

Dated

2007

- (1) The Secretary of State for Transport
- (2) Arriva Trains Cross Country Limited

NEW CROSS COUNTRY Franchise Agreement
incorporating by reference the National Rail Franchise Terms
(Third Edition)

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BETWEEN

- WHEREAS**

- ## 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 Certificate of Commencement; and

Terms

means the National Rail Franchise Terms (Third Edition) attached to this Agreement.

- 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 this Agreement and the Terms listed in clauses 2.1(a) to 2.1(p) (inclusive) together with such other 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 1 of Appendix 13 (New Cross Country Specific Provisions) of this Agreement;
- (b) paragraph 5.3 of Schedule 1.4 (Passenger Facing Obligations);
- (c) paragraph 2 of Schedule 2.2 (Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases) of the Terms;
- (d) paragraph 2 of Schedule 2.3 (Third Party Delivery of Passenger Services and Other Franchisees) of the Terms;
- (e) Schedule 5.1 (Purpose, Structure and Construction) of the Terms;
- (f) Schedule 5.3 (Allocation of Fares to Fares Baskets) of the Terms;

- (g) Schedule 5.7 (Changes to Fares and Fares Regulation) of the Terms;
- (h) Schedule 9 (Changes) of the Terms;
- (i) Schedule 10 (Remedies, Termination and Expiry) of the Terms;
- (j) paragraphs 1 to 3 (inclusive) of Schedule 11 (Agreement Management Provisions) of the Terms;
- (k) paragraph 4 of Schedule 12 (Financial Obligations and Covenants) of the Terms;
- (l) paragraphs 1, 2, 5, 6, 7 and 8 of Schedule 13 (Information and Industry Initiatives) of the Terms;
- (m) Schedule 14.3 (Key Contracts) of the Terms;
- (n) paragraph 1 of Schedule 16 (Pensions) of the Terms;
- (o) Schedule 17 (Confidentiality) of the Terms; and
- (p) Schedule 19 (Other Provisions) of the Terms.

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

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 its terms and with that degree of skill, diligence, prudence and foresight which would be exercised by a skilled and experienced Train Operator of the Franchise.

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.
- 4.5 The Franchisee and the Secretary of State shall agree a conformed copy of the Terms, incorporating those changes to the Terms set out in this Agreement, by no later than one month after the date of this Agreement or such later date as the Secretary of State and the Franchisee may agree. In the case of any dispute or inconsistency between such conformed copy and this Agreement, this Agreement shall prevail.

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) Not Used;
 - (b) Not Used;
 - (c) Not Used;
 - (d) the schemes for the purpose of the definition of Discount Fare Scheme are:
 - (i) ATOC Disabled Persons Railcard Scheme dated 23 July 1995 between the participants named therein;
 - (ii) ATOC Young Persons Railcard Scheme dated 23 July 1995 between the participants named therein; and
 - (iii) ATOC Senior Railcard Scheme dated 23 July 1995 between the participants named therein;
 - (e) the prescribed period for the purpose of the definition of Evening Peak is the period between 1500 and 1900 (inclusive) during a Weekday or such other continuous four hour period between

1200 and 2359 (inclusive) as the Secretary of State may specify from time to time;

- (f) the prescribed time and date for the purpose of paragraph (b) of the definition of Expiry Date is 0159 on 31 March 2016;
- (g) for the purposes of the definition of Franchise:
 - (i) the prescribed date is 31 October 2006; and
 - (ii) the prescribed places are Plymouth, Edinburgh, Leeds, Penzance, Aberdeen, Glasgow, Reading, Newcastle, Bristol, Manchester, Bournemouth, Cardiff, Birmingham, Nottingham, Stansted Airport, Cambridge, Leicester and Guildford, amongst others and as may be varied from time to time in accordance with the Franchise Agreement;
- (h) the date for the purposes of the definition of Franchise Letting Process Agreement is 28 July 2006;
- (i) each Franchisee Year shall, subject to the terms of that definition, begin on 1 April and end on 31 March;
- (j) the Initial Business Plan in the agreed terms is attached to this Agreement marked IBP;
- (k) the time and date for the purpose of the definition of Initial Expiry Date is 0159 on 10 November 2013;
- (l) the schemes for the purpose of the definition of Inter-Operator Scheme are:
 - (i) ATOC Staff Travel Scheme dated 23 July 1995 between the participants named therein;
 - (ii) Ticketing and Settlement Agreement;
 - (iii) ATOC LRT Scheme dated 23 July 1995 between the participants named therein;
 - (iv) Travelcard Agreement dated 15 October 1995 between London Regional Transport and the parties named therein;

- (v) Through Ticketing (Non-Travelcard) Agreement dated 15 October 1995 between London Regional Transport and the parties named therein; and
- (vi) National Rail Enquiry Scheme dated 11 June 1996 between the participants named therein;
- (m) the prescribed stations for the purpose of the definition of Managed Station are Edinburgh Waverley, Glasgow Central, Leeds City, Manchester Piccadilly, Birmingham New Street and Gatwick Airport;
- (n) Not Used;
- (o) the prescribed period for the purpose of the definition of Morning Peak is the period between 0700 and 1000 (inclusive) during a Weekday or such other continuous morning three hour period as the Secretary of State may specify from time to time;
- (p) the Operational Model in the agreed terms is attached to this Agreement marked OM;
- (q) Parent means Arriva plc, registered number 00347103, whose registered office is at 1 Admiral Way, Doxford International Business Park, Sunderland SR3 3XP provided that, for the purposes of paragraph 4.2 of Schedule 11 (Agreement Management Provisions) of the Terms only, Parent shall mean Arriva Trains Limited, registered number 03166214, whose registered office is at 1 Admiral Way, Doxford International Business Park, Sunderland SR3 3XP;
- (r) the Passenger's Charter in the agreed terms is attached to this Agreement marked PC;
- (s) the Power of Attorney in the agreed terms is attached to this Agreement marked POA;
- (t) the Protected Fares Document means the document issued or reissued (as the case may be) by the Secretary of State pursuant to paragraph 8.1 of Schedule 5.7 (Changes to Fares and Fares Regulation) of the Terms;
- (u) 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;

- (v) the Record of Assumptions in the agreed terms is attached to this Agreement marked ROA;
- (w) the Reporting Accountants are Ernst & Young LLP;
- (x) the date for the purpose of paragraph (a) of the definition of Review Date is 1 October 2007;
- (y) 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);
- (z) Not used;
- (aa) the Service Quality Audit Programme is Appendix D of the Service Quality Management System;
- (ab) the Service Quality Management System in the agreed terms is attached to this Agreement marked SQMS;
- (ac) the Service Quality Standards in the agreed terms are attached to this Agreement marked SQS;
- (ad) the time and date for the purpose of paragraph (a) of the definition of Start Date is 0200 on 11 November 2007;
- (ae) 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));
- (af) for the purposes of the formula set out in the definition of Threshold Amount:
 - (i) the prescribed threshold amount for any Franchisee Year, referred to by the acronym "FAT" is 0.1% 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" is February 2007;
- (ag) in respect of the period prior to the Passenger Change Date occurring in or around December 2008 the Train Plan is the Train Plan referred to in paragraph 16 of Appendix 1 to the Conditions

Precedent Agreement and in respect of the period commencing on the Passenger Change Date occurring in or around December 2008 the Train Plan in the agreed terms is attached to this Agreement marked TP;

- (ah) the Seasonally Adjusted Target Revenue Table in the agreed terms is attached to this Agreement marked SATRT; and
- (ai) the prescribed date for the purpose of paragraph (b) of the definition of Pre Force Majeure Event Period and the definition of Year 0 is 1 April 2007.

Changes to the Terms

5.2 The Terms shall be amended by:

- (a) the following words and expressions or parts contained in clause 3.1 thereof being disapplied:
 - (i) Bond Year;
 - (ii) paragraphs (b)(ii) and (iii) of the definition of Fare;
 - (iii) London Station;
 - (iv) Minor Works;
 - (v) Minor Works' Budget;
 - (vi) Minor Works' Programme;
 - (vii) paragraphs (a)(iii)(B) and (C) of the definition of Protected Return Fare;
 - (viii) Season Ticket Bond;
 - (ix) Suburban Station;
 - (x) Travelcard Agreement; and
 - (xi) Zone;
- (b) the following provisions or parts thereof being disapplied:
 - (i) paragraph 1.2(b) of Schedule 2.1 (Asset Vesting and Transfer);

- (ii) paragraph 2.7 of and the Appendix to Schedule 4 (Persons with Disabilities and Disability Discrimination);
 - (iii) paragraph 2.13(c) of Schedule 10.3 (Events of Default and Termination Event);
 - (iv) paragraph 5 of Schedule 12 (Financial Obligations and Covenants); and
 - (v) the provisions of the Terms (including Schedule 5) relating to Commuter Fares, the Commuter Fares Basket and the Commuter Fares Document and all applicable definitions relating thereto;
- (c) the insertion in Clause 3.1 thereof of the following definitions:

Birmingham Commuter Route means for the purpose of paragraphs 1.6 and 1.7 of Schedule 1.5 (*Information about Passengers*) the following routes:

- (a) Birmingham to Leicester;
- (b) Birmingham to Gloucester;
- (c) Birmingham to Nottingham;
- (d) Birmingham to Sheffield;
- (e) Birmingham to Stoke on Trent;
- (f) Birmingham to Oxford; and
- (g) Birmingham to Bristol;

East Midlands Franchise means the rights tendered by the Secretary of State on 31 October 2006 to operate railway passenger services to and from London, Liverpool, Nottingham, Norwich, Crewe, Stoke-on-Trent, Derby, Leicester, Newark, Lincoln, Loughborough, Matlock, Mansfield, Worksop, Doncaster, Spalding, Peterborough, Grantham, Skegness, Grimsby and Cleethorpes amongst others;

East Midlands Franchisee means the franchisee of the East Midlands Franchise;

GSM-R means the radio communication system known as the Global Standard for Mobile Communications - Railway;

SLC1 means the service level commitment in the agreed terms marked SLC1 as it may subsequently be amended or replaced in accordance with Schedule 1.1 (Service Development);

SLC2 means the service level commitment in the agreed terms marked SLC2 as it may subsequently be amended or replaced in accordance with Schedule 1.1 (Service Development);

Upgrade Charge means any of Upgrade Charge 1, Upgrade Charge 2A, Upgrade Charge 2B, Upgrade Charge 3 and/or Upgrade Charge 4, each being as defined in and payable under Part 2 of Schedule 7 of the Track Access Agreement;

West Midlands Franchise means the rights tendered by the Secretary of State on 31 October 2006 to operate railway passenger services to and from London, Northampton, Rugby, Coventry, Birmingham, Wolverhampton, Shrewsbury, Stafford, Crewe and Liverpool amongst others; and

West Midlands Franchisee means the franchisee of the West Midlands Franchise; and

(d) the following provisions being amended:

(i) the definition of "Change" by:

(1) adding the following new sentence to the end of paragraph (e):

"For the avoidance of doubt the coming into force of SLC2 on the Passenger Change Date occurring in or around December 2008 shall not be a Change";

(2) adding the following as a new paragraph (v):

"a variation to a Relevant Agreement which does not amount to a Charge Variation and which results in any change in the amount of the Upgrade Charge; or";

(3) deleting the word "or" from the end of paragraph (u); and

(4) renumbering existing paragraph (v) as paragraph (w);

- (ii) the definition of "Service Level Commitment" by replacing the definition with the following:

"means either or both of SLC1 and SLC2 (as appropriate) and references to the "current Service Level Commitment" shall, where the current Service Level Commitment is SLC1, be deemed to include a reference to both SLC1 and SLC2;"

- (iii) paragraph 1.2 of Schedule 1.1 (Service Development), by replacing paragraph 1.2 with the following:

"1.2 The Service Level Commitment as at the date of the Franchise Agreement is in the agreed terms marked SLC1, attached to the Franchise Agreement. Such Service Level Commitment shall remain in force until 0159 on the Passenger Change Date occurring in or around December 2008 unless amended or replaced pursuant to this Schedule 1.1. The Service Level Commitment in the agreed terms marked SLC2 attached to the Franchise Agreement, shall apply in respect of the period commencing 0159 on the Passenger Change Date occurring in or around December 2008 and shall remain in force unless and until amended or replaced pursuant to this Schedule 1.1."

- (iv) paragraph 2.4 of Schedule 1.1 (Service Development) of the Terms shall be replaced by the following:

"The Train Plan for the Timetable at the Start Date is the Train Plan referred to in paragraph 16 of Appendix 1 to the Conditions Precedent Agreement."

- (v) paragraph 1.2 of Schedule 1.5 (Information about Passengers) by adding the following new sentence to the end of that paragraph:

"If requested by the Secretary of State, the Franchisee shall also provide such information as it may have collected in the ordinary course of business through use of the ¹ machines referred to in paragraph 4.1 of Part 1 of Appendix 11 of the Franchise Agreement."

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.

- (vi) Schedule 1.5 by the addition of new paragraphs 1.5, 1.6, 1.7, 1.8 and 1.9 as follows:

"1.5 By no later than 31 December 2009 the Franchisee shall procure that as a minimum 10% in aggregate of the Train Fleet is fitted with the technology prescribed in paragraph 5.4 of the Franchise Agreement. The technology prescribed in paragraph 5.4 of the Franchise Agreement shall be fitted to a representative selection of the Train Fleet and shall not be disproportionately concentrated on a particular rolling stock class or classes;

1.6. In addition to the Franchisee's obligations under paragraph 1.1 the Franchisee shall, once in every Franchisee Year, carry out a programme of passenger counts or secure that a programme of passenger counts is carried out, in respect of the Passenger Services operated on the Birmingham Commuter Routes ("**Passenger Counts**"), at such times and in such manner (including as to levels of accuracy and the number of days (not being more than 7 consecutive days) over which the programme of counts is carried out) as may be approved from time to time by the Secretary of State;

1.7. The manner of undertaking the Passenger Counts shall be designed to ensure so far as practicable that the Passenger Counts are typical of demand for the Passenger Services operated on the Birmingham Commuter Routes at the relevant time of the year and for the relevant day of the week. Where applicable, any such Passenger Count shall be carried out by a person or persons approved by the Secretary of State (such approval not to be unreasonably withheld);

1.8. The Franchisee shall supply the details of such Passenger Counts to the Secretary of State in accordance with the requirements in paragraphs 1.1 and 1.3;

1.9. The Secretary of State shall be entitled to audit any of the Passenger Counts (whether by specimen checks at the time of such Passenger Counts,

verification of proper compliance with the manner approved by the Secretary of State or otherwise). If such audit reveals material error, or a reasonable likelihood of material error, in such Passenger Counts, the Secretary of State may require such Passenger Counts to be repeated or the results adjusted as the Secretary of State considers appropriate, and in these circumstances the Franchisee shall pay the Secretary of State the costs of any such audit.”;

- (vii) paragraph 5(d) of Schedule 1.6 (Franchise Services), by the addition of the following words after the words “under this Schedule 1.6”:

“or to satisfy the requirements of paragraph 1 of Appendix 13 (New Cross Country Specific Provisions) of the Franchise Agreement”;

- (viii) Schedule 2.1 (Asset Vesting and Transfer), by replacing paragraph 1.2 with the following:

“1.2 In respect of any new Property Leases with Network Rail, the Franchisee shall enter into such Property Leases with the intent that Section 31 of the Act shall apply to such leases.”;

- (ix) paragraph 2.4 of Schedule 4 (Persons with Disabilities and Disability Discrimination) by deleting the words “and its obligations in paragraph 2.7 concerning Minor Works; and”;

- (x) Schedule 7.1 (Performance Benchmarks) shall be amended by adding the following to the end of paragraph 2.4:

“provided that for the purpose of calculating the moving annual average of the Franchisee’s performance against the Capacity Benchmark, in respect of Passenger Services provided on Saturdays or Sundays, only those Passenger Services of which a measured journey specified in Tables B to E in paragraph 3.2 of Appendix 13 of the Franchise Agreement forms a part shall be taken into account.”;

- (xi) paragraph 1.1 of Schedule 9.2 (Identity of the Financial Model etc.) of the Terms by replacing the words prior to sub-paragraph (a) with the following:

"The Franchisee shall deliver two copies (each in electronic format on CD ROM) of each of the Financial Model and the Operational Model and two copies of the Record of Assumptions (each copy in electronic format on CD-ROM and in hard format) (the **Escrow Documents**) to the Secretary of State in the agreed form, accompanied by a notice that the Escrow Documents are to be Placed in Escrow:";

- (xii) paragraph 2.13(a) of Schedule 10.3 (Events of Default and Termination Event) by deleting the words "or Season Ticket Bond";

- (xiii) Appendix 1 (Form of Performance Bond) to Schedule 12 (Financial Obligations and Covenants) of the Terms by:

- (1) replacing the second paragraph of the Performance Bond with the following:

"We are further informed that the Franchise Agreement requires that the Secretary of State receives a duly executed performance bond in the amount of:

- (a) [*insert amount*] in respect of a Call Event occurring on or after [*insert date*] but prior to [*insert date*];
 - (b) [*insert amount*] in respect of a Call Event occurring on or after [*insert date*] but prior to [*insert date*]; and
 - (c) [*insert amount*] in respect of a Call Event occurring on or after [*insert date*],

(the Bond Value) to secure the performance by the Franchisee of and its compliance with its obligations under the Franchise Agreement and any Supplemental Agreement.";

- (2) replacing paragraph 1(a) with the following:

"our maximum liability for any period shall be limited to a sum or sums not exceeding in the aggregate the amount of the Bond Value shown above for that period or such lesser amount as you may notify us of from time to time in writing, separately from any demand, shall constitute the Bond Value of this Bond for that period;"

- (3) adding a new paragraph 1(b) as follows:

"our maximum liability for all periods in aggregate shall be limited to £[insert highest amount from paragraphs (a), (b) and (c) of the definition of "Bond Value" above] or such lesser amount as you may notify us of from time to time in writing, separately from any demand, shall constitute the aggregate Bond Value of this Bond; and"

- (4) renumbering the existing paragraph 1(b) as 1(c);

- (5) amending paragraph 5 by deleting the words "or facsimile transmission" and the words "Facsimile Number: [Bond Provider's fax number]";

- (6) inserting the following as a new paragraph 8:

"We and the Secretary of State do not intend that any of the terms of this Bond will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person other than us or the Secretary of State."; and

- (7) renumbering the existing paragraph 8 as paragraph 9;

- (xiv) paragraph 1.2 of Schedule 14.3 (Key Contracts) by deleting the words "as at the date of the Franchise Agreement"; and
- (xv) Schedule 16 (Pensions), by replacing Schedule 16 in its entirety with the version of Schedule 16 set out in Appendix 16 (New Schedule 16 (Pensions)).

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 in 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:

- (a) passenger counting equipment to be supplied by ² or such other substitute supplier as the Franchisee shall deem appropriate, at a total cost of £³, including costs of fitment, the purchase of interface software, and testing and training costs. Such equipment will be installed prior to 30 June 2009 as follows:
 - (i) Class 220s/221s - 27 vehicles, 6 units (3 x 4 car class 220s and 3 x 5 car class 221s);
 - (ii) HSTs - 8 vehicles, 1 set; and
 - (iii) Class 170s - 8 vehicles, 3 units (2 x 3 car and 1 x 2 car); and
- (b) until such time as the Additional Technology is installed and fully operational, passenger counts will be carried out using existing technology and such other manual passenger counts as the Franchisee shall deem 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) one per cent.; and
- (b) one per cent.

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

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 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.

None.

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

Headquarters building in Birmingham.

- 5.8 The prescribed 'Original 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 2 of Schedule 2.1 (Asset Vesting and Transfer) of the Terms shall apply. The parties acknowledge that the Franchisee is not required to enter into any Property Leases with effect from the Start Date.

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:

- (a) Highland Regional Council Concessionary Fares Scheme;
- (b) Grampian Regional Council Concessionary Fares Scheme;
- (c) Tayside Regional Council Concessionary Fares Scheme;
- (d) Fife Regional Council Concessionary Fares Scheme;
- (e) Lothian Regional Council Concessionary Fares Scheme;

- (f) Strathclyde Regional Council Concessionary Fares Scheme;
- (g) Co Durham County Council Concessionary Fares Scheme;
- (h) Derbyshire County Council Concessionary Fares Scheme;
- (i) Devon County Council Concessionary Fares Scheme;
- (j) Hampshire County Council Concessionary Fares Scheme;
- (k) Merseyside Concessionary Fares Scheme;
- (l) Greater Manchester Concessionary Fares Scheme;
- (m) West Yorkshire Concessionary Fares Scheme;
- (n) South Yorkshire Concessionary Fares Scheme;
- (o) West Midlands Concessionary Fares Scheme; and
- (p) Humberside Concessionary Fares Scheme.

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:

- (a) Strathclyde Multi-modal Travel Scheme;
- (b) West Yorkshire PTE Multi-modal Travel Scheme;
- (c) South Yorkshire PTE Multi-modal Travel Scheme;
- (d) Greater Manchester PTE Multi-modal Travel Scheme; and
- (e) West Midlands PTE Multi-modal Travel Scheme.

Schedule 3 (Priced Options)

5.14 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)

5.15 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).

- 5.16 The Capacity Benchmarks for the purpose of paragraph 1.2 of Schedule 7.1 (Performance Benchmarks) of the Terms are set out in Appendix 6 (Capacity Benchmark Table).
- 5.17 The Service Delivery Benchmarks for the purpose of paragraph 1.4 of Schedule 7.1 (Performance Benchmarks) of the Terms are set out in Appendix 7 (Service Delivery Benchmark Table).

Schedule 8.1 (Franchise Payments)

- 5.18 The prescribed percentage for the purpose of paragraph 3.1 of Schedule 8.1 (Franchise Payments) of the Terms is two per cent.
- 5.19 The prescribed percentages to be applied to the formula set out in paragraph 3.2(c) of Schedule 8.1 (Franchise Payments) of the Terms are, respectively:
- (a) for paragraph (a) of factor "A", 102 per cent;
 - (b) for paragraph (b) of factor "A", 106 per cent;
 - (c) for factor "X", 50 per cent;
 - (d) for factor "B", 106 per cent; and
 - (e) for factor "Y", 80 per cent.

Schedule 8.2 (Annual Franchise Payments)

- 5.20 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).
- 5.21 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 2007.

Schedule 9.3 (Runs of the Financial Model)

- 5.22 The percentage agreed profit margin for each Franchisee Year for the purpose of paragraphs 7.1(a) and (b)(i) of Schedule 9.3 (Runs of the Financial Model) of the Terms is set out in the table below.

Franchisee Year	Percentage agreed profit margin (%) ⁴
Year 1 (part year)	
Year 2	
Year 3	
Year 4	
Year 5	
Year 6	
Year 7	
Year 7 (up to first expiry period)	
Year 7 (up to 7 Reporting Period extension)	
Year 7 Part Year	
Year 8 Part Year	
5.25%	
5.25%	
Year 8	
Year 9	
Year 10 (up to 7 Reporting Period extension)	

Schedule 12 (Financial Obligations and Covenants)

5.23 The agreed amounts of any Performance Bond for the purposes of paragraph 4.4 of Schedule 12 (Financial Obligations and Covenants) of the Terms are, respectively:

- (a) £⁵, being 5.5 per cent. of the aggregate forecast operating costs of the Franchisee for the period from the Start Date to the first

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.

⁵ 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.

anniversary of the Start Date, as forecast in the Initial Business Plan;

- (b) £⁶, being 5.5 per cent. of the aggregate forecast operating costs of the Franchisee for the year commencing on the first anniversary of the Start Date, as forecast in the Initial Business Plan;
- (c) £⁷, being 5.5 per cent. of the aggregate forecast operating costs of the Franchisee for the year commencing on the second anniversary of the Start Date, as forecast in the latest practicably available Business Plan; and
- (d) an amount equal to 5.5 per cent. of the aggregate forecast operating costs of the Franchisee for each subsequent year (or part thereof) during the Franchise Term, as forecast in the latest practicably available Business Plan, provided that for the purpose of determining the amount of any Performance Bond in respect of any part year, the aggregate forecast operating costs of the Franchisee for such part year shall be increased by dividing such costs by the number of Reporting Periods in such part year and multiplying by 13.

Schedule 14.3 (Key Contracts)

- 5.24 The Key Contracts 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)

- 5.25 The Primary Franchise Assets as at the date of this Agreement for the purpose of paragraph 2.1(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)

- 5.26 Not Used.

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

Schedule 18 (Franchise Continuation Criteria)

- 5.27 The relevant date for the purpose of paragraph 1.2 of Schedule 18 (Franchise Continuation Criteria) of the Terms is the date prescribed in paragraph (b) of the definition of Expiry Date.

Schedule 19 (Other Provisions)

- 5.28 **5.28⁸** *The details of the parties for the purpose of paragraph 5.1(a) of Schedule 19 (Other Provisions) of the Terms are as follows.*

Name: *The Department for Transport*

Address: *33 Horseferry Road, London SW1P 4DR⁹*

Facsimile: *020 7944 2446*

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

Attention: *Director, Rail Commercial Contracts*

Address: C/O Arriva PLC, 1 Admiral Way, Doxford International Business Park, Sunderland SR3 3XP

Facsimile: 0191 520 4181

E-mail: thorpel@arriva.co.uk

Attention: Managing Director.

6. COMMITTED OBLIGATIONS

The Franchisee shall deliver the Committed Obligations that are set out in Appendix 11 (List of Committed Obligations and Related Provisions) in accordance with the terms thereof.

7. SUPPLEMENTAL TERMS

- 7.1 The provisions of Appendix 12 (2012 Olympic Games and Paralympic Games) shall apply.

⁸ Date of Change 09/02/2011

⁹ Date of Change 01/10/2011

- 7.2 The provisions of Appendix 13 (New Cross Country Specific Provisions) shall apply.

8. **RECALIBRATION OF THE BENCHMARKS**

The Benchmarks (other than the Capacity Benchmarks) shall be recalibrated in accordance with the provisions of Appendix 14 (Recalibration of the Benchmarks).

9. **DOCUMENTS IN THE AGREED TERMS**

The parties hereby acknowledge that the list of documents in the agreed terms is set out in Appendix 15 (List of Documents in the Agreed Terms).

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 reports provided by the Reporting Accountants in respect of Central Trains Limited and CrossCountry Trains Limited, each dated 19 September 2006.

- 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:)

Authenticated by authority of the
Secretary of State for Transport

SIGNED for and on behalf of)
ARRIVA TRAINS CROSS COUNTRY)
LIMITED)

Director:

Director/Secretary:

APPENDIX 1

Secretary of State Risk Assumptions (Clause 5.1(y))

1. Definitions

For the purposes of this Appendix 1:

"Access Charge Supplement for Restrictions of Use" shall mean the Access Charge Supplement for Restrictions of Use, as defined in the Track Access Agreement and as payable by the Franchisee to Network Rail under Part 5 of Schedule 4 of the Track Access Agreement;

"Actual Access Charge Supplement for Restrictions of Use" means the amount of the Access Charge Supplement for Restrictions of Use which, following completion of the Initial Franchise Remapping, the Secretary of State reasonably determines will be payable in respect of the Franchise Period;

"Actual BTP Charges" means the amount of the BTP Charges which, following completion of the Initial Franchise Remapping, the Secretary of State reasonably determines will be payable in respect of the Franchise Period;

"Actual CC Term" means the amount of the CC Term which, following completion of the Initial Franchise Remapping, the Secretary of State reasonably determines will be payable in respect of the Franchise Period;

"Actual Fixed Track Charges" means the amount of the Fixed Track Charges which, following completion of the Initial Franchise Remapping, the Secretary of State reasonably determines will be payable in respect of the Franchise Period;

"Assumed Access Charge Supplement for Restrictions of Use" means the amount of the Access Charge Supplement for Restrictions of Use shown in row 5544 of the "Inputs" sheet in the Financial Model (having been calculated in accordance with the assumptions set out in section 6.8 of the Record of Assumptions) in respect of the Franchise Period;

"Assumed BTP Charges" means the amount of the BTP Charges shown in row 1694 of the "Inputs" sheet in the Financial Model (having been calculated in accordance with the assumptions set out in section 4.2.1 of the Record of Assumptions) in respect of the Franchise Period;

"Assumed CC Term" means the amount of the CC Term shown in row 5156 of the "Inputs" sheet in the Financial Model (having been calculated

in accordance with the assumptions set out in section 6.3 of the Record of Assumptions) in respect of the Franchise Period;

"Assumed Fixed Track Charges" means the amount of the Fixed Track Charges shown in row 5150 of the "Inputs" sheet in the Financial Model (having been calculated in accordance with the assumptions set out in section 6.2 of the Record of Assumptions) in respect of the Franchise Period;

"BTP" means the British Transport Police;

"BTP Charges" means the charges payable by the Franchisee in respect of the services to be provided by the BTP in connection with the Franchise;

"CC Term" means CCt as defined in paragraph 6 of Part 2 of Schedule 7 of the Track Access Agreement;

"Initial Franchise Remapping" shall mean the franchise remapping process directed by the Secretary of State (as announced on 18 October 2005 and thereafter amended) pursuant to which the Franchise, the East Midlands Franchise and the West Midlands Franchise shall be created, each of which is due to commence on 11 November 2007;

"Fixed Track Charges" shall mean the Fixed Track Charge, as defined in the Track Access Agreement and as payable by the Franchisee to Network Rail under Part 2 of Schedule 7 of the Track Access Agreement;

"NCC Top-Up Liability" means any payment which the Franchisee is required to make pursuant to paragraph 1.6 of Schedule 16 (Pensions) of the Terms; and

"Transferring Services" shall mean services from Manchester to Scotland via Preston and Birmingham to Scotland via Preston.

2. **Fixed Track Charges**

It shall be a Change to the extent that, upon determination of Fixed Track Charges which take into account the impact of the Initial Franchise Remapping thereon:

2.1 there is any difference between:

- (a) the Actual Fixed Track Charges; and
- (b) the Assumed Fixed Track Charges; and

- 2.2 such difference arises as a result of the Initial Franchise Remapping.

Any Change pursuant to this paragraph 2 shall automatically be a Qualifying Change irrespective of whether such Change meets the requirements of the definition of Qualifying Change.

3. **Access Charge Supplement for Restrictions of Use**

It shall be a Change to the extent that, upon determination of the Access Charge Supplement for Restrictions of Use which takes into account the impact of the Initial Franchise Remapping thereon:

- 3.1 there is any difference between:

- (a) the Actual Access Charge Supplement for Restrictions of Use;
and
- (b) the Assumed Access Charge Supplement for Restrictions of Use;
and

- 3.2 such difference arises as a result of the Initial Franchise Remapping.

Any Change pursuant to this paragraph 3 shall automatically be a Qualifying Change irrespective of whether such Change meets the requirements of the definition of Qualifying Change.

4. **Capacity Charge**

It shall be a Change to the extent that, upon determination of the CC Term which takes into account the impact of the Initial Franchise Remapping thereon:

- 4.1 there is any difference between:

- (a) the Actual CC Term; and
- (b) the Assumed CC Term; and

- 4.2 such difference arises as a result of the Initial Franchise Remapping.

Any Change pursuant to this paragraph 4 shall automatically be a Qualifying Change irrespective of whether such Change meets the requirements of the definition of Qualifying Change.

5. **British Transport Police Charges**

It shall be a Change to the extent that, upon determination of BTP Charges which take into account the impact of the Initial Franchise Remapping thereon:

- 5.1 there is any difference between:
 - (a) the Actual BTP Charges; and
 - (b) the Assumed BTP Charges; and
- 5.2 such difference arises as a result of the Initial Franchise Remapping; and
- 5.3 the Franchisee has used all reasonable endeavours to minimise the Actual BTP Charges.

Any Change pursuant to this paragraph 5 shall automatically be a Qualifying Change irrespective of whether such Change meets the requirements of the definition of Qualifying Change.

6. Transferring Services - Fixed Track Charge

It shall be a Change if there is any change in the Fixed Track Charge as a result of the transfer of the Transferring Services to West Coast Trains Limited. Any Change pursuant to this paragraph 6 shall automatically be a Qualifying Change irrespective of whether such Change meets the requirements of the definition of Qualifying Change.

7. Start Date

It shall be a Change if as a direct result of the acts or omissions of the Secretary of State the Start Date is a date later than 11th November 2007 provided that it will not be a Change where:

- 7.1 the Start Date is changed by the Secretary of State pursuant to clauses 4.2 or 4.3 of the Conditions Precedent Agreement; or
- 7.2 the relevant acts or omissions of the Secretary of State arise as a result of or in connection with any failure by the Franchisee to satisfy the conditions precedent set out in the Conditions Precedent Agreement.

8. Pensions¹⁰

APPENDIX 2

Target Revenue (expressed in real terms) (Clause 5.1(ae))¹¹

¹¹ 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

The Train Fleet (*Clause 5.3*)

1. The Composition of the Train Fleet

The Train Fleet consists of:

- 1.1 the rolling stock vehicles specified in Table 1, with the capacity characteristics referred to there, until the lease expiry dates referred to there;
- 1.2 following any such lease expiry, substitute rolling stock vehicles having:
 - (a) at least the capacity specified in respect of the original rolling stock vehicles being substituted; and
 - (b) reliability, capability and quality that is at least equal to the reliability, capability and quality of the original rolling stock vehicles being substituted; and
- 1.3 from the dates specified in Table 2, the additional rolling stock vehicles referred to against those dates, having:
 - (a) in the case of any additional rolling stock vehicles of the same class as any original rolling stock vehicles:
 - (i) at least the capacity specified in respect of such original rolling stock vehicles or such greater capacity as may be specified in Table 2; and
 - (ii) reliability, capability and quality that is at least equal to the reliability, capability and quality of such original rolling stock vehicles; and
 - (b) in the case of any other additional rolling stock vehicles:
 - (i) at least the capacity specified in respect of any original rolling stock vehicles that are, in the reasonable opinion of the Secretary of State, most similar to such additional rolling stock vehicles; and
 - (ii) reliability, capability and quality that is, in the reasonable opinion of the Secretary of State, at least equal to the reliability, capability and quality of any original rolling stock vehicles that are, in the reasonable

opinion of the Secretary of State, most similar to such additional rolling stock vehicles.

Table 1 (existing vehicles) ¹²

Capacities from the Start Date to 30 June 2009

Column 1	Column 2	Column 3			Column 4	Column 5
Class of vehicle	Number of vehicles and unit configuration	Capacity of units			Owner/ Lessor	Lease expiry date(s)
		Standard	First	Total		
220	34/4 Car	162	26	188	Voyager Leasing Limited	31 March 2016
221	27/5 Car	222	26	248	Voyager Leasing Limited	31 March 2016
221	1/4 Car	162	26	188	Voyager Leasing Limited	31 March 2016
170/1	10/3 Car	166	0	166	Porterbrook Leasing Company Limited	31 March 2016
170/1	7/2 Car	123	0	123	Porterbrook Leasing Company Limited	31 March 2016
¹³ 170/3	2/3 Car	198	0	198	Porterbrook Leasing Company Limited	31 March 2016
170/6	¹⁴ 4/3 Car	198	0	198	Porterbrook Leasing Company Limited	31 March 2016
170/5	6/2 Car	124	0	124	Porterbrook Leasing Company Limited	31 March 2016
HST 1 3	5 x 8 car	395	72	467	Sets formed from the vehicles	

¹² Date of change 23/5/2008

¹³ Date of change 4/2/2009

¹⁴ Date of change 4/2/2009

Column 1	Column 2	Column 3			Column 4	Column 5
Class of vehicle	Number of vehicles and unit configuration	Capacity of units			Owner/ Lessor	Lease expiry date(s)
		Standard	First	Total		
					listed below	
HST Power Car	5 Vehicles	n/a	n/a	n/a	Porterbrook Leasing Company Limited	31 March 2016
HST Power Car	5 Vehicles	n/a	n/a	n/a	Angel Trains Limited	31 March 2016
HST Trailers 2	5 Vehicles	n/a	n/a	n/a	Porterbrook Leasing Company Limited	31 March 2016
HST Trailers	14 Vehicles	n/a	n/a	n/a	Angel Trains Limited	31 March 2016
Mk3 carriages	21 Vehicles	n/a	n/a	n/a	Porterbrook Leasing Company Limited	31 March 2016

Notes

- 1 The Franchisee's obligation pursuant to paragraph 6.2 of Schedule 1.1 (Service Development) of the Terms to prepare its Train Plan so as to operate the entire Train Fleet in delivering Passenger Services during each Peak shall not apply in respect of this rolling stock during the period prior to 30 June 2009. Furthermore, the capacities specified for these vehicles are those which will apply post completion of the refurbishment works referred to in paragraphs 2.1(b) and (c) of Appendix 11 (List of Committed Obligations and Related Provisions) and are calculated on the basis of 2 + 7 formation.
- 2 Three of these vehicles will be leased by the Franchisee with effect from on or around 1 January 2009 and will not form part of the Train Fleet until the relevant rolling stock lease is entered into.
- 3 The Franchisee shall not lease any of the rolling stock listed in the following table without the prior written consent of the Secretary of State (such consent not to be unreasonably withheld or delayed):

Class	Painted number
Class 43 HST	43043, 43044, 43045, 43046, 43047, 43048, 43049, 43050, 43052, 43054, 43055, 43058, 43059, 43060, 43061, 43066,

Class	Painted number
Power Cars	43072, 43073, 43074, 43075, 43076, 43081, 43082, 43083 ¹⁵
HST Mark III Trailer Cars	41041, 41046, 41057, 41062, 41063, 41064, 41067, 41068, 41069, 41070, 41071, 41072, 41075, 41076, 41077, 41078, 41079, 41080, 41111, 41113, 41117, 41153, 41154, 41155, 41156, 42100, 42111, 42112, 42113, 42119, 42120, 42121, 42123, 42124, 42125, 42131, 42132, 42133, 42135, 42136, 42137, 42139, 42140, 42141, 42148, 42149, 42151, 42152, 42153, 42155, 42156, 42157, 42163, 42194, 42205, 42210, 42220, 42225, 42227, 42228, 42229, 42230, 42324, 42327, 42328, 42329, 42331, 42335, 42337, 42339, 42341, 44027, 44041, 44044, 44046, 44047, 44048, 44051, 44054, 44070, 44071, 44073, 44085
HST Mark III Catering Vehicles	40700, 40728, 40729, 40730, 40741, 40746, 40751, 40753, 40754, 40756

Table 1 (existing vehicles)

Capacities from 30 June 2009 ¹⁶

Column 1	Column 2	Column 3			Column 4	Column 5
Class of vehicle	Number of vehicles and unit configuration	Capacity of units From 30 June 2009			Owner/ Lessor	Lease expiry date(s)
		Standard	First	Total		
220	34/4 Car	176	26	202	Voyager Leasing Limited	31 March 2016
221	22/5 Car	238	26	264	Voyager Leasing Limited	31 March 2016
221	1/4 Car	176	26	202	Voyager Leasing Limited	31 March 2016
¹⁷ 170/1	10/3 Car	191	9	200	Porterbrook Leasing Company	31 March 2016

¹⁵ Delete text wef 07/08/07

¹⁶ Date of change 16/04/2012

Column 1	Column 2	Column 3			Column 4	Column 5
Class of vehicle	Number of vehicles and unit configuration	Capacity of units From 30 June 2009			Owner/ Lessor	Lease expiry date(s)
		Standard	First	Total		
					Limited	
170/1	7/2 Car	111	9	120	Porterbrook Leasing Company Limited	31 March 2016
170/6	4/3 Car	191	9	200	Porterbrook Leasing Company Limited	31 March 2016
170/3	2/3 Car	191	9	200	Porterbrook Leasing Company Limited	31 March 2016
170/5	6/2 Car	111	9	120	Porterbrook Leasing Company Limited	31 March 2016
HST ³	5 x 8 car	471	71 incl 1 w/c	543	Sets formed from the vehicles listed below	
HST Power Car	5 Vehicles	n/a	n/a	n/a	Porterbrook Leasing Company Limited	31 March 2016
HST Power Car	5 Vehicles	n/a	n/a	n/a	Angel Trains Limited	31 March 2016
HST Trailers ²	5 Vehicles	n/a	n/a	n/a	Porterbrook Leasing Company Limited	31 March 2016
HST Trailers	14 Vehicles	n/a	n/a	n/a	Angel Trains Limited	31 March 2016
Mk3 carriages	21 Vehicles	n/a	n/a	n/a	Porterbrook Leasing Company Limited	31 March 2016

Notes

¹⁷ Date of change 4/2/2009

- 2 See note 2 above.
- 3 See note 3 above. In addition, the total capacity of 543 seats specified in respect of these units is a minimum capacity and the Franchisee may, at its discretion, provide additional capacity on such units. No amendment to this table will be required should the Franchisee provide any such additional capacity on such units.

Table 2 (additional vehicles)

Column 1	Column 2	Column 3	Column 4				Column 5	Column 6
Lease start date(s)	Class of vehicle	Number of vehicles and unit configuration	Capacity of units				Owner/ Lessor	Lease expiry date(s)
			Seats	Standing	Total	Standard Class		
N/A	N/A	N/A	N/A				N/A	N/A

APPENDIX 4

List of Priced Options (Clause 5.14)

Part 1

1. GSM-R

Description, objective and specification

1.1 This option relates to:

- (a) the procurement, installation and maintenance of GSM-R radio units to the Train Fleet;
- (b) the training of drivers employed by the Franchisee in the use and maintenance of that equipment;
- (c) any costs associated with any requirement under any Rolling Stock Lease to obtain the approval of a third party (including the lessor of any rolling stock) to install such equipment; and
- (d) any costs associated with the removal and making good of any legacy radio systems in any rolling stock vehicles comprised in the Train Fleet.

Price for exercising this Priced Option (in £ base date)

1.2 Where this Priced Option is called in accordance with its terms, the price for this Priced Option shall be the price set out in Tables 1A and 1B in Part 2 to this Appendix 4 and adjustments to Franchise Payments shall be made accordingly.

1.3 The price of this Priced Option shall be indexed in accordance with the principles set out in Schedule 8.2 (Annual Franchise Payments) of the Terms.

Timescale for implementing this Priced Option from the date it is called

1.4 The timescale for implementation of this Priced Option is 3 years from the date on which it is called.

Other effects on the Franchise Agreement

1.5 The only effects on the Franchise Agreement will be the inclusion of the following in Appendix 11 (List of Committed Obligations and Related Provisions):

- (a) a new Committed Obligation in Part 1 to Appendix 11 which reads "On or before ¹⁸ the Franchisee shall procure and install GSM-R radio equipment to the driving cabs of the Train Fleet and provide training to its train drivers in the use of that equipment."
- (b) the addition of a new entry in the Table in Part 3 to Appendix 11 which reads:

Column 1	Column 2	Column 3	Column 4	Column 5
Reference in Part 1 (paragraph)	Summary Description	Deadline	Committed Obligation Payment Adjustment (£ per Reporting Period)	Method of adjustment
[x]	GSM-R introduction	¹⁹	£ ²⁰	Pro rata to the extent of GSM-R fitment to the Train Fleet

- (c) the inclusion of a new Secretary of State Risk Assumption in Appendix 1 (*Secretary of State Risk Assumptions*) as follows:

"It shall be a Qualifying Change if the Franchisee claims any compensation from Network Rail under the Network Code (including Condition G2.2 of that code) in respect of the fulfilment of its obligations under paragraph 1 of Part 1 of Appendix 4 (List of Priced Options).".

Latest date for calling this Priced Option to maintain the price in paragraph 1.2

¹⁸ 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.

¹⁹ 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.

²⁰ Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

- 1.6 The latest date for calling this Priced Option to maintain the price in paragraph 1.2 is 31 December 2008.
- 1.7 Where this Priced Option is called prior to 31 December 2008 then it shall be a Qualifying Change provided that the only Revised Inputs shall be those agreed or reasonably determined by the Secretary of State to be necessary for the purposes of reprofiling the price set out in Tables 1A and 1B in Part 2 to this Appendix 4 to take account of the different times at which and periods for which costs may be incurred compared with implementation following call on 31 December 2008.
- 1.8 For the avoidance of doubt, following the exercise of the above Priced Option by the Secretary of State, the corresponding option shall be switched on in the Financial Model so that the outputs of the Financial Model incorporate the agreed cost and revenue amounts for that Priced Option.

2. Stansted Overnight Services

Description, objective and specification

- 2.1 This option relates to the provision by the Franchisee of additional overnight services between Stansted Airport and Leicester as further specified in paragraph 2.5.

Price for exercising this Priced Option (in £ base date)

- 2.2 Where this Priced Option is called in accordance with its terms, the price for this Priced Option shall be the price set out in Tables 2A and 2B in Part 2 to this Appendix 4 and adjustments to Franchise Payments shall be made accordingly.
- 2.3 The price of this Priced Option shall be indexed in accordance with the principles set out in Schedule 8.2 (*Annual Franchise Payments*) of the Terms.

Timescale for implementing this Priced Option from the date it is called

- 2.4 The timescale for implementation of this Priced Option is the next Passenger Change Date to occur at least 12 months after the date on which it is called.

Other effects on the Franchise Agreement

- 2.5 The only effects on the Franchise Agreement will be the inclusion of a new paragraph in Appendix 13 (New Cross Country Specific Provisions) as follows:

“[x] **Stansted Overnight Services**

[x].1 The services set out in paragraph [x].2 below shall be deemed to be specified in SLC2 with the effect that the Franchisee and the Secretary of State shall have the same rights and obligations in relation to such services as they do in relation to the other services specified in SLC2.

[x].2 The services referred to in paragraph [x].1 are as follows:

- (a) one additional service per day (Monday to Sunday) from Stansted Airport to Leicester, departing Stansted Airport between 2115 and 2145 and calling at Audley End, Cambridge, Ely, March, Peterborough, Stamford, Oakham, Melton Mowbray and Leicester;
- (b) two additional services per day (Monday to Sunday) from Stansted Airport to Cambridge departing Stansted Airport between 2215 and 2345 and calling at Audley End and Cambridge;
- (c) two additional services per day (Monday to Sunday) from Stansted Airport to Peterborough departing Stansted Airport between 0015 and 0145 and calling at Audley End, Cambridge, Ely, March and Peterborough;
- (d) one service per day (Monday to Sunday) described in SLC2 Route 6 paragraph 2.7 as “May start from Cambridge” will start from Stansted Airport;
- (e) one additional service per day (Monday to Sunday) from Leicester to Stansted Airport departing Leicester between 0515 and 0545 and calling at Melton Mowbray, Oakham, Stamford, Peterborough, March, Ely, Cambridge, Audley End and Stansted Airport; and
- (f) three additional services per day (Monday to Sunday) from Peterborough to Stansted Airport departing Peterborough between 0200 and 0600 and calling at March, Ely, Cambridge, Audley End and Stansted Airport,

provided that on Saturdays the Franchisee may provide the services specified in this paragraph [x].2 by bus."

where "[x]" shall be replaced by the next available paragraph number in Appendix 13 at the relevant time.

Latest date for calling this Priced Option to maintain the price in paragraph 2.2

- 2.6 The latest date for calling this Priced Option to maintain the price in paragraph 2.2 is 31 December 2009.
- 2.7 Where this Priced Option is called after 1 December 2007 then it shall be a Qualifying Change provided that the only Revised Inputs shall be those agreed or reasonably determined by the Secretary of State to be necessary for the purposes of reprofiling the price set out in Tables 2A and 2B in Part 2 to this Appendix 4 to take account of the different times at which and periods for which costs may be incurred and/or revenue received compared with implementation following call on or before 1 December 2007.
- 2.8 For the avoidance of doubt, following the exercise of the above Priced Option by the Secretary of State, the corresponding option shall be switched on in the Financial Model so that the outputs of the Financial Model incorporate the agreed cost and revenue amounts for that Priced Option.

3. Stansted - Two Trains Per Hour

Description, objective and specification

- 3.1 This option relates to the extension of the hourly Birmingham New Street to Leicester service to and from Stansted Airport.
- 3.2 The Secretary of State may only call this Priced Option if the Franchisee has notified the Secretary of State pursuant to paragraph 8 of Appendix 13 (New Cross Country Specific Provisions) that it has identified suitable rolling stock for use in the provision of such services or if the Secretary of State has identified such rolling stock.

Price for exercising this Priced Option (in £ base date)

- 3.3 Where this Priced Option is called in accordance with its terms, the price (based upon use of 18 (6 x 3 car) class 170 rolling stock vehicles) for this Priced Option, shall be the price set out in Tables 3A and 3B in Part 2 to this Appendix 4 and adjustments to Franchise Payments shall be made accordingly.

- 3.4 The price of this Priced Option shall be indexed in accordance with the principles set out in Schedule 8.2 (Annual Franchise Payments) of the Terms.

Timescale for implementing this Priced Option from the date it is called

- 3.5 The timescale for implementation of this Priced Option is the next Passenger Change Date to occur after the first anniversary of the date on which it is called, unless implementation of the Priced Option includes the procurement by the Franchisee of new build rolling stock in which case the timescale for implementation is the next Passenger Change Date to occur after the second anniversary of the date on which the Priced Option is called.

Other effects on the Franchise Agreement

- 3.6 The only effects on the Franchise Agreement will be the inclusion of a new paragraph in Appendix 13 (New Cross Country Specific Provisions) as follows:

“[x] **Stansted - two trains per hour**

[x].1 For the purpose of this paragraph [x]:

“**Affected Rows**” means rows:

- (a) 128;
- (b) 140;
- (c) 196 to 226; and
- (d) 231,

of the “Detailed P&L” sheet of the Financial Model;

“**Stansted 2tph Option**” means the Priced Option specified in paragraph 3 of Part 1 of Appendix 4 (List of Priced Options); and

“**Stansted 2tph Services**” means the extension of the hourly Birmingham New Street to Leicester service to and from Stansted Airport.

- [x].2 By no later than two months after the date on which the Secretary of State called the Stansted 2tph Option, the Secretary of State may notify the Franchisee as to the class of rolling stock which the Franchisee shall use in order to provide

the Stansted 2tph Services and the Secretary of State shall provide such notification where the Secretary of State called the Stansted 2tph Option in circumstances where the Franchisee had not notified the Secretary of State pursuant to paragraph 8 of this Appendix 13.

[x].3 By no later than the earlier of 3 months after the date on which the Secretary of State called the Stansted 2tph Option and 1 month after the date of any notification by the Secretary of State under paragraph [x].2, the Franchisee shall notify the Secretary of State as to:

(a) the class of rolling stock which the Franchisee proposes to use in order to provide the Stansted 2tph Services, which, where the Secretary of State has notified the Franchisee pursuant to paragraph [x].2, shall, unless otherwise agreed by the Secretary of State, be the class of rolling stock specified by the Secretary of State in that notice; and

(b) if the class of rolling stock proposed by the Franchisee in accordance with paragraph [x].3(a) is other than class 170 rolling stock:

(i) the adjustments (if any) to the Affected Rows which the Franchisee considers are necessary in order to ensure that any change in those costs specified in the Affected Rows which arise as a result of the Franchisee providing the Stansted 2tph Services using the proposed rolling stock rather than class 170 rolling stock are reflected in the Affected Rows as adjusted; and

(ii) the consequential adjustments (if any) which the Franchisee considers are required to Tables 3A and 3B as a result of any adjustments to the Affected Rows proposed pursuant to paragraph [x].3(b)(i).

[x].4 If the class of rolling stock proposed by the Franchisee in accordance with paragraph [x].3(a) is other than class 170 rolling stock, the parties shall agree or the Secretary of State shall reasonably determine:

(a) the adjustments (if any) to the Affected Rows which are necessary in order to ensure that any change in those

costs specified in the Affected Rows which arise as a result of the Franchisee providing the Stansted 2tph Services using the proposed rolling stock rather than class 170 rolling stock are reflected in the Affected Rows as adjusted; and

- (b) the consequential adjustments (if any) which are required to Tables 3A and 3B as a result of any adjustments to the Affected Rows which are agreed or determined pursuant to paragraph [x].4(a).

[x].5 By no later than 2 months after the date on which any adjustments to the Affected Rows are agreed or determined in accordance with paragraph [x].4, the Secretary of State shall notify the Franchisee as to whether the Secretary of State requires the Franchisee to implement the Stansted 2tph Option. For the avoidance of doubt paragraphs 3.3 and 3.9 of Part 1 of Appendix 4 of the Franchise Agreement shall only apply if the Secretary of State requires the Franchisee to implement the Stansted 2tph Option pursuant to this paragraph [x].5 and shall then apply by reference to Tables 3A and 3B and the Financial Model each as adjusted pursuant to paragraph [x].4.

[x].6 If the Secretary of State requires the Franchisee to implement the Stansted 2tph Option pursuant to paragraph [x].5, then with effect from the next Passenger Change Date to occur after:

- (a) the first anniversary; or
- (b) where the rolling stock proposed by the Franchisee in accordance with paragraph [x].3(a) is new build rolling stock, the second anniversary,

of the date on which the Secretary of State called the Stansted 2tph Option, the Stansted 2tph Services shall be deemed to be specified in SLC2 with the effect that the Franchisee and the Secretary of State shall have the same rights and obligations in relation to the Stansted 2tph Services as they do in relation to the other services specified in SLC2."

where "[x]" shall be replaced by the next available paragraph number in Appendix 13 at the relevant time.

Latest date for calling this Priced Option to maintain the price in paragraph 3.3

- 3.7 The latest date for calling this Priced Option to maintain the price in paragraph 3.3 is 31 December 2009.
- 3.8 It shall be a Qualifying Change where this Priced Option is called such that it is required to be implemented other than with effect from the Passenger Change Date occurring in or around December 2009, provided that the only Revised Inputs shall be those agreed or reasonably determined by the Secretary of State to be necessary for the purposes of reprofiling the price set out in Tables 3A and 3B in Part 2 to this Appendix 4 to take account of the different times at which and periods for which costs may be incurred and/or revenue received compared with implementation with effect from the Passenger Change Date occurring in or around December 2009.
- 3.9 For the avoidance of doubt, following the exercise of the above Priced Option by the Secretary of State, the corresponding option shall be switched on in the Financial Model so that the outputs of the Financial Model incorporate the agreed cost and revenue amounts for that Priced Option.

4. Dundee to Glasgow Services

Description, objective and specification

- 4.1 This option relates to the provision by the Franchisee of additional services between Dundee and Glasgow.

Price for exercising this Priced Option (in £ base date)

- 4.2 Where this Priced Option is called in accordance with its terms, the price for this Priced Option, shall be the price set out in Tables 4A and 4B in Part 2 to this Appendix 4 and adjustments to Franchise Payments shall be made accordingly.
- 4.3 The price of this Priced Option shall be indexed in accordance with the principles set out in Schedule 8.2 (*Annual Franchise Payments*) of the Terms.

Timescale for implementing this Priced Option from the date it is called

- 4.4 The timescale for implementation of this Priced Option is with effect from the Passenger Change Date occurring on or around December 2008.

Other effects on the Franchise Agreement

- 4.5 The only effects on the Franchise Agreement will be the inclusion of the following in Appendix 13 (*New Cross Country Specific Provisions*):

"[x] Dundee to Glasgow Service

With effect from the Passenger Change Date occurring in or around December 2008 the Dundee to Glasgow Service shall be deemed to be specified in SLC2 with the effect that the Franchisee and the Secretary of State shall have the same rights and obligations in relation to the Dundee to Glasgow Service as they do in relation to the other services specified in SLC2. For the purposes of this paragraph [x], the "Dundee to Glasgow Service" means the continuation of one Dundee to Edinburgh service per day (Monday to Friday) to Glasgow."

where "[x]" shall be replaced by the next available paragraph number in Appendix 13 at the relevant time.

Latest date for calling this Priced Option to maintain the price in paragraph 1.2

- 4.6 The latest date for calling this Priced Option is 30 June 2008.
- 4.7 For the avoidance of doubt, following the exercise of the above Priced Option by the Secretary of State, the corresponding option shall be switched on in the Financial Model so that the outputs of the Financial Model incorporate the agreed cost and revenue amounts for that Priced Option.

Part 2

1. GSM-R

Table 1A: Target Revenue (expressed in real terms) (*Clause 5.1(ae)*)

This table sets out the increment to the Target Revenue set out in Appendix 2 (*Target Revenue (expressed in real terms)*) to this Agreement where this Priced Option is called by 31 December 2008 and is subject to change in accordance with paragraph 1.7 of Part 1 of Appendix 4:

Column 1	Column 2
Franchise Year	Target Revenue (£k)
Year 1 (part year)	0
Year 2	0
Year 3	0
Year 4	0
Year 5	0
Year 6	0
Year 7	0
Year 7 (up to first expiry period)	0
Year 7 (up to 7 Reporting Period extension)	
Year 7 (part year)	0
Year 8 (part year)	0
Year 8	0
Year 9	0
Year 10 (up to 7 Reporting Period extension)	0

Table 1B: Figures for Calculation of Annual Franchise Payments (*Clause 5.20*)²¹

This table sets out the increment to the figures for calculation of the Annual Franchise Payments set out in Appendix 8 (*Figures for Calculation of Annual Franchise Payments*) to this Agreement where this Priced Option is called by 31 December 2008 and is subject to change in accordance with paragraph 1.7 of Part 1 of Appendix 4:

²¹ 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. Stansted Overnight Services

Table 2A: Target Revenue (expressed in real terms) (*Clause 5.1(ae)*)²²

This table sets out the increment to the Target Revenue set out in Appendix 2 (*Target Revenue (expressed in real terms)*) to this Agreement where this Priced Option is called by 31 December 2009 and is subject to change in accordance with paragraph 2.7 of Part 1 of Appendix 4:

²² 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.

Table 2B: Figures for Calculation of Annual Franchise Payments (Clause 5.20)²³

This table sets out the increment to the figures for calculation of the Annual Franchise Payments set out in Appendix 8 (*Figures for Calculation of Annual Franchise Payments*) to this Agreement where this Priced Option is called by 31 December 2009 and is subject to change in accordance with paragraph 2.7 of Part 1 of Appendix 4:

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.

3. **Stansted - Two Trains Per Hour**

Table 3A: Target Revenue (expressed in real terms) (*Clause 5.1(ae)*)²⁴

This table sets out the increment to the Target Revenue set out in Appendix 2 (*Target Revenue (expressed in real terms)*) to this Agreement where this Priced Option is called by 31 December 2009 and is subject to change in accordance with paragraph 3.8 of Part 1 of Appendix 4:

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.

Table 3B: Figures for Calculation of Annual Franchise Payments (Clause 5.20)²⁵

This table sets out the increment to the figures for calculation of the Annual Franchise Payments set out in Appendix 8 (*Figures for Calculation of Annual Franchise Payments*) to this Agreement where this Priced Option is called by 31 December 2009 and is subject to change in accordance with paragraph 3.8 of Part 1 of Appendix 4:

²⁵ 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.

4. **Dundee to Glasgow Services**

Table 4A: Target Revenue (expressed in real terms) (*Clause 5.1(ae)*)²⁶

This table sets out the increment to the Target Revenue set out in Appendix 2 (*Target Revenue (expressed in real terms)*) to this Agreement where this Priced Option is called by 30 June 2008:

Table 4B: Figures for Calculation of Annual Franchise Payments (Clause 5.20)²⁷

This table sets out the increment to the figures for calculation of the Annual Franchise Payments set out in Appendix 8 (*Figures for Calculation of Annual Franchise Payments*) to this Agreement where this Priced Option is called by 30 June 2008:

²⁷ 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 5²⁸

Cancellations Benchmark Table (Clause 5.15)

Column 1 Reporting Year Reporting Period		Column 2 Target Performance Level (%)	Column 3 Improvement Plan Performance Level (%)	Column 4 Breach Performance Level (%)	Column 5 Default Performance Level (%)
Year 1	Period 9	1.31%	1.41%	1.51%	1.58%
	Period 10	1.31%	1.41%	1.51%	1.58%
	Period 11	1.31%	1.41%	1.51%	1.57%
	Period 12	1.31%	1.41%	1.50%	1.57%
	Period 13	1.30%	1.40%	1.50%	1.57%
Year 2	Period 1	1.30%	1.40%	1.50%	1.56%
	Period 2	1.30%	1.40%	1.50%	1.56%
	Period 3	1.29%	1.39%	1.49%	1.56%
	Period 4	1.29%	1.39%	1.49%	1.56%
	Period 5	1.29%	1.39%	1.49%	1.55%
	Period 6	1.29%	1.39%	1.48%	1.55%
	Period 7	1.28%	1.38%	1.48%	1.55%
	Period 8	1.28%	1.38%	1.48%	1.54%
	Period 9	1.28%	1.38%	1.48%	1.54%
	Period 10	1.27%	1.37%	1.47%	1.54%
	Period 11	1.27%	1.37%	1.47%	1.53%
	Period 12	1.27%	1.37%	1.47%	1.53%
	Period 13	1.26%	1.36%	1.46%	1.53%
	Period 1	1.26%	1.36%	1.46%	1.53%
	Period 2	1.26%	1.36%	1.46%	1.52%
	Period 3	1.26%	1.35%	1.45%	1.52%
	Period 4	1.25%	1.35%	1.45%	1.52%

²⁸ Date of Change 28/12/2007

Column 1		Column 2	Column 3	Column 4	Column 5
Reporting Year Reporting Period		Target Performance Level (%)	Improvement Plan Performance Level (%)	Breach Performance Level (%)	Default Performance Level (%)
Year 3	Period 5	1.25%	1.35%	1.45%	1.51%
	Period 6	1.255	1.34%	1.44%	1.51%
	Period 7	1.24%	1.34%	1.44%	1.51%
	Period 8	1.24%	1.34%	1.44%	1.50%
	Period 9	1.24%	1.34%	1.43%	1.50%
	Period 10	1.23%	1.33%	1.43%	1.50%
	Period 11	1.23%	1.33%	1.43%	1.49%
	Period 12	1.23%	1.33%	1.43%	1.49%
	Period 13	1.23%	1.32%	1.42%	1.49%
Year 4	Period 1	1.22%	1.32%	1.42%	1.49%
	Period 2	1.22%	1.32%	1.42%	1.48%
	Period 3	1.22%	1.32%	1.41%	1.48%
	Period 4	1.21%	1.31%	1.41%	1.48%
	Period 5	1.21%	1.31%	1.41%	1.47%
	Period 6	1.21%	1.31%	1.41%	1.47%
	Period 7	1.21%	1.30%	1.40%	1.47%
	Period 8	1.20%	1.30%	1.40%	1.47%
	Period 9	1.20%	1.30%	1.40%	1.46%
	Period 10	1.20%	1.30%	1.39%	1.46%
	Period 11	1.19%	1.29%	1.39%	1.46%
	Period 12	1.19%	1.29%	1.39%	1.46%
	Period 13	1.1.9%	1.29%	1.39%	1.45%
	Period 1	1.19%	1.28%	1.38%	1.45%
	Period 2	1.18%	1.28%	1.38%	1.45%
	Period 3	1.18%	1.28%	1.38%	1.44%

Column 1		Column 2	Column 3	Column 4	Column 5
Reporting Year Reporting Period		Target Performance Level (%)	Improvement Plan Performance Level (%)	Breach Performance Level (%)	Default Performance Level (%)
Year 5	Period 4	1.18%	1.28%	1.38%	1.44%
	Period 5	1.17%	1.27%	1.37%	1.44%
	Period 6	1.17%	1.27%	1.37%	1.44%
	Period 7	1.17%	1.27%	1.37%	1.43%
	Period 8	1.17%	1.27%	1.36%	1.43%
	Period 9	1.16%	1.26%	1.36%	1.43%
	Period 10	1.16%	1.26%	1.36%	1.42%
	Period 11	1.16%	1.26%	1.36%	1.42%
	Period 12	1.16%	1.25%	1.35%	1.42%
	Period 13	1.15%	1.25%	1.35%	1.42%
Year 6	Period 1	1.15%	1.25%	1.35%	1.41%
	Period 2	1.15%	1.25%	1.35%	1.41%
	Period 3	1.15%	1.24%	1.34%	1.41%
	Period 4	1.14%	1.24%	1.34%	1.41%
	Period 5	1.14%	1.24%	1.34%	1.40%
	Period 6	1.14%	1.24%	1.33%	1.40%
	Period 7	1.13%	1.23%	1.33%	1.40%
	Period 8	1.13%	1.23%	1.33%	1.40%
	Period 9	1.13%	1.23%	1.33%	1.39%
	Period 10	1.13%	1.23%	1.32%	1.39%
	Period 11	1.12%	1.22%	1.32%	1.39%
	Period 12	1.12%	1.22%	1.32%	1.38%
	Period 13	1.12%	1.22%	1.32%	1.38%
	Period 1	1.12%	1.21%	1.31%	1.38%
	Period 2	1.11%	1.21%	1.31%	1.38%

Column 1		Column 2	Column 3	Column 4	Column 5
Reporting Year Reporting Period		Target Performance Level (%)	Improvement Plan Performance Level (%)	Breach Performance Level (%)	Default Performance Level (%)
Year 7	Period 3	1.11%	1.21%	1.31%	1.37%
	Period 4	1.11%	1.21%	1.31%	1.37%
	Period 5	1.10%	1.20%	1.30%	1.37%
	Period 6	1.10%	1.20%	1.30%	1.37%
	Period 7	1.10%	1.20%	1.30%	1.36%
	Period 8	1.10%	1.20%	1.29%	1.36%

Until end of Franchise Term

1. **Start of the Franchise**

The Reporting Period in the cells entitled "Year 1 Period 9" shall be the first Reporting Period of the Franchise Term.

APPENDIX 6

Capacity Benchmark Table (*Clause 5.16*)

Column 1 Reporting Year Reporting Period		Column 2 Target Performance Level (%)	Column 3 Improvement Plan Performance Level (%)	Column 4 Breach Performance Level (%)	Column 5 Default Performance Level (%)
Year 1	Period 9	2.00%	2.10%	2.30%	2.40%
	Period 10	2.00%	2.10%	2.30%	2.40%
	Period 11	2.00%	2.10%	2.30%	2.40%
	Period 12	2.00%	2.10%	2.30%	2.40%
	Period 13	2.00%	2.10%	2.30%	2.40%
Year 2	Period 1	2.00%	2.10%	2.30%	2.40%
	Period 2	2.00%	2.10%	2.30%	2.40%
	Period 3	2.00%	2.10%	2.30%	2.40%
	Period 4	2.00%	2.10%	2.30%	2.40%
	Period 5	2.00%	2.10%	2.30%	2.40%
	Period 6	2.00%	2.10%	2.30%	2.40%
	Period 7	2.00%	2.10%	2.30%	2.40%
	Period 8	2.00%	2.10%	2.30%	2.40%
	Period 9	2.00%	2.10%	2.30%	2.40%
	Period 10	2.00%	2.10%	2.30%	2.40%
	Period 11	2.00%	2.10%	2.30%	2.40%
	Period 12	2.00%	2.10%	2.30%	2.40%
	Period 13	2.00%	2.10%	2.30%	2.40%
Year 3	Period 1	2.00%	2.10%	2.30%	2.40%
	Period 2	2.00%	2.10%	2.30%	2.40%
	Period 3	2.00%	2.10%	2.30%	2.40%
	Period 4	2.00%	2.10%	2.30%	2.40%
	Period 5	2.00%	2.10%	2.30%	2.40%
	Period 6	2.00%	2.10%	2.30%	2.40%
	Period 7	2.00%	2.10%	2.30%	2.40%
	Period 8	2.00%	2.10%	2.30%	2.40%
	Period 9	2.00%	2.10%	2.30%	2.40%
	Period 10	2.00%	2.10%	2.30%	2.40%
	Period 11	2.00%	2.10%	2.30%	2.40%
	Period 12	2.00%	2.10%	2.30%	2.40%
	Period 13	1.90%	2.00%	2.20%	2.30%
Year 4	Period 1	1.90%	2.00%	2.20%	2.30%
	Period 2	1.90%	2.00%	2.20%	2.30%
	Period 3	1.90%	2.00%	2.20%	2.30%
	Period 4	1.90%	2.00%	2.20%	2.30%
	Period 5	1.90%	2.00%	2.20%	2.30%
	Period 6	1.90%	2.00%	2.20%	2.30%
	Period 7	1.90%	2.00%	2.20%	2.30%
	Period 8	1.90%	2.00%	2.20%	2.30%
	Period 9	1.90%	2.00%	2.20%	2.30%
	Period 10	1.90%	2.00%	2.20%	2.30%
	Period 11	1.90%	2.00%	2.20%	2.30%
	Period 12	1.90%	2.00%	2.20%	2.30%
	Period 13	1.90%	2.00%	2.20%	2.30%

Column 1 Reporting Year Reporting Period		Column 2 Target Performance Level (%)	Column 3 Improvement Plan Performance Level (%)	Column 4 Breach Performance Level (%)	Column 5 Default Performance Level (%)
Year 5	Period 1	1.90%	2.00%	2.20%	2.30%
	Period 2	1.90%	2.00%	2.20%	2.30%
	Period 3	1.90%	2.00%	2.20%	2.30%
	Period 4	1.90%	2.00%	2.20%	2.30%
	Period 5	1.90%	2.00%	2.20%	2.30%
	Period 6	1.90%	2.00%	2.20%	2.30%
	Period 7	1.90%	2.00%	2.20%	2.30%
	Period 8	1.90%	2.00%	2.20%	2.30%
	Period 9	1.90%	2.00%	2.20%	2.30%
	Period 10	1.90%	2.00%	2.20%	2.30%
	Period 11	1.90%	2.00%	2.20%	2.30%
	Period 12	1.90%	2.00%	2.20%	2.30%
	Period 13	1.90%	2.00%	2.20%	2.30%
Year 6	Period 1	1.90%	2.00%	2.20%	2.30%
	Period 2	1.90%	2.00%	2.20%	2.30%
	Period 3	1.90%	2.00%	2.20%	2.30%
	Period 4	1.80%	1.90%	2.10%	2.20%
	Period 5	1.80%	1.90%	2.10%	2.20%
	Period 6	1.80%	1.90%	2.10%	2.20%
	Period 7	1.80%	1.90%	2.10%	2.20%
	Period 8	1.80%	1.90%	2.10%	2.20%
	Period 9	1.80%	1.90%	2.10%	2.20%
	Period 10	1.80%	1.90%	2.10%	2.20%
	Period 11	1.80%	1.90%	2.10%	2.20%
	Period 12	1.80%	1.90%	2.10%	2.20%
	Period 13	1.80%	1.90%	2.10%	2.20%
Year 7	Period 1	1.80%	1.90%	2.10%	2.20%
	Period 2	1.80%	1.90%	2.10%	2.20%
	Period 3	1.80%	1.90%	2.10%	2.20%
	Period 4	1.80%	1.90%	2.10%	2.20%
	Period 5	1.80%	1.90%	2.10%	2.20%
	Period 6	1.80%	1.90%	2.10%	2.20%
	Period 7	1.80%	1.90%	2.10%	2.20%
	Period 8	1.80%	1.90%	2.10%	2.20%

Until Franchise ends

1. Start of the Franchise

The Reporting Period in the cells entitled "Year 1 Period 9" shall be the first Reporting Period of the Franchise Term.

APPENDIX 7²⁹ 30

Service Delivery Benchmark Table (*Clause 5.17*)^{31 32 33 34 35 36}

Column 1	Column 2	Column 3	Column 4	Column 5
	Target Performance Level	Improvement Plan Performance Level	Breach Performance Level	Default Performance Level
Reporting Period	(Minutes Delay)	(Minutes Delay)	(Minutes Delay)	(Minutes Delay)
Year 1, Period 9	11250	12090	12940	13500
Year 1, Period 10	11180	12020	12860	13420
Year 1, Period 11	11160	12000	12840	13400
Year 1, Period 12	11150	11980	12820	13380
Year 1, Period 13	11130	11970	12800	13360
Year 2, Period 1	11110	11950	12780	13340
Year 2, Period 2	11100	11930	12760	13320
Year 2, Period 3	11030	11860	12680	13240
Year 2, Period 4	10980	11800	12620	13170
Year 2, Period 5	10960	11780	12600	13150
Year 2, Period 6	10940	11760	12580	13130
Year 2, Period 7	10930	11740	12560	13110
Year 2, Period 8	10910	11730	12540	13090
Year 2, Period 9	10870	11680	12500	13040
Year 2, Period	11420	12270	13130	13710

²⁹ Date of Change 28/12/2007

³⁰ Date of change 8/2/2010

³¹ Date of change 19/8/2008

³² Date of change 14/7/2009

³³ Date of Change 5/10/2009

³⁴ Date of Change 11/03/2011

³⁵ Date of Change 08/08/2011

³⁶ Date of Change 20/03/2012

10				
Year 2, Period 11	11380	12230	13090	13650
Year 2, Period 12	11350	12190	13030	13610
Year 2, Period 13	11300	12150	12990	13560
Year 3, Period 1	11260	12100	12940	13510
Year 3, Period 2	11220	12060	12900	13460
Year 3, Period 3	11330	12170	13020	13590
Year 3, Period 4	11280	12130	12970	13530
Year 3, Period 5	11250	12090	12940	13490
Year 3, Period 6	11200	12040	12890	13430
Year 3, Period 7	11160	11990	12840	13390
Year 3, Period 8	11120	11950	12800	13340
Year 3, Period 9	11100	11930	12760	13320
Year 3, Period 10	11030	11880	12700	13250
Year 3, Period 11	11010	11860	12680	13230
Year 3, Period 12	10990	11820	12660	13200
Year 3, Period 13	10970	11800	12630	13170
Year 4, Period 1	10950	11780	12600	13150
Year 4, Period 2	10940	11760	12580	13130
Year 4, Period 3	10920	11740	12570	13120
Year 4, Period 4	10900	11720	12550	13090
Year 4, Period 5	10880	11700	12520	13070
Year 4, Period 6	10850	11680	12500	13050
Year 4, Period 7	10830	11660	12480	13010
Year 4, Period 8	10810	11630	12460	12990
Year 4, Period 9	10790	11610	12430	12970
Year 4, Period 10	10890	11720	12530	13080
Year 4, Period 11	10870	11700	12510	13070

Year 4, Period 12	10850	11680	12490	13050
Year 4, Period 13	10830	11660	12470	13020
Year 5, Period 1	10810	11630	12440	13000
Year 5, Period 2	10800	11610	12420	12970
Year 5, Period 3	10880	11710	12530	13080
Year 5, Period 4	10860	11680	12510	13050
Year 5, Period 5	10840	11660	12480	13030
Year 5, Period 6	10820	11640	12450	13000
Year 5, Period 7	10800	11620	12430	12970
Year 5, Period 8	10790	11600	12410	12950
Year 5, Period 9	10770	11580	12390	12930
Year 5, Period 10	10770	11570	12380	12900
Year 5, Period 11	10750	11550	12350	12880
Year 5, Period 12	10720	11530	12330	12860
Year 5, Period 13	10690	11500	12300	12830
Year 6, Period 1	10670	11480	12280	12810
Year 6, Period 2	10650	11460	12260	12790
Year 6, Period 3	10640	11420	12220	12770
Year 6, Period 4	10620	11400	12200	12740
Year 6, Period 5	10600	11380	12180	12710
Year 6, Period 6	10580	11360	12160	12690
Year 6, Period 7	10560	11340	12140	12660
Year 6, Period 8	10540	11320	12110	12640
Year 6, Period 9	10510	11290	12090	12620
Year 6, Period 10	10490	11270	12070	12590
Year 6, Period 11	10470	11250	12040	12570
Year 6, Period 12	10450	11230	12010	12550
Year 6, Period	10430	11210	11990	12510

13				
Year 7, Period 1	10410	11190	11970	12490
Year 7, Period 2	10400	11160	11950	12460
Year 7, Period 3	10380	11140	11930	12440
Year 7, Period 4	10360	11120	11890	12410
Year 7, Period 5	10340	11080	11870	12390
Year 7, Period 6	10310	11060	11850	12370
Year 7, Period 7	10280	11040	11830	12340
Year 7, Period 8	10260	11020	11810	12310

Until Franchise ends

1. Start of the Franchise

The Reporting Period in the cells entitled "Year 1 Period 9" shall be the first Reporting Period of the Franchise Term.

APPENDIX 8

Figures for Calculation of Annual Franchise Payments (Clause 5.20)³⁷

³⁷ Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

APPENDIX 9

List of Key Contracts (Clause 5.24)

The following items have as at the date of the Franchise Agreement been agreed between the parties to be Key Contracts (or will become Key Contracts once entered into by or transferred to the Franchisee):

1. Any Access Agreement to which the Franchisee is a party other than in its capacity as a Facility Owner.
2. Any Property Lease.
3. Any Rolling Stock Related Contract including the Rolling Stock Leases listed in Table 1 and Table 2 of Appendix 3 (*The Train Fleet*), but excluding any Rolling Stock Related Contract relating only to rolling stock vehicles funded by Additional Rolling Stock Investment.
4. Any contract or arrangement for the lending, seconding, hiring, contracting out, supervision, training, assessment, or accommodation by another Train Operator of any train drivers, conductors or other train crew used by the Franchisee in the provision of the Passenger Services.
5. Any contract or arrangement for the subcontracting or delegation to another Train Operator of the provision of any of the Passenger Services (whether or not the consent of the Secretary of State is required to such subcontracting or delegation under paragraph 1 of Schedule 2.3 (*Third Party Delivery of Passenger Services and Other Franchisees*) of the Terms).
6. Any contract or arrangement with a Train Operator (other than an Access Agreement) for the provision to the Franchisee of train dispatch, performance or supervision of platform duties, security activities, evacuation procedures, advice or assistance to customers, assistance to disabled customers, operation of customer information systems, cash management or ticket issuing systems administration.
7. Any contract or arrangement with a Train Operator for the provision of breakdown or recovery, and track call services to assist in the provision of the Passenger Services.
8. Any contract or arrangement for the supply of spare parts or Spares.
9. Any contract or arrangement for the maintenance of track and other related infrastructure.
10. Any licences of Marks to the Franchisee.

11. Any licence of any CRM System or Yield Management System.
12. Any agreement between the Franchisee and Crossfleet Ltd relating to the provision of maintenance services in respect of the Franchisee's Voyager Train Fleet.
13. Service Provision Agreement dated 15 December 2006 relating to the outsourcing and/or obtaining of IT services entered into between (1) Cap Gemini plc (2) West Coast Trains Ltd (3) CrossCountry Trains Ltd.
14. Master Services Agreement dated 11 May 2007 relating to the provision of Wide Area Network Services entered into between (1) Cable and Wireless UK and (2) CrossCountry Trains Limited.

APPENDIX 10

List of Primary Franchise Assets (Clause 5.25)

Description of Primary Franchise Asset	Commitment not to de designate?
The rights and liabilities of the Franchisee under the Universal Licence Agreement between the Board and the Franchisee dated 12 November 1995.	No
The rights and liabilities of the Franchisee under the Sub-licence Deed between the Board and the Franchisee dated 12 November 1995.	No
The rights and liabilities of the Franchisee under the Master Software Licence between the Board and the Franchisee dated 12 November 1995.	No
The rights and liabilities of the Franchisee under the Computer Services Agreement between the Board and the Franchisee dated 12 November 1995.	No
Avantix Mobile Supply and Support Agreement dated 30th July 2003 between Sema UK Limited, Virgin Rail Group Limited, West Coast Trains Limited and the Franchisee.	No
Agreement for the provision of Driving Cab Simulator Maintenance dated 8th March 2005 between the Franchisee and Corys TESS.	No
184 Avantix mobiles, as previously leased through a sub-lease between West Coast Trains Limited and CrossCountry Trains Limited.	No

APPENDIX 11

List of Committed Obligations and Related Provisions (Clause 6)

Part 1 to Appendix 11

List of Committed Obligations

1. Major Projects

1.1 Without prejudice to the Franchisee's obligations under Schedule 1.7 (Extended Restrictions of Use) of the Terms the Franchisee shall, to the extent so requested by the Secretary of State following consultation with the Franchisee and other train operators likely to be affected by major projects, co-operate and liaise to the extent reasonably required with Network Rail, the Secretary of State and all the relevant parties in connection with any major project developed during the Franchise Term including without limitation:

- (a) London 2012 Olympic and Paralympic Games;
- (b) Gloucestershire Parkway Station;
- (c) Birmingham New Street Station "gateway" project;
- (d) Reading Station development;
- (e) Worcester Parkway;
- (f) the Intercity Express Programme;
- (g) Worle Strategic Interchange;
- (h) Kenilworth Station;
- (i) Channel Tunnel rail link and new St Pancras Station;
- (j) West Coast Route modernisation;
- (k) Network Rail re-signalling schemes; and
- (l) ATOC fares simplification scheme.

1.2 In fulfilling its obligation to co-operate and liaise pursuant to paragraph 1.1 the Franchisee shall amongst other things seek to:

- (a) participate in a positive and constructive manner and in a way which offers full transparency of information available to the Franchisee to the Secretary of State; and
- (b) identify solutions that minimise overall rail industry costs.

2. Rolling Stock

2.1 The Franchisee shall procure that:ⁱ

- (a) all of its class 220 and 221 rolling stock shall, by ³⁸, have:
 - (i) a new interior layout that provides the additional seats specified in Appendix 3 (The Train Fleet) and permits an at-seat catering service to be provided at all seats;
 - (ii) an aggregate increase in luggage space (expressed in cubic metres) of at least 25% (4 car) and 20% (5 car) compared with the luggage space in existence on such rolling stock at the Start Date;
 - (iii) improved mobile phone reception for passengers travelling on such rolling stock, compared to the level of mobile phone reception available as at 1 January 2007; and
 - (iv) operational wi-fi access for all seats;

- (b) ³⁹ ⁴⁰ *all of its HST rolling stock (including the rolling stock referred to in paragraph 2.1(c)) shall, by the Passenger Change Date occurring in or around December 2008 have:*

- (i) had a full refurbishment of the passenger environment, including:*

(1) repair and refinishing of all:

- (i) wall panels, ceiling panels and partitions;*

- (ii) luggage racks and stacks;*

³⁸ Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

³⁹ Date of change 4/2/2009

⁴⁰ Date of change 16/04/2012

(iii) litter bins; and

(iv) internal and external doors;

(2) renewed lighting throughout;

(3) all seats replaced by new seats;

(4) all carpets replaced by new carpets;

(5) all toilet floor coverings replaced by new toilet floor coverings;

(6) all toilets will be refurbished;

(7) provision of two wheelchair accessible toilets which are compliant with the Rail Vehicle Accessibility Regulations 1998 (one accessible to standard class ticket holders and one to first class ticket holders);

(8) provision of an at-seat power socket for each first class seat and for every two standard class seats;

(9) provision of window blinds or curtains at each window in First Class;

(10) external repainting and/or vinyl wrap; and

(11) an internal visual Passenger Information System within all vehicles;

(ii) an electronic seat reservation system with a display at or reasonably close to each seat showing whether such seat is reserved;

(iii) operational wi-fi access for all seats; and

(iv) refurbishment and improvements to the driving cab environment including refurbishing the cab door (to the extent necessary to improve the draught/noise conditions), installing a new drivers seat and improvements to the heating and ventilation system;

- (c) all of its ⁴¹**21** formerly locomotive-hauled Mark 3 carriages shall, by the Passenger Change Date occurring in or around ⁴², have had all necessary conversion and renovation to make them operable as HST passenger trailers;
- (d) all of its 5 power cars that are non-operational at the date of this Agreement shall, by the Passenger Change Date occurring in or around ⁴³, have had all necessary works to make them operational;
- (e) by ⁴⁴, a feasibility study to identify ways of minimising toilet waste discharge on to the track is completed in respect of its HST rolling stock, and such study is provided to and discussed with the Secretary of State;
- (f) all of its class 170 rolling stock shall, by ⁴⁵, have:
 - (i) a new interior layout providing additional luggage space and permitting an at-seat catering service to be provided at all seats and the following number of seats:
 - (1) 9 first and 190 standard class seats in each class 170/1 three-car unit;
 - (2) 9 first and 111 standard class seats in each class 170/1 two-car unit;
 - (3)⁴⁶ ***9 first and 111 standard class seats in each class 170/5 two-car unit; and***
 - (4) 9 first and 186 standard class seats in each class 170/6 three-car unit;

⁴¹ Date of change 4/2/2009

⁴² **Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

⁴³ **Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

⁴⁴ **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.**

⁴⁵ **Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.**

⁴⁶ Date of change 26/11/2008

- (ii) refurbished seats, including new seat covers for each seat;
 - (iii) all carpets replaced by new carpets; and
 - (iv) refinished luggage stacks, wall panels, partitions, tables and grab handles in all vehicles; and
 - (g) the technology identified in clause 5.4(a) has been installed in accordance with the terms of that clause.
- 2.2 The Franchisee will, by no later than ⁴⁷, spend (or procure that the lessor under any relevant Rolling Stock Lease shall spend) no less than £⁴⁸ on the improvements specified in paragraph 2.1.
- 2.3 The Franchisee shall use all reasonable endeavours on or before the Start Date to enter into contracts that will allow such parts of the Committed Obligations described in paragraphs 2.1(b), (c) and (d) as relate to rolling stock either referred to in paragraphs 2.1(c) or (d) or which is leased by the Franchisee from Porterbrook Leasing Company Limited ("Relevant Committed Obligations") to be completed on or before⁴⁹. If on or before ⁵⁰ all of the Relevant Committed Obligations are completed in respect of some or all of the rolling stock vehicles which are leased by the Franchisee from Porterbrook Leasing Company Limited, then paragraphs 2.3 to 2.6 shall apply in relation to the relevant number of HST rolling stock vehicles leased by the Franchisee from Angel Trains Limited, where the relevant number is the number of rolling stock vehicles leased by the Franchisee from Porterbrook Leasing Company Limited in respect of which all of the Relevant Committed Obligations were completed by ⁵¹.

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⁴⁸ Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

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2.4 If the Franchisee has complied with paragraph 2.3, but anticipates that there may be a delay in relation to the completion of some or all of the Relevant Committed Obligations as a result of:

- (a) any failure or delay by the Franchisee to enter into any of the contracts referred to in paragraph 2.3; or
- (b) any of such contracts not obliging the counterparty thereto to undertake the relevant works or provide the relevant services thereunder in sufficient time to allow the Relevant Committed Obligations to be completed by ⁵²,

it shall notify the Secretary of State promptly and in any case by 11 December 2007. The Franchisee shall thereafter use all reasonable endeavours to ensure that the Relevant Committed Obligations are completed as soon as practicable and shall keep the Secretary of State informed of progress and of its expected date(s) for completion of the Relevant Committed Obligations.

2.5 If the Franchisee has complied with paragraphs 2.3 and 2.4 above but has not completed any of the Relevant Committed Obligations by ⁵³:

- (a) such failure shall not amount to a contravention of the Franchise Agreement and the Franchisee shall procure that any such Relevant Committed Obligations are completed by no later than ⁵⁴; and
- (b) the Franchisee may apply for a waiver of such part of any payments due in respect of the period between ⁵⁵ and ⁵⁶ under Part 3 of this Appendix as relate to the late delivery of any such Relevant Committed Obligations.

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⁵³ Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

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⁵⁶ Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

- 2.6 The Secretary of State shall act reasonably in considering any application pursuant to paragraph 2.5(b). Any waiver granted in accordance with paragraphs 2.5 and 2.6 shall not apply to any payments under Part 3 of this Appendix accruing after ⁵⁷. For the avoidance of doubt, any waiver granted pursuant to paragraphs 2.5 and 2.6 shall not affect any of the Franchisee's obligations under this Franchise Agreement other than the Relevant Committed Obligations and in particular shall not affect the Franchisee's obligations under paragraph 3 of Appendix 13 (New Cross Country Franchise Specific Provisions).

3. **Ticketing and Sales Distribution**

The Franchisee shall procure:

- 3.1 a new web based ticketing system ("WebTIS") is introduced and made available for use by customers on or before ⁵⁸, and that WebTIS will comply with or exceed the World Wide Web Consortium's HTML 4.01 and CSS standards and:
- (a) interface with any Yield Management System used by the Franchisee;
 - (b) interface with any CRM System used by the Franchisee;
 - (c) make journey information packs containing details of access to the station, and information on the station, boarding the train, the train itself, interchanges and options for onward travel, as well as details on the train departure and arrival times and departure platforms of the relevant service (including in relation to any connections) available for customers (either by way of download by the customer or by post where customers make reservations or purchase tickets using the Franchisee's telephone booking service); and
 - (d) allow customers to print tickets for travel themselves on their own printer;

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- 3.2 that WebTIS is upgraded on or before ⁵⁹ to include: ⁱⁱ
- (a) the ability for a customer to make a reservation for a Passenger Service and for a customer holding an existing reservation for a Passenger Service to adjust such reservation, in each case at any time prior to ten minutes before the scheduled departure of that Passenger Service from the station at which that customer is scheduled to board such Passenger Service;
 - (b) functionality whereby a passenger holding a reservation for a connecting Passenger Service will, if such passenger misses such connecting Passenger Service as a result of delay to or cancellation of any of the Passenger Services, automatically have such reservation moved on to an appropriate later connecting Passenger Service;
 - (c) real time itinerary management, allowing customers that have provided the relevant contact details as part of a ticket purchase and reservation made via WebTIS to be advised, by way of SMS message or other similar direct electronic communication of any changes to their itinerary, including the ability, where the relevant contact details of a third party have been provided, to advise such third party of any changes thereto; and
 - (d) subject to obtaining RSP accreditation (which the Franchisee will use all reasonable endeavours to obtain) the ability for tickets to be sent to and displayed on a mobile phone without the need for a separate ticket to be printed;
- 3.3 a customer contact centre to support customers (who are using WebTIS or who otherwise want assistance), on or before ⁶⁰ (or, if earlier, the date on which WebTIS is introduced);
- 3.4 an additional 20 ticket vending machines to be located at stations on or before ⁶¹ and the Franchisee shall spend not less than £⁶² in fulfilling this obligation; and

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- 3.5 the development and completion of a functioning Computer System for the collection and processing of Yield Management Data to manage or set the prices at which tickets are sold and/or any quotas and/or restrictions applying to tickets, on or before ⁶³.

The Franchisee will incur no less than £⁶⁴ of capital expenditure and development costs on the improvements specified in this paragraph 3 provided that any amount incurred in connection with paragraph 3.4 shall not be counted towards such sum.

4. **On-Board Services**

The Franchisee shall procure that:

- 4.1 on or before ⁶⁵, all ⁶⁶, are provided with their own ⁶⁷ machines that can:
- (a) ⁶⁸
 - (b) provide a real-time link to WebTIS information;
 - (c) allow the user to manage reservations; and
 - (d) cancel tickets and capture data (provided that, in relation to ITSO Certified Smartcards (which shall have the meaning given in paragraph 5.3 of Appendix 13 (New Cross Country Specific

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Provisions)), this obligation shall only apply with effect from the date upon which ITSO Certified Smartcards become valid for travel on the Passenger Services);

- 4.2 by no later than ⁶⁹, there will be a ⁷⁰ on each service between Manchester and Reading and between Newcastle upon Tyne and Bristol which, in accordance with the then current Forecast Passenger Demand, is forecast to carry more than 200 passengers at any stage during its journey;
- 4.3 on or before 31 March 2015, the Franchisee will create (and, subject to paragraph 2.3 of Part 2 of this Appendix, use all reasonable endeavours to fill) at least 50 additional full time ⁷¹ posts above the base level assessment of ⁷² in accordance with the following phasing programme:
- (a) 12 additional ⁷³ posts by 31 March 2011;
 - (b) a further 19 additional ⁷⁴ posts by 31 March 2013; and
 - (c) a further 19 additional ⁷⁵ posts by 31 March 2015;
- 4.4 on or before 30 June 2009, an at seat catering service is provided:
- (a) between the hours of 0600 and 2000 on all services between Manchester and Bristol, Manchester and Bournemouth,

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Edinburgh and Plymouth and Newcastle and Reading that are operating between such times (regardless of whether those services started before 0600 or terminate after 2000), with the exception of the services between Plymouth and Penzance and between Edinburgh and Dundee; and

- (b) on at least 40 trains per day (Monday to Saturday) and at least 30 trains per day (Sunday) on the Nottingham – Cardiff and Birmingham- Stansted services for the majority of the journey (by mileage) of each such service;

4.5 ^{iii iv v} on or before ⁷⁶, hot, plated, food is available for all first class passengers on Weekdays between the hours of 0700 and 2000 on all services between Manchester and Bristol, Manchester and Bournemouth, Edinburgh and Plymouth and Newcastle and Reading that are operating between such times (regardless of whether those services started before 0700 or terminate after 2000); and

4.6 on or before ⁷⁷ complimentary wi-fi access is available for all first class passengers.

5. **Staff Development**

5.1 The Franchisee shall:

- (a) ⁷⁸***provide training (including equality and diversity training) to at least NVQ Level 2 in either Customer Services or Rail Services to all staff whose job ordinarily involves dealing with customers for 3 days per week or more, by no later than the third anniversary of the Start Date or if later the first anniversary of the relevant individual's recruitment;***

- (b) create (and, subject to paragraph 2.3 of Part 2 of this Appendix, use all reasonable endeavours to fill) 10 new full time and 20 new part time Revenue Protection Inspector ("RPI") posts by no later than the first anniversary of the Start Date;

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⁷⁸ Date of change 7 January 2010

- (c))⁷⁹ *provide training for all Revenue Protection Inspectors within 6 months of their appointment, which will consist of:*
- *4 days legal based training including the successful presentation of evidence and*
 - *1 day advanced tactical conflict management training;*
- (d) conduct a survey of all employees every two years, and of a sample of all employees every intervening year;
- (e) annually invest at least £1,400,000 in training and development (including the training referred to in paragraphs (a) and (c) above);
- (f) ⁸⁰
- (g) consult with staff regarding the development and introduction of new permanent uniforms on or before the first anniversary of the Start Date and implement a new uniform by ⁸¹; and
- (h) (subject to the approval of the relevant Facility Owner, which approval the Franchisee will use all reasonable endeavours to obtain) by the first anniversary of the Start Date locate a resident engineer at the Central Rivers depot.

6. Interchange

- 6.1 On or before the Passenger Change Date in or around December 2008, the Franchisee shall:
- (a) implement measures to offer passengers whose journey involves a change of train an alternative to doing so at Birmingham New Street if practicable including through the use of WebTIS and on-board staff and shall consult with Passenger Focus in relation to the same; and

⁷⁹ Date of change 27/01/2010

⁸⁰ 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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- (b) provide customer facing staff to support the implementation of SLC2 for ⁸²(which may be provided at any time between 1 September 2008 and 30 June 2009).
- 6.2 On or before 30 June 2009, the Franchisee shall procure the expenditure of at least £⁸³ in the provision of real time or electronic customer information equipment at stations.
- 6.3 The Franchisee shall maintain the customer assistance staff establishment at Birmingham New Street at the levels that apply on the Start Date (unless otherwise agreed by the Secretary of State, such agreement not to be unreasonably withheld or delayed).
- 7. **Security**
- 7.1 On or before the second anniversary of the Start Date, the Franchisee shall:
 - (a) work with the relevant Facility Owners to procure "Secure Station Scheme" accreditation for stations covering 80% of the Franchise's customer footfall, including for Nottingham, Cheltenham Spa, Coventry, Cambridge, Tamworth, Leamington Spa, Burton upon Trent, Banbury and Bristol Parkway stations; and

New text

(b) ⁸⁴***take all of the following actions:***

- i. issue emergency cards to all staff – including the security HOT protocol;***
- ii. submit an application to RSSB for a research programme in the area of rolling stock security;***
- iii. update and re-issue extracts from the Train Operator Security Plan to staff;***
- iv. hold three 'focus days' relating to on board security;***
- v. incorporate Rolling Stock Security matters in the safety brief for all operational employees and managers; and***

⁸² 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.

⁸³ 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.

⁸⁴ Date of Change 06/08/10

vi. carry out a specific on-board security audit programme

- 7.2 The Franchisee will provide additional ⁸⁵ security staff for ⁸⁶ additional staff days per annum.

8. Environment

- 8.1 On or before the first anniversary of the Start Date, the Franchisee shall:
- (a) ensure that all of its drivers receive training to minimise fuel usage and reduce engine exhaust emissions;
 - (b) implement an environmental awareness programme encouraging all employees to take action to reduce the environmental impact of the Franchise;
 - (c) undertake programmes to reduce the amount of on-board waste produced and increase recycling of on-board waste; and
 - (d) co-operate with, and participate in, group and rail industry initiatives regarding research and development options for use of less-environmentally damaging fuels by its rolling stock.
- 8.2 The Franchisee will achieve ISO 14001 accreditation by 31 December 2009.

9. Development of the Stansted Airport Service

The Franchisee shall:

- 9.1 (subject to the approval of the relevant Facility Owner, which approval the Franchisee will use all reasonable endeavours to obtain) on or before 31 December 2008 procure the provision of covered and heated passenger waiting accommodation at Stansted Airport station; and

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⁸⁵ 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.

⁸⁶ Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

- 9.2 spend not less than £25,000 by 31 January 2009 upon conducting marketing and promotion activities to increase the use of the Passenger Services to and from Stansted Airport.

10. **Stakeholder and Customer Consultation**

- 10.1 On or before 31 December 2008, the Franchisee shall establish an external relations team to manage relationships with stakeholders, including the appointment (including by way of temporary agency appointment) of a head of external relations to manage the Franchisee's relationship with key national stakeholders and two external relations managers to manage the Franchisee's relationship with line of route stakeholders.
- 10.2 On or before 1 February 2008, the Franchisee shall complete a full consultation for the December 2008 timetable changes.
- 10.3 The Franchisee shall, in consultation with the Secretary of State, create and undertake a programme of stakeholder management activities in each Franchisee Year including (at least from April 2008):
- (a) 6 regional road shows;
 - (b) 6 media forums;
 - (c) either a Train of Thought (namely a stakeholder conference to be hosted on a train) or Rail & the Environment Conference;
 - (d) 1 briefing to relevant Members of Parliament (the first such briefing to be undertaken by 1 June 2008); and
 - (e) e-newsletters.
- 10.4 The Franchisee shall procure the introduction of a text service, on or before the Passenger Change Date occurring in or around December 2007, so that customers can text by way of SMS message details of any complaints to "graffiti wall" and that details of these complaints and the Franchisee's responses are published every quarter.

11. ***[NOT USED]***⁸⁷

12. **Fleet and Maintenance**

- 12.1 The Franchisee shall, by ⁸⁸, procure that:

⁸⁷ DATE OF DELETION 02/02/2010

- (a) capital expenditure of not less than £⁸⁹ is incurred upon the provision of additional spares for use solely on the Franchisee's class 220 and class 221 rolling stock vehicles, provided that, if and to the extent that less than £⁹⁰ is incurred for this purpose by ⁹¹ (the extent by which such expenditure is less than £⁹² being the "Shortfall"), the Franchisee shall consult with the Secretary of State in order to agree how such Shortfall shall be spent and failing such agreement the Secretary of State may reasonably determine how the Franchisee will spend such Shortfall; and
- (b) new, Franchise specific, updated paper and web-based maintenance and overhaul manuals for the Franchisee's class 220 and class 221 rolling stock are produced.

12.2 The Franchisee shall use all reasonable endeavours to procure that by ⁹³ Crossfleet Limited provides it with a detailed breakdown (including type, volume and cost) of any spares procured by Crossfleet Limited in fulfilment of the Franchisee's obligation under paragraph 12.1 and shall upon request provide such information to the Secretary of State as well as any additional information in this respect in the possession of or under the control of the Franchisee.

⁸⁸ 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.

⁸⁹ 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.

⁹⁰ 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.

⁹¹ 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.

⁹² 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.

⁹³ 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.

13.⁹⁴ **Advertising and Marketing the extended Edinburgh to Glasgow services**

- 13.1 The Franchisee shall procure that in each of the financial years as outlined in the table below to spend not less than the amounts stated on advertising and marketing relating to the amended service pattern reflected in the revised SLC coming into effect on 22 May 2011. Any under spend may be transferred to a subsequent year by agreement with Secretary of State. To the extent that any monies have been under spent in the final year of operation of the franchise this shall be refunded to the Secretary of State.

£'000s	2010/11	2011/12	2012/13	2013/14	2014/15	2015/16
	46	200	196	199	201	203

14.⁹⁵ **Ticketless travel reporting for the additional Edinburgh to Glasgow Services**

- 14.1 Schedule 1.3 requires the Franchisee to produce an updated plan regarding reducing ticketless travel and fare evasion and update the Secretary of State every three months. This report shall include detail of revenue protection activity that has taken place on the Edinburgh to Glasgow route.

⁹⁴ New text added 23/12/2011

⁹⁵ New text added 23/12/2011

Part 2 to Appendix 11

Miscellaneous Provisions

1. Application

This Appendix sets out further terms which apply to the Committed Obligations set out in Part 1 (*List of Committed Obligations*) to this Appendix 11 and the references to Committed Obligations in each Part of this Appendix 11 are only to the Committed Obligations in Part 1.

2. Continuation of Availability

2.1 Save as expressly provided in this Appendix 11, the Franchisee shall maintain facilities established in accordance with its Committed Obligations throughout the remainder of the Franchise Term.

2.2 The Franchisee shall be treated as maintaining Committed Obligations notwithstanding temporary non-availability due to accidental damage or vandalism or maintenance, repair or replacement activities, or temporary staff absence, subject in each case to the Franchisee taking all reasonable steps to keep any such period of temporary non-availability to a minimum.

2.3 Where Part 1 to this Appendix 11 includes a commitment regarding staffing or particular appointments it plans to make:

(a) the obligation of the Franchisee applies, but shall not be regarded as being contravened by:

(i) temporary absences (for example for sickness or holiday); or

(ii) temporary non-fulfilment of a relevant post whilst the Franchisee is recruiting for that post, subject to the Franchisee using all reasonable endeavours to keep the duration between appointments as short as reasonably practicable; and

(b) the Franchisee's rights and obligations in relation to the numbers or deployment of its other staff remain unaffected.

3. Expenditure Commitments

Annual Expenditure

- 3.1 Where Part 1 (*List of Committed Obligations*) to this Appendix 11 provides for the expenditure of an annual amount (or an amount over some other period) by the Franchisee, that amount:

- (a) is assessed net of Value Added Tax; and
- (b) is the amount required to be expended by the Franchisee itself or procured by the Franchisee to be expended.

Expenditure Commitments in real amounts

- 3.2 All expenditure commitments set out in Part 1 to this Appendix 11, to the extent they have not already been incurred by the Franchisee, shall be indexed by the Retail Prices Index (in the same way as variable costs are indexed in Schedule 8.2 (*Annual Franchise Payments*) to the Terms).

Expenditure by Network Rail

- 3.3 All amounts which the Franchisee has committed (whether unconditionally or otherwise) pursuant to Part 1 to this Appendix 11 to expend in connection with improvements to track or Stations shall be in addition to any expenditure made by Network Rail as part of its infrastructure improvements or maintenance programme to the extent such expenditure is not directly funded or reimbursed by the Franchisee.

4. Liaison and Co-Operation

Where the Franchisee is committed to liaison and co-operation under Part 1 (*List of Committed Obligations*) to this Appendix 11, it shall participate actively in the relevant measures including through the application of management time and internal resources, correspondence and attendance at meetings, in each case as the Franchisee reasonably considers in all the circumstances to be an appropriate use of its resources and effective to help achieve the relevant objective.

5. Nature of Commitment

- 5.1 Any commitment in terms of Part 1 (*List of Committed Obligations*) to this Appendix 11 shall be in addition to any obligation of the Franchisee elsewhere in this Agreement and nothing in this Appendix 11 shall limit or restrict an obligation imposed on the Franchisee elsewhere in this Agreement.
- 5.2 Where in Part 1 to this Appendix 11, references are made to particular manufacturers or suppliers of equipment or services, the Franchisee may fulfil its relevant commitment by using reasonable equivalents.

- 5.3 Each commitment under this Appendix 11 shall come to an end on expiry of the Franchise Term for whatever reason, save in respect of any accrued payments owed pursuant to Part 3 (*Late/Non-Completion of Committed Obligations*) to this Appendix 11 but not yet paid.

6. **Review of Compliance**

- 6.1 Progress with Committed Obligations is an agenda item for Franchise Performance Meetings and the Franchisee shall ensure that at such meetings, the Secretary of State is given such progress reports as he may reasonably request.

- 6.2 In addition to its obligation under paragraph 6.1, the Franchisee shall from time to time promptly provide such evidence of its compliance with any Committed Obligation as the Secretary of State may reasonably request.

7. **ROSCO and SFO Consents**

- 7.1 Subject to paragraph 7.2, if the Franchisee is unable to deliver in full any of the Committed Obligations referred to in paragraphs 2 or 6.2 of Part 1 of this Appendix 11 as a direct result of:

- (a) any person from whom the Franchisee leases rolling stock withholding or delaying its consent to the undertaking of any of the matters referred to in paragraph 2 of Part 1 of this Appendix 11; or
- (b) a station facility owner withholding or delaying its consent to the proposed installation of customer information equipment referred to in paragraph 6.2 of Part 1 of this Appendix 11,

(together the “**Third Party Events**”) then, provided that the Franchisee has used all reasonable endeavours to obtain the relevant consents referred to in paragraphs 7.1(a) and/or (b) (as applicable), the Franchisee shall not be liable for any failure to perform the relevant Committed Obligations and no payment shall be due pursuant to paragraph 2 of Part 3 of this Appendix 11 in respect of such failure.

- 7.2 Paragraph 7.1 shall not apply where the relevant Third Party Event occurs as a result of:

- (a) any act or omission of the Franchisee or its agents or subcontractors;
- (b) the Franchisee’s own contravention of, or default under the Franchise Agreement, Rolling Stock Related Contract or Access

Agreement or any other agreement contemplated by the Franchise Agreement.

- 7.3 As soon as reasonably practicable after the Franchisee becomes aware that a Third Party Event is likely to jeopardise the ability of the Franchisee to deliver in full any of the Committed Obligations referred to in paragraphs 2 or 6.2 of Part 1 of this Appendix 11 the Franchisee shall notify the Secretary of State accordingly. The Franchisee and the Secretary of State shall use all reasonable endeavours to agree how the Franchisee should spend any amounts which the Franchisee would otherwise have been obliged to spend upon the relevant Committed Obligations (together with appropriate amendments to Parts 1 and 3 of this Appendix 11 in respect of the same), provided that if the Franchisee and the Secretary of State have not reached agreement within 2 months of the date of the Franchisee's notification to the Secretary of State, the Secretary of State may reasonably determine the same.

Part 3 to Appendix 11

Late/Non Completion of Committed Obligations

1. Late Completion or Non-Delivery of Committed Obligations

If the Franchisee fails to deliver in full a Committed Obligation in accordance with and by the timeframe specified for its delivery in Part 1 (*List of Committed Obligations*) to this Appendix 11, such late, partial or non-delivery shall constitute a contravention of this Agreement.

2. Committed Obligation Payment Adjustment

2.1 In addition to being a contravention of this Agreement, if any of the Committed Obligations referred to in the Table is not delivered in full by the date specified for that Committed Obligation in column 3 of the Table, the Franchisee shall pay to the Secretary of State:

(a) in respect of each Reporting Period or part thereof for which that Committed Obligation remains undelivered in full from such date; and

(b) until the Committed Obligation is delivered in full,

a Committed Obligation Payment Adjustment, being the amount set out in column 4 of the Table, as adjusted in accordance with column 5 of the Table, provided that if in respect of any Reporting Period a Committed Obligation Payment Adjustment is due under any of rows 1 to 8 of the Table and also under row 9 of the Table, the Committed Obligation Payment Adjustment due in respect of such Reporting Period shall be the greater of the aggregate of the Committed Obligation Payment Adjustments due under rows 1 to 8 of the Table and the Committed Obligation Payment Adjustment due under row 9 of the Table in each case in respect of such Reporting Period.

2.2 Column 5 of the Table shall specify how, if at all, any Committed Obligation Payment Adjustment shall be adjusted in the event of partial delivery of the relevant Committed Obligation by the date specified for that Committed Obligation in column 3 of the Table.

Pro-rating of Committed Obligation Payment Adjustment where partial completion of rolling stock works

2.3 Where:

(a) in relation to any Committed Obligation specified in column 5 of the Table as to be subject to the terms of this paragraph 2.3 that

is expressed in terms of a requirement to carry out activities in respect of a specified class of rolling stock vehicles; and

- (b) the Franchisee has carried out some or all of the relevant activities in respect of some or all of the total number of such rolling stock vehicles comprised in the Train Fleet by the relevant delivery date (but has not carried out all of the relevant activities in respect of all of such rolling stock vehicles),

then the relevant Committed Obligation Payment Adjustment shall be reduced pro rata by reference to the number of such rolling stock vehicles in respect of which all of the relevant activities have been carried out and then again in respect of the remaining rolling stock vehicles by reference to the extent to which the relevant activities have been carried out in relation to such remaining rolling stock vehicles.

Adjustment to Committed Obligation Payment Adjustment where partial spend

2.4 Where:

- (a) in relation to any Committed Obligation referred to in column 5 of the Table to be subject to the terms of this paragraph 2.4 that is expressed in terms of a requirement to spend a specified sum in fulfilling its stated objective; and
- (b) the Franchisee has spent less than the sum specified in that Committed Obligation in fulfilling its stated objectives by the relevant delivery date,

then the relevant Committed Obligation Payment Adjustment shall be reduced pro rata by reference to the amount actually spent by that delivery date.

2.5

- (a) Where in relation to any Committed Obligation that is expressed in terms of a requirement to spend a specified sum in fulfilling its stated objective, the Franchisee is able to achieve that stated objective within the timeframe specified for its delivery without investing the full amount referred to in that Committed Obligation, whether because of cost savings or securing additional investment from third parties, the Franchisee may apply to the Secretary of State for the consent referred to in paragraph 2.5(b).

- (b) The Secretary of State's consent for the purposes of paragraph 2.5(a) is his consent for the Franchisee to invest any unspent amount towards the fulfilment of such other commitments as the Franchisee proposes at that time. That consent may not be unreasonably withheld.
- (c) If the Secretary of State consents to an application pursuant to paragraph 2.5(a) in respect of any Committed Obligation, then:
 - (i) Part 1 to Appendix 11 and this Part 3 shall be amended to reflect the terms of any new commitments; and
 - (ii) no Committed Obligation Payment Adjustment shall be payable in respect of the unspent amount that relates to that Committed Obligation.

2.6 The Committed Obligation Payment Adjustment shall be payable in accordance with Schedule 8.1 (*Franchise Payments*) of the Terms.

Table : **Committed Obligations where a Committed Obligation Payment Adjustment applies**⁹⁶

3. **Waiver of Payments Under this Part 3**

- 3.1 The Secretary of State may at his reasonable discretion decide to waive his rights to receive any payments payable in respect of a late, partial or non-delivery of any Committed Obligations.
- 3.2 In deciding whether to waive such rights the Secretary of State may, but shall not be obliged to, take into consideration the circumstances under which the late, partial or non-delivery arose.

⁹⁶ 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 12

2012 Olympic Games and Paralympic Games (Clause 7.1)

1. Acknowledgement

The parties acknowledge that:

- 1.1 London will host the Games in 2012;
- 1.2 as a key provider of public transport services into and out of areas serving as venues for the Games, the Franchisee will have an important role to play during the Franchise Term in helping to make the staging of the Games successful; and
- 1.3 the Olympic Delivery Authority must prepare and keep under review the Olympic Transport Plan for addressing transport matters relating to the Games.

2. Franchisee Co-Operation

The Franchisee:

- 2.1 shall at its own cost, co-operate and consult as reasonably required by and with the Olympic Delivery Authority, LOCOG, 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; and
- 2.2 shall not for the purposes of publicity, advertising, marketing or any other reason, without the prior written consent of LOCOG, represent that any product or service provided by the Franchisee under this Agreement:

- (a) has been endorsed or approved by LOCOG, the Olympic Delivery Authority or any other Olympic body; or
- (b) is in any way associated with those organisations or the Games, including by publishing or issuing any statement (factual or otherwise) about the Franchisee's products or services under this Agreement.

3. **Entry into the Olympic Services Delivery Plan**

3.1 The Secretary of State may require the Franchisee to enter into a plan with him:

- (a) to facilitate, in particular, the implementation of the railway aspects of the Olympic Transport Plan;
- (b) to the extent not already provided for under paragraph 3.1(a), to:
 - (i) implement any or all of the matters referred to in paragraph 2; and
 - (ii) any other matter relevant to the planning or staging of the Games,

(the ***Olympic Services Delivery Plan***).

3.2 The Secretary of State shall give the Franchisee reasonable notice of the terms of the Olympic Services Delivery Plan he wishes to enter into and the date on which he wishes to enter into the Olympic Services Delivery Plan.

3.3 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.

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

3.5 On the date notified to the Franchisee by the Secretary of State pursuant to paragraph 3.2, 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 (j) of the definition of ***Change***, the Franchisee's implementation of the Olympic Services Delivery Plan shall

be a Change, insofar as such implementation results in the imposition of costs on and receipt of revenue by the Franchisee.

5. **Implementation of the Olympic Services Delivery Plan**

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

APPENDIX 13

New Cross Country Specific Provisions (Clause 7.2)

1. Trading Arrangements

1.1 Mandatory Train Crew Trading

(a) The Franchisee shall (unless otherwise agreed by the respective parties to the relevant agreement) on or before the Start Date seek to agree and enter into:

(i) a train crew hire agreement with the East Midlands Franchisee substantially in the form of the document in agreed terms marked TCHA ("the Train Crew Hire Agreement") which provides for the Franchisee to trade at least the numbers of train crew for the diagrams and days and at the rates prescribed in Annex A to this Appendix 13 with the East Midlands Franchisee ("East Midlands Train Crew Trading Agreement"); and

(ii) a train crew hire agreement with the West Midlands Franchisee substantially in the form of the Train Crew Hire Agreement which provides for the Franchisee to trade at least the numbers of train crew for the diagrams and days and at the rates prescribed in Annex A to this Appendix 13 with the West Midlands Franchisee ("West Midlands Train Crew Trading Agreement"),

such agreements to commence on the Start Date and continue until the Passenger Change Date in or around December 2008 or such other date as the respective parties to such agreements may agree.

(b) If the Franchisee has not agreed all of the terms of either or both of the East Midlands Train Crew Trading Agreement or the West Midlands Train Crew Trading Agreement on or before 11 September 2007, the Secretary of State may reasonably determine (by reference to the principles set out in paragraphs 1.1(a)(i) and (ii) above) any terms that have not then been agreed (or at his option may appoint an industry expert to make such determination).

(c) The Franchisee shall then promptly execute the East Midlands Train Crew Trading Agreement and the West Midlands Train Crew Trading Agreement as agreed or determined.

1.2 Tyseley Depot

- (a) The Franchisee agrees, subject to the approval of the ORR, to enter into a depot access agreement with the West Midlands Franchisee (or such other person as shall be the depot facility owner as at the Start Date) in relation to the depot at Tyseley ("the Tyseley Depot Access Agreement").
- (b) The Tyseley Depot Access Agreement shall, subject to the approval of the ORR (which the Franchisee shall use all reasonable endeavours to obtain), commence on the Start Date and continue until the Passenger Change Date in or around December 2008 or such later date as the parties to it may agree. It shall, subject to the approval of the ORR, provide for the Franchisee to purchase at least the following volumes of Light Maintenance Services at the rates prescribed in the Maintrain Agreement:

	Diagram sets	Total sets					
			Overnight servicing	A exam	B exam	Underframe cleaning	Tyre turning
New Cross Country			(sets)	(sets)	(sets)	(sets)	(sets)
November 07 to December 08 (14 4-weekly periods)							
170 2-car	11	13	1512	198	44	44	
170 3-car	14	16	2016	242	53	53	
	25	29	3528	440	97	97	As required
Overnight servicing is defined for diagram sets, other activities for total sets							
Overnight servicing includes fuel, wash, clean and reactive repairs							

- (c) If the Franchisee has not agreed all of the other terms of the draft Tyseley Depot Access Agreement to be submitted to the ORR for approval on or before 11 September 2007, the Secretary of State may reasonably determine, for the purposes of such submission, any terms that have not then been agreed (or at his option may appoint an industry expert to make such determination). The Franchisee shall then promptly, upon approval by the ORR of the agreed or determined terms (which the Franchisee shall use all reasonable endeavours to obtain), enter into the form of Tyseley Depot Access Agreement approved by the ORR.

- (d) If the form of the Tyseley Depot Access Agreement approved by the ORR specifies rates which are different from the rates prescribed in the Maintrain Agreement in consequence of a decision of the ORR, there shall be a one-off adjustment to the Franchise Payment for the second Reporting Period starting after the date of the ORR's approval ("Specified Period") of an amount equal to the difference between:
- (i) the amount which the Secretary of State reasonably determines (on the basis of the form of the Tyseley Depot Access Agreement approved by the ORR) as the aggregate amount which will be payable by the Franchisee under the Tyseley Depot Access Agreement in respect of the receipt by it of the Light Maintenance Services during the whole of the period from the Start Date until the Passenger Change Date in or around December 2008 (the "Relevant Period"); and
 - (ii) the amount which the Secretary of State reasonably determines as the aggregate amount which would have been payable by the Franchisee under the Tyseley Depot Access Agreement in respect of the receipt by it of the Light Maintenance Services during the whole of the Relevant Period had the form of the Tyseley Depot Access Agreement approved by the ORR not contained rates different to the rates prescribed in the Maintrain Agreement,

in each case on the assumption that the volume of Light Maintenance Services received by the Franchisee under the Tyseley Depot Access Agreement during the Relevant Period is as set out in the table above.

For the avoidance of doubt, any such adjustment shall be by way of a reduction of the Franchise Payment in the Specified Period where the amount referred to in paragraph 1.2(d)(ii) exceeds the amount referred to in paragraph 1.2(d)(i) and an increase in the Franchise Payment in the Specified Period where the amount referred to in paragraph 1.2(d)(i) exceeds the amount referred to in paragraph 1.2(d)(ii).

- (e) For the purposes of this paragraph 1.2, "Maintrain Agreement" means the agreement between Maintrain Limited (whose registered number is 2918124 and whose registered office is at 75 Davies Street, London W1K 5HT) and Central Trains Limited

(whose registered number is 03007938 and whose registered office is at 75 Davies Street, London W1K 5HT) dated 23 July 1999 and relating to the provision of Light Maintenance Services at the depot at Tyseley.

2. **Rolling Stock Costs**

2.1 The Franchisee shall co-operate with the reasonable requirements of the Secretary of State in implementing any proposals he may have to:

- (a) reduce, taking into account any change in the allocation of risk between the parties, the aggregate net costs relating to the leasing and/or maintenance arrangements in respect of relevant rolling stock vehicles under the Rolling Stock Related Contracts without any corresponding reduction in the performance and/or other output related requirements, and/or the specification or quantum of associated services that are available for those rolling stock vehicles under any Rolling Stock Related Contract; and
- (b) enable the Secretary of State to realise any consequent savings that arise in accordance with paragraph 2.3.

2.2 Without limiting paragraph 2.1, the Franchisee shall:

- (a) upon reasonable notice, attend meetings with the Secretary of State and any or all of the rolling stock leasing companies to discuss those proposals;
- (b) provide the Franchisee's opinion on those proposals and such opinion and any supporting information provided by the Franchisee shall be subject to paragraph 1 of Schedule 17 (Confidentiality) of the Terms. The Secretary of State acknowledges and agrees that:
 - (i) he shall not be entitled to disclose any information provided by the Franchisee pursuant to this paragraph 2.2(b) under paragraph 3.1 or 3.2 of Schedule 17 (*Confidentiality*) of the Terms; and
 - (ii) disclosure of any information provided by the Franchisee pursuant to this paragraph 2.2(b) pursuant to a request made in accordance of the Freedom of Information Act 2000 may prejudice the commercial interests of the Franchisee and that he shall have due regard to any representations made by the Franchisee in this regard.

- (c) review and comment on implementation timetables and programmes for any reductions in costs relating to the operation of rolling stock vehicles;
- (d) agree, and where required use all reasonable endeavours to achieve, any amendments to any Rolling Stock Related Contract which the Secretary of State considers to be necessary or desirable, and in such form as he may specify, in order to facilitate the implementation of those proposals and use all reasonable endeavours to maximise the reductions referred to in paragraph 2.1(a);
- (e) where and to the extent that the Secretary of State considers it requisite for the purpose of implementing or facilitating the implementation of those proposals, to exercise any or all of the Franchisee's rights under any Rolling Stock Related Contract or any related rights which the Franchisee may have, in each case as the Secretary of State may specify. The Franchisee's obligations under this paragraph 2.2 include, where the Secretary of State so requires, the pursuit of any disputed issue by litigation or other form of dispute resolution provided for by the relevant Rolling Stock Related Contract. The Franchisee shall comply with the requirements of the Secretary of State in respect of the prosecution and resolution or determination of any such disputed issue. The Secretary of State shall indemnify the Franchisee against all direct losses, costs and expenses (including, without limitation, reasonable legal fees) relating to or arising out of the Franchisee's performance of its obligations under this paragraph 2.2(e). The Franchisee shall, to the extent reasonably practicable and without prejudice to the foregoing provisions of this paragraph 2.2(e), give prior notice of the nature and likely extent of such losses, costs and expense and shall be under an obligation to mitigate such direct losses, costs and expenses to the extent reasonably practicable; and
- (f) make available to the Secretary of State on an open book basis as and when reasonably requested, full information and explanation as to the extent of the costs that may be saved by the implementation of any such proposals.

2.3 The parties hereby agree that to the extent that the Franchisee is required to take any action under paragraph 2.1 or 2.2 and/or that the aggregate net costs relating to rolling stock vehicle leasing and/or maintenance arrangements payable by the Franchisee under any Rolling

Stock Related Contract are reduced, taking into account any change in the allocation of risk between the parties, as a consequence of:

- (a) the implementation of any or all of the Secretary of State's proposals referred to in paragraph 2.1 including:
 - (i) the entering into of any agreement between the counterparty to any Rolling Stock Related Contract and the Secretary of State or any other government instrumentality under which it has been agreed to alter amounts payable under the relevant contract;
 - (ii) any revision (with the agreement of the ORR, where applicable) of any existing code of practice which the counterparty has in place, or the creation of a new code of practice, where the effect of the revision or new code is to change, directly or indirectly, the basis upon which rentals or other payments are fixed, determined, set or agreed under rolling stock leases or other Rolling Stock Related Contracts whether entered into before or after the coming into effect of the revised or new code of practice; and/or
 - (iii) the giving by the counterparty of any undertaking to any competition authority whether voluntarily or as required by law in respect of its participation in the rolling stock leasing and/or maintenance market in Great Britain; and/or
- (b) the determination, finding, decision or requirements of any competition authority,

then a Change shall occur and that Change shall be a Qualifying Change.

2.4 For the purposes of paragraph 2.3:

- (a) the reference to a Rolling Stock Related Contract includes any such contract which is in place at the Start Date and also any further replacement or additional such contract to which the Franchisee is a party at any time during the Franchise Term;
- (b) the additional assumptions which the parties shall agree or the Secretary of State shall reasonably determine pursuant to paragraph 5.2 of Schedule 9.3 (*Runs of the Financial Model*) of the Terms shall include (where relevant) those necessary in

order to ascertain the extent of the reduction in costs payable under any Rolling Stock Related Contract:

- (i) to which the Franchisee is not a party as at the date of this Franchise Agreement; and
 - (ii) in respect of which no relevant assumption has been included in the Record of Assumptions;
- (c) the reference to aggregate net costs payable by the Franchisee under the Rolling Stock Related Contracts shall be deemed to include any introduction of or increase in amounts paid by any party to the Franchisee the effect of which, taken together with the costs payable by the Franchisee under the relevant contracts and any change in the allocation of risk between the parties, is to produce a net reduction in costs incurred by the Franchisee in relation to those Rolling Stock Related Contracts; and
- (d) in determining any Revised Inputs the Secretary of State shall have due regard to the rolling stock assumptions and proposals made by the Franchisee which are included in the Financial Model, the Operational Model and/or the Record of Assumptions, (which shall constitute the basis on which any reduction in aggregate net costs shall be assessed) and to any other effects of the proposals on the other costs and risks of the Franchisee in connection with the leasing, operation and maintenance of the relevant rolling stock vehicles, including (without limitation) external costs.

3. **Seat Based Capacity Regime^{vi}**

3.1 Without limiting paragraphs 6.3 to 6.6 of Schedule 1.1 (*Service Development*), the Franchisee shall ensure that:

- (a) in respect of the period commencing on the Passenger Change Date occurring in or around December 2008, each Train Plan shall, in respect of the Passenger Services described in each row of the tables at paragraph 3.2, provide for the minimum number of seats specified in the fourth column of each such row to be provided in aggregate by such Passenger Services; and
- (b) in respect of the period commencing on the Passenger Change Date occurring in or around June 2009, each Train Plan shall, in respect of the Passenger Services described in each row of the tables at paragraph 3.2, provide for the minimum number of

seats specified in the fifth column of each such row to be provided in aggregate by such Passenger Services,

provided that the Franchisee shall not be liable for any failure to comply with this paragraph 3.1 in respect of a Saturday or a Sunday to the extent that the Franchisee's failure to comply with this paragraph 3.1 arises as a result of the exercise by Network Rail of its rights under the Track Access Agreement and provided further that the Franchisee has complied with its obligations under Schedule 1.2 (Operating Obligations) in relation thereto.

(c)⁹⁷ and in respect of the period commencing on the Passenger Change Date occurring in or around December 2009 and ending on at the end of the franchise term, each Train Plan shall, in respect of the Passenger Services described within the timebands at paragraph 3.2, provide for the minimum number of seats specified.

3.2^{98 99} Table A - Monday – Friday (including Bank Holidays (other than 25 and 26 December))

Departure Location	Departure Timeband	Measured Journey	Monday- Friday Inclusive Total as delivered in May 2010 Timetable
Birmingham New Street	15.30 – 18.45	Birmingham New Street – Stoke on Trent	8275
Birmingham New Street	15.00 – 19.15	Birmingham New Street – Oxford	10440
Birmingham New Street	15.03 – 19.03	Birmingham New Street – Sheffield	12080
Birmingham New Street	15.12 – 19.12	Birmingham New Street – Bristol Temple Meads	12460
Bristol Temple Meads	15.00– 18.00	Bristol Temple Meads – Birmingham New Street	5650
Bristol	15.00–	Bristol	4800

⁹⁷ Date of Change 20/10/2010

⁹⁸ Date of Change 20/10/2010

⁹⁹ Date of Change 23/12/2011

Temple Meads	19.00	Temple Meads – Taunton	
Manchester Piccadilly	15.00–18.45	Manchester Piccadilly – Stoke on Trent	3960
Leeds	15.00–18.40	Leeds – Darlington	4920
Leeds	15.00–19.30	Leeds – Derby	7800
Reading	15.00–18.40	Reading – Leamington Spa	7580
Reading	15.00–18.00	Reading – Southampton	2620
Monday- Friday Inclusive Specified Total Seats,			80585

Total seats each week, Monday to Friday inclusive: 80585

Table B - Winter Saturdays

<i>Departure Location</i>	<i>Departure Timeband</i>	<i>Measured Journey</i>	<i>Specified Seats - Dec 08</i>	<i>Specified Seats - Jun 09</i>	<i>Specified Seats – May 10</i>
<i>Birmingham New Street</i>	<i>13.30 – 21.45</i>	<i>Birmingham New Street – Stoke on Trent</i>	<i>3488</i>	<i>3728</i>	<i>3728</i>
<i>Birmingham New Street</i>	<i>13.30 – 21.45</i>	<i>Birmingham New Street - Oxford</i>	<i>3436</i>	<i>3654</i>	<i>3654</i>
<i>Birmingham New Street</i>	<i>13.30 – 21.45</i>	<i>Birmingham New Street – Sheffield</i>	<i>3926</i>	<i>4286</i>	<i>4286</i>
<i>Birmingham New Street</i>	<i>13.30 – 21.45</i>	<i>Birmingham New Street – Bristol Temple Meads</i>	<i>4174</i>	<i>4522</i>	<i>4522</i>
<i>Bristol Temple Meads</i>	<i>13.30 – 21.45</i>	<i>Bristol Temple Meads - Birmingham New Street</i>	<i>3490</i>	<i>3820</i>	<i>3820</i>
<i>Bristol Temple</i>	<i>13.30 – 21.45</i>	<i>Bristol Temple</i>	<i>2866</i>	<i>3152</i>	<i>3152</i>

<i>Departure Location</i>	<i>Departure Timeband</i>	<i>Measured Journey</i>	<i>Specified Seats - Dec 08</i>	<i>Specified Seats - Jun 09</i>	<i>Specified Seats – May 10</i>
<i>Meads</i>		<i>Meads – Taunton</i>			
<i>Manchester Piccadilly</i>	<i>13.30 – 21.45</i>	<i>Manchester Piccadilly – Stoke on Trent</i>	<i>3428</i>	<i>3638</i>	<i>3638</i>
<i>Leeds</i>	<i>13.30 – 21.45</i>	<i>Leeds – Darlington</i>	<i>2362</i>	<i>2608</i>	<i>2608</i>
<i>Leeds</i>	<i>13.30 – 21.45</i>	<i>Leeds – Derby</i>	<i>2524</i>	<i>2811</i>	<i>2811</i>
<i>Reading</i>	<i>13.30 – 21.45</i>	<i>Reading - Leamington Spa</i>	<i>3556</i>	<i>3806</i>	<i>3806</i>
<i>Reading</i>	<i>13.30 – 21.45</i>	<i>Reading – Southampton</i>	<i>2180</i>	<i>2302</i>	<i>2302</i>

Table C - Winter Sundays

<i>Departure Location</i>	<i>Departure Timeband</i>	<i>Measured Journey</i>	<i>Specified Seats - Dec 08</i>	<i>Specified Seats - Jun 09</i>	<i>Specified Seats – May 10</i>
<i>Birmingham New Street</i>	<i>13.30 – 21.45</i>	<i>Birmingham New Street – Stoke on Trent</i>	<i>3616</i>	<i>3868</i>	<i>3868</i>
<i>Birmingham New Street</i>	<i>13.30 – 21.45</i>	<i>Birmingham New Street - Oxford</i>	<i>3614</i>	<i>3846</i>	<i>3846</i>
<i>Birmingham New Street</i>	<i>13.30 – 21.45</i>	<i>Birmingham New Street – Sheffield</i>	<i>4323</i>	<i>4729</i>	<i>4729</i>
<i>Birmingham New Street</i>	<i>13.30 – 21.45</i>	<i>Birmingham New Street – Bristol Temple Meads</i>	<i>4083</i>	<i>4381</i>	<i>4381</i>
<i>Bristol Temple Meads</i>	<i>13.30 – 21.45</i>	<i>Bristol Temple Meads - Birmingham</i>	<i>3709</i>	<i>4099</i>	<i>4099</i>

<i>Departure Location</i>	<i>Departure Timeband</i>	<i>Measured Journey</i>	<i>Specified Seats - Dec 08</i>	<i>Specified Seats - Jun 09</i>	<i>Specified Seats - May 10</i>
		<i>m New Street</i>			
<i>Bristol Temple Meads</i>	<i>13.30 – 21.45</i>	<i>Bristol Temple Meads – Taunton</i>	<i>2519</i>	<i>2733</i>	<i>2733</i>
<i>Manchester Piccadilly</i>	<i>13.30 – 21.45</i>	<i>Manchester Piccadilly – Stoke on Trent</i>	<i>3060</i>	<i>3278</i>	<i>3278</i>
<i>Leeds</i>	<i>13.30 – 21.45</i>	<i>Leeds – Darlington</i>	<i>2114</i>	<i>2344</i>	<i>2344</i>
<i>Leeds</i>	<i>13.30 – 21.45</i>	<i>Leeds – Derby</i>	<i>2348</i>	<i>2426</i>	<i>2426</i>
<i>Reading</i>	<i>13.30 – 21.45</i>	<i>Reading - Leamington Spa</i>	<i>3556</i>	<i>3806</i>	<i>3806</i>
<i>Reading</i>	<i>13.30 – 21.45</i>	<i>Reading – Southampton</i>	<i>2170</i>	<i>2292</i>	<i>2292</i>

Table D - Summer Saturdays

<i>Departure Location</i>	<i>Departure Timeband</i>	<i>Measured Journey</i>	<i>Specified Seats - Dec 08</i>	<i>Specified Seats - Jun 09</i>	<i>Specified Seats - May 10</i>
<i>Birmingham New Street</i>	<i>13.30 – 21.45</i>	<i>Birmingham New Street – Stoke on Trent</i>	<i>3895</i>	<i>4209</i>	<i>4209</i>
<i>Birmingham New Street</i>	<i>13.30 – 21.45</i>	<i>Birmingham New Street - Oxford</i>	<i>3436</i>	<i>3682</i>	<i>3682</i>
<i>Birmingham New Street</i>	<i>13.30 – 21.45</i>	<i>Birmingham New Street – Sheffield</i>	<i>4744</i>	<i>5126</i>	<i>5126</i>
<i>Birmingham New Street</i>	<i>13.30 – 21.45</i>	<i>Birmingham New Street – Bristol Temple</i>	<i>3887</i>	<i>4193</i>	<i>4193</i>

<i>Departure Location</i>	<i>Departure Timeband</i>	<i>Measured Journey</i>	<i>Specified Seats - Dec 08</i>	<i>Specified Seats - Jun 09</i>	<i>Specified Seats - May 10</i>
		<i>Meads</i>			
<i>Bristol Temple Meads</i>	<i>13.30 – 21.45</i>	<i>Bristol Temple Meads - Birmingham New Street</i>	<i>3957</i>	<i>4363</i>	<i>4363</i>
<i>Bristol Temple Meads</i>	<i>13.30 – 21.45</i>	<i>Bristol Temple Meads – Taunton</i>	<i>3046</i>	<i>3338</i>	<i>3338</i>
<i>Manchester Piccadilly</i>	<i>13.30 – 21.45</i>	<i>Manchester Piccadilly – Stoke on Trent</i>	<i>3180</i>	<i>3402</i>	<i>3402</i>
<i>Leeds</i>	<i>13.30 – 21.45</i>	<i>Leeds – Darlington</i>	<i>2248</i>	<i>2408</i>	<i>2408</i>
<i>Leeds</i>	<i>13.30 – 21.45</i>	<i>Leeds – Derby</i>	<i>1924</i>	<i>2050</i>	<i>2050</i>
<i>Reading</i>	<i>13.30 – 21.45</i>	<i>Reading - Leamington Spa</i>	<i>3436</i>	<i>3682</i>	<i>3682</i>
<i>Reading</i>	<i>13.30 – 21.45</i>	<i>Reading – Southampton</i>	<i>2060</i>	<i>2206</i>	<i>2206</i>

Table E - Summer Sundays

Departure Location	Departure Timeband	Measured Journey	Specified Seats - Dec 08	Specified Seats - Jun 09	Specified Seats - May 10
Birmingham New Street	13.30 – 21.45	Birmingham New Street – Stoke on Trent	3556	3806	3806
Birmingham New Street	13.30 – 21.45	Birmingham New Street - Oxford	3496	3744	3744
Birmingham New Street	13.30 – 21.45	Birmingham New Street – Sheffield	4364	4844	4844
Birmingham New Street	13.30 – 21.45	Birmingham New Street – Bristol Temple Meads	3852	4072	4072
Bristol Temple Meads	13.30 – 21.45	Bristol Temple Meads - Birmingham New Street	3988	4440	4440
Bristol Temple Meads	13.30 – 21.45	Bristol Temple Meads – Taunton	2457	2649	2649
Manchester Piccadilly	13.30 – 21.45	Manchester Piccadilly – Stoke on Trent	3120	3340	3340
Leeds	13.30 – 21.45	Leeds – Darlington	2174	2406	2406
Leeds	13.30 – 21.45	Leeds – Derby	2348	2426	2426
Reading	13.30 – 21.45	Reading - Leamington Spa	3556	3806	3806
Reading	13.30 – 21.45	Reading – Southampton	2052	2190	2190

For the purposes of this paragraph 3.2, "Summer Saturdays" and "Summer Sundays" are the last 12 consecutive Saturdays and the last 12 consecutive Sundays in the period specified as the standard period of operation of summer dated services in the Rules of the Plan applicable to the relevant year plus the Saturdays and Sundays of the weekends immediately preceding and immediately following the late spring Bank Holiday and "Winter Saturdays" and "Winter Sundays" means any other Saturdays and Sundays.

3.3 The Passenger Services described in the table at paragraph 3.2 are Passenger Services falling into one of the following Service Groups:

- (a) Edinburgh - Plymouth;
- (b) Reading - Newcastle;
- (c) Manchester - Bournemouth; and
- (d) Manchester - Bristol.

3.4 Without limiting paragraph 4 of Schedule 1.2 (Operating Obligations), the Franchisee shall use all reasonable endeavours to mitigate the effect of any Restriction of Use which applies upon a Saturday or a Sunday upon its ability to operate any Passenger Service with the minimum number of seats specified in the Train Plan for such Passenger Service pursuant to this paragraph 3.

4. **Trading Name**

The Franchisee shall at all times trade and operate the Passenger Services under a trading name incorporating the words "Cross Country" (in that order and adjacent to each other).

5. **ITSO Smart Card Ticketing**

5.1 If the Lead Operator on any Flow on which the Passenger Services operate is a Train Operator other than the Franchisee and such Train Operator as "lead operator" seeks approval under the TSA for ITSO Certified Smartcards to be valid on such Flow the Franchisee shall support such application for approval and ensure that it has an ITSO compliant ticketing acceptance system comprising ticket readers and validators, and such back office administrative and support functions as may reasonably be required, to enable passengers using such Passenger Services to use such ITSO Certified Smartcards Provided That the

obligations under this paragraph will not require the Franchisee to provide an ITSO compliant ticketing acceptance system prior to the commencement of the Reporting Period commencing on 4th January 2009.

5.2 The Franchisee shall co-operate and liaise with ATOC, other Train Operators and RSP as appropriate in:

- (a) developing an approach to the provision of information regarding the use of ITSO Certified Smartcards to facilitate use of more sophisticated ticket types and demand management over time; and
- (b) establishing processes, business rules and necessary system changes in order to achieve the effective delivery of its obligations under paragraph 5.1.

5.3 For the purposes of this paragraph 5, "ITSO Certified Smartcards" means the portable cards or devices designed to hold fare and travel information with the monetary or other value encoded which meet the requirements of paragraph 2 of Schedule 1.3 (Ticket Collection and Ticketing) of the Terms and have been fully certified by ITSO.

6. Coleshill Station

6.1 The Franchisee shall:

- (a) ensure that rail fares for journeys to and from Coleshill station are set at a level which is non-discriminatory when compared with rail fares for journeys to and from other stations within the West Midlands; and
- (b) not propose any amendment to the Service Level Commitment which is discriminatory with regard to Coleshill station when compared to other comparable stations along the line of route serving Coleshill station.

7. SLC Extensions

7.1 Subject to paragraphs 7.4 and 7.5, the services set out in paragraph 7.3 below shall be deemed to be specified in SLC2 with the effect that, subject to paragraph 7.2, the Franchisee and the Secretary of State shall have the same rights and obligations in relation to such services as they do in relation to the other services specified in SLC2.

7.2 Paragraph 8.7 of Schedule 1.1 (Service Development) of the Terms shall not apply in respect of the services set out in paragraph 7.3 below.

Accordingly, if the Franchisee is not able to secure a Timetable enabling it to operate such services as a result of it not being able to obtain the timetable development rights that it requires for that purpose, the Secretary of State shall not be obliged to issue an SLC (TDR) Amendment pursuant to paragraph 8.7 of Schedule 1.1 (*Service Development*) of the Terms.

7.3 The services referred to in paragraph 7.1 are as follows:

- (a) one Newcastle to Reading service per day (Monday to Saturday) will start from Edinburgh, calling at Berwick, Alnmouth and Morpeth;
- (b) one Reading to Newcastle service per day (Monday to Saturday) will continue to Edinburgh, calling at Morpeth, Alnmouth and Berwick;
- (c) one Reading to Newcastle service per day (Monday to Saturday) will start from Bournemouth, calling at Brockenhurst, Southampton, Southampton Airport, Winchester and Basingstoke;
- (d) one Newcastle to Birmingham New Street service per day (Monday to Saturday) will continue to Bournemouth, calling at Reading, Basingstoke, Winchester, Southampton Airport, Southampton and Brockenhurst;
- (e) one Bristol to Manchester service per day (Monday to Friday and Winter Saturdays, as that term is defined in paragraph 3.2) will start from Penzance, calling at St Erth, Camborne, Redruth, Truro, St. Austell, Par, Bodmin Parkway, Liskeard, Plymouth, Totnes, Newton Abbot, Exeter St Davids, Tiverton Parkway and Taunton. This service may, at the discretion of the Franchisee, operate instead of one of the services specified in SLC2 Route 1 paragraph 1.6;
- (f) one Manchester to Bristol service per day (Monday to Friday and Winter Saturdays, as that term is defined in paragraph 3.2) will continue to Plymouth, calling at Taunton, Tiverton Parkway, Exeter St Davids, Newton Abbot and Totnes;
- (g) a further service each Sunday from Edinburgh to Plymouth will start at Glasgow Central in addition to the two services stated in SLC2 Route 1 paragraph 1.5;

- (h) one additional service each Sunday from York (or south thereof) to Glasgow Central will be provided;
- (i) on Summer Sundays (which shall have the meaning given in paragraph 3.2 of this Appendix):
 - (i) one Newcastle to Reading service will start from Edinburgh, calling at Berwick Upon Tweed and Alnmouth; and
 - (ii) two services from Reading to Newcastle will continue to Edinburgh. One of these services will call at Berwick Upon Tweed and the other will call at Morpeth, Alnmouth and Berwick Upon Tweed;
- (j) one Gloucester to Nottingham service per day (Monday to Friday) will start from Cardiff Central calling at Severn Tunnel Junction, Caldicot, Chepstow and Lydney;
- (k) one Nottingham to Birmingham New Street service per day (Monday to Friday) departing from Nottingham after 1850 will continue to Cardiff, calling at University, Cheltenham Spa, Gloucester and Newport;
- (l) one additional service from Cardiff to Birmingham New Street per day (Monday to Friday) departing Cardiff no earlier than 2130 and calling at Newport, Gloucester, Cheltenham Spa and University will be provided;
- (m) four Birmingham New Street to Cambridge services per day (Monday to Friday), the first of which will depart Birmingham New Street no earlier than 1715, will continue to Stansted Airport. Each of these four services will call at Audley End;
- (n) three additional services from Stansted Airport to Cambridge per day (Monday to Friday) will be provided, the first of which will depart Stansted Airport no earlier than 2120. Each of these three services will call at Audley End; and
- (o) one Birmingham New Street to Bournemouth service per day (Monday to Saturday) which is not required by SCL2 to start at Crewe or Manchester Piccadilly will start at Nottingham. This service may, at the discretion of the Franchisee, operate instead of one of the services specified in SLC2 Route 5 paragraph 2.8.

7.4 If and to the extent that the Franchisee is not able to secure a Timetable enabling it to operate the railway passenger services set out in any of:

- (a) paragraphs 7.3(a) or 7.3(b);
- (b) paragraphs 7.3(c) or 7.3(d);
- (c) paragraphs 7.3(e) or 7.3(f);
- (d) paragraphs 7.3(g) or 7.3(h);
- (e) paragraphs 7.3(i)(i) or 7.3(i)(ii); and/or
- (f) paragraphs 7.3(j) or 7.3(k),

as a result of it not being able to obtain the timetable development rights that it requires for this purpose, then, provided that the Franchisee has used all reasonable endeavours to obtain the requisite timetable development rights in accordance with paragraph 8.1 of Schedule 1.1 (Service Development) of the Terms, the services set out in both of the relevant paragraphs shall not be deemed to be specified in SLC2. This paragraph 7.4 shall not apply to circumstances where the Franchisee is unable to secure a Timetable permitting it to call at any of the stations referred to in paragraph 7.3 and paragraph 7.6 shall apply in such circumstances.

7.5 If and to the extent that the Franchisee is not able to secure a Timetable enabling it to operate any of the railway passenger services set out in either of paragraphs 7.3(m) or 7.3(n) as a result of it not being able to obtain the timetable development rights that it requires for this purpose, then, provided that the Franchisee has used all reasonable endeavours to obtain the requisite timetable development rights in accordance with paragraph 8.1 of Schedule 1.1 (Service Development) of the Terms, such service and the corresponding return service set out in the other of such paragraphs shall not be deemed to be specified in SLC2. This paragraph 7.5 shall not apply to circumstances where the Franchisee is unable to secure a Timetable permitting it to call at any of the stations referred to in paragraphs 7.3(m) or 7.3(n) and paragraph 7.6 shall apply in such circumstances.

7.6 If and to the extent that the Franchisee is unable to secure a Timetable enabling it to stop at all of the stations referred to in relation to any of the services set out in paragraph 7.3 as a result of it not being able to obtain the timetable development rights that it requires for this purpose, the Franchisee will consult with the Secretary of State in order to attempt to resolve the position, and provided that the Franchisee has exercised

all reasonable endeavours to obtain the requisite timetable development rights in accordance with paragraph 8.1 of Schedule 1.1 (Service Development) of the Terms, the Franchisee may continue to operate that service without making the relevant stops for which it has been unable to secure a Timetable. For the avoidance of doubt, the Franchisee will continue to use all reasonable endeavours to obtain the requisite timetable development rights in order to enable it to stop at all of the stations referred to in the relevant service.

- 7.7 The Franchisee shall use all reasonable endeavours to operate services equivalent to the services set out in paragraphs 7.3(k) to (n) (inclusive) on Saturdays, having regard to its other timetabling and resourcing commitments at weekends. For the avoidance of doubt, the operation of such services on Saturdays shall not be deemed to be specified in SCL2.

8. **Stansted Two Trains Per Hour Priced Option**

The Franchisee shall use its reasonable endeavours to identify rolling stock which would be suitable for the provision of the additional services to and from Stansted Airport referred to in the Priced Option in paragraph 3 of Part 1 of Appendix 4 and shall notify the Secretary of State should any such suitable rolling stock be identified.

ANNEX A TO SCHEDULE 13

TRAIN CREW TRADING TABLES

TABLE OF RATES AND VOLUMES FOR TRAIN CREW TRADING - FRANCHISEE AND EAST MIDLANDS FRANCHISEE

Rates¹⁰⁰

	2007/2008	2008/2009
Drivers		
Conductors		

Rate per driver/conductor per diagram supplied per Reporting Period

Volumes¹⁰¹

¹⁰⁰ 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.

¹⁰¹ 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.

TABLE OF RATES AND VOLUMES FOR TRAIN CREW TRADING - FRANCHISEE AND WEST MIDLANDS FRANCHISEE

Birmingham: West Midlands Franchisee to supply Franchisee

Rates¹⁰²

Volumes¹⁰³

Shrewsbury and Worcester: West Midlands Franchisee to supply Franchisee

Rates¹⁰⁴

Volumes¹⁰⁵

New Street Depot: Franchisee to supply West Midlands Franchisee

Rates¹⁰⁶

Volumes¹⁰⁷

¹⁰² 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.

¹⁰³ 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.

¹⁰⁴ 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.

¹⁰⁵ 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.

¹⁰⁶ 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.

¹⁰⁷ 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 14

Recalibration of the Benchmarks (Clause 8)

1. Cancellations Target Performance Level for First Reporting Period

In respect of the Cancellations Benchmark Table, the Target Performance Level specified therein for the first Reporting Period of the Franchise Term shall be recalibrated by:

- (a) taking the number of instances where a Previous Passenger Service was cancelled in accordance with the definitions of Cancellation and Partial Cancellation during the Performance Measurement Period, where a cancellation satisfying the definition of Cancellation shall count as 1 and a cancellation satisfying the definition of Partial Cancellation shall count as 0.5;
- (b) dividing the sum of that total by 13; and
- (c) calculating a percentage in respect of that total in accordance with the following:

$$\frac{A}{B} \times 100$$

where:

A equals the number determined in accordance with paragraph 1(a), as divided in accordance with paragraph 1(b); and

B equals the total number of Previous Passenger Services that were scheduled to be operated during the last Reporting Period prior to the Start Date.

2. Capacity Benchmarks

The Capacity Benchmarks specified in the Capacity Benchmark Table will not be subject to recalibration in accordance with this Appendix 14.

3. Service Delivery Target Performance Level for First Reporting Period

In respect of the Service Delivery Benchmark Table, the Target Performance Level specified therein for the first Reporting Period of the Franchise Term shall be recalibrated by:

- (a) taking the minutes of delay attributed to the Train Operator that provided the Previous Passenger Services under its track access agreement with Network Rail in respect of the Performance Measurement Period; and
- (b) dividing the sum of that number by 13.

4. **Target Performance Levels for Each Benchmark for all Subsequent Reporting Periods**

The relevant Target Performance Level for the first Reporting Period of the Franchise Term, as determined pursuant to each of paragraphs 1 and 3, shall then be used to determine the relevant Target Performance Level for each Reporting Period during the remainder of the Franchise Term by calculating:

- (a) the relevant Target Performance Level for Reporting Period 8 of Reporting Year 7 in accordance with the following formula:

$$\frac{(100 - 26.6)}{100} \times \text{TPL}$$

where:

TPL equals the relevant Target Performance Level for the first Reporting Period of the Franchise Term as determined pursuant to paragraph 1 or 3 (as appropriate);

- (b) the relevant Target Performance Levels for each intervening Reporting Period between the first Reporting Period of the Franchise Term and Reporting Period 8 of Reporting Year 7, by decreasing each such level on a straight-line basis from the level set for the first Reporting Period of the Franchise Term to the level set for Reporting Period 8 of Reporting Year 7; and
- (c) in respect of Target Performance Levels for each Reporting Period after Reporting Period 8 of Reporting Year 7 for the remainder of the Franchise Term, the relevant Target Reporting Levels shall be the same as the Target Performance Level calculated in accordance with paragraph 4(a).

5. **Improvement Plan Performance Levels For Each Benchmark For All Reporting Periods**

The Target Performance Levels for each Benchmark shall then be used to determine the relevant Improvement Plan Performance Level for each Reporting Period of the Franchise Term by calculating:

- (a) the relevant Improvement Plan Performance Level for each of the first Reporting Period of the Franchise Term and Reporting Period 8 of Reporting Year 7 in accordance with the following formula:

$$\frac{(100 - 7.5)}{100} \times \text{TPL}$$

where:

TPL equals the relevant Target Performance Level for the first Reporting Period of the Franchise Term or Reporting Period 8 of Reporting Year 7 (as appropriate) as determined pursuant to this Appendix 14;

- (b) the relevant Improvement Plan Performance Levels for each intervening Reporting Period between the first Reporting Period of the Franchise Term and Reporting Period 8 of Reporting Year 7, by decreasing each such level on a straight-line basis from the level set for the first Reporting Period of the Franchise Term to the level set for Reporting Period 8 of Reporting Year 7; and
- (c) in respect of Improvement Plan Performance Levels for each Reporting Period after Reporting Period 8 of Reporting Year 7 for the remainder of the Franchise Term, the relevant Improvement Plan Performance Levels shall be the same as the Improvement Plan Performance Levels calculated in accordance with paragraph 5(a).

6. **Breach Performance Levels for Each Benchmark for all Reporting Periods**

The Target Performance Levels for each Benchmark shall then be used to determine the relevant Breach Performance Level for each Reporting Period of the Franchise Term by calculating:

- (a) the relevant Breach Performance Level for each of the first Reporting Period of the Franchise Term and Reporting Period 8 of Reporting Year 7 in accordance with the following formula:

$$\frac{(100 - 15)}{100} \times \text{TPL}$$

where:

TPL equals the relevant Target Performance Level for the first Reporting Period of the Franchise Term or Reporting Period 8 of Reporting Year 7 (as appropriate) as determined pursuant to this Appendix 14;

- (b) the relevant Breach Performance Levels for each intervening Reporting Period between the first Reporting Period of the Franchise Term and Reporting Period 8 of Reporting Year 7, by decreasing each such level on a straight-line basis from the level set for the first Reporting Period of the Franchise Term to the level set for Reporting Period 8 of Reporting Year 7; and
- (c) in respect of Breach Performance Levels for each Reporting Period after Reporting Period 8 of Reporting Year 7 for the remainder of the Franchise Term, the relevant Breach Performance Levels shall be the same as the Breach Performance Levels calculated in accordance with paragraph 6(a).

7. **Default Performance Levels for Each Benchmark for all Reporting Periods**

The Target Performance Levels for each Benchmark shall then be used to determine the relevant Default Performance Level for each Reporting Period of the Franchise Term by calculating:

- (a) the relevant Default Performance Level for each of the first Reporting Period of the Franchise Term and Reporting Period 8 of Reporting Year 7 in accordance with the following formula:

$$\frac{(100 - 20)}{100} \times \text{TPL}$$

where:

TPL equals the relevant Target Performance Level for the first Reporting Period of the Franchise Term or Reporting Period 8 of Reporting Year 7 (as appropriate) as determined pursuant to this Appendix 14;

- (b) the relevant Default Performance Levels for each intervening Reporting Period between the first Reporting Period of the Franchise Term and Reporting Period 8 of Reporting Year 7, by decreasing each such level on a straight-line basis from the level

set for the first Reporting Period of the Franchise Term to the level set for Reporting Period 8 of Reporting Year 7; and

- (c) in respect of Default Performance Levels for each Reporting Period after Reporting Period 8 of Reporting Year 7 for the remainder of the Franchise Term, the relevant Default Performance Levels shall be the same as the Default Performance Levels calculated in accordance with paragraph 7(a).

8. **Roundings**

8.1 The:

- (a) Cancellations Benchmark percentages recalibrated pursuant to paragraphs 1 and 4 to 7 (inclusive); and
- (b) Capacity Benchmarks percentages recalibrated pursuant to paragraphs 2 and 4 to 7 (inclusive),

shall be rounded to two decimal places, with the midpoint (that is, 2.835) rounded upwards (that is, 2.84).

- 8.2 The Service Delivery Benchmarks recalibrated pursuant to paragraphs 3 to 7 (inclusive) shall be rounded to the nearest ten minutes of delay, with the midpoint (that is, 5,005) rounded upwards (that is, 5,010).

9. **Definitions**

For the purpose of this Appendix 14 ***Previous Passenger Services*** means:

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

APPENDIX 15

List of Documents in the Agreed Terms (Clause 9)

<i>FM</i>	Financial Model
<i>IBP</i>	Initial Business Plan
<i>OM</i>	Operational Model
<i>OOA</i>	Olympic Option Agreement
<i>PC</i>	Passenger's Charter
<i>POA</i>	Power of Attorney
<i>ROA</i>	Record of Assumptions
<i>SATRT</i>	Seasonally Adjusted Target Revenue Table
<i>SLC</i>	Service Level Commitment
<i>SQMS</i>	Service Quality Management System
<i>SQS</i>	Service Quality Standards
<i>TCHA</i>	Train Crew Hire Agreement
<i>TP</i>	Train Plan

APPENDIX 16

New Schedule 16 (Pensions)

SCHEDULE 16

Pensions

1. Franchise Section

1.1 The Secretary of State shall use his reasonable endeavours to procure that, with effect from the Start Date, the following liabilities (and assets relating to those liabilities calculated in accordance with paragraph 1.4 below) are transferred from the Central Trains Section of the Railways Pension Scheme to the Cross Country Section (with effect from the Start Date to be renamed the New Cross Country Franchise Section) (the ***Franchise Section***):

(a) those relating to employees who are active members of the Central Trains Section and whose employment transfers to the Franchisee on the Start Date;

(b) those relating to any person who:-

(i) was an active member of the Central Trains Section as at 31 May 2007 but becomes a deferred or pensioner member of that section on or prior to the Start Date; or

(ii) became a member of the Central Trains Section after 31 May 2007 and becomes a deferred or pensioner member of that section on or prior to the Start Date,

to the extent that the Secretary of State reasonably determines that such person is a person who would otherwise have fallen within paragraph (a);

(c) those relating to a specific number of active members of the Central Trains section immediately before the Start Date: -

(i) who the Secretary of State reasonably determines to be persons whose employment will not automatically transfer on the Start Date to any of the Franchisee, the West Midlands Franchisee, the East Midlands Franchisee or any other person; and

(ii) which the Secretary of State notifies the Franchisee are to transfer to the Franchise Section under this paragraph

1.1(c) at that date, to be determined on the basis of a reasonable allocation between the Franchisee, the West Midlands Franchise and the East Midlands Franchise; and

- (d) subject to paragraph 1.3, a percentage ("A") of those relating to deferred and pensioner members of the Central Trains Section as at 31 May 2007, where A is calculated in accordance with the formula in paragraph 1.2 below.

1.2 The formula referred to in paragraph 1.1(d) is:

$$A = B/C \times 100; -$$

Where:

- A = is defined in paragraph 1.1(d) above;
- B = the ongoing value of the liabilities relating to the total number of active employees who the Secretary of State has reasonably determined as at 31 May 2007 are to be transferred to the Franchise Section; and
- C = the ongoing value of the liabilities relating to the total number of active members of the Central Trains Section as at 31 May 2007,

provided that where it is not possible to transfer the precise percentage calculated in accordance with the formula in this paragraph 1.2, the percentage shall reflect the result of that formula to the closest practicable extent.

1.3 The identity of the deferred and pensioner members of the Central Trains Section who will transfer to the Franchise Section to satisfy the requirements of paragraph 1.1(d) (**Transferring Members**) shall be reasonably determined by the Secretary of State by reference to the following principles:

- (a) the Secretary of State shall be deemed to have reasonably determined the identity of the Transferring Members where it agrees to another party's identification of them, on the condition that the identification process must still comply with the principles set out in this paragraph 1.3;
- (b) the deferred and pensioner members' service records shall be examined with a view to these members' liabilities transferring to one of the Franchise Section, or the section of the Railways Pension Scheme relating to the West Midlands Franchisee or the East Midlands Franchisee, in any case by reference to the section

each such member would have transferred to had the member been an active member as at 31 May 2007. Those members who are to transfer to the Franchise Section on this basis shall be Transferring Members; and

- (c) if there are deferred or pensioner members who would not transfer to any one of these sections of the Railways Pension Scheme on the basis described in paragraph 1.3(b) (***Unallocated Members***), some of them may then be identified as Transferring Members by the Secretary of State if he reasonably determines this to be appropriate to ensure that the amount of the liabilities transferred to the Franchise Section under paragraph 1 complies with the requirements of paragraph 1.2 above. If more than one method of identifying Unallocated Members as Transferring Members results in the requirements of paragraph 1.2 above equally being met, the method chosen shall be that which results in the Transferring Members' liability profile being closest to the liability profile of all the deferred and pensioner members of the Central Trains Section as at 31 May 2007.

1.4 The asset transfer amount payable in respect of a transfer of liabilities under this paragraph 1 shall be calculated on a share of fund basis, or any other basis that the trustee of the Central Trains Section determines from time to time, and it shall be paid by way of a share of the assets of the Central Trains Section as determined by the trustee. The Secretary of State shall reasonably determine the ongoing value of the liabilities referred to in paragraph 1.2.

1.5 The Franchisee shall be the Designated Employer in relation to the Franchise Section for the duration of the Franchise Term.

1.6 The Franchisee shall pay to the Franchise Section as soon as practicable after the start of the Franchise Term an amount equal to:

- (a) the amount required under article 7(4) of the Railway Pensions (Protection and Designation of Schemes) Order 1994 (***article 7(4)***) in respect of the transfer to the Franchise Section from the Central Trains Section of Protected Persons; plus
- (b) the amount that would have been required under article 7(4) in respect of the transfer to the Franchise Section from the Central Trains Section of Non Protected Persons had article 7(4) applied to Non Protected Persons in the same way as it applies to Protected Persons,

and for the purposes of this paragraph 1.6:-

“Protected Persons” has the same meaning as in the Railways Act 1993;
and

“Non Protected Persons” are members who are not Protected Persons and whose liabilities transfer under paragraph 1.1.

- 1.7 Paragraph 4.2 shall not apply to the initial transfer to the Franchise Section from the Central Trains Section but shall otherwise apply to the Franchise Section and to the liabilities in the Franchise Section relating to the former members of the Central Trains Section.
- 1.8 Subject to paragraphs 2 and 3.2(d), membership of a Franchise Section will be offered to each employee of the Franchisee only.
- 1.9 The Secretary of State shall use his reasonable endeavours to procure that those active, deferred or pensioner members in respect of whom the liabilities mentioned in paragraph 1.1 relate are transferred to the Franchise Section.
- 1.10 The Franchisee shall do such things and execute such documents as are necessary and within its control and as may be reasonably required by the Secretary of State to ensure that the transfer of assets and liabilities set out in paragraph 1 occurs and shall not take any action which could prevent this transfer from happening. The Franchisee shall be given a reasonable opportunity to comment on any communications to be sent to the Transferring Members as part of the transfer of assets and liabilities.

2. **Closed Schemes**

- 2.1 Subject to any requirements of Her Majesty's Revenue and Customs, the Franchisee shall take any necessary steps (including entering into any relevant deed of participation) to allow Closed Scheme Employees to continue in membership of the British Railways Superannuation Fund or the BR (1974) Pension Fund in accordance with their terms during the Franchise Period.
- 2.2 For the purposes of this paragraph 2, ***Closed Scheme Employees*** means such of the employees of the Franchisee who were, immediately prior to the commencement of their employment with the Franchisee, members of either of the British Railways Superannuation Fund or the BR (1974) Pension Fund.

3. **Variations in Benefits and Contributions; Investment**

- 3.1 If the Franchisee is considering making a proposal that it considers would fall within the scope of paragraphs 3.2(a) to (f) inclusive, it shall promptly consult with the Secretary of State in relation to that proposal prior to putting such a proposal to the Pensions Committee of the Franchise Section, the Trustee of the Railways Pension Scheme ("the Trustee"), or to any trade union. The Franchisee must otherwise consult in good time with the Secretary of State in relation to any proposal it considers would fall within the scope of paragraphs 3.2(a) to (f) inclusive.
- 3.2 The Franchisee shall not, without the prior written consent of the Secretary of State (which may be given on such terms and subject to such conditions as the Secretary of State thinks fit):
- (a) restructure or change the composition of the earnings of employees of the Franchisee in such a way as to increase the part of those earnings which qualifies as pensionable earnings under the Rules applicable to the Franchise Section or take any action (or consent to the taking of any action) which could detrimentally affect the funding of the Franchise Section, including varying or providing different or additional benefits under the Franchise Section or promising to do so, unless this change:
 - (i) is required by Law;
 - (ii) only affects benefits payable in respect of past service of members of the Franchise Section and on or prior to the effective date of the change the Franchisee pays an additional cash payment to the Trustee which, in the opinion of the Actuary, meets in full the additional funding cost imposed on the Franchise Section; or
 - (iii) would not lead to substantial changes in the funding of the Franchise Section and is the result of the normal application of the Franchise Section's Rules in the ordinary day to day running of the business of the Franchise, for example, where individual employees are, from time to time promoted or transferred to higher paid or different employment which has a different composition of earnings;
 - (b) make or consent to any proposal to change any of the provisions of the Pension Trust in respect of the Franchise Section unless the change is required by Law;

- (c) provide retirement, death or life assurance benefits in respect of any of its employees other than under the Franchise Section or as provided in paragraph 2;
- (d) omit to provide the above-mentioned benefits in respect of its employees save that, without prejudice to any rights which any such employee may otherwise have, the Franchisee shall not under this Schedule 16 be obliged for the purposes of the Franchise Agreement to offer such benefits to any employee employed on a fixed term contract of 12 months or less;
- (e) take any action (or consent to the taking of any action) which could affect the contributions payable by Participating Employers under the Franchise Section, including exercising any discretion allowed to the Franchisee as Designated Employer arising out of any actuarial valuation of the Franchise Section, and varying or providing different or additional benefits under the Franchise Section in respect of future service, unless such action is required by Law;
- (f) close the Franchise Section to new members; or
- (g) take (or omit to take) any action which could result in the Franchise Section being wound up, in whole or in part.

3.3 The Franchisee shall consult with the Secretary of State on:

- (a) any proposal made by the Trustee to change the statement of investment principles applicable to the Franchise Section; and
- (b) any proposal to alter the rate of contributions payable by the Franchisee or its employees under a new schedule of contributions for the Franchise Section.

3.4 The Franchisee shall also consult with the Trustee on the basis of any response it receives from the Secretary of State in relation to any such proposal.

4. **Funding Liabilities**

4.1 The Franchisee shall pay the employer contributions required under the schedule of contributions applicable to the Franchise Section or either of the British Railways Superannuation Fund or the BR (1974) Pension Fund in which it participates in respect of the Franchise Term subject to the provisions of paragraph 4.2 below.

- 4.2 Where, during the Franchise Term, Franchise Services are aggregated or disaggregated by the Secretary of State (for example, as a result of remapping) and, as a consequence, the Franchise Section is required to accept a transfer in or to make a transfer out of members, the Secretary of State shall ensure that the Franchisee has no liability for any resulting deterioration immediately arising in the funding level of the Franchise Section measured in accordance with the Franchise Section's technical provisions in Part 3 of the Pensions Act 2004, or for any amount arising under article 7(4) of the Railway Pensions (Protection and Designation of Schemes) Order 1994. Notwithstanding the above the Secretary of State shall have no liability for any future deterioration in the funding levels of the Franchise Section linked to such transfer in or out of members.

5. **Discharge of Obligations**

- 5.1 The Secretary of State may at any time during the Franchise Term seek information from the Trustee with a view to satisfying himself that the Franchisee and the other Participating Employers (if any) have fully discharged their respective obligations under the Railways Pension Scheme, including their obligations in respect of the payment of contributions to the Franchise Section.

- 5.2 The Franchisee shall, at its expense, promptly provide such information in relation to the Franchise Section, including actuarial advice and information, as the Secretary of State may from time to time request and shall authorise and consent to the Trustee doing so.

- 5.3 The Franchisee shall, in respect of the Franchise Term, use all reasonable endeavours to provide to the Secretary of State:

- (a) within one month of the expiry of each Franchisee Year; and
- (b) at other times as soon as practicable following a request by the Secretary of State,

a certificate signed by the Trustee in relation to the Franchise Section stating either that the Franchisee has fully complied with its obligations under the Railways Pensions Scheme, including its obligation to contribute to the Franchise Section or, if it has not so complied, stating the extent to which it has not done so. Where the certificate is given pursuant to paragraph 5.3(a), it shall cover the relevant Franchisee Year; where the certificate has been given pursuant to paragraph 5.3(b), it shall cover such period as the Secretary of State shall specify.

- 5.4 If the Trustee does not certify under paragraph 5.3 in relation to the Franchise Section that the Franchisee has fully complied with its

obligations under the Railways Pension Scheme or if the Secretary of State otherwise reasonably considers that the Franchisee has not complied with such obligations, the Secretary of State may withhold from any Franchise Payments payable by him under Schedule 8 (Payments) an amount which is, in his opinion, no greater than the amount of any contribution that the Franchisee has thereby failed to make or avoided making.

- 5.5 The Secretary of State may, under paragraph 5.4, withhold such amount until such time as he reasonably determines that the relevant contributions have been made in full by the Franchisee. Following that determination, the amount withheld shall become payable (without interest) on the next day on which a Franchise Payment becomes payable under Schedule 8, being a day which falls no less than seven days after such determination or, if there is no such day, 14 days after the date of such determination. To the extent that the Secretary of State has not so determined within four weeks after the expiry of the Franchise Period, the Franchisee's right to receive the amount so withheld under the Franchise Agreement shall lapse and the Secretary of State shall not be obliged to pay such amount.

6. **Termination of Franchise**

The Secretary of State shall at the end of the Franchise Term ensure that the Franchisee has no liability for any deficit in the Franchise Section (other than for contributions due and payable by the Franchisee to the Franchise Section for any period prior to the end of the Franchise Term) and shall have no right to benefit from any surplus which may exist in the Franchise Section. For the avoidance of doubt, this paragraph 6 shall apply where the Franchise Services are either aggregated or disaggregated (for example, as a result of remapping).

7. **Definitions**

Unless otherwise defined in the Franchise Agreement, terms used in this Schedule 16 shall have the meanings given to them in the Railways Pension Scheme.

Derogations Page

~~i By virtue of a derogation the Secretary of State has granted the Franchise Operator the following; to allow Cross Country to continue to work with Bombardier to complete the refurbishment of the voyager train fleet to provide additional seating and luggage space and also to provide service at seat catering on voyagers.~~

~~Start Date 30/6/2009 End Date 1/10/2009~~

~~By virtue of a derogation the Secretary of State has granted the Franchise Operator the following; to allow Cross Country to continue to work with its supplier to improve the power supply to the catering hub on its HST fleet affecting power to microwave ovens in order to provide hot plated food to 1st class customers.~~

~~Start Date 30/6/2009 End Date 30/10/2009~~

~~ii By virtue of a derogation the Secretary of State has granted the Franchise Operator the following; to grant XC a derogation to May 23 for this Committed Obligation in the knowledge that the majority of work will have been completed by 31 March 2010 and that the only aspect outstanding will be the opportunity to upload the relevant information.~~

~~Start Date 31/3/2010 End Date 23/5/2010~~

~~iii By virtue of a derogation the Secretary of State has granted the Franchise Operator the following; to allow Cross Country to continue to work with its supplier to improve the power supply to the catering hub on its HST fleet affecting power to microwave ovens in order to provide hot plated food to 1st class customers.~~

~~Start Date 30/10/2009 End Date 08/01/2010~~

~~iv By virtue of a derogation the Secretary of State has granted the Franchise Operator the following; to allow Cross Country to continue to work with its supplier to improve the power supply to the catering hub on its HST fleet affecting power to microwave ovens in order to provide hot plated food to 1st class customers.~~

~~Start Date 08/01/2010 End Date 15/01/2010~~

~~v By virtue of a derogation the Secretary of State has granted the Franchise Operator the following; to allow Cross Country to continue to work with its supplier to improve the power supply to the catering hub on its HST fleet affecting power to microwave ovens in order to provide hot plated food to 1st class customers.~~

~~Start Date 15/01/2010 End Date 08/04/2010~~

~~vi By virtue of a derogation the Secretary of State has granted the Franchise Operator the following; against Appendix 13 Clause 3 to enable Cross Country to operate its December 2009 timetable in accordance with the revised values submitted for seating requirements on the SBCR flows subject to Cross Country working with the Department to optimise an contract change for implementation from the Subsidiary Change Date in May 2010.~~

~~Start Date 13/12/2009 End Date 22/5/2010.~~