law and Jurisdiction*);
 - (v) nothing in this clause 11.1 shall preclude either Party from commencing, continuing or otherwise taking any step by way of litigation in pursuit of the resolution or determination of the dispute unless an agreement is reached to refer the dispute to arbitration; and
 - (vi) **NOT USED.**
- (d) The arbitrator in any dispute referred for resolution or determination under the Dispute Resolution Rules shall be a suitably qualified person chosen by agreement between the Parties or, in default of agreement, chosen by the Secretary of the Access Disputes Committee from a panel of persons agreed from time to time for such purposes between the Secretary of State and the Franchisee or, in default of agreement as to the arbitrator or as to such panel, selected on the application of any Party by the President of the Law Society or the President of the Institute of Chartered Accountants in England and Wales from time to time (or such other person to whom they may delegate such selection).

11.2 **Disputes under other agreements**

- (a) The Franchisee shall notify the Secretary of State of any disputes to which it is a party under any Inter-Operator Scheme, Access Agreement, Property Lease or Rolling Stock Related Contract, or under any other agreement in circumstances where the relevant dispute could have an adverse effect on the Franchisee's ability to comply with its obligations under the Franchise Agreement or on the provision of the Franchise Services and which have been submitted for resolution either to the courts or to any other procedure for dispute resolution provided for under such agreements.
- (b) Such notification shall be made both:
 - (i) at the time of such submission (and such notification shall include reasonable details of the nature of the dispute); and
 - (ii) at the time of the resolution of the dispute (whether or not subject to appeal) (and such notification shall include reasonable details of the result of the dispute, any associated award and whether it is subject to appeal).
- (c) The Franchisee shall provide such further details of any dispute referred to in clause 11.1(d) (*Dispute Resolution Procedure*) as the Secretary of State may reasonably request from time to time.

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

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

12. **NOTICES**

12.1 **Notices**

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

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

Table 2	
Name:	XC TRAINS LIMITED
Address:	C/O Arriva Plc 1 Admiral Way, Doxford International, Business Park, Sunderland, SR3 3XP

Email:	[REDACTED ⁴]
Attention:	[REDACTED ⁵]

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

- (i) by email; or
- (ii) through the Secretary of State's contract management system,

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

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

Table 4	
Name:	XC TRAINS LIMITED
Address:	C/O Arriva Plc 1 Admiral Way, Doxford International, Business Park, Sunderland, SR3 3XP
Email:	[REDACTED ⁶]
Attention:	[REDACTED ⁷]

⁴ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁵ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁶ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁷ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

12.2 **Deemed Receipt**

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

- (a) if sent by hand or recorded delivery, when delivered; or
- (b) if sent by pre-paid first class post, from and to any place within the United Kingdom, three (3) Weekdays after posting unless otherwise proven; or
- (c) if sent by email, upon sending, subject to receipt by the sender of a **"delivered"** confirmation (provided that the sender shall not be required to produce a **"read"** confirmation); or
- (d) if sent through the Secretary of State's contract management system, an **"actual date"** confirmation in the audit log from the Secretary of State's contract management system.

13. **SET-OFF**

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

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

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

13.3 Notwithstanding clause 13.1, the Secretary of State shall be entitled to set off any liability for payment under Schedule 8.1A (Franchise Payments) against any sum owed to the Secretary of State by the Franchisee under Schedule 8.1A (Franchise Payments).

14. **MISCELLANEOUS PROVISIONS**

14.1 **Waivers**

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

14.2 Time Limits

Where in the Franchise Agreement any obligation of a Party is required to be performed within a specified time limit (including an obligation to use all reasonable endeavours or reasonable endeavours to secure a particular result within such time limit): (i) that obligation shall be deemed to continue after the expiry of such time limit if such Party fails to comply with that obligation (or secure such result, as appropriate) within such time limit; (ii) the Parties shall consult on the relevant Party's failure to perform the obligation within the specified time limit; and (iii) the relevant Party shall, as applicable, continue to use all reasonable endeavours or reasonable endeavours to do or procure that the relevant thing is done as soon as reasonably practicable thereafter.

14.3 Partial Invalidity

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

14.4 Further Assurance

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

14.5 Rights of Third Parties

- (a) A person who is not a Party to the Franchise Agreement shall have no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Franchise Agreement except to the extent set out in this clause 14.5.
- (b) Any Successor Operator or potential Successor Operator nominated by the Secretary of State and notified to the Franchisee and the Franchisee for the purposes of this clause 14.5 may enforce and rely on the provisions of Schedule 15 (Obligations Associated with Termination) to the same extent as if it were a Party but subject to clauses 14.5(c) and 14.5(d).
- (c) The Franchise Agreement may be terminated, and any term may be amended or waived, in each case in accordance with the terms of the Franchise Agreement, without the consent of any person nominated under clause 14.5(b).
- (d) The person nominated under clause 14.5(b) shall only be entitled to enforce and rely on Schedule 15 (*Obligations Associated with Termination*) to the extent determined by the Secretary of State (whether at the time of nomination or at any other time) and, to the extent that any such person is entitled to enforce and rely on Schedule 15 (Obligations Associated with Termination), any legal proceedings in relation thereto must be commenced within one (1) year of the expiry of the Franchise Period and any such person shall not be entitled to enforce or rely on Schedule 15 (Obligations Associated with Termination) to the extent that it has consented to any particular act or omission of the Franchisee which may constitute a contravention of Schedule 15 (Obligations Associated with Termination) or has been afforded a reasonable opportunity to indicate to the Franchisee that it is not so consenting and has not so indicated (the extent of such reasonable opportunity to be determined by the Secretary of State unless otherwise agreed).

14.6 Secretary of State's Consent or Approval

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

14.7 Enforcement Costs

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

14.8 Arm's Length Dealings

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

14.9 Non-Discrimination

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

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

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

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

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

14.11 NOT USED**14.12 Co-operation**

- (a) The Franchisee agrees to co-ordinate and co-operate with other Train Operators, Network Rail and other rail industry bodies, to ensure the continuation of Passenger Services across the network in a co-ordinated manner, and in line with the priorities and directions, as may be set out by the Secretary of State from time to time, including:
 - (i) co-ordinating with other Train Operators to ensure consistency of coverage to all communities across the national network, including changes to Franchise Services to assist where other Train Operators are unable to fully perform their own Franchise Services;
 - (ii) assisting altered or additional freight services to operate on the national rail network and, where appropriate, enabling certain essential goods (such as medical equipment or other urgent items) to be carried on Passenger Services; and

- (iii) continuing where possible and appropriate to enforce any agreements with third parties to deliver quality and value for money.
- (b) The Franchisee agrees to co-operate with the Secretary of State in an open and transparent manner, which shall include an obligation on the Franchisee to disclose to the Secretary of State anything which the Secretary of State would reasonably expect notice of in connection with the matters arising under this Franchise Agreement.

14.13 Additional Services

- (a) The Franchisee acknowledges that the Secretary of State may require special measures, in the form of increased co-operation or additional services, to be implemented during the Franchise Period and the Franchisee shall use its reasonable endeavours to accommodate such requests and act in the national interests.
- (b) The Franchisee, if requested by the Secretary of State, shall use its reasonable endeavours to provide additional services, such as enhanced cleaning regimes to a standard reasonably proposed by the Secretary of State.
- (c) The reasonable and proper costs incurred by the Franchisee in performing its obligations under this Clause 14.13 shall be recoverable from the Secretary of State as part of the Actual Costs, subject to the provisions of schedule 8.1A (*Franchise Payments*) to the Franchise Agreement.

14.14 Meetings

Where the Franchise Agreement refers to a "meeting" of the Parties or the Parties and other third parties, such meetings may be conducted by conference call or other remote link as mutually agreed between the Parties or the Parties and any relevant third parties (as applicable).

15. COMPETITION

15.1 For the purposes of this clause 15:

- (a) "**CMA**" means the Competition and Markets Authority;
- (b) "**Commitment**" means:
 - (i) where the Transaction is within the jurisdiction of the CMA undertakings in lieu of reference for a second phase investigation offered by any Parent, the Franchisee or any Affiliate that the CMA is able to accept pursuant to section 73(2) of the Enterprise Act 2002 in relation to the Transaction; or
 - (ii) where the Transaction is notified to the European Commission under Council Regulation (EC) 139/2004 concerning the control of concentrations between undertakings as amended from time to time the giving by any Parent, the Franchisee or any Affiliate to the European Commission of commitments to enable the European Commission to conclude that the concentration arising out of the Transaction would not impede effective competition in the common market or a substantial part of it and declare it compatible with the common market pursuant to Article 6(1)(b) of the EU Merger Regulation;
- (c) "**Competition Authority**" means the European Commission or the CMA;
- (d) "**Competition Event**" means an Intervention by a Competition Authority or any Commitment which could prejudice the ability of:

- (i) the Franchisee to operate the Franchise in accordance with the Franchise Agreement; or
 - (ii) any Affiliate of the Franchisee to continue to operate any other Rail Franchise of which it is the franchisee;
- (e) **"Intervention"** means a determination following the completion of a second phase investigation that the merger resulting from the award of the Franchise to the Franchisee (i) in the case of the CMA has resulted or may be expected to result in a substantial lessening of competition in the UK market or (ii) in the case of the European Commission would significantly impede effective competition in the internal market and that in either case specified actions are required to be taken for the purposes of remedying those anticipated competition issues;
- (f) **"Rail Franchise"** means any passenger rail franchise awarded pursuant to the Act in respect of which a franchisee or its wholly owned subsidiary provides franchised services; and
- (g) **"Transaction"** means the entry into the Franchise Agreement by the Secretary of State and the Franchisee.

15.2 In so far as the Transaction is:

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

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

15.3 Without prejudice to the generality of clause 15.2, the Franchisee shall respond in a timely manner to all requests for information and/or documents made by the Competition Authority, respond to any issues letter, issues statement or statement of objections, provide comments on any working papers on which the Competition Authority invites comments, attend any meeting (including issues meetings, state of play meetings or hearings), respond to any provisional findings and notice of possible remedies, respond to any provisional decision on remedies and attend any remedies hearing.

15.4 The Franchisee shall report to the Secretary of State on at least a weekly basis or as frequently as the Secretary of State shall require on the progress of the consideration of the Transaction by the Competition Authority and immediately concerning any material developments in the case. The Franchisee shall promptly provide to the Secretary of State copies of all material communications with the Competition Authority, including but not limited to requests for information and/or documents made by the Competition Authority, submissions and responses with supporting evidence, as well as hearing transcripts (provided always that the Franchisee may redact from such copies information which is confidential to the Franchisee and which may if disclosed to the Secretary of State prejudicially affect the Franchisee's legitimate business interests).

15.5 If at any time the Secretary of State (acting reasonably) determines that a Competition Event has arisen, the Secretary of State shall have the right to give written notice to the Franchisee informing it that such Competition Event has arisen (**"Competition Event Notice"**) and the provisions of paragraph 2.5 of Schedule 10.2 (*Events of Default and Termination Events*) shall apply.

16. ENTIRE AGREEMENT

- 16.1 Subject to clause 6.6, this Agreement and the Direct Award Collateral Agreement contain the entire agreement between the Parties in relation to the subject matter of the Franchise Agreement and supersede all prior agreements and arrangements between the Parties other than any confidentiality agreements or undertakings which the Franchisee may have entered into with the Secretary of State in connection with the Secretary of State’s proposal to secure the provision of the Passenger Services under the Franchise Agreement.
- 16.2 The Franchisee hereby acknowledges that it is not entering into the Franchise Agreement in reliance on any warranties, representations or undertakings howsoever or to whomsoever made except in so far as such warranties, representations or undertakings are contained in the Franchise Agreement.
- 16.3 The Franchisee hereby acknowledges and agrees with the Secretary of State (for the Secretary of State and as trustee for each of the other persons referred to therein) to the disclaimers of liability which are contained in the Request for Proposal or in any document supplied by or on behalf of the Secretary of State in connection with the Franchise Agreement, the process leading to the entering into of the Franchise Agreement, or the Franchise Services (including any Request for Proposal issued in connection therewith).
- 16.4 The Franchisee irrevocably and unconditionally waives any right which it may otherwise have to claim damages in respect of and/or to rescind this Agreement and/or the Direct Award Collateral Agreement on the basis of any warranty, representation (whether negligent or otherwise, and whether made prior to and/or in this Agreement or the Direct Award Collateral Agreement) or undertaking howsoever or to whomsoever made unless and to the extent that such warranty, representation or undertaking was made fraudulently.

17. GOVERNING LAW AND JURISDICTION

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

SIGNATURE PAGE

This Agreement has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

SEAL REF No.

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

)
)
)
)

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

Executed as a deed by **XC TRAINS LIMITED**
acting by Tom Joyner, a director and Gillian
Ingham, a director

Director:)
)
)
)

Director:)
)
)
)

SCHEDULE 1

PASSENGER SERVICE OBLIGATIONS

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

Schedule 1.1

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

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

2. NOT USED**3. Light Maintenance Services**

3.1 Light Maintenance Services shall comprise:

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

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

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

4. **Ancillary Services**

- 4.1 The Franchisee may carry out the following Ancillary Services:

- (a) the selling, lending or hiring of any goods or rights and the provision of any services (whether for a charge or not) on any train used in the provision of the Passenger Services where such goods or services are sold or provided principally for consumption or use on the relevant train, including the sale of any Fares, meals, light refreshments, newspapers, magazines, books, entertainment materials, information or materials targeted at tourists and other leisure passengers (such as maps) or phone cards;
- (b) the provision of any service at any station which, if provided on a train used in the provision of the Passenger Services, would fall within paragraph 4.1(a) and is made available only or principally to persons at such stations who either are about to travel or have recently travelled on a train used in the provision of the Passenger Services;
- (c) not used;
- (d) not used;
- (e) not used;
- (f) the selling at any location of any Fare which is valid, in whole or in part, on the Passenger Services and the selling of any other Fare at any location where such Fares may be purchased from the Franchisee on or before the date of the Franchise Agreement or at any other location, provided that the majority of Fares sold at any such other location shall be Fares which are valid, in whole or in part, on the Passenger Services;
- (g) the selling, in conjunction with any Fare, of any other rights which entitle the purchaser thereof to:
 - (i) travel on any other train or light rail service;
 - (ii) travel on any aircraft;
 - (iii) travel on any shipping or ferry service;
 - (iv) travel on any bus; or
 - (v) attend any event or attraction or enter any location;
- (h) the lending, seconding, hiring or contracting out of Franchise Employees to other Train Operators in order to enable such Train Operators to provide services at the Stations to passengers travelling on any such operator's trains;

- (i) the provision of information relating to railway passenger services within Great Britain to passengers through telephone, internet, mobile data services or other appropriate means;
 - (j) the supervision, management and training of train crew of other Train Operators provided such activity is necessarily incidental to the provision of the Passenger Services and could not reasonably be carried out by or through an Affiliate of the Franchisee;
 - (k) not used;
 - (l) the licensing or permitting of any other person (including an Affiliate of the Franchisee) to carry out any activity or business, in connection with the provision of the Franchise Services, or otherwise, on any rolling stock vehicle operated by the Franchisee, at any station served by the Passenger Services, at any Depot, or otherwise (including the letting, leasing or licensing (on an exclusive basis or otherwise) of any part or all of a Station or Depot to such other person);
 - (m) such other activity or business as may be reasonably necessary for the purpose of providing any other Franchise Services or complying with the Franchise Agreement, provided that it could not reasonably be carried out by or through an Affiliate of the Franchisee;
 - (n) not used;
 - (o) the provision or operation of Charter Services, subject to the Planned Train Mileage of such Charter Services not exceeding in any Reporting Period two per cent (2%) of the Planned Train Mileage of Passenger Services provided by the Franchisee in such Reporting Period;
 - (p) the provision of consultancy services reasonably ancillary to the provision of the other Franchise Services; and
 - (q) any services or activity not falling within paragraphs 3, 4.1(a) to 4.1(p) above, subject to the gross value of any such services or activity (excluding any attribution of costs) not exceeding twenty five thousand pounds sterling (£25,000) per annum in each Franchisee Year, per item and in aggregate, two hundred and fifty thousand pounds sterling (£250,000) per annum in each Franchisee Year provided that in the second and each subsequent Franchisee Year, these amounts will be Indexed.
- 4.2. Subject to obtaining the Secretary of State's prior written consent (such consent not to be unreasonably withheld or delayed), the Franchisee:
- (i) may; and
 - (ii) to the extent required in order to best serve the needs of passengers on railway passenger services within Great Britain from time to time), shall use all reasonable endeavours to,
- carry out the following Ancillary Services:
- (a) in any Reporting Period, the subleasing, hiring or licensing of the rolling stock vehicles used in the provision of the Passenger Services;

(b) the lending, seconding, hiring or contracting out during any Reporting Period to another person or persons (whether for a charge or not) of Franchise Employees; and

(c) not used.

4.3 The Franchisee:

(i) may; and

(ii) to the extent required in order to best serve the needs of passengers on railway passenger services within Great Britain from time to time, shall use reasonable endeavours to,

carry out the following Ancillary Services on an emergency basis; the subleasing, hiring, licensing, lending, selling of any rolling stock vehicles or other assets of the 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.

5. **Royal Train**

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

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

(a) running a "**sweeper**" train in front of the royal train;

(b) having spare locomotives or other rolling stock on standby as rescue traction; and/or

(c) carrying out security requirements or co-operating with other persons in ensuring that security requirements are carried out prior to calling at any station on the Routes.

6. **Restrictions relating to Franchise Services**

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

(a) Penzance to Bristol Temple Meads via Plymouth, Exeter St David's and Taunton;

(b) Par to Newquay;

(c) Newton Abbot to Paignton;

- (d) Bristol Temple Meads to Bath Spa;
- (e) Bristol Temple Meads to Cardiff Central via Severn Tunnel Junction;
- (f) Bristol Temple Meads to Birmingham New Street via Bristol Parkway and Cheltenham Spa;
- (g) Bristol Parkway to Gloucester;
- (h) Bristol Temple Meads to Taunton via Weston-super-Mare;
- (i) Cardiff Central to Birmingham New Street via Lydney, Gloucester, Worcestershire Parkway and University;
- (j) Birmingham New Street to Stansted Airport via Leicester, Stamford, Peterborough, Ely and Cambridge;
- (k) Birmingham New Street to Sheffield via Tamworth, Derby and Chesterfield;
- (l) Sheffield to York via Doncaster;
- (m) Sheffield to York via Wakefield Westgate, Leeds and Micklefield;
- (n) Derby to Nottingham;
- (o) Derby to Chesterfield via Long Eaton and Alfreton (Erewash Valley line);
- (p) Willington to Nottingham direct;
- (q) York to Glasgow Central via Newcastle, Edinburgh and Motherwell;
- (r) Edinburgh to Aberdeen via Cupar and Dundee;
- (s) Birmingham New Street to Manchester Piccadilly via Wolverhampton, Stafford and Stoke-on-Trent;
- (t) Stafford to Manchester Piccadilly via Crewe and Stockport;
- (u) Birmingham New Street to Reading via Coventry, Oxford and Didcot avoiding line;
- (v) Birmingham New Street to Leamington Spa via Solihull;
- (w) Reading to Bournemouth via Basingstoke and Southampton Central;
- (x) Reading to Guildford;
- (y) Tilehurst to Reading West direct;
- (z) Bristol Parkway to Bath Spa direct.

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

- 6.3 The Secretary of State may impose such conditions to the Secretary of State's consent as the Secretary of State considers appropriate for the purpose of securing the continuity of the provision of the Franchise Services at the end of the Franchise Term.
- 6.4 The Franchisee shall not during the Franchise Term, without the consent of the Secretary of State:
- (a) provide or operate any railway passenger services other than the Passenger Services or Charter Services;
 - (b) operate any stations or light maintenance depots other than the Stations and Depots; or
 - (c) hold shares, participations or any other interest in any other company or body corporate unless such company or body corporate is:
 - (i) Network Rail; or
 - (ii) owned directly or indirectly by another participant in the railway industry and the holding is incidental to the Franchisee's participation in an Inter-Operator Scheme or any other arrangement designed to ensure or facilitate co-operation between such participants or between any such participants and any other person.

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

- 7.1 Except to the extent that the Secretary of State agrees otherwise, the Franchisee shall not:
- (a) cease to operate;
 - (b) cease to secure the operation of; or
 - (c) propose to terminate the use of,
- any Station (or part of a Station) or any railway passenger service over a Route where such cessation or proposal might result in a Closure.
- 7.2 If any procedures are commenced under Part 4 of the Railways Act 2005 in relation to a Closure, the Franchisee shall, at the Secretary of State's cost and to the extent so requested by the Secretary of State, take such action as the Secretary of State may require in order to enable the Secretary of State to comply with any duty imposed on the Secretary of State under Part 4 of the Railways Act 2005 in relation to such Closure.

8. **Subcontracting any Passenger Services**

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

- (a) the Secretary of State receives prior written notice of any such subcontracting or delegation;
 - (b) the Franchisee continues to be party to all Access Agreements and Property Leases necessary to provide such Passenger Services and to enjoy all relevant access and operational rights thereunder;
 - (c) the Franchisee continues to specify and control the terms and conditions (subject to the requirements of the Inter-Operator Schemes) on which such Passenger Services are to be provided, including the determination of the Price or Child Price (as the case may be) of any Fares;
 - (d) the Planned Train Mileage of the Passenger Services so delegated or subcontracted does not exceed five per cent (5%) of the Planned Train Mileage of the Franchisee in any Reporting Period (provided that, if as a result of the impact of COVID-19 it is not reasonably practicable to obtain the prior written consent of the Secretary of State to a higher percentage of the Planned Train Mileage being delegated or subcontracted in advance of subcontracting or delegating the provision of such Passenger Services, the Franchisee may subcontract or delegate the provision of such Passenger Services provided that the Secretary of State receives notification of, and has not objected to, any such subcontracting or delegation); and
 - (e) the Franchisee continues to perform its obligations under this Schedule 1.1 in respect of any subcontracted or delegated services.
- 8.3 Any such subcontracting or delegation shall not relieve the Franchisee from any of its obligations under the Franchise Agreement, including its obligations under this paragraph 8 and Schedule 14 (Preservation of Assets).

Part 2 – Service Development

9. Train Service Requirement - Purpose and Responsibility

- 9.1 This Part 2 of Schedule 1.1 sets out the obligations of the Franchisee in relation to the acquisition of timetable development rights required for the purposes of securing a Timetable that complies with the Train Service Requirement and preparing a Train Plan consistent with the obligations of the Franchisee and the provision of appropriate levels of passenger carrying capacity. It also provides for alteration of the Train Service Requirement by the Secretary of State. The Train Service Requirement does not in any way limit the Franchisee's obligations pursuant to paragraph 14 of this Schedule 1.1.
- 9.2 The Train Service Requirement is the minimum specification of the Passenger Services to be provided by the Franchisee during the Franchise Term.
- 9.3 The Train Service Requirement as at the date of the Franchise Agreement is comprised in the following, all in the agreed terms marked as follows:
- (a) TSR1 being the Train Service Requirement applicable from the Start Date until the Passenger Change Date in December 2020; and
 - (b) TSR2 being the Train Service Requirement applicable from the Passenger Change Date in December 2020 until the end of the Franchise Term.
- 9.4 The Secretary of State and the Franchisee agree that the replacement of TSR1 by TSR2 at the time and for the period specified in paragraph 9.3 shall not constitute a Change for the purposes of paragraph (d) of the definition of Change.
- 9.5 For the purposes of this Schedule 1.1, the Train Service Requirement shall remain in force unless and until amended or replaced pursuant to this Schedule 1.1.
- 9.6 The Train Service Requirement may be expressed in whole or in part at any level of generality or to any level of detail the Secretary of State considers appropriate.

10. Train Plan

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

- 10.3 The Franchisee shall submit to the Secretary of State a Train Plan in respect of each Timetable in accordance with this Schedule 1.1.
- 10.4 In preparing any Train Plan, the Franchisee shall do so by reference to the Timetable that it envisages operating in order to comply with the Train Service Requirement and paragraph 14 of this Schedule 1.1.
- 10.5 Each Train Plan shall set out for each railway passenger service in the Timetable to which it relates:
- (a) its start point and departure time;
 - (b) its terminating point and arrival time;
 - (c) the number and class of rolling stock vehicles allocated to each such railway passenger service;
 - (d) the Passenger Carrying Capacity that each such railway passenger service, as formed, is to have; and
 - (e) its Forecast Passenger Demand and, where this has been requested by the Secretary of State and is capable of calculation, Actual Passenger Demand.
- 10.6 A Train Plan shall be in any format that the Secretary of State may reasonably specify for this purpose.
- 10.7 From the Start Date until the next Passenger Change Date, the Franchisee shall adopt as the Train Plan the document in the agreed terms marked **TP**. It is acknowledged that the Train Plan in the agreed terms marked **TP** shall be replaced from time to time during the Franchise Period in accordance with the provisions of paragraph 14.4.
- 11. Consultation on Significant Alterations to the Timetable**
- 11.A Notwithstanding any consultation the Secretary of State might separately undertake in respect of any amended or new draft Train Service Requirement issued pursuant to paragraph 16, the Franchisee shall where it intends that any future Timetable will contain Significant Alterations compared to the Timetable then in force:
- (a) consult with the Secretary of State regarding the nature, extent and rationale for such Significant Alterations; and
 - (b) agree with the Secretary of State whether such Significant Alterations to a future Timetable proposed by the Franchisee are likely to have a material adverse effect as described in paragraph 11.1(b). If the Parties are unable to reach such an agreement, the Secretary of State shall reasonably determine whether or not the proposed Significant Alterations are likely to have a material adverse effect as described in paragraph 11.1(b).
- 11.1 If, following such consultation with the Secretary of State referred to in paragraph 11.A:
- (a) the Franchisee wishes to continue to pursue the Significant Alterations to any future Timetable on which it has consulted with the Secretary of State pursuant to paragraph 11.A; and

- (b) such Significant Alterations are likely to have, as agreed or determined by the Secretary of State pursuant to paragraph 11.A, a materially adverse effect on:
- (i) the ability of passengers using any station served by the Passenger Services to make journeys relating to work or education at reasonably convenient times; and/or
 - (ii) the trading prospects of commercial enterprises located in any community in which a station served by the Passenger Services is located in consequence of it being more difficult for customers or employees to access such commercial enterprises through travel on the Passenger Services,

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

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

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

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

report and exercise such Timetable Development Rights in the manner indicated in the report.

12. **Timetable Development Rights**

- 12.1 The Franchisee shall use all reasonable endeavours to amend and/or enter into such Access Agreements as may be necessary or desirable from time to time to obtain the timetable development rights that it requires to secure a Timetable that enables it to operate railway passenger services that comply with the Train Service Requirement and otherwise comply with its obligations under the Franchise Agreement (including under paragraph 14 and paragraph 16 of this Schedule 1.1).
- 12.2 Prior to exercising any Timetable Development Rights to secure a Timetable the Franchisee shall make an informed estimate of Forecast Passenger Demand and in doing so shall make reasonable assumptions based on available evidence (making proper use of recognised railway industry systems and forecasting tools as these may develop over the Franchise Period) with the estimate being in such format and to such level of disaggregation as the Secretary of State may reasonably require.
- 12.3 Subject to the remaining provisions of this paragraph 12, the Franchisee shall exercise its Timetable Development Rights so as to secure a Timetable that enables it to operate railway passenger services that comply with the Train Service Requirement and paragraph 14 of this Schedule 1.1 in accordance with its obligations under paragraph 17 of this Schedule 1.1.
- 12.4 Where the Franchisee proposes to exercise its Timetable Development Rights so that the Timetable in force after the relevant Passenger Change Date contains Significant Alterations to that in force prior to such Passenger Change Date the Franchisee shall (without prejudice to its obligation to consult pursuant to paragraph 11) act reasonably with the intention of obtaining a Timetable which enables:

- (a) paragraph 14.1(b); and
- (b) paragraph 14.1(c),

of this Schedule 1.1 to be achieved in relation to each Passenger Service in the Timetable to the greatest extent reasonably practicable.

It is agreed that in acting reasonably the Franchisee shall take full and proper account of its informed estimate of the Forecast Passenger Demand made pursuant to paragraph 12.2 above.

- 12.5 Unless the Secretary of State otherwise directs, the Franchisee shall, for the purposes of securing a Timetable that complies with the Train Service Requirement and paragraph 14 of this Schedule 1.1, exercise its rights under the Track Access Agreement (including the Network Code) to object, to make representations and to withhold consent in respect of any actual or proposed act or omission by Network Rail in relation to such agreement in respect of its Timetable Development Rights.
- 12.6 If the Secretary of State does not consider that the Franchisee has taken sufficient steps under paragraph 12.5, the Secretary of State may require the Franchisee to exercise its rights in such manner as the Secretary of State reasonably considers appropriate in the circumstances, including:

- (a) disputing any actual or proposed act or omission by Network Rail in respect of any Timetable Development Rights; and
- (b) submitting such dispute to any relevant dispute resolution arrangements or procedures and appealing against any award or determination under such arrangements or procedures, including to the ORR.

12.7 Subject to the Franchisee complying with its obligations under paragraph 12.5 above, it shall not be liable for any failure to secure a Timetable that enables the Franchisee to operate railway passenger services that comply with the Train Service Requirement and paragraph 14 of this Schedule 1.1, to the extent that such failure is caused by:

- (a) the Franchisee's Timetable Development Rights being inadequate to enable it to secure the requisite Train Slots, provided that the Franchisee has exercised and, unless otherwise agreed by the Secretary of State, is continuing to exercise all reasonable endeavours to obtain the requisite Timetable Development Rights in accordance with paragraph 12.1 above;
- (b) Network Rail exercising its flexing rights from time to time under the Track Access Agreement or the Network Code in respect of such Train Slots;
- (c) Network Rail exercising its other rights from time to time under the Track Access Agreement or the Network Code; or
- (d) the exercise by the ORR of its powers pursuant to section 22C of the Act.

12.8 **TDR Amendments**

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

State reasonably considers that such failure to secure a Timetable that enables the Franchisee to operate the Train Service Requirement is partly due to the default of the Franchisee in not properly complying with its obligations under the Franchise Agreement in relation to securing timetable development rights. Accordingly any TDR Amendment may be drafted so that it does not relieve the Franchisee of the obligation to comply with the Train Service Requirement to the extent that the Secretary of State determines that the failure is due to such default of the Franchisee and the Franchisee may therefore be in contravention of the Franchise Agreement.

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

12.10 Any TDR Amendment issued pursuant to paragraph 12.8 shall:

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

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

- (a) the Train Service Requirement without such TDR Amendment shall thereafter apply; and
- (b) the cessation of such TDR Amendment shall be a Change.

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

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

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

13.3 The Franchisee shall:

- (a) keep the Secretary of State fully informed of any discussions with Network Rail in relation to the matters referred to in this Schedule 1.1 which may, in

the reasonable opinion of the Franchisee, have a material impact on the ability of the Franchisee to deliver the Train Service Requirement or meet the requirements of paragraph 14 of this Schedule 1.1 through the Timetable and shall, if required to do so by the Secretary of State, supply copies of any related correspondence to the Secretary of State; and

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

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

14.1 **Capacity and Timetable Planning**

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

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

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

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

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

14.3 Preparation of Timetable and Train Plan

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

14.4 Finalising the Train Plan

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

15. Capacity Mitigation Proposal

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

- (a) remedy the circumstances leading to the Franchisee being unable to prepare a Timetable and/or a Train Plan which meets the requirements of paragraph 14.1; and/or
 - (b) minimise, so far as is possible, the amount by which Target Passenger Demand exceeds the provision of Passenger Carrying Capacity on the affected Passenger Services;
 - (c) ensure, so far as is possible, that such excess is not unduly concentrated on any particular Route or Passenger Service; and
 - (d) minimise, so far as is possible, the extent to which passengers are required to stand:
 - (i) on boarding any Off-Peak Passenger Service; and
 - (ii) twenty (20) minutes after boarding (or such other time period as the Secretary of State may stipulate) on any Peak Passenger Service,

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

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

should take effect along with the Secretary of State's views as to the changes (if any) that the Secretary of State proposes to make to the Benchmarks.

16.3 On receipt of any such draft of a proposed amended or new Train Service Requirement the Franchisee shall provide to the Secretary of State (if so requested) its informed opinion:

- (a) with supporting reasons as to the impact of the proposed amended or new Train Service Requirement on the delivery of an optimal range of railway passenger services patterns relative to Target Passenger Demand and compliance with paragraph 14.1 of this Schedule 1.1;
- (b) with supporting reasons as to the changes to resources and adjustment to Franchise Payments (if any) which would be required in consequence of the proposed amended or new Train Service Requirement;
- (c) with supporting reasons as to changes (if any) to the Benchmarks;
- (d) of the process to be required to implement the proposed amendment to the Train Service Requirement together with a plan for the implementation of the amendment to the Train Service Requirement (including all steps required to ensure that the Franchisee can deliver a Timetable compliant with such amended or new Train Service Requirement) prepared in accordance with procedural arrangements specified by the Secretary of State pursuant to paragraph 17 of this Schedule 1.1; and
- (e) with supporting reasons of the likely impact of the proposed amended or new Train Service Requirement on existing and future passenger journeys and journey opportunities,

together with a draft of the Train Plan that it considers that the proposed amended or new Train Service Requirement would require.

16.4 There may be iterations of drafts of the proposed amended or new Train Service Requirement and the Franchisee shall to the extent required by the Secretary of State have the obligations described in this paragraph 16 in respect of all such iterations.

16.5 Processes contained in this paragraph 16 shall take place in accordance with procedural arrangements and timescales stipulated by the Secretary of State pursuant to paragraph 17.2 of this Schedule 1.1.

16.6 The Secretary of State may, in accordance with any stipulation made under paragraph 17.2, issue to the Franchisee any amended or new Train Service Requirement that the Secretary of State requires the Franchisee to operate and notice of the amendments (if any) to the Benchmarks. Such amended or new Train Service Requirement will be issued prior to the commencement of the timetable development process of Network Rail for the Timetable in respect of which it is proposed to implement the change to Passenger Services arising from the amended or new Train Service Requirement.

16.7 In the absence of the Secretary of State issuing any amended or new Train Service Requirement the existing Train Service Requirement will remain in full force and effect.

16.8 At the same time as the Secretary of State provides the Franchisee with a draft of any proposed amended or new Train Service Requirement pursuant to paragraph 16.1, the Secretary of State shall also provide to the Franchisee the Secretary of State's opinion of any amendments (if any) that are required to the Benchmarks.

16.9 Not used.

17. **Procedural Arrangements and Timescales**

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

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

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

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

(a) shall be at the reasonable discretion of the Secretary of State;

(b) may contain procedural arrangements and timescales to be followed by the Franchisee in relation to other changes to the Franchise Services (pursuant to paragraph 1 of Schedule 9.3 (*Variations to the Franchise Agreement*)) in conjunction with the Train Service Requirement; and

(c) may provide for iterations of drafts of any amended or new Train Service Requirement, Train Plan or Timetable.

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

18. **Obligations in relation to other Train Operators**

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

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

(b) the stopping patterns of such railway passenger services are placed at approximately evenly-spaced intervals throughout each relevant hour,

taking into account the reasonable needs of passengers and the different types of railway passenger services provided by other Train Operators and the Franchisee; and

- (c) a reasonable pattern of railway passenger service is provided on the relevant route(s) to enable passengers to make Connections (particularly where low frequency railway passenger services are operated, first trains or last trains are involved, taking account of seasonal fluctuations in passenger demand and the time needed to make any such Connection).

19. Provisions relating to Access Agreements and Property Leases

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

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

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

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

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

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

19.4 If and to the extent that:

- (a) the Secretary of State exercises the Secretary of State's rights pursuant to paragraph 19.1;
- (b) the Franchisee's compliance with the Secretary of State's requirements pursuant to paragraph 19.1 would lead to the unavoidable consequence of the Franchisee contravening any other terms of the Franchise Agreement or the occurrence of an Event of Default; and
- (c) the Franchisee duly complies with such requirements,

no such contravention of the Franchise Agreement or Event of Default shall have occurred.

20. **The Timetable and Network Rail's Working Timetable**

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

20.2 The Franchisee shall ensure, for each period between two (2) consecutive Passenger Change Dates during the Franchise Term that the Timetable for such period is, in its reasonable opinion, not materially different from the relevant working timetable issued by Network Rail.

21. **NOT USED.**

Schedule 1.2

Operating Obligations**1. Daily Operating Obligations**

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

2. Timetabling and Train Planning Compliance Investigation

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

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

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

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

2.3 **Contravention of the Franchise Agreement**

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

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

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

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

4.1 The Franchisee agrees, subject to paragraph 4.4, not to propose to Network Rail:

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

without the Secretary of State's prior consent.

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

4.3 **NOT USED.**

4.4 Subject to paragraph 4.8, if, in the opinion of the Franchisee (acting reasonably), it would not be reasonably practicable to obtain the Secretary of State's consent prior to proposing any of the items referred to in paragraph 4.1(a), 4.1(b) or 4.1(c) to Network Rail, the Franchisee shall be entitled to propose such items to Network Rail without the Secretary of State's prior consent, provided that the Franchisee shall inform the Secretary of State of such proposals as soon as is reasonably practicable.

4.5 Subject to paragraph 4.8, the Franchisee shall ensure that any proposals to Network Rail submitted pursuant to paragraphs 4.1 or 4.4:

- (a) take full and proper account of the likely passenger demand (including a reasonable assessment of key workers) considering any known or anticipated impacts of COVID-19 (including without limitation any guidance published by Public Health England, and any Legislation, direction or instruction issued by any relevant local, governmental or other competent authority in the United Kingdom from time to time);
- (b) utilise an appropriate number of Franchise Employees to support the likely passenger demand (as determined having taking into consideration the matters referred to in paragraph 4.5(a)); and
- (c) ensure that the Train Fleet is deployed in an optimal manner taking account of all relevant circumstances, including the latest available official guidance relating to social distancing.

4.6 The Franchisee shall use all reasonable endeavours to co-operate with other Train Operators in respect of the Franchisee's proposals to Network Rail pursuant to paragraphs 4.1 and 4.4 or any emergency timetables proposed by other Train Operators to ensure that 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 first trains or last trains are involved, taking account of the likely fluctuations in passenger demand as a result of COVID-19 and the time needed to make any such Connection).

4.7 The Franchisee shall use reasonable endeavours to take into account the requirements of operators of rail freight services in respect of the Franchisee's proposals to Network Rail pursuant to paragraphs 4.1 and 4.4.

4.8 The Franchisee acknowledges and agrees that the Secretary of State may, at any time, direct that all or any part of paragraphs 4.4 and/or 4.5 shall cease to apply. Any such direction by the Secretary of State shall have effect from such date as may be reasonably specified by the Secretary of State and, in such circumstances, the relevant parts of paragraph 4.4 and/or paragraph 4.5 and, where applicable, any references to the provisions of those provisions shall be deemed to be deleted.

4A **Special Events**

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

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

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

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

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

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

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

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

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

deliver the Timetable or deliver the Timetable in accordance with the Train Plan;

- (b) co-operate with Network Rail and other Train Operators to act in the overall interests of passengers using such railway passenger services, including using all reasonable endeavours to ensure that such disruption is not concentrated on a particular part of the network, except where such concentration either:
 - (i) would be in the overall interests of passengers using such Passenger Services or railway passenger services and would not result in disproportionate inconvenience to any group of passengers; or
 - (ii) is reasonably necessary as a result of the cause or the location of the disruption; and
- (c) use all reasonable endeavours to provide or secure the provision of alternative transport arrangements in accordance with paragraph 6.2.

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

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

7. Obligation to use “all reasonable endeavours” under Schedule 1.2

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

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

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

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

7.3 For the purpose of taking measures in respect of any disruption to the Franchise Services in accordance with paragraph 7.1(b) and assessing the extent of any risk

referred to in paragraph 7.1(b) and any such risk's reasonable foreseeability, regard shall be had both:

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

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

- (a) co-operating with Network Rail in the development, agreement and implementation of:
 - (i) a five (5) year (rolling) Performance Strategy Plan; and
 - (ii) recovery plans in response to failures to achieve the performance levels specified in any Performance Strategy Plan;
- (b) co-operating with Network Rail in adopting the principles set out in any Service Recovery Plans agreed between Network Rail and the Franchisee from time to time;
- (c) undertaking regular reviews of:
 - (i) the most common and most detrimental causes of delay to the Passenger Services; and
 - (ii) the causes of the ten (10) delays to the Passenger Services with the longest duration (to the extent not already reviewed in accordance with paragraph 7.4(c) (i)),

which have occurred during a defined review period (e.g. weekly/four (4) weekly/quarterly) and which have been caused by the Franchisee, any other Train Operator, any other train operator licensed under the Act or Network Rail;
- (d) undertaking with Network Rail a review of the time taken to recover the Passenger Services following the occurrence of any of the events specified in paragraphs 7.4(c)(i) and 7.4(c)(ii) and seeking to identify and implement actions that reduce the delay effect of such events;
- (e) setting up and holding regular and effective performance review meetings with Network Rail, evidenced by meeting minutes and the closure of actions agreed between the Parties;
- (f) regularly monitoring (at least every Reporting Period) the delivery of local output commitments made by Network Rail in the Performance Strategy Plan and derived delivery plans and using reasonable endeavours to specify and develop such delivery plans;

- (g) as and when required by Network Rail, co-operating with Network Rail in improving the accuracy of future timetables by providing access to trains (and data collected from train systems), other facilities and/or information;
 - (h) co-operating with Network Rail in other delay management initiatives and ongoing quarterly reviews of the Performance Strategy Plan;
 - (i) regularly reviewing (at least every Reporting Period) the imposition and clearance of temporary speed restrictions;
 - (j) regularly reviewing (at least every Reporting Period) the timely and efficient handover and hand-back of possessions; and
 - (k) where appropriate and where Network Rail fails to perform its obligations under the Track Access Agreement, enforcing the Franchisee's rights under the Track Access Agreement.
- 7.5 The Franchisee undertakes to reasonably co-operate with Network Rail with regard to Network Rail's management of the network, including in relation to the establishment of up to date Timetable Planning Rules.
- 7.6 To the extent not already provided for in the Franchise Agreement, the Franchisee shall use all reasonable endeavours to ensure the performance by Network Rail of its obligations under any relevant agreement including, where appropriate or where requested by the Secretary of State, enforcing its rights against Network Rail under any such agreement.
- 7.7 When and to the extent reasonably requested by the Secretary of State, the Franchisee shall provide to the Secretary of State evidence of the steps taken by the Franchisee in order to comply with its obligations under this paragraph 7.

Schedule 1.3

NOT USED

Schedule 1.4

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

The Franchisee shall publish on the Start Date:

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

1.2 Timetable Revisions and Alterations

Subject to paragraph 2A.2 of this Schedule 1.4, the Franchisee shall publish updates or replacements to the Timetable at the locations specified in paragraph 1.1 to the extent necessary to reflect any changes which come into effect on a Passenger Change Date:

- (a) in the case of booklets, at least two (2) weeks before the changes come into effect;
- (b) in the case of information displays, no later than the day before the changes come into effect;
- (c) in the case of information provided to the operators of Franchisee Access Stations, in sufficient time for such information to be published by such operators within the time limits provided for in this paragraph 1.2; and
- (d) in the case of the Franchisee's website, at least four (4) weeks before the changes come into effect.

1.3 In addition, subject to paragraph 2A.2 of this Schedule 1.4, the Franchisee shall:

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

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

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

1.4 **Other Train Operators' Timetables**

Subject to paragraph 2A.2 of this Schedule 1.4, the Franchisee shall also comply with the requirements of paragraphs 1.1 to 1.3 inclusive by making available booklets and displaying information in information displays and otherwise displaying posters in respect of any other Train Operator's timetable at each Station where the railway passenger services of such other Train Operator are scheduled to call or in respect of which Connections to such other Train Operators railway passenger services can be made from that Station:

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

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

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

- 1.6 Subject to paragraph 2A.2 of this Schedule 1.4, the Franchisee shall use all reasonable endeavours to procure that information in relation to:

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

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

2. **Communicating Late Timetable Changes**

- 2.1 Subject to paragraph 2A.2 of this Schedule 1.4, and save in respect of Significant Alterations, for which the provisions of paragraphs 1.3 and 1.6 shall apply, the Franchisee shall inform passengers, so far as possible on not less than seven (7) days' prior notice, if it will be unable to operate its trains in accordance with the Timetable. Such information shall include any revised Timetable or travelling arrangements.

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

2A. Communicating Emergency Timetables

2A.1 Subject to paragraph 2A.3, the Franchisee shall publish:

- (a) any amendments to the Timetable made pursuant to paragraphs 3, 4, 5 or 6 of Schedule 1.2 as soon as reasonably practicable:
 - (i) **NOT USED;**
 - (ii) 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 for the display of such relevant information on information displays;
 - (iii) on the Franchisee's website;
 - (iv) via the Franchisee's social media accounts (through which the Franchisee shall in any event publish any such amendments to the Timetable no later than two (2) hours following agreement of such amendments); and
 - (v) via any other direct means of communication with passengers available to the Franchisee, including but not limited to email and/or text messaging services; and
- (b) as far and as soon as is reasonably practicable, any emergency timetables of other Train Operator's where the railway passenger services of such other Train Operator are scheduled to call or in respect of which Connections to such other Train Operators railway passenger services can be made from that Station:

- (i) **NOT USED;** and
- (ii) on the Franchisee's website.

2A.2 To the extent that this paragraph 2A requires the Franchisee to undertake activities that it would otherwise be obliged to perform pursuant to paragraphs 1.2, 1.3, 1.4, 1.6 and 2, and there are any discrepancies between the timescales or other requirements relating to such activities between this paragraph 2A and paragraphs 1.2, 1.3, 1.4, 1.6 or 2, the relevant requirements of this paragraph 2A shall take precedence over those in paragraph 1.2, 1.3, 1.4, 1.6 or 2 (as applicable).

2A.3 The Secretary of State may, at any time, direct that this paragraph 2A shall cease to apply and/or shall no longer take precedence over the timescales and/or the other requirements set out in paragraphs 1.2, 1.3, 1.4, 1.6 or 2 above. Any such direction shall have effect from such date as may be reasonably specified by the Secretary of State and, in such circumstances, the entirety of this paragraph 2A and any references to the provisions of this paragraph 2A shall be deemed to be deleted.

3. **Fares Selling Restrictions**

3.1 **Restrictions on Sales**

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

- (a) shall be entitled, without further charge, to such rights of access and egress and other similar rights at the commencement and end of the relevant intended journey or journeys as may be reasonably necessary for such purchaser to travel on the Passenger Services;
- (b) shall not be required to incur any cost or take any action beyond the payment of an amount equal to the Price of such Protected Fare or Commuter Fare (as the case may be) and, in relation to the issue of a Season Ticket Fare, the completion of an identity card as the Franchisee may reasonably require; and
- (c) shall not be required to pay an amount in respect of a seat reservation or other similar right which it may be compulsory for such purchaser to have in order to make a journey with such Protected Fare or Commuter Fare (as the case may be) on a Passenger Service.

3.2 The Franchisee shall procure that for any:

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

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

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

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

3.4 The Franchisee shall not sell or offer to sell:

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

3.5 **Agents of the Franchisee**

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

- (a) for Fares in respect of which the:
 - (i) Prices are regulated under Schedule 5.4 (*Regulation of Fares Basket Values*) and Schedule 5.5 (*Regulation of Individual Fares*), sell or offer to sell at prices no greater than the Prices set for such Fares from time to time in accordance with Schedule 5.4 and Schedule 5.5; and
 - (ii) **NOT USED;**
- (b) for Fares in respect of which the Child Price has been set pursuant to paragraph 2.1 of Schedule 5.2 (*Franchisee's Obligation to Create Fares*), sell or offer to sell such Fares to any person under the age of 16 for an amount which is no greater than fifty per cent (50%) of the Price of the relevant Fare; and

- (c) for all Fares:
 - (i) do not sell or offer to sell any Fare or Discount Card with a validity of thirteen (13) or more months without the consent of the Secretary of State (such consent not to be unreasonably withheld); and
 - (ii) comply with the provisions of paragraph 5 of Schedule 15.2 (*Last Twelve (12) or Thirteen (13) Months of Franchise Period and Other Conduct of Business Provisions*) to the extent they apply to the selling of Fares by the Franchisee.

3.6 Additional Ancillary Services

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

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

3.7 Sale of Fares for travel on Bank Holidays

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

3.8 NOT USED.

4. Passenger's Charter

4.1 Content

The Franchisee shall:

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

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

4.3 Publishing the Passenger's Charter

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The Franchisee shall publicise its Passenger's Charter by:

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

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

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

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

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

The Franchisee shall:

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

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

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

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

6. **Statutory Notices**

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

7. **Train and Station Cleaning**

The Franchisee shall:

- 7.1 ensure that the nature and frequency of its planned and reactive programme for maintaining a reasonable standard of train presentation is such that all rolling stock used by the Franchisee in the provision of the Passenger Services is expected to be kept reasonably clean, appropriately stocked with consumables and free from minor defects;
- 7.2 use all reasonable endeavours to ensure that a reasonable standard of train presentation is maintained at all times in respect of all rolling stock used by the Franchisee in the provision of the Passenger Services;
- 7.3 **NOT USED**; and
- 7.4 use all reasonable endeavours to ensure that all Franchisee Access Stations are clean, free of litter and graffiti, painted to a reasonable standard and free from minor defects throughout the Franchise Term.

8. **Publication of Performance Data**

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

- (a) Cancellations Figures;
- (b) **NOT USED**;
- (c) **NOT USED**;
- (d) **NOT USED**;
- (e) Short Formation Figures;

- (f) Time to 3 Minutes Figures;
- (g) Time to 15 Minutes Figures;
- (h) All Cancellations Figures; and
- (i) On Time Figures.

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

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

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

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

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

- (a) the mean average of each of the Cancellations Figures and the Short Formation Figures for the Reporting Periods that have elapsed since the last Reporting Period reported on in the previous Customer Report (or, in the case of the first (1st) Customer Report, since the last Reporting Period reported on in the last Customer Report provided by the Franchisee in accordance with the Previous Franchise Agreement (and as defined therein);

- (b) the latest Time to 3 Minutes Figures, Time to 15 Minutes Figures, All Cancellation Figures and On Time Figures for the last Reporting Period before publication of the relevant Customer Report;
- (c) a summary comparison of the statistics produced pursuant to paragraphs 8.3 (a) and 8.3 (b) as against the equivalent statistics provided for the same Reporting Period(s) in the previous Franchisee Year;
- (d) an update on the key activities undertaken by the Franchisee to improve its performance in relation to the measures referred to in paragraphs 8.3 (a) and 8.3 (b); and
- (e) a summary of the key activities planned to be undertaken by the Franchisee in the period in relation to which the next Customer Report will report to improve its performance in relation to the measures referred to in paragraphs 8.3 (a) and 8.3 (b).

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

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

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

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

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

10. Route Maps

10.1 The Franchisee shall produce a Route Map which shall include as a minimum;

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

10.2 The Route Map shall include notes identifying:

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

10.3 The Franchisee shall, as soon as reasonably practicable, update the Route Map in all places where it is displayed where there is any change:

- (a) to the Passenger Services, leading to a change in the routes falling within the definition of Route; or
- (b) to the passenger services operated by another passenger train operator (as stated in the National Rail Timetable), leading to a change to the routes falling within the definition of Other Passenger Route Within the Geographical Area.

10.4 The Route Map shall at all times be displayed:

- (a) in every passenger carrying vehicle within the Train Fleet;
- (b) at main Franchisee Access Stations; and
- (c) on its website.

10.5 The Franchisee shall be regarded as having complied with the requirement of paragraph 10.1 if a map that meets the requirements of a Route Map is produced by

a Local Authority or other relevant Stakeholder. The provisions of paragraphs 10.3 and 10.4 shall apply in relation to any such map.

Schedule 1.5

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

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

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

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

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

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

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

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

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

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

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

1.5 **NOT USED.**

2. Manual Passenger Counts

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

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

State considers appropriate, and in these circumstances the Franchisee shall pay to the Secretary of State the costs of any such audits.

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

3.1 The technology to be used for the purpose of paragraph 1.2 shall be procured by the Franchisee after the Start Date and the details of such technology shall be confirmed to the Secretary of State as soon as reasonably practicable.

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

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

(b) in the case of all other rolling stock (including any rolling stock that is cascaded into the Franchise), by [REDACTED⁸] to every vehicle comprised within no less than [REDACTED⁹] of such rolling stock units included in the Train Fleet from time to time in aggregate.

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

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

4. **Customer Relationship Management (CRM) Data**

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

⁸ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁹ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

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

5. Yield Management Data

5.1 The Franchisee shall ensure that any Yield Management Data and Yield Management System are the property of the Franchisee or are licensed to the Franchisee on terms which have been approved by the Secretary of State (such approval not to be unreasonably withheld or delayed).

5.2 NOT USED.

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

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

6. NOT USED.

7. Rail Passenger Counts Database

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

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

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

- (a) any data or information contained in the RPC Database;

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

7.3

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

- (iv) the Secretary of State shall be entitled to deduct from any sums recovered from the Subcontractor pursuant to this paragraph 7.3(b) such sum as the Secretary of State reasonably deems appropriate to take account of the Secretary of State's actual or potential liability to other train operating companies pursuant to equivalent arrangements with them, with a view to distributing any sums received from the Subcontractor fairly between the various operators.
- (c) The Franchisee shall use all reasonable endeavours to mitigate any losses incurred by the Franchisee as a result of a contravention by the Secretary of State of the Secretary of State's obligations contained in paragraph 7.1 of this Schedule 1.5.
- 7.4 The Parties acknowledge that it is intended that the RPC Database will also contain actual passenger demand information relating to franchisees other than the Franchisee but a franchisee shall have access only to information relating to its own franchise (in the case of the Franchisee, via the log on details provided pursuant to paragraph 7.1(c)). For the avoidance of doubt, the licence granted at paragraph 8.6 shall only permit the usage of the RPC Database, Derivative Output and Intellectual Property Rights related to the Actual Passenger Demand information supplied by the Franchisee.
- 7.5 Without prejudice to Schedule 14.4 (Designation of Franchise Assets), paragraphs 2.1 and 3 of Schedule 15.1 (Reletting Provisions), Schedule 15.4 (Provisions applying on and after Termination) or any other rights of the Secretary of State, the Franchisee agrees that, following the expiry or termination by whatever means of the Franchise Agreement and any Continuation Document, the Secretary of State shall be entitled to allow access to the Franchisee's Actual Passenger Demand information by way of granting access to that area of the RPC Database or otherwise to any future operator of the Passenger Services (whether or not in direct succession to the Franchisee) or to such part of the Actual Passenger Demand information as relates to the part of the franchise which is being taken over by such future operator.
- 8. Intellectual Property Rights and General Provisions**
- 8.1 All Intellectual Property Rights in the RPC Database and Derivative Output shall at all times remain owned by the Secretary of State and to the extent that any rights in the RPC Database vest in the Franchisee by operation of law, the Franchisee hereby assigns such rights to the Secretary of State.
- 8.2 Subject to Schedule 14.4 (Designation of Franchise Assets) and Schedule 15.4 (Provisions applying on and after Termination), all Intellectual Property Rights in the Actual Passenger Demand information will at all times remain owned by the Franchisee and (subject as previously stated) to the extent that any rights in the Actual Passenger Demand information vest in the Secretary of State by operation of law, the Secretary of State hereby assigns such rights to the Franchisee.
- 8.3 All Intellectual Property Rights in the Network Rail Data will at all times remain owned by the relevant NR entity and to the extent that any rights in the Network Rail Data vest in the Secretary of State or the Franchisee by operation of law, the Secretary of State and/or the Franchisee (as applicable) will enter into a separate agreement with the relevant Network Rail entity to assign such rights to it.
- 8.4 All Intellectual Property Rights in the Third Party Data will at all times remain owned by the third party from whom they have been obtained and to the extent that any

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

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

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

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

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

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

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

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

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

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

Schedule 1.6

The Rolling Stock**1. Purpose**

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

2. The Composition/Deployment of the Train Fleet

2.1 The Train Fleet consists of:

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

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

(c) **NOT USED**; and

(d) **NOT USED**.

2.2 **NOT USED**.

2.3 **NOT USED**.

2.4 The Passenger Carrying Capacity of any rolling stock vehicles shall be as set out in Tables 1 or 2 or 3 in Appendix 1 to this Schedule 1.6 or as determined by the Secretary of State in accordance with paragraph 3.4 of this Schedule 1.6 (as applicable).

2.5 The Franchisee shall procure that the rolling stock vehicles described in the Tables 1 or 2 or 3 in Appendix 1 to this Schedule 1.6, with the capacity and other characteristics referred to there, are available for deployment in the provision of

the Passenger Services to the extent required by the Timetable and Train Plan during the periods referred to therein.

3. **Changes to the Train Fleet**

3.1 The Franchisee shall maintain the composition of the Train Fleet during the Franchise Period, unless the Secretary of State otherwise agrees or otherwise directs the Franchisee pursuant to paragraph 3A, such that there are no changes to the Train Fleet, including changes:

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

of any rolling stock vehicles specified in the Train Fleet.

3.2 **NOT USED.**

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

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

3A. **Secretary of State Rights**

3A.1 During the Franchise Period, the Secretary of State may at any time notify and require the Franchisee (subject to (in the cases of paragraphs (a), (b), (d) or (e)), where the consent of the ROSCO is required, such consent being obtained, and in respect of which the Franchisee shall use all reasonable endeavours to obtain such consent) to:

- (a) change the composition of the Train Fleet;
- (b) sub-let some of its Train Fleet to another Train Operator;
- (c) sub-lease rolling stock from another Train Operator;
- (d) procure modifications to the Train Fleet and to manage any such modification programme;
- (e) alter the maintenance arrangements for the Train Fleet; and/or
- (f) identify and secure new, additional or replacement rolling stock (and the Secretary of State may require the Franchisee to set the specification for such rolling stock, and such specification shall be agreed with the Secretary of State),

(each being a "**Rolling Stock Change**"). The Franchisee agrees and acknowledges that the number of Rolling Stock Changes that the Secretary of State may make is not limited.

4. **Rolling Stock Testing and Commissioning**

- 4.1 The Franchisee shall, to the extent reasonably requested by the Secretary of State and subject to payment of the Franchisee's reasonable costs by the relevant third party, co-operate with any third party which the Secretary of State may specify (including a Successor Operator, a rolling stock vehicle manufacturer or Network Rail or the Secretary of State) in connection with the testing and commissioning of new rolling stock vehicles or any new equipment to be fitted to rolling stock vehicles (whether such rolling stock vehicles are new or otherwise).
- 4.2 The co-operation referred to in paragraph 4.1 shall not unreasonably disrupt the provision and operation of the Franchise Services and may include:
- (a) the movement of test trains within and around depots;
 - (b) making available suitably qualified personnel to operate test trains along the Routes and provide information on the Routes;
 - (c) making Train Slots available for such purposes;
 - (d) granting or procuring the grant of access to the third party and its representatives to any relevant facilities; and
 - (e) the delivery of rolling stock vehicles to specific locations.

5. **Controlled Emission Toilets**

- 5.1 The Franchisee shall ensure that all rolling stock vehicles comprised in the Train Fleet used for the provision of the Passenger Services which have on board toilet facilities shall be fitted with Controlled Emission Toilets with a tank capacity sufficient for the requirements of the Passenger Services so that for the duration of the Franchise Term all rolling stock vehicles which have on board toilets are exclusively fitted with Controlled Emission Toilets.
- 5.2 The Franchisee shall ensure that the contents of the toilet retention tanks relating to each Controlled Emission Toilet fitted on rolling stock vehicles in accordance with the requirements of paragraph 5.1 are disposed of in a safe and hygienic manner at suitable facilities designed for these purposes including at Depots and stabling points.

5.3 **NOT USED.**

5.4 **NOT USED.**

6. **Baby Changing Facilities**

- 6.1 The Franchisee shall ensure that as soon as reasonably practicable but in any event by no later than the Start Date each train operated by the Franchisee in delivering the Passenger Services that is fitted with toilet facilities is also fitted with such number of baby change facilities as is necessary to be compliant with the requirements of the PRM TSI.

7. **Measurement of Traction Energy Usage**

7.1 The Franchisee shall ensure that all rolling stock units that form part of the Train Fleet are able to measure and monitor fuel use as soon as reasonably practicable, and in the case of electric traction, enable the Franchisee to be a **“Metered Train Operator”** as defined by Network Rail’s Traction Electricity Rules.

7.2 **NOT USED.**

APPENDIX 1 TO SCHEDULE 1.6
The Composition of the Train Fleet

1. Original Rolling Stock

Explanatory Note A: Where in Column 6 both a Scheduled Lease Expiry Date and an Early Redelivery Date are specified in relation to one or more specified units (each being a "Specified Unit") the Lease Expiry Date for the Specified Units shall be the Early Redelivery Date provided that where any unit shown in Table 2 or Table 3 below as replacing any Specified Unit from the Early Delivery Date is delivered after the Early Redelivery Date such Specified Unit shall remain in the Train Fleet until the relevant Scheduled Lease Expiry Date or such earlier date as the Secretary of State acting reasonably may agree.

Table 1 (Original Rolling Stock)									
Column 1 Class of vehicle/unit	Column 2 Number of vehicles in fleet and unit configuration	Column 3 Standard Class Passenger Carrying Capacity per unit			Column 4 First Class per unit		Column 5 Owner/Lessor	Column 6 Lease expiry date(s) (See Explanatory Note A above)	
		Seated	Wheelchair spaces	Standing	Seated	Wheelchair Spaces		Scheduled Lease Expiry Date	Early Redelivery Date (if any)
		170-1 (2 Car)	7 * 2-car units	112	2	86			
170-1 (3 Car)	10 * 3-car units	192	2	139	9	0	Porterbrook	15 October 2023	
170-3	2 * 3-car units	192	2	139	9	0	Porterbrook	15 October 2023	
170-5	6 * 2-car units	112	2	89	9	0	Porterbrook	15 October 2023	
170-6	4 * 3-car units	192	2	139	9	0	Porterbrook	15 October 2023	
HST (Sets 1-3)	3 * (2+7) sets	391	2	188	70	1	Porterbrook / Angel Trains	15 October 2023	

Table 1 (Original Rolling Stock)									
Column 1	Column 2	Column 3			Column 4		Column 5	Column 6	
Class of vehicle/unit	Number of vehicles in fleet and unit configuration	Standard Class Passenger Carrying Capacity per unit			First Class per unit		Owner/Lessor	Lease expiry date(s) (See Explanatory Note A above)	
		Seated	Wheelchair spaces	Standing	Seated	Wheelchair Spaces		Scheduled Lease Expiry Date	Early Redelivery Date (if any)
HST (Sets 4&5)	2 * (2+7) sets	391	2	188	70	1	Porterbrook / Angel Trains	15 October 2023	
HST (spare trailer cars)	5 trailer vehicles (TS)	82	0	34	0	0	Porterbrook / Angel Trains	15 October 2023	
220	34 * 4-car units	176	1	102	26	1	Beacon Rail	15 October 2023	
221 (4 car)	4 * 4-car units	176	1	102	26	1	Beacon Rail	15 October 2023	
221 (5 car)	20 * 5-car units	238	1	133	26	1	Beacon Rail	15 October 2023	

2. Specified Additional Rolling Stock

Table 2 (Specified Additional Rolling Stock)										
Column 1	Column 2	Column 3			Column 4		Column 5	Column 6	Column 7	Column 8
Class of vehicle /unit	Number of vehicles in fleet and unit configuration	Standard Class Passenger Carrying Capacity per unit			First Class per unit		Owner/Le ssor	Lease start date(s)	Lease expiry date(s)	Identity of any unit in Table 1 (Original Rolling Stock) intended to be replaced by the Specified Additional Rolling Stock and the date of replacement
		Seated	Wheelchair spaces	Standing	Seated	Wheelchair spaces				
HST (spare power cars)	2	N/A	N/A	N/A	N/A	N/A	Angel Trains	1 February 2020	15 October 2023	Available for unrestricted passenger service no later than the Dec 2020 timetable change date.
170-6	6 * 3-car units (see entry in column 8)	186	2	139	9	0	Porterbrook	Vehicle 1- 23 August 2020 Vehicle 2-20 September 2020 Vehicle 3-18 October 2020 Vehicle 4-15 November 2020 Vehicle 5- 13 December 2020 Vehicle 6- 10 January 2021	15 October 2023	Six 2-car Class 170/5 shown in Table 1 become these six 3-car Class 170/6 no later than the May 2021 timetable change date, through insertion of an intermediate vehicle cascaded from West Midlands franchise.

3. NOT USED.

Schedule 1.7

NOT USED

SCHEDULE 2

ASSETS, LEASES, OTHER FRANCHISEES AND SCHEMES

Schedule 2.1:	Asset Vesting and Transfer
Schedule 2.2:	Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases
Schedule 2.3:	Other Franchisees
Schedule 2.4:	NOT USED
Schedule 2.5:	Transport, Travel and Other Schemes
	Appendix 1: List of Transport, Travel and Other Schemes

Schedule 2.1

Asset Vesting and Transfer

1. **Vesting of Property Leases at the Start Date**
- 1.1 The Franchisee shall not without the prior written consent of the Secretary of State (such consent not to be unreasonably withheld), whether generally or on a case-by-case basis:
 - (a) enter into any new Property Lease; or
 - (b) effect any amendment to any Property Lease, except to the extent that the Franchisee is required to do so by virtue of any station or depot access conditions to which it is a party.
- 1.2 In respect of any new Property Leases with Network Rail, the Franchisee shall enter into such Property Leases:
 - (a) with the intent that section 31 of the Act shall apply to such leases; and
 - (b) in the agreed terms marked **SL** and **DL** (as appropriate).
- 1.3 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.
- 1.4 The Franchisee shall use all reasonable endeavours to ensure that any Station Lease that it enters into accurately records all fixtures and fittings in relation to such Station Lease.

Schedule 2.2

Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases**1. Novation of Access Agreements during the Franchise Term**

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

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

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

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

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

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

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

1.4 The Franchisee shall, on the occurrence of any of the circumstances specified in paragraph 1.1 in relation to any other Train Operator who is a party to an Access Agreement to which the Franchisee is also party, agree to the novation of the relevant Train Operator's interest under the relevant Access Agreement to the Secretary of State or as the Secretary of State may direct, subject, to the extent

applicable, to the consent of the ORR. The provisions of paragraph 1.3 shall apply to any such novation.

- 1.5 The Franchisee shall notify the Secretary of State on becoming aware of any circumstances which might lead to the Secretary of State being able to require the Franchisee to novate its interest or agree to the novation of another Train Operator's interest under this paragraph 1.

2. **Rolling Stock Related Contracts and Insurance Arrangements**

- 2.1 The Franchisee shall not:

- (a) execute any Rolling Stock Related Contract;
- (b) exercise any option or other discretion in any Rolling Stock Related Contract that would result in any increased payment or delay in delivery being made by or to the Franchisee or the relevant counterparty or which may result in it being reasonably likely to be unable to comply with the terms of the Franchise Agreement; or
- (c) amend or waive the terms of any Rolling Stock Related Contract,

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

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

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

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

- 2.4 The Franchisee shall not, without the prior written consent of the Secretary of State:
- (a) amend the terms of any insurance arrangements which relate to rolling stock vehicles used by it in the provision of the Passenger Services to which it is a party on the Start Date; or
 - (b) enter into any new insurance arrangements after the Start Date which relate to rolling stock vehicles used or to be used by it in the provision of the Passenger Services ("**New Insurance Arrangements**").

2.5 The Franchisee shall, in addition, if it enters into any New Insurance Arrangements, use all reasonable endeavours to ensure that the relevant insurers waive their rights of subrogation against any Train Operator which may have equivalent insurance arrangements providing for a similar waiver of rights of subrogation against the Franchisee, whether on a reciprocal basis or otherwise.

3A **Train Maintenance**

3A.1 The Franchisee shall procure that heavy maintenance of Train Fleet is undertaken in accordance with the standard expected of a competent, skilled and experienced train operator.

3A.2 The Franchisee shall seek approval from the Secretary of State for any changes to the heavy maintenance regime for the Train Fleet where such change will result in any cost saving to the Franchisee including the reduction of any lease payments for the relevant Rolling Stock (such approval not to be unreasonably withheld or delayed).

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

3.1 For the purpose of this paragraph 3:

"Cascaded Rolling Stock" means rolling stock proposed to be used by the Franchisee in the provision of the Passenger Services the availability of which is, in the opinion of the Secretary of State, directly or indirectly dependent upon the successful introduction into service of any Relevant Rolling Stock by any other Train Operator;

"Prior Train Operator" means the Train Operator which used or is using the Cascaded Rolling Stock immediately prior to its proposed use by the Franchisee;

"Relevant Delay" means any delay to the successful introduction into service of any Relevant Rolling Stock; and

"Relevant Rolling Stock" means rolling stock to be acquired by another Train Operator which, when acquired, will initiate the **"cascade"** of rolling stock that directly or indirectly makes the Cascaded Rolling Stock available for use by the Franchisee.

3.2 Without limiting paragraph 2.1 (*Rolling Stock Related Contracts and Insurance Arrangements*):

- (a) each Rolling Stock Lease must be capable of allowing the Secretary of State to make a direction under paragraph 3.2(b) below including but not limited

to allowing Cascaded Rolling Stock to be sub-leased to the Prior Train Operator; and

- (b) if a Relevant Delay occurs, the Secretary of State may in his discretion direct 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, and the Franchisee shall comply with such direction. Without limitation any such direction may include the Secretary of State requiring the Franchisee to sublease the Cascaded Rolling Stock back to the Prior Train Operator and/or to delay the date on which the Cascaded Rolling Stock is required to be delivered to the Franchisee under such Rolling Stock Lease.
- 3.3 Where the Secretary of State exercises the Secretary of State's right pursuant to paragraph 3.2 (b) to make Cascaded Rolling Stock available for use by the Prior Train Operator during a specified period there shall be a Change and for the purposes of Schedule 9.1, the impact of such Change on the Budget shall set out the difference between each of the rolling stock lease costs and variable track usage charge for the Cascaded Rolling Stock and the rolling stock lease costs and variable track usage charge applicable in relation to whatever rolling stock is to be used by the Franchisee in place of the Cascaded Rolling Stock.
- 3.4 Where there is a Change pursuant to paragraph 3.3 and the period that the Prior Train Operator retains any Cascaded Rolling Stock is more than ninety (90) days there shall be a further Change.
- 3.5 Where there is a Change pursuant to paragraphs 3.3 or 3.4 there shall be a further Change on the date that the last Cascaded Rolling Stock ceases to be retained by the Prior Train Operator.
- 3.6 **NOT USED.**
- 3.7 Where the Secretary of State exercises the Secretary of State's right pursuant to paragraph 3.2(b) to require the Franchisee to make the Cascaded Rolling Stock available for use by the Prior Train Operator during a specified period, the Franchisee shall not be liable for any failure to comply with its obligations under the Franchise Agreement to the extent that:
- (a) such failure to comply arises directly as a result of the Franchisee being unable to use the Cascaded Rolling Stock; and
- (b) the Franchisee uses all reasonable endeavours to comply with the relevant obligations notwithstanding the unavailability of the Cascaded Rolling Stock.
- 3.8 The Franchisee shall notify the Secretary of State as soon as reasonably practicable if it becomes aware of any material risk that a Relevant Delay will occur. If a Relevant Delay does occur the Franchisee shall use all reasonable endeavours to mitigate the impact on the delivery of the Franchise Services of the unavailability of the Cascaded Rolling Stock at the expected time including by identifying and proposing value for money alternative sources of replacement rolling stock.
- 3.9 If a Relevant Delay has occurred or the Secretary of State believes that there is a material risk that a Relevant Delay will occur the Secretary of State may serve a notice on the Franchisee requiring it to produce a plan to a reasonable specification provided with the notice to remedy or mitigate the impact of the delayed availability of the Cascaded Rolling Stock ("**Delayed Cascade Mitigation Plan**"). Such specification may include measures to be implemented by the Franchisee to

mitigate the direct or indirect impact of the Relevant Delay on the Prior Train Operator or any other affected Train Operator. The Delayed Cascade Mitigation Plan shall provide a comprehensive analysis backed by relevant data and assumptions of:

- (a) all cost and revenue and other financial implications of options contained within it including the potential implications for Franchise Payments;
- (b) the implications (if any) for the Benchmarks; and
- (c) the likely impact of options within it for existing and future passenger journeys and journey opportunities.

3.10 The Franchisee shall meet with the Secretary of State to discuss the Delayed Cascade Mitigation Plan and provide such further information or analysis and further iterations of the Delayed Cascade Mitigation Plan as the Secretary of State shall reasonably require.

3.11 Where any rolling stock vehicles cease to be part of the Train Fleet but are acquired by another Train Operator for use in delivering passenger services the Franchisee shall:

- (a) ensure that:
 - (i) such rolling stock is in an acceptable redelivery condition consistent with the hand back terms agreed with the lessor;
 - (ii) a complete set of maintenance and mileage records are handed over in a suitable format; and
 - (iii) the Train Operator is given reasonable access to the relevant rolling stock prior to handover to assist with an effective hand over in relation to both operation and maintenance; and
- (b) use reasonable endeavours to ensure that:
 - (i) the Train Operator is offered 'knowledge transfer' sessions to enable recipient engineers and operational personnel to learn from informed peers;
 - (ii) the Train Operator is offered on-train development programmes to train their maintenance staff to an appropriate level of competence; and
 - (iii) it offers medium-term support and advice in relation to such rolling stock including technical and operational support.

4. **Assignment of Property Leases during the Franchise Term**

4.1 The Franchisee shall (other than on termination of the Franchise Agreement, for which the provisions of paragraph 4.5 of Schedule 15.4 (Provisions applying on and after Termination) shall apply) following receipt of a notice purporting to terminate a Property Lease or on becoming aware of any proceedings or any other steps having or purporting to have similar effect, if requested by the Secretary of State, assign its interest under all or any Property Leases to the Secretary of State or as

the Secretary of State may direct, subject where applicable to the agreement of any other party to such Property Lease or the ORR.

- 4.2 Such assignment shall be on such terms as the Secretary of State may reasonably require, including:
- (a) that the Franchisee shall not be released from any accrued but unperformed obligation, the consequences of any antecedent breach of a covenant or obligation in the Property Leases or any liability in respect of any act or omission under or in relation to the Property Lease prior to, or as at the date of, any such assignment (except to the extent that the Secretary of State or the Secretary of State's nominee agrees to assume responsibility for such unperformed obligation, such liability or the consequences of such antecedent breach in connection with the relevant assignment); and
 - (b) that neither the Secretary of State nor the Secretary of State's nominee shall be obliged, in connection with such assignment, to agree to assume responsibility for any unperformed obligation, liability or consequences of a contravention referred to in paragraph 4.2(a), and the Franchisee shall indemnify the Secretary of State or the Secretary of State's nominee, as the case may be, on an after-tax basis against any costs, losses, liabilities or expenses suffered or incurred in relation thereto.
- 4.3 The Franchisee shall, on the occurrence of any of the circumstances specified in paragraph 4.1 in relation to any other Train Operator who is a party to a Property Lease to which the Franchisee is also party, agree to the assignment of such Train Operator's interest under the relevant Property Lease to the Secretary of State or as the Secretary of State may direct, subject, where applicable, to the consent of Network Rail. The provisions of paragraph 4.2 shall apply to any such assignment.
- 4.4 The Franchisee shall notify the Secretary of State on becoming aware of any circumstances which might lead to the Secretary of State being able to require the Franchisee to assign its interest or agree to the assignment of another Train Operator's interest under this paragraph 4.

4A. Sub-letting the Train Fleet

Where the Department requires the Franchisee to sub-let some of its Train Fleet to another Train Operator under the terms of paragraph 3A.1 of Schedule 1.6 (The Rolling Stock), then the Franchisee shall:

- (a) provide the sub-lessee with access to any applicable maintenance and mileage records;
- (b) give the sub-lessee reasonable access to the relevant rolling stock vehicles prior to the handover of such rolling stock vehicles to assist with the relevant handover in relation to both operation and maintenance;
- (c) use reasonable endeavours to offer the sub-lessee "knowledge transfer" sessions (including technical and operation support) to enable recipient engineers and operational personnel to learn from informed peers;
- (d) provide the sub-lessee all relevant information in relation to property arrangements at any Depot relevant to the sub-leased rolling stock vehicles (a "**Relevant Depot**"), including any stabling arrangements; and

- (e) procure such access to each Relevant Depot as the sub-lessee may reasonably require.

5. **Station and Depot Leases**

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

5.2 The Franchisee shall not:

- (a) terminate or agree to terminate in whole or in part, or take or omit to take any other action which might result in the termination of any Station Lease or Depot Lease;
- (b) assign all or part of its interest under any Station Lease or Depot Lease; or
- (c) sublet the whole or substantially the whole of the property comprised in any Station Lease or Depot Lease,

except to the extent that the Secretary of State may otherwise agree from time to time (such agreement not to be unreasonably withheld if the Franchisee has made arrangements, reasonably satisfactory to the Secretary of State, for the continued operation of such Station or Depot (as the case may be) for the remainder of the Franchise Term or if consent to the Closure of the relevant Station or Depot has been granted).

6. **Station Subleases**

6.1 Unless the Secretary of State agrees otherwise, the Franchisee shall not sublet to any of its Affiliates any part of the property comprised in any Property Lease except on terms that any such subletting:

- (a) (other than any subletting to an Affiliate which is a Train Operator) is terminable without compensation immediately upon the termination of the Franchise Agreement; and
- (b) is excluded from the provisions of Part II of the Landlord and Tenant Act 1954 and the Tenancy of Shops (Scotland) Act 1949.

6.2 If so requested by the Secretary of State, the Franchisee shall:

- (a) extend each Station Sublease on the same terms for such period as the Secretary of State may request (including a period equivalent to the franchise term of the Train Operator who is the lessee under such Station Sublease); and
- (b) if such Station Sublease terminates (which for the purposes of this paragraph 6.2(b) shall include the termination, at or around the time of termination of the Previous Franchise Agreement, of a station sublease in respect of which the Franchisee was the lessor), grant a new Station Sublease on the same terms to such Train Operator and for such period as the Secretary of State may request (including a period equivalent to the franchise term of the Train Operator who is the lessee under such Station Sublease),

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

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

Schedule 2.3

Other Franchisees**1. Other Franchisees**

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

Schedule 2.4

NOT USED

Schedule 2.5

Transport, Travel and Other Schemes**1. Local Authority Concessionary Travel Schemes**

1.1 The Franchisee shall:

- (a) subject to paragraph 1.2, participate in and comply with its obligations under:
 - (i) the concessionary travel schemes listed in Appendix 1 (List of Transport, Travel and Other Schemes) to this Schedule 2.5; and
 - (ii) any other concessionary travel scheme which the Franchisee is required to participate in during the Franchise Term pursuant to paragraph 1.1(b); and
- (b) subject to paragraph 1.3, if so requested by the Secretary of State, participate in and comply with its prospective obligations under:
 - (i) any concessionary travel scheme listed in the Franchise Agreement the terms of which have been amended since the date of the Franchise Agreement; and
 - (ii) such other concessionary travel schemes as any relevant Local Authority may require or request it to participate in.

1.2 Subject to the terms of the relevant concessionary travel scheme, the Franchisee shall be entitled to cease to participate in any scheme referred to in paragraph 1.1(a) where, in the reasonable opinion of the Secretary of State:

- (a) the Franchisee's continuing participation in such scheme; and/or
- (b) the obligations assumed by the relevant Local Authority in connection therewith,

each pursuant to Part II of the Travel Concession Schemes Regulations 1986 (SI 1986/77) (the "**Regulations**"), would fail to leave the Franchisee financially no worse off (following consideration of the application of the reimbursement test in paragraph 5(2) of the Regulations) than it was immediately following the Start Date.

1.3 The Secretary of State shall not require the Franchisee to participate in any scheme referred to in paragraph 1.1(b) where the Secretary of State is reasonably satisfied that:

- (a) the reimbursement arrangements with respect to the Franchisee's participation in any such scheme; and/or
- (b) the obligations to be assumed by such Local Authority in connection therewith,

each pursuant to the Regulations would fail to leave the Franchisee financially no worse off (following consideration of the application of the reimbursement test in paragraph 5(2) of the Regulations) as a result of such participation.

- 1.4 The Secretary of State shall consult the Franchisee before making any request of the Franchisee to participate in any amended or new concessionary travel scheme pursuant to paragraph 1.1(b) and shall allow the Franchisee a reasonable opportunity to make representations to the Secretary of State with respect to any such participation.
- 1.5 The Franchisee shall supply to the Secretary of State, in respect of any concessionary travel schemes referred to in paragraph 1.1(b), such information within such period as the Secretary of State may reasonably require for the purposes of determining whether or not the Franchisee is or will be financially no worse off (following consideration of the application of the reimbursement test in paragraph 5(2) of the Regulations) as a consequence of its participation in any such scheme, and/or the obligations assumed by such Local Authority in connection therewith.
- 1.6 If the Secretary of State and the Franchisee are unable to agree whether the Franchisee will be financially no worse off (following consideration of the application of the reimbursement test in paragraph 5(2) of the Regulations), the Secretary of State and the Franchisee may resolve such dispute in accordance with the Dispute Resolution Rules.

2. **Multi-modal Fares Schemes**

2.1 The Franchisee shall:

- (a) subject to paragraph 2.2, participate in and comply with its obligations under:
- (i) the multi-modal fares schemes set out in paragraph 2 of Appendix 1 (List of Transport, Travel and Other Schemes) to this Schedule 2.5; and
 - (ii) any other multi-modal fares scheme which the Franchisee is required to participate in during the Franchise Term pursuant to paragraph 2.1(b);

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

- (b) subject to paragraph 2.3, if so requested by the Secretary of State, participate in and comply with its prospective obligations under:
- (i) any multi-modal fares scheme set out in paragraph 2 of Appendix 1 (*List of Transport, Travel and Other Schemes*) to this Schedule 2.5, the terms of which have been amended since the date of signature of this Agreement; and
 - (ii) such other multi-modal fares schemes as any relevant Local Authority may require or request it to participate in.

2.2 Subject to the terms of the relevant multi-modal fares scheme, the Franchisee shall be entitled to cease to participate in any scheme referred to in paragraph 2.1(a) where, in the reasonable opinion of the Secretary of State:

- (a) the Franchisee's continuing participation in such scheme; and/or

- (b) the obligations assumed by the relevant Local Authority in connection therewith,
- would fail, by way of distribution of income or otherwise, to render the Franchisee financially no worse off.
- 2.3 The Secretary of State shall not require the Franchisee to participate in any scheme referred to in paragraph 2.1(b) where the Secretary of State is reasonably satisfied that the Franchisee's participation in any such scheme and/or the obligations to be assumed by the relevant Local Authority in connection therewith, would fail, by way of distribution of income or otherwise, to render the Franchisee financially no worse off.
- 2.4 In determining whether the Franchisee shall, pursuant to paragraph 2.2, continue to participate or, pursuant to paragraph 2.3, participate in any multi-modal fares scheme, the Secretary of State shall construe the term "**financially no worse off**" to mean:
- (a) in respect of any multi-modal fares scheme set out in paragraph 2 of Appendix 1 (List of Transport, Travel and Other Schemes) to this Schedule 2.5, that the Franchisee incurs no greater financial loss than the financial loss (if any) incurred by the Franchisee at the Start Date under that scheme, as adjusted by reference to any change in the level of prices according to the Retail Prices Index since such date;
- (b) in respect of any multi-modal fares scheme which replaces and (in the Secretary of State's reasonable opinion) is reasonably similar to any such scheme as may be set out in paragraph 2 of Appendix 1 (List of Transport, Travel and Other Schemes) to this Schedule 2.5, that the Franchisee incurs no greater financial loss than the financial loss (if any) incurred by the Franchisee at the Start Date under the replaced scheme, as adjusted by reference to any change in the level of prices according to the Retail Prices Index since such date; and
- (c) in respect of any multi-modal fares scheme which does not replace or which does replace but which is not (in the Secretary of State's reasonable opinion) reasonably similar to any such scheme or schemes as may be set out in paragraph 2 of Appendix 1 (List of Transport, Travel and Other Schemes) to this Schedule 2.5, such reimbursement arrangements as agreed by the relevant parties to such multi-modal fares schemes (or on failure to agree, as determined by the Secretary of State).
- 2.5 The Secretary of State shall consult the Franchisee before making any request of the Franchisee to participate in any amended or new multi-modal fares scheme pursuant to paragraph 2.1(b) and shall allow the Franchisee a reasonable opportunity to make representations to it with respect to any such participation.
- 2.6 The Franchisee shall supply to the Secretary of State, in respect of any multi-modal fares schemes referred to in paragraph 2.1 such information within such period as the Secretary of State may reasonably require for the purposes of determining whether or not the Franchisee is or will be financially no worse off as a consequence of its participation in any such scheme and/or the obligations to be assumed by the relevant Local Authority in connection therewith.

2.7 If the Secretary of State and the Franchisee are unable to agree whether the Franchisee will be financially no worse off, the Secretary of State and the Franchisee may resolve such dispute in accordance with the Dispute Resolution Rules.

3. **Discount Fare Schemes**

3.1 If the Secretary of State:

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

for the purposes of section 28 of the Act, such amendment, intended amendment, introduction or cessation of approval shall be a Change.

3.2 The Secretary of State shall provide a reasonable opportunity to the Franchisee to make representations to the Secretary of State before amending, introducing or ceasing to approve a Discount Fare Scheme pursuant to paragraph 3.1.

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

4. **Inter-Operator Schemes**

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

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

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

4.4 The Franchisee shall:

- (a) provide reasonable notice to the Secretary of State of any proposal to amend any Inter-Operator Scheme which it intends to make or of which it receives notification and which, in its opinion, is reasonably likely to materially affect the provision of the Franchise Services; and
- (b) have regard to the Secretary of State's views in respect of any such proposal.

4.5 If an amendment is effected or proposed to be effected to an Inter-Operator Scheme which requires the consent or approval of the Secretary of State in accordance with the terms thereof, such amendment shall be treated as a Change to the extent and only to the extent that the Franchisee makes a saving as a consequence of such amendment or proposed amendment.

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

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

- (a) Highland Regional Council Concessionary Fares Scheme;
- (b) Grampian Regional Council Concessionary Fares Scheme;
- (c) Tayside Regional Council Concessionary Fares Scheme;
- (d) Fife Regional Council Concessionary Fares Scheme;
- (e) Lothian Regional Council Concessionary Fares Scheme;
- (f) Strathclyde Regional Council Concessionary Fares Scheme;
- (g) Co Durham County Council Concessionary Fares Scheme;
- (h) Derbyshire County Council Concessionary Fares Scheme;
- (i) Devon County Council Concessionary Fares Scheme;
- (j) Hampshire County Council Concessionary Fares Scheme;
- (k) Merseyside Concessionary Fares Scheme;
- (l) Greater Manchester Concessionary Fares Scheme;
- (m) West Yorkshire Concessionary Fares Scheme;
- (n) South Yorkshire Concessionary Fares Scheme;
- (o) West Midlands Concessionary Fares Scheme; and
- (p) Humberside Concessionary Fares Scheme.

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

2. Multi-modal Fares Schemes

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

- (a) Strathclyde Multi-modal Travel Scheme;
- (b) West Yorkshire PTE Multi-modal Travel Scheme;
- (c) South Yorkshire PTE Multi-modal Travel Scheme;
- (d) Greater Manchester PTE Multi-modal Travel Scheme; and

(e) West Midlands PTE Multi-modal Travel Scheme.

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

3. **Discount Fare Schemes**

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

- (a) Disabled Persons Railcard Scheme dated 23 July 1995 between the participants therein;
- (b) Young Persons Railcard Scheme dated 23 July 1995 between the participants therein; and
- (c) Senior Railcard Scheme dated 23 July 1995 between the participants therein; or
- (d) any other discount fare scheme approved from time to time by the Secretary of State for the purposes of section 28 of the Act,

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

4. **Inter-Operator Schemes**

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

- (a) Staff Travel Scheme dated 23 July 1995 between the participants named therein;
- (b) Ticketing and Settlement Agreement;
- (c) **NOT USED;**
- (d) **NOT USED;**
- (e) **NOT USED;**
- (f) National Rail Enquiry Scheme dated 11 June 1996 between the participants named therein;
- (g) **NOT USED;**
- (h) **NOT USED;**
- (i) any Discount Fare Scheme;
- (j) the 16-17 Saver railcard scheme introduced for use with effect from 2 September 2019 between the participants named therein;
- (jA) the Veterans Railcard scheme between the participants named therein to provide discounted rail travel to military veterans and their named companions and accompanying children; and

- (k) any other scheme, agreement and/or contract of a similar or equivalent nature as may from time to time during the Franchise Period amend, replace or substitute, in whole or in part, any of such schemes, agreements and/or contracts.

SCHEDULE 3

NOT USED

SCHEDULE 4
ACCESSIBILITY AND INCLUSIVITY

Schedule 4:	Accessibility and Inclusivity
	Appendix 1: NOT USED
	Appendix 2: Accessible Transport Arrangements

Schedule 4

Accessibility and Inclusivity

1. **Relationship with other obligations relating to persons with disabilities**
 - 1.1 The Franchisee acknowledges that its obligations in this Schedule 4 are in addition to and do not limit its obligations to comply with:
 - (a) the EA and any regulations imposed by it;
 - (b) any applicable condition(s) in any of its Licences (including in respect of persons with disabilities); and
 - (c) any other requirements of the Franchise Agreement.
 - 1.2 This Schedule 4 sets out:
 - (a) **NOT USED**; and
 - (b) specific obligations of the Franchisee directed at meeting the needs of persons with disabilities.
 - 1.3
 - (a) It is acknowledged that the Franchisee is subject to obligations regarding accessibility under the terms of its Licences (including under the form of its Accessible Travel Policy as approved from time to time by the ORR in connection with the requirements of its Licences) (the "**Licence Accessibility Obligations**").
 - (b) Where any matter included in this Schedule 4 is the subject of a Licence Accessibility Obligation, it is agreed that compliance with the Licence Accessibility Obligation shall take precedence over this Schedule 4 such that compliance with the Licence Accessibility Obligation shall be deemed to fulfil the obligation of the Franchisee in respect of that matter under this Schedule 4 and any failure by the Franchisee in respect of that matter shall be addressed under that Licence and not under this Franchise Agreement.
2. **NOT USED.**
- 3A. **NOT USED.**
3. **NOT USED.**
4. **Specific additional obligations relating to persons with disabilities**
 - 4.1 To the extent the Franchisee did so prior to the Start Date, it shall continue to implement procedures necessary to:
 - (a) record the making of reservations for seating accommodation and for spaces for wheelchairs for and/or the provision of assistance to, persons with disabilities which are made through the Passenger Assistance (or whatever service may replace it from time to time for the purposes of ORR's most recent guidance on the Accessible Travel Policies);

- (b) record whether such seating accommodation and/or assistance is actually provided, whether there has been a delay in providing such assistance at either departing, arrival or any interchange stations, and whether the journeys planned using Passenger Assistance have been completed successfully (e.g. by surveying a representative sample of users); and
 - (c) provide the results of such records to the Secretary of State, and publish a summary of the data in its Customer Report(s) and on the relevant section of the Franchisee's website.
- 4.2 By no later than 18 December 2020, the Franchisee shall notify the Secretary of State of the extent to which it recorded the matters described in paragraphs 4.1(a) and 4.1(b) above (collectively referred to as the "**Seating and Assistance Provisions**") as at the date of the notification.
- 4.3 Following the notification referred to in paragraph 4.2:
- (a) if the Franchisee already records the Seating and Assistance Provisions, it shall continue to do so and shall provide the results of such records to the Secretary of State, and publish a summary of the data in its Customer Report(s) and on the relevant section of the Franchisee's website; and
 - (b) if the Franchisee does not record the Seating and Assistance Provisions, then the Secretary of State may require them to establish and implement the necessary systems and processes by such date as the Secretary of State may reasonably specify (having regard to any assessment provided by the Franchisee pursuant to paragraph 4.1 above), and with effect from such date, it shall record Seating and Assistance Provisions and shall provide the results of such records to the Secretary of State and publish a summary of the data in its Customer Report(s) and on the relevant section of the Franchisee's website.
- 4.4 The Franchisee shall promptly send to the Secretary of State a copy of:
- (a) each set of results of the surveys of Passenger Assistance users that the Franchisee undertakes pursuant to its Accessible Travel Policy; and
 - (b) any reports that the Franchisee submits to ORR in connection with the effectiveness of, and satisfaction with, the Passenger Assistance service.
- 4.5 The Franchisee shall comply with the requirements set out in Appendix 2 (*Accessible Transport Arrangements*) to this Schedule 4 in respect of the provision of accessible transport arrangements for persons with disabilities.
- 5. Annual Accessibility Update**
- 5.1 The Parties acknowledge that the Franchisee, pursuant to its Licence Accessibility Obligations, is required to submit reports from time to time to ORR in respect of accessibility matters, including in relation to:
- (a) the activities undertaken by the Franchisee to improve accessibility to the Franchise Services; and
 - (b) the approach that the Franchisee has taken to assessing the accessibility requirements of passengers pursuant to the requirements of the EA for

example when making decisions about operations, design and service improvements; and

- (c) the action(s) taken by the Franchisee to remedy any failure (whether identified by the Franchisee or ORR) to comply with the Franchisee's Accessible Travel Policy or any other accessibility related obligation arising pursuant to its Licence Accessibility Obligations.

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

6. **Accessibility Director and Accessibility Manager**

6.1 By no later than the Start Date, the Franchisee shall nominate:

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

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

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

7. **NOT USED**

8. **Accessibility Panel**

The Franchisee shall:

- (a) consult the Accessibility Panel on operational and policy decisions that may have an impact on the needs of passengers with accessibility requirements;
- (b) develop the design of the Enhanced Disability Awareness Training referred to in paragraph 9 below, and the co-design of physical assets, electronic services and applications, and other services and facilities relating to accessibility as appropriate, in each case, actively engaging with the Accessibility Panel as may be appropriate; and
- (c) provide the Accessibility Panel the opportunity to report to the board of directors of the Franchisee on a quarterly basis.

9. **Enhanced Disability Awareness Training**

By no later than **[REDACTED¹⁰]** (or such later date as may be agreed by the Secretary of State), the Franchisee shall deliver Enhanced Disability Awareness

¹⁰ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

Training to all Franchise Employees. The Franchisee shall also ensure it delivers the Enhanced Disability Awareness Training to any Franchise Employees appointed following [REDACTED¹¹].

- 9.1 as soon as reasonably practicable after their appointment (except where this is not reasonably practicable in the case of a Franchise Employee who is appointed less than two months prior to the Expiry Date.
- 9.2 In developing the Enhanced Disability Awareness Training, the Franchisee shall:
- (a) take into account of a wide range of disabilities (including non-visible disabilities); and
 - (b) ensure the content complies with the requirements of the ORR's Accessible Travel Policy Guidance.
- 9.3 The Franchisee shall involve people with disabilities and/or groups representing people with disabilities (which may include the Accessibility Panel) in the delivery of the Enhanced Disability Awareness Training.

10. **Social Media Engagement with Passengers with Disabilities**

- 10.1 By no later than 31 January 2021, the Franchisee shall develop and share with the Secretary of State a 12-month plan describing how it shall (or if the Franchise Period is due to expire within the following 12 months, its Successor Operator may) increase its use of social media for the purpose of:
- (a) advising passengers with disabilities on matters, including:
 - (i) planned and/or unplanned disruptions to Passenger Services;
 - (ii) changes to Passenger Services in operation; and
 - (iii) rail replacement bus services; and
 - (b) responding to queries and questions from passengers with disabilities and in a timely manner;
 - (c) receiving feedback and comments from passengers with disabilities; and
 - (d) promoting the Franchisee's additional services for passengers with disabilities, including Passenger Assistance.
- 10.2 Subject to the Secretary of State's consent to the plan shared pursuant to paragraph 10.1 (such consent not unreasonably withheld or delayed), the Franchisee shall implement this plan (the "**Social Media Plan**").
- 10.3 By no later than 18 October 2022, the Franchisee shall provide the Secretary of State with a report detailing the extent to which the Social Media Plan is achieving

¹¹ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

the purposes referred to in paragraph 10.1 and any proposed revisions to the Social Media Plan to help achieve those purposes.

- 10.4 Any revision to the Social Media Plan proposed by the Franchisee pursuant to paragraph 10.3 shall be subject to the consent of the Secretary of State before implementation (such consent not unreasonably withheld or delayed).

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

- 11.1 By no later than 31 January 2021, the Franchisee shall ensure (and continue to ensure throughout the Franchise Term) that, to the extent reasonably practicable, all passenger facing information (in whatever form or media) is presented or made available in a range of accessible formats, taking into account the requirements of Disabled Persons in relation to communication (such as passengers who use British Sign Language or "easy read").

- 11.2 The Parties acknowledge that:

- (a) the ORR licensing regime requires the publication of certain documents (the "**Relevant Documents**") in accessible formats; and
- (b) insofar as the obligation in paragraph 11.1 above applies to the Relevant Documents, enforcement action is within the remit of the ORR and accordingly a failure to comply with paragraph 11.1 in respect of the Relevant Documents shall not be treated as a contravention of the Franchise Agreement (but the Franchisee nevertheless acknowledges that it will remedy any such failure, as soon as practicable and in accordance with any directions as may be given by the ORR).

12. **Diversity Impact Assessments**

- 12.1 The Franchisee shall, from the Start Date and throughout the Franchise Term, ensure that it conducts a diversity impact assessment on all projects with the potential to affect the interests of persons with protected characteristics (as defined under the Equalities Act 2010) carried out or made by the Franchisee. The Franchisee shall take such steps as it considers appropriate (acting reasonably) in light of the conclusions of the diversity impact assessment to ensure that issues affecting people with protected characteristics (as defined under the Equalities Act 2010) are properly addressed in the context of its duties under Law.

APPENDIX 1 TO SCHEDULE 4

NOT USED

APPENDIX 2 TO SCHEDULE 4**Accessible Transport Arrangements**

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

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

and, in any case, at no cost additional to the price of the Fare which would otherwise be payable for the passenger's rail journey.
4. The Franchisee's obligations under this Appendix 2 to Schedule 4 (*Accessibility and Inclusivity*) are subject to:
 - 4.1 reasonable prior notice of the passenger's requirement for accessible transport arrangements; and
 - 4.2 the availability of suitable accessible transport arrangements (provided that the Franchisee has used all reasonable endeavours to ensure that it has arrangements in place to meet requirements for the provision of such accessible transport arrangements).

SCHEDULE 5**FARES AND SMART TICKETING**

Schedule 5.1:	Purpose, Structure and Construction
Schedule 5.2:	Franchisee's Obligation to Create Fares
Schedule 5.3:	Allocation of Fares to Fares Baskets
Schedule 5.4:	Regulation of Fares Basket Values
Schedule 5.5:	Regulation of Individual Fares
Schedule 5.6:	Exceeding the Regulated Value, Regulated Price or Regulated Child Price
Schedule 5.7:	Changes to Fares and Fares Regulation
Schedule 5.8:	Fares Regulation Information and Monitoring
Schedule 5.9:	Smart Ticketing
Schedule 5.10	Trials
Schedule 5.11	Fares, Ticketing and Retail Reform

Schedule 5.1

Purpose, Structure and Construction**1. Purpose of provisions relating to Creating Fares**

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

1.2 Purpose of Fares Regulation

(a) The purpose of Schedule 5.3 (Allocation of Fares to Fares Baskets) to Schedule 5.8 (Fares Regulation Information and Monitoring) (inclusive) is to provide for the regulation of Fares by the Secretary of State pursuant to section 28 of the Act.

(b) For the purpose of regulating Fares, each Fare that is to be regulated shall be allocated in accordance with this Schedule 5.1 to one of the following Fares Baskets:

(i) the Commuter Fares Basket; or

(ii) the Protected Fares Basket; or

(c) The Secretary of State's regulation of Fares places a limit on:

(i) the Price of each Fare that is allocated by the Secretary of State to a Fares Basket. The limit on the Price of each Fare is set by reference to:

(A) the overall increase of the Prices of all Fares in a Fares Basket;

(B) the individual increase in the Price of each Fare in a Fares Basket; and

(ii) the Child Price of each Fare as specified in paragraph 1.3 of Schedule 5.5 (Regulation of Individual Fares).

(d) Subject to the more detailed provisions of Schedule 5.4 (Regulation of Fares Basket Values) and Schedule 5.5 (Regulation of Individual Fares):

(i) the overall increase of the Prices of all Fares in a Fares Basket may not exceed the Retail Prices Index + k per cent per annum in respect of each Fare Year; and

(ii) the increase in the Price of any individual Fare in a Fares Basket may not exceed the Retail Prices Index + k per cent + f per cent per annum in respect of each Fare Year.

For the purposes of paragraph 1.2(d)(i), "k" shall have the meaning given to it in paragraph 4.2 of Schedule 5.4 (Regulation of Fares Basket Values) and for the purposes of paragraph 1.2(d)(ii) "k" and "f" shall each have the meaning given to each such term in paragraph 2.2 of Schedule 5.5 (Regulation of Individual Fares).

- (e) The Secretary of State may alter these limits, and other aspects of the regulation of Fares, in accordance with the more detailed provisions of Schedule 5.7 (Changes to Fares and Fares Regulation).

2. **Structure of Schedule 5**

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

3. **References to "Fare"**

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

4. **Fares Documents**

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

- (a) described in or determined in accordance with this Schedule 5; and
- (b) described in the relevant Fares Document,

the relevant Fares Document shall prevail.

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

- (a) described in or determined in accordance with this Schedule 5; and
- (b) described in the relevant Fares Document,

this Schedule 5 shall prevail.

5. **Setting of Child Prices**

5.1 Any requirement under this Schedule 5 to set a Child Price in respect of a Fare shall be satisfied by the Franchisee Creating either:

- (a) a Fare which is only valid for use by persons under the age of 16; or
- (b) a Fare which is valid for use:
 - (i) by any person at a price; and
 - (ii) by persons under the age of 16 at a discounted price relative to the price set pursuant to paragraph 5.1(b) (i).

6. **New Stations**

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

- (a) Fares Basket;
- (b) Commuter Fare; and
- (c) Protected Fare,

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

Schedule 5.2

Franchisee's Obligation to Create Fares**1. Creation of Commuter Fares and Protected Fare**

The Franchisee shall ensure that each Commuter Fare and Protected Fare has been Created in accordance with the Fares Plan (as the same may be amended from time to time in accordance with Schedule 6.5 (Additional Operating Contract Obligations)) and to the extent it is entitled or obliged to do so under the terms of the Ticketing and Settlement Agreement.

2. Restrictions on Creation of Fares

- 2.1 The Franchisee shall set the Child Price for any Fare that it Creates so that that Fare may be purchased by or for a person under the age of 16 for an amount which is no greater than fifty per cent (50%) of the Price of the relevant Fare.
- 2.2 The Franchisee shall not Create or agree to Create any Fare or Discount Card with a validity of thirteen (13) or more months without the consent of the Secretary of State (such consent not to be unreasonably withheld).

Schedule 5.3

Allocation of Fares to Fares Baskets**1. Allocation of Fares to Fares Baskets**

1.1 On or prior to the Start Date the Secretary of State shall allocate each Commuter Fare and Protected Fare to the relevant Fares Basket in accordance with this Schedule 5.3.

1.2 Subject to paragraph 2, every Commuter Fare shall be allocated by the Secretary of State to the Commuter Fares Basket and every Protected Fare shall be allocated by the Secretary of State to the Protected Fares Basket.

2. Designation of Non Fares Basket Fares

2.1 On or prior to the Start Date, the Secretary of State shall:

(a) separately (or in aggregate with other Fares of the same type in the opposite direction or for similar journeys that have the same Price) rank, in descending order according to their Gross Revenue for the period of twelve (12) months which ended 31 March 2019:

(i) all Commuter Fares; and

(ii) all Protected Fares;

(b) aggregate, following such ranking:

(i) those Commuter Fares with the lowest Gross Revenue, until the total of the aggregated Gross Revenue of such fares accounts for up to five per cent (5%) of the aggregate Reference Revenue of all Commuter Fares;

(ii) those Protected Fares with the lowest Gross Revenue, until the total of the aggregated Gross Revenue of such fares accounts for up to five per cent (5%) of the aggregate Reference Revenue of all Protected Fares; and

(c) designate, following such aggregation:

(i) those Commuter Fares referred to in paragraph 2.1(b)(i) as Non Fares Basket Fares; and

(ii) those Protected Fares referred to in paragraph 2.1(b)(ii) as Non Fares Basket Fares.

2.2 Without prejudice to the Secretary of State's right to require the content of a Fares Basket to change at any time prior to the Start Date, or, thereafter, prior to the commencement of any Fares Setting Round, pursuant to paragraph 1 of Schedule 5.7 (Changes to Fares and Fares Regulation), any Commuter Fare or Protected Fare that is also designated as a Non Fares Basket Fare shall not be allocated to the relevant Fares Basket.

2.3 The Secretary of State may de-designate any Non Fares Basket Fare pursuant to paragraph 1.1(d) (iii) of Schedule 5.7 (Changes to Fares and Fares Regulation).

Schedule 5.4

Regulation of Fares Basket Values

1. Value of Fares Basket not to exceed Regulated Value

Subject to paragraph 1.3 of Schedule 5.6 (*Exceeding the Regulated Value, Regulated Price or Regulated Child Price*) the Franchisee shall procure that the Value of a Fares Basket at any time in any Fare Year does not exceed its Regulated Value for that Fare Year.

2. Value

The Value of a Fares Basket at any time shall be the aggregate of the Projected Revenue of each Fare in that Fares Basket at that time.

3. Projected Revenue

The Projected Revenue of any Fare at any time shall be an amount equal to:

P x 2019 Nominal Ticket Sales	
where:	
P	is the Price of that Fare at that time; and
2019 Nominal Ticket Sales	is the number of nominal ticket sales of that Fare for 2019, ascertained as follows:
	$\frac{A}{B}$
	where:
A	is the aggregate Gross Revenue recorded by RSP as attributable to sales of that Fare and any other Fare with which it was aggregated under paragraph 2.1(a) of Schedule 5.3 (Allocation of Fares to Fares Baskets) for the period of twelve (12) months which ended 31 March 2019; and
B	is the Price for that Fare recorded by RSP in 2019

4. Regulated Value

4.1 The Regulated Value of a Fares Basket for any Fare Year shall be an amount equal to:

2019 Ticket Revenue x PPAI	
where:	
2019 Ticket Revenue	is the aggregate Gross Revenue recorded by RSP as attributable to sales of all Fares in that Fares Basket for the period of twelve (12) months which ended 31 March 2019;
PPAI	is:
	where:
	(a)
(b)	in respect of each Fare Year commencing on or after 1 January 2021, the product of the Permitted

		Aggregate Increase for each Fare Year between that Fare Year and the Fare Year which begins on 1 January 2020 (inclusively).
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4.2 The Permitted Aggregate Increase in any Fare Year shall be an amount equal to:

PAI =	$PAI = \frac{(100 \times RPI) + k}{100}$	
where:		
PAI	is the Permitted Aggregate Increase in that Fare Year;	
RPI	is an amount equal to:	
	$\frac{RPI - 1}{RPI - 2}$	
	where:	
RPI-1	is the Retail Prices Index for the July of the calendar year preceding that Fare Year; and	
RPI-2	is the Retail Prices Index for the July of the calendar year preceding the calendar year referred in the definition of RPI-1 ; and	
k	is equal to zero (0) for each Fare Year until the Fare Year commencing on 1 January 2021 where it will be equal to plus one (+ 1) per annum for any Fare Year thereafter.	

Schedule 5.5

Regulation of Individual Fares

1. Price not to exceed Regulated Price or Regulated Child Price

1.1 The Franchisee shall procure that the Price of:

- (a) each Commuter Fare included in the Commuter Fares Basket;
- (b) each Protected Fare included in the Protected Fares Basket,

in any Fare Year does not exceed the Regulated Price for such Fare in that Fare Year.

1.2 The Franchisee shall procure that the Price of any Season Ticket Fare shall be the same in both directions.

1.3 The Franchisee shall procure that the Child Price of each Fare in any Fare Year does not exceed fifty per cent (50%) of the Price for such Fare in that Fare Year.

2. Regulated Price

2.1 The Regulated Price for any Fare in any Fare Year shall be an amount equal to the greater of:¹²

(a) Preceding Year Ticket Price + £0.10p; and	
(b) ROUND (Preceding Year Ticket Price x PII)	
where:	
Preceding Year Ticket Price	for the Fare Year commencing 2020, is the maximum Price for that Fare recorded by RSP in 2019 and, for any subsequent Fare Year, is the maximum Price recorded by RSP in the Fare Year preceding that Fare Year, provided that such maximum Price complied with the requirements of this Schedule 5 as it applied at the relevant time such maximum Price was recorded by RSP. If such maximum Price did not so comply, then such maximum Price shall be the last Price recorded by RSP which did so comply;
PII	is the Permitted Individual Increase in any Fare Year, as determined in accordance with paragraph 2.2; and
ROUND	if (Preceding Year Ticket Price x PII), when rounded to two decimal places, results in a value ending in five

12 **Explanatory Note:** For illustration, here is a worked example of the formula in paragraph 2.1:

Where, for a particular Fare Year, the Preceding Year Ticket Price is £10.00p and PII is 2.7%, the Regulated Price will be an amount equal to the greater of:

- (a) £10.10p (i.e. Preceding Year Ticket Price + £0.10p); and
- (b) £10.00p x 2.7% = £10.27p, as rounded up by two decimal places to the nearest whole multiple of £0.10p in application of ROUND.

The Regulated Fare is therefore £10.30p.

	<p>pence to nine pence (inclusive), then (Preceding Year Ticket Price x PII) shall be rounded up to the nearest whole multiple of £0.10; or</p> <p>if (Preceding Year Ticket Price x PII), when rounded to two decimal places, results in a value ending in one pence to four pence (inclusive), then (Preceding Year Ticket Price X PII) shall be rounded down to the nearest whole multiple of £0.10.</p>
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2.2 The Permitted Individual Increase in any Fare Year shall be an amount equal to:

PII =	$\frac{(100 \times RPI) + k + f}{100}$	
where:		
PII	is the Permitted Individual Increase in that Fare Year;	
RPI	is an amount equal to:	
	$\frac{RPI - 1}{RPI - 2}$	
	where:	
	RPI-1	is the Retail Prices Index for the July of the calendar year preceding that Fare Year; and
	RPI-2	is the Retail Prices Index for the July of the calendar year preceding the calendar year referred in the definition of RPI-1 ;
k	is equal to zero (0) for each Fare Year until the Fare Year commencing on 1 January 2021 where it will be equal to plus one (+ 1) per annum for any Fare Year thereafter.	
f	is equal to (+0).	

2.3 Where:

- (a) the Franchisee sets the Price of any Commuter Fare or Protected Fare in any Fare Year; and
- (b) the Secretary of State reasonably determines that the Price of such Commuter Fare or Protected Fare was set solely for the purpose of increasing the value of the Preceding Year Ticket Price in the next Fare Year,

the Preceding Year Ticket Price for the purposes of determining the Regulated Price pursuant to paragraph 2.1 in the next Fare Year shall be the maximum Price prior to such setting that complied with the requirements of this Schedule 5, as recorded by RSP in the relevant preceding Fare Year.

3. Compulsory Inter-available Flows

3.1 Where the Franchisee:

- (a) as Lead Operator for a Compulsory Inter-available Flow, is responsible for setting the Price of a Commuter Fare for that Flow; and
- (b) has notified the RSP of the Price of that Commuter Fare in any Fares Setting Round,

the Franchisee shall not increase the Price of that Commuter Fare in the same Fares Setting Round without the consent of either the Secretary of State or each other Train Operator which provides Railway Passenger Services for such Flow.

Schedule 5.6

Exceeding the Regulated Value, Regulated Price or Regulated Child Price**1. Exceeding the Regulated Value**

1.1 If the Franchisee is in contravention of paragraph 1 of Schedule 5.4 (Regulation of Fares Basket Values) in respect of either the Commuter Fares Basket or the Protected Fares Basket:

- (a) it shall reduce the Price of Fares in the relevant Fares Basket at the next available opportunity and, in any event, at the next Fares Setting Round, so as to comply with the requirements of paragraph 1 of Schedule 5.4 (Regulation of Fares Basket Values) from such date; and
- (b) the Secretary of State shall adjust Franchise Payments by an amount equivalent in the Secretary of State's opinion to the sum of:
 - (i) any additional gross revenue accruing to the Franchisee or any person selling Fares on its behalf as a result of the Value of any Fares Basket exceeding its Regulated Value permitted under Schedule 5.4 (Regulation of Fares Basket Values); and
 - (ii) any costs incurred by the Secretary of State in determining the amount of such additional gross revenue.

1.2 Any adjustment to Franchise Payments by the Secretary of State pursuant to paragraph 1.1:

- (a) **NOT USED**; and
- (b) shall be without prejudice to any other rights or remedies of the Secretary of State under the Act or the Franchise Agreement in respect of such contravention.

1.3 It shall not be a contravention of paragraph 1 of Schedule 5.4 (Regulation of Fares Basket Values) if and to the extent that:

- (a) the Value of the Commuter Fares Basket exceeds its Regulated Value in any Fare Year;
- (b) such excess is caused by the Price of any relevant Commuter Fare being set pursuant to the terms of the Ticketing and Settlement Agreement by another person (other than an Affiliate); and
- (c) the Franchisee does not have a reasonable opportunity, under any procedure for consulting or notifying Train Operators of alterations to the Prices of Fares under the Ticketing and Settlement Agreement or otherwise, to alter some or all of the other Commuter Fares in the Commuter Fares Basket so as to avoid the Value of the Commuter Fares Basket exceeding its Regulated Value.

1.4 If and to the extent that the circumstances described in paragraph 1.3 prevail in any Fare Year, the Franchisee shall not subsequently increase during that Fare Year, or any subsequent Fare Year, the Price of any Commuter Fare in the Commuter Fares Basket which it is entitled to set pursuant to the terms of the

Ticketing and Settlement Agreement, unless, following such increase, the Franchisee would, otherwise than under paragraph 1.3, comply with the provisions of paragraph 1 of Schedule 5.4 (Regulation of Fares Basket Values) in relation to the Commuter Fares Basket.

- 1.5 Where circumstances described in paragraph 1.3 prevail in any Fare Year, the Franchisee shall not be required to reduce the Price of any other Commuter Fare at any time during that Fare Year, or any subsequent Fare Year, where such Price has previously been set in a Fares Setting Round.

2. **Exceeding the Regulated Price or Regulated Child Price**

- 2.1 If the Franchisee is in contravention of any of the provisions of paragraph 1 of Schedule 5.5 (Regulation of Individual Fares):

(a) it shall reduce the Price and/or Child Price (as the case may be) of any relevant Fare at the next available opportunity and, in any event, at the next Fares Setting Round, so as to comply with the requirements of paragraph 1 of Schedule 5.5 (Regulation of Individual Fares) from such date; and

(b) the Secretary of State shall adjust Franchise Payments by an amount equivalent in the Secretary of State's opinion to the sum of:

(i) any additional gross revenue accruing to the Franchisee or any person selling Fares on its behalf as a result of the sale of Fares at Prices and/or Child Prices in excess of the relevant amounts permitted under Schedule 5.5 (Regulation of Individual Fares); and

(ii) any costs incurred by the Secretary of State in determining the amount of such additional gross revenue.

- 2.2 Any adjustment to Franchise Payments by the Secretary of State pursuant to paragraph 2.1:

(a) **NOT USED**; and

(b) shall be without prejudice to any other rights or remedies of the Secretary of State under the Act or the Franchise Agreement in respect of such contravention.

Schedule 5.7

Changes to Fares and Fares Regulation**1. Changes to Fares Baskets**

1.1 The Secretary of State may require the content of the Commuter Fares Basket or Protected Fares Basket (as the case may be) to change in accordance with the following:

- (a) where the Secretary of State is not satisfied that the Price of any Non Fares Basket Fare is reasonably constrained by the Price of other Fares which:
 - (i) have been set in respect of the same, or part of the same, Flow as such Non Fares Basket Fare, or a Flow which is reasonably proximate to the Flow on which such Non Fares Basket Fare has been set; and
 - (ii) have been included in the relevant Fares Basket,

the Secretary of State may de-designate any Non Fares Basket Fare and include such Non Fares Basket Fare in the relevant Fares Basket;

- (b) where any Commuter Fare for a Flow has been included in the Commuter Fares Basket, the Secretary of State may require the inclusion in the Commuter Fares Basket of any Weekly Season Ticket, Monthly Season Ticket, Quarterly Season Ticket, Annual Season Ticket, unrestricted Single Fare or unrestricted Return Fare that existed on that Flow in February 2019;
- (c) where any Protected Fare for a Flow has been included in the Protected Fares Basket, the Secretary of State may require the inclusion in the Protected Fares Basket of any Protected Return Fare or Protected Weekly Season Ticket that existed on that Flow in February 2003; and/or
- (d) where the Secretary of State changes the Reference Revenue and/or the Gross Revenue of any Fare pursuant to paragraphs 3.1(a) and/or 3.1(b) then, in relation to the Fares Basket in which such Fare is or would be included, and without limiting paragraphs 1.1(a) to (c) inclusive, the Secretary of State may also:
 - (i) make any of the changes to such Fares Basket contemplated by this paragraph 1.1;
 - (ii) designate any Fare as a Non Fares Basket Fare in accordance with the provisions (other than the requirement that such designation occurs on or prior to the Start Date) of paragraph 2 of Schedule 5.3 (Allocation of Fares to Fares Baskets); and/or
 - (iii) de-designate any Non Fares Basket Fare and include such Non Fares Basket Fare in the relevant Fares Basket.

1.2 The Secretary of State shall serve notice in writing on the Franchisee:

- (a) at any time prior to the Start Date; and
- (b) thereafter, no later than the commencement of any Fares Setting Round,

to require any Fare to be included in a Fares Basket or to designate any Fare as a Non Fares Basket Fare pursuant to paragraph 1.1.

2. **Changes to the 2019 Nominal Ticket Sales**

2.1 The Franchisee may, in the event of any significant change to the pattern of travel on the Passenger Services during the Franchise Term, apply to the Secretary of State for the **value of factors A and/or B** in the formula for determining 2019 Nominal Ticket Sales in paragraph 3 of Schedule 5.4 (Regulation of Fares Basket Values) to be adjusted to take account of such changes, such that:

- (a) the **value of factor A** is re calculated by using the Gross Revenue in respect of the sales of the relevant Fares for the most recently completed period of twelve (12) months ending 31 March 2019; and/or
- (b) the **value of factor B** is recalculated by using the Price of the relevant Fares recorded by RSP in the month of February during such period.

2.2 The Secretary of State shall act reasonably in relation to any such application but shall not under any circumstances be obliged to accept any such application in whole or in part. The Secretary of State shall be entitled to impose conditions upon any such acceptance, including conditions requiring that the **value of both factors A and B** are adjusted and/or are adjusted in respect of any or all Fares in the relevant Fares Basket.

3. **Changes to the Reference Revenue, Gross Revenue, 2019 Nominal Ticket Sales and/or 2019 Ticket Revenue**

3.1 The Secretary of State may, by notice in writing served on the Franchisee no later than the date of commencement of any Fares Setting Round, require:

- (a) the Reference Revenue of any Fares Basket to be calculated by reference to a different reference period for the purpose of paragraph 2 of Schedule 5.3 (*Allocation of Fares to Fares Baskets*) than the period of twelve (12) months ended 31 March 2019; and/or
- (b) the Gross Revenue of all Commuter Fares and Protected Fares to be recalculated for the purpose of paragraph 2 of Schedule 5.3 (*Allocation of Fares to Fares Baskets*) by reference to a different reference period than the period of twelve (12) months ended 31 March 2019; and/or
- (c) **the value of factor A** in the formula for determining the 2019 Nominal Ticket Sales in paragraph 3 of Schedule 5.4 (*Regulation of Fares Basket Values*) to be recalculated in respect of any Fare by reference to a different reference period than the period of twelve (12) months ended 31 March 2019; and/or
- (d) **the value of factor B** in the formula for determining the 2019 Nominal Ticket Sales in paragraph 3 of Schedule 5.4 (*Regulation of Fares Basket Values*) to be re calculated in respect of any Fare by reference to a different reference date other than February 2019; and/or
- (e) the 2019 Ticket Revenue in respect of any Fares Basket to be re calculated for the purpose of paragraph 4 of Schedule 5.4 (*Regulation of Fares Basket Values*) by reference to a different reference period than the period of twelve (12) months ended 31 March 2019.

- 3.2 Where, in accordance with paragraph 3.1(e), the 2019 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 from time to time submit proposals to the Secretary of State to increase any Prices beyond the levels permitted under Schedule 5.4 (*Regulation of Fares Basket Values*) and Schedule 5.5 (*Regulation of Individual Fares*) in connection with any proposed or actual improvement in any aspect of the Passenger Services relating to such Fares. The Secretary of State shall consider any such proposal and may (at his sole discretion) require the Franchisee to implement any such proposal in whole or in part.

5. **Changes to Fares Regulation**

- 5.1 The Parties agree that the Secretary of State shall have the power at any time and on more than one occasion during the Franchise Term to alter the obligations of, and restrictions on, the Franchisee under Schedule 5.1 (*Purpose, Structure and Construction*) to Schedule 5.8 (*Fares Regulation Information and Monitoring*) inclusive for any Fare Year, or part thereof (including alteration of the **value of "k"** under paragraph 4.2 of Schedule 5.4 (*Regulation of Fares Basket Values*) and/or paragraph 2.2 of Schedule 5.5 (*Regulation of Individual Fares*) and/or alteration of the **value of "f"** under paragraph 2.2 of Schedule 5.5 (*Regulation of Individual Fares*)).
- 5.2 The exercise by the Secretary of State of the Secretary of State's powers under this paragraph 5 shall be a Change.

6. **Changes to Compulsory Inter-available Flows**

6.1 Where:

- (a) pursuant to Clauses 4 to 7 of the Ticketing and Settlement Agreement, the consent of the Secretary of State is requested for the abolition of a Compulsory Inter-available Flow (the "**Reference Flow**") in respect of which any Fare Created would be a Commuter Fare or a Protected Fare (the "**Reference Fare**"); and
- (b) a Flow exists, which, in the Secretary of State's opinion, is substantially similar to the Reference Flow (the "**Equivalent Flow**"),

the Secretary of State may, as a condition of granting the Secretary of State's consent to the abolition of the Reference Flow, by written notice to the Franchisee, require any Fare Created in respect of the Equivalent Flow which has substantially the same characteristics as the Reference Fare to be included in a Fares Basket ("**Equivalent Fare**").

6.2 The Secretary of State shall not issue any such notice in respect of an Equivalent Fare unless the provisions of such notice have first been approved by the Ticketing and Settlement Scheme Council (as defined in the Ticketing and Settlement Agreement) or a delegate of such council.

6.3 The Price of any Equivalent Fare in the first Fare Year in which it is to be introduced shall be no greater than the maximum permitted Price in that Fare Year of the relevant Reference Fare, as if such Reference Fare had not been abolished.

7. Change of Lead Operator/Major Flow Operator

7.1 The Franchisee shall not without the Secretary of State's prior approval, agree to any request under the Ticketing and Settlement Agreement that it cease to be Lead Operator in respect of any Flow.

7.2 The Franchisee shall inform the Secretary of State if it becomes the Lead Operator in respect of any Flow. Upon the Franchisee becoming the Lead Operator in respect of any Flow, the Secretary of State may without limiting paragraph 3, exercise the Secretary of State's rights pursuant to paragraph 3 in relation to the relevant Fares Basket.

7.3 The Franchisee shall inform the Secretary of State if it ceases to be a Major Flow Operator in respect of any Flow.

8. Changes to Fares Documents

8.1 Following:

(a) any allocation of Fares to any Fares Basket pursuant to Schedule 5.3 (Allocation of Fares to Fares Baskets); or

(b) any subsequent adjustment thereof pursuant to this Schedule 5.7,

the Secretary of State shall set out in the Commuter Fares Document and/or Protected Fares Document (as the case may be) all Fares then included in the relevant Fares Basket and, as soon as reasonably practicable thereafter, the Secretary of State shall issue or reissue (as the case may be) such Fares Document(s) to the Franchisee.

9. Changes to Fares Plans

9.1 Where the Secretary of State exercises any of the Secretary of State's rights specified in any of paragraphs 1 to 9 of this Schedule 5.7, it is acknowledged that changes to the Fares Plan may be required in order for the Fares Created in accordance with the Fares Plan to be consistent with those which would be Created consistently with the Good and Efficient Operator standard).

Fares Regulation Information and Monitoring

1. Information

- 1.1 The Franchisee shall provide to the Secretary of State by no later than week twelve (12) of each Fares Setting Round, a summary (to such level of detail or generality as the Secretary of State may reasonably require) of the Prices of the Commuter Fares or Protected Fares it is intending to set.
- 1.2 The Franchisee shall notify, or procure the notification to, the Secretary of State of any proposed increase to the Price of any Commuter Fare or Protected Fare and shall provide such details of any such proposal at such times (including before and during each Fares Setting Round) and in such form (including by electronic data transfer) as the Secretary of State may reasonably request from time to time.
- 1.3 The Franchisee shall make available, or procure that RSP makes available, to the Secretary of State, for any Fares Setting Round during the Franchise Term, such details (including the proposed Prices) of the Initial Permanent Fare of any Commuter Fare and Protected Fare for each such Fares Setting Round as the Secretary of State may reasonably request from time to time.

2. Monitoring

- 2.1 The Franchisee shall provide to the Secretary of State:
 - (a) such access as the Secretary of State may require to information pertaining to the Prices of Commuter Fares and Protected Fares from time to time; and
 - (b) such further information as the Secretary of State may require for the purpose of determining the Gross Revenue of the Franchisee in relation to any particular Fare or Fares or any particular period.
- 2.2 By no later than week seventeen (17) of each Fares Setting Round, the Franchisee shall provide to the Secretary of State written confirmation from a statutory director of the Franchisee of whether the Franchisee has complied with its obligations under this Schedule 5 (Fares and Smart Ticketing) during each such Fares Setting Round.
- 2.3 The Franchisee shall take such action as the Secretary of State may require following receipt of any details from the Franchisee pursuant to paragraph 1 in order to ensure that the Franchisee shall comply with the provisions of Schedule 5.2 (Franchisee's Obligation to Create Fares) to this Schedule 5.8 (inclusive).

3. Car Park Revenue

- 3.1 Where the Franchisee sells Fares that incorporate car park tickets in the purchase price (each a "**Combined Ticket**"), the Franchisee shall ensure that the revenue received from such sales is apportioned between passenger revenue and car park revenue so as to reflect the respective value of the Fare and the car park ticket.
- 3.2 Notwithstanding paragraph 3.1 of this Schedule 5.8, the Franchisee shall notify the Secretary of State in writing of any proposals to:
 - (a) introduce new Combined Tickets; and/or
 - (b) change the apportionment of revenue received from Combined Tickets between passenger revenue and car park revenue,

(each a **"Combined Ticket Notification"**).

- 3.3 Each Combined Ticket Notification shall be provided to the Secretary of State not less than thirty (30) days prior to the proposed implementation of the introduction or change that is the subject of the Combined Ticket Notification and shall include the following information:
- (a) details of the applicable Fare and car park ticket (including the origin, destination and type of Fare and the location of the car park) that comprise the Combined Ticket or that will comprise the proposed Combined Ticket (as applicable);
 - (b) a breakdown of how the existing Combined Ticket or proposed Combined Ticket revenue (as applicable) will be apportioned between passenger revenue and car park revenue; and
 - (c) the revenue that would have been derived from the Fare and car park ticket comprising the existing Combined Ticket or proposed Combined Ticket (as applicable) had they been sold separately.
- 3.4 The Secretary of State may consider whether the proposed apportionment between passenger revenue and car park revenue as set out in the Combined Ticket Notification is reasonable. Where the Secretary of State determines that such apportionment is not reasonable, the Secretary of State may amend such apportionment accordingly.
- 3.5 Within thirty (30) days of any request by the Secretary of State, the Franchisee shall provide a report setting out:
- (a) the total sales of Combined Tickets;
 - (b) the information set out in paragraph 3.3 of this Schedule 5.8 in respect of such Combined Tickets; and
 - (c) any further information requested by the Secretary of State from time to time.

Schedule 5.9

Smart Ticketing1. **Definitions**

1.1 For the purposes of this Schedule 5.9, the following words and expressions shall have the following meanings unless otherwise set out in clause 3 (*Definitions*):

"EMV" means contactless payment cards and any other devices that conform to the international standards issued by EMVCo (owned by American Express, Discover, JCB, MasterCard, UnionPay and Visa);

"ITSO Ltd" means the non-profit distributing organisation run by its members for the benefit of members and users of Smart Media;

"ITSO Operating Licence" means the licence granted to Train Operators by ITSO Ltd which, among other things, permits the Train Operators to issue ITSO-Specification compliant cards and issue, sell and accept ITSO Specification compliant products;

"ITSO Smart Media Ticketing Scheme" means a Smart Ticketing Scheme that utilises ITSO Certified Smart Media;

"Previous Franchisee ITSO Smart Media Ticketing Scheme" means any ITSO Smart Media Ticketing Scheme operated by the Previous Franchisee prior to the Start Date;

"RSPS3002" means the RSP document with reference RSPS3002, version 3 (03-00) published on 27 September 2017 (or amended publications that replace this) which specifies standards for issuing, checking and validating rail products on ITSO Certified Smart Media and defines the rail specific rules required to ensure interoperability across the rail network;

"Smart Ticketing Scheme" means a scheme or system that uses Smart Media that can be fulfilled electronically. It must:

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

- (c) provide management information that a journey is being/has been made to the relevant back office; and

“Smart Media Target”

means targets proposed by the Franchisee or required by the Secretary of State for channel shift from magstripe tickets (orange paper tickets with a magnetic strip on the back) and journeys made on Passenger Services within the geographic boundary of the Franchise using Smart Media as set out in paragraph 2.1(d) of this Schedule 5.9.

2. Smart Ticketing

2.1 The Franchisee shall:

- (a) join and comply with any RDG approved Smart Ticketing Schemes relevant to some or all of the Passenger Services unless otherwise determined by the Secretary of State;
- (b) fully and effectively co-operate with Network Rail, other Train Operators, Transport for the North, Transport Scotland, Transport for Wales, Transport for West Midlands and relevant Local Authorities, including in relation to the provision of any required equipment, to implement and operate Smart Ticketing Schemes; and
- (c) fully and effectively co-operate with other Train Operators, Transport for the North, Transport Scotland, Transport for Wales, Transport for West Midlands and relevant Local Authorities in relation to proposals to apply Smart Ticketing Schemes to new or existing multi-modal fares schemes including in the implementation of any Smart Media technology pursuant to any multi-modal fares schemes that it may participate in pursuant to its obligations under paragraph 2.1 of Schedule 2.5 (*Transport, Travel and Other Schemes*);
- (d) ensure within one (1) year following the Start Date that a Smart Media Target of **[REDACTED¹³]** of all journeys made by passengers buying tickets via the Franchisee’s retail channels are made using Smart Media; and
- (e) prepare and submit a report to the Secretary of State in advance of each Franchise Performance Meeting (in such form as the Secretary of State may reasonably require) setting out:
- (i) the baseline of uptake and journey usage of Smart Media from the Start Date and level of migration from magstripe tickets and increased take-up and journeys made using Smart Ticketing Schemes, as a minimum disaggregated between types of fares (Season Fares, Single Fares and Saver Return Fares) and type of

¹³ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

Smart Media (using the Lennon database as the sole source of data unless otherwise agreed with the Secretary of State) by users of the Passenger Services, for each completed Reporting Period during the Franchise Term;

- (ii) the Franchisee's performance in respect of the requirement set out at paragraph 2.1(d) of this Schedule 5.9; and
- (iii) the steps that the Franchisee is taking, including other Train Operators, Network Rail, Transport for the North, Transport Scotland, Transport for Wales, Transport for West Midlands, Local Authorities or other organisations that it will be working with, to increase channel shift to Smart Ticketing Schemes operated by the Franchisee, or enabled by the Franchisee for other Smart Ticketing Schemes, and increase usage of Smart Ticketing Schemes by users of the Passenger Services,

and the Franchisee shall present the report at the Franchise Performance Meeting.

2.2 The Franchisee shall ensure, with effect from the Start Date in relation to any Previous Franchisee ITSO Smart Media Ticketing Scheme and from the date of commissioning in relation to any ITSO Smart Media Ticketing Scheme introduced by it, that from such relevant date until the end of the Franchise Term:

- (a) it continues to provide, make available and promote (and where applicable effectively maintain) such ITSO Smart Media Ticketing Scheme (including any associated infrastructure);
- (b) all components of the ITSO Smart Media Ticketing Scheme (and any amendment, extension or replacement thereof) inherited, used or introduced by the Franchisee (whether on a permanent or a trial basis) are at all times compliant with:
 - (i) version 2.1.4 of ITSO Specification;
 - (ii) the ITSO Operating Licence; and
 - (iii) RSPS3002,

or such subsequent versions as the Franchisee and the Secretary of State may agree;

- (c) any ITSO Certified Smart Media readers introduced by the Franchisee (whether on a permanent or temporary basis) shall conform to EMV level 1 certification (hardware) and be capable of being upgraded whilst in operation to EMV level 2 (application) and to EMV level 3 (end to end certification) where there is a contactless payment scheme in place or one is proposed;
- (d) it pays all costs of participating in the relevant ITSO Smart Media Ticketing Scheme including the costs of maintaining all required scheme components to the standards specified in this Schedule 5.9;
- (e) both the RDG operated central back office and the RSP owned product set that is compliant with the ITSO Specification are used;

- (f) all available Fares on all Flows for which it is Lead Operator are capable of residing upon and being fulfilled as soon as reasonably practicable by the use of ITSO Certified Smart Media; and
 - (g) if so requested in writing by another Train Operator the Franchisee shall as soon as reasonably practicable give all necessary permissions to that Train Operator so that all available Fares on all Flows for which that Train Operator is Lead Operator are capable of residing upon and being fulfilled by the use of ITSO Certified Smart Media.
- 2.3 Where the Franchisee was a participant in any RDG approved Smart Ticketing Scheme pursuant to the Previous Franchise Agreement, the Franchisee shall take such action as may be required to ensure that it continues to participate in such Smart Ticketing Scheme from the Start Date without any disruption to the continuity of service received by passengers unless otherwise determined by the Secretary of State.
- 2.4 Without prejudice to its other obligations pursuant to this Schedule 5.9, the Franchisee shall undertake such further actions as the Secretary of State may reasonably require in connection with the introduction of Smart Ticketing Schemes.
- 2.5 **NOT USED.**
- 2.6 Either Party may propose, or the Secretary of State may reasonably determine, a change to the definition of "Smart Media" to include any new technology which enables the fulfilment of a Smart Ticketing Scheme.
- 2.7 The Franchisee shall ensure that all Weekly Season Tickets, Monthly Season Tickets and Annual Season Tickets which are ordered through the Franchisee's online retail channels or at ticket offices are, as the default option, offered to the customer on Smart Media.
3. **Costs**
- 3.1 The Secretary of State shall reimburse the reasonable costs incurred by the Franchisee in complying with any such requirement of the Secretary of State pursuant to paragraph 2.4 above subject to the Franchisee obtaining the prior written approval of the Secretary of State to the incurring of any such cost and provided that the Franchisee shall not have the right to be reimbursed any costs to the extent that:
- (a) it has already been reimbursed for such costs pursuant to any other provision of the Franchise Agreement or other arrangements with the Secretary of State; and/or
 - (b) it has the right or ability to recover such costs from any third party
4. **STNR Project**
- The Franchisee shall comply with its obligations comprised in Appendix 1 (STNR Project) of this Schedule 5.9.

APPENDIX 1 TO SCHEDULE 5.9

STNR Project

1. Definitions

In this Appendix the words and expressions defined in this paragraph 1 shall (unless the context requires otherwise) have the meanings there given to them below:

“STNR Project” means the project for implementing and operating an interoperable smart ticketing solution on the National Rail Network allowing passengers to make complete journeys on the National Rail Network using a smartcard as a ticket. For the purpose of this definition, “National Rail Network” has the meaning given to it in the National Conditions of Travel; and

“Smart Ticket” means a ticket which is stored in or on any Smart Media.

2. The Franchisee shall use reasonable endeavours to support other train operators and RDG and TfL in the delivery of their respective obligations and activities with respect to the implementation of the STNR Project.
3. The Franchisee shall ensure that where relevant that it provides to passengers (travelling on Passenger Services on Smart Tickets issued by the Franchisee) seat reservations either integrated with that Smart Ticket or through separate media including e-mail or mobile app for the purposes of inspection by guards and ticket inspectors.

Schedule 5.10

Trials**1. Fares, Ticketing and Retail Trials**

- 1.1 In order to investigate improved fares and ticketing options for passengers, the Franchisee shall, if requested by the Secretary of State, co-operate with the Secretary of State in the planning, proposed implementation and evaluation by the Franchisee of trials in the Franchise area that relate to fares, ticketing and ticket retail reforms, including, but not limited to, single-leg pricing, part-time season tickets and smart based ticketing solutions (the "**Fares, Ticketing and Retail Trials**").
- 1.2 The Parties shall agree or the Secretary of State may reasonably determine the form, scope, location and timing of any Fares, Ticketing and Retail Trial and the Franchisee shall implement that Fares, Ticketing and Retail Trial as agreed or determined.
- 1.3 The Secretary of State will reimburse the reasonable costs incurred by the Franchisee in implementing a Fares, Ticketing and Retail Trial provided that:
- (a) prior to incurring such costs, the Franchisee has obtained the Secretary of State's approval of the same; and
 - (b) the Franchisee has not already recovered (or is able to recover) such costs through any Franchise Payment, pursuant to any other provision of the Franchise Agreement or pursuant to any other agreement or arrangement between the Franchisee and the Secretary of State.

Schedule 5.11

Fares, Ticketing and Retail Reform**1. Fares, Ticketing and Retail Reform**

1.1 The Franchisee shall:

- (a) co-operate with the Secretary of State as may be required from time to time in respect of the planning and/or development (as applicable) of industry reform with respect to Fares, ticketing and the retailing of tickets, including:
 - (i) co-operating and collaborating with other Train Operators and rail industry parties and other organisations in respect of such reforms;
 - (ii) developing pilot schemes in respect of such reforms,
 in each case, as directed by the Secretary of State; and
- (b) co-operate and collaborate with the RDG, other Train Operators and other organisations as directed by the Secretary of State to develop Modernising Retail proposals to accelerate and facilitate a transition to online and pay-as-you-go retailing of tickets and the changes to industry retail operations enabled by such changes, including the ultimate withdrawal of "magstripe" paper tickets; and
- (c) as directed by the Secretary of State, co-operate with the RDG to develop proposals for all commuters to have access to a flexible commuting product that the Secretary of State reasonably determines will (when calculated on a daily basis) offer better value and convenience to commuters than purchasing anytime day return tickets (and no worse than purchasing a Weekly Season Ticket) for the relevant flow and which shall be available on Smart Media by no later than 31 December 2020 or such other date as may be agreed between the Franchisee and the Secretary of State,

each a **"FTR Co-operation Requirement"**.

- 1.2 If requested by the Secretary of State, the Franchisee shall also bring forward specific and suitable proposals to implement any plans and/or proposals developed pursuant to a FTR Co-operation Requirement (a **"Proposed Reform Activity"**) which may be contracted pursuant to and in accordance with Schedule 9.3 (*Variations to the Franchise Agreement*).
- 1.3 When requested by the Secretary of State, the Franchisee shall provide the Secretary of State its assessment of:
 - (a) any capital investment required to implement a Proposed Reform Activity;
 - (b) the cost of implementing a Proposed Reform Activity;
 - (c) any revenue impact associated with or caused by implementing a Proposed Reform Activity;
 - (d) estimates of significant change to passenger demand and/or patterns of travel that could be caused by a Proposed Reform Activity;

- (e) any material change to the Franchisee's assessment of any of the matters outlined in paragraphs (a) to (d) above,

in each case promptly and in any event within seven (7) Weekdays of having calculated the same (unless the Secretary of State directs otherwise) and accompanied by all supporting evidence to substantiate each such calculation or change.

1.4 The Franchisee shall:

- (a) continue undertaking any reform work related to a FTR Co-operation Requirement or other reform work requested or directed by the Secretary of State prior to the Start Date in accordance with any programme schedule agreed between the Franchisee and the Secretary of State (or in the absence of any such schedule, within such timescales as the Secretary of State may direct);
- (b) commence undertaking and continue to undertake any FTR Co-operation Requirement requested or directed by the Secretary of State after the Start Date promptly and in any event in accordance with any schedule agreed between the Franchisee and the Secretary of State (or in the absence of any such schedule, within such timescales as the Secretary of State may direct).

1.5 The Franchisee shall use all reasonable endeavours to:

- (a) bring forward new proposals for implementing; and/or
- (b) introduce and implement,

such amendments to the Ticketing and Settlement Agreement, the Pay As You Go Agreement, the CPAY Agreement and any other applicable industry agreements (including any successor arrangements or any other agreement between the Franchisee and one or more other Train Operators, rail industry parties and other relevant organisations (including Transport for London) relating to ticketing, fares, fares settlement, the operation of discount schemes or any related matter) as may be directed by the Secretary of State from time to time.

1.6 During the term of the Franchise Agreement, the Franchisee shall not enter into any new arrangements or material amendments to existing arrangements for the delivery of Fares, ticketing or the retailing of tickets without the prior written consent of the Secretary of State.

1.7 The Franchisee shall promptly (and in any event within any timeframes specified by the Secretary of State) provide to the Secretary of State such information and data in relation to Fares, ticketing and the retail of tickets as the Secretary of State may require from time to time.

SCHEDULE 6

FRANCHISE SPECIFIC OBLIGATIONS AND COMMITTED OBLIGATIONS

Schedule 6.1:	Franchise Specific Obligations
	Part 1: List of Previous Franchisee’s Committed Obligations
	Part 2: Mandatory Franchise Specific Obligations
	Part 3: Franchise Specific Obligations
	Part 4: Bespoke Obligations
Schedule 6.2:	Committed Obligations
	Part 1: List of Committed Obligations
	Part 2: Special Terms related to the Committed Obligations
Schedule 6.3:	NOT USED
Schedule 6.4:	Alliances
Schedule 6.5:	Additional Operating Contract Obligations
Schedule 6.6:	NOT USED

Schedule 6.1

Franchise Specific Obligations**PART 1 - PREVIOUS FRANCHISEE'S COMMITTED OBLIGATIONS****1. Application of Special Terms**

1.1 The provisions of Part 2 (*Special Terms related to the Committed Obligations*) of Schedule 6.2 (*Committed Obligations*) shall apply in respect of the obligations of the Franchisee specified in this Part 1 provided that references to a 'Committed Obligation' in Part 2 (*Special Terms related to the Committed Obligations*) of Schedule 6.2 (*Committed Obligations*) shall be construed as references to the Franchisee's obligations under this Part 1 (*List of Previous Franchisee's Committed Obligations*).

1.2 **NOT USED.**

1.3 **NOT USED.**

1.4 **NOT USED.**

2. Definitions

2.1 In this Part 1 (*List of Previous Franchisee's Committed Obligations*) except to the extent the context otherwise requires the following words and expressions have the following meanings:

"Bespoke Trackside Provision" means the provision of MCS External Connectivity to trains by use of trackside infrastructure installed, whether by the Franchisee or a third party, for the purpose of providing MCS External Connectivity;

"Customer Information Team" has the meaning given to it in paragraph 3.1 (*Better Customer Information*) of this Part 1 (*Previous Franchisee's Committed Obligations*);

"Environment Manager" has the meaning given to it in paragraph 7 (*Environment Manager*) of this Part 1 (*Previous Franchisee's Committed Obligations*);

"Feedback" has the meaning given to it in paragraph 4.3 (*Better Customer Information*) of this Part 1 (*Previous Franchisee's Committed Obligations*);

"Feedback Report" has the meaning given to it in paragraph 4.4 (*Better Customer Information*) of this Part 1 (*Previous Franchisee's Committed Obligations*);

"MCS Equipment" means the equipment including the hardware, data communications cabling, power, equipment racks, external aerials and cabling required for the Mobile Communication Services;

"MCS External Connectivity" means the availability of mobile communication services to a train providing connectivity between the MCS Equipment and the internet, whether provided by means of a Public Communication Service Provider, or Bespoke Trackside Provision or a combination of the both;

"MCS Report" has the meaning given to it in paragraph 12.6 (*Minimum Wi-Fi Service on Trains*) of this Part 1 (*Previous Franchisee's Committed Obligations*);

"MCS Route Signal and Capacity Survey" has the meaning given to it in paragraph 12.8 (*Minimum Wi-Fi Service on Trains*) of this Part 1 (*Previous Franchisee's Committed Obligations*);

"Minimum Wi-Fi Service" has the meaning given to it in paragraph 12.4 (*Minimum Wi-Fi Service on Trains*) of this Part 1 (*Previous Franchisee's Committed Obligations*);

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

"MyDay Mobile Application" has the meaning given to it in paragraph 8.1 (*MyDay Mobile Application*) of this Part 1 (*Previous Franchisee's Committed Obligations*);

"Online Community" has the meaning given to it in paragraph 4.1 (*Better Customer Information*) of this Part 1 (*Previous Franchisee's Committed Obligations*);

"Public Communication Service Provider" means a third-party provider of mobile communication services to consumers and/or businesses;

"Stakeholder Communications Team" has the meaning given to it in paragraph 5.1 (*Stakeholder Communications Team*) of this Part 1 (*Previous Franchisee's Committed Obligations*); and

"Stakeholder Plan" has the meaning given to it in paragraph 5.2(b) (*Stakeholder Communications Team*) of this Part 1 (*Previous Franchisee's Committed Obligations*).

3. Better Customer Information

- 3.1 The Franchisee agrees and acknowledges that, in order to provide passengers with information about disruption quickly and efficiently and pursuant to paragraph 3 (*Better Customer Information*) of Part 1 (*Committed Obligations*) of Schedule 6.1 (*Committed Obligations and Special Terms*) of the Previous Franchise Agreement, the Franchisee developed a dedicated **"Customer Information Team"** consisting of no fewer than **[REDACTED¹⁴]** additional employees of the Franchisee on a full time equivalent basis and which operates 24 hours a day, 7 days a week. The Franchisee shall:

¹⁴ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

- (a) retain the Customer Information Team from the Start Date and throughout the Franchise Term, and the Customer Information Team's responsibilities shall include:
- (i) the provision of digital real-time passenger information during disruption; and
 - (ii) informing customers of their eligibility to claim compensation, under any applicable scheme,
- which it shall provide through various channels including social media, the Franchisee's website and notifications via the Franchisee's mobile app; and
- (iii) promptly responding to queries from passengers and, where applicable, in accordance with any timescales specified by the Secretary of State; and
- (b) from the Start Date, ensure that the launch page viewed by any passenger having accessed the Minimum Wi-Fi Service during their journey includes a link to real-time passenger information from the Customer Information Team.

3.2 In performing the activities under paragraph 3.1(a), the Franchisee shall incur expenditure of not less than **[REDACTED¹⁵]** (Indexed) per Franchisee Year (pro-rated where a Franchisee Year is less than thirteen (13) Reporting Periods).

4. Online Community

- 4.1 The Franchisee agrees and acknowledges that it has established an online community of at least a thousand existing and potential passengers, who are prepared to give feedback about any aspect of their passenger experiences via an online portal ("**Online Community**") pursuant to paragraph 4 (*Online Community*) of Part 1 (*Committed Obligations*) of Schedule 6.1 (*Committed Obligations and Special Terms*) of the Previous Franchise Agreement. The Franchisee agrees and acknowledges that from the Start Date and throughout the Franchise Term, the Franchisee shall continue to use the Online Community to collect feedback to help inform the Franchisee's business decisions and to monitor service delivery from a passenger perspective. The activities for which the Online Community shall be engaged shall include carrying out mini-surveys either on one-off subjects or to monitor opinions on particular matters on an ongoing basis and conducting ad hoc market research.
- 4.2 The Franchisee shall conduct no fewer than 4 mini-surveys in each Franchisee Year. The Franchisee shall include in each mini-survey all questions which the Secretary of State proposes to be included in that mini-survey.

¹⁵ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

- 4.3 Any feedback or other information collected from the Online Community via the online portal or via the mini-surveys detailed under paragraph 4.2 ("**Feedback**") shall be the property of the Franchisee.
- 4.4 The Franchisee shall prepare and submit to the Secretary of State a quarterly report summarising the Feedback collected over the previous quarter ("**Feedback Report**"). The Franchisee shall provide such further information and analysis in relation to each Feedback Report as the Secretary of State may reasonably require from time to time.
- 4.5 The Franchisee shall incur expenditure of not less than **[REDACTED¹⁶]** per Franchisee Year in undertaking its obligation under this paragraph 4.

5. Stakeholder Communications Team

- 5.1 The Franchisee agrees and acknowledges that it has established a "**Stakeholder Communications Team**" pursuant to paragraph 10 (*Stakeholder Communications Team*) of Part 1 (*Committed Obligations*) of Schedule 6.1 (*Committed Obligations and Special Terms*) of the Previous Franchise Agreement. The Franchisee agrees and acknowledges that from the Start Date and throughout the Franchise Term, the Franchisee shall retain the Stakeholder Communications Team which shall continue to comprise **[REDACTED¹⁷]** additional employees of the Franchisee on a full time equivalent basis who shall act as stakeholder liaison managers, and its work shall cover the whole Franchise area.
- 5.2 The Stakeholder Communications Team shall improve the quality and level of engagement of the Franchisee with its stakeholders by:
- (a) **NOT USED;**
 - (b) creating a stakeholder plan ("**Stakeholder Plan**") and updating this annually. The Stakeholder Plan shall include:
 - (i) an identified contact point within the Franchise for every stakeholder; and
 - (ii) the Franchisee's objectives for stakeholders;
 - (c) holding meetings with individual stakeholders or groups of stakeholders;
 - (d) when invited and subject to reasonable availability, representing the Franchisee in stakeholders' own meetings; and
 - (e) attempting to resolve any issues raised or bring them back to the Franchisee for further consideration.

¹⁶ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹⁷ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

5.2A The Stakeholder Communications Team shall also perform the role identified in paragraph 2.1 (*Community Rail Partnerships*) of Schedule 13.1 (*Rail Industry Initiatives and Co-operation*) and in performing these activities.

5.3 **NOT USED.**

5.4 The Franchisee shall incur expenditure of not less than **[REDACTED¹⁸]** (Indexed) per Franchisee Year (pro-rated where a Franchisee Year is less than thirteen (13) Reporting Periods) in performing the obligations set out at paragraphs 5.1 and 5.2.

6. **NOT USED**

7. **Environment Manager**

7.1 The Franchisee agrees and acknowledges that, pursuant to paragraph 12 (*Environment and Sustainability Manager*) of Part 1 (*Committed Obligations*) of Schedule 6.1 (*Committed Obligations and Special Terms*) of the Previous Franchise Agreement, the Franchisee has appointed an "**Environment Manager**". From the Start Date and throughout the Franchise Term, the Franchisee shall continue to employ the Environment Manager, whose responsibilities shall include the following:

- (a) developing the Franchisee's strategy for sustainability and environmental matters;
- (b) supporting the Franchisee's compliance with the obligations in this Agreement and in relevant Legislation that relate to environmental matters, including the measurement and reporting of environmental targets;
- (c) promoting improved resource utilisation, recycling and waste reduction across the Franchisee's business; and
- (d) improving awareness of and engagement with sustainability and environmental matters and opportunities among Franchise Employees.

8. **MyDay Mobile Application**

8.1 The Franchisee agrees and acknowledges that it has introduced the "MyDay" mobile application for use by Franchise Employees who are train crew, rolling stock operations and maintenance staff and other customer-facing staff on their tablets and other mobile devices which provides access to information that relates to their work that day, including in respect of work allocation and late changes to that allocation, train stopping patterns, rolling stock defects and updates on repair of such defects, and information relating to disruption ("**MyDay Mobile Application**") pursuant to paragraph 9 (*MyDay Mobile Application*) of Part 1 (*Committed Obligations*) of Schedule 6.1 (*Committed Obligations and Special Terms*) of the Previous Franchise Agreement.

¹⁸ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

- 8.2 The Franchisee shall:
- (a) continue to maintain the MyDay Mobile Application for use by Franchise Employees throughout the Franchise Term; or
 - (b) propose for approval by the Secretary of State (acting reasonably), an alternative mobile application which meets the requirements of paragraph 8.1 above and which is, in the Franchisee's opinion (acting reasonably), an improvement on the MyDay Mobile Application. Where such alternative mobile application is approved by the Secretary of State, the Franchisee shall introduce and maintain such mobile application throughout the Franchise Term for use by Franchise Employees.
- 8.3 The Franchisee agrees and acknowledges that in performing the activities under paragraph 8.1, the Franchisee shall incur expenditure of not less than **[REDACTED¹⁹]** (Indexed) per Franchisee Year (pro-rated where a Franchisee Year is less than thirteen (13) Reporting Periods).

9. Cascaded Rolling Stock or New Rolling Stock Units

- 9.1 The Franchisee agrees and acknowledges that during the term of the Previous Franchise Agreement it investigated additional options for obtaining further Cascaded Rolling Stock pursuant to paragraph 10 (*Cascaded Rolling Stock Units*) of Schedule 6.2 (*Franchise Specific Obligations*) of the Previous Franchise Agreement.
- 9.2 The Franchisee shall continue to investigate additional options for obtaining further Cascaded Rolling Stock or new Rolling Stock Units during the Franchise Term. The Franchisee shall advise the Secretary of State of the outcome of these investigations at least twice (at reasonable intervals) during the Franchise Term and at any time that appropriate Cascaded Rolling Stock Units might become available.

10. Staff Mobile Application

- 10.1 The Franchisee agrees and acknowledges that it has introduced a staff mobile application for use by Franchise Employees which provides enhanced real-time train running and service disruption information to allow Franchise Employees to receive accurate passenger information to be able to inform passengers, while on-board trains or in any other passenger environment pursuant to paragraph 7 (*Staff Mobile Application*) of Part 1 (*Committed Obligations*) of Schedule 6.1 (*Committed Obligations and Special Terms*) of the Previous Franchise Agreement.
- 10.2 The Franchisee shall continue to maintain the staff mobile application referred to in paragraph 10.1 above for use by Franchise Employees throughout the Franchise Term.

¹⁹ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

10.3 The Franchisee shall incur expenditure of not less than [REDACTED²⁰] (Indexed) per Franchisee Year (pro-rated where a Franchisee Year is less than thirteen (13) Reporting Periods) in performing this obligation.

11. Environmentally Sustainable Operation

11.1 The Franchisee agrees and acknowledges that it has delivered and developed certain measures regarding environmentally sustainable operation pursuant to paragraph 13 (*Environmentally Sustainable Operation*) of Part 1 (*Committed Obligations*) of Schedule 6.1 (*Committed Obligations and Special Terms*) of the Previous Franchise Agreement.

11.2 From the Start Date and throughout the Franchise Term the Franchisee shall continue to:

- (a) deliver the project to achieve fuel savings from 'depot mode' on two thirds of the Train Fleet by [REDACTED²¹];
- (b) deliver improved auto-engine shut down;
- (c) develop the use of Driver Advisory Systems; and
- (d) deliver a strengthened 'Destination Green campaign' underlining the Franchisee's environmental commitment.

12. Minimum Wi-Fi Service on Trains

12.1 The Franchisee agrees and acknowledges that it has provided the Mobile Communication Services pursuant to paragraph 4 (*Minimum Wi-Fi Service On Trains*) of Schedule 6.2 (*Franchise Specific Obligations*) of the Previous Franchise Agreement.

12.2 The Franchisee shall continue to provide the Mobile Communication Services throughout the Franchise Period in both first class and Standard Class Accommodation on all its Train Fleet used for the provision of Passenger Services.

12.3 The Mobile Communication Services procured by the Franchisee pursuant to paragraph 12.2 shall provide the Minimum Wi-Fi Service.

12.4 The "**Minimum Wi-Fi Service**" means, subject to paragraph 12.5, a wireless internet service which allows each passenger to browse web pages on the internet and send and receive mail electronically through any mobile, tablet or computer device that they may use for this purpose and which is, subject to the availability of the MCS External Connectivity, available for use by each passenger at all times for the duration of each passenger's journey.

²⁰ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

²¹ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

- 12.5 To ensure a non-discriminatory Minimum Wi-Fi Service is offered to any passenger, the Franchisee shall be permitted:
- (a) to dynamically manage the available bandwidth on an active user or select vehicles basis as required, in accordance with a fair-usage policy to be published by the Franchisee; and
 - (b) to filter the type of services which may be accessed by a passenger using the Mobile Communication Services, including by restricting passenger access to video and audio streaming services, peer-to-peer file sharing and inappropriate content.
- 12.6 The Franchisee shall monitor the performance of the Mobile Communication Services for the term of the franchise for the purposes of providing to the Secretary of State a report on the performance in relation to each Franchisee Year. Such report shall be submitted to the Secretary of State one (1) month after the end of each Franchisee Year or on such other more frequent basis as is agreed between the Secretary of State and the Franchisee (the "**MCS Report**").
- 12.7 The MCS Report shall include information on the:
- (a) actual demand by Reporting Period using customer usage statistics to demonstrate:
 - (i) the number of passengers using the Mobile Communication Services;
 - (ii) the average duration (in minutes and seconds) of connections to the Mobile Communication Services; and
 - (iii) the average data (in Mbytes) received and transmitted;
 - (b) statistics on the availability of the Mobile Communication Services including the duration of any significant periods of time during which the Mobile Communication Services were not available, the reason for such unavailability and the action taken by the Franchisee in respect of such unavailability; and
 - (c) information on the average internet speed (in Mbps) and the average latency figures (in milliseconds) experienced by passengers in respect of each connected device which is using the Mobile Communication Services, by route, together with any factors which, in the Franchisee's reasonable opinion, have affected and/or contributed to such average internet speed and latency figures.
- 12.8 The Franchisee shall undertake a signal-strength and capacity survey of its Routes ("**MCS Route Signal and Capacity Survey**") to determine the likely Mobile Communication Service coverage, bandwidth, and availability of data services to trains on each Route to establish a non-binding baseline for determining the likely:
- (a) per passenger data connection speeds;
 - (b) typical latencies; and
 - (c) the number of simultaneous connected passengers that can be supported by the Mobile Communication Service.

- 12.9 The MCS Route Signal and Capacity Survey shall record the time, date, latitude and longitude information of each measurement point to permit the signal strength and capacity information of Routes to be mapped.
- 12.10 The MCS Route Signal and Capacity Survey shall be undertaken annually in association with the MSC Report.
- 12.11 The MCS Report and MCS Route Signal and Capacity Survey, including any associated data or information, shall be shared with the Secretary of State by the Franchisee in an appropriate format that will not require any specialist software to access or interpret.
- 12.12 The Franchisee shall grant to the Secretary of State a perpetual, non-exclusive, irrevocable, world-wide, paid-up, royalty-free licence to use, copy, modify, transmit, distribute and publish the MCS Route Signal and Capacity Survey for any purpose, and such licence shall be transferrable and/or capable of being sub-licensed.
- 12.13 Where, in the Secretary of State's reasonable opinion, the performance of the Mobile Communication Services reported in the MCS Report is poor, or has changed significantly between Reporting Periods, the Franchisee shall provide reasons for such poor performance and/or fluctuating performance (as applicable) to the Secretary of State, together with any remedial or mitigating action that the Franchisee proposes to take in respect of the poor and/or fluctuating performance of the Mobile Communication Services.
- 12.14 The Franchisee shall maintain the MCS Equipment in good repair and working order for the Franchise Term to enable the Franchisee to deliver the Mobile Communication Service.
- 12.15 The Franchisee shall:
- (a) market the availability of Mobile Communication Services to passengers via:
 - (i) the Franchisee's public webpage, together with terms and conditions, a fair-usage policy and "how to use the service guides"; and
 - (ii) on-board physical notices, for example, a notice which reads: "*Free Wi-Fi Available Here*";
 - (b) ensure all branding of the Mobile Communication Services is that of the Franchisee in accordance with Schedule 14.2 (*Maintenance of Operating Assets and Branding*).

13. **PRM TSI compliance and Controlled Emission Toilets**

- 13.1 The Franchisee agrees and acknowledges that:
- (a) each Rolling Stock Unit comprised in the Train Fleet and used for the provision of the Passenger Services must be compliant with Regulation 45 of the Railway Interoperability Regulations 2011 regarding minimum standards for accessibility; and
 - (b) NOT USED.
- 12.2 NOT USED.

14. HS2 Project Planning Interface Manager

14.1 The Franchisee agrees and acknowledges that it has appointed a "HS2 Project Planning Interface Manager" pursuant to paragraph 1 (HS2 Project Planning Interface Manager) of Part 1 (Committed Obligations) of Schedule 6.1 (Committed Obligations and Special Terms) of the Previous Franchisee Agreement. The Franchisee agrees and acknowledges that from the Start Date and throughout the Franchise Term, the Franchisee shall retain the HS2 Project Planning Interface Manager on a full time equivalent basis to act as a Project Planning Interface Manager who shall:

- (a) be accountable for day-to-day management and delivery of the Franchisee's obligations under paragraph 13 (HS2 Project) of Schedule 13.1; and
- (b) work collaboratively with Network Rail, the Secretary of State, HS2 Ltd and other relevant parties in relation to the HS2 Project, in order to assist with the timely, efficient, and cost effective delivery of the HS2 Project.

15. Benefits for Registered Customers

12.3 The Franchisee agrees and acknowledges that from the Start Date and throughout the Franchise Term, the Franchisee shall not charge an administration fee where a passenger wishes to change the time and/or day of travel (up to twenty four (24) hours before the time of travel) in respect of an Advance Purchase Train-specific Fare for a journey that:

- (a) is exclusively on the Passenger Services, and
- (b) has been booked via Smart Media, the Franchisee's website, collected at a station or a ticket vending machine or received via post.

PART 2 – MANDATORY FRANCHISE SPECIFIC OBLIGATIONS

1. **NOT USED.**
2. **Boxing Day Services**
 - 2.1 At least six (6) months prior to the Passenger Change Date occurring in December 2021 the Franchisee shall:
 - (a) consult with passengers, user groups, Network Rail, other train operators licensed under the Act and who operate along the affected Routes and other relevant Stakeholders on the potential demand for passenger services on 26 December in each Franchisee Year ("**Boxing Day Services**"); and
 - (b) prepare and submit a report to the Secretary of State which sets out its proposals for operating Boxing Day Services which are additional to those Passenger Services to be operated by the Franchisee on 26 December in each Franchisee Year pursuant to the relevant Train Service Requirement (the "**Additional Boxing Day Services**"). Such report shall include:
 - (i) the Franchisee's view on whether or not the operation of the Additional Boxing Day Services will be commercially viable;
 - (ii) the impact on Franchise Payments (if any) if the Secretary of State (at the Secretary of State's sole discretion) elects to vary the Train Service Requirement to require the provision of the Additional Boxing Day Services thereby triggering a Change pursuant to paragraph (d) (*change to the Train Service Requirement in accordance with paragraph 16.6 of Schedule 1.1*) of the definition of Change.
 - 2.2 Following the submission of the report required pursuant to paragraph 2.1(b) the Franchisee shall:
 - (a) promptly respond to the Secretary of State's reasonable queries in relation to such report (including the provision of such assistance as the Secretary of State may reasonably require in connection with the verification of any information contained in such report); and
 - (b) upon reasonable notice, attend any such meeting as the Secretary of State may reasonably require for the purposes of discussing the contents of such report.
 - 2.3 The Franchisee shall have due regard to the outcomes and findings of the consultation referred to in paragraph 2.1(a) in proposing on which Routes, the Additional Boxing Day Services should operate if the Secretary of State (at the Secretary of State's sole discretion) elects to vary the Train Service Requirement to require the provision of the Additional Boxing Day Services.

PART 3 – FRANCHISE SPECIFIC OBLIGATIONS

1. **NOT USED**
2. **NOT USED**
3. **NOT USED**
4. **NOT USED**
5. **Digital Railway Programme**
 - 5.1 The Franchisee shall co-operate in good faith with Network Rail, any relevant ROSCO and any other relevant third party in connection with the development by Network Rail of a plan for the implementation and operational introduction on the routes of:
 - (a) the Connected Driver Advisory System ("**C-DAS**");
 - (b) the Combined Performance and Safety System ("**COMPASS**");
 - (c) such similar system(s) which may be developed to succeed C-DAS or COMPASS; or
 - (d) the Defect Reporting Analysis and Correctional Action System for ETCS ("**DRACAS**"), including but not limited to sharing of relevant defect corrective and preventative action data; and
 - (e) any system which is intended to provide interconnectivity between the European Train Control System ("**ETCS**"), C-DAS and COMPASS for the purposes of improving capacity management, performance, and safety.
 - 5.2 In respect of any plan developed by Network Rail pursuant to paragraph 5.1 above, the Franchisee shall:
 - (a) use all reasonable endeavours to provide assistance to Network Rail, any relevant ROSCO and any other relevant third party in connection with the development of the elements of the plan relating to:
 - (i) C-DAS;
 - (ii) COMPASS; and/or
 - (iii) DRACAS; and/or
 - (iv) such similar system(s) which may be developed to succeed C-DAS, COMPASS or DRACAS; and
 - (b) use reasonable endeavours to provide assistance to Network Rail, any relevant ROSCO and any other relevant third party in connection with the development of the elements of the plan relating to any system which is intended to provide interconnectivity between ETCS, C-DAS and COMPASS for the purposes of improving capacity management, performance, and safety.
6. **NOT USED.**

7. **NOT USED.**

8. **NOT USED**

9. **Infrastructure Projects**

9.1 For the purposes of this paragraph 9:

(a) **“Infrastructure Project”** shall mean any of them:

- (i) **Worcestershire Parkway new station;** and
- (ii) **Cambridge South new station;**
- (iii) **Birmingham New Street signalling,** which means works associated with the renewal and resignalling of signalling infrastructure in the Birmingham New Street area including New Street Station;
- (iv) **Euston conventional station upgrade,** which means proposals to refurbish or redevelop the conventional (National Rail) station at Euston and works to integrate the conventional station with the High Speed station at Euston;
- (v) **North Wembley to Euston Power Supply Works (Bushey feeder area),** which means proposals to enable an independent and resilient power supply between North Wembley and Euston, including the renewal and upgrade of the 25kV power supply equipment in the Bushey feeder area and associated work in relation to an additional neutral section at Bushey;
- (vi) **Midlands Rail Hub,** which means the proposed package of infrastructure enhancements in the West Midlands area to facilitate up to 10 additional paths into central Birmingham for additional local / regional services. The proposal includes reinstating platform 4 at Snow Hill; additional platforms at Moor Street (with associated signalling improvements); new chords at Bordesley to connect the Camp Hill and Snow Hill lines; reconfiguration of Kings Norton station to bring disused platforms back into use; and four-tracking / additional crossovers in the Water Orton area;
- (vii) **Northern Powerhouse Rail,** which means the proposed new east-west rail network across the Pennines which could potentially link with HS2 and the West Coast Main Line;
- (viii) **North of England Programmes,** which is a collective term for enhancements delivered as part of Northern Hub and North West Electrification, referred to as the ‘Great North Rail Project’;
- (ix) **Transpennine Route upgrade,** which is a proposal to deliver improvements to journey times between Leeds and Manchester, the ability to run longer trains offering more seats on both long distance and local services and improvements to overall performance on the whole route; and

- (x) **East Coast Main Line Upgrade**, which is a proposal to increase journey times and capacity and enable operation of the new intercity express programme fleet between London and destinations in North East England and Scotland,

together with such other infrastructure and station projects which impact on the routes over which the Passenger Services are operated and as are notified to the Franchisee by the Secretary of State from time to time.

- 9.2 The Franchisee shall from the Start Date until completion of each Infrastructure Project engage constructively with all relevant parties responsible for the delivery of such Infrastructure Project with the intention of assisting its timely, efficient and effective completion.
- 9.3 To the extent that any Infrastructure Project leads to the Franchisee having rights under railway industry procedures (including Network Change and Station Change) the Franchisee shall not act in a way designed to directly or indirectly prevent, prejudice or frustrate the delivery of such Infrastructure Project and the Franchisee shall not unreasonably raise any objection under any railway industry procedure (including Network Change or Station Change) and any reasonable objections shall be raised by the Franchisee in accordance with the relevant railway industry procedures. It is acknowledged that the Franchisee may make reasonable objections with a view to mitigating the impact of the Infrastructure Projects and their implementation on passengers and the Franchise Services, while recognising the need for the Infrastructure Projects to be able to be undertaken in a reasonable manner.
- 9.4 The Franchisee shall throughout the Franchise Term allocate such appropriate Franchise Employees and other relevant resource as is reasonably required for the purposes of complying with its obligations in relation to all of the Infrastructure Projects pursuant to both the Franchise Agreement and the Access Agreements to which it is a party.
- 9.5 The Franchisee shall provide within ten (10) Weekdays of the end of each Reporting Period a detailed report complying with the reasonable requirements of the Secretary of State describing progress in relation to matters relating to each Infrastructure Project and identifying and quantifying so far as the Franchisee is reasonably able the emerging risk position in relation to each such Infrastructure Project as it affects passengers and the Franchise Services. The Franchisee shall provide such additional information as the Secretary of State shall reasonably request and if requested by the Secretary of State it shall develop such alternative and contingency plans as the Secretary of State may reasonably require for the purpose of mitigating relevant risk and ensuring that the adverse impacts on passengers and the Franchise Services of any relevant risk arising is mitigated to the greatest extent reasonably practicable.

10. **Development of Proposals for Rolling Stock and Service Increments**

- 10.1 Where the Franchisee is required to produce a report pursuant to paragraph 10.3, the Franchisee shall undertake a feasibility study for the purposes of identifying options (the "**Passenger Services Enhancement Options**") for delivering extra capacity and enhanced Passenger Services on Routes where such improvements can be delivered including by:

- (a) obtaining additional rolling stock through cascade or new build that is capable of operating within current and future infrastructure capability and shows benefits to the environment, passengers, and to the Secretary of State, which provides sufficient capacity on all routes during the Franchise Period and Extension Years. Such feasibility study shall include recommendations for what further rolling stock would be required to meet demand until **[REDACTED²²]** (using an assumed growth rate in passenger numbers of 1.5% per annum from **[REDACTED²³]** with a baseline for loading data taken from either **[REDACTED²⁴]** or **[REDACTED²⁵]** (and in the event both are available, the **[REDACTED²⁶]** data shall be used). Notwithstanding the foregoing, the Franchisee is permitted to discuss alternative growth assumptions with the Secretary of State for which it has evidence. The agreed baseline and growth rates will apply in the relation to paragraphs (b) and (c) below;
- (b) running a limited number of additional long or medium distance services including on new routes, especially if this adds or improves connectivity to the East Midlands and/or Liverpool from the Cross Country network or can otherwise be demonstrated to be in line with the rail industry's future planning objectives. Such additional services shall be: (i) deliverable on infrastructure expected to be available by December 2024, or soon after, and grow the overall market for rail; (ii) consistent with rolling stock options described in paragraph 10.1(a) and therefore the report should make clear what rolling stock is needed for such additional services. As a minimum the study should consider the feasibility of, and the commercial case for, running the following regular services, which could include amending the baseline Cross Country train service to accommodate these new services, if appropriate:
- (i) **[REDACTED²⁷]**
- (ii) **[REDACTED²⁸]**

²² 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

²³ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

²⁴ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

²⁵ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

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- (c) running further additional new services no later than **[REDACTED²⁹]** assuming the East West Rail Scheme is completed to Cambridge, permitting through services to Ipswich and Norwich. At a minimum the study should include analysis of a regular **[REDACTED³⁰]** through service.
- (d) implementing changes to the existing infrastructure, if required;
- (e) improving rolling stock capability or reliability including through the modification of rolling stock or employing efficient maintenance arrangements; and
- (f) implementing changes in service patterns. This can include reviewing and removing train services to/from **[REDACTED³¹]** if this will lead to a beneficial increase in capacity on other routes.
- 10.2 The Franchisee shall, as part of the feasibility study required pursuant to paragraph 10.1 and a minimum:
- (a) work with Network Rail with a view to considering the feasibility of implementing any of the Passenger Services Enhancement Options where Network Rail input is required or where implementation of such Passenger Services Enhancement Options will require changes to the infrastructure or the Timetable. The Franchisee shall robustly challenge Network Rail to identify efficient and cost-effective ways by which such Passenger Services Enhancement Options could be implemented and provide evidence that it has complied with this requirement in the report to be submitted to the Secretary of State pursuant to paragraph 10.3; and
- (b) prepare an initial assessment of the likely costs and benefits of implementing the Passenger Services Enhancement Options including full procurement proposal(s) for the additional rolling stock described in paragraph 10.1(a);
- 10.3 The Franchisee shall submit to the Secretary of State by 1 June 2021 or earlier, a report which sets out the outcomes of the feasibility study undertaken pursuant to paragraph 10.1, such report to include information relating to the matters set out in paragraphs 10.2(a) to 10.2(b).
- 10.4 Following the submission of the report required pursuant to paragraph 10.3 the Franchisee shall:
- (a) promptly respond to the Secretary of State's reasonable queries in relation to such report (including the provision of such assistance as the Secretary of State may reasonably require in connection with the verification of any information contained in such report); and

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³⁰ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

³¹ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

- (b) upon reasonable notice, attend any such meeting as the Secretary of State may reasonably require for the purposes of discussing the contents of such report.
- 10.5 The Franchisee shall, at the request of the Secretary of State, co-operate with Network Rail and other relevant Stakeholders to undertake further development and, if appropriate, implementation of any or all of the Passenger Services Enhancement Options. This implementation will include running a full procurement process for new rolling stock, if new rolling stock has been selected for implementation.
- 10.6 The Secretary of State and the Franchisee acknowledge and agree that if any or all of the Passenger Services Enhancement Options are to be implemented, this will be by way of amendment to the Train Service Requirement or by the Secretary of State proposing a Variation pursuant to paragraph 1.1(a) of Schedule 9.3 (*Variations to the Franchise Agreement*).
11. **NOT USED**
12. **Co-operation with third party promoted franchise schemes**
- 12.1 Except to the extent that any of the following third party promoted franchise schemes are completed and in operation prior to the Start Date, the Franchisee shall fully and effectively co-operate with relevant Local Authorities and/or other interested bodies (each being a **"Sponsor"**) and with Network Rail and act reasonably and in good faith in its engagement with each of them in relation to each such third party promoted franchise scheme:
- (a) Worcestershire Parkway;
- (b) Metrowest;
- (c) Coventry to Nuneaton Enhancement;
- (d) enhancement to the far south west route and Cornish mainline; and
- (e) others as appropriate.
- 12.2 Where instructed to do so by the Secretary of State the Franchisee shall fully and effectively co-operate with the Secretary of State, Network Rail and any relevant Local Authority in relation to any scheme to reopen or divert any rail route.
- 12.3 The Franchisee shall at all times during the Franchise Term fully and effectively co-operate with the Secretary of State, Network Rail, any Local Authority or any relevant third party in the development and implementation of plans and proposals to:
- (a) enhance existing stations;
- (b) open new stations;
- (c) open new rail routes, or re-open existing rail routes that are not currently used to operate regular passenger services; and

- (d) regenerate and redevelop the areas at or immediately surrounding stations.
- 12.4 The obligation to co-operate pursuant to paragraph 12.3 shall include the Franchisee carrying out in a timely manner all the activities and actions reasonably required to be carried out or taken by a Train Operator who:
- (a) in the case of paragraph 12.3 (a) only, is the Facility Owner at the relevant station;
- (b) in any of cases of paragraphs 12.3 (a), 12.3 (b) or 12.3 (c), is or is likely to be a provider of passenger services at the station or on the route in question.
- 12.5 Without limiting the above, the obligation to co-operate pursuant to paragraph 12.3 shall also include:
- (a) attending meetings with the Secretary of State, Network Rail, a Local Authority or a relevant third party (as the case may be);
- (b) reviewing and commenting on the implementation and programme plans for the development of a brand new station;
- (c) providing analysis and advice to any of the above parties in relation to station location and design, timetabling, staffing, marketing, rolling stock and other relevant operational and practical issues;
- (d) negotiating in good faith with the Secretary of State or relevant scheme promoter with a view to reaching agreement with that person in relation to the terms (including price) for provision of Passenger Services at any new station or on any new or re-opened rail route;
- (e) maintaining records of usage and financial performance of passenger services calling at the relevant stations or operating on the relevant routes;
- (f) make available those records to the Secretary of State or relevant scheme promoter;
- (g) co-operate with any reasonable request by the Secretary of State or relevant scheme promoter to undertake a review of the operational and financial performance of the Passenger Services at the relevant stations or on the relevant routes (including their value for money); and
- (h) in the case of paragraph 12.3 (a) or 12.3 (b) above only, using reasonable endeavours to achieve any necessary amendments to any Station Lease or enter into new station leases as may be required for the purposes of the development and implementation of any such new station.
13. **NOT USED.**
14. **Railway Heritage**
- 14.1 The Franchisee shall:
- (a) engage constructively with the Railway Heritage Trust in order to maintain a register of listed buildings, those in conservation areas, and a list of

designated artefacts and records (to ensure compliance with the Railway Heritage Act 1996);

- (b) engage constructively with the Railway Heritage Trust, Network Rail, and other relevant organisations to ensure that historic buildings and structures are conserved and promoted; and
- (c) maintain close and purposeful contact with heritage railway lines within the area of the Franchise, to identify and execute initiatives which will increase their usage and provide benefit to Passengers and the community.

15. **NOT USED.**

16. **NOT USED.**

17. **NOT USED.**

18. **East West Rail Scheme**

18.1 The Franchisee shall from the Start Date until the completion of the East West Rail Scheme fully and effectively co-operate and engage constructively with all relevant third parties responsible for the delivery of the East West Rail Scheme with the intention of assisting in the timely, efficient and cost effective implementation and delivery of the East West Rail Scheme in a manner which provides the best overall solution for the network.

18.2 To the extent that the East West Rail Scheme leads to the Franchisee having rights under railway industry procedures including Network Change or Station Change the Franchisee shall not act in a way designed to directly or indirectly prevent, prejudice or frustrate the delivery of the East West Rail Scheme and the Franchisee shall not unreasonably raise any objection under any railway industry procedure including Network Change or Station Change.

18.3 It is acknowledged that the Franchisee may make reasonable objections with a view to mitigating the impact of the East West Rail Scheme and their implementation on passengers and the Franchise Services, while recognising the need for the East West Rail Scheme to be able to be undertaken in a reasonable manner.

18.4 The Franchisee shall provide such information in respect of the East West Rail Scheme as the Secretary of State may reasonably request from time to time.

19. **NOT USED.**

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

20.1 The following words and expressions shall have following meanings:

“Welsh Ministers”	has the meaning ascribed to it in section 45(1)(b) of the Government of Wales Act 2006 and shall include any other body replacing them from time to time.
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20.2 The Franchisee shall at all times during the Franchise Term fully and effectively co-operate with Welsh Ministers in relation to:

- (a) any scheme to reopen or divert any rail route; and
- (b) any proposal which may be promoted by (or on behalf of) Welsh Ministers during the Franchise Term for the provision of additional, varied or extended Passenger Services to and from destinations in Wales, such co-operation to:

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

21. Co-operation with Scottish Ministers

21.1 The following words and expressions shall have following meanings:

"Scottish Ministers" has the meaning ascribed to it in section 44(2) of the Scotland Act 1998 and shall include any other body replacing them from time to time;

21.2 The Franchisee shall at all times during the Franchise Term fully and effectively co-operate with Scottish Ministers in relation to:

- (a) any scheme to reopen or divert any rail route; and
- (b) any proposal which may be promoted by (or on behalf of) Scottish Ministers during the Franchise Term for the provision of additional, varied or extended Passenger Services to and from destinations in Scotland, such co-operation to:

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

22. Voyager Fleet

22.1 The Franchisee shall from the Start Date and at all times during the Franchise Term fully and effectively co-operate (which shall include engaging constructively with all relevant third parties) in relation to any measures to improve the resilience of the Voyager Fleet in adverse weather conditions.

23. Collaboration and Co-Operation

23.1 The Franchisee shall collaborate and co-operate with other Train Operators, Transport for the North, Transport Scotland, Transport for Wales, Transport for West Midlands and relevant Local Authorities as and when may reasonably be required.

24. Co-operation in respect of Welsh Devolution

24.1 The Franchisee agrees and acknowledges that from the Start Date and throughout the Franchise Term, the Franchisee shall co-operate with the Secretary of State

and act reasonably and in good faith in its engagement with Welsh Government in relation to Welsh Devolution.

24.2 Pursuant to its obligations in paragraph 24.1, the Franchisee shall, if so requested by the Secretary of State:

- (a) upon reasonable notice, attend meetings with the Secretary of State, Welsh Government and other relevant bodies specified by the Secretary of State to discuss and provide an opinion on any relevant issues;
- (b) provide information, data, reports, analysis and copy documentation reasonably required by the Secretary of State and/or Welsh Government to assist in its assessment of the implications of Welsh Devolution;
- (c) review and comment of implementation timetables and programmes for the commencement of the operation of Welsh Devolution; and
- (d) provide such assistance as is reasonably required by the Secretary of State and/or Welsh Government to assist in the making of arrangements for Welsh Devolution.

25. **Programme of Communication**

25.1 The Franchisee agrees and acknowledges that it has established a **“Programme of Communication”** pursuant to paragraphs 3.10 to 3.14 (Programme of Communication) of Schedule 6.2 (Committed Obligations) of the Previous Franchise Agreement. The Franchisee agrees and acknowledges that from the Start Date and throughout the Franchise Term, the Franchisee shall retain the Programme of Communication and continue to fully and effectively co-operate with Network Rail for the purpose of ensuring that the Programme of Communication is regularly updated as required to ensure it remains accurate as the delivery of the Great Western Route Modernisation develops, with updates provided at least with each summer and winter timetable. The Programme of Communication shall continue to deal with matters of reasonable concern to stakeholders and passengers including through providing information in relation to:

- (a) short, medium and long term impacts on the Passenger Services of planned restrictions of use (including “blockades”), arrangements for bus substitution and diversion, cancellation and rescheduling of Passenger Services;
- (b) arrangements for handling unplanned relevant alterations to the Passenger Services including as a result of overrunning restrictions of use;
- (c) the purpose of relevant changes to the Passenger Services in the context of the works required to deliver the Great Western Route Modernisation; and
- (d) the benefits to be delivered by the Great Western Route Modernisation and the dates from which such benefits are likely to be delivered.

25.2 The Programme of Communication shall use all reasonable channels of communication including notices at stations and on ticketing vending machine screens and passenger information screens, media advertising, announcements on stations and trains, briefings to Stakeholders, the circulation of leaflets and the use of appropriate “social media” platforms.

- 25.3 If so required by the Secretary of State the Franchisee shall consult with him in relation to the Programme of Communication and any amendments to it.
- 25.4 The Secretary of State and the Franchisee each acknowledge that no funding and compensation in respect of the Programme of Communication is included in the Financial Model. Accordingly:
- (a) the Secretary of State requires the Franchisee to use all reasonable endeavours to secure funding and compensation in relation to its compliance with paragraphs 25.1 and 25.2 above in accordance with railway industry procedures, including Network Change and Station Change as applicable;
 - (b) the Franchisee is not restricted or prevented from exercising its rights under those industry procedures to secure such funding and compensation; and
 - (c) subject to the Franchisee's compliance with its obligation to exercise all reasonable endeavours under paragraph (a) above, it is recognised that the nature and extent of the Franchisee's cooperation in the Programme of Communication will depend on the funding and compensation which it is able to secure through the relevant railway industry procedures.
- 25.5 Without prejudice to the provisions of paragraph 25.1 above, where and to the extent the relevant resources are funded as contemplated by paragraph 25.4 above, the Franchisee shall throughout the Franchise Term allocate such relevant resource as is reasonably required for the purposes of complying with its obligations in relation to the Programme of Communication and related communication obligations pursuant to these paragraphs 25.1 to 25.5 and railway industry procedures including Network Change and Station Change as applicable.
- 26. Great Western Route Modernisation**
- 26.1 For the purposes of this paragraph 26:
- "Great Western Route Modernisation"** means the route electrification programme and related infrastructure works implemented or to be implemented by Network Rail on the Great Western route.
- 26.2 The Franchisee agrees and acknowledges that it has pursuant to paragraphs 3.1 to 3.4 (Great Western Route Modernisation) of Schedule 6.2 (Committed Obligations) of the Previous Franchise Agreement it has engaged with relevant parties responsible for the delivery of the Great Western Route Modernisation and provided assistance to enable the delivery of the Great Western Route Modernisation. The Franchisee agrees and acknowledges that from the Start Date until the completion of the Great Western Route Modernisation it shall continue to engage constructively with all relevant parties responsible for the delivery of the Great Western Route Modernisation with the intention of assisting its timely, efficient and cost effective completion.
- 26.3 To the extent that Great Western Route Modernisation has prior to or after the Start Date, leads to the Franchisee having rights under railway industry procedures (including Network Change and Station Change) the Franchisee shall not act in a way designed to directly or indirectly prevent, prejudice or frustrate the delivery of Great Western Route Modernisation and the Franchisee shall not unreasonably raise any objection under any railway industry procedure (including Network Change or Station Change) and any reasonable objections shall be raised by the Franchisee in accordance with the relevant railway industry procedures. It is acknowledged

that the Franchisee may make reasonable objections with a view to mitigating the impact of the Great Western Route Modernisation and its implementation on passengers and the Franchise Services, while recognising the need for the Great Western Route Modernisation to be able to be undertaken in a reasonable manner.

- 26.4 The Franchisee shall fully and effectively co-operate with the Secretary of State in the development and amendment of the specification of such Great Western Route Modernisation in accordance with the reasonable requirements of the Secretary of State. The Franchisee may be required to provide its opinion, as a skilled and experienced Train Operator, on the operational and commercial effects (including rolling stock implications) of the proposed specification and any amendment to it and the benefits and disadvantages of different options to achieve the output specification required by the Secretary of State.
- 26.5 The Franchisee shall at the request of the Secretary of State provide a detailed report complying with the reasonable requirements of the Secretary of State describing progress in relation to matters relating to Great Western Route Modernisation and identifying and quantifying so far as the Franchisee is reasonably able the emerging risk position as it affects passengers and the Franchise Services. The Franchisee shall provide such additional information as the Secretary of State shall reasonably request and, if requested by the Secretary of State, shall develop such alternative and contingency plans as the Secretary of State may reasonably require for the purpose of mitigating relevant risk and ensuring that the adverse effects on passengers and the Franchise Services of any relevant risk arising is mitigated to the greatest extent reasonably practicable.

27. **Co-operation in respect of Infrastructure Projects**

- 27.1 The Franchisee shall co-operate with the Secretary of State and act reasonably and in good faith in its delivery of Infrastructure Projects.
- 27.2 Pursuant to its obligations in paragraph 27.1, the Franchisee shall, if so requested by the Secretary of State:
- (a) upon reasonable notice, attend meetings with the Secretary of State, and other relevant bodies specified by the Secretary of State, to discuss and provide an opinion on any relevant issues;
 - (b) provide information, data, reports, analysis and copy documentation reasonably required by the Secretary of State to assist in its assessment of the implications of the Infrastructure Projects; and
 - (c) review and comment of implementation timetables and programmes for the commencement of the operation of the Infrastructure Projects.

28. **Specified Obligations**

- 28.1 For the purposes of this paragraph, "**Specified Obligations**" means the obligations of the Franchisee contained in any of:
- (a) clauses 14.12 (Co-operation) and 14.13 (Additional Services);
 - (b) paragraph 9B (Diversity and Inclusion) of schedule 13.1 (Rail Industry Initiatives and Co-operation);

- (c) paragraph 11A (European Train Control System) of schedule 13.1 (Rail Industry Initiatives and Co-operation); and/or
 - (d) Part 1 (Co-Operation) of Schedule 6.7 (Co-Operation and Industrial Relations).
- 28.2 It is acknowledged and agreed that the Specified Obligations provisions shall not take effect and shall not be binding on the Parties until the earlier of:
- (a) the date on which the Parties agree in accordance with paragraph 28.3 below:
 - (i) the Specified Obligations and any necessary amendments to the Specified Obligations; and
 - (ii) any revisions to the Budget which shall include any impact of the Specified Obligations; and
 - (b) three weeks before the end of the first Quarter following the Start Date (the "**Backstop Date**").
- 28.3 The Parties agree to work together acting reasonably and in good faith to agree any amendments necessary to the Specified Obligations (noting that the Specified Obligations as at the Start Date reflect the Secretary of State's policy requirements) and any revisions to the Budget but if, notwithstanding both parties acting reasonably and in good faith, the Parties are unable to agree the Specified Obligations and/or any revisions to the Budget on or before the Backstop Date the Secretary of State shall reasonably determine the terms of the Specified Obligations and any revision to the Budget.

PART 4 – BESPOKE OBLIGATIONS**1. Air emissions monitoring**

- 1.1 From the Start Date and throughout the Franchise Period, the Franchisee shall co-operate fully with the Secretary of State in relation to the Secretary of State's monitoring of emissions of air pollution including NO_x, PM10 and PM2.5.
- 1.2 The Franchisee shall:
- (a) allow the Secretary of State to monitor emissions of air pollution on the Train Fleet (whether by inspection or otherwise) and shall permit the Secretary of State (or the Secretary of State's nominee) to have such access to the Train Fleet and such systems and equipment that the Secretary of State (or the Secretary of State's nominee) may reasonably require in connection with such monitoring;
 - (b) cooperate with the Secretary of State (or the Secretary of State's nominee) if required, in connection with any testing on exhaust plumes carried out by the Secretary of State (or the Secretary of State's nominee) through the use of such trackside systems as may be developed at certain locations along the Routes;
 - (c) provide to the Secretary of State any information which is reasonably requested by the Secretary of State for the purposes of analysing any impacts on air quality of the emissions of air pollution referred to in paragraph 1.2(a)(i) above, as soon as reasonably practicable after receipt by the Franchisee of such request.

2. Co-operation in respect of remapping of Midlands Local Services

- 2.1 The Franchisee shall co-operate with the Secretary of State and act reasonably and in good faith in its engagement with the Secretary of State in relation to any proposed transfer of the Midlands Local Services to another Train Operator.
- 2.2 Pursuant to its obligations in paragraph 2.1, the Franchisee shall, if so requested by the Secretary of State:
- (a) upon reasonable notice, attend meetings with the Secretary of State, Network Rail, and other relevant persons specified by the Secretary of State (including any Train Operator who is to be the transferee of the Midlands Local Services or bidders for the relevant franchise) to discuss and provide an opinion on any relevant issues;
 - (b) provide information, data, reports, analysis and copy documentation reasonably required by the Secretary of State to assist in its assessment of the implications of the commencement of the operation of the Midlands Local Services by another Train Operator (or bidders for the relevant franchise) or relevant aspects of the transfer of the Midlands Local Services including:
 - (i) driver, other train crew and rolling stock diagrams, health and safety and environmental information, Network Rail charges and performance data;

- (ii) information in respect of the terms and conditions of employees and human resources policies including pensions information and documentation; and
 - (iii) any other information as the Secretary of State may specify from time to time; and
- (c) review and comment on implementation timetables and programmes for the commencement of the operation of the Midlands Local Services by another Train Operator (including proposals from bidders for the relevant franchise).
- 2.3 The Franchisee shall upon instruction by the Secretary of State:
- (a) continue to co-operate with the Secretary of State in accordance with the provisions of paragraphs 2.1 and 2.2; and
 - (b) take all steps necessary to transfer the Midlands Local Services, and, in such circumstances, this will be a Change in accordance with limb (za) of the definition of Change and the Train Service Requirement will be reissued.

3. West Midlands Grand Rail Collaboration

From the Start Date and throughout the Franchise Term, the Franchisee shall be a member of the WMGRC and cooperate in good faith with the other members of the WMGRC in the development and implementation of initiatives relating to its participation.

4. Commonwealth Games

In addition to complying with its obligations in paragraph 4A (*Special Events*) of Schedule 1.2 (*Operating Obligations*), the Franchisee shall, from the Start Date until (and including) the closing of the 2022 Commonwealth Games to be held in the West Midlands, fully and effectively co-operate and engage constructively with all relevant stakeholders responsible for the delivery of the 2022 Commonwealth Games with the intention of assisting in ensuring the delivery of the additional passenger services and/or capacity required to meet passenger demand in relation to the 2022 Commonwealth Games.

5. Multi-Modal Interchanges

From the Start Date and throughout the Franchise Term, the Franchisee shall cooperate in good faith with the operators of multi-modal transport at any station or between any stations where a multi-modal interchange exists in order to facilitate passenger interchange at or between such stations.

6. West Midlands Timetable Re-casts

From the Start Date and throughout the Franchise Term, the Franchisee shall cooperate in good faith with West Midlands Rail Executive and Network Rail in the planning and delivery of timetable re-casts, including but not limited to changes to the Passenger Services that may be required as a result of timetable re-casts on the West Coast Main Line, in Birmingham and/or in the West Midlands, which are expected to occur in 2021-22 and/or on the East Coast Main Line, which are expected to occur on or around May 2022.

Schedule 6.2

COMMITTED OBLIGATIONS**PART 1 – COMMITTED OBLIGATIONS**

1. **Delivery of a Passenger Benefits Plan using the Performance Settlement Sum**
 - 1.1 The Franchisee acknowledges and agrees that, in connection with certain performance breaches under the terms of the Previous Franchise Agreement, a sum of [REDACTED³²] was agreed in respect damages for such breaches (the "Performance Settlement Sum"). Pursuant to paragraph 6.8 of Schedule 6.2 (Franchise Specific Obligations) to the Previous Franchise Agreement (as amended by the terms of an Agreement of Amendment dated 9 October 2020), the Performance Settlement Sum is to be transferred to the Franchisee. The Franchisee agrees that it cannot spend or otherwise use the Performance Settlement Sum other than in accordance with this paragraph 1.
 - 1.2 The Franchisee shall propose a plan to the Secretary of State by no later than [REDACTED³³] setting out its proposal for how the Performance Settlement Sum can be spent by the Franchisee in order to deliver passenger benefits in the Franchisee Year commencing on [REDACTED³⁴]. The Franchisee shall ensure that the plan sets out in reasonable detail the various benefits it intends to deliver and how it intends to deliver such benefits. The Parties shall use reasonable endeavours to agree the contents of such plan by no later than [REDACTED³⁵] (the "**Passenger Benefits Plan**").
 - 1.3 The Franchisee shall deliver the Passenger Benefits Plan in accordance with its terms.
 - 1.4 Notwithstanding paragraph 3 of part 2 (*Special Terms Related to the Committed Obligations*) of Schedule 6.2 (*Committed Obligations*), if there is any Underspend in connection with the delivery of the Passenger Benefits Plan or the Secretary of State does not agree the contents of the Passenger Benefits Plan, such sums shall be transferred to the Secretary of State (unless the Secretary of State agrees that paragraph 3 of part 2 (*Special Terms Related to the Committed Obligations*) of Schedule 6.2 (*Committed Obligations*) applies).

³² 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

³³ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

³⁴ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

³⁵ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

2 Prince's Trust 'Get Into' Scheme

- 2.1 Without limiting paragraph 9A of Schedule 13.1, the Franchisee shall:
- (a) from the Start Date, engage with the Prince's Trust to develop a pilot programme to support the Prince's Trust 'Get Into Scheme';
 - (b) on or before [REDACTED³⁶] use all reasonable endeavours to deliver a two (2) week placement, including a blend of job shadowing, taking part in selected in-house training and practical experience with the aim of providing a broad insight into the types of roles that the rail industry offers, for between [REDACTED³⁷] and [REDACTED³⁸] young people from the Prince's Trust (the pilot programme). This obligation does not preclude the Franchisee from offering additional work experience placements to young people;
 - (c) from 30 September 2021, donate to the Prince's Trust no less than [REDACTED³⁹] (Indexed) each Franchise Year (such amount to be reduced on a pro rata basis where a Franchisee Year is less than 13 Periods).

3 Community Rail Partnerships

- 3.1 In connection with the Community Rail Partnerships for Settle & Carlisle Railway Development Company, East Lothian and Borders (each as listed in Appendix 1 to Schedule 13.1, being the "Additional CRPs"), the Franchisee, from 1 April 2021, comply with paragraph 2 of Schedule 13 in respect of the Additional CRPs and commits to:
- (a) incur a minimum expenditure of [REDACTED⁴⁰] on each Additional CRP in respect of community rail funding in each Franchisee Year; and
 - (b) [REDACTED⁴¹].

³⁶ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

³⁷ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

³⁸ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

³⁹ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁴⁰ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁴¹ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

4 Completion of the Coach D luggage enhancements

- 4.1 The Franchisee agrees and acknowledges that pursuant to paragraph 18 (Luggage Area Improvements) of Part 1 (Committed Obligations) of Schedule 6.1 (Committed Obligations) of the Previous Franchise Agreement it has commenced the procurement of the application, installation or fitment of improvements to the luggage area of the class 220 and 221 Rolling Stock Units in the Train Fleet (each a **"Voyager Rolling Stock Unit"**). The Franchisee acknowledges and agrees that it shall continue such procurement to ensure the application, installation or fitment of improvements to the luggage area of the Voyager Rolling Stock Unit by no later than **[REDACTED⁴²]** and that such improvements shall provide better sign-posting to customers on-board and via its website which shall include:
- (a) increasing the visibility of the floor-mounted luggage stacks which are provided at either one or both ends of each rolling stock vehicle, through the use of clear, consistent labelling throughout each Voyager Rolling Stock Unit used in the provision of the Passenger Services, using easily-recognisable icons and colour;
 - (b) increasing the visibility of the large, dedicated area for the storage of luggage which is in Coach D of each Voyager Rolling Stock Unit from the outside of each such Voyager Rolling Stock Unit, by fitting all such Voyager Rolling Stock Units with an external roofline stripe that corresponds to the luggage area, and which uses the same colour as the internal luggage area identification labels, such colour to differ from that used on the outside of Rolling Stock Units to indicate First Class accommodation, catering or wheelchair space;
 - (c) enhancements to on-board communications in respect of on-board luggage storage facilities; and
 - (d) using reasonable endeavours to communicate with passengers waiting for a passenger service at a platform where the location of the dedicated area for the storage of luggage space in Coach D of each Voyager Rolling Stock Unit will be, when such Voyager Rolling Stock Unit stops at the platform.
- 4.2 Subject to paragraph 4.3, the Franchisee shall incur expenditure of not less than **[REDACTED⁴³]** in performing the obligations set out at paragraph 4.1, and the Franchisee shall provide such evidence as the Secretary of State may reasonably request of the Franchisee's compliance with its obligations under paragraph 4.1.
- 4.3 The figure stated in paragraph 4.2 is inclusive of expenditure incurred by Franchisee in respect of it performing such obligations under the Previous Franchise Agreement and accordingly, the Franchisee is not entitled to claim any costs pursuant to this Franchise Agreement in performing the obligations set out at paragraph 4.1 for which it has already claimed under the Previous Franchise Agreement.

⁴² 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁴³ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

5 Appointment of Special Events Manager

- 5.1 By [REDACTED⁴⁴] the Franchisee shall appoint a special events manager, [REDACTED⁴⁵] who shall:
- (a) [REDACTED⁴⁶]; and
 - (b) [REDACTED⁴⁷],
- (such person being the "Special Events Manager").

6 NOT USED

7 Mystery Shopper Inspection on Accessibility

- 7.1 The Franchisee shall (at its cost) procure the carrying out of the Customer Service Quality Inspections of Passenger Assist, including the services delivered by Station Operators and provided by onboard teams, by an independent person ("**Mystery Shopper Inspection**").
- 7.2 The Franchisee shall agree the terms of reference for the procurement of any Mystery Shopper Inspection and the identity of any independent person proposed to undertake such Mystery Shopper Inspection with the Secretary of State prior to any procurement by the Franchisee of any such Mystery Shopper Inspection.
- 7.3 The Franchisee shall incur expenditure of no less than:
- (a) [REDACTED⁴⁸] during the first Franchise Year;
 - (b) [REDACTED⁴⁹] during the second Franchise Year;

⁴⁴ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁴⁵ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁴⁶ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁴⁷ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

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- (c) [REDACTED⁵⁰] during the third Franchise Year;
- (d) [REDACTED⁵¹] during the fourth Franchise Year; and
- (e) [REDACTED⁵²] during the fifth Franchise Year,

in performing the obligations set out in paragraph 7 above, and the Franchisee shall provide such evidence as the Secretary of State may reasonably request of the Franchisee's compliance with its obligations under paragraph 7.

8 Disability Awareness Training Videos

- 8.1 Without limiting Schedule 4, by [REDACTED⁵³] the Franchisee shall develop four Disability Awareness videos, with each one focussing on different first-hand user perspectives on rail travel, for use in the provision of disability awareness training.
- 8.2 The Franchisee shall incur a total expenditure of no less than [REDACTED⁵⁴] in developing the Disability Awareness videos.

9. [REDACTED⁵⁵] link on printed materials and video chat

- 9.1 By no later than [REDACTED⁵⁶] the Franchisee shall work with Deafax [REDACTED⁵⁷] (or other appropriate organisation) to:
 - (a) provide pre-recorded content in British Sign Language in a format that customers can play on demand via their smartphone, in augmented reality

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using the [REDACTED⁵⁸] app or as a pop up on the Franchisee's website;
and

- (b) enable a videolink between customers and a sign language expert when an enquiry is made by a customer to customer relations.

9.2. Without limiting paragraph 9.1, the Franchisee shall provide no less than [REDACTED⁵⁹] different types of content each Franchise Year including printed posters on trains and at stations and summaries of documents such as the Passenger's Charter, Accessible Travel Policy and Complaints Handling Procedure.

9.3 The Franchisee shall incur a minimum expenditure of no less than:

- (a) [REDACTED⁶⁰] during the first Franchise Year;
 (b) [REDACTED⁶¹] during the second Franchise Year;
 (c) [REDACTED⁶²] during the third Franchise Year;
 (d) [REDACTED⁶³] during the fourth Franchise Year; and
 (e) [REDACTED⁶⁴] during the fifth Franchise Year;

in performing the obligations set out in paragraph 9.1 above.

10 Ear defenders

10.1 By [REDACTED⁶⁵] the Franchisee shall ensure that each Rolling Stock Unit

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in the Train Fleet is installed with not less than one (1) set of ear defenders on board in an area that is accessible to the train crew and that on board staff will be trained in their use.

- 10.2 By [REDACTED⁶⁶] the Franchisee shall ensure that all customer facing traincrew have received a briefing on:
- (a) The availability of ear defenders;
 - (b) what the ear defenders are intended for;
 - (c) which passengers may need to use the ear defenders; and
 - (d) how to respond to requests for the use of the ear defenders.
- 10.3 The Franchisee shall incur expenditure of not less than [REDACTED⁶⁷] in performing the obligations set out in paragraph 10.1 above.

11. Guide Dog reservations

- 11.1 By [REDACTED⁶⁸] the Franchisee shall:
- (a) ensure that Customers who travel with a guide dog are able to book a second seat to accommodate their guide dog; and
 - (b) design, produce and promote a guide dog seat reservation coupon that Customers can request from Customer Relations to be used on the train to highlight to other customers that the second seat is occupied by a guide dog.
- 11.2 The Franchisee shall incur expenditure of not less than [REDACTED⁶⁹] in performing the obligations set out in paragraph 11.1(b).

12 Completion of the Reservation System (non TRS)

- 12.1 The Franchisee agrees and acknowledges that pursuant to paragraph 19 (Improving Reservations) of Part 1 (Committed Obligations) of Schedule 6.1 (Committed Obligations) of the Previous Franchise Agreement it commenced work to deliver improvements to the 'Ten Minute Reservations' system of the Train Fleet ("**TMR**") and the Franchisee's reservations policy. The Franchisee agrees and acknowledges that it

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shall continue to make, or shall procure the making of such improvements by no later than **[REDACTED⁷⁰]** which shall include:

- (a) providing improved awareness and interaction for passengers with the TMR and reservations systems;
- (b) improving labelling, signposting and visibility so passengers can more clearly see which seats are dedicated to last minute sales or reservations and therefore make a more informed choice about where to sit, which shall include advertising how passengers looking for a seat can reserve one once on board;
- (c) expansion of TMR capability to include bike reservations and specific seat requests (enabling passengers to reserve the seat they are sat in, if available);
- (d) creating a customer interface with the TMR so that where there is suitable demand for reservations passengers can self-select seats from a visual 'seat selector' tool; and
- (e) using reasonable endeavours to make customers aware of the improvements made pursuant to this paragraph 19.1 through appropriately targeted on-board and electronic communications and the Franchisee shall incorporate this into the marketing plan for the Franchise.

12.2 Subject to paragraph 12.3, the Franchisee shall incur expenditure of not less than **[REDACTED⁷¹]** in performing the obligations set out at paragraph 12.1.

12.3 The figure stated in paragraph 12.2 is inclusive of expenditure incurred by Franchisee in respect of it performing such obligations under the Previous Franchise Agreement and accordingly, the Franchisee is not entitled to claim any costs pursuant to this Franchise Agreement in performing the obligations set out at paragraph 12.1 for which it has already claimed under the Previous Franchise Agreement.

12.4 By **[REDACTED⁷²]** the Franchisee shall carry out a review of the operation and effectiveness of the TMR and level of customer uptake, and the improvements introduced by the Franchisee in accordance with paragraph 12.1, and shall provide a report in writing to the Secretary of State of the findings of such review. The Secretary of State shall be entitled, in the Secretary of State's absolute discretion, to require the Franchisee to provide such further evidence

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of the operation and effectiveness of the TMR and level of customer uptake, and the improvements introduced by the Franchisee in accordance with paragraph 12.1 as the Secretary of State may reasonably request.

13 RDG Passenger Assistance App

- 13.1 The Franchisee shall use all reasonable endeavours to work with RDG integrate the new RDG customer-facing passenger assist app into the Franchisee's website and app.
- 13.2 The Franchisee shall incur expenditure of no more than [REDACTED⁷³] in second Franchisee Year in integrating the RDG Passenger Assist App into the Franchisee's website and app.

14 Increasing Awareness of the Customer Report

- 14.1 From 1 January 2021, the Franchisee must improve awareness of Customer Report through existing communications channels, including by developing a new range of e-mail communications to customers on the customer database who have opted in to receive such communications. Such e-mail communications shall be provided no less than four (4) times per year using Customer Report information that shall be tailored as far as reasonably possible to be relevant to the individual customers, including: (i) information on operational performance specific to the region where the customer lives and (ii) information on the progress of key initiatives which are being implemented on the routes that the customer uses.

15 Third party assessment of customer focus

- 15.1 By [REDACTED⁷⁴] the Franchisee shall procure an external supplier to carry out an assessment of the experience of customers and within three (3) Reporting Periods following such assessment the Franchisee shall identify areas of improvement for the purpose of demonstrating to the Secretary of State whether the Franchisee has, over each Franchisee Year, improved performance in those areas of improvement identified.
- 15.2 The external assessment shall encompass (as a minimum) the following: Stakeholder interviews; mystery shopping results; cultural analysis; customer insight review; systems and process review; organisational structure analysis; performance management rewards; and review of customer journeys and touch points.
- 15.3 The external assessment described in paragraphs 15.1 and 15.2 shall have been carried out by, and a report on the same provided to the Secretary of State by, 31 October 2021. The Franchisee shall, if appropriate, formulate an action plan to implement changes based upon the outcome of the external assessment.

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- 15.4 Following the identification of areas of improvement in accordance with paragraph 15.1 above and the Franchisee shall, if requested by the Secretary of State acting reasonably, as soon as practicable following such a request prepare a provide a report to the Secretary of State on whether the Franchisee has, over each Franchisee Year improved performance in those areas of improvement identified in accordance with paragraph 15.1 above.
- 15.5 The Franchisee shall incur expenditure of not less than **[REDACTED⁷⁵]** in the second Franchisee Year in performing the obligations set out in this paragraph 15 above.

16 Auditing of Franchisee's SQR performance

- 16.1 The Franchisee shall procure, from **[REDACTED⁷⁶]** that a third party carries out audits in each Reporting Period in respect of the Franchisee's performance of its obligations, and compliance with the specification, each as set out in Schedule 7.3 (*Service Quality Regime*).
- 16.2 The Franchisee shall incur a minimum expenditure of no less than:
- (a) **[REDACTED⁷⁷]** during the first Franchise Year;
 - (b) **[REDACTED⁷⁸]** during the second Franchise Year;
 - (c) **[REDACTED⁷⁹]** during the third Franchise Year;
 - (d) **[REDACTED⁸⁰]** during the fourth Franchise Year; and
 - (e) **[REDACTED⁸¹]** during the fifth Franchise Year;

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in performing the obligations set out in paragraph 16.1 above.

- 16.3 The Franchisee shall provide progress reports to the Secretary of State every Reporting Period in connection with the establishment of the SQR Management System.

17 Removal of Owing Group branding

- 17.1 Within [REDACTED⁸²] Reporting Periods of the Start Date, the Franchisee shall remove all "by Arriva" branding from train interiors, customer communications, signage, websites, digital channels and stationery. Within [REDACTED⁸³] Reporting Periods of the Start Date, the Franchisee shall remove all "by Arriva" branding including from train exteriors. The Franchisee and the Secretary of State will work together in good faith to create and agree a cost effective de-branding plan in order to meet the obligations contained in this paragraph by no later than the first Quarterly Finance Review Meeting after the Start Date. In the absence of the Parties agreeing to such plan by the time of the first Quarterly Finance Review Meeting after the Start Date, the Secretary of State shall reasonably determine the content of such plan (including the costs of implementing such plan). The Franchisee shall comply with such plan as agreed or determined.

18 Class 170 Electricity Shore Supply initiative

- 18.1 The Franchisee shall by [REDACTED⁸⁴] complete a trial of the use of electricity shore supply on [REDACTED⁸⁵] class 170 Turbostar trains including by modifying the trains to be able to be powered up via depot-based electricity supply (delivering lighting and socket power, enabling the continuation of maintenance activities on the train such as cleaning and repairs), rather than having to source power from running diesel engines ("**Electricity Shore Supply**") and will report back to the Secretary of State on progress.

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⁸⁵ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

18.2 The Franchisee shall incur a total expenditure of no less than [REDACTED⁸⁶] in performing the obligations set out in paragraph 18.1 above.

19. **Class 170 Improvements**

19.1 The Franchisee shall, by no later than [REDACTED⁸⁷] subject to the agreement of Porterbook Leasing for the scope and commencement of the installation, application or fitment of enhancements on the class 170 Rolling Stock Units in the Train Fleet as set out in this paragraph 20.1, agree a programme to improve the on-board environment for customers and enter into contracts to deliver such programme which shall include the following:

- (a) refreshing interiors to Universal Access Toilets through fitment of vinyl interior wraps, such vinyl interior wraps to be owning group brand neutral;
- (b) replacing all toilet push buttons to improve aesthetics and user friendliness, including improving the lighting around such buttons and improved button finish;
- (c) installing LED lighting tubes in the toilet areas to improve the quality of lighting in the toilets so as to match the standard of lighting within the saloon area; and
- (d) fitment across the fleet of class 170 Rolling Stock Units comprised in the Train Fleet of replacement lighting reflectors within the toilets,

the "**Class 170 Improvement Works**".

19.2 Subject to paragraph 19.3, the Franchisee shall incur expenditure of not less than [REDACTED⁸⁸] in completing the delivery of the improvements set out at paragraph 19.1.

19.3 The figure stated in paragraph 19.2 is inclusive of expenditure incurred by Franchisee in respect of it performing such obligations under the Previous Franchise Agreement and accordingly, the Franchisee is not entitled to claim any costs pursuant to this Franchise Agreement in performing the obligations set out at paragraph 4.1 for which it has already claimed under the Previous Franchise Agreement.

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20. **Class 170 (a) additional diagram**

20.1 The Franchisee shall, by no later than the [REDACTED⁸⁹] Timetable change, commence the delivery of an increase to the number of diagrams in daily Weekday service, such increase to be by at least 3 vehicles, and increase the number of trainsets available daily by at least 1, by utilising an existing three-car class 170 unit comprised in the Train Fleet (the “**Newly Utilised Class 170**”) and shall:

(a) introduce the Newly Utilised Class 170 into unrestricted passenger carrying service from the Passenger Change Date in May 2021 on Weekdays in both the Morning Peak and the Evening Peak by developing a draft Train Plan which includes an additional diagram for the Newly Utilised Class 170 such that capacity on the following routes is increased:

1. Birmingham-Leicester;
2. Birmingham-Nottingham;
3. Cardiff-Birmingham; and
4. Birmingham Stansted Airport,

such that the number of seats provided by the class 170 fleet is increased by at least eighteen thousand (18,000) per Reporting Period across Weekdays by the Committed Obligation set out in this paragraph 21.1(a) alone compared to the May 2019 timetable on services operated by the class 170 fleet; and

(b) use its Timetable Development Rights in accordance with Schedule 1.1 to secure the Timetable proposed by the Franchisee which includes the Newly Utilised Class 170 and which complies with the Service Level Commitment.

21. **NOT USED**

22. **NOT USED**

23. **NOT USED**

24. **Liaison and Co-Operation**

24.1 Where the Franchisee is committed to liaison and co-operation under Part 1 to Schedule 6.2 (Committed Obligations), it shall participate actively in the relevant measures including through the application of management time and internal resources, correspondence and attendance at meetings, in each case as the Franchisee reasonably considers in all the circumstances to be an appropriate use of its resources and effective to help achieve the relevant objective.

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25 **NOT USED**

26. **NOT USED**

27. **NOT USED**

28 Co-operation in respect of implementation of passenger compensation provisions

28.1 The Franchisee shall co-operate with the Secretary of State in good faith with the intention of implementing a revised Passenger's Charter containing such passenger compensation provisions as may be proposed by the Secretary of State. Such co-operation shall include providing such information, analysis, records and documents as the Secretary of State may reasonably request, including relating to the performance of the Passenger Services, details of compensation claims made by passengers of the Passenger Services, details of compensation claims met by the Franchisee and the costs of processing compensation claims.

28.2 It is intended that any revised Passenger's Charter shall be implemented by way of Variation pursuant to paragraph 1.1(b) of Schedule 9.5 (Variations).

29 Vehicle Walkthroughs

29.1 The Franchisee agrees and acknowledges that it has commenced work, pursuant to paragraph 6.6 of schedule 6.2 (Franchise Specific Obligations) to the Previous Franchisee Agreement, to ensure that a 360 degree walkthrough film of each of:

- (a) a typical Class 170 Rolling Stock Unit;
- (b) a typical Class 221 Voyager Rolling Stock Unit; and
- (c) each Mark 3 HST Trailer Vehicle of a typical HST Set,

is available, and suitably signposted to customers on the Franchisee's website. The Franchisee shall complete the work described in this paragraph, by no later than 31 December 2020, and shall spend no more than **[REDACTED⁹⁰]** in doing so.

29.2 Unless otherwise expressly agreed by the Secretary of State, any costs or expenditure incurred by the Franchisee in respect of its obligations under paragraph 29.1 shall be deemed to be Disallowable Costs (as defined in Schedule 8.1A (Franchise Payments)).

30. Advanced HST options

30.1. The Franchisee agrees and acknowledges that, pursuant to paragraph 23 of Schedule 6.1 (*Committed Obligations*) to the Previous Franchise Agreement, it commenced the work and actions described in this paragraph 30 in respect of two additional Class 43 HST power cars (the "**Additional HST Power Cars**").

⁹⁰ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

30.2 By no later than 30 November 2020, subject to the consent of the relevant ROSCO(s), the Franchisee shall procure the modification of the Additional HST Power Cars so that they are similar in specification and operational reliability to the Franchisee's existing HST power cars and may be operated with power door operated HST trailer vehicles comprised in the Train Fleet, including:

- (a) fitment of traction interlock equipment & cab desk modifications for compatibility with power operated door system fitted trailer cars;
- (b) re-paint the Additional HST Power Cars into CrossCountry Trains livery using a suitable supplier;
- © removal of Joyce-Loebel driver guard & PA equipment and re-instatement of Ripper/GAI-tronics driver/guard & PA equipment;
- (d) removal of Glenair 36-way jumpers and re-instatement of LPA 36-way jumpers;
- (e) fitment of FFCCTV equipment;
- (f) upload of CrossCountry Trains GSM-R phonebook onto GSM- R units;
- (g) fitment of wi-fi network equipment;
- (h) fitment of DAS equipment;
- (i) fitment of 240V converter & cab 3-pin socket;
- (j) fitment of TocLITE bullet equipment; and
- (k) removal/isolation of any modifications that the Franchisee did not opt into since HST re-introduction (or modification of the current 10 power cars to standardise) - examples include Nexala RCM, TAS cab desk bracketry and roof hatch catch secondary retention.

30.3 The Franchisee shall:

- (a) use all reasonable endeavours 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 which includes the operation of the Additional HST Power Cars in accordance with paragraph 30.3(b) and (c) below;
- (b) deploy the Additional HST Power Cars once the modification work referred to in paragraph 30.2 is complete such that they can, where reasonably possible, replace failed HST power cars overnight to reduce cancellations and short formations due to failed HST power cars; and
- © use all reasonable endeavours to (or to enable a Successor Operator to) operate services utilising the Additional HST Power Cars in the timetable by no later than the Passenger Change Date in December 2020.

30.4 The Franchisee shall notify the Secretary of State on becoming aware of any circumstances which might lead to the Franchisee or a Successor Operator (as the case may be) being unable to operate services utilising the Additional HST Power

Cars in the timetable from the Passenger Change Date in December 2020 as envisaged by paragraph 30.3(c) above, and:

- (a) upon such notification the Secretary of State shall be entitled in its absolute discretion to require the Franchisee to provide such further information and/or take such mitigating action as the Secretary of State may reasonably request; and
- (b) the Franchisee shall mitigate any costs and/or losses which do or may arise from the termination of the lease of the Additional HST Power Cars or from the Franchisee or a Successor Operator (as the case may be) being otherwise unable to operate services utilising the Additional HST Power Cars from the Passenger Change Date in December 2020.

30.5 Subject to paragraph 30.6, the Franchisee shall incur expenditure of not less than **[REDACTED⁹¹]** in performing the obligations set out at paragraph 30.2, which shall be comprised of the following:

- (a) **[REDACTED⁹²]** in respect of the storage of the Additional HST Power Cars; and
- (b) **[REDACTED⁹³]** in respect of the modification of the Additional HST Power Cars.

30.6 The figures stated in paragraph 30.5 are inclusive of expenditure incurred by Franchisee in respect of it performing such obligations under the Previous Franchise Agreement and accordingly, the Franchisee is not entitled to claim any costs pursuant to this Franchise Agreement in performing the obligations set out at paragraph 30.2 for which it has already claimed under the Previous Franchise Agreement.

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⁹² 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

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PART 2 - SPECIAL TERMS RELATED TO THE COMMITTED OBLIGATIONS

This Part 2 of Schedule 6.2 sets out further provisions which shall apply to the Committed Obligations contained in the Franchise Agreement and these provisions shall be construed as supplemental to the related provisions set out in Part 1 of this Schedule 6.2 and elsewhere in the Franchise Agreement.

1. Continuation of Availability

1.1 Where the Franchisee is obliged under this Schedule 6.2 to provide, implement or install something (whether a service, facility or otherwise) the Franchisee shall ensure that once the same is provided, implemented or installed that it continues to be provided and made available (and where relevant, effectively maintained) for the remainder of the Franchise Period unless the contrary is expressly stated.

1.2 Where Part 1 to Schedule 6.2 (Committed Obligations) includes a commitment:

(a) regarding the maintenance of certain facilities or activities or other similar analogous matters which are the subject of the Committed Obligations, the Franchisee shall not be regarded as having contravened the relevant obligation due to any temporary non-availability of the facility or activity (as the case may be) due to accidental damage or vandalism or maintenance, repair or replacement activities; or

(b) regarding staffing requirements or particular appointments the Franchisee is required to make and maintain, the obligation of the Franchisee shall not be regarded as being contravened by:

(i) temporary absences (for example for sickness or holiday); or

(ii) temporary non-fulfilment of a relevant post whilst the Franchisee is recruiting for that post

providing always that the Franchisee is using all reasonable endeavours to keep the duration of any (x) non-availability of a facility or activity or (y) vacant or unfulfilled post or appointment (as the case may be) as short as reasonably practicable.

2. Expenditure Commitments

2.1 Annual Expenditure

Where Part 1 to Schedule 6.2 (Committed Obligations) provides for the expenditure of an annual amount (or an amount over some other period) by the Franchisee, that amount:

(a) is assessed net of Value Added Tax; and

(b) is the amount required to be expended by the Franchisee itself or procured by the Franchisee to be expended.

2.2 Expenditure Commitments in real amounts

All expenditure commitments set out in Part 1 to Schedule 6.2 (Committed Obligations), to the extent they have not already been incurred by the Franchisee,

shall be Indexed (in the same way as the Fixed Fee and Performance Payment are indexed).

2.3 **Expenditure by Network Rail**

All amounts which the Franchisee has committed (whether unconditionally or otherwise) pursuant to Part 1 to Schedule 6.2 (Committed Obligations) to expend in connection with improvements to track or Stations shall be in addition to any expenditure made by Network Rail as part of its infrastructure improvements or maintenance programme to the extent such expenditure is not directly funded or reimbursed by the Franchisee.

3. **Underspend**

(a) Where in relation to any Committed Obligation that is expressed in terms of a requirement to spend not less than a specified sum in fulfilling its stated objective, the Franchisee is able to achieve that stated objective without incurring the full amount referred to in that Committed Obligation, whether because of cost savings or otherwise, the Franchisee shall notify the Secretary of State, together with a statement of the costs it has incurred (excluding any third party funding) in delivering the relevant obligations and a reconciliation against the amount it had committed to spend (excluding any third party funding) ("**Underspend**").

(b) The Parties shall, acting reasonably, seek to agree an additional scheme or schemes which would give rise to benefits to passengers using the Passenger Services to be funded using one or more Underspends and, once agreed, the Franchisee shall apply such relevant Underspend in the delivery of the agreed scheme(s). In circumstances only where, despite having used reasonable endeavours the Parties fail to agree an additional scheme in relation to which relevant Underspend will be applied, the aggregate amount of unallocated Underspend shall be repaid to the Secretary of State as soon as reasonably practicable.

4. **Nature of Commitment**

4.1 Any commitment in terms of Part 1 to Schedule 6.2 (Committed Obligations) shall be in addition to any obligation of the Franchisee elsewhere in this Agreement and nothing in this Schedule 6.2 (Committed Obligations) shall limit or restrict an obligation imposed on the Franchisee elsewhere in this Agreement.

4.2 Save as expressly provided in Part 1 to Schedule 6.2 (Committed Obligations), each Committed Obligation is a separate obligation from any other Committed Obligation and satisfaction of or steps taken towards the satisfaction of one Committed Obligation will not amount to or contribute towards satisfaction of any other Committed Obligation.

4.3 Where in Part 1 to Schedule 6.2 (Committed Obligations), references are made to particular manufacturers or suppliers of equipment or services, the Franchisee may fulfil its relevant commitment by using reasonable equivalents.

5. **Review of Compliance**

5.1 Progress with Committed Obligations shall be considered and discussed at Franchise Performance Meetings.

5.2 In addition to its obligation under paragraph 5.1, the Franchisee shall from time to time promptly provide such evidence of its compliance with any Committed Obligation as the Secretary of State may reasonably request.

6. **Consequences of Late Completion or Non-Delivery of Committed Obligations**

If the Franchisee fails to deliver in full a Committed Obligation in accordance with and by the timeframe specified for its delivery in this Schedule 6.2 (Committed Obligations), such late, partial or non-delivery shall constitute a contravention of the Franchise Agreement.

7. **NOT USED**

8. **Third Party Consents, Agreement and Conditions**

8.1 A Committed Obligation may be expressed to be conditional upon the satisfaction of any condition (including the occurrence of any event or the obtaining of any third party consent and/or entering into any agreement or arrangement with a third party) ("**Pre-condition**"). Where a Committed Obligation is subject to a Pre-condition and, despite having used all reasonable endeavours, the Franchisee is not able to satisfy such Pre-condition within such timescales (if any) as are required to enable the Franchisee to deliver such Committed Obligation in accordance with its terms then the Secretary of State and the Franchisee shall agree (or on failure to agree, the Secretary of State shall reasonably determine) such modifications to such Committed Obligation as may be necessary to allow the Franchisee to deliver a scheme which would give rise to benefits to passengers using the Passenger Services similar to (but not necessarily the same as) those benefits which would have arisen if the Franchisee had delivered such Committed Obligation.

8.2 If the Franchisee and the Secretary of State agree (or on failure to agree, the Secretary of State reasonably determines) a modification to a Committed Obligation pursuant to paragraph 8.1 then to the extent that the Franchisee delivers such modified Committed Obligation by the date agreed by the Parties (or, on failure to agree reasonably determined by the Secretary of State) then the Franchisee shall not be in breach of the Franchise Agreement.

9. **Designation of Assets comprised in COs as Primary Franchise Assets**

9.1 The Secretary of State may at any time designate as a Primary Franchise Asset any asset introduced by the Franchisee by way of a Committed Obligation (the "**Designated CO Primary Franchise Assets**"). Such designation shall take effect from the date on which the Secretary of State delivers to the Franchisee a notice designating the relevant asset as a Designated CO Primary Franchise Asset.

9.2 The transfer value in relation to any Designated CO Primary Franchise Asset, which at the end of the Franchise Period is:

- (a) not de-designated as a Primary Franchise Asset pursuant to paragraph 10 of Schedule 14.4 (Designation of Primary Franchise Assets); and
- (b) transferred to a Successor Operator (whether pursuant to the Transfer Scheme or otherwise),

shall (unless otherwise agreed by the Secretary of State) be nil.

10. Obligations on Delivery of a Committed Obligation

By no later than thirty (30) days after the date of delivery of a Committed Obligation the Franchisee shall provide to the Secretary of State a certificate (in such form as may be specified by the Secretary of State from time to time) signed by a statutory director of the Franchisee confirming that such Committed Obligation has been delivered in full and in accordance with its terms, together with such supporting information as may be requested by the Secretary of State from time to time.

11. Nil value transfer

Unless the Secretary of State gives a contrary direction, all Franchise Assets acquired by the Franchisee pursuant to its obligations under part 1 (*Committed Obligations*) of Schedule 6.2 (*Committed Obligations*) shall be designated as Primary Franchise Assets and (to the extent that they are not liabilities) shall transfer to a Successor Operator at a nil value.

SCHEDULE 6.3

NOT USED

Schedule 6.4

Alliances**1. General Co-operation with Network Rail**

The Franchisee shall use all reasonable endeavours to work with Network Rail to identify ways in which co-operation between the Franchisee and Network Rail can be enhanced, costs can be reduced and closer working and alignment of incentives can improve value for money within the parameters of this Agreement.

2. Sharing of information with Network Rail

The Franchisee shall to the extent reasonably requested by Network Rail share with Network Rail all relevant data including GPS data and data derived from geometry measurement systems, forward facing CCTV, driver advisory systems, train condition monitoring systems fitted to any rolling stock within the Train Fleet. Any such data provided to Network Rail shall be provided in such format as Network Rail may reasonably request without charge.

3. NOT USED.**4. Alliance Agreement with Network Rail**

4.1 Where the Franchisee considers that it is appropriate to enter into an alliance agreement with Network Rail that would require its obligations under this Agreement to be varied (an "**Alliance Agreement**") it may make a proposal for the Secretary of State to consider. The Franchisee agrees that any such proposal (unless otherwise agreed by the Secretary of State) shall:

- (a) be for the purposes of improved delivery of some or all of the following:
 - (i) the efficient and cost effective operation of some or all of the network over which the Passenger Services operate;
 - (ii) the efficient and cost effective maintenance of some or all of the network over which the Passenger Services operate;
 - (iii) the efficient and cost effective renewal of some or all of the network over which the Passenger Services operate;
 - (iv) the efficient and cost effective delivery of some or all enhancement projects on the network over which the Passenger Services operate; and
 - (v) such other infrastructure enhancement projects as may be agreed by the Franchisee and Network Rail and approved by the Secretary of State during the Franchise Term;
- (b) be on terms which are commercially fair and reasonable so that:
 - (i) the incentives of the Franchisee and Network Rail are more effectively aligned in a way that gives a reasonable expectation that the matters subject to the alliance will be delivered in a more efficient and effective way;

- (ii) the financial and operational risk of the Franchisee arising out of the operation of the Franchise is not unreasonably increased (including through the agreement of appropriate limitations of liability); and
 - (iii) the Secretary of State has rights to require the termination of the Alliance Agreement in appropriate circumstances including so that the term of the alliance is aligned with the Franchise Term and liabilities do not accrue to any Successor Operator.
- (c) The Franchisee shall provide such information, updates and reports on the progress of its negotiation with Network Rail as the Secretary of State shall reasonably require and meet with the Secretary of State to discuss the progress of the negotiations when reasonably requested to do so.
- (d) On reaching agreement in principle with Network Rail on the terms of an Alliance Agreement the Franchisee shall present the draft Alliance Agreement to the Secretary of State for approval and shall not enter into any such agreement without the prior written consent of the Secretary of State (which he shall have an unfettered discretion to withhold).
- (e) The Franchisee agrees that any approval of an Alliance Agreement shall (without prejudice to the unfettered discretion of the Secretary of State to refuse to consent to such an alliance) be conditional upon:
 - (i) the Secretary of State being satisfied that such Alliance Agreement is consistent with the provisions of paragraph 4.1 (a) (ii) above;
 - (ii) the Franchisee agreeing to a fair and reasonable allocation of the gain from such alliance being passed to the Secretary of State (whether through profit share or otherwise) consistent with the role of the Secretary of State in funding the railway network; and
 - (iii) the Franchisee entering into a deed of amendment to the Franchise Agreement in a form reasonably determined by the Secretary of State.

Schedule 6.5

Additional Operating Contract Obligations**1. Definitions**

1.1 For the purposes of this Schedule 6.5 only, the following words and expressions shall have the following meanings unless otherwise set out in clause 3 (*Definitions*):

"Alternative Fare" has the meaning given to it in paragraph 10.6(c)(ii) of this Schedule 6.5;

"Annual Fares Plan" means the annual fares plan to be provided by the Franchisee to the Secretary of State in accordance with the requirements of paragraph 10.4 of this Schedule 6.5;

"Applicable Fares Plan" has the meaning given to it in paragraph 10.6(a) of this Schedule 6.5;

"Draft Marketing Plan" means a draft marketing plan produced pursuant to paragraph 5.1 of this Schedule 6.5;

"Marketing Plan" has the meaning given to it in paragraph 5.5 of this Schedule 6.5;

"Marketing Team" means a team of Franchise Employees whose role is largely concerned with the organisation and delivery of marketing activities for the Franchise in accordance with paragraph 5 of this Schedule 6.5; and

"Marketing Year" has the meaning given to it in paragraph 5.1(a) of this Schedule 6.5.

2. NOT USED.**3. General Obligation of the Franchisee when the provisions of this Schedule 6.5 apply**

3.1 The Franchisee shall, consistent with its obligation to act as a Good and Efficient Operator, and in addition to complying with the other provisions of this Schedule 6.5, generally use all reasonable endeavours to:

(a) maximise Revenue and minimise or mitigate the impacts of any factors leading to Revenue being reduced or increasing less quickly than the Franchisee had forecast; and

(b) reduce Costs and minimise or mitigate the impacts of any factors leading to Costs being increased or decreasing less quickly than the Franchisee had forecast; or

provided that where compliance with paragraph (a) in relation to Revenue will have consequential impacts on Costs and/or compliance with (b) in relation to Costs will have consequential impacts on Revenue, the Franchisee's obligation will

be to use all reasonable endeavours to optimise in combination the Revenue and Cost position.

3.2 The Franchisee shall proactively consider and implement actions to meet its obligations pursuant to paragraph 3.1 above, provided that where the consent of the Secretary of State is required to any action pursuant to the terms of the Franchise Agreement, the Franchisee shall seek the Secretary of State's consent as soon as reasonably practicable and shall only pursue such action once consent has been provided.

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

4. **NOT USED.**

5. **Marketing Plan**

5.1 **Initial Draft Marketing Plan**

(a) The Franchisee shall produce and submit to the Secretary of State a Draft Marketing Plan by **[REDACTED⁹⁴]** from the Start Date, which shall set out in respect of each Franchisee Year comprised in the maximum potential Franchise Term duration of four (4) years (each such Franchisee Year being a "**Marketing Year**"):

- (i) the amount which the Franchisee plans to spend on marketing activities (excluding direct staff costs) in each Marketing Year in each case consistent with the Record of Assumptions;
- (ii) the Franchisee's planned activities to advertise, market and promote the Passenger Services in each Marketing Year to be set out:
 - (A) in detail in relation to the first Marketing Year; and
 - (B) in outline for the second, third and fourth Marketing Years;
- (iii) the Franchisee's proposed approach to and arrangements for:
 - (A) measuring the effectiveness of the activities referred to in paragraph 5.1(a)(ii); and

⁹⁴ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

- (B) applying the findings to improve the Marketing Plan and the effectiveness of the Franchisee's marketing activities.
- (b) The Franchisee shall provide to the Secretary of State such further analysis or iterations of the Draft Marketing Plan as the Secretary of State reasonably requires and shall, if required by the Secretary of State, meet with the Secretary of State to discuss the Draft Marketing Plan.
- (c) The Secretary of State shall (acting reasonably) by the Start Date approve or reject the Draft Marketing Plan. Where the Secretary of State rejects the Draft Marketing Plan, the Franchisee shall as soon as reasonably practicable make such amendments necessary to the Secretary of State's reasonable satisfaction. This document, as either approved or amended to the Secretary of State's reasonable satisfaction, shall become the form of the Franchisee's marketing plan (the "**Marketing Plan**").

5.2 Compliance with the Marketing Plan

The Franchisee shall comply with and implement the Marketing Plan.

5.3 Review of and/or changes to the Marketing Plan

- (a) As part of each Business Plan to be submitted under paragraph 10 (Business Plans) of Schedule 11.2 (Management Information) the Franchisee shall deliver to the Secretary of State for the Secretary of State's approval an updated version of the Marketing Plan in respect of and covering each of the remaining Marketing Years:
 - (i) in substantially the same form as the immediately preceding Marketing Plan delivered to the Secretary of State in accordance with this Agreement;
 - (ii) which shall be revised to:
 - (A) describe the Franchisee's planned expenditure and activities to advertise, market and promote the Passenger Services for each remaining Marketing Year (or part Marketing Year) such description being in detail for the next Marketing Year and in outline for subsequent Marketing Years;
 - (B) include details of the Franchisee's planned arrangements to measure the effectiveness of such expenditure and activities; and
 - (C) confirm how the Franchisee will improve the Marketing Plan and increase the effectiveness of its expenditure and activities; and
 - (iii) containing a statement of the differences between such updated Marketing Plan and the immediately preceding Marketing Plan delivered to the Secretary of State in accordance with this Agreement, together with an explanation of such differences.

- 5.4 The Franchisee may apply to the Secretary of State to make interim revisions to the Marketing Plan in the course of any Marketing Year.
- 5.5 The Marketing Plan shall be reviewed by the Franchisee and the Secretary of State upon the Secretary of State's request. The Secretary of State will be entitled, in advance of any such meeting, to require the Franchisee to provide a report (in respect of such period of time as the Secretary of State may specify (the "**Marketing Plan Review Period**")):
- (a) analysing the effectiveness of the marketing activities undertaken by the Franchisee during the relevant Marketing Plan Review Period and a statement of the costs incurred by the Franchisee in undertaking such marketing activities; and
 - (b) setting out proposals for how the effectiveness of the marketing activities undertaken by the Franchisee during the relevant Marketing Plan Review Period might be improved and/or the associated costs might be reduced (for example, but without limitation, by reducing the amount of marketing expenditure or the size of the Marketing Team).

Following any such review of the Marketing Plan pursuant to this paragraph 5.5, the Parties may agree or the Secretary of State may direct the Franchisee to make revisions to the Marketing Plan.

- 5.6 If pursuant to any review of the Marketing Plan under paragraph 5.4 or 5.5 the Secretary of State agrees to or directs any change to the amount of marketing expenditure provided for in the then-current Marketing Plan and such revised amount of marketing expenditure is different to the amount of marketing expenditure provided for the Record of Assumptions and Budget then there shall be revisions to the Budget pursuant to paragraph 8 of Schedule 8.1A (*Franchise Payments*).

6A. **Ticketless Travel Surveys**

- 6A.1 The Franchisee on behalf of the Secretary of State shall carry out Ticketless Travel Surveys in each Ticketless Travel Survey Period in accordance with the Ticketless Travel Survey Methodology.
- 6A.2 It is acknowledged and agreed by the Franchisee that:
- (a) a Ticketless Travel Survey can only be carried out during a Ticketless Travel Survey Period; and
 - (b) nothing in this paragraph 6A shall prevent the Secretary of State from carrying out any other ticketless travel surveys as the Secretary of State may wish to undertake from time to time (such surveys not to be subject to the provisions of this paragraph 6A).
- 6A.3 Within thirty (30) days of the completion of each Ticketless Travel Survey the Franchisee shall produce and provide to the Secretary of State a report setting out the results of such Ticketless Travel Survey and detailing how such Ticketless Travel Survey was carried out in accordance with the Ticketless Travel Survey Methodology.
- 6A.4 The Franchisee agrees and acknowledges that the Target Ticketless Travel Benchmarks contained in Schedule 8.1B (Performance Payments) may be adjusted

by the Secretary of State in the Secretary of State's reasonable discretion and to be consistent with the Ticketless Travel Survey Methodology to align with the results of the first Ticketless Travel Survey that is carried out in accordance with this paragraph 6A. If the Target Ticketless Travel Benchmarks are adjusted pursuant to this paragraph 6A.4, the figures in Schedule 8.1B (Performance Payments) will be deemed to be updated in accordance with the revised benchmark levels for the remainder of the Franchise Term.

6. Ticketless Travel Payments

6.1 Ticketless Travel Survey Periods Calculations

(a) Ticketless Travel Survey Periods

At the end of each Ticketless Travel Survey Period the Secretary of State shall use the Ticketless Travel Rate for such Ticketless Travel Survey Period to calculate the Franchisee's performance against the relevant Target Ticketless Travel Benchmark in accordance with the following formula:

$$[TT \text{ Deemed } =] \frac{A + B}{2}$$

where:

TT Deemed is the Franchisee's deemed performance against the relevant Target Ticketless Travel Benchmark;

A is the Ticketless Travel Rate for that Ticketless Travel Survey Period; and

B is the Ticketless Travel Rate for the preceding Ticketless Travel Survey Period.

6.2 Consequences of Poor Performance

- (a) Without limiting paragraph 6.3, if for any Ticketless Travel Survey Period the TT Deemed as calculated pursuant to paragraph 6.1 above is:
- (i) more than (that is, is **equal to or worse than**) the relevant Target Ticketless Travel Benchmark the Franchisee shall produce a plan intended to ensure that the Ticketless Travel Rates will be below (that is, **better than**) the Ticketless Travel Expected Fee Performance Level ("**TT Action Plan**");
 - (ii) not used.
- (b) The Franchisee shall (i) produce, (ii) obtain the Secretary of State's approval of, and (iii) commence the implementation of the TT Action Plan within three (3) months after the TT Deemed is calculated as being more than (that is, is **equal to or worse than**) the Ticketless Travel Expected Fee Performance Level.
- (c) The TT Action Plan shall contain specific tangible action points and indicate in the case of each action point:

- (i) how that action will contribute to ensuring that the Ticketless Travel Rates will be below (that is, **better than**) the Ticketless Travel Expected Fee Performance Level;
 - (ii) where the action is to be implemented;
 - (iii) when the action is to be commenced and by when it is to be implemented provided always that where any action is expressed to be ongoing the TT Action Plan shall include specific review dates; how
 - (iv) performance of the action is to be measured.
- (d) The Franchisee shall, except to the extent otherwise agreed by the Secretary of State in advance, implement each TT Action Plan in accordance with its terms.
- (e) It is acknowledged by the Franchisee that the approval or lack of approval by the Secretary of State of each TT Action Plan as contemplated in this paragraph shall not relieve the Franchisee of its obligations in relation to this paragraph 6 or any other provisions of the Franchise Agreement.
- (f) The Parties acknowledge and agree that:
- (i) costs incurred by the Franchisee pursuant to paragraphs 6.2(b)(i) and (ii) in producing and obtaining the Secretary of State's consent to a TT Action Plan will be a Disallowable Cost for the purposes of Schedule 8.1A (*Franchise Payments*); and
 - (ii) costs incurred by the Franchisee pursuant to paragraph 6.2(b)(iii) in implementing a TT Action Plan will constitute a Cost for the purposes of Schedule 8.1A (*Franchise Payments*).

6.3 **NOT USED.**

6.4 **NOT USED.**

7. **NOT USED.**

8. **Changes in Numbers and Total Cost of Retail and Revenue Protection Employees**

8.1 The Franchisee shall not, and shall secure that each other relevant employer shall not, without the prior written consent of the Secretary of State increase or decrease the number of Franchise Employees whose role wholly or partially relates to:

- (a) revenue protection, (b) NOT USED, or (c) the sale of tickets such that:
 - (i) the total number of such Franchise Employees or the total cost per annum to the Franchisee and each other relevant employer of employing such Franchise Employees is increased; or
 - (ii) the total number of such Franchise Employees is decreased,

in each case, by more than five per cent (5%) in any Franchisee Year that occur as against the relevant staff figures included at section 5.2 of the Record of Assumptions.

8.2 **[REDACTED⁹⁵]**

(a) **[REDACTED⁹⁶]**

(b) **[REDACTED⁹⁷]**

9. **Percentage Allocations**

9.1 The Franchisee shall monitor on an on-going basis the Percentage Allocations in relation to Rail Products.

9.2 The Franchisee shall ensure that it manages and requests changes (including by disputing Percentage Allocations under the Ticketing and Settlement Agreement) to the Percentage Allocations in relation to Rail Products in such manner as would reasonably be expected from a skilled and experienced Train Operator bearing farebox revenue risk in relation to its franchise and seeking to maximise its profit consistent with its other obligations under its franchise agreement.

9.3 Except to the extent that the Secretary of State may consent from time to time the Franchisee shall not take any action or step which may result in its Percentage Allocation in respect of any Rail Product being reduced.

9.4 The Franchisee shall notify the Secretary of State before taking any such action or step and upon becoming aware of any other person proposing to take any action or step which may have the same effect. The Franchisee shall take such action as the Secretary of State may reasonably request in order to prevent any such reduction, including submitting any dispute to any relevant dispute resolution procedures. If the Secretary of State does not respond to the Franchisee's notification within one (1) month of the date of receipt of such notification, the Franchisee shall be entitled to take the action or step so notified.

10. **Fares Setting/Monitoring**

10.1 **Purpose/Objective**

(a) this provision sets out:

⁹⁵ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁹⁶ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁹⁷ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

- (i) the terms and conditions and the further restrictions that are placed on the Franchisee's ability to Create Fares, in addition to those contained in Schedules 5.1 (Purpose, Structure and Construction) to 5.7 (Changes to Fares and Fares Regulations) and Schedule 5.9 (Smart Ticketing); and
- (ii) information and monitoring provisions which apply to all Fares Created, which are in addition to those set out in Schedule 5.8 (Fares Regulation Information and Monitoring).

10.2 The Secretary of State bears Revenue risk in relation to the Franchise because of the particular commercial circumstances that apply to it. In consequence of this it is acknowledged that it is necessary and proportionate for this Franchise Agreement to include provisions which are different from those which apply where a franchisee takes fare box revenue risk. Accordingly the following provisions of this paragraph 10 contain mechanisms, to address this issue including:

- (a) the absence of the normal commercial incentives which a franchisee would have to maximise fare box revenue; and
- (b) perverse incentives to price off demand so as to reduce operating costs or to increase non farebox revenue at the expense of Revenue,

as required to protect the interests of passengers and tax payers and the long term value of the Franchise.

10.3 **Fares Plan**

The Initial Fares Plan shall be provided within three (3) reporting periods of the Start Date and shall include:

- (a) a clear and quantified description of the planned structure and policy to be adopted by the Franchisee in respect of:
 - (i) the Creation of Protected Fares and Commuter Fares, such planned structure and policy to be at all times in compliance with the requirements of Schedule 5 of the Franchise Agreement and the Ticketing and Settlement Agreement; and
 - (ii) the creation, setting, retailing and marketing of Unregulated Fares, consistent with the requirement to act as a Good and Efficient Operator;
- (b) a detailed description as to how the Franchisee will Create, retail and market Fares consistent with the requirement to act as a Good and Efficient Operator;
- (c) a detailed description of the Franchisee's planned expenditure and activities to advertise, market and promote the Passenger Services for the purposes of growing passenger revenue in each Franchisee Year, including details of the arrangements that the Franchisee will put in place for the purposes of measuring the effectiveness of such planned expenditure and activities;

- (d) a statement of the Gross Revenue attributable to each Fare for a period from 30 November 2020;
- (e) a detailed description of any new fares and ticketing measures that the Franchisee wishes to implement including any Fares trials or simplification measures as approved by the Secretary of State;
- (f) the Franchisee's revenue protection plan including its plans relating to the management of fare evasion (by including the publication of the risks of fare evasion and improvements to the processes for the issuing and charging of Penalty Fares; and
- (g) a statement of the costs and the number of the Franchise Employees who will carry out revenue protection roles to be employed by the Franchisee disaggregated on a Franchisee Year to Franchisee Year basis.

10.4 **Annual Fares Plan**

At least three (3) Reporting Periods prior to the start of each Franchisee Year (other than the first Franchisee Year) the Franchisee shall deliver to the Secretary of State an Annual Fares Plan in respect of that Franchisee Year and the remainder of the Franchise Term and in substantially the same form as the Initial Fares Plan updated to include:

- (a) information that is available to the Franchisee as at the date of delivery of the applicable Annual Fares Plan and describing Franchisee's plans and strategies for the relevant Franchisee Year and the remainder of the Franchise Term on each of the matters described in paragraphs 10.3(a) to (g);
- (b) a statement of the differences between the applicable Annual Fares Plan and the immediately preceding Annual Fares Plan together with an explanation of any such differences; and
- (c) a review of the effectiveness of the Franchisee's the current revenue protection plan and any improvements that are proposed by the Franchisee to such revenue protection plan.

10.5 **Secretary of State proposed changes to the Fares Plan**

The Secretary of State may from time to time direct the Franchisee to make changes to the Applicable Fares Plan to:

- (a) on notification by the Secretary of State of any changes to changes to Fares or the regulation of Fares pursuant to any of the provisions of Schedule 5.7 (Changes to Fares and Fares Regulations) the Franchisee shall submit to the Secretary of State any updates that are required to the then applicable Fares Plan in order to give effect to such changes. The Franchisee shall following approval of such amendment by the Secretary of State update the Applicable Fares Plan to reflect the such of the amendments as are approved by the Secretary of State);
- (b) give effect to any determination made by the Secretary of State pursuant to paragraph 6 of Schedule 5.1(Purpose, Structure and Construction);

- (c) give effect to any amendments to the Fares Plan as may be notified by the Secretary of State to the Franchisee from time to time including any fares initiatives or fare trials as may be required by the Secretary of State from time to time.

10.6 Other Changes to the Fares Plan

- (a) Subject to paragraph 10.6(b) and paragraph 10.6(c), for each Fares Setting Round the Franchisee shall Create such Fares as are specified in the then applicable Fares Plan (the "**Applicable Fares Plan**").
- (b) The Franchisee shall, in advance of every Fares Setting Round review whether changes are necessary to the Applicable Fares Plan.
- (c) By no later than week four (4) of each Fares Setting Round, the Franchisee shall provide to the Secretary of State details (including supporting documentation) of any Fare where, in the reasonable opinion of the Franchisee, the Creation of such Fare would require the Franchisee to act other than as required of a Good and Efficient Operator, together with:
 - (i) a detailed explanation of the reasons for the Franchisee's opinion pursuant to paragraph 10.6(d)(iii) and, if applicable, an explanation of the changes that would need to be made to a subsequent Fares Plan to ensure that the Creation of any Fares specified in such subsequent Fares Plan in any subsequent Fares Setting Rounds would not require the Franchisee to act other than as a Good and Efficient Operator;
 - (ii) the details of such alternative Fare (including the Price or Child Price (as the case may be) and the terms of such alternative Fare) that it wishes to Create in place of the relevant Fare contained in the Applicable Fares Plan (plus supporting documentation to evidence that Creation of such Fare would not require the Franchisee to act other than as a Good and Efficient Operator ("**Alternative Fare**"));
 - (iii) written confirmation from a statutory director of the Franchisee which confirms that Creation of the Alternative Fare would not require the Franchisee to act other than as a Good and Efficient Operator.
- (d) On receipt of the information required by paragraph 10.6(c), the Secretary of State may, by no later than week nine (9) of each Fares Setting Round, by notice to the Franchisee:
 - (i) confirm the Secretary of State's agreement to the modification of the Applicable Fares Plan as proposed by the Franchisee pursuant to paragraph 10.6(c) (and the Applicable Fares Plan as so modified shall apply until such a time as it is replaced by an Annual Fares Plan to be provided by the Franchisee to the Secretary of State pursuant to paragraph 10.4;

- (ii) decline to agree the modification, in which case the Franchisee shall Create Fares in accordance with the requirements of the Applicable Fares Plan as required by paragraph 10.6(a),

and if the Secretary of State does not notify the Franchisee within the time specified, the Secretary of State shall be deemed to have declined to agree and the provisions of paragraph 10.6(d)(ii) shall apply.

11. **NOT USED.**

12. **NOT USED.**

13. **NOT USED.**

14. **Additions to the Annual Business Plan**

14.1 The Franchisee shall include, in each Annual Business Plan delivered to the Secretary of State in accordance with paragraph 10.2 (Annual Business Plans) of Schedule 11.2 (Management Information):

- (a) proposals for measures that the Franchisee could take to maximise revenue and minimise or mitigate the impacts of any factors leading to revenue being reduced or increasing less quickly than had been forecast; and
- (b) notwithstanding the Franchisee's obligations pursuant to paragraph 10.5(a) of this Schedule 6.5, proposals for any changes to the Fares Plan or the price or terms of any Fare specified in the same that the Franchisee (acting in a reasonable and proper manner and to a Good and Efficient standard) considers necessary.

14.2 Within one (1) month of the provision of the Annual Business Plan by the Franchisee to the Secretary of State in accordance with paragraph 10.2 of Schedule 11.2 (Management Information), the Secretary of State shall raise in writing to the Franchisee any reasonable objections regarding the content of such Annual Business Plan.

14.3 Within one (1) month of the receipt of any objections pursuant to paragraph 14.2 of this Schedule 6.5 the Franchisee shall:

- (a) amend the Annual Business Plan to address such objections; or
- (b) provide reasons in writing to the Secretary of State as to why the Franchisee reasonably considers that no amendment to the Annual Business Plan is required.

Schedule 6.6

NOT USED

Schedule 6.7

CO-OPERATION AND INDUSTRIAL RELATIONS**PART 1 – CO-OPERATION****1A. Definitions**

For the purposes of this Schedule 6.7 (*Co-Operation and Industrial Relations*) only, the following words and expressions shall have the following meanings unless otherwise set out in clause 3 (*Definitions*):

“Control Centres”	means each integrated control centre, signalling centre, rail operating centre and other equivalent operational locations;
“Event Steering Groups”	has the meaning given to it in paragraph 7.1 of this Part 1 of Schedule 6.7;
“Financial and Commercial Data”	has the meaning given to it in paragraph 9.1 of this Part 1 of Schedule 6.7;
“Franchisee FI Contact”	has the meaning given to it in paragraph 1.5 of this Part 1 of Schedule 6.7;
“Franchisee Initiatives”	has the meaning given to it in paragraph 3.1 of this Part 1 of Schedule 6.7;
“Further Industry Initiatives”	has the meaning given to it in paragraph 3.1 of this Part 1 of Schedule 6.7;
“Future Initiative”	has the meaning given to it in paragraph 1.1 of this Part 1 of Schedule 6.7;
“Future Initiative Notice” or “FIN”	has the meaning given to it in paragraph 1.2 of this Part 1 of Schedule 6.7;
“Improvement Initiatives”	has the meaning given to it in paragraph 3.1 of this Part 1 of Schedule 6.7;
“Integrated Control Centres Implementation Plan”	means a detailed plan jointly produced between the Franchisee, Network Rail and any other Train Operators setting out how and when they will implement the Integrated Control Centres Initiative;
“Integrated Control Centres Initiative”	means measures and initiatives to improve performance outcomes between Network Rail and the Franchisee through collaboration, co-location and unified policies such that an integrated and cost-

	efficient approach to operations is adopted at specified Control Centres;
"Network Services Directorate of Network Rail"	means a directorate of Network Rail formed from the Freight and National Passenger Operators route and the Route Businesses Centre;
"NR Data Sharing Objectives"	has the meaning given to it in paragraph 9.1 of this Part 1 of Schedule 6.7;
"NR Data Sharing Strategy"	has the meaning given to it in paragraph 9.1 of this Part 1 of Schedule 6.7;
"NR Managed Stations"	has the meaning given to it in paragraph 4.1 of this Part 1 of Schedule 6.7;
"One Team Stations Implementation Plan"	has the meaning given to it in paragraph 4.1 of this Part 1 of Schedule 6.7;
"One Team Stations Initiative"	has the meaning given to it in paragraph 4.1 of this Part 1 of Schedule 6.7;
"Operational Data"	has the meaning given to it in paragraph 9.1 of this Part 1 of Schedule 6.7;
"Performance Improvement Management System"	has the meaning given to it in paragraph 6.1 of this Part 1 of Schedule 6.7;
"Reactionary Minutes Delay"	has the meaning given to it in paragraph 6.1 of this Part 1 of Schedule 6.7;
"Required Establishment"	has the meaning given to it in paragraph 7.1 of this Part 1 of Schedule 6.7;
"RM3P"	has the meaning given to it in paragraph 6.1 of this Part 1 of Schedule 6.7;
"Specified Industry Initiatives"	has the meaning given to it in paragraph 3.1 of this Part 1 of Schedule 6.7;
"TD Academy Board"	has the meaning given to it in paragraph 13.1;
"TD Academy Objectives"	has the meaning given to it in paragraph 13.1 of this Part 1 of Schedule 6.7;
"TD Academy Plan"	has the meaning given to it in paragraph 13.1 of this Part 1 of Schedule 6.7;
"TD Academy Stakeholders"	has the meaning given to it in paragraph 13.1 of this Part 1 of Schedule 6.7;

- "Train Crew Numbers Data"** has the meaning given to it in paragraph 7.3 of this Part 1 of Schedule 6.7;
- "Train Driver Academy" or "TD Academy"** has the meaning given to it in paragraph 13.1 of this Part 1 of Schedule 6.7;

1. **Development, Design and Implementation of Future Initiatives**

- 8.3 The Franchisee shall, at the request of the Secretary of State, fully and effectively co-operate with the Secretary of State in connection with the development, design, and implementation of future initiatives which, in the opinion of the Secretary of State (acting reasonably) are likely to:
- (a) improve outcomes for passengers on any or all parts of the railway network;
 - (b) improve cost-efficiency and/or reduce costs in relation to any or all parts of the railway network;
 - (c) generate additional revenue for all or part of the railway network; or
 - (d) deliver any other benefits or support any government policy objective,
- (each a **"Future Initiative"**).
- 8.4 The Secretary of State may from time to time (and at all times acting reasonably) issue a notice to the Franchisee specifying any assistance that the Secretary of State requires from the Franchisee in relation to the development, design and/or implementation of a Future Initiative and the date by when any deliverable required pursuant to this paragraph 8.4 must be undertaken or delivered (a **"Future Initiative Notice"** or **"FIN"**). Without limiting the foregoing, a Future Initiative Notice may, but shall not be required to, request the Franchisee to, among other things:
- (a) prepare and submit to the Secretary of State a proposal or proposals in relation to achieving any of the outcomes described in paragraphs 8.3(a) to 8.3(d) of this part 1 of this Schedule 6.7;
 - (b) prepare and submit to the Secretary of State an implementation plan and cost and revenue forecasts in relation to the relevant Future Initiative;
 - (c) prepare and submit to the Secretary of State any relevant data, reports, feasibility studies, business cases or other information that is held by the Franchisee or which the Franchisee can reasonably be expected to obtain (including any such documents or information prepared or procured pursuant to paragraph (d) of this part 1 of this Schedule 6.7);
 - (d) identify, develop, design, assess and/or advise on options or proposals for delivering specified outputs or outcomes in connection with a Future Initiative, including undertaking or commissioning feasibility studies; developing implementation plans; analysing financial, operational, practical and other impacts and risks; developing business cases; reviewing and

commenting on documents; and participating in meetings or other discussions; and

- (e) collaborate and co-operate with the Secretary of State, Network Rail, other Train Operators, industry bodies and other relevant third parties to undertake any of the above activities jointly.

8.5 The Secretary of State may (acting reasonably) issue to the Franchisee:

- (a) any number of FINs in relation to a Future Initiative; and
 (b) FINs in relation of any number of Future Initiatives at any given time.

8.6 The Secretary of State may at any time, by proposing a Variation pursuant to paragraph 1.1(a) of Schedule 9.3 (*Variations to the Franchise Agreement and Incentivising Beneficial Changes*), require the Franchisee to develop, design and/or implement any changes to the Franchise Services or any provision of the Franchise Agreement in connection with a Future Initiative.

8.7 In consultation with the Secretary of State, the Franchisee shall assign a Franchise Employee with appropriate seniority to oversee and facilitate the Franchisee's compliance with its obligations pursuant to this paragraph 1 (a "**Franchisee FI Contact**"). The Franchisee shall confirm the identity of such Franchisee FI Contact to the Secretary of State by no later than as soon as reasonably practicable after the Start Date, and in any event by 16 November 2020.

8.8 The Franchisee FI Contact shall act as the Franchisee's primary point of contact with the Secretary of State in relation to all matters contemplated by this paragraph 1.

8.9 The Franchisee shall procure that the Franchisee FI Contact shall be supported from time to time by such other Franchisee Employees as shall be reasonably required to ensure the Franchisee's compliance with this paragraph 1.

8.10 This paragraph 1 is subject to the Secretary of State's rights pursuant to clause 14.13 (*Additional Services*) of the Franchise Agreement.

9 Not used

10 Improvement Initiatives

10.2 In this paragraph 10:

"**Franchisee Initiatives**" means any Improvement Initiatives which are identified by the Franchisee and which relate specifically to the Franchise Services.

"**Further Industry Initiatives**" means any Improvement Initiatives (other than Specified Industry Initiatives) which are intended to secure improvements on a railway industry wide basis.

"**Improvement Initiatives**" means any measures or initiatives which may apply to any aspect of the railway industry which are intended to secure improvements in relation to passenger outcomes, cost-efficiency and/or environmental outcomes or otherwise support the achievement of government policy objectives, including

any Franchisee Initiatives, Specified Industry Initiatives and Further Industry Initiatives.

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

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

10.2.i.1 WCML (South) Capacity study;

10.2.i.2 West Midlands Recovery Plan;

10.2.i.3 Manchester Recovery Task Force;

10.2.i.4 ECML Dec 2021;

10.2.i.5 Thames Valley service patterns;

10.2.i.6 Bristol area service improvements; and

10.2.i.7 Nottingham Improvement plan.

10.3 Subject to paragraph 10.5, the Franchisee shall:

- (a) proactively identify, develop, assess the business case for and implement Franchisee Initiatives.
- (b) co-operate and collaborate with, any or all of, the Secretary of State, Network Rail, Train Operators, freight operators, railway industry bodies and any other relevant third parties (as may be applicable), to jointly plan, develop and fully participate in the implementation of Specified Industry Initiatives; and
- (c) proactively co-operate and collaborate with, any or all of, the Secretary of State, Network Rail, Train Operators, freight operators, railway industry bodies and any other relevant third parties (as may be applicable), to jointly

identify, plan, develop and fully participate in the implementation of Further Industry Initiatives.

10.4 For the purposes of paragraphs 10.3(b) and 10.3(c), the Franchisee's obligation to co-operate and collaborate may require the Franchisee to use all reasonable endeavours to support the planning, development and implementation of the relevant Improvement Initiative in a manner satisfactory to the Secretary of State. In particular, this may require the Franchisee to:

- (a) provide advice to, or otherwise share its expertise with, the Secretary of State or Network Rail, including inputting into the business case for the relevant Improvement Initiative;
- (b) collect, analyse, share and/or report on certain information and data as may be necessary to inform the relevant Improvement Initiative;
- (c) attend and participate in relevant meetings or workshops in relation to the relevant Improvement Initiative;
- (d) implement such actions as may be agreed with relevant stakeholders in respect of the relevant Improvement Initiative, unless such actions cannot reasonably be expected to be implemented by the Franchisee taking account of the resources available to it and what could reasonably be expected of a competent and efficient operator; and
- (e) collaborate with, and respond to requests from, relevant stakeholders in respect of the relevant Improvement Initiative, unless such collaboration or responses (as the case may be) cannot reasonably be expected of the Franchisee taking account of the resources available to it and what could reasonably be expected of a competent and efficient operator.

10.5 Notwithstanding any other provision of this paragraph 10, if the Franchisee reasonably considers that pursuing the implementation of any Improvement Initiative or otherwise actioning any requests in connection with the planning, development or implementation of any Improvement Initiative would, or is reasonably likely to, result in:

- (a) it incurring additional costs, over and above those a Good and Efficient Operator would incur; or
- (b) in the case of Specified Industry Initiatives or Further Industry Initiatives, it being required to increase its staffing resources,

it shall notify the Secretary of State of the same and shall not proceed unless (i) the Secretary of State so directs or gives consent for it to do so or (ii) such additional staffing resources or costs were contemplated when the Secretary of State agreed or reasonably determined the Franchisee's most recent business plan and cost budget in accordance with the terms of Schedule 8.1A, and Schedule 11.2. If the Secretary of State directs or gives consent in relation to an Improvement Initiative pursuant to this paragraph 10.5, the Franchisee shall plan, develop or implement (as applicable) such Improvement Initiative in accordance with the Secretary of State's instructions.

10.6 Any notice issued pursuant to paragraph 10.5 shall include:

- (a) details of the proposed Improvement Initiative;

- (b) the Franchisee's assessment of the wider benefits for passengers, the wider economy, the environment and others;
- (c) the Franchisee's assessment of any financial or other benefits to Network Rail or other industry parties; and
- (d) the Franchisee's reasonable estimate of the associated cost or staffing requirements (as applicable).

11 One Team Stations Initiative

11.2 In this paragraph 11:

"NR Managed Stations" means each station which is served by Passenger Services and where Network Rail is the Station Facility Owner.

"One Team Stations Implementation Plan" means a detailed plan jointly produced between Network Rail and the Franchisee setting out how and when they will implement the One Team Stations Initiative.

"One Team Stations Initiative" means measures and initiatives to promote a 'one team' culture and approach between Network Rail and the Franchisee through collaborative working, unified policies and organisational delivery models such that customers are not able to distinguish between Network Rail and Franchisee employees at NR Managed Stations, resulting in improved passenger and cost efficiency outcomes.

11.3 During the Franchise Term, the Franchisee shall, including as may be requested by the Secretary of State or Network Rail, consult, co-ordinate and co-operate with Network Rail and other Train Operators (as applicable) in respect of the planning, development and implementation of the One Team Stations Initiative.

11.4 Subject always to paragraph 11.8, the Franchisee shall use all reasonable endeavours to agree a One Team Stations Implementation Plan with Network Rail by 28 February 2021 and shall update this as necessary for consistency with the One Team Stations Initiative from time to time.

11.5 If the Franchisee and Network Rail fail to agree a One Team Stations Implementation Plan in accordance with paragraph 11.4, the Franchisee shall promptly notify the Secretary of State and the Franchisee agrees that it shall accept such One Team Stations Implementation Plan as the Secretary of State may specify (acting reasonably and having due regard to the information provided by the Franchisee in its notice). In any notice issued to the Secretary of State pursuant to this paragraph 11.5, the Franchisee shall include reasonable details of the points of difference between the Franchisee and Network Rail, together with its reasons for not accepting any proposal made by Network Rail.

11.6 In developing the One Team Stations Initiative pursuant to paragraph 11.3, the Franchisee shall collaborate and cooperate with Network Rail and, where applicable, any other Train Operators to identify and assess the business case for any alternative operational delivery models, including joint management structures designed to improve customer service, operations and cost efficiency.

11.7 As soon as practicable following agreement of any One Team Stations Implementation Plan under paragraph 11.4 or otherwise following any instructions from the Secretary of State in accordance with paragraph 11.5, the Franchisee shall

take such action as may be necessary to discharge its obligations under this plan and shall promptly notify the Secretary of State of any material failure to discharge such obligations.

- 11.8 If the Franchisee reasonably considers that any provision of this paragraph 11 requires, or is likely to require, it do anything inconsistent with acting as a Good and Efficient Operator, it shall notify and consult with the Secretary of State as soon as reasonably practicable following becoming aware of the same and proceed in accordance with any guidance or directions that the Secretary of State may reasonably provide or direct (which may include a direction or guidance to agree and implement a proposal on such terms as the Secretary of State may reasonably specify).

12 Integrated Control Centres Initiative

- 12.2 During the Franchise Term, the Franchisee shall, where required to do so in accordance with this Franchise Agreement or where requested to do so by the Secretary of State or Network Rail, consult, co-ordinate and co-operate with Network Rail and other Train Operators (as applicable) in respect of the planning, development and/or implementation (as applicable) of the Integrated Control Centres Initiative at such Control Centres as the Secretary of State or Network Rail may specify.
- 12.3 If required to do so in accordance with paragraph 12.2, and subject always to paragraph 12.7, the Franchisee shall use all reasonable endeavours to agree an Integrated Control Centres Implementation Plan with Network Rail within such timescale as the Secretary of State or Network Rail may reasonably specify and shall update this as necessary for consistency with the Integrated Control Centres Initiative from time to time.
- 12.4 If the Franchisee and Network Rail fail to agree an Integrated Control Centres Implementation Plan in accordance with paragraph 12.3, the Franchisee shall promptly notify the Secretary of State and the Franchisee agrees that it shall accept such Integrated Control Centres Implementation Plan as the Secretary of State may specify (acting reasonably and having due regard to the information provided by the Franchisee in its notice). In any notice issued to the Secretary of State pursuant to this paragraph 12.4, the Franchisee shall include reasonable details of the points of difference between the Franchisee and Network Rail, together with its reasons for not accepting any proposal made by Network Rail.
- 12.5 If required to do so in accordance with paragraph 12.2, the Franchisee shall collaborate and cooperate with Network Rail and, where applicable, any other Train Operators to:
- (a) identify any alternative operational delivery models which could be developed and implemented to promote an integrated approach to joint control at any Control Centres; and
 - (b) assess the business case for the industry (as a whole) for implementing any such proposals.
- 12.6 As soon as practicable following agreement of any Integrated Control Centres Implementation Plan under paragraph 12.3 or otherwise following any instructions from the Secretary of State in accordance with paragraph 12.4, the Franchisee shall take such action as may be necessary to discharge its obligations under this plan

and shall promptly notify the Secretary of State of any material failure to discharge such obligations.

- 12.7 If the Franchisee reasonably considers that any provision of this paragraph 12 requires, or is likely to require, it do anything inconsistent with acting as a Good and Efficient Operator, it shall notify and consult with the Secretary of State as soon as reasonably practicable following becoming aware of the same and proceed in accordance with any guidance or directions that the Secretary of State may reasonably provide or direct (which may include a direction or guidance to agree and implement a proposal on such terms as the Secretary of State may reasonably specify).

13 Co-operation

- 13.2 In this paragraph 13:

"Performance Improvement Management System" means the rail industry framework for the management of performance risks;

"Reactionary Minutes Delay" means the minutes of delay to the Passenger Services that are attributed as 'Reactionary Delay' in accordance with the Delay Attribution Principles and Rules, disregarding any minutes of delay that are imputed to Passenger Services that were cancelled; and

"RM3P" means the 'Risk Management Maturity Model for Performance' system to monitor and manage operational performance within the rail industry.

- 13.3 The Franchisee shall work fully and effectively with Network Rail as required to:

- (a) analyse Reactionary Minutes Delay and develop and deliver performance improvement plans to address areas of underperformance, focusing on improving Timetable robustness and contingency planning;
- (b) record, monitor and reduce sub-threshold delay;
- (c) implement industry best practice approaches to improving performance, including, if requested by the Secretary of State, the deployment of the RM3P and the Performance Improvement Management System; and
- (d) review 'TRUST Delay Codes' (as set out in the Delay Attribution Principles and Rules) and identify opportunities to improve the delay attribution process set out in the Delay Attribution Principles and Rules.

14 Operational Planning

- 14.2 In this paragraph 14:

"Event Steering Groups" has the meaning given to it in the Network Code.

"Required Establishment" means the number of train crew required in order to operate the Passenger Services, which in the case of drivers shall be calculated in accordance with the Rail Delivery Group's "Guidance Note on Driver Establishment Calculation (December 2013)" and otherwise in accordance with an equivalent methodology.

“**Train Crew Numbers Data**” has the meaning given to it in paragraph 14.4.

- 14.3 The Franchisee shall consult, co-ordinate and co-operate with Network Rail and any relevant Train Operators in respect of the planning, development and implementation of proposals to support the continuous improvement of train timetabling and train planning functions. Amongst other things, this shall include developing improvements to:
- (a) the quality of the Franchisee’s and Network Rail’s timetable planning activities, through, amongst other things:
 - 14.3.a.1 adequate resourcing of train planning and diagramming activities for both rolling stock and traincrew;
 - 14.3.a.2 collaborative working between the Franchisee’s and Network Rail or other Train Operators’ planning teams;
 - 14.3.a.3 the timely sharing of plans for rolling stock and traincrew, including ancillary moves;
 - 14.3.a.4 timely sharing of rolling stock characteristics required to support timetable simulation and performance modelling; and
 - 14.3.a.5 an increased focus on the advance development of major timetable changes, including through Event Steering Groups;
 - (b) the robustness and resilience of the Franchisee’s and Network Rail’s train plans through collaborative working, to ensure jointly developed train regulation policies, contingency and service recovery plans including but not limited to data in relation to, and plans for:
 - 14.3.b.1 diversionary route availability (including traincrew knowledge and rolling stock clearance); and
 - 14.3.b.2 traincrew flexibility (including route and traction knowledge, and spare cover).
- 14.4 The Franchisee shall, as soon as reasonably practicable following any request, provide Network Rail with such information as it may reasonably request, including:
- (a) information in relation to current and projected future numbers of train crew employed, in aggregate and in respect of each individual train crew depot or link, and distinguishing in each case between different types of train crew and between fully qualified individuals and trainee (the “**Train Crew Numbers Data**”); and
 - (b) a comparison of the Train Crew Numbers Data against the Franchisee’s most recent assessment of the current and expected future Required Establishment in each case.

15 Infrastructure Projects

The Franchisee shall, throughout the Franchise Term, consult, co-ordinate and co-operate with Network Rail and any relevant Train Operators in respect of the planning, development and/or implementation (as applicable) of such renewals,

enhancements and associated possessions as Network Rail may notify to the Franchisee. In particular, the parties shall work collaboratively to:

- (a) identify opportunities to coordinate and combine the delivery of infrastructure enhancements and planned renewals; and
- (b) plan possessions,

in each case, in such manner as achieves the optimum compromise between outcomes for passengers and cost-efficiency for the railway industry as a whole.

16 Sharing Data with Network Rail

16.2 In this paragraph 16:

"Financial and Commercial Data" means financial and commercial data and information in respect of:

- (a) the number of passengers using the Passenger Services, including as may be sourced from MOIRA, Lennon, passenger counts, yield management data and gate line data; and
- (b) operating costs.

"NR Data Sharing Objectives" means the aims and objectives of data sharing as may be agreed between the Franchisee and Network Rail and documented in the NR Data Sharing Strategy, including for the purposes of improving the planning and delivery of the day to day operational activities, supporting business planning, supporting train planning, informing service change and timetabling proposals, planning access and possessions, assessing the railway industry business case for specified proposals and to support strategic planning.

"NR Data Sharing Strategy" means the data sharing strategy to be developed in accordance with paragraph 16.3, as may be updated from time to time.

"Operational Data" means data and information in relation to the day to day operation of the passenger services including in relation to traincrew diversionary route and traction knowledge, Train Plan, rolling stock configuration, stock and crew diagrams and fleet reliability data.

16.3 By no later than 31 January 2021, the Franchisee shall, jointly with the Network Services Directorate of Network Rail, develop and use all reasonable endeavours to agree a strategy, which sets out the basis on which the Franchisee will, subject to any guidance or instructions that the Secretary of State may provide or issue from time to time, share specified operational, financial and commercial data and information with Network Rail. As a minimum, the strategy will include:

- (a) the agreed NR Data Sharing Objectives;
- (b) the types of data to be shared by the Franchisee and Network Rail (including Operational Data and Financial and Commercial Data);
- (c) the format and frequency of the data sharing;
- (d) how the Franchisee and Network Rail intend to receive, use and safely store the data;

- (e) approach to cost-sharing and apportionment in respect of the data sharing; and
- (f) approach to overcoming any confidentiality or other restrictions in respect of data sharing or storage which may arise (including as matter of law).

16.4 If the Franchisee:

- (a) is unable to agree the NR Data Sharing Strategy with Network Rail by 31 January 2021 or
- (b) reasonably considers that any proposal pursuant to this paragraph 16 requires, or is likely to require, it to do anything inconsistent with acting as a Good and Efficient Operator,

it shall notify and consult with the Secretary of State as soon as reasonably practicable following becoming aware of the same and proceed in accordance with such guidance or directions as the Secretary of State may reasonably provide or direct (which may include a direction or guidance to agree and implement a proposal on such terms as the Secretary of State may reasonably specify).

- 16.5 The Franchisee shall use all reasonable endeavours to implement the NR Data Sharing Strategy in accordance with its terms, and shall continue to consult, collaborate and co-operate with Network Rail to agree any reasonable amendments or updates to the NR Data Sharing Strategy from time to time.
- 16.6 The Franchisee shall propose and use all reasonable endeavours to agree with Network Rail suitable amendments to the NR Data Sharing Strategy to ensure compliance with any guidance or instructions issued or provided by the Secretary of State from time to time.
- 16.7 The Franchisee shall not unreasonably withhold or delay its consent to any amendments which Network Rail may reasonably propose to the NR Data Sharing Strategy, provided that the Franchisee shall not agree to any amendments which would not be in compliance with any guidance the Secretary of State may provide or issue from time to time.
- 16.8 Notwithstanding any other term of this paragraph 16, the Franchisee shall not be required to do anything which would put it in breach of any obligation on the Franchisee arising under applicable Law or the terms of its Licences.

17 Sharing on-train data with Network Rail

- 17.2 The Franchisee shall, to the extent reasonably requested by Network Rail, share with Network Rail all relevant data including GPS data and data derived from geometry measurement systems, forward facing CCTV, driver advisory systems and train condition monitoring systems fitted to any rolling stock within the Train Fleet. Any such data provided to Network Rail shall be provided in such format as Network Rail may reasonably request without charge.
- 17.3 The Franchisee shall, if so requested by Network Rail, provide advice to Network Rail on the feasibility, costs and associated practicalities of providing Network Rail with access to real-time (or near-real-time) footage from on-train forward-facing CCTV systems.

18 Not used**19 Compensation**

Save with the prior written consent (such consent not to be unreasonably withheld or delayed) of the Secretary of State, the Franchisee shall not:

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

20 TD Academy

20.2 In this paragraph 20 of part 1 of Schedule 6.7:

"**TD Academy Board**" means the board of the TD Academy.

"**TD Academy Objectives**" means:

- 20.2.a.1 improving the consistency and quality of driver training;
- 20.2.a.2 improving and increasing driver training throughout with the objective of eliminating the shortage of drivers;
- 20.2.a.3 improving driver skills and qualifications, including through increased uptake of the Train Driver Apprenticeship (Level 3) (as supported by the Institute for Apprenticeships and Technical Education);
- 20.2.a.4 improving, increasing and promoting diversity of drivers in the industry in accordance with the Approved D&I Strategy;
- 20.2.a.5 providing information to the TD Academy Board for assurance on training quality to stakeholders; and
- 20.2.a.6 promoting synergies, efficiencies and consistency through collaboration between TD Academy Stakeholders on driver training programmes and initiatives, (each, a "**TD Academy Objective**").

"**TD Academy Plan**" has the meaning given to it in paragraph 20.4(b), including as updated from time to time.

"**TD Academy Stakeholders**" means the Franchisee, the Secretary of State, Train Operators, the RDG, any other relevant rail industry bodies and any other

stakeholders which the Secretary of State may notify the Franchisee of from time to time.

"Train Driver Academy" or **"TD Academy"** means the scheme to promote driver training programmes (including through online learning platforms) which was originally established by the RDG in 2019, including as it may be amended, supplemented or replaced from time to time."

- 20.3 During the Franchise Period, the Franchisee shall consult, co-ordinate and co-operate with the TD Academy Stakeholders as appropriate (or as may be required by the Secretary of State) from time to time in respect of the planning, development and/or implementation (as applicable) of the Train Driver Academy and/or in connection with promoting the TD Academy Objectives.
- 20.4 By no later than 30 November 2020, the Franchisee shall provide the Secretary of State with a report:
- (a) setting out how it is currently engaging with the TD Academy and/or promoting the TD Academy Objectives; and
 - (b) how it intends to engage with the TD Academy and/or promote the TD Academy Objectives during the Franchise Period, including its proposed timing for achieving any key milestones (the **"TD Academy Plan"**), together with an assessment of the costs and practicalities involved in implementing the TD Academy Plan.
- 20.5 Following the report referred to in paragraph 20.3, the Franchisee shall implement its TD Academy Plan and shall promptly notify the Secretary of State of any material departures or failure to do so.
- 20.6 The Secretary of State may, from time to time:
- (a) recommend specified changes to the Franchisee's TD Academy Plan as it considers reasonable to promote the achievement of the TD Academy Objectives; and
 - (b) direct the Franchisee to comply with and or implement instructions which the Secretary of State considers necessary to promote the achievement of the TD Academy Objectives.
- 20.7 The Franchisee shall:
- (a) take account of, and update its TD Academy Plan in respect of, any Secretary of State recommendations pursuant to paragraph 20.6(a) and implement its TD Academy Plan (as amended); and
 - (b) implement and or comply with any Secretary of State instructions pursuant to paragraph 20.6(b) and update its TD Academy Plan accordingly.
- 20.8 During the Franchise Period, the Franchisee shall not enter into any new contracts or other arrangements which may materially adversely affect the Franchisee's ability to comply with this paragraph 20, without the prior written consent of the Secretary of State.

PART 2 – PAY AND INDUSTRIAL RELATIONS AND DISPUTE HANDLING**1. Notification of the Secretary of State**

1.1 In this part 2 of Schedule 6.7:

“Collective Agreement” has the meaning given to it in the Trade Union and Labour Relations (Consolidation) Act 1992.

“Dispute Handling Policy” means the policy issued by the Secretary of State with the same name on, on or about the Start Date, as may be amended, supplemented or replaced from time to time.

“Dispute Handling Plan” has the meaning given to it in paragraph 5.2 of this part 2 of Schedule 6.7.

“Employment Agreement” means the terms and conditions of employment of any Franchise Employee whether contained in or otherwise incorporated or implied, including by way of custom or practice, into any Collective Agreement, individual contract of employment, employee handbook or otherwise, in each case whether or not in writing.

“Employment Policy Framework” has the meaning given to it in paragraph 2.1 of this part 2 of Schedule 6.7

“In-Scope Matters” means any of the following matters in relation to any Franchise Employees:

- (i) pay negotiation strategies;
- (ii) changes to any remuneration strategy, pension arrangements or staff benefits;
- (iii) any proposed restructuring or redundancy plans;
- (iv) any proposed changes affecting Franchise Employees (including proposed changes to the terms of any Employment Agreement, any proposed changes to working practices or procedures, howsoever these are recorded or have become established, and whether these apply nationally or locally) which either party reasonably believes (a) is likely to give rise to material industrial relations risks (including a risk of Industrial Action); and/or (b) could have a material negative impact on productivity; and/or

(c) would not be in train passengers' interests;

(v) any other matter notified to the Franchisee by the Secretary of State from time to time; and/or

(vi) any negotiation or consultation strategies regarding any of the matters at (i) to (v) above,

(each, an **"In-Scope Matter"**).

"Mandate"

means in relation to any In-Scope Matter any mandate formally agreed from time to time in writing (other than through email or other informal correspondence unless the email in question includes express confirmation from the Secretary of State that its content (or stipulated part of it) is to form a Mandate) between the Franchisee and the Secretary of State regarding: (i) the objective or objectives of negotiations or consultation; (ii) any parameters or constraints on such objective(s), or the substance of such negotiations or consultation; and/or (iii) how such negotiations or consultation are to be approached, structured or handled.

"Relevant Employer"

means any of the Franchisee's Affiliates 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, which employs Franchise Employees performing or in support of or ancillary to the Franchise Services.

"Reward and People Principles"

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

"Trade Union"

means any trade union(s) recognised by the Franchisee or any Relevant Employer in respect of Franchise Employees.

- “Unrepresented Employees”** has the meaning given to it in paragraph 1.7(a).
- “Workers”** has the meaning given to it in paragraph 10.

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

and where reasonably practicable in each case in good time to allow for proper engagement with the Secretary of State, inform the Secretary of State of all relevant information relating to any such matters and any other information the Secretary of State may request from time to time in relation to such matters. Where there is any doubt as to whether a matter requires notification in accordance with this paragraph 1.2, the Franchisee shall, and shall procure that each other Relevant Employer shall, make a notification in any event. In determining whether to make a notification and/or what information must be provided to the Secretary of State by the Franchisee, the Franchisee shall have regard to its obligations under paragraph 7.1 of this Part 2 of Schedule 6.7.

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

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

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

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

in each case where the Secretary of State in the Secretary of State’s sole discretion determines that such loss of revenue or increased costs (as the case may be) arises

in connection with actions taken (or omitted to be taken) by the Franchisee or Relevant Employer in relation to the relevant In-Scope Matter.

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

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

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

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

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

- (a) any issue which would require notification in paragraphs 1.2(a) and 1.2(b) in relation to an In-Scope Matter shall require notification if the issue arises in respect of any group of more than one such unrepresented Franchise Employees ("**Unrepresented Employees**"); and
- (b) when paragraph 1.7(a) applies, once a Mandate is required, the provisions of this part 2 of Schedule 6.7 shall apply in full in respect of the relevant Unrepresented Employees.

2. **Reward and People Principles**

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

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

- (i) **[REDACTED⁹⁸]**

⁹⁸ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

(ii) [REDACTED⁹⁹]

(iii) [REDACTED¹⁰⁰]

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

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

2.2 Nothing in this part 2 of Schedule 6.7 shall prevent the Franchisee or Relevant Employer from seeking to reach agreement with any Trade Union, other employee representative body or Relevant Employees or taking such other steps as are appropriate or necessary regarding new or revised terms and conditions of employment in order to implement the Employment Policy Framework or any Mandate.

2.3 The Franchisee shall, and shall procure that each Relevant Employer shall, unless otherwise directed by the Secretary of State, conduct any negotiations or consultation with any Trade Union, other employee representative body or group of employees (within paragraph 1.7(a)) regarding the subject of a Mandate in accordance with the Employment Policy Framework.

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

3. **Terms of Employment**

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

3.2 Without limiting paragraph 3.1, subject to paragraph 3.4, the Franchisee shall not, and shall procure that each 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 with any Franchise Employee (in particular, the Franchisee shall not, and shall procure that each Relevant Employer shall not, promise to make any additional payment or

⁹⁹ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹⁰⁰ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

provide any additional benefit or vary any term or condition relating to holiday, leave or hours to be worked) where the revised terms of employment of any existing Franchise Employee may take effect on or after the Start Date if and to the extent that such terms or conditions are more favourable than the standard terms or conditions of employment of the equivalent or nearest equivalent Franchise Employee role at the date on which such revised terms and conditions are scheduled to take effect.

3.3 Without limiting paragraph 3.1, subject to paragraph 3.4, the Franchisee shall not, and shall procure 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 prospective Franchise Employee where the employment of such prospective Franchise Employee by the Franchisee or such other Relevant Employer may commence on or after the Start Date if and to the extent that:

- (a) such terms or conditions are more favourable than the standard terms or conditions of employment of the equivalent or nearest equivalent Franchise Employee role at the date on which such employment is scheduled to commence; and
- (b) if such terms or conditions were granted to such equivalent Franchise Employee already employed by the Franchisee by way of variation to their terms or conditions of employment, the Franchisee would be in contravention of paragraph 3.2.

3.4 For the purposes of matters falling within paragraphs 3.2 and 3.3, no consent will be required from the Secretary of State in respect of any changes or proposed changes made or proposed in the ordinary course of business in accordance with human resources policies (in relation to the day to day management of the Franchisee's or Relevant Employer's business) which exist prior to the Start Date which: (a) are not likely to give rise to material industrial relations risks (including a risk of Industrial Action); and/or (b) will not have a material negative impact on productivity; and/or (c) are not contrary to train passengers' interests.

4. **In-Scope Matters**

4.1 The Secretary of State may at any time, in the Secretary of State's sole discretion, determine that a matter is, or is not, an In-Scope Matter. Save where either paragraph 4.4 or 4.5 applies, a determination that a matter is an In-Scope Matter will be final and conclusive but will not prevent the Parties agreeing that a matter is no longer an In-Scope Matter.

4.2 Without prejudice to paragraphs 3.2 and 3.3, if a matter is not an In-Scope Matter, no Mandate is required. For these purposes, matters in respect of which a Mandate is not required will include changes to working practices made in the ordinary course of business in accordance with human resources policies (in relation to the day to day management of the Franchisee's or Relevant Employer's business) which exist prior to the Start Date which: (a) are not likely to give rise to material industrial relations risks (including a risk of Industrial Action); and/or (b) will not have a material negative impact on productivity; and/or (c) are not contrary to train passengers' interests.

4.3 Where a Franchisee (or a Relevant Employer) is in any doubt as to whether any matter is an In-Scope Matter requiring a Mandate, it must, or must procure that the Relevant Employer shall, inform the Secretary of State in good time prior to

steps being taken to implement such matter or change and the Franchisee must, or must procure that the Relevant Employer shall, if requested by the Secretary of State, provide an explanation of why it believes the proposed matter or change is not an In-Scope Matter requiring a Mandate. Thereafter, the Secretary of State may make a determination in accordance with paragraph 4.1. Provided the Secretary of State, acting reasonably, is satisfied that the Franchisee complied with its obligations under this paragraph 4.3 and paragraph 7.1, the Secretary of State's determination shall, subject to paragraph 4.5, be final and conclusive. Where the Secretary of State has determined that a matter is an In-Scope Matter, nothing will prevent the Parties subsequently agreeing that the matter is no longer an In-Scope Matter.

- 4.4 Where a matter is not an In-Scope Matter, the Parties acknowledge and agree that further developments in relation to, and/or escalation of, that matter may be such that it could result in (a) material industrial relations risks (including a risk of Industrial Action); and/or (b) a material negative impact on productivity; and/or (c) be contrary to train passengers' interests. In any such event, the Franchisee will make a notification to the Secretary of State in accordance with paragraph 4.3 with a view to seeking a determination from the Secretary of State as to whether the matter has become an In-Scope Matter.
- 4.5 Any determination by the Secretary of State that any matter is an In-Scope Matter is conditional on the Secretary of State, acting reasonably, being and remaining satisfied that the Franchisee and, where relevant, the Relevant Employer have disclosed all relevant information relating to such matter and complying and continuing to comply with the duty in paragraph 7.1. If, in the Secretary of State's opinion, acting reasonably, there is or has been any material non-disclosure of relevant information or a material breach of paragraph 7.1 by the Franchisee or Relevant Employer, the Secretary of State may determine that the Mandate is void in which case for the purposes of this part 2 of Schedule 6.7 costs, losses and revenues shall be treated as if that Mandate had never been agreed and paragraph 1.4(a) of this part 2 of Schedule 6.7 shall apply in respect of any acts or omissions of the Franchisee, or the Relevant Employer, in relation to that matter. The Parties acknowledge and agree that where this paragraph 4.5 applies, the Secretary of State may take such action and/or instruct such changes as it considers reasonably necessary to correct the apportionment of costs, losses and revenues between the Parties.

5. Industrial Action

- 5.1 The Franchisee shall, and shall procure that each Relevant Employer shall, comply with the Dispute Handling Policy. Without prejudice to any obligations under the Dispute Handling Policy, to the extent the Franchisee, acting reasonably, believes that Industrial Action is likely to occur as a result of its (or any Relevant Employer's) compliance with any aspect of this part 2 of Schedule 6.7 (including any Mandate agreed pursuant to it), or for any other reason, it shall promptly notify the Secretary of State of its reason for that belief and the effect, or the anticipated effect, of such event on the performance of the Franchise Services and provide the Secretary of State with such further information as the Secretary of State may request.
- 5.2 As soon as reasonably practicable following a notification set out in paragraph 5.1 above, and in any event within three (3) Weekdays following such notification, the Franchisee shall propose a process it intends to adopt to deal with the relevant Industrial Action in accordance with and subject to the Dispute Handling Policy.

The Franchisee and the Secretary of State shall use reasonable endeavours to agree how the relevant Industrial Action shall be handled, bearing in mind the Dispute Handling Policy, provided however that the Franchisee's handling of such Industrial Action will be subject always to the Secretary of State's direction, such agreement and/or direction being the "**Dispute Handling Plan**". The Franchisee shall, and shall procure that each Relevant Employer shall, act in accordance with the Dispute Handling Plan.

- 5.3 If:
- (a) agreement is not reached regarding how relevant Industrial Action is to be handled; or
 - (b) in the event that Industrial Action occurs which the Secretary of State determines (at the Secretary of State's sole discretion, acting reasonably), has arisen as a result of the Franchisee or any Relevant Employer not complying with its or their obligations under this part 2 of Schedule 6.7 (including any Mandate agreed pursuant to it, any failure to act in accordance with the Dispute Handling Plan, to make a notification required by paragraph 1.2 or to provide all relevant information in relation to such notification and/or to comply with paragraphs 7.1 and 7.3,

either of which has resulted in a loss of revenue, an increase or decrease in costs, or a combination of the foregoing, as a consequence (direct or otherwise) of the disruption to Passenger Services (however so related), the Secretary of State may in the Secretary of State's sole discretion:

- (c) determine that this shall be treated as a Change (but only in respect of the Financial Measures Performance Payment, unless the Secretary of State, in their sole discretion, determines that such Change may also apply to other Relevant Measures);
- (d) direct that any such increase in costs shall be treated as Disallowable Costs and the Franchisee shall not, in any circumstances, be entitled to claim back such costs from the Secretary of State whether pursuant to Schedule 8.1A (*Franchise Payments*) or otherwise; and/or
- (e) direct that any such lost revenue shall be treated as Revenue Foregone.

- 5.4 To the extent that the Franchisee:

- (a) has complied with this part 2 of Schedule 6.7 (including any applicable Mandate); and
- (b) has complied with the Dispute Handling Plan,

then:

- (c) the Secretary of State, will not treat any increase in costs or loss of revenue of the Franchisee arising from the relevant Industrial Action (however caused and of whatever nature) as a Disallowable Cost or Revenue Foregone (respectively); and
- (d) a Change shall occur (but only in respect of the Financial Measures Performance Payment, unless the Secretary of State, in their sole discretion, determines that such Change may also apply to other Relevant Measures);

provide that, in each case, the Secretary of State is satisfied that the Franchisee has acted reasonably in taking all reasonable steps (and procuring that any Relevant Employer has taken all reasonable steps) to avoid the Industrial Action and that, Industrial Action having nevertheless occurred, the Franchisee has taken all reasonable steps (and has procured that any Relevant Employer has taken all reasonable steps) to mitigate its effects.

6. Reform

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

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

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

6.3 During the Franchise Period, the Franchisee shall not, and shall procure that each Relevant Employer shall not, enter into any new Employment Agreements otherwise than in accordance with the terms of this part 2 of Schedule 6.7 (including any applicable Mandate) and the Employment Policy Framework without the prior written consent of the Secretary of State.

7. Duties of the Franchisee

7.1 In relation to any matters dealt with in this part 2 of Schedule 6.7, the Franchisee shall, and shall procure that each Relevant Employer shall, deal with the Secretary of State in an open and cooperative way, and must disclose to the Secretary of State on an ongoing basis anything relating to the Franchise Employees (and any Trade Union or other employee representative body representing any such employees) of which the Secretary of State would reasonably expect notice in respect of anything which might reasonably be expected to be relevant to an In-Scope Matter.

7.2 The Franchisee shall (and shall procure that each Relevant Employer shall) act within the spirit of this part 2 of Schedule 6.7 in its communications and dealings with any Trade Union, employee representative body or any Franchise Employee, both locally and nationally.

7.3 The Franchisee's duty to act as a Good and Efficient Operator shall apply to the discharge of its obligations under this part 2 of Schedule 6.7.

8. **Cooperation**

Where the Franchisee or Relevant Employer reasonably considers that complying with any aspect of this Schedule 6.7, including any aspect of the Employment Policy Framework or any Mandate, will cause it to breach any legal obligation of the Franchisee or Relevant Employer in their capacity as employer (whether arising under legislation or at common law) including breaches of legislation relating to unlawful discrimination or equal pay, the Secretary of State and Franchisee shall work in cooperation (and/or, as appropriate, the Secretary of State shall, and the Franchisee shall use reasonable endeavours to procure that the Relevant Employer shall, work in cooperation) with a view to agreeing an approach to, as the case may be, compliance with such obligations under this part 2 of Schedule 6.7 or avoidance or mitigation of the risk of such breach by the Franchisee or Relevant Employer. Once such an approach is agreed, the Franchisee shall, and will procure that the Relevant Employer shall, implement it on its terms.

9. **Disallowable Costs**

Save as provided in this part 2 of Schedule 6.7 or as expressly agreed with the Secretary of State, any losses and liabilities (including costs, charges, penalties, compensation or similar payments) incurred as result of termination of a contract of employment of, or reaching any settlement or compromise with, a Franchisee Employee shall be Disallowable Costs.

10. **Workers**

To the extent that the Franchisee or any Relevant Employer engages individuals to work on the Franchise Services as workers (howsoever "workers" is defined in relevant English employment legislation from time to time, but excluding "agency workers" as defined in the Agency Worker Regulations 2010, as amended from time to time) ("**Workers**") rather than employees, the provisions in this part 2 of Schedule 6.7 shall be deemed to cover such Workers. In such circumstances, the engaging party shall be the Franchisee or the Relevant Employer, as applicable, and references to terms and conditions of employment shall be construed as references to terms and conditions of engagement and references to Franchise Employees shall include such workers.

SCHEDULE 7
PERFORMANCE BENCHMARKS

Schedule 7.1:	Operational Performance
	Appendix 1: TOC on Self Cancellations Benchmarks and Enforcement TOC on Self Cancellations Benchmarks Part 1 – Enforcement TOC on Self Cancellations Benchmark Table Part 2 – TOC on Self Cancellations Benchmark Table
	Appendix 2: TOC Minute Delay Benchmarks and Enforcement TOC Minute Delay Benchmarks Part 1 – Enforcement TOC Minute Delay Benchmark Table Part 2 – TOC Minute Delay Benchmark Table (Financial Regime)
	Appendix 3: Short Formation Benchmarks and Enforcement Short Formation Benchmarks Part 1 – Enforcement Short Formation Benchmark Table Part 2 – Short Formation Benchmark Table
	Appendix 4: T-3 Table
	Appendix 5: T-15 Table
	Appendix 6: All Cancellations Table
Schedule 7.2:	Customer Experience and Engagement
	Appendix 1: NRPS Benchmark Table
Schedule 7.3:	Service Quality Regime Part A – Service Quality Management Process Part B – Inspections and Audits Part C – Calculations of Pass Rates and Calculations related to the Service Quality Regime Part D – Publication and Reporting Requirements Part E – Remedies Part F – NOT USED
	Appendix 1: Service Quality Schedules Part 1: NOT USED Part 2: SQR Trains Part 3: SQR Customer Service
	Appendix 2: Service Quality Areas/SQR Benchmarks/Service Quality Indicators/Weightings Part 1: NOT USED Part 2: SQR Trains Part 3: SQR Customer Service

	Appendix 3: NOT USED
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Schedule 7.1

Operational Performance

1. **Definitions, Charging Review, Track Access Agreement, Changes to Benchmarks and Enforcement Benchmarks and Notice of Performance Results**

1.1 For the purposes of this Schedule 7.1 (Operational Performance) only, the following words and expressions shall have the following meanings unless otherwise set out in clause 3 (*Definitions*):

“Actual All Cancellations Performance Level”

means, in respect of a Reporting Period, the All Cancellations Figures most recently published by Network Rail for that Reporting Period in relation to the Franchisee;

“Actual T-3 Performance Level”

means, in respect of a Reporting Period, the T-3 Figures most recently published by Network Rail for that Reporting Period in relation to the Franchisee;

“Actual T-15 Performance Level”

means, in respect of a Reporting Period, the T-15 Figures most recently published by Network Rail for that Reporting Period in relation to the Franchisee;

“All Cancellations Measure”

means, for each Reporting Period, each of the benchmarks specified in the All Cancellations Table for that Reporting Period;

“All Cancellations Table”

means the table set out in Appendix 6 (All Cancellations Table) of this Schedule 7.1;

“Breach Performance Level”

means, in relation to an Enforcement Benchmark for any Reporting Period, the number set out in Column 2 of the Enforcement TOC on Self Cancellations Benchmark Table, the Enforcement Short Formation Benchmark Table, the Enforcement TOC Minute Delay Benchmark Table and (as the case may be) in the row of the applicable table for that Franchisee Year;

“Cancellation”	means a Passenger Service:
	(a) which is included in the Enforcement Plan of the Day and which is cancelled for reasons attributed to the Franchisee pursuant to the Track Access Agreement; or
	(b) which is included in the Enforcement Plan of the Day and which operates less than fifty per cent (50%) of its scheduled mileage (as prescribed in the Enforcement Plan of the Day) for reasons attributed to the Franchisee pursuant to the Track Access Agreement;
“Draft Action Plan”	has the meaning given to it in paragraph 9.1(b) (i), of Part 1 of this Schedule 7.1;
“Enforcement Benchmark”	means any of the Enforcement TOC on Self Cancellations Benchmark, the Enforcement TOC Minute Delay Benchmark or the Enforcement Short Formation Benchmark (as the context may require);
“Enforcement TOC on Self Cancellations Benchmark”	means for each Reporting Period within each Franchisee Year, the benchmark specified in the Enforcement TOC on Self Cancellations Benchmark Table for that Franchisee Year;
“Enforcement TOC on Self Cancellations Benchmark Table”	means the table set out in Part 1 of Appendix 1 (<i>TOC on Self Cancellations Benchmarks and TOC Enforcement Cancellations Benchmarks</i>) of this Schedule 7.1;
“Enforcement Short Formation Benchmark”	means, for each Reporting Period within each Franchisee Year, the benchmark specified in the Enforcement Short Formation Benchmark Table for that Franchisee Year;
“Enforcement Short Formation Benchmark Table”	means the table set out in Appendix 3 (<i>Short Formation Benchmarks and Enforcement Short Formation Benchmarks</i>) of this Schedule 7.1;
“Enforcement TOC Minute Delay Benchmark”	means, for each Reporting Period within each Franchisee Year, the benchmark specified in the Enforcement TOC Minute Delay Benchmark Table for that Franchisee Year;

“Enforcement TOC Minute Delay Benchmark Table”

means the table set out in Part 1 of Appendix 2 (*TOC Minute Delay Benchmarks*) of this Schedule 7.1;

“Enhanced Fee Band Performance Level”

means, in relation to:

- (a) a TOC on Self Cancellations Benchmark for any Reporting Period, the number set out in Column 5 (Enhanced Fee Band Performance Level) of the TOC on Self Cancellations Benchmark Table for that Reporting Period;
- (b) a TOC Minute Delay Benchmark for any Reporting Period, the number set out in Column 5 (Enhanced Fee Band Performance Level) of the TOC Minute Delay Benchmark Table for that Reporting Period;
- (c) a Short Formation Benchmark for any Reporting Period, the number set out in Column 5 (Enhanced Fee Band Performance Level) of the Short Formation Benchmark Table for that Reporting Period;
- (d) a T-3 Measure for any Reporting Period, the number set out in Column 5 (Enhanced Fee Band Performance Level) of the T-3 Table for that Reporting Period;
- (e) a T-15 Measure for any Reporting Period, the number set out in Column 5 (Enhanced Fee Band Performance Level) of the T-15 Table for that Reporting Period; or

an All Cancellations Measure for any Reporting Period, the number set out in Column 5 (Enhanced Fee Band Performance Level) of the All Cancellations Table for that Reporting Period;

“Expected Fee Band Performance Level”

means, in relation to:

- (a) a TOC on Self Cancellations Benchmark for any Reporting Period, the number set out in Column 4 (Expected Fee Band Performance Level) of the TOC on Self Cancellations Benchmark Table for that Reporting Period;

- (b) a TOC Minute Delay Benchmark for any Reporting Period, the number set out in Column 4 (Expected Fee Band Performance Level) of the TOC Minute Delay Benchmark Table for that Reporting Period;
- (c) a Short Formation Benchmark for any Reporting Period, the number set out in Column 4 (Expected Fee Band Performance Level) of the Short Formation Benchmark Table for that Reporting Period;
- (d) a T-3 Measure for any Reporting Period, the number set out in Column 4 (Expected Fee Band Performance Level) of the T-3 Table for that Reporting Period;
- (e) a T-15 Measure for any Reporting Period, the number set out in Column 4 (Expected Fee Band Performance Level) of the T-15 Table for that Reporting Period; or
- (f) an All Cancellations Measure for any Reporting Period, the number set out in Column 4 (Expected Fee Band Performance Level) of the All Cancellations Table for that Reporting Period;

“Initial TOC on Self Cancellations Calculation” has the meaning given to it in paragraph 3.1(a) of Part 1 of this Schedule 7.1;

“Initial TOC Minute Delay Calculation” has the meaning given to it in paragraph 4.1(a) of Part 1 of this Schedule 7.1;

“Nil Fee Band Performance Level” means, in relation to:

- (a) a TOC on Self Cancellations Benchmark for any Reporting Period, the number set out in Column 3 (Nil Fee Band Performance Level) of the TOC on Self Cancellations Benchmark Table for that Reporting Period;
- (b) a TOC Minute Delay Benchmark for any Reporting Period, the number set out in Column 3 (Nil Fee Band Performance Level) of the TOC Minute Delay Benchmark Table for that Reporting Period;

- (c) a Short Formation Benchmark for any Reporting Period, the number set out in Column 3 (Nil Fee Band Performance Level) of the Short Formation Benchmark Table for that Reporting Period;
- (d) a T-3 Measure for any Reporting Period, the number set out in Column 3 (Nil Fee Band Performance Level) of the T-3 Table for that Reporting Period;
- (e) a T-15 Measure for any Reporting Period, the number set out in Column 3 (Nil Fee Band Performance Level) of the T-15 Table for that Reporting Period; or
- (f) an All Cancellations Measure for any Reporting Period, the number set out in Column 3 (Nil Fee Band Performance Level) of the All Cancellations Table for that Reporting Period;

“Previous Passenger Services” means:

- (a) any rail passenger services operated under a Previous Franchise Agreement that is the same or substantially the same as any Passenger Service in terms of departure and arrival times and stopping patterns;
- (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;

“Required Performance Improvement” means an improvement in the Franchisee's performance against:

- (a) the TOC on Self Cancellations Benchmark so that such level is better than the Nil Fee Band

Performance Level for that TOC on Self Cancellations Benchmark; and/or

- (b) the TOC Minute Delay Benchmark so that such level is better than the Nil Fee Band Performance Level for that TOC Minute Delay Benchmark; and/or
- (c) the Short Formation Benchmark so that such level is better than the Nil Fee Band Performance Level for that Short Formation Benchmark; and/or
- (d) the T-3 Measure so that such level is better than the Nil Fee Band Performance Level for that T-3 Measure; and/or
- (e) the T-15 Measure so that such level is better than the Nil Fee Band Performance Level for that T-15 Measure; and/or
- (f) the All Cancellations Measure so that such level is better than the Nil Fee Band Performance Level for that All Cancellation Measure;

“Short Formation Benchmark” means any of the performance levels in respect of Short Formations set out in the Short Formation Benchmark Table;

“Short Formation Benchmark Table” means the table set out in Part 2 (Short Formation Benchmark Table) of Appendix 3 (Short Formation Benchmarks Table and Enforcement Short Formation Benchmarks) of this Schedule 7.1;

“T-3 Measure” means, for each Reporting Period each of the benchmarks specified in the T-3 Table for that Reporting Period;

“T-3 Table” means the table set out in Appendix 4 (*T-3 Table*) of this Schedule 7.1;

“T-15 Measure” means, for each Reporting Period each of the benchmarks specified in the T-15 Table for that Reporting Period;

“T-15 Table” means, the table set out in Appendix 5 (*T-15 Table*) of this Schedule 7.1;

“TOC Minute Delay Benchmark” means any of the performance levels in respect of Minutes Delay attributable to the

- Franchisee set out in the TOC Minute Delay Benchmark Table;
- “TOC Minute Delay Benchmark Table”** means the table set out in Part 2 (*TOC Minute Delay Benchmark Table*) of Appendix 2 (*TOC Minute Delay Benchmarks and Enforcement TOC Minute Delay Benchmarks*) to this Schedule 7.1;
- “TOC Minute Delay Re-Calculation”** has the meaning given to it in paragraph 4.1(b) of Part 1 of this Schedule 7.1;
- “TOC on Self Cancellations Benchmark”** means any of the performance levels in respect of Cancellations and Partial Cancellations set out in the TOC on Self Cancellations Benchmark Table;
- “TOC on Self Cancellations Benchmark Table”** means the table set out in Part 2 (TOC on Self Cancellations Benchmark Table) of Appendix 1 (*TOC on Self Cancellations Benchmarks and Enforcement TOC on Self Cancellations Benchmarks*) of this Schedule 7.1;
- “TOC on Self Cancellations Re-Calculation”** has the meaning given to it in paragraph 3.1(b) of Part 1 of this Schedule 7.1;
- “Undisputed Cancellation”** means a Cancellation that is not a Disputed Cancellation;
- “Undisputed Network Rail Cancellation”** means a Network Rail Cancellation that is not a Disputed Cancellation;
- “Undisputed Network Rail Partial Cancellation”** means a Network Rail Partial Cancellation that is not a Disputed Partial Cancellation; and
- “Undisputed Partial Cancellation”** means a Partial Cancellation that is not a Disputed Partial Cancellation.
- 1.2 The TOC on Self Cancellations Benchmarks are set out in the table in Part 2 of Appendix 1 (*TOC on Self Cancellations Benchmarks and Enforcement TOC on Self Cancellations Benchmarks*) to this Schedule 7.1.
- 1.3 The Enforcement TOC on Self Cancellations Benchmarks are set out in the table in Part 1 of Appendix 1 (*TOC on Self Cancellations Benchmarks and Enforcement TOC on Self Cancellations Benchmarks*) of this Schedule 7.1.
- 1.4 The TOC Minute Delay Benchmarks are set out in the table in Part 2 of Appendix 2 (*TOC Minute Delay Benchmarks and Enforcement TOC Minute Delay Benchmarks*) to this Schedule 7.1.
- 1.5 The Enforcement TOC Minute Delay Benchmarks are set out in the table in Part 1 of Appendix 2 (*TOC Minute Delay Benchmarks and Enforcement TOC Minute Delay Benchmarks*) to this Schedule 7.1.

- 1.6 The Short Formation Benchmarks are set out in the table in Part 2 of Appendix 3 (*Short Formation Benchmarks and Enforcement Short Formation Benchmarks*) to this Schedule 7.1
- 1.7 The Enforcement Short Formation Benchmarks are set out in the table in Part 1 of Appendix 3 (*Short Formation Benchmarks and Enforcement Short Formation Benchmark Table*) to this Schedule 7.1.
- 1.8 The T-3 Measure is set out in the table in Appendix 4 (*T-3 Table*) to this Schedule 7.1.
- 1.9 The T-15 Measure is set out in the table in Appendix 5 (*T-15 Table*) to this Schedule 7.1.
- 1.10 The All Cancellations Measure is set out in the table in Appendix 6 (*All Cancellations Table*) to this Schedule 7.1.

1.11 Charging Review

The Secretary of State may at any time after a Charging Review vary, on giving not less than three (3) months' notice in writing, any of the TOC on Self Cancellations Benchmarks, Enforcement TOC on Self Cancellations Benchmarks, TOC Minute Delay Benchmarks, the Enforcement TOC Minute Delay Benchmarks, T-3 Measure, T-15 Measure and/or All Cancellations Measure (as the case may be) to reflect the Secretary of State's reasonable view of the performance trajectory set as part of such Charging Review. Where the Secretary of State exercises the Secretary of State's right pursuant to this paragraph 1.11, the relevant TOC on Self Cancellations Benchmark Table, Enforcement TOC on Self Cancellations Benchmark Table, TOC Minute Delay Benchmark Table, Enforcement TOC Minute Delay Benchmark Table, T-3 Table, T-15 Table and/or All Cancellations Table shall be deemed to have been amended accordingly. The exercise by the Secretary of State of the Secretary of State's rights pursuant to this paragraph 1.11 shall be an event which shall have the potential to give rise to revisions to the Budget pursuant to paragraph 8 of Schedule 8.1A (*Franchise Payments*).

1.12 Track Access Agreement

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

1.13 Changes to Benchmarks and Enforcement Benchmarks on the occurrence of a Change

Paragraph 4 of Schedule 9.1 (*Financial and Other Consequences of Change*) sets out the circumstances and the process by which any adjustments to the Benchmarks and the Enforcement Benchmarks consequent upon the occurrence of a Change will be determined and effected.

1.14 Notice of Performance Results

As soon as reasonably practicable after the end of each Reporting Period and each Franchisee Year, the Secretary of State shall notify the Franchisee of the results of the calculations performed pursuant to this Schedule 7.1.

2. Reporting Requirements

The Franchisee shall at the end of each Reporting Period and in accordance with the relevant requirements of Appendix 2 (*Operational Performance Information*) of Schedule 11.2 (*Management Information*) report to the Secretary of State the operational information as specified in Appendix 2 (*Operational Performance Information*) of Schedule 11.2 (*Management Information*) and required for the purposes of the Secretary of State undertaking any the calculations required to be performed by the Secretary of State pursuant to this Schedule 7.1.

3. TOC on Self Cancellation Calculation

3.1 For each Reporting Period during the Franchise Term the Secretary of State shall:

- (a) calculate the Franchisee's performance against the TOC on Self Cancellations Benchmark in accordance with the formula set out in Table 1 below (each an **"Initial TOC on Self Cancellations Calculation"**); and
- (b) (other than for the first and second Reporting Periods following the Start Date) re-calculate the Franchisee's performance against the TOC on Self Cancellations Benchmark for each of the two (2) Reporting Periods immediately preceding the relevant Reporting Period using the formula set out in Table 1 below (each a **"TOC on Self Cancellations Re-Calculation"**).

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

Table 1		
A	=	$\frac{B}{C} \times 100$
where:		
	B	is the total number of Cancellations or Partial Cancellations of Passenger Services scheduled to be operated in the Enforcement Plan of the Day for that Reporting Period, on the basis that: <ul style="list-style-type: none"> (a) a Cancellation shall count as 1; (b) a Partial Cancellation shall count as 0.5; and (c) any Cancellations or Partial Cancellations during that Reporting Period which were caused by: <ul style="list-style-type: none"> (i) the Franchisee's implementation of a Service Recovery Plan during that Reporting Period; or (ii) the occurrence or continuing effect of a Force Majeure Event, shall, if the Franchisee has complied with paragraph 7.1 (<i>Service Recovery Plans and Force Majeure</i>) of this Schedule 7.1, be disregarded in determining such total number of Cancellations and Partial Cancellations;

Table 1		
	C	is the total number of Passenger Services scheduled to be operated in the Enforcement Plan of the Day for that Reporting Period, disregarding, if the Franchisee has complied with paragraph 7.1 (<i>Service Recovery Plans and Force Majeure</i>) of this Schedule 7.1, any Cancellations or Partial Cancellations during that Reporting Period which were caused by: (a) the Franchisee's implementation of a Service Recovery Plan during that Reporting Period; or (b) the occurrence or continuing effect of a Force Majeure Event.

4. TOC Minute Delay Calculations

4.1 For each Reporting Period during the Franchise Term the Secretary of State shall:

- (a) calculate the Franchisee's performance against the TOC Minute Delay Benchmark in accordance with the formula set out in Table 2 below (each an **"Initial TOC Minute Delay Calculation"**); and
- (b) (other than for the first (1st) and second (2nd) Reporting Periods following the Start Date) re-calculate the Franchisee's performance against the TOC Minute Delay Benchmark for each of the two (2) Reporting Periods immediately preceding the relevant Reporting Period using the formula set out in Table 2 below (each a **"TOC Minute Delay Re-Calculation"**).

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

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

5. Short Formations

5.1 Short Formation Calculation

For each Reporting Period during the Franchise Term the Secretary of State shall calculate the Franchisee's performance against the Enforcement Short Formation Benchmark in accordance with the following formula:

Table 3		
A^{SF}	=	$\frac{B_{SF}}{C_{SF}} \times 100$
where:		
B_{SF}	is the total number of Passenger Services in that Reporting Period operated with less Passenger Carrying Capacity than that specified for each such Passenger Service in the Train Plan disregarding, if the Franchisee has complied with paragraph 7.1 (<i>Service Recovery Plans and Force Majeure</i>) of this Schedule 7.1, any such Passenger Services which were operated in that way as a result of:	
	(a) the Franchisee's implementation of a Service Recovery Plan during that Reporting Period; or	
	(b) the occurrence or continuing effect of a Force Majeure Event; and	
C_{SF}	is the total number of Passenger Services scheduled to be operated in that Reporting Period disregarding, if the Franchisee has complied with paragraph 7.1 (<i>Service Recovery Plans and Force Majeure</i>) of this Schedule 7.1, any such Passenger Service operated with less Passenger Carrying Capacity than that specified for each such Passenger Service in the Train Plan as a result of:	
	(a) the Franchisee's implementation of a Service Recovery Plan during that Reporting Period; or	
	(b) the occurrence or continuing effect of a Force Majeure Event.	

5.2 For the purposes of the calculation to be undertaken by the Secretary of State pursuant to paragraph 5.1:

- (a) if and to the extent that any Passenger Service is operated in excess of the Passenger Carrying Capacity specified for that Passenger Service in the Train Plan, the excess capacity shall be disregarded; and
- (b) any Passenger Service that is the subject of a Cancellation or a Partial Cancellation shall be disregarded.

6. Calculations

6.1 The Secretary of State shall perform the calculations referred to in 3.1, 4.1 and 5.1 rounded to two (2) decimal places with the midpoint (that is, 11.115) rounded upwards (that is, 11.12).

7. Service Recovery Plans and Force Majeure.

7.1 The Franchisee shall, within eight (8) weeks of the end of each Reporting Period for which a Service Recovery Plan has been implemented (or such other period as may be agreed by the Secretary of State), submit to the Secretary of State all the comprehensive records (as more particularly described in the "Approved Code of Practice 2013" or any document of a similar equivalent nature) which relate to the implementation of such Service Recovery Plan during that Reporting Period.

7.2 In performing the calculations pursuant to paragraph 4.1 the Secretary of State shall disregard any Minutes Delay that are caused by the occurrence or continuing effect of a Force Majeure Event.

8. **Consequences for Poor Performance - Benchmarks.**

- 8.1 The Franchisee shall ensure that its performance in each Reporting Period as calculated by the Secretary of State in accordance with the requirements of this Schedule 7.1, **is not equal to or worse than** each Breach Performance Level in respect of the relevant Franchisee Year.
- 8.2 Without limiting the provisions of paragraph 8.4 below and Schedule 8.1B (*Performance Payments*), if in any Reporting Period the Franchisee's performance, as calculated by the Secretary of State in accordance with the requirements of this Schedule 7.1, is **equal to or worse than** any Breach Performance Level relating to an Enforcement Benchmark in respect of the relevant Franchisee Year, then a contravention of the Franchise Agreement shall occur and the Secretary of State may serve a Remedial Plan Notice in accordance with the provisions of paragraph 2 (*Remedies for Contraventions of the Franchise Agreement*) of Schedule 10.1 (*Procedure for remedying a Contravention of the Franchise Agreement*).
- 8.3 For the purposes of paragraph 4.2(c) (*Remedial Plans*) of Schedule 10.1 (*Procedure for remedying a Contravention of the Franchise Agreement*) the steps to be proposed by the Franchisee pursuant to that paragraph are those which ensure that the Franchisee's performance against the relevant Enforcement Benchmark will be **better than** the Breach Performance Level relating to such Enforcement Benchmark.
- 8.4 Certain consequences of the Franchisee's performance being **equal to or worse than** the Breach Performance Levels and Default Performance Levels relating to each Enforcement Benchmark are set out in Schedule 10 (*Remedies, Events of Default and Termination Events*).

9. **Consequences for Poor Performance.**

9.1 **Action Plans**

- (a) If in any three (3) consecutive Reporting Periods the Franchisee's performance against:
- (i) the TOC on Self Cancellations Benchmark is worse than the Nil Fee Band Performance Level for that TOC on Self Cancellations Benchmark; and/or
 - (ii) the TOC Minute Delay Benchmark is worse than the Nil Fee Band Performance Level for that TOC Minute Delay Benchmark; and/or
 - (iii) the T-3 Measure is worse than the Nil Fee Band Performance Level for that T-3 Measure; and/or
 - (iv) the T-15 Measure is worse than the Nil Fee Band Performance Level for that T-15 Measure; and/or
 - (v) the All Cancellations Measure is worse than the Nil Fee Band Performance Level for that All Cancellation Measure,

then the Secretary of State shall be entitled to request from the Franchisee a plan in order to secure a Required Performance Improvement.

- (b) Within one (1) month of the Secretary of State's request pursuant to paragraph 9.1(a), the Franchisee shall:
- (i) produce, at its own cost, and deliver to the Secretary of State its draft plan for securing a Required Performance Improvement (the "**Draft Action Plan**"); and
 - (ii) subject to paragraph 9.1(d)(iv):
 - (A) obtain the Secretary of State's approval of the Draft Action Plan in accordance with paragraph 9.1(c); and
 - (B) commence the implementation of a resulting Action Plan.
- (c) The Draft Action Plan shall contain specific tangible action points and indicate in the case of each action point:
- (i) how that action will contribute to achieving the Required Performance Improvement;
 - (ii) where the action is to be implemented;
 - (iii) when the action is to be commenced and by when it is to be implemented provided always that where any action is expressed to be ongoing the Draft Action Plan shall include specific review dates;
 - (iv) how performance of the action is to be measured; and
 - (v) set out the additional expenditure associated with each action.
- (d) The Secretary of State shall be entitled to:
- (i) request further information from the Franchisee with respect to its Draft Action Plan and the Franchisee shall submit such further information to the Secretary of State within the timescales as reasonably requested by the Secretary of State; and/or
 - (ii) propose amendments to the Draft Action Plan and the parties shall agree and, in the absence of agreement, the Secretary of State shall reasonably determine the amendments to the Draft Action Plan, in which case paragraph 9.1(e) shall apply; or
 - (iii) accept the Draft Action Plan, in which case paragraph 9.1(e) shall apply; or
 - (iv) not accept the Draft Action Plan, in which case the Franchisee shall not be obliged to undertake any further action with respect to its Draft Action Plan.9
- (e) The Draft Action Plan as agreed, determined or accepted by the Secretary of State (as the case may be) in accordance with paragraph 9.1(d), shall be referred to as the "**Action Plan**". The Franchisee shall implement the Action Plan in accordance with its terms and the provisions of paragraph 8 of Schedule 8.1A (*Franchise Payments*) shall apply in order to adjust the Budget to reflect the additional expenditure stated in the Action Plan.

- (f) It is acknowledged by the Franchisee that the approval or lack of approval by the Secretary of State of each Action Plan as contemplated in this paragraph 9.1 shall not relieve the Franchisee of its obligations under this Schedule 7.1 or any other provisions of the Franchise Agreement.

10. Allocation of Disputed Cancellations / Disputed Partial Cancellations

10.1 For the purpose of performing the calculations referred to in paragraph 3.1 of this Schedule 7.1 and/or paragraph 4 of Schedule 8.1B (*Performance Payments*) the Secretary of State shall, subject to paragraph 10.2, allocate any Disputed Cancellations and/or Disputed Partial Cancellations between the Franchisee and Network Rail at the end of a Reporting Period in the following ratio of:

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

10.2 For so long as fewer than thirteen (13) Reporting Periods have elapsed following the Start Date, the Secretary of State shall, for the purposes of allocating Disputed Cancellations and/or Disputed Partial Cancellations between the Franchisee and Network Rail in accordance with Table 4, assume performance at the Previous Performance Level in respect of the relevant Reporting Periods (up to a maximum of twelve (12) Reporting Periods) that precede the Start Date.

11. Allocation of Disputed Minutes Delay

11.1 Where the attribution of any Minutes Delay is in dispute between Network Rail and the Franchisee at the end of a Reporting Period the Secretary of State shall, subject to paragraph 11.2, for the purpose of performing the calculations referred to in paragraph 4.1 of this Schedule 7.1 and/or paragraph 4 of Schedule 8.1B (*Performance Payments*), allocate any disputed Minutes Delay between the Franchisee and Network Rail in the ratio of:

Table 5	
FF: GG	
where:	

FF	is the total number of undisputed Minutes Delay, in each case, from the twelve (12) preceding Reporting Periods that are attributable to the Franchisee including any disputed attributions which were resolved or determined (and attributed to the Franchisee) during such twelve (12) preceding Reporting Periods; and
GG	is the total number of undisputed Minutes Delay, in each case from the twelve (12) preceding Reporting Periods that are attributable to Network Rail including any disputed attributions which were resolved or determined (and attributed to Network Rail) during such twelve (12) preceding Reporting Periods.

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

Appendix 1 to Schedule 7.1 – TOC on Self Cancellations Benchmarks and Enforcement TOC on Self Cancellations Benchmarks

PART 1 – ENFORCEMENT TOC ON SELF CANCELLATIONS BENCHMARK TABLE

Column 1	Column 2	Column 3
Franchisee Year	Breach Performance Level (% Cancelled)	Default Performance Level (% Cancelled)
Year 1	3.10	4.00
Year 2	3.10	4.00
Year 3	3.10	4.00
Year 4	3.10	4.00
Year 5	3.10	4.00

PART 2 – TOC ON SELF CANCELLATIONS BENCHMARK TABLE

Column 1		Column 2		Column 3	Column 4	Column 5
Year		Franchisee Year	Reporting Period	Nil Fee Band Performance Level	Expected Fee Band Performance Level	Enhanced Fee Band Performance Level
From	To			(% Cancelled)	(% Cancelled)	(% Cancelled)
2020	2021	Year 1	Period 08	2.06	1.46	0.87
2020	2021	Year 1	Period 09	1.97	1.39	0.84
2020	2021	Year 1	Period 10	2.75	1.94	1.17
2020	2021	Year 1	Period 11	0.88	0.62	0.38
2020	2021	Year 1	Period 12	0.77	0.54	0.33
2020	2021	Year 1	Period 13	0.84	0.59	0.36
2021	2022	Year 2	Period 01	0.82	0.58	0.35
2021	2022	Year 2	Period 02	0.76	0.54	0.32
2021	2022	Year 2	Period 03	1.08	0.76	0.46
2021	2022	Year 2	Period 04	1.23	0.87	0.52
2021	2022	Year 2	Period 05	1.46	1.03	0.62
2021	2022	Year 2	Period 06	1.53	1.08	0.65
2021	2022	Year 2	Period 07	1.15	0.81	0.49
2021	2022	Year 2	Period 08	1.74	1.23	0.74
2021	2022	Year 2	Period 09	1.70	1.20	0.72
2021	2022	Year 2	Period 10	2.38	1.68	1.01
2021	2022	Year 2	Period 11	0.68	0.48	0.29
2021	2022	Year 2	Period 12	0.54	0.38	0.23
2021	2022	Year 2	Period 13	0.61	0.43	0.26
2022	2023	Year 3	Period 01	0.55	0.39	0.23
2022	2023	Year 3	Period 02	0.49	0.34	0.21
2022	2023	Year 3	Period 03	1.01	0.71	0.43
2022	2023	Year 3	Period 04	0.95	0.67	0.40
2022	2023	Year 3	Period 05	1.12	0.79	0.48
2022	2023	Year 3	Period 06	1.27	0.90	0.54
2022	2023	Year 3	Period 07	0.94	0.66	0.40
2022	2023	Year 3	Period 08	1.42	1.00	0.60
2022	2023	Year 3	Period 09	1.26	0.89	0.54
2022	2023	Year 3	Period 10	2.13	1.50	0.90
2022	2023	Year 3	Period 11	0.59	0.42	0.25
2022	2023	Year 3	Period 12	0.53	0.38	0.23
2022	2023	Year 3	Period 13	0.47	0.33	0.20
2023	2024	Year 4	Period 01	0.51	0.36	0.22

Column 1		Column 2		Column 3	Column 4	Column 5
Year		Franchisee Year	Reporting Period	Nil Fee Band Performance Level	Expected Fee Band Performance Level	Enhanced Fee Band Performance Level
From	To			(% Cancelled)	(% Cancelled)	(% Cancelled)
2023	2024	Year 4	Period 02	0.42	0.30	0.18
2023	2024	Year 4	Period 03	0.84	0.60	0.36
2023	2024	Year 4	Period 04	0.83	0.59	0.35
2023	2024	Year 4	Period 05	1.01	0.71	0.43
2023	2024	Year 4	Period 06	1.16	0.82	0.49
2023	2024	Year 4	Period 07	0.86	0.60	0.36
Up to 13 Reporting Periods Extension						
2023	2024	Year 4	Period 08	1.29	0.91	0.55
2023	2024	Year 4	Period 09	1.20	0.84	0.51
2023	2024	Year 4	Period 10	1.85	1.31	0.78
2023	2024	Year 4	Period 11	0.58	0.41	0.25
2023	2024	Year 4	Period 12	0.52	0.37	0.22
2023	2024	Year 4	Period 13	0.45	0.32	0.19
2024	2025	Year 5	Period 01	0.48	0.34	0.20
2024	2025	Year 5	Period 02	0.42	0.30	0.18
2024	2025	Year 5	Period 03	0.84	0.59	0.35
2024	2025	Year 5	Period 04	0.82	0.58	0.35
2024	2025	Year 5	Period 05	1.01	0.71	0.43
2024	2025	Year 5	Period 06	1.16	0.82	0.49
2024	2025	Year 5	Period 07	0.81	0.57	0.34

**Appendix 2 to Schedule 7.1 - TOC Minute Delay Benchmarks and Enforcement
TOC Minute Delay Benchmarks**

PART 1 – ENFORCEMENT TOC MINUTE DELAY BENCHMARK TABLE

Column 1	Column 2	Column 3
Franchisee Year	Breach Performance Level (relevant Minutes Delay/1000 Actual Train Miles)	Default Performance Level (relevant Minutes Delay/1000 Actual Train Miles)
Year 1	6.47	7.20
Year 2	6.47	7.20
Year 3	6.47	7.20
Year 4	6.47	7.20
Year 5	6.47	7.20

PART 2 - TOC MINUTE DELAY BENCHMARK TABLE

Column 1		Column 2		Column 3	Column 4	Column 5
Year		Franchisee Year	Reporting Period	Nil Fee Band Performance Level	Expected Fee Band Performance Level	Enhanced Fee Band Performance Level
From	To			(relevant Minutes Delay/100 Actual Train Miles)	(relevant Minutes Delay/100 Actual Train Miles)	(relevant Minutes Delay/100 Actual Train Miles)
2020	2021	Year 1	Period 08	5.83	5.19	4.94
2020	2021	Year 1	Period 09	6.15	5.47	5.22
2020	2021	Year 1	Period 10	5.00	4.45	4.24
2020	2021	Year 1	Period 11	3.54	3.15	3.00
2020	2021	Year 1	Period 12	2.68	2.38	2.27
2020	2021	Year 1	Period 13	3.69	3.29	3.13
2021	2022	Year 2	Period 01	3.27	2.91	2.77
2021	2022	Year 2	Period 02	3.55	3.16	3.01
2021	2022	Year 2	Period 03	4.41	3.93	3.74
2021	2022	Year 2	Period 04	3.91	3.48	3.32
2021	2022	Year 2	Period 05	4.90	4.36	4.16
2021	2022	Year 2	Period 06	4.93	4.39	4.19
2021	2022	Year 2	Period 07	4.79	4.26	4.06
2021	2022	Year 2	Period 08	5.59	4.98	4.74
2021	2022	Year 2	Period 09	5.92	5.26	5.02
2021	2022	Year 2	Period 10	4.76	4.24	4.04
2021	2022	Year 2	Period 11	3.30	2.94	2.80
2021	2022	Year 2	Period 12	2.44	2.17	2.07
2021	2022	Year 2	Period 13	3.46	3.07	2.93
2022	2023	Year 3	Period 01	3.03	2.70	2.57
2022	2023	Year 3	Period 02	3.31	2.95	2.81
2022	2023	Year 3	Period 03	4.18	3.72	3.54
2022	2023	Year 3	Period 04	3.61	3.22	3.07
2022	2023	Year 3	Period 05	4.60	4.09	3.90
2022	2023	Year 3	Period 06	4.70	4.18	3.98
2022	2023	Year 3	Period 07	4.49	4.00	3.81
2022	2023	Year 3	Period 08	5.35	4.76	4.54
2022	2023	Year 3	Period 09	5.68	5.05	4.82
2022	2023	Year 3	Period 10	4.53	4.03	3.84
2022	2023	Year 3	Period 11	3.11	2.77	2.64
2022	2023	Year 3	Period 12	2.43	2.16	2.06

Column 1		Column 2		Column 3	Column 4	Column 5
Year		Franchisee Year	Reporting Period	Nil Fee Band Performance Level	Expected Fee Band Performance Level	Enhanced Fee Band Performance Level
From	To			(relevant Minutes Delay/100 Actual Train Miles)	(relevant Minutes Delay/100 Actual Train Miles)	(relevant Minutes Delay/100 Actual Train Miles)
2022	2023	Year 3	Period 13	3.22	2.86	2.73
2023	2024	Year 4	Period 01	2.96	2.64	2.51
2023	2024	Year 4	Period 02	3.24	2.89	2.75
2023	2024	Year 4	Period 03	4.11	3.65	3.48
2023	2024	Year 4	Period 04	3.61	3.21	3.06
2023	2024	Year 4	Period 05	4.60	4.09	3.90
2023	2024	Year 4	Period 06	4.63	4.12	3.93
2023	2024	Year 4	Period 07	4.48	3.99	3.80
Up to 13 Reporting Periods Extension						
2023	2024	Year 4	Period 08	5.29	4.70	4.48
2023	2024	Year 4	Period 09	5.61	4.99	4.76
2023	2024	Year 4	Period 10	4.46	3.97	3.78
2023	2024	Year 4	Period 11	3.10	2.76	2.63
2023	2024	Year 4	Period 12	2.42	2.15	2.05
2023	2024	Year 4	Period 13	3.15	2.80	2.67
2024	2025	Year 5	Period 01	2.56	2.28	2.17
2024	2025	Year 5	Period 02	3.01	2.68	2.55
2024	2025	Year 5	Period 03	3.70	3.29	3.14
2024	2025	Year 5	Period 04	3.20	2.85	2.72
2024	2025	Year 5	Period 05	4.42	3.93	3.75
2024	2025	Year 5	Period 06	4.22	3.76	3.58
2024	2025	Year 5	Period 07	4.30	3.83	3.65

**Appendix 3 to Schedule 7.1 - Short Formation Benchmarks and Enforcement
Short Formation Benchmarks**

PART 1 – ENFORCEMENT SHORT FORMATION BENCHMARK TABLE

Column 1	Column 2	Column 3
Franchisee Year	Breach Performance Level (% Short Formed)	Default Performance Level (% Short Formed)
Year 1	4.30	4.90
Year 2	4.30	4.90
Year 3	4.30	4.90
Year 4	4.30	4.90
Year 5	4.30	4.90

PART 2 - SHORT FORMATION BENCHMARK TABLE

Column 1		Column 2		Column 3	Column 4	Column 5
Year		Franchisee Year	Reporting Period	Nil Fee Band Performance Level	Expected Fee Band Performance Level	Enhanced Fee Band Performance Level
From	To			% Short Formed	% Short Formed	% Short Formed
2020	2021	Year 1	Period 08	2.57	2.34	0.00
2020	2021	Year 1	Period 09	2.54	2.31	0.00
2020	2021	Year 1	Period 10	2.71	2.47	0.00
2020	2021	Year 1	Period 11	2.54	2.31	0.00
2020	2021	Year 1	Period 12	2.33	2.12	0.00
2020	2021	Year 1	Period 13	2.21	2.01	0.00
2021	2022	Year 2	Period 01	2.48	2.25	0.00
2021	2022	Year 2	Period 02	2.45	2.23	0.00
2021	2022	Year 2	Period 03	2.40	2.18	0.00
2021	2022	Year 2	Period 04	2.53	2.30	0.00
2021	2022	Year 2	Period 05	2.48	2.25	0.00
2021	2022	Year 2	Period 06	2.43	2.21	0.00
2021	2022	Year 2	Period 07	2.48	2.25	0.00
2021	2022	Year 2	Period 08	2.57	2.34	0.00
2021	2022	Year 2	Period 09	2.54	2.31	0.00
2021	2022	Year 2	Period 10	2.71	2.47	0.00
2021	2022	Year 2	Period 11	2.54	2.31	0.00
2021	2022	Year 2	Period 12	2.33	2.12	0.00
2021	2022	Year 2	Period 13	2.21	2.01	0.00
2022	2023	Year 3	Period 01	2.48	2.25	0.00
2022	2023	Year 3	Period 02	2.45	2.23	0.00
2022	2023	Year 3	Period 03	2.40	2.18	0.00
2022	2023	Year 3	Period 04	2.53	2.30	0.00
2022	2023	Year 3	Period 05	2.48	2.25	0.00
2022	2023	Year 3	Period 06	2.43	2.21	0.00
2022	2023	Year 3	Period 07	2.48	2.25	0.00
2022	2023	Year 3	Period 08	2.53	2.30	0.00
2022	2023	Year 3	Period 09	2.50	2.27	0.00
2022	2023	Year 3	Period 10	2.68	2.43	0.00
2022	2023	Year 3	Period 11	2.50	2.27	0.00
2022	2023	Year 3	Period 12	2.28	2.07	0.00
2022	2023	Year 3	Period 13	2.17	1.97	0.00
2023	2024	Year 4	Period 01	2.40	2.18	0.00

Column 1		Column 2		Column 3	Column 4	Column 5
Year		Franchisee Year	Reporting Period	Nil Fee Band Performance Level	Expected Fee Band Performance Level	Enhanced Fee Band Performance Level
From	To			% Short Formed	% Short Formed	% Short Formed
2023	2024	Year 4	Period 02	2.41	2.19	0.00
2023	2024	Year 4	Period 03	2.36	2.14	0.00
2023	2024	Year 4	Period 04	2.45	2.23	0.00
2023	2024	Year 4	Period 05	2.44	2.22	0.00
2023	2024	Year 4	Period 06	2.39	2.18	0.00
2023	2024	Year 4	Period 07	2.40	2.18	0.00
Up to 13 Reporting Periods Extension						
2023	2024	Year 4	Period 08	2.49	2.27	0.00
2023	2024	Year 4	Period 09	2.46	2.24	0.00
2023	2024	Year 4	Period 10	2.64	2.40	0.00
2023	2024	Year 4	Period 11	2.44	2.22	0.00
2023	2024	Year 4	Period 12	2.25	2.05	0.00
2023	2024	Year 4	Period 13	2.13	1.94	0.00
2024	2025	Year 5	Period 01	2.40	2.18	0.00
2024	2025	Year 5	Period 02	2.37	2.16	0.00
2024	2025	Year 5	Period 03	2.33	2.12	0.00
2024	2025	Year 5	Period 04	2.45	2.23	0.00
2024	2025	Year 5	Period 05	2.40	2.18	0.00
2024	2025	Year 5	Period 06	2.36	2.14	0.00
2024	2025	Year 5	Period 07	2.40	2.18	0.00

Appendix 4 to Schedule 7.1 – T-3 Table

Column 1		Column 2		Column 3	Column 4	Column 5
Year		Franchisee Year	Reporting Period	Nil Fee Band Performance Level	Expected Fee Band Performance Level	Enhanced Fee Band Performance Level
From	To			(% T-3)	(% T-3)	(% T-3)
2020	2021	Year 1	Period 08	57.86	64.82	70.43
2020	2021	Year 1	Period 09	55.99	62.74	68.17
2020	2021	Year 1	Period 10	62.18	69.67	75.70
2020	2021	Year 1	Period 11	68.17	76.38	82.99
2020	2021	Year 1	Period 12	67.48	75.61	82.16
2020	2021	Year 1	Period 13	65.82	73.74	80.13
2021	2022	Year 2	Period 01	67.55	75.69	82.24
2021	2022	Year 2	Period 02	66.89	74.94	81.43
2021	2022	Year 2	Period 03	63.78	71.46	77.64
2021	2022	Year 2	Period 04	62.71	70.26	76.34
2021	2022	Year 2	Period 05	59.28	66.42	72.17
2021	2022	Year 2	Period 06	65.26	73.12	79.45
2021	2022	Year 2	Period 07	62.26	69.76	75.80
2021	2022	Year 2	Period 08	58.83	65.92	71.62
2021	2022	Year 2	Period 09	56.96	63.82	69.34
2021	2022	Year 2	Period 10	63.19	70.80	76.93
2021	2022	Year 2	Period 11	68.84	77.13	83.81
2021	2022	Year 2	Period 12	68.53	76.78	83.43
2021	2022	Year 2	Period 13	66.85	74.90	81.38
2022	2023	Year 3	Period 01	67.65	75.80	82.36
2022	2023	Year 3	Period 02	67.02	75.09	81.59
2022	2023	Year 3	Period 03	63.93	71.63	77.83
2022	2023	Year 3	Period 04	62.83	70.40	76.49
2022	2023	Year 3	Period 05	59.46	66.62	72.39
2022	2023	Year 3	Period 06	65.33	73.20	79.54
2022	2023	Year 3	Period 07	62.91	70.48	76.58
2022	2023	Year 3	Period 08	59.02	66.13	71.85
2022	2023	Year 3	Period 09	57.16	64.04	69.58
2022	2023	Year 3	Period 10	63.35	70.98	77.12
2022	2023	Year 3	Period 11	69.19	77.52	84.23
2022	2023	Year 3	Period 12	68.65	76.92	83.58
2022	2023	Year 3	Period 13	67.20	75.29	81.81
2023	2024	Year 4	Period 01	68.01	76.20	82.80
2023	2024	Year 4	Period 02	67.23	75.33	81.85
2023	2024	Year 4	Period 03	64.11	71.83	78.04

Column 1		Column 2		Column 3	Column 4	Column 5
Year		Franchisee Year	Reporting Period	Nil Fee Band Performance Level	Expected Fee Band Performance Level	Enhanced Fee Band Performance Level
From	To			(% T-3)	(% T-3)	(% T-3)
2023	2024	Year 4	Period 04	63.14	70.74	76.86
2023	2024	Year 4	Period 05	59.67	66.85	72.64
2023	2024	Year 4	Period 06	65.57	73.47	79.82
2023	2024	Year 4	Period 07	63.09	70.68	76.80
Up to 13 Reporting Periods Extension						
2023	2024	Year 4	Period 08	59.23	66.36	72.10
2023	2024	Year 4	Period 09	57.37	64.28	69.85
2023	2024	Year 4	Period 10	63.53	71.18	77.34
2023	2024	Year 4	Period 11	69.26	77.60	84.32
2023	2024	Year 4	Period 12	68.80	77.08	83.75
2023	2024	Year 4	Period 13	67.30	75.40	81.93
2024	2025	Year 5	Period 01	68.10	76.30	82.90
2024	2025	Year 5	Period 02	67.28	75.39	81.91
2024	2025	Year 5	Period 03	64.23	71.97	78.20
2024	2025	Year 5	Period 04	63.19	70.80	76.93
2024	2025	Year 5	Period 05	59.82	67.03	72.83
2024	2025	Year 5	Period 06	65.69	73.60	79.97
2024	2025	Year 5	Period 07	63.19	70.80	76.93

Appendix 5 to Schedule 7.1 – T-15 Table

Column 1		Column 2		Column 3	Column 4	Column 5
Year		Franchisee Year	Reporting Period	Nil Fee Band Performance Level	Expected Fee Band Performance Level	Enhanced Fee Band Performance Level
From	To			(% T-15)	(% T-15)	(% T-15)
2020	2021	Year 1	Period 08	90.28	93.59	96.46
2020	2021	Year 1	Period 09	89.70	93.00	95.85
2020	2021	Year 1	Period 10	91.52	94.88	97.79
2020	2021	Year 1	Period 11	93.24	96.67	99.00
2020	2021	Year 1	Period 12	92.97	96.38	99.00
2020	2021	Year 1	Period 13	92.67	96.07	99.00
2021	2022	Year 2	Period 01	94.48	97.95	99.00
2021	2022	Year 2	Period 02	94.28	97.75	99.00
2021	2022	Year 2	Period 03	93.31	96.74	99.00
2021	2022	Year 2	Period 04	92.38	95.77	98.71
2021	2022	Year 2	Period 05	91.85	95.23	98.15
2021	2022	Year 2	Period 06	93.60	97.04	99.00
2021	2022	Year 2	Period 07	92.92	96.34	99.00
2021	2022	Year 2	Period 08	91.76	95.13	98.05
2021	2022	Year 2	Period 09	91.08	94.42	97.32
2021	2022	Year 2	Period 10	93.12	96.54	99.00
2021	2022	Year 2	Period 11	94.87	98.35	99.00
2021	2022	Year 2	Period 12	94.77	98.25	99.00
2021	2022	Year 2	Period 13	94.19	97.65	99.00
2022	2023	Year 3	Period 01	94.53	98.00	99.00
2022	2023	Year 3	Period 02	94.33	97.80	99.00
2022	2023	Year 3	Period 03	93.32	96.75	99.00
2022	2023	Year 3	Period 04	92.60	96.00	98.94
2022	2023	Year 3	Period 05	91.88	95.25	98.17
2022	2023	Year 3	Period 06	93.70	97.14	99.00
2022	2023	Year 3	Period 07	92.94	96.35	99.00
2022	2023	Year 3	Period 08	91.78	95.15	98.07
2022	2023	Year 3	Period 09	91.15	94.50	97.40
2022	2023	Year 3	Period 10	93.13	96.55	99.00
2022	2023	Year 3	Period 11	94.96	98.45	99.00
2022	2023	Year 3	Period 12	94.87	98.35	99.00
2022	2023	Year 3	Period 13	94.19	97.65	99.00
2023	2024	Year 4	Period 01	94.58	98.05	99.00
2023	2024	Year 4	Period 02	94.38	97.85	99.00

Column 1		Column 2		Column 3	Column 4	Column 5
Year		Franchisee Year	Reporting Period	Nil Fee Band Performance Level	Expected Fee Band Performance Level	Enhanced Fee Band Performance Level
From	To			(% T-15)	(% T-15)	(% T-15)
2023	2024	Year 4	Period 03	93.41	96.84	99.00
2023	2024	Year 4	Period 04	92.94	96.35	99.00
2023	2024	Year 4	Period 05	91.96	95.33	98.26
2023	2024	Year 4	Period 06	93.80	97.24	99.00
2023	2024	Year 4	Period 07	93.02	96.44	99.00
Up to 13 Reporting Periods Extension						
2023	2024	Year 4	Period 08	91.86	95.23	98.15
2023	2024	Year 4	Period 09	91.28	94.63	97.53
2023	2024	Year 4	Period 10	93.22	96.64	99.00
2023	2024	Year 4	Period 11	95.06	98.55	99.00
2023	2024	Year 4	Period 12	94.96	98.45	99.00
2023	2024	Year 4	Period 13	94.67	98.15	99.00
2024	2025	Year 5	Period 01	94.67	98.15	99.00
2024	2025	Year 5	Period 02	94.48	97.95	99.00
2024	2025	Year 5	Period 03	93.42	96.85	99.00
2024	2025	Year 5	Period 04	93.03	96.45	99.00
2024	2025	Year 5	Period 05	91.97	95.35	98.27
2024	2025	Year 5	Period 06	93.80	97.25	99.00
2024	2025	Year 5	Period 07	93.03	96.45	99.00

Appendix 6 to Schedule 7.1 – All Cancellations Table

Column 1		Column 2		Column 3	Column 4	Column 5
Year		Franchisee Year	Reporting Period	Nil Fee Band Performance Level	Expected Fee Band Performance Level	Enhanced Fee Band Performance Level
From	To			(% All Cancelled)	(% All Cancelled)	(% All Cancelled)
2020	2021	Year 1	Period 08	4.35	3.90	2.85
2020	2021	Year 1	Period 09	4.23	3.80	2.77
2020	2021	Year 1	Period 10	4.43	3.97	2.90
2020	2021	Year 1	Period 11	2.53	2.26	1.65
2020	2021	Year 1	Period 12	3.08	2.76	2.01
2020	2021	Year 1	Period 13	2.43	2.17	1.59
2021	2022	Year 2	Period 01	2.27	2.04	1.49
2021	2022	Year 2	Period 02	2.21	1.98	1.45
2021	2022	Year 2	Period 03	2.28	2.05	1.49
2021	2022	Year 2	Period 04	2.65	2.37	1.73
2021	2022	Year 2	Period 05	3.29	2.94	2.15
2021	2022	Year 2	Period 06	2.89	2.59	1.89
2021	2022	Year 2	Period 07	2.61	2.34	1.71
2021	2022	Year 2	Period 08	4.01	3.60	2.63
2021	2022	Year 2	Period 09	3.90	3.50	2.55
2021	2022	Year 2	Period 10	4.09	3.66	2.67
2021	2022	Year 2	Period 11	2.35	2.11	1.54
2021	2022	Year 2	Period 12	2.84	2.54	1.86
2021	2022	Year 2	Period 13	2.30	2.06	1.51
2022	2023	Year 3	Period 01	2.20	1.97	1.44
2022	2023	Year 3	Period 02	2.14	1.92	1.40
2022	2023	Year 3	Period 03	2.21	1.98	1.44
2022	2023	Year 3	Period 04	2.55	2.29	1.67
2022	2023	Year 3	Period 05	3.13	2.81	2.05
2022	2023	Year 3	Period 06	2.75	2.46	1.80
2022	2023	Year 3	Period 07	2.49	2.23	1.63
2022	2023	Year 3	Period 08	3.57	3.20	2.34
2022	2023	Year 3	Period 09	3.68	3.30	2.41
2022	2023	Year 3	Period 10	3.64	3.27	2.38
2022	2023	Year 3	Period 11	1.88	1.68	1.23
2022	2023	Year 3	Period 12	2.43	2.18	1.59
2022	2023	Year 3	Period 13	2.07	1.86	1.36
2023	2024	Year 4	Period 01	2.19	1.96	1.43
2023	2024	Year 4	Period 02	2.13	1.91	1.39

Column 1		Column 2		Column 3	Column 4	Column 5
Year		Franchisee Year	Reporting Period	Nil Fee Band Performance Level	Expected Fee Band Performance Level	Enhanced Fee Band Performance Level
From	To			(% All Cancelled)	(% All Cancelled)	(% All Cancelled)
2023	2024	Year 4	Period 03	2.20	1.97	1.44
2023	2024	Year 4	Period 04	2.44	2.19	1.60
2023	2024	Year 4	Period 05	3.12	2.80	2.04
2023	2024	Year 4	Period 06	2.71	2.43	1.77
2023	2024	Year 4	Period 07	2.34	2.10	1.53
Up to 13 Reporting Periods Extension						
2023	2024	Year 4	Period 08	3.56	3.19	2.33
2023	2024	Year 4	Period 09	3.66	3.28	2.39
2023	2024	Year 4	Period 10	3.64	3.26	2.38
2023	2024	Year 4	Period 11	1.53	1.37	1.00
2023	2024	Year 4	Period 12	2.42	2.17	1.58
2023	2024	Year 4	Period 13	1.97	1.77	1.29
2024	2025	Year 5	Period 01	2.00	1.80	1.31
2024	2025	Year 5	Period 02	2.13	1.91	1.39
2024	2025	Year 5	Period 03	2.19	1.97	1.43
2024	2025	Year 5	Period 04	2.44	2.18	1.59
2024	2025	Year 5	Period 05	3.12	2.80	2.04
2024	2025	Year 5	Period 06	2.71	2.43	1.77
2024	2025	Year 5	Period 07	2.34	2.10	1.53

Schedule 7.2

Customer Experience and Engagement**1. Definitions**

- 1.1 For the purposes of this Schedule 7.2 (*Customer Experience and Engagement*) only, the following words and expressions shall have the following meanings unless otherwise set out in clause 3 (*Definitions*):

"Alternative NRPS" has the meaning given to it in paragraph 2.6 of this Schedule 7.2 (Customer Experience and Engagement);

"CCI Amount" means, in each Franchisee Year, [REDACTED¹⁰¹] (Indexed);

"CCI Programme" means a document accumulating and describing the Franchisee's Approved CCI Schemes for each CCI Period (as amended from time to time as permitted by paragraph 11.5A of this Schedule 7.2 (Customer Experience and Engagement));

"CCI Scheme" has the meaning given to it in paragraph 11 of this Schedule 7.2 (Customer Experience and Engagement);

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

"CCI Scheme Margin" means [REDACTED¹⁰²] of the applicable CCI Scheme Costs;

"NRPS Benchmark" means, in respect of a relevant Franchisee Year, the benchmark for each NRPS Measure and for each NRPS Service Group as set out in the NRPS Benchmark Table;

"NRPS Benchmark Table" means each of tables 1, 2, 3 and 4 in Appendix 1 to this Schedule 7.2 (Customer Experience and Engagement);

"NRPS Improvement" means an improvement in the level of customer satisfaction for the relevant NRPS Measure as measured by a National Rail Passenger Survey so that such level is not lower than the related NRPS Nil Band Level;

"NRPS Measure" means each of the factors more particularly described in the Passenger Survey Methodology and grouped as "Trains (T)", "Customer Service (C)" and "Dealing With Delays (D)";

¹⁰¹ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹⁰² 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

“NRPS Nil Band Level” means, in respect of a relevant Franchisee Year, the NRPS nil band level for each NRPS Measure and for each NRPS Service Group as set out in the NRPS Benchmark Table; and

“NRPS Service Group” means each of the service groups set out in the Passenger Survey Methodology and more particularly described as:

- (a) CrossCountry-North-South Scotland & NE;
- (b) CrossCountry-North-South Manchester; and
- (c) CrossCounty East West.

2. Conduct of National Rail Passenger Surveys

2.1 The Franchisee agrees with the Secretary of State that:

- (a) the Passengers' Council may measure the level of passenger satisfaction with the Franchise Services through National Rail Passenger Surveys;
- (b) the Passengers' Council shall determine how, when (normally twice per annum) and where National Rail Passenger Surveys are to be carried out;
- (c) the Franchisee shall grant access on trains or at stations to the Passengers' Council (or its representatives and agents) to carry out National Rail Passenger Surveys;
- (d) the Franchisee shall co-operate with the Passengers' Council (in such manner as the Passengers' Council may reasonably request or as the Secretary of State may reasonably direct) in order to enable the Passengers' Council to carry out National Rail Passenger Surveys; and
- (e) the Passengers' Council and/or the Secretary of State may, from time to time, publish the results of each National Rail Passenger Survey.

2.2 The Secretary of State shall ensure or shall procure that:

- (a) the findings of any National Rail Passenger Survey are made available by the Passengers' Council to the Franchisee within a reasonable period of time after the completion of each such survey and shall use all reasonable endeavours to procure that those findings are made available in a timely manner to enable the Franchisee to comply with its obligations under paragraph 2.3; and
- (b) if any such survey includes a comparison between its findings and the findings of any equivalent earlier survey, such comparison forms a reasonable basis for monitoring the trends of passenger satisfaction over time.

2.3 The Franchisee shall, as soon as reasonably practicable after such information is made available to the Franchisee in accordance with paragraph 2.2, publicise its performance against the NRPS Benchmarks by including such information in its Customer Report and displaying such information at the main Franchisee Access Stations and on its website.

2.4 It is agreed by the Franchisee that, subject to paragraph 2.5, the methodology to be adopted by the Passengers' Council in conducting any such National Rail Passenger Survey shall be as described in the document in the agreed terms marked **PSM** (the "**Passenger Survey Methodology**");

2.5 If:

(a) at any time during the Franchise Term the methodology adopted in conducting any National Rail Passenger Survey is, in the reasonable opinion of the Secretary of State, materially inconsistent with the Passenger Survey Methodology; and

(b) the Secretary of State reasonably determines that in consequence a revision to the NRPS Benchmark is required in order to hold constant the risk of the Franchisee failing to satisfy the NRPS Benchmark,

then the Secretary of State shall make such revisions to such NRPS Benchmarks as the Secretary of State reasonably considers appropriate to hold constant such risk.

2.6 If the Passengers' Council ceases to undertake National Rail Passenger Surveys then the relevant National Rail Passenger Survey for the purposes of this Schedule 7.2 shall be such other passenger survey as the Secretary of State may, after consultation with the Franchisee, reasonably determine to be appropriate in the circumstances (the "**Alternative NRPS**"). The provisions of this Schedule 7.2 shall apply in respect of any Alternative NRPS and for these purposes Passengers' Council shall be replaced with such other entity that is responsible for conducting such Alternative NRPS.

3. **NRPS Benchmarks**

3.1 It is agreed by the Secretary of State and the Franchisee that, subject to paragraph 2.6, the results of the National Rail Passenger Survey(s) published by the Passengers' Council in any Franchisee Year should be used to determine the Franchisee's performance against the NRPS Benchmarks for that Franchisee Year. If in any Franchisee Year the Passengers' Council has published:

(a) only one (1) National Rail Passenger Survey in that Franchisee Year then the performance of the Franchisee against the NRPS Benchmarks shall be measured against the results of such National Rail Passenger Survey; or

(b) more than one (1) National Rail Passenger Survey in that Franchisee Year then the performance of the Franchisee against the NRPS Benchmarks shall be measured against the average of the results of all of the National Rail Passenger Surveys published by the Passengers' Council in that Franchisee Year.

4. **Performance Review**

4.1 For each Franchisee Year the Secretary of State shall determine the Franchisee's performance against each NRPS Benchmark by comparing:

(a) if only one (1) National Rail Passenger Survey has been published by the Passengers' Council in that Franchisee Year, the results of such National Rail Passenger Survey against the NRPS Benchmarks applicable in respect of that Franchisee Year; or

- (b) if more than one (1) National Rail Passenger Survey has been published by Passengers' Council in that Franchisee Year, the average of the results of all of the National Rail Passenger Surveys published by the Passengers' Council in that Franchisee Year against the NRPS Benchmarks applicable in respect of that Franchisee Year.
- 4.2 For the purposes of undertaking the comparison pursuant to paragraph 4.1, the results referred to in paragraph 4.1(a) or paragraph 4.1(b) (as the case may be) shall be rounded up to one (1) decimal place with the midpoint (that is, 4.45) rounded upwards (that is, 4.5).
- 4.3 If, following the Secretary of State's determination pursuant to any of paragraphs 4.1(a) or 4.1(b) (as the case may be), the results show that the level of customer satisfaction in respect of any NRPS Measure is below the NRPS Nil Band Level for such measure then the Secretary of State shall be entitled to request from the Franchisee a plan in order to secure the NRPS Improvement.
- 5. NRPS Improvement Proposals**
- 5.1 Within thirty (30) Weekdays of the Secretary of State's request (or such longer period as may be agreed by the Secretary of State) pursuant to paragraph 4.3, the Franchisee shall, at its own cost, prepare and deliver to the Secretary of State its proposal (the "**NRPS Improvement Proposal**") for achieving an NRPS Improvement which shall:
- (a) contain specific tangible action points and indicate in the case of each action point:
- (i) how that action will contribute to meeting the relevant NRPS Measure;
 - (ii) where the action is to be implemented;
 - (iii) the proposed timescales for implementing such action and, where any action is expressed to be ongoing, proposed review dates; and
 - (iv) how the Franchisee proposes to measure the performance of the action; and
- (b) the additional expenditure associated with each action.
- 5.2 The Secretary of State shall be entitled to:
- (a) request further information from the Franchisee with respect to its NRPS Improvement Proposal, and the Franchisee shall submit such further information to the Secretary of State within the timescales as reasonably requested by the Secretary of State; and/or
 - (b) propose amendments to the NRPS Improvement Proposal and the parties shall agree and, in the absence of agreement, the Secretary of State shall reasonably determine the amendments to the NRPS Improvement Proposal, in which case paragraph 5.3 shall apply; or
 - (c) accept the NRPS Improvement Proposal, in which case paragraph 5.3 shall apply; or

- (d) not accept the NRPS Improvement Proposal, in which case the Franchisee shall not be obliged to undertake any further action with respect to its NRPS Improvement Proposal.

5.3 The NRPS Improvement Proposal as agreed, determined or accepted by the Secretary of State (as the case may be) in accordance with paragraph 5.2 shall be referred to as the **"NRPS Improvement Plan"**. The Franchisee shall implement the NRPS Improvement Plan in accordance with its terms and the provisions of paragraph 8 of Schedule 8.1A (Franchise Payments) shall apply in order to adjust the Budget to reflect the additional expenditure stated in the NRPS Improvement Plan.

6. **NOT USED**

7. **NOT USED**

8. **Consultations**

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

- (a) passengers, potential passengers, Stakeholders and other users of the rail network; and
- (b) persons who are covered by a Accessible Travel Policy; and
- (c) persons with other protected characteristics within the meaning of the EA,

for the purposes of the Customer and Stakeholder Engagement Strategy, the Customer Report and the CCI Scheme.

9. **Customer and Stakeholder Engagement Strategy**

9.1 The Franchisee shall comply with the Customer and Stakeholder Engagement Strategy from the Start Date.

9.2 The Franchisee shall:

- (a) undertake and complete a review of the Customer and Stakeholder Engagement Strategy during each Franchisee Year (excluding the first Franchisee Year); and
- (b) provide the Secretary of State with any proposed revisions to the Customer and Stakeholder Engagement Strategy arising out of such review by no later than the end of each such Franchisee Year.

9.3 The aim of the review referred to in paragraph 9.2 shall be to update the Customer and Stakeholder Engagement Strategy to reflect lessons learned in the period since the Start Date or the previous review of the Customer and Stakeholder Engagement Strategy (as applicable) and to ensure that the Customer and Stakeholder Engagement Strategy achieves effective passenger engagement.

9.4 Any revisions to the Customer and Stakeholder Engagement Strategy shall require the consent of the Secretary of State (such consent not to be unreasonably withheld or delayed).

10. Customer Report

- 10.1 The Franchisee shall, in accordance with the requirements of paragraph 10.2 and paragraph 10.3 below, publish a Customer Report in such readily accessible formats as the Secretary of State may reasonably require (including in booklet or other similar hard copy formats (if and to the extent that the Secretary of State instructs the Franchisee to re-commence the publication of hard copy formats during the Franchise Period), in electronic formats (such as on the Franchisee's website, through social media channels and by email)), in each case in accordance with the Customer and Stakeholder Engagement Strategy and the provisions of paragraph 8 (*Publication of Performance Data*) and paragraph 9 (*Publication of Complaints and Faults Handling Data*) of Schedule 1.4 (*Passenger Facing Obligations*) and paragraph 16 of Schedule 11.2 (*Management Information*).
- 10.2 The Franchisee shall publish a Customer Report as follows:
- (a) in respect of the first (1st) Franchisee Year where such Franchisee Year is less than seven (7) Reporting Periods, the Franchisee shall only be required to publish a Customer Report for that Franchisee Year by no later than the Start Date; and
 - (b) in respect of each subsequent Franchisee Year, the Franchisee shall be required to publish a Customer Report at least twice in that Franchisee Year provided that where the final Franchisee Year is less than seven (7) Reporting Periods the Franchisee shall not be required to publish a Customer Report.
- 10.3 Without prejudice to the obligations of the Franchisee as specified in each of paragraphs 12.1 and 12.3 of this Schedule 7.2, paragraphs 8.3 and 9 of Schedule 1.4 (*Passenger Facing Obligations*) and paragraph 16 of Schedule 11.2 (*Management Information*), the Secretary of State and the Franchisee acknowledge and agree that in respect of each Franchisee Year to which the provisions of paragraph 10.2(b) apply, the first Customer Report to be published for that Franchisee Year shall be prepared in respect of the first six (6) Reporting Periods of that Franchisee Year and the second Customer Report to be published for that Franchisee Year shall be prepared in respect of the last seven (7) Reporting Periods of that Franchisee Year.

11. Customer and Communities Investment (CCI) Scheme

- 11.1 No later than three (3) months prior to the start of each CCI Period the Franchisee shall provide to the Secretary of State details of those initiatives, works or proposals (each a "**CCI Scheme**") which the Franchisee proposes to undertake in that CCI Period in order to resolve or mitigate issues raised with the Franchisee through the consultations as carried out pursuant to paragraph 8 (*Consultations*). The Franchisee shall use all reasonable endeavours to propose, in respect of each CCI Period, CCI Schemes with an aggregate projected CCI Scheme Shortfall of not less than the aggregate of the CCI Amount for each Franchisee Year in the relevant CCI Period.
- 11.2 In relation to each CCI Scheme proposed by the Franchisee pursuant to paragraph 11.1 the Franchisee shall provide:
- (a) details of the specific issues which that CCI Scheme is intended to resolve or mitigate (including how those issues have been identified) and how that CCI Scheme will resolve or mitigate those issues; and

- (b) fully worked up details of the CCI Scheme sufficient to enable the Secretary of State to evaluate the same, including:
- (i) a timetable for the implementation of that CCI Scheme, setting out the proposed commencement and completion date of such CCI Scheme and any other key dates and milestones;
 - (ii) details of the projected CCI Scheme Cost; and
 - (iii) details of the projected CCI Scheme Revenue.
- 11.3 The Franchisee shall provide the Secretary of State with such further information in relation to any CCI Scheme proposed by the Franchisee pursuant to paragraph 11.1 as the Secretary of State may reasonably require.
- 11.4 A CCI Scheme proposed by the Franchisee pursuant to paragraph 11.1 shall not be an Approved CCI Scheme unless and until approved by the Secretary of State pursuant to this paragraph 11.4. Without limitation, the Secretary of State may withhold the Secretary of State's approval to any proposed CCI Scheme which:
- (a) has not been identified and/or developed in accordance with the Customer and Stakeholder Engagement Strategy;
 - (b) is not designed to resolve or mitigate issues raised with the Franchisee through the consultations referred to in paragraph 8;
 - (c) has a completion date falling later than the end of the relevant CCI Period;
 - (d) **NOT USED**;
 - (e) the Franchisee is otherwise funded to undertake; or
 - (f) in the opinion of the Secretary of State, amounts to actions or steps which the Franchisee is otherwise obliged to take or which any competent train operator should be taking in relation to the operation of the Franchisee.
- 11.5 The Franchisee shall undertake the Approved CCI Schemes described in the CCI Programme for each CCI Period.
- 11.5A No later than the start of each CCI Period, the Franchisee shall produce a CCI Programme which includes all the Approved CCI Schemes which it plans to undertake in the following CCI Period and provide the CCI Programme to the Secretary of State.
- 11.5B A CCI Programme may be varied at any time by agreement in writing between the parties, provided that paragraphs 11.6 to 11.8 shall continue to apply.
- 11.6 Paragraph 11.8 will apply if:
- (a) the aggregate projected CCI Scheme Shortfall in respect of all Approved CCI Schemes for any CCI Period is less than the aggregate of the CCI Amount for each Franchisee Year in that CCI Period; or
 - (b) subject to paragraph 11.7 in any CCI Period, in the Secretary of State's reasonable opinion, the aggregate of the actual CCI Scheme Shortfall incurred by the Franchisee during that CCI Period upon Approved CCI

Schemes is less than the aggregate of the CCI Amount for each Franchisee Year in that CCI Period,

in each case the underspend against the aggregate CCI Amount being the “**CCI Scheme Underspend**”.

11.7 If:

- (a) the amount of the CCI Scheme Costs actually incurred by the Franchisee in relation to any Approved CCI Scheme exceed the projected CCI Scheme Costs notified to the Secretary of State pursuant to paragraph 11.2 for such Approved CCI Scheme, then the amount of the excess shall not amount to CCI Scheme Cost; or
- (b) in the Secretary of State's reasonable opinion, the amount of the CCI Scheme Revenue actually earned by the Franchisee in relation to any Approved CCI Scheme is less than the projected CCI Scheme Revenue notified to the Secretary of State pursuant to paragraph 11.2 for such Approved CCI Scheme then, for the purposes of paragraph 11.6(b) the actual CCI Scheme Revenue shall be deemed to be the projected CCI Scheme Revenue.

11.8 Where this paragraph 11.8 applies the Secretary of State may require:

- (a) all or part of the CCI Scheme Underspend to be added to the CCI Amount for the first Franchisee Year in the subsequent CCI Period;
- (b) the Franchisee to propose further CCI Schemes using all or part of the CCI Scheme Underspend by such new deadline as the Secretary of State may specify;
- (c) the Franchisee to spend all or part of the CCI Scheme Underspend in such manner as the Secretary of State may direct; and/or
- (d) the Franchisee to pay all or part of the CCI Scheme Underspend to the Secretary of State,

provided that paragraph 11.8(d) shall automatically apply in respect of the last CCI Period unless the Secretary of State specifies otherwise.

11.9 Any Franchise Asset arising as a result of an Approved CCI Scheme shall be designated as a Primary Franchise Asset and shall not be de-designated as such. Any such Primary Franchise Asset which falls to be valued in accordance with the Supplemental Agreement shall be valued at nil.

12. **Customer Service and Satisfaction Data**

12.1 As part of each Customer Report to be provided by the Franchisee pursuant to paragraph 10.1 of this Schedule 7.2, the Franchisee shall publish (in such format as the Secretary of State may reasonably require) details of the Franchisee's:

- (a) **NOT USED**; and
- (b) performance by reference to such benchmarks as may be agreed between the Franchisee and the ORR as part of the an Accessible Travel Policy in respect of the Passenger Assistance service operated by the Franchisee,

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

12.2 The Franchisee shall publish on its website (in such format as the Secretary of State may reasonably require):

- (a) within twenty (20) Weekdays of the publication of each National Rail Passenger Survey carried out by the Passengers' Council during the Franchise Term, details of the scores achieved by the Franchisee in such National Rail Passenger Survey, including the scores achieved in respect of passengers' 'overall satisfaction'; and
- (b) within twenty (20) Weekdays of the publication of the last National Rail Passenger Survey to be carried out by the Passengers' Council during any Franchisee Year, details of the scores achieved by the Franchisee in respect of each NRPS Benchmark, as calculated in accordance with paragraph 4 of this Schedule 7.2.

12.3 The Franchisee shall ensure that the scores achieved in relation to the NRPS Benchmarks, published by it pursuant to paragraph 12.2, are also recorded in the subsequent Customer Report which relates to the Reporting Periods during which the applicable NRPS Benchmarks were achieved, along with:

- (a) a comparison with the scores that were achieved against the NRPS Benchmarks for the same Reporting Periods in the previous Franchisee Year, accompanied by a supporting narrative describing the outcomes and implications of the results of such comparison exercise;
- (b) details of any remedial work either:
 - (i) planned by the Franchisee to occur in the period in relation to which the next Customer Report will report to improve the Franchisee's performance in relation to achieving and exceeding the NRPS Benchmarks (for instance, the planned application of Additional Expenditure); or
 - (ii) undertaken by the Franchisee during the Reporting Periods that have elapsed since the last Reporting Period reported on in the previous Customer Report or, in the case of the first (1st) Customer Report, since the last Reporting Period reported on in the last Customer Report provided by the Franchisee in accordance with the Previous Franchise Agreement (and as defined therein), for the purposes of improving the Franchisee's performance in relation to achieving and exceeding the NRPS Benchmarks (for instance, the planned application of Additional Expenditure); and
- (c) details of any other initiatives planned to be implemented by the Franchisee to improve passenger experience.

12.4 If the Secretary of State instructs the Franchisee to re-commence the publication of Customer Reports in hard copy formats during the Franchise Period, the

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

13. **Wavelength**

13.1 Unless otherwise directed by the Secretary of State, the Franchisee shall:

- (a) fully and effectively engage with the Wavelength Programme;
- (b) ⁱ ⁱⁱ subject to the relevant information being made available to the Franchisee via the Wavelength portal, provide to the Secretary of State by no later than seven (7) Weekdays following the end of each Reporting Period, a report setting out the results of the Wavelength Survey undertaken during that Reporting Period, such results to be presented in such aggregated or disaggregated format as the Secretary of State may specify from time to time; and
- (c) ⁱⁱⁱ ^{iv} subject to the relevant information being made available to the Franchisee via the Wavelength portal, provide to the Secretary of State by no later than fourteen (14) Weekdays following the end of each quarter, a report detailing:
 - (i) how the Franchisee has used the full range of Wavelength Programme insights (including the analysis of data received through the Wavelength Survey) to implement and/or invest in: (A) customer-focused initiatives; and/or (B) tangible benefits or improvements for customers; and
 - (ii) whether such initiatives, benefits or improvements referred to in paragraph 1(c)(i) have: (A) resulted in any improvement in the Wavelength Survey scores collected to date; and/or (B) any other improvements or benefits to the Franchisee.

13.2 For the purpose of this paragraph:

- (a) **“Wavelength Programme”** means the programme of work being developed by the rail industry as at the Start Date which involves collecting a wide range of information about the customer experience by tracking, amongst other things, the Franchisee’s performance against certain journey touchpoints (as specified in the Wavelength Survey) and certain key commitments based on core passenger priorities or such programme of work substantially the same as the programme of work being developed by the rail industry as at the Start Date; and
- (b) **“Wavelength Survey”** means the weekly survey relating to the Passenger Services (in such form as may be agreed from time to time), which is undertaken as part of the Wavelength Programme to monitor, amongst other things, the Franchisee’s performance against certain journey touchpoints (as specified in the Wavelength Survey) and certain key commitments based on core passenger priorities.

**APPENDIX 1 TO SCHEDULE 7.2
NRPS Benchmark Table**

Table 1						
NRPS SERVICE GROUP - CrossCountry-North-South Scotland & NE						
"CrossCountry-North-South Scotland & NE" is comprised of the following Service Groups:						
(a) Scotland – South West England; and						
(b) North East England – South Coast						
Year		Franchisee Year	NRPS BENCHMARKS AND NRPS NIL BAND LEVEL			
From	To		NRPS MEASURE		NRPS MEASURE	
			TRAINS (T)(%)		CUSTOMER SERVICES (CS) (%)	
		NRPS BENCHMARK	NRPS NIL BAND LEVEL	NRPS BENCHMARK	NRPS NIL BAND LEVEL	
18 October 2020	31 March 2021	Year 1	71.5	67.5	70.0	66.0
1 April 2021	31 March 2022	Year 2	71.5	67.5	71.0	67.0
1 April 2022	31 March 2023	Year 3	73.5	69.5	72.0	68.0
1 April 2023	14 Oct 2023	Year 4 (core) (part)	75.0	71.0	72.0	68.0
Up to 13 Reporting Period Extension						
15 Oct 2023	31 March 2024	Year 4 (extension) (full)	75.0	71.0	72.0	68.0
1 April 2024	12 October 2024	Year 5 (extension) (part)	75.0	71.0	72.0	68.0

Table 2						
NRPS SERVICE GROUP - CrossCountry-North-South Manchester						
"CrossCountry-North-South Manchester" is comprised of the following Service Groups:						
(a) Manchester – South Coast; and						
(b) Manchester – South West England.						
Year		Franchisee Year	NRPS BENCHMARKS AND NIL BAND LEVEL			
From	To		NRPS MEASURE		NRPS MEASURE	
			TRAINS (T) (%)		CUSTOMER SERVICES (CS)(%)	
			NRPS BENCHMARK	NRPS NIL BAND LEVEL	NRPS BENCHMARK	NRPS NIL BAND LEVEL
18 October 2020	31 March 2021	Year 1	71.0	67.0	69.0	65.0
1 April 2021	31 March 2022	Year 2	71.5	67.5	71.0	67.0
1 April 2022	31 March 2023	Year 3	72.5	68.5	74.0	70.0
1 April 2023	14 October 2023	Year 4 (core) (part)	74.0	70.0	74.0	70.0
Up to 13 Reporting Period Extension						
15 Oct 2023	31 March 2024	Year 4 (extension) (full)	74.0	70.0	74.0	70.0
1 April 2024	12 October 2024	Year 5 (extension) (part)	74.0	70.0	74.0	70.0

Table 3						
NRPS SERVICE GROUP - CrossCounty East West						
"CrossCounty East West" is comprised of the following Service Groups:						
(a) Cardiff – Nottingham; and						
(b) Birmingham – Leicester / Stansted Airport.						
Year		Franchisee Year	NRPS BENCHMARKS			
From	To		NRPS MEASURE		NRPS MEASURE	
			TRAINS (T) (%)		CUSTOMER SERVICES (CS) (%)	
			NRPS BENCHMARK	NRPS NIL BAND LEVEL	NRPS BENCHMARK	NRPS NIL BAND LEVEL
18 October 2020	31 March 2021	Year 1	67.0	63.0	61.0	57.0
1 April 2021	31 March 2022	Year 2	68.0	64.0	63.0	59.0
1 April 2022	31 March 2023	Year 3	71.0	67.0	66.0	62.0
1 April 2023	14 October 2024	Year 4 (core) (part)	72.0	68.0	66.0	62.0
Up to 13 Reporting Period Extension						
15 Oct 2023	31 March 2024	Year 4 (extension) (full)	72.0	68.0	66.0	62.0
1 April 2024	12 October 2024	Year 5 (extension) (part)	72.0	68.0	66.0	62.0

Table 4				
NRPS SERVICE GROUP - All				
Year		Franchisee Year	NRPS BENCHMARKS	
From	To		NRPS MEASURE	
			DEALING WITH DELAYS (D)(%)	
			NRPS BENCHMARK	NRPS NIL BAND LEVEL
18 October 2020	31 March 2021	Year 1	53.0	47.0
1 April 2021	31 March 2022	Year 2	64.0	48.0
1 April 2022	31 March 2023	Year 3	56.0	50.0
1 April 2023	14 October 2023	Year 4 (core) (part)	56.0	50.0
Up to 13 Reporting Period Extension				
15 Oct 2023	31 March 2024	Year 4 (extension) (full)	56.0	50.0
1 April 2024	12 October 2024	Year 5 (extension) (part)	56.0	50.0

**Schedule 7.3
Service Quality Regime**

1. Purpose

1.1 This Schedule 7.3 sets out the following:

- (a) Part A – Service Quality Management Process;
- (b) Part B – Inspections and Audits;
- (c) Part C – Calculation of Pass Rates and Calculations related to the Service Quality Regime;
- (d) Part D – Publication and Reporting Requirements;
- (e) Part E – Remedies; and
- (f) **NOT USED.**

2. Definitions

2.1 For the purposes of this Schedule 7.3 (*Service Quality Regime*) only, the following words and expressions shall have the following meanings unless otherwise set out in clause 3 (*Definitions*):

“Affected Service Quality Area”	has the meaning given to such term in paragraph 20.1(c) of Schedule 7.3;
“Affected Service Quality Indicator”	has the meaning given to such term in paragraph 20.1 of this Schedule 7.3;
“Ceased Services”	has the meaning given to such term in paragraph 3.3(c) of this Schedule 7.3;
“Customer Service Quality Inspection”	means an inspection (and provision of reports as specified) of the Franchisee's customer facing systems and procedures against each Service Quality Indicator in the manner specified in the Service Quality Schedules and in accordance with the requirements of this Schedule 7.3;
“Independent Service Quality Audit”	has the meaning given to such term in paragraph 7.1 of this Schedule 7.3;
“Material Discrepancies”	has the meaning given to such term in paragraph 18.1 of this Schedule 7.3;
“New Facilities”	has the meaning given to such term in paragraph 3.3(a)(ii) of this Schedule 7.3;
“New Services”	has the meaning given to such term in paragraph 3.3(a)(i) of this Schedule 7.3;

“Pass Rate”

means:

- (a) in respect of a Reporting Period and for each Service Quality Schedule, the pass rate (*i.e. the number of Service Quality Indicators that have passed rather than failed*) for a Service Quality Area comprised in such Service Quality Schedule as calculated in accordance with paragraph 10 of this Schedule 7.3; and
- (b) in respect of each Service Quality Schedule and for each Franchisee Year, the pass rate (*i.e. the number of Service Quality Indicators that have passed rather than failed*) for a Service Quality Area comprised in such Service Quality Schedule calculated in accordance with paragraph 10 of this Schedule 7.3,

both expressed as a percentage;

“Previous Customer Report”

means, in relation to a Customer Report, the Customer Report published by the Franchisee immediately prior to that Customer Report;

“Relevant Rectification Period”

has the meaning given to such term in paragraph 6.1 of this Schedule 7.3;

“Service Quality Area”

means each of the service quality areas for SQR Trains, and SQR Customer Service as set out in Column 1 of the table (s) in Appendix 2 of this Schedule 7.3;

“Service Quality Failure”

has the meaning given to such term in paragraph 6.1 of this Schedule 7.3;

“Service Quality Improvement”

means the Franchisee ensuring that the relevant Affected Service Quality Area or Affected Service Quality Indicator (as applicable) is provided at a level that is equal to or above the SQR Benchmark;

“Service Quality Indicator”

means each of the indicators for SQR Trains, SQR Customer Service comprised in a Service Quality Area as specifically specified in Column 3 of the table(s) in Appendix 2 of this Schedule 7.3;

“Service Quality Inspection”

has the meaning given to such term in paragraph 4.1 of this Schedule 7.3;

“Service Quality Regime” or “SQR”

means the regime for the measurement of standards on SQR Trains and SQR Customer Service as set out in this Schedule 7.3;

“Service Quality Schedules”

means each of the service schedules for SQR Trains and SQR Customer Service contained in Appendix 1 of Schedule 7.3;

“Service Quality Trains Rectification Evidence”

means evidence and/or documentation demonstrating (as the case may be) that the Franchisee:

- (a) has rectified a relevant Service Quality Failure in relation to SQR Trains.
- (b) **NOT USED.**

“SoS Audits”

has the meaning given to such term in paragraph 8.1 of this Schedule 7.3;

“SoS Nominee”

has the meaning given to such term in paragraph 7.6 of this Schedule 7.3;

“SoS Service Quality Inspection”

means inspections undertaken by the Secretary of State or the Secretary of State’s agents in place of the Franchisee;

“SoS Service Quality Inspection Period”

has the meaning given to such term in paragraph 17.2(b)(iii) of this Schedule 7.3;

“SQR Benchmark”

means any SQR Train Benchmark or SQR Customer Service Benchmark (as the context may require);

“SQR Customer Service”

means the services measured by the indicators set out in Part 3 of Appendix 1 to this Schedule 7.3;

“SQR Customer Service Benchmark”

means the benchmark for each Service Quality Area relating to SQR Customer Service as set out in Column 2 of the table in Part 3 of Appendix 2 to this Schedule 7.3;

“SQR Management System”

has the meaning given to such term in paragraph 3.1 of this Schedule 7.3;

“SQR Register”

means the register of the facilities and services which exist on a SQR Train and which is to be used for carrying out:

- (a) Service Quality Inspections; and
- (b) **NOT USED;** and
- (c) Independent Service Quality Audits, SoS Audits or SoS Service Inspections,

in each case, as such register is required pursuant to paragraph 3.2 of this Schedule 7.3;

“SQR Train”

means a train engaged in the provision of Passenger Services;

“SQR Train Benchmark”

means, in relation to a SQR Train, the benchmark for each Service Quality Area as set out in Column 2 of the table in Appendix 2 to this Schedule 7.3; and

“Train Service Quality Inspection” means an inspection of the facilities and services on a vehicle comprised within a SQR Train in the manner specified in the Service Quality Schedules and in accordance with the requirements of this Schedule 7.3.

Part A - Service Quality Management Process

3. Service Quality Management

3.1 SQR Management System

- (a) The Franchisee shall put in place service quality management arrangements and processes (including the collection of relevant data) which shall (as a minimum):
- (i) be capable of measuring and reporting the Franchisee's performance against each Service Quality Indicator comprised in a Service Quality Area;
 - (ii) be capable of recording and retaining Service Quality Trains Rectification Evidence; and
 - (iii) set out procedures for:
 - (A) ensuring compliance with the requirements of this Schedule 7.3 including the obligation to conduct Service Quality Inspections as required pursuant to this paragraph 3; and
 - (B) identifying and rectifying failures identified during each Service Quality Inspection (including processes which ensure that corrective actions identified during any Service Quality Inspection are undertaken in a diligent and prompt manner),
- (the **“SQR Management System”**).
- (b) The SQR Management System shall be implemented and fully operational by **[REDACTED¹⁰³]**.

3.2 SQR Register

- (a) The Franchisee shall prepare and complete the SQR Register so as to include the facilities and services which exist on every SQR Train by **[REDACTED¹⁰⁴]**.
- (b) The form and content of the SQR Register shall include as a minimum the following content:
- (i) description, purpose and quantity of each facility or service;

¹⁰³ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹⁰⁴ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

- (ii) photographic evidence of each facility or service;
 - (iii) individual serial number and asset tracking number (where applicable) for each facility or service;
 - (iv) details of the applicable Service Quality Indicators against which the facility or service will be measured and reported against as set out in Appendix 2 of this Schedule 7.3; and
 - (v) **NOT USED.**
- (c) The Franchisee shall maintain the SQR Register and update such SQR Register at such regular intervals as is reasonably necessary to ensure compliance with its obligations under this Schedule 7.3.
- (d) The Franchisee shall provide an up to date copy of the SQR Register to the Secretary of State (when requested to do so from time to time) or to any person carrying out an SoS Audit or SoS Service Quality Inspection on behalf of the Secretary of State.

3.3 Changes to Franchise Services

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

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

- (b) The requirements of this Schedule 7.3 shall begin to apply in relation to such New Services and such New Facilities from the first day of the first Reporting Period which commences after the date on which the Franchisee commences the operation of such New Services or New Facilities are introduced (as the case may be).
- (c) If at any time during the Franchise Term, the Secretary of State directs the Franchisee to permanently stop operating certain railway passenger services which are part of the SQR Trains at the Start Date ("**Ceased Services**"), then the Franchisee shall update the SQR Management System and the SQR Register to remove such Ceased Services by no later than the first day of the first Reporting Period which commences after the date upon which the Franchisee stopped operating such Ceased Services.
- (d) The requirements of this Schedule 7.3 shall cease to apply in relation to such Ceased Services from the first day of the first Reporting Period which commences after the date on which the Franchisee stops the operation of such Ceased Services are introduced.

Part B – Inspections and Audits

4. Franchisee Service Quality Inspections

- 4.1 In each Reporting Period commencing from [REDACTED¹⁰⁵] the Franchisee shall, in accordance with the requirements of paragraph 4.3, procure the undertaking by an independent party of, Train Service Quality Inspections and Customer Service Quality Inspections (together to be known as the “**Service Quality Inspections**”).
- 4.1A The Franchisee shall agree that the terms of reference for the procurement of any Service Quality Inspection and the identity of any independent party proposed to undertake such Service Quality Inspection with the Secretary of State prior to any procurement by the Franchisee of any such Service Quality Inspection.
- 4.2 **NOT USED.**
- 4.3 The Franchisee shall (as a minimum):
- (a) ensure that each Service Quality Inspection is carried out so as to determine whether any Service Quality Indicator has been passed or failed in accordance with the failure criteria specified in the Service Quality Schedules;
 - (b) ensure that each Service Quality Inspection is carried out accurately and impartially by independent parties (who are not Franchise Employees);
 - (c) **NOT USED;**
 - (d) ensure that any Franchise Employee who is a member of the customer relations team or who is involved in the operation of any SQR Train (including any person who is responsible for the management and operation of any such SQR Train) in respect of which a Service Quality Inspection is to be undertaken is not notified or otherwise made aware of the date or time of any proposed or actual Service Quality Inspection;
 - (e) ensure that:
 - (i) **NOT USED;** and
 - (ii) **NOT USED;** and
 - (iii) **NOT USED;** and
 - (f) ensure that:
 - (i) in respect of each Reporting Period, [REDACTED¹⁰⁶] Train Service Quality Inspections are carried out in respect of different vehicles comprised within different SQR Trains with such Train Service Quality Inspection being apportioned across the day and between the days of the week in proportion to the typical

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distribution of passenger journeys across the day and between the days of the week; and

- (ii) Train Service Quality Inspections are carried out in respect of vehicles operating on each Route once every Reporting Period. Such Train Service Quality Inspections shall not be unduly concentrated on vehicles that operate on a particular Route; and
- (iii) ninety five per cent (95%) of the Train Service Quality Inspections are carried out on standard class vehicles and five per cent (5%) of the Train Service Quality Inspections are carried out on first class vehicles in each Reporting Period; and

(g) ensure that:

- (i) at least **[REDACTED¹⁰⁷]** Customer Service Quality Inspections are conducted in each Reporting Period;
- (ii) **NOT USED**; and
- (iii) Customer Service Quality Inspections relating to SQR Trains are carried out on each Route once every Reporting Period. Such Customer Service Quality Inspections shall be reasonably apportioned so that they are undertaken on SQR Trains across the different Routes.

4.4 For any Reporting Period which is longer than thirty-two (32) days or shorter than twenty-five (25) days the minimum number of:

- (a) **NOT USED**; and
- (b) Train Service Quality Inspections as specified in paragraph 4.3(f); and
- (c) Customer Service Quality Inspections as specified in paragraph 4.3(g), shall be increased or reduced pro rata based on a normal Reporting Period of twenty-eight (28) days.

4.5 For any Franchisee Year which has less than thirteen (13) Reporting Periods:

- (a) **NOT USED**;
- (b) Train Service Quality Inspections as specified in paragraph 4.3(f); and
- (c) Customer Service Quality Inspections as specified in paragraph 4.3(g), shall be reduced pro rata based on a normal Franchisee Year of thirteen (13) Reporting Periods.

5. **NOT USED**

6. **Service Quality Trains Rectification Evidence**

6.1 If in any Reporting Period a "fail" is recorded against any Service Quality Indicator set out in any Service Quality Schedule ("**Service Quality Failure**") then, in relation to SQR Trains the

¹⁰⁷ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

Franchisee shall within the relevant time period specified in the Service Quality Schedule ("**Relevant Rectification Period**"):

(a) ensure that relevant Service Quality Trains Rectification Evidence is recorded and retained in the Service Quality Management System, it being acknowledged and agreed that if no Service Quality Trains Rectification Evidence is recorded in the Service Quality Management System within the Relevant Rectification Period then a further Service Quality Failure shall occur.

(b) **NOT USED.**

6.2 The provisions of this paragraph 6 shall continue to apply until such a time as:

(a) **NOT USED.**

(b) in the case of the circumstances described in paragraph 6.1(a), the Franchisee has recorded relevant Service Quality Trains Rectification Evidence within the Relevant Rectification Period and accordingly a Service Quality Failure has not occurred.

6.3 If following two (2):

(a) **NOT USED.**

(b) previous failures by the Franchisee to record relevant Service Quality Trains Rectification Evidence within the Relevant Rectification Period pursuant to paragraph 6.1(a) a Service Quality Failure is recorded against the same facility or service which resulted in the occurrence of a Service Quality Failure ("**Rectification Evidence Failure**"),

then the Franchisee shall within fourteen (14) days of the occurrence of such Rectification Evidence Failure notify the Secretary of State of such failure.

6.4 The Franchisee shall prepare and submit to the Secretary of State together with such notice a plan which sets out the steps the Franchisee proposes to implement to ensure that the Rectification Evidence Failure is rectified before the next Service Quality Inspection and the Rectification Evidence Failure does not reoccur. The Franchisee shall use all reasonable endeavours to implement such plan in accordance with its terms.

6.5 Where a Rectification Evidence Failure results in a Service Quality Failure being recorded against a facility or service, the Service Quality Failure arising as a result of that Rectification Evidence Failure shall be included in the calculation of the Pass Rates for the Reporting Period in which the Rectification Evidence Failure occurs, in accordance with the provisions of paragraph 10 (*Calculation of Pass Rates*) and paragraph 20 (*Consequences of Performance falling below the SQR Benchmark*) and determining the Service Quality Performance Payment in accordance with Schedule 8.1B (Performance Payments).

6.6 The provisions of this paragraph 6 shall not apply to Customer Service Quality Inspections, or the Service Quality Indicators relating to 'Information During Disruption'.

7. **Independent Service Quality Audit**

7.1 In respect of each Franchisee Year, the Franchisee shall procure the carrying out of an independent audit ("**Independent Service Quality Audit**").

7.2 The Franchisee shall agree the terms of reference for the procurement of any Independent Service Quality Audit and the identity of any independent party proposed to undertake such Independent Service Quality Audit with the Secretary of State prior to any procurement by the Franchisee of any such Independent Service Quality Audit.

- 7.3 The Independent Service Quality Audit shall be undertaken [REDACTED¹⁰⁸] to verify and confirm that the:
- (a) SQR Management System complies with the requirements of paragraph 3.1 (*SQR Management System*) and has been implemented as required pursuant to this Schedule 7.3 (including that Service Quality Trains Rectification Evidence has been recorded and retained in accordance with (and is otherwise in compliance with) the requirements of this Schedule 7.3);
 - (b) Service Quality Inspections undertaken in that Franchisee Year comply with the requirements of paragraph 4.3 (*Franchisee Service Quality Inspections*);
 - (c) SQR Register has been maintained and updated as required pursuant to paragraph 3.2 (*SQR Register*);
 - (d) Pass Rates reported by the Franchisee for Reporting Periods within that Franchisee Year have been calculated in accordance with the requirements of paragraph 10.1 (*Calculation of Pass Rates*);
 - (e) Pass Rates reported by the Franchisee for that Franchisee Year have been calculated in accordance with paragraph 10.2 (*Calculation of Pass Rates*).
- 7.4 Any Independent Service Quality Audit shall either:
- (a) confirm that, after having regard to the findings of such inspections, its assessment of the matters referred to in paragraphs 7.3(a) to 7.3(e) and any other relevant information at the disposal of any person conducting such Independent Service Quality Audit, it can reasonably be concluded that the Pass Rates reported by the Franchisee for that Reporting Periods within that Franchisee Year and/or for that Franchisee Year are a fair, accurate and impartial reflection of the Franchisee's performance against each Service Quality Indicator or Service Quality Area; or
 - (b) state that such confirmation cannot be provided and proceed to comply with paragraph 7.9 below.
- 7.5 Any Independent Service Quality Audit carried out on behalf of the Franchisee as required under this paragraph 7 shall be for the benefit of the Secretary of State.
- 7.6 The Secretary of State (and any of the Secretary of State's employees, agents, representatives and/or advisers, and any of its advisers, representatives and employees (each such person to be referred to as a "**SoS Nominee**")) shall have the right to witness any inspection carried out as part of an Independent Service Quality Audit.
- 7.7 The Franchisee shall co-operate in good faith with the Secretary of State in permitting the Secretary of State (including a SoS Nominee) to exercise the Secretary of State's rights under paragraph 7.6 and this paragraph 7.7 including by promptly providing to the Secretary of State the details of how and when any Independent Service Quality Audit will be conducted a reasonable time (and in any event [REDACTED¹⁰⁹] prior to the commencement of any such Independent Service Quality Audit.

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¹⁰⁹ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

- 7.8 The Franchisee shall provide the report together with all data produced as a consequence of any Independent Service Quality Audit to the Secretary of State as soon as reasonably practicable after the completion of the Independent Service Quality Audit to which it relates and in any event by no later than the date that is [REDACTED¹¹⁰] following the last day of the Franchisee Year to which the Independent Service Quality Audit relates.
- 7.9 To the extent that the confirmation specified in paragraph 7.4(b) cannot be provided in respect of any Independent Service Quality Audit, the Franchisee shall procure that any such audit report specifies in detail the reasons why such confirmation cannot be provided (including details of any Material Discrepancies between any Pass Rate reported by the Franchisee in accordance with paragraph 14 (*Reporting Requirements*) and a comparable Pass Rate derived from the inspections carried out as part of the Independent Service Quality Audit (and in particular where any such Material Discrepancies are in favour of the Franchisee)).
- 8. Secretary of State's Right of Audit**
- 8.1 Without prejudice to any other audit rights the Secretary of State may have under the Franchise Agreement, the Secretary of State (and a SoS Nominee on the Secretary of State's behalf), shall have the right to carry out audits (the "**SoS Audits**") for the purposes of verifying, as a minimum, the matters referred to in paragraph 4.1 (*Franchisee Service Quality Inspections*).
- 8.2 The Secretary of State shall use the Secretary of State's reasonable endeavours to procure that any inspections carried out as part of any SoS Audits undertaken pursuant to this paragraph 8 are conducted on a basis that is, as far as reasonable practicable, consistent with the Service Quality Inspections undertaken in respect of the Franchisee Year to which the SoS Audit relates.
- 9. Access Rights**
- 9.1 The Franchisee shall grant such access to information, individuals and facilities including:
- (a) access to the SQR Trains;
 - (b) access to schedules of the locations and times of any actual or planned Independent Service Quality Audits or Service Quality Inspections (as the case may be);
 - (c) access to the relevant Franchise Employees, records and information (including access to relevant third parties and information, records and other materials kept by such third parties on behalf of the Franchisee); and
 - (d) access to any and all Service Quality Trains Rectification Evidence,
- as is reasonably necessary to enable the Secretary of State and/or the SoS Nominees to carry out SoS Audits or SoS Service Quality Inspections (as the case may be) or to witness any Service Quality Inspections, or Independent Service Quality Audits.
- 9.2 The Franchisee shall ensure that it has necessary arrangements in place with any relevant third parties for the purposes of ensuring that it can comply with its obligations under this paragraph 9.

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- 9.3 The Secretary of State shall use reasonable endeavours to ensure that the persons employed in undertaking any SoS Service Quality Inspections or SoS Audits carry out such audits diligently and objectively.
- 9.4 The Secretary of State shall use reasonable endeavours to notify the Franchisee of the result of any SoS Service Quality Inspection or SoS Audit that is undertaken.
- 9.5 In carrying out any SoS Service Quality Inspection or SoS Audit (as the case may be) or witnessing any Service Quality Inspections, or Independent Service Quality Audits, the Secretary of State shall, subject to paragraph 9.6, be responsible for ensuring that the SoS Nominees:
 - (a) are appropriately trained and briefed with respect to such reasonable location-specific safety rules and regulations; and
 - (b) obey such reasonable location-specific rules and regulations in respect of security and access,
 in each case, as have been notified to the Secretary of State under paragraph 9.6.
- 9.6 The Franchisee shall provide reasonable prior notice from time to time of current location-specific access, security and safety rules and regulations to the Secretary of State for the purpose of ensuring that the Secretary of State (and the SoS Nominees) can carry out their respective inspection and auditing rights in an efficient, secure and safe manner.

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

10. Calculation of Pass Rates

10.1 From [REDACTED¹¹¹] the Franchisee shall calculate the Pass Rates for the Train Service Quality Inspections and the Customer Service Quality Inspections for each Reporting Period as follows:

Table 1	
SQA_{rp} = Σ IPR_{rp}	
where:	
SQA_{rp}	is the Pass Rate for each Service Quality Area comprised in such Service Quality Schedule for that Reporting Period;
IPR_{rp}	is ascertained as follows:
	$p \times w$
	where:
	p is ascertained as follows:
	$P = \left(\frac{SQi - SQf}{SQi} \right) \times 100$

¹¹¹ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

Table 1		
	where:	
	SQ _i	is, in respect of each Service Quality Indicator relevant to a Service Quality Area, the total number of: (a) Service Quality Inspections carried out; (b) NOT USED (c) occasions on which the Franchisee was required to record Service Quality Trains Rectification Evidence in the Service Quality Management System within the Relevant Rectification Period pursuant to paragraph 6.1(b), in respect of that Service Quality Indicator for that Reporting Period;
	SQ _f	is, in respect of each Service Quality Indicator relevant to a Service Quality Area, the total number of: (a) Service Quality Inspections where a "fail" was recorded; (b) NOT USED (c) occasions on which the Franchisee failed to record Service Quality Trains Rectification Evidence in the Service Quality Management System within the Relevant Rectification Period pursuant to paragraph 6.1(b), in respect of that Service Quality Indicator for that Reporting Period; and
	w	is the weighting as specified in Column 4 of the table in Appendix 2 of the table(s) of this Schedule 7.3 in respect of the relevant Service Quality Indicator comprised in that Service Quality Area.

10.2 Within fourteen (14) days after the end of each Franchisee Year, the Franchisee shall provide to the Secretary of State its calculation of the Pass Rate for the relevant Franchisee Year in respect of each Service Quality Area comprised in each Service Quality Schedule, such Pass Rate to be separately calculated for the Train Service Quality Inspections and the Customer Service Quality Inspections carried out in that Franchisee Year as follows:

Table 2	
SQA_{yr} = Σ IPR_{yr}	
where:	
SQA_{yr}	is the Pass Rate for each Service Quality Area comprised in such Service Quality Schedule for that Franchisee Year;
IPR_{yr}	is ascertained as follows:
	$p \times w$
	where:
	p is ascertained as follows:

Table 2		
	$P = \left(\frac{SQ_i - SQ_f}{SQ_i} \right) \times 100$	
	where:	
	SQ _i	is, in respect of each Service Quality Indicator relevant to a Service Quality Area, the total number of: (a) Service Quality Inspections carried out; (b) NOT USED (c) occasions on which the Franchisee was required to record Service Quality Trains Rectification Evidence in the Service Quality Management System within the Relevant Rectification Period pursuant to paragraph 6.1(b), in respect of that Service Quality Indicator for that Franchisee Year;
	SQ _f	is, in respect of each Service Quality Indicator relevant to a Service Quality Area, the total number of: (a) Service Quality Inspections where a "fail" was recorded; (b) NOT USED (c) occasions on which the Franchisee failed to record Service Quality Trains Rectification Evidence in the Service Quality Management System within the Relevant Rectification Period pursuant to paragraph 6.1(b), in respect of that Service Quality Indicator for that Franchisee Year; and
	w	is the weighting as specified in Column 4 of the table(s) in Appendix 2 of this Schedule 7.3 in respect of the Service Quality Indicator comprised in that Service Quality Area.

10.3 The Franchisee shall perform the calculations referred to in paragraphs 10.1 and 10.2 rounded to two (2) decimal places with the midpoint (that is, 0.115) rounded upwards (that is, 0.12).

11. **Calculations related to the Service Quality Regime**

11.1 **NOT USED.**

11.1A **NOT USED.**

11.2 **NOT USED.**

11.3 On the later of receipt of the:

(a) notification referred to in paragraph 11.2 by the Secretary of State in respect of a Franchisee Year; and

(b) any audit report relating to any Independent Service Quality Audit or SoS Audit (as the case may be) undertaken in respect of that Franchisee Year:

the Secretary of State shall:

- (i) confirm to the Franchisee that the Secretary of State agrees with the calculation of **SQA_{yr}**; and
- (ii) where any Independent Service Quality Audit or SoS Audit (as the case may be) reveals that there were Material Discrepancies in the calculation of the Pass Rate in favour of the Franchisee for that Franchisee Year (including where any such Independent Service Quality Audit or SoS Audit (as the case may be) fails to confirm or verify any of the matters specified in paragraph 7.1 (*Independent Service Quality Audits*), notify the Franchisee of that fact and the provisions of paragraph 18 (*Material Discrepancies*) shall apply.

12. **NOT USED**

12.1 NOT USED.

Part D – Publication and Reporting Requirements

13. **Publication of Pass Rates**

13.1 The Franchisee shall publish (as a minimum) on its web site (in such format as the Secretary of State may reasonably require) details of:

- (a) within one (1) week of the end of each Reporting Period, the Pass Rate for SQR Trains and SQR Customer Service for that Reporting Period, alongside the SQR Benchmark for such Service Quality Area; and
- (b) within two (2) weeks of receipt of the confirmation from the Secretary of State provided in accordance with paragraph 11.3(b) (ii) (*Calculations related to the Service Quality Regime*), the Pass Rate for each Service Quality Area for each Franchisee Year alongside the applicable SQR Benchmark for such Service Quality Area.

13.2 The Franchisee shall ensure that the Pass Rates published by it pursuant to paragraph 13.1 are also recorded in the subsequent Customer Report which relates to the Reporting Periods during which the applicable Pass Rates were achieved, along with:

- (a)
 - (i) (in relation to the third (3rd) Customer Report) a comparison with the Pass Rates achieved in relation to the Reporting Periods that have elapsed since the last Reporting Period reported on in the relevant Previous Customer Report accompanied by a supporting narrative describing the outcomes and implications of the results of such comparison exercise onwards;
 - (ii) (in the case of each subsequent Customer Report) a comparison with the Pass Rates achieved in relation to the Reporting Periods that have elapsed since the last Reporting Period reported on in the relevant Previous Customer Report for the same Reporting Periods in the previous Franchisee Year accompanied by a supporting narrative describing the outcomes and implications of the results of such comparison exercise onwards;
- (b) details of any remedial work either:
 - (i) planned by the Franchisee to occur in the period in relation to which the next Customer Report will report to improve the Franchisee's performance in relation to achieving and exceeding the SQR Benchmarks in respect of any Service Quality Area where performance is below the applicable SQR Benchmark; or

- (ii) undertaken by the Franchisee during the Reporting Periods that have elapsed since the previous Customer Report or, in the case of the first Customer Report, since the Start Date, for the purposes of improving the Franchisee's performance in relation to achieving and exceeding the SQR Benchmarks for any Service Quality Area where performance was below the applicable SQR Benchmark; and
- (c) details of any other initiatives planned to be implemented by the Franchisee to improve the Franchisee's performance against the SQR Benchmarks.

14. Reporting Requirements

14.1 Within fourteen (14) days after the end of each Reporting Period, the Franchisee shall provide to the Secretary of State:

- (a) a statement (disaggregated to separately show the total number of Train Service Quality Inspections and Customer Service Quality Inspections carried out in that Reporting Period) setting out the following:
 - (i) the raw data produced by any Service Quality Inspection and/or the recording of Service Quality Trains Rectification Evidence in the Service Quality Management System within the Relevant Rectification Period pursuant to paragraph 6.1(a) (where applicable);
 - (ii) the number of:
 - (A) Service Quality Inspections carried out in respect of each Service Quality Schedule in that Reporting Period; and
 - (B) occasions on which the Franchisee was required to record Service Quality Trains Rectification Evidence in the Service Quality Management System within the Relevant Rectification Period pursuant to paragraph 6.1(a) in that Reporting Period;
 - (iii) the number of:
 - (A) Service Quality Inspections where a "fail" was recorded in respect of a Service Quality Indicator in that Reporting Period; and
 - (B) Service Quality Failures occurring in the circumstances described in paragraph 6.1(a) in that Reporting Period;
 - (iv) the number of:
 - (A) Service Quality Inspections where a "pass" was recorded in respect of a Service Quality Indicator in that Reporting Period for each Service Quality Schedule; and
 - (B) occasions on which the Franchisee was required to record Service Quality Trains Rectification Evidence in the Service Quality Management System within the Relevant Rectification Period pursuant to paragraph 6.1(a) in that Reporting Period and a Service Quality Failure did not occur in respect of the same pursuant to paragraph 6.1(a);
 - (v) for each Service Quality Schedule and in respect of a Service Quality Area, the total number of "passes" and "fails" recorded in respect of each Service Quality Indicator comprised in such Service Quality Area; and

- (b) in respect of that Reporting Period, the Franchisee's calculation of the Pass Rate for each Service Quality Area comprised in the relevant Service Quality Schedule.
- 14.2 The Pass Rate shall be separately calculated for the Train Service Quality Inspections and the Customer Service Quality Inspections in that Reporting Period determined as set out in paragraph 10 (*Calculation of Pass Rates*).
15. **Additional Information Requirements for Service Quality Trains Rectification Evidence**
- 15.1 In addition to the information to be provided by the Franchisee pursuant to paragraph 14 (*Reporting Requirements*), the Franchisee shall at the end of each Reporting Period provide to the Secretary of State a list of each facility or service or train comprised in a SQR Train against which a "fail" was recorded:
- (a) during any Service Quality Inspections; or
- (b) in the circumstances described in paragraph 6.1(a).
16. **Maintenance of Records**
- 16.1 Without limiting the obligations of the Franchisee pursuant to paragraph 5 (*Maintenance of Records*) of Schedule 11.2 (*Management Information*), the Franchisee shall maintain true, up to date and complete records of the results of each Service Quality Inspection, its calculations of the Pass Rates in relation to such Service Quality Inspections and the results of each Independent Service Quality Audit.
- 16.2 The Franchisee shall, immediately at the request of the Secretary of State make any records required under this Schedule 7.3 available to the Secretary of State.

Part E – Remedies

17. **Consequences of a Failed Audit**

17.1 If:

- (a) following an Independent Service Quality Audit or SoS Audit (as the case may be) any such audit cannot verify or confirm any of the matters referred to in paragraph 7 (*Independent Service Quality Audits*) or any confirmation required by paragraph 7.4(a) (*Independent Service Quality Audits*) cannot be provided; or
- (b) the Franchisee fails to:
- (i) carry out a Service Quality Inspection as required by paragraph 4.1 (*Franchisee Service Quality Inspection*); or
- (ii) calculate the Pass Rates and/or report to the Secretary of State the Pass Rates as required pursuant to paragraphs 10.1 and 10.2 (*Calculation of the Pass Rates*); or
- (iii) procure that an Independent Service Quality Audit is carried out or fails to provide an audit report as required pursuant to paragraph 7.9 (*Independent Service Quality Audits*),

then the provisions of this paragraph 17 shall apply.

17.2 If any of the circumstances specified in paragraph 17.1 occur then:

- (a) the Secretary of State may in the case of an SoS Audit, require the Franchisee to reimburse to the Secretary of State the reasonable and proper costs incurred in undertaking any such SoS Audit; and
- (b) the Secretary of State may in all cases:
 - (i) require the Franchisee to carry out additional Service Quality Inspections at the Franchisee's cost (that is, in excess of those required pursuant to paragraph 4.1 (*Franchisee Service Quality Inspections*));
 - (ii) require the Franchisee to procure a further Independent Service Quality Audit (or the Secretary of State may carry out a further SoS Audit) for the purposes of verifying whether any deficiencies in the SQR Management System have led or contributed to the failure of any Independent Service Quality Audit or SoS Audit or to confirm or verify whether any of the matters referred to in paragraph 7 (*Independent Service Quality Audits*) have been subsequently rectified by the Franchisee; or
 - (iii) elect to step in and carry out SoS Service Quality Inspections in place of the Service Quality Inspections for the remainder of the Franchise Term or such period as the Secretary of State may specify (the "**SoS Service Quality Inspection Period**") and in these circumstances:
 - (A) the results of each SoS Service Quality Inspection shall be used for the purposes of calculating the Pass Rates in accordance with paragraph 10 (*Calculation of Pass Rates*) and paragraph 6 of Schedule 8.1B (*Performance Payments*);
 - (B) the Franchisee's obligations to undertake Service Quality Inspections and procure an Independent Service Quality Audit shall cease to apply for the duration of the SoS Service Quality Inspection Period; and
 - (C) the Secretary of State may require the Franchisee to reimburse to the Secretary of State the reasonable and proper costs incurred by the Secretary of State in undertaking any such SoS Service Quality Inspection during the SoS Service Quality Inspection Period.

18. Material Discrepancies

18.1 For the purposes of this Schedule 7.3, "**Material Discrepancies**" means:

- (a) discrepancies in the Franchisee's calculation of the Pass Rate which in the reasonable opinion of the Secretary of State are considered to be material; or
- (b) where an Independent Service Quality Audit or SoS Audit fails to confirm or verify any of the matters specified in paragraph 7.3 (*Independent Service Quality Audits*) in circumstances where the Pass Rate has been calculated wrongly; or
- (c) where an Independent Service Quality Audit or SoS Audit confirms that there would have been a different Pass Rate if the Franchisee had complied with the requirements of paragraph 7.3 (*Independent Service Quality Audits*)).

18.2 If, in any Franchisee Year, an Independent Service Quality Audit or SoS Audit (as the case may be) reveals:

- (a) any Material Discrepancies, the Franchisee shall not be entitled to receive payment of the Service Quality Performance Payment in respect of the Service Quality Area(s) to which the Material Discrepancies relate; or

- (b) any Material Discrepancies which are so significant as to indicate in the reasonable opinion of the Secretary of State wilful misconduct by the Franchisee or a material or persistent disregard by the Franchisee of its obligations under this Schedule 7.3, the Franchisee shall not be entitled to receive payment of the Service Quality Performance Payment applicable to:
- (i) all Service Quality Areas related to SQR Trains where the Material Discrepancies referred to in this paragraph 18.2(b) relate to any Service Quality Area(s) applicable to SQR Trains; and/or
 - (ii) all Service Quality Areas related to SQR Customer Service where the Material Discrepancies referred to in this paragraph 18.2(b) relate to any Service Quality Area(s) applicable to SQR Customer Service.

19. **Contravention of the Franchise Agreement in respect of Material Discrepancies**

19.1 On the second occasion that any Independent Service Quality Audit or SoS Audit (as the case may be) identifies any Material Discrepancies (irrespective of the nature or type of such Material Discrepancy) then this shall constitute a contravention of the Franchise Agreement in addition to the provisions of paragraph 18.2 of this Schedule 7.3 applying.

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

20.1 If:

- (a) the Pass Rate of any individual Service Quality Indicator falls below the SQR Benchmark (as applicable) for the applicable Service Quality Area ("**Affected Service Quality Indicator**") for:
 - (i) any three (3) consecutive Reporting Periods; or
 - (ii) any four (4) Reporting Periods within any period of thirteen (13) consecutive Reporting Periods; or
- (b) the Pass Rate as calculated in accordance with paragraph 10 (*Calculation of the Pass Rates*) in respect of any Service Quality Area is below any SQR Benchmark for that Service Quality Area ("**Affected Service Quality Area**") for:
 - (i) any three (3) consecutive Reporting Periods; or
 - (ii) any four (4) Reporting Periods within any period of thirteen (13) consecutive Reporting Periods; or
 - (iii) any Franchisee Year,

then the Franchisee shall immediately notify the Secretary of State of such fact and, if requested to do so by the Secretary of State, within twenty-eight (28) days (or such longer period as the Secretary of State may specify) of such request prepare at its own cost (such cost being a Disallowable Cost) and submit to the Secretary of State (for the Secretary of State's approval) the Franchisee's proposals for achieving, as soon as reasonably practicable, a Service Quality Improvement (a "**Service Quality Improvement Proposal**").

20.2 The Service Quality Improvement Proposal shall:

- (a) contain specific tangible action points and indicate in the case of each action point:
 - (i) how that action will contribute to meeting the relevant SQR Benchmark;

- (ii) where the action is to be implemented;
 - (iii) the proposed timescales for implementing such action and, where any action is expressed to be ongoing, proposed review dates;
 - (iv) the date by which the Service Quality Improvement will be achieved; and
- (b) the additional expenditure associated with each action.

20.3 The Secretary of State shall be entitled to:

- (a) request further information from the Franchisee with respect to its Service Quality Improvement Proposal and the Franchisee shall submit such further information to the Secretary of State within the timescales as reasonably requested by the Secretary of State; and/or
- (b) propose amendments to the Service Quality Improvement Proposal and the Parties shall agree and, in the absence of agreement, the Secretary of State shall reasonably determine the amendments to the Service Quality Improvement Proposal, in which case paragraph 20.4 shall apply; or
- (c) accept the Service Quality Improvement Proposal, in which case paragraph 20.4 shall apply; or
- (d) not accept the Service Quality Improvement Proposal, in which case the Franchisee shall not be obliged to undertake any further action with respect to its Service Quality Improvement Proposal.

20.4 The Franchisee shall implement the Service Quality Improvement Proposal as amended, determined or accepted by the Secretary of State (as the case may be) in accordance with paragraph 20.3. The provisions of paragraph 8 of Schedule 8.1A (Franchise Payments) shall apply in order to adjust the Budget to reflect the additional expenditure stated in the Service Quality Improvement Proposal.

20.5 If:

- (a) the Franchisee fails to implement any Service Quality Improvement Proposal (as approved by the Secretary of State) as required pursuant to paragraph 20.4 of this Schedule 7.3 within the required timescales; or
- (b) the Franchisee's performance in relation to the Affected Service Quality Area is not at a level that is equal to or above the SQR Benchmark within the period specified in the Service Quality Improvement Proposal,

then this shall constitute a contravention of the Franchise.

21. Variations to the Service Quality Regime

21.1 Without prejudice to paragraph 21.2, the Secretary of State and the Franchisee may from time to time agree to vary the contents of the Service Quality Schedules and/or any SQR Benchmark (including by reducing the SQR Benchmark in respect of certain Service Quality Areas and at the same time increasing others). Any variation agreed by the Secretary of State and the Franchisee pursuant to this paragraph 21.1 shall be effective from the date agreed by the parties for this purpose. Any such variation as agreed by the Secretary of State and the Franchisee shall not constitute a Change.

21.2 **NOT USED.**

Part F - NOT USED

**Appendix 1 to Schedule 7.3
Service Quality Schedules**

PART 1 – NOT USED

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PART 2 – SQR TRAINS

Please note that a Service Quality Indicator should only be subject to a Service Quality Inspection if the relevant facility or service is included in the SQR Register for that SQR Train.

Table 2			
Column 1	Column 2	Column 3	Column 4
Service Quality Area	Service Quality Indicator	Failure Criteria	Rectification Timescales
Ambience and Assets	Lighting	(a) Any light bulb or lighting tube does not illuminate when the power is on (except during load shedding). (b) Any light cover is cracked or broken, is loose or is otherwise unfit for purpose or missing.	Within 7 days
	Vehicle Interior Condition	(a) There are any unsightly damaged panels or damaged panel trims. (b) There are any seat tears in the fabric. (c) Seat covers are worn, visible from 1 m. (d) There is heavy wear on floor coverings or seat coverings visible from 1m. (e) Any window seals are loose, torn or missing. (f) Any windows are broken, cracked or scratched (not to include etching). (g) There are any holes in the floor vinyl/ carpet. (h) Luggage racks are broken, cracked or damaged. (i) There are any broken or missing door buttons.	Within 28 days
	Toilet Operation	(a) Any general toilet is out of use. (b) Any disabled toilet is out of use. (c) The door handle or locking mechanism is not operating correctly.	Within 24 hours

Table 2			
Column 1	Column 2	Column 3	Column 4
Service Quality Area	Service Quality Indicator	Failure Criteria	Rectification Timescales
		(d) Any lavatory seat is not in place. (e) Any lavatory is blocked. (f) Any lavatory flush system is not in working order. (g) The hand wash system is not operating correctly, including water and soap dispensers. (h) The baby change facilities (if present) are not in working order. (i) The disabled access facilities (if present) are not in working order. (j) There is no toilet tissue available. (k) There is no room in litter or disposal bins for additional items. (l) A mirror is not provided. (m) There is no means of hand drying available i.e. the hand dryer is not operational/there are no paper towels. (n) There are prolonged, lingering smells that are not perceived to be temporary.	
Cleanliness	Exterior	(a) There are apparent stains or ingrained dirt on the front, rear and/or sides of the vehicle. (b) The windows are evidently dirty.	Within 7 days except where the temperature is below 4 degrees centigrade for prolonged periods
	Interior	(a) Any surface in the interior of the vehicle is subject to excessive dust, dirt (that a letter can be written in the dirt or dust and is legible) staining or recent chewing gum.	Within 24 hours

Table 2			
Column 1	Column 2	Column 3	Column 4
Service Quality Area	Service Quality Indicator	Failure Criteria	Rectification Timescales
		(b) The floor has ingrained dirt excepting recent tracked dirt from people's shoes. (c) There is any fly posting or stickers. (d) There are fluids on the floor (not mild splashing).	
	Graffiti & Etching	(a) There is any surface based graffiti e.g. paint or pen graffiti that would be immediately evident to a customer. (b) There is any etching or " <i>structural</i> " graffiti that would be immediately evident to a customer (graffiti which is ingrained and cannot be cleaned off without replacing the item on which the graffiti is administered/without undertaking constructional work).	Offensive surface-based graffiti – within 24 hours Non-offensive surface-based graffiti – within 7 days Offensive structural graffiti – within 7 days Non-offensive structural graffiti – within 28 days
	Litter	(a) There are more than six items of litter each the same or greater in size than a credit card in the interior of each vehicle. (b) There is no space to place rubbish in the bins.	Within 24 hours
	Toilets	(a) Any lavatory is soiled. (b) Any sink is soiled. (c) Any baby change facility is soiled. (d) There is staining on the floor or walls. (e) There are fluids on the floor (not mild splashing). (f) Any fixtures or fittings are unclean	Within 24 hours

Table 2			
Column 1	Column 2	Column 3	Column 4
Service Quality Area	Service Quality Indicator	Failure Criteria	Rectification Timescales
		(g) There are no litter bins, or bins for sanitary products in cubicles or there is no space in them to place items.	
Information	Customer Information Screens	(a) Any customer information display is not working. (b) Any customer information display is working but not legible. (c) Any customer information display is showing incorrect information. (d) Any customer information display is not showing next stop information (internal) and major/final destinations (internal and external).	Within 48 hours
	Public Announcement	(a) Any announcement is not audible or capable of being understood. (b) An announcement of the train destination and major destinations is not made prior to departure of any station allowing sufficient time for people who have boarded an incorrect train to alight. (c) An announcement of the next station is not made between one and five minutes before arrival at the next station. (d) An announcement is not made requesting passengers to move down the train or free up seats from bags, etc. during crowding. (e) Where selective door operation is in operation, passengers are not informed before arrival at each station of the section of the	

Table 2			
Column 1	Column 2	Column 3	Column 4
Service Quality Area	Service Quality Indicator	Failure Criteria	Rectification Timescales
		train where doors will not be operational at that station.	
	Wi-Fi	(a) A Wi-Fi connection to the internet is not possible.	Within 7 days
	Catering	(a) The facility is unavailable when it should be available in accordance with the on-board information.	Within 14 days
	Posters, Frames & Signs	(a) Any poster or frame is missing, in line with the SQR register. (b) Any poster frame is damaged, rusting or unsecure. (c) Any information on the poster is not visible. (d) Any poster is showing incorrect or out of date information. (e) Any poster is torn, damaged or slipped in the case. (f) Any poster is faded, evident from 1m. (g) Any signs fixed to the interior of the train are damaged or illegible (h) Route diagrams are not available showing train routes and key connection information.	(a) within 7 days (b), (c), (d),(e),(f), (g),(h) within 48 hours
	Information During Disruption	(a) Where a delay has occurred, an announcement was not made following the delay or was made more than two minutes after the delay commenced. (b) Where a delay has occurred, information was not provided about the nature of the delay and expected duration (or if this is not known,	N/A

Table 2			
Column 1	Column 2	Column 3	Column 4
Service Quality Area	Service Quality Indicator	Failure Criteria	Rectification Timescales
		<p>an update on the action being taken to establish the nature of the delay is not provided).</p> <p>(c) Where disruption has occurred, ongoing updates are not provided every three minutes or less for the duration of the disruption.</p> <p>(d) If the train is to terminate before its destination, fails to stop or is going to skip a stop due to disruption, or for delays of over 15 minutes, information on next steps, alternatives and passenger ticket validity on other operators' services is not provided.</p> <p>(e) Where a delay has occurred and is resolved, an update on scheduled arrival times is not provided.</p> <p>(f) Information provided by on train announcement is not consistent with the information provided through social media, the websites and the Smartphone application.</p> <p>(g) Where a delay has occurred, an apology for the delay is not received.</p>	

PART 3 – SQR CUSTOMER SERVICE

Please note that a Service Quality Indicator should only be subject to a Service Quality Inspection if the relevant facility or service is included in the SQR Register for that SQR Train

Table 3		
Column 1	Column 2	Column 3
Service Quality Area	Service Quality Indicator	Failure Criteria
Information & Contact	Social Media Mystery Shopper Question	(a) No response within 30 minutes. (b) The response did not answer the question or advise to where additional information could be found.
	Helpfulness of Staff On Trains	(a) Staff member does not provide a friendly interaction with the mystery shopper. (b) Staff member does not have the correct information to hand when responding to a mystery shopper question. (c) Staff member gives incorrect information in response to a Mystery Shopper Inspection. (d) The staff member’s behaviour and/or body language reflects poorly on the Franchisee.

**Appendix 2 to Schedule 7.3
Service Quality Areas/SQR Benchmarks/Service Quality Indicators/Weightings**

PART 1 –NOT USED

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PART 2 – SQR TRAINS

Table 2						
Column 1	Column 2				Column 3	Column 4
	SQR Train Benchmarks					
Service Quality Area	Franchisee Years				Service Quality Indicators	Weighting
	2021/22	2022/23	2023/24	2024/25		
Ambience and Assets	81.0%	82.0%	83.0%	84.0%	Lighting	33%
					Vehicle Interior Condition	33%
					Toilet Operation	34%
Cleanliness	91.0%	92.0%	93.0%	94.0%	Exterior	10%
					Interior	30%
					Graffiti & Etching	15%
					Litter	20%
					Toilets	25%
Information	85.0%	86.0%	87.0%	88.0%	Customer Information Screens	15%
					Public Announcements	15%
					Wi-Fi	15%
					Catering Information	15%
					Posters, Frames & Signs	15%
					Information During Disruption	25%

PART 3 – SQR CUSTOMER SERVICE

Table 3							
Column 1	Column 2				Column 3		Column 4
	SQR Customer Service Benchmarks						
Service Quality Area	Franchisee Years				Service Quality Indicators		Weighting
	2021/22	2022/23	2023/24	2024/25			
Information & Contact	80.0%	81.0%	82.0%	83.0%	Social Media Mystery Shopper		50%
					Helpfulness of Staff on Trains		50%

**Appendix 3 to Schedule 7.3
NOT USED**

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SCHEDULE 8**PAYMENTS**

Schedule 8.1A:	Franchise Payments
	Appendix 1: Disallowable Costs
Schedule 8.1B:	Performance Payments
Schedule 8.3:	NOT USED
Schedule 8.4:	NOT USED
Schedule 8.5:	NOT USED
Schedule 8.6:	NOT USED

Schedule 8.1A

Franchise Payments**1A. Definitions**

For the purposes of this Schedule 8.1A (Franchise Payments) only, the following words and expressions shall have the following meanings unless otherwise set out in clause 3 (Definitions):

"Accrued Claims"	has the meaning given in paragraph 9.8 of Schedule 8.1A (Franchise Payments);
"Accrued Disallowable Costs"	has the meaning given in paragraph 9.8 of Schedule 8.1A (Franchise Payments);
"Accrued Revenue Foregone"	has the meaning given in paragraph 9.8 of Schedule 8.1A (Franchise Payments);
"Approved Affiliate Contract"	means a contract or arrangement entered into between the Franchisee and an Affiliate to which the Secretary of State has consented to: (a) in accordance with paragraph 8.7 of Schedule 8.1A (Franchise Payments) or (b) on or prior to the Start Date save that if such contract or arrangement is renewed (including the continuation of any such contract or arrangement beyond its original term) and/or varied then the provisions of paragraph 8.7 of Schedule 8.1A (Franchise Payments) shall apply to such contract or arrangement;
"Base Cash Position"	[REDACTED¹¹²] (excluding the value of Season Ticket suspense liabilities) or such other value as the Secretary of State may determine in accordance with paragraph 12.8 of Schedule 8.1A (Franchise Payments);
"Capital Expenditure"	means costs of creating non-current or fixed assets which are not Costs (as defined in this Schedule 8.1A) excluding all depreciation and amortisation charges;

¹¹² 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

“Ceiling Cash Position”	means [REDACTED¹¹³] (excluding the value of Season Ticket suspense liabilities) or such other value as the Secretary of State may determine in accordance with paragraph 12.8 of Schedule 8.1A (Franchise Payments);
“Direct Award Collateral Agreement”	means the collateral agreement to this Agreement between the Franchisee and the Secretary of State and dated on or about the date of this Agreement;
“Emergency Working Capital Payment”	has the meaning given in paragraph 12.5 of Schedule 8.1A (Franchise Payments);
“First Quarter”	means the first Quarter to occur during the Franchise Term;
“First Reporting Period”	means the first Reporting Period to occur during the Franchise Term;
“[REDACTED¹¹⁴]”	[REDACTED] ;
“Fixed Fee” or “FF”	means the fixed fee part of the Fixed Fee and Performance Payment calculated in accordance with paragraph 15 of this Schedule 8.1A (Franchise Payments);
“Franchise Payment Component”	means: <ul style="list-style-type: none"> (a) each of the components of “FP” as described in paragraph 1.1 of this Schedule 8.1A (Franchise Payments); and (b) any component or element, described in the relevant provisions of this Schedule 8.1A (Franchise Payments) and Schedule 8.1B (Performance Payments), as the case may be, which is used in determining or calculating the value of those components described in paragraph (a) above;

¹¹³ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹¹⁴ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

- “Periodic Adjustment”** has the meaning given in paragraph 10.2 of this Schedule 8.1A (Franchise Payments);
- “Periodic Budgeted Capex Payment” or “PBCP”** means the Franchise Payment Component calculated in accordance with paragraph 1.1 of this Schedule 8.1A (Franchise Payments);
- 1. **“Periodic Finance Review Meeting”** has the meaning given in paragraph 9.1 of this Schedule 8.1A (Franchise Payments);
- “Periodic Franchise Payment” or “PFP”** means the Franchise Payment Component calculated in accordance with paragraph 1.1 of this Schedule 8.1A (Franchise Payments);
- “Quarterly Finance Review Meeting”** has the meaning given in paragraph 9.3 of this Schedule 8.1A (Franchise Payments);
- “Start Date Franchise Payment”** has the meaning given in paragraph 1.2 of this Schedule 8.1A (Franchise Payments);
- “Unreimbursed Disallowable Costs”** has the meaning given in paragraph 9.12 of this Schedule 8.1A (Franchise Payments);

Franchise Payments

1.1 Subject to paragraph 1.2, the Franchise Payment for any Reporting Period shall be an amount equal to:

£FP =	$PFP + PBCP + PADJ + WCP - WCR + AADJ + FFPP - FWCA$
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where:

PFP (Periodic Franchise Payment)	means an amount equal to: $PFP = BC - FR$ Where:	
	BC	means the Budgeted Costs for the next Reporting Period (if any). BC may only be a positive number.
	FR	means the Forecasted Revenue for the current Reporting Period (if any). FR may only be a positive number.
	PFP may be a positive or negative number.	
PBCP (Periodic Budgeted)	means an amount equal to the Budgeted Capex for the next Reporting Period (if any). PBCP may only be a positive number	

Capex Payment)	
PADJ	means any Periodic Adjustment, determined in accordance with paragraph 10, to be made on that Reporting Period's Payment Date. PADJ may be a positive or negative number.
WCP	means any Working Capital Payment to be made on that Reporting Period's Payment Date. WCP may only be a positive number.
WCR	means any Working Capital Repayment to be made on that Reporting Period's Payment Date. WCR may only be a positive number.
AADJ	means any Annual Adjustment, determined in accordance with paragraph 11, to be made on that Reporting Period's Payment Date. AADJ may be a positive or negative number.
FFPP	means the Fixed Fee and Performance Payment for the applicable Franchisee Year, determined in accordance with paragraph 15.1 and to be paid on that Reporting Period's Payment Date in accordance with paragraph 15.3. Subject to paragraph 15.2, FFPP may only be a positive number.
FWCA	means the Final Working Capital Adjustment, determined in accordance with paragraph 14.3, to be made on that Reporting Period's Payment Date. FWCA may be a positive or negative number.

1.2 In respect of the First Reporting Period there shall be an additional Franchise Payment (the "**Start Date Franchise Payment**"), which shall be an amount equal to:-

£SDFP =	FFPP + FPBCP + FWCP
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Where:

FPFP (First Periodic Franchise Payment)	means an amount equal to: FPFP = BC Where:	
	BC	means the Budgeted Costs for the First Reporting Period. BC may only be a positive number.

FPBCP (First Periodic Budgeted Capex Payment)	means an amount equal to the Budgeted Capex for the First Reporting Period. FPBCP may only be a positive number.
FWCP	means an amount equal to the First Working Capital Payment and FWCP may be either a positive or negative number.

1.3 The Parties agree that:

- (a) where **£FP is a positive number**, the Secretary of State shall pay that amount to the Franchisee on the Payment Date for that Reporting Period;
- (b) where **£FP is a negative number**, the Franchisee shall pay the corresponding positive amount to the Secretary of State on the Payment Date for that Reporting Period.

1.4 The Parties shall co-operate in considering an alternative process for the calculation and/or payment of the Franchise Payments in respect of those Reporting Periods which occur after the expiry of the Franchise Period but for the avoidance of doubt in the absence of agreement or where the Parties decide not to implement any other calculation or payment procedure, the provisions of this Schedule 8.1A shall continue to apply to such Reporting Periods.

2. **Payment of Franchise Payments**

- 2.1 The Secretary of State shall notify the Franchisee, no less than seven (7) days prior to the end of each Reporting Period, of the amount of the Franchise Payment payable in respect of that Reporting Period provided that in respect of the Start Date Franchise Payment, the Secretary of State shall notify the Franchisee of the amount of the Start Date Franchise Payment no less than seven (7) days prior to the Start Date.
- 2.2 Each such notification shall set out in reasonable detail how the Franchise Payment has been calculated.
- 2.3 The Payment Date for a Reporting Period shall be the last Weekday of that Reporting Period, except that the Payment Date in respect of the Start Date Franchise Payment shall be the fifth Weekday following the Start Date.
- 2.4 Each Franchise Payment shall be payable by the Franchisee or, as the case may be, the Secretary of State in the amount notified by the Secretary of State in accordance with paragraph 2.1 on the Payment Date of the Reporting Period to which it relates.

- 2.5 Each Franchise Payment shall be made:
- (a) by automatic electronic funds transfer in pounds sterling to such bank account in the United Kingdom as the payee of such payment may have previously specified to the payer in writing; and
 - (b) so that cleared funds are received in that account on or before the due date for payment.

3. **Interest**

3.1 If:

- (a) the Franchisee fails to pay any amount to the Secretary of State on its due date,
- (b) the Secretary of State fails to pay to the Franchisee the Fixed Fee and Performance Payment on its due date,

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

4. **Disputes under Schedule 8**

- 4.1 If either the Franchisee or the Secretary of State disputes the amount of a Franchise Payment, the dispute shall, unless the Franchisee and the Secretary of State otherwise agree, be resolved in accordance with the provisions of clause 17 (Governing Law and Jurisdiction) of the Franchise Agreement. Any such dispute shall not affect the obligation of either party to pay a Franchise Payment notified in accordance with this Schedule 8.1A.

5. **Not Used**

6. **No Double Recovery**

- 6.1 Neither Party shall be entitled to recover (by way of an adjustment to Franchise Payments or otherwise) more than once in respect of the same amount. In particular, no amount shall be categorised as both Capital Expenditure and as a Cost for the purpose of this Schedule 8.1A.
- 6.2 The Franchisee shall use all reasonable endeavours to avail itself of, including applying for, any governmental support or support from any local authority or other such body that:
- (a) is offered to it;
 - (b) the details of which are notified to it by the Secretary of State; or
 - (c) which a Good and Efficient Operator should have been reasonably aware of,

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

6.3 If and to the extent that the Franchisee is successful in receiving any such support described in paragraph 6.2, this shall be taken into account in relation to the relevant payment and adjustments in this Schedule 8.1A such that the Franchisee does not benefit from double recovery or double counting.

7. Force Majeure and Payments

Following the occurrence of a Force Majeure Event, the payment of Franchise Payments shall continue to be calculated in accordance with this Schedule 8.1A (Franchise Payments) and the payment of such Franchise Payments shall continue unaffected.

8. Revisions to the Budget and Record of Assumptions

8.1 Without limiting the requirement for any other meeting, the Parties shall, at least once in each Quarter, hold a forecast Budget review meeting (a **"Quarterly Budget Forecast Review Meeting"**) at a time and location notified to the Franchisee by the Secretary of State following provision of the information referred to in paragraph 8.2. The purpose of the meeting shall be to review and seek to agree:

- (a) revisions (if any) to the then current Budget for the remaining Reporting Periods of the Budget;
- (b) the content of any necessary or desirable corresponding addendum to the Record of Assumptions;
- (bA) any changes to the assumption(s) as set out in the Record of Assumptions and consequential revisions (if any) to the then current Budget for the remaining Reporting Periods of the Budget to reflect the change in assumption(s);
- (c) whether (and if so, the extent to which) the provisions of Schedule 9.1 (Consequences of Change and Other Adjustments) apply to any such revisions agreed in accordance with this paragraph 8.1(a) and/or (b);
- (d) any contracts which the Franchisee proposes to enter into with an Affiliate or renew (and the provisions of paragraph 8.7 shall apply) and any existing contracts with an Affiliate which the Franchisee proposes to amend or extend and details of any contract procurement process (pursuant to which the Franchisee proposes to enter into a contract with the successful bidder) in which the Franchisee reasonably expects an Affiliate to participate; and
- (e) whether any adjustment to the value(s) of Base Cash Position, Ceiling Cash Position and/or Floor Cash Position are necessary.

The Franchisee shall ensure that the representatives of the Franchisee at the Quarterly Budget Forecast Review Meeting shall include the Finance Director of the Franchisee or a suitable representative of the Finance Director as may reasonably be approved for this purpose by the Secretary of State.

8.2 The Franchisee shall, prior to the date of each Quarterly Budget Forecast Review Meeting have provided to the Secretary of State the relevant information required pursuant to paragraph 9.3 of Schedule 11.2 together with a draft revision of the worksheet labelled "Periodic P&L1" in the Financial Formats,

updated to reflect Actual Costs and Actual Revenues as reflected in the latest Management Accounts and revised Budgeted Costs and Forecasted Revenues for the remainder of the Franchise Period, in accordance with the timescales set out therein, and shall provide the Secretary of State with all further information as the Secretary of State may request from time to time for the purposes of the operation of this paragraph 8, within such time as the Secretary of State may reasonably specify for that purpose (and this paragraph shall continue to apply such that the number of requests which the Secretary of State may make is not limited).

- 8.3 If the Parties fail to agree the matters referred to in paragraphs 8.1(a) to 8.1(e) the relevant Quarterly Budget Forecast Review Meeting, the Secretary of State shall reasonably determine such matters.
- 8.4 Such revisions to the Budget and addenda to the Record of Assumptions as agreed or determined shall take effect from the first day of the Quarter immediately following the date on which the Quarterly Budget Forecast Review Meeting (at which such matters were discussed) took place provided that, if such revisions or addenda are not agreed by the first day of that Quarter, the relevant revisions and addenda shall take effect from the first day of the Reporting Period which falls at least 10 Weekdays after those revisions and addenda are agreed or determined.
- 8.5 Each revision to the Budget and/or addendum to the Record of Assumptions shall (unless the Parties otherwise agree):
- (a) adopt the same format and structure as the original version in agreed terms (or where the preceding version has included any changes from that format and structure expressly agreed by the Parties for this purpose) from the preceding version;
 - (b) make no assumptions or include any costs, revenue or other adjustments which are not consistent with the definitions of Costs, Capital Expenditure and Revenue or which represent Disallowable Costs or Revenue Foregone or liabilities in respect of SoS Claims (except as may be otherwise expressly agreed by the Parties for that purpose);
 - (c) adopt the same accounting principles and standards as the original version (as these may be expressly varied by agreement between the Parties for this purpose or, in the case of accounting standards, as these may be reasonably revised by the Secretary of State to take account of changes to GAAP in the United Kingdom); and
 - (d) otherwise facilitate easy comparison with the definitions of Costs, Capital Expenditure, Revenue, Disallowable Costs and Revenue Foregone and with the information reported in the Management Accounts, Annual Management Accounts and the Audited Annual Accounts.
- 8.6 Each time it is agreed or determined that the Budget is to be revised and/or an addendum is to be added to the Record of Assumptions, the Secretary of State shall be entitled to:-
- (a) make the agreed or determined revisions to the Budget and/or Record of Assumptions himself (or procure this is done on his behalf) and provide copies of those revised documents to the Franchisee; or

- (b) require the Franchisee to provide the agreed or determined revisions to the Budget and/or Record of Assumptions for approval by the Secretary of State, which the Franchisee shall do and provide revised versions to the Secretary of State within such time as the Secretary of State shall specify for this purpose.

8.7 The Franchisee shall not enter into any contract or arrangement with an Affiliate (including the renewal of any such contract or arrangement (including the continuation of any such contract or arrangement beyond its original term) and/or the variation of any such contract or arrangement) unless the Secretary of State has, in their absolute discretion first consented to the terms of such contract or arrangement and to it being entered into, varied or renewed on those terms, whether at or following a Quarterly Budget Forecast Review Meeting (where such contract forms part of the agenda for that meeting) or otherwise. In connection with any permission sought by the Franchisee in connection with this paragraph, the Franchisee is required to provide evidence to the Secretary of State demonstrating that:

- (a) it has complied with the Franchisee’s Procurement Rules;
- (b) the goods and/or services to be purchased from the Affiliate are at competitive rates, on an arm’s length basis and that there is a sound business case for contracting with, or entering into an arrangement with, an Affiliate (such as by providing evidence of quotations and prices from other suppliers or providers for comparison); and
- (c) it has commercially challenged the quoted price(s) in order to achieve the best price or value,

and the Franchisee shall provide details of any management charges or management overheads forming part of such proposed contract or arrangement with the Affiliate.

8.7A Where the Franchisee has:

- (a) provided the evidence set out in paragraph 8.7 to the Secretary of State; and
- (b) the Secretary of State is not, at such time, able to properly evaluate such evidence in order to consent to the entry into of any such contract or arrangement with an Affiliate by the Franchisee,

then should the Secretary of State (at the Secretary of State’s absolute discretion) decide to provide its consent to the entry into of such contract or arrangement, the giving of such consent by the Secretary of State shall remain subject to the Secretary of State retaining at all timesthe right to withdraw its consent where the Secretary of State, having evaluated the evidence provided by the Franchisee in accordance with paragraph 8.7, is not or is no longer satisfied with the evidence provided by the Franchisee in relation to such contract or arrangement, and provided that any such contract or arrangement contains appropriate termination and/or variation provisions so that in the event that the Secretary of State elects to withdraw its consent in accordance with paragraph 8.7A(a), such contract or arrangement may be terminated or varied to address the Secretary of State’s concerns in relation to such contract or

arrangement. In the event that the Secretary of State has withdrawn its consent in accordance with this paragraph 8.7A then the Franchisee shall ensure that the process set out in paragraph 8.7 is followed in respect of the re-procurement of any replacement contract or arrangement with an Affiliate.

8.8 For the purpose of this paragraph 8, the Secretary of State shall be entitled to consider any information provided to the Secretary of State by the Franchisee and any other sources of information which the Secretary of State considers to be relevant and the Secretary of State shall be entitled to request such information from the Franchisee as the Secretary of State requires in connection with the matters referred to in this paragraph 8. Without prejudice to the generality of the foregoing, in considering any revisions to the Budget, regard shall be had to the definitions of Costs, Revenue, Capital Expenditure, Good and Efficient Operator, Disallowable Costs and Revenue Foregone, so as to ensure that the revisions to the Budget are consistent with those definitions.

8.9 Subject to the Secretary of State's rights set out in paragraph 8.7, the Parties shall at all times act in good faith, reasonably and in a timely manner in the interpretation and application of the provisions for agreeing revisions to the Budget and any addendum to the Record of Assumptions.

9. **Review of Franchisee's performance against Budget
Finance Review Meeting**

9.1 Without limiting the requirement for any other meeting, the Parties shall hold (subject to paragraph 9.11) a finance review meeting at least once in every Reporting Period ("**Periodic Finance Review Meeting**") (other than the First Reporting Period) at such time(s) and location(s) notified to the Franchisee by the Secretary of State following provision of the information referred to in paragraph 9.2 and:

- (a) the purpose of the Periodic Finance Review Meeting shall be to review the financial performance of the Franchisee. This shall include:
 - (i) a review and discussion of variances arising in the preceding Reporting Period between Actual Costs, Actual Revenues and Actual Capex and Budgeted Costs, Forecasted Revenues and Budgeted Capex respectively and confirmation of the value of the Periodic Adjustment to be applied to the Franchise Payment to be paid in the Reporting Period in which the Periodic Finance Review Meeting is taking place;
 - (ii) a review and discussion regarding any Actual Costs with respect to payments made by the Franchisee under Approved Affiliate Contracts which exceed the Budgeted Costs stated in the then current Budget with respect to the payments to be made under such contracts;
 - (iii) a review of fees and payments (including bonuses) actually paid by the Franchisee to its directors and officers during the preceding Reporting Period as against the Budgeted Costs for such fees and payments as stated in the then current Budget;
 - (iv) a review and discussion of the Franchisee's management of its working capital and the Franchisee's Forecast Closing Cash

Position for that Reporting Period in which the Periodic Finance Review Meeting is taking place and any Working Capital Payment or Working Capital Repayment to be applied to the Franchise Payment to be paid in that Reporting Period in which the Periodic Finance Review Meeting is taking place;

- (v) actions to be taken in respect of the Franchisee's financial performance;
 - (vi) identification of any potential Non-Recoverable Costs, Disallowable Costs, Unreimbursed Disallowable Costs, Revenue Foregone and SoS Claims that may have been incurred within the preceding or current Reporting Period or will be incurred in the current or the next three (3) Reporting Periods; and
 - (vii) identification of any contracts or arrangements to which paragraph 8.7 of this schedule or paragraph 9.3(a)(iA) of Schedule 11.2 will apply in the current or the next six (6) Reporting Periods;
- (b) the Franchisee shall ensure that the representatives of the Franchisee at the meeting shall include the Finance Director of the Franchisee or a suitable representative of the Finance Director as may reasonably be approved for this purpose by the Secretary of State.

9.2 The Franchisee shall, prior to the date of each Periodic Financial Review Meeting have provided to the Secretary of State the relevant information required pursuant to paragraph 9.2 of Schedule 11.2 together with a statement of the Franchisee's Forecast Closing Cash Position applicable to that Reporting Period, in accordance with the timescales set out therein, and shall provide the Secretary of State with all further information as the Secretary of State may request from time to time for the purposes of the operation of paragraph 9.1, within such time as the Secretary of State may reasonably specify for that purpose (and this paragraph shall continue to apply such that the number of requests which the Secretary of State may make is not limited).

Quarterly Financial Review

9.3 Without limiting any other rights the Secretary of State may have and without limiting the requirement for any other meeting, the Parties shall hold a finance review meeting at least once in each Quarter ("**Quarterly Finance Review Meeting**"), excluding the First Quarter, at such time(s) and location(s) notified to the Franchisee by the Secretary of State following provision by the Franchisee of the relevant information required pursuant to paragraph 9.2 of Schedule 11.2 applicable to the final Reporting Period to occur in the preceding Quarter and:

- (a) the purpose of the Quarterly Finance Review Meeting shall be to review the financial performance of the Franchisee. This shall include:
 - (i) a review and discussion of variances arising in the preceding Quarter between Actual Costs, Actual Revenues and Actual Capex and Budgeted Costs, Forecasted Revenues and Budgeted Capex respectively;

- (ii) a review and discussion regarding any Actual Costs with respect to payments made by the Franchisee under Approved Affiliate Contracts which exceed the Budgeted Costs stated in the then current Budget with respect to the payments to be made under such contracts;
 - (iii) a review of fees and payments actually paid by the Franchisee to its directors and officers during each Reporting Period in that Quarter as against the Budgeted Costs for such fees and payments as stated in the Budget applicable to such Reporting Periods;
 - (iv) actions to be taken in respect of the Franchisee's financial performance;
 - (v) confirmation and valuation of any Disallowable Costs, Unreimbursed Disallowable Costs, Revenue Foregone and SoS Claims (and/or in accordance with paragraph 9.10, relevant Initial SoS Claim Amounts, as applicable) which have been identified pursuant to paragraph 9.1(a)(vi) above in a prior Periodic Finance Review Meeting;
 - (vi) a joint review of the process set out in paragraphs 9.3(a)(i) to 9.3(a)(v) (inclusive) to consider whether such processes are working efficiently and to consider any recommendations that may practically improve the processes set out in this Schedule 8.1A provided always that any variations as may be agreed by the Parties shall be subject to Schedule 9.3; and
- (b) the Franchisee shall ensure that the representatives of the Franchisee at the meeting shall include the Finance Director of the Franchisee or a suitable representative of the Finance Director as may reasonably be approved for this purpose by the Secretary of State; and
 - (c) the Secretary of State shall ensure that the representatives of the Secretary of State shall include a senior civil servant where the confirmation and valuation of any Disallowable Costs, Unreimbursed Disallowable Costs, Revenue Foregone and/or SoS Claims (and/or in accordance with paragraph 9.10, relevant Initial SoS Claim Amounts, as applicable) are to be considered as part of any Quarterly Finance Review Meeting.
- 9.4 The Secretary of State shall be entitled to consider any information provided to him by the Franchisee and any other sources of information which the Secretary of State considers to be relevant and the Secretary of State shall be entitled to request such information from the Franchisee as the Secretary of State requires for the purposes of the operation of this paragraph 9. The Franchisee shall provide the information within such time as the Secretary of State may reasonably specify for the purpose (and this paragraph shall continue to apply such that the number of requests which the Secretary of State may make is not limited).
- 9.4A If, within ten (10) Weekdays following the relevant Quarterly Finance Review Meeting:

- (a) the Parties have failed to agree the matters referred to in paragraph 9.3(a)(v); and
- (b) such matters either individually or in the aggregate exceed two hundred thousand pounds sterling (£200,000); then

each Party will respectively procure that such matter or matters (as the case may be) will be escalated to any senior civil servant within the Department for Transport's Rail Group (excluding the Passenger Services Group) on behalf of the Secretary of State and any statutory director of any Affiliate of the Franchisee on behalf of the Franchisee. Those representatives will meet at the earliest convenient time and in any event within twenty (20) Weekdays of the date of the relevant Quarterly Finance Review Meeting and negotiate in good faith and attempt to agree the relevant matters.

9.5 If:

- (a) the Parties fail to agree the matters referred to in paragraph 9.3(a) at the relevant Quarterly Finance Review Meeting, in circumstances where paragraph 9.4A does not apply;
- (b) the representatives of the Parties fail to agree the matters referred to in paragraph 9.3(a)(v) within ten (10) Weekdays of first meeting to agree such matters in accordance with paragraph 9.4A, in circumstances where that paragraph applies; or
- (c) the Franchisee fails to provide the relevant information required pursuant to Schedule 11.2 (Management Information), in accordance with the timescales set out therein, or otherwise in accordance with this paragraph 9,

the Secretary of State shall (without prejudice to his other rights) be entitled (but not obliged) to determine the relevant matters in accordance with this paragraph 9 and all other applicable provisions of this Schedule 8.1A but by reference to the relevant information available to the Secretary of State at the time of such determination.

- 9.6 Any Reporting Period Budget Forecast Review Meeting or Period Finance Review Meeting (or part thereof) may be held remotely with the prior agreement of the Parties.

Accrued Disallowable Costs, Accrued Revenue Foregone and Accrued SoS Claims

- 9.7 Without prejudice to paragraphs 9.3 to 9.5, if subsequent to any Quarterly Finance Review Meeting the Secretary of State later identifies any item (applicable to that period to which the relevant Quarterly Finance Review Meeting relates) which the Secretary of State considers is or may be a Disallowable Cost or an instance of Revenue Foregone or any SoS Claims (whether following a review of the Franchisee's Annual Audited Accounts or otherwise) the Secretary of State shall within 28 days of identifying such item be entitled to:-

- (a) notify the Franchisee in writing, identifying the item concerned; and

- (b) request further information from the Franchisee in connection with the item for the purposes of the operation of this paragraph 9.7 and paragraphs 9.7A to 9.7C. The Franchisee shall provide the information within such time as the Secretary of State may reasonably specify for the purpose.

9.7A The parties shall seek to agree the value of any Disallowable Costs and/or Revenue Foregone and/or any SoS Claims (and/or in accordance with paragraph 9.10, relevant Initial SoS Claim Amounts, as applicable) identified by the Secretary of State pursuant to paragraph 9.7 within twenty (20) Weekdays of the later of the Secretary of State's notice referred to in paragraph 9.7(a) and the date specified by the Secretary of State for the delivery of further information in accordance with paragraph 9.7(b) (the "**Escalation Trigger Date**").

9.7B If:

- (a) the parties fail to agree the matters referred to in paragraph 9.7A; and
- (b) such matters either individually or in the aggregate exceed five hundred thousand pounds sterling (£500,000); then

each Party will respectively procure that such matter or matters (as the case may be) will be escalated to any senior civil servant within the Department for Transport's Rail Group (excluding the Passenger Services Group) on behalf of the Secretary of State and any statutory director of any Affiliate of the Franchisee on behalf of the Franchisee. Those representatives will meet at the earliest convenient time and in any event within twenty (20) Weekdays of the Escalation Trigger Date and negotiate in good faith and attempt to agree the relevant matters.

9.7C If:

- (a) the Parties fail to agree the matters referred to in paragraph 9.7A in circumstances where paragraph 9.6B does not apply;
- (b) the representatives of the Parties fail to agree the matters referred to in paragraph 9.7A within ten (10) Weekdays of first meeting to agree such matters in accordance with paragraph 9.7B, in circumstances where that paragraph applies; or
- (c) the Franchisee fails to provide the relevant information required pursuant to paragraph 9.7(b) in accordance with the specified timescales, then

the Secretary of State shall reasonably determine the value of any Disallowable Costs and/or Revenue Foregone and/or any SoS Claims (and/or in accordance with paragraph 9.10, relevant Initial SoS Claim Amounts, as applicable).

9.8 The value of any Disallowable Costs and/or Revenue Foregone and/or any SoS Claims (and/or in accordance with paragraph 9.10, relevant Initial SoS Claim Amounts as applicable) as agreed or determined whether pursuant to paragraph 9.3, paragraph 9.4A, paragraph 9.5, paragraph 9.7A, paragraph 9.7B, paragraph 9.7C or paragraph 9.10 shall be referred to as "**Accrued**

Disallowable Costs" and **"Accrued Revenue Foregone"** and **"Accrued Claims"** (as applicable).

- 9.9 The value of any Accrued Disallowable Costs and/or Accrued Revenue Foregone and/or Accrued Claims on each occasion accumulated pursuant to paragraph 9.7 shall be aggregated with the total of all Disallowable Costs, Revenue Foregone and SoS Claims which have been previously accumulated, such aggregated value from time to time being the **"Aggregated Costs and Revenues Liabilities"**.
- 9.10 To the extent that any SoS Claim is a contingent or unliquidated claim (a **"Contingent SoS Claim"**), the parties shall, pursuant to paragraph 9.3, paragraph 9.4A, paragraph 9.7A or paragraph 9.7B (as applicable) seek to agree (or in the absence of agreement, the Secretary of State may for the purposes of paragraph 9.5 and shall for the purposes of paragraph 9.7C, reasonably determine) an initial value for such Contingent SoS Claim (the **"Initial SoS Claim Amount"**) and the Initial SoS Claim Amount shall be deemed to be an Accrued Claim for the purposes of paragraph 9.7. If the value of Contingent SoS Claim once fully liquidated (that is, being agreed or determined through dispute resolution) is:
- (a) in excess of the Initial SoS Claim Amount the Secretary of State shall be entitled to claim such amount in excess of the Initial SoS Claim Amount from the Franchisee:
 - (i) as an adjustment to the Aggregated Costs and Revenues Liabilities to be applied against the calculation of FFPP (in accordance with paragraph 15.1), where Franchise Payments in favour of the Secretary of State remain to be paid after the date on which the Contingent SoS Claim has become fully liquidated; and/or
 - (ii) as a debt from the Franchisee which the Secretary of State shall be entitled to claim from the Guarantor in accordance with the Funding Deed or from the Performance Bond on expiry or termination of this Franchise Agreement; or
 - (b) less than the Initial SoS Claim Amount the Secretary of State shall repay to the Franchisee the difference between the actual liquidated value of the relevant SoS Claim and the Initial SoS Claim Amount either:
 - (i) as an adjustment to the Aggregated Costs and Revenues Liabilities to be applied against the calculation of FFPP, where Franchise Payments remain to be paid after the date on which the Contingent SoS Claim has become fully liquidated; or
 - (ii) where no Franchise Payment is payable after the date on which the Contingent SoS Claim becomes fully liquidated as a payment to the Franchisee.
- 9.11 Secretary of State shall have the discretion (acting reasonably) to decrease (and subsequently increase) the required frequency of the Periodic Finance Review Meetings, provided they shall be no more frequent than once a Reporting Period.

Unreimbursed Disallowable Costs

- 9.12 If the value of any Disallowable Cost is agreed or determined pursuant to this paragraph 9, the Franchisee may (subject to the prior written consent of the Secretary of State) request that the Guarantor pay to the Franchisee within ten (10) Weekdays of receipt of such request a sum equal to the value of such Disallowable Cost (such sum, once paid to the Franchisee in accordance with this paragraph 9.12, being an **“Unreimbursed Disallowable Cost”**).
- 9.13 Paragraph 9.12 shall not apply in relation to Disallowable Costs specified in paragraph (h) or paragraph (m) of Appendix 1 (Disallowable Costs) to this Schedule 8.1A.
- 9.14 Any Unreimbursed Disallowable Costs shall be disregarded for the purposes of:
 - (a) paragraph 1.16 of Schedule 10.2 (Events of Default and Termination Events); and
 - (b) calculating any Costs for the purposes of any Franchise Payment.

10. Periodic Adjustments

- 10.1 The value of PADJ for the current Reporting Period (n) shall be equal to the following:

PADJ for Reporting Period(n) =	$(ACRP_{n-2} - BCRP_{n-2}) + (ACAP_{n-2} - BCAP_{n-2}) - (ARRP_{n-2} - FRRP_{n-2})$
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Where:

ACRP_{n-2}	means the total Actual Costs for the second preceding Reporting Period (n-2) as set out in the Management Accounts for that preceding Reporting Period. ACRP _{n-2} may only be a positive number.
BCRP_{n-2}	means the total Budgeted Costs in respect of the second preceding Reporting Period (n-2) (based on the version of the Budget which applied for the purpose of the calculation of the Franchise Payment for that second preceding Reporting Period (n-2)). BCRP _{n-2} may only be a positive number.
ACAP_{n-2}	means the total Actual Capex for the second preceding Reporting Period (n-2). ACAP _{n-2} may only be a positive number.
BCAP_{n-2}	means the Budgeted Capex in respect of the second preceding Reporting Period (n-2) (based on the version of the Budget which applied for the purpose of the calculation of the Franchise Payment for that second preceding Reporting Period (n-2)). BCAP _{n-2} may only be a positive number.
ARRP_{n-2}	means the total Actual Revenue for the second preceding Reporting Period (n-2). ARRP _{n-2} may only be a positive number.
FRRP_{n-2}	means the total Forecasted Revenue in respect of the second preceding Reporting Period (n-2) (based on

	the version of the Budget which applied for the purpose of the calculation of the Franchise Payment for that second preceding Reporting Period (n-2)). FRRP _{n-2} may only be a positive number.
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- 10.2 The value of PADJ in respect of a Reporting Period shall be made as an adjustment to the next Franchise Payment payable after that calculation of PADJ is determined ("**Periodic Adjustment**"). For the avoidance of doubt a Periodic Adjustment shall be calculated on the basis that no interest is due pursuant to paragraph 3 of this Schedule 8.1A.
- 10.3 The Secretary of State agrees that, provided the Management Accounts (in a form consistent with the obligations of the Franchisee under Schedule 11.2 (Management Information)) are received from the Franchisee within the timescale specified in paragraph 9.2(a) of Schedule 11.2 (Management Information), the Secretary of State will provide the Franchisee with the value of PADJ in sufficient time for the Periodic Adjustment to be included in the Franchise Payment for the Reporting Period immediately following the Reporting Period to which the Periodic Adjustment relates.
- 10.4 If the Franchisee fails to provide the Management Accounts in accordance with its obligations under Schedule 11.2 (Management Information), the Secretary of State shall (without prejudice to his other rights) be entitled (but not obliged) to determine the amount of any Periodic Adjustment in accordance with this paragraph 10 but by reference to the relevant information available to the Secretary of State at the time of such determination.

11. Post Franchisee Year Adjustments

11.1 AADJ for Franchisee Year (y) shall be equal to the following:

AADJ for Franchisee Year (y) =	$(TotalAC_y - TotalAR_y) + TotalACAP_y - (TotalPFP_y + TotalPBCP_y) - TotalPADJ_y$
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Where:

TotalAC_y	means the total Actual Costs in Franchisee Year (y) as set out in the Annual Audited Accounts for that Franchisee Year. TotalAC _y may only be a positive number.
TotalAR_y	means the total Actual Revenue for Franchisee Year (y) as set out in the Annual Audited Accounts for that Franchisee Year. TotalAR _y may only be a positive number.
TotalACAP_y	means the total Actual Capex in Franchisee Year (y) as set out in the Annual Audited Accounts for that Franchisee Year. TotalACAP _y may only be a positive number.
TotalPFP_y	means the aggregate value of all of the Periodic Franchise Payments in Franchisee Year (y). TotalPFP _y may be positive or negative.
TotalPBCP_y	means the aggregate value of all of the Periodic Budgeted Capex Payments paid to the Franchisee in Franchisee Year (y). TotalPBCP _y may only be a positive number.

TotalPADJ_y	means the total net value of PADJ paid in respect of each Reporting Period during Franchisee Year (y) which shall be calculated for the final Reporting Period of Franchisee Year (y). TotalPADJ _y may be positive or negative.
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- 11.2 The value of AADJ in respect of a Franchisee Year (whether negative or positive) shall be made as an adjustment to the next Franchise Payment payable after the calculation of AADJ is determined (the "**Annual Adjustment**"). For the avoidance of doubt the Annual Adjustment shall be calculated on the basis that no interest is due pursuant to paragraph 3 of this Schedule 8.1A.
- 11.3 If the Franchisee fails to provide the information required by paragraph 9.4(b) of Schedule 11.2 (Management Information) including Annual Audited Accounts and a reconciliation to the Management Accounts by the date specified in that paragraph the Secretary of State shall (without prejudice to his other rights) be entitled (but not obliged) to determine the amount of any Annual Adjustment in accordance with this paragraph 11 but by reference to the relevant information available to the Secretary of State at the time of such determination, including any information contained in the latest cumulative, year to date Management Accounts or in the Annual Management Accounts.

12. Working Capital Payments

- 12.1 Working Capital Payment shall become payable to the Franchisee as part of a Reporting Period's Franchise Payment where the Forecast Closing Cash Position for that Reporting Period is less than the Floor Cash Position. The value of the Working Capital Payment shall be calculated in accordance with paragraph 12.3.
- 12.2 The Franchisee shall provide the Secretary of State with a statement of the Franchisee's Forecast Closing Cash Position prior to each Periodic Finance Review Meeting in accordance with paragraph 9.2.
- 12.3 The Working Capital Payment, if payable in any Reporting Period, shall be equal to the following:

WCP =	BCP – FCCP
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Where:

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

- 12.4 If during a Reporting Period, the Franchisee becomes aware that in its reasonable opinion prior to the payment of the Franchise Payment in respect of that Reporting Period the Franchisee's available Cash Balance will be insufficient to meet its liabilities that will fall due prior to the payment of the Franchise Payment applicable to that Reporting Period (the "**Working Capital Shortfall**"), the Franchisee shall immediately:

- (a) notify the Secretary of State that a Working Capital Shortfall is likely to occur during that Reporting Period; and
- (b) provide in or with that notice supporting information (including relevant accounts and calculations) evidencing the likely Working Capital Shortfall and the amount of additional working capital that the Franchisee considers it will require to ensure that the Working Capital Shortfall is remedied; and
- (c) provide such further supporting information as the Secretary of State shall reasonably require.

12.5 The Parties shall agree or where the parties fail to agree, the Secretary of State shall reasonably determine the amount required to remedy the Working Capital Shortfall (an "**Emergency Working Capital Payment**") and when such Emergency Working Capital Payments are required to be paid for that purpose.

12.6 The Secretary of State shall pay to the Franchisee any Emergency Working Capital Payment in accordance with the timescales agreed or determined in accordance with paragraph 12.5.

12.7 If the Franchisee fails to provide any information required by this paragraph 12, or any information in accordance with its obligations in Schedule 11.2 (Management Information) to enable the Secretary of State to calculate the amount of any Working Capital Payment or Emergency Working Capital Payment the Secretary of State shall (without prejudice to the Secretary of State's other rights) be entitled (but not obliged) to determine the amount of WCP in accordance with this paragraph 12 but by reference to the relevant information available to the Secretary of State at the time of such determination.

12.8 The Secretary of State shall at any time on reasonable prior notice to the Franchisee be entitled to adjust the value of the Ceiling Cash Position, the Base Cash Position and/or the Floor Cash Position provided that the Secretary of State shall have first consulted the Franchisee as to any such adjustments as the Secretary of State is considering making.

13. Working Capital Repayment

13.1 Subject to paragraph 14.3, a Working Capital Repayment shall become payable by the Franchisee as part of a Reporting Period's Franchise Payment where the Franchisee's Forecast Closing Cash Position in that Reporting Period is greater than the Ceiling Cash Position. The value of the Working Capital Repayment shall be calculated in accordance with paragraph 13.2.

13.2 A Working Capital Repayment, if payable in any Reporting Period, shall be equal to the following:

WCR =	FCCP – BCP
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Where:

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

14. Final Working Capital Adjustment

14.1 The value of FWCA shall equal:

FWCA =	FWCP + TotalWCP – TotalWCR
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Where:

FWCP	First Working Capital Payment
TotalWCP	the aggregate of all Working Capital Payments and all Emergency Working Capital Payments paid to the Franchisee during the Franchise Period
TotalWCR	the aggregate of all Working Capital Repayments paid by the Franchisee during the Franchise Period

14.2 The value of FWCA shall be payable as an adjustment to the Franchise Payment payable in the Reporting Period in which the Final Balance Sheet is delivered to the Secretary of State, provided that if the Final Balance Sheet is delivered more than 10 Weekdays after the first day of that Reporting Period, the value of FWCA shall become payable in the immediately following Reporting Period.

14.3 If the Franchisee fails to provide any information in accordance with its obligations in Schedule 11.2 (Management Information) to enable the Secretary of State to calculate any Working Capital Repayment or the Final Working Capital Adjustment the Secretary of State shall (without prejudice to his other rights) be entitled (but not obliged) to determine the amount of WCR or FWCA (as the case may be) in accordance with this paragraph 14 but by reference to the relevant information available to the Secretary of State at the time of such determination.

15. Fixed Fee and Performance Payment

15.1 Subject to paragraphs 15.2 to 15.5 (inclusive), the value of FFPP shall equal:

FFPP =	FF + PP – ACRL
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Where:

FF	means the value of the Fixed Fee for the relevant Franchisee Year as set out below and calculated in accordance with the Performance Fee Calculation
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	Spreadsheet (and subject to pro rating to reflect the number of Reporting Periods in such Franchisee Year):	
	Year 1 (£)	[REDACTED ¹¹⁵]
	Year 2 (£)	[REDACTED]
	Year 3 (£)	[REDACTED]
	Year 4 (£)	[REDACTED]
	Year 5 (£)	[REDACTED]
	The above values for FF are subject to Indexation. FF may only be a positive number.	
PP	means the value of the Performance Payment for the relevant Franchisee Year calculated in accordance with Schedule 8.1B (Performance Payments). PP may only be a positive number.	
ACRL	<p>means the sum of the total value of the Aggregated Costs and Revenues Liabilities:</p> <p>(a) calculated on the basis of the Franchisee’s Annual Audited Accounts for all Franchisee Years; and</p> <p>(b) as agreed or reasonably determined (in accordance with paragraphs 9.7 to 9.7C inclusive) at the Payment Date for FFPP pursuant to paragraph 15.3,</p> <p>provided that in each Franchisee Year, ACRL shall be reduced by an amount equivalent to:</p> <p>(c) the aggregate of the amount of ACRL taken into account in the calculation of FFPP in respect previous Franchisee Years; and</p> <p>(d) the amount (if any) paid by the Guarantor to the Secretary of State under the Funding Deed on account of the Aggregated Costs and Liabilities (as at the Payment Date for any previous Franchisee Year) which are in excess of the Fixed Fee and Performance Payment for the previous Franchisee Years.</p> <p>Without limiting paragraph 15.2, ACRL may only be a positive number.</p>	

¹¹⁵ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

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- 15.2 If the value of FFPP is a negative amount:
- (a) for the purposes of paragraph 2.1, FFPP shall be deemed to equal zero; and
 - (b) the Secretary of State shall be entitled to claim the value of FFPP (expressed as a positive value) from the Guarantor in accordance with the Funding Deed.

- 15.3 Subject to paragraph 15.4, the value of FFPP, if a positive amount, shall be made as an adjustment to the next Franchise Payment payable after:
- (a) the value of the Fixed Fee and Performance Payment for the relevant Franchisee Year has been finally calculated pursuant to Schedule 8.1B (Performance Payments); and
 - (b) the value of the Aggregate Costs and Revenue Liabilities have been agreed or determined for the purposes of this paragraph 15.

For the avoidance of doubt FFPP shall be calculated on the basis that no interest is due pursuant to paragraph 3 of this Schedule 8.1A.

15.4 Nothing in this paragraph 15 shall limit the rights and remedies of the Secretary of State in respect of any Disallowable Costs, Non-Recoverable Costs, Revenue Foregone and/or SoS Claims not taken into account in the calculation of ACRL. The Secretary of State's rights and remedies in respect of any Disallowable Costs, Non-Recoverable Costs, Revenue Foregone and/or SoS Claims not taken into account in the calculation of ACRL shall include claims pursuant to and in accordance with the Funding Deed and/or Performance Bond.

16. Further Secretary of State's rights in relation to accounting matters

16.1 Where the Secretary of State reasonably considers that in calculating any matter which impacts the calculation of a Franchise Payment Component, any particular item or transaction has not been accounted for on a reasonable basis (including where the accounting treatment looks to the form rather than the substance, of the item or transaction) and having regard to all circumstances, including GAAP (as may be amended from time to time), the Secretary of State shall be entitled to require it to be accounted for on such other basis as the Secretary of State may 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.

16.2 Where the Annual Audited Accounts in relation to any previous Franchisee Year are subject to adjustment or restatement the Secretary of State shall have a discretion to require the recalculation of any affected Franchise Payment Component for the relevant Franchisee Year and to require that the Franchisee shall pay to the Secretary of State the amount which is the difference between:

- (a) any amount actually paid to the Secretary of State or adjusted in favour of the Secretary of State and the amount that would have been paid or adjusted had the affected Franchise Payment Component been originally

calculated on the basis that such adjustment or revision was included in the Annual Audited Accounts; and/or

- (b) any amount actually paid by the Secretary of State or adjusted in favour of the Franchisee and the amount that would have been paid or adjusted had the affected Franchise Payment Component been originally calculated on the basis that such adjustment or revision was included in the Annual Audited Accounts.

16.3 Any payment due to the Secretary of State shall be paid by the Franchisee within thirty (30) days of the Secretary of State notifying the Franchisee that the Secretary of State requires a payment to be made pursuant to this paragraph.

16.4 The Secretary of State shall be entitled to notify the Franchisee of any future initiatives or proposals that the Secretary of State considers may have the potential to reduce certain Actual Costs below the applicable Budgeted Costs and the Franchisee shall, acting reasonably and in good faith discuss with the Secretary of State all such matters as are relevant to the possible implementation of such initiatives.

17. **Indexation**

17.1 Subject to paragraph 17.2, it is agreed that the Franchise Payments and any sum shown in any Budget for any given Franchisee Year (or other period) shall not be subject to automatic indexation or adjustment to take into account the effect of inflation provided that this paragraph 17 is without prejudice to the adjustment of the Budget in accordance with paragraph 8 and/or the adjustment of the Franchise Payments in accordance with paragraphs 10 and 11 of this Schedule 8.1A.

17.2 The Fixed Fee and Performance Payment is subject to indexation in accordance with this paragraph. With effect from the second Franchisee Year, indexation shall be calculated in accordance with the Retail Prices Index by taking the quotient of the Retail Prices Index for the January which immediately precedes the commencement of the relevant Franchisee Year divided by the Retail Prices Index for January 2020 (provided that, for the first Franchisee Year, the Retail Prices Index shall be one and using the resulting figure as the multiplier to be applied to the amount to be indexed in order to calculate indexed amount).

18. **Further obligations of the Franchisee**

18.1 Except to the extent otherwise agreed by the Secretary of State, the Franchisee will act as a Good and Efficient Operator (including in particular in accordance with paragraph (d) of the definition of Good and Efficient Operator) in all respects in connection with the operation of this Schedule 8.1A (Franchise Payments).

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

- (a) any amounts which the Franchisee might otherwise have received from a third party are reduced, waived or otherwise suppressed; and/or

- (b) any amounts which the Franchisee might otherwise be properly obliged to pay or be liable are increased,

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

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

- (a) until all the adjustments and payments for which this Schedule 8.1A provides have been made and discharged in full; and/or

- (b) without the prior written consent of the Secretary of State.

18.4 The Franchisee shall, in the performance of its obligations under, and when incurring any expenditure in connection with, this Franchise Agreement comply with the requirements of the Franchisee's Procurement Rules and the Bonus Policy.

19.1 Relevant Contracts

19.1 Subject to paragraph 19.2, the Franchisee shall indemnify the Secretary of State against any costs, expenses or liabilities that the Secretary of State incurs (including by way of any increase to the amounts which the Secretary of State is liable to pay under this Franchise Agreement) arising from the termination of a Relevant Contract and/or any variation to the terms of a Relevant Contract in either case as a consequence of the exercise of any rights that the counterparty to that Relevant Contract may have to require the termination or variation of that Relevant Contract on termination or expiry of the Previous Franchise Agreement.

19.2 The Franchisee shall not be liable to the Secretary of State pursuant to Paragraph 19.1 if the Franchisee has, prior to the date of this Agreement, provided to the Secretary of State (with specific reference to this paragraph) full details regarding the rights, referred to in paragraph 19.1, of a counterparty to a Relevant Contract and the Secretary of State expressly agrees that the Franchisee is not required to indemnify the Secretary of State in accordance with paragraph 19.1.

19.3 For the purposes of this paragraph 19 a "**Relevant Contract**" shall mean:

- (a) any Key Contract; or
- (b) any contract with a value in excess of **[REDACTED¹¹⁶]** to which the Franchisee is a party as at the expiry date of the Previous Franchise Agreement.

¹¹⁶ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

- 19.4 The Franchisee shall indemnify the Secretary of State against any costs, expenses or liabilities that the Secretary of State incurs (including by way of any increase to the amounts which the Secretary of State is liable to pay under this Franchise Agreement) as a result of the termination of a contract:
- (a) to which the Franchisee is a party;
 - (b) having a term which exceeds the Franchise Term; and
 - (c) which does not provide a right for the Franchisee to terminate that contract on termination or expiry of this Agreement, without costs or other liabilities accruing,

provided that in respect of any such contract to which the Franchisee is a party as at the date of this Franchise Agreement, the Franchisee shall not be liable to the Secretary of State pursuant to this paragraph 19.4 if the Franchisee has, prior to the date of this Agreement, provided to the Secretary of State full details of such contract and the costs and liabilities arising thereunder as referred to in paragraph 19.4(c) and the Secretary of State expressly agrees that the Franchisee is not required to indemnify the Secretary of State in accordance with this paragraph 19.4.

20. **Survival**

- 20.1 For the avoidance of doubt this Schedule 8.1A (Franchise Payments) and Schedule 8.1B (Performance Payments) and any other provisions of the Franchise Agreement reasonably required for the purpose of giving such Schedules full effect shall survive the termination or expiry of the Franchise Term (however arising) and continue in full force and effect in accordance with their terms.

APPENDIX 1 TO SCHEDULE 8.1A**Disallowable Costs**

Any references in this Appendix 1 to Schedule 8.1A to costs, payments, expenses, fees, liabilities or other amounts shall be deemed to refer to Costs and/or Capital Expenditure as the context may require.

- (a) Any costs that were incurred otherwise than in accordance with those expected to be incurred by a Good and Efficient Operator. Variations between Actual Costs and Budgeted Costs and/or Actual Capex and Budgeted Capex (as the case may be) likely to be considered to be inconsistent with those expected of a Good and Efficient Operator include but are not limited to:-
- (i) staff, director or officer costs in excess of the Budget (except where evidenced by the Franchisee as appropriate for delivery of the Franchise or of reasonable scale given the requirement for delivery of the Franchise provided that any costs referred to in paragraph (b) or paragraph (c) of this Appendix shall not in any circumstance be considered appropriate for the delivery of the Franchise or of a reasonable scale given the requirement for delivery of the Franchise);
 - (ii) costs that do not reflect the contracted position under:
 - (A) existing contracts as at the Start Date;
 - (B) new contracts entered in compliance with the Franchisee's Procurement Rules; or
 - (C) variations in existing contracts made in accordance with the Franchisee's Procurement Rules;
 - (iii) any payments, costs or other liabilities owed to Affiliates;
- (b) Any bonuses, rewards or discretionary benefits paid to any staff, directors or officers under any schemes which have not previously been approved by the Secretary of State (in his absolute discretion) in writing;
- (c) Any expenses, disbursements or equivalent costs (to which the Franchisee's Expenses Policy would apply) which are incurred other than in compliance with the Expenses Policy;
- (d) Costs incurred or to be incurred by the Franchisee in removing branding or Marks under paragraph 4.4 of Schedule 14.2 (Maintenance of Operating Assets) except for branding or Marks whose removal from particular assets the Secretary of State has explicitly agreed for the purpose of this provision should be an allowable cost;
- (e) Costs incurred or to be incurred by the Franchisee in relation to the audit costs referred to in paragraph 6.4 of Schedule 11.2 (Management Information);
- (f) Costs incurred or to be incurred by the Franchisee in meeting Deutsche Bahn AG's audit requirements to the extent these are additional to audit costs which would otherwise be incurred by the Franchisee;

- (g) Costs incurred or to be incurred by the Franchisee in relation to any reasonable enforcement costs incurred by the Secretary of State pursuant to clause 14.7;
- (h) Any cost that the Franchisee may incur as a result of:
 - (i) it failing to comply with its obligations under or in connection with the Franchise Agreement (including the grant thereof) or the Previous Franchise Agreement;
 - (ii) it failing to comply with its obligations under or in connection with any agreements which are ancillary to the Franchise Agreement, including the Supplemental Agreement and/or the Direct Award Collateral Agreement (and/or a Transfer Agreement pursuant to (and as defined in) the Direct Award Collateral Agreement);
 - (iii) it failing to comply with any applicable Laws, to the extent this gives rise to a criminal liability. Paragraph (a) above shall apply in respect of any other consequence of a failure by the Franchisee to comply with any applicable Laws; or
 - (iv) indemnifying the Secretary of State for any matter which the Franchisee is obliged to indemnify the Secretary of State pursuant to this Agreement, the Previous Franchise Agreement or any agreements which are ancillary to the Franchise Agreement, including the Supplemental Agreement and/or the Direct Award Collateral Agreement (and/or a Transfer Agreement pursuant to (and as defined in) the Direct Award Collateral Agreement);
- (i) Any Facilitation Fee or Administration Fee pursuant to clause 8 (Change of Control and Facilitation Fee);
- (j) Any costs incurred by the Franchisee arising out of or in connection with a lawful demand by the Secretary of State under the Performance Bond or Season Ticket Bond or under the Funding Deed or under the Bond (as defined in the Funding Deed);
- (k) Costs of developing and protecting any intellectual property rights which are not owned by the Secretary of State or the Franchisee or are so owned, but where the costs are not ancillary to an activity included in the Budget;
- (l) Marketing or advertising costs incurred substantially to the benefit of wider group products or group brand recognition and which are not primarily for the benefit of Franchise Services;
- (m) Fines from government or regulatory bodies;
- (n) Costs of financial hedging, or gains/losses from hedging activity except with prior agreement from the Secretary of State or where such costs or gains/losses arise from the Franchisee's participation in an industry recognised hedging scheme or activity which has been agreed by the Secretary of State or which the Secretary of State reasonably considers have been made in good faith on an arm's length basis to any Affiliate in connection with fuel hedging instruments to help manage the exposure of the Franchisee to diesel fuel costs;

- (o) The amount by which the Purchase Price payable by the Franchisee to the successor operator under the Supplemental Agreement at the end of the Franchise Period is higher than it would have been but for the Franchisee:
 - (i) incurring Disallowable Costs; or
 - (ii) otherwise acting other than as Good and Efficient Operator;
- (p) The costs incurred by the Franchisee which are associated with the preparation or development of any Remedial Plans or any other plans to remedy performance shortfalls, including but not limited to Action Plans, NRPS Improvement Proposals and/or a Service Quality Improvement Proposals, unless such costs are associated with existing internal staff of the Franchisee and are contained in the then current Budget, or are explicitly approved by the Secretary of State in writing;
- (q) The amount of any interest payable by the Franchisee to the Secretary of State in accordance with paragraph 3.1;
- (r) Any costs incurred by the Franchisee in pursuing or defending any claim against the Secretary of State in respect of or in connection with the Franchise Agreement or the Previous Franchise Agreement or otherwise;
- (s) Except with the prior agreement of the Secretary of State (not to be unreasonably withheld), any costs, charges, penalties, compensation or similar payments that the Franchisee may incur as a result of the termination of any contract or other arrangement (including any contract or other arrangement relating to, or continued from, the Previous Franchise Agreement);
- (t) Except with the prior agreement of the Secretary of State, losses on disposals of Fixed or Non-Current Assets;
- (u) Depreciation or Capital Expenditure to the extent that the capital cost of acquisition of the relevant assets was (or was assumed in the Financial Model) to be funded by a third party;
- (v) Costs of any audit pursuant to paragraph 9.7(c)(ii) of Schedule 11.2 (Management Information);
- (w) Legal, accountancy and other costs and expenses incurred in connection with the preparation and implementation of the Direct Award and/or any subsequent Franchise procurement;
- (x) Additional costs or expenses incurred by the Franchisee in procuring any new Performance Bond where required to do so pursuant to paragraph 4.3(c) of Schedule 12.1 (Financial Covenants and Bonds); and
- (y) any other costs, payments, expenses, fees, liabilities or other amounts:
 - (i) expressly identified as Disallowable Costs, Revenue Foregone and/or SoS Claims in the Franchise Agreement; or
 - (ii) notified to the Franchisee by the Secretary of State (acting reasonably) as being Disallowable Costs in advance of such costs,

payments, expenses, fees, liabilities or other amounts being incurred.

SCHEDULE 8.1B

Performance Payments

1. **Definitions**

For the purposes of this Schedule 8.1B (Performance Payments) only, the following words and expressions shall have the following meanings unless otherwise set out in clause 3 (Definitions):

- “All Cancellations Measure”** has the meaning given to it in paragraph 1 of Schedule 7.1 (*Operational Performance*);
- “All Cancellations Performance Amount”** means an amount calculated (where applicable) in accordance with paragraphs 4.6(b) and (c) of this Schedule 8.1B;
- “Collaborative Working Performance Payment” or “CWPP”** means, in relation to each Franchisee Year, the amount determined in accordance with:

 - (a) Appendix 1 to this Schedule 8.1B and paragraph 7.2 of this Schedule 8.1B during the Scorecard Methodology Period; and
 - (b) paragraph 7.1 of this Schedule 8.1B during the Quantified Target Methodology Period,

as the context requires;
- “COVID-19 Guidance and Regulation”** means guidance and/or regulation relating to COVID-19 as from time to time issued by the ORR, Public Health England or any other relevant government department, agencies or public bodies;
- “Customer Experience Performance Payment” or “CEPP”** means, in relation to each Franchisee Year, the amount determined in accordance with:

 - (a) Appendix 1 to this Schedule 8.1B during the Scorecard Methodology Period; and
 - (b) paragraph 5 of this Schedule 8.1B during the Quantified Target Methodology Period;
- “Delay Attribution Principles and Rules”** means the version of the document known as the Delay Attribution Principles and Rules referenced in the Network Code;
- “Financial Measures Performance Payment”** means, in relation to each Franchisee Year, the amount determined in accordance with:

- (a) Appendix 1 to this Schedule 8.1B during the Scorecard Methodology Period; and
 - (a) paragraph 3 of this Schedule 8.1B during the Quantified Target Methodology Period,
- as the context requires;
- “Maintenance Cost Change”** has the meaning given to it paragraph 3.3(c) of this Schedule 8.1B;
- “Maximum Performance Payment Amount”** has the meaning given to it paragraph 2.7 of this Schedule 8.1B;
- “New Revenue Incentive Measure”** has the meaning given to it paragraph 8.1 of this Schedule 8.1B;
- “Operational Performance Payment” or “OPP”** means, in relation to each Franchisee Year, the amount determined in accordance with:
- (b) Appendix 1 to this Schedule 8.1B during the Scorecard Methodology Period; and
 - (c) paragraph 4 of this Schedule 8.1B during the Quantified Target Methodology Period,
- as the context requires;
- “Performance Assessment Period Review Checklist”** means, in respect of a Performance Assessment Period Review, a checklist completed (or, as the case may be, to be completed) substantially in the form of that set out in Appendix 3 (Performance Assessment Period Review Checklist) of this Schedule 8.1B;
- “Performance Assessment Period Review Meeting”** means, in respect of a Performance Assessment Period Review, a meeting held between the Parties to discuss the performance of the Franchisee during the relevant Performance Assessment Period;
- “Quantified Target Methodology”** means, in relation to a Performance Payment Component during the Quantified Target Methodology Period, the methodology set out in paragraphs 3 to 7 (inclusive) of this Schedule 8.1B (subject to paragraph 2.5 and 2.5A of this Schedule 8.1B);
- “Quantified Target Methodology Period”** means the period during which Quantitative Target Methodology is applicable (in respect of that Performance Payment Component), such period commencing in accordance with

	the notice provided by the Secretary of State in accordance with paragraph 2.5 of this Schedule 8.1B;
"Reactionary Delay"	means a delay that is attributed as "Reactionary Delay" in accordance with the Delay Attribution Principles and Rules;
"Scorecard Methodology"	means, in relation to a Performance Payment Component during the Scorecard Methodology Period, the methodology set out in Appendix 5 (<i>Scorecard Methodology</i>) of this Schedule 8.1B (subject to paragraph 2.4A of this Schedule 8.1B);
"Scorecard Methodology Period"	means the period from the Start Date until (in respect of that Performance Payment Component) the commencement of the Quantitative Target Methodology Period;
"T-3 Measure"	has the meaning given to it in paragraph 1 of Schedule 7.1 (<i>Operational Performance</i>);
"T-3 Performance Amount"	means an amount calculated (where applicable) in accordance with paragraphs 4.4(b) and (c) of this Schedule 8.1B;
"T-15 Measure"	has the meaning given to it in paragraph 1 of Schedule 7.1 (<i>Operational Performance</i>);
"T-15 Performance Amount"	means an amount calculated (where applicable) in accordance with paragraphs 4.5(b) and (c) of this Schedule 8.1B;
"Ticketless Travel Enhanced Fee Performance Level"	means the enhanced fee performance level (ENHANCED _{TT}) specified in Table 2 of this Schedule 8.1B;
"Ticketless Travel Expected Fee Performance Level"	has the expected fee performance level (EXPECTED _{TT}) specified in Table 2 of this Schedule 8.1B;
"Ticketless Travel Performance Amount"	means the amount calculated in respect of a Franchisee Year in accordance with (as the case may be) paragraph 3.3.2 of this Schedule 8.1B;
"Ticketless Travel Performance Payment" or "TTPP"	means, in relation to each Franchisee Year (during the Quantified Target Methodology Period), the amount (forming part of the FMPP) determined in accordance with paragraph 3.3 of this Schedule 8.1B;

- “TOC Minute Delay Performance Amount”** means an amount calculated (where applicable) in accordance with paragraphs 4.3(b) and (c) of this Schedule 8.1B;
- “TOC on Self Cancellations Performance Amount”** means an amount calculated (where applicable) in accordance with paragraphs 4.2(b) and (c) of this Schedule 8.1B;
- “Voyager Maintenance Costs”** means the total maintenance cost in respect of the Voyager Fleet, comprising of:
 - (a) all fixed and variable payments made by the Franchisee under the Voyager TSA;
 - (b) all other payments made under the Voyager TSA for maintenance work not covered under limb (a);
in each case, in accordance with the maintenance plans, manuals and/or schedules pursuant to the Voyager TSA; and
 - (c) all payments made to other companies who undertake work on the Voyager Fleet;
but in all cases excluding:
 - (d) maintenance reserve payments to the ROSCO in respect of the Voyager Fleet;
 - (e) costs relating to upgrades, modifications and/or enhancements to the Voyager Fleet (including, but not limited to hybridisation, installing new luggage racks, interior refurbishment, upgrading or installing new information systems); and
 - (f) any costs that are not routine or periodic maintenance costs.
- “Voyager Maintenance Cost Efficiency Performance Payment” or “VMCEPP”** means, in relation to each Franchisee Year (during the Quantified Target Methodology Period), the amount (forming part of the FMPP) determined in accordance with paragraph 3.3 of this Schedule 8.1B; and
- “Voyager TSA”** means the train services agreement to which the Franchisee and Crossfleet Limited are both party in respect of the Voyager Fleet (as such contract may be amended or replaced from time to time).

2. **Determination of Performance Payment Components and PP**

- 2.1 Subject to paragraph 15.4 of Schedule 8.1A (Franchise Payments), for the purpose of paragraph 15.1 of Schedule 8.1A (Franchise Payments), the Performance Payment (“PP”) shall be determined in respect of each Franchisee Year in accordance with this paragraph 2.
- 2.2 The Secretary of State shall determine each of the Performance Payment Components and PP in respect of each Franchisee Year in accordance with the process set out in this paragraph 2 and the Performance Fee Calculation Spreadsheet.
- 2.3 Subject to paragraphs, 2.7 and 2.8, at the end of each Franchisee Year the Secretary of State shall calculate the value of each Performance Payment Component in accordance with this Schedule 8.1B by reference to the Maximum Performance Payment Amount for each such Performance Payment Component.
- 2.4 Subject to paragraphs 2.7 and 2.8, during the Scorecard Methodology Period, PP shall be calculated in accordance with the Scorecard Methodology pursuant to Appendix 1 (The Scorecard Methodology Period) and, on and from the Reporting Period in which the Quantified Target Methodology Period is triggered in accordance with paragraph 2.5, PP shall be calculated in accordance with the Quantified Target Methodology pursuant to paragraph 2.6.
- 2.4A During the Scorecard Methodology Period, the Secretary of State may give the Franchisee notice to take effect at the first day of the Reporting Period specified in such notice (provided that the Franchisee has at least one full Reporting Period’s notice of such change taking effect), confirming at the Secretary of State’s sole discretion:
- (a) any proposed amendments to the Scorecard Criteria, in which case such amendments may insert or remove requirements but shall not materially:
 - (i) change the overall purpose of the relevant Scorecard Criterion; and/or
 - (ii) improve or impede the ability of the Franchisee (acting as a Good and Efficient Operator) to achieve any particular score in accordance with the Scorecard Criteria;
 - (b) changes to the Maximum Performance Payment Amount applicable to each of the Performance Payment Components (subject to the total of all Maximum Performance Payment Amounts for all Performance Payment Components being the same) for the purposes of calculating the Performance Payment for that those applicable Reporting Periods within the Franchisee Year,

and in such circumstances, this shall be treated as a Change (save that paragraph 4 of Schedule 9.1 shall not apply and the matters in paragraph (b), (c) and (d) above shall be agreed or, in the absence of such agreement, determined by the Secretary of State acting reasonably) and the Franchisee,

acting as a Good and Efficient Operator, in addition to paragraph 3 of Schedule 9.1, shall:

- (c) make representations to the Secretary of State about the impact of the applicable change, to which the Secretary of State have due regard; and
- (d) provide written details of the revisions to the Budget that the Franchisee considers the applicable change would require in order to hold constant the risk of the Franchisee failing to satisfy the requirements of the applicable change.

2.5 The Secretary of State shall determine at their sole discretion whether the Quantified Target Methodology shall apply to the calculation of all or some of the Performance Payment Components, and if the Secretary of State so determines, notice shall be given to the Franchisee confirming that the Quantified Target Methodology Period shall commence on the first day of the Reporting Period specified in such notice (provided that the Franchisee has at least two full Reporting Period's notice of such change taking effect). Such notice shall also confirm, at the Secretary of State's sole discretion:

- (a) the applicable Performance Payment Components that will be subject to the Quantified Target Methodology (and those Performance Payment Components which shall continue to be subject to the Scorecard Methodology);
- (b) the applicable thresholds and/or targets triggering any level of Performance Payment that shall apply in the Quantified Target Methodology Period to any Performance Payment Component (if different);
- (c) changes to the Maximum Performance Payment Amount applicable to each of the Performance Payment Components (subject to the total of all Maximum Performance Payment Amounts for all Performance Payment Components being the same) for the purposes of calculating the Performance Payment;
- (d) whether any additional Performance Payment Components shall apply (and if so, on what basis),

and in such circumstances, this shall be treated as a Change (save that paragraph 4 of Schedule 9.1 shall not apply and the matters in paragraphs (b) (together with any other relevant performance benchmarks in Schedules 7.1, 7.2 or 7.3), (c) and (d) above shall be agreed by the Parties acting in good faith (within the minimum period of two Reporting Period's notice described above) or, in the absence of such agreement, determined by the Secretary of State acting reasonably), in connection with which the Parties shall take account of (i) the Performance Methodology Document (to the extent that it is relevant and/or appropriate in the circumstances) and (ii) the then current commercial and operating constraints that the Franchisee is operating under, and the Franchisee, acting as a Good and Efficient Operator, in addition to paragraph 3 of Schedule 9.1, shall:

- (e) make representations to the Secretary of State about the impact of the applicable change, to which the Secretary of State have due regard; and

(f) provide written details of the revisions to the Budget that the Franchisee considers the applicable change would require in order to hold constant the risk of the Franchisee failing to satisfy the requirements of the applicable change.

2.5A During the Quantified Target Methodology Period, the Secretary of State shall determine at their sole discretion whether the Quantified Target Methodology shall apply to the calculation of any or all the Performance Payment Components that remain subject to the Scorecard Methodology, and if the Secretary of State so determines, notice shall be given to the Franchisee at least two Reporting Periods to such change taking effect. Such notice shall also confirm, at the Secretary of State’s sole discretion the matters described in paragraphs 2.5 (a) to (d) and the remainder of paragraph 2.5 shall apply as if it were part of this paragraph.

2.5B During the Quantified Target Methodology Period, the Secretary of State may give the Franchisee notice to take effect at the first day of the Reporting Period specified in such notice (provided that the Franchisee has at least two full Reporting Period’s notice of such change taking effect), in order to effect any of the changes contemplated in paragraphs 2.5(b) to (d) in accordance with the same process as set out in paragraph 2.5.

2.5C In the event that the Quantified Target Methodology Period does not commence at the start of a Franchisee Year, the calculation of the Performance Payment shall be pro-rated between the Reporting Periods of the Franchisee Year in which the Scorecard Methodology and Quantified Target Methodology each apply (and in such instance, the Secretary of State shall use its reasonable endeavours to provide an indicative Scorecard score in respect of the part of that Franchisee Year in which the Scorecard Methodology applied). In the event of the Secretary of State exercising its rights pursuant to paragraph 2.4A, 2.5A or 2.5B, the calculation of the Performance Payment shall be pro-rated between the Reporting Periods of the Franchisee Year (falling prior to such change and after such change takes effect).

2.6 When the Quantified Target Methodology applies, PP shall be calculated in accordance with the following formula:

PP =	FMPP + OPP + CEPP + SQPP + CWPP
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where:

FMPP	means the value of the Financial Measures Performance Payment calculated in accordance with paragraph 3. FMPP may not be a negative number
OPP	means the value of the Operational Performance Payment calculated in accordance with paragraph 4. OPP may not be a negative number

CEPP	means the value of the Customer Experience Performance Payment calculated in accordance with paragraph 5. CEPP may only be a positive number
SQPP	means the value of the Service Quality Performance Payment calculated in accordance with paragraph 6. SQPP may not be a negative number
CWPP	means the value of the Collaborative Working Performance Payment calculated in accordance with paragraph 7. CWPP may not be a negative number

and each component of PP as set out in this paragraph 2.6 shall be a **“Performance Payment Component”**.

2.7 The Parties agree and acknowledge that each Performance Payment Component shall, in each Franchisee Year, not exceed the maximum amount for that Performance Payment Component as set out in the relevant column for such Franchisee Year of Table 1, which differs depending on whether the Scorecard Methodology applies or the Quantified Target Methodology applies and shall be subject to pro-rating if the circumstances in paragraph 2.5C apply (the **“Maximum Performance Payment Amount”**). These figures are subject to Indexation.

Table 1						
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
Performance Payment Component	Maximum Performance Payment Amount (Year 1 (Part))	Maximum Performance Payment Amount (Year 2)	Maximum Performance Payment Amount (Year 3)	Maximum Performance Payment Amount (Year 4 (Part))	Maximum Performance Payment Amount (Year 4 (Part) (extension))	Maximum Performance Payment Amount (Year 5 (Part))
During the Scorecard Methodology Period (£)						
FMPP	[REDACTED] ¹¹⁷]	[REDACTED] D]	[REDACTED]]	[REDACTED] D]	[REDACTED]	[REDACTED]]
OPP	[REDACTED] ¹¹⁸]	[REDACTED] D]	[REDACTED]]	[REDACTED] D]	[REDACTED]	[REDACTED]]

¹¹⁷ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹¹⁸ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

CEPP	[REDACTED ¹¹⁹]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
CWPP	[REDACTED ¹²⁰]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
During the Quantified Target Methodology Period (£)						
FMPP	[REDACTED ¹²¹]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
OPP	[REDACTED ¹²²]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
CEPP	[REDACTED ¹²³]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
SQPP	[REDACTED ¹²⁴]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
CWPP	[REDACTED ¹²⁵]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

2.8 If the Franchisee fails to provide any information in accordance with its obligations in Schedule 11.2 (Management Information) to enable the Secretary of State to calculate the amount of PP in accordance with this Schedule 8.1B, the Secretary of State shall (without prejudice to the Secretary of State’s other rights) be entitled (but not obliged) to determine the amount of PP in accordance

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¹²¹ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹²² 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹²³ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹²⁴ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹²⁵ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

with this Schedule 8.1B but by reference to any relevant information available to the Secretary of State at the time of such determination.

2.9 The Parties agree and acknowledge that, in accordance with the provisions of Schedule 9.1 (Consequences of Change and Other Adjustments) the TOC on Self Cancellations Benchmarks, TOC Minute Delay Benchmarks, Short Formation Benchmarks, T-3 Measures, T-15 Measures and All Cancellations Measures referred to in this Schedule 8.1B, may be subject to revision or adjustment as a result of a Change.

2.10 In the event that the Franchise Period ends on a date that does not coincide with the end of a Franchisee Year, the Parties shall agree, if applicable, the relevant pro-rating to the Performance Payment Components in this Schedule 8.1B.

3. **Financial Measures Performance Payment**

3.1 Subject to paragraph 3.5, the value of Performance Payment Component FMPP in each Franchisee Year ("**Franchisee Year_y**") shall be equal to:

FMPP for Franchisee Year_y =	$RDWPP_y + VMCEPP_y + TTPP_y$
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where:

RDWPP_y	means the Rest Day Working Performance Payment in the relevant Franchisee Year determined in accordance with paragraph 3.2
VMCEPP_y	means the Voyager Maintenance Cost Efficiency Performance Payment in the relevant Franchisee Year determined in accordance with paragraph 3.3
TTPP_y	means the Ticketless Travel Performance Payment in the relevant Franchisee Year determined in accordance with paragraph 3.4

3.2 **Rest Day Working Performance Payment**

(a) Subject to paragraph 3.5, the value of $RDWPP_y$ in each Franchisee Year ("**Franchisee Year_y**") shall be calculated as follows:

(i) $RDWPP_y$ shall be the applicable amount for that Franchisee Year (as set out in the table in this paragraph, such amounts (£) being subject to Indexation) if the total Rest Day Working Payments made to Franchisee staff in relation to such Franchisee Year are less than or equal to the applicable enhanced target set out in Table 1A.

Franchise Year	Amount (£)
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Year 1 (part)	[REDACTED ¹²⁶]
Year 2	[REDACTED]
Year 3	[REDACTED]
Year 4 (part)	[REDACTED]
Year 4 (part) (extension)	[REDACTED]
Year 5 (part)	[REDACTED]

(ii) RDWPP_y shall be the applicable amount for that Franchisee Year (as set out in the table in this paragraph, such amounts (£) being subject to Indexation), if the total Rest Day Working Payments made to Franchisee staff in relation to such Franchisee Year are greater than the applicable enhanced target and less than or equal to the applicable expected target set out in Table 1A.

Franchise Year	Amount (£)
Year 1 (part)	[REDACTED ¹²⁷]
Year 2	[REDACTED]
Year 3	[REDACTED]
Year 4 (part)	[REDACTED]
Year 4 (part) (extension)	[REDACTED]
Year 5 (part)	[REDACTED]

(iii) RDWPP_y shall be zero for each Franchisee Year, if the total Rest Day Working Payments made to Franchisee staff in relation to such Franchisee Year are greater than the applicable expected target set out in Table 1A.

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¹²⁷ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

- (b) In connection with the Franchisee’s obligations pursuant to paragraphs 9.2(b)(xi) and 9.4(b) of Schedule 11.2 (Management Information), the Franchisee shall provide the Secretary of State with a spreadsheet summarising the total Rest Day Working Payments (set out by category of Franchisee staff on a per Reporting Period basis, and which shall correspond to the Franchisee’s payroll data) as evidence of the Rest Day Working Payments made by the Franchisee. The Franchisee shall submit such evidence to the Secretary of State every Quarter. The Franchisee shall provide any such additional data or underlying data as the Secretary of State may request in connection with Rest Day Working Payments.

Table 1A						
	Year 1 (part)	Year 2	Year 3	Year 4 (part)	Year 4 (part) (extension)	Year 5 (part)
	Rest Day Working Costs (£)					
Enhanced target	[REDACTED ¹²⁸]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Expected target	[REDACTED ¹²⁹]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

3.3 Voyager Maintenance Cost Efficiency Performance Payment

- (a) Subject to paragraph 3.5, the value of VMCEPP_y in each Franchisee Year (“**Franchisee Year_y**”) shall be calculated as follows:
 - (i) VMCEPP_y shall be the applicable amount for that Franchisee Year (as set out in the table in this paragraph, such amounts (£) being subject to Indexation), if the Voyager Maintenance Costs in relation to such Franchisee Year are less than or equal to the applicable enhanced target set out in Table 1B.

Franchise Year	Amount (£)
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¹²⁸ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹²⁹ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

Year 1 (part)	[REDACTED ¹³⁰]
Year 2	[REDACTED]
Year 3	[REDACTED]
Year 4 (part)	[REDACTED]
Year 4 (part) (extension)	[REDACTED]
Year 5 (part)	[REDACTED]

(ii) VMCEPP_y shall be the applicable amount for that Franchisee Year (as set out in the table in this paragraph, such amounts (£) being subject to Indexation), if the Voyager Maintenance Costs in relation to such Franchisee Year are greater than the applicable enhanced target and less than or equal to the applicable expected target set out in Table 1B.

Franchise Year	Amount (£)
Year 1 (part)	[REDACTED ¹³¹]
Year 2	[REDACTED]
Year 3	[REDACTED]
Year 4 (part)	[REDACTED]
Year 4 (part) (extension)	[REDACTED]
Year 5 (part)	[REDACTED]

(iii) VMCEPP_y shall be zero for each Franchisee Year, if the Voyager Maintenance Costs in relation to such Franchisee Year are greater than the applicable expected target set out in Table 1B,

and in each case, Voyager Maintenance Costs shall be determined and interpreted subject to paragraphs 3.3 (b) to (e) inclusive.

¹³⁰ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹³¹ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

- (b) The Franchisee shall provide to the Secretary of State, in the first Reporting Period of each Franchisee Year, details of the anticipated Voyager Maintenance Cost for each Franchisee Year, in such format as the Secretary of State requires, which as a minimum shall identify the types of activity to be performed (with reference to limbs (a), (b) and (c) of the definition of Voyager Maintenance Costs) and in each case, the cost of such activity and the time at which such activity is expected to be carried out. In connection with the Franchisee’s obligations pursuant to paragraphs 9.2(b)(xi) and 9.4(b) of Schedule 11.2 (Management Information), the Franchisee shall provide updated information throughout the Franchisee Year.
- (c) In respect of Voyager Maintenance Costs, the Franchisee must notify the Secretary of State as soon as reasonably practicable of any proposed changes to maintenance schedules or activities (including the waiver or deferral of maintenance costs) in respect of the Voyager Fleet which have the effect of changing costs (a “**Maintenance Cost Change**”) and provide sufficient detail of the cost impact of such changes in order for the Secretary of State to understand the Maintenance Cost Change.
- (d) In the event of a Maintenance Cost Change leading to a saving or reduction in costs, such saving or reduction shall be deemed to have been incurred for the purposes of calculating VMCEPP, unless the Secretary of State agrees in writing to such Maintenance Cost Change, and, in which case, the Secretary of State (acting reasonably) shall update the applicable figures for the purposes of Table 1B to take account of such agreed Maintenance Cost Change and VMCEPP shall be calculated accordingly.
- (e) In the event of a Maintenance Cost Change leading to an increase in costs, the applicable figures for the purposes of Table 1B shall not adjusted, unless the Secretary of State agrees in writing to such Maintenance Cost Change, and, in which case, the Secretary of State (acting reasonably) shall update the applicable figures for the purposes of Table 1B to take account of such agreed Maintenance Cost Change and VMCEPP shall be calculated accordingly.

Table 1B						
	Year 1 (part)	Year 2	Year 3	Year 4 (part)	Year 4 (part) (extension)	Year 5 (part)
	Voyager Maintenance Costs (£)					

Enhanced target	[REDACTED ¹³²]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Expected target	[REDACTED ¹³³]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

3.4 Ticketless Travel Performance Payment

3.4.1 Subject to paragraph 3.5, the value of $TTPP_y$ for each Franchisee Year shall be an amount equal to:

TTPP for Franchisee Year_y =	$TTPA_y$
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where:

$TTPA_y$	means the Ticketless Travel Performance Amount for the relevant Franchisee Year _y calculated in accordance with paragraph 3.3.2.
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3.4.2 The value of $TTPA_y$ shall be calculated in accordance with Table 3, and for the purposes of Table 3:

Table 2	
ACTUAL_{TT}	is the Franchisee’s performance for that Franchisee Year _y as calculated pursuant to paragraph 6 of Schedule 6.5 (Additional Operating Contract Obligations)
EXPECTED_{TT}	is the Ticketless Travel Expected Fee Performance Level for that Franchisee Year _y , whereby the Ticketless Travel Rate is four per cent. (4%) (as such may target adjusted in accordance with paragraph 6A of Schedule 6.5 (Additional Operating Contract Obligations))
ENHANCED_{TT}	is the Ticketless Travel Enhanced Fee Performance Level for that Franchisee Year _y , whereby the Ticketless Travel Rate is three per cent. (3%) (as such may target adjusted in accordance with paragraph 6A of Schedule 6.5 (Additional Operating Contract Obligations))

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Table 3						
Value of ACTUAL_{TT} is	Ticketless Travel Performance Amount (£) in Franchisee Year shall equal (all figures are subject to Indexation):					
	Year 1 (part)	Year 2	Year 3	Year 4 (part)	Year 4 (part) (extension)	Year 5 (part)
Better than or equal to ENHANCED_{TT}	[REDACTED ^{D134}]	[REDACTED ^D]	[REDACTED ^D]	[REDACTED ^{ED}]	[REDACTED]	[REDACTED ^{ED}]
Worse than ENHANCED_{TT} and better than or equal to EXPECTED_{TT}	[REDACTED ^{D135}]	[REDACTED ^D]	[REDACTED ^D]	[REDACTED ^{ED}]	[REDACTED]	[REDACTED ^{ED}]
Worse than EXPECTED_{TT}	0	0	0	0	0	0

3.5 The value of each of RDWPP, VMCEPP and TTPP shall not be less than zero (0) and if either is a negative number, it shall be deemed to be zero (0). The value of FMPP in each Franchisee Year shall not:

- (a) exceed the relevant Maximum Performance Payment Amount for that Franchisee Year; or
- (b) be less than zero (0) such that if the value of FMPP is a negative number it shall be deemed to be zero (0) for the purposes of paragraph 2.6.

4. Operational Performance Payment

4.1 The value of Performance Payment Component OPP for each Franchisee Year ("**Franchisee Year_y**") shall be an amount equal to:

OPP for Franchisee Year_y =	$TCP_y + TMDP_y + T-3_y + T-15_y + AC_y + SF_y$
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where:

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¹³⁵ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

TCP_y	means the value of $\Sigma TCPA_y$ as calculated in accordance with paragraph 4.2 for Franchisee Year _y
TMDP_y	means the value of $\Sigma TMDPA_y$ as calculated in accordance with paragraph 4.3 for Franchisee Year _y
T-3_y	means the value of $\Sigma T-3PA_y$ as calculated in accordance with paragraph 4.4 for Franchisee Year _y
T-15_y	means the value of $\Sigma T-15PA_y$ as calculated in accordance with paragraph 4.5 for Franchisee Year _y
AC_y	means the value of $\Sigma ACPA_y$ as calculated in accordance with paragraph 4.6 for Franchisee Year _y
SF_y	means the value of $\Sigma SFPA_y$ as calculated in accordance with paragraph 4.7 for Franchisee Year _y

4.2 **TOC on Self Cancellations Performance Payment**

- (a) The value of $\Sigma TCPA_y$ for Franchisee Year_y shall equal the sum of all TOC on Self Cancellations Performance Amounts achieved by the Franchisee in respect of Franchisee Year_y as calculated in accordance with paragraphs 4.2(b) and (c).
- (b) The Franchisee shall achieve a TOC on Self Cancellations Performance Amount if its performance against the TOC on Self Cancellations Benchmark in a Reporting Period ("**Reporting Period_y**") in accordance with paragraph 3 of Schedule 7.1 (Operational Performance) is **better than** the applicable Nil Fee Band Performance Level for that Reporting Period_y.
- (c) The value of any such TOC on Self Cancellations Performance Amount shall be calculated in accordance with paragraph 4.2(c). If the Franchisee's performance against the TOC on Self Cancellations Benchmark in Reporting Period_y is **equal to or worse than** the applicable Nil Fee Band Performance Level for that Reporting Period_y, then the Franchisee will not achieve a TOC on Self Cancellations Performance Amount for that Reporting Period_y.
- (d) The value of a TOC on Self Cancellations Performance Amount in Reporting Period_y shall be calculated in accordance with Table 4, and for the purposes of Table 4:

Table 3	
ACTUAL_c	is the Franchisee's performance against the TOC on Self Cancellations Benchmark for that Reporting Period _y as calculated pursuant to paragraph 3 and paragraph 10 of Schedule 7.1 (Operational Performance)

ENHANCED_c	is the Enhanced Fee Performance Level relating to the TOC on Self Cancellations Benchmark for that Reporting Period _y
EXPECTED_c	is the Expected Fee Performance Level relating to the TOC on Self Cancellations Benchmark for that Reporting Period _y
NIL BAND_c	is the Nil Fee Band Performance Level relating to the TOC on Self Cancellations Benchmark for that Reporting Period _y

Table 4						
Value of ACTUAL_c is	TOC on Self Cancellations Performance Amount (£) in each Reporting Period_y (as applicable) in the relevant Franchise Year shall equal (all figures are subject to Indexation):					
	Year 1 (part)	Year 2	Year 3	Year 4 (part)	Year 4 (part) (extension)	Year 5 (part)
Better than or equal to ENHANCED _c	[REDACTED ^{D¹³⁶}]	[REDACTED ^D]	[REDACTED ^D]	[REDACTED ^{ED}]	[REDACTED []]	[REDACTED ^{ED}]
Worse than ENHANCED _c and better than or equal to EXPECTED _c	[REDACTED ^{D¹³⁷}]	[REDACTED ^D]	[REDACTED ^D]	[REDACTED ^{ED}]	[REDACTED []]	[REDACTED ^{ED}]
Worse than EXPECTED _c and better than NIL BAND _c	[REDACTED ^{D¹³⁸}]	[REDACTED ^D]	[REDACTED ^D]	[REDACTED ^{ED}]	[REDACTED []]	[REDACTED ^{ED}]
Worse than or equal to NIL BAND _c	0	0	0	0	0	0

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¹³⁸ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

4.3 TOC Minute Delay Performance Payment

- (a) The value of $\Sigma TMDPA_y$ for Franchisee Year_y shall equal the sum of all TOC Minute Delay Performance Amounts achieved by the Franchisee in respect of Franchisee Year_y as calculated in accordance with paragraphs 4.3(b) and (c).
- (b) The Franchisee shall achieve a TOC Minute Delay Performance Amount if its performance against the TOC Minute Delay Benchmark in a Reporting Period ("**Reporting Period_y**") in accordance with paragraph 4 of Schedule 7.1 (Operational Performance) is **better than** the applicable Nil Fee Band Performance Level for that Reporting Period_y.
- (c) The value of any such TOC Minute Delay Performance Amount shall be calculated in accordance with paragraph 4.3(c). If the Franchisee's performance against the TOC Minute Delay Benchmark in Reporting Period_y is **equal to or worse than** the applicable Nil Fee Band Performance Level for that Reporting Period_y, then the Franchisee will not achieve a TOC Minute Delay Performance Amount for that Reporting Period_y.
- (d) The value of a TOC Minute Delay Performance Amount in Reporting Period_y shall be calculated in accordance with Table 6, and for the purposes of Table 6:

Table 5	
ACTUAL_{MD}	is the Franchisee's performance against the TOC Minute Delay Benchmark for that Reporting Period _y as calculated pursuant to paragraph 4 and paragraph 11 of Schedule 7.1 (Operational Performance)
ENHANCED_{MD}	is the Enhanced Fee Performance Level relating to the TOC Minute Delay Benchmark for that Reporting Period _y
EXPECTED_{MD}	is the Expected Fee Performance Level relating to the TOC Minute Delay Benchmark for that Reporting Period _y
NIL BAND_{MD}	is the Nil Fee Band Performance Level relating to the TOC Minute Delay Benchmark for that Reporting Period _y

Table 6						
Value of ACTUAL_{MD} is	TOC Minute Delay Performance Amount (£) in each Reporting Period_y (as applicable) in the relevant Franchise Year shall equal (all figures are subject to Indexation):					
	Year 1 (part)	Year 2	Year 3	Year 4 (part)	Year 4 (part) (extension)	Year 5 (part)
Better than or equal to ENHANCED_{MD}	[REDACTED ^{D¹³⁹}]	[REDACTED ^D]	[REDACTED ^D]	[REDACTED ^{ED}]	[REDACTED]	[REDACTED ^{ED}]
Worse than ENHANCED_{MD} and better than or equal to EXPECTED_{MD}	[REDACTED ^{D¹⁴⁰}]	[REDACTED ^D]	[REDACTED ^D]	[REDACTED ^{ED}]	[REDACTED]	[REDACTED ^{ED}]
Worse than EXPECTED_{MD} and better than NIL BAND_{MD}	[REDACTED ^{D¹⁴¹}]	[REDACTED ^D]	[REDACTED ^D]	[REDACTED ^{ED}]	[REDACTED]	[REDACTED ^{ED}]
Worse than or equal to NIL BAND_{MD}	0	0	0	0	0	0

4.4 T-3 Performance Payment

- (a) The value of $\Sigma T-3PA_y$ for Franchisee Year_y shall equal the sum of all T-3 Performance Amounts achieved by the Franchisee in respect of Franchisee Year_y as calculated in accordance with paragraphs 4.4(b) and (c).
- (b) The Franchisee shall achieve a T-3 Performance Amount if its Actual T-3 Performance Level in a Reporting Period ("**Reporting Period_y**") is

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¹⁴¹ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

better than the applicable Nil Fee Band Performance Level for that Reporting Period_y.

- (c) The value of any such T-3 Performance Amount shall be calculated in accordance with paragraph 4.4(c). If the Franchisee’s Actual T-3 Performance Level in Reporting Period_y is **equal to or worse than** the applicable Nil Fee Band Performance Level for that Reporting Period_y, then the Franchisee will not achieve a T-3 Performance Amount for that Reporting Period_y.
- (d) The value of a T-3 Performance Amount in Reporting Period_y shall be calculated in accordance with Table 8, and for the purposes of Table 8:

Table 7	
ACTUAL_{T-3}	is the Franchisee’s Actual T-3 Performance Level for that Reporting Period _y
ENHANCED_{T-3}	is the Enhanced Fee Performance Level relating to the T-3 Measure for that Reporting Period _y
EXPECTED_{T-3}	is the Expected Fee Performance Level relating to the T-3 Measure for that Reporting Period _y
NIL BAND_{T-3}	is the Nil Fee Band Performance Level relating to the T-3 Measure for that Reporting Period _y

Table 8						
Value of ACTUAL_{T-3} is	T-3 Performance Amount (£) in each Reporting Period_y (as applicable) in the relevant Franchise Year shall equal (all figures are subject to Indexation):					
	Year 1 (part)	Year 2	Year 3	Year 4 (part)	Year 4 (part) (extension)	Year 5 (part)
Better than or equal to ENHANCED_{T-3}	[REDACTED ¹⁴²]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

¹⁴² 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

Table 8						
Value of ACTUAL_{T-3} is	T-3 Performance Amount (£) in each Reporting Period_y (as applicable) in the relevant Franchise Year shall equal (all figures are subject to Indexation):					
	Year 1 (part)	Year 2	Year 3	Year 4 (part)	Year 4 (part) (extension)	Year 5 (part)
Worse than ENHANCED_{T-3} and better than or equal to EXPECTED_{T-3}	[REDACTED ^{D143}]	[REDACTED ^D]	[REDACTED ^D]	[REDACTED ^{ED}]	[REDACTED]	[REDACTED ^{ED}]
Worse than EXPECTED_{T-3} and better than NIL BAND_{T-3}	[REDACTED ^{D144}]	[REDACTED ^D]	[REDACTED ^D]	[REDACTED ^{ED}]	[REDACTED]	[REDACTED ^{ED}]
Worse than or equal to NIL BAND_{T-3}	0	0	0	0	0	0

4.5 T-15 Performance Payment

- (a) The value of $\Sigma T-15PA_y$ for Franchisee Year_y shall equal the sum of all T-15 Performance Amounts achieved by the Franchisee in respect of Franchisee Year_y as calculated in accordance with paragraphs 4.5(b) and (c).
- (b) The Franchisee shall achieve a T-15 Performance Amount if its Actual T-15 Performance Level in a Reporting Period (“**Reporting Period_y**”) is **better than** the applicable Nil Fee Band Performance Level for that Reporting Period_y.
- (c) The value of any such T-15 Performance Amount shall be calculated in accordance with paragraph 4.5(c). If the Franchisee’s Actual T-15 Performance Level in Reporting Period_y is **equal to or worse than** the applicable Nil Fee Band Performance Level for that Reporting Period_y,

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¹⁴⁴ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

then the Franchisee will not achieve a T-15 Performance Amount for that Reporting Period_y.

- (d) The value of a T-15 Performance Amount in Reporting Period_y shall be calculated in accordance with Table 10, and for the purposes of Table 10:

Table 9	
ACTUAL_{T-15}	is the Franchisee’s Actual T-15 Performance Level for that Reporting Period _y
ENHANCED_{T-15}	is the Enhanced Fee Performance Level relating to the T-15 Measure for that Reporting Period _y
EXPECTED_{T-15}	is the Expected Fee Performance Level relating to the T-15 Measure for that Reporting Period _y
NIL BAND_{T-15}	is the Nil Fee Band Performance Level relating to the T-15 Measure for that Reporting Period _y

Table 10						
Value of ACTUAL_{T-15} is	T-15 Performance Amount (£) in each Reporting Period_y (as applicable) in the relevant Franchise Year shall equal (all figures are subject to Indexation):					
	Year 1 (part)	Year 2	Year 3	Year 4 (part)	Year 4 (part) (extension)	Year 5 (part)
Better than or equal to ENHANCED_{T-15}	[REDACTED ¹⁴⁵]	[REDACTED ^D]	[REDACTED ^D]	[REDACTED ^{ED}]	[REDACTED []]	[REDACTED ^{ED}]
Worse than ENHANCED_{T-15} and better than or equal to EXPECTED_{T-15}	[REDACTED ^{D146}]	[REDACTED ^D]	[REDACTED ^D]	[REDACTED ^{ED}]	[REDACTED []]	[REDACTED ^{ED}]

¹⁴⁵ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹⁴⁶ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

Table 10						
Value of ACTUAL_{T-15} is	T-15 Performance Amount (£) in each Reporting Period_y (as applicable) in the relevant Franchise Year shall equal (all figures are subject to Indexation):					
	Year 1 (part)	Year 2	Year 3	Year 4 (part)	Year 4 (part) (extension)	Year 5 (part)
Worse than EXPECTED_{T-15} and better than NIL BAND_{T-15}	[REDACTED] ¹⁴⁷	[REDACTED] ^D	[REDACTED] ^D	[REDACTED] ^{ED}	[REDACTED]	[REDACTED] ^{ED}
Worse than or equal to NIL BAND_{T-15}	0	0	0	0	0	0

4.6 All Cancellations Performance Payment

- (a) The value of $\Sigma ACPA_y$ for Franchisee Year_y shall equal the sum of all All Cancellations Performance Amounts achieved by the Franchisee in respect of Franchisee Year_y as calculated in accordance with paragraphs 4.6(b) and (c).
- (b) The Franchisee shall achieve an All Cancellations Performance Amount if its Actual All Cancellations Performance Level in a Reporting Period ("**Reporting Period_y**") is **better than** the applicable Expected Fee Performance Level for that Reporting Period_y.
- (c) The value of any such All Cancellations Performance Amount shall be calculated in accordance with paragraph 4.6(c). If the Franchisee's Actual All Cancellations Performance Level in Reporting Period_y is **equal to or worse than** the applicable Expected Fee Performance Level for that Reporting Period_y, then the Franchisee will not achieve an All Cancellations Performance Amount for that Reporting Period_y.
- (d) The value of an All Cancellations Performance Amount in Reporting Period_y shall be calculated in accordance with Table 12, and for the purposes of Table 12:

Table 11

¹⁴⁷ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

ACTUAL_{AC}	is the Franchisee’s Actual All Cancellations Performance Level for that Reporting Period _y
ENHANCED_{AC}	is the Enhanced Fee Performance Level relating to the All Cancellations Measure for that Reporting Period _y
EXPECTED_{AC}	is the Expected Fee Performance Level relating to the All Cancellations Measure for that Reporting Period _y
NIL BAND_{AC}	is the Nil Fee Band Performance Level relating to the All Cancellations Measure for that Reporting Period _y

Table 12						
Value of ACTUAL_{AC} is	All Cancellations Performance Amount (£) in each Reporting Period_y (as applicable) in the relevant Franchise Year shall equal (all figures are subject to Indexation):					
	Year 1 (part)	Year 2	Year 3	Year 4 (part)	Year 4 (part) (extension)	Year 5 (part)
Better than or equal to ENHANCED_{AC}	[REDACTED ^{D148}]	[REDACTED ^D]	[REDACTED ^D]	[REDACTED ^{ED}]	[REDACTED []]	[REDACTED ^{ED}]
Worse than ENHANCED_{AC} and better than or equal to EXPECTED_{AC}	[REDACTED ^{D149}]	[REDACTED ^D]	[REDACTED ^D]	[REDACTED ^{ED}]	[REDACTED []]	[REDACTED ^{ED}]
Worse than EXPECTED_{AC} and better than NIL BAND_{AC}	[REDACTED ^{D150}]	[REDACTED ^D]	[REDACTED ^D]	[REDACTED ^{ED}]	[REDACTED []]	[REDACTED ^{ED}]

¹⁴⁸ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹⁴⁹ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹⁵⁰ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

Table 12						
Value of ACTUAL_{AC} is	All Cancellations Performance Amount (£) in each Reporting Period_y (as applicable) in the relevant Franchise Year shall equal (all figures are subject to Indexation):					
	Year 1 (part)	Year 2	Year 3	Year 4 (part)	Year 4 (part) (extension)	Year 5 (part)
Worse than or equal to NIL BAND_{AC}	0	0	0	0	0	0

4.7 Short Formations Performance Payment

- (a) The value of $\Sigma SFPA_y$ for Franchisee Year_y shall equal the sum of all Short Formation Performance Amounts achieved by the Franchisee in respect of Franchisee Year_y as calculated in accordance with paragraphs 4.7(b) and (c).
- (b) The Franchisee shall achieve a Short Formation Performance Amount if its performance against the Short Formation Benchmark in a Reporting Period ("**Reporting Period_y**") in accordance with paragraph 5 of Schedule 7.1 (Operational Performance) is **better than** the applicable Nil Fee Band Performance Level for that Reporting Period_y.
- (c) The value of any such Short Formation Performance Amount shall be calculated in accordance with paragraph 4.7(c). If the Franchisee's performance against the Short Formation Benchmark in Reporting Period_y is **equal to or worse than** the applicable Nil Fee Band Performance Level for that Reporting Period_y, then the Franchisee will not achieve a Short Formation Performance Amount for that Reporting Period_y.
- (d) The value of a Short Formation Performance Amount in Reporting Period_y shall be calculated in accordance with Table 14, and for the purposes of Table 14:

Table 13	
ACTUAL_{SF}	is the Franchisee's performance against the Short Formation Benchmark for that Reporting Period _y as calculated pursuant to paragraph 5 of Schedule 7.1 (Operational Performance)
ENHANCED_{SF}	is the Enhanced Fee Performance Level relating to the Short Formation Benchmark for that Reporting Period _y
EXPECTED_{SF}	is the Expected Fee Performance Level relating to the Short Formation Benchmark for that Reporting Period _y

NIL BAND_{SF}	is the Nil Fee Band Performance Level relating to the Short Formation Benchmark for that Reporting Period _y
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Table 14						
Value of ACTUAL_{SF} is	Short Formation Performance Amount (£) in each Reporting Period_y (as applicable) in the relevant Franchise Year shall equal (all figures are subject to Indexation):					
	Year 1 (part)	Year 2	Year 3	Year 4 (part)	Year 4 (part) (extension)	Year 5 (part)
Better than or equal to ENHANCED_{SF}	[REDACTED ^{D151}]	[REDACTED ^D]	[REDACTED ^D]	[REDACTED ^{ED}]	[REDACTED]	[REDACTED ^{ED}]
Worse than ENHANCED_{SF} and better than or equal to EXPECTED_{SF}	[REDACTED ^{D152}]	[REDACTED ^D]	[REDACTED ^D]	[REDACTED ^{ED}]	[REDACTED]	[REDACTED ^{ED}]
Worse than EXPECTED_{SF} and better than NIL BAND_{SF}	[REDACTED ^{D153}]	[REDACTED ^D]	[REDACTED ^D]	[REDACTED ^{ED}]	[REDACTED]	[REDACTED ^{ED}]
Worse than or equal to NIL BAND_{SF}	0	0	0	0	0	0

5. Customer Experience Performance Payment

5.1 The value of Performance Payment Component CEPP for each Franchisee Year ("**Franchisee Year_y**") shall be an amount equal to (whereby such figures (£) are subject to Indexation):

¹⁵¹ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹⁵² 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹⁵³ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

CEPP in Franchisee Year_y		$NRPS(T)_{NSM} + NRPS(T)_{NSS} + NRPS(T)_{EW} + NRPS(CS)_{NSM} + NRPS(CS)_{NSS} + NRPS(CS)_{EW} + NRPS(DD)$	
where:			
1.	NRPS(T)_{NSM} =	Year 1 (part) (£)	[REDACTED¹⁵⁴]
		Year 2 (£)	[REDACTED]
		Year 3 (£)	[REDACTED]
		Year 4 (part) (£)	[REDACTED]
		Year 4 (part) (extension) (£)	[REDACTED]
		Year 5 (part) (£)	[REDACTED]
2.	NRPS(T)_{NSS} =	Year 1 (part) (£)	[REDACTED¹⁵⁵]
		Year 2 (£)	[REDACTED]
		Year 3 (£)	[REDACTED]
		Year 4 (part) (£)	[REDACTED]
		Year 4 (part) (extension) (£)	[REDACTED]
		Year 5 (part) (£)	[REDACTED]
3.	NRPS(T)_{EW} =	Year 1 (part) (£)	[REDACTED¹⁵⁶]

¹⁵⁴ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹⁵⁵ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹⁵⁶ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

		Year 2 (£)	[REDACTED]
		Year 3 (£)	[REDACTED]
		Year 4 (part) (£)	[REDACTED]
		Year 4 (part) (extension) (£)	[REDACTED]
		Year 5 (part) (£)	[REDACTED]
4.	NRPS(CS)_{NSM} =	Year 1 (part) (£)	[REDACTED¹⁵⁷]
		Year 2 (£)	[REDACTED]
		Year 3 (£)	[REDACTED]
		Year 4 (part) (£)	[REDACTED]
		Year 4 (part) (extension) (£)	[REDACTED]
		Year 5 (part) (£)	[REDACTED]
5.	NRPS(CS)_{NSS} =	Year 1 (part) (£)	[REDACTED¹⁵⁸]
		Year 2 (£)	[REDACTED]
		Year 3 (£)	[REDACTED]
		Year 4 (part) (£)	[REDACTED]
		Year 4 (part) (extension) (£)	[REDACTED]

¹⁵⁷ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹⁵⁸ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

		Year 5 (part) (£)	[REDACTED]
6.	NRPS(CS)_{EW} =	Year 1 (part) (£)	[REDACTED¹⁵⁹]
		Year 2 (£)	[REDACTED]
		Year 3 (£)	[REDACTED]
		Year 4 (part) (£)	[REDACTED]
		Year 4 (part) (extension) (£)	[REDACTED]
		Year 5 (part) (£)	[REDACTED]
7.	NRPS(DD) =	Year 1 (part) (£)	[REDACTED¹⁶⁰]
		Year 2 (£)	[REDACTED]
		Year 3 (£)	[REDACTED]
		Year 4 (part) (£)	[REDACTED]
		Year 4 (part) (extension) (£)	[REDACTED]
		Year 5 (part) (£)	[REDACTED]

5.2 For the purposes of paragraph 5.1:

(a) the multipliers:

- (i) "NRPS(T)_{NSM}", being applicable to the NRPS Measure 'Trains' for the North-South Manchester NRPS Service Group;

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¹⁶⁰ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

- (ii) **"NRPS(T)M_{NSS}"**, being applicable to the NRPS Measure 'Trains' for the North-South Scotland & NE NRPS Service Group;
- (iii) **"NRPS(T)M_{EW}"**, being applicable to the NRPS Measure 'Trains' for the East West NRPS Service Group;

shall be calculated in accordance with Tables 16, 17 and 18 respectively, and for the purposes of such Tables 16, 17 and 18:

Table 15	
Actual NRPS(T)_{NSM}	means, in respect of Franchisee Year _y , the Franchisee's performance against NRPS Measure 'Trains' for the North-South Manchester NRPS Service Group (with reference to Table 2 of Appendix 1 to Schedule 7.2 (Customer Experience and Engagement)) as determined by the Secretary of State in accordance with paragraph 4 of Schedule 7.2 (Customer Experience and Engagement);
Actual NRPS(T)_{NSS}	means, in respect of Franchisee Year _y , the Franchisee's performance against NRPS Measure 'Trains' for the North-South Scotland & NE NRPS Service Group (with reference to Table 1 of Appendix 1 to Schedule 7.2 (Customer Experience and Engagement)) as determined by the Secretary of State in accordance with paragraph 4 of Schedule 7.2 (Customer Experience and Engagement);
Actual NRPS(T)_{EW}	means, in respect of Franchisee Year _y , the Franchisee's performance against NRPS Measure 'Trains' for the East West NRPS Service Group (with reference to Table 3 of Appendix 1 to Schedule 7.2 (Customer Experience and Engagement)) as determined by the Secretary of State in accordance with paragraph 4 of Schedule 7.2 (Customer Experience and Engagement);

Table 16	
where, as the case may be, Actual NRPS(T)_{NSM} is:	NRPS(T)M_{NSM} shall equal:

Better than or equal to two (2) percentage points above the NRPS Benchmark	[REDACTED ¹⁶¹]
Worse than two (2) percentage points above the NRPS Benchmark and better than or equal to the NRPS Benchmark	[REDACTED]
Worse than the NRPS Benchmark and equal to or better than NRPS Nil Band Level	[REDACTED]
Worse than the NRPS Nil Band Level	0

Table 17	
where, as the case may be, Actual NRPS(T)_{NSS} is:	NRPS(T)_{MNSS} shall equal:
Better than or equal to two (2) percentage points above the NRPS Benchmark	1
Worse than two (2) percentage points above the NRPS Benchmark and better than or equal to the NRPS Benchmark	0.56
Worse than the NRPS Benchmark and equal to or better than NRPS Nil Band Level	0.28
Worse than the NRPS Nil Band Level	0

Table 18	
where, as the case may be, Actual NRPS(T)_{EW} is:	NRPS(T)_{EW} shall equal:
Better than or equal to two (2) percentage points above the NRPS Benchmark	[REDACTED ¹⁶²]
Worse than two (2) percentage points above the NRPS Benchmark and better than or equal to the NRPS Benchmark	[REDACTED]

¹⁶¹ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹⁶² 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

Worse than the NRPS Benchmark and equal to or better than NRPS Nil Band Level	[REDACTED]
Worse than the NRPS Nil Band Level	0

(f) the multipliers:

- (i) "NRPS(CS)M_{NSM}", being applicable to the NRPS Measure 'Customer Services' for the North-South Manchester NRPS Service Group;
- (ii) "NRPS(CS)M_{NSS}", being applicable to the NRPS Measure 'Customer Services' for the North-South Scotland & NE NRPS Service Group;
- (iii) "NRPS(CS)M_{EW}", being applicable to the NRPS Measure 'Customer Services' for the East West NRPS Service Group;

shall be calculated in accordance with Tables 20, 21 and 22 respectively, and for the purposes of such Tables 20, 21 and 22:

Table 19	
Actual NRPS(CS) _{NSM}	[REDACTED ¹⁶³]
Actual NRPS(CS) _{NSS}	[REDACTED]
Actual NRPS(CS) _{EW}	[REDACTED]

Table 20	
where, as the case may be, Actual NRPS(CS) _{NSM} is:	NRPS (CS)M _{NSM} shall equal:
Better than or equal to two (2) percentage points above the NRPS Benchmark	[REDACTED ¹⁶⁴]
Worse than two (2) percentage points above the NRPS Benchmark and better than or equal to the NRPS Benchmark	[REDACTED]

¹⁶³ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹⁶⁴ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

Worse than the NRPS Benchmark and equal to or better than NRPS Nil Band Level	[REDACTED]
Worse than the NRPS Nil Band Level	0

Table 21	
where, as the case may be, Actual NRPS(CS)_{NSS} is:	NRPS(CS)_{M_{NSS}} shall equal:
Better than or equal to two (2) percentage points above the NRPS Benchmark	[REDACTED ¹⁶⁵]
Worse than two (2) percentage points above the NRPS Benchmark and better than or equal to the NRPS Benchmark	[REDACTED]
Worse than the NRPS Benchmark and equal to or better than NRPS Nil Band Level	[REDACTED]
Worse than the NRPS Nil Band Level	0

Table 22	
where, as the case may be, Actual NRPS(CS)_{EW} is:	NRPS(CS)_{M_{EW}} shall equal:
Better than or equal to two (2) percentage points above the NRPS Benchmark	[REDACTED ¹⁶⁶]
Worse than two (2) percentage points above the NRPS Benchmark and better than or equal to the NRPS Benchmark	[REDACTED]
Worse than the NRPS Benchmark and equal to or better than NRPS Nil Band Level	[REDACTED]
Worse than the NRPS Nil Band Level	0

¹⁶⁵ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹⁶⁶ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

- (a) the multiplier "**NRPS(DD)M**", being applicable to the NRPS measure 'Dealing with Delays' shall be calculated in accordance with Table 24 and for the purpose of Table 24:

Table 23	
Actual NRPS(DD)	[REDACTED ¹⁶⁷]

Table 24	
where Actual NRPS(DD) is:	NRPS(DD)M shall equal:
Better than or equal to three (3) percentage points above the NRPS Benchmark	1
Worse than three (3) percentage points above the NRPS Benchmark and better than or equal to the NRPS Benchmark	0.56
Worse than the NRPS Benchmark and equal to or better than NRPS Nil Band Level	0.28
Worse than NRPS Nil Band Level	0

6. **Service Quality Performance Payment**

- 6.1 The value of Performance Payment Component SQPP for each Franchisee Year ("**Franchisee Year_y**") shall be an amount equal to (whereby such figures (£) are subject to Indexation):

SQPP in Franchisee Year_y =	SQR(T) + SQR(CS)			
where:				
1.	SQR(T) =	Year 1 (part) (£)	[REDACTED ¹⁶⁸]	[REDACTED]

¹⁶⁷ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹⁶⁸ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

		Year 2 (£)	[REDACTED]	
		Year 3 (£)	[REDACTED]	
		Year 4 (part) (£)	[REDACTED]	
		Year 4 (part) (extension) (£)	[REDACTED]	
		Year 5 (part) (£)	[REDACTED]	
2.	SQR(CS) =	Year 1 (part) (£)	[REDACTED¹⁶⁹]	[REDACTED]
		Year 2 (£)	[REDACTED]	
		Year 3 (£)	[REDACTED]	
		Year 4 (part) (£)	[REDACTED]	
		Year 4 (part) (extension) (£)	[REDACTED]	
		Year 5 (part) (£)	[REDACTED]	

6.2 For the purposes of paragraph 6.1:

(a) the values of each of:

- (i) "SQR(T_A)", being applicable to the SQR Train Benchmark for the 'Ambience and Assets' Service Quality Area;
- (ii) "SQR(T_C)", being applicable to the SQR Train Benchmark for the 'Cleanliness' Service Quality Area; and
- (iii) "SQR(T_I)", being applicable to the SQR Train Benchmark for the 'Information' Service Quality Area,

shall be calculated in accordance with Table 26, 26A and 26B, and for the purposes of Table 26:

¹⁶⁹ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

Table 25	
Actual SQR(T_A)	means, in respect of Franchisee Year _y , the Franchisee’s performance against the SQR Train Benchmark for the ‘Ambience and Assets’ Service Quality Area (with reference to Appendix 2 to Schedule 7.3 (Service Quality Regime)) as determined by the Secretary of State in accordance with paragraph 10.2 of Part C (Calculations of Pass Rates and Service Quality Payments) of Schedule 7.3 (Service Quality Regime);
Actual SQR(T_C)	means, in respect of Franchisee Year _y , the Franchisee’s performance against the SQR Train Benchmark for the ‘Cleanliness’ Service Quality Area (with reference to Appendix 2 to Schedule 7.3 (Service Quality Regime)) as determined by the Secretary of State in accordance with paragraph 10.2 of Part C (Calculations of Pass Rates and Service Quality Payments) of Schedule 7.3 (Service Quality Regime); and
Actual SQR(T_I)	means, in respect of Franchisee Year _y , the Franchisee’s performance against the SQR Train Benchmark for the ‘Information’ Service Quality Area (with reference to Appendix 2 to Schedule 7.3 (Service Quality Regime)) as determined by the Secretary of State in accordance with paragraph 10.2 of Part C (Calculations of Pass Rates and Service Quality Payments) of Schedule 7.3 (Service Quality Regime).

Table 26	
where Actual SQR(T_A) is:	SQR(T_A) shall equal:
Better than or equal to three (3) percentage points above the SQR Benchmark	[REDACTED¹⁷⁰]
Worse than three (3) percentage points above the SQR Benchmark and better than or equal to the SQR Benchmark	[REDACTED]
Worse than the SQR Benchmark	0

¹⁷⁰ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

Table 26A	
where Actual SQR(T_c) is:	SQR(T_c) shall equal:
Better than or equal to two (2) percentage points above the SQR Benchmark	[REDACTED ¹⁷¹]
Worse than two (2) percentage points above the SQR Benchmark and better than or equal to the SQR Benchmark	[REDACTED]
Worse than the SQR Benchmark	0

Table 26B	
where Actual SQR(T_i) is:	SQR(T_i) shall equal:
Better than or equal to four (4) percentage points above the SQR Benchmark	[REDACTED ¹⁷²]
Worse than four (4) percentage points above the SQR Benchmark and better than or equal to the SQR Benchmark	[REDACTED]
Worse than the SQR Benchmark	0

(b) the value of "**SQR(CS_{IC})**" shall be calculated in accordance with Table 28, and for the purposes of Table 28:

Table 27	
Actual SQR(CS_{IC})	means, in respect of Franchisee Year _y , the Franchisee's performance against the SQR Customer Service Benchmark for the 'Information and Contact' Service Quality Area (with reference to Appendix 2 to Schedule 7.3 (Service Quality Regime)) as determined by the Secretary of State in accordance with paragraph 10.2 of Part C (Calculations of Pass Rates and Service

¹⁷¹ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹⁷² 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

	Quality Payments) of Schedule 7.3 (Service Quality Regime);
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Table 28	
where, as the case may be, each of Actual SQR(CS_{IC}) :	SQ(CS_{IC}) shall equal:
Better than or equal to four (4) percentage points above the SQR Benchmark	[REDACTED¹⁷³]
Worse than four (4) percentage points above the SQR Benchmark and better than or equal to the SQR Benchmark	[REDACTED]
Worse than the SQR Benchmark	0

6.3 The provisions of this paragraph 6 shall be subject to the Secretary of State’s rights in paragraph 18.2 of Schedule 7.3 (Service Quality Regime).

7. Collaborative Working Performance Payment

7.1 During the Quantified Target Methodology Period the Performance Payment Component CWPP for each Franchisee Year (“**Franchisee Year_y**”) shall be an amount equal to (whereby such figures (£) are subject to Indexation):

CWPP in Franchisee Year_y =	CS + CNR + CWSP		
where:			
CS (client satisfaction)	is equal to (£):		
	Year 1 (part) (£)	[REDACTED¹⁷⁴]	[REDACTED]
	Year 2 (£)	[REDACTED]	
	Year 3 (£)	[REDACTED]	
	Year 4 (part) (£)	[REDACTED]	

¹⁷³ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹⁷⁴ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

		Year 4 (part) (extension) (£)	[REDACTED]	
		Year 5 (part) (£)	[REDACTED]	
	CS(M)	shall mean (as the case may be): (a) zero (0), in circumstances where the Scorecard score in respect of collaborative working performance ('Element 1: Client Satisfaction', as described in paragraph 4.1 of Appendix 3 to this Schedule 8.1B) is '1: Below Acceptable Standard' (b) zero point five six (0.56), in circumstances where the Scorecard score in respect of collaborative working performance ('Element 1: Client Satisfaction', as described in paragraph 4.1 of Appendix 3 to this Schedule 8.1B) is '2: Acceptable'; (c) one (1), in circumstances where the Scorecard score in respect of collaborative working performance ('Element 1: Client Satisfaction', as described in paragraph 4.1 of Appendix 3 to this Schedule 8.1B) is '3: Good'		
	CNR (collaboration with Network Rail)	is equal to (£):		
		Year 1 (part) (£)	[REDACTED¹⁷⁵]	[REDACTED]
		Year 2 (£)	[REDACTED]	
		Year 3 (£)	[REDACTED]	
		Year 4 (part) (£)	[REDACTED]	
		Year 4 (part) (extension) (£)	[REDACTED]	

¹⁷⁵ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

		Year 5 (part) (£)	[REDACTED]	
	CNR(M)	shall mean (as the case may be): (a) zero (0), in circumstances where the Scorecard score in respect of collaborative working performance ('Element 2: Collaboration with Network Rail', as described in paragraph 4.2 of Appendix 3 to this Schedule 8.1B) is '1: Below Acceptable Standard'; (b) zero point five six (0.56), in circumstances where the Scorecard score in respect of collaborative working performance ('Element 2: Collaboration with Network Rail', as described in paragraph 4.2 of Appendix 3 to this Schedule 8.1B) is '2: Acceptable'; (c) one (1), in circumstances where the Scorecard score in respect of collaborative working performance ('Element 2: Collaboration with Network Rail', as described in paragraph 4.2 of Appendix 3 to this Schedule 8.1B) is '3: Good'.		
	CWS (collaboration with wider stakeholders)	is equal to (£):		
		Year 1 (part) (£)	[REDACTED¹⁷⁶]	[REDACTED]
		Year 2 (£)	[REDACTED]	
		Year 3 (£)	[REDACTED]	
		Year 4 (part) (£)	[REDACTED]	
		Year 4 (part) (extension) (£)	[REDACTED]	
		Year 5 (part) (£)	[REDACTED]	
	CWS(M)	shall mean (as the case may be):		

¹⁷⁶ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

	<p>(a) zero (0), in circumstances where the Scorecard score in respect of collaborative working performance ('Element 3: Collaboration with Wider Stakeholders', as described in paragraph 4.3 of Appendix 3 to this Schedule 8.1B) is '1: Below Acceptable Standard';</p> <p>(b) zero point five six (0.56), in circumstances where the Scorecard score in respect of collaborative working performance ('Element 3: Collaboration with Wider Stakeholders', as described in paragraph 4.3 of Appendix 3 to this Schedule 8.1B) is '2: Acceptable';</p> <p>(c) one (1), in circumstances where the Scorecard score in respect of collaborative working performance ('Element 3: Collaboration with Wider Stakeholders', as described in paragraph 4.3 of Appendix 3 to this Schedule 8.1B) is '3: Good';</p>
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7.2 During the Scorecard Methodology Period the Performance Payment Component CWPP for each Franchisee Year ("**Franchisee Year_y**") shall be an amount equal to (whereby such figures (£) are subject to Indexation):

CWPP in Franchisee Year_y =	CS + CNR + CWSP		
where:			
CS (client satisfaction)	is equal to (£):		
	Year 1 (part) (£)	[REDACTED¹⁷⁷]	[REDACTED]
	Year 2 (£)	[REDACTED]	
	Year 3 (£)	[REDACTED]	
	Year 4 (part) (£)	[REDACTED]	

¹⁷⁷ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

		Year 4 (part) (extension) (£)	[REDACTED]	
		Year 5 (part) (£)	[REDACTED]	
	CS(M)	<p>shall mean (as the case may be):</p> <p>(a) zero (0), in circumstances where the Scorecard score in respect of collaborative working performance ('Element 1: Client Satisfaction', as described in paragraph 4.1 of Appendix 3 to this Schedule 8.1B) is '1: Below Acceptable Standard'</p> <p>(b) zero point four six (0.46), in circumstances where the Scorecard score in respect of collaborative working performance ('Element 1: Client Satisfaction', as described in paragraph 4.1 of Appendix 3 to this Schedule 8.1B) is '2: Acceptable';</p> <p>(c) one (1), in circumstances where the Scorecard score in respect of collaborative working performance ('Element 1: Client Satisfaction', as described in paragraph 4.1 of Appendix 3 to this Schedule 8.1B) is '3: Good'</p>		
	CNR (collaboration with Network Rail)	is equal to (£):		
		Year 1 (part) (£)	[REDACTED¹⁷⁸]	(in each case) [REDACTED]
		Year 2 (£)	[REDACTED]	
		Year 3 (£)	[REDACTED]	
		Year 4 (part) (£)	[REDACTED]	
		Year 4 (part) (extension) (£)	[REDACTED]	

¹⁷⁸ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

		Year 5 (part) (£)	[REDACTED]	
	CNR(M)	<p>shall mean (as the case may be):</p> <p>(d) zero (0), in circumstances where the Scorecard score in respect of collaborative working performance ('Element 2: Collaboration with Network Rail', as described in paragraph 4.2 of Appendix 3 to this Schedule 8.1B) is '1: Below Acceptable Standard;'</p> <p>(e) zero point four six (0.46), in circumstances where the Scorecard score in respect of collaborative working performance ('Element 2: Collaboration with Network Rail', as described in paragraph 4.2 of Appendix 3 to this Schedule 8.1B) is '2: Acceptable';</p> <p>(f) one (1), in circumstances where the Scorecard score in respect of collaborative working performance ('Element 2: Collaboration with Network Rail', as described in paragraph 4.2 of Appendix 3 to this Schedule 8.1B) is '3: Good'.</p>		
	CWS (collaboration with wider stakeholders)	is equal to (£):		
		Year 1 (part) (£)	[REDACTED¹⁷⁹]	[REDACTED]
		Year 2 (£)	[REDACTED]	
		Year 3 (£)	[REDACTED]	
		Year 4 (part) (£)	[REDACTED]	
		Year 4 (part) (extension) (£)	[REDACTED]	
	Year 5 (part) (£)	[REDACTED]		
	CWS(M)	shall mean (as the case may be):		

¹⁷⁹ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

		<p>(d) zero (0), in circumstances where the Scorecard score in respect of collaborative working performance ('Element 3: Collaboration with Wider Stakeholders', as described in paragraph 4.3 of Appendix 3 to this Schedule 8.1B) is '1: Below Acceptable Standard';</p> <p>(e) zero point four six (0.46), in circumstances where the Scorecard score in respect of collaborative working performance ('Element 3: Collaboration with Wider Stakeholders', as described in paragraph 4.3 of Appendix 3 to this Schedule 8.1B) is '2: Acceptable';</p> <p>(f) one (1), in circumstances where the Scorecard score in respect of collaborative working performance ('Element 3: Collaboration with Wider Stakeholders', as described in paragraph 4.3 of Appendix 3 to this Schedule 8.1B) is '3: Good';</p>
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7.3 The Parties acknowledge and agree that the Collaborative Working Performance Payment shall be calculated during the Quantified Target Methodology Period on the same basis as it was calculated during the Scorecard Methodology Period.

8. Financial Incentive Measures

8.1 If requested by the Secretary of State, the Franchisee shall design, develop and provide to the Secretary of State such data as the Secretary of State may require in relation to the development and implementation of a new revenue incentive measure ("**New Revenue Incentive Measure**") (which may vary, replace or be in addition to existing provisions of the Franchise Agreement and/or may be used in future contracts with Train Operators) and the Franchisee shall at all times fully and effectively co-operate with the directions of the Secretary of State in doing so.

8.2 The Franchisee's obligations pursuant to paragraph 8.1 above may include:

- (a) developing, reviewing and/or commenting on proposals in relation to such New Revenue Incentive Measure;
- (b) providing advice on the feasibility, costs and other implications of any such proposals made by the Secretary of State;
- (c) attending meetings to discuss such proposals and any related matters; and
- (d) supporting the Secretary of State in preparing to implement such New Revenue Incentive Measure, including by collecting and providing relevant data to the Secretary of State in accordance with any requirements specified by the Secretary of State from time to time.

- 8.3 The Franchisee shall cooperate with the directions of the Secretary of State in relation to the development and implementation of any New Revenue Incentive Measure, including in relation to the principles governing the objectives of such New Revenue Incentive Measure.
- 8.4 Where the Secretary of State determines, in the Secretary of State's absolute discretion, that such New Revenue Incentive Measure shall be implemented the requirements in relation to such New Revenue Incentive Measure shall be implemented as a Variation and there shall be a Change for the purposes of Schedule 9.
- 8.5 Any New Revenue Incentive Measures that are implemented in a Franchisee Year shall not, together with all other retained Performance Payment Components, in aggregate, exceed the sum of each of the Maximum Performance Payment Amounts in any such Franchisee Year.

9. **Incentive Regimes**

- 9.1 The Franchisee shall, as required by the Secretary of State, fully and effectively co-operate with the Secretary of State to design, develop and (as applicable) implement and provide to the Secretary of State such data as the Secretary of State may require in relation to potential new incentive regimes (which may be used in future contracts with Train Operators and/or may be introduced into the Franchise Agreement by means of a Variation, provided that no such new incentive regime may be introduced into the calculation of the Performance Payments pursuant to Schedule 8.1B (Performance Payments) without the prior written agreement of the Parties)), including designing:
- (a) new models for assessing customer satisfaction and sentiment;
 - (b) new measures of Operational Performance;
 - (c) alternative cost or other financial incentive mechanisms;
 - (d) a new regime for assessing service quality standards delivered by the Franchisee; and/or
 - (e) a new regime for assessing the Franchisee's performance in relation to deterring and preventing ticketless travel.
- 9.2 The Franchisee's obligations pursuant to paragraph 9.1 above may include:
- (a) developing, reviewing and/or commenting on proposals in relation to such new incentive regimes;
 - (b) providing advice on the feasibility, costs and other implications of any such proposals made by the Secretary of State;
 - (c) attending meetings to discuss such proposals and any related matters; and
 - (d) supporting the Secretary of State in preparing to implement such new incentive mechanisms, including by collecting and providing relevant

data to the Secretary of State in accordance with any requirements specified by the Secretary of State from time to time.

APPENDIX 1 TO SCHEDULE 8.1B

The Scorecard Methodology Period

1. **Performance Payment during the Scorecard Methodology Period**

1.1 When the Scorecard Methodology applies, PP shall be calculated in accordance with the Scorecard Methodology in accordance with the following formula:

PP =	FMPP + OPP + CEPP + CWPP
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where:

FMPP	means the value of the Financial Measures Performance Payment calculated in accordance with the Scorecard Methodology. FMPP may not be a negative number
OPP	means the value of the Operational Performance Payment calculated in accordance with the Scorecard Methodology. OPP may not be a negative number
CEPP	means the value of the Customer Experience Performance Payment calculated in accordance with the Scorecard Methodology. CEPP may only be a positive number
CWPP	means the value of the Collaborative Working Performance Payment calculated in accordance with the Scorecard Methodology. CWPP may not be a negative number.

and each component of PP as set out in this paragraph 1.1 of Appendix 1 shall be a **“Performance Payment Component”**.

APPENDIX 2

Performance Assessment Review Period

1 Purpose of the Performance Assessment Period Review

- 1.1 The purpose of a Performance Assessment Period Review is for the Secretary of State to undertake a review of the Franchisee's performance in relation to the Franchise Services over the course of the relevant Performance Assessment Period.
- 1.2 The Secretary of State shall carry out a Performance Assessment Period Review with respect to each Performance Assessment Period.
- 1.3 At each periodic Franchise Performance Meeting, progress against the Scorecard Criteria and any other assessment criteria implemented pursuant to this Schedule 8.1B shall be discussed and reviewed by the Parties.
- 1.4 Each Performance Assessment Period Review shall be carried out in accordance with the process set out in this Appendix 2 to Schedule 8.1B.

2 Notice of Performance Assessment Period Review Meeting

- 2.1 The Secretary of State shall notify the Franchisee of the date, time and location for the relevant Performance Assessment Period Review Meeting by no later than the end of the relevant Performance Assessment Period, provided always that the Performance Assessment Period Review Meeting shall take place no earlier than the last day in the relevant Performance Assessment Period and no later than sixty (60) days after the end of the relevant Performance Assessment Period.
- 2.2 Nothing in this Schedule 8.1B shall prevent the Parties from discussing any matter relevant to an Performance Assessment Period Review outside of the relevant Performance Assessment Period Review Meeting.

3 Performance Assessment Period Review Checklist

- 3.1 Not less than thirty (30) days prior to the end of the relevant Performance Assessment Period, the Secretary of State, acting reasonably, shall notify the Franchisee in writing of any additional information that the Franchisee shall be required to submit at the same time as the completed Performance Assessment Period Review Checklist.
- 3.2 Not less than fifteen (15) days prior to end of the Performance Assessment Period, the Franchisee shall notify the Secretary of State in writing of any matters in addition to those set out in the Performance Assessment Period Review Checklist or the information notified to the Franchisee by the Secretary of State in accordance with paragraph 3.1 of this Appendix 2 to Schedule 8.1B, which the Franchisee considers to be relevant for the Performance Assessment Period Review. The Secretary of State shall, within ten (10) days of receiving such notice, provide written confirmation to the Franchisee of whether the Secretary of State considers such matters to be relevant to the Performance Assessment Period Review.

- 3.3 As soon as reasonably practicable after the end of a Performance Assessment Period, and in any event no later than ten (10) days after the end of a Performance Assessment Period, the Franchisee shall deliver to the Secretary of State a duly completed copy of the Performance Assessment Period Review Checklist in respect of the Performance Assessment Period.
- 3.4 The Performance Assessment Period Review Checklist delivered by the Franchisee in accordance with paragraph 3.3 of this Appendix 2 to Schedule 8.1B shall include written commentary from the Franchisee in respect of the Performance Assessment Period covering:
- 3.4.1 each of the matters listed in the Performance Assessment Period Review Checklist;
- 3.4.2 any other such matter notified by the Secretary of State to the Franchisee in accordance with paragraph 3.1 of this Appendix 2 to Schedule 8.1B; and
- 3.4.3 any other matter which the Secretary of State has confirmed as relevant for the Performance Assessment Period Review in accordance with paragraph 3.2 of this Appendix 2 to Schedule 8.1B.
- 3.5 The Secretary of State shall provide the Franchisee with:
- 3.5.1 written commentary on the completed Performance Assessment Period Review Checklist (including any commentary provided by the Franchisee under paragraph 3.4 of this Appendix 2 to Schedule 8.1B); and
- 3.5.2 any information additional to that contained in the Performance Assessment Period Review Checklist which the Secretary of State has used or intends to use to assess the Franchisee's performance,
- in each case, no later than ten (10) days prior to the Performance Assessment Period Review Meeting.

4 Performance Assessment Period Review Meeting

- 4.1 The Performance Assessment Period Review Meeting shall take place at the date, time and location notified by the Secretary of State to the Franchisee in accordance with paragraph 2.1 of this Appendix 2 to Schedule 8.1B and shall be attended by representatives of each of the Secretary of State and the Franchisee.
- 4.2 The Franchisee shall ensure that the representatives of the Franchisee at the Performance Assessment Period Review Meeting include such:
- (a) appropriate and qualified personnel of the Franchisee;
- (b) directors and/or senior managers of the Franchisee; and
- (c) directors and/or senior managers of the Parent,
- as the Secretary of State may reasonably require.
- 4.3 At the Performance Assessment Period Review Meeting the Parties shall discuss the Franchisee's performance by reference to the Performance Assessment

Period Review Checklist, together with any supporting commentary, documents or evidence submitted by the Franchisee to the Secretary of State in accordance with paragraphs 3.3 and 3.4 of this Appendix 2 to Schedule 8.1B and any commentary and/or information provided by the Secretary of State to the Franchisee in accordance with paragraph 3.5 of this Appendix 2 to Schedule 8.1B.

5 Performance Assessment Period Review Scoring

- 5.1 The Secretary of State shall provide to the Franchisee, no later than thirty (30) days following the Performance Assessment Period Review Meeting, a duly completed Performance Assessment Period Scorecard setting out the Franchisee's performance in each of the Scorecard Criteria and any other assessment criteria implemented pursuant to this Schedule 8.1B for the Performance Assessment Period.
- 5.2 The Franchisee shall be scored 3, 2 or 1 in relation to each Scorecard Criterion and, in relation to any other assessment criteria implemented pursuant to this Schedule 8.1B, shall be assessed or scored (as applicable) in accordance with such assessment criteria.
- 5.3 Scores in the Performance Assessment Period Scorecard shall be awarded by the Secretary of State having regard to the matters set out in the Performance Assessment Period Scorecard. One single, integer, overall score shall be awarded in relation to each Scorecard Criterion based on the Secretary of State's assessment of the Franchisee's performance in respect of that Scorecard Criterion against the Performance Assessment Period Scorecard and taking into account:
- (a) the Performance Assessment Period Review Checklist provided to the Secretary of State by the Franchisee in accordance with paragraphs 3.3 and 3.4 of this Appendix 2 to Schedule 8.1B;
 - (b) any commentary provided to the Franchisee by the Secretary of State in accordance with paragraph 3.5 of this Appendix 2 to Schedule 8.1B;
 - (c) any discussions between the Franchisee and the Secretary of State at the Performance Assessment Period Review Meeting; and
 - (d) in respect of Collaborative Working Performance:
 - (i) in respect of 'Client Satisfaction', the Franchise Manager's view of the Franchisee's performance of its obligations (acting reasonably and taking into account all relevant circumstances);
 - (ii) in respect of 'Collaboration with Network Rail', any feedback received or obtained from Network Rail in respect of the Franchisee (including the content of any relevant 'Pulse Survey') and the Secretary of State may seek independent feedback in this regard; and
 - (iii) in respect of 'Collaboration with Wider Stakeholders', any feedback received or obtained from such applicable stakeholders in respect of the Franchisee and the Secretary of State may seek independent feedback in this regard,

and to facilitate this process, regular dialogue shall take place between the Franchisee and the Secretary of State in respect of the Franchisee's performance in respect of such matters at an appropriate level of granularity to assist the Franchisee in understanding their potential score.

- 5.4 The Performance Assessment Period Review shall be complete once the Secretary of State has sent a duly completed Performance Assessment Period Scorecard to the Franchisee in accordance with paragraph 5.1 of this Appendix 2 to Schedule 8.1B.
- 5.5 The Franchisee shall receive a Performance Payment (in respect of a Performance Payment Component), in accordance with this Schedule 8.1B, if the Franchisee scores (in relation to each such Performance Payment Component) 2 or above with respect to one or more of the Scorecard Criteria.
- 5.6 The Franchisee shall not receive a Performance Payment for a Performance Payment Component if the Franchisee scores 1 in relation to all of the Scorecard Criteria.
- 5.7 The Secretary of State may inform the Franchisee if it is of the view that evidence is lacking with regard to any of the Scorecard Criteria during a Performance Assessment Period.

APPENDIX 3 TO SCHEDULE 8.1B**Performance Assessment Review Checklist****1 Operational Performance**

A report on the Franchisee's operational performance, including:

- (a) an explanation of the level of performance achieved during the Performance Assessment Period and the underlying drivers of that performance, including evidence of the impacts of any significant actions the Franchisee has undertaken during the Performance Assessment Period to improve performance or to reduce the impacts of incidents;
- (b) in respect of significant or repeated failures to deliver the Enforcement Plan of the Day, an explanation of the underlying causes of those failures setting out (if relevant) any act, omission or failure of a third party which has impacted performance and the extent of that impact;
- (c) a summary of the Franchisee's approaches to service recovery, Depot and Train Fleet management and train crew management during the Performance Assessment Period, including any significant actions take to improve those approaches, supported by evidence of their effectiveness; and
- (d) evidence of how the ratio of Reactionary Delay to Primary Delay, and incidences of delay attributable to Depot, Train Fleet and train crew related causes, compare with historic trends.

2 Customer Experience

A report on the customer experience delivered by the Franchisee, including:

- (a) tables, charts and other data (as appropriate) showing, for the Performance Assessment Period:
 - (i) delivery of train cleans against the planned programme;
 - (ii) level of adherence to staffing rosters;
 - (iii) a summary of the availability of key assets such as train toilets and the length of time taken to remedy any faults; and
 - (iv) a summary of how the Franchisee has provided consistently accurate, timely and relevant information to customers on rolling stock used to deliver the Passenger Services and online, and in respect of the provision of information at stations, how the Franchisee has managed its relationships with the Station Facility Owners and used all reasonable endeavours to provide such information at stations;
- (b) an explanation of the level of performance achieved during the Performance Assessment Period in respect of each of the above and the underlying drivers of that performance, including evidence of the impacts of any significant actions the Franchisee has undertaken during the Performance Assessment Period to improve performance;

- (c) a summary of customer feedback obtained during the Performance Assessment Period, including insights gathered through complaints, surveys where relevant (including Wavelength and National Rail Passenger Survey, if available), social media and any other relevant sources;
- (d) a summary of how the Franchisee has used these customer insights to identify and address customer needs; and
- (e) the results of any research or assessments undertaken by Transport Focus, the ORR or any other independent bodies which demonstrate the Franchisee's compliance with any of the Scorecard Criteria.

3 Financial Performance

A report detailing the extent to which the Franchisee has acted as a Good and Efficient Operator, including evidence of:

- (a) the actions which the Franchisee has taken to drive the recovery of revenue and demand, and the effect those actions have had on revenue and demand;
- (b) the actions the Franchisee has taken to reduce costs and improve efficiency, and the effect those actions have had on costs;
- (c) the approach the Franchisee has taken to balancing the short, medium and long term financial interest of the franchise (both within and beyond the Franchise Term); and
- (d) appropriate revenue protection being applied to reduce ticketless travel or travel with invalid tickets to the greatest extent reasonably practicable with the intention of maximising revenue while also treating passengers fairly and reasonably (and/or otherwise evidence that the Franchisee has followed government guidance prevailing at the time regarding revenue collection).

4 Collaborative Working Performance

4.1 Element 1: Client Satisfaction

A report detailing the Franchisee's collaboration with the Secretary of State, including evidence of:

- (a) the actions taken by the Franchisee to support the development, design and (where appropriate) implementation of initiatives to improve the long term financial performance of the Franchise, outcomes for passengers and/or other public policy objectives;
- (b) the actions taken by the Franchisee to share data with the Secretary of State, and to facilitate the sharing of data held by third parties on the Franchisee's behalf, pursuant to paragraphs 12 (Further Information) and 13 (Information from Third Parties) of Schedule 11.2 (Management Information);
- (c) the Franchisee having complied with the reporting requirements set out in the Franchise Agreement, and provided supporting commentary,

analysis and (when requested) additional information to help the Secretary of State to assess and understand the drivers of the performance of the delivery of the Franchise Services;

- (d) how the Franchisee has managed its requests for guidance, consents, directions, derogations and other decisions so as to ensure they are accompanied by sufficient high-quality supporting evidence and allow sufficient time for due consideration by the Secretary of State;
- (e) the Franchisee's approach to collaborating with the Secretary of State in respect of business planning, budget setting and (where applicable) seeking to agree the matters described in paragraphs 2.4A, 2.5, 2.5A and/or 2.5B of Schedule 8.1B, and in particular how its approach has enabled the Secretary of State to agree such matters without the need for substantial amendment;
- (f) how the Franchisee has monitored the quality of its collaboration with the Secretary of State, any shortcomings identified and the remedial actions taken;
- (g) the extent to which the Franchisee has pro-actively delivered upon its obligations under the Franchise Agreement and details of how it has acted as a Good and Efficient Operator, including evidence of collaborative working and strategic initiatives about the future direction of the franchise and the markets in which it operates; and
- (h) all steps taken to support the implementation of the findings of the Williams Rail Review and/or any rail reform that the Secretary of State requires (such as by the provision of information, attendance at meetings and other such support reasonably requested by the Secretary of State).

4.2 Element 2: Collaboration with Network Rail

A report detailing the Franchisee's collaboration with Network Rail, other Train Operators, suppliers and industry bodies, including evidence of:

- (a) the actions taken by the Franchisee to comply with the obligations in part 1 (*Co-operation*) of Schedule 6.7 (*Co-operation and Industrial Relations*);
- (b) the actions taken by the Franchisee to collaborate with those parties in each of the areas identified in paragraph 5.2(a) of Appendix 4 (Scorecard Criteria) to Schedule 8.1B;
- (c) how those collaborative actions have directly resulted in improved passenger outcomes and/or whole-industry financial efficiency;
- (d) how the Franchisee has monitored the quality of its collaboration with those parties, any shortcomings identified and the remedial actions taken; and
- (e) how the Franchisee has effectively and pro-actively engaged with, and worked collaboratively with, Network Rail, including (but not limited to) the Franchisees' feedback as reported pursuant to Network Rail's 'Pulse Survey' and/or other sources of insight of the operation of the FNPO Network.

4.3 Element 3: Collaboration with Wider Stakeholders

A report detailing the Franchisee's collaboration with stakeholders specified in paragraph 6.2(a)(a) of Appendix 4 (Scorecard Criteria) to Schedule 8.1B, including evidence of:

- (a) the collaborative actions the Franchisee has taken in each of the areas in paragraph 6.2(b) of Appendix 4 (Scorecard Criteria) to Schedule 8.1B, how those collaborative actions have directly improved outcomes for passengers and/or other stakeholders, and whether (and, if so, how) those actions have helped to leverage in third party funding for improvements to the railway infrastructure or to the Passenger Services;
- (b) how the Franchisee has collaborated with persons with disabilities and their representative bodies in particular, and how this collaboration has directly improved outcomes for such passengers;
- (c) the processes the Franchisee has put in place to monitor stakeholders' satisfaction with the quality of their collaboration and engagement, the results of that monitoring, any shortcomings identified and the actions taken to remedy them; and
- (d) details of how the Franchisee has effectively and pro-actively engaged with, and worked collaboratively with, wider stakeholders, including but not limited to, local government, regional government, industry bodies, other transport operators, passenger groups, community rail partnerships, including evidence of collaborative working.

APPENDIX 4 TO SCHEDULE 8.1B**Scorecard Criteria****1 Operational Performance****1.1 One (1): Below acceptable standard**

The Franchisee has failed in any material respect to demonstrate that it has met the standard required to score a 'two (2)'.

1.2 Two (2): Acceptable

1.2.1 The Franchisee has generally delivered the Passenger Services in accordance with the applicable Enforcement Plan of the Day, such that where there have been significant or repeated failures to deliver the applicable Enforcement Plan of the Day:

- (i) these have typically been due to external factors and/or incidents beyond the reasonable control of the Franchisee;
- (ii) the Franchisee has taken reasonable steps to recover the Passenger Services as quickly as possible so as to minimise passenger inconvenience and delay, regardless of whether or not the root cause was within the Franchisee's reasonable control; and
- (iii) the Franchisee has undertaken reviews of the root cause(s) of such failure(s) to deliver the applicable Enforcement Plan of the Day and the effectiveness of the Franchisee's actions to deal with the incident and recover the Passenger Services.

1.2.2 The Franchisee has in place and has implemented appropriate Depot and Train Fleet management plans that have been generally effective in minimising the number of instances of insufficient rolling stock vehicles being available to resource the applicable Enforcement Plan of the Day.

1.2.3 The Franchisee has in place and has implemented appropriate plans for train crew management (including to mitigate risks relating to COVID-19), recruitment, training, succession and contingency management that have generally been effective in minimising the number of instances of insufficient train crew being available to resource the applicable Enforcement Plan of the Day.

1.3 Three (3): Good

1.3.1 The Franchisee has fully met the criteria for a "two (2)" and in addition:

- (i) there have been very few, if any, significant or repeated failures to deliver the applicable Enforcement Plan of the Day that have been due to factors and/or incidents within the reasonable control of the Franchisee;
- (ii) the Franchisee's approach to service recovery has been particularly robust and, as a result, the ratio of Reactionary Delay to Primary Delay in respect of the Passenger Services has been

low by historical standards during the term of the Previous Franchise Agreement (taking account of all Primary Delay, whether attributed to the Franchisee or not);

- (iii) the reviews referred to in paragraph 1.2(a)(iii) of this Appendix 4 to Schedule 8.1B have been particularly thorough and, as a result of those reviews, the Franchisee has identified and implemented significant actions that have minimised (or will minimise) the likelihood and the impacts on passengers of similar incidents occurring in future; or
- (iv) the Franchisee's Depot, Train Fleet and train crew management has been particularly robust and, as a result, the number of instances of insufficient rolling stock or train crew being available to deliver the Enforcement Plan of the Day have been low by historical standards.

2 Customer Experience

2.1 One (1): Below acceptable standard

The Franchisee has failed in any material respect to demonstrate that it has met the standard required to score a "two (2)".

2.2 Two (2): Acceptable

2.2.1 The Franchisee has taken a proactive approach to managing customer experience for all customers, with appropriate plans and processes in place that have been generally effective in:

- (i) providing information on rolling stock used to deliver the Passenger Services (where appropriate) and online, timely and easy for customers to understand, taking account of the needs of different customers and which covers (but is not limited to):
 - (a) the timetable being operated;
 - (b) planned and unplanned disruption;
 - (c) fares and ticketing;
 - (d) passenger rights (including compensation and redress);
 - (e) the availability of train facilities and station facilities; and
 - (f) (when appropriate) COVID-19 Guidance and Regulation;
- (ii) ensuring that all customer contact surfaces are cleaned regularly and keeping rolling stock used to deliver the Passenger Services free from litter, dirt and other unhygienic substances;
- (iii) ensuring that rolling stock used to deliver the Passenger Services and online services have been staffed as required to provide a visible, helpful and proactive customer-facing service;

- (iiiA) ensuring that the Franchisee has managed its relationships with Station Facility Owners and has used all reasonable endeavours to ensure that relevant information (including, but not limited to, that listed in paragraph 2.2.1(i)(a)-(f)) reaches the Franchisee's customers in timely manner; and
- (iv) maintaining all train facilities so that they are fully functional, available for use and presented in good condition, with any non-availability of facilities for repair or maintenance being kept to the minimum necessary.

2.2.2 The Franchisee has regularly and at an appropriate frequency monitored compliance with those plans and processes and has taken prompt remedial action when they have been found not to be working.

2.2.3 The Franchisee has used some survey results and other relevant data and information to review customer needs and the extent to which they are being met (including, but not limited to, Wavelength and National Rail Passenger Survey data, where available). Where needs are not being met, the Franchisee has (where consistent with the requirement to act as a Good and Efficient Operator, or where the Secretary of State has otherwise consented) taken action to address them, and these actions have demonstrably resulted in meaningful improvements in outcomes for customers (or, in the opinion of the Secretary of State (acting reasonably), will result in such improvements, either during the Franchise Term or in the long term).

2.3 **Three (3): Good**

The Franchisee has fully met the criteria for a "two (2)" and in addition:

- (a) the Franchisee's plans and processes described in paragraph 2.2(a) of this Appendix 4 to Schedule 8.1B have been particularly robust, such that there have been very few, if any, repeated or systemic failures to:
 - (i) provide timely, accurate and relevant information in the manner described in paragraph 2.2(a)(i) of this Appendix 4 to Schedule 8.1B;
 - (ii) undertake cleaning activities and maintain high levels of cleanliness on rolling stock used to deliver the Passenger Services;
 - (iii) staff rolling stock used to deliver the Passenger Services and online services to provide a proactive customer-facing service;
 - (iiiA) ensuring that the Franchisee has managed its relationship with Station Facility Owners and has used best endeavours to ensure that relevant information reaches the Franchisee's customers in timely manner; and
 - (iv) maintain train facilities so that they are fully functional and well-presented,

that have been due to factors and/or incidents within the reasonable control of the Franchisee.

- (b) The Franchisee's plans and processes for managing customer experience have been particularly thorough and, as a result, any *potential* issues have consistently been identified and resolved in a swift and effective manner. Any *actual* issues have also been few in number and low in impact, and the Franchisee has taken prompt and effective remedial action when they have occurred.
- (c) The Franchisee has regularly used a range of different survey results and other relevant data and information (when possible) to review customer needs and the extent to which they are being met (including Wavelength and National Rail Passenger Survey data, where available), and the prompt actions taken to address those needs have demonstrably resulted in substantial improvements in outcomes for customers.

3 Financial Performance

3.1 One (1): Below acceptable standard

The Franchisee has failed in any material respect to demonstrate that it has met the standard required to score a "two (2)".

3.2 Two (2): Acceptable

3.2.1 The Franchisee has consistently acted as a Good and Efficient Operator and has been effective in optimising the financial prospects of its business over the short, medium and long term by:

- (i) driving the recovery of passenger demand and revenue; and
- (ii) robustly controlling the Franchisee's costs.

3.2.2 In driving the recovery of passenger demand and revenue, the Franchisee has taken effective action (in each case within the limits arising from COVID-19 Guidance and Regulation) to:

- (i) promote rail as a safe mode of transport and to raise public awareness of the steps taken by the Franchisee and the wider rail industry to minimise public health risks;
- (ii) monitor and deter ticketless travel on board services; and
- (iii) implement such further actions as may have been directed by the Secretary of State with a view to promoting demand and revenue growth.

3.2.3 In robustly controlling the Franchisee's costs, the Franchisee has:

- (i) put in place internal processes which are comparable to (or better than) those adopted by the Franchisee prior to the EMA Start Date and which have been effective in managing the Franchisee's expenditure across all areas of the business, so as to improve efficiency and guard against unnecessary or excessive spend; and
- (ii) implemented such further actions as may have been directed by the Secretary of State with a view to controlling costs,

while also continuing to incur such expenditure as is reasonably necessary to meet the Franchisee's obligations under this Agreement and to protect the long-term financial interests of the franchise (both during the Franchise Term and in the longer term).

- 3.2.4 If and to the extent that there are any specific instances where the Franchisee has not fully complied with the requirements described above, such instances have been few in number and limited in impact, and the Franchisee has taken prompt and effective remedial action following any such instances.

3.3 **Three (3): Good**

The Franchisee has fully met the criteria for a "two (2)" and in addition on its own initiative, has developed and implemented (subject to the Secretary of State's consent where required pursuant to the Franchise Agreement) significant initiatives, the effect of which has been (or, in the Secretary of State's opinion (acting reasonably), will be):

- (a) where possible and appropriate, in line with UK government advice and the prevalent operating environment, to substantially accelerate the recovery of passenger demand and revenue (while avoiding material increases in costs, either during the Franchise Term or thereafter); and/or
- (b) to substantially reduce the costs of operating the franchise and/or improve its cost efficiency (while avoiding material adverse impacts on passenger outcomes or revenues).

4 **Collaborative Behaviours (client satisfaction)**

4.1 **One (1): Below acceptable standard**

The Franchisee has failed in any material respect to demonstrate that it has met the standard required to score a "two (2)".

4.2 **Two (2): Acceptable**

- (a) The Franchisee has co-operated with the Secretary of State in the development, design and (where applicable) implementation of initiatives to improve the long-term financial performance of the Franchise, outcomes for passengers and/or other public policy objectives (including Future Initiatives and Franchisee Initiatives pursuant to and in accordance with part 1 (*Co-operation*) of Schedule 6.7 (*Co-operation and Industrial Relations*)) of the Franchise Agreement that relate to co-operation with the Secretary of State and prospective Fares, ticketing and ticket retailing reform pursuant to in accordance with Schedule 5.11 (Fares, Ticketing and Retail Reform)).
- (b) The Franchisee has shared data fully and openly with the Secretary of State, and has taken reasonable steps to facilitate the sharing of data held by third parties on the Franchisee's behalf, in accordance with paragraphs 12 (Further Information) and 13 (Information from Third Parties) of Schedule 11.2 (Management Information).

- (c) The Franchisee has provided periodic reporting packs on time and to a good standard, including all data required by the Franchise Agreement with commentary and analysis to allow the Secretary of State to assess the performance of the Franchise Services and to understand the underlying drivers. Appropriate representatives of the Franchisee have attended each Franchise Performance Meeting. The Franchisee has responded to requests for additional information positively and within agreed timescales.
- (d) Requests for the Secretary of State to provide guidance, consents, directions, derogations and other decisions have been made in sufficient time to allow for due consideration by the Secretary of State. Such requests having been supported by appropriate supporting evidence and analysis to enable the Secretary of State to make an informed decision. Unnecessary or spurious requests have been avoided.
- (e) The Franchisee has worked constructively with the Secretary of State to agree appropriate business plans, budgets and (where applicable) the matters described in paragraphs 2.4A, 2.5, 2.5A and/or 2.5B of Schedule 8.1B, in each case in a timely manner. In particular, the Franchisee's proposals in respect of these matters have been provided in accordance with required timescales, underpinned by sound assumptions and good supporting evidence, enabling the Secretary of State to accept them without the need for substantial amendment.
- (f) If and to the extent that there are any specific instances where the Franchisee has not demonstrated good collaborative behaviours, these have been few in number and of minor impact and the Franchisee has taken prompt and effective remedial action where the Franchisee has become aware (or should reasonably have become aware) of any such instances.

4.3 **Three (3): Good**

The Franchisee has fully met the criteria for a "two (2)" and in addition:

- (a) both proactively and in response to any specific requests by the Secretary of State, the Franchisee has developed and presented to the Secretary of State a variety of high-quality, credible reform initiatives to materially strengthen the long-term financial sustainability of the franchise, improve passenger outcomes and support other public policy objectives;
- (b) such proposals have been accompanied by credible delivery plans and clear, robust analysis of the financial and practical consequences, associated risks and other implications; and
- (c) when such proposals have been consistent with what a Good and Efficient Operator would do, or have otherwise been approved by the Secretary of State, the Franchisee has implemented those proposals in accordance with their terms (or, where applicable, the Franchisee's actions during the Performance Assessment Period have given the Secretary of State good confidence that the Franchisee will do so).

5 Collaborative behaviours (collaboration with Network Rail, other Train Operators, suppliers and industry bodies)

5.1 One (1): Below acceptable standard

The Franchisee has failed in any material respect to demonstrate that it has met the standard required to score a "two (2)".

5.2 Two (2): Acceptable

- (a) The Franchisee has complied with the obligations set out in part 1 (*Co-operation*) of Schedule 6.7 (*Co-operation and Industrial Relations*) of the Franchise Agreement insofar as they relate to collaboration with Network Rail, other Train Operators, suppliers and industry bodies.
- (b) In complying with those obligations, the Franchisee has demonstrated good collaborative behaviours in working with Network Rail, other Train Operators, suppliers and relevant industry bodies (as applicable) in **each** of the following areas:
- (i) improving operational performance, which shall include (in particular) reducing Reactionary Delay, improving service recovery and investigating and addressing the root causes of sub-threshold delay;
 - (ii) improving the efficiency and effectiveness of the timetable development process, with the result that timetables better meet the needs of passengers while also being operationally robust and delivering high levels of performance;
 - (iii) optimising the planning of access and possessions, so as to achieve an appropriate balance between protecting journey opportunities for passengers and minimising the cost of carrying out necessary works;
 - (iv) identifying and implementing opportunities to deliver whole-industry cost efficiencies, including by sharing resources, establishing joint teams and/or eliminating duplication of activities across multiple organisations at Stations, control centres and elsewhere;
 - (v) delivering major projects (including infrastructure upgrades, introduction of new or cascaded rolling stock fleets) efficiently, successfully and in a way that minimises any adverse passenger impacts; and
 - (vi) openly and proactively sharing data with Network Rail, in accordance with paragraph 9 (*Sharing Data with Network Rail*) of part 1 (*Co-operation*) of Schedule 6.7 (*Co-operation and Industrial Relations*), as necessary to maximise the effectiveness of collaboration in each of the areas listed above.
- (c) The Franchisee's collaborative actions in **some** of the areas listed in paragraph 5.2(b) of this Appendix 4 to Schedule 8.1B have demonstrably resulted in meaningful improvements in passenger outcomes and/or meaningful whole-industry financial efficiencies (or, in the opinion of the

Secretary of State (acting reasonably), will result in such improvements, either during the Franchise Term or in the long term).

- (d) If and to the extent that there are any specific instances where the Franchisee has not demonstrated good collaborative behaviours, these have been few in number and of minor impact and the Franchisee has taken prompt and effective remedial action where the Franchisee has become aware (or should reasonably have become aware) of any such instances.

5.3 **Three (3): Good**

The Franchisee has fully met the criteria for a "two (2)" and in addition:

- (a) the Franchisee's collaborative actions in **most** or **all** of the areas listed in paragraph 5.2(b) of this Appendix 4 to Schedule 8.1B have demonstrably resulted in meaningful improvements in passenger outcomes and/or meaningful whole-industry financial efficiencies (or, in the opinion of the Secretary of State (acting reasonably), will result in such improvements, either during the Franchise Term or in the long term); or
- (b) the Franchisee's collaborative actions in **some** of the areas listed in paragraph 5.2(b) of this Appendix 4 to Schedule 8.1B have demonstrably resulted in **very substantial** improvements in passenger outcomes and/or **very substantial** whole-industry financial efficiencies (or, in the reasonable opinion of the Secretary of State, will result in such improvements, either during the Franchise Term or in the long term).

6 **Collaborative behaviours (collaboration with other stakeholders)**

6.1 **One (1): Below acceptable standard**

The Franchisee has failed in any material respect to demonstrate that it has met the standard required to score a "two (2)".

6.2 **Two (2): Acceptable**

- (a) The Franchisee has demonstrated good collaborative behaviours in working with stakeholders, including:
- (i) passengers (including, and in particular, passengers with disabilities) and their representative bodies;
 - (ii) devolved administrations (where applicable);
 - (iii) local authorities;
 - (iv) community rail partnerships;
 - (v) local enterprise partnerships and other representatives of the business community; and
 - (vi) other transport operators,

but excluding the Secretary of State, Network Rail and other industry parties as identified in paragraph 5 (*Collaborative behaviours (Collaboration with Network Rail, other Train Operators, suppliers and industry bodies)*) of this Appendix 4.

- (b) In particular, the Franchisee has:
- (vii) sought feedback from such stakeholders about the Franchise Services;
 - (viii) consulted with such stakeholders and involved them in significant decisions that affect them, such that they have had a meaningful opportunity to influence those decisions;
 - (ix) provided feedback to those stakeholders on significant decisions that affect them and the reasons for those decisions;
 - (x) routinely and actively involved passengers with disabilities and their representatives in designing and developing the facilities and Passenger Services provided by the Franchisee, and in other decisions that may have a particular impact on passengers with disabilities; and
 - (xi) provided support to prospective third party promoters and funders of improvements to the railway when requested to do so by the Secretary of State or the third party concerned.
- (c) The Franchisee's collaborative actions in the areas identified in this paragraph 6.2 have resulted in **some** improvements in outcomes for passengers and other stakeholders served by the Franchisee, including in particular for passengers with disabilities (or, in the opinion of the Secretary of State (acting reasonably), will result in such improvements, either during the Franchise Term or in the long term.

6.3 **Three (3): Good**

The Franchisee has fully met the criteria for a "two (2)" and in addition:

- (a) the Franchisee has in place and has implemented effective processes to monitor stakeholder satisfaction with the quality of the Franchisee's collaboration and engagement with them, and the results of this monitoring show consistently excellent levels of stakeholder satisfaction during the Performance Assessment Period; and
- (b) regular, open collaboration, proactively initiated by the Franchisee, has demonstrably resulted in (or, in the opinion of the Secretary of State (acting reasonably) will, either during the Franchise Term or in the longer term, result in):
 - (i) **substantial** improvements in outcomes for passengers and/or other stakeholders (including in particular passengers with disabilities); and/or

third party investment or other funding contributions to **significantly** improve the Passenger Services and/or the railway infrastructure.

APPENDIX 5 TO SCHEDULE 8.1B

Scorecard Methodology

1 Application of the Scorecard Methodology

1.1 The Performance Payment in relation to the Scorecard Methodology Period shall solely be calculated as the sum of the amounts corresponding to each of the Performance Payment Components calculated in accordance with paragraph 2 (*Application of the Scorecard Criteria*) of this Appendix 5 to Schedule 8.1B. The Performance Payment Components in the table at paragraph 2 (*Application of the Scorecard Criteria*) of this Appendix 5 to Schedule 8.1B are subject to Indexation.

2 Application of the Scorecard Criteria

2.1 Each Performance Payment Component to be calculated in accordance with the Scorecard Methodology shall be assessed with respect to the Franchisee’s Performance Assessment Period Review score for the applicable Performance Assessment Period in connection with the Scorecard Criteria as set out below:

Scorecard Criterion	Scorecard score for relevant Scorecard Criterion	Performance Payment Component (£)					
		Year 1 (part)	Year 2	Year 3	Year 4 (part)	Year 4 (part) (extension)	Year 5 (part)
Operational Performance	3	[REDACTED ¹⁸⁰]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	2	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	1	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Customer Experience	3	[REDACTED ¹⁸¹]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	2	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	1	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

¹⁸⁰ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹⁸¹ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

Financial Performance	3	[REDACTED] ^{182]}	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	2	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	1	0	0	0	0	0	0
Collaborative Working Performance (to be scored for each of the elements described in paragraph 4 of Appendix 3 (Performance Assessment Period Review Checklist) to this Schedule 8.1B)		The Collaborative Working Performance Payment shall be calculated in accordance with paragraph 7.2 of Schedule 8.1B until the Quantified Target Methodology Period applies to this Performance Payment Component.					

¹⁸² 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

Schedule 8.2

NOT USED

Schedule 8.3

NOT USED

Schedule 8.4

NOT USED

Schedule 8.5

NOT USED

Schedule 8.6

NOT USED

SCHEDULE 9
CHANGES AND VARIATIONS

Schedule 9.1:	Financial and Other Consequences of Change
	Appendix 1: NOT USED
	Appendix 2: NOT USED
Schedule 9.2:	Identity of the Financial Model (Escrow Documents)
Schedule 9.3:	Variations to the Franchise Agreement
Schedule 9.4:	NOT USED
Schedule 9.5:	NOT USED

Schedule 9.1

Financial and Other Consequences of Change**1. Purpose and Application of Schedule**

1.1 This Schedule 9.1 sets out the process by which any such adjustment to:

- (a) the Budget; and/or
- (b) any of the following:
 - (i) the Benchmarks and/or the Enforcement Benchmarks;
 - (ii) the Target Ticketless Travel Benchmarks;
 - (iii) the T-3 Measure;
 - (iv) the T-15 Measure;
 - (v) the All Cancellations Measure;
 - (vi) the calculation of the Voyager Maintenance Cost Efficiency Performance Payment; and/or
 - (vii) the calculation of the Rest Day Working Performance Payment;
- (in each case, a **"Relevant Measure"**); and/or
- (c) the Franchisee's obligations under the Franchise Agreement (save that this provision shall only apply to the extent that it would be impossible for the Franchisee to comply with such obligations),

will be determined and effected if there is a Change.

1.2 This Schedule 9.1 shall apply in relation to a Change where 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 in accordance with paragraph 1.5 even though the required notice(s) have not been given).

1.3 The notice requirements are that a Party must have notified the other Party of a Change within six (6) months of becoming aware of that Change.

1.4 If the Franchisee provides notice in accordance with paragraph 1.3 and it considers that the Change will in its reasonable opinion:

- (a) have a material impact on the Budget; and or
- (b) have a material effect on the risk of the Franchisee failing to satisfy the requirements of any Relevant Measure (whether in terms of increasing or reducing that risk); and/or
- (c) make it impossible for the Franchisee to comply with certain obligations under the Franchise Agreement,

the Franchisee, acting as a Good and Efficient Operator, shall promptly provide all relevant details to the Secretary of State, including details of the impact on the Budget (including, in the case of limb (b), any impact on the Budget in order to hold constant the risk of the Franchisee failing to satisfy the requirements of the Relevant Measure). If the Secretary of State provides notice in accordance with paragraph 1.3, then the Franchisee shall, within ten (10) Weekdays, provide the Secretary of State such information contemplated by this paragraph, to the extent relevant.

- 1.5 Where the notice required to be given pursuant to paragraph 1.3 has not been given, the Parties may nevertheless agree that this Schedule 9.1 will apply and there should be a review of the Budget and/or Relevant Measures.

2. Timescales

- 2.1 Where this Schedule 9.1 applies (whether by virtue of paragraph 1.3 or 1.5) any resulting impact on the Budget and/or restatement of the Relevant Measures and/or obligations that would be impossible to comply with (as applicable) shall be made in accordance with this Schedule 9.1:

- (a) where it is reasonably practicable to do so, at the last Franchise Performance Meeting to take place in each Quarter (in respect of all Changes since the last such meeting); or
- (b) where the timescale in paragraph 2.1(a) is not reasonably practicable, at the next Franchise Performance Meeting or otherwise as soon as reasonably practicable,

provided that:

- (i) any impact on the Budget resulting from a Change shall be calculated with effect from the date of the occurrence of the Change; and
- (ii) if a Change results in a restatement of a Relevant Measure and as a consequence of the occurrence of the Change the Franchisee cannot meet the requirements of that Relevant Measure, for the period from the date of the occurrence of the Change until the date of the restatement of such Relevant Measure the Franchisee shall be deemed not to have contravened the requirements of such Relevant Measure.

3. Adjustments to the Budget

- 3.1 Where paragraph 1.4 applies in respect of the Budget, the Parties shall agree (or in the absence of agreement, the Secretary of State shall reasonably determine) the expected impact of the Change with regard to:

- (a) the costs that will be incurred as a result of such Change;
- (b) and savings that will be made as a result of such Change;
- (c) any other impacts on the Budget as a result of such Change; and/or
- (d) any changes to the Record of Assumptions and/or the Operating Model.

- 3.2 In agreeing or determining the impact on the Budget pursuant to paragraph 3.1, the Parties may have regard to:
- (a) the relevant assumptions in the Record of Assumptions and any changes to the Record of Assumptions;
 - (b) the contents of any Operational Model;
 - (c) then the current Budget; and/or
 - (d) any other information.
- 3.3 The changes agreed or determined to the Budget (and if applicable, the content of any addendum to the Record of Assumptions) in accordance with this paragraph 3 shall, for the purposes of paragraph 8.1(c) of Schedule 8.1A, be reflected in the Budget agreed or determined pursuant to the next Quarterly Budget Forecast Review Meeting.
- 3.4 Any costs that the Franchisee incurs in connection with such Change that are not in accordance with those agreed or determined in accordance with this paragraph 3 shall be a Disallowable Cost.

4. **Adjustments to Relevant Measures**

- 4.1 Where paragraph 1.4 applies in respect of a Relevant Measure, the Relevant Measure shall be revised to the extent that such revision is reasonably considered to be necessary to hold constant the risk of the Franchisee failing to satisfy the requirements of that Relevant Measure. The Parties shall agree or, in the absence of such agreement, the Secretary of State shall reasonably determine any such revision(s).
- 4.2 For the purposes of any revision to the Relevant Measure under paragraph 4.1, regard may be had to:
- (a) the relevant assumptions in the Record of Assumptions and any changes to the Record of Assumptions;
 - (b) the contents of any Operational Model;
 - (c) any impact on the Budget; and/or
 - (d) any other information,
- to the extent relevant to the consideration of whether a revision is reasonably considered to be necessary to hold constant the risk of the Franchisee failing to satisfy the requirements of that Relevant Measure.
- 4.3 If any changes to the Relevant Measure have been agreed or determined in accordance with paragraph 4.1, the Relevant Measures shall be restated to give effect to those changes.

4A. **Adjustments to the Franchisee's Obligations**

- 4A.1 Where paragraph 1.4 applies in respect of the Franchisee's obligations under Franchise Agreement becoming impossible to comply with, the Parties shall agree (or in the absence of agreement, the Secretary of State shall reasonably determine)

the adjustments to the Franchisee's obligations resulting from such Change, save that any such adjustments shall only be to the extent it would otherwise be impossible for the Franchisee to comply with such obligations.

4A.2 The changes agreed or determined in accordance with paragraph 4A.1 shall be documented by the Parties in writing.

5. **No other changes to Schedule 8.1B**

Nothing in paragraphs 1 to 4 (inclusive) of this Schedule 9.1 shall give rise to an adjustment, change or revision to any provision of Schedule 8.1B (*Performance Payments*) other than the indirect effect on achieving any applicable Performance Payment Component pursuant to Schedule 8.1B, by reference to any change to the Relevant Measures.

6. **Information**

The Franchisee shall promptly, having regard to the other timescales anticipated in this Schedule 9.1, provide to the Secretary of State such information as the Secretary of State may request for the purpose of enabling the Secretary of State to exercise the Secretary of State's rights and comply with the Secretary of State's obligations pursuant to this Schedule 9.1.

APPENDIX 1 TO SCHEDULE 9.1

NOT USED

APPENDIX 2 TO SCHEDULE 9.1

NOT USED

Schedule 9.2

Identity of the Financial Model (Escrow Documents)**Franchisee's Obligations**

- 1.1 The Franchisee shall deliver two (2) copies of each of the Financial Model, the Operational Model, the Record of Assumptions and the Initial Budget (each such copy in electronic format on non-rewritable password protected CD-ROM or other appropriate electronic medium) together with hard format copies of the output template of the Financial Model in the format set out in the document in the agreed terms marked **FF** (the "**Escrow Documents**") to the Secretary of State in the agreed form.
- 1.2 The Franchisee shall deliver the Escrow Documents to the Secretary of State in accordance with paragraph 1.1:
- (a) on the date of the Franchise Agreement; and
 - (b) within seven (7) days of any revisions to the Escrow Documents (including the Budget and/or any addendum to the Record of Assumptions) as provided for in paragraph 8 of Schedule 8.1A (Franchise Payments) and/or paragraphs 3 or 4 of Schedule 9.1 (Consequences of Change and Other Adjustments), but updated with any revised inputs or 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:
- (a) details of the Escrow Documents deposited (including full filename and version details, any details required to access the Escrow Documents including media type, backup command/software used, compression used, archive hardware and operating system details);
 - (b) the names and contact details of persons who are able to provide support in relation to accessing and interpreting the Escrow Documents; and
 - (c) if required by the Secretary of State, a certificate from independent auditors approved by the Secretary of State, confirming that the deposited version of the Escrow Documents is in the agreed form in accordance with paragraph 1.1 or (as the case may be) is in accordance with paragraphs 1.2(a) or 1.2(b).

2. Secretary of State's Obligations

- 2.1 The Secretary of State shall store all 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.
- 2.2 From the Start Date, the Operator shall store a copy of all Escrow Documents and updated Escrow Documents in the Secretary of State's contract management system.
- 2.3 The Secretary of State shall

- (a) 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;
- (b) 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
- (c) not be liable for any loss, damage or destruction caused to the Operator arising from any loss of, damage to or destruction of the Escrow Documents.

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 rectified as soon as reasonably practicable and the Franchisee shall deliver to the Secretary of State such rectified documents within seven (7) days of such rectification. In such circumstances, paragraph 1.3 above shall apply.

Schedule 9.3**Variations to the Franchise Agreement****Variations**

- 1.1 The terms of the Franchise Agreement may be varied as follows but not otherwise:
- (a) by the Secretary of State in relation to:
 - (i) any aspect of the Franchise Services; and/or
 - (ii) any provision of the Franchise Agreement other than those provisions specified in paragraph 1.2,

by service of a notice on the Franchisee referring to this paragraph 1.1(a) and setting out the variation to the terms of the Franchise Agreement; and
 - (b) in relation to any other provision of the Franchise Agreement, by agreement in writing between the Parties to that effect,
- (each a "**Variation**").
- 1.2 Without prejudice to the Secretary of State's rights under paragraph 1.1(a), the terms of each of:
- (a) clauses 5 (*Duration of the Franchise Agreement*), 7 (*Assignment*), 10 (*Cumulative Rights and Remedies*), 11 (*Dispute Resolution*), 12 (*Notices*), 13 (*Set-Off*) and 14 (*Miscellaneous Provisions*) of this Agreement;
 - (b) Schedules 8 (*Payments*), 9 (*Changes and Variations*), 10 (*Remedies, Events of Default and Termination Events*), 12 (*Financial Covenants and Bonds*) and 14 (*Preservation of Assets*) of this Agreement; and
 - (c) the definitions set out at clause 3 (*Definitions*) of this Agreement insofar as such affect the respective rights and obligations of the Secretary of State and the Franchisee pursuant to the provisions referred to at (a) and (b) above,
- shall not be varied at any time other than in accordance with the terms of the Franchise Agreement or with the agreement of the Parties.
- 1.3 The Secretary of State shall, to the extent reasonably practicable, allow the Franchisee a reasonable opportunity to make representations to the Secretary of State concerning any Variation to be made in accordance with paragraph 1.1(a), prior to making any such Variation.
- 1.4 The Secretary of State may:
- (a) issue, revise and withdraw from time to time procedures that the Secretary of State requires to be followed for the purposes of orderly consideration of Variations; and
 - (b) require the Franchisee to provide any information that the Secretary of State reasonably requires for this purpose (including in relation to prospective

change to costs and revenue as a consequence of proceeding with the Variation).

- 1.5 Procedures issued pursuant to paragraph 1.4 may provide for the Franchisee to provide information and/or commentary to the Secretary of State on the impact on the Budget in relation to one or more Changes that the Secretary of State is considering (which may also provide for any number of Changes to be grouped together as a single Change).
- 1.6 Procedures issued pursuant to paragraph 1.4 shall have contractual effect between the Parties in accordance with their terms.
- 1.7 The Franchisee may notify the Secretary of State of any proposal for a Variation by notice setting out the proposed method of implementing such Variation including:
 - (a) the timescale for doing so;
 - (b) the effect (if any) on the timing of the performance of its other obligations under the Franchise Agreement;
 - (c) the impact of effecting the proposed Variation on the provision of the Franchise Services and the Franchisee's proposals as to how to minimise such impact; and
 - (d) the financial consequences of implementing the Variation proposed by the Franchisee in terms of the revisions to the Budget that the Franchisee considers the Variation would require.
2. **NOT USED.**
3. **NOT USED.**

Schedule 9.4

NOT USED

Schedule 9.5

NOT USED

SCHEDULE 10**REMEDIES, EVENTS OF DEFAULT AND TERMINATION EVENTS**

Schedule 10.1:	Procedure for remedying a Contravention of the Franchise Agreement
Schedule 10.2:	Events of Default and Termination Events
Schedule 10.3:	Force Majeure and Business Continuity
Schedule 10.4:	Liability

Schedule 10.1

Procedure for remedying a Contravention of the Franchise Agreement**1. Contraventions of the Franchise Agreement**

1.1 The Franchisee shall notify the Secretary of State, so far as possible before it may occur and in any event as soon as reasonably practicable thereafter, of any contravention by the Franchisee of any provision of the Franchise Agreement. This includes where the Franchisee is under an obligation to use all reasonable endeavours to achieve a particular result by a particular time, where such result is not achieved by such time.

1.2 The Franchisee shall deliver to the Secretary of State, or procure the delivery to the Secretary of State of, such information, records or documents as the Secretary of State may request within such period as the Secretary of State may reasonably require for the purpose of determining the existence, likelihood, nature or scope of any contravention of, Event of Default or Termination Event under, the Franchise Agreement.

2. Remedies for Contraventions of the Franchise Agreement

If:

(d) the Secretary of State is satisfied that the Franchisee is contravening or is likely to contravene any term of the Franchise Agreement; and/or

(e) the:

(i) Secretary of State is satisfied that the Franchisee is operating at a level that would, or would likely, be scored "1"; or

(ii) Franchisee has received a score of "1",

in relation to any of the Scorecard Criteria for a particular Performance Assessment Period, in accordance with the Performance Assessment Period Review process set out in Schedule 8.1B (Performance Payments); and/or

(f) the Franchisee has received a score of "1" in relation to any EMA Scorecard Criterion in accordance with the EMA Review process set out in appendix 1 (EMA Review) of Schedule 8.B (Performance Payment) of the Previous Franchise Agreement as amended by the EMA:

the Secretary of State may serve a notice on the Franchisee requiring it to:

(g) propose such steps as the Franchisee considers appropriate for the purpose of securing or facilitating compliance with the term in question; and/or

(h) address and overcome the shortfalls or failures that have led to the Franchisee receiving, or being likely to receive, a score of "1" with respect to the relevant Scorecard Criterion or EMA Scorecard Criterion (pursuant to the Previous Franchisement Agreement as amended by the EMA) (as applicable),

as applicable, (a "**Remedial Plan Notice**").

3. Remedial Plan Notices

3.1 Each Remedial Plan Notice shall specify the following:

- (a) the:
 - (i) term or terms of the Franchise Agreement that the Secretary of State is satisfied that the Franchisee is contravening or is likely to contravene (each a **"Relevant Term"**); and/or
 - (ii) specific Scorecard Criterion under the Performance Assessment Period Scorecard that the Secretary of State is satisfied that the Franchisee is likely to score, or has scored, "1" in; and/or
 - (iii) specific EMA Scorecard Criterion under the EMA Review Scorecard in respect of which the Franchisee has scored "1" (pursuant to the Previous Franchisement Agreement as amended by the EMA),

as applicable; and
- (b) the time period (**"Remedial Plan Period"**) within which the Secretary of State requires the Franchisee to provide an appropriate plan for the purpose of facilitating or securing compliance with such Relevant Term and/or addressing and overcoming the shortfalls or failures that have led to the Franchisee receiving, or being likely to receive, a score of "1" with respect to the relevant Scorecard Criterion or EMA Scorecard Criterion (pursuant to the Previous Franchisement Agreement as amended by the EMA), as applicable (a **"Remedial Plan"**).

4. Remedial Plans

4.1 If the Secretary of State issues a Remedial Plan Notice, the Franchisee shall submit (at its own cost) a Remedial Plan to the Secretary of State within the Remedial Plan Period.

4.2 Each Remedial Plan shall set out:

- (a) the:
 - (i) Relevant Term which has caused such Remedial Plan to be required; and/or
 - (ii) the Scorecard Criterion in respect of which the Franchisee has received, or is likely to receive, a score of "1"; and/or
 - (iii) the EMA Scorecard Criterion in respect of which the Franchisee has received a score of "1" (pursuant to the Previous Franchisement Agreement as amended by the EMA),

as applicable;
- (b) an explanation of the reasons for:
 - (i) the contravention or likely contravention of the Relevant Term; and/or

- (ii) the Franchisee receiving, or being likely to receive, a score of "1" with respect to the relevant Scorecard Criterion; and/or
- (iii) the Franchisee receiving a score of "1" with respect to the relevant EMA Scorecard Criterion (pursuant to the Previous Franchisement Agreement as amended by the EMA),

as applicable;

- (c) the steps proposed for the purposes of:

- (i) securing or facilitating compliance with the Relevant Term; and/or
- (ii) addressing and overcoming the shortfalls or failures that have led to the Franchisee receiving, or being likely to receive, a score of "1" with respect to the relevant Scorecard Criterion and/or EMA Criterion (pursuant to the Previous Franchisement Agreement as amended by the EMA) (as applicable),

as applicable; and

- (d) the time period within which the Franchisee proposes to implement those steps.

4.3 Unless otherwise agreed by the Secretary of State:

- (a) the costs of developing a Remedial Plan shall be a Disallowable Cost for the purposes of the Franchise Agreement; and
- (b) the costs of implementing a Remedial Plan (the "**Implementation Costs**") shall be for the account of the Secretary of State, provided that:
 - (i) the Secretary of State's liability pursuant to this paragraph Clause 4.3(b) shall be limited to costs that would have been incurred by a Good and Efficient Operator; and
 - (ii) if and to the extent that the Implementation Costs are greater than the cost that the Franchisee would have incurred in performing the obligation which is the subject of the relevant Remedial Plan (the "**Original Cost**") as a result of the Franchisee having failed to comply with such obligation or otherwise having failed to act as a Good and Efficient Operator prior to the implementation of the Remedial Plan then the Franchisee shall be liable for the difference between the Implementation Costs and the Original Cost.

5. Remedial Agreements

- 5.1 If the Secretary of State is satisfied that the matters within such Remedial Plan referred to in paragraphs 4.2(c) and (d) are appropriate (with or without further modification as the Parties may agree) the Secretary of State may require the Franchisee to enter into a supplemental agreement (the "**Remedial Agreement**") with the Secretary of State to implement those matters.
- 5.2 It is a term of the Franchise Agreement that the Franchisee (at its own cost) complies with each Remedial Agreement in accordance with its terms.

6. **Effect of Force Majeure Event on a Remedial Agreement**

6.1 Without prejudice to the operation of paragraph 2.1 of Schedule 10.2 (Events of Default and Termination Events), the following provisions shall apply in relation to Force Majeure Events affecting the Franchisee's performance of their obligations pursuant to a Remedial Agreement:

- (a) the Franchisee shall give written notice to the Secretary of State promptly after the Franchisee becomes aware (and in any event within twenty-four (24) hours after becoming aware) of the occurrence or likely occurrence of a Force Majeure Event which will or is likely to affect the Franchisee's ability to comply with a Remedial Agreement within the period specified therein;
- (b) each notice submitted in accordance with paragraph 6.1(a) shall state the extent or likely extent of the relevant Force Majeure Event and in the case of a Force Majeure Event which has not occurred at such time, the reasons why the Franchisee considers it likely to occur;
- (c) the Franchisee shall use, and shall continue to use, all reasonable endeavours to avoid or reduce the effect or likely effect of any Force Majeure Event on its ability to comply with any Remedial Agreement; and
- (d) subject to the Franchisee having complied with its obligations under paragraphs 6.1(a) to 6.1(c) (inclusive) the Franchisee shall be entitled to a reasonable extension of the remedial period applicable to a Remedial Agreement in order to take account of the effect of a Force Majeure Event which has occurred on the Franchisee's ability to comply with that Remedial Agreement.

7. **Enhanced Monitoring by the Secretary of State**

7.1

- (i) Following the occurrence of a contravention of the Franchise Agreement; and/or
- (ii) where the Secretary of State is satisfied that the Franchisee is operating at a level that would, or would likely, be scored "1" or the Franchisee has received a score of "1" in relation to any of the Scorecard Criteria for a particular Performance Assessment Period, in accordance with the Performance Assessment Period Review process set out in Schedule 8.1B (Performance Payments); and/or
- (iii) where the Franchisee has received a score of "1" in relation to any of the EMA Scorecard Criteria in accordance with the EMA Review process set out in appendix 1 (EMA Review) of Schedule 8.B (Performance Payment) of the Previous Franchise Agreement as amended by the EMA,

the Secretary of State may at the Secretary of State's option (but shall not be obliged to) commence or increase the level and/or frequency of monitoring (whether by inspection, audit or otherwise) of the Franchisee's performance of any relevant obligations until such time as the Franchisee demonstrates, to the Secretary of State's reasonable satisfaction, that it is capable of performing and will perform such obligations as required by the Franchise Agreement.

- 7.2 The Franchisee shall co-operate fully with the Secretary of State in relation to the monitoring referred to in paragraph 7.1.
- 7.3 The results of such monitoring will be reviewed at each Franchise Performance Meeting held pursuant to Schedule 11.1 (Franchise Performance Meetings).
- 7.4 The Franchisee shall compensate the Secretary of State for all reasonable costs incurred by the Secretary of State in carrying out such monitoring. Any such compensation shall be a Disallowable Cost pursuant to Appendix 1 (Disallowable Costs) to Schedule 8.1A (Franchise Payments).

Schedule 10.2

Events of Default and Termination Events**1. Definition of Events of Default**

Each of the following is an **"Event of Default"**:

1.1 Insolvency

- (a) **Administration:** Any step being taken by any person with a view to the appointment of an administrator to the Franchisee, the Parent, any Bond Provider or the Guarantor;
- (b) **Insolvency:** Any of the Franchisee, the Parent, any Bond Provider or the Guarantor stopping or suspending or threatening to stop or suspend payment of all or, in the reasonable opinion of the Secretary of State, a material part of (or of a particular type of) its debts, or being unable to pay its debts, or being deemed unable to pay its debts under section 123(1) or (2) of the Insolvency Act 1986 except that in the interpretation of this paragraph the words "it is proved to the satisfaction of the court that" in sub-section (1)(e) and sub-section (2) of section 123 shall be deemed to be deleted;
- (c) **Arrangements with Creditors:** The directors of the Franchisee, the Parent, any Bond Provider or the Guarantor making any proposal under section 1 of the Insolvency Act 1986, or any of the Franchisee, the Parent, any Bond Provider or the Guarantor proposing or making any agreement for the deferral, rescheduling or other readjustment (or proposing or making a general assignment or an arrangement or composition with or for the benefit of creditors) of all or, in the reasonable opinion of the Secretary of State, a material part of (or of a particular type of) its debts, or a moratorium being agreed or declared in respect of or affecting all or, in the reasonable opinion of the Secretary of State, a material part of (or of a particular type of) its debts;
- (d) **Security Enforceable:** Any expropriation, attachment, sequestration, execution or other enforcement action or other similar process affecting any property of the Franchisee or the whole or a substantial part of the assets or undertaking of the Franchisee, the Parent, any Bond Provider or the Guarantor, including the appointment of a receiver, administrative receiver, manager or similar person to enforce that security;
- (e) **Stopping Business/Winding-Up:** Any step being taken by the Franchisee, the Parent, any Bond Provider or Guarantor with a view to its winding-up or any person presenting a winding-up petition or any of the Franchisee, the Parent, any Bond Provider or Guarantor ceasing or threatening to cease to carry on all or, in the reasonable opinion of the Secretary of State, a material part of its business, except for the purpose of and followed by a reconstruction, amalgamation, reorganisation, merger or consolidation on terms approved by the Secretary of State before that step is taken;
- (f) **Railway Administration Order:** A railway administration order being made in relation to the Franchisee under sections 60 to 62 of the Act; and

- (g) **Analogous Events:** Any event occurring which, under the Law of any relevant jurisdiction, has an analogous or equivalent effect to any of the events listed in this paragraph 1.1,

subject, in the case of any relevant event occurring in relation to a Bond Provider where no such other Event of Default has occurred and is unremedied or continuing at such time, to a period of twenty (20) Weekdays having elapsed in order to allow the Franchisee to replace the relevant Bond Provider.

1.2 **Non-payment**

The Franchisee failing to pay to the Secretary of State any amount due under the Franchise Agreement within twenty eight (28) days of the due date for such payment.

1.3 **Change of Control**

A Change of Control other than in accordance with the prior consent of the Secretary of State pursuant to clause 8 (Change of Control and Facilitation Fee).

1.4 **Revocation of Licence**

Revocation of any Licence required to be held by the Franchisee in order to comply with its obligations under the Franchise Agreement.

1.5 **Safety Certificate and Safety Authorisation**

The Safety Certificate and/or Safety Authorisation of the Franchisee being withdrawn or terminated.

1.6 **Passenger Service Performance**

The Franchisee's performance in relation to any Benchmark is **equal to or worse than** the Default Performance Level for that Benchmark for:

- (a) any three (3) consecutive Reporting Periods;
- (b) any four (4) Reporting Periods within a period of thirteen (13) consecutive Reporting Periods; or
- (c) any five (5) Reporting Periods within a period of twenty six (26) consecutive Reporting Periods,

save that, unless otherwise instructed by the Secretary of State, this paragraph 1.6 shall not apply during the Franchise Period, provided that the Parties agree that paragraph 1.6 shall automatically apply if the Parties agree (or the Secretary of State determines, as applicable) that the Quantified Target Methodology shall apply to the Operational Performance Payment pursuant to and in accordance with the terms of Schedule 8.1B (*Performance Payments*).

1.7 **Non-compliance with Remedial Agreements and Orders under the Act**

- (a) Non-compliance by the Franchisee with a Remedial Agreement, where such non-compliance is reasonably considered by the Secretary of State to be material.

- (b) Non-compliance by the Franchisee with:
- (i) a provisional order;
 - (ii) a final order;
 - (iii) a penalty; or
 - (iv) any other order made relating to contravention of either a relevant condition or requirement (as defined in section 55 of the Act) or another order,

in each case made by the Secretary of State under the Act.

- (c) Non-compliance by the Franchisee with any enforcement notice issued to it by the Secretary of State pursuant to section 120 of the Act.
- (d) **NOT USED.**

1.8 **NOT USED**

1.9 **Breach of Law**

- (a) It becoming unlawful for the Franchisee to provide all or, in the reasonable opinion of the Secretary of State, a material part of the Passenger Services or to operate all or, in the reasonable opinion of the Secretary of State, a material number of the Stations or Depots (except to the extent not required under the Franchise Agreement);
- (b) The Franchisee or any of the directors or senior managers of the Franchisee being convicted of manslaughter, fraud or any other indictable criminal offence in each case relating directly to the provision and operation of the Franchise Services; or
- (c) The Franchisee being, in the reasonable opinion of the Secretary of State, in material non-compliance with a prohibition or enforcement order (or the equivalent thereof) issued by the ORR pursuant to its safety functions. If the Franchisee makes an appeal against such prohibition or enforcement order (or such equivalent thereof) in accordance with its terms, no Event of Default shall have occurred under this paragraph 1.9(c) until such appeal has been determined to be unsuccessful.

1.10 **Contravention of Other Obligations**

The occurrence of the following:

- (a) the Franchisee contravening to an extent which is reasonably considered by the Secretary of State to be material any one or more of its obligations under the Franchise Agreement (other than such non-performance or non-compliance as may constitute an Event of Default under the provisions of this Schedule 10.2 other than this paragraph 1.10);
- (b) the service by the Secretary of State on the Franchisee of a written notice specifying:
- (i) such contravention; and

- (ii) to the extent the contravention is capable of being remedied, the reasonable period within which the Franchisee is required to so remedy; and
- (c) the Franchisee:
 - (i) contravening such obligation or obligations again to an extent which is reasonably considered by the Secretary of State to be material; or
 - (ii) permitting the contravention to continue; or
 - (iii) if the contravention is capable of remedy, failing to remedy such contravention within such period as the Secretary of State has specified in the notice served pursuant to paragraph 1.10(b)(ii).

1.11 **Non-membership of Inter-Operator Schemes**

The Franchisee ceasing to be a member of, or ceasing to participate in or to be party to, any of the Inter-Operator Schemes, or having its membership or participation therein suspended.

1.12 **Bonds**

- (a) Any Performance Bond or Season Ticket Bond ceasing to be a legal, valid and binding obligation on the relevant Bond Provider (other than in accordance with its terms) or it otherwise becoming unlawful or impossible for such Bond Provider to perform its obligations thereunder;
- (b) A failure by the Franchisee to procure the provision to the Secretary of State of a Performance Bond (or Performance Bonds) required to be provided pursuant to paragraph 4 of Schedule 12 (Financial Covenants and Bonds) which individually or in aggregate fulfil the requirements of Schedule 12 (Financial Covenants and Bonds); or
- (c) A failure by the Franchisee to procure the provision to the Secretary of State of a Season Ticket Bond (or Season Ticket Bonds) required to be provided pursuant to paragraph 5 of Schedule 12 (Financial Covenants and Bonds) which individually or in aggregate fulfil the requirements of Schedule 12 (Financial Covenants and Bonds).

1.13 **Key Contracts**

Termination of any Key Contract, or the failure by the Franchisee to take all reasonable steps to enter into an appropriate replacement contract prior to the scheduled expiry date of any Key Contract, except where requested by the Secretary of State or to the extent that the Franchisee has demonstrated to the reasonable satisfaction of the Secretary of State that for the duration of the Franchise Term:

- (a) it is no longer necessary for it to be party to such Key Contract; or
- (b) it has made adequate alternative arrangements in order to be able to continue to provide and operate the Franchise Services.

1.14 **Funding Deed**

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A failure by the Franchisee or the Guarantor to comply with their respective obligations under the Funding Deed.

1.15 **Not used**

1.16 **Aggregate Costs and Revenues Liabilities exceeding maximum liabilities**

At any time the Franchisee's liability for the amount of any Aggregated Costs and Revenues Liabilities (as such liabilities have been agreed or reasonably determined by the Secretary of State in accordance with paragraphs 9.7 to 9.7C (inclusive) of Schedule 8.1A) is equal to or greater than the aggregated value of:

- (a) the forecasted value of the any Fixed Fee and Performance Payment in the Franchisee Year in which such calculation is being undertaken; plus
- (b) an amount equal to the Maximum Amount (as defined in the Funding Deed) less the then current value of the Previous Guarantor Payments (as defined in the Funding Deed).

For the purposes of this paragraph 1.16:

- (c) the amount of any Aggregated Costs and Revenues Liabilities shall be deemed to exclude any amounts in respect of such Aggregated Costs and Revenues Liabilities which have:
 - (i) previously been deducted from any Fixed Fee and Performance Payment by the Secretary of State in calculating any Fixed Fee and Performance Payment pursuant to paragraph 15.1 of Schedule 8.1A; or
 - (ii) been claimed by the Secretary of State pursuant to the Funding Deed in accordance with paragraph 15.2(b) of Schedule 8.1A; and
- (d) the forecasted value of the Fixed Fee and Performance Payment in a Franchisee Year shall be calculated whereby the values of each Performance Payment Component will be the maximum which is capable of being achieved for that Franchisee Year taking into account the relevant performance and results achieved by the Franchisee (in so far as the same has been measured and relevant results are available at the time the calculation is being undertaken).

2. **Definition of Termination Events**

Each of the following is a **"Termination Event"**:

- 2.1 any Force Majeure Event continues with the effect of preventing the Franchisee from delivering, wholly or mainly, the Passenger Services for more than six (6) consecutive months; or
- 2.2 the warranty given by the Franchisee pursuant to paragraph 6.1 (Tax Compliance) of Schedule 12 (Financial Covenants and Bonds) is materially untrue; or
- 2.3 the Franchisee commits a material breach of its obligation to notify the Secretary of State of any Occasion of Tax Non-Compliance in respect of any Affected Party

(as defined in paragraph 6.3 of Schedule 12 (Financial Covenants and Bonds)) as required by paragraph 6.2(a) of Schedule 12 (Financial Covenants and Bonds); or

- 2.4 the Franchisee fails to provide details of proposed mitigating factors as required by paragraph 6.2(b) of Schedule 12 (Financial Covenants and Bonds) which in the reasonable opinion of the Secretary of State, are acceptable; or
- 2.5 the Secretary of State serves a Competition Event Notice on the Franchisee pursuant to clause 15.5 (*Competition*).

3. **Consequences of Events of Default**

The occurrence of an Event of Default shall constitute a contravention of the Franchise Agreement by the Franchisee. On the occurrence of an Event of Default, the provisions of Schedule 10.1 (*Procedure for remedying a Contravention of the Franchise Agreement*) shall apply.

4. **Notification of Event of Default**

The Franchisee shall notify the Secretary of State as soon as reasonably practicable on, and in any event within twenty four (24) hours of, it becoming aware of the occurrence of an Event of Default or an event which is likely to result in the occurrence of an Event of Default. The Franchisee shall take such action or steps as the Secretary of State may require to remedy any Event of Default or potential Event of Default.

5. **Termination Notices**

- 5.1 The Secretary of State may, on and at any time after the occurrence of:

- (a) (subject to paragraphs 5.2 and 5.3) an Event of Default which:
- (i) is unremedied or continuing; and
 - (ii) the Secretary of State considers to be material; or
- (b) a Termination Event specified in paragraph 2.1 of this Schedule 10.2 which is unremedied or continuing; or
- (c) a Termination Event specified in paragraphs 2.2, 2.3, 2.4 and 2.5 of this Schedule 10.2,

terminate the Franchise Agreement by serving a Termination Notice on the Franchisee. The Franchise Agreement shall terminate with effect from the date specified in any such Termination Notice.

- 5.2 The Secretary of State may not serve a Termination Notice in respect of an Event of Default in relation to which a Remedial Plan Notice has been issued until the Remedial Plan Period has expired.
- 5.3 The Secretary of State may not serve a Termination Notice in respect of an Event of Default for which the Franchisee is implementing a Remedial Agreement in accordance with its terms.

6. Consequences of Termination or Expiry

- 6.1 Upon termination of the Franchise Agreement (whether through default or effluxion of time or otherwise) the obligations of the Parties shall cease except for:
- (a) any obligations arising as a result of any antecedent contravention of the Franchise Agreement;
 - (b) any obligations which are expressed to continue in accordance with the terms of the Franchise Agreement; and
 - (c) any other obligations which give effect to such termination or to the consequences of such termination or which otherwise apply (expressly or impliedly) on or after such termination.
- 6.2 Nothing in this paragraph 6 shall prevent the Secretary of State from bringing an action against the Franchisee in connection with the termination of the Franchise Agreement prior to the expiry of the Franchise Term.

Schedule 10.3

Force Majeure and Business Continuity**1. Definition of Force Majeure Events**

The following events shall constitute "**Force Majeure Events**", subject to the conditions specified in paragraph 2 being satisfied:

- (a) the Franchisee or any of its agents or subcontractors is prevented or restricted by the Infrastructure Manager (including by virtue of the implementation of any Contingency Plan) from gaining access to any section or part of track (including any track running into, through or out of a station). For the purposes of this paragraph 1:
 - (i) references to a party being prevented or restricted from gaining access to any section or part of track shall mean that such party is not permitted to operate any trains on the relevant section or part of track, or is only permitted to operate a reduced number of trains from that which it was scheduled to operate;
 - (ii) the period of such prevention or restriction shall be deemed to commence with effect from the first occasion on which the Franchisee is prevented or restricted from operating a train on such section or part of track;
 - (iii) references in paragraphs 1(a)(i) and 1 (a) (ii) to the operation of trains include scheduled empty rolling stock vehicle movements; and
 - (iv) "**Contingency Plan**" means a contingency plan (as defined in the Railway Operational Code or where the Railway Operational Code ceases to exist such other replacement document of a similar or equivalent nature which contains a definition of contingency plan similar to that contained in the Railway Operational Code) implemented by and at the instigation of the Infrastructure Manager, or such other contingency or recovery plan as the Secretary of State may agree from time to time;
- (b) the Franchisee or any of its agents or subcontractors is prevented or restricted by the Infrastructure Manager or any Facility Owner (other than a Facility Owner which is an Affiliate of the Franchisee) from entering or leaving:
 - (i) any station or part thereof (excluding any prevention or restriction from gaining access to any section or part of track running into, through or out of a station); or
 - (ii) any depot or part thereof (including the movement of trains on tracks within any depot but excluding any prevention or restriction from gaining access to any track outside such depot running into or out of that depot);
- (c) any of the following events occurs:
 - (i) a programme of Mandatory Modifications commences;

- (ii) any Rolling Stock Units are damaged by fire, vandalism, sabotage or a collision and are beyond repair or beyond economic repair; or
- (iii) a government authority prevents the operation of Rolling Stock Units on the grounds of safety,

and, in each case, the greater of two (2) Rolling Stock Units and ten per cent (10%) of all rolling stock vehicles used by the Franchisee in the provision of the Passenger Services in relation to any Service Group are unavailable for use in the provision of the Passenger Services as a result of the occurrence of such event.

For the purposes of this paragraph 1(c), **"Rolling Stock Units"** means the smallest number of rolling stock vehicles which are normally comprised in a train used by the Franchisee in the provision of the Passenger Services;

- (d) the Franchisee prevents or restricts the operation of any train on safety grounds provided that:
 - (i) the Franchisee has, either before or as soon as reasonably practicable after initiating such prevention or restriction, sought the confirmation of the ORR in exercise of its safety functions, or any relevant other body with statutory responsibility for safety in the circumstances, of the necessity of such prevention or restriction; and
 - (ii) if and to the extent that the ORR, or other relevant body with statutory responsibility for safety in the circumstances, in exercise of its safety functions indicates that such prevention or restriction is not necessary, then no Force Majeure Event under this paragraph 1(d) shall continue in respect of that restriction or prevention after the receipt of such indication from the ORR or other relevant body;
- (e) act of God, war damage, enemy action, terrorism or suspected terrorism, riot, civil commotion or rebellion (together **"Emergency Events"**) or the act of any government instrumentality (including the ORR but excluding the Secretary of State) in so far as the act of government instrumentality directly relates to any of the Emergency Events, provided that there shall be no Force Majeure Event under this paragraph 1(e) by reason of:
 - (i) the suicide or attempted suicide of any person that does not constitute an act of terrorism;
 - (ii) the activities of the police, fire service, ambulance service or other equivalent emergency service that are not in response to acts of terrorism or suspected terrorism; or
 - (iii) an act of God which results in the Franchisee or its agents or subcontractors being prevented or restricted by the Infrastructure Manager from gaining access to any relevant section or part of track; or
 - (iv) for the Franchise Period, the occurrence and impact, whether direct or indirect, of COVID-19; and
- (f) any strike or other Industrial Action by any or all of the employees of the Franchisee or any or all of the employees of:

- (i) the Infrastructure Manager;
- (ii) the operator of any other railway facility; or
- (iii) any person with whom the Franchisee has a contract or arrangement for the lending, seconding, hiring, contracting out or supervision by that person of train drivers, conductors, other train crew or station or depot staff used by the Franchisee in the provision of the Franchise Services,

or of the agents or sub-contractors of any such person listed in paragraphs 1(f)(i) to 1(f)(iii).

The definition of "Force Majeure Event" shall for the Franchise Period exclude the occurrence and impact, whether direct or indirect, of COVID-19.

2. **Conditions to Force Majeure Events**

2.1 The occurrence, and continuing existence of a Force Majeure Event shall be subject to satisfaction of the following conditions:

- (a) in relation to an event occurring under paragraph 1 (a), that event has continued for more than twelve (12) consecutive hours;
- (b) the Franchisee notifies the Secretary of State within two (2) Weekdays of it becoming aware or, if circumstances dictate, as soon as reasonably practicable thereafter, of:
 - (i) the occurrence or likely occurrence of the relevant event; and
 - (ii) the effect or the anticipated effect of such event on the Franchisee's performance of the Passenger Services;
- (c) at the same time as the Franchisee serves notification on the Secretary of State under paragraph 2.1(b), it informs the Secretary of State of the steps taken and/or proposed to be taken by the Franchisee to prevent the occurrence of, and/or to mitigate and minimise the effects of, the relevant event and to restore the provision of the Passenger Services;
- (d) the relevant event did not occur as a result of:
 - (i) any act or omission to act by the Franchisee or its agents or subcontractors, save that in respect of the occurrence of Industrial Action in accordance with paragraph 1(f), the provisions of paragraph 2.2 apply; or
 - (ii) the Franchisee's own contravention of, or default under, the Franchise Agreement, any Access Agreement, Rolling Stock Related Contract, Property Lease or any other agreement;
- (e) the Franchisee used and continues to use all reasonable endeavours to avert or prevent the occurrence of the relevant event and/or to mitigate and minimise the effects of such event on its performance of the Passenger Services and to restore the provision of the Passenger Services as soon as reasonably practicable after the onset of the occurrence of such event; and

- (f) the Franchisee shall, to the extent reasonably so requested by the Secretary of State, exercise its rights and remedies under any relevant agreement to prevent the occurrence or recurrence of any such event and to obtain appropriate redress and/or compensation from any relevant person.

2.2 Where:

- (a) Industrial Action in accordance with paragraph 1(f) occurs as a result of an act or omission to act by the Franchisee or its agents or subcontractors;
- (b) the Secretary of State reasonably believes that it was reasonable for the Franchisee, its agents or subcontractors (as the case may be) so to act or omit to act; and
- (c) the other conditions specified in paragraph 2.1 have been satisfied,
- such occurrence shall be a Force Majeure Event.

3. **Consequences of Force Majeure Events**

- 3.1 The Franchisee shall not be responsible for any failure to perform any of its obligations under the Franchise Agreement, nor shall there be any contravention of the Franchise Agreement if and to the extent that such failure is caused by any Force Majeure Event.
- 3.2 If any Force Majeure Event continues, with the effect of preventing the Franchisee from delivering, wholly or mainly, the Passenger Services for more than six (6) consecutive months, it shall be a Termination Event in accordance with paragraph 2.1 (*Definition of Termination Events*) of Schedule 10.2 (*Events of Default and Termination Events*).
- 3.3 Notwithstanding any other provision of this Agreement, and without prejudice to the Parties' positions as to whether the Force Majeure provisions would otherwise be engaged, the Franchisee agrees that it shall not for the Franchise Period be entitled to further relief from obligations pursuant to the Force Majeure provisions under this Schedule 10.3 as a direct or indirect impact of COVID-19.

4. **Business Continuity**

4.1 **Obligation to Produce a BCP**

- (a) Within one (1) month following the Start Date the Franchisee shall produce and provide to the Secretary of State a written Business Continuity Plan in respect of the Franchise Services and the people, facilities and assets used to provide them which is consistent with the requirements of ISO 22301:2012.
- (b) Within one (1) month of the end of each Franchisee Year the Franchisee shall provide to the Secretary of State a certificate addressed to the Secretary of State and signed by a statutory director of the Franchisee confirming that the Business Continuity Plan is consistent with the requirements of the ISO 22301:2012.

4.2 No Relief under Force Majeure

- (a) Nothing in paragraph 3 (Consequences of Force Majeure Events) will relieve the Franchisee from its obligations under the Franchise Agreement to create, implement and operate the Business Continuity Plan.
- (b) If a Force Majeure Event affecting the Franchisee occurs which is an event or circumstance that is within the scope of the Business Continuity Plan, then paragraph 3.1 will only apply to that Force Majeure Event to the extent that the impacts of that Force Majeure Event would have arisen even if:
 - (i) the Franchisee had complied with this paragraph 4; and
 - (ii) the Business Continuity Plan had been fully and properly implemented and operated in accordance with this paragraph 4 and the terms of the Business Continuity Plan in respect of that Force Majeure Event.

Schedule 10.4

Liability**1. Exclusion of Liability****1.1 Liability with respect to Passengers and Third Parties**

- (a) The Franchisee hereby acknowledges that the Secretary of State shall not be responsible for the actions of the Franchisee or any Affiliate of the Franchisee and that, except as expressly provided in the Franchise Agreement, the Franchisee shall provide and operate the Franchise Services at its own cost and risk without recourse to the Secretary of State or government funds or guarantees.
- (b) The Franchisee, on demand, shall hold the Secretary of State fully protected and indemnified in respect of all losses, liabilities, costs, charges, expenses, actions, proceedings, claims or demands incurred by or made on the Secretary of State in connection with any death, personal injury, loss or damage suffered by passengers or by any third party using or affected by the Franchise Services which is caused or contributed to by the Franchisee, any Affiliate of the Franchisee, or any employee, agent, contractor or sub-contractor of the Franchisee or of any Affiliate of the Franchisee.

1.2 Liability of the Secretary of State

Neither the Secretary of State nor any of the Secretary of State's officers, agents or employees shall in any circumstances be liable to the Franchisee for any loss or damage caused by the negligent exercise of any powers reserved to the Secretary of State under the Franchise Agreement, except to the extent that such negligence also constitutes a contravention of an obligation of the Secretary of State under the Franchise Agreement. The Franchisee may not recover from the Secretary of State or any of the Secretary of State's officers, agents, or employees any amount in respect of loss of profit or consequential loss.

2. Review or Monitoring by the Secretary of State

- 2.1 The Secretary of State may for the Secretary of State's own purposes (whether under the Franchise Agreement or under any other arrangement or otherwise and whether before or after the date of the Franchise Agreement) monitor or review any proposals, plans or projects (or any aspect thereof) of the Franchisee under the Franchise Agreement, but no review, enquiry, comment, statement, report or undertaking, made or given by or on behalf of the Secretary of State during such review or monitoring (and no failure to undertake, make or give any review, enquiry, comment or statement) shall operate to exclude or relieve either Party from or reduce or otherwise affect the obligations of such Party under the Franchise Agreement.
- 2.2 The exercise by or on behalf of the Secretary of State of (or, as the case may be, any failure to exercise) any of the Secretary of State's functions, rights or obligations in respect of any review or monitoring process shall not in any way impose any liability, express or implied, on the Secretary of State to any other Party save to the extent that the exercise (or failure to exercise) of any of such functions, rights or obligations results in a contravention by the Secretary of State of an express provision of the Franchise Agreement and the Secretary of State does not make or give any representation or warranty, either express or implied, as to

whether any proposal, plan or project will enable either Party to comply with its obligations under the Franchise Agreement.

SCHEDULE 11

FRANCHISE PERFORMANCE MEETINGS AND MANAGEMENT INFORMATION

Schedule 11.1:	Franchise Performance Meetings
Schedule 11.2:	Management Information
	Appendix 1: Environmental Information
	Appendix 2: Operational Information
	Appendix 3: Summary of Reporting and Other Requirements

Schedule 11.1

Franchise Performance Meetings**1. Franchise Performance Meetings**

- 1.1 The Parties shall hold a Franchise Performance Meeting at least once in every Reporting Period (or such other interval as the Secretary of State may notify to the Franchisee in writing) at a time and location notified to the Franchisee by the Secretary of State.
- 1.2 The Franchisee shall ensure that:
- (a) the representatives of the Franchisee at a Franchise Performance Meeting shall include such directors and/or senior managers of the Franchisee as the Secretary of State may require; and
 - (b) representatives of the Parent (which shall include such directors and/or senior managers of the Parent as the Secretary of State may require) attend a Franchise Performance Meeting at least once every quarter.
- 1.3 The Franchisee shall prepare and present such reports to each Franchise Performance Meeting as the Secretary of State may reasonably request. The Franchisee's obligations under this paragraph 1.3 are subject to the Franchisee receiving at least twenty eight (28) days' notice of the requirement to prepare and present any such report.
- 1.4 No comment or failure to comment nor any agreement or approval, implicit or explicit by either Party at a Franchise Performance Meeting will relieve a party of its obligations, constitute a waiver of an obligation or otherwise vary the terms of the Franchise Agreement. The terms of the Franchise Agreement shall only be capable of waiver or variation in writing in accordance with clause 14.1 (*Waivers*) and paragraph 1 of Schedule 9.3 (*Variations to the Franchise Agreement*) (respectively).

2. Contract Management System

- 2.1 The Franchisee shall, no later than the Start Date and thereafter throughout the Franchise Term:
- (a) use the contract management system which the Secretary of State uses to manage the delivery of the obligations under the Franchise Agreement; and
 - (b) use the contract management system to administer any variations to the Franchise Agreement after the Start Date.

Schedule 11.2

Management Information**1. Corporate Information**

1.1 The Franchisee shall provide the following information to the Secretary of State on the Start Date and shall notify the Secretary of State of any change to such information within twenty one (21) days of such change:

- (a) its name;
- (b) its business address and registered office;
- (c) its directors and company secretary;
- (d) its auditors;
- (e) its trading name or names; and
- (f) to the best of the Franchisee's knowledge and belief, having made due and diligent enquiry, the identity of all persons holding, separately or acting by agreement, directly or indirectly, the right to cast more than twenty per cent (20%) of the votes at general meetings of the Franchisee.

1.2 The Franchisee shall inform the Secretary of State of any:

- (a) material change or proposed material change in its business;
- (b) material change in or restructuring of the capitalisation or financing of the Franchisee, the Parent or the Guarantor; and
- (c) litigation or other dispute which may have a material effect on its business.

For the purposes of paragraph 1.2(a), a material change or proposed material change shall include the employment or the termination of employment of any Key Personnel or the termination of any Key Contract.

2. Information about Assets used in the Franchise

The Franchisee shall at all times during the Franchise Term maintain (and shall provide copies to the Secretary of State when requested to do so from time to time) records covering the following information:

- (a) for each Primary Franchise Asset or other asset which is the subject of, or operated under, a Key Contract:
 - (i) the progress and completion of all work described in the maintenance schedules and manuals; and
 - (ii) all operating manuals (including any safety related regulations); and
 - (iii) all permits, licences, certificates or other documents required to operate such asset; and

- (iv) a printed or electronic list of all assets owned by the Franchisee from time to time (excluding, unless otherwise requested by the Secretary of State, any office furniture and consumable items).

3. Identification of Key Personnel and Provision of Organisation Chart

3.1 The Franchisee shall identify and provide to the Secretary of State a schedule of Key Personnel who shall be employed by the Franchisee in the performance of the Franchise Agreement. This shall include but not be limited to the following persons:

- (a) a managing director whose role will include the overall management of the operation of the Franchise Services;
- (b) a director, whose role will include responsibility for ensuring compliance by the Franchisee with Schedule 7.1 (*Operational Performance*);
- (c) a director, whose role will include responsibility for ensuring that the Franchisee complies with its legal obligations in relation to the Franchise Services including the Safety Certificate; and
- (d) a director, whose role will include responsibility in relation to the Budget.

3.2 The Franchisee shall nominate a board level director of the Franchisee (or at the Secretary of State's discretion, a board level director of the Parent or any appropriate Affiliate) within fourteen (14) Weekdays of the date of this Agreement. Such board level director's responsibilities shall include overseeing, at a strategic level, the Franchisee's interface with the Secretary of State in relation to sections 119 to 121 (inclusive) of the Act and co-ordinating relevant activities and delivery of counter terrorist security on behalf of the Franchisee in connection with the Franchisee's compliance with relevant instructions issued by the Secretary of State under section 119 of the Act from time to time. Such board level director shall be identified by job title in the organisation chart referred to in paragraph 3.3 and shall be deemed part of the Key Personnel.

3.3 On or before the Start Date the Franchisee shall provide to the Secretary of State the schedule of Key Personnel and the organisation chart detailing the responsibilities and reporting lines of each of the Key Personnel and shall update such schedule and organisation chart (and provide copies to the Secretary of State promptly thereafter) as and when any changes occur.

4. Operational Performance Information

4.1 The Franchisee shall provide to the Secretary of State the information specified in Appendix 2 (*Operational Performance Information*) to this Schedule 11.2 at the times specified therein.

5. Maintenance of Records

5.1 The Franchisee shall at all times create and maintain true, up to date and complete records, books and other materials relating to the:

- (a) operation and maintenance of Franchise Assets;
- (b) operation of the Franchise Services; and
- (c) financial performance of the Franchise,

in each case, in exercising that degree of care, skill, diligence, prudence, efficiency, foresight and timeliness which would reasonably be expected from a prudent and leading Train Operator and in order to fulfil the requirements of the Franchise Agreement including in relation to maintenance of the Franchise as a going concern in accordance with paragraph 1 of Schedule 14.1 (*Maintenance of Franchise*).

- 5.2 Unless otherwise agreed by the Secretary of State, all records, books and materials required to be maintained by the Franchisee in accordance with this Schedule 11.2 shall be held in a form that is capable of audit for a period of not less than six (6) years following the Expiry Date or the date of any earlier termination of this Agreement.
- 5.3 References to records, books and materials in this Schedule 11.2 shall include records, books and materials maintained under any Previous Franchise Agreement to the extent that such records relate to services equivalent to the Franchise Services and the Franchisee has access to them (which it shall use all reasonable endeavours to secure). Notwithstanding the requirements of paragraphs 5.2 and 5.4, the Franchisee shall only be required to hold such records, books and materials created under any Previous Franchise Agreement for a period of six (6) years following the date of this Agreement.
- 5.4 The Franchisee shall not be responsible for any records, books or materials maintained under any Previous Franchise Agreement, as referred to in paragraph 5.3, being true, complete and up to date. As soon as reasonably practicable after becoming aware that any such records, books or materials are not true, complete and up to date, the Franchisee shall take all reasonable steps to remedy any such deficiency, and shall thereafter maintain such records, books or materials in accordance with paragraph 5.1.

6. **Right to Inspect**

- 6.1 The Franchisee shall, if requested by the Secretary of State, allow the Secretary of State and the Secretary of State's representatives and advisers:
- (a) to inspect and copy any records referred to in this Schedule 11.2 and the Secretary of State may verify any such records; and/or
 - (b) to inspect and copy at any reasonable time any books, records and any other material kept by or on behalf of the Franchisee and/or its auditors and any assets (including the Franchise Assets) used by the Franchisee in connection with the Franchise Services.
- 6.2 The Franchisee shall make available to the Secretary of State, the Secretary of State's representatives and advisers the information referred to in paragraph 6.1 and grant or procure the grant of such access (including to or from third parties) as the Secretary of State, the Secretary of State's representatives and advisers shall reasonably require in connection therewith. The obligation of the Franchisee under this paragraph 6.2 shall include an obligation on the Franchisee to grant or procure the grant of such access to premises (including third party premises) where the information referred to in paragraph 6.1 is kept by or on behalf of the Franchisee.
- 6.3 The Secretary of State, the Secretary of State's representatives and advisers shall be permitted to take photographs, film or make a video recording, or make any other kind of record of any such inspection.

- 6.4 If any inspection reveals that information previously supplied to the Secretary of State was, in the reasonable opinion of the Secretary of State, inaccurate in any material respect or if such inspection reveals any other contravention of the Franchisee's obligations under the Franchise Agreement which the Secretary of State considers to be material, the costs of any such inspection shall be borne by the Franchisee.

7. Information to the Passengers' Council and Local Authorities

The Franchisee shall comply with any reasonable requests and guidance issued by the Secretary of State from time to time in respect of the provision of information to and co-operation and consultation with the Passengers' Council and Local Authorities.

8. Periodic Update Reports

- 8.1 The Franchisee shall prepare and submit to the Secretary of State a periodic report in each Reporting Period which shall:

- (a) contain updates on the Franchisee's progress in complying with its Committed Obligations together with any other information as the Secretary of State may specify from time to time;
- (b) relate to the period preceding the date of the report, unless another period is reasonably required by the Secretary of State; and
- (c) be disaggregated to the extent required by the Secretary of State.

- 8.2 Where, as part of the periodic report referred to in paragraph 8.1, the Secretary of State requires the Franchisee to provide information and/or details in addition to those required pursuant to paragraph 8.1, the Franchisee shall ensure that the periodic report includes such additional information and/or details subject to the Franchisee having received at least twenty eight (28) days' notice of the additional information and/or details required by the Secretary of State.

9. Financial Information

9.1 Accounting Records

The Franchisee shall prepare and at all times during the Franchise Term maintain true, up to date and complete accounting records as are required to be kept under section 386 of the Companies Act 2006. Such records shall be prepared on a consistent basis for each Reporting Period.

9.2 Reporting Period Financial Information

- (a) The Franchisee shall deliver to the Secretary of State, within ten (10) Weekdays of the end of each Reporting Period:
 - (i) Management Accounts for such Reporting Period, setting out a cash flow statement, profit and loss account and balance sheet for that Reporting Period and cumulatively for the Franchisee Year to date, together with a statement of the Franchisee's Forecast Closing Cash Position applicable to that Reporting Period ensuring that:

- (A) the profit and loss account shall adopt the same format and structure as the Financial Formats except to the extent expressly agreed otherwise by the Secretary of State from time to time for this purpose; and
- (B) in particular, Costs, Capital Expenditure and Revenues shall be allocated consistently to the level of disaggregation required by the Financial Formats and there shall be no netting off between those disaggregated areas; and
- (ii) written confirmation that the Management Accounts, to the best of the knowledge, information and belief of the board of directors of the Franchisee, contain a true and accurate reflection of the current revenues, costs, assets and liabilities of the Franchisee (including contingent assets or liabilities and known business risks and opportunities) and, to the extent that they do not, identify in a written report relevant issues in reasonable detail and provide such further information that the Secretary of State shall reasonably require in relation thereto; and
- (iii) written confirmation from a statutory director of the Franchisee that the Franchisee has complied with the restrictions applicable during the Lock-up Period pursuant to paragraph 3 of Schedule 12 (*Financial Covenants and Bonds*).
- (iv) **NOT USED.**
- (b) The Management Accounts shall also set out:
 - (i) the Franchisee's available Cash Balance on the final day of the Reporting Period to which the Management Accounts relate;
 - (ii) the Franchisee's forecast of:
 - (A) the Franchisee's daily Cash Balance for the period of thirteen (13) weeks following the Reporting Period to which the Management Accounts relate;
 - (B) the amount of Working Capital Payment (if any) that the Franchisee forecasts that it will require in order to maintain a Cash Balance in accordance with paragraph 12 of Schedule 8.1A (*Franchise Payments*) in respect of the three (3) Reporting Periods following the Reporting Period to which the Management Accounts relate;
 - (C) payments to and from Affiliates of the Franchisee (in the same format as, and to the level of detail required in, the Financial Formats), and such forecasts shall provide an explanation in relation to any material differences between the actual and forecast payments to and from Affiliates as referred to in paragraph 9.2(b)(iii)(C) below; and
 - (D) the profit and loss, cash flow and balance sheet provided in accordance with the Budget (together with a detailed and comprehensive written explanation as to any changes in such forecasts from the previous such forecasts provided pursuant

to the provisions of this paragraph 9.2(b) for each of the following thirteen (13) Reporting Periods.

- (iiA) a detailed statement of the Franchisee's actual payments to and from Affiliates of the Franchisee and the net balance of such payments, disaggregated between each individual Affiliate entity in respect of the Reporting Period to which the Management Accounts relate, setting out the details of the specific company or legal entity the transactions were with and the nature of the goods or services exchanged in respect of the Reporting Period to which the Management Accounts relate, which shall provide separate identification of:
 - (A) the Affiliate to or from whom each such payment was made; and
 - (B) a description of the nature of the services rendered in relation to each such payment;
- (iii)
 - (A) a comparison of the Franchisee's financial performance during such period against the forecast provided by the Franchisee; in the then current Business Plan;
 - (B) a comparison on a line by line basis of Actual Costs and Actual Revenue of the Franchisee compared to the Budgeted Costs and Forecasted Revenue for that Reporting Period; and
 - (C) a detailed statement and a detailed and comprehensive written explanation of any material differences between the actual payments to and from Affiliates of the Franchisee and the forecast of such payments as referred to in paragraph 9.2(b)(ii)(C).
- (iv) a comparison of the Franchisee's cumulative financial performance during the Franchisee Year in which such period occurs against the forecast referred to in paragraph 9.2(b)(iii) and in particular of cumulative Actual Costs, Actual Revenue and Actual Capex of the Franchisee compared to cumulative Budgeted Costs, Forecasted Revenue and Budgeted Capex for that Franchisee Year;
- (v) a detailed statement and a detailed and comprehensive written explanation of any material differences between such Management Accounts and the forecast referred to in paragraph 9.2(b)(iii) and in particular a detailed explanation of the variances between Actual Costs and Budgeted Costs, Actual Revenues and Forecasted Revenue and Actual Capex and Budgeted Capex and a description of the steps which (1) have been taken by the Franchisee to address and mitigate any Costs in excess of Budgeted Costs, any Capital Expenditure in excess of Budgeted Capex and/or Forecasted Revenue shortfall and/or (2) could otherwise be taken for that purpose;
- (vi) where the level of financial performance reported in the Management Accounts is, in the reasonable opinion of the Secretary

of State, materially worse than forecast by the Franchisee in its current Business Plan, the Secretary of State may require the Franchisee to prepare and submit to the Secretary of State, as soon as reasonably practicable, a Financial Action Plan to ensure that the level of financial performance forecast in its current Business Plan for the remainder of the currency of that Business Plan is achieved and the Franchisee shall use all reasonable endeavours to implement such Financial Action Plan;

- (vii) **NOT USED**; and
 - (viii) separate identification of payments to or from any Affiliate of the Franchisee;
 - (ix) **NOT USED**;
 - (x) a detailed statement and a detailed and comprehensive written explanation of any material differences between such payments to and from Affiliates and the forecast referred to in paragraph 9.2(b)(ii)(C); and
 - (xi) sufficient information to enable the Secretary of State to calculate the Rest Day Working Performance Payment and the Voyager Maintenance Cost Efficiency Performance Payment for any Franchisee Year.
- (c) Within five (5) Weekdays after receipt of the Management Accounts for each Reporting Period in accordance with paragraphs (a) and (b) above, the Secretary of State shall notify the Franchisee of any further information, explanation or analysis which the Secretary of State requires in relation to the Management Accounts (including information in relation to the calculation of the Franchise Payment under the provisions of Schedule 8.1A (*Franchise Payments*)) and the Franchisee shall promptly provide such further information or analysis.

9.3 Quarterly Financial Information

- (a) By the date falling twenty (20) Weekdays before the end of the third (3rd), sixth (6th), ninth (9th) and thirteenth (13th) Reporting Periods in each Franchisee Year, the Franchisee shall deliver to the Secretary of State the following information:
- (i) an updated version of the profit and loss forecast, cash flow forecast and forecast balance sheet (in the format specified in the Budget) updated to reflect Actual Costs and Actual Revenues as reflected in the latest Management Accounts and revised Budgeted Costs, Budgeted Capex and Forecasted Revenues for the remainder of the Franchise Period;
 - (iA)
 - (A) a copy of each new contract with an Affiliate which the Franchisee proposes to enter into or renew in the next six (6) Reporting Periods;

- (B) a copy of each existing contract with an Affiliate which the Franchisee proposes to amend in the next six (6) Reporting Periods; and
- (C) details of any potential contract procurement process (pursuant to which the Franchisee proposes to enter into a contract with the successful bidder) in which the Franchisee reasonably expects an Affiliate to participate in the next six (6) Reporting Periods,

in each case following the end of the relevant Quarter; and

- (ii) a detailed and comprehensive written explanation as to any changes in such forecasts from the previous forecasts provided pursuant to the provisions of this Schedule 11.2, for the remainder of the Franchise Period.

9.4 Annual Financial Information

- (a) Within fifteen (15) Weekdays of the end of each Franchisee Year, the Franchisee shall deliver to the Secretary of State its Annual Management Accounts for that Franchisee Year.
- (b) Within four (4) Reporting Periods after the end of each Franchisee Year, the Franchisee shall deliver to the Secretary of State the following information:
 - (i) its Annual Audited Accounts for that Franchisee Year;
 - (ii) certified true copies of its annual report and Annual Audited Accounts for that Franchisee Year, together with copies of all related directors' and auditors' reports;
 - (iii) a detailed reconciliation of the Annual Audited Accounts to each of the Budget and Management Accounts for the same period in a format to be from time to time reasonably specified by the Secretary of State (the "**Audited Accounts Reconciliation**"). The Audited Accounts Reconciliation shall:
 - (A) disaggregate the costs and revenues in the Annual Audited Accounts so as to report against (and show in a format consistent with that used in) each of the Budget, Management Accounts and Annual Management Accounts; and
 - (B) facilitate the identification of Actual Costs and Actual Revenues as reported in the Management Accounts and easy comparison of Actual Costs and Actual Revenues with the Budget;
 - (iv) a reconciliation of the costs and revenues in the Annual Management Accounts to the Annual Audited Accounts;
 - (v) **NOT USED;**
 - (vi) **NOT USED;**

- (vii) a statement from the Franchisee (signed by a statutory director of the Franchisee) confirming compliance with the reporting requirements of paragraph 9.2(b)(xi) of this Schedule 11.2;
- (viii) a statement from the Franchisee's auditors (in a format to be reasonably specified by the Secretary of State from time to time, on the basis of providing the Secretary of State with reasonable assurance) that the disaggregation required by the Audited Accounts Reconciliation in accordance with paragraph 9.4(b)(iii) has been undertaken accurately;
- (ix) a statement from the Franchisee's auditors confirming that the available Cash Balance did not fall below the Floor Cash Position during the period covered by the Annual Audited Accounts;
- (x) a statement from the Franchisee confirming the aggregate value of all Working Capital Payments, Emergency Working Capital Payments and Working Capital Repayments made during the period covered by the Annual Audited Accounts; and
- (xi) a statement from the Franchisee's auditors confirming that GAAP has been applied in a fair and consistent manner.

9.5 Accounting Standards and Practices

- (a) Each set of Management Accounts and Annual Management Accounts shall:
 - (i) be in the format as the Secretary of State may reasonably specify from time to time;
 - (ii) be prepared:
 - (A) in accordance with the Franchisee's obligations in clause 6.1 (General Obligations); and
 - (B) consistently in accordance with the Franchisee's normal accounting policies, details of which shall be supplied on request to the Secretary of State; and
 - (iii) identify to the reasonable satisfaction of the Secretary of State, any changes in such accounting policies from those policies that were applied in preparing each of the profit and loss account, the cashflow projection and the balance sheet used for the purposes of preparing the Budget.
- (b) The Annual Audited Accounts shall:
 - (i) be prepared and audited in accordance with GAAP, consistently applied and in accordance with the Companies Act 2006; and
 - (ii) give a true and fair view of:
 - (A) the state of affairs, profits and financial condition of the Franchisee for the period covered by such accounts;

(B) the amount of its total revenue (being all revenue whatsoever from any source obtained from any commercial or non-commercial activity or undertaking of the Franchisee, such revenue to be disaggregated by reference to revenue derived by the Franchisee from:

- (i) the sale of tickets;
- (ii) income received from the Infrastructure Manager pursuant to Schedule 4 and Schedule 8 to the Track Access Agreement;
- (iii) NOT USED; and
- (iv) other income,

or to such other level of disaggregation as may be notified to the Franchisee by the Secretary of State from time to time, including to such a level to enable the Secretary of State to calculate the Rest Day Working Performance Payment and the Voyager Maintenance Cost Efficiency Performance Payment in respect of that Franchisee Year and in any Franchisee Year.

9.5A **Changes to accounting policies**

The Franchisee shall not, without the express written consent of the Secretary of State, make any alteration to its accounting policies or basis of preparation in relation to its Management Accounts, Annual Management Accounts, Annual Audited Accounts or Final Reviewed Accounts.

9.6 **Parent, Guarantor and Affiliate Accounts and Affiliate Trading**

- (a) The Franchisee shall, upon the request of the Secretary of State, promptly deliver to, or procure delivery to, the Secretary of State:
- (i) certified true copies of the annual reports and audited accounts of the Parent, the Guarantor and any Affiliate, together with copies of all related directors' and auditors' reports. If any of the Parent, the Guarantor or the Affiliate is domiciled outside England and Wales, the equivalent documents in the jurisdiction of residence of the Parent, the Guarantor or the Affiliate (as applicable) shall be delivered to the Secretary of State;
 - (ii) certified true copies of and/or details of (as instructed by the Secretary of State) any contracts or non-contractual arrangements with any Affiliate, including those which give rise to payments from an Affiliate to the Franchisee or payments from the Franchisee to an Affiliate (including payments or charges in relation to management services);
 - (iii) procurement policies in relation to contracts and non-contractual arrangements with Affiliates, including policies in relation to Affiliates procuring services from third parties on behalf of the Franchisee; and

- (iv) evidence that all services provided by Affiliates (including management services) have been procured competitively and on an arm's length basis, have a sound business case, comply with of the Franchise Agreement and are in all ways appropriate.
- (b) The Franchisee shall procure that any new contract entered into between the Franchisee and any of its Affiliates is capable of being terminated in accordance with its terms after a period of seven (7) Reporting Periods and that the Franchisee shall not incur any penalty or be required to make any termination payment to the relevant Affiliate if the Franchisee elects to exercise any such termination right.

9.7 **Secretary of State Audit**

- (a) Without prejudice to any other rights of the Secretary of State under the Franchise Agreement, the Secretary of State and the Secretary of State's representatives shall be permitted to inspect at any time the books, records and any other material kept by or on behalf of the Franchisee in order to check or audit any item contained in or relating to the Management Accounts in so far as they relate to:
 - (i) **NOT USED;**
 - (ii) the calculation of the Franchise Payment (and each component thereto) in accordance with Schedule 8.1A (Franchise Payments) and/or Schedule 8.1B (Performance Payments);
 - (iii) **NOT USED;**
 - (iv) **NOT USED;** and
 - (v) any other information required pursuant to the provisions of paragraphs 9.2 or 9.4.
- (b) The Franchisee shall make available to the Secretary of State and the Secretary of State's representatives such information and grant such access or procure the grant of such access (including to or from third parties) as they shall reasonably require in connection with any audit to be carried out pursuant to paragraph 9.7(a).
- (c) If any audit carried out pursuant to paragraph 9.7(a) reveals, in the reasonable opinion of the Secretary of State, any material inaccuracy in the Management Accounts, the Annual Management Accounts and/or the Annual Audited Accounts then:
 - (i) the Secretary of State may exercise the Secretary of State's rights as described in paragraphs 16.1 or 16.2 of Schedule 8.1A (Franchise Payments) or paragraph 2.8 of Schedule 8.1B (Performance Payments) (as the case may be); and
 - (ii) the Franchisee shall pay all reasonable costs of any such audit as a monitoring cost pursuant to paragraph 7.4 of Schedule 10.1 (*Procedure for remedying a Contravention of the Franchise Agreement*).

9.8 **Adjustment and Restatement of the Annual Audited Accounts**

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The Franchisee shall promptly notify the Secretary of State as soon as it becomes aware of any requirement to adjust or restate the Annual Audited Accounts and shall deliver to the Secretary of State any such adjusted or restated Annual Audited Accounts as soon as such accounts are available.

10. Business Plans

10.1 Initial Business Plan

- (a) Within one (1) Reporting Period of the Start Date, the Franchisee shall deliver to the Secretary of State its Initial Business Plan, describing its planned activities for each Franchisee Year during the Franchise Term, which shall include:
- (i) a description as to how the Franchisee shall meet its obligations under the Franchise Agreement for the Franchise Term, supported by operational plans demonstrating this;
 - (ii) details of any investments proposed to be made or procured by the Franchisee in relation to the Franchise Services during the Franchise Term;
 - (iii) a summary of the Franchisee's plans for marketing and developing the Franchise Services;
 - (iv) a profit and loss forecast, cash flow forecast and forecast balance sheet for each of first thirteen (13) Reporting Periods following the Start Date and each subsequent Franchisee Year of the Franchise Period, together with a list of assumptions on the basis of which each such forecast has been prepared;
 - (v) information in relation to arrangements with Affiliates, including:
 - (A) a forecast of payments to or from any Affiliate(s);
 - (B) a forecast of fees, remuneration, pension contributions or any other payments to or in respect of any director or officer of the Franchisee; and
 - (C) evidence that such payments are on arms' length commercial terms in the ordinary course of business and are otherwise compliant with the terms of the Franchise Agreement; and
 - (vi) the Initial Budget and Record of Assumptions.

10.2 Annual Business Plans

- (a) Within twenty (20) Weekdays of the start of the twelfth Reporting Period in each Franchisee Year, the Franchisee shall deliver to the Secretary of State the Franchisee's business plan for the forthcoming Franchisee Year (the "**Annual Business Plan**"). The Annual Business Plan shall be a detailed and comprehensive description of the Franchisee's planned activities for such Franchisee Year and the manner in which the Franchisee shall meet its obligations under the Franchise Agreement in respect of that Franchisee Year and include:

- (i) a revised profit and loss forecast, cash flow forecast and forecast balance sheet for each of the thirteen (13) Reporting Periods each Franchisee Year during the Franchise Term;
- (ii) the then current Budget as at the final Quarter of that Franchisee Year;
- (iii)
 - (A) the Forecast Closing Cash Position for each of the following thirteen (13) Reporting Periods; and
 - (B) a statement demonstrating how the Franchisee intends to ensure that at the end of each of the following thirteen (13) Reporting Periods it will have an available Cash Balance which is not less than the Floor Cash Position;
- (iv) an annual improvement plan providing:
 - (A) details of any new technologies, processes, developments and/or proposals which could improve the provision of the Franchise Services, reduce the cost of providing the Franchise Services or enable the Franchise Services to be provided more efficiently;
 - (B) an analysis of the impact of any technologies, processes, developments and/or proposals that are proposed in relation to the Franchise Services, including analyses of the costs of and timescale for effecting such changes and the impact on the provision of the Franchise Services;
 - (C) details of those technologies, processes, developments and/or proposals which the Franchisee proposes to implement during the relevant Franchisee Year; and
 - (D) an analysis of the technologies, processes, developments and/or proposals which the Franchisee implemented in the previous Franchisee Year including details of any cost reductions and/or efficiency gains arising from the same and a reconciliation to the annual improvement plan for that previous Franchisee Year;
- (v) a statement from each of, a statutory director of the Franchisee and, a statutory director of the Parent confirming that the Annual Business Plan has been provided to, considered and endorsed by the board of directors of the Parent and that the board of directors of the Parent is not aware of any other plan which may alter, vary or impact on the Business Plan and shall at any time during the following twelve (12) months notify the Secretary of State should any of them become aware of any such plan;
- (vi) a forecast of payments to or from any Affiliate(s), a forecast of fees, remuneration, pension contributions or other payments to or in respect of any director or officer of the Franchisee, and evidence that all of these are at arms' length/normal commercial terms.

- (b) If at any time during a Franchisee Year the Franchisee produces any other annual business plan or periodic plan which is delivered to its Parent it shall at the same time as delivering such plan to its Parent notify the Secretary of State of all such plans and shall explain to the Secretary of State how (if at all) such further plan alters, amends or otherwise varies or impacts on the applicable Annual Business Plan or Initial Business Plan or the Budget. The Secretary of State shall be entitled to copies of such further plans as the Secretary of State shall reasonably determine.

10.3 Business Action Plan

- (a) The Secretary of State may at any time require the Franchisee to produce a Business Action Plan in respect of any aspect of the Business Plan. Such Business Action Plan may include steps relating to:
- (i) timetable and service pattern development;
 - (ii) NOT USED;
 - (iii) performance management improvement;
 - (iv) customer service improvement; and
 - (v) improvements in the quality of service delivery or the efficiency of delivery of the Franchise Services.
- (b) The Franchisee shall comply with any guidance issued by the Secretary of State about how and with whom any consultation on the content of a Business Action Plan is to take place.
- (c) Any proposal in a Business Action Plan shall only be implemented if and to the extent that the Secretary of State decides it is appropriate to do so and subject to any conditions which the Secretary of State may impose.

11. Safety Information

11.1 Safety

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

12. Further Information

- 12.1 The Franchisee shall:

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- (a) deliver to the Secretary of State, or procure the delivery to the Secretary of State of, such information, records or documents as the Secretary of State may request within such period as the Secretary of State may reasonably require and which relate to or are connected with the Franchisee's performance of the Franchise Agreement; and
- (b) procure that each Affiliate of the Franchisee complies with paragraph 12.1(a) in respect of any information, records or documents that relate to its dealings with the Franchisee in connection with the Franchisee's performance of its obligations under the Franchise Agreement.

12.2 The information referred to in paragraph 12.1 shall include:

- (a) any agreement, contract or arrangement to which the Franchisee is a party in connection with any rolling stock vehicles used in the operation of Passenger Services;
- (b) in so far as the Franchisee has or is able to obtain the same, any agreement contract or arrangement which may be associated with the procurement, leasing, financing or maintenance of any such rolling stock vehicles;
- (c) any agreement for or any documents associated with the manufacture or supply of any rolling stock vehicles; or
- (d) any arrangements for the securitisation of any lease granted in respect of such rolling stock vehicles.

12.3 The Secretary of State may require the Franchisee to provide:

- (a) the information required to be provided under this Schedule 11.2 more frequently than set out in this Schedule 11.2;
- (b) the information required to be provided under this Schedule 11.2, or, in the Secretary of State's discretion, more detailed financial information, at any time in connection with the re-letting of the Franchise; and
- (c) such unaudited accounts under such accounting policies as may be prescribed by the Secretary of State, acting reasonably, from time to time.

13. **Information from Third Parties**

13.1 The Franchisee shall, if the Secretary of State so requests, use all reasonable endeavours to ensure that the Secretary of State has direct access to any information, data or records relating to the Franchisee which is or are maintained by third parties and to which the Secretary of State is entitled to have access, or of which the Secretary of State is entitled to receive a copy under the Franchise Agreement.

13.2 The Franchisee shall, if the Secretary of State so requests, procure the provision by RSP to the Secretary of State of such information, data and records as the Franchisee is entitled to receive under the Ticketing and Settlement Agreement, in such form as the Secretary of State may specify from time to time.

13.3 The obligations of the Franchisee under this Schedule 11.2 to provide information to the Secretary of State shall not apply if the Secretary of State notifies the Franchisee that the Secretary of State has received the relevant information

directly from any other person (including the Infrastructure Manager or RSP). The Franchisee shall, if the Secretary of State so requests, confirm or validate any such information which is received from any such other person.

- 13.4 The Franchisee shall promptly advise the Secretary of State of any changes that are to be made to its systems or processes or the systems and processes of the RSP that will, in the reasonable opinion of the Franchisee, materially affect the continuity of any of the records that are provided pursuant to this Schedule 11.2. Any such advice shall include an assessment of the materiality of the relevant change.

14. **Compatibility of Information**

- 14.1 All financial, operational or other information, and any data and records required to be provided to the Secretary of State under the Franchise Agreement shall be provided, if so requested by the Secretary of State, in a form compatible with the Secretary of State's electronic data and records systems on the Start Date, as modified from time to time in accordance with paragraph 3 of Schedule 13.1 (Rail Industry Initiatives and Co-operation).

- 14.2 The Franchisee shall ensure that the interconnection of such systems or the provision of such information, data and records to the Secretary of State under the Franchise Agreement will not result in any infringement of any third party Intellectual Property Rights to which its systems or such information, data or records may be subject.

15. **Environmental Information**

15.1 **Environmental Information Data Collection Plan**

- (a) The Franchisee acknowledges that, in accordance with paragraph 21 (*Environmental Information*) of Schedule 13 (*Information and Industry Initiatives*) of the Previous Franchise Agreement, it provided a report to the Secretary of State setting out:
- (i) which measures included in the Dataset the Franchisee was unable to provide, despite using reasonable endeavours to do so ("**Excluded Data**");
 - (ii) for each item of Excluded Data, the technical, operational or commercial reason why the Franchisee was unable to provide the Excluded Data; and
 - (iii) a plan ("**Environmental Data Collection Plan**") detailing, in relation to each item of Excluded Data, the actions which the Franchisee would need to take in order to be able to provide such Excluded Data, the Franchisee's best estimate of the cost of taking such action and the date by which, if such actions were taken, the Franchisee would be able to begin providing such Excluded Data to the Secretary of State.
- (b) The Dataset, excluding any measures which the Secretary of State agrees, acting reasonably, that the Franchisee was (under the Previous Franchise Agreement), or is (in accordance with the Franchise Agreement) (as applicable), despite using reasonable endeavours, unable to provide, shall be referred to as the "**Initial Dataset**".

- (c) The Secretary of State may require:
- (i) the Franchisee to implement the Environmental Data Collection Plan in whole or in part; and/or
 - (ii) the Franchisee to take such other actions as, in the reasonable opinion of the Secretary of State, would enable the Franchisee to provide any item of Excluded Data,

following which the relevant item of Excluded Data will form part of the Initial Dataset.

- (d) Where the Franchisee is:
- (i) undertaking works, whether at a Station or Depot or in respect of rolling stock;
 - (ii) procuring rolling stock; or
 - (iii) taking any other action which could enable the Franchisee to provide any items of Excluded Data in a cost effective manner,

the Franchisee shall use reasonable endeavours to do so in a manner which would enable the Franchisee to provide any relevant item of Excluded Data (and any item of Excluded Data which the Franchisee becomes able to provide as a result will, with effect from the date on which the Franchisee becomes able to provide the same, form part of the Initial Dataset).

- (e) The Franchisee shall measure and collect and provide to the Secretary of State in accordance with this paragraph 15, that data included in the Initial Dataset so as to allow the Secretary of State and the Franchisee to understand the current environmental performance of the Franchise and any potential for improvement in terms of environmental impact.
- (f) The Franchisee may, in its discretion, measure and collect additional data provided that the minimum required under the Initial Dataset is adhered to and the Franchisee shall co-operate with the Secretary of State to seek to identify improvements in the efficiency and/or cost effectiveness of the collection of the data in the Dataset.
- (g) The Franchisee shall ensure that the form of measurement of the Initial Dataset enables it to report a consolidated periodic or annual usage figure to the Secretary of State as specified for each measure in paragraph 1 of Appendix 1 (Environmental Information) to this Schedule 11.2.

15.2 Environmental Impact Monitoring Report and Environmental Impact Monitoring Audit

- (a) The Franchisee shall submit to the Secretary of State a report setting out the result of the data collection of the Initial Dataset required by this paragraph 15 in accordance with the applicable granularity and regularity specified in paragraph 1 of Appendix 1 (Environmental Information) to this Schedule 11.2 (the "**Environmental Impact Monitoring Report**") within three (3) months following the end of each Franchisee Year.

- (b) The Franchisee shall procure a suitably qualified independent body (such independent body to be appointed only with the prior written approval of the Secretary of State) to undertake an annual independent written audit of the data provided in the Environmental Impact Monitoring Report and the collection methodology of the Initial Dataset in respect of each Franchisee Year (the "**Environmental Impact Monitoring Audit**").
- (c) The Franchisee shall procure that the independent body appointed pursuant to paragraph 15.2(b) includes in the Environmental Impact Monitoring Audit:
- (i) a retrospective assessment (covering the Franchisee Year to which the audit relates) of the Franchisee's data collection methodology and level of data granularity carried out in accordance with this paragraph 15.2 and any recommendations by the independent body in respect of such methodology;
 - (ii) a verification of the accuracy of past data submissions made in respect of the Initial Dataset and as summarised in the Environmental Impact Monitoring Report; and
 - (iii) an assessment of the Franchisee's proposed data collection methodology and level of data granularity for the following Franchisee Year's data collection; and
 - (iv) where the independent body has identified as part of its audit any errors, discrepancies or concerns with any of the items described in paragraphs 15.2(c)(i) to (iii) above, whether these are, in the reasonable opinion of the independent body undertaking the audit material or minor errors, discrepancies or concerns.
- (d) The Franchisee shall submit a copy of the Environmental Impact Monitoring Audit to the Secretary of State at the same time as the Environmental Impact Monitoring Report is submitted in accordance with paragraph 15.2(a) above.
- (e) Where the Environmental Impact Monitoring Audit highlights errors, discrepancies or concerns with any of the items described in paragraphs 15.2(c)(i) to (iii) above, the Franchisee shall, at the Franchisee's cost:
- (i) **in the case of minor errors, discrepancies or concerns which are capable of rectification without material additional expenditure** - rectify such minor errors, discrepancies or concerns and resubmit the relevant Environmental Impact Monitoring Report updated to address these to the Secretary of State as soon as reasonably practicable, and in any event within ten (10) Weekdays, following the date of the submission of the Environmental Impact Monitoring Audit to the Secretary of State so that there is a complete and accurate record of the data in question;
 - (ii) **in the case of material errors, discrepancies or concerns which are capable of rectification** - rectify such material errors, discrepancies or concerns and resubmit the relevant Environmental Impact Monitoring Report updated to address these to the Secretary of State as soon as reasonably practicable, and in any event within ten (10) Weekdays, following the date of the submission of the

Environmental Impact Monitoring Audit to the Secretary of State so that there is a complete and accurate record of the data in question; and

- (iii) **in the case of concerns in relation to the Franchisee's data collection methodology and level of data granularity for the forthcoming Franchisee Year's data collection** – make such amendments to such methodology as recommended in the Environmental Impact Monitoring Audit so as to address those concerns.

16. **NOT USED.**

APPENDIX 1 TO SCHEDULE 11.2**Environmental Information****1. Environmental Impact Monitoring Dataset**

Table 1			
Subject	Unit	Granularity	Regularity
TRACTION	EC4T (kWh)	Breakdown per distinct fleet - metered	Four (4) week period
	EC4T (kWh)	Breakdown per distinct fleet - unmetered	Four (4) week period
	Gas-oil (litres)	Breakdown per distinct fleet	Four (4) week period
NONTRACTION	Electricity (kWh)	Total	Four (4) week period or monthly
	Gas (kWh)	Total	Four (4) week period or monthly
	Gas-oil (litres)	Total	Four (4) week period or monthly
CARBON	Scope 1 emissions (tonnes)	Total	Annual
	Scope 2 emissions (tonnes)	Total	Annual
	Embodied carbon in new infrastructure projects over the amount set out in paragraph 10.3 (b) (Sustainable Construction) of Schedule 13.1 (Rail Industry Initiatives and Co-operation)	Total	Per project
WATER	Mains Water consumption (m ³)	Total	Annual
	Water recycling initiatives	Narrative	Annual
WASTE	Waste generated (tonnes)	Total	Annual
	Waste recycled (tonnes)	Total	Annual
	Waste subject to other recovery (tonnes)	Total	Annual
	Waste to landfill (tonnes)	Total	Annual
	Hazardous waste	Total	Annual
ENVIRONMENTAL MANAGEMENT SYSTEM (EMS)	Enforcement/information Notices	Total	Annual
	Environmental fines or prosecutions	Total	Annual
	Environmental incidents reported through the EMS	Total	Annual
	Environmental training records % personnel briefed/trained	Total	Annual

2. NOT USED.

APPENDIX 2 TO SCHEDULE 11.2

Operational Performance Information

1. Information about the operational performance of the Franchisee

- 1.1 The Franchisee shall at all times during the Franchise Term maintain records in relation to its operational performance under the Franchise Agreement, covering the areas and the information described in this Appendix 2. Such information shall include details as to whether or not any curtailment, diversion, delay or failure to attain any connection is attributable, in the Franchisee's opinion, to either a Force Majeure Event or the implementation of a Service Recovery Plan.
- 1.2 The Franchisee shall, subject to paragraph 1.3, provide to the Secretary of State the information set out in the following tables at the frequency specified in the Column of each such table headed **"When information to be provided"**.
- 1.3 When so requested by the Secretary of State, the Franchisee shall, within such reasonable period as the Secretary of State may specify, make such information available for review by the Secretary of State by reference to:
 - (a) such level of disaggregation (including by Route or Service Group) as is reasonably specified by the Secretary of State; and
 - (b) any particular day, week or other longer period as is reasonably specified by the Secretary of State.
- 1.4 The following key shall apply to the table in this Appendix 2:

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

1.4A For the purposes of this Schedule 11.2, the following words and expressions shall have the following meanings:

- Number of Primary Minutes Delay attributable to any other Train Operator means the number of minutes of delay to the Passenger Services that are:
 - (a) attributed as a "Primary Delay" in accordance with the Delay Attribution Principles and Rules; and
 - (b) attributable to any other Train Operator;
- Number of Primary Minutes Delay attributable to Network Rail means the number of minutes of delay to the Passenger Services that are:
 - (a) attributed as a "Primary Delay" in accordance with the Delay Attribution Principles and Rules; and
 - (b) attributable to Network Rail;

- Number of Primary Minutes Delay attributable to the Franchisee means the number of minutes of delay to the Passenger Services that are:
- (a) attributed as a "Primary Delay" in accordance with the Delay Attribution Principles and Rules; and
 - (b) attributable to the Franchisee;
- Number of Primary Minutes Delay on other Operators attributable to the Franchisee means the number of minutes of delay to passenger services operated by any other Train Operator or services operated by freight operators that are attributed:
- (a) as "Primary Delay" in accordance with the Delay Attribution Principles and Rules; and
 - (b) to the Franchisee pursuant to the Track Access Agreement,
- disregarding any minutes of delay that are imputed to other Train Operators' passenger services that were cancelled.
- Number of Reactionary Minutes Delay attributable to any other Train Operator means the number of minutes of delay to the Passenger Services that are:
- (a) attributed as a "Reactionary Delay" in accordance with the Delay Attribution Principles and Rules; and
 - (b) attributable to any other Train Operator;
- Number of Reactionary Minutes Delay attributable to Network Rail means the number of minutes of delay to the Passenger Services that are:
- (a) attributed as a "Reactionary Delay" in accordance with the Delay Attribution Principles and Rules; and
 - (b) attributable to Network Rail;
- Number of Reactionary Minutes Delay attributable to the Franchisee means the number of minutes of delay to the Passenger Services that are:
- (a) attributed as a "Reactionary Delay" in accordance with the Delay Attribution Principles and Rules; and
 - (b) attributable to the Franchisee; and
- Number of Reactionary Minutes Delay on other Operators attributable to the Franchisee means the number of minutes of delay to passenger services operated by any other Train Operator or services operated by freight operators that are attributed:
- (a) as "Reactionary Delay" in accordance with the Delay Attribution Principles and Rules; and
 - (b) to the Franchisee pursuant to the Track Access Agreement,
- disregarding any minutes of delay that are imputed to other Train Operators' passenger services that were cancelled.

1.5 This Appendix 2 shall be interpreted in accordance with any guidance issued by the Secretary of State from time to time for that purpose.

Table 1 - Operational Performance Information		
Information to be provided	Information (format)	When information to be provided
Number of Passenger Services		
Number of Passenger Services in the Timetable	[number]	B
Number of Passenger Services in the Enforcement Plan of the Day	[number]	B
Number of Cancellations and Partial Cancellations		
Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Cancellation	[number]	B
Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Partial Cancellation	[number]	B
Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Cancellation attributable to the Franchisee's implementation of a Service Recovery Plan	[number]	B
Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Partial Cancellation attributable to the Franchisee's implementation of a Service Recovery Plan	[number]	B
Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Network Rail Cancellation	[number]	B
Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Network Rail Partial Cancellation	[number]	B
Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Disputed Cancellation	[number]	B
Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a Disputed Partial Cancellation	[number]	B
Number of Disputed Cancellations and Disputed Partial Cancellations for the twelve (12) preceding Reporting Periods for which the attribution remains in dispute between Network Rail and the Franchisee	[number]	B
Number of Disputed Cancellations and Disputed Partial Cancellations from the twelve (12) preceding Reporting Periods for which disputed attribution has been resolved or determined since the Franchisee's previous report including whether each relevant Disputed Cancellation and/or Disputed Partial Cancellation was attributed to Network Rail or to the Franchisee	[number]	B

Table 1 - Operational Performance Information		
Information to be provided	Information (format)	When information to be provided
Where there is a difference between the Timetable and the Plan of the Day on any day the following: (a) the fact of such difference; and (b) the number of: (i) Passenger Services affected; and (ii) Cancellations or Partial Cancellations which would have arisen if the Timetable on that day had been the same as the Plan of the Day	[number]	B
Where there is a difference between the Plan of the Day and the Enforcement Plan of the Day on any day: (a) the fact of such difference; (b) the number of: (i) Passenger Services affected; and (ii) Cancellations or Partial Cancellations which would have arisen if the Plan of the Day had been the same as the Enforcement Plan of the Day	[number]	B
Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a cancellation and which satisfied the conditions of the term Cancellation, except that such cancellations occurred for reasons attributable to the occurrence of a Force Majeure Event	[number]	B
Number of Passenger Services in the Enforcement Plan of the Day which were the subject of a partial cancellation and which satisfied the conditions of the term Partial Cancellation, except that such partial cancellations occurred for reasons attributable to the occurrence of a Force Majeure Event	[number]	B
Number of Short Formations		
Simple Short Formations		
All Day		
Number of Passenger Services that have <i>less than the required Passenger Carrying Capacity</i> specified in the Train Plan	[number]	B
Number of Passenger Services that have <i>less than the required Passenger Carrying Capacity</i> specified in the Train Plan attributable to the Franchisee's implementation of a Service Recovery Plan	[number]	B
Number of Passenger Services that have <i>less than the required Passenger Carrying Capacity</i> specified in the Train Plan attributable to the occurrence of a Force Majeure Event	[number]	B
Number of Passenger Services scheduled (excluding Cancellations or Partial Cancellations)	[number]	B
Minutes Delay		
Number of Minutes Delay attributable to the Franchisee	[number]	B
Number of Primary Minutes Delay attributable to the Franchisee	[number]	B

Table 1 - Operational Performance Information		
Information to be provided	Information (format)	When information to be provided
Number of Reactionary Minutes Delay attributable to the Franchisee	[number]	B
Number of Minutes Delay attributable to Network Rail	[number]	B
Number of Primary Minutes Delay attributable to Network Rail	[number]	B
Number of Reactionary Minutes Delay attributable to Network Rail	[number]	B
Number of Minutes Delay attributable to any other Train Operator	[number]	B
Number of Primary Minutes Delay attributable to any other Train Operator	[number]	B
Number of Reactionary Minutes Delay attributable to any other Train Operator	[number]	B
Number of Primary Minutes Delay on other Operators attributable to the Franchisee	[number]	B
Number of Reactionary Minutes Delay on other Operators attributable to the Franchisee	[number]	B
Number of Minutes Delay for such Reporting Period for which the attribution is in dispute between Network Rail and the Franchisee	[number]	B
Number of Minutes Delay for the twelve (12) preceding Reporting Periods for which the attribution remains in dispute between Network Rail and the Franchisee	[number]	B
Number of Minutes Delay from the twelve (12) preceding Reporting Periods for which disputed attribution has been resolved or determined since the Franchisee's previous report and the number of such Minutes Delay attributed to each of the Franchisee and Network Rail as a result of such resolution or determination	[number]	B
Number of Minutes Delay attributed to the occurrence of a Force Majeure Event	[number]	B
T-3, T-15, All Cancellations and On Time		
Time to 3 Minutes percentage published by Network Rail, rounded to two (2) decimal places	[number]	B
Time to 15 Minutes percentage published by Network Rail, rounded to two (2) decimal places	[number]	B
All Cancellations percentage published by Network Rail, rounded to two (2) decimal places	[number]	B
On Time percentage published by Network Rail, rounded to two (2) decimal places	[number]	B
Train Mileage		
Planned Train Mileage	[mileage]	A
Actual Train Mileage	[mileage]	B

APPENDIX 3 TO SCHEDULE 11.2**Summary of Reporting and Other Requirements**

This Appendix contains a non-exhaustive summary of the obligations on the Franchisee throughout this Agreement in respect of the provision of information to the Secretary of State which are not set out in this Schedule 11.2. This summary is for guidance only. If there are any inconsistencies with the other contents of the Schedules mentioned below (including any Appendix), those other contents shall apply.

Reference	Summary of Obligation
Schedule 1.1 (Franchise Services and Service Development), paragraph 11.3(a) (Consultation on Significant Alterations to the Timetable)	Requirement for Franchisee to provide a comprehensive summary of the proposed changes from the Timetable then in force.
Schedule 1.1 (Franchise Services and Service Development), paragraphs 11.3(e) and 11.3(f) (Consultation on Significant Alterations to the Timetable)	Requirement for Franchisee to publish a report containing a summary of the main issues raised by respondents to the consultation.
Schedule 1.1 (Franchise Services and Service Development), paragraph 13.1 (Certification and Notification by Franchisee of Exercising Timetable Development Rights)	Requirement for Franchisee to provide a certificate addressed to the Secretary of State signed by a statutory director in respect of the exercise of timetable development rights.
Schedule 1.1 (Franchise Services and Service Development), paragraph 13.3(a) (Certification and Notification by Franchisee of Exercising Timetable Development Rights)	Requirement for Franchisee to provide copies to the Secretary of State of correspondence in respect of discussions with Network Rail.
Schedule 1.1 (Franchise Services and Service Development), paragraph 14.4 (Finalising the Train Plan)	Requirement for Franchisee to provide the Train Plan certified as true and accurate by a statutory director.
Schedule 1.1 (Franchise Services and Service Development), paragraph 15.1 (Capacity Mitigation Proposal)	Requirement for Franchisee to provide a Capacity Mitigation Proposal if required by the Secretary of State.
Schedule 1.1 (Franchise Services and Service Development), paragraph 16.1 (New or amended Train Service Requirement by Secretary of State and Franchisee's Informed Opinion)	Requirement for Franchisee to provide informed opinion in respect of a new or amended Train Service Requirement.
Schedule 1.2 (Operating Obligations), paragraph 7.7	Provide evidence to the Secretary of State of the steps taken under Paragraph 7 (Obligation to use all reasonable endeavours under this Schedule 1.2).

Reference	Summary of Obligation
Schedule 1.4 (Passenger Facing Obligations), paragraph 8 (Publication of Performance Data)	Requirements to publish performance data.
Schedule 1.4 (Passenger Facing Obligations), paragraph 9 (Publication of Complaints and Faults Handling Data)	Requirements to publish complaints and fault handling data.
Schedule 1.5 (Information about Passengers), paragraph 1 (Passenger Numbers Information)	Requirement to provide Secretary of State information about the use by passengers of the Passenger Services.
Schedule 1.5 (Information about Passengers) Paragraph 5.3 (Yield Management Data)	Requirement to notify the Secretary of State in writing of the full names and registered office addresses of the entities which from to time are hosting or storing any of the Yield Management Data together with the location(s) in which the Yield Management Data is hosted, stored or otherwise held. In cases where the storage, hosting and/or other processing location(s) are outside of the United Kingdom the notification shall include details of the relevant country(ies) or territory(ies).
Schedule 2.2 (Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases), paragraph 2.2 (Rolling Stock Related Contracts and Insurance Arrangements)	Obligation to provide a copy of all draft Rolling Stock Related Contracts and all executed Rolling Stock Related Contracts and any agreements amending the Rolling Stock Related Contracts including such other information as required by the Secretary of State together with a justification of the Franchisee's proposed rolling stock maintenance strategy and provision of analysis of whole life costs.
Schedule 2.2 (Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases), paragraph 3.9(b) (Cascaded Rolling Stock and Delayed Cascade Mitigation Plan)	Requirement to produce a Delayed Cascade Mitigation Plan.
Schedule 2.5 (Transport, Travel and Other Schemes), paragraph 1.5 (Local Authority Concessionary Travel Schemes)	Requirement to provide information about Local Authority Concessionary Travel Schemes.
Schedule 2.5 (Transport, Travel and Other Schemes), paragraph 2.6 (Multi-Modal Fares Schemes)	Requirement to provide information about multi-modal fares schemes.

Reference	Summary of Obligation
Schedule 2.5 (Transport, Travel and Other Schemes), paragraph 3.3 (Discount Fares Schemes)	Requirement to provide information about Discount Fares Schemes.
Schedule 2.5 (Transport, Travel and Other Schemes), paragraph 4.4 (Inter-Operator Schemes)	Requirement to provide information about Inter-Operator Schemes.
Schedule 4 (Accessibility and Inclusivity), paragraph 4 (Specific additional obligations relating to persons with disabilities)	Recording of obligations relating to persons with disabilities.
Schedule 4 (Accessibility and Inclusivity), paragraph 4.1(c) (Specific additional obligations relating to persons with disabilities)	Requirement for the Franchisee to provide the results of such records to the Secretary of State, and publish a summary of the data in its Customer Report(s) and on the relevant section of the Franchisee's website.
Schedule 4 (Accessibility and Inclusivity), paragraph 4.2 (Specific additional obligations relating to persons with disabilities)	Requirement for the Franchisee, by no later than 18 December 2020, to notify the Secretary of State of the extent to which it recorded the matters described in paragraphs 4.1(a) and 4.1(b) as at the date of the notification.
Schedule 4 (Accessibility and Inclusivity), paragraph 4.3 (a) and (b) (Specific additional obligations relating to persons with disabilities)	Requirement for the Franchisee, following the notification referred to in paragraph 4.2: (a) or (b) to provide the Secretary of State the results of its records on Seating and Assistance Provisions.
Schedule 4 (Accessibility and Inclusivity), paragraph 5.2 (Annual Accessibility Update)	Requirement for the Franchisee to provide a copy of any report (submitted to ORR pursuant to paragraph 5.1) in respect of accessibility matters to the Secretary of State within seven (7) days of it being submitted to ORR.
Schedule 4 (Accessibility and Inclusivity), paragraph 10.3 (Social Media Engagement with Passengers with Disabilities)	Requirement for the Franchisee, by no later than 18 October 2022, to provide the Secretary of State with a report detailing the extent to which the Social Media Plan is achieving the purposes referred to in paragraph 10.1 and any proposed revisions to the Social Media Plan to help achieve those purposes.
Schedule 5.8 (Fares Regulation Information and Monitoring), paragraph 1 (Information)	Requirement to provide a summary of the Prices of Commuter Fares and Protected Fares to the Secretary of State no later than week twelve (12) of each Fares Setting Round.

Reference	Summary of Obligation
Schedule 5.8 (Fares Regulation Information and Monitoring), paragraph 2.1 (Monitoring)	Requirement to provide information relating to the Prices of Commuter Fares and Protected Fares to the Secretary of State and information relating to the Gross Revenue of the Franchisee in relation to the any particular Fare or Fares or any particular period.
Schedule 5.8 (Fares Regulation Information and Monitoring), paragraph 2.2 (Monitoring)	Requirement to provide written confirmation to the Secretary of State from a statutory director whether the Franchisee has complied with the obligations under Schedule 5 (Fares and Smart Ticketing) during each Fares Setting Round.
Schedule 5.9 (Smart Ticketing), paragraph 2.1 (Smart Ticketing)	Prepare and submit a report to the Secretary of State in advance of each Franchise Performance Meeting (in such form as the Secretary of State may reasonably require).
Schedule 5.11 (Fares, Ticketing and Retail Reform), paragraph 1.1 (a)(ii) and (c) (Fares, Ticketing and Retail Reform)	Requirement for the Franchisee to develop pilot schemes and proposals in respect of the planning and/or development (as applicable) of industry reform with respect to Fares, ticketing and the retailing of tickets.
Schedule 5.11 (Fares, Ticketing and Retail Reform), paragraph 1.2 (Fares, Ticketing and Retail Reform)	Requirement for the Franchisee to develop suitable proposals to implement any plans and/or proposals developed pursuant to a FTR Co-operation Requirement (a "Proposed Reform Activity")
Schedule 5.11 (<i>Fares, Ticketing and Retail Reform</i>), paragraph 1.3 (<i>Fares, Ticketing and Retail Reform</i>).	Requirement for the Franchisee, when requested by the Secretary of State, to provide the Secretary of State its assessment of: (a) any capital investment required to implement a Proposed Reform Activity; (b) the cost of implementing a Proposed Reform Activity; (c) any revenue impact associated with or caused by implementing a Proposed Reform Activity; (d) estimates of significant change to passenger demand and/or patterns of travel that could be caused by a Proposed Reform Activity; (e) any material change to the Franchisee's assessment of any of the matters outlined in paragraphs (a) to (d) above, and accompanied by all supporting evidence to substantiate each such calculation or change.
Schedule 6.1 (Franchise Specific Obligations), Part 1 (Previous Franchisee's Committed Obligations), paragraph 4.4 (Online Community)	Requirement to provide the Feedback Report and such further information and analysis in relation to each Feedback Report as the Secretary of State may reasonably require.

Reference	Summary of Obligation
Schedule 6.1 (Franchise Specific Obligations), Part 1 (Previous Franchisee's Committed Obligations), paragraph 5.3 (Stakeholder Communications Team)	Provide evidence to the Secretary of State of compliance with its obligations under paragraph 5.2(a) (Stakeholder Communications Team).
Schedule 6.1 (Franchise Specific Obligations), Part 1 (Previous Franchisee's Committed Obligations), paragraph 12.6 (Minimum Wi-Fi Service on Trains)	Requirement to provide the MCS Report.
Schedule 6.1 (Franchise Specific Obligations), Part 1 (Previous Franchisee's Committed Obligations), paragraph 12.11 (Minimum Wi-Fi Service on Trains)	Requirement to share the MCS Report and MCS Route Signal and Capacity Survey, including any associated data or information, with the Secretary of State in an appropriate format.
Schedule 6.1 (Franchise Specific Obligations), Part 1 (Mandatory Franchise Specific Obligations) paragraph 2.1 (Boxing Day Services)	Requirement to provide reports setting out proposals for operation of Additional Boxing Day Services.
Schedule 6.1 (Franchise Specific Obligations), Part 3 (Franchise Specific Obligations) paragraph 9.5 (Infrastructure Projects)	Requirement to provide reports describing progress in relation to matters relating to each Infrastructure Project.
Schedule 6.1 (Franchise Specific Obligations), Part 3 (Franchise Specific Obligations) paragraph 10.1 (Development of Proposals for Service Enhancements)	Requirement to provide a report which sets out the outcomes of the feasibility study.
Schedule 6.1 (Franchise Specific Obligations), Part 3 (Franchise Specific Obligations) paragraph 18 (East West Rail Scheme)	Requirement to provide such information in respect of the East West Rail Scheme as the Secretary of State may reasonably request from time to time.
Schedule 6.1 (Franchise Specific Obligations), Part 3 (Franchise Specific Obligations) paragraph 24 (Co-operation in respect of Welsh Devolution)	Requirement to provide information, data, reports, analysis and copy documentation reasonably required by the Secretary of State to assist in its assessment of the implications of Welsh Devolution
Schedule 6.1 (Franchise Specific Obligations), Part 3 (Franchise Specific Obligations) paragraph 26 (Great Western Route Modernisation)	Requirement to provide such report in respect of matters relating to the Great Western Route Modernisation at the reasonably request of the Secretary of State.
Schedule 6.1 (Franchise Specific Obligations), Part 3 (Franchise Specific Obligations) paragraph 27 (Co-operation in respect of Infrastructure Projects)	Requirement to provide information, data, reports, analysis and copy documentation reasonably required by the Secretary of State to assist in its assessment of the implications of Infrastructure Projects
Schedule 6.1 (Franchise Specific Obligations), Part 4 (Bespoke Obligations), paragraph 1.2(b) (Air emissions monitoring)	Requirement to provide such information as the Secretary of State may reasonably request for the purposes of analysing any

Reference	Summary of Obligation
	impacts on air quality of the emissions of air pollution referred to in paragraph 8.2(a)(i) (Air emissions monitoring).
Schedule 6.1 (Franchise Specific Obligations), Part 4 (Bespoke Obligations), paragraph 2.2(b) (Co-operation in respect of remapping of Midlands Local Services)	Requirement to provide information, data, reports, analysis and copy documentation reasonably required by the Secretary of State to assist in its assessment of the implications of the commencement of the operation of the Midlands Local Services by another Train Operator (or bidders for the relevant franchise) or relevant aspects of the transfer of the Midlands Local Services
Schedule 6.2 (Committed Obligations), Part 1 (Committed Obligations) paragraph 1.2 (Delivery of a Passenger Benefits Plan using the Performance Settlement Sum)	Requirement for the Franchisee to provide a Passenger Benefits Plan
Schedule 6.2 (Committed Obligations), Part 1 (Committed Obligations) paragraph 12.4 (Completion of the Reservation System (non TRS))	Requirement for the Franchisee report on the findings of its review of the operation and effectiveness of the TMR and level of customer uptake and the improvements introduced by the Franchisee (in accordance with paragraph 12.1)
Schedule 6.2 (Committed Obligations), Part 1 (Committed Obligations) paragraph 15.3 (Third party assessment of customer focus)	Requirement for the Franchisee to provide a report on the external assessment of customer experience and, if appropriate, formulate an action plan to implement changes based upon the outcome of the external assessment.
Schedule 6.2 (<i>Committed Obligations</i>), Part 1 (<i>Committed Obligations</i>) paragraph 16.3 (<i>Auditing of Franchisee's SQR performance</i>)	Requirement for Franchisee to provide progress reports every Reporting Period in connection with the establishment of the SQR Management System.
Schedule 6.2 (<i>Committed Obligations</i>), Part 1 (<i>Committed Obligations</i>) paragraph 28.1 (<i>Co-operation in respect of implementation of passenger compensation provisions</i>)	Requirement for Franchisee to provide such information, analysis, records and documents as the Secretary of State may reasonably request, including relating to the performance of the Passenger Services, details of compensation claims made by passengers of the Passenger Services, details of compensation claims met by the Franchisee and the costs of processing compensation claims.
Schedule 6.2 (Committed Obligations) Part 2 (Special Terms related to the Committed Obligations), paragraph 5 (Review of Compliance)	Requirement to provide such evidence of compliance with Committed Obligations as the Secretary of State may request.

Reference	Summary of Obligation
Schedule 6.2 (Committed Obligations) Part 2 (Special Terms related to the Committed Obligations), paragraph 10 (Obligations on Delivery of a Committed Obligation)	The Franchisee shall provide the Secretary of State with certificates confirming that Committed Obligations have been delivered.
Schedule 6.5 (Additional Operating Contract Obligations), paragraph 5.1 (Marketing Plan)	Requirement to provide the Draft Marketing Plan.
Schedule 6.5 (Additional Operating Contract Obligations), paragraph 5.3 (Marketing Plan)	Requirement to provide updated Marketing Plans.
Schedule 6.5 (Additional Operating Contract Obligations), paragraph 5.5 (Marketing Plan Review Period)	Requirement for Franchisee to provide a report reviewing a Marketing Plan.
Schedule 6.5 (Additional Operating Contract Obligations), paragraph 6A.3 (Ticketless Travel Surveys)	Requirement to provide a report setting out the results of the Ticketless Travel Surveys.
Schedule 6.5 (Additional Operating Contract Obligations), paragraph 10.4 (Annual Fares Plan)	Requirement for the Franchisee to provide an Annual Fares Plan.
Schedule 6.5 (Additional Operating Contract Obligations), paragraph 10.6 (Other Changes to the Fares Plan)	The Franchisee shall provide to the Secretary of State details (including supporting documentation) of any Fare where, in the reasonable opinion of the Franchisee, the Creation of such Fare would require the Franchisee to act other than as required of a Good and Efficient Operator
Schedule 6.5 (Additional Operating Contract Obligations), paragraph 14 (Additions to Annual Business Plan)	Requirement to provide proposals to maximise revenue and minimise or mitigate the impacts of any factors leading to revenue being reduced or increasing less quickly than the Franchisee had forecast.
Schedule 6.7 (Co-operation and Industrial Relations), part 1 (Co-Operation), paragraph 1.2 (Development, Design and Implementation of Future Initiatives)	Preparation and submission of proposals, implementation plans in connection with Future Initiatives and preparation and submission of relevant data, reports, feasibility studies, business cases or other information
Schedule 6.7 (Co-operation and Industrial Relations), part 2 (Pay and Industrial Relations and Dispute Handling), paragraph 5 (Industrial Action)	Requirement for Franchisee to propose a process it intends to adopt to deal with the relevant Industrial Action in accordance with and subject to the Dispute Handling Policy.
Schedule 6.7 (Co-operation and Industrial Relations), part 2 (Pay and Industrial	The Franchisee shall provide such information and data in relation to the

Reference	Summary of Obligation
Relations and Dispute Handling), paragraph 6 (Reform)	Employment Policy Framework and/or the Dispute Handling Policy (or any aspect of it/them) as the Secretary of State may require from time to time.
Schedule 7.1 (Operational Performance), paragraph 2 (Reporting Requirements)	Reporting requirements relating to the operational performance information set out in Appendix 2 (<i>Operational Performance Information</i>) of Schedule 11.2 (<i>Management Information</i>).
Schedule 7.1 (Operational Performance), paragraph 7 (Service Recovery Plans and Force Majeure)	Requirement to provide comprehensive records relating to the implementation of a Service Recovery Plan.
Schedule 7.1 (Operational Performance), paragraph 9.1 (b) (Action Plans)	Requirement for the Franchisee to deliver its draft plan for securing a Required Performance Improvement (the "Draft Action Plan").
Schedule 7.2 (Customer Experience and Engagement), paragraph 5.1 (NRPS Improvement Proposals)	Requirement for Franchisee to prepare an NRPS Improvement Proposal for achieving an NRPS Improvement.
Schedule 7.2 (Customer Experience and Engagement), paragraph 9 (Customer and Stakeholder Engagement Strategy)	Requirement to provide to the Secretary of State any proposed revisions to the Customer and Stakeholder Engagement Strategy.
Schedule 7.2 (Customer Experience and Engagement), paragraph 10 (Customer Report)	Requirement to produce and publish a Customer Report.
Schedule 7.2 (Customer Experience and Engagement), paragraph 11 (CCI Scheme)	Requirement to provide details of any CCI Scheme proposed by the Franchisee.
Schedule 7.2 (Customer Experience and Engagement), paragraph 12.1 (Customer Service and Satisfaction Data)	Requirement to publish details of the Franchisee's level of adherence to performance in respect of Passenger Assistance service.
Schedule 7.2 (Customer Experience and Engagement), paragraphs 12.2 and 12.3 (Customer Service and Satisfaction Data)	Requirement to publish NRPS scores achieved by the Franchisee.
Schedule 7.3 (Service Quality Regime) paragraph 3.2(d) (SQR Register)	The Secretary of State may request the Franchisee to provide an up to date copy of the SQR Register.
Schedule 7.3 (Service Quality Regime) paragraph 7.8 (Independent Service Quality Audit)	Requirement to provide a report together with data produced as a consequence of any Independent Service Quality Audit.

Reference	Summary of Obligation
Schedule 7.3 (Service Quality Regime) paragraph 14 (Reporting Requirements)	Requirement to provide a statement for the information set out in paragraph 14.
Schedule 7.3 (Service Quality Regime) paragraph 15 (Additional Information Requirements for Service Quality Re-Inspections)	Requirement to provide a list of each facility or service or train comprised in a SQR Train against which a "fail" was recorded at the end of each Reporting Period.
Schedule 7.3 (Service Quality Regime) paragraph 16 (Maintenance of Records)	Requirement to maintain true, up to date and complete records of the results of each Service Quality Inspections.
Schedule 7.3 (Service Quality Regime) paragraph 20.1 (Consequences of Performance falling below the SQR Benchmark)	Requirement to submit proposals if requested by the Secretary of State within twenty-eight (28) days.
Schedule 8.1A (Franchise Payments), paragraph 8.2 (Revisions to the Budget and Record of Assumptions)	Requirement for the Franchisee to provide specified information prior to each Quarterly Budget Forecast Review Meeting and all further information as the Secretary of State may request from time to time for the purposes of the operation of paragraph 8.
Schedule 8.1A (Franchise Payments), paragraph 9.2 (Review of Franchisee's performance against Budget)	Requirement for the Franchisee to provide specified information prior to each Periodic Financial Review Meetings and all further information as the Secretary of State may request from time to time for the purposes of the operation of paragraph 9.
Appendix 2 (<i>Performance Assessment Review Period</i>) to Schedule 8.1B (<i>Performance Payments</i>), paragraph 3.3 (<i>Performance Assessment Period Review Checklist</i>).	The Franchisee shall deliver to the Secretary of State a duly completed copy of the Performance Assessment Period Review Checklist.
Schedule 9.1 (Financial and Other Consequences of Change), paragraph 1.4 (Purpose and Application of Schedule)	The Franchisee is to provide notice in respect of a Change including all relevant details.
Schedule 9.2 (Identity of the Financial Model (Escrow Documents)), paragraph 1 (Franchisee's Obligations)	Requirement to provide the Financial Model and the Escrow Documents.
Schedule 10.1 (Procedure for remedying a Contravention of the Franchise Agreement), paragraphs 3 (Remedial Plan Notices) and 4 (Remedial Plans)	Obligation to provide certain information in a Remedial Plan Notices/Remedial Plans.

Reference	Summary of Obligation
Schedule 10.3 (Force Majeure and Business Continuity), paragraph 4 (Business Continuity)	Requirement to provide a Business Continuity Plan.
Schedule 11.1 (Franchise Performance Meetings), paragraph 1.3 (Franchise Performance Meetings)	Requirement to prepare and present such reports to each Franchise Performance Meeting as the Secretary of State may reasonably requests.
Schedule 13.1 (Rail Industry Initiatives and Co-operation), paragraph 2 (Community Rail Partnerships)	Requirement to provide a Community Rail Report.
Schedule 13.1 (Rail Industry Initiatives and Co-operation), paragraph 8 (Small and Medium-sized Enterprises)	Requirement to provide breakdown of Small and Medium-sized Enterprises.
Schedule 13.1 (Rail Industry Initiatives and Co-operation), paragraph 9 (Apprenticeships)	Requirement to provide the information relating to Apprenticeships as set out in paragraphs 9.1 and 9.2.
Schedule 13.1 (Rail Industry Initiatives and Co-operation), paragraphs 9.2/9.3 (Apprenticeships)	Requirement to submit the Apprenticeships Data Collection Form to the Rail Delivery Group.
Schedule 13.1 (Rail Industry Initiatives and Co-operation), paragraph 9.5 (Apprenticeships)	Requirement to submit a draft Skills and Leadership Strategy.
Schedule 13.1 (Rail Industry Initiatives and Co-operation), paragraph 9.6 (Apprenticeships)	Requirement to submit the revised Skills and Leadership Strategy and Apprenticeships Data Collection Form.
Schedule 13.1 (Rail Industry Initiatives and Co-operation), paragraph 9A.2 (The Prince's Trust Get Into Programmes)	Submission of project plans
Schedule 13.1 (Rail Industry Initiatives and Co-operation) paragraph 9B.1 (Diversity and Inclusion Strategy)	Requirement for Franchisee to provide a draft D&I Strategy.
Schedule 13.1 (Rail Industry Initiatives and Co-operation) paragraph 9B.3 (Performance Reporting) and paragraph 9B.5 (e) (Recruitment Targets and Objectives)	The Franchisee shall submit a D&I Annual Report.
Schedule 13.1 (Rail Industry Initiatives and Co-operation) paragraph 9B.5 (c) (Recruitment Targets and Objectives)	The Franchisee shall provide to the Secretary of State all evidence to allow the Secretary of State to reasonably determine whether any Recruitment Target is proportionate, as reasonably requested by the Secretary of State

Reference	Summary of Obligation
Schedule 13.1 (Rail Industry Initiatives and Co-operation) paragraph 9B.6 (e) and (f) (Data – collecting, monitoring and reporting)	The Franchisee shall provide reports on Workforce Diversity Data.
Schedule 13.1 (Rail Industry Initiatives and Co-operation) paragraph 9B.7 (Improvement and Remedial Plans)	The Franchisee may be notified to provide a D&I Improvement Plan.
Schedule 13.1 (Rail Industry Initiatives and Co-operation), paragraph 10.1(d)	Requirement to submit a copy of the assessment report produced by an independent body in respect of performance against the Rail Safety and Standard's Board's Sustainable Development Self-Assessment Framework.
Schedule 13.1 (Rail Industry Initiatives and Co-operation), paragraph 10.1(f)	Obligation to produce an improvement plan in respect of the targets against the Sustainable Development Strategy.
Schedule 13.1 (Rail Industry Initiatives and Co-operation), paragraph 10.1(h)	Obligation to provide a report identifying progress in respect of delivering a sustainable franchise and revisions to the Sustainable Development Strategy.
Schedule 13.1 (Rail Industry Initiatives and Co-operation), paragraph 10.1(j)	Requirement on the Franchisee to publish its Sustainable Development Strategy on the request of the Secretary of State.
Schedule 13.1 (Rail Industry Initiatives and Co-operation), paragraph 10.2	Requirement to provide copies of the certification audit reports and a copy of the ISO50001 Energy Review.
Schedule 13.1 (Rail Industry Initiatives and Co-operation), paragraph 13 (HS2 Project)	The Franchisee shall provide such information in respect of the HS2 Project as the Secretary of State may reasonably request from time to time
Schedule 14 (Rail Industry Initiatives and Co-operation), paragraph 13 (Suicide Prevention Strategy)	The Franchisee shall submit a completed suicide prevention plan (Plan) and copies of revised and/or updated Plans.
Schedule 13.1, paragraph 15 (Safeguarding Strategy)	The Franchisee shall submit a completed safeguarding strategy and plan to the Secretary of State together with written confirmation from the British Transport Police that the safeguarding strategy and plan comply with the requirements of the Safeguarding on Rail Audit as soon as reasonably practicable following such approval and in any event within twelve months of the Start Date.
Schedule 13.1, paragraph 16 (Incident Response Plan)	By no later than six months following the Start Date the Franchisee shall prepare and

Reference	Summary of Obligation
	provide to the Secretary of State for approval the Incident Response Plan.
Schedule 13.1 – paragraph 17 (Cyber Security Information Sharing Strategy)	By no later than six months following the Start Date the Franchisee shall prepare and provide to the Secretary of State for approval the Cyber Security Information Sharing Strategy.
Schedule 14.4 (Designation of Franchise Assets), paragraph 9 (Provision of Information to the Secretary of State)	Obligation to provide such information as the Secretary of State requires in respect of Primary Franchise Assets including details of Security Interests.
Schedule 14.5 (Dealing with Franchise Assets), paragraph 5 (Miscellaneous)	Obligation to provide such information as the Secretary of State requires in respect of Security Interests.
Schedule 15.1 (Reletting Provisions), paragraphs 2 (Preparation for Reletting) and 3 (Data Site Information)	Obligation to provide certain information to the Secretary of State in respect of a reletting of the Franchise.
Schedule 15.3 (Handover Package), paragraph 1 (Handover Package Status)	Requirement to produce and maintain the Handover Package.
Schedule 15.3 (Handover Package), paragraph 2 (Statutory Director's Certificate)	Requirement to provide a statutory director's certificate in each Franchisee Year.
Schedule 15.3 (Handover Pack) paragraph 3 (Key Contacts List)	Requirement to provide to the Secretary of State the Key Contacts List in accordance with the guidance issued to the Franchisee.
Schedule 15.4 (Provisions applying on and after Termination), paragraph 9 (Information about Passengers)	Requirement to provide passenger numbers information, CRM Data and Yield Management Data on expiry of the Franchise Period.
Appendix 2 (Template Form of Supplemental Agreement) to Schedule 15.4 (Provisions applying on and after Termination), paragraph 2.2 (Net Asset Statement)	Obligation to prepare and provide a net asset statement under the supplemental agreement.
Schedule 16.1 (Railways Pension Scheme), paragraph 6 (Discharge of Obligations)	Obligation to provide a certificate signed by the Trustee in relation to the Franchise Sections stating that the Franchisee has fully complied with its obligations under the Railways Pensions Scheme.
Schedule 17 (Confidentiality, Freedom of Information and Data Protection), paragraph 10 (Redactions)	Obligation to provide details of provisions of the Franchise Documents or any such variations which the Franchisee believes are exempt from the Freedom of Information

Reference	Summary of Obligation
	Act, Environmental Information Regulations or the Act.
Schedule 17 (Confidentiality, Freedom of Information and Data Protection) paragraph 11.2 (Data Protection)	Requirement to notify the Secretary of State of any Franchise Data Breach upon the Franchisee’s awareness of the same, including all relevant details, whether the Franchise Data Breach is by itself or by a Franchise Data Processor.
Schedule 17 (Confidentiality, Freedom of Information and Data Protection) paragraph 11.3 (Data Protection)	Requirement to notify (in the case of Franchisee) the Secretary of State and (in the case of any Franchise Data Processor) the Franchisee in writing of the full names and registered office addresses of the entities which are from time to time carrying out any storage, hosting and/or other processing of the CRM Data and/or the Personal Data relating to Franchise Employees, together with the storage, hosting and/or other processing location(s); and in cases where the storage, hosting and/or other processing location(s) are outside of the United Kingdom the notification shall include details of the relevant country(ies) or territory(ies).

SCHEDULE 12

FINANCIAL COVENANTS AND BONDS

Schedule 12:	Financial Covenants and Bonds
	Appendix 1: Template Form of Performance Bond
	Appendix 2: Template Form of Season Ticket Bond

Schedule 12

Financial Covenants and Bonds**1. Obligations**

1.1. Except to the extent that the Secretary of State may otherwise agree from time to time, the Franchisee shall not:

- (c) incur any liability or financial indebtedness except in the ordinary course of providing and operating the Franchise Services;
- (d) borrow any sum, or enter into any loan or lending agreement for the purpose of borrowing from any person;
- (c) make any loan or grant any credit, or have or permit to subsist any loan or any credit, to any person (other than the deposit of cash with a Bank as permitted under paragraph 1.1(e) or to an employee in the ordinary course of its business);
- (d) create or permit to subsist any Security Interest over any of its assets or property or give any guarantee or indemnity to or for the benefit of any person or otherwise assume liability or become obliged (actually or contingently) in respect of any obligation of any other person, in each case other than in the ordinary course of the business of providing and operating the Franchise Services; or
- (e) create or acquire any subsidiary or make or have any investment in any other entity, except for the deposit of cash with a Bank.

1.2. NOT USED.

2. NOT USED**3. Lock-up Restriction**

3.1 The Franchisee shall not during the Lock-up Period, do any of the following without the prior written consent of the Secretary of State:

- (a) declare or pay any dividend (equity or preference) or make any other distribution including surrendering any taxable losses to any of its Affiliates or pay any of its Affiliates in respect of taxable losses that they wish to surrender to the Franchisee;
- (b) make payments to any of its Affiliates, including payments in respect of management charges or costs for goods or services rendered by or through an Affiliate save to the extent such charges or payments (including with respect to the quantum of such charges or payments) have been expressly allocated and approved by the Secretary of State in the Budget;
- (c) make payment under any intra-group borrowings; or
- (d) make payment of any fees, remuneration, pension contribution or other payment to or in respect of any director or officer of the Franchisee or of any Affiliate of the Franchisee save and only to the extent that the same

(including with respect to the quantum of them) have been expressly allocated and approved by the Secretary of State in the Budget.

3.2 **“Lock-up Period”** means the period commencing on the date of this Agreement and expiring on the date which the Secretary of State confirms by notice in writing to the Franchisee that:

- (a) the Secretary of State considers that all the obligations of the Parties to account to each other pursuant to Schedule 8.1A (Franchise Payments) have been fully performed and discharged (such confirmation not to be unreasonably withheld or delayed); and
- (b) by virtue of such notice, the Lock-Up Period has expired.

No such notice shall constitute a waiver of any rights which the Secretary of State may have under or in respect of Schedule 8.1A (Franchise Payments).

3.3 The Secretary of State shall not unreasonably withhold or delay consent under paragraph 3.1(a) and 3.1(b) above in respect of any Permitted Dividend as described in paragraph 3.4 below subject to the Parent or such other person acceptable to the Secretary of State agreeing (in a form acceptable to the Secretary of State) to pay to the Franchisee at the Secretary of State’s demand the amount (if any) recoverable by the Secretary of State in respect of a fully liquidated Contingent SoS Claim and/or in respect of an adjustment to FFPP in accordance with paragraphs 9.10(a) and 15 of Schedule 8.1A (Franchise Payments), provided in each case that such amount to be paid to the Franchisee by the Parent or such other person acceptable to the Secretary of State shall be reduced by a percentage equivalent to the percentage rate of NTR (as referred to in paragraph 3.4 below) which applied to the corresponding Permitted Dividend payment made in respect of FFPP.

3.4 For the purposes of paragraph 3.3, a **“Permitted Dividend”** shall be an amount in respect of FFPP (if and to the extent that an amount in respect of FFPP has been included in a Franchise Payment paid in accordance with Schedule 8.1A (Franchise Payments)), calculated as follows:

PD	=	$FFPP - (FFPP \times NTR)$
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where:

PD	means the Permitted Dividend;
FFPP	means: <ul style="list-style-type: none"> a) in relation to the Reporting Period following the later of the payment to the Franchisee of the amounts in limbs (i) and (ii) below: the aggregate of: <ul style="list-style-type: none"> i) the aggregate of any Management Fee and Performance Payment paid to the Franchisee pursuant to schedule 8.A (Franchise Payments) of the Previous Franchise Agreement as such schedule

	<p>8.A (Franchise Payments) applied during the term of the EMA pursuant to the terms of the EMA; and</p> <p>ii) the amount of FFPP (for the first Franchisee Year) that has been included in a Franchise Payment paid in accordance with Schedule 8.1A (Franchise Payments); and</p> <p>b) in relation to any other Reporting Period the amount of FFPP (as the case may be) that has been included in a Franchise Payment paid in accordance with Schedule 8.1A (Franchise Payments);</p>
<p>NTR</p>	<p>means the rate of corporation tax (as published by HM Revenue & Customs) applicable at the time at which the Secretary of State determines the value of FFPP (as applicable) in accordance with Schedule 8.1A (Franchise Payments) provided that:</p> <p>(a) for the avoidance of doubt NTR shall not be adjusted, revalued or otherwise affected by the application of tax losses or any other reliefs to which the Franchisee may be entitled; and</p> <p>(b) if a Permitted Dividend has been made in accordance with this paragraph 3.4 and there is a subsequent variation in the rate of corporation tax in the relevant tax year, the Permitted Dividend shall not be recalculated to take account of that variation.</p>

4. Performance Bond

4.1 The Franchisee shall procure that there shall be a valid and effective Performance Bond in place with effect from the date of the Franchise Agreement, and the Franchisee shall procure that there shall be a valid and effective Performance Bond in place:

- (a) throughout the Franchise Period; and
- (b) for a further period that is the later of the date:
 - (i) falling one (1) month after the determination of the Purchase Price (as defined in any Supplemental Agreement) under the Supplemental Agreement;
 - (ii) that is seven (7) Reporting Periods after the date of receipt by the Secretary of State of the Franchisee’s Annual Audited Accounts which include the Final Balance Sheet; and
 - (iii) 31 December 2025 (the “**Bond Longstop Date**”).

The provisions of this paragraph 4.1 shall survive the termination of the Franchise Agreement.

4.1A The Secretary of State acknowledges that the Franchisee may put in place one performance bond to satisfy its obligations in respect of the performance bond required to be in place in accordance with this Agreement and the performance bond required to be in place in accordance with the Previous Franchise Agreement provided that all relevant requirements in respect of each performance bond are fulfilled by one such performance bond.

4.2 Each Performance Bond shall:

- (a) be substantially in the form of Appendix 1 (*Template Form of Performance Bond*) to this Schedule 12;
- (b) be issued by a Bond Provider;
- (c) in the case of the Initial Performance Bond, have a value of **[REDACTED¹⁸³]** in respect of the period that a Performance Bond is required to be provided pursuant to Schedule 12 of the Previous Franchise Agreement and to a value of **[REDACTED¹⁸⁴]** thereafter and in the case of any Replacement Performance Bond, have a value equal to the relevant amount determined under paragraph 4.4; and
- (d) for the purposes of paragraph 1(b)(iii) of the Template Form of Performance Bond set out in Appendix 1 to this Schedule 12 (Financial Covenants and Bonds), have a minimum duration of three (3) years except that where:
 - (i) a Replacement Performance Bond is being provided on the expiry (but not any earlier termination or replacement) of the Initial Performance Bond to be provided by the Franchisee under this Franchise Agreement, the minimum duration of the Replacement Performance Bond shall be two (2) years; or
 - (ii) a Replacement Performance Bond (a "**Subsequent Replacement Bond**") is being provided to replace a Replacement Performance Bond (having a minimum duration of two (2) years) as described in paragraph 4.2(d)(i), the minimum duration of the Subsequent Replacement Bond shall be two (2) years.

4.3 **Provision of Replacement Performance Bond**

- (a) The Franchisee may replace the then current Performance Bond at any time.

¹⁸³ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

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- (b) The Franchisee shall replace each Performance Bond at least six (6) months prior to its scheduled expiry with a Replacement Performance Bond.
- (c) If at any time the Secretary of State reasonably considers the Bond Provider under the then current Performance Bond to be unacceptable, the Secretary of State may require the Franchisee within twenty (20) Weekdays to procure the execution and delivery of a new Performance Bond by a Bond Provider acceptable to the Secretary of State. The Parties acknowledge and agree that the Franchisee shall under no circumstances be entitled to reimbursement, pursuant to Schedule 8.1A (Franchise Payments) or otherwise, in respect of any additional costs or expenses incurred by the Franchisee in procuring any new Performance Bond where required to do so pursuant to this paragraph 4.3(c).

4.4 Amount of Replacement Performance Bond

- (a) The value of any Replacement Performance Bond shall be as follows:
 - (i) in relation to the first (1st) Replacement Performance Bond, an amount which is [REDACTED¹⁸⁵] (Indexed) in respect of any period that a Performance Bond is required to be provided pursuant to Schedule 12 of the Previous Franchise Agreement and to a value of [REDACTED¹⁸⁶] (Indexed) thereafter; and
 - (ii) in relation to each subsequent Replacement Performance Bond an amount which is the amount of the Replacement Performance Bond that it is replacing x RPI,

and for the purpose of this paragraph 4.4, "**RPI**" shall be the quotient of the Retail Prices Index for the month for which the Retail Prices Index has most recently been determined on the date on which the Franchisee is to replace the Performance Bond divided by the Retail Prices Index for the month in which the Performance Bond that is being replaced was required to be delivered to the Secretary of State.

4.5 Demands under the Performance Bond

- (a) The Performance Bond shall be on terms that it is payable without further enquiry by the Bond Provider to the Secretary of State in full in London on first written demand by the Secretary of State on the Bond Provider, certifying as to any one or more of the following:
 - (i) that the Previous Franchise Agreement or this Agreement (together the "**Bonded Franchise Agreements**") has:
 - (A) either terminated or expired and, in either case, in circumstances where there are liabilities or obligations

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outstanding from the Franchisee to the Secretary of State including where the Franchise Period has terminated or expired but provisions of the Franchise Agreement remain in operation and effect (including Schedule 8.1A (Franchise Payments)); and/or

- (B) terminated solely as a consequence of the occurrence of one (1) or more Events of Default or a Termination Event of a type described in paragraphs 2.2, 2.3, 2.4 and 2.5 of Schedule 10.2 (Events of Default and Termination Events) of this Agreement or Events of Default or a Termination Event of a type described in paragraph 3.1 of Schedule 10.3 (Events of Default and Termination Events) of the Previous Franchise Agreement in circumstances where the Secretary of State has incurred or expects to incur losses, liabilities, costs or expenses in connection with early termination of the Franchise;
- (ii) that a railway administration order has been made in relation to the Franchisee pursuant to sections 60 to 62 of the Act;
- (iii) the occurrence of an Event of Default under either of the Bonded Franchise Agreements:
 - (A) under paragraph 1.12(a) of Schedule 10.2 (Events of Default and Termination Events) of this Agreement or under paragraph 2.13(a) of Schedule 10.3 (Events of Default and Termination Events) of the Previous Franchise Agreement in relation to the Performance Bond; or
 - (B) under paragraph 1.12(b) of Schedule 10.2 (Events of Default and Termination Events) of this Agreement or under paragraph 2.13(b) of Schedule 10.3 (Events of Default and Termination Events) of the Previous Franchise Agreement, whether or not the relevant Bonded Franchise Agreement is, or is to be, terminated as a result thereof;
- (iv) that the Franchisee has failed to perform or comply with its obligations under any Supplemental Agreement under either of the Bonded Franchise Agreements;
- (v) that the Franchisee has failed to provide a Replacement Performance Bond complying with paragraph 4 of Schedule 12 of the relevant Bonded Franchise Agreement at least six (6) months prior to the scheduled expiry of the existing Performance Bond;
- (vi) that the Franchisee has failed to procure the execution and delivery of a new Performance Bond by a Bond Provider acceptable to the Secretary of State when required to do so in accordance with paragraph 4.3(c) of Schedule 12 of either of the relevant Bonded Franchise Agreements; or
- (vii) that the Franchisee's Annual Audited Accounts have not been received by the Secretary of State seven (7) Reporting Periods prior to the Bond Longstop Date,

provided that in the case of the Previous Franchise Agreement a demand may only be made prior to the date that is seven (7) Reporting Periods after the end of the Franchise Period (as such term is defined in the Original Franchise Agreement) and provided that in respect of this Agreement a demand may only be made in respect of a total amount in aggregate of **[REDACTED¹⁸⁷]**.

- (b) If the Secretary of State makes a demand under the Performance Bond, the Secretary of State shall, within a reasonable period, account to the Franchisee for the proceeds of such Performance Bond less the amount of the losses, liabilities, costs or expenses which, in the reasonable opinion of the Secretary of State, the Secretary of State or a Successor Operator has incurred or suffered or may be reasonably likely to incur or suffer including:
- (i) as a result of early termination of the Franchise Agreement; and/or
 - (ii) as a result of any failure by the Franchisee to perform or comply with any of its obligations to the Secretary of State under the Bonded Franchise Agreement or to a Successor Operator under any applicable Supplemental Agreement,
- and which are not otherwise recovered by the Secretary of State (including pursuant to Clause 7.3 of (i) the Funding Deed or (ii) the deed made between the Secretary of State, the Franchisee and the Guarantor (as defined under the Original Franchise Agreement) dated on or about the date of the Original Franchise Agreement specifying arrangements relating to the funding for the Franchisee by the Guarantor and giving rights to the Secretary of State in relation to such funding (the **"Original Funding Deed"**); and/or
- (iii) without prejudice to the generality of paragraph 4.5(b)(i), any of the following amounts which (a), in respect of any Franchisee Year, the Secretary of State has not offset against FFPP in accordance with paragraph 15 of Schedule 8.1A (Franchise Payments); or (b) which are not taken into account in any payment received by the Secretary of State pursuant to Clause 7.3 of (i) the Funding Deed or the Original Funding Deed:
 - (A) SoS Claims; and
 - (B) any other sums which the Secretary of State has the right in accordance with Schedule 8.1A (Franchise Payments) to offset against FFPP; and/or
 - (iv) any amount of the Final Working Capital Repayment not paid to the Secretary of State in accordance with paragraph 14 of Schedule 8.1A (Franchise Payments).
- (c) It is agreed that for the purposes of paragraph 4.5(b) losses, liabilities, costs or expenses which the Secretary of State or a Successor Operator has

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incurred or suffered or may be reasonably likely to incur or suffer shall include any losses, liabilities costs or expenses consequent upon the fact that the Successor Operator and any Train Operators that might succeed the Franchisee in providing all or any of the Franchise Services during the remainder of the Franchise Term may do so on a different financial basis with regard to amounts equivalent to the Franchise Payments and/or other amounts payable pursuant to Schedule 8.1A (Franchise Payments) of the relevant Bonded Franchise Agreement than the financial basis on which the Franchisee provided the Franchise Services pursuant to the relevant Bonded Franchise Agreement.

- (d) Nothing in paragraphs 4.5(b) and 4.5(c) shall oblige the Secretary of State to account to the Franchisee for any proceeds of such Performance Bond in the circumstances described in paragraphs 4.5(a)(iii), 4.5(a)(v) or 4.5(a)(vi) until such time as the Franchisee has procured a Replacement Performance Bond which complies with the requirements of this paragraph 4.
- (e) The Parties acknowledge and agree that the Franchisee shall under no circumstances be entitled to reimbursement, pursuant to Schedule 8.1A (Franchise Payments) or otherwise, of any losses, liabilities, costs or expenses incurred by the Franchisee arising out of or in connection with any lawful demand made by the Secretary of State under the Performance Bond pursuant to this paragraph 4.

4.6 **Characteristics of Performance Bond Provider**

- (a) In determining whether a Bond Provider under any Replacement Performance Bond is acceptable, the Secretary of State may exercise the Secretary of State's discretion and shall not be obliged to accept a Bond Provider accepted under any previous Performance Bond.
- (b) The Franchisee shall provide such information relating to any Bond Provider or proposed Bond Provider as the Secretary of State may require from time to time.

4.7 **Provision of more than one Performance Bond**

The Franchisee shall be permitted subject to the prior consent of the Secretary of State (such consent not to be unreasonably withheld or delayed) to meet its obligations to provide a valid and effective Performance Bond by providing up to three (3) valid and effective Performance Bonds, the aggregate value of which at all times is equal to the value determined under paragraph 4.2. With the exception of the value of each individual Performance Bond the provisions of the Franchise Agreement in relation to the Performance Bond shall be deemed to apply separately in relation to each such Performance Bond. Where more than one (1) Performance Bond is provided the Secretary of State shall have a discretion as to whether to make a demand under one or more of such Performance Bonds and the extent to which the Secretary of State accounts to the Franchisee for the proceeds of each such Performance Bond in accordance with the provisions of paragraph 4.5(b).

5. **Season Ticket Bond**

5.1 **Provision of Season Ticket Bond**

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The Franchisee shall procure that, for each Franchisee Year throughout the Franchise Term and during the relevant call period specified in Clauses 4 and 5 of the Season Ticket Bond, there shall be in place a valid and effective Season Ticket Bond substantially in the form of Appendix 2 (*Template Form of Season Ticket Bond*) to this Schedule 12.

5.2 Provision of Replacement Season Ticket Bond

No later than one (1) Reporting Period before the expiry of each Bond Year, the Franchisee shall provide to the Secretary of State (or procure that the Secretary of State receives) a Season Ticket Bond for the following Bond Year:

- (a) substantially in the form of Appendix 2 (*Template Form of Season Ticket Bond*) to this Schedule 12 (or in any other form acceptable to the Secretary of State in the Secretary of State’s discretion);
- (b) duly executed and delivered by a Bond Provider acceptable to the Secretary of State; and
- (c) in an amount determined in accordance with paragraph 5.3.

5.3 Amount of Season Ticket Bond

The amount of any Season Ticket Bond shall vary for each Reporting Period during the Bond Year to which the Season Ticket Bond relates in accordance with the following formula:

$$STBA = STL \times \frac{(RPI \times 100) + k \times Z}{100}$$

where:

STBA equals the amount of the Season Ticket Bond in the relevant Reporting Period;

STL equals in respect of such Reporting Period:

- (a) the maximum amount which would be payable by the Franchisee in respect of Season Ticket Fares under and in accordance with a Supplemental Agreement and paragraph 3.3 of Schedule 15.4 (Provisions applying on and after Termination) and the rights and liabilities of the Franchisee relating to an obligation of carriage under the terms of any Season Ticket Fares which were transferred under a Transfer Scheme relating to that Supplemental Agreement to a Successor Operator at that time; and
- (b) the Stored Credit Balance which would be held by the Franchisee,

if the Franchise Agreement were to terminate on any day during the Reporting Period (the “**Relevant Reporting Period**”) falling thirteen (13) Reporting Periods before such Reporting Period,

provided that for these purposes only:

- (i) Season Ticket Fares shall mean any Season Ticket Fare which expires more than seven (7) days after it first comes into effect;

- (ii) the Start Date shall be assumed, where relevant, to have occurred before the commencement of the Relevant Reporting Period; and
- (iii) if STL cannot reasonably be determined at the time at which the Franchisee is required under paragraph 5.4 to provide its estimate of the amount of the relevant Season Ticket Bond (including because the Relevant Reporting Period has not yet occurred), the Relevant Reporting Period shall be the Reporting Period falling twenty six (26) Reporting Periods before the Reporting Period in the relevant Bond Year;

RPI equals the quotient of the Retail Prices Index for the month for which the Retail Prices Index has most recently been determined at the time the Franchisee is required under paragraph 5.4 to provide its estimate of the amount of the relevant Season Ticket Bond divided by the Retail Prices Index for the month falling twelve (12) months before such month;

k has the value attributed to it in Schedule 5 (*Fares and Smart Ticketing*) for the Fare Year in which the Reporting Period in the relevant Bond Year falls; and

Z equals **+1 or**, if the Relevant Reporting Period falls twenty six (26) Reporting Periods before such Reporting Period, an amount equal to:

$\frac{(\text{RPI} \times 100) + k}{100}$

where **RPI** and **k** are determined for the twelve (12) months and the Fare Year preceding the twelve (12) months and the Fare Year for which **RPI** and **k** are respectively determined above.

- 5.4 The Franchisee shall supply to the Secretary of State, not later than three (3) Reporting Periods before the end of each Bond Year, its estimate of the amount of the Season Ticket Bond for each Reporting Period during the following Bond Year and shall supply such details as the Secretary of State may request in connection therewith.
- 5.5 The Franchisee and the Secretary of State shall endeavour to agree the amount of such Season Ticket Bond by no later than two (2) Reporting Periods before the end of each Bond Year. If the Parties are unable to agree the amount of the Season Ticket Bond in respect of any Reporting Period during the following Bond Year, the matter shall be resolved in accordance with the Dispute Resolution Rules.
- 5.6 If the amount of the Season Ticket Bond for each Reporting Period during a Bond Year has not been agreed two (2) Reporting Periods before the end of the preceding Bond Year, then, until the amount is agreed or determined in accordance with the Dispute Resolution Rules, the amount thereof shall be the amount determined by the Secretary of State.
- 5.7 The Secretary of State and the Franchisee may agree to increase or reduce the amount covered or required to be covered under a Season Ticket Bond from time to time and the Secretary of State may direct the Franchisee to amend the amount covered or required to be covered under a Season Ticket Bond when, in the Secretary of State's sole discretion, the STBA calculated pursuant to paragraph 5.3

above may not accurately represent the value of the Season Ticket suspense liabilities held by the Franchisee.

5.8 Demands under the Season Ticket Bond

- (a) The Season Ticket Bond shall be on terms that it is payable without further enquiry by the Bond Provider to the Secretary of State in full in London on first written demand by the Secretary of State on the Bond Provider, certifying as to any one or more of the following:
- (i) that the Franchise Agreement has terminated or expired;
 - (ii) that a railway administration order has been made in relation to the Franchisee pursuant to sections 60 to 62 of the Act; or
 - (iii) that an Event of Default:
 - (A) under paragraph 1.12(a) (*Bonds*) of Schedule 10.2 (*Events of Default and Termination Events*) in relation to the Season Ticket Bond; or
 - (B) under paragraph 1.12(c) (*Bonds*) of Schedule 10.2 (*Events of Default and Termination Events*),

has occurred (whether or not the Franchise Agreement is, or is to be, terminated as a result thereof).
- (b) If the Secretary of State makes a demand under the Season Ticket Bond, the Secretary of State shall account to the Franchisee for the proceeds of such Season Ticket Bond remaining following settlement of all liabilities or obligations of the Franchisee in respect of any Season Ticket Fares and/or Stored Credit Balance that may be transferred or is transferred whether under a Transfer Scheme (or otherwise) to a Successor Operator.
- (c) **NOT USED.**

5.9 Characteristics of Season Ticket Bond Provider

- (a) In determining whether a Bond Provider under any replacement Season Ticket Bond is acceptable, the Secretary of State may exercise the Secretary of State's discretion and shall not be obliged to accept a Bond Provider accepted under any previous Season Ticket Bond.
- (b) The Franchisee shall provide such information relating to any Bond Provider or proposed Bond Provider as the Secretary of State may require from time to time.
- (c) The Secretary of State agrees that, subject to receipt of a Season Ticket Bond in an amount determined in accordance with paragraph 5.3 in respect of any Bond Year, the Secretary of State shall release the relevant Bond Provider from any liability under the Season Ticket Bond provided in relation to the preceding Bond Year on the expiry of such Bond Year, provided that no Event of Default has occurred and is unremedied or continuing.

5.9A Provision of more than one Season Ticket Bond

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The Franchisee shall be permitted subject to the prior consent of the Secretary of State (such consent not to be unreasonably withheld or delayed) to meet its obligations to provide a valid and effective Season Ticket Bond by providing up to three (3) valid and effective Season Ticket Bonds, the aggregate value of which at all times is equal to the value determined under paragraph 5.3. With the exception of the value of each individual Season Ticket Bond the provisions of the Franchise Agreement in relation to the Season Ticket Bond shall be deemed to apply separately in relation to each such Season Ticket Bond. Where more than one (1) Season Ticket Bond is provided the Secretary of State shall have a discretion as to whether to make a demand under one or more of such Season Ticket Bonds and the extent to which the Secretary of State accounts to the Franchisee for the proceeds of each such Season Ticket Bond in accordance with the provisions of paragraph 5.8(b).

5.10 **Meaning of "Reporting Period"**

References in this paragraph 5 to a **"Reporting Period"** shall be construed, where the Franchisee so requests and the Secretary of State consents (such consent not to be unreasonably withheld), to be references to each consecutive seven (7) day period (or such other period as may be agreed) during such Reporting Period. The Franchisee may only make such a request in respect of a maximum of two (2) Reporting Periods in each Bond Year and only where the amount of the Season Ticket Bond over any such period would, in the reasonable opinion of the Franchisee, differ materially if determined by reference to such seven (7) day periods.

6. **Tax Compliance**

6.1 The Franchisee represents and warrants that as at the Start Date, it has notified the Secretary of State in writing of any Occasions of Tax Non-Compliance where the Franchisee (including where the Franchisee is an unincorporated joint venture or consortium, the members of that unincorporated joint venture or consortium) is the Affected Party (as defined in paragraph 6.3 below) or any litigation that it is involved in that is in connection with any Occasions of Tax Non-Compliance where the Franchisee (including where the Franchisee is a joint venture or consortium, the members of that joint venture or consortium) is the Affected Party.

6.2 If, at any point during the Franchise Term, an Occasion of Tax Non-Compliance occurs in relation to any Affected Party, the Franchisee shall:

- (a) notify the Secretary of State in writing of such fact within five (5) Weekdays of its occurrence; and
- (b) promptly provide to the Secretary of State:
 - (i) details of the steps which the Affected Party is taking to address the Occasion of Tax Non-Compliance and to prevent the same from recurring, together with any mitigating factors that it considers relevant; and
 - (ii) such other information in relation to the Occasion of Tax Non-Compliance as the Secretary of State may reasonably require.

6.3 For the purposes of this paragraph 6, the following defined terms shall have the following meanings:

- “Affected Party”** has the meaning given to it in the definition of Occasion of Tax Non Compliance;
- “DOTAS”** means the Disclosure of Tax Avoidance Schemes rules which require a promoter of tax schemes to tell HM Revenue & Customs of any specified notifiable arrangements or proposals and to provide prescribed information on those arrangements or proposals within set time limits as contained in Part 7 of the Finance Act 2004 and in secondary legislation made under vires contained in Part 7 of the Finance Act 2004 and as extended to National Insurance Contributions by the National Insurance Contributions (Application of Part 7 of the Finance Act 2004) Regulations 2012, SI 2012/1868 made under s.132A Social Security Administration Act 1992;
- “General Anti-Abuse Rule”** means:
- (a) the legislation in Part 5 of the Finance Act 2013; and
 - (b) any future legislation introduced into parliament to counteract tax advantages arising from abusive arrangements to avoid national insurance contributions;
- “Halifax Abuse Principles”** means the principle explained in the CJEU Case C-255/02 Halifax and others; and
- “Occasion of Tax Non-Compliance”** means, in respect of the Franchisee (including where Franchisee is an unincorporated joint venture or consortium, the members of that unincorporated joint venture or consortium) or the Franchisee (such party being the **“Affected Party”**):
- (a) any tax return of the Affected Party submitted to a Relevant Tax Authority on or after 1 October 2012 is found on or after 1 April 2013 is found to be incorrect as a result of:
 - (i) a Relevant Tax Authority successfully challenging the Affected Party under the General Anti-Abuse Rule or the Halifax Abuse Principle or under any tax rules or legislation that have an effect equivalent or similar to the General Anti-Abuse Rule or the Halifax Abuse Principle;
 - (ii) the failure of an avoidance scheme which the Affected Party was involved in, and which was, or should have been, notified to a Relevant Tax Authority under the

DOTAS or any equivalent or similar regime; and/or

- (b) any tax return of the Affected Party submitted to a Relevant Tax Authority on or after 1 October 2012 gives rise, on or after 1 April 2013, to a criminal conviction in any jurisdiction for tax related offences which is not spent at the Start Date or to a civil penalty for fraud or evasion.

7. Survival

For the avoidance of doubt this Schedule 12 and any other provisions of the Franchise Agreement reasonably required for the purpose of giving this Schedule full effect shall survive the termination or expiry of the Franchise Term (however arising) and continue in full force and effect in accordance with its terms.

APPENDIX 1 TO SCHEDULE 12
Template Form of Performance Bond

[DOCUMENT "PB" - PERFORMANCE BOND]

Dated [INSERT DATE]

[INSERT NAME OF BOND PROVIDER]

[Template] Performance Bond

*Secretary of State for Transport
33 Horseferry Road
London SW1P 4DR*

To: Secretary of State for Transport
33 Horseferry Road
London
SW1P 4DR
(The "**Secretary of State**")

PERFORMANCE BOND

Whereas:

We are informed that you have entered into:

- (a) a franchise agreement dated 28 September 2016 (the "**Original Franchise Agreement**") with XC Trains Limited of C/O Arriva PLC, 1 Admiral Way, Doxford International Business Park, Sunderland SR3 3XP (the "**Franchisee**") and which is due to expire on 01.59 on 18 October 2020 subject to any later date which it is extended in accordance with its terms;
- (b) a new franchise agreement dated [INSERT DATE] (the "**New Franchise Agreement**") with the Franchisee which is due to expire at 01.59 15 October 2023 on, subject to any later date which it is extended in accordance with its terms,

(the "**Bonded Franchise Agreements**")

Pursuant to the Bonded Franchise Agreements the Franchisee shall provide certain railway passenger services.

We are further informed that the Franchise Agreement requires that the Secretary of State receives a duly executed performance bond [(the "**Bond**") in the amount of [REDACTED¹⁸⁸] [REDACTED¹⁸⁹] **[Note: value to be determined in accordance with paragraph 4.2 of Schedule 12 to the Franchise Agreement]** (the "**Bond Value**") to (i) secure the performance by the Franchisee of and its compliance with their respective obligations under the Bonded Franchise Agreements and any Supplemental Agreement and/or (ii) otherwise secure payment to the Secretary of State of amounts which the Franchise Agreement provides are to be met from such performance bond.

Accordingly:

We hereby unconditionally and irrevocably undertake to pay to you in full in London, immediately upon receipt of your first written demand on us in the form set out in the Schedule and, without further enquiry, the sum specified therein. Such written demand shall state:

- (a) the Call Event (as defined in Clause 2 hereof) that has occurred; and
- (b) the date of occurrence of such Call Event.

¹⁸⁸ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹⁸⁹ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

You may call on us for the whole or part of the amount of our liability hereunder and you may make any number of calls on us up to a maximum aggregate amount of the Bond Value. All sums payable hereunder shall be paid free of any restriction or condition and free and clear of and (except to the extent required by law) without any deduction or withholding, whether for or on account of tax, by way of set-off or otherwise.

1. The undertaking given by us above shall operate provided that:
 - (a) our maximum liability shall be limited to a sum or sums not exceeding in the aggregate the amount of the Bond Value or such lesser amount as you may notify us of from time to time in writing, separately from any demand, shall constitute the Bond Value of this Bond; and
 - (b) notwithstanding anything contained herein, our liability hereunder shall expire on the earliest of:
 - (i) the date falling six (6) months after the date on which any railway administration order is made in relation to the Franchisee pursuant to sections 60 to 62 of the Railways Act 1993; and
 - (ii) where the Original Franchise Agreement has been terminated or expires and the New Franchise Agreement has been terminated before the Start Date (as defined under the New Franchise Agreement), the later of:
 - (A) the date falling one (1) month after the determination of the Purchase Price (as defined in any Supplemental Agreement under the Original Franchise Agreement) under each relevant Supplemental Agreement under the Original Franchise Agreement (as defined in the New Franchise Agreement); and
 - (B) the date falling seven (7) 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
 - (iii) where the Original Franchise Agreement has been terminated or expires and the New Franchise Agreement has been entered into and remains in force at the Start Date (as defined in the New Franchise Agreement), the later of:
 - (A) the date falling one (1) month after the determination of the Purchase Price (as defined in any Supplemental Agreement under the New Franchise Agreement) under each relevant Supplemental Agreement under the New Franchise Agreement; and
 - (B) the date that is seven (7) Reporting Periods after the date of receipt by the Secretary of State of the Franchisee's Annual Audited Accounts which include the Final Balance Sheet; and
 - (C) the end of the Franchise Term (as defined in the New Franchise Agreement); and

(D) three (3) years from the date of this Bond; and

(iv) 31 December 2025 (the "**Bond Longstop Date**").

except in respect of any written demand for payment complying with all the requirements hereof which is received by us on or before such date for either the Bond Value, or for such lesser amount which, when aggregated with any previous demands, amounts to the Bond Value or less, after which date this undertaking shall be void whether returned to us or not.

2. "**Call Event**" means, in this Bond, any of:

- (a) the termination or expiry of either of the Bonded Franchise Agreements in circumstances where there are liabilities or obligations outstanding from the Franchisee to the Secretary of State including where the Franchise Period has terminated or expired but provisions of the Franchise Agreement remain in operation and effect (including Schedule 8.1A (Franchise Payments));
- (b) the termination of the Original Franchise Agreement solely as a consequence of the occurrence of one (1) or more Events of Default or a Termination Event of a type described in paragraph 3.1 of Schedule 10.3 (Events of Default and Termination Events) of the Original Franchise Agreement in circumstances where the Secretary of State has incurred or expects to incur losses, liabilities, costs or expenses in connection with termination of the Cross Country franchise;
- (c) the termination of the New Franchise Agreement solely as a consequence of the occurrence of one or more Events of Default or a Termination Event of a type described in paragraphs 2.2, 2.3, 2.4 and 2.5 of Schedule 10.2 (*Events of Default and Termination Events*) of the New Franchise Agreement in circumstances where the Secretary of State has incurred or expects to incur losses, liabilities, costs or expenses in connection with early termination of the Cross Country franchise;
- (d) the making of a railway administration order in relation to the Franchisee pursuant to sections 60 to 62 of the Railways Act 1993;
- (e) the occurrence of an Event of Default under either of the Bonded Franchise Agreements in respect of:
 - (i) paragraph 1.12(a) of Schedule 10.2 (Events of Default and Termination Events) of the New Franchise Agreement or paragraph 2.13 (a) of Schedule 10.3 (Events of Default and Termination Events) of the Original Franchise Agreement in relation to the Performance Bond; or
 - (ii) paragraph 1.12(b) of Schedule 10.2 (Events of Default and Termination Events) of the New Franchise Agreement or paragraph 2.13(b) of Schedule 10.3 (Events of Default and Termination Events) of the Original Franchise Agreement,

whether or not the relevant Bonded Franchise Agreement is, or is to be, terminated as a result thereof;

- (f) the failure by the Franchisee to perform or comply with its obligations under any applicable Supplemental Agreement under either of the Bonded Franchise Agreements;
 - (g) the failure by the Franchisee to provide the Secretary of State with a Replacement Performance Bond which complies with paragraph 4 of Schedule 12 (Financial Covenants and Bonds) of the relevant Bonded Franchise Agreement at least six (6) months prior to the scheduled expiry of the existing Performance Bond;
 - (h) the failure by the Franchisee to procure the execution and delivery of a new Performance Bond by a Bond Provider in favour of and acceptable to the Secretary of State when required to do so in accordance with paragraph 4.3(c) of Schedule 12 (Financial Covenants and Bonds) under either of the Bonded Franchise Agreements; or
 - (i) the Franchisee's Annual Audited Accounts have not been received by the Secretary of State seven (7) Reporting Periods prior to the Bond Longstop Date.
3. This undertaking is made to you, your successors and your assigns.
 4. This undertaking shall not be discharged or released by time, indulgence, waiver, alteration (including, without limitation, by way of extension of the term) or release of, or in respect to, the obligations of the Franchisee under either of the Bonded Franchise Agreements 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 or via email transmission to us as follows:

Address: [INSERT BOND PROVIDER'S ADDRESS]

Email Address: [INSERT BOND PROVIDER'S EMAIL ADDRESS]
 6. References in this Bond to the Franchise Agreements and the Supplemental Agreements are to the Bonded 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 relevant Franchise Agreement.
 8. This Bond shall be governed by and construed in accordance with the laws of England and Wales.

Executed as a deed this [INSERT DAY AND MONTH] of [INSERT YEAR].

SCHEDULE TO THE PERFORMANCE BOND**SPECIMEN DEMAND NOTICE**

To: [INSERT NAME AND ADDRESS OF BOND PROVIDER]

[INSERT DATE OF DEMAND NOTICE]

We refer to the performance bond issued by you on [INSERT DATE OF BOND] (the "**Performance Bond**") in connection with:

- (a) a franchise agreement dated 28 September 2016 (the "**Original Franchise Agreement**") with XC Trains Limited of C/O Arriva PLC, 1 Admiral Way, Doxford International Business Park, Sunderland SR3 3XP (the "Franchisee") and which is due to expire on 01.59 on 18 October 2020 subject to any later date which it is extended in accordance with its terms;
- (b) a new franchise agreement dated [INSERT FRANCHISE AGREEMENT SIGNATURE DATE] (the "**New Franchise Agreement**") with the Franchisee which is due to expire at 01.59 15 October 2023 on, subject to any later date which it is extended in accordance with its terms,

(the "**Bonded Franchise Agreements**")

We hereby notify you that the following Call Event (as defined in the Performance Bond) occurred on [INSERT DATE OF OCCURRENCE OF CALL EVENT]: **[DRAFTING NOTE: DELETE AS APPROPRIATE]**

- [The relevant Bonded Franchise Agreement has **[terminated/expired]** on [INSERT DATE OF TERMINATION/EXPIRY] in circumstances where there are liabilities or obligations outstanding from the Franchisee to the Secretary of State. This includes where:
 - (1) the Franchise Period has terminated or expired but provisions of the New Franchise Agreement remain in operation and effect (including Schedule 8.1A (Franchise Payments); and/or
 - (2) there remain outstanding or the Secretary of State in any case has not received amounts which the relevant Bonded Franchise Agreements provide the Secretary of State shall be entitled to claim under the Performance Bond]
- [The Original Franchise Agreement has terminated solely as a consequence of the occurrence of one or more Events of Default or a Termination Event of a type described in paragraph 3.1 of Schedule 10.3 (Events of Default and Termination Events) on [INSERT DATE OF TERMINATION] in circumstances where the Secretary of State has incurred or expects to incur losses, liabilities, costs or expenses in connection with early termination of the [INSERT NAME OF THE FRANCHISE] franchise].
- [The New Franchise Agreement has terminated solely as a consequence of the occurrence of one or more Events of Default or a Termination Event of a type described in paragraphs 2.2, 2.3, 2.4 and 2.5 of Schedule 10.2 (Events of Default and Termination Events) on [INSERT DATE OF TERMINATION] in circumstances where the Secretary of State has incurred or expects to incur losses, liabilities,

costs or expenses in connection with early termination of the Cross Country franchise].

- [A railway administration order has been made in relation to the Franchisee pursuant to sections 60 to 62 of the Railways Act 1993.]
- [That an Event of Default under the relevant Bonded Franchise Agreement has occurred as applicable under:
 - [(a) paragraph 1.12(a) of Schedule 10.2 (Events of Default and Termination Events) of the New Franchise Agreement in relation to the Performance Bond; or]
 - [(b) paragraph 1.12(b) of Schedule 10.2 (Events of Default and Termination Events) of the New Franchise Agreement; or]
 - [(c) paragraph 2.13(a) of Schedule 10.3 (Events of Default and Termination Events) of the Original Franchise Agreement in relation to the Performance Bond; or]
 - [(d) paragraph 2.13(b) of Schedule 10.3 (Events of Default and Termination Events) of the Original Franchise Agreement],

whether or not the relevant Bonded Franchise Agreement is, or is to be, terminated as a result thereof.]

- [The Franchisee has failed to perform or comply with its obligations under any applicable Supplemental Agreement under the relevant Bonded Franchise Agreement.]
- [The Franchisee has failed to provide a Replacement Performance Bond (as described in the Franchise Agreement) complying with paragraph 4 of Schedule 12 (Financial Covenants and Bonds) of either of the Bonded Franchise Agreements at least six (6) months prior to the scheduled expiry of the existing Performance Bond.]
- [The Franchisee has failed to procure the execution and delivery of a new Performance Bond by a Bond Provider acceptable to the Secretary of State when required to do so in accordance with paragraph 4.3(c) of Schedule 12 (Financial Covenants and Bonds) of either of the Bonded Franchise Agreements.]

We hereby demand immediate payment from you of [SPECIFY ALTERNATIVE AMOUNT IF NOT BOND VALUE] or the Bond Value, whichever is smaller.

Please arrange for immediate payment of the relevant amount as follows:

[INSERT ACCOUNT DETAILS TO WHICH BOND MONIES TO BE PAID INTO]

Where used in this Notice, capitalised terms have the same meanings as in the relevant Franchise Agreement.

For and on behalf of **Secretary of State for Transport**

.....

Cross Country Franchise Agreement	Page 613 of 736	Appendix 1 to Schedule 12
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APPENDIX 2 TO SCHEDULE 12
Template Form of Season Ticket Bond

DOCUMENT "STB" - SEASON TICKET BOND

Dated [INSERT DATE]

[INSERT NAME OF BOND PROVIDER]

[Template] Season Ticket Bond

*Secretary of State for Transport
33 Horseferry Road
London SW1P 4DR*

To: Secretary of State for Transport
 33 Horseferry Road
 London
 SW1P 4DR
 (The "**Secretary of State**")

SEASON TICKET BOND

Whereas:

We are informed that you have entered into a franchise agreement dated [INSERT DATE] (the "**Franchise Agreement**") with XC Trains Limited of C/O Arriva PLC, 1 Admiral Way, Doxford International Business Park, Sunderland SR3 3XP (the "**Franchisee**") under which the Franchisee shall provide certain railway passenger services.

We are further informed that the Franchise Agreement requires that the Secretary of State receives a duly executed season ticket bond to secure the performance by the Franchisee of and its compliance with its obligations under the Franchise Agreement and any Supplemental Agreement.

Accordingly:

We hereby unconditionally and irrevocably undertake to pay to you in full in London, immediately upon receipt of your first written demand on us in the form set out in Schedule 1 (Specimen Demand Notice) and, without further enquiry, the sum specified therein. Such written demand shall state:

- (a) the Call Event (as defined in Clause 2) that has occurred; and
- (b) the date of occurrence of such Call Event.

You may call on us for the whole or part of the amount of our liability hereunder and you may make any number of calls on us up to a maximum aggregate amount of the Bond Value (as defined in Clause 3). All sums payable hereunder shall be paid free and clear of any restriction or condition and free and (except to the extent required by law) without any deduction or withholding, whether for or on account of tax, by way of set-off or otherwise.

1. The undertaking given by us above shall operate provided that:
 - (a) our maximum liability shall be limited to a sum or sums not exceeding in the aggregate the amount of the Bond Value on the date of occurrence of the Call Event stated in your written demand on us; and
 - (b) you may only call on us (whether on one or more occasions) in relation to one Call Event, such Call Event to be determined by reference to the first written demand which is received by us in the form set out in Schedule 1 (Specimen Demand Notice).
2. "**Call Event**" means, in this Bond, any of:
 - (a) the termination or expiry of the Franchise Agreement;
 - (b) the making of a railway administration order in relation to the Franchisee pursuant to sections 60 to 62 of the Railways Act 1993; or

- (c) the occurrence of an Event of Default under paragraph 1.12(a) (in relation to a Season Ticket Bond) or paragraph 1.12(c) of Schedule 10.2 (*Events of Default and Termination Events*) of the Franchise Agreement (whether or not the Franchise Agreement is, or is to be, terminated as a result thereof).
3. Bond Value shall mean, in respect of any date, the amount specified in Schedule 2 (Bond Value) as being the value of this Bond for such date (provided that for these purposes the date of occurrence of the Call Event specified in Clause 2(c) shall be deemed to be the last date for which a Bond Value is assigned under Schedule 2 (Bond Value) of this Bond).
4. Notwithstanding anything contained herein, but subject to Clause 5, our liability hereunder in respect of any Call Event shall expire no later than the end of the Franchise Term and:
- 4.1 in relation to a Call Event specified in Clauses 2(a) and 2(b), at noon (London time) on the date falling three (3) business days after the date of occurrence of such Call Event (business day being a day on which banks are open for business in the City of London); and
- 4.2 in relation to any other Call Event, on the day falling one (1) month after the last date for which a Bond Value is assigned under Schedule 2 of this Bond unless you notify us in writing prior to the relevant expiry time that the relevant Call Event has occurred (whether or not you call on us at the same time under this Bond).
5. If you do notify us under Clause 4 our liability shall expire on:
- 5.1 if the Call Event in respect of which you may call on us under this Bond is the termination of the Franchise Agreement, the date falling one (1) month after the determination of the Purchase Price (as defined in the Supplemental Agreement) under each relevant Supplemental Agreement;
- 5.2 if the Call Event in respect of which you may call on us under this Bond is the making of a railway administration order in relation to the Franchisee pursuant to sections 60 to 62 of the Railways Act 1993, the date falling three (3) months after the making of such railway administration order; or
- 5.3 if the Call Event in respect of which you may call on us under this Bond is the occurrence of an Event of Default under paragraph 1.12(a) (in relation to a Season Ticket Bond) or paragraph 1.12(c) of Schedule 10.2 (*Events of Default and Termination Events*) of the Franchise Agreement (whether or not the Franchise Agreement is, or is to be, terminated as a result thereof), the date falling one (1) month after your notification to us under Clause 4,
- except, in each case, in respect of any written demand for payment complying with all the requirements hereof which is received by us on or before the relevant date, after which date this undertaking shall be void whether returned to us or not.
6. This undertaking is made to you, your successors and your assigns.
7. This undertaking shall not be discharged or released by time, indulgence, waiver, alteration or release of, or in respect to, the obligations of the Franchisee under the Franchise Agreement or any Supplemental Agreement or any other circumstances that might operate as a release of a guarantor at law or in equity.

8. You may make demand or give notice to us under this Bond in writing by hand or via email transmission to us as follows:

Address: [INSERT BOND PROVIDER'S ADDRESS]

Email Address: [INSERT BOND PROVIDER'S EMAIL ADDRESS]

9. References in this Bond to the Franchise Agreement and the Supplemental Agreement are to the Franchise Agreement and the Supplemental Agreement as amended from time to time and terms defined therein shall have the same meaning in this Bond.

10. Where used in this Bond, capitalised terms have the same meanings as in the Franchise Agreement.

11. This Bond shall be governed by and construed in accordance with the laws of England and Wales.

Executed as a deed this [INSERT DAY AND MONTH] of [INSERT YEAR].

SCHEDULE 1 TO THE SEASON TICKET BOND

SPECIMEN DEMAND NOTICE

To: [INSERT NAME AND ADDRESS OF BOND PROVIDER]

[INSERT DATE OF DEMAND NOTICE]

We refer to the season ticket bond issued by you on [INSERT DATE OF BOND] (the "Season Ticket Bond") in connection with the franchise agreement (the "Franchise Agreement") entered into between the Secretary of State for Transport (the "Secretary of State") and [INSERT NAME OF FRANCHISEE] (the "Franchisee") on [INSERT FRANCHISE AGREEMENT SIGNATURE DATE].

We hereby notify you that the following Call Event (as defined in the Season Ticket Bond) occurred on [INSERT DATE OF OCCURRENCE OF CALL EVENT]: **[DRAFTING NOTE: DELETE AS APPROPRIATE]**

- [The Franchise Agreement **[terminated/expired]** on [INSERT DATE OF [TERMINATION/EXPIRY]].
- [A railway administration order has been made in relation to the Franchisee pursuant to sections 60 to 62 of the Railways Act 1993.]
- [An Event of Default occurred under paragraph 1.12(a) (in relation to a Season Ticket Bond) or paragraph 1.12(c) of Schedule 10.2 (*Events of Default and Termination Events*) of the Franchise Agreement.]

We hereby demand immediate payment from you of [SPECIFY ALTERNATIVE AMOUNT IF NOT BOND VALUE] or the Bond Value, whichever is smaller.

Please arrange for immediate payment of the relevant amount as follows:

[INSERT ACCOUNT DETAILS TO WHICH BOND MONIES TO BE PAID INTO]

Where used in this Notice, capitalised terms have the same meanings as in the Franchise Agreement.

For and on behalf of **Secretary of State for Transport**

.....

SCHEDULE 2 TO THE SEASON TICKET BOND

Bond Value

Call Event occurring in Reporting Period	Bond Value £
1	[INSERT AMOUNT]
2	[INSERT AMOUNT]
3	[INSERT AMOUNT]
4	[INSERT AMOUNT]
5	[INSERT AMOUNT]
6	[INSERT AMOUNT]
7	[INSERT AMOUNT]
8	[INSERT AMOUNT]
9	[INSERT AMOUNT]
10	[INSERT AMOUNT]
11	[INSERT AMOUNT]
12	[INSERT AMOUNT]
13	[INSERT AMOUNT]

SCHEDULE 13

RAIL INDUSTRY INITIATIVES AND INNOVATION OBLIGATIONS

Schedule 13.1:	Rail Industry Initiatives and Co-operation
	Appendix 1: Community Rail Partnerships
	Appendix 2: D&I Strategy Framework
Schedule 13.2:	NOT USED
Schedule 13.3:	NOT USED
Schedule 13.4:	NOT USED

Schedule 13.1

Rail Industry Initiatives and Co-operation1. **British Transport Police**

- 1.1 The Franchisee shall give due consideration to any request by the British Transport Police to provide suitable accommodation (including additional or alternative accommodation) or facilities at Stations to enable the British Transport Police to effectively perform the services owed to the Franchisee under any contract or arrangement entered into between the British Transport Police and the Franchisee.
- 1.2 The Franchisee shall:
- (a) work with the British Transport Police to:
 - (i) reduce crime and anti-social behaviour on the railway;
 - (ii) reduce minutes lost to police-related disruption;
 - (iii) increase passenger confidence with personal security on train and on station;
 - (b) work in partnership with the British Transport Police and conduct an annual assessment of the security and crime risk across the Franchise generally;
 - (c) co-operate with the British Transport Police to provide it with access to records and/or systems maintained by the Franchisee which relate to lost property to enable the British Transport Police to have access to such information when dealing with items reported to them as lost; and
 - (d) consult with the British Transport Police as to its requirements in relation to records and/or systems and shall ensure that the British Transport Police has access to such records and/or systems within fifteen (15) Weekdays of the Start Date and in any event within five (5) Weekdays of the notification of a crime by the British Transport Police.
- 1.3 The Franchisee shall consult with the British Transport Police in relation to plans to develop any part of the land within a Property Lease which could affect staff or customers and give the British Transport Police an opportunity to advise on and/or provide comments on any opportunities for the enhancement of safety and reduction in crime.

2. Community Rail Partnerships

- 2.1 The Franchisee shall become a member of and shall continue to participate in the Community Rail Partnerships relevant to the Passenger Services, including but not limited to the Community Rail Partnerships listed in the table in Appendix 1 to this Schedule 13.1 (and any successor Community Rail Partnerships). As part of such participation the Franchisee shall identify a senior Franchise Employee whose duties shall include:
- (a) supporting the Community Rail Partnerships;
 - (b) ensuring managerial focus within the Franchisee's organisation to enable the Franchisee to meet its Community Rail Partnership obligations; and
 - (c) leading on the Franchisee's development of community rail projects.

- 2.2 The Franchisee shall, at the request of the Secretary of State:
- (a) co-operate with the Secretary of State, Network Rail, the Community Rail Network, local transport authorities and/or any other person as the Secretary of State may nominate for the purposes of developing and furthering the success of the Community Rail Partnerships;
 - (b) co-operate with, establish and/or participate in any Community Rail Partnership;
 - (c) provide technical support in respect of timetable specification for the Community Rail Partnerships, including providing appropriate journey and revenue data; and
 - (d) co-operate in the development of the Secretary of State's initiatives to examine:
 - (i) options for a more cost effective delivery of the railway passenger services operated on any Community Rail Route (such options to include changes in working practices of the relevant Franchise Employees, reducing rolling stock lease costs and maximising opportunities for obtaining local funding of development at relevant stations and developing new ways of maintaining and renewing relevant railway infrastructure); and
 - (ii) the actual costs incurred in operating, maintaining and renewing the infrastructure relevant for such Community Rail Route.
- 2.3 The Franchisee shall use reasonable endeavours to develop and implement the Community Rail Partnership's initiatives in order to increase the use of the Passenger Services by non-users of the Passenger Services and tourists including, where appropriate, the development of and implementation of marketing strategies.
- 2.4 The Secretary of State may at any time, by proposing a Variation pursuant to paragraph 1.1(a) of Schedule 9.3 (*Variations to the Franchise Agreement*), require the Franchisee to develop and/or implement any changes to the Franchise Services and/or the transfer of any Franchise Services to another Train Operator in order to deliver either of the initiatives that were examined pursuant to paragraph 2.2(d).
- 2.5 The Franchisee shall:
- (a) become a member and shall continue to participate in the National Community Rail Steering Group;
 - (b) **NOT USED.**
- 2.6 No later than three (3) months before the start of (i) the second Franchisee Year and (ii) each subsequent Franchisee Year, the Franchisee shall provide to the Secretary of State a report ("**Community Rail Report**") setting out the distribution of the CRP Amount in full amongst the Community Rail Partnerships identified in paragraphs 2.1 and 2.2.
- 2.7 The Community Rail Report shall contain the following information:

- (a) a statement confirming that the Franchisee's distribution of funds to the Community Rail Partnerships takes account of the Secretary of State's then current published Community Rail Strategy;
 - (b) a statement confirming that the Franchisee has discussed the funding of the Community Rail Partnerships with the Community Rail Network and has taken sufficient account of the Community Rail Network's views;
 - (c) confirmation that the Franchisee has discussed with all Community Rail Partnerships the aims and needs of such partnerships and the funding required to achieve these;
 - (d) a table setting out the relevant portions of the CRP Amount which are to be paid to each Community Rail Partnership (on a non-indexed basis) over the remainder of the Franchise Term (assuming for these purposes that the Franchise Term in total is 26 Reporting Periods) (it being acknowledged that these amounts are likely to be different for each Community Rail Partnership);
 - (e) the activities undertaken by the Franchise pursuant to paragraph 2.3 of this Schedule 13.1;
 - (f) **NOT USED**; and
 - (g) such further information as the Secretary of State may from time to time request.
- 2.8 The Franchisee shall within thirty (30) days of the commencement of each Franchisee Year, make the relevant payments totalling the CRP Amount to each of the Community Rail Partnerships identified in the Community Rail Report for that year.
- 2.9 **NOT USED.**
- 2.10 **NOT USED.**
- 2.11 The Franchisee shall hold an annual conference for the Community Rail Partnerships' officers and station adopters in conjunction with the Community Rail Network to encourage the spread of best practice and to communicate plans for franchise development. The first such conference shall be held within six (6) months of the Start Date. Such conferences may be held virtually in the event that there are requirements to maintain social distancing.
- 2.12 **NOT USED.**
- 2.13 **NOT USED.**
- 2.14 In collaboration with the relevant Community Rail Partnership and other Stakeholders the Franchisee shall use reasonable endeavours to identify sources of third party funding for the Community Rail Partnerships and encourage such third parties to make funding commitments.
- 2.15 **NOT USED.**

3. **Development of Industry Systems**

The Franchisee shall fully and effectively co-operate (in a manner consistent with it being a responsible Train Operator of the Franchise) with Network Rail, the Secretary of State, ORR, HS2 Limited and all other relevant railway industry bodies and organisations in relation to the development of anything that can reasonably be considered to be a railway industry system including systems in relation to the attribution of train delay, the allocation of revenue and the collection and dissemination of industry wide information.

4. **Co-operation with Industry Schemes**

The Franchisee shall co-operate (in good faith) with the Secretary of State, the relevant Local Authority and/or any other affected railway industry parties in the development and the implementation of initiatives relating to its participation in multi-modal fares schemes and Traveline (the "**Industry Schemes**"), where such Industry Schemes relate to the Franchise.

5. **Co-operation with Local Authorities**

5.1 **General co-operation with Local Authority in respect of schemes**

- (a) The Franchisee shall co-operate in good faith with any Local Authority that seeks to promote a scheme for the provision of additional or varied Passenger Services including by attending meetings, contributing to feasibility schemes and project plans and liaising with relevant industry participants including Network Rail.
- (b) Paragraph 5.1 does not oblige the Franchisee to incur any cost in the actual provision of the revised Passenger Services.

5A. **Preparation for Potential Outcomes of the Williams Rail Review**

- 5A.1 The Parties acknowledge and agree that as at the date of this Agreement, the implications of the Williams Rail Review (including in respect of the Franchise) are unknown.
- 5A.2 The Franchisee shall (at the request of the Secretary of State) fully and effectively co-operate with the Secretary of State in connection with matters associated with the conclusions of the Williams Rail Review (including, inter alia, the identification and consideration of options, the provision of relevant information, advice and/or analysis) for the purposes of informing future decisions which the Secretary of State may make in respect of the Franchise.
- 5A.3 In consultation with the Secretary of State, the Franchisee shall assign a Franchisee WRR Contact and shall confirm the identity of such Franchisee WRR Contact to the Secretary of State by no later than the Start Date.
- 5A.4 The Franchisee WRR Contact will act as the Franchisee's primary point of contact with the Secretary of State in relation to all matters contemplated by this paragraph 5A.
- 5A.5 The Franchisee shall procure that the Franchisee WRR Contact shall be supported from time to time by such other Franchisee Employees as shall be reasonably required to ensure the Franchisee's compliance with this paragraph 5A.

- 5A.6 The Franchisee's obligations pursuant to this paragraph 5A shall include:
- (a) upon reasonable notice, attending meetings with the Secretary of State to discuss and provide an opinion on any relevant issues;
 - (b) providing information, data, reports, feasibility studies, business cases, comments, commentary and analysis reasonably required by the Secretary of State (the cost of any such externally commissioned documents to be agreed as between the Parties); and
 - (c) (where applicable) reviewing and commenting on implementation timetables and programmes for changes proposed by the Secretary of State,

in each case as may be required as a result of or in connection with the conclusions of the Williams Rail Review.

6. **NOT USED.**

7. **NOT USED.**

8. **Small and Medium-sized Enterprises**

8.1 The Franchisee shall at all times keep accurate and complete records of its use of and interaction with SMEs in delivering the Franchise Services.

8.2 By no later than 31 January in each year (and within one (1) month of the end of the Franchise Period) the Franchisee shall deliver to the Secretary of State a breakdown of the number of SMEs used by the Franchisee in providing the Franchise Services during the calendar year (or part thereof) which ended on the immediately preceding 31 December or at the end of the Franchise Period (as applicable).

9. **Apprenticeships**

9.1 The Franchisee shall at all times keep accurate and complete records of the Apprenticeships (and the training provided to apprentices) offered by the Franchisee and (if applicable) its immediate UK based supply chain in delivering the Franchise Services on a basis which is at all times compliant with Data Protection Legislation. In particular, in relation to each Reporting Period the Franchisee shall record:

- (a) the number of new Apprenticeships created, continuing and concluding in that Reporting Period;
- (b) the date of commencement and conclusion of each Apprenticeship; and
- (c) in relation to each Franchise Employee that commences an Apprenticeship in such Reporting Period:
 - (i) the level of such Apprenticeship as described in the Regulated Qualifications Framework;
 - (ii) the skills category (as described in the Standard Occupational Classification Codes) within which Apprenticeship falls;
 - (iii) the month and year of birth of that Franchise Employee;

- (iv) the current occupation of that Franchise Employee;
- (v) the gender of that Franchise Employee (except in relation to those Franchise Employees who do not permit disclosure);
- (vi) whether that Franchise Employee is of BAME origin (except in relation to those Franchise Employees who do not permit disclosure);
- (vii) the postcode of the location at which that Franchise Employee is principally employed at (e.g. the relevant train crew depot of train crew); and
- (viii) the first half of that Franchise Employee's residential postcode.

9.2 Subject to paragraph 9.2A, the Franchisee shall provide an Apprenticeships Data Collection Form to the Rail Delivery Group containing the information set out in paragraph 9.1 for the for the purpose of enabling the Secretary of State to monitor the achievement of the apprenticeship targets set out in the Transport Infrastructure Skills Strategy and check for any duplication of records.

9.2A In respect of information relating to each Franchisee Employee who commences an Apprenticeship and which is included in the Apprenticeships Data Collection Form:

- (a) the Franchisee shall not cause or permit any Personal Data whatsoever which relates to any Franchisee Employee who commences an Apprenticeship to be included in any Apprenticeships Data Collection Form or otherwise shared with the Secretary of State or the Rail Delivery Group (whether in written form, on the telephone, or otherwise) and, accordingly, the Franchisee shall convert into anonymised aggregated form all Personal Data that is in the first instance included in the Apprenticeships Data Collection Form prior to sharing the Apprenticeships Data Collection Form with the Rail Delivery Group for the purpose described in paragraph 9.2 (and the Franchisee hereby acknowledges and agrees that if it should be possible in any way to identify any Franchise Employee from the anonymised aggregated data there would be a disclosure of Personal Data by the Franchisee and, accordingly, the Franchisee would be in contravention of this paragraph 9.2A(a) in that event); and
- (b) the Parties acknowledge that, notwithstanding the requirements of paragraph 9.2A(a) including the absolute obligation that is imposed on the Franchisee to effect the anonymised aggregation of the Personal Data comprised in information relating to each Franchisee Employee who commences an Apprenticeship, it may still be possible from time to time to identify the Franchise Employee from the Apprenticeships Data Collection Form and that there will be processing of Personal Data inherent in that circumstance, and accordingly, the Franchisee shall in preparation for that possibility ensure that:
 - (i) the Franchise Employee who commences an Apprenticeship is made aware that their Personal Data may be shared with the Rail Delivery Group (and onward to the Secretary of State) for the purpose described in paragraph 9.2;
 - (ii) the Personal Data is collected and processed by or on behalf of the Franchisee in accordance with the Data Protection Legislation;

- (iii) the fairness principle of the Data Protection Legislation is satisfied including by issuing all relevant privacy notices in relation to the collecting and processing of the Personal Data by the Franchisee, and for the disclosure to and subsequent processing by the Rail Delivery Group (and the Secretary of State) for the purpose described in paragraph 9.2;
- (iv) there is a lawful basis for the collection and processing of the Personal Data by the Franchisee, and for the disclosure to and subsequent processing by the Rail Delivery Group (and the Secretary of State) for the purpose described in paragraph 9.2; and
- (v) the Franchise Employee is made aware that their Personal Data shall be retained by the Secretary of State for a period of seven (7) years following its receipt of the same from the Rail Delivery Group.

9.2B Nothing in paragraph 9.2A(b) is intended by the Parties to absolve the Franchisee from its obligations under paragraph 9.2A(a)).

9.3 By no later than 31 January each year (and within one (1) month of the end of the Franchise Period) the Franchisee shall deliver to the Rail Delivery Group the breakdown of the information recorded pursuant to paragraph 9.1, and (subject to the requirements of paragraphs 9.2) it shall record this during the calendar year (or part thereof) which ended on the immediately preceding 31 December or at the end of the Franchise Period (as applicable), and that information is to be transmitted via the completed Apprenticeships Data Collection Form and submitted to the Rail Delivery Group for onward transmission to the Secretary of State on an annual basis or at such other time as the Secretary of State may specify.

9.4 The Franchisee shall ensure that the number of Franchise Employees who begin an Apprenticeship in any Franchisee Year shall constitute **[REDACTED¹⁹⁰]** of the total number of Franchise Employees (the "**Apprenticeships Requirement**"), provided that:

- (a) the Apprenticeships Requirement shall be subject to a pro rata reduction in relation to the first Franchisee Year, it being acknowledged that for such purposes the first Franchisee Year shall be treated as commencing on the date on which the Skills and Leadership Strategy is adopted by the Franchisee pursuant to paragraph 9.5 of this Schedule 13.1; and
- (b) the Apprenticeships Requirement shall be subject to a pro rata reduction in respect of the Final Franchisee Year in the event that the Final Franchisee Year consists of less than thirteen (13) Reporting Periods,

and the Franchisee shall provide evidence of the satisfaction of the Apprenticeships Requirement to the Secretary of State within ten (10) days of the end of each Franchisee Year.

9.5 The Franchisee shall submit a draft Skills and Leadership Strategy to the Secretary of State by no later than three (3) months after the Start Date. Such draft Skills

¹⁹⁰ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

and Leadership Strategy shall set out the comprehensive, robust and deliverable strategy of the Franchisee for providing an appropriately skilled and trained workforce of Franchise Employees based on a skills gap analysis including through the delivery of the Apprenticeships specified in the Apprenticeships Data Collection Form. The draft Skills and Leadership Strategy shall take into account the likely short, medium and long term requirements of the Franchisee and any Successor Operator including in the context of expected change to the Franchise Services (including as a result of technological change) and the age profile of the Franchise Employees. The draft Skills and Leadership Strategy shall include a management/leadership maturity model to help target and improve investment in developing leadership and management. The Franchisee shall meet with the Secretary of State to discuss the draft Skills and Leadership Strategy and shall have due regard to the opinions of the Secretary of State. The Skills and Leadership Strategy shall be finalised and adopted by the Franchisee within six (6) months of the Start Date and the Franchisee shall implement it in accordance with its terms from the date that it is adopted.

9.6 The Franchisee shall:

- (a) undertake and complete a review of its Skills and Leadership Strategy and compliance with the Apprenticeships Data Collection Form during each of the second (2nd) and fourth (4th) Franchisee Years; and
- (b) provide the Secretary of State with any proposed revisions to the Skills and Leadership Strategy and the Apprenticeships Data Collection Form arising out of such review by no later than the end of each such Franchisee Year.

9.7 The aim of such review shall be to update the Skills and Leadership Strategy by reference to an updated skills gap analysis and to ensure that the Skills and Leadership Strategy continues to effectively achieve its purposes to the greatest extent reasonably practicable. The review shall check compliance with the targets contained in the Apprenticeships Data Collection Form and if they have not been met shall propose robust and effective strategies and methodologies to be contained in the revised Skills and Leadership Strategy to ensure delivery in future. The review may propose amendments to the Apprenticeships Data Collection Form that are consistent with any proposed revisions to the Skills and Leadership Strategy. Any revisions to the Skills and Leadership Strategy (including the Apprenticeships Data Collection Form) shall require the consent of the Secretary of State (such consent not to be unreasonably withheld or delayed). The Franchisee shall implement any revised Skills and Leadership Strategy in accordance with its terms from the date that the Secretary of State consents to the relevant revisions.

9.8 **NOT USED.**

9A. **The Prince's Trust Youth Programmes**

9A.1 **Definitions**

- (a) In this paragraph 9A, unless the context requires otherwise, the following words and expressions have the following meanings:

"Get Into Programme" means The Prince's Trust programme which helps young people to access job opportunities by providing 'on the job'

experience and training with potential permanent job offers available at the end; and

“The Prince's Trust” means a charity that operates throughout the UK to aid young people aged 11 to 30 to get into jobs, education and training. The Prince's Trust is comprised of both a charity and a trading company. The charity is The Prince's Trust, incorporated by Royal Charter (RC000772), with registered charity number (1079675) in England and Wales and the trading company is Prince's Trust Trading Limited with registered company number (03161821).

9A.2 The Prince's Trust Get Into Programmes

- (a) The Franchisee shall deliver the following activities through the Get Into Programme:
- (i) short vocational skills training and work experience courses which offers potential employment to successful participants; and
 - (ii) one-to-one mentoring support for young people who have completed a Prince's Trust programme.
- (b) The Franchisee shall undertake **[REDACTED¹⁹¹]** Get Into Programme **[REDACTED¹⁹²]** in accordance with 9A.2(a)(i) within twelve (12) months of the Start Date and the Franchisee shall increase the number of courses delivered in future Franchisee Years to a minimum of **[REDACTED¹⁹³]** in any future Franchise Year and the Franchisee shall ensure that such Get Into Programme courses are delivered across the geographical area of the Franchise.
- (c) The Franchisee shall work with The Prince's Trust to identify the needs which the Get Into Programme can best address and shall submit a project plan developed with The Prince's Trust to the Secretary of State by no later than **[REDACTED¹⁹⁴]** after the Start Date. Such project plan shall specify the detail of how the Franchisee will deliver the activities specified in paragraph 9A.2(a) and 9A.2(b) including the proposed delivery dates. The Franchisee shall agree the project plan with the Secretary of State and shall implement it in accordance with its terms.

¹⁹¹ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹⁹² 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹⁹³ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹⁹⁴ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

- (d) The Franchisee shall update the project plan in each Franchisee Year to ensure that it continues to effectively achieve its purpose, and shall provide the updated project plan to the Secretary of State for approval no later than on each anniversary of the Start Date. Following agreement of the revised project plan with the Secretary of State the Franchisee shall implement such revised project plan in accordance with its terms.

9B. Diversity and Inclusion

9B.1 Diversity and Inclusion Strategy

- (a) Within 12 weeks of the Start Date, the Franchisee shall prepare a draft of its D&I Strategy and submit it to the Secretary of State. The draft shall include details of:
- (i) the diversity and inclusion principles that the Franchisee maintains and/or will establish within its organisation, including but not limited to, in relation to recruitment practices, working environments and procedures
 - (ii) the activities, policies and procedures that the Franchisee will employ (for example, including in relation to targeted recruitment policies, promotion of flexible working, mentoring programmes, school visits and annual staff diversity and inclusion surveys) that will demonstrate that it is an inclusive employer;
 - (iii) how the Franchisee will evidence compliance with its diversity principles, policies and procedures against the Diversity KPIs (as defined in paragraph 9B.3);
 - (iv) how it will achieve and/or maintain diversity accreditation in accordance with a Recognised Accreditation Scheme in accordance with paragraph 9B.2; and
 - (v) how the Franchisee will comply with its Recruitment Objectives.
- (b) The Secretary of State may provide comments on the draft D&I strategy to the Franchisee and the Parties shall use all reasonable endeavours to agree the form of D&I Strategy within four (4) months of the date on which it was provided to the Secretary of State pursuant to paragraph 9B.1(a).
- (c) If the Parties are unable to agree a D&I Strategy within the period set out in paragraph 9B.1(b) the Secretary of State may reasonably determine the D&I Strategy.
- (d) The Secretary of State may, from time to time, recommend such changes to the Approved D&I Strategy as it considers reasonable.
- (e) The Franchisee shall use all reasonable endeavours to implement and comply with the Approved D&I Strategy.

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

9B.2 Diversity Accreditation

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

9B.3 Performance Reporting

- (a) The Franchisee shall develop D&I Initiatives KPIs and D&I Characteristics KPIs (together, the "**Diversity KPIs**").
- (b) The Franchisee shall design its Diversity KPIs with a focus on such areas as the Secretary of State may notify to it and in accordance with any guidance as the Secretary of State may provide.
- (c) The Franchisee shall collect suitable data to evidence its performance against the Diversity KPIs of which it shall:
 - (i) provide details on as part of the D&I Annual Report; and
 - (ii) make available, in an orderly fashion, to any Successor Operator.
- (d) The Franchisee shall submit a D&I Annual Report to the Secretary of State on the D&I Annual Reporting Date.
- (e) The Parties acknowledge and agree that the Franchisee's D&I Annual Report shall be provided substantially in the same form as the Secretary of State may request and shall include:
 - (i) evidence of the Franchisee's performance against, and impact of implementing, its D&I Strategy;
 - (ii) evidence of the Franchisee's performance against the Diversity KPIs;
 - (iii) evidence of the Franchisee working towards achieving and maintaining diversity accreditation in accordance with paragraph 9B.2;
 - (iv) evidence of the Franchisee establishing diversity in its procurement process and using a diverse supply chain;

- (v) evidence of the Franchisee's performance against its Recruitment Objectives;
- (vi) a record of any other diversity data collected by the Franchisee in respect of its workforce; and
- (vii) such other information and data as the Secretary of State may reasonably request at least three (3) months prior to the D&I Annual Reporting Date.

9B.4 Diversity and Inclusion Champion

- (a) As soon as reasonably practicable and by no later than 31 October 2020, the Franchisee shall (to the extent that the Franchisee has not already done so) nominate a board director of the Franchisee or a member of the senior executive team of the Franchisee to act as D&I Champion.
- (b) The Franchisee shall ensure that the D&I Champion role is filled as soon as reasonably practicable after such role becomes vacant throughout the term of this Franchise Agreement.

9B.5 Recruitment Targets and Objectives

- (a) The Franchisee shall set out suitable recruitment targets and associated timeframes from time to time in respect of all new recruits across all grades, jobs, positions and roles (the "**Recruitment Targets**") in its D&I Strategy which, amongst other things, shall include:
 - (i) gender equality targets, including a target of 50% female new recruits across all grades, jobs, positions and roles; and
 - (ii) targets specifying the percentage of new recruits across all grades, jobs, positions and roles which will be ethnic minorities.
- (b) The Secretary of State shall consider the proportionality of the Recruitment Targets by reference to:
 - (i) the demographics of the workforce in each region as indicated by the most recent Labour Force Survey produced by the Office for National Statistics;
 - (ii) the individual circumstances of the Franchisee; and
 - (iii) any other information the Secretary of State reasonably determines to be relevant.
- (c) The Franchisee shall provide to the Secretary of State all evidence to allow the Secretary of State to reasonably determine whether any Recruitment Target is proportionate, as reasonably requested by the Secretary of State.
- (d) The Franchisee shall use all reasonable and lawful endeavours to:
 - (i) be objective, transparent and fair in its recruitment processes;
 - (ii) meet Recruitment Targets; and

- (iii) improve retention rates of underrepresented groups
(together, the "**Recruitment Objectives**").
- (e) The Franchisee shall report on its performance against its Recruitment Objectives as part of its D&I Annual Report, together with relevant supporting evidence. Such supporting evidence may include details of Franchisee policies and procedures such as: advertising across a variety of channels to reach a broad range of candidates; blind sifting applications; engaging in CV blind interviewing; engaging in outreach programmes; establishing a returners policy; and/or establishing mentoring schemes.
- (f) The Secretary of State shall review the Franchisee's performance against the Franchisee's Recruitment Objectives as part of the Franchisee's D&I Annual Report.
- (g) The Secretary of State shall keep the Recruitment Targets under review and may adjust and/or suspend any Recruitment Target the Secretary of State reasonably determines to no longer be proportionate.
- (h) Nothing in this paragraph 9B.5 or this Schedule 13.1 is intended to impose or require any quota.

9B.6 **Data – collecting, monitoring and reporting**

- (a) During the Franchise Term, the Franchisee shall monitor the diversity profile of its workforce and collect Workforce Diversity Data.
- (b) Within 6 weeks of the date of the Franchise Agreement, the Secretary of State may notify the Franchisee of any further data requirements it may have, including:
 - (i) any additions to the scope of the Workforce Diversity Data the Franchisee is required to monitor and collect;
 - (ii) the frequency in which it shall be measured or collected; and
 - (iii) the form in which the Franchisee is required to deliver this to the Secretary of State via such data hub as the Secretary of State may direct.
- (c) The Franchisee shall use reasonable endeavours to collect and submit this data in accordance with the Secretary of State's data requirements.
- (d) The Franchisee acknowledges and agrees that the Secretary of State may use any data provided to it by the Franchisee pursuant to this Schedule 13.1 for analytical and policy development purposes.
- (e) The Franchisee shall provide a summary report to the Secretary of State of its Workforce Diversity Data by no later than the date which is six (6) months after date of the Franchise Agreement.
- (f) The Franchisee shall provide a detailed report to the Secretary of State of its Workforce Diversity Data by no later than the date which is twelve (12) months after the date of this Franchise Agreement and on each anniversary of this date thereafter.

- (g) The Franchisee shall organise the detailed report in accordance with the characteristics listed in the definition of Workforce Diversity Data.

9B.7 Improvement and Remedial Plans

- (a) If and to the extent that the Secretary of State considers that the Franchisee has not adequately:
- (i) delivered its D&I Strategy;
 - (ii) achieved accreditation in accordance with its D&I Strategy or has otherwise lost its accreditation;
 - (iii) used all reasonable and lawful endeavours to deliver against its Recruitment Objectives; or
 - (iv) collected, monitored and reported on data pursuant to paragraph 9B.6,

it may notify the Franchisee that it requires it to deliver a plan for how it will improve its performance in the relevant area (a "**D&I Improvement Plan**") for its approval. The D&I Improvement Plan shall include the Franchisee's proposed timeline for implementing any changes or actions.

- (b) If the Parties cannot agree the D&I Improvement Plan within 20 Weekdays from the Secretary of State's notification pursuant to paragraph 9B.7(a), the Secretary of State may impose such D&I Improvement Plan as it considers reasonable.
- (c) If the Franchisee fails to implement the D&I Improvement Plan, then the Secretary of State may serve a Remedial Plan Notice on the Franchisee in accordance with paragraph 2 of Schedule 10.1.

10. Sustainability and other related initiatives

10.1 Sustainable Development Strategy

- (a) The Franchisee agrees and acknowledges that it developed the Sustainable Development Strategy in accordance with paragraph 17 (*Sustainability and other related initiatives*) of Schedule 13 (*Information and Industry Initiatives*) of the Previous Franchise Agreement, and agrees and acknowledges that the Sustainable Development Strategy shall apply from the Start Date. The Franchisee shall consult with the RSSB and such other Stakeholders as agreed between the Secretary of State and the Franchisee (or, in the absence of agreement, such Stakeholders as the Secretary of State shall determine) in order to agree any amendments and/or updates to the Sustainable Development Strategy required in respect of:
- (i) key priority sustainable development areas;
 - (ii) the outcomes associated with such key priority and sustainable development areas;
 - (iii) the annual traction carbon trajectory (CO₂E/vehicle km) for the duration of the Franchise Term; and

- (iv) target levels according to the Rail Safety and Standards Board Sustainable Development Self-Assessment Framework that will be reached by the end of two (2) Franchisee Years and five (5) Franchisee Years (in the case of an extension),

by no later than six (6) months after the Start Date.

- (b) **NOT USED.**
- (c) The Franchisee shall at all times comply with the Sustainable Development Strategy. Any amendments to the Sustainable Development Strategy must be agreed by the Secretary of State.
- (d) By no later than three (3) months following the end of the two (2) Franchisee Years, the Franchisee shall procure a suitably qualified independent body (such independent body to be appointed only with the prior written approval of the Secretary of State) to undertake an assessment of performance against the Rail Safety and Standards Board's Sustainable Development Self-Assessment Framework and produce a report in respect of such assessment, such assessment to review performance against the targets set out in the Sustainable Development Strategy.
- (e) The Franchisee shall submit a copy of the assessment report produced by the independent body pursuant to paragraph 10.1(d) to the Secretary of State within six (6) months following the end of the two (2) Franchisee Years.
- (f) Where the assessment report identifies a significant shortfall against the targets set out in the Sustainable Development Strategy, the Franchisee must as soon as reasonably practicable and in any event within two (2) months, produce an improvement plan which, in the reasonable opinion of the Secretary of State, is capable of achieving the targets set out within the Sustainable Development Strategy.
- (g) The Franchisee shall use all reasonable endeavours to implement the improvement plan referred to in paragraph 10.1(f) and improve its performance against the targets set out in the Sustainable Development Strategy against the agreed timeframes for performance as set out in the revised Sustainable Development Strategy.
- (h) The Franchisee shall, within three (3) months following the end of each Franchisee Year, provide to the Secretary of State a report showing:
- (i) progress against the outcomes in key priority sustainable development areas;
 - (ii) progress on development of Franchise Employees to ensure they have the skills and knowledge required to deliver a sustainable franchise; and
 - (iii) proposed revisions to the Sustainable Development Strategy (such revisions to include those revisions reflecting feedback and advice from Stakeholders, and which have been consulted on with RSSB).
- (i) The Franchisee shall obtain the Secretary of State's consent to any amendments to the Sustainable Development Strategy proposed pursuant

to paragraphs 10.1(a) or 10.1(h)(iii) before such amendments are adopted and the Sustainable Development Strategy updated.

- (j) On request by the Secretary of State, the Franchisee shall publish (in such form as the Secretary of State may reasonably determine):
 - (i) all or any part of its Sustainable Development Strategy; and/or
 - (ii) all or any of the information described in paragraphs 10.1(a) or 10.1(h)(i) to (h)(iii).

10.2 Environmental Management and Sustainability Accreditation

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

10.3 NOT USED.

11. National Joint ROSCO Project

11.1 National Joint ROSCO Project

- (a) The Franchisee shall co-operate in good faith with the relevant third parties involved in the implementation of the National Joint ROSCO Project (including Network Rail and the relevant NJRP ROSCOs) with the intention of ensuring the timely, efficient and cost effective implementation of the National Joint ROSCO Project and, in particular assisting in the development, installation, testing, commissioning and implementation of the relevant ERTMS equipment on the first in class units for which the Franchisee is identified as the "**Lead TOC**" under the National Joint ROSCO Project.
- (b) **NOT USED;**
- (c) If requested by the Secretary of State, the Franchisee shall provide an update on their engagement with the National Joint ROSCO Project at the Franchise Performance Meetings.

11.2 NOT USED.

11.3 NOT USED.

11A. European Train Control System

- 11A.1 The Franchisee shall co-operate in good faith acting reasonably and with each of the Department for Transport, Network Rail, any relevant ROSCO and any other third party in connection with the development, implementation and operational

introduction on the routes of any system which is intended to provide European Train Control System ("**ETCS**").

11A.2 In accordance with paragraph 11A.1, the Franchisee shall provide reasonable assistance to the Secretary of State, Network Rail, any relevant ROSCO and any other relevant third party, which may, amongst other things, include:

- (a) providing advice to the Secretary of State in respect of any ETCS proposals and plans;
- (b) supporting planning activities alongside other key stakeholders;
- (c) ensuring that suitable equipment is fitted to rolling stock if needed during the Franchise Term, which will amount to a Change; and
- (d) developing and if required implementing driver training programmes, which will amount to a Change.

12. **NOT USED.**

13. **HS2 Project**

13.1 The Franchisee shall from the Start Date until the completion of the HS2 Project fully and effectively co-operate and engage constructively with all relevant parties responsible for the delivery of the HS2 Project with the intention of assisting in the timely, efficient and cost effective implementation and delivery of the HS2 Project in a manner which provides the best overall solution for the network. To the extent that the HS2 Project leads to the Franchisee having rights under railway industry procedures including Network Change or Station Change the Franchisee shall not act in a way designed to directly or indirectly prevent, prejudice or frustrate the delivery of the HS2 Project and the Franchisee shall not unreasonably raise any objection under any railway industry procedure including Network Change or Station Change. It is acknowledged that the Franchisee may make reasonable objections with a view to mitigating the impact of the HS2 Project and their implementation on passengers and the Franchise Services, while recognising the need for the HS2 Project to be able to be undertaken in a reasonable manner.

13.2 The Franchisee shall provide such information in respect of the HS2 Project as the Secretary of State may reasonably request from time to time.

13.3 In order to facilitate commencement of the High Speed Services, and notwithstanding the Franchisee's general obligations under Paragraphs 13.1 and 13.2 above, the Franchisee shall also co-operate with the HS2 Shadow Operator specifically as follows:

- (a) co-operate with the HS2 Shadow Operator in its development of a report on the optimisation of the train services specification for conventional and high speed train services operated post the introduction of the High Speed Services ("**HS2 TSS Options Report**"), such co-operation to include responding to all consultations requested by the HS2 Shadow Operator on this matter in a timely manner, participating in working groups, and any other associated activities reasonably required by the Secretary of State;
- (b) further to the completion of the HS2 TSS Options Report, if during the Franchise Term the Secretary of State issues one or more draft Integrated Service TSRs to the HS2 Shadow Operator, the Franchisee shall, on request

by the HS2 Shadow Operator or the Secretary of State, review the proposed train service requirements relating to the operation of High Speed Services and share its views on whether the Franchisee considers, from the perspective of the Franchise Services it operates, that either of these cannot be delivered due to:

- (i) rolling stock availability, capability and/or capacity;
- (ii) capacity constraints and planning rules on the HS2 Network and/or any affected Route;
- (iii) capacity constraints at Depots and/or stations; and
- (iv) the interaction with any train service requirements being operated or to be operated by the Franchisee.

14. **Suicide Prevention Strategy**

14.1

- (a) As soon as reasonably practicable after the Start Date the Franchisee shall, in consultation with the British Transport Police and the wider cross-industry suicide prevention group, develop a draft suicide prevention plan that fully delivers and complies with the Suicide Prevention Strategy and the Suicide Prevention Duty Holders' Group's 9 Point Plan and submit it to the Suicide Prevention Duty Holders Group (or such other group as may replace the Suicide Prevention Duty Holders Group from time to time) for approval.
- (b) The Franchisee shall make such amendments to the draft suicide prevention plan as:
 - (i) the British Transport Police shall require for the purposes of ensuring that it fully delivers and complies with the Suicide Prevention Strategy; and
 - (ii) the Suicide Prevention Duty Holders Group (or such other group as may replace the Suicide Prevention Duty Holders Group from time to time) shall require for the purposes of ensuring that it fully delivers and complies with the Suicide Prevention Duty Holders' Group's 9 Point Plan.
- (c) The Franchisee shall submit a completed suicide prevention plan (the "**Plan**") to the Secretary of State together with written confirmation from the British Transport Police that the Plan complies with the requirements of the Suicide Prevention Strategy and from the Suicide Prevention Duty Holders Group (or such other group as may replace the Suicide Prevention Duty Holders Group from time to time) that the Plan complies with the Suicide Prevention Duty Holders' Group's 9 Point Plan as reasonably practicable and in any event within twelve (12) months of the Start Date.
- (d) The Franchisee shall review and update the Plan:
 - (i) at least every twelve (12) months; and

- (ii) immediately following any amendment to, or replacement of, the Suicide Prevention Strategy and/or the Suicide Prevention Duty Holders' Group's 9 Point Plan.

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

- 14.2 The Franchisee shall implement the Plan as it may be revised and/or updated pursuant to paragraph 14.1 in accordance with its then prevailing provisions.

15. **Safeguarding Strategy**

- 15.1 As soon as reasonably practicable after the Start Date, the Franchisee shall, in consultation with the British Transport Police and such other relevant groups as the Franchisee and/or the British Transport Police consider appropriate, develop a draft safeguarding strategy.

- 15.2 The draft safeguarding strategy shall be submitted to the British Transport Police for its approval that the Safeguarding Strategy complies with the requirements of the Safeguarding on Rail Audit and the Franchisee shall take into account any comments or amendments proposed by:

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

as are required to ensure that such draft safeguarding strategy complies with the Safeguarding on Rail Audit.

- 15.3 The Franchisee shall deliver a copy of the Safeguarding Strategy to the Secretary of State together with written confirmation of the approval issued by the British Transport Police that the Safeguarding Strategy complies with the requirements of the Safeguarding on Rail Audit as soon as reasonably practicable following such approval and in any event within twelve (12) months of the Start Date.

- 15.4 The Franchisee shall review and, as necessary, update the Safeguarding Strategy:

- (a) at least every (twelve) 12 months; and
- (b) within one (1) month following the publication of any amendment to, or replacement of the Safeguarding on Rail Audit.

- 15.5 Any review and necessary updates to the Safeguarding Strategy in accordance with paragraph 15.4 shall take into account any changes to, or replacement of the

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

15.6 The Franchisee shall undertake any review and necessary updates to the Safeguarding Strategy in accordance with paragraph 15.4 in consultation with the British Transport Police and such other relevant groups as the Franchisee and/or the British Transport Police consider appropriate. The Franchisee shall submit such updated Safeguarding Strategy to the British Transport Police within one (1) month of such review for its approval that the Safeguarding Strategy complies with the requirements of the Safeguarding on Rail Audit and the Franchisee shall take into account any comments or amendments proposed by:

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

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

15.7 The Franchisee shall deliver a copy of any updated Safeguarding Strategy to the Secretary of State together with written confirmation of the approval issued by the British Transport Police as soon as reasonably practicable following such approval.

15.8 The Franchisee shall implement the approved Safeguarding Strategy as it may be revised and/or updated pursuant to this paragraph 15 from time to time.

16. **Incident Response Plan**

16.1 For the purposes of this paragraph 16, the following definitions shall the following meanings unless the context requires otherwise:

“Incident Response Plan” means the plan created by the Franchisee pursuant to this paragraph 16 of Schedule 13.1 (*Rail Industry Initiatives and Co-operation*) which contains (as a minimum) the information set out in paragraph 16.3 of Schedule 13.1;

“RDG Guidance on Emergency Planning, Knowledge, Understanding and Responsibilities” means the guidance that sets out industry best practice for planning for responses to major incidents and emergencies entitled *“Emergency Planning, Knowledge, Understanding and Responsibilities”* dated April 2015 and published by RDG, as amended or updated from time to time, or other relevant guidance as reasonably specified by the Secretary of State during the Franchise Term.

16.2 By no later than six (6) months following the Start Date the Franchisee shall prepare and provide to the Secretary of State for approval (such approval not to be unreasonably withheld or delayed) the Incident Response Plan.

- 16.3 The Incident Response Plan shall:
- (a) detail how the Franchisee would respond to an incident or emergency (including cyber security incidents); and
 - (b) reflect the RDG Guidance on Emergency Planning, Knowledge, Understanding and Responsibilities,
- and it shall be reasonable for the Secretary of State to not approve a plan which does not include such information or meet such requirements.
- 16.4 Where the Secretary of State does not approve the draft Incident Response Plan submitted to it, the Franchisee shall make:
- (a) such amendments to it as the Secretary of State shall reasonably direct; and
 - (b) provide such additional information as the Secretary of State may reasonably require.
- 16.5 From the date of approval, the Franchisee shall implement and comply with the Incident Response Plan.
- 16.6 The Incident Response Plan shall be updated by the Franchisee on an annual basis and submitted to the Secretary of State for approval (such approval not to be unreasonably withheld or delayed).
- 16.7 Each updated version of the Incident Response Plan shall incorporate a schedule of revisions to the Incident Response Plan compared to the previous version and a brief summary of the rationale supporting each such revision.
- 16.7 If:
- (a) the Secretary of State approves an updated draft Incident Response Plan submitted to it pursuant to paragraph 16.6, such document shall become the then current Incident Response Plan; or
 - (b) the Secretary of State does not approve an updated draft Incident Response Plan submitted to it pursuant to paragraph 16.6, the provisions of paragraph 16.4 shall apply.

17. Cyber Security Information Sharing Strategy

17.1 For the purposes of this paragraph 17, the following definitions shall the following meanings unless the context requires otherwise:

“Cyber Information Sharing Platform” means the government and industry partnership operated by the National Cyber Security Centre to facilitate the sharing of information and intelligence in relation to cyber security threats;

“Cyber Security Information Sharing Strategy” or “CSISS” means the strategy created by the Franchisee pursuant to this paragraph 17 of Schedule 13.1 which contains (as a minimum) the information set out in paragraph 17.3 of Schedule 13.1;

“National Cyber Security Centre”

means the National Cyber Security Centre, which is a part of Government Communications Headquarters established to protect UK critical services from cyber attacks, manage major incidents, and improve the underlying security of the UK Internet through technological improvement and advice to citizens and organisations.

17.2 By no later than six (6) months following the Start Date the Franchisee shall prepare and provide to the Secretary of State for approval (such approval not to be unreasonably withheld or delayed) the Cyber Security Information Sharing Strategy.

17.3 The Cyber Security Information Sharing Strategy shall:

- (a) detail how the Franchisee shall share information regarding cyber security threats and incidents with the Department for Transport, British Transport Police, Police Scotland (where relevant), the National Cyber Security Centre and other industry partners; and
- (b) reflect the latest Secretary of State’s cyber incident reporting guidance including detailing how the Franchisee shall use the Cyber Information Sharing Platform,

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

17.4 Where the Secretary of State does not approve the draft Cyber Security Information Sharing Strategy submitted to it, the Franchisee shall make:

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

17.5 From the date of approval, the Franchisee shall implement and comply with the Cyber Security Information Sharing Strategy.

17.6 The Cyber Security Information Sharing Strategy shall be updated by the Franchisee on an annual basis and submitted to the Secretary of State for approval (such approval not to be unreasonably withheld or delayed).

17.7 Each updated version of the Cyber Security Information Sharing Strategy shall incorporate a schedule of revisions to the Cyber Security Information Sharing Strategy compared to the previous version and a brief summary of the rationale supporting each such revision.

17.8 If:

- (a) the Secretary of State approves an updated draft Cyber Security Information Sharing Strategy submitted to it pursuant to paragraph 17.6, such document shall become the then current Cyber Security Information Sharing Strategy; or

- (b) the Secretary of State does not approve an updated draft Cyber Security Information Sharing Strategy submitted to it pursuant to paragraph 17.6, the provisions of paragraph 17.4 shall apply.

18. **CCTV**

18.1 **NOT USED.**

18.2 The Franchisee shall ensure that any installation of, or upgrade to, CCTV in the areas accessible by passengers of any vehicle that is operated as part of the Train Fleet shall be undertaken in accordance with the CCTV Guidance.

APPENDIX 1 TO SCHEDULE 13.1**Community Rail Partnerships**

	Community Rail Partnership	Community Rail Route
1.	Severnside	Bristol - Gloucester
2.	Severnside	Bristol - Pilning
3.	Severnside	Bristol - Severn Beach
4.	Severnside	Bristol - Weston / Taunton
5.	Severnside	Bristol - Trowbridge
6.	Lymington - Brockenhurst	Brockenhurst - Lymington
7.	North Staffs	Crewe - Derby via Stoke
8.	Crewe - Manchester	Crewe - Manchester via Wilmslow & Stockport
9.	Bishop Line	Darlington - Bishop Auckland
10.	Devon & Cornwall RP	Exeter - Paignton
11.	Derwent Valley	Derby - Matlock
12.	Hereward Line	Peterborough - Ely
13.	Devon & Cornwall RP	Exeter - Barnstaple
14.	Devon & Cornwall RP	Exeter - Exmouth
15.	Leeds-Lancaster-Morecambe	Leeds-Morecambe via Lancaster
16.	Devon & Cornwall RP	Liskeard - Looe
17.	High Peak & Hope Valley	Manchester - Buxton via Stockport
18.	High Peak & Hope Valley	Manchester - Glossop / Hadfield
19.	SE Manchester	Manchester - Rose Hill / Strines / Hattersley & Hazel Grove via Stockport
20.	High Peak & Hope Valley	Manchester - Sheffield via Hope Valley
21.	Tyne Valley	Newcastle - Carlisle
22.	Devon & Cornwall RP	Par - Newquay

	Community Rail Partnership	Community Rail Route
23.	Nottingham - Skegness	Nottingham - Skegness
24.	Devon & Cornwall RP	Plymouth - Gunnislake
25.	Penistone Line Partnership	Sheffield - Huddersfield
26.	Three Rivers	Salisbury - Eastleigh - Southampton - Romsey
28.	Devon & Cornwall RP	St Erth - St Ives
29.	Mid Cheshire	Manchester - Chester via Northwich
30.	Southeast Communities RP	Reading - Guildford
31.	Devon & Cornwall RP	Truro - Falmouth
32.	Settle & Carlisle Railway Development Company	Leeds - Carlisle
33.	East Lothian	Edinburgh - Dunbar
34.	Borders	Edinburgh - Berwick-upon-Tweed
35.	SE Glasgow	Glasgow Central - Barrhea
36.	Heart of England	Birmingham Snow Hill - Leamington Spa
37.	Worcestershire	- North Cotswold Line (Worcester Parkway - Honeybourne) - Worcester-Hereford Route (Worcester - Malvern) - Stourbridge Line (Droitwich - Hagley) - Cross City South (Bromsgrove - Redditch)
38.	Bolton & South Lancashire	Bolton - Manchester
39.	Gloucestershire	Ashchurch for Tewksbury to Lydney
(and any successor Community Rail Partnerships)		

APPENDIX 2 TO SCHEDULE 13.1**D&I STRATEGY FRAMEWORK**

The Department requires a train operator who will develop and implement a tailored Diversity and Inclusion Strategy, the goal of which is to deliver a more diverse workforce, reflective of the communities that it serves, by increasing representation of under-represented groups at all levels and grades.

Requirement from the Franchisee

The train operator shall prepare and submit a Diversity & Inclusion Strategy in accordance with the guidance and templates contained in this framework. However, it should be noted that this is not a comprehensive framework and should only be used as a guide.

The train operator shall submit a strategic Diversity & Inclusion action plan including the steps that they will take to ensure a more diverse workforce. The train operator shall also set out the methods they propose to monitor and report on the implementation of the policy and its effectiveness.

Strategic Diversity and Inclusion Action Plan

The Diversity & Inclusion Strategy shall include the following:

- Plans to implement a range of recruitment and retention policies and procedures to ensure they recruit and retain a diverse group of candidates.
- A set of recruitment targets which is 50% female with BAME composition reflective of the local area.
- Plans to address gaps in representation in all job types and levels to meet recruitment targets on gender and BAME.
- A list of specific KPIs to measure progress/success of implementing diversity action plan.
- Plans for achieving, maintaining and progressing within a specific diversity accreditation scheme.
- Plans to collect, monitor and report diversity data of its workforce.

Plans to implement recruitment and retention policies and procedures

This is an example below of what a general diversity plan might look like.

Goal	Objective	Current position/ baseline	Actions	Accountability	By when	Measure of success
Increase workforce diversity	Recruit from a diverse group of candidates	Some advertisement in different publications	Work with local employment agencies and JCP	HR	Q4	Workforce is increasingly reflective Internal targets
Retain a diverse workforce	Create an inclusive culture that encourages collaboration and	Employee engagement survey	Inclusive leadership training for managers	HR	Q3	All leaders to have D&I training Engagement results

Goal	Objective	Current position/ baseline	Actions	Accountability	By when	Measure of success
	increases retention					should increase
Monitoring diversity data	Monitor diversity data to implement a range of recruitment policies	Data is collected on gender and age but there is no action Data is not collected on other protected characteristics	Collect diversity data on all groups Monitor data every 6 months	HR	Q2	Recruitment policies are reviewed and updated

The Strategy should also cover most of the protected characteristics, as well as looking at caring responsibilities, social mobility and issues affecting parents returning to work. Below are some examples of what this could look like depending at what point of the journey the train operator is at.

Goal	Objective	Actions	Measure of success
BAME	Improve representation of people from a BAME background in leadership and across the business. Seek to undertake and publish ethnicity pay gap report and activities.	Programme of mentoring and activities	Increase in BAME representation in leadership/ across organisation 10% employees from BAME Reduction in pay gap
Disability	Develop appropriate environment for people.	Train managers to deliver reasonable adjustment	Increase number of disabled employees Disability Confident Leader
Gender	Improve gender diversity across workforce and in leadership positions.	Set targets Programme of activities	25% of employees to be women Reduction in gender pay gap
LGBT+	Be an inclusive employer of LGBT+ employees	Provide specific LGBT+ awareness/ confidence training for managers	Stonewall Inclusive Employers
Carers	Support carers in the workplace	Review family-friendly policies to support carers	Level 1 Carer Confident Benchmark

Goal	Objective	Actions	Measure of success
		Increase awareness amongst managers of carers' needs	Carer Positive award
Faith and belief	Be an employer where people of different faiths and beliefs feel equally valued and respected	Provide series of briefings for employees Faith spaces for employees	Inclusive Employer status
Age	Transfer skills between generations	Develop inter-generational mentoring between older and younger employees	Recognised as an employer for all ages
Social mobility	Make sure everyone can succeed and make the most of their talents, whatever the circumstances	Promote work with ex-offenders and lone parents Collect data on social mobility	The Social Mobility Employer Index

KPIs Example

The plan should be supported by an appropriate set of key performance indicators to measure progress. For example, this could include:

- Number of positive action initiatives in employment.
- Number of adverts in targeted publications to reach BAME and women.
- Membership of networks and forums.

Schedule 13.3

NOT USED

Schedule 13.4

NOT USED

SCHEDULE 14
PRESERVATION OF ASSETS

Schedule 14.1:	Maintenance of Franchise
Schedule 14.2:	Maintenance of Operating Assets and Branding
	Appendix 1: List of Trade Marks
Schedule 14.3:	Key Contracts
	Appendix 1: List of Key Contracts
Schedule 14.4:	Designation of Franchise Assets
	Appendix 1: List of Primary Franchise Assets
Schedule 14.5:	Dealing with Franchise Assets
Schedule 14.6:	NOT USED
Schedule 14.7:	NOT USED

Schedule 14.1

Maintenance of Franchise**1. Maintenance as a going concern**

- 1.1 The Franchisee shall maintain and manage the business of providing the Franchise Services so that, to the greatest extent possible and practicable:
- (a) the Franchisee is able to perform its obligations under the Franchise Agreement; and
 - (b) a Successor Operator would be able to take over the business of providing the Franchise Services immediately at any time.
- 1.2 The Franchisee's obligation under paragraph 1.1 shall include an obligation to ensure that any computer and information technology systems of the Franchisee shared in whole or in part with Affiliates or third parties can be operated by a Successor Operator as a stand alone system without continued reliance on such Affiliates or other third parties immediately from the date of termination of the Franchise Agreement without any reduction in functionality or any increase in maintenance or support costs to the Successor Operator (this obligation being without prejudice to any requirement for the Franchisee to obtain consent to such arrangements relating to sharing computer and information technology systems from the Secretary of State).
- 1.3 The Franchisee shall use all reasonable endeavours to ensure that such Successor Operator would have immediate access to all Franchise Employees and Primary Franchise Assets for such purpose.
- 1.4 The Franchisee shall maintain and manage the business of providing the Franchise Services on the basis that such business will be transferred, in the manner contemplated under the Franchise Agreement, as a going concern at the end of the Franchise Period to, and continued immediately thereafter by, a Successor Operator.
- 1.5 The Franchisee shall use all reasonable endeavours to ensure that an appropriate number of employees (having sufficient skills, qualifications and experience) will transfer by operation of Law to any Successor Operator following the expiry of the Franchise Period and in so doing shall plan for the recruitment and training of Franchise Employees to continue up until the end of the Franchise Term.
- 1.6 The Franchisee shall comply with all reasonable requirements of the Secretary of State to obtain or maintain the property and rights that a Successor Operator would require, or that it would be convenient for it to have, on the basis that the same will transfer by operation of Law to any Successor Operator following the expiry of the Franchise Term.

2. Post-Franchise Timetables

- 2.1 Both prior to and following the selection of a Successor Operator (whether a franchisee or otherwise and whether or not subject to the satisfaction of any conditions), the Franchisee shall:
- (a) co-operate with, where a Successor Operator has been appointed, that Successor Operator, or where not, the Secretary of State; and

- (b) take such steps as may reasonably be requested by the Secretary of State, so as to ensure the continuity of, and orderly handover of control over of the Franchise Services.
- 2.2 The steps that the Secretary of State may reasonably request the Franchisee to take pursuant to paragraph 2.1 include:
- (a) participating in any timetable development process that takes place during the Franchise Period, but which relates to any timetable period applying wholly or partly after the expiry of the Franchise Term ("**Successor Operator Timetable**"), including bidding for and securing any Successor Operator Timetable, whether or not:
- (i) the Successor Operator has been identified; or
- (ii) there is in place an Access Agreement relating to the period over which that Successor Operator Timetable is intended to be operated;
- (b) using reasonable endeavours to seek amendments to and/or extensions of Access Agreements which can be transferred to the Successor Operator on expiry of the Franchise Period;
- (c) assisting the Secretary of State or the Successor Operator (as the case may be) in the preparation and negotiation of any new Access Agreement relating to any Successor Operator Timetable; and/or
- (d) entering into that Access Agreement in order to secure the relevant priority bidding rights required by the Successor Operator to operate that Successor Operator Timetable, provided that the Franchisee shall not be required to enter into any such Access Agreement unless the Secretary of State has first provided to it confirmation in writing that the Secretary of State shall include that Access Agreement in any Transfer Scheme pursuant to paragraph 3.1 of Schedule 15.4 (*Provisions applying on and after Termination*).
- 2.3 In addition to its obligation in paragraph 2.2(c), the Franchisee shall undertake such planning, preparation and organisation as would be undertaken by a Good and Efficient Operator to ensure the successful operation of the Successor Operator Timetable from the Expiry Date as if the Franchisee were to be operating the same from that date.

Schedule 14.2

Maintenance of Operating Assets and Branding**1. Operating Assets**

- 1.1 The Franchisee shall maintain, protect and preserve the Operating Assets in good standing or good working order, subject to fair wear and tear.
- 1.2 The Franchisee shall carry out its obligations under paragraph 1.1 so that the Operating Assets may be transferred at the end of the Franchise Period to a Successor Operator and used by such Successor Operator in the provision or operation of similar services to the Franchise Services.
- 1.3 Where any Operating Asset is lost, destroyed or otherwise beyond repair, the Franchisee shall replace the Operating Asset with property, rights or liabilities in modern equivalent form to the Operating Asset to be replaced. The Franchisee shall at all times maintain an appropriate volume of Spares, and/or an appropriate level of access to Spares from a third party, to enable it to perform its obligations under the Franchise Agreement.
- 1.4 The Secretary of State may at any time require the Franchisee to provide to the Secretary of State a schedule specifying the condition of any asset or class of assets that the Secretary of State specifies for this purpose. Such schedule shall cover such aspects of asset condition as the Secretary of State may reasonably require. If the Parties are unable to agree the content of such schedule of condition, either Party may refer the dispute for resolution in accordance with the Dispute Resolution Rules. Until such dispute is resolved, the Franchisee shall comply with the Secretary of State's requirements in respect of such schedule of condition.

2. Spares

The obligation of the Franchisee to maintain, preserve and protect the Operating Assets under this Schedule 14.2 shall, in respect of Spares, include the obligation to replace any Spare which has been designated as a Primary Franchise Asset, which subsequent to its designation ceases to be part of the stock of Spares available to the Franchisee for use in the provision of the Franchise Services, with an equivalent Spare of equal or better quality than the Spare so replaced.

3. Brand Licence and Branding**3.1 Brand Licences**

The Franchisee shall comply with its obligations under the Brand Licence.

3.2 Branding

Subject to any applicable obligations or restrictions on the Franchisee (including the terms of the Rolling Stock Leases), the Franchisee shall apply the registered and unregistered trade marks specified in the Brand Licence(s) and as listed in Appendix 1 (*List of Trade Marks*) of this Schedule 14.2 to all those assets owned or used by the Franchisee in the operation and provision of the Franchise Services, including but not limited to:

- (a) the Train Fleet;

- (b) the Stations;
- (c) staff uniforms;
- (d) marketing materials;
- (e) publications;
- (f) ticket sales channels; and
- (g) visual display screens.

3.3 **NOT USED.**

4. **Branding Requirements**

4.1 The following words and expressions shall have following meanings unless otherwise set out in clause 3 (*Definitions*):

“Enduring Branding” means

- (a) branding which shall not:
 - (i) bear any brand image or symbol;
 - (ii) display any distinctive trademarks;
 - (iii) (subject to paragraph 4.2) make any reference to the name of the company or entity which owns the branding, the Franchisee or an Affiliate; or
 - (iv) use any colour combinations, livery or other elements,

that are specific to the Franchisee, an Affiliate or any other company and shall incorporate no other visual link to the Franchisee, an Affiliate or any other company unless otherwise agreed by the Secretary of State; and

- (b) such trade marks as:
 - (i) the Franchisee applies to any Primary Franchise Asset or other asset used by it under a Key Contract that encapsulate the heritage, regional and passenger perception of railway routes served by its train services; and
 - (ii) are under the proprietorship of the Secretary of State and licensed to the Franchisee in accordance with

a Brand Licence under paragraph 3.1 of Schedule 14.2 that encapsulate the heritage, regional and passenger perception of railway routes served by its train services;

“Cross Country Railway Brand”

means

- (a) “Cross Country” and/or “XC” and/or “X” (or brands similar to the foregoing) or any other brand (which may include sub-brands for specific Routes or types of Passenger Services) which is owned by the Secretary of State; and
- (b) any Intellectual Property Right relating to the foregoing brands which is owned by either:
 - (i) the Secretary of State; or
 - (ii) the Franchisee or its Affiliates as at the date of this Agreement, but is to be the subject of the Arriva IP Assignment (subject to agreement of its terms),

provided always that such brand constitutes Enduring Branding; and

“Used Marks”

has the meaning given to it in paragraph 4.4(b) of this Schedule 14.2 (*Maintenance of Operating Assets and Branding*).

- 4.2 The Franchisee shall implement and maintain the Enduring Branding and the Cross Country Railway Brand throughout the Franchise Term.
- 4.3 The Franchisee shall use and apply the Cross Country Railway Brand in relation to the Train Fleet (subject to the terms of the Rolling Stock Leases) and all Stations, staff uniforms, marketing materials, publications, ticket sales channels and visual display screens used by the Franchisee (and any other assets owned or used by the Franchisee in the operation and provision of the Franchise Services which the Franchisee uses branding on) throughout the Franchise Term and in connection with the provision of the Franchise Services.
- 4.4 To the extent that:
 - (a) the Franchisee has not removed, covered or replaced the Cross Country Railway Brand in such a way that is reasonably acceptable to the Secretary of State prior to the expiry of the Franchise Period; or
 - (b) the Secretary of State otherwise considers the relevant Enduring Branding, Cross Country Railway Brand or other marks registered and unregistered

used (the "**Used 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 Used Marks are applied (including where the Secretary of State has previously agreed these constitute Enduring Branding for the purpose of this Franchise);

then the Franchisee shall either:

- (c) ensure that all Enduring Branding is removed from use on the items as mentioned on paragraph 4.3 by the end of the Franchise Period which shall include, but is not limited to, the following:
 - (i) removing or covering Used Marks from the exterior of any rolling stock vehicle;
 - (ii) removing or covering interior indications of Used Marks including upholstery and carpets;
 - (iii) replacing or covering all station or other signs including bill boards;
 - (iv) replacing or covering all staff uniforms; and
 - (v) 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; or
- (d) 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 Used Marks or otherwise removing all indications or reference to the Used 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 Used Marks with its own and may include the reasonable cost to the Franchisee of taking the steps referred to at paragraph 4.4(c) above. 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.

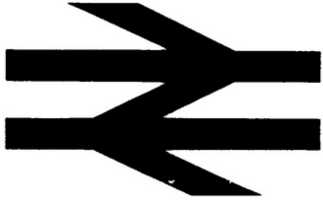

4.5 The Secretary of State shall determine at or around the end of the Franchise Period, and after consultation with the Franchisee, the maximum liability of the Franchisee under paragraph 4.4 (d) above.




5. **NOT USED**

Appendix 1

List of Trade Marks

1. Registered Trade Marks

<u>Owner</u>	<u>Trade Mark</u>	<u>Registration No</u>	<u>Classes</u>	<u>Date of Filing</u>	<u>Status</u>
Secretary of State for Transport	(Double Arrow Symbol) 	2107832	16,35,37,39,41,42	16 August 1996	Registered
Secretary of State for Transport	JOURNEYCARE JOURNEY CARE JourneyCare (Series of: 3)	2044057A	39, 43	09 November 1995	Registered
Secretary of State for Transport	CROSSCOUNTRY JOURNEYCARE CROSSCOUNTRY JOURNEY CARE CrossCountry JourneyCare (Series of: 3)	2044057B	39, 43	09 November 1995	Registered
Secretary of State for Transport	XC CrossCountry XC CrossCountry XC CrossCountry XC CrossCountry (Including trade mark device) (Series of: 4) 	2042034	16, 39, 43	19 October 1995	Registered

Secretary of State for Transport*		2544261	39	8 April 2010	Registered
Secretary of State for Transport*		2544259	39	8 April 2010	Registered
Secretary of State for Transport*		2544262	39	8 April 2010	Registered
Secretary of State for Transport	CROSSCOUNTRY CROSS COUNTRY (Series of: 2)	3537962	9, 16, 21, 24, 25, 28, 35, 36, 38, 39, 41, 43	28 September 2020	Under Examination

*on the date of this Agreement, Arriva Plc is the legal owner of this registered trade mark, but the Parties have agreed to enter into the Arriva IP Assignment (subject to agreement of its terms) which shall assign the trade mark from Arriva Plc to the Secretary of State, such that the Secretary of State shall be legal owner on or before the Start Date.

2. Unregistered Trade Marks

Brands, including

- "XC" and "X"
- "CrossCountry" and "Cross Country"
- "crosscountrytrains.co.uk" and "crosscountrytrains.co.uk X"

Logos, including:

- "X" logo variations including:





- "crosscountry X" logo variations including:



- "crosscountrytrains.co.uk X" logo variations including:



3. Copyright

All copyright in the logo works set out in Parts 1 and 2 above.

Schedule 14.3

Key Contracts**1. Key Contracts**

1.1 This Schedule sets out the rights of the Secretary of State to:

- (a) designate certain contracts or categories of contracts as Key Contracts where the Secretary of State considers that such contracts or categories of contract are necessary for the purposes of securing continuity of the Franchise Services by a Successor Operator on expiry of the Franchise Period; and
- (b) in accordance with paragraph 5, require the Franchisee to procure that a counterparty to a Key Contract enters into a Direct Agreement with the Secretary of State.

This Schedule 14.3 shall apply to all contracts designated as Key Contracts from time to time.

1.2

- (a) The Key Contracts as at the date of the Franchise Agreement are set out in Appendix 1 (List of Key Contracts) to this Schedule 14.3.
- (b) The Franchisee shall enter into any and all Key Contracts which are necessary for the Franchise Agreement to continue in accordance with clause 5 (Duration of the Franchise Agreement).
- (c) Where at any time after the date of the Franchise Agreement the Franchisee proposes to enter into any agreement, contract, licence or other arrangement which falls within one of the categories listed in Appendix 1 (List of Key Contracts) to this Schedule 14.3 the Franchisee shall:
 - (i) inform the Secretary of State from time to time of any such agreement, contract, licence or other arrangement which it may be intending to enter into; and
 - (ii) comply with the provisions of paragraph 5.1 in respect of any such agreement, contract, licence or other arrangement.

1.3 Without prejudice to the provisions of paragraphs 2, 3 and 4 of this Schedule 14.3, Appendix 1 (List of Key Contracts) to this Schedule 14.3 shall be amended as considered necessary from time to time to take account of any:

- (a) designation by the Secretary of State of any actual or prospective agreement, contract, licence or other arrangement or any category of agreement, contract, licence or other arrangement, to which or under which the Franchisee is (or may become) a party or a beneficiary pursuant to paragraph 2 of this Schedule 14.3; or
- (b) de-designation by the Secretary of State of any Key Contract pursuant to paragraph 3 of this Schedule 14.3; or

- (c) re-designation by the Secretary of State pursuant to paragraph 4 of this Schedule 14.3.

2. **Designation of Key Contracts**

- 2.1 Where the Secretary of State considers that it is reasonably necessary for securing the continued provision of the Franchise Services or the provision of services similar to the Franchise Services by a Successor Operator in accordance with the Franchise Agreement, the Secretary of State may make a designation pursuant to paragraph 2.2.
- 2.2 The Secretary of State may at any time, by serving notice on the Franchisee, designate as a Key Contract:
 - (a) any actual or prospective agreement, contract, licence or other arrangement; and/or
 - (b) any category of agreement, contract, licence or other arrangement, to which or under which the Franchisee is (or may become) a party or a beneficiary, with effect from the date specified in such notice.
- 2.3 Key Contracts may include any agreement, contract, licence or other arrangement whether in written, oral or other form, whether formal or informal and whether with an Affiliate of the Franchisee or any other person and may include any arrangement for the storage of assets (including electronic systems or Computer Systems) or accommodation of employees.

3. **De-designation of Key Contracts**

The Secretary of State may at any time, by serving a notice on the Franchisee, de-designate any Key Contract from continuing to be a Key Contract with effect from the date specified in such notice.

4. **Re-designation of Key Contracts**

The Secretary of State may at any time, by serving notice on the Franchisee, re-designate as a Key Contract anything which has ceased to be designated as a Key Contract in accordance with paragraph 3 with effect from the date specified in such notice.

5. **Direct Agreements**

- 5.1 Unless the Secretary of State otherwise agrees, or unless directed to do so by the ORR, the Franchisee shall not enter into any prospective Key Contract unless the counterparty to that prospective Key Contract:
 - (a) is a Train Operator; or
 - (b) has entered into a Direct Agreement with the Secretary of State in respect of that prospective Key Contract, providing on a basis acceptable to the Secretary of State, amongst other things, for the continued provision of the Passenger Services and/or the continued operation of the Stations and Depots in the event of:
 - (i) breach, termination or expiry of such Key Contract;

- (ii) termination or expiry of the Franchise Agreement; or
- (iii) the making of a railway administration order in respect of the Franchisee.

5.2 Where the Secretary of State designates or re-designates as a Key Contract:

- (a) any agreement, contract, licence or other arrangement to which the Franchisee is already a party; or
- (b) any category of agreement, contract, licence or other arrangement where the Franchisee is already a party to a contract, licence or other arrangement which, by virtue of the Secretary of State's designation or re-designation, is classified in such category,

the Franchisee shall use all reasonable endeavours to assist the Secretary of State in entering into a Direct Agreement as envisaged by paragraph 5.1(b).

5.3 The Franchisee shall pay to the Secretary of State an amount equal to any losses, costs, liabilities, charges or expenses which may be suffered or incurred by the Secretary of State under the provisions of any Direct Agreement and which may be notified to the Franchisee as a result of, or in connection with:

- (a) any breach by the Franchisee of the terms of the Key Contract to which the relevant Direct Agreement relates; or
- (b) any unsuccessful claim being brought by the Franchisee against the counterparty of any such Key Contract in relation to the termination of such Key Contract.

6. **Emergencies**

6.1 Where any emergency may arise in connection with the provision and operation of the Franchise Services, the Franchisee:

- (a) may enter into on a short-term basis such contracts, licences or other arrangements as it considers necessary or appropriate to deal with the emergency;
- (b) need not procure that the relevant counterparty enters into a Direct Agreement in respect of such contracts or use all reasonable endeavours to assist the Secretary of State in entering into the same;
- (c) shall promptly inform the Secretary of State of any such emergency and contracts, licences or other arrangements which it proposes to enter into; and
- (d) shall take such action in relation to such emergency, contracts, licences or other arrangements as the Secretary of State may request.

7. **No Amendment**

The Franchisee shall not without the prior consent of the Secretary of State (which shall not be unreasonably withheld) vary, or purport to vary, the terms or conditions of any Key Contract at any time, unless directed to do so by the ORR.

8. Replacement of Key Contracts

The Franchisee shall, prior to the scheduled expiry date of any Key Contract (or, if earlier, such other date on which it is reasonably likely that such Key Contract will terminate), take all reasonable steps to enter into an appropriate replacement contract (whether with the counterparty to the existing Key Contract or not) and shall comply with the reasonable instructions of the Secretary of State in relation to such replacement contract.

9. Termination of Key Contracts

The Franchisee shall, to the extent so requested by the Secretary of State, exercise its right to terminate any Key Contract on the Expiry Date.

APPENDIX 1 TO SCHEDULE 14.3**List of Key Contracts**

Subject to any de-designations by the Secretary of State under paragraph 3 of Schedule 14.3 (Key Contracts), the following items have as at the date of the Franchise Agreement been agreed between the Parties to be Key Contracts:

1. any Access Agreement to which the Franchisee is a party other than in its capacity as a Facility Owner;
2. any Property Lease and all side agreements relating to such relevant Property Lease;
3. any Rolling Stock Related Contract including the Rolling Stock Leases listed in Table 1 (*Original Rolling Stock*) and Table 2 (*Specified Rolling Stock*) of Appendix 1 (*The Composition of the Train Fleet*) to Schedule 1.6 (*The Rolling Stock*);
4. **NOT USED;**
5. any contract or arrangement for the lending, seconding, hiring, contracting out, supervision, training, assessment, or accommodation by another Train Operator or other third party of any train drivers, conductors or other train crew used by the Franchisee in the provision of the Passenger Services;
6. any contract or arrangement for the subcontracting or delegation to another Train Operator or other third party of the provision of any of the Passenger Services (whether or not the consent of the Secretary of State is required to such subcontracting or delegation under paragraph 8 (*Subcontracting any Passenger Services*) of Schedule 1.1 (*Franchise Services and Service Development*));
7. any contract or arrangement with a Train Operator or other third party (other than an Access Agreement) for the provision to the Franchisee of train dispatch, performance or supervision of platform duties, security activities, evacuation procedures, advice or assistance to customers, assistance to disabled customers, operation of customer information systems, cash management or ticket issuing systems administration;
8. any contract or arrangement with a Train Operator or other third party for the provision of breakdown or recovery, and track call services to assist in the provision of the Passenger Services;
9. any contract or arrangement for the supply of spare parts or Spares;
10. any contract or arrangement for the maintenance of track and other related infrastructure;
11. any licences of Marks to the Franchisee;
12. any contract or arrangement relating to the operation of smart ticketing;
13. any licence of any CRM System or Yield Management System;
14. any contract or arrangement for the provision or lending of Computer Systems (other than the CRM System and Yield Management System) that the Secretary of State reasonably considers is essential for the delivery of the Franchise Services;

- 15. **NOT USED;**
- 16. **NOT USED;**
- 17. **NOT USED;**
- 18. **NOT USED;**
- 19. **NOT USED;** and
- 20. **NOT USED.**

Schedule 14.4

Designation of Franchise Assets**1. Franchise Assets**

1.1 Subject to paragraph 1.2, all property, rights and liabilities of the Franchisee from time to time during the Franchise Period shall be designated as Franchise Assets and shall constitute Franchise Assets for the purposes of section 27(11) of the Act.

1.2 The rights and liabilities of the Franchisee in respect of the following items shall not be designated as Franchise Assets and shall not constitute franchise assets for the purposes of section 27(11) of the Act:

- (a) any contracts of employment;
- (b) the Franchise Agreement and any Transfer Scheme or Supplemental Agreement;
- (c) the Ticketing and Settlement Agreement;
- (d) any sums placed on deposit with a bank or other financial institution;
- (e) such other property, rights and liabilities as the Franchisee and the Secretary of State may agree from time to time or as the Secretary of State may de-designate as Franchise Assets under paragraph 10.2; and
- (f) any Rolling Stock Leases.

1.3 The Franchisee shall keep vested in it at all times during the Franchise Period all Franchise Assets designated as such pursuant to Schedule 14.4 (*Designation of Franchise Assets*) as it may require in order to comply with:

- (a) the Licences;
- (b) any contracts of employment with Franchise Employees;
- (c) any relevant Fares;
- (d) any Key Contracts; and
- (e) any applicable safety legislation regulations or safety standards and the Safety Certificate,

in order to ensure that the Secretary of State may designate such assets as Primary Franchise Assets.

2. Primary Franchise Assets

2.1 The following property, rights and liabilities shall (to the extent that they constitute Franchise Assets) be designated as Primary Franchise Assets with effect from the following dates:

- (a) the property, rights and liabilities listed as such in the table in Appendix 1 (*List of Primary Franchise Assets*) to this Schedule 14.4 (which constitute

Primary Franchise Assets agreed between the Parties as at the date of the Franchise Agreement), on the Start Date;

- (b) any additional property, rights and liabilities designated under paragraph 3 during the Franchise Period, on the date of such designation;
- (c) any property or right which is vested in the Franchisee and used for the purpose of maintaining, replacing, repairing or renewing any property designated as Primary Franchise Assets and which forms or replaces part or all of such designated property on completion of such maintenance, replacement, repair or renewal, on the date of its use for such purpose;
- (d) the rights and liabilities of the Franchisee under any Key Contract designated under paragraph 5, on the date of such designation;
- (e) the rights and liabilities of the Franchisee in respect of the terms of any Fare or Discount Card designated under paragraph 6, on the date of such designation;
- (f) any CRM Data and/or Yield Management Data and, to the extent that any CRM System and/or Yield Management System is the property of the Franchisee, such CRM System and/or Yield Management System on the later of the Start Date and:
 - (i) in relation to CRM Data or Yield Management Data, the date on which such CRM Data or Yield Management Data (as applicable) is collected; or
 - (ii) in relation to any such CRM System or Yield Management System, the date on which such CRM System or Yield Management System is created,

save, in relation to CRM Data and Yield Management Data, any data in respect of which the Data Subject has not consented to such data being disclosed and processed by any Successor Operator and/or the Secretary of State;

- (g) any licence of any CRM System and/or Yield Management System, on the date of such licence;
- (h) **NOT USED;**
- (i) any Actual Passenger Demand information (and all Intellectual Property Rights in respect of the same), on the date such information is supplied to the Secretary of State pursuant to paragraph 1.1 of Schedule 1.5 (*Information about Passengers*); and
- (j) any property and rights comprised in Committed Obligations and designated by the Secretary of State as Primary Franchise Assets pursuant to paragraph 9 (*Designation of Assets comprised in COs as Primary Franchise Assets*) of Schedule 6.2 (*Special Terms related to the Committed Obligations*), on the date of such designation.

2.2 **NOT USED.**

3. **Designation of Additional Primary Franchise Assets**

3.1 The Secretary of State may at any time and from time to time, by serving notice on the Franchisee, designate any or all of the Franchise Assets as Primary Franchise Assets.

3.2 Such designation shall take effect from the delivery of such notice and may refer to all or certain categories of property, rights or liabilities. Any such notice shall specify the reasons for such designation.

3.3 On or before designation of any Franchise Asset as a Primary Franchise Asset, the Secretary of State may agree not to subsequently de-designate such Primary Franchise Asset without the prior written consent of the Franchisee. If the Secretary of State so agrees, the notice designating the relevant Franchise Asset as a Primary Franchise Asset shall state the commitment not to de-designate.

4. **Designation during last twelve (12) months of Franchise Period**

4.1 If the Secretary of State designates a Franchise Asset as a Primary Franchise Asset under paragraph 3 at any time during the last twelve (12) months of the Franchise Period then, within twenty eight (28) days of such designation, the Secretary of State may, subject to paragraph 4.2, de-designate such Primary Franchise Asset by serving notice on the Franchisee. Such de-designation shall take effect upon delivery of such notice.

4.2 Where, the Secretary of State has given a commitment not to de-designate a Primary Franchise Asset pursuant to paragraph 3.3, the Secretary of State shall not de-designate such Primary Franchise Asset pursuant to paragraph 4.1 without first obtaining the prior written consent of the Franchisee.

5. **Designation of Key Contracts as Primary Franchise Assets**

The Secretary of State shall, subject to paragraphs 1.2(b) and 7, be entitled to designate any Key Contract as a Primary Franchise Asset at any time during the Franchise Period by serving notice on the Franchisee. Such designation shall take effect from delivery of such notice.

6. **Designation of Fares and Discount Cards**

The Secretary of State may designate any Fare or Discount Card as a Primary Franchise Asset at any time during the Franchise Period by serving a notice on the Franchisee. Such designation shall take effect from delivery of such notice.

7. **Rights and Liabilities**

The Secretary of State, in designating the rights and liabilities of the Franchisee (whether under a particular contract or other arrangement) as a Primary Franchise Asset may, in the Secretary of State's discretion, elect to designate some but not all of the rights and liabilities under a particular contract or other arrangement, or to designate only those rights and liabilities arising after or otherwise relating to a period after a particular time (including the period after the expiry of the Franchise Period) or to those relating only to the Franchise Services or a particular part thereof.

8. No Disputes over Designation

- 8.1 The Franchisee agrees that it shall not object in writing to or dispute any designation by the Secretary of State to any designation pursuant to paragraph 3 or 4.

9. Provision of Information to the Secretary of State

- 9.1 The Franchisee shall provide such information as the Secretary of State may reasonably require in order to satisfy the Secretary of State that any Franchise Assets which are to be designated as Primary Franchise Assets after the Start Date under this Schedule 14.4 will at the time of such designation be vested in the Franchisee. Such information may include details of any Security Interests over such property, rights and liabilities.

- 9.2 The Franchisee shall further provide such information as to the property, rights and liabilities of the Franchisee as the Secretary of State may reasonably require in connection with the designation of Primary Franchise Assets. Such information shall be supplied to the Secretary of State within such timescale as the Secretary of State may reasonably require.

10. De-Designation of Franchise Assets and Primary Franchise Assets

- 10.1 The Secretary of State and the Franchisee may agree in writing at any time that a:

- (a) Franchise Asset shall cease to be designated as a Franchise Asset; or
- (b) Primary Franchise Asset shall cease to be designated as a Primary Franchise Asset,

and the relevant Franchise Asset or Primary Franchise Asset (as the case may be) shall cease to be designated upon such agreement coming into effect.

- 10.2 The Secretary of State may, in addition at any time during the Franchise Period, by serving notice on the Franchisee:

- (a) cause a Franchise Asset which is not a Primary Franchise Asset to cease to be designated as a Franchise Asset. Such Franchise Asset shall cease to be designated on the date specified in such notice; or
- (b) subject to paragraph 10.3, cause a particular Primary Franchise Asset to cease to be designated as such. Such Primary Franchise Asset shall cease to be designated on the date specified in such notice.

- 10.3 Where, the Secretary of State has given a commitment not to de-designate a Primary Franchise Asset pursuant to paragraph 3.3, the Secretary of State shall not de-designate such Primary Franchise Asset pursuant to paragraph 10.2(b) without first obtaining the prior written consent of the Franchisee.

- 10.4 The Secretary of State's rights pursuant to paragraph 10.2(b) may be exercised, in respect of any rights and liabilities in respect of a Fare or Discount Card, at any time and, in respect of any other Primary Franchise Asset, no later than one (1) year prior to the expiry of the Franchise Term.

11. Amendment of the List of Primary Franchise Assets

The table in Appendix 1 (List of Primary Franchise Assets) to this Schedule 14.4 shall be amended as the Secretary of State considers necessary or desirable from time to time to take account of designation and de-designation of Primary Franchise Assets pursuant to this Schedule 14.4.

APPENDIX 1 TO SCHEDULE 14.4**List of Primary Franchise Assets**

Description of Primary Franchise Asset*	Commitment not to de-designate	To Transfer to Successor Operator at Nil Value
The rights and liabilities of the Franchisee under the Universal Licence Agreement between the British Railways Board and the Franchisee dated 12 November 1995.	No	Yes
The rights and liabilities of the Franchisee under the Sub-licence Deed between the British Railways Board and the Franchisee dated 12 November 1995.	No	Yes
The rights and liabilities of the Franchisee under the Master Software Licence between the British Railways Board and the Franchisee dated 12 November 1995.	No	Yes
The rights and liabilities of the Franchisee under the Computer Services Agreement between the British Railways Board and the Franchisee dated 12 November 1995.	No	Yes
Avantix Mobile Supply and Support Agreement dated 30th July 2003 between Sema UK Limited, Virgin Rail Group Limited, West Coast Trains Limited and the Franchisee	No	Yes
Agreement for the provision of Driving Cab Simulator Maintenance dated 8th March 2005 between the Franchisee and Corys TESS.	No	Yes
184 Avantix mobiles, as previously leased through	No	Yes

<p>a sub-lease between West Coast Trains Limited and CrossCountry Trains Limited.</p>		
<p>The Modification Agreement re: Future-Proofing the HST Fleet, incorporating: Power Door, CET Toilet + PRM Works (Contract No: XCB/0026) between the Franchisee and Wabtec Rail Limited, dated 23 May 2017.</p>	<p>No</p>	<p>Yes</p>
<p>Any spare parts which have come into the possession of the Franchisee under the Modification Agreement re: Future-Proofing the HST Fleet, incorporating: Power Door, CET Toilet + PRM Works (Contract No: XCB/0026) between the Franchisee and Wabtec Rail Limited, dated 23 May 2017 but which remain uninstalled by the Start Date.</p>	<p>No</p>	<p>Yes</p>
<p>Laptop computers and associated equipment purchased by the Franchisee in early 2020 as advised to the Secretary of State by the Franchisee on 19 May 2020 comprising:</p> <ul style="list-style-type: none"> • 80 x Latitude 3390 2 in 1 laptops; • 40 x Latitude 5300 laptops; • 20 x Dell Monitors; • 45 x headsets of various types; and • Leads, docking stations and associated equipment provided for use with the above. 	<p>No</p>	<p>Yes</p>

**Note that the Secretary of State may elect to designate under Schedule 14.4 as Primary Franchise Assets any assets delivered by the Franchisee as part of a Committed Obligation under Schedule 6.2 (Committed Obligations).*

Schedule 14.5

Dealing with Franchise Assets**1. Assets not Designated as Primary Franchise Assets**

- 1.1 This paragraph 1 relates to any Franchise Assets that are property or rights and are not designated as Primary Franchise Assets.
- 1.2 For the purposes of section 27(3) of the Act, the Secretary of State consents to the Franchisee:
- (a) transferring or agreeing to transfer any such Franchise Assets or any interests in, or right over, any such Franchise Assets; and
 - (b) creating or extinguishing, or agreeing to create or extinguish, any interest in, or right over, any such Franchise Assets.

2. Liabilities not Designated as Primary Franchise Assets

- 2.1 This paragraph 2 relates to any liabilities which are not designated as Primary Franchise Assets.
- 2.2 For the purposes of section 27(3) of the Act, the Secretary of State consents to the Franchisee entering into any agreement under which any such liability is released or discharged, or transferred to another person.

3. Franchise Assets and Primary Franchise Assets

- 3.1 This paragraph 3 relates to Franchise Assets (whether or not designated as Primary Franchise Assets) which are property or rights.
- 3.2 The Secretary of State hereby consents to the installation of Spares which have been designated as Primary Franchise Assets on any rolling stock vehicles. Any Spare which is so installed shall cease to be so designated on such installation.
- 3.3 For the purposes of section 27(3) of the Act, the Secretary of State hereby consents to the Franchisee creating or agreeing to create any Security Interest over any of these Franchise Assets to the extent that the terms of any such Security Interest provided that:
- (a) if the relevant Franchise Asset becomes the subject of a transfer scheme made under section 12 and Schedule 2 of the Railways Act 2005, it shall be fully and automatically released from the relevant Security Interest immediately before the coming into force of such transfer scheme;
 - (b) if the relevant Franchise Asset is assigned, novated or otherwise transferred to another person pursuant to and in accordance with the Franchise Agreement, it shall be fully and automatically released from the relevant Security Interest immediately before such assignment, novation or transfer; and
 - (c) such Security Interest shall not be enforced or enforceable until the date on which such Franchise Asset ceases to be designated as a Franchise Asset.

4. **Prohibition on Other Security Interests**

The Franchisee shall not create or agree to create a Security Interest over any Franchise Asset except on the terms permitted under paragraph 3.3.

5. **Miscellaneous**

The Franchisee shall promptly inform the Secretary of State of any Security Interest arising at any time over any of its property or rights and shall provide the Secretary of State with such information in relation thereto as the Secretary of State may reasonably require.

Schedule 14.6

NOT USED

Schedule 14.7

NOT USED

SCHEDULE 15**OBLIGATIONS ASSOCIATED WITH TERMINATION**

Schedule 15.1:	Reletting Provisions
Schedule 15.2:	Last Twelve (12) or Thirteen (13) months of Franchise Period and other conduct of business provisions
Schedule 15.3:	Handover Package
	Appendix 1: Form of Handover Package
Schedule 15.4:	Provisions applying on and after Termination
	Appendix 1: Template Form of Transfer Scheme
	Appendix 2: Template Form of Supplemental Agreement

Schedule 15.1

Reletting Provisions**1. Reletting of Franchise**

- 1.1 The Franchisee acknowledges that the Secretary of State may wish, at or before the expiry of the Franchise Period, either to invite persons to tender for the right to provide all or some of the Passenger Services under a franchise agreement or alternatively to enter into a franchise agreement in respect of all or some of the Passenger Services without having gone through a tendering process.
- 1.2 The Franchisee further acknowledges that the Secretary of State has in certain circumstances a duty under section 30 of the Act to secure the continued provision of services equivalent to the Passenger Services on expiry or termination of the Franchise Agreement. The Franchisee accordingly accepts and agrees to the restrictions and obligations imposed on it under Part 1 (Franchise Services) of Schedule 1.1 (Franchise Services and Service Development), Schedule 14 (Preservation of Assets) and this Schedule 15 (Obligations Associated with Termination).

2. Preparation for Reletting

- 2.1 The Franchisee shall, if so requested by the Secretary of State provide the Secretary of State and the Secretary of State's representatives and advisers with access to officers, the Franchise Employees and all books, records and other materials kept by or on behalf of the Franchisee in connection with the Franchise Services (including electronic or magnetic records, any CRM System and any Yield Management System) for the purpose of assisting such representatives and advisers:
- (a) to prepare reports or other documents in connection with any invitation to potential Successor Operators to tender for the right and obligation to operate all or any of the Franchise Services;
 - (b) to prepare invitations to other potential franchisees to tender for the right and obligation to provide any other railway passenger services or operate any other additional railway asset; or
 - (c) to enter into any franchise agreement or other agreement (including any agreement entered into by the Secretary of State in fulfilment of the Secretary of State's duties under section 30 of the Act) relating to the services equivalent to the Franchise Services (or any part thereof), without undergoing a tendering process,

provided that the exercise of such access rights by the Secretary of State and the Secretary of State's representatives and advisers shall not unduly interfere with the continuing provision and operation of the Franchise Services by the Franchisee.

3. Data Site Information

- 3.1 The Franchisee shall, at the request of the Secretary of State, make available to the Secretary of State and the Secretary of State's representatives and advisers:

- (a) the information relating to the Franchise Services as specified in the document in the agreed terms marked **DSMI** (the "**Data Site Monitor and Index**"); and
- (b) such other information as they shall reasonably require in connection with the matters referred to in paragraph 2.1,

in each case, by no later than three (3) months after the date of any such request. For the purposes of this paragraph 3 the information referred to in paragraphs 3.1(a) and 3.1(b) shall be the "**Data Site Information**".

- 3.2 The Data Site Monitor and Index shall be amended and updated by the Secretary of State from time to time. Such amended and updated Data Site Monitor and Index shall, from the date that the Franchisee receives notification from the Secretary of State of any such amendment or update, be the applicable Data Site Monitor and Index for the purposes of this paragraph 3.
- 3.3 The Franchisee shall prepare and present the Data Site Information in such manner and in such format (including in disaggregated form) as the Secretary of State may specify in the Data Site Monitor and Index or otherwise require, and shall provide such assistance as the Secretary of State may require in connection with the verification and the updating of such Data Site Information.
- 3.4 The Franchisee shall provide such confirmation in relation to the accuracy of:
 - (a) the contents of the documents referred to in paragraph 2.1; and
 - (b) any Data Site Information uploaded to such electronic data site as the Secretary of State may require pursuant to paragraph 3.5,

in each case, as the Secretary of State shall require from time to time.

- 3.5 The Franchisee shall upload the Data Site Information to such electronic data site as the Secretary of State may specify and shall make a sufficient number of appropriate staff available for that purpose. The Franchisee shall ensure that such staff are trained in the use of such data site (such training to be at the expense of the Secretary of State).
- 3.6 The Franchisee shall:
 - (a) comply with its obligations under paragraph 2.1 and this paragraph 3 promptly and in any case in accordance with any reasonable timetable with which the Secretary of State requires the Franchisee by notice in writing to comply;
 - (b) where the Secretary of State raises with the Franchisee any query in relation to any Data Site Information, make a full and substantive response to such query within five (5) Weekdays. Such response shall include any further information requested by the Secretary of State in relation to such query; and
 - (c) nominate a person to whom:
 - (i) all queries or requests for information pursuant to paragraph 3.6(b);

- (ii) requests for access to premises pursuant to paragraph 5; and
- (iii) requests for access to employees,

shall be addressed and who shall be responsible for complying with any such queries or requests for information and such requests for access to employees and premises. The Franchisee shall notify the Secretary of State (the Secretary of State's representatives and advisers) of the name and contact details of such person.

3.7 In connection with any proposal (whether or not yet finalised) to enter into separate franchise agreements and/or other agreements with more than one Successor Operator, each relating to some only of services equivalent to the Franchise Services (whether or not together with other railway passenger services) at or following the end of the Franchise Period, the Franchisee agrees and acknowledges that the Secretary of State may require:

- (a) that the Franchisee provides the Secretary of State with additional information and reports and analysis in respect of such Service Groups as the Secretary of State may specify. This may include:
 - (i) information relating to the operational and financial performance of the Franchisee in relation to such Service Groups; and
 - (ii) identification of those employees, assets and liabilities which relate to such Service Groups together with an indication of the extent to which the same are shared between the operation of different Service Groups; and
- (b) subject to paragraph 3.8, that the Franchisee reorganises the business of providing services equivalent to the Franchise Services in order to facilitate the transfer anticipated by this Schedule 15.1 on an ongoing basis of the business of providing the Franchise Services within each of such Service Groups to separate Successor Operators. This may include, to the extent reasonably practicable:
 - (i) the re-organisation of personnel such that an appropriate number of employees (having sufficient skills, qualifications and experience) will transfer by operation of Law to each Successor Operator of each such Service Group; and/or
 - (ii) entering into additional or clarificatory contractual or other arrangements so that the Successor Operator of each such Service Group will have the necessary assets and rights to operate the Franchise Services within that Service Group; and
- (c) that the Franchisee uploads Data Site Information to more than one data site.

3.8 Subject to paragraph 3.9, the Secretary of State shall reimburse any reasonable out of pocket expenses that the Franchisee may incur in complying with its obligations under this paragraph 3.

3.9 Without prejudice to any other rights the Secretary of State may have (under the Franchise Agreement or otherwise) in respect of any contravention by the Franchisee of its obligations under this paragraph 3, if the Secretary of State is of

the reasonable opinion that the Franchisee does not have sufficient resources to enable its compliance with its obligations under this paragraph 3 the Secretary of State may:

- (a) require the Franchisee (at its own cost) to employ; or
- (b) after notification to the Franchisee, employ,

such suitable additional resource as may be required to ensure that the Franchisee can comply with its obligations under this paragraph 3. The Franchisee shall reimburse to the Secretary of State, by way of adjustment to Franchise Payments, any proper costs (including staff costs) incurred by the Secretary of State in the employment of any such additional resource pursuant to paragraph 3.9(b).

- 3.10 To the extent reasonably practicable, prior to taking any of the actions referred to in paragraph 3.9, the Secretary of State shall allow the Franchisee a reasonable opportunity to make representations to the Secretary of State concerning the exercise by the Secretary of State of the Secretary of State's rights under paragraph 3.9 but the Secretary of State shall not be obliged by those representations to refrain from exercising any of the actions specified under paragraph 3.9.

4. **Non-Frustration of Transfer to Successor Operator**

- 4.1 The Franchisee shall take no action or steps which is or are designed, directly or indirectly:

- (a) to prevent, prejudice or frustrate the transfer as a going concern of the business of providing the Franchise Services at the end of the Franchise Period to a Successor Operator; or
- (b) to avoid, frustrate or circumvent any provision of the Franchise Agreement (including in particular the provisions of Schedule 14 (*Preservation of Assets*) and this Schedule 15) which is included in whole or in part for the purpose of preventing any such preventive, prejudicial or frustrating action or steps.

- 4.2 Subject to the restrictions set out in paragraph 4.1 and the other provisions of the Franchise Agreement, the Franchisee may take such action as it may require for the purposes of bidding to become, or becoming, a Successor Operator.

5. **Inspection Rights during the Tendering/Reletting Process**

- 5.1 Without limiting any other rights of the Secretary of State under the Franchise Agreement and subject to paragraph 5.3, the Franchisee shall permit the undertaking of inspections (including the taking of inventories) or surveys of:

- (a) trains;
- (b) Stations;
- (c) Depots;
- (d) sidings; and/or

- (e) other premises owned or occupied by the Franchisee or any of its Affiliates or used in connection with the provision of the Franchise Services by the Franchisee or any of its Affiliates,

("Inspections") by the Secretary of State (or the Secretary of State's nominee, which for these purposes shall include potential Successor Operators including potential bidders who have expressed an interest in tendering for the right and obligation to operate any or all of the Franchise Services, and who carry suitable identification and evidence of authorisation (**"Nominee"**)) as the Secretary of State may reasonably require in connection with any Tendering/Reletting Process.

- 5.2 The Franchisee shall provide a travel permit(s) which will allow the Secretary of State or a Nominee to travel free of charge on the Routes in order to carry out the Inspections.
- 5.3 The Secretary of State shall use reasonable endeavours to ensure that any Inspections shall be undertaken so as not to unduly interfere with the continuing provision and operation of the Franchise Services by the Franchisee.

Schedule 15.2

Last Twelve (12) or Thirteen (13) Months of Franchise Period and Other Conduct of Business Provisions

1. Last Twelve (12) or Thirteen (13) Month Period

1.1 Where reference is made in the Franchise Agreement to the last twelve (12) or thirteen (13) months of the Franchise Period, such period shall be deemed to commence on the earliest of the following dates:

- (a) the date which is twelve (12) or thirteen (13) months, as the case may be, prior to the Expiry Date or if the actual date of expiry of the Franchise Period is known the date which is twelve (12) or thirteen (13) months prior to that date;
- (b) the date on which the Secretary of State notifies the Franchisee that such period of twelve (12) or thirteen (13) months shall be deemed to commence on the grounds that the Secretary of State reasonably considers that an Event of Default may occur within the following twelve (12) months; or
- (c) the date on which the Secretary of State notifies the Franchisee that such period of twelve (12) or thirteen (13) months shall be deemed to commence on the grounds that the Secretary of State considers it reasonably likely that the Franchise Agreement will be terminated by agreement between the Parties within such period.

1.1A **NOT USED.**

1.2 Any such period (which may be longer or shorter than twelve (12) or thirteen (13) months, as the case may be) shall expire on the Expiry Date or, if earlier:

- (a) in the case of periods commencing under paragraph 1.1(b) or 1.1(c), the date falling twelve (12) or thirteen (13) months after the date of any notice under paragraph 1.1(b) or 1.1(c); or
- (b) such earlier date as the Secretary of State may determine.

1.2A **NOT USED**

2. **NOT USED**

3. **NOT USED**

4. Changes in Numbers and Total Cost of Employees

4.1 Subject to and excluding any increase in the remuneration of Franchise Employees permitted under Schedule 6.7 (*Co-Operation and Industrial Relations*), the Franchisee shall not, and shall secure that each other relevant employer shall not, without the prior written consent of the Secretary of State (which shall not be unreasonably withheld) increase or decrease during the Franchise Period the number of Franchise Employees such that:

- (a) the total number of Franchise Employees or the total cost per annum to the Franchisee and each other relevant employer of employing all Franchise Employees is increased; or

(b) the total number of Franchise Employees is decreased,

in each case, by more than five per cent (5%) compared to the relevant headcount and costs in respect of Franchise Employees (by reference to FTEs (full time equivalents)) stated in the Record of Assumptions as at the Start Date.

5. Fares

5.1 *Reduction in Prices of Fares*

(a) During the last thirteen (13) months of the Franchise Period the Franchisee shall not, without the prior written consent of the Secretary of State (not to be unreasonably withheld), set the Price or Child Price of or sell (except to the extent required to do so under the terms of the Ticketing and Settlement Agreement as a result of the Price or Child Price of a Fare being set by another person) any Fare which would entitle the purchaser of such Fare to travel on all or any of the Passenger Services after the Franchise Period for an amount which is less than the Price or the Child Price of that Fare immediately before the commencement such thirteen (13) month period or, in the case of a new Fare, the Price of its nearest equivalent immediately before the commencement of such period.

(b) Paragraph 5.1(a) shall not prevent the Franchisee from giving any discount or reduction to which the purchaser of a Fare may be entitled by virtue of:

- (i) presenting a Discount Card (or any equivalent replacement thereof) issued by the Franchisee before the commencement of such thirteen (13) month period and to which the purchaser would have been entitled before the commencement of such period;
- (ii) presenting a Discount Card issued by another train operator;
- (iii) the Passenger's Charter or the passenger's charter of any other train operator; or
- (iv) any relevant conditions of carriage.

(c) The Franchisee shall procure that persons acting as its agent (except persons acting in such capacity by virtue of having been appointed under Parts II to VI of Chapter 9 of the Ticketing and Settlement Agreement or by being party to the Ticketing and Settlement Agreement) shall comply with the provisions of paragraph 5.1(a) to the extent that such provisions apply to the selling of Fares by the Franchisee.

5.2 *Percentage Allocations*

(a) Except to the extent that the Secretary of State may consent from time to time (such consent not to be unreasonably withheld), the Franchisee shall not, in the last thirteen (13) Reporting Periods of the Franchise Period, take any action or step which may result in its Percentage Allocation in respect of any Rail Product being reduced.

(b) The Franchisee shall notify the Secretary of State before taking any such action or step in the last thirteen (13) Reporting Periods of the Franchise Period and upon becoming aware of any other person proposing to take any action or step which may have the same effect. The Franchisee shall take

such action as the Secretary of State may reasonably request in order to prevent any such reduction, including submitting any dispute to any relevant dispute resolution procedures.

5.3 **Restrictions in respect of Sale of Advance Purchase Train-specific Fares**

- (a) It is acknowledged that the Franchisee shall make available for sale prior to the end of the Franchise Period Advance Purchase Train-specific Fares which are valid for travel after the end of the Franchise Period.
- (b) In making such Advance Purchase Train-specific Fares available for purchase the Franchisee shall not change its commercial practice in terms of the number of such Advance Purchase Train-specific Fares made available or the Passenger Services on which they are valid for use when compared with its previous commercial practice in respect of Advance Purchase Train-specific Fares valid for travel prior to the end of the Franchise Period.
- (c) The Franchisee shall be permitted to take into account reasonable seasonal factors in determining its previous commercial practice. In assessing reasonableness, account will be taken of the Franchisee's practice in addressing such seasonal factors in the corresponding period in the previous year.

6. **Voting on Scheme Councils**

6.1 The Franchisee shall give the Secretary of State reasonable notice of:

- (a) any meeting of:
 - (i) a scheme council of an Inter-Operator Scheme on which the Franchisee is represented; or
 - (ii) a scheme management group of any Inter-Operator Scheme:
 - (A) in which the Franchisee has a permanent position; or
 - (B) where the Franchisee employs a member of such group; and
- (b) the resolutions to be voted upon at any such meeting; and
- (c) the Franchisee's voting intentions recommendations, together with its reasons.

6.2 The Franchisee shall:

- (a) vote at any such meeting in the manner required by the Secretary of State; and
- (b) present any documents or other information which the Secretary of State may request at any such meeting.

7. **Not Used**

Schedule 15.3

Handover Package**1. Handover Package Status**

1.1 The Franchisee shall:

- (a) on or before the Start Date, provide to the Secretary of State:
 - (i) the package which contains the information specified in Appendix 1 (Form of Handover Package) to this Schedule 15.3 and such other information as the Secretary of State may reasonably specify from time to time (the "**Handover Package**"); and
 - (ii) a letter in a form approved by and addressed to the Secretary of State confirming the details of any insurer providing insurance to the Franchisee and authorising the insurer (and any relevant broker) to release any insurance-related information to any of the Secretary of State, a Successor Operator or its agent on demand;
- (b) maintain the Handover Package and update it at least every three (3) Reporting Periods; and
- (c) in respect of the information required pursuant to paragraph 1.1(a)(ii), supply revised information and/or letters to the Secretary of State as and when required in order to ensure that such information and letters remain accurate and up to date.

1.2 The Franchisee shall ensure that any Successor Operator will have immediate access to the Handover Package on the expiry of the Franchise Period.

1.3 **NOT USED.**

1.4 **NOT USED.**

2. Statutory Director's Certificate

2.1 At the same time as the Franchisee is required to provide the Annual Business Plan to the Secretary of State as required by paragraph 10.2 of Schedule 11.2 (*Management Information*), the Franchisee shall provide to the Secretary of State the latest version of the Handover Package (updated as required pursuant to paragraph 1.1(b) of this Schedule 15.3) together with:

- (a) a certificate signed by a statutory director of the Franchisee, addressed to the Secretary of State, which confirms that:
 - (i) the Handover Package contains the information specified in Appendix 1 (*Form of Handover Package*) to this Schedule 15.3 (and such other information specified from time to time by the Secretary of State); and
 - (ii) such information is accurate as at the date of the certificate; and

- (b) a document setting out all the changes that have been made to the Handover Package since the last version of the Handover Package provided to the Secretary of State pursuant to this paragraph 2.1.

3. **Key Contacts List**

- 3.1 The Franchisee shall on or before the Start Date, provide to the Secretary of State the Key Contacts List by following the guidance issued by the Secretary of State from time to time. The Key Contacts List shall be stored in an encrypted server with password protected access.
- 3.2 The Franchisee shall ensure that the Key Contacts List is maintained in an accurate and up to date form. In the event of any change(s) to the Key Contacts List the Franchisee shall supply the revised Key Contacts List to the Secretary of State pursuant to the guidance mentioned in paragraph 3.1 above and as soon as reasonably practicable (and in any event within the timeframes set out in paragraph 3.4) after the change(s) is/are made.
- 3.3 The Franchisee shall make the relevant Franchise Employee listed in the Key Contacts List aware that their Personal Data shall be shared with:
- (a) the Secretary of State and retained by the Secretary of State during the Franchise Term (until such time as the Personal Data is replaced in the Key Contacts List by way of the change(s) described in paragraph 3.2) and for a period of twelve (12) months after the Expiry Date; and
- (b) the Successor Operator during the mobilisation period,
- including by ensuring that the fairness principle of the Data Protection Legislation is satisfied in respect of the same by issuing all relevant privacy notices.
- 3.4 The Franchisee shall be responsible for informing the Secretary of State if details in the Key Contacts List are incorrect or need to be deleted by the Secretary of State within five (5) Weekdays of notice from the relevant Franchise Employee. The Secretary of State shall delete or amend the details within five (5) Weekdays of notice from the Franchisee.
- 3.5 The Franchisee shall also ensure that the Key Contacts List is provided to the Secretary of State within twenty four (24) hours of the receipt of any Termination Notice.

APPENDIX 1 TO SCHEDULE 15.3**Form of Handover Package**

1. All information in the Handover Package must be provided electronically in a form that is acceptable to the Secretary of State.

2. **Property**

A list of all property owned, leased, operated or occupied by the Franchisee which shall include the address and contact telephone number of each property. Where applicable, the list will also include the name, office address and telephone number of the lessor and/or the party which has granted authority to use or occupy the property, and any relevant reference numbers applicable to that lease or occupation.

2. **Contracts**

A list of all contracts (sales, purchases or otherwise including leases and licences) between the Franchisee and the counterparty or counterparties to each such contract, showing the name, office address and telephone number of each counterparty; the contract reference number of the Franchisee and each counterparty (if any); and the contract price/value, term and expiry date. This requirement shall apply to all contracts unless otherwise agreed by the Secretary of State.

3. **Systems**

A list of the electronic systems in use by the Franchisee, together with the name, office address and telephone number of the Franchisee's Information Technology Manager (or the holder of any equivalent post) who is responsible for administration of each such system.

4. **Asset Register**

A list of all assets owned or operated by the Franchisee, together with their location.

5. **Insurance**

A list of the names, office addresses and telephone numbers of all insurers and any relevant broker providing insurance to the Franchisee, together with the relevant policy numbers and other references and details of any outstanding claims or unresolved disputes.

6. **Safety Certificate/Safety Authorisation**

- (a) A complete copy of the Safety Certificate, an electronic copy of the Franchisee's application for the Safety Certificate and full details of the Franchisee's safety management system in place to support the Safety Certificate.

- (b) A complete copy of the Safety Authorisation, an electronic copy of the Franchisee's application for the Safety Authorisation and full details of the Franchisee's safety management system in place to support the Safety Authorisation.

7. **NOT USED.**

Schedule 15.4

Provisions applying on and after Termination**1. Novation of Access Agreements on Termination of the Franchise Agreement**

1.1 The Franchisee shall, to the extent so requested by the Secretary of State on termination of the Franchise Agreement, in relation to any Access Agreement to which it is a party, novate its interest under any relevant Access Agreement (and any related Collateral Agreement) to the Secretary of State or as the Secretary of State may direct.

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

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

(a) that the Franchisee shall not be released from any accrued but unperformed obligation, the consequences of any breach of the relevant agreement which is the subject of arbitration or litigation between the Parties or any liability in respect of any act or omission under or in relation to the relevant agreement prior to, or as at the date of, any such novation (except to the extent that the Secretary of State or the Secretary of State's nominee agrees to assume responsibility for such unperformed obligation, such liability or the consequences of such breach in connection with the relevant novation); and

(b) that neither the Secretary of State nor the Secretary of State's nominee shall be obliged, in connection with such novation, to agree to assume responsibility for any unperformed obligation, liability or consequences of a breach of the relevant agreement referred to in paragraph 1.3(a),

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

1.4 The Franchisee shall, on the occurrence of the circumstances specified in paragraph 1.1 in relation to any other Train Operator who is a party to an Access Agreement to which the Franchisee is also party, agree to the novation of the relevant Train Operator's interest under the relevant Access Agreement to the Secretary of State or as the Secretary of State may direct, subject, to the extent applicable, to the consent of the ORR. The provisions of paragraph 1.3 shall apply to any such novation.

1.5 The Franchisee shall notify the Secretary of State on becoming aware of any circumstances which might lead to the Secretary of State being able to require the Franchisee to novate its interest or agree to the novation of another Train Operator's interest under this paragraph 1.

2. **Co-operation with Successor Operator**

2.1 In order to ensure the continuity of, and an orderly handover of control over, the Franchise Services, the Franchisee shall co-operate with:

- (a) where a Successor Operator has been appointed, such Successor Operator; or
- (b) the Secretary of State; or
- (c) any relevant Train Operator,

and shall take such steps as may be reasonably requested by the Secretary of State in connection therewith.

2.2 In satisfaction of its obligations under paragraph 2.1, the Franchisee shall make appropriately skilled and qualified Franchise Employees reasonably available to attend such meetings with the Secretary of State, any Successor Operator, the Infrastructure Manager, ORR, HS2 Limited and any relevant Train Operator, any rolling stock lessor or sub-lessee and/or any other relevant third party as are reasonably required in order to determine:

- (a) those actions that are required in order to facilitate such continuity and orderly handover, in particular those actions arising under, but not limited to, the following agreements:
 - (i) Access Agreements;
 - (ii) Property Leases;
 - (iii) agreements in relation to Shared Facilities;
 - (iv) Rolling Stock Leases;
 - (v) Rolling Stock Related Contracts;
 - (vi) any other Key Contract; and
- (b) without prejudice to the Secretary of State's rights under this Schedule 15.4, those rights and liabilities as may be specified in any Transfer Scheme.

3. **Transfer of Primary Franchise Assets**

3.1 **Option Arrangements**

- (a) The Secretary of State hereby grants to the Franchisee the right to require the Secretary of State to make, and the Franchisee hereby grants to the Secretary of State the right to make, a Transfer Scheme in accordance with section 12 and Schedule 2 of the Railways Act 2005 for the transfer of any or all Primary Franchise Assets on the expiry of the Franchise Period.
- (b) On or within fourteen (14) days before the expiry of the Franchise Period:
 - (i) either Party may serve notice on the other Party specifying the Primary Franchise Assets to be transferred; and

- (ii) the other Party may (within such timescale) serve a subsequent notice specifying any additional Primary Franchise Assets to be transferred.
- (c) The Secretary of State may (and shall if required by the Franchisee) make one or more such Transfer Schemes for the transfer of the Primary Franchise Assets specified in any such notice within fourteen (14) days after service of such notice (except in relation to any such Primary Franchise Assets which are, in accordance with Schedule 14.4 (*Designation of Franchise Assets*), de-designated as such prior to the end of the Franchise Period).
- (d) Any Franchise Assets or Primary Franchise Assets which are not so transferred shall cease to be designated as such fourteen (14) days after service of such notice.

3.2 Supplemental Agreement

Without prejudice to the duties, powers, rights and obligations of the Secretary of State under the Railways Act 2005 in respect of any Transfer Scheme, any Transfer Scheme shall impose on the Franchisee and the transferee an obligation to enter into an agreement substantially in the form of the Supplemental Agreement which shall provide for the determination of amounts to be paid in respect of the property, rights and liabilities which are transferred under such Transfer Scheme. The Franchisee shall enter into any such Supplemental Agreement and shall comply with its obligations thereunder.

3.3 Payment of Estimated Transfer Price

- (a) The Secretary of State may require the Franchisee to pay to any transferee under a Transfer Scheme, or may require any such transferee to pay to the Franchisee, on the day on which the Transfer Scheme comes into force such sum as the Secretary of State may determine should be so paid having regard to:
 - (i) the Secretary of State's estimate of the sum likely to be paid under the relevant Supplemental Agreement in respect of the Primary Franchise Assets being transferred under the relevant Transfer Scheme;
 - (ii) the Secretary of State's estimate of any other sums likely to be paid thereunder;
 - (iii) the financial condition of the Franchisee and the transferee and whether any estimate so paid would be likely to be repaid, if in excess of the sums eventually payable thereunder; and
 - (iv) such other matters as the Secretary of State may consider appropriate.
- (b) The Franchisee shall pay to any such transferee the sum determined by the Secretary of State in accordance with paragraph 3.3(a) on the day on which the relevant Transfer Scheme comes into force.

3.4 Possession of Franchise Assets

On the coming into force of a Transfer Scheme, the Franchisee shall deliver up to the Secretary of State (or the Secretary of State's nominee) possession of the Primary Franchise Assets transferred under such Transfer Scheme.

4. Associated Obligations on Termination

4.1 Assistance in Securing Continuity

- (a) In order to facilitate the continuity of the Franchise Services on expiry of the Franchise Period, the Franchisee shall take such steps, both before and after the expiry of the Franchise Period, as the Secretary of State may reasonably require, to assist and advise any Successor Operator in providing and operating the Franchise Services.
- (b) In particular, the Franchisee shall provide any Successor Operator with such records and information relating to or connected with the Franchise Services as the Secretary of State may reasonably require (other than confidential financial information but including all records relating to the Franchise Employees).

4.2 Access

On the expiry of the Franchise Period, the Franchisee shall grant (or, in relation to the rolling stock vehicles, use all reasonable endeavours to procure that any sub-lessee shall provide) the Secretary of State and the Secretary of State's representatives such access as the Secretary of State may reasonably request to any property owned, leased or operated by the Franchisee at such time, for the purpose of facilitating the continued provision of the Franchise Services.

4.3 Key Contracts

- (a) The Franchisee shall provide such assistance to any Successor Operator as the Secretary of State may reasonably require in ensuring that, pursuant to any Direct Agreements, such Successor Operator may enter into (or enjoy the benefit of) contracts equivalent to the relevant Key Contracts (or part thereof).
- (b) In satisfaction of its obligations under paragraph 4.3(a), the Franchisee shall terminate, surrender, cancel or undertake not to enforce its rights under any Key Contract (or part thereof) provided that nothing in this paragraph shall require the Franchisee to undertake not to enforce any rights under a Key Contract relating to the period prior to the expiry of the Franchise Period.

4.4 Change of Name

The Franchisee shall cease to use any trademarks which are licensed to the Franchisee under any of the Brand Licences forthwith upon expiry of the Franchise Period and shall take all necessary steps to change any company name which incorporates any such marks as soon as practicable.

4.5 Property Leases

- (a) The Franchisee shall, on the expiry of the Franchise Period, if requested by the Secretary of State, assign its interest under all or any Property Leases to the Secretary of State or as the Secretary of State may direct, subject where applicable to the agreement of any other party to such Property Lease or the ORR.
- (b) Such assignment shall be on such terms as the Secretary of State may reasonably require, including:
 - (i) that the Franchisee shall not be released from any accrued but unperformed obligation, the consequences of any antecedent breach of a covenant or obligation in the Property Leases or any liability in respect of any act or omission under or in relation to the Property Lease prior to, or as at the date of, any such assignment (except to the extent that the Secretary of State or the Secretary of State's nominee agrees to assume responsibility for such unperformed obligation, such liability or the consequences of such breach in connection with the relevant assignment); and
 - (ii) that neither the Secretary of State nor the Secretary of State's nominee shall be obliged, in connection with such assignment, to agree to assume responsibility for any unperformed obligation, liability or consequences of a breach referred to in paragraph 4.5(b)(i), and the Franchisee shall indemnify the Secretary of State or the Secretary of State's nominee, as the case may be, on demand, on an after-tax basis against any costs, losses, liabilities or expenses suffered or incurred in relation thereto.
- (c) The Franchisee shall, on the occurrence of any of the circumstances specified in paragraph 4.5(a) in relation to any other Train Operator who is a party to a Property Lease to which the Franchisee is also party, agree to the assignment of such Train Operator's interest under the relevant Property Lease to the Secretary of State or as the Secretary of State may direct, subject, where applicable, to the consent of the Infrastructure Manager. The provisions of paragraph 4.5(b) shall apply to any such assignment.
- (d) The Franchisee shall notify the Secretary of State on becoming aware of any circumstances which might lead to the Secretary of State being able to require the Franchisee to assign its interest or agree to the assignment of another Train Operator's interest under this paragraph 4.

5. **Actions required immediately on Handover**

- 5.1 The Franchisee shall immediately on the expiry of the Franchise Period make available to the Secretary of State:
 - (a) information as to the status of each purchase order or contract, including its award date, anticipated delivery date, confirmation of receipt of goods or services and the payment records for each purchase order, together with any matters in dispute with the appointed subcontractor and, to the extent that the Franchisee is a subcontractor to another Train Operator, equivalent information in respect of that Train Operator; and
 - (b) information concerning any contract necessary for the continued operation of the Franchise where a procurement or bidding process has been initiated.

5.2 The Franchisee agrees that the Secretary of State or the Secretary of State's agents may have access to and use free of charge any information contained in any Computer System or in hard copy format as the Secretary of State sees fit (for the purposes of continuing the operation of the Franchise Services).

6. **Maintenance Records**

6.1 The Franchisee shall immediately on expiry of the Franchise Period provide to the Secretary of State (or, in relation to rolling stock vehicles, use all reasonable endeavours to procure that any sub-lessee shall provide):

- (a) records of the status of the maintenance of the rolling stock vehicles used in the provision of the Passenger Services;
- (b) records of the status of the maintenance of any lifting equipment;
- (c) a list of any deferred maintenance; and
- (d) records of the status of the maintenance of any depot or station which is a Franchise Asset,

including the extent of completion of examinations and the modification status of each such rolling stock vehicle

7. **Ticketing Arrangements**

7.1 The Franchisee shall provide immediately on expiry of the Franchise Period a statement certifying:

- (a) all ticketing transactions with the public or credit card agencies that are in process and not yet complete, together with any allocations on multi-modal travel with other agencies or local authorities;
- (b) the extent of any outstanding claims with ticketing settlement agencies;
- (c) refund arrangements (whether under the Passenger's Charter or not) with members of the public or other Train Operators or ticketing settlement agencies that are in process and not yet complete; and
- (d) commissions owed and/or due.

8. **Franchisee's Intellectual Property**

8.1 On the expiry of the Franchise Period, the Franchisee shall grant to any Successor Operator licences of any Intellectual Property Rights which:

- (a) are owned by or licensed to the Franchisee; and
- (b) were not owned by or licensed to it immediately prior to the commencement of the franchise agreement between the Parties dated 11 November 2007; and

- (c) have not been designated as a Primary Franchise Asset
 - (d) are not owned by the Secretary of State (including Intellectual Property Rights in the Cross Country Railway Brand, which are reserved to the Secretary of State); and
 - (e) may, in the reasonable opinion of the Secretary of State, be necessary for any Successor Operator to operate the Franchise Services on an efficient and economic basis after the expiry of the Franchise Period.
- 8.2 When agreeing the terms on which Intellectual Property Rights are to be licensed to it, the Franchisee shall use all reasonable endeavours to ensure that such terms include the right to sub-license such Intellectual Property Rights in accordance with this paragraph 8. The Franchisee shall not enter into a licence that does not include such a provision without first obtaining the Secretary of State's prior written consent (such consent not to be unreasonably withheld).
- 8.3 Any licence of any Intellectual Property Rights shall be granted to the relevant Successor Operator for such period as the Secretary of State may determine to be reasonably necessary for the purpose of securing continuity of the provision of the Franchise Services. Such licence shall be free of charge and royalty-free for a minimum of three (3) months.
- 8.4 If the licence of any Intellectual Property Rights is for a period in excess of three (3) months, the grant of the licence shall be subject to payment of a reasonable royalty (backdated to the expiry of the Franchise Period) on the basis of a willing licensor and licensee entering into a licence on comparable terms to similar licences of such Intellectual Property Rights. If the Franchisee and the relevant Successor Operator are unable to agree such royalty, the Franchisee shall submit such dispute for resolution in accordance with such dispute resolution rules as the Secretary of State may require.
- 8.5 Any such licence shall be in such form as the Secretary of State shall reasonably determine and shall:
- (a) be non-exclusive and limited to use solely for the purposes of the provision and operation of the Franchise Services and will not provide for any right to use such Intellectual Property Rights for any other purpose (including its marketing or exploitation for any other purpose);
 - (b) be terminable on material breach by the Successor Operator;
 - (c) contain an indemnity from the Franchisee to the effect that to the best of its knowledge and belief it owns the relevant Intellectual Property Rights or has the right to license them and the licensing of such Intellectual Property Rights and the subsequent use of the Intellectual Property Rights will not infringe any third party Intellectual Property Rights; and
 - (d) require the Successor Operator, to the extent that it relates to any trade marks, to use such trade marks in such manner as may reasonably be required by the Franchisee provided that it shall not be reasonable for the Franchisee to require any such trade mark to be used in a manner materially different from its use during the Franchise Period.

9. Information about Passengers

- 9.1 The Franchisee shall immediately on the expiry of the Franchise Period make available to the Secretary of State and/or the Secretary of State's nominee:
- (a) passenger numbers information specified in paragraph 1 of Schedule 1.5 (*Information about Passengers*) in such format and to such level of disaggregation (as the Secretary of State and/or the Secretary of State's nominee may reasonably require);
 - (b) the CRM Data; and
 - (c) the Yield Management Data.

APPENDIX 1 TO SCHEDULE 15.4
Template Form of Transfer Scheme

Dated [INSERT DATE]

[Template] TRANSFER SCHEME
OF
THE SECRETARY OF STATE FOR TRANSPORT
MADE PURSUANT TO SCHEDULE 2 OF THE RAILWAYS ACT 2005

IN FAVOUR OF
[INSERT NAME OF SUCCESSOR OPERATOR]

IN RESPECT OF
CERTAIN PROPERTY, RIGHTS AND LIABILITIES
OF
[INSERT NAME OF FRANCHISEE]

Secretary of State for Transport
33 Horseferry Road
London SW1P 4DR

TRANSFER SCHEME

Whereas:

- (A) [INSERT NAME OF FRANCHISEE] (the “**Transferor**”) has been providing certain services for the carriage of passengers by railway and operating certain stations and light maintenance depots pursuant to a franchise agreement with the Secretary of State for Transport (the “**Secretary of State**”) dated [INSERT DATE] (the “**Franchise Agreement**”).
- (B) The Franchise Agreement terminated or is to terminate on [INSERT DATE] and [INSERT NAME OF SUCCESSOR OPERATOR] (the “**Transferee**”) is to continue the provision of all or part of such services or the operation of all or some of such stations and light maintenance depots under a new franchise agreement or in connection with the performance or exercise of the duties and powers of the Secretary of State to secure the provision of such services or the operation of such stations or light maintenance depots.
- (C) Certain property, rights and liabilities of the Transferor which were designated as franchise assets for the purpose of the Franchise Agreement are to be transferred to the Transferee under a transfer scheme made by the Secretary of State under section 12 and Schedule 2 of the Railways Act 2005.

The Secretary of State, in exercise of the powers conferred on the Secretary of State by Schedule 2 of the Railways Act 2005, hereby makes the following scheme:

1. **Definitions and Interpretation**

In this Transfer Scheme functions has the meaning ascribed to it in the Railways Act 2005 and relevant enactment has the meaning ascribed to it in paragraph 6 of Schedule 2 of the Railways Act 2005.

2. **Transfer of Property, Rights and Liabilities**

With effect from [INSERT DATE] the property, rights and liabilities of the Transferor specified or described in the Schedule shall be transferred to, and vest in, the Transferee.

3. **Statutory Functions**

Subject to any amendment to the relevant enactment which comes into force on or after the date on which this Transfer Scheme is made, there shall be transferred to the Transferee all the functions of the Transferor under any relevant enactments if and to the extent that any such relevant enactment:

- (a) relates to any property which is to be transferred by this Transfer Scheme; or
- (b) authorises the carrying out of works designed to be used in connection with any such property or the acquisition of land for the purpose of carrying out any such works.

4. **Supplemental Agreement**

Each of the Transferor and the Transferee shall enter into the Supplemental Agreement (as defined in the Franchise Agreement) on the coming into force of this Transfer Scheme.

This Transfer Scheme is made by the Secretary of State on [INSERT DATE].

SEAL REF NO:

THE CORPORATE SEAL OF
THE SECRETARY OF STATE
FOR TRANSPORT IS
HEREUNTO AFFIXED:



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

SCHEDULE TO THE TRANSFER SCHEME

[LIST RELEVANT FRANCHISE ASSETS TO BE TRANSFERRED TO SUCCESSOR OPERATOR]

APPENDIX 2 TO SCHEDULE 15.4
Template Form of Supplemental Agreement

Dated [INSERT DATE]

[INSERT NAME OF OUTGOING FRANCHISEE]

- and -

[INSERT NAME OF SUCCESSOR OPERATOR]

[Template] SUPPLEMENTAL AGREEMENT

to the transfer scheme dated [INSERT DATE] made
by the Secretary of State for Transport in respect of
certain property rights and liabilities of
[INSERT NAME OF OUTGOING FRANCHISEE]

Secretary of State for Transport
33 Horseferry Road
London SW1P 4DR

THIS SUPPLEMENTAL AGREEMENT is made on [INSERT DAY] [INSERT YEAR]

BETWEEN:

- (1) [INSERT NAME OF OUTGOING FRANCHISEE] whose registered office is at [INSERT ADDRESS OF REGISTERED OFFICE] (the "**Transferor**"); and
- (2) [INSERT NAME OF SUCCESSOR OPERATOR] whose registered office is at [INSERT ADDRESS OF REGISTERED OFFICE] (the "**Transferee**").

WHEREAS

- (A) The Transferor has been providing certain services and the carriage of passengers by railway and operating certain stations and light maintenance depots pursuant to a franchise agreement with the Secretary of State for Transport (the "**Secretary of State**") dated [INSERT DATE] (the "**Franchise Agreement**").
- (B) The Franchise Agreement terminated or is to terminate on [INSERT DATE] and the Transferee has been selected by the Secretary of State to continue the provision of all or part of such services pursuant either to a franchise agreement with the Secretary of State or arrangements made with the Secretary of State in connection with the Secretary of State's duties and powers.
- (C) Certain property, rights and liabilities of the Transferor are to be transferred to the Transferee pursuant to a transfer scheme made by the Secretary of State on [INSERT DATE] under section 12 and Schedule 2 of the Railways Act 2005 (the "**Transfer Scheme**").
- (D) This Agreement is supplemental to the Transfer Scheme and sets out certain terms between the Transferor and the Transferee in relation to the transfer of such property, rights and liabilities under the Transfer Scheme and the transfer of certain other property, rights and liabilities at the same time.

IT IS AGREED THAT:

1. DEFINITIONS AND INTERPRETATION

Definitions

- 1.1 The following words and expressions shall have the following meaning:

"Business" means such of the undertaking or part of the undertaking of the Transferor prior to the Transfer Date as may be continued by the Transferee after the Transfer Date;

"Credit" has the meaning assigned to that term under the Ticketing and Settlement Agreement;

"Debit" has the meaning assigned to that term under the Ticketing and Settlement Agreement;

"DfT Funded Assets" means those property, rights and liabilities that are legally or beneficially owned by the Franchisee and which are funded through the following schemes, funds or budgets:

- (a) **NOT USED**;

- (b) the Minor Works' Budget;
- (c) an Approved CCI Scheme; [or]
- (d) [INSERT ANY OTHER RELEVANT FRANCHISE SPECIFIC SCHEME, FUND OR BUDGET/NOT USED].

"Estimated Completion Payment" has the meaning ascribed to that term in Clause 2.1;

"Net Asset Statement" means the statement to be drawn up pursuant to Clause 2.2;

"Net Asset Value" means the aggregate of the amounts of the Relevant Franchise Assets, the Relevant Contract Liabilities, the Relevant Debits and Credits and the Relevant Employee Liabilities as shown in the Net Asset Statement agreed or determined pursuant to Clause 2.2;

"Purchase Price" has the meaning ascribed to that term in Clause 2.1;

"Relevant Contract Liabilities" means such rights and liabilities of the Transferor as may be transferred to the Transferee on the expiry of the Franchise Period in relation to any Licence, Access Agreement or Property Lease under paragraphs 1 and 4.5 of Schedule 15.4 (Provisions applying on and after Termination) of the Franchise Agreement;

"Relevant Debits and Credits" means such Debits and Credits of the Transferor which relate to Fares sold before the Transfer Date and which may be received by the Transferee as a result of Clause 11-33 of the Ticketing and Settlement Agreement;

"Relevant Employee Liabilities" means such rights and liabilities of the Transferor (or any other relevant employer or person) under any contracts of employment relating to the Relevant Employees which have been or are to be transferred to the Transferee by virtue of the operation of Law (including the Transfer Regulations);

"Relevant Employees" means all persons employed in the Business immediately before the Transfer Date (whether employed by the Transferor or otherwise) whose contract of employment has been or is to be transferred to the Transferee by virtue of the operation of Law (including the Transfer Regulations) or any other person employed at any time in the Business in respect of whom liabilities arising from a contract of employment or employment relationship have or will be transferred by virtue of the operation of Law (including the Transfer Regulations);

"Relevant Franchise Assets" means such of the property, rights and liabilities that are legally or beneficially owned by the Transferor and which are or are to be transferred to the Transferee under the Transfer Scheme;

"Reporting Accountants" means such firm of accountants as may be selected by agreement between the Parties within four (4) weeks of the preparation of the Net Asset Statement or, in the absence of such agreement, selected by the Secretary of State upon the request of either party;

"Season Ticket Fare" means a Fare which entitles the purchaser to make an unlimited number of journeys in any direction during the period for which, and between the stations and/or the zones for which, such Fare is valid;

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

"Taxation" comprises all forms of taxation, duties, contributions and levies of the United Kingdom whenever imposed and (except in so far as attributable to the unreasonable delay or default of the Transferee) all penalties and interest relating thereto;

"TOGC" has the meaning assigned to that term in Clause 6.2;

"Transfer Date" means the date and, where relevant, the time on or at which the Transfer Scheme comes into force;

"Transfer Regulations" means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (as amended, replaced or substituted from time to time);

"Transferring Assets and Liabilities" has the meaning assigned to that term in Clause 2.1; and

"Undisclosed Employee" has the meaning assigned to that term in Clause 7.1(d).

Construction and Interpretation

- 1.2 In this Agreement terms and expressions defined in the Franchise Agreement shall have the same meaning and the terms **"contract of employment"**, **"collective agreement"**, **"employee representatives"** and **"trade union"** shall have the same meanings respectively as in the Transfer Regulations.

2. **TRANSFER PRICE**

2.1 **Amount and Payment**

The price for the transfer of:

- (a) the Relevant Franchise Assets;
- (b) the Relevant Contract Liabilities;
- (c) the Relevant Debits and Credits; and
- (d) the Relevant Employee Liabilities,

(together the **"Transferring Assets and Liabilities"**) shall (subject to adjustment as expressly provided in this Agreement) be an amount equal to the Net Asset Value (the **"Purchase Price"**). The sum of [£INSERT AMOUNT IN NUMBERS (INSERT AMOUNT IN WORDS)], as determined under paragraph 3.3 of Schedule 15.4 (*Provisions applying on and after Termination*) of the Franchise Agreement (the **"Estimated Completion Payment"**) shall be paid in immediately available funds by the Transferor to the Transferee, or by the Transferee to the

Transferor, as determined under paragraph 3.3 of Schedule 15.4 (Provisions applying on and after Termination) of the Franchise Agreement, on the Transfer Date. On determination of the Purchase Price a balancing payment (if any) shall be made by the Transferor to the Transferee or the Transferee to the Transferor (as the case may be) in accordance with Clause 2.1.

2.2 **Net Asset Statement**

The Transferee shall procure that, as soon as practicable and in any event not later than two (2) months following the Transfer Date, there shall be drawn up a statement showing a true and fair view of the aggregate of the amount of each separate asset and liability of the Transferring Assets and Liabilities as at the Transfer Date.

2.3 The Net Asset Statement shall be:

- (a) drawn up in the manner described in the Schedule;
- (b) prepared on such basis as would enable the Transferee's auditors, if so requested, to give an unqualified audit report thereon to the effect that it had been drawn up in accordance with the schedule; and
- (c) presented, initially as a draft, to the Transferor immediately following its preparation for review in conjunction with its auditors.

2.4 If the Transferor and the Transferee have failed to agree the Net Asset Statement within four (4) weeks following such presentation, the matter shall be referred to the Reporting Accountants who shall settle and complete the Net Asset Statement as soon as practicable and shall determine the amount of the Net Asset Value as shown by the Net Asset Statement.

2.5 **Adjustment of Price**

If the Purchase Price exceeds or is less than the Estimated Completion Payment, the Transferee shall pay to the Transferor or, as the case may be, the Transferor shall pay to the Transferee, in either case within fourteen (14) days of the agreement or determination of the Net Asset Value, an amount equal to such excess or deficiency together in either case with interest thereon calculated from the Transfer Date at the Interest Rate.

3. **REFERENCES TO THE REPORTING ACCOUNTANTS**

Whenever any matter is referred under this Agreement to the decision of the Reporting Accountants:

- (a) the Reporting Accountants shall be engaged jointly by the parties on the terms set out in this Agreement and otherwise on such terms as shall be agreed, provided that neither party shall unreasonably (having regard, amongst other things, to the provisions of this Agreement) refuse its agreement to terms proposed by the Reporting Accountants or by the other party. If the terms of engagement of the Reporting Accountants have not been settled within fourteen (14) days of their appointment having been determined (or such longer period as the Parties may agree) then, unless one party is unreasonably refusing its agreement to those terms, such accountants shall be deemed never to have been appointed as Reporting Accountants, save that the accountants shall be entitled to their reasonable

expenses under Clause 3(d), and new Reporting Accountants shall be selected in accordance with the provisions of this Agreement;

- (b) if Reporting Accountants acting or appointed to act under this Agreement resign, withdraw, refuse to act, or are disqualified for any reason from performing their duties then, except as may be agreed between the Parties, the parties shall appoint a replacement in accordance with the definition of Reporting Accountants;
- (c) the Reporting Accountants shall be deemed to act as experts and not as arbitrators;
- (d) the Reporting Accountants shall have power to allocate their fees and expenses for payment in whole or in part by any party at their discretion. If not otherwise allocated they shall be paid as to half by the Transferor and as to half by the Transferee;
- (e) each of the parties shall promptly on request supply to the Reporting Accountants all such documents and information as they may require for the purpose of the reference;
- (f) the decision of the Reporting Accountants shall (in the absence of objection on the grounds of any manifest error discovered within fourteen (14) days of the issue of their decision) be conclusive and binding (and in accordance with Clause 3(g) below) and shall not be the subject of any appeal by way of legal proceeding or arbitration or otherwise; and
- (g) without prejudice to Clauses 3(a) to 3(f) above, either party may, prior to or during the course of the reference to the Reporting Accountants, seek a declaration from the court on a relevant point of law, including but not limited to a point of legal interpretation. Upon such application for a declaration being issued and served all applicable time limits relative to the reference to the Reporting Accountant shall be stayed pending the outcome of such application (including any appeal). The Reporting Accountants are bound to make their determination in a manner consistent with the findings of the Court.

4. **WARRANTY**

The Transferor warrants and represents to the Transferee that the Relevant Contract Liabilities and the Relevant Franchise Assets are, to the extent they are property or rights, transferring to the Transferee free and clear of all Security Interests.

5. **INTEREST**

If the Transferor or the Transferee defaults in the payment when due of any sum payable under this Agreement (whether determined by agreement or pursuant to an order of a court or otherwise) the liability of the Transferor or the Transferee (as the case may be) shall be increased to include interest on such sum from the date when such payment is due until the date of actual payment (after as well as before judgement) at a rate equal to the Interest Rate. Such interest shall accrue from day to day.

6. VALUE ADDED TAX

- 6.1 All amounts under this Agreement are expressed as exclusive of Value Added Tax where Value Added Tax is applicable.
- 6.2 The Transferor and the Transferee shall use all reasonable endeavours to secure that the transfer of the Transferring Assets and Liabilities is treated for Value Added Tax purposes as the transfer of a business as a going concern ("**TOGC**") and accordingly as neither a supply of goods nor a supply of services for the purposes of Value Added Tax.
- 6.3 If HM Revenue & Customs direct that the transfer of the Transferring Assets and Liabilities cannot be treated as a TOGC, the Transferor shall provide the Transferee with a copy of such direction within five (5) days of receipt thereof by the Transferor.
- 6.4 The Transferee shall thereafter pay upon the receipt of a valid tax invoice the amount of any Value Added Tax which as a result of that direction may be chargeable on the transfer of the Transferring Assets and Liabilities. If the aforementioned direction was issued as a result of any action or inaction of the Transferee then the Transferee shall in addition to the Value Added Tax indemnify the Transferor for any penalties and interest that may be incurred upon receipt of such evidence from HM Revenue & Customs.
- 6.5 If the Transferee considers the direction issued by HM Revenue & Customs referred to in Clause 6.3 to be incorrect then, without prejudice to the Transferee's obligation under Clause 6.4 to pay to the Transferor the amount of any Value Added Tax which as a result such direction may be chargeable on the transfer of the Transferring Assets and Liabilities, the Transferee may, within thirty (30) days of receipt of such direction by the Transferor, give notice to the Transferor that it requires the Transferor to appeal such direction. Upon requesting such an appeal the Transferee agrees to indemnify the Transferor for all reasonable costs that the Transferor may incur in taking such action upon receipt of evidence of those costs. If such an appeal is successful the Transferor agrees to reimburse the Transferee for such reasonable costs and penalties and interest to the extent that those costs have been reimbursed by HM Revenue & Customs.
- 6.6 If any amount paid by the Transferee to the Transferor in respect of Value Added Tax pursuant to this Agreement is subsequently found to have been paid in error the Transferor shall issue a valid tax credit note for the appropriate sum to the Transferee and promptly repay such amount to the Transferee.
- 6.7 If any amount is payable by the Transferor to the Transferee in respect of the transfer of the Relevant Franchise Assets, Relevant Contract Liabilities, Relevant Debits and Credits and Relevant Employee Liabilities pursuant to this Agreement, Clauses 6.3 to 6.6 inclusive shall apply mutatis mutandis to such payment substituting Transferor for Transferee and vice versa.
- 6.8 All of the records referred to in section 49 of the Value Added Tax Act 1994 relating to the Business (being the purchase records) shall be retained by the Transferor and the Transferor shall undertake to the Transferee to:
- (a) preserve those records in such manner and for such periods as may be required by law; and

- (b) give the Transferee as from the Transfer Date reasonable access during normal business hours to such records and to take copies of such records.

7. EMPLOYEES

7.1 Transfer Regulations

The parties accept that, to the extent that the undertaking or part of the undertaking of the Transferor is continued by the Transferee after the Transfer Date, this Agreement and the transfer of the Business which is effected in connection with the Transfer Scheme are governed by the Transfer Regulations and the following provisions shall apply in connection therewith:

- (a) the contract of employment of each of the Relevant Employees (save, to the extent provided by the Transfer Regulations, insofar as such contract relates to any occupational pension scheme) shall be transferred to the Transferee with effect from the Transfer Date which shall be the **"time of transfer"** under the Transfer Regulations and the Transferee shall employ each such Relevant Employee on the terms of those contracts of employment (save, to the extent provided by the Transfer Regulations, insofar as such contract relates to any occupational pension scheme) with effect from the Transfer Date;
- (b) the Transferor shall perform and discharge all its obligations in respect of all the Relevant Employees for its own account up to and including the Transfer Date including, without limitation, discharging all wages and salaries of the Relevant Employees, all employer's contributions to any relevant occupational pension scheme and all other costs and expenses related to their employment (including, without limitation, any Taxation, accrued holiday pay, accrued bonus, commission or other sums payable in respect of service prior to the close of business on the Transfer Date) and shall indemnify the Transferee and keep the Transferee indemnified against each and every action, proceeding, liability (including, without limitation, any Taxation), cost, claim, expense (including, without limitation, reasonable legal fees) or demand arising from the Transferor's failure so to discharge;
- (c) the Transferor shall indemnify the Transferee and keep the Transferee indemnified against each and every action, proceeding, cost, claim, liability (including, without limitation, any Taxation), expense (including, without limitation, reasonable legal fees) or demand which relates to or arises out of any act or omission by the Transferor or any other event or occurrence prior to the Transfer Date and which the Transferee may incur in relation to any contract of employment or collective agreement concerning one or more of the Relevant Employees pursuant to the provisions of the Transfer Regulations or otherwise including, without limitation, any such matter relating to or arising out of:
- (i) the Transferor's rights, powers, duties and/or liabilities (including, without limitation, any Taxation) under or in connection with any such contract of employment or collective agreement, which rights, powers, duties and/or liabilities (as the case may be) are or will be transferred to the Transferee in accordance with the Transfer Regulations; or

- (ii) anything done or omitted before the Transfer Date by or in relation to the Transferor in respect of any such contract of employment or collective agreement or any Relevant Employee, which is deemed by the Transfer Regulations to have been done or omitted by or in relation to the Transferee save where the thing done or omitted to be done before the Transfer Date relates to the Transferee's failure to comply with its obligations referred to in Clause 7.4;
- (d) if any contract of employment or collective agreement which is neither disclosed in writing to the Transferee by the Transferor prior to the Transfer Date nor made available to the Secretary of State under Schedule 15.3 (Handover Package) of the Franchise Agreement prior to the Transfer Date shall have effect as if originally made between the Transferee and any employee (the "**Undisclosed Employee**") or a trade union or employee representatives as a result of the provisions of the Transfer Regulations (without prejudice to any other right or remedy which may be available to the Transferee):
 - (i) the Transferee may, upon becoming aware of the application of the Transfer Regulations to any such contract of employment or collective agreement terminate such contract or agreement forthwith;
 - (ii) the Transferor shall indemnify the Transferee against each and every action, proceeding, cost, claim, liability (including, without limitation, any Taxation), expense (including, without limitation, reasonable legal fees) or demand relating to or arising out of such termination and reimburse the Transferee for all costs and expenses (including, without limitation, any Taxation) incurred in employing such employee in respect of the Secretary of State's employment following the Transfer Date; and
 - (iii) the Transferor shall indemnify the Transferee in respect of any Undisclosed Employee on the same terms mutatis mutandis as the Transferor has indemnified the Transferee in respect of a Relevant Employee pursuant to the terms of Clauses 7.1(b) and 7.1(c); and
- (e) the Transferor shall indemnify the Transferee and keep the Transferee indemnified against each and every action, proceeding, cost, claim, liability (including without limitation, any Taxation) expense (including, without limitation, reasonable legal fees) or demand which relates to or arises out of any dismissal (including, without limitation, constructive dismissal) by the Transferor of any employee (not being a Relevant Employee) and which the Transferee may incur pursuant to the provisions of the Transfer Regulations.

7.2 **Transferee's Indemnities**

The Transferee shall indemnify the Transferor and keep the Transferor indemnified against each and every action, proceeding, liability (including, without limitation, any Taxation), cost, claim, loss, expense (including reasonable legal fees) and demand arising out of or in connection with:

- (a) any substantial change in the working conditions of the Relevant Employees to the Secretary of State's or her detriment or any of them occurring on or after the Transfer Date;

- (b) the change of employer occurring by virtue of the Transfer Regulations and/or the Franchise Agreement being significant and detrimental to any of the Relevant Employees;
- (c) the employment by the Transferee on or after the Transfer Date of any of the Relevant Employees other than on terms (including terms relating to any occupational pension scheme) at least as good as those enjoyed prior to the Transfer Date or the termination of the employment of any of them on or after the Transfer Date; or
- (d) any claim by any Relevant Employee (whether in contract or in tort or under statute (including the Treaty of the European Community or European Union and any Directives made under any such Treaty or any successor thereof)) for any remedy (including, without limitation, for unfair dismissal, redundancy, statutory redundancy, equal pay, sex or race discrimination) as a result of any act or omission by the Transferee after the Transfer Date.

7.3 The Transferee shall indemnify the Transferor and keep the Transferor indemnified against each and every action, proceeding, liability, cost, claim, loss, expense (including reasonable legal fees) and demand which arises as a result of it not providing or not having provided, in accordance with its obligations under the Transfer Regulations, the Transferor in writing with such information and at such time as will enable the Transferor to carry out its duties under Regulation 13(2)(d) and 13(6) of the Transfer Regulations concerning measures envisaged by the Transferee in relation to the Relevant Employees.

7.4 **Details of Relevant Employees**

Without prejudice to the Transferor's duties under the Transfer Regulations, the Transferor warrants to the Transferee that it has (to the extent not made available to the Secretary of State under Schedule 15.4 (Provisions applying on and after Termination) of the Franchise Agreement prior to the Transfer Date) provided the Transferee prior to the Transfer Date with full particulars of:

- (a) each Relevant Employee, including name, sex, and the date on which continuity of employment began for each Relevant Employee for statutory purposes;
- (b) terms and conditions of employment of each such person;
- (c) all payments, benefits or changes to terms and conditions of employment promised to any such person;
- (d) dismissals of Relevant Employees or termination of employment effected within twelve (12) months prior to the Transfer Date including the Transfer Date;
- (e) all agreements or arrangements entered into in relation to the Relevant Employees between the Transferor, any Affiliate of the Transferor or any other relevant employer and any trade union or association of trade unions or organisation or body of employees including employee representatives and elected representatives; and
- (f) all strikes or other Industrial Action taken by any Relevant Employee within twelve (12) months prior to the Transfer Date including the Transfer Date.

7.5 The Transferor and Transferee shall deliver to each of the Relevant Employees letters in an agreed form from the Transferor and Transferee as soon as is practicable after the execution of this Agreement (to the extent not already delivered prior to the Transfer Date).

8. MISCELLANEOUS PROVISIONS

8.1 Variations in Writing

No variation of this Agreement shall be effective unless in writing and signed by duly authorised representatives of the parties.

8.2 Partial Invalidity

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

8.3 Further Assurance

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

8.4 Notices

Any notice or other communication requiring to be given or served under or in connection with this Agreement shall be in writing and shall be sufficiently given or served if delivered or sent to the registered office of the recipient or:

(a) in the case of the Transferor to [INSERT NAME OF TRANSFEROR] at:

Address: [INSERT ADDRESS]

Email Address: [INSERT EMAIL ADDRESS]

Attention: [INSERT NAME]

(b) in the case of the Transferee to [INSERT NAME OF TRANSFEE] at:

Address: [INSERT ADDRESS]

Email Address: [INSERT EMAIL ADDRESS]

Attention: [INSERT NAME]

Any such notice or other communication shall be delivered by email transmission, by hand or sent by courier or prepaid first class post. If sent by courier such notice or communication shall conclusively be deemed to have been given or served at the time of despatch. If sent by post such notice or communication shall conclusively be deemed to have been received two (2) Weekdays from the time of posting.

8.5 Counterparts

This Agreement may be executed in any number of counterparts each of which shall be deemed an original, but all the counterparts shall together constitute one and the same instrument.

8.6 Third Parties

This Agreement does not create any rights under the Contracts (Rights of Third Parties) Act 1999 which is enforceable by any person who is not a party to it.

8.7 Governing Law and Jurisdiction

This Agreement (and any non-contractual obligations arising out of or in connection with it) shall be governed by and construed in accordance with the laws of England and Wales and the parties irrevocably agree that the courts of England and Wales are to have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Agreement.

IN WITNESS whereof the parties hereto have executed this Agreement the day and year first before written.

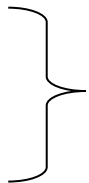
SIGNED FOR AND ON
BEHALF OF THE **[INSERT
NAME OF TRANSFEROR]:**



DIRECTOR:

DIRECTOR/SECRETARY:

SIGNED FOR AND ON
BEHALF OF THE **[INSERT
NAME OF TRANSFEREE]:**



DIRECTOR:

DIRECTOR/SECRETARY:

SCHEDULE TO THE SUPPLEMENTAL AGREEMENT

Net Asset Statement

The Net Asset Statement shall be drawn up (except to the extent otherwise agreed by the Transferor and the Transferee) in accordance with accounting principles generally accepted in the United Kingdom and such that the Transferring Assets and Liabilities are valued on the following basis:

1. Rights and liabilities relating to an obligation of carriage under the terms of any Fare shall be valued in accordance with the following formula:

$$(C - D) \times \frac{A}{B} + E$$

where:

C	equals the Credit (exclusive of any Valued Added Tax) received by the Transferor in respect of the Fare provided that:
	(a) such Credit shall be deemed not to include any reduction in respect of a discount allowed to the purchaser of the Fare pursuant to the Passenger's Charter or any other passenger's charter of the Transferor;
	(b) if the Fare is a Season Ticket Fare, such Credit shall be the New Credit (as defined in the Ticketing and Settlement Agreement) relating to that Season Ticket Fare on the Transfer Date if different to the Credit that was in fact received by the Transferor in respect of such Season Ticket Fare;
	(c) such Credit shall be net of any Private Settlement Credit (as defined in the Ticketing and Settlement Agreement) arising in respect of that Fare; and
	(d) such Credit shall be deemed to exclude any Credit received by the Transferor in respect of any commission due to it in respect of the sale of such Fare (provided that for these purposes the amount of such commission shall not exceed the National Standard Rate of Commission (as defined in the Ticketing and Settlement Agreement) in respect of the Fare);
D	equals the Debit (exclusive of any Value Added Tax) received by the Transferor in respect of the commission due in respect of the sale of the Fare (provided that for these purposes the amount of

	such commission shall not exceed the National Standard Rate of Commission (as defined in the Ticketing and Settlement Agreement) in respect of the Fare);
--	---

$\frac{A}{B}$ equals:	(a) in the case of a Season Ticket Fare, the number of journeys which the purchaser of the Fare is estimated to make from (and including) the Transfer Date to (and including) the last day on which the Fare is valid (including any extensions to its original period of validity) divided by the total number of journeys which the purchaser of the Fare is estimated to make with that Fare (as determined in each case in accordance with Schedule 28 of the Ticketing and Settlement Agreement);
	(b) in the case of any other Fare which entitles the holder thereof to make more than two journeys, the number of days for which the Fare continues to be valid after the Transfer Date (including any extensions to its original period of validity) divided by the total number of days for which such Fare is valid on issue (except to the extent that it can reasonably be estimated what proportion of the journeys which could be made on issue of the Fare have not been made prior to the Transfer Date); or
	(c) in the case of any other Fare, zero; and

E	<p>equals, if $\frac{A}{B}$ is greater than zero:</p> <p>the amount of any discount to which it can be reasonably estimated that the purchaser of the Fare would be entitled pursuant to the Passenger's Charter or any other passenger's charter of the Transferor on purchasing an equivalent Fare on the expiry of the relevant Fare,</p>
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and for these purposes a Credit or Debit shall be deemed to be received when the relevant Fare is Accepted for Clearing (as defined in the Ticketing and Settlement Agreement).

- Rights and liabilities relating to an Excess Fare, Reservation or Upgrade (as such terms are defined in the Ticketing and Settlement Agreement) shall be valued at

zero unless such Excess Fare, Reservation or Upgrade involves more than two journeys, in which case they shall be valued in accordance with paragraph 1 and references to Fare in paragraph 1 shall be construed accordingly.

3. Rights and liabilities under a Discount Card shall be valued in accordance with the following formula:

$$(C - D) \times \frac{A}{B}$$

where:

C	equals the Credit (exclusive of any Value Added Tax) received by the Transferor in respect of the Discount Card;
D	equals the Debit (exclusive of any Value Added Tax) received by the Transferor in respect of the commission due in respect of the sale of the Discount Card (provided that for these purposes the amount of such commission shall not exceed the National Standard Rate of Commission (as defined in the Ticketing and Settlement Agreement) in respect of the Discount Card); and
$\frac{A}{B}$	equals the number of days for which the Discount Card continues to be valid after the Transfer Date (including any extensions to its original period of validity) divided by the total number of days for which such Discount Card is valid on issue, or in the case of any Discount Card listed in Schedules 12 or 39 of the Ticketing and Settlement Agreement on the Start Date, zero,
and for these purposes a Credit or Debit shall be deemed to be received when the relevant Discount Card is Accepted for Clearing (as defined in the Ticketing and Settlement Agreement).	

4. Relevant Debits and Credits shall be valued at the full amount of such Debits and Credits (inclusive of any Value Added Tax) but excluding any Debits and Credits arising in respect of Adjustment Amounts (as defined in the Ticketing and Settlement Agreement) which are received by the Transferee in respect of a change to the Credit which is used to value any relevant Season Ticket Fare under paragraph 1 of this Schedule to the extent such Adjustment Amounts (as defined in the Ticketing and Settlement Agreement) relate to a period after the Transfer Date.
5. Rights and liabilities in respect of any contract, lease, licence or other equivalent arrangement (excluding rights and liabilities valued under paragraphs 1 to 4) shall be valued at nil except to the extent that the relevant rights and liabilities include matters specified in the left hand Column of the following table, which shall be valued on the basis specified in the right hand Column of the following table:

Rights and Liabilities	Value
Any accrued rights to receive payment	Monetary amounts so accrued, subject to any provision being made for payment not being received from any other person
Any right to receive payment in respect of goods and/or services provided by the Transferor prior to the Transfer Date where the due date for such payment is after the Transfer Date	Amount payable under such contract, lease, licence or other equivalent arrangement for the goods and/or services so provided by the Transferor, subject to any provision being made for payment not being received from any other person
Any accrued liabilities to make payment	Monetary amounts so accrued
Any liability to make payment in respect of goods and/or services provided to the Transferor prior to the Transfer Date where the due date for such payment is after the Transfer Date	Amount payable under such contract, lease, licence or other equivalent arrangement for the goods and/or services provided to the Transferor
Any rights in respect of which payment has already been made by the Transferor	Monetary amounts so paid, subject to any provision being made for such rights not being exercisable against any other person
Any liabilities in respect of which payment has already been received by the Transferor	Monetary amounts so received
Any liability resulting from any breach of or failure by the Transferor to comply with the terms of any such contract, lease, licence or other equivalent arrangement	Amount of such liability or, to the extent that such amount is not ascertained, the parties reasonable estimate of the amount of such liability

6. CRM Data, Yield Management Data and Actual Passenger Demand information (and all Intellectual Property Rights in respect of the same) shall be valued at nil.
7. The Stored Credit Balance held by the Franchisee at the Transfer Date shall be valued at the monetary amount so held.
8. Any DfT Funded Assets shall be valued at nil.
9. Any equipment compliant with the ITSO Specification (including Smart Media and ITSO Certified Smart Media readers) and any databases and any Intellectual Property Rights associated with this equipment transferred from the Transferor to the Transferee pursuant to the Transfer Scheme shall be valued at nil.
10. **NOT USED.**

- 11. The following assets shall be valued at nil:
 - (a) [INSERT DETAILS];
 - (b) [INSERT DETAILS];
 - (c) [INSERT DETAILS].
- 12. [DFT TO INSERT DETAILS TO REFLECT OTHER RELEVANT/SPECIFIC ASSETS.]
- 13. **NOT USED.**
- 14. **NOT USED.**
- 15. 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.

SCHEDULE 16**PENSIONS**

Schedule 16.1:	Pensions
	Appendix 1: List of Shared Costs Sections
Schedule 16.2:	NOT USED

Schedule 16.1

[REDACTED¹⁹⁵]

¹⁹⁵ 16 June 2021 (Date of Redactions Approval) – Where text has been omitted from the document – this is because the Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

Cross Country Franchise Agreement	Page 724 of 736	Schedule 16.1
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APPENDIX 1 TO SCHEDULE 16.1

List of Shared Costs Sections

Shared Costs Sections
New Cross Country Shared Cost Section

Schedule 16.2

NOT USED

SCHEDULE 17

CONFIDENTIALITY, FREEDOM OF INFORMATION AND DATA PROTECTION

Schedule 17:	Confidentiality, Freedom of Information and Data Protection
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Schedule 17

Confidentiality, Freedom of Information and Data Protection**1. Confidentiality**

Subject to the provisions of the Act, the Environmental Information Regulations, the Freedom of Information Act (and any code of practice or other guidance related to the same) and paragraphs 2 to 8 and 10 inclusive of this Schedule 17, each Party shall hold in confidence the Franchise Documents and all documents, materials and other information, whether technical or commercial, supplied by or on behalf of the other Party (including all documents and information supplied in the course of proceedings under the Dispute Resolution Rules or the rules of any other dispute resolution procedures to which a dispute is referred in accordance with the Franchise Agreement) (all together the "**Confidential Information**") and shall not, except with the other Party's prior written authority, publish or otherwise disclose any Confidential Information otherwise than as expressly provided for in the Franchise Agreement unless or until the recipient Party can demonstrate that any such document, material or information is in the public domain through no fault of its own and through no contravention of the Franchise Agreement, whereupon to the extent that it is in the public domain this obligation shall cease.

2. Disclosure of Confidential Information

2.1 Each Party may disclose any data or information acquired by it under or pursuant to the Franchise Agreement or information relating to a dispute arising under the Franchise Agreement without the prior written consent of the other Party if such disclosure is made in good faith:

- (a) to any Affiliate of such Party or outside consultants or advisers of such Affiliate, upon obtaining from such Affiliate and/or such outside consultants or advisers of such Affiliate an undertaking of confidentiality equivalent to that contained in paragraph 1 above;
- (b) to any outside consultants or advisers engaged by or on behalf of such Party and acting in that capacity, upon obtaining from such consultants or advisers an undertaking of confidentiality equivalent to that contained in paragraph 1 above;
- (c) to any lenders, security trustee, bank or other financial institution (and its or their advisers) from which such Party is seeking or obtaining finance, upon obtaining from any such person an undertaking of confidentiality equivalent to that contained in paragraph 1 above;
- (d) to the extent required by Law or pursuant to an order of any court of competent jurisdiction or under the Dispute Resolution Rules or the rules of any other dispute resolution procedures to which a dispute is referred in accordance with the Franchise Agreement or the rules of a recognised stock exchange or a formal or informal request of any taxation authority;
- (e) to any insurer, upon obtaining from such insurer an undertaking of confidentiality equivalent to that contained in paragraph 1 above;
- (f) to any director, employee or officer of such Party, to the extent necessary to enable such Party to perform its obligations under the Franchise

Agreement or to protect or enforce its rights under the Franchise Agreement;

- (g) by the Franchisee, to the ORR, the Passengers' Council or a Local Authority; or
- (h) by the Secretary of State (with the consent of the Franchisee (such consent not to be unreasonably withheld or delayed)) to Transport for the North, Transport Scotland, Transport for Wales, Transport for West Midlands, HS2 Limited, Network Rail and its consultants and advisors, upon obtaining from Transport for the North, Transport Scotland, Transport for Wales, Transport for West Midlands, HS2 Limited, Network Rail or its relevant consultant or advisor (as the case may be) an undertaking of confidentiality equivalent to that contained in paragraph 1 above.

2.2 The Secretary of State may disclose the Confidential Information of the Franchisee:

- (a) on a confidential basis to any Central Government Body for any proper purpose of the Secretary of State or of the relevant Central Government Body;
- (b) to Parliament and Parliamentary Committees or if required by any Parliamentary reporting requirement;
- (c) to the extent that the Secretary of State (acting reasonably) deems disclosure necessary or appropriate in the course of carrying out its public functions;
- (d) on a confidential basis to a professional adviser, consultant, supplier or other person engaged by any of the entities described in paragraph 2.2(a) of this Schedule 17 (including any benchmarking organisation) for any purpose relating to or connected with the Franchise;
- (e) on a confidential basis for the purpose of the exercise of its rights under this Agreement, including but not limited to its right of audit, assessment or inspection pursuant to paragraph 6 of Schedule 11.2 (*Management Information*) and its rights pursuant to Schedule 15.1 (*Reletting Provisions*);
- (f) on a confidential basis to a Local Authority or other relevant Stakeholder to the extent that the Secretary of State (acting reasonably) deems such disclosure necessary or appropriate for the purposes of the development and/or implementation of any proposal promoted by (or on behalf of) such Local Authority or other relevant Stakeholder in relation to the provision of additional, varied and/or extended Passenger Services, introduction of new stations or enhancements to Stations or other infrastructure schemes which impact on the Franchise; or
- (g) on a confidential basis to a proposed successor, transferee or assignee of the Secretary of State in connection with any assignment, novation or disposal of any of its rights, obligations or liabilities under this Agreement; or
- (h) on a confidential basis to any Devolved Transport Body for any proper purpose of the Secretary of State or of the relevant Devolved Transport Body,

and for the purposes of the foregoing, references to disclosure on a confidential basis shall mean disclosure subject to a confidentiality agreement or arrangement containing terms no less stringent than those placed on the Secretary of State under this paragraph 2.2 of this Schedule 17.

3. **Publication of Certain Information**

3.1 Notwithstanding the provisions of paragraph 1, the Secretary of State may publish (for purposes including section 73 of the Act and whether to the press, the public or to one or more individuals, companies or other bodies, including to any prospective Successor Operator) in such form and at such times as the Secretary of State sees fit, the following (irrespective of whether the same was provided to the Secretary of State by the Franchisee or a third party):

- (a) any or all of the Franchise Documents provided that the Secretary of State shall, prior to publishing the same, redact from any Franchise Document any information contained therein which the Secretary of State and the Franchisee agree or failing which the Secretary of State determines, in the Secretary of State's absolute discretion, is exempt from disclosure in accordance with the provisions of the Freedom of Information Act and/or the Environmental Information Regulations;
- (b) the amount of any Franchise Payments payable under the Franchise Agreement and the aggregate amount of Franchise Payments paid in each year under the Franchise Agreement;
- (c) such information as the Secretary of State may consider reasonably necessary to publish in connection with the performance of the Secretary of State's functions in relation to any Closure or proposed Closure;
- (d) the amount of any payments by the Franchisee under the Passenger's Charter;
- (e) such information (including CRM Data and Yield Management Data) as may reasonably be required in connection with any Tendering/Reletting Process or the retendering or reletting of any other railway passenger services, provided that such information may only be published during the period of, or during the period leading up to, such retendering or reletting;
- (f) any reports and accounts delivered to the Secretary of State under Schedule 13 (*Rail Industry Initiatives and Innovation Obligations*) including any analyses, statistics and other information derived from such reports and accounts;
- (g) the results of any monitoring or measurement of the performance of the Franchisee in the provision of the Franchise Services (including any information provided under Schedule 11 (*Franchise Performance Meetings and Management Information*));
- (h) the results, on a Service Group, Route, station or other comparable basis, of any calculation of passenger numbers under Schedule 1.5 (*Information about Passengers*);
- (i) the results of any survey under Schedule 7.2 (*Customer Experience and Engagement*);

- (j) the results of any assessment or inspection under Schedule 11.2 (*Management Information*);
 - (k) details of the Franchisee's plans and performance in respect of safety;
 - (l) such information as the Secretary of State may reasonably require to include in the Secretary of State's annual report in respect of the Franchisee provided that, in preparing that report, the Secretary of State shall have regard to the need for excluding, so far as is practicable, the matters specified in paragraphs (a) and (b) of section 71(2) of the Act for this purpose, taking references in those paragraphs to the ORR as references to the Secretary of State;
 - (m) such information as the Secretary of State may reasonably require to publish at or around the expiry or possible termination of the Franchise Period in order to secure continuity of the provision and operation of the Franchise Services; and
 - (n) any information provided to the Secretary of State pursuant to any provision of the Franchise Agreement including pursuant to a Request for Data where in the opinion of the Secretary of State publication is appropriate for the purposes of properly carrying out its duties.
- 3.2 Without prejudice to any other provision of this Schedule 17, the Secretary of State may publish any other information relating to the Franchisee if the Secretary of State has previously notified the Franchisee and the Franchisee does not demonstrate to the reasonable satisfaction of the Secretary of State within fourteen (14) days of such notification that the publication of such information would, in the reasonable opinion of the Franchisee, have a material adverse effect on its business. If the Franchisee attempts so to demonstrate to the Secretary of State but the Secretary of State is not so satisfied, the Secretary of State shall allow seven (7) more days before publishing the relevant information.

4. **Service Development Information**

Nothing in this Schedule 17 shall be deemed to prohibit, prevent or hinder, or render either Party liable for, the disclosure by either Party to Network Rail, the ORR, HS2 Limited/Devolved Body, other Train Operators, any operators of services for the carriage of goods by rail, the Passengers' Council and/or any Local Authority of any information relating to the development of the Train Service Requirement in accordance with Schedule 1.1 (*Franchise Services and Service Development*).

5. **Publication by Secretary of State**

Nothing in this Schedule 17 shall be deemed to prohibit, prevent or hinder, or render the Secretary of State liable for, the disclosure of any information by the Secretary of State to the ORR, the Parliamentary Commissioner for Administration, a Minister of the Crown, any department of the government of the United Kingdom, the Scottish Parliament, the National Assembly of Wales, the Mayor of London, the Greater London Authority or any department or officer of any of them or of information which is otherwise disclosed for the purpose of facilitating the carrying out of the Secretary of State's functions.

6. Provision of Information to the ORR

The Franchisee hereby authorises the Secretary of State to provide to the ORR, to the extent so requested by the ORR, such information as may be provided to the Secretary of State in relation to the Franchisee under the Franchise Agreement.

7. Disclosure by Comptroller and Auditor General

The Parties recognise that the Comptroller and Auditor General may, in pursuance of the Secretary of State's functions under the Exchequer and Audit Department Act 1921, the National Audit Act 1983 and the Government Resources and Accounts Act 2000, disclose information which the Secretary of State has obtained pursuant to those Acts and which a Party to the Franchise Agreement would not be able to disclose otherwise than under this Schedule 17.

8. Continuing Obligation

This Schedule 17 (and any other provisions necessary to give effect hereto) shall survive the termination of the Franchise Agreement, irrespective of the reason for termination.

9. Freedom of Information - General Provisions

9.1 The Franchisee acknowledges and shall procure that its agents and subcontractors acknowledge that the Secretary of State is subject to the requirements of the Freedom of Information Act and the Environmental Information Regulations and accordingly the Franchisee shall (and shall procure that its agents and subcontractors shall) assist and co-operate with the Secretary of State to enable the Secretary of State to comply with the Secretary of State's information disclosure obligations under the Freedom of Information Act and/or the Environmental Information Regulations.

9.2 Notwithstanding paragraph 10 (*Redactions*), the Franchisee shall (and shall procure that its agents and subcontractors shall):

- (a) transfer to the Secretary of State any Requests for Information received by the Franchisee (or its agents or subcontractors) as soon as practicable and in any event within two (2) Weekdays of receiving any such Request for Information;
- (b) provide the Secretary of State with a copy of all information in its (or their) possession or power in the form that the Secretary of State requires within five (5) Weekdays of the Secretary of State's request (or within such other period as the Secretary of State may specify); and
- (c) provide all necessary assistance as reasonably requested by the Secretary of State to enable the Secretary of State to respond to any Request for Information within the time for compliance set out in section 10 of the Freedom of Information Act or Regulation 5 of the Environmental Information Regulations as applicable.

9.3 The Secretary of State shall be responsible for determining in the Secretary of State's absolute discretion, and notwithstanding any other provision in the Franchise Agreement or any other agreement, whether Confidential Information (as such term is defined in paragraph 1 of this Schedule 17) and/or any other

information is exempt from disclosure in accordance with the provisions of the Freedom of Information Act and/or the Environmental Information Regulations.

9.4 The Franchisee shall not (and shall procure that its agents and subcontractors shall not) respond directly to any Request for Information unless expressly authorised to do so by the Secretary of State.

9.5 The Franchisee acknowledges and shall procure that its agents and subcontractors acknowledge that notwithstanding any provision to the contrary in the Franchise Agreement the Secretary of State may be obliged under the Freedom of Information Act and/or the Environmental Information Regulations and any related Code of Practice or other guidance to disclose information concerning the Franchisee and/or its agents and subcontractors:

- (a) in certain circumstances without consulting the Franchisee (or its agents and/or subcontractors where applicable); or
- (b) following consultation with the Franchisee and having taken its views into account (and the views of its agents and/or subcontractors where applicable),

provided always that where applicable the Secretary of State shall in accordance with the provisions of the Freedom of Information Act and/or the Environmental Information Regulations take reasonable steps where appropriate to give the Franchisee advance notice or failing that to draw the disclosure to the Franchisee's attention after any such disclosure.

10. Redactions

10.1 Subject to paragraph 9 (*Freedom of Information - General Provisions*), by no later than the date which is:

- (a) thirty (30) Weekdays after the date of this Agreement (in respect of the Franchise Documents referred to in paragraph (a) of the definition thereof);
- (b) thirty (30) Weekdays after the date of notification by the Secretary of State to the Franchisee of another agreement that is required for publication (in respect of the Franchise Documents referred to in paragraph (e) of the definition thereof; and
- (c) thirty (30) Weekdays after the date of any document varying the terms of any Franchise Document,

the Franchisee shall provide to the Secretary of State details of any provisions of the Franchise Documents or any such variation which the Franchisee believes are exempt from disclosure in accordance with the provisions of the Freedom of Information Act, the Environmental Information Regulations and/or section 73(3) of the Act (the "**Redactions**").

10.2 For each such Redaction the Franchisee should specify:

- (a) the exact text of the Franchise Document or variation that the Franchisee proposes is redacted using the template table(s) provided by the Secretary of State from time to time;

- (b) whether the Franchisee proposes that the Redaction applies in relation to the publication of the relevant Franchise Document or variation on the website of the Department for Transport, on the register required to be maintained by the Secretary of State pursuant to section 73 of the Act or on both such website and such register; and
 - (c) the reasons why the Franchisee believes that the proposed Redaction is justified in accordance with the Freedom of Information Act, the Environmental Information Regulations and/or section 73(3) of the Act. Such reasons shall be stated in the template table(s) provided by the Secretary of State from time to time.
- 10.3 The Secretary of State shall consult with the Franchisee in relation to the Franchisee's proposed Redactions (provided that the same are provided to the Secretary of State in accordance with paragraph 10.1).
- 10.4 If the Secretary of State and the Franchisee are unable to agree upon any proposed Redaction, the Secretary of State shall be entitled to determine, in the Secretary of State's absolute discretion, whether or not to make such proposed Redaction.
- 10.5 If the Franchisee does not provide its proposed Redactions to the Secretary of State in accordance with paragraph 10.1, the Franchisee shall be deemed to have consented to publication of the relevant document without any Redactions.
- 11. Data Protection**
- 11.1 In respect of any Personal Data processed by the Franchisee, including CRM Data and Personal Data relating to Franchise Employees, the Franchisee agrees that it shall:
- (a) comply with the Data Protection Legislation; and
 - (b) procure that its agents and sub-contractors, including the Franchise Data Processors, shall comply with the Data Protection Legislation.
- 11.2 The Franchisee shall at its own cost promptly:
- (a) notify the Secretary of State of any Franchise Data Breach, upon the Franchisee's awareness of the same, including all relevant details, whether the Franchise Data Breach is by itself or by a Franchise Data Processor;
 - (b) provide the Secretary of State on request with all reasonable information, assistance and co-operation in relation to its processing of the CRM Data and the Personal Data relating to Franchise Employees, and procure that any Franchise Data Processor which it appoints shall provide the Franchisee with all reasonable information, assistance and co-operation in relation to the processing of the CRM Data and the Personal Data relating to Franchise Employees by the Franchise Data Processor, in each case in order to permit the Secretary of State to make an accurate and complete assessment of compliance by the Franchisee with this paragraph 11; and
 - (c) provide the Secretary of State on request with all reasonable information, assistance and co-operation in relation to any audit of the Franchisee in relation to its processing of the CRM Data and the Personal Data relating to Franchise Employees, and procure that any Franchise Data Processor which it appoints shall submit itself to audits by the Franchisee of the Franchise

Data Processor (whether those audits are by the Franchisee or by any person appointed on its behalf), in each case in order to permit the Secretary of State to make an accurate and complete assessment of compliance by the Franchisee with this paragraph 11.

11.3 The Franchisee shall and shall procure that any Franchise Data Processor which it appoints shall:

- (a) notify (in the case of Franchisee) the Secretary of State and (in the case of any Franchise Data Processor) the Franchisee in writing of the full names and registered office addresses of the entities which are from time to time carrying out any storage, hosting and/or other processing of the CRM Data and/or the Personal Data relating to Franchise Employees, together with the storage, hosting and/or other processing location(s);
- (b) ensure that in cases where the storage, hosting and/or other processing location(s) are outside of the United Kingdom the notification shall include details of the relevant country(ies) or territory(ies); and
- (c) ensure that in cases where the storage, hosting and/or other processing locations(s) are in a third country (which has the meaning given in the Data Protection Legislation) the notification shall include a description of the appropriate safeguards which are in place under the Data Protection Legislation in respect of the same including that there is in force a European Commission decision that the country or territory to which the transfer is made ensures an adequate level of protection for processing of Personal Data, that there is in place the standard contractual clauses approved by the European Commission decision for the transfer of personal data to processors established in third countries, or that the transfer is to the United States of America and there exists a current and appropriate certification under the EU-US Privacy Shield framework (or such other framework as may replace the EU-US Privacy Shield framework during the Franchise Term) in each case in relation to the transfer.

11.4 With reference to paragraphs 11.1 to 11.3 inclusive, the Franchisee hereby acknowledges that whilst the Secretary of State is not the Controller in respect of the CRM Data or Personal Data relating to Franchise Employees, the Secretary of State's legitimate interests given its duties under the Act, and its reputation, may be adversely affected in the event of any unlawful processing of CRM Data and/or Personal Data relating to Franchise Employees, or in the event of any Franchise Data Breach. In addition, the Franchisee hereby acknowledges that the Secretary of State legitimately wishes to have knowledge of the locations in which the CRM Data and the Personal Data relating to Franchise Employees is stored, hosted or otherwise processed from time to time (whether inside or outside of the United Kingdom) given that all such information would be relevant in the event of any transfer of the Franchise to a Successor Operator.

DEROGATIONS (WAIVERS) - POST CONTRACT SIGNATURE DATE

ⁱ 17 September 2021 (Date of Derogation Letter) - The Secretary of State has granted the Franchise a derogation against the requirements of Paragraph 13.1 (b) of Schedule 7.2 (Wavelength).

Original Due Date: 12/03/2021

Revised Due Date: 19/09/2021

ⁱⁱ 17 September 2021 (Date of Derogation Letter) - The Secretary of State has granted the Franchisee a further derogation against the requirements of Paragraph 13.1 (b) of Schedule 7.2 (Wavelength).

Original Due Date: 12/03/2021

1st Revised Due Date: 19/09/2021

2nd Revised Due Date: 31/03/2022

ⁱⁱⁱ 17 September 2021 (Date of Derogation Letter) - The Secretary of State has granted the Franchise a derogation against the requirements of Paragraph 13.1 (c) of Schedule 7.2 (Wavelength).

Original Due Date: 12/03/2021

Revised Due Date: 19/09/2021

^{iv} 17 September 2021 (Date of Derogation Letter) - The Secretary of State has granted the Franchisee a further derogation against the requirements of Paragraph 13.1 (c) of Schedule 7.2 (Wavelength).

Original Due Date: 12/03/2021

1st Revised Due Date: 19/09/2021

2nd Revised Due Date: 31/03/2022

^v 21 July 2021 (Date of Derogation Letter) - The Secretary of State has granted the Franchisee a derogation against the requirements of Paragraph 9.4 (b) of Schedule 11.2 (Annual Financial Information) due to the complexity of the audit process for XC statutory accounts from January 2020 covering the pre-EMA contract, EMA from March 2020 and then the OCFA from October 2020.

Original Due Date: 24/07/2021

Revised Due Date: 30/09/2021