

THIS AGREEMENT is dated 29 NOVEMBER 2005

BETWEEN

- (1) **THE SECRETARY OF STATE FOR TRANSPORT**, whose principal place of business is at 76 Marsham Street, London SW1P 4DR (the *Secretary of State*); and
- (2) **LONDON & SOUTH EASTERN RAILWAY LIMITED**, whose registered office is at 3PPrd Floor, 41 - 51 Grey Street, Newcastle Upon Tyne, NE1 6EE (the *Franchisee*).

WHEREAS

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

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

(C) This Agreement has been entered into pursuant to and incorporates by reference the Terms. This Agreement specifies the matters which the Terms require to be addressed in a franchise agreement and which are to be agreed between the parties or prescribed by the Secretary of State, together with any other provisions that the parties have agreed should amend or supplement the Terms.

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

1. INTERPRETATION AND DEFINITIONS

1.1 In this Agreement:

Conditions Precedent Agreement means the agreement between the Secretary of State and the Franchisee of even date herewith specifying certain conditions to be satisfied prior to issue of a Franchise Commencement Certificate.

Terms means the National Rail Franchise Terms of even date herewith (as amended for the Integrated Kent Franchise).

1.2 The Terms are hereby incorporated by reference in this Agreement.

1.3 This Agreement, the Conditions Precedent Agreement and the Terms together constitute a single agreement, which is a "franchise agreement" for the purposes of the Act.

1.4 This Agreement shall be interpreted in accordance with the Terms, for which purpose terms defined therein shall have the same meanings where used in this Agreement, unless this Agreement expressly provides to the contrary.

1.5 If there is any conflict between the terms of this Agreement and the Terms, the terms of this Agreement shall prevail.

2. COMMENCEMENT

2.1 The provisions of the Terms listed in clauses 2.1(a) to 2.1(n) (inclusive) together with such provisions of this Agreement as may be required to give effect to the same, shall take effect and be binding upon each of the Secretary of State and the Franchisee immediately upon signature of this Agreement:

- (a) paragraph 5.3 of Schedule 1.4 (*Passenger Facing Obligations*);
- (b) paragraph 2 of Schedule 2.2 (*Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases*);
- (c) paragraph 2 of Schedule 2.3 (*Third Party Delivery of Passenger Services and Other Franchisees*);
- (d) Schedule 5.1 (*Purpose, Structure and Construction*);
- (e) Schedule 5.3 (*Allocation of Fares to Fares Baskets*);
- (f) Schedule 5.7 (*Changes to Fares and Fares Regulation*);
- (g) Schedule 9 (*Changes*);
- (h) Schedule 10 (*Remedies, Termination and Expiry*);
- (i) paragraphs 1 to 3 (inclusive) of Schedule 11 (*Agreement Management Provisions*);
- (j) paragraph 4 of Schedule 12 (*Financial Obligations and Covenants*);
- (k) paragraphs 1, 2, 5, 6, 7 and 8 of Schedule 13 (*Information and Industry Initiatives*);
- (l) Schedule 14.3 (*Key Contracts*);
- (m) Schedule 17 (*Confidentiality*); and
- (n) Schedule 19 (*Other Provisions*).

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

3. TERM

This Agreement shall terminate on the Expiry Date or on the date of any earlier termination pursuant to clause 2.2(a) of the Conditions Precedent Agreement or pursuant to Schedule 10 (*Remedies, Termination and Expiry*) of the Terms.

4. GENERAL OBLIGATIONS

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

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

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

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

5. SPECIFIC OBLIGATIONS

The following provisions shall apply for the purpose of implementing the Terms.

Clause 3 (*Definitions*)

5.1 The following words and expressions contained in clause 3.1 of the Terms shall be interpreted in accordance with the following:

- (a) the date for the purposes of the *Anticipated Franchise Commencement Date* is 1 April 2006;
- (b) the prescribed month for the purpose of the definition of *Bond Year* is March;
- (c) the prescribed stations for the purpose of the definition of *Commuter Fare* are:
 - (i) London Stations; and
 - (ii) Suburban Stations;
- (d) the *Commuter Fares Document* in the agreed terms is attached to this Agreement marked *CFD*;
- (e) the date for the purposes of the *Conditions Precedent Review Date* is 17 February 2006;
- (f) the prescribed period for the purpose of the definition of *Evening Peak* is, in relation to any Passenger Service other than CTRL Domestic Services, the period between 1600 and 1859 during a Weekday, or such continuous evening 3 hour period as the Secretary of State may specify from time to time and, in the case of CTRL Domestic Services, the period between 16.30 and 18.30 during a weekday, or such continuous evening 2 hour period as the Secretary of State may specify from time to time;
- (g) for the purposes of the definition of *Franchise*:
 - (i) the prescribed date is 17 January 2005; and
 - (ii)¹ the prescribed places are Abbey Wood, Adisham, Albany Park, Ashford, Aylesford, Aylesham, Barming, Barnehurst, Bat & Ball, Battle, Bearsted, Beckenham Hill, Beckenham Junction, Bekesbourne, Bellingham, Beltring, Belvedere, Bexley, Bexleyheath, Bickley, Birchington on Sea, Blackheath, Borough Green & Wrotham, Brixton, Broadstairs, Bromley North, Bromley

¹ Date of change 05/06/2010

South, Canterbury East, Canterbury West, Catford, Catford Bridge, Charing, Charlton, Chartham, Chatham, Chelsfield, Chestfield & Swalecliffe, Chilham, Chislehurst, **City Thameslink**, Clock House, Crayford, Crofton Park, Crowhurst, Cuxton, Dartford, Deal, Denmark Hill, Deptford, Dover Priory, Dumpton Park, Dunton Green, East Farleigh, East Malling, **Ebbsfleet International**, Eden Park, [] Elmers End, Elmstead Woods, Eltham, Erith, Etchingham, Eynsford, Falconwood, Farningham Road, Faversham, Folkestone Central, Folkestone Harbour, Folkestone West, Frant, Gillingham, [] Gravesend, Greenhithe, Greenwich, Grove Park, Halling, Harrietsham, Hastings, Hayes, Headcorn, Herne Bay, Herne Hill, High Brooms, Higham, Hildenborough, Hither Green, Hollingbourne, Kearsney, Kemsing, Kemsley, Kent House, Kidbrooke, Knockholt, Ladywell, Lee, []² Lenham, Lewisham, Longfield, **Loughborough Junction**, Lower Sydenham, Maidstone Barracks, Maidstone East, Maidstone West, Marden, Margate, Martin Mill, Maze Hill, Meopham, Minster, Mottingham, New Beckenham, New Cross, New Eltham, New Hythe, Newington, Northfleet, Nunhead, [] Orpington, Otford, Paddock Wood, Penge East, [] Petts Wood, Pluckley, Plumstead, Queenborough, Rainham, Ramsgate, Ravensbourne, Robertsbridge, Rochester, Sandling, Sandwich, Selling, Sevenoaks, Sheerness on Sea, Shepherds Well, Shoreham, Shortlands, Sidcup, Sittingbourne, Slade Green, Snodland, Snowdown, Sole Street, St Johns, St Leonards W S, St Mary Cray, **St Pancras International**, Staplehurst, Stone Crossing, Stonegate, **Stratford International**, Strood, Sturry, Sundridge Park, Swale, Swanley, Swanscombe, Sydenham Hill, Teynham, Tonbridge, Tunbridge Wells, Wadhurst, Walmer, Watlington, Waterloo East, Welling, West Dulwich, West Malling, West St Leonards, West Wickham, Westcombe Park, Westenhager, Westgate on Sea, Whitstable, Woolwich Arsenal, Woolwich Dockyard, Wye, Yalding, [], Blackfriars, Cannon St, Ore, Charing Cross, Peckham Rye, London Bridge, Victoria, Elephant and Castle;

- (h) the date for the purposes of the definition of **Franchise Letting Process Agreement** is 29 September 2003;
- (i) each **Franchisee Year** shall, subject to the terms of that definition, begin on 1 April and end on 31 March;
- (j) the date for the purpose of the definition of **Initial Expiry Date** is the sixth anniversary of the Franchise Commencement Date;
- (k)³ the prescribed stations for the purpose of the definition of **Major Station** **Major Station are** ⁴**Cannon St., Charing Cross, London Bridge, Victoria, St Pancras International, Stratford International and Ebbsfleet International.**
- (l) the prescribed amount for the purpose of the definition of **Minor Works' Budget** is £250,000 for each Franchisee Year;
- (m) the prescribed period for the purpose of the definition of **Morning Peak** is, in relation to any Passenger Service other than CTRL Domestic Services, the period between 0700 and 0959 during a Weekday or such other continuous morning three hour period

² [] date of deletion 05/06/2010

³

⁴ Date of Change 11/06/2010

as the Secretary of State may specify from time to time and, in the case of CTRL Domestic Services, the period between 0700 and 0859, or such continuous morning 2 hour period as the Secretary of State may specify from time to time;

- (n) the ***Operational Model*** in the agreed terms is attached to this Agreement marked ***OM***;
- (o) ***Parent*** means, in relation to the Franchisee, Keolis SA (registered in France under number 552111809) and The Go-Ahead Group Plc (company number 2100855) or the assigns or successors in title of either of them to their interest in the share capital of the Franchisee;
- (p) the ***Passenger's Charter*** in the agreed terms is attached to this Agreement marked ***PC***;
- (q) the ***Power of Attorney*** in the agreed terms is attached to this Agreement marked ***POA***;
- (r) the ***Protected Fares Document*** in the agreed terms is attached to this Agreement marked ***PFD***;
- (s) for the purpose of the definition of ***Qualifying Change***, the prevailing discount rate is 3.5 per cent. per annum (in real terms) at the date of this Agreement;
- (t) the ***Record of Assumptions*** in the agreed terms is attached to this Agreement marked ***ROA***;
- (u) the ***Reporting Accountants*** are Messrs PricewaterhouseCoopers;
- (v) the agreed assumptions for the purpose of the definition of ***Secretary of State Risk Assumptions*** are set out in Appendix 1 (*Secretary of State Risk Assumptions*);
- (w) the ***Service Level Commitment 1*** in the agreed terms is attached to this Agreement marked ***SLC 1***;
- (x) the ***Service Level Commitment 2*** in the agreed terms is attached to this Agreement marked ***SLC 2***;
- (y) the ***Service Quality Standards*** in the agreed terms are attached to this Agreement marked ***SQS***;
- (z) the agreed amounts of "TR" for the purpose of the definition of ***Target Revenue*** are set out in Appendix 2 (*Target Revenue (expressed in real terms)*);
- (aa) for the purposes of the formula set out in the definition of ***Threshold Amount***:
 - (i) the prescribed initial threshold amount, referred to by the acronym "ITA" is 0.1 per cent. of annual Turnover assumed by the Franchisee at the date of this Agreement;
 - (ii) the prescribed month for the purpose of the definition of "CRPI" is February; and
 - (iii) the prescribed base month and year for the purpose of the definition of "ORPI" are February 2006; and
- (ab) the ***Train Plan*** in the agreed terms is attached to this Agreement marked ***TP***.

Changes to the Terms

5.2⁵ *the insertion of the following definitions (in alphabetical order) in clause 3.1 of the Terms*

Schedule 1.1 (Service Development)

5.3 For the purpose of paragraph 3.1 of Schedule 1.1 (*Service Development*) of the Terms, Tables 1 and 2 are set out Appendix 3 (*The Train Fleet*).

Schedule 1.5 (Information about Passengers)

5.4 The technology to be used for the purpose of paragraph 1.2 of Schedule 1.5 (*Information about Passengers*) of the Terms is Passenger Load Determination Equipment supplemented by manual counting (as appropriate).

Schedule 1.6 (Franchise Services)

5.5 The prescribed percentages for the purposes of paragraphs 5(d)(i) and (ii) of Schedule 1.6 (*Franchise Services*) of the Terms are, respectively:

- (a) 1 per cent.; and
- (b) 5 per cent.

5.6 The relevant Depots for the purpose of paragraph 5(e) of Schedule 1.6 of the Terms are as follows:

- (a) Victoria Grosvenor Road;
- (b) Grove Park;
- (c) Orpington;
- (d) Ashford;
- (e) St Leonards West Marina
- (f) Ramsgate;
- (g) Gillingham; and
- (h) Slade Green

5.7 The relevant property for the purpose of paragraph 5(n) of Schedule 1.6 of the Terms is as follows:

Those parts of the premises at the following addresses occupied by South Eastern Trains Limited as at the date of this Agreement:

- (a) Friar's Bridge Court, 41-45 Blackfriars Road, London SE1 8PG;
- (b) International House, Dover Place, Ashford, Kent TN23 1HU;

⁵ Date of Change 14/07/2008

(c) The Waterloo Training Centre, Lincoln House, 75 Westminster Bridge Road, London SE1 7HZ;

(d) South Eastern House, Station Approach, Orpington, Kent BR6 0SX.

5.8 The prescribed amounts for the purposes of paragraph 5(q) of Schedule 1.6 of the Terms are:

(a) £25,000 per annum per item; and

(b) £250,000 per annum in aggregate.

Schedule 2.1 (*Asset Vesting and Transfer*)

5.9 The provisions of Part 1 of Schedule 2.1 (Asset Vesting and Transfer) of the Terms shall apply, for which purpose the Property Leases shall be in the agreed terms attached to this Agreement marked **SL** and **DL** (as appropriate).

Schedule 2.3 (*Third Party Delivery of Passenger Services and Other Franchisees*)

5.10 The prescribed percentage for the purpose of paragraph 1.2(d) of Schedule 2.3 (*Third Party Delivery of Passenger Services and Other Franchisees*) of the Terms is five per cent.

Schedule 2.5 (*Transport, Travel and Other Schemes*)

5.11 The prescribed Integrated Transport Schemes for the purpose of paragraph 1.1 of Schedule 2.5 (*Transport, Travel and Other Schemes*) of the Terms are as follows:

None

5.12 The prescribed concessionary travel schemes for the purpose of paragraph 2.1(a) of Schedule 2.5 of the Terms are as follows:

The Scheme established by an agreement between the Kent County Council and South Eastern dated 6 January 1996 for the sale of Scholar Season Tickets.

5.13 The prescribed multi-modal schemes for the purpose of paragraph 3.1(a) of Schedule 2.5 of the Terms are as follows:

None

5.14 The prescribed Discount Fare Schemes for the purpose of paragraph 4.1 of Schedule 2.5 of the Terms are as follows:

(a) ATOC Disabled Persons Railcard Scheme dated 23 July 1995 between the participants named therein;

(b) ATOC Young Persons Railcard Scheme dated 23 July 1995 between the participants named therein; and

(c) ATOC Senior Railcard Scheme dated 23 July 1995 between the participants named therein.

5.15 The prescribed Inter-Operator Schemes for the purpose of paragraph 5.1 of Schedule 2.5 of the Terms are as follows:

- (a) ATOC Staff Travel Scheme dated 23 July 1995 between the participants named therein;
- (b) Ticketing and Settlement Agreement;
- (c) ATOC LRT Scheme dated 23 July 1995 between the participants named therein;
- (d) Travelcard Agreement dated 15 October 1995 between London Regional Transport and the parties named therein;
- (e) Through Ticketing (Non-Travelcard) Agreement dated 15 October 1995 between London Regional Transport and the parties named therein; and
- (f) National Rail Enquiry Scheme dated 11 June 1996 between the participants named therein.

Schedule 3 (*Priced Options*)

5.16 The Priced Options and the terms upon which the Secretary of State may exercise each Priced Option for the purpose of Schedule 3 (*Priced Options*) of the Terms, are set out in Appendix 4 (*List of Priced Options*).

Schedule 7.1 (*Performance Benchmarks*)

5.17 The Cancellations Benchmarks for the purpose of paragraph 1.1 of Schedule 7.1 (*Performance Benchmarks*) of the Terms are set out in Appendix 5 (*Cancellations Benchmark Table*).

5.18 The Capacity Benchmarks for the purpose of paragraph 1.2 of Schedule 7.1 of the Terms are set out in Appendix 6 (*Capacity Benchmark Table*).

5.19 (a) The Service Delivery Benchmarks for the purpose of paragraph 1.4 of Schedule 7.1 of the Terms for all Reporting Periods up to and including the tenth Reporting Period of the fourth Franchisee Year are set out in Appendix 7 (*Service Delivery Benchmark Table*).

5.19 (b) The Service Delivery Benchmarks for the purpose of paragraph 1.4 of Schedule 7.1 of the Terms following the tenth Reporting Period of the fourth Franchisee Year shall be populated in accordance with Appendix 7A.

Schedule 8.1 (*Franchise Payments*)

5.20 The prescribed percentage for the purpose of paragraph 3.1 of Schedule 8.1 (*Franchise Payments*) of the Terms is two per cent.

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

Schedule 8.2 (*Annual Franchise Payments*)

5.22 The agreed figures for the purposes of the definitions of “FXD”, “VCRPI”, “VCAEI”, “PRPI” and “TRRPI” in the formula set out in Schedule 8.2 (*Annual Franchise Payments*) of the Terms are shown in the table set out in Appendix 8 (*Figures for Calculation of Annual Franchise Payments*).

5.23 The prescribed month and the prescribed date for the purposes of the definitions of “RPI” and “AEI” in the formula set out in Schedule 8.2 of the Terms are, respectively, February and February 2005.

Schedule 9.3 (*Runs of the Financial Model*)

5.24 The percentage agreed profit margin for the purpose of paragraphs 7.1(a) and (b)(i) of Schedule 9.3 (*Runs of the Financial Model*) of the Terms shall be determined by reference to the table set out at Appendix 20.

Schedule 12 (*Financial Obligations and Covenants*)

5.25 The agreed amounts of any Performance Bond for the purposes of paragraphs 4.4(a), (b) and (c) of Schedule 12 (*Financial Obligations and Covenants*) of the Terms are, respectively:

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

(c) an amount, being 5.5 per cent. of the annual aggregate forecast operating costs of the Franchisee for each such year referred to in sub-paragraph (c), as forecast in the latest practicably available Business Plan).

Schedule 14.3 (*Key Contracts*)

5.26 Key Contracts as at the date of this Agreement for the purpose of paragraph 1.2 of Schedule 14.3 (*Key Contracts*) of the Terms are set out in Appendix 9 (*List of Key Contracts*).

Schedule 14.4 (*Designation of Franchise Assets*)

5.27 The Primary Franchise Assets as at the date of this Agreement for the purpose of paragraph 2(a) of Schedule 14.4 (*Designation of Franchise Assets*) of the Terms are listed in Appendix 10 (*List of Primary Franchise Assets*).

Schedule 16 (*Pensions*)

5.28 The relevant sections of the Railways Pension Scheme for the purpose of paragraph 1 of Schedule 16 (*Pensions*) of the Terms are:

South Eastern Trains Limited section of the Railways Pension Scheme.

Schedule 18 (*Franchise Continuation Criteria*)

5.29 Not used

Schedule 19 (*Other Provisions*)

5.30^{6 7} The details of the parties for the purpose of paragraph 5.1(a) of Schedule 19 (*Other Provisions*) of the Terms are as follows.

⁶ Date of Change 17.11.2005

⁷ Date of second change wef 09/03/11

Name: *The Secretary of State*

⁸Address: *Department for Transport,
Great Minster House,
33 Horseferry Road,
London, SW1P 4DR*

Facsimile *020 7944 2446*

E-mail: *franchise.notices@dft.gsi.gov.uk*

Attention *Director, Rail Commercial Contracts*

Name: *London & South Eastern Railway Limited*

Address: *3rd Floor,
41-51 Grey Street,
Newcastle-upon-Tyne NE1 6EE*

Facsimile: *0191 211 3218*

E-mail:⁹ *TTUUcarolyn.sephoton@go-ahead.com*

Attention: *Company Secretary*

6. COMMITTED OBLIGATIONS

The Franchisee shall deliver the Committed Obligations that are set out in Appendix 11 (*List of Committed Obligations*) in accordance with the terms thereof except to the extent already carried out by South Eastern Trains Limited.

7. SUPPLEMENTAL TERMS

7.1 The provisions of Appendix 12 (*2012 Olympic Games*) shall apply.

7.2 The provisions of Appendix 19 (*Station and Depot Surveys*) shall apply.

7.3 The Franchisee agrees to enter into the Standard Form Agreement when required in order either to provide services to, or to accept services from, TfL at stations which are served by train services operated by both the Franchise and TfL.

7.4 **Thameslink 2000:** The Franchise agrees to act co-operatively and constructively in order to facilitate the introduction, implementation and completion of the Thameslink 2000 Programme, including working constructively and co-operatively with all third parties involved in the Thameslink 2000 Programme. This co-operation shall include, without limitation, participation in working groups established to monitor and facilitate progress of the Thameslink 2000 Programme.

7.5 **Station Development:** The Franchisee agrees to co-operate fully and constructively with the Secretary of State and other relevant third parties in order to develop station

⁸ Date of change: 16/09/2011

⁹ date of change 7.7.2006

environments in the interests of the development of the Franchise Service, or the wider commercial and/or civic community. Such co-operation shall include without limitation:

- (a) participation in working groups established to evaluate the benefits of proposed station developments; and
- (b) preparation, as required, of full and transparent analyses of the costs which would be incurred in progressing the relevant station development through to completion.

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

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

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

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

7.10 **Provision of Accounting Services:** The Franchisee agrees, at the request of the Secretary of State, to provide such assistance as the Secretary of State may reasonably require to:

- (a) prepare, on behalf of South Eastern Trains Limited, the accounting books and records and management accounts of the company for the monthly and annual periods ending on or about the Franchise Commencement Date;
- (b) assist the directors of South Eastern Trains Limited and South Eastern Trains (Holdings) Limited in the preparation of the statutory accounts of South Eastern Trains Limited for the year ended 31 March 2006 by no later than 31 December 2006 and to liaise with the company's auditors for the purposes of having such statutory accounts audited; and
- (c) provide such other assistance in relation to the preparation of the books and records of South Eastern Trains Limited as are reasonably required to wind up the affairs of that company.

7.11 The assistance shall include the services of appropriate accounting personnel whose employment has transferred to the Franchisee pursuant to the Transfer Scheme; and access to relevant records necessary for the preparation of such statutory accounts and the Franchisee shall provide the accounting services above using reasonable care and skill. For the avoidance of doubt, the responsibility for the preparation, auditing and filing of the statutory accounts of South Eastern Trains Limited for the period ending 31 March 2006 shall remain the responsibility of the directors of South Eastern Trains Limited.

7.12 The Franchisee shall provide the accounting services referred to above for a reasonable fee, but shall not incur any expenses in connection with the provision of the services without the prior written consent of South Eastern Trains (Holdings) Limited (either

in respect of specific items of expenditure or on the basis of a general approval within specified limits).

7.13 The Franchisee shall invoice South Eastern Trains Limited (c/o South Eastern Trains (Holdings) Limited) at the end of each Reporting Period in arrears for the services provided, together with any approved expenses incurred, in the relevant month. Each invoice shall be accompanied by a statement identifying the personnel providing the services, their grade, rate and hours worked.

7.14 **Introduction of Travelcards on CTRL DS:** if requested to do so by the Secretary of State the Franchisee shall enter into such agreements or arrangements with London Regional Transport or other body or authority as appropriate in relation to the use of Travelcards on CTRL Domestic Services between St Pancras and Stratford Stations and for the avoidance of doubt, the introduction of the use of Travelcards on CTRL Domestic Services shall be a Change in accordance with paragraph (i) of the definition of Change.

“7.15 Thameslink KO0 Specific Provisions: The provisions of Appendix 21 (Thameslink KO0 Specific Provisions) shall apply.”¹⁰

7.16 Estimated Items and Estimated Values: The Estimated Items and Estimated Values for the purposes of paragraph 7 of Appendix 21 (Thameslink KO0 Specific Provisions are set out in Appendix 22 (Estimated Items and Estimated Values).”¹¹

8. DOCUMENTS IN THE AGREED TERMS

The parties hereby acknowledge that the list of documents in the agreed terms is set out in Appendix 13 (*List of Documents in the Agreed Terms*).

9. CHANGES TO THIS AGREEMENT

9.1 ATOC amendments to Franchise Agreement:

- (a) The Franchise agrees to implement amendments to this Agreement prior to the Franchise Commencement Date to reflect the terms of such of the amendments to the template franchise agreement agreed between ATOC and the Secretary of State during November 2005 as the Secretary of State considers and notifies the Franchisee are applicable to this Agreement.
- (b) ¹²***After the Franchise Commencement Date the Secretary of State and the Franchisee shall implement amendments to this Franchise Agreement to reflect the terms of such amendments agreed between ATOC and the Secretary of State after the Franchise Commencement Date as have the effect of confirming that the Franchisee shall, at the end of the Franchise Term, have no responsibility for any deficit in the Franchise Sections other than as a result of a failure by the Franchisee to make the contributions to the Franchise sections as required to be made by the Franchisee under the rules of the Franchise Sections or any schedule of contributions maintained under the Pensions Act; and that the Franchisee shall have no right to benefit from any surplus which may exist in the Franchise Sections at the end of the Franchise Term. The Secretary of State agrees that if no terms having such an effect are agreed with ATOC, the Secretary of State shall, at***

¹⁰ Date of change 14/7/2008

¹¹ Date of change 14/7/2008

¹² Date of Change 30.3.2006

the written request of the Franchisee, nonetheless agree with the Franchise equivalent terms for inclusion in this Agreement.

9.2 **Improvements to the management and administration of this Agreement:** The Franchisee agrees to co-operate with the Secretary of State with a view to incorporating into this Agreement, and implementing, such minor amendments as may be proposed to the Franchisee in writing by the Secretary of State from time to time in order to improve the management and administration of the Franchise Services.

10. ENTIRE AGREEMENT

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

10.2 The Franchisee hereby acknowledges that it is not entering into this Agreement, the Conditions Precedent Agreement and the Terms in reliance on any warranties, representations or undertakings howsoever or to whomsoever made except in so far as such warranties, representations or undertakings are:

- (a) contained in this Agreement; or
- (b) embodied in any warranties, representations or undertakings contained in the long form report provided by the Reporting Accountants in respect of the passenger services operated by South Eastern Trains Limited immediately prior to the date of this Agreement.

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

10.4 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, the Conditions Precedent Agreement and the Terms on the basis of any warranty, representation (whether negligent or otherwise, and whether made prior to and/or in this Agreement, the Conditions Precedent Agreement and the Terms) or undertaking howsoever or to whomsoever made unless and to the extent that such warranty, representation or undertaking was made fraudulently.

IN WITNESS whereof the parties hereto have executed this Agreement the day and year first before written.

THE CORPORATE SEAL
OF THE **SECRETARY OF
STATE FOR TRANSPORT**
IS HEREUNTO AFFIXED:



.....Richard Horton.....
Authenticated by authority of the
Secretary of State for Transport

SIGNED FOR AND ON
BEHALF OF LONDON & SOUTH
EASTERN RAILWAY LIMITED

DIRECTOR:

DIRECTOR/SECRETARY:



.....Keith Ludeman.....

.....Jean-Pierre Deghaye.....

APPENDIX 1

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

APPENDIX 2

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

APPENDIX 3

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

APPENDIX 4

Priced Options

1. OPTION 1 - CTRL DS TO DOVER PRIORY

1.1 Where requested by the Secretary of State to do so in writing by no later than 1 May 2007 (or, if the introduction of full CTRL Domestic Services is later than the Transition Date, the date that is 31 months before the date of introduction of full CTRL Domestic Services) the SLC2 shall be updated to provide that any CTRL Domestic Service required to call at Folkestone Central station shall begin or end at Dover Priory station and such amended SLC2 shall be the Service Level Commitment which shall apply as from the Transition Date (or such later date as the Secretary of State may specify).

1.2 In the event that the Secretary of State exercises the option at paragraph 1.1 above the following shall be restated in the amounts and in the values ascertained by switching on “Option 1: CTRL DS to Dover Priory” in the Financial Model:

- (a) the amounts of Target Revenue for each Franchisee Year specified in the table set out in Appendix 2 (Target Revenue (expressed in real terms)) to the Franchise Agreement; and
- (b) the values of FXD, VCRPI, VCAEI, PRPI and TRRPI specified for each Franchisee Year in the table set out in Appendix 8 (Figures for Calculation of Annual Franchise Payments) to the Franchise Agreement.

2. OPTION 2 - PROVISION OF SERVICES OPERATING WEST OF TONBRIDGE TO A BRIGHTON MAIN LINE OPERATOR

2.1 Unless requested to do otherwise by the Secretary of State by the Franchise Commencement Date, the Franchisee shall provide the services operating west of Tonbridge via Redhill from the Franchise Commencement Date until the subsequent Passenger Change Date.

2.2 Subject to paragraphs 2.3 to 2.5, where requested to do so in writing by the Secretary of State by no later than 1 April in any Franchisee Year (or by the Franchise Commencement Date for the first year of the Franchise), the Franchisee shall provide the services operating west of Tonbridge via Redhill from the Passenger Change Date in that year until the subsequent Passenger Change Date on or around 12 months later. Subject to paragraphs 2.3 and 2.5, the Secretary of State may make more than one request under this paragraph 2.2.

2.3 If at the time the Secretary of State makes such request the Rolling Stock Leases necessary for the provision of such services would expire prior to the date that such services would terminate, the Franchisee shall not be required to provide such services unless and until the Secretary of State has agreed to fund the extension of such Rolling Stock Leases as necessary to provide the services.

2.4 At the same time as making such request, the Secretary of State may require the Franchisee to cease the provision of such services prior to the subsequent Passenger Change Date on or around 12 months later, and if the Secretary of State so requires, the Franchisee shall cease the provision of such services accordingly.

2.5 The Secretary of State shall not be entitled to require the Franchisee to operate the services west of Tonbridge via Redhill pursuant to paragraph 2.2 after any transfer of such services during the Franchise Term to another operator.

2.6 In the event that the Franchisee is required to provide the services west of Tonbridge via Redhill pursuant to paragraph 2.1 and/or paragraph 2.2. the following shall be restated for the relevant Franchisee Years in the amounts and in the values ascertained by switching on “Option 2: Transfer of Services operating west of Tonbridge to a Brighton Main Line Operator” in the Financial Model:

- 2.6.1 the amounts of Target Revenue for each Franchisee Year specified in the table set out in Appendix 2 (Target Revenue (expressed in real terms)) to the Franchise Agreement; and
- 2.6.2 the values of FXD, VCRP1, VCAEI, PRPI and TRRPI specified for each Franchisee Year in the table set out in Appendix 8 (Figures for Calculation of Annual Franchise Payments) to the Franchise Agreement.

2.7 In the event that the Franchisee is no longer required to provide the services west of Tonbridge via Redhill pursuant to paragraph 2.1 or 2.2 (whether by reason of a request under paragraph 2.1, or the Secretary of State declining to make a request under paragraph 2.2, the operation of paragraph 2.3 or the Secretary of State making a request under paragraph 2.4), the following shall be restated for the relevant Franchisee Years in the amounts and in the values ascertained by switching off “Option 2: Transfer of Services operating west of Tonbridge to a Brighton Main Line Operator” in the Financial Model:

- 2.7.1 the amounts of Target Revenue for each Franchisee Year specified in the table set out in Appendix 2 (Target Revenue (expressed in real terms)) to the Franchise Agreement; and
- 2.7.2 the values of FXD, VCRPI, VCAEI, PRPI and TRRPI specified for each Franchisee Year in the table set out in Appendix 8 (Figures for Calculation of Annual Franchise Payments) to the Franchise Agreement

(save that such amounts and values for the Franchisee Year in which the Franchisee ceases to operate the services shall be restated again on a pro rata basis to reflect the cessation of the operation of the services by the Franchisee on the Passenger Change Date (part way through the Franchisee Year) as Option 2 in the Financial Model is only being capable of being switched on or off for a full Financial Year at a time).

3. OPTION 3 - FIT-OUT OF CTRL STATIONS

Option 3 Alternative A

3.1 Subject to paragraph 3.2 below, where requested to do so in writing by the Secretary of State by no later than 30 August 2006, the Franchisee shall procure at its own cost the design, construction, handover and management of the fit-out of the domestic operational areas of St Pancras, Stratford International and Ebbsfleet stations in accordance with the Project outputs as limited and identified in the Technical Note TN37a “Statement of Requirements - CTRL Stations Fit-Out” by no later than the date that is 6 months before the date of introduction of the full CTRL Domestic Service.

3.2 The Franchisee shall not be in breach of the obligations under paragraph 3.1 above, and shall not be responsible for cost and delay, if and to the extent that such breach, cost and/or delay is reasonably attributable to the Franchisee not being able to gain access to any part of the stations for the fit-out on and from the ‘Handover of Area’ date for that part of the station on the bar chart at Annex I (provided that the reason for the Franchisee not being able

to gain access on the relevant date(s) is not caused by an unreasonable act or omission of the Franchisee). The Secretary of State shall compensate the Franchisee accordingly.

3.3 In the event that the Franchisee is required to implement the option at paragraph 3.1:

3.3.1 the following shall be restated in the amounts and in the values ascertained by switching on “Option 3 Alternative A: Fit-Out of CTRL Stations” in the Financial Model:

- (a) the amounts of Target Revenue for each Franchisee Year specified in the table set out in Appendix 2 (Target Revenue (expressed in real terms)) to the Franchise Agreement; and
- (b) the values of FXD, VCRP1, VCAEI, PRPI and TRRPI specified for each Franchisee Year in the table set out in Appendix 8 (Figures for Calculation of Annual Franchise Payments) to the Franchise Agreement; and

3.3.2 paragraph 3 of Appendix 1 (Secretary of State Risk Assumption in respect of the fit-out of the domestic operational areas of the CTRL stations) shall no longer apply and shall have no force and effect.

3.4 The Franchisee shall regularly communicate and consult with stakeholders (including LCR, Eurostar, Network Rail, the Olympic Delivery Authority, relevant Local Authorities and relevant passenger groups) on the progress of the fit-out required by paragraph 3.1.

3.5 The Franchisee shall submit a project plan for the fit-out required by paragraph 3.1 to the Secretary of State within 4 weeks of receipt of the request pursuant to paragraph 3.1 and shall thereafter:

- 3.5.1 meet with the Secretary of State quarterly to update the Secretary of State on progress against that plan; and
- 3.5.2 provide the Secretary of State with such information as he may reasonably require on the capital cost of the equipment and/or facilities to be provided.

3.6 Change Control

3.6.1 The Secretary of State may issue an instruction requiring a variation of the fit-out required pursuant to paragraph 3.1 above (an “Instruction”) at the cost of the Secretary of State.

3.6.2 The Franchisee shall not execute any such variation nor comply with an Instruction unless the Franchisee shall have first submitted to the Secretary of State in writing within 42 days of such Instruction:-

- (a) an assessment of the value thereof;
- (b) an assessment of the time within which the variation is proposed to be executed;
- (c) an assessment of the length of any extension of time to which the Franchisee may require;

- (d) a payment schedule setting out the instalments for payment (if required) of the value of such variation; and
- (e) such other information as the Secretary of State may reasonably require.

- 3.6.3 The Secretary of State and the Franchisee shall thereupon take reasonable steps to agree the assessment and/or the payment schedule. Any agreement so reached shall be binding on the Secretary of State and the Franchisee and the Franchisee shall then execute the variation in accordance with the Instruction.
- 3.6.4 For the avoidance of doubt the Franchisee shall comply with any reasonable Instruction of the Secretary of State save where the carrying out of such Instruction will cause the Franchisee to breach its obligations to carry out and complete by the dates specified the fit-out works specified under paragraph 3.1.
- 3.6.5 The Secretary of State shall not unreasonably withhold consent to any amendment to the specification for the fit-out (as detailed in paragraph 3.1) requested by the Franchisee provided that the Franchisee shall not be entitled to propose any amendment under this paragraph which would impact on the cost of the project to the Secretary of State or the delivery the delivery date of the project.

3.7 Prior to commencement of fit-out works referred to in paragraph 3.1, the Franchisee and the Secretary of State shall agree financial terms which ensure that the Franchisee is able to recover in full the net asset value of the assets procured under paragraph 3.1 on termination or expiry of the Franchise Agreement, as shown in the Financial Model as at the date of such termination or expiry (provided that such amount shall be reduced to the extent that the fit-out has not been completed). The Franchisee shall not unreasonably withhold or delay its agreement to financial terms proposed by the Secretary of State which have such effect and vice versa. If the Franchisee and the Secretary of State cannot agree such financial terms the matter may be referred by either party to be determined in accordance with the Dispute Resolution Rules.

Option 3 Alternative B

3.8 Where requested to do so in writing by the Secretary of State by no later than 30 August 2006, the Franchisee shall project manage the procurement of the fit-out of the domestic operational areas of St Pancras, Stratford International and Ebbsfleet stations in accordance with the Project outputs as limited and identified in the Technical Note TN37a "Statement of Requirements - CTRL Stations Fit-Out".

3.9 In the event that the Franchisee is required to implement the option at paragraph 3.8, the Secretary of State and the Franchisee shall agree a project management agreement for the services to be provided by the Franchisee.

3.10 Subject to paragraph 3.11, the project management agreement shall provide that the Secretary of State shall pay to the Franchisee each Reporting Period a project management fee of:

- 3.10.1 8% of the aggregate capital outturn cost of the project in the event that the aggregate capital outturn cost of the project is less than £15 million;

3.10.2 6% of the aggregate capital outturn cost of the project in the event that the aggregate capital outturn cost of the project is equal to or more than £15 million but less than £20 million; or

3.10.3 4% of the aggregate capital outturn cost of the project in the event that the aggregate capital cost of the project is equal to or greater than £20 million.

3.11 In the event that the Franchisee (acting reasonably) is satisfied with the estimate for the aggregate capital outturn cost of the project provided by the Secretary of State to the Franchisee, the Secretary of State may, in any request pursuant to paragraph 3.8 above, require the Franchisee to notify the Secretary of State in writing within 28 days of a fixed price for the project management referred to at paragraph 3.8 above, such fixed price to be no more than 6% of the estimate for the aggregate capital outturn cost of the project provided by the Secretary of State to the Franchisee..

3.12 Where requested in writing by the Secretary of State within 14 days of the Franchisee's response to a request under paragraph 3.11, the project management agreement to be entered into pursuant to paragraph 3.9 above shall provide that (subject to any adjustment pursuant to change control provision to be included in the project management agreement) the Secretary of State shall pay to the Franchisee each Reporting Period a project management fee equal to that notified pursuant to paragraph 3.11.

4. OPTION 4 - EARLY INTRODUCTION OF CTRL DS SERVICES

4.1 Subject to paragraph 4.2 below, where required to do so in writing by the Secretary of State by no later than 30 November 2007, the Franchisee will provide in addition to the Service Level Commitment:

4.1.1 from 28 June 2009 to 19 September 2009 a twice hourly service in each direction between Ashford and St Pancras. Such service shall operate 12 hours a day for all seven days of the week; and

4.1.2 from 20 September 2009 to 12 December 2009:

- (a) a twice hourly service in each direction between Ashford and St Pancras. Such service shall operate 12 hours a day for all 7 days of the week; and
- (b) a twice hourly service in each direction between Ebbsfleet and St Pancras. Such service shall operate 12 hours a day for all seven days of the week.

4.2 The Franchisee shall not be in breach of paragraph 4.1 above if and to the extent that the Franchisee is unable to provide the services required by paragraph 4.1 because:

4.2.1 the infrastructure required for the delivery of such services (including, without limitation, CTRL section 2, platforms at the relevant stations and the works at Ashford depot) is not available (provided that such non-availability of the infrastructure is not caused by an unreasonable act or omission of the Franchisee);

4.2.2 the CTRL DS Rolling Stock required for the provision of such services is not available or has not obtained certification for passenger service operation (provided that such non-availability of the CTRL DS Rolling Stock is not caused by an unreasonable act or omission of the Franchisee);

- 4.2.3 of the application of the Rules of the Route; or
- 4.2.4 of a Force Majeure Event
- 4.3 In the event that the Franchisee is required to implement the option at paragraph 4.1:
 - 4.3.1 the following shall be restated in the amounts and in the values ascertained by switching on “Option 4: Early introduction of CTRL DS Services” in the Financial Model:
 - (a) the amounts of Target Revenue for each Franchise Year specified in the table set out in Appendix 2 (Target Revenue (expressed in real terms)) to the Franchise Agreement; and
 - (b) the values of FXD, VCRPI, VCAEI PRPI and TRRPI specified for each Franchise Year in the table set out in Appendix 8 (Figures for Calculation of Annual Franchise Payments) to the Franchise Agreement;
 - 4.3.2 Schedule 5.9 of the Terms (Fares for CTRL Domestic Services) shall not apply to any services provided pursuant to paragraph 4.1 above;
 - 4.3.3 the services provided pursuant to paragraph 4.1 shall be exempt and ignored for the purposes of Schedule 7 of the Terms (Performance Benchmarks); and
 - 4.3.4 for the period of implementation, paragraphs 2 and 3 of Schedule 8.5 shall apply as if the words “and by paragraph 4.1 of Appendix 1” were added to the end of each paragraph.

ANNEX

REQUIRED HANDOVER DATES OF STATION AREAS

Station Area		Required Handover Date
St Pancras		
	Ancillary Spaces	28 May 2007
	Management Suite	16 August 2007
	Station Staff Facilities	27 September 2007
	Platform Offices	18 October 2007
Stratford International		
	Domestic Operator Facilities	14 May 2007
	Platform Offices	2 August 2007
Ebbsfleet		
	Platform Offices	3 March 2008
	Domestic Operator Facilities	4 August 2008

APPENDIX 5

Cancellations Benchmark Table - (Clause 5.17)

Column 1		Column 2	Column 3	Column 4	Column 5
Reporting Period		Target Performance Level (%)	Improvement Plan Performance Level (%)	Breach Performance Level (%)	Default Performance Level (%)
Year 1	Period 1	0.94%	1.02%	1.09%	1.13%
Year 1	Period 2	0.94%	1.01%	1.08%	1.13%
Year 1	Period 3	0.94%	1.01%	1.08%	1.13%
Year 1	Period 4	0.94%	1.01%	1.08%	1.13%
Year 1	Period 5	0.94%	1.01%	1.08%	1.13%
Year 1	Period 6	0.94%	1.01%	1.08%	1.13%
Year 1	Period 7	0.94%	1.01%	1.08%	1.12%
Year 1	Period 8	0.93%	1.01%	1.08%	1.12%
Year 1	Period 9	0.93%	1.00%	1.07%	1.12%
Year 1	Period 10	0.93%	1.00%	1.07%	1.12%
Year 1	Period 11	0.93%	1.00%	1.07%	1.12%
Year 1	Period 12	0.93%	1.00%	1.07%	1.12%
Year 1	Period 13	0.93%	1.00%	1.07%	1.12%
Year 2	Period 1	0.93%	1.00%	1.07%	1.11%
Year 2	Period 2	0.92%	0.99%	1.07%	1.11%
Year 2	Period 3	0.92%	0.99%	1.06%	1.11%
Year 2	Period 4	0.92%	0.99%	1.06%	1.11%
Year 2	Period 5	0.92%	0.99%	1.06%	1.11%
Year 2	Period 6	0.92%	0.99%	1.06%	1.11%
Year 2	Period 7	0.92%	0.99%	1.06%	1.11%
Year 2	Period 8	0.91%	0.99%	1.06%	1.10%
Year 2	Period 9	0.91%	0.98%	1.05%	1.10%
Year 2	Period 10	0.91%	0.98%	1.05%	1.10%
Year 2	Period 11	0.91%	0.98%	1.05%	1.10%
Year 2	Period 12	0.91%	0.98%	1.05%	1.10%
Year 2	Period 13	0.91%	0.98%	1.05%	1.10%
Year 3	Period 1	0.91%	0.98%	1.05%	1.09%
Year 3	Period 2	0.90%	0.97%	1.05%	1.09%
Year 3	Period 3	0.90%	0.97%	1.04%	1.09%
Year 3	Period 4	0.90%	0.97%	1.04%	1.09%
Year 3	Period 5	0.90%	0.97%	1.04%	1.09%
Year 3	Period 6	0.90%	0.97%	1.04%	1.09%
Year 3	Period 7	0.90%	0.97%	1.04%	1.09%
Year 3	Period 8	0.89%	0.97%	1.04%	1.08%
Year 3	Period 9	0.89%	0.96%	1.04%	1.08%
Year 3	Period 10	0.89%	0.96%	1.03%	1.08%
Year 3	Period 11	0.89%	0.96%	1.03%	1.08%
Year 3	Period 12	0.89%	0.96%	1.03%	1.08%
Year 3	Period 13	0.89%	0.96%	1.03%	1.08%
Year 4	Period 1	0.89%	0.96%	1.03%	1.07%
Year 4	Period 2	0.88%	0.96%	1.03%	1.07%
Year 4	Period 3	0.88%	0.95%	1.02%	1.07%
Year 4	Period 4	0.88%	0.95%	1.02%	1.07%

Column 1		Column 2	Column 3	Column 4	Column 5
Reporting Period		Target Performance Level (%)	Improvement Plan Performance Level (%)	Breach Performance Level (%)	Default Performance Level (%)
Year 4	Period 5	0.88%	0.95%	1.02%	1.07%
Year 4	Period 6	0.88%	0.95%	1.02%	1.07%
Year 4	Period 7	0.88%	0.95%	1.02%	1.07%
Year 4	Period 8	0.88%	0.95%	1.02%	1.06%
Year 4	Period 9	0.87%	0.94%	1.02%	1.06%
Year 4	Period 10	0.87%	0.94%	1.02%	1.06%
Year 4	Period 11	0.87%	0.94%	1.02%	1.06%
Year 4	Period 12	0.87%	0.94%	1.02%	1.06%
Year 4	Period 13	0.87%	0.94%	1.02%	1.06%
Year 5	Period 1	0.87%	0.94%	1.02%	1.06%
Year 5	Period 2	0.87%	0.94%	1.02%	1.06%
Year 5	Period 3	0.87%	0.94%	1.02%	1.06%
Year 5	Period 4	0.87%	0.94%	1.02%	1.06%
Year 5	Period 5	0.87%	0.94%	1.02%	1.06%
Year 5	Period 6	0.87%	0.94%	1.02%	1.06%
Year 5	Period 7	0.87%	0.94%	1.02%	1.06%
Year 5	Period 8	0.87%	0.94%	1.02%	1.06%
Year 5	Period 9	0.87%	0.94%	1.02%	1.06%
Year 5	Period 10	0.87%	0.94%	1.02%	1.06%
Year 5	Period 11	0.87%	0.94%	1.02%	1.06%
Year 5	Period 12	0.87%	0.94%	1.02%	1.06%
Year 5	Period 13	0.87%	0.94%	1.02%	1.06%
Year 6	Period 1	0.87%	0.94%	1.02%	1.06%
Year 6	Period 2	0.87%	0.94%	1.02%	1.06%
Year 6	Period 3	0.87%	0.94%	1.02%	1.06%
<i>Continue for duration of franchise</i>					

1. START OF THE INTEGRATED KENT FRANCHISE

The Reporting Period in the cells entitled "Year 1 Period 1" shall be the first Reporting Period of the Franchise Term.

2. CONTINUATION OF TABLE

The figures appearing above for Year 6, Period 3 shall apply for each subsequent Reporting Period until the end of the Franchise Term and any extension thereof.

APPENDIX 6

Capacity Benchmark Table (*Clause 5.18*)

Column 1		Column 2	Column 3	Column 4	Column 5
Reporting Period		Target Performance Level (%)	Improvement Plan Performance Level (%)	Breach Performance Level (%)	Default Performance Level (%)
Year 1	Period 1	1.6%	1.8%	1.9%	2.1%
Year 1	Period 2	1.6%	1.8%	1.9%	2.1%
Year 1	Period 3	1.6%	1.8%	1.9%	2.1%
Year 1	Period 4	1.6%	1.8%	1.9%	2.1%
Year 1	Period 5	1.6%	1.8%	1.9%	2.1%
Year 1	Period 6	1.6%	1.8%	1.9%	2.1%
Year 1	Period 7	1.6%	1.8%	1.9%	2.1%
Year 1	Period 8	1.6%	1.8%	1.9%	2.1%
Year 1	Period 9	1.6%	1.8%	1.9%	2.1%
Year 1	Period 10	1.6%	1.8%	1.9%	2.1%
Year 1	Period 11	1.6%	1.8%	1.9%	2.1%
Year 1	Period 12	1.6%	1.8%	1.9%	2.1%
Year 1	Period 13	1.6%	1.8%	1.9%	2.1%
Year 2	Period 1	1.5%	1.7%	1.8%	2.0%
Year 2	Period 2	1.5%	1.7%	1.8%	2.0%
Year 2	Period 3	1.5%	1.7%	1.8%	2.0%
Year 2	Period 4	1.5%	1.7%	1.8%	2.0%
Year 2	Period 5	1.5%	1.7%	1.8%	2.0%
Year 2	Period 6	1.5%	1.7%	1.8%	2.0%
Year 2	Period 7	1.5%	1.7%	1.8%	2.0%
Year 2	Period 8	1.5%	1.7%	1.8%	2.0%
Year 2	Period 9	1.5%	1.7%	1.8%	2.0%
Year 2	Period 10	1.5%	1.7%	1.8%	2.0%
Year 2	Period 11	1.5%	1.7%	1.8%	2.0%
Year 2	Period 12	1.5%	1.7%	1.8%	2.0%
Year 2	Period 13	1.5%	1.7%	1.8%	2.0%
Year 3	Period 1	1.5%	1.7%	1.8%	2.0%
Year 3	Period 2	1.4%	1.6%	1.7%	1.9%
Year 3	Period 3	1.4%	1.6%	1.7%	1.9%
Year 3	Period 4	1.4%	1.6%	1.7%	1.9%
Year 3	Period 5	1.4%	1.6%	1.7%	1.9%
Year 3	Period 6	1.4%	1.6%	1.7%	1.9%
Year 3	Period 7	1.4%	1.6%	1.7%	1.9%
Year 3	Period 8	1.4%	1.6%	1.7%	1.9%
Year 3	Period 9	1.4%	1.6%	1.7%	1.9%
Year 3	Period 10	1.4%	1.6%	1.7%	1.9%
Year 3	Period 11	1.4%	1.6%	1.7%	1.9%
Year 3	Period 12	1.4%	1.6%	1.7%	1.9%
Year 3	Period 13	1.4%	1.6%	1.7%	1.9%
Year 4	Period 1	1.4%	1.6%	1.7%	1.9%
Year 4	Period 2	1.3%	1.5%	1.6%	1.8%

Column 1		Column 2	Column 3	Column 4	Column 5
Reporting Period		Target Performance Level (%)	Improvement Plan Performance Level (%)	Breach Performance Level (%)	Default Performance Level (%)
Year 4	Period 3	1.3%	1.5%	1.6%	1.8%
Year 4	Period 4	1.3%	1.5%	1.6%	1.8%
Year 4	Period 5	1.3%	1.5%	1.6%	1.8%
Year 4	Period 6	1.3%	1.5%	1.6%	1.8%
Year 4	Period 7	1.3%	1.5%	1.6%	1.8%
Year 4	Period 8	1.3%	1.5%	1.6%	1.8%
Year 4	Period 9	1.3%	1.5%	1.6%	1.8%
Year 4	Period 10	1.3%	1.5%	1.6%	1.8%
Year 4	Period 11	1.3%	1.5%	1.6%	1.8%
Year 4	Period 12	1.3%	1.5%	1.6%	1.8%
Year 4	Period 13	1.3%	1.5%	1.6%	1.8%
Year 5	Period 1	1.3%	1.5%	1.6%	1.8%
Year 5	Period 2	1.3%	1.5%	1.6%	1.8%
Year 5	Period 3	1.3%	1.5%	1.6%	1.8%
Year 5	Period 4	1.3%	1.5%	1.6%	1.8%
Year 5	Period 5	1.3%	1.5%	1.6%	1.8%
Year 5	Period 6	1.3%	1.5%	1.6%	1.8%
Year 5	Period 7	1.3%	1.5%	1.6%	1.8%
Year 5	Period 8	1.3%	1.5%	1.6%	1.8%
Year 5	Period 9	1.3%	1.5%	1.6%	1.8%
Year 5	Period 10	1.3%	1.5%	1.6%	1.8%
Year 5	Period 11	1.3%	1.5%	1.6%	1.8%
Year 5	Period 12	1.3%	1.5%	1.6%	1.8%
Year 5	Period 13	1.3%	1.5%	1.6%	1.8%
Year 6	Period 1	1.3%	1.5%	1.6%	1.8%
Year 6	Period 2	1.3%	1.5%	1.6%	1.8%
Year 6	Period 3	1.3%	1.5%	1.6%	1.8%
Continue for duration of franchise					

1. START OF THE INTEGRATED KENT FRANCHISE

The Reporting Period in the cells entitled “Year 1 Period 1” shall be the first Reporting Period of the Franchise Term.

2. CONTINUATION OF TABLE

The figures appearing above for Year 6, Period 3 shall apply for each subsequent Reporting Period until the end of the Franchise Term and any extension thereof.

APPENDIX 7

Service Delivery Benchmark Table (Clause 5.19(a))^{13 14}

<i>Franchisee Year / Reporting Period</i>	<i>Target</i>	<i>Remedial Plan</i>	<i>Breach</i>	<i>Default</i>
<i>Year 1, Period 1</i>	<i>44000</i>	<i>46750</i>	<i>49750</i>	<i>51500</i>
<i>Year 1, Period 2</i>	<i>44000</i>	<i>46750</i>	<i>49750</i>	<i>51500</i>
<i>Year 1, Period 3</i>	<i>44320</i>	<i>47110</i>	<i>50130</i>	<i>51900</i>
<i>Year 1, Period 4</i>	<i>44320</i>	<i>47110</i>	<i>50130</i>	<i>51900</i>
<i>Year 1, Period 5</i>	<i>44320</i>	<i>47110</i>	<i>50130</i>	<i>51900</i>
<i>Year 1, Period 6</i>	<i>44320</i>	<i>47110</i>	<i>50130</i>	<i>51900</i>
<i>Year 1, Period 7</i>	<i>44320</i>	<i>47110</i>	<i>50130</i>	<i>51900</i>
<i>Year 1, Period 8</i>	<i>44070</i>	<i>46860</i>	<i>49860</i>	<i>51650</i>
<i>Year 1, Period 9</i>	<i>44070</i>	<i>46860</i>	<i>49860</i>	<i>51650</i>
<i>Year 1, Period 10</i>	<i>44980</i>	<i>47830</i>	<i>50920</i>	<i>52740</i>
<i>Year 1, Period 11</i>	<i>44980</i>	<i>47830</i>	<i>50920</i>	<i>52740</i>
<i>Year 1, Period 12</i>	<i>44720</i>	<i>47570</i>	<i>50660</i>	<i>52480</i>
<i>Year 1, Period 13</i>	<i>44470</i>	<i>47310</i>	<i>50410</i>	<i>52230</i>
<i>Year 2, Period 1</i>	<i>44470</i>	<i>47310</i>	<i>50410</i>	<i>52230</i>
<i>Year 2, Period 2</i>	<i>43300</i>	<i>46090</i>	<i>49120</i>	<i>50900</i>
<i>Year 2, Period 3</i>	<i>43300</i>	<i>46090</i>	<i>49120</i>	<i>50900</i>
<i>Year 2, Period 4</i>	<i>43050</i>	<i>45840</i>	<i>48870</i>	<i>50650</i>
<i>Year 2, Period 5</i>	<i>43050</i>	<i>45840</i>	<i>48870</i>	<i>50650</i>
<i>Year 2, Period 6</i>	<i>42800</i>	<i>45590</i>	<i>48620</i>	<i>50390</i>
<i>Year 2, Period 7</i>	<i>42550</i>	<i>45330</i>	<i>48370</i>	<i>50130</i>
<i>Year 2, Period 8</i>	<i>42550</i>	<i>45330</i>	<i>48370</i>	<i>50130</i>
<i>Year 2, Period 9</i>	<i>42290</i>	<i>45070</i>	<i>48110</i>	<i>49880</i>
<i>Year 2, Period 10</i>	<i>43090</i>	<i>45920</i>	<i>49020</i>	<i>50820</i>
<i>Year 2, Period 11</i>	<i>42830</i>	<i>45670</i>	<i>48770</i>	<i>50570</i>
<i>Year 2, Period 12</i>	<i>42580</i>	<i>45410</i>	<i>48510</i>	<i>50310</i>
<i>Year 2, Period 13</i>	<i>42580</i>	<i>45410</i>	<i>48510</i>	<i>50310</i>
<i>Year 3, Period 1</i>	<i>42310</i>	<i>45150</i>	<i>48260</i>	<i>50050</i>
<i>Year 3, Period 2</i>	<i>48060</i>	<i>45150</i>	<i>48260</i>	<i>50050</i>
<i>Year 3, Period 3</i>	<i>42060</i>	<i>44890</i>	<i>47990</i>	<i>49790</i>
<i>Year 3, Period 4</i>	<i>42060</i>	<i>44890</i>	<i>47990</i>	<i>49790</i>
<i>Year 3, Period 5</i>	<i>41800</i>	<i>44640</i>	<i>47740</i>	<i>49540</i>
<i>Year 3, Period 6</i>	<i>41550</i>	<i>44380</i>	<i>47480</i>	<i>49290</i>
<i>Year 3, Period 7</i>	<i>41550</i>	<i>44380</i>	<i>47480</i>	<i>49290</i>
<i>Year 3, Period 8</i>	<i>41280</i>	<i>44120</i>	<i>47220</i>	<i>49020</i>
<i>Year 3, Period 9</i>	<i>41280</i>	<i>44120</i>	<i>47220</i>	<i>49020</i>
<i>Year 3, Period 10</i>	<i>37920</i>	<i>40530</i>	<i>45090</i>	<i>46830</i>
<i>Year 3, Period 11</i>	<i>39080</i>	<i>41800</i>	<i>44770</i>	<i>46500</i>
<i>Year 3, Period 12</i>	<i>39080</i>	<i>41800</i>	<i>44770</i>	<i>46500</i>
<i>Year 3, Period 13</i>	<i>38820</i>	<i>41550</i>	<i>44520</i>	<i>46260</i>
<i>Year 4, Period 1</i>	<i>38900</i>	<i>41630</i>	<i>44610</i>	<i>46350</i>
<i>Year 4, Period 2</i>	<i>38660</i>	<i>41380</i>	<i>44360</i>	<i>46090</i>
<i>Year 4, Period 3</i>	<i>38660</i>	<i>41380</i>	<i>44360</i>	<i>46090</i>

¹³ Date of change 27/04/2010

¹⁴ Date of change 29/07/2010

Year 4, Period 4	38400	41130	44100	45840
Year 4, Period 5	38160	40890	43850	45590
Year 4, Period 6	38160	40890	43850	45590
Year 4, Period 7	37910	40630	43600	45340
Year 4, Period 8	37910	40630	43600	45340
Year 4, Period 9	37660	40390	43360	45090
Year 4, Period 10	44980	48230	51780	53850
Year 4, Period 11	44980	48230	51780	53850
Year 4, Period 12	44980	48230	51780	53850
Year 4, Period 13	44980	48230	51780	53850
Year 5, Period 1	44980	48230	51780	53850
Year 5, Period 2	45020	48280	51840	53910
Year 5, Period 3	45020	48280	51840	53910
Year 5, Period 4	45020	48280	51840	53910
Year 5, Period 5	45020	48280	51840	53910
Year 5, Period 6	45020	48280	51840	53910
Year 5, Period 7	45020	48280	51840	53910
Year 5, Period 8	45020	48280	51840	53910
Year 5, Period 9	45020	48280	51840	53910
Year 5, Period 10	45020	48280	51840	53910
Year 5, Period 11	45020	48280	51840	53910

1. START OF THE INTEGRATED KENT FRANCHISE

The Reporting Period in the cells entitled "Year 1 Period 7" shall be the first Reporting Period of the Franchise Term.

2. CONTINUATION OF TABLE

The above table shall continue until the end of the Franchise Term and any extension thereof. The figures appearing in the table after Year 4 Period 10 shall be calculated in accordance with Appendix 7A.

APPENDIX 7A

Re-calculation of Service Delivery Benchmarks (*Clause 5.19(b)*)

1. In this Appendix 7A, the tenth Reporting Period of the fourth Franchisee Year shall be referred to as the **Reference Reporting Period** and the **SLC2 Date** means the date on which full CTRL Domestic Services are introduced. In respect of all Reporting Periods following the Reference Period up to and including the Reporting Period that is the fourteenth whole Reporting Period after the Reporting Period in which the **SLC2 Date** falls (together, the **Static Periods**), the benchmark figures to be inserted in each of the second, third, fourth and fifth columns of Appendix 7 shall be a figure equal to the benchmark figure appearing in those respective columns for the Reference Reporting Period subject to any adjustment pursuant to paragraph 3.1 of Schedule 7.1 of the Terms.

2. In respect of the first Reporting Period following the Static Periods (the **Initial Period**) and all subsequent Reporting Periods up to and including the forty second Reporting Period after the SLC2 Date (the **Backstop Period**):

- (a) the benchmark figure to be inserted into the second column of Appendix 7 (the **Target Minutes**) shall be determined in accordance with paragraph 3 below; and
- (b) the benchmark figure to be inserted into each of the third column (the **Improvement Plan Minutes**), the fourth column (the **Breach Minutes**) and fifth column (the **Default Minutes**) of Appendix 7 shall be calculated by multiplying the Target Minutes in respect of each such Reporting Period (as so determined) by the prescribed number rounded up to the nearest whole number.

For this purpose, the prescribed number means:

- (i) in the case of the Improvement Plan Minutes, the number that is derived from dividing the Improvement Plan Minutes in the Reference Reporting Period, by the Target Minutes in the Reference Reporting Period;
 - (ii) in the case of the Breach Minutes, the number that is derived from dividing the Breach Minutes in the Reference Reporting Period, by the Target Minutes in the Reference Reporting Period; and
 - (iii) in the case of the Default Minutes, the number that is derived from dividing the Default Minutes in the Reference Reporting Period, by the Target Minutes in the Reference Reporting Period;
3. (a) The Target Minutes for the Backstop Period (the **Backstop Target Minutes**) and the Target Minutes for the Initial Period (the **Initial Target Minutes**) shall be determined as follows. No later than the first day of the fourteenth Reporting Period following the SLC2 Date, the Franchisee shall serve a notice in writing on the Secretary of State (the **Franchisee's Benchmark Proposals**) stating, in its opinion, what the Initial Target Minutes and the Backstop Target Minutes should be having regard to the principles set out in paragraph 4 below (the **New Benchmark Principles**). The Secretary of State shall, within 5 working days of receipt of such notice, serve a written counter-notice indicating either that he agrees with the Franchisee's Benchmark Proposals, or, in the absence of such agreement, what he considers, having regard to the New Benchmark Principles, the Initial Target Minutes and the

Backstop Target Minutes should be (the *Secretary of State's Benchmark Proposals*). If the Secretary of State agrees with the Franchisee's Benchmark Proposals, then those proposals shall become the Initial Target Minutes and the Backstop Target Minutes. If the Secretary of State does not so agree, but the Franchisee indicates, within 5 working days of receiving the Secretary of State's Benchmark Proposals that it agrees with those proposals, then the Secretary of State's Benchmark Proposals shall become the Initial Target Minutes and the Backstop Target Minutes. In the absence of such agreement, either party may refer the matter to arbitration in accordance with paragraph 5. below and the decision of the arbitrator so appointed shall determine the Initial Target Minutes and the Backstop Target Minutes.

- (b) The Target Minutes in respect of each Reporting Period falling between the Initial Period and the Backstop Period shall be calculated by the following formula:

$$RPTM^N = ITM - (N \times ((ITM - BTM) / 41))$$

where:

RPTM ^N	represents the Target Minutes for the Reporting Period in question.
ITM	is the figure equal to the Initial Target Minutes.
BTM	is the figure equal to the Backstop Target Minutes.
N	is the number of Reporting Periods after the Initial Period that the Reporting Period in question falls (<i>so that, for the first Reporting Period following the Initial Period N shall be equal to 1</i>).

4. The New Benchmark Principles are as follows:

- (a) the Initial Target Minutes and the Backstop Target Minutes shall be a figure that is fair and reasonable having regard to:
- (i) the actual number of Minutes Delay attributable to the Franchisee (as calculated pursuant to paragraphs 2.8 to 2.10 of Schedule 7.1 of the Terms) during the period commencing on the Commencement Date and ending on the SLC2 Date;
 - (ii) the actual number of Minutes Delay attributable to the Franchisee (as calculated pursuant to paragraphs 2.8 to 2.10 of Schedule 7.1 of the Terms) during such of the Static Periods for which performance figures are available at the time of calculation;
 - (iii) the mechanism for recording and attributing cancellations and delay minutes on CTRL;
 - (iv) the mechanism for recording and attributing cancellations and delay minutes across the boundary from CTRL to the Network Rail network and vice versa. In particular, where cancellations and delay minutes are attributed to the Infrastructure Operator on either CTRL or the Network Rail network, but become cancellations and delay

minutes attributable to the Franchisee for the purposes of recording cancellations and delay minutes on the other network, such cancellations and delay minutes are to be discounted for the purpose of calculating the Franchisee's cancellations and delay minutes in any Reporting Period;

- (v) the Initial Target Minutes and the Backstop Target Minutes should be set at a level that sets a benchmark which is consistent with the general trend of service performance being achieved by other Train Operators under other franchises in the south east of England;
 - (vi) the Franchisee's stated intention to improve performance throughout the Franchise Term, as set out in paragraph 2.13 of Appendix 11 (Committed Obligations).
- (b) the Secretary of State and the Franchisee acknowledge that the Initial Target Minutes may be different from the Target Minutes in the Reference Period;
 - (c) the Backstop Target Minutes per train mile shall not be higher than the Target Minutes per train mile for the Reference Reporting Period unless the Secretary of State otherwise agrees in writing; and
 - (d) the parties acknowledge that their aspirations as at the date of this Agreement are that the Backstop Target Minutes shall be 36,000 as adjusted in accordance with the formula set out at paragraph 3.1 of Schedule 7.1 of the Terms but they shall not be lower than 36,000 (prior to such adjustment) unless the Franchisee otherwise agrees in writing.

5. In the event that the Secretary of State and the Franchisee cannot agree what the Initial Target Minutes and the Backstop Target Minutes should be pursuant to paragraph 3(a), then:

- (a) either party may refer the matter to arbitration by serving a notice on the other party and on the Disputes Secretary (as defined in the Dispute Resolution Rules);
- (b) the parties shall, within 5 working days of the notice referring the matter to arbitration, agree on the choice of arbitrator to be appointed. In the absence of such agreement, the Disputes Secretary shall, within 5 working days thereafter (or as soon as reasonably practicable) appoint an arbitrator from the register in accordance with the Dispute Resolution Rules;
- (c) the question which the arbitrator so appointed shall be asked to determine is whether (having regard to the New Benchmark Principles) the Initial Target Minutes and the Backstop Target Minutes should be those contained in the Franchisee's Benchmark Proposals or the Secretary of State's Benchmark Proposals. The arbitrator shall not be required to substitute his own proposals for Initial Target Minutes or the Backstop Target Minutes;
- (d) the arbitrator shall be requested to set a hearing date within 5 working days of his appointment (or as soon thereafter as reasonably practicable), such hearing date to be no sooner than 5 working days after his appointment, and no later than 10 working days after his appointment (or as soon thereafter as reasonably practicable);

- (e) each of the Franchisee and the Secretary of State shall deliver written submissions to the arbitrator and to each other in support of their respective proposals no later than 3 working days prior to the proposed hearing date;
- (f) at the hearing, each party shall be entitled to present their submissions orally, and to adduce the evidence of no more than one expert witness;
- (g) each of the Franchisee and the Secretary of State shall have a further 5 working days following the hearing date to respond to the submissions of the other party, such responses to be given in writing to the arbitrator and to the other party;
- (h) the arbitrator shall be requested to make an award within 10 working days of the hearing date;
- (i) the decision of the arbitrator shall be final and binding

and the application of the Dispute Resolution Rules to this arbitration shall be amended to the extent that they are inconsistent with paragraphs 5(a) to (i) above.

6. In the event that the Initial Target Minutes and the Backstop Target Minutes have not been determined pursuant to paragraphs 3 or 5 above prior to the end of the Static Periods, then the benchmark figures to be inserted in each of the second, third, fourth and fifth columns of Appendix 7 after that time shall be a figure equal to the benchmark figure appearing in those respective columns for the Reference Reporting Period subject to any adjustment pursuant to paragraph 3.1 of Schedule 7.1 of the Terms until such time as such agreement is reached.

7. Once the Initial Target Minutes and the Backstop Target Minutes have been determined pursuant to paragraphs 3 or 5 above, such agreement and the consequent population of the second, third, fourth and fifth columns of Appendix 7 shall have effect from the Reporting Period starting after the date of determination pursuant to paragraph 3 or 5 above and shall not have retrospective effect.

APPENDIX 8

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

APPENDIX 9

List of Key Contracts (*Clause 5.26*)

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 including any Property Leases listed in paragraph 4 of Appendix 2 (*List of Conditions Precedent Documents*) to the Conditions Precedent Agreement.
3. Any contract or arrangement for the lending, seconding, hiring, contracting out, supervision, training, assessment, or accommodation by another Train Operator of any train drivers, conductors or other train crew used by the Franchisee in the provision of the Passenger Services.
4. Any contract or arrangement for the subcontracting or delegation to another Train Operator of the provision of any of the Passenger Services (whether or not the consent of the Secretary of State is required to such subcontracting or delegation under paragraph 1 of Schedule 2.3 (*Third Party Delivery of Passenger Services and Other Franchisees*)).
5. Any contract or arrangement with a Train Operator (other than an Access Agreement) for the provision to the Franchisee of train dispatch, performance or supervision of platform duties, security activities, evacuation procedures, advice or assistance to customers, assistance to disabled customers, operation of customer information systems, cash management or ticket issuing systems administration.
6. Any contract or arrangement with a Train Operator for the provision of breakdown or recovery, and track call services to assist in the provision of the Passenger Services.
7. Any contract or arrangement for the supply of spare parts or Spares.
8. Any contract or arrangement for the maintenance of track, rolling stock and other related infrastructure.
9. Any licences of Marks to the Franchisee.
10. Any Rolling Stock Lease including the Rolling Stock Leases listed in Table 1 of Appendix 3 (*The Train Fleet*).
11. Licence for use of Railtrack Software dated 8 December 1995.
12. RT Computer Services between RT and Operator dated 27 March 1995.

APPENDIX 10

List of Primary Franchise Assets (*Clause 5.27*)

None.

APPENDIX 11

Committed Obligations

Unless otherwise stated, any reference to expenditure in this Appendix 11 is a reference to expenditure in nominal terms.

1. COMMITTED OBLIGATIONS REQUIRED BY THE SECRETARY OF STATE FOR TRANSPORT

The Franchisee agrees to deliver the following committed obligations (save to the extent already carried out by South Eastern Trains Limited):

1.1 Infrastructure Operators

The Franchisee agrees to develop a mutually beneficial partnership relationship with the Infrastructure Operators. The partnership relationship shall focus in particular on:

- (a) More effective sharing of knowledge, skills and best practice;
- (b) Improved communications and mutual understanding between the workforces of the Franchisee and Network Rail;
- (c) More effective and productive relationships;
- (d) Better appreciation by each of the Franchisee and the Infrastructure Operators of the other's responsibilities and how they impact on the passenger; and
- (e) Joint focus on both internal and external customer service.

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

2. COMMITTED OBLIGATIONS PROPOSED BY THE FRANCHISEE AND ACCEPTED BY THE SECRETARY OF STATE

The Franchisee commits to deliver the following obligations (save to the extent already carried out by South Eastern Trains Limited):

2.1 The Franchisee in seeking to perform at a level which is equal or better than the Target Performance Levels for the Cancellations and Service Delivery Benchmarks shall use all reasonable endeavours to ensure that Networker fleet reliability will achieve a 50% improvement in miles per casualty (mpc) rates from those inherited at the commencement of the franchise to at most 11,500 mpc by December 2009 - the mpc at the commencement of the franchise to be agreed.

2.2 Graffiti will *normally* be removed from stations within 24 hours of it being reported and, from trains ¹⁵“(*other than the rolling stock vehicles which are sub leased from the FCC Franchisee as required in paragraph 1.1 of Appendix 21 (Thameslink KO0 Specific Provisions)*”); and within 24 hours or before entering service as is reasonably practicable and without causing unreasonable delay or cancellation, and in any event, will be removed as soon

¹⁵ Date of change 14/7/2008

as reasonably practicable with the procedure for removal having been commenced within 24 hours of it being reported. In this paragraph 2.2, ***normally*** means all circumstances save those circumstances where graffiti removal requires a possession, a risk assessment or specialist attention or is outside the area of the station lease or where the graffiti cannot be rectified at the reported location, appears on out-berthed stock, requires specialist chemicals/parts or involves window etching.

¹⁶“ ***The parties acknowledge that in considering whether the Franchisee has complied with its obligations in this paragraph , regard will be had to the extent to which:***

- (a) the Franchisee’s ability to remove graffiti from trains has been prejudiced by the implementation of Thameslink KO0 (including the requirement for the Franchisee to comply with the Thameslink KO0 Trading Agreements and to operate the Thameslink KO0 Services); and***
- (b) the Franchisee has used reasonable endeavours to mitigate any such prejudicial impacts of implementing Thameslink KO0 (including the requirement for the Franchisee to comply with the Thameslink KO0 Trading Agreements and operate the Thameslink KO0 Services)”;*** and

2.3 The Franchisee in seeking to perform at a level which is equal or better than the Target Performance Levels for the Cancellations and Service Delivery Benchmarks shall use all reasonable endeavours to ensure that:

- (a) Class 375 fleet reliability will achieve a 70% improvement in miles per casualty rates from those inherited at the commencement of the franchise to at most 31,000 mpc by the second anniversary of the Franchise Commencement Date - the mpc at the commencement of the franchise to be agreed; and
- (b) Class 376 fleet reliability will achieve a 70% improvement in miles per casualty from those inherited at the commencement of the franchise to at most 17,600 mpc by the second anniversary of the Franchise Commencement Date – the mpc at the commencement of the franchise to be agreed.

2.4 Subject to the Franchisee securing the necessary track access rights (which the Franchisee shall use all reasonable endeavours to obtain), the introduction by December 2007 until the date of introduction of SLC2 of additional services, as specified below (save that the arrival and departure times are indicative only), at a level of performance consistent with its Schedule 7.1 benchmarks, namely:

- (a) Mondays to Fridays
 - (a) one additional train from Faversham dep 0522 arriving at London Cannon Street before 0700;
 - (b) one additional train from London Cannon Street dep 1916 to Faversham;
 - (c) two additional trains from Ashford International dep 0518 and 0600 arriving at London Charing Cross at 0640 and 0715;
 - (d) one additional train from London Charing Cross dep 1645 to Tunbridge Wells; (this train is proposed to provide one of the services from Tonbridge to Tunbridge Wells required by SLC1 section H3 para 2.3)
 - (e) two additional peak services from London Charing Cross dep 1923 and 1953 to Ashford International; (these trains are proposed to continue beyond

¹⁶ Date of change 14/7/2008

Ashford International, replacing the Margate and Ramsgate portions of the existing trains from London Charing Cross departing at 1900 and 1930)

- (f) two additional trains from London Cannon Street dep 1918 and 1948 to Orpington;
 - (g) two additional trains from London Cannon Street dep 1920 and 1950 to Crayford via Sidcup;
 - (h) two additional trains from London Cannon Street dep 1923 and 1953 to Hayes (Kent);
 - (i) one additional train from London Cannon Street dep 1935 to Barnehurst via Bexleyheath;
 - (j) three additional trains from London Charing Cross dep 2115, 2215 and 2315 to Tunbridge Wells; (these trains are proposed to provide the service from Tonbridge to Tunbridge Wells required by SLC1 section H3 para 2.5)
 - (k) seventeen additional trains between London Victoria and Beckenham Junction, departing London Victoria at 0907 and every 30 minutes until 1607; thence 1907 and 1937; (these services will be introduced once Eurostar services have ceased to operate to Waterloo International)
 - (l) seventeen additional trains between Beckenham Junction and London Victoria, departing Beckenham Junction at 0939 and every 30 minutes until 1639; thence 1939 and 2009; (these services will be introduced once Eurostar services have ceased to operate to Waterloo International)
- (b) Saturdays
- (a) twenty four additional trains from London Victoria to Beckenham Junction departing London Victoria at 0807 and every 30 minutes until 1937; (these services will be introduced once Eurostar services have ceased to operate to Waterloo International)
 - (b) twenty four additional trains from Beckenham Junction to London Victoria, departing Beckenham Junction at 0839 and every 30 minutes until 2009; (these services will be introduced once Eurostar services have ceased to operate to Waterloo International)
- (c) Sundays
- (a) ten additional trains from London Charing Cross to Hastings departing London Charing Cross at 0940 and every 60 minutes until 1840; (these trains are proposed to provide the service from Tonbridge to Tunbridge Wells required by SLC1 section H3 para 4.1)
 - (b) one additional train from London Charing Cross to Tunbridge Wells departing London Charing Cross at 1940; (this train is proposed to provide the service from Tonbridge to Tunbridge Wells required by SLC1 section H3 para 4.1)

- (c) one additional train from Tunbridge Wells arriving at London Charing Cross at 0925; (this train is proposed to provide the service from Tunbridge Wells to Tonbridge required by SLC1 section H3 para 4.2)
- (d) ten additional trains from Hastings to London Charing Cross arriving London Charing Cross at 1025 and every 60 minutes until 1925 (these trains are proposed to provide the service from Tunbridge Wells to Tonbridge required by SLC1 section H3 para 4.2).

2.5 The achievement of full IIP accreditation as part of the train operator's HR Strategy by December 2009.

2.6 ***The achievement, by 35% of the workforce, of an NVQ and/or VRQ qualification by the end of 2009.***¹⁷

2.7 The development and introduction of a company Stakeholder Advisory Board by the first anniversary of the Franchise Commencement Date.

2.8 The achievement of automatic passenger counting capability:

- (a) on the entire Electrostar fleet (Class 375s and 376s) by the first anniversary of the Franchise Commencement Date; and

(b)¹⁸¹⁹ on 25% of the Networker Fleet which the Franchisee shall use all reasonable endeavours to achieve by 31 August 2011 and in any event shall achieve by 29 February 2012 including the achievement of such capability on 10% of the Networker Fleet which the Franchisee shall use all reasonable endeavours to achieve by the second anniversary of the Franchise Commencement Date and in any event achieve by 1 October 2008. The parties acknowledge that in considering what are reasonable endeavours for the purposes of this paragraph, regard will be had to the extent to which:

- (i) the Franchisee's ability to achieve automatic passenger counting capability on the Networker Fleet as required by this paragraph has been prejudiced by the implementation of Thameslink KO0; and***
- (ii) the Franchisee has used reasonable endeavours to mitigate any such prejudicial impacts of implementing Thameslink KO0.***

2.9 The achievement of the Park Mark Safer Parking award for at least 10 car parks by the 3rd anniversary of the Franchise Commencement Date.

2.10 The improvement in NPS scores for 'satisfied/good' responses for station cleanliness by 13 percentage points (compared to SET's Spring 2005 station cleanliness NPS score) by Spring 2009.

¹⁷ Insert change text wef 18/06/07

¹⁸ Date of change 14/7/2008

¹⁹ Date of Change 17/03/2011

2.11 The reduction of cancellations due to vandalism of berthed stock by 20% by the 2nd anniversary of the Franchise Commencement Date to a number that is no higher than on average 7 per Reporting Period.

2.12 The improvement of 'satisfied/good' responses relating to NPS scores in regard to ticket buying facilities to 63% by the 2nd anniversary of the Franchise Commencement Date and by a further 4 percentage points by the 3rd anniversary.

2.13 *The Franchisee in seeking to perform at a level which is equal or better than the Target Performance Levels for Cancellations and Service Delivery Benchmarks shall use all reasonable endeavours to ensure that all day PPM MAA train performance by Year end 03/07 PPM MAA = 87.35%, Year end 03/08 PPM MAA = 89.20%, Year end 03/09 PPM MAA = 91.61%, Year end 03/10 PPM MAA = 91.8%; Year end 03/11 PPM MAA = 92.3%; Year end 03/12 PPM MAA = 92.6%; Year end 03/13 PPM MAA = 93% and Year end 03/14 PPM MAA = 93.4%²⁰.²¹ The parties acknowledge that in considering what are reasonable endeavours for the purposes of this paragraph, regard will be had to the extent to which:*

- (a) the Franchisee's ability to achieve the specified percentages has been prejudiced by the requirement for it to implement Thameslink KO0 (including the requirement for the Franchisee to comply with the Thameslink KO0 Trading Agreements and to operate the Thameslink KO0 Services); and***
- (b) the Franchisee has used reasonable endeavours to mitigate any such prejudicial impacts of implementing Thameslink KO0 (including the requirement for the Franchisee to comply with the Thameslink KO0 Trading Agreements and operate the Thameslink KO0 Services)***

2.14 The introduction of Zonal fares in the Metro area by January 2008.

Investments made directly by the Franchisee and procured from third parties, together totalling up to £76,900,000 will be made, including the following specifically identified elements:

2.15 The Franchisee shall use all reasonable endeavours to procure by 31 December 2008 third party investment at a total cost of up to £13,500,000 as follows:

- (a) the enabling of passenger broadband internet access equipment on the entire Class 375 fleet and the Class 465/9s; and
- (b) the provision of the necessary trackside internet access infrastructure on the mainline routes.

²⁰ Date of Change 23/07/2010

²¹ Date of change 14/7/2008

²²*The parties acknowledge that in considering what are reasonable endeavours for the purposes of this paragraph, regard will be had to the extent to which:*

- (a) the Franchisee's ability to procure the specified investment has been prejudiced by the requirement for it to implement Thameslink KO0; and*
- (b) the Franchisee has used reasonable endeavours to mitigate any any such prejudicial impacts of implementing Thameslink KO0.*

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

2.17 The introduction of a comprehensive staff development programme at a cost of £10,300,000 over the life of the franchise.

2.18 Subject to the approval of HMRI and station change approval as required (which the Franchisee shall use all reasonable endeavours to obtain), the Franchisee shall procure: (a) the investment of £246,000 in respect of remote monitoring for new gating by the first anniversary of the Franchise Commencement Date; (b) the introduction of automatic ticket gates at Ashford (£452,000), Canterbury West (£210,000) and Gravesend (£452,000) by the first anniversary of the Franchise Commencement Date; and, (c) with the agreement of the Secretary of State (such agreement not to be unreasonably withheld), the investment of £1,814,000 on new ticket machines by the first anniversary of the Franchise Commencement Date.ⁱ

2.19 The investment of £410,000 on staff accommodation in the first year of the franchise, and at least a further £1m over the remaining life of the franchise similarly on staff accommodation.

2.20 The investment of £5,607,000 in total on the following station improvements:

- (a) accessibility improvements at stations within 3 years of the Franchise Commencement Date (including £1,274,000 on step free access, £1,163,000 on the installation of interactive Help Points, and £413,000 on other improvements) and such investment shall satisfy the Franchisee's obligations under the Minor Works Programme pursuant to paragraph 2.7 of the Terms for the first three Franchisee Years; and
- (b) £2,757,000 on transport integration, car park improvements, CCTV enhancements and improvements to the CIS System within 2 years of the Franchise Commencement Date.

2.21^{23 24} ***All station and Depot Dilapidations work required under paragraph 1.6 of Appendix 19 shall be completed by 02:00 hours on 31 August 2012.***

²² Date of change 14/7/2008

²³ Date of Change 05/08/2010

²⁴ Date of Change 29/02/2012

- 2.22²⁵ (a) *All stations shall be re-branded with the Franchisee's signage by 31st December 2008*
- (b) *50% of stations shall be re-painted in the Franchisee's branding by 31st December 2009; and*
- (c)²⁶ *All stations shall be repainted in the Franchisee's branding by 31 August 2012.*

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

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

3. LIQUIDATED DAMAGES FOR FAILURE TO DELIVER COMMITTED OBLIGATIONS

Automatic Ticket Gates (paragraph 2.18)

3.1 In the event that the Franchisee has not spent:

- (a) £1,114,000 on the introduction of automatic ticket gates at Ashford, Canterbury West and Gravesend stations by the first anniversary of the Franchise Commencement Date, then the Franchise Payments shall be adjusted (subject to paragraph 3.2 below) by subtracting £0.183 for every £1,000 of such amount that has not been invested by such anniversary for each day that passes between such anniversary and the date on which the Franchisee has invested £1,114,000 on the introduction of such automatic ticket gates; and/or
- (b) £256,000 on remote automatic ticket gate monitoring equipment at various locations where automatic ticket gates have already been installed by the first anniversary of the Franchise Commencement Date, then the Franchise Payments shall be adjusted (subject to paragraph 3.2 below) by subtracting £0.274 for every £1,000 of such amount that has not been invested by such anniversary for each day that passes between such anniversary and the date on which the Franchisee has invested £256,000 on the introduction of such remote automatic ticket gate monitoring equipment.

3.2 The Franchisee shall not be liable to make any payment pursuant to paragraph 3.1 if and to the extent that any failure to comply with paragraph 2.18 of this Appendix 11 is attributable to the absence of HMRI approval and/or station change approval (except to the extent that it is attributable to the Franchisee failing to use all reasonable endeavours to obtain either HMRI approval or station change approval).

3.3 In the event that the Franchisee has not invested £1,814,000 on new ticket machines by the first anniversary of the Franchise Commencement Date, then the Franchise Payments shall be adjusted (subject to any delay not being attributable to the Secretary of State unreasonably withholding its agreement) by subtracting £0.343 for every £1,000 of such amount that has not been invested by such anniversary for each day that passes between such

²⁵ Date of Change 05/08/2010

²⁶ Date of Change 29/02/2012

anniversary and the date on which the Franchisee has invested £1,814,000 on the introduction of such new ticket machines.

Staff Accommodation (paragraph 2.19)

3.4 In the event that the Franchisee has not invested £410,000 on staff accommodation by the first anniversary of the Franchise Commencement Date, then the Franchise Payments shall be adjusted by subtracting £0.55 for every £1,000 of such amount that has not been invested by such anniversary for each day that passes between such anniversary and the date on which the Franchisee has invested £410,000 on staff accommodation.

Accessibility Improvements and Transport Integration (paragraph 2.20)

3.5 In the event that the Franchisee has not invested £2,850,000 on accessibility improvements at stations in accordance with paragraph 2.20(a) of this Appendix 11 by the third anniversary of the Franchise Commencement Date, then the Franchise Payments shall be adjusted by subtracting £0.34 for every £1,000 of such amount that has not been invested by such anniversary for each day that passes between such anniversary and the date on which the Franchisee has invested £2,850,000 on the matters identified in paragraph 2.20(a).

3.6 In the event that the Franchisee has not invested £2,757,000 in accordance with paragraph 2.20(b) of this Appendix 11 by the second anniversary of the Franchise Commencement Date, then the Franchise Payments shall be adjusted by subtracting £0.343 for every £1,000 of such amount that has not been invested by such anniversary for each day that passes between such anniversary and the date on which the Franchisee has invested £2,757,000 on the matters identified at paragraph 2.20(b).

Station Re-branding (Paragraph 2.22)²⁷

3.7 *In the event that the Franchisee has not completed the re-branding of all stations as set out in paragraph 2.22 (a) of this Appendix 11 by the 31st December 2008, then the Franchisee shall pay £176 per day to the Department for Transport until the work is completed to the Department's satisfaction. This provision shall not apply to stations between 2009 and 2011 which are not completed as a result of non-delivery on the part of Network Rail.*

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

²⁷ Date of Change 05/08/2010

APPENDIX 12

2012 Olympic Games (Clause 7)

1. ACKNOWLEDGEMENT

The parties acknowledge that:

- (a) the UK Government has succeeded in its bid to the Olympic Committee for London (*London 2012*) to host the Olympic Games in 2012 (the *Games*); and
- (b) as a key provider of public transport services into and out of London and the surrounding area, the Franchisee will have an important role to play during the Franchise Term in helping to make the staging of the Games successful.

2. FRANCHISEE CO-OPERATION

The Franchisee shall, at its own cost, co-operate and consult as reasonably required with the London 2012 Bid Team, the Secretary of State, Transport for London, Network Rail, the British Transport Police and any other relevant party in connection with any arrangements directly or indirectly connected with the Games, including:

- (a) the provision of additional and/or specific railway passenger services;
- (b) the carrying out of necessary works to the network;
- (c) the provision of additional and/or specific security arrangements at stations at which the Passenger Services call and on the Passenger Services;
- (d) the provision of specific integrated ticketing in relation to the Passenger Services; and
- (e) advertising and marketing of the Games in relation to the Franchise Services.

3. ENTRY INTO THE OLYMPIC SERVICES DELIVERY PLAN

3.1 During the Franchise Term the Secretary of State shall give the Franchisee reasonable notice of:

- (a) his intention to enter into a plan for the implementation of:
 - (i) any or all of the matters referred to in paragraph 2; and
 - (ii) any other matter relevant to the award, planning or staging of the Games, (the *Olympic Services Delivery Plan*); and
- (b) the terms of the Olympic Services Delivery Plan he wishes to enter into.

3.2 The Franchisee may make representations to the Secretary of State in respect of the Secretary of State's proposed terms of the Olympic Services Delivery Plan.

3.3 If the Secretary of State and the Franchisee cannot agree on the terms of the Olympic Services Delivery Plan the Secretary of State shall reasonably determine such terms.

3.4 At a date to be notified to the Franchisee by the Secretary of State, the Secretary of State and the Franchisee shall enter into the Olympic Services Delivery Plan.

4. FINANCIAL EFFECTS OF THE OLYMPIC SERVICES DELIVERY PLAN

For the purpose of paragraph (g) of the definition of *Change*, the cost and revenue effects of the Franchisee's implementation of the Olympic Services Delivery Plan shall be a Change.

5. IMPLEMENTATION OF THE OLYMPIC SERVICES DELIVERY PLAN

5.1 The Franchisee shall implement the Olympic Services Delivery Plan in accordance with its terms.

5.2 In the event the Franchisee enters into a contract with an advertising sales agency (a **Contractor**), such that the Contractor is entitled to grant rights to others:

- (i) inside and on the outside of trains and including for the avoidance of doubt the Olympic Javelin Service or any other dedicated service which commences, terminates or passes through the Olympic Park; and
- (ii) in or around train stations served by those aforementioned trains

for the display of advertisement, promotional or other media copy, then the Franchisee will first procure that the Contractor grants to London 2012 an option by entering into an agreement on substantially the same terms as the Option Agreement for Advertising entered into by the Franchisee as a Condition Precedent to commencing operation of this Franchise (only to the extent the Contractor has not already entered into an agreement with London 2012 on the same or similar terms).

6. OLYMPIC JAVELIN SERVICE AND CAPACITY PLANNING

6.1 The Franchisee agrees to provide a shuttle service that will run between St Pancras and Ashford and St Pancras and Ebbsfleet calling at Stratford International station at the time of the Games (the Olympic Javelin Service) within 36 months of a written request to that effect from the Secretary of State. Following receipt of such a request, the Franchisee shall agree with the Secretary of State and the relevant organisers of the Games a plan for the introduction of the Olympic Javelin Service in terms acceptable to the Secretary of State, acting reasonably, at least 18 months prior to the introduction of the service. Once agreed, such plan should form part of the Olympic Services Delivery Plan.

6.2 The Franchisee shall agree with the Secretary of State and any other interested authorities or bodies a plan to meet the anticipated additional demand on those of the Passenger Services running into London Stations throughout the duration of the Games and the provision of the Olympic Javelin Service in terms acceptable to the Secretary of State, acting reasonably, and the Secretary of State shall notify the final form of such plan to the Franchisee as part of the Olympic Services Delivery Plan in accordance with paragraph 3.1 of this Appendix 12.

APPENDIX 13²⁸**List of Documents in the Agreed Terms (*Clause 8*)**

<i>319SL</i>	<i>Class 319 Sub Lease</i>
<i>377SHA</i>	<i>Class 377 Sub Hire Agreement</i>
<i>CFD</i>	Commuter Fares Document
<i>DL</i>	Depot Lease
<i>FM</i>	Financial Model
<i>HOT</i>	Heads of Terms
<i>LA</i>	Shareholder's Loan Agreement
<i>MBM</i>	<i>Methodology for the creation of the Baseline Model.</i>
<i>OA</i>	Option Agreement with London 2012 Ltd
<i>OM</i>	Operational Model
<i>PC</i>	Passenger's Charter
<i>PCG</i>	Parent Company Guarantee
<i>PFD</i>	Protected Fares Document
<i>POA</i>	Power of Attorney
<i>ROA</i>	Record of Assumptions
<i>SLC1</i>	Service Level Commitment 1
<i>SLC2</i>	Service Level Commitment 2
<i>SL</i>	Station Lease
<i>SQS</i>	Service Quality Standards
<i>STLKT</i>	<i>Southern Training Agreement</i>
<i>TfL SFA</i>	TfL Standard Form Agreement

²⁸ Date of Change 14/07/2008

<i>TLKTA</i>	<i>FCC Training Agreement</i>
<i>TLKTC1</i>	<i>Train Crew Trading Agreement (FCC Franchisee buying)</i>
<i>TLKTC2</i>	<i>Train Crew Trading Agreement (Franchisee buying)</i>
<i>TLKTTS</i>	<i>Thameslink KO0 Timetable Specification</i>
<i>TP</i>	Train Plan

APPENDIX 14

The Transition Plan

NB: This plan assumes a Franchise Commencement Date of 1 April 2006 and the introduction of CTRL DS at the timetable change date in December 2009.

1. PROJECT MANAGEMENT

Management Structure

1.1 The Franchisee will have in place on the Franchise Commencement Date a dedicated project management group (“PMG”) which will be responsible for the overall management of the transition to SLC2. The PMG will inter alia consist of:-

- 1.1.1 an SLC2 Programme Director, with responsibility for managing all aspects of the introduction of SLC2;
- 1.1.2 a Deputy Director (High Speed Strategy) to provide support to the SLC2 Programme Director in relation to all high speed issues; and
- 1.1.3 a Planning & Risk Manager, who will be responsible for identifying and managing risks associated with the introduction of SLC2.

1.2 The PMG will be supported by dedicated Engineering, Operations and Safety and Commercial resources, and will draw on expertise in the areas of Human Resources Management and Communications from within the Franchisee’s existing organisation.

1.3 ⁱⁱThe PMG will report to the SLC2 Programme Board, led by the Franchisee’s SLC2 Programme Director and including representatives from the Secretary of State, Hitachi, HSBC Rail and the infrastructure operators. The responsibilities of the Board will include:-

- 1.3.1 review of progress against key milestones;
- 1.3.2 liaison and consultation with key stakeholders; and
- 1.3.3 regular progress reporting to the Secretary of State.

Programme Monitoring

1.4 The Franchisee will maintain with effect from the Franchise Commencement Date:-

- 1.4.1 a detailed transition programme; and
- 1.4.2 a risk log

each of which shall be reviewed and updated by the PMG on a monthly basis.

1.5 The PMG will meet on a monthly basis and will prepare and submit to the SLC2 Programme Board each month a progress report detailing the Franchisee’s progress against the transition programme, highlighting key risk areas and identifying mitigation actions.

1.6 ⁱⁱThe SLC2 Programme Board will meet on a quarterly basis to consider the PMG reports, review transition strategy and engage stakeholders, suppliers and the Secretary of

State as required to ensure that any strategic risks to the transition to SLC2 are managed and resolved.

2. FLEET INTRODUCTION

Interface Management

2.1 In order to ensure the timely introduction of the new train fleet for the CTRL DS, with effect from the Franchise Commencement Date, the Franchisee will (subject to the co-operation of the other relevant parties), establish procedures for actively managing the interfaces with its key partners, Hitachi, HSBC Rail, Network Rail and the CTRLDS infrastructure operator. This will include:-

- 2.1.1 putting in place a project management agreement with HSBC Rail to provide for the joint management of the procurement process; and
- 2.1.2 establishing a joint project programme for the testing, delivery and acceptance of the new rolling stock.

2.2 During the testing phase, and until all of the new units are in service, the Franchisee will hold monthly performance meetings with HSBC Rail and Hitachi to ensure that technical issues associated with the new rolling stock are understood and addressed, and that any necessary consequential modifications are made to the Franchisee's training and operational procedures.

Depot Construction & Commissioning

2.3 The Planning and Projects team of Govia Limited, supported by the Franchisee's dedicated Engineering resource team will monitor and oversee on behalf of the Franchisee:-

- 2.3.1 the building of the new depot at Ashford and the remodelling of existing facilities at Ramsgate; and
- 2.3.2 testing and validation of DS Rolling stock stabling facilities.

2.4 The Franchisee will co-operate fully with the Secretary of State and all relevant stakeholders to ensure that construction and commissioning of depot facilities for the CTRL DS fleet is completed to timetable and to the specification required for the operation of CTRL DS.

Fleet Testing and Commissioning

2.5 The Franchisee's dedicated Engineering resource team will work closely with Hitachi to ensure that the testing and commissioning process is completed and provisional acceptance achieved in accordance with Hitachi's proposed project programme for the achievement of Provisional Acceptance including ensuring that the mileage accumulation requirements for provisional and full acceptance are met. This will include full support of and involvement in:-

- 2.5.1 applications for approvals;
- 2.5.2 safety case development;
- 2.5.3 risk and hazard identification;

2.5.4 design review; and

2.5.5 test planning.

Fleet Introduction

2.6 Subject to the timely completion of testing and commissioning of the new fleet, the Franchisee will commence a period of shadow running of the new rolling stock (not necessarily in passenger service) no later than June 2009, for the purposes of:-

2.6.1 verifying the operation of passenger amenities;

2.6.2 training of drivers, on-train and station staff;

2.6.3 validation of operational procedures; and

2.6.4 earlier identification of measures to improve reliability.

2.7 The Franchisee will ensure that the introduction of the full CTRL DS service is informed by technical and operational issues identified during the period of shadow running.

Fleet Reliability Growth

2.8 The Franchisee's dedicated Engineering resource team will actively manage contractual relationships with Hitachi during the transition period, which will include:-

2.8.1 ensuring that Hitachi introduces its planned maintenance organisation;

2.8.2 reviewing and approving maintenance documentation;

2.8.3 reviewing and approving the content and structure of maintenance staff training; and

2.8.4 designing and implementing procedures for the monitoring of maintenance related performance issues.

2.9 Representatives of the Franchisee's Engineering resource team will attend monthly performance meetings with Hitachi and other relevant stakeholders to monitor reliability and identify measures to ensure that planned reliability targets are delivered.

Recruitment

2.10 The Franchisee will make the following key appointments to deliver its transition plan for CTRL DS fleet introduction:-

2.10.1 New Train Project Manager, to be appointed on or before the Franchise Commencement Date;

2.10.2 Design & Delivery Engineer, to be appointed on or before the Franchise Commencement Date;

2.10.3 Engineering Approvals Manager, to be appointed within one year of the Franchise Commencement Date;

2.10.4 Acceptance Team (consisting of the Test & Acceptance Engineer, the Operations & Planning Manager and the Ashford Depot Operating Controller), to be appointed within 15 months of the Franchise Commencement Date; and

2.10.5 Fleet Manager DS, to be appointed not less than 11 months before the commencement of CTRL DS services by the beginning of 2009.

3. TRAINCREW

3.1 Within 11 months of the Franchise Commencement Date, the Franchisee will initiate a programme of driver training for the CTRL DS which:-

3.1.1 provides for early identification and training of driver instructors;

3.1.2 ensures that there are sufficient trained drivers to support the testing of the new train fleet on the CTRL DS and for the introduction of the full service whilst maintaining an adequate pool to support ongoing operation of SLC1 services (including spare cover);

3.1.3 identifies the interdependencies within the programme for the delivery of the CTRL DS rolling stock fleet and fully integrates with it;

3.1.4 ensures that competencies are retained in the event of delayed introduction of the services; and

3.1.5 generally achieves a smooth transition to SLC2.

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

3.3 The Franchisee's centralised route learning and risk assessment function will ensure that:-

3.3.1 route learning materials are updated and validated for all CTRL DS routes; and

3.3.2 route risk assessment issues arising from the introduction of CTRL DS are addressed.

3.4 The Franchisee will continuously monitor the content of its driver training and route learning programmes, including actively seeking and reviewing feed back from trainee drivers.

3.5 The Franchisee will develop a plan for use of a simulator in training to include:

3.5.1 Initial cooperation with the Secretary of State in relation to its procurement of the driver simulator for the DS rolling stock;

3.5.2 Arrangements for the location and housing of the simulator; and

3.5.3 Details of its intended use within the overall driver training programme in such a way as to achieve the maximum possible benefit from it.

4. OTHER STAFF

Station Staffing

4.1 The Franchisee will put in place by the end of 2007 a transition staffing strategy which identifies the measures it will take to ensure that:-

- 4.1.1 all stations are staffed appropriately to meet the operational and retail requirements of the SLC2 service;
- 4.1.2 customers are fully informed of the new services and changes they should expect;
- 4.1.3 customers experience a seamless transition from SLC1 to SLC2; and
- 4.1.4 station staff are briefed on changes as a result of SLC2 and the introduction of the CTRL DS so that they feel confident to advise customers appropriately and promptly.

Recruitment & Training

4.2 The Franchisee will commence a programme of recruitment and selection of station staff for the CTRL DS before the end of 2008.

4.3 The Franchisee will implement selection criteria designed to identify candidates with a high degree of competence, to include people skills, communications skills, resilience and (for safety critical posts) the required level of competence in safety standards.

4.4 Prior to the transition to SLC2, the Franchisee will introduce a programme of training for CTRL DS station staff, to include:-

- 4.4.1 a one day induction course for all staff;
- 4.4.2 a five day customer service training course to be undertaken by all staff within six months of their recruitment;
- 4.4.3 specialist management training for Duty Station Managers; and
- 4.4.4 safety and security training.

4.5 The Franchisee will recruit and train (including from internal candidates and/or agency staff) a total of 18 specialist customer service staff who will be placed at key stations across the Franchise at least six months prior to the introduction of the CTRL DS, in order to:-

- 4.5.1 supply information to customers on the new services; and
- 4.5.2 provide support to permanent station staff during the transition period.

Route Control

4.6 The Franchisee is committed to:-

- 4.6.1 having in place at the Franchise Commencement Date a control strategy for the establishment of a joint control function for both classic and CTRL DS

services, based at Ashford, at least six months prior to the commencement of the CTRL DS; and

- 4.6.2 working closely with Network Rail in advance of the commencement of CTRL DS to deliver this strategy, including finalising proposals for an integrated organisational structure.

Management Plan

4.7 No later than two months before the commencement of the CTRL DS, the Franchisee will have in place a DS Management Team, whose responsibilities will include:-

- 4.7.1 championing the Franchise's brand for CTRL DS;
- 4.7.2 effective internal and external communication, dealing in particular with DS stakeholders; and
- 4.7.3 working with the other line management within the Franchisee's organisation to deliver the DS product at its interfaces with the "classic network".

4.8 The DS Management Team will include a:-

- 4.8.1 Director DS;
- 4.8.2 Product Manager (direct report of Director DS);
- 4.8.3 Customer Services Manager DS (direct report of Director DS);
- 4.8.4 General Manager DS (dedicated to DS and a direct report of the Operations and Safety Director); and
- 4.8.5 Fleet Manager DS (dedicated to DS and a direct report of the Engineering Director).

4.9 Prior to the introduction of the CTRL DS, all members of the DS Management Team will undertake a training and experience programme hosted by SNCF.

5. SAFETY CASE

Development Plan

5.1 The Franchisee will, using a risk based approach, have in place at the Franchise Commencement Date a CTRL DS Safety Case Development Plan consisting of:-

- 5.1.1 a plan and process to ensure that the Franchisee's operational safety systems are adapted to encompass operations over CTRL infrastructure and that the Franchisee's Safety Certificate is amended and approved accordingly;
- 5.1.2 procedures for obtaining HMRI approval, Railway Safety Engineering Acceptance and Network Rail Route Acceptance for the new CTRL DS fleet for both CTRL and classic infrastructure, together with Department for Transport RVAR approval and compliance with European Interoperability Directives; and

- 5.1.3 staff selection, training and assessment plans to ensure competence to carry out all tasks associated with the respective stages of CTRL operation.

Timescales & Resources

5.2 From the Franchise Commencement Date, the Franchisee will work closely with Network Rail and Union Railways to identify the amendments which are required to the SET Safety Certificate as a consequence of the introduction of the CTRL DS, with a view to:-

- 5.2.1 submitting a revised Safety Certificate to HMRI in October 2006; and

- 5.2.2 obtaining full approval by April 2007.

5.3 With effect from October 2007, the Franchisee will work closely with Hitachi on the testing and commissioning of the new CTRL DS fleet leading to full acceptance and safety approval of CTRL DS rolling stock in time for commencement of the services in December 2009.

5.4 The Franchisee's SLC2 Programme Director will oversee the delivery of the Safety Case Development Plan, supported by a dedicated DS Safety Manager, who will be appointed by the Franchise Commencement Date.

6. LICENSING & PERMISSIONS

Station & Depot Agreements

6.1 The Franchisee will agree a joint action plan with the Secretary of State and the relevant facility operator (taking into account the requirement for consultation with and approval from the Regulator), in respect of:-

- 6.1.1 the new station access agreements to be entered into prior to the introduction of SLC2 at Ebbsfleet and Stratford International; and

- 6.1.2 the amendments which are required to the Franchisee's existing depot access agreements for Gillingham and Ramsgate in connection with the introduction of the CTRL DS rolling stock.

Track Access

6.2 The Franchisee will agree a joint action plan with the Secretary of State and the relevant infrastructure operator (taking into account the requirement for consultation with and approval from the Regulator) in respect of the negotiation of:-

- 6.2.1 a new track access agreement in accordance with Heads of Terms agreed by the Authority and the relevant infrastructure operator;

- 6.2.2 supplemental agreements for the purpose of each stage of the development of CTRL DS; and

- 6.2.3 access for testing and commissioning of the CTRL DS rolling stock.

Ticketing & Settlement

6.3 The Franchisee will work with ATOC and other relevant industry parties to ensure that appropriate ticketing and settlement arrangements are in place in relation to the CTRL DS Services, including co-operating in respect of any changes which are required to the Ticketing and Settlement Agreement.

7. TIMETABLE PLANNING

Resources

7.1 Within six months of the Franchise Commencement Date, the Franchisee will restructure and strengthen its Train Planning Unit by the establishment of a dedicated SLC2 Development Section, consisting of:-

- 7.1.1 an SLC2 Timetable Development Manager;
- 7.1.2 a Timetable Development Manager; and
- 7.1.3 two Timetable Development Assistants.

Processes and Procedures

7.2 The Franchisee will have in place on the Franchise Commencement Date a project plan for the development of the SLC2 timetable. The project plan will:-

- 7.2.1 provide for the development of the timetable in accordance with the Rail Industry Timetabling Process set out in the Network Code;
- 7.2.2 include commitments to consult with key stakeholders throughout the timetable development process;
- 7.2.3 ensure that due weight is given in the timetable development process to the following factors:
 - management of capacity and crowding;
 - the balance between timetable details and performance robustness; and
 - the aspiration for a clock face timetable for DS and Classic services.
- 7.2.4 specify arrangements for joint working on timetable development issues with Network Rail, the Secretary of State, Eurostar and other train operating companies within the Franchise area;
- 7.2.5 identify steps for ensuring that the specification can be delivered in accordance with Rules of the Route and Rules of the Plan (including making proposals for amendments to the specification); and
- 7.2.6 define procedures to minimise the operational and commercial risks associated with the change over.

7.3 The project plan will identify measures to ensure the efficient distribution of information in relation to the implementation of the 2009 timetable, including:-

- 7.3.1 timetables, including regular trains paths and conditional (Q) paths recorded in the Train Service Data Base (TSDB) and in working timetables;
- 7.3.2 unit diagrams and train crew diagrams;
- 7.3.3 other operating documents; and
- 7.3.4 public timetables.

8. EXTERNAL INTERFACE STRATEGY

Industry Partners

8.1 The Franchisee's SLC2 Programme Director will be responsible for actively managing the interfaces between the Franchisee and the following key partners in relation to the transition to SLC2, each of which will be encouraged to attend quarterly meetings of the SLC2 Programme Board:-

- 8.1.1 the Department of Transport
- 8.1.2 Hitachi;
- 8.1.3 HSBC Rail; and
- 8.1.4 infrastructure operators.

Stakeholders & Customers

8.2 The Franchisee will establish during the period of transition to SLC2 an SLC2 Stakeholder Committee, to enable key stakeholders (including the Secretary of State, Kent County Council, Medway District Council, Rail Passengers Council, London Travelwatch, Transport for London and the Olympic Transport Authority) to identify and discuss the issues and concerns of passengers in connection with the introduction of the new services.

8.3 The Franchisee will have in place at the Franchise Commencement Date a strategic communications plan for customers and stakeholders in relation to the DS services and will work closely with the Secretary of State in the delivery of such plan. The plan will include the Franchisee's strategy for disseminating passenger information, including information on fares and timetable.

8.4 Throughout the period of transition to SLC2, the Franchisee's Stakeholder Relations Manager will:-

- 8.4.1 meet regularly with customer groups and other stakeholders to brief them in full;
- 8.4.2 establish regular contact with local newspapers, and develop rapport by visiting key correspondents at least twice a year during the transitional period;
- 8.4.3 publish a quarterly newsletter to update customers and stakeholders on project progress;

- 8.4.4 establish on the Franchisee's website a dedicated and updateable 'transition to SLC2' section;
- 8.4.5 establish a Route Users Group to help thoroughly understand the needs of customers and provide a forum through which to deal with specific issues as they arise; and
- 8.4.6 arrange an annual stakeholder information event during the transition to SLC2 to ensure stakeholders are adequately briefed and feel sufficiently engaged in the process.

APPENDIX 15

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APPENDIX 16

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APPENDIX 17

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APPENDIX 18

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APPENDIX 19

Station and Depot Surveys

1. STATION AND DEPOT SURVEYS

1.1 The Franchisee and the Secretary of State shall undertake joint surveys that record the aesthetic condition of each Station and Depot and the state of repair of each Station and Depot, including the buildings, roofs, station shelters, guttering, glazing, painted surfaces, tiled surfaces, floor surfaces and signage.

1.2 Either party shall be entitled to use photographic or video recording equipment in the carrying out of any survey pursuant to paragraph 1.1, but in any event the parties shall record a summary of the operational status and condition of each Station and Depot at the date of such survey.

1.3 The surveys shall be completed within 6 months of the date of signature of this Agreement. The Franchisee shall co-operate with the Secretary of State in relation to the surveys in order to, as far as possible, carry out such surveys in conjunction with representatives from Network Rail.

1.4 The Franchisee shall use reasonable endeavours to procure by agreement with Network Rail that the surveys conducted pursuant to paragraphs 1.1 and 1.3 shall establish the extent to which the repair and maintenance obligations of the lessee under the lease in respect of the Stations and Depots have been complied with and, to the extent that they have not, to agree with Network Rail a schedule of dilapidations identifying the works necessary to be undertaken to ensure compliance with those obligations. The Franchisee shall not agree the schedule of dilapidations without the prior approval of the Secretary of State.

²⁹ **1.5 The Franchisee and the Secretary of State acknowledge that:**

(a) The Franchisee has undertaken a significant programme of works to rectify the Station and Depot dilapidations identified in paragraph 1.1;

(b) the Secretary of State has already paid to the Franchisee the sum of £4,227,729 for works to remedy the deficiencies in repair and maintenance identified in the schedule of dilapidations as described in para 1.4; and

(c) the Secretary of State will pay the Franchisee the sum of £3,241,620.56 in relation to repair and maintenance works already completed by 30 April 2012.

²⁹ Date of change: 29/02/2012

³⁰ **1.6 The Franchisee and the Secretary of State shall agree by 31 March 2012 a further programme of works to remedy the deficiencies in repair and maintenance identified in the Schedule of Dilapidations and the Franchisee will complete those works.**

³¹ **1.7 Within 60 days of the Franchisee providing evidence of completion of the works described in paragraph 1.6 the Secretary of State will pay the Franchisee the sum of £1,014,153.44.**

1.8 The obligations of the Franchisee under paragraph 1.7 of this Appendix 19 shall apply in respect of Stations and Depots only once the work to be carried out in relation to each Station and Depot as identified in the programme of works have been completed. Where no such work has been identified, the obligations shall apply as from the date that it is established that no such work is necessary.

1.9 In respect of the matters referred to in paragraph 1.1, each Station and Depot shall be further categorised by the Secretary of State and the Franchisee (and in the absence of agreement, the Secretary of State shall reasonably determine the categories) in accordance with the following condition standard:

Condition status at time of survey completion	Description of condition status	Characteristics of condition status
1	Excellent	As new or recently refurbished, no attention required
2	Good	Good aesthetic appearance, a few minor aesthetic issues requiring attention, no concerns as to repair of fabric of building
3	Satisfactory	Generally acceptable appearance, a few minor aesthetic issues requiring attention, a few minor deficiencies in condition where delay in remedying would not damage the fabric of the building
4	Poor	Shabby, aesthetically poor, attention required to a few deficiencies where delay in remedying would increase the cost of repair
5	Extremely poor	Dilapidated, urgent attention required to a significant number of deficiencies or a few deficiencies where delay in remedying would cause significant additional cost

³⁰ Date of change 29/02/2012

³¹ Date of change 29/02/2012

³² 1.10 Following receipt by the Franchisee of payments by the Secretary of State to the Franchisee under paragraphs 1.5(c) and 1.7, the Franchisee shall be responsible, at his own cost, for any works required to meet the repair and maintenance obligations of the Lessee under respective Station Leases and Depot Leases.

³³ 1.11 The Secretary of State acknowledges that, upon completion of the works described in paragraph 1.6, the Franchisee will have discharged completely its obligations to remedy the deficiencies in repair and maintenance identified in the Schedule of Dilapidations.

³² Date of change 29/02/2012

³³ Date of change 29/02/2012

APPENDIX 20

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APPENDIX 21 (Thameslink KO0 Specific Provisions)

1. Rolling Stock Sub Leases

1.1 Except as otherwise directed by the Secretary of State pursuant to paragraph 13.2(d)(2) of Appendix I (Secretary of State Risk Assumptions) the Franchisee shall:

- (a) on or before 14 August 2008 agree and enter into a sub lease with the FCC Franchisee for the hire of Class 319 units in substantially the same form as the document in agreed terms marked 319 SL (“319 Sub Lease”);***
- (b) on or before 31 December 2008 enter into a sub hire agreement with the FCC Franchisee for the sub hire of Class 377 units in substantially the same form as the document in agreed terms marked 377 SHA (“377 Sub Hire Agreement”).***

2. Other Trading Arrangements

2.1 The Franchisee shall on or before the Execution Date agree and enter into the following trading arrangements with the FCC Franchisee:

- (a) a train crew trading agreement pursuant to which the Franchisee will provide train crew services to the FCC Franchisee in substantially the same form as the document in agreed terms marked TLKTC1 (“Train Crew Trading Agreement (FCC Franchisee Buying)”);***
- (b) a train crew trading agreement pursuant to which the FCC Franchisee will provide train crew services to the Franchisee in substantially the same form as the document in agreed terms marked TLKTC2 (“Train Crew Trading Agreement (Franchisee Buying)”);***
- (c) a training agreement pursuant to which the FCC Franchisee will provide driver training to the Franchisee on the Class 319 dual voltage traction in substantially the same form as the document in agreed terms marked TLKTA (“FCC Training Agreement”).***

- 2.2 *The Franchisee shall on or before the Execution Date agree and enter into an agreement with the Southern Franchisee for the provision of driver training on the Class 377 AC traction in substantially the same form as the document in agreed terms marked STLKTT (“Southern Traction and Training Agreement”).*

3. **Changes to the Thameslink KO0 Trading Agreements**

The Franchisee agrees and undertakes to:-

- 3.1 *observe and comply with all the conditions and obligations on its part contained in each Thameslink KO0 Trading Agreement;*
- 3.2 *agree, and take all steps which may be required to implement, any amendment to any Thameslink KO0 Trading Agreement as the Secretary of State may direct from time to time;*
- 3.3 *take all such steps as may be required to terminate each or any Thameslink KO0 Trading Agreement as the Secretary of State may direct from time to time; and*
- 3.4 *not vary, agree to vary, waive performance of, terminate or in any other way deal with or change the terms of any Thameslink KO0 Trading Agreement without the prior consent of the Secretary of State.*

4. **Agreements with Successor Operators**

The Franchisee shall enter into replacement Thameslink KO0 Trading Agreements on materially the same commercial terms with, as the case may be, a successor operator who becomes the franchisee of all or part of the services provided by the Southern Franchisee or the FCC Franchisee or the successor of either of them except to the extent that the Secretary of State otherwise directs.

5. **Thameslink KO0 Committed Obligations**

- 5.1 *Without prejudice to any other obligation of the Franchisee under the Franchise Agreement the Franchisee shall use all reasonable endeavours to facilitate the implementation of Thameslink KO0 with effect from the Planned Thameslink KO0 Start Date including by co-operating with Network Rail, the Southern Franchisee and the FCC Franchisee (as reasonably necessary) in order to ensure the commencement of operation of the Thameslink KO0 Services by that date and the Franchisee shall not do anything or omit to do anything which is inconsistent with its obligations under this paragraph 5.1.*

5.2³⁴

<i>Additional Franchise Employees</i>	<i>Dates</i>
<i>2 additional conductors</i>	<i>1 September 2008</i>
<i>2 “line of route” maintenance staff (the “Maintenance Staff”)</i>	<i>1 September 2008</i>

The Maintenance Staff employed by the Franchisee under this paragraph 5.2 shall be utilised for the provision of weekly 24 hour maintenance cover and weekly 24 hour emergency cover for the Class 319 and 377 units sub leased from the FCC Franchisee.

5.3 *The Franchisee shall at its own expense (subject always to paragraph 7 of this Appendix 21):*

- (a) provide such assistance as may be reasonably required by the Infrastructure Provider and/or the FCC Franchisee to properly interface with and support the Infrastructure Provider and the FCC Franchisee (as the case may be) in the obtaining of the route clearance and the route acceptance for the Class 319 and 377 rolling stock units; and*
- (b) undertake the activities considered necessary by the Franchisee or as may be reasonably required by the Secretary of State for the implementation of Thameslink KO0 and the operation of the Thameslink KO0 Services including:*
 - (i) inspection of sidings to support depot clearance works;*
 - (ii) procure that any minor infrastructure modifications are made at sidings and depots to allow different classes of rolling stock to use such sidings and depots;*
 - (iii) review of platform and stepping distance data in support of Class 319 and Class 377 rolling stock units route acceptance;*
 - (iv) review and amend the vehicle change process documentation as considered necessary by the Franchisee;*

³⁴ Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

- (v) *review and amend the Franchisee’s quality procedures as considered necessary by the Franchisee;*
- (vi) *ensure the effective implementation of changes to procedures, quality documentation and defect matrix as considered necessary by the Franchisee; and*
- (vii) *review the Safety Management System and ensure that all relevant updates are implemented and approved by the relevant safety authority.*

5.5 *Thameslink KO0 Communication Plan*

- (a) *The Franchisee shall on the Execution Date submit to the Secretary of State an effective customer communication and marketing plan (the “Thameslink KO0 Communication Plan”) that:*
 - (i) *reflects the reasonable opinions of passengers as derived from the passenger focus research undertaken by the Franchisee prior to the preparation of the Thameslink KO0 Communication Plan;*
 - (ii) *ensures that customers are informed of the relevant details about the Thameslink KO0 Services including details of:*
 - (A) *the passenger services to be operated by the Franchisee on behalf of the FCC Franchisee and by the FCC Franchisee on behalf of the Franchisee;*
 - (B) *the increased journey opportunities that become available as a result of the implementation of Thameslink KO0; and*
 - (C) *any potential disruptions to passenger journeys (including the complaints handling procedure) arising as a result of Thameslink KO0,*
 - (D) *The Franchisee shall (at its own expense but subject always to paragraph 7 of this Appendix 21) implement the Thameslink KO0 Communication Plan.*
 - (E) *In implementing the Thameslink KO0 Communication Plan the Franchisee shall use a range of appropriate communication channels, including stakeholder consultation, website communications, 24 hour telephone enquiry service, leaflets and posters, letters to customers on*

the CRM database, station communications, customer count down promotions, customer newsletters, on train advertising, route maps and timetables.

5.7 *The Franchisee shall (at its own expense, subject always to paragraph 7 of this Appendix 21) and in accordance with the timings described in the Thameslink KO0 Transition Plan:*

(a) update the following information technology systems as required for the implementation of Thameslink KO0:

(i) Tyrell;

(ii) Voyagerplan;

(iii) Genius;

(iv) IRMA; and

(vi) P2; and

(b) in addition to the requirements of paragraph 5.7(a) undertake such updates to its other information technology systems as may be considered necessary by the Franchisee for the implementation of Thameslink KO0.

5.8 *In addition to the requirements of paragraph 5.7 the Franchisee shall (at its own expense, subject always to paragraph 7 of this Appendix 21) implement any changes to its Customer Information Systems as may be necessary in respect of Thameslink KO0 including to ensure the proper description of the passenger services to be operated by the Franchisee on behalf of the FCC Franchisee and the FCC Franchisee on behalf of the Franchisee.*

5.9 *The Franchisee shall:*

(a) on the Execution Date submit to the Secretary of State a plan which covers all the activities to be carried out by the Franchisee in order to facilitate the implementation of Thameslink KO0 in accordance with its obligations under the Franchise Agreement including the dates for completion of such activity, any specific action plans and the relevant milestones (the “Thameslink KO0 Transition Plan”);

(b) implement the Thameslink KO0 Transition Plan and at each Franchise Performance Meeting update the Secretary of State on:

- (i) *any progress it has made in the implementation of the Thameslink KO0 Transition Plan since the last Franchise Performance Meeting; and*
 - (ii) *the occurrence or non-occurrence (as the case may be) of any events or series of events which were anticipated or not anticipated (as the case may be) at the time the Thameslink KO0 Transition Plan was being finalised;*
- (c) *ensure that each activity required in order for it to comply with its obligations set out in paragraphs 5.1 to 5.9 is included in the Thameslink KO0 Transition Plan as a specific item and that each such activity is completed in accordance with the date specified in the Thameslink KO0 Transition Plan in respect of such an activity except that where the undertaking of any activity set out in the Thameslink KO0 Transition Plan is outside the control of the Franchisee (in whole or in part) the Franchisee shall use all reasonable endeavours to complete such activity in accordance with the dates specified in the Thameslink KO0 Transition Plan; and*
- (d) *not make any:*
- (i) *changes to the final dates for completion as specified in the Thameslink KO0 Transition Plan to the extent that such date relates to any of the obligations set out in this paragraph 5; or*
 - (ii) *other changes which will have the effect of delaying the Planned Thameslink KO0 Start Date,*
- without first obtaining the consent of the Secretary of State.*

5.10 Timetabling of Traded Services

- (A) *The Franchisee shall at the Secretary of State's request from time to time provide to the Secretary of State and (if and to the extent so requested by the Secretary of State) to the FCC Franchisee (or any successor operator to the FCC Franchisee) such information as the Secretary of State may reasonably request in connection with the planning, timetabling, diagramming and operation of the Franchise Services which may reasonably be expected for reasons in connection with the Thameslink KO0 Trading Agreements to affect the planning, timetabling diagramming or operation of services by the FCC Franchisee (or any successor operator to the FCC Franchisee).*

- (B) *The Franchisee shall at the Secretary of State's request from time to time liaise and cooperate with the Secretary of State and (if and to the extent so requested by the Secretary of State) with the FCC Franchisee (or any successor operator to the FCC Franchisee):*
- (i) *in connection with the planning for and the achievement of the Planned Thameslink KO0 Start Date; and*
- (ii) *with a view to securing the planning, diagramming and operation of a Timetable which is in accordance with the Thameslink KO0 Timetable Specification throughout the period of operation of the Thameslink KO0 SLC or (subject to any changes consequent upon the relevant changes to the SLC) any subsequent SLC which envisages any Train Slots being operated partly by the Franchisee and partly by the FCC Franchisee (or any successor operator to the FCC Franchisee).*

6. *Passenger Charter Compensation Payments*

6.1 ³⁵

6.2 ³⁶

6.3 ³⁷

6.4³⁸

6.5 ³⁹

6.6 ⁴⁰

³⁵ Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

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³⁹ Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

7. *Transition Costs*

7.1 *The Secretary of State and the Franchisee each acknowledge that the Franchisee will incur certain costs in respect of each of the Estimated Items and that such costs have not been reflected in the Financial Model applicable from the Execution Date. Accordingly the Secretary of State has in accordance with this paragraph 7 agreed to pay to the Franchisee the reasonable and proper costs incurred in respect of an Estimated Item (the “Actual Value”) but only up to the Estimated Value.*

7.2 *The Franchisee shall at quarterly intervals (or such other interval as may be agreed by the Secretary of State and the Franchisee) beginning from the Execution Date provide to the Secretary of State a certificate signed by a director of the Franchisee confirming:*

- (a) the Actual Value incurred by the Franchisee in respect of an Estimated Item during such quarter;*
- (b) that the Actual Values have been incurred solely in respect of the Franchisee carrying out the activities comprised in the Estimated Items;*
- (c) the aggregate amounts that have been paid to the Franchisee by the Secretary of State in respect of each Estimated Item as at the date of the relevant Transition Costs Report;*
- (d) that as at the date of the relevant Transition Costs Report the aggregate amount paid to the Franchisee by the Secretary of State in respect of each Estimated Item is less than or equal to its Estimated Value; and*
- (e) that the Franchisee has complied with its obligations in paragraph 7.8,*

together with all relevant invoices and other supporting information, (together to be known as the “Transition Costs Report”).

7.3 *Within 20 business days of receipt of any Transition Costs Report (or in circumstances where paragraph 7.4 applies within 20 business days of receipt of the Further Information (as such term is defined in paragraph 7.4)) the Secretary of State shall notify the Franchisee in writing of:*

⁴⁰ Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

- (a) *those Actual Values contained in the Transition Costs Report which are approved and to which the provisions of paragraph 7.5 shall apply; and/or*
- (b) *the Actual Values contained in the Transition Costs Report which are not approved and to which the provisions of paragraph 7.7 shall apply. The circumstances in which the Secretary of State can refuse approval of any Actual Value contained in a Transition Costs Report shall be where:*
 - (i) *the Franchisee has failed to demonstrate to the reasonable satisfaction of the Secretary of State that it has complied with its obligations under paragraph 7.8 in respect of such Actual Value; and/or*
 - (ii) *the Secretary of State disputes that such Actual Value has been reasonably and properly incurred.*

7.4 *In order to assist the Secretary of State with its decision on whether to approve or not approve any Actual Value contained in a Transition Costs Report the Secretary of State may request such further information from the Franchisee in respect of such Actual Value as it may reasonably require (“Further Information”). The Franchisee shall provide such Further Information as soon as reasonably practicable after receipt of such request to provide the Further Information.*

7.5 *On the next Payment Date after the date the Secretary of State approves any Actual Value contained in a Transition Costs Report the Secretary of State shall pay to the Franchisee by way of an adjustment to the Franchise Payment an amount equal to such Actual Value (plus any applicable Value Added Tax) provided that where the aggregate amount (less any applicable Value Added Tax) already paid by the Secretary of State to the Franchisee as at the date of the relevant Transition Costs Report is more or equal to the Estimated Value in respect of an Estimated Item the Secretary of State shall not be obliged to make any further payment to the Franchisee in respect of such Estimated Item.*

7.6 *Where there is a Specification Change the Secretary of State and the Franchisee Operator shall within 20 business days seek to agree any revisions to the Estimated Values as may be considered necessary by the parties. If the Secretary of State and the Franchise Operator fail to agree the revisions to the amounts of the Estimated Values within 20 business days then the Secretary of State shall reasonably determine such revisions. The Estimated Values shall be restated by the revised amounts as agreed by the parties or reasonably determined by the Secretary of State pursuant to this paragraph 7.6.*

7.7 *Where paragraph 7.3(b) applies the Secretary of State shall within 20 business days from the date of receipt by the Secretary of State of the relevant Transition Costs Report (or in circumstances where paragraph 7.4 applies within 20 business days of receipt of the Further Information (as such term is defined in paragraph 7.4)):*

- (a) notify the Franchisee of its reasons for not approving any Actual Value contained in such Transition Costs Report (“Dispute Notification”); and*
- (b) pay to the Franchisee in accordance with paragraph 7.5 the amounts of any Actual Values (plus any applicable Value Added Tax) contained in such Transition Costs Report and which are not disputed by the Secretary of State,*

and the Secretary of State and the Franchise shall within 20 business days from the date of receipt by the Franchisee of the Dispute Notification seek to agree in good faith the amount that should be attributed to any Actual Value that is disputed by the Secretary of State and in the event of failure to agree within 60 business days the Secretary of State shall reasonably determine such an amount (“Substituted Amount”). The Secretary of State shall on the next Payment Date following the date on which the Substituted Amount is agreed or determined pay to the Franchisee such Substituted Amount in accordance with the provisions of paragraph 7.5.

7.8 *The Franchisee shall use all reasonable endeavours to ensure that each Actual Value is as low as reasonably practicable.*

8. *Thameslink KO0 Timetable Specification*

8.1 *Without prejudice to its obligation under paragraph 10.2 of Schedule 1.1 of the Terms to secure a Timetable that enables it to operate railway passenger services that comply with the Service Level Commitment (unless otherwise directed by the Secretary of State) the Franchisee shall use all reasonable endeavours to ensure that the Timetable is as similar as reasonably practicable to the Thameslink KO0 Timetable Specification with effect from the Thameslink KO0 Start Date.*

9. *Class 375 Sub Leasing Arrangements*

The Secretary of State agrees to the sub lease by the Franchisee on reasonable legal and commercial terms of two Class 375 units to the Southern Franchisee from the Passenger Change Date in December 2008 until the end of the Franchise Term and the inclusion of the impacts of this sub lease in the Financial Model and the

Franchise Payments provided that such agreement is conditional on the Franchisee and the Southern Franchisee jointly undertaking to the Secretary of State in a legally binding form that (taking the Franchise Agreement and the Southern Franchisee's franchise agreement together) there will no consequent aggregate cost increase to the Secretary of State (whether through increased franchise payments under either franchise agreement or otherwise) arising out of such sub leasing.

APPENDIX 22⁴¹

The Estimated Items and Estimated Values)

⁴¹ Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

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THE SECRETARY OF STATE FOR TRANSPORT

and

LONDON & SOUTH EASTERN RAILWAY LIMITED

**INTEGRATED KENT
FRANCHISE AGREEMENT**

**incorporating by reference the
National Rail Franchise Terms
(as amended for IKF)**

(First Edition)

CONFORMED COPY

Derogation Page

ⁱ ~~By virtue of a derogation, the Secretary of State has granted the Franchise Operator the following: A £519k underspend to be used for investments in ticket vending machines and gating.~~

~~Start Date: 17/05/07 End Date 30/09/07~~

ⁱⁱ ~~By virtue of a derogation, the Secretary of State has granted the Franchise Operator the following:
Replace the SLC2 Programme Board with a monthly SLC Risk management meeting. This meeting will be attended by:~~

DfT	Southeastern
Director, Rail Projects	Managing Director, Southeastern
Director, Rail Service Delivery	SLC2 Programme Director, Southeastern
Franchise Manager, Southeastern	Deputy SLC2 Programme Director, Southeastern
Divisional Manager, RSD South	

~~Start Date: 30/04/07 End Date: 31/03/08~~