

DOCUMENT “FSA” - SUPPLEMENTAL AGREEMENT

Dated **2002**

[Outgoing Operator]

and

[Successor Operator]

and

[Security Trustee/Eligible Person]

FUNDER’S SUPPLEMENTAL AGREEMENT

to the transfer scheme dated [•] made
by the Strategic Rail Authority in respect of
certain property rights and liabilities of
The Chiltern Railway Company Limited

Strategic Rail Authority
55 Victoria Street
London SW1H 0EU

This Agreement is made on _____ **between:**

- (1) [Outgoing Operator] whose registered office is at [] (the “Transferor”);
- (2) [Successor Operator] whose registered office is at [] (the “Transferee”); and
- (3) [Eligible Person] whose registered office is at [] (the “Eligible Person”) [THE AGREEMENT HAS BEEN DRAFTED ON THE BASIS THAT THE ELIGIBLE PERSON WILL ENTER INTO THE AGREEMENT – IF THE SECURITY TRUSTEE ENTERS INTO AGREEMENT INSTEAD THEN ALL REFERENCES TO ELIGIBLE PERSON CAN BE REPLACED WITH REFERENCES TO SECURITY TRUSTEE AND RECITAL (C) MAY BE DELETED]

Whereas:

- (A) The Transferor has been providing certain services and the carriage of passengers by railway and operating certain stations and light maintenance depots pursuant to a franchise agreement with the Strategic Rail Authority (the “**Authority**”) dated [] (the “**Franchise Agreement**”).
- (B) Pursuant to the Franchise Agreement the Transferor has acquired and leased certain assets to improve the provision of services and such assets have been financed by a Facility Agreement dated [] 2002 (the “Facility Agreement”) made among others between M40 Trains Ltd, the Transferor and the Royal Bank of Scotland PLC (“the “Security Trustee”) (as agent and trustee for and on behalf of itself and certain other parties).
- (C) As a condition of the Facility Agreement, the Authority, M40 Trains Limited, the Transferor and the Security Trustee entered into a Funder’s Direct Agreement (the “Funder’s Direct Agreement”) dated [] 2002. Under the terms of clause 3(b) of the Funder’s Direct Agreement the Security Trustee may in prescribed circumstances procure by notice to the Authority the appointment of an “Eligible Person” to assume jointly and severally with the Transferor its rights under this Agreement (subject in each case to the Transferor being able to perform and performing its obligations thereunder other than payment obligations). The Eligible Person has been appointed by the Security Trustee pursuant to the Funder’s Direct Agreement as agent and trustee for and on behalf of the Security Trustee.
- (D) The Franchise Agreement terminated on [•] and the Transferee has been selected by the Authority to continue the provision of all or part of such services pursuant either to a franchise agreement with the Authority or arrangements made with the Authority in connection with the Authority’s duties and powers under Part IV of the Transport Act 2000 (the “**Act**”).
- (E) Certain property, rights and liabilities of the Transferor are to be transferred to the Transferee pursuant to a transfer scheme made by the Authority on [] under Section 220 and Schedule 21 of the Act (the “**Transfer Scheme**”).
- (F) This agreement is supplemental to the Transfer Scheme and sets out certain terms between the Transferor and the Transferee in relation to the transfer of such property, rights and

liabilities under the Transfer Scheme and the transfer of certain other property, rights and liabilities at the same time.

It is agreed that:

1. Definitions and Interpretation

1.1 Definitions

"Business" means such of the undertaking or part of the undertaking of the Transferor prior to the Transfer Date as may be continued by the Transferee after the Transfer Date;

"Credit" has the meaning assigned to that term under the Ticketing and Settlement Agreement;

"Debit" has the meaning assigned to that term under the Ticketing and Settlement Agreement;

"Estimated RVA" has the meaning ascribed to that term in Clause 2.1;

"Interest Rate" means the rate certified by the Security Trustee to be the rate at which it bids for Sterling deposits for a three month period from leading banks in the London interbank market at or about 11.00 am (London time) on the RVA Date in an amount comparable to the Estimated RVA.

"Net Asset Statement" means the statement to be drawn up pursuant to Clause 2.2;

"Net Asset Value" means the aggregate of the amounts of the Relevant Franchise Assets, the Relevant Contract Liabilities, the Relevant Debits and Credits and the Relevant Employee Liabilities as shown in the Net Asset Statement;

"Purchase Price" means an amount equal to the Net Asset Value;

"Relevant Contract Liabilities" means such rights and liabilities of the Transferor as may be transferred to the Transferee on the expiry of the Franchise Period in relation to any Licence, Access Agreement or Property Lease under Clauses 12.2, 12.3 and 12.4 of the Franchise Agreement;

"Relevant Debits and Credits" means such Debits and Credits of the Transferor which relate to Fares sold before the Transfer Date and which may be received by the Transferee as a result of Clause 11-32 of the Ticketing and Settlement Agreement;

"Relevant Employees" means all persons employed in the Business immediately before the Transfer Date (whether employed by the Transferor or otherwise) whose contract of employment has been or is to be transferred to the Transferee by virtue of the operation of Law (including the Transfer Regulations) or any other person employed in the Business in respect of whom liabilities arising from a contract of employment or employment relationship

have or will be transferred by virtue of the operation of Law (including the Transfer Regulations);

“Relevant Employee Liabilities” means such rights and liabilities of the Transferor (or any other relevant employer or person) under any contracts of employment relating to the Relevant Employees which have been or are to be transferred to the Transferee by virtue of the operation of Law (including the Transfer Regulations);

“Relevant Franchise Assets” means the property, rights and liabilities of the Transferor which are or are to be transferred to the Transferee under the Transfer Scheme;

“Reporting Accountants” means such firm of accountants as may be selected by agreement between the parties within four weeks of the preparation of the Net Asset Statement or, in the absence of such agreement, selected by the Authority;

“Residual Value Amount” has the meaning ascribed to that term in the Funder’s Direct Agreement; **[IF THE VALUE OF THE RESIDUAL VALUE AMOUNT IS ALREADY KNOWN AND ANY EXCESS PAYMENT HAS ALREADY BEEN PAID TO THE AUTHORITY THEN THIS DEFINITION SHOULD BE DELETED TOGETHER WITH CLAUSES 2.3(B) AND (C)]**

“RVA Date” means the date on which the Estimated RVA is or was paid by the Authority or the Transferee, as the case may be.

[IF THE RVA DATE IS THE SAME AS THE TRANSFER DATE THEN THE LATER TERM MAY BE USED INSTEAD IN ALL PLACES WHERE RVA DATE APPEARS AND THIS DEFINITION MAY BE DELETED]

“Taxation” comprises all forms of taxation, duties, contributions and levies of the United Kingdom whenever imposed and (except in so far as attributable to the unreasonable delay or default of the Transferee) all penalties and interest relating thereto;

“Transfer Date” means the date and, where relevant, the time on or at which the Transfer Scheme comes into force; and

“Transfer Regulations” means the Transfer of Undertakings (Protection of Employment) Regulations 1981 (as amended, replaced or substituted from time to time).

1.2 **Construction and Interpretation**

In this Agreement terms and expressions defined in the Franchise Agreement shall have the same meaning and the terms “contract of employment”, “collective agreement”, “employee representatives” and “trade union” shall have the same meanings respectively as in the Transfer Regulations.

2. **Transfer Price**

2.1 **Amount and Payment**

2.1.1 The price for the transfer of the Relevant Franchise Assets, the Relevant Contract Liabilities, the Relevant Debits and Credits and the Relevant Employee Liabilities shall (subject to adjustment as expressly provided in this Agreement) be an amount equal to the Net Asset Value of which:-

- (a) the sum of £[], as determined under Clause 35.3 of the Franchise Agreement shall be paid in immediately available funds by the Transferor to the Transferee, or by the Transferee to the Transferor, as determined under Clause 35.3 of the Franchise Agreement, on the Transfer Date;
- (b) the sum of £[] (the "Estimated RVA") shall be paid on the Transfer Date in immediately available funds by the Transferee to the Eligible Person which amount shall be applied in satisfaction (to the extent of those payments) of its and M40 Trains Limited's obligations under its financing arrangements. The payment of the Estimated RVA is to be made without set off or deduction of any kind except to the extent that any amount ("the Deduction") is required as a matter of law to be paid to the Transferor or M40 Trains Limited ; and

OR IF THE ESTIMATED RVA HAS ALREADY BEEN PAID BY THE AUTHORITY

the sum of £[] (the "Estimated RVA") was paid on the RVA Date by the Authority pursuant to the terms of the Funder's Direct Agreement so as to reduce the Transferor's liabilities to the Security Trustee under the Facility Agreement; and

- (c) the balance (if any) shall be paid in accordance with Clause 2.3.

INSERT CLAUSE 2.1.2 IF THE ESTIMATED RVA HAS ALREADY BEEN PAID BY THE AUTHORITY

2.1.2 The Transferee shall pay to the Authority an amount equal to the Residual Value Amount which amount shall be paid in immediately available funds on the Transfer Date together with interest thereon calculated from the RVA Date at the Interest Rate.

2.1.3 If the Deduction referred to in Clause 2.1.1(b) is made then the Transferee shall pay an amount equal to the Deduction to the Transferor on the Transfer Date unless the Transferee had been required by law to pay the Deduction to M40 Trains Limited.

2.2 Net Asset Statement

- (a) The Transferee shall procure that, as soon as practicable and in any event not later than two months following the Transfer Date, there shall be drawn up a statement showing a true and fair view of the aggregate of the amounts of the Relevant Franchise Assets, the Relevant Contract Liabilities, the Relevant Debits and Credits and the Relevant Employee Liabilities as at the Transfer Date. The Net Asset Statement shall be drawn up in the manner described

in the Schedule and shall be prepared on such basis as would enable the Transferee's auditors, if so requested, to give an unqualified audit report thereon to the effect that it had been drawn up in accordance with the Schedule. The Net Asset Statement shall be presented, initially as a draft, to the Transferor and the Eligible Person immediately following its preparation for review in conjunction with its auditors. If the Transferor, the Transferee and the Eligible Person have failed to agree the Net Asset Statement within four weeks following such presentation, the matter shall be referred to the Reporting Accountants who shall settle and complete the Net Asset Statement as soon as practicable and shall determine the amount of the Net Asset Value as shown by the Net Asset Statement.

- (b) The Transferor and the Eligible Person shall use reasonable endeavours to procure that the Transferee has access to all certificates and other confirmations and statements prepared by the Independent Technical Adviser and that such certificates and other confirmations and statements are addressed to the Transferee. The Transferee agrees that, save in the case of manifest error, such certificates and other confirmations and statements shall be binding on it.

2.3 Adjustment of Price

- (a) If the Purchase Price exceeds the sum of (i) the aggregate of any payment made by the Transferee to the Transferor pursuant to Clauses 2.1.1(a) and the Estimated RVA less (ii) the aggregate of any payments made by the Transferor to the Transferee pursuant to Clause 2.1.1(a) and the amount of any Deduction which the Transferee is required by law to pay to M40 Trains Limited, the Transferee shall pay to the Transferor within 14 days of the agreement or determination of the Net Asset Value, an amount equal to such excess together with interest thereon calculated from the Transfer Date at the Interest Rate.
- (b) If the Purchase Price is less than the sum of (i) the aggregate of any payment made by the Transferee to the Transferor pursuant to Clauses 2.1.1(a) and the Estimated RVA less (ii) the aggregate of any payments made by the Transferor to the Transferee pursuant to Clause 2.1.1(a) and the amount of any Deduction which the Transferee is required by law to pay to M40 Trains Limited, the Transferor shall pay to the Transferee within 14 days of the agreement or determination of the Net Asset Value, an amount equal to such deficiency together with interest thereon calculated from the Transfer Date at the Interest Rate.
- (c) If the Residual Value Amount is less than the Estimated RVA, the Eligible Person shall pay to the Transferee (or to such other person as the Authority directs the Eligible Person to pay) an amount ("the Excess") equal to:
 - (i) such excess ("the RVA Excess") less the Deduction (if any); and
 - (ii) interest calculated on the amount referred to in sub-paragraph (i) above from the RVA Date at the Interest Rate

provided that if the Deduction exceeds the RVA Excess then no monies shall be due or payable by either party under Clause 2.3(c).

- (d) The Transferee shall either promptly on receipt of the monies referred to in Clause 2.3(c) pay to the Transferor an amount equal to the Excess (if any) together with interest thereon calculated from the RVA Date at the Interest Rate or, at its option, set off the Excess together with the interest payable thereon against any monies owed to the Transferee in respect of the Purchase Price.

2.4 Account Details

All amounts payable pursuant to this Agreement shall be paid into the following accounts:

- (a) With respect to sums due to the Eligible Person [insert details of the Residual Value Account (as such term is defined in the Funder's Direct Agreement)]

OR IF ESTIMATED RVA HAS ALREADY BEEN PAID

With respect to sums due to the Authority []

- (b) With respect to sums due to the Transferor [insert details of the Security Trustee Proceeds Account (as such term is defined in the Funder's Direct Agreement)]
- (c) With respect to sums due to the Transferee []

3. References to the Reporting Accountants

Whenever any matter is referred under this Agreement to the decision of the Reporting Accountants:

- 3.1 the Reporting Accountants shall be engaged jointly by the parties on the terms set out in this Agreement and otherwise on such terms as shall be agreed; provided that neither party shall unreasonably (having regard, *inter alia*, to the provisions of this Agreement) refuse its agreement to terms proposed by the Reporting Accountants or by another party. If the terms of engagement of the Reporting Accountants have not been settled within 14 days of their appointment having been determined (or such longer period as the parties may agree) then, unless one party is unreasonably refusing its agreement to those terms, such accountants shall be deemed never to have been appointed as Reporting Accountants, save that the accountants shall be entitled to their reasonable expenses under Clause 3.4, and new Reporting Accountants shall be selected in accordance with the provisions of this Agreement;
- 3.2 if Reporting Accountants acting or appointed to act under this Agreement resign, withdraw, refuse to act, or are disqualified for any reason from performing their duties then, except as may be agreed between the parties, the parties shall appoint a replacement in accordance with the definition of "Reporting Accountants";
- 3.3 the Reporting Accountants shall be deemed to act as experts and not as arbitrators;

- 3.4 the Reporting Accountants shall have power to allocate their fees and expenses for payment in whole or in part by any party at their discretion. If not otherwise allocated they shall be paid as to half by the Transferor and as to half by the Transferee;
- 3.5 each of the parties shall promptly on request supply to the Reporting Accountants all such documents and information as they may require for the purpose of the reference; and
- 3.6 the decision of the Reporting Accountants shall (in the absence of objection on the grounds of any error discovered within 14 days of the issue of their decision) be conclusive and binding and shall not be the subject of any appeal by way of legal proceeding or arbitration or otherwise.

4. Warranty

- (a) The Transferor warrants and represents to the Transferee that the Relevant Contract Liabilities and the Relevant Franchise Assets are, to the extent they are property or rights, transferring to the Transferee free and clear of all Security Interests created by it.
- (b) The Eligible Person warrants and represents to the Transferee that the Relevant Contract Liabilities and the Relevant Franchise Assets are, to the extent they are property or rights, transferring to the Transferee free and clear of all Security Interests granted in favour of the Security Trustee.

5. Interest

If the Transferor or the Transferee defaults in the payment when due of any sum payable under this Agreement (whether determined by agreement or pursuant to an order of a court or otherwise) the liability of the Transferor or the Transferee (as the case may be) shall be increased to include interest on such sum from the date when such payment is due until the date of actual payment (as well after as before judgement) at a rate equal to the Interest Rate. Such interest shall accrue from day to day.

6. VAT

- 6.1 The Transferor and the Transferee shall use all reasonable endeavours to secure that the transfer of the Relevant Franchise Assets, Relevant Contract Liabilities, Relevant Debits and Credits and Relevant Employee Liabilities is treated for VAT purposes as the transfer of a business as a going concern and accordingly as neither a supply of goods nor a supply of services, and the Transferor and the Transferee shall forthwith agree the form of a letter to be sent by the Transferor to HM Customs & Excise seeking confirmation that the transfer is to be so treated unless such confirmation has already been obtained.
- 6.2 If and to the extent HM Customs & Excise have before the date for payment pursuant to Clause 2.3 expressly indicated that the transfer of the Relevant Franchise Assets, Relevant Contract Liabilities, Relevant Debits and Credits and Relevant Employee Liabilities cannot be treated in the manner contemplated by Clause 6.1, the Transferee shall (against production of tax invoices in respect thereof) in addition to any amounts expressed in this Agreement to be payable by the Transferee pay on such date the amount of any VAT which

as a result of that indication may be chargeable on the transfer of the Relevant Franchise Assets, Relevant Contract Liabilities, Relevant Debits and Credits and Relevant Employee Liabilities. If no such indication shall have been given before such date, then no amount in respect of VAT shall be so paid, but to the extent that VAT shall subsequently be determined by HM Customs & Excise to be payable, the Transferee shall (unless it gives written notice to the Transferor that it requires such determination to be challenged in accordance with Clause 6.3 below) in addition to any amount expressed in the Agreement to be payable by the Transferee pay to the Transferor such VAT and any penalty or interest incurred by the Transferor for late payment thereof, such payment by the Transferee to be made forthwith against evidence that the due date for payment of such tax has fallen due or will fall due within seven days or if later against delivery by the Transferor to the Transferee of the appropriate tax invoice.

- 6.3 Nothing in this sub-clause shall require the Transferor to make any appeal to any tribunal or court against or otherwise challenge any determination of HM Customs & Excise that the transfer does not fall to be treated as the transfer of a going concern unless the Transferee shall give notice to the Transferor that it requires such appeal or challenge to be made by such date as reasonably allows the Transferor to make any such approval or challenge within any applicable time limit and shall first agree to indemnify the Transferor against all irrecoverable costs and expenses that the Transferor may incur by taking any such action and, in any case where an appeal cannot be made against the determination of HM Customs & Excise without the Transferor accounting for the VAT and any penalty or interest in question, unless the Transferee shall first pay to the Transferor an amount equal to that VAT and any such penalty or interest (against delivery by the Transferor of the appropriate tax invoice). Any VAT and penalty or interest that is finally determined to be payable on the sale and which the Transferee has not previously paid to the Transferor shall following such final determination be paid by the Transferee forthwith to the Transferor against production of the appropriate tax invoice.
- 6.4 If any amount paid by the Transferee to the Transferor in respect of VAT pursuant to this Agreement is subsequently found to have been paid in error the Transferor shall if the Transferor has not yet accounted for such VAT to HM Customs & Excise promptly repay such amount to the Transferee, and if the Transferor has already so accounted then the Transferor shall at the expense of the Transferee use all reasonable endeavours to obtain repayment thereof from HM Customs & Excise and forthwith on receiving repayment from HM Customs & Excise shall pay to the Transferee the amount repaid.
- 6.5 If any amount is payable by the Transferor to the Transferee in respect of the transfer of the Relevant Franchise Assets, Relevant Contract Liabilities, Relevant Debits and Credits and Relevant Employee Liabilities pursuant to this Agreement, Clauses 6.2 to 6.4 inclusive shall apply *mutatis mutandis* to such payment substituting "Transferor" for "Transferee" and vice versa.
- 6.6 The Transferor shall on the Transfer Date deliver to the Transferee such of those records referred to in Section 49 of the Value Added Tax Act 1994 as relate exclusively to the Business on condition that the Transferee undertakes to preserve those records in such manner and for such periods as may be required by law. Subject to HM Customs & Excise

so permitting, all of the records referred to in Section 49 of the Value Added Tax Act 1994 relating to the Business (being the purchase records) shall be retained by the Transferor, the Transferor undertaking to the Transferee to preserve those records in such manner and for such periods as may be required by law and to give the Transferee as from the Transfer Date reasonable access during normal business hours to such records and to take copies of such records.

7. Employees

7.1 Transfer Regulations

The parties accept that, to the extent that the undertaking or part of the undertaking of the Transferor is continued by the Transferee after the Transfer Date, this Agreement and the transfer of the Business which is effected in connection with the Transfer Scheme are governed by the Transfer Regulations and the following provisions shall apply in connection therewith:

- 7.1.1 the contract of employment of each of the Relevant Employees (save insofar as such contract relates to any occupational pension scheme) shall be transferred to the Transferee with effect from the Transfer Date which shall be the "time of transfer" under the Transfer Regulations and the Transferee shall employ each such Relevant Employee on the terms of those contracts of employment (save insofar as such contract relates to any occupational pension scheme) with effect from the Transfer Date;
- 7.1.2 the Transferor shall perform and discharge all its obligations in respect of all the Relevant Employees for its own account up to and including the Transfer Date including, without limitation, discharging all wages and salaries of the Relevant Employees, all employer's contributions to any relevant occupational pension scheme and all other costs and expenses related to their employment (including, without limitation, any Taxation, accrued holiday pay, accrued bonus, commission or other sums payable in respect of service prior to the close of business on the Transfer Date) and shall indemnify the Transferee and keep the Transferee indemnified against each and every action, proceeding, liability (including, without limitation, any Taxation), cost, claim, expense (including, without limitation, reasonable legal fees) or demand arising from the Transferor's failure so to discharge;
- 7.1.3 the Transferor shall indemnify the Transferee and keep the Transferee indemnified against each and every action, proceeding, cost, claim, liability (including, without limitation, any Taxation), expense (including, without limitation, reasonable legal fees) or demand which relates to or arises out of any act or omission by the Transferor or any other event or occurrence prior to the Transfer Date and which the Transferee may incur in relation to any contract of employment or collective agreement concerning one or more of the Relevant Employees pursuant to the provisions of the Transfer Regulations or otherwise including, without limitation, any such matter relating to or arising out of:

- (i) the Transferor's rights, powers, duties and/or liabilities (including, without limitation, any Taxation) under or in connection with any such contract of employment or collective agreement, which rights, powers, duties and/or liabilities (as the case may be) are or will be transferred to the Transferee in accordance with the Transfer Regulations; or
- (ii) anything done or omitted before the Transfer Date by or in relation to the Transferor in respect of any such contract of employment or collective agreement or any Relevant Employee, which is deemed by the Transfer Regulations to have been done or omitted by or in relation to the Transferee save where the thing done or omitted to be done before the Transfer Date relates to the Transferee's failure to comply with its obligations referred to in Clause 7.4;

7.1.4 if any contract of employment or collective agreement which is neither disclosed in writing to the Transferee by the Transferor prior to the Transfer Date nor made available to the Authority under Clause 25.2 of the Franchise Agreement prior to the Transfer Date shall have effect as if originally made between the Transferee and any employee ("**Undisclosed Employee**") or a trade union or employee representatives as a result of the provisions of the Transfer Regulations (without prejudice to any other right or remedy which may be available to the Transferee):

- (i) the Transferee may, upon becoming aware of the application of the Transfer Regulations to any such contract of employment or collective agreement terminate such contract or agreement forthwith; and
- (ii) the Transferor shall indemnify the Transferee against each and every action, proceeding, cost, claim, liability (including, without limitation, any Taxation), expense (including, without limitation, reasonable legal fees) or demand relating to or arising out of such termination and reimburse the Transferee for all costs and expenses (including, without limitation, any Taxation) incurred in employing such employee in respect of its employment following the Transfer Date; and
- (iii) the Transferor shall indemnify the Transferee in respect of any Undisclosed Employee on the same terms mutatis mutandis as the Transferor has indemnified the Transferee in respect of a Relevant Employee pursuant to the terms of Clauses 7.1.2 and 7.1.3 above; and

7.1.5 the Transferor shall indemnify the Transferee and keep the Transferee indemnified against each and every action, proceeding, cost, claim, liability (including without limitation, any Taxation) expense (including, without limitation, reasonable legal fees) or demand which relates to or arises out of any dismissal (including, without limitation, constructive dismissal) by the Transferor of any employee (not being a Relevant Employee) and which the Transferee may incur pursuant to the provisions of the Transfer Regulations.

7.2 Transferee's Indemnity

The Transferee shall indemnify the Transferor and keep the Transferor indemnified against each and every action, proceeding, liability (including, without limitation, any Taxation), cost, claim, loss, expense (including reasonable legal fees) and demand arising out of or in connection with:

- 7.2.1 any substantial change in the working conditions of the Relevant Employees to its or her detriment or any of them occurring on or after the Transfer Date;
- 7.2.2 the change of employer occurring by virtue of the Transfer Regulations and/or this Agreement being significant and detrimental to any of the Relevant Employees;
- 7.2.3 the employment by the Transferee on or after the Transfer Date of any of the Relevant Employees other than on terms (including terms relating to any occupational pension scheme) at least as good as those enjoyed prior to the Transfer Date or the termination of the employment of any of them on or after the Transfer Date; or
- 7.2.4 any claim by any Relevant Employee (whether in contract or in tort or under statute (including the Treaty of the European Community or European Union and any Directives made under the authority of any such Treaty or any successor thereof)) for any remedy (including, without limitation, for unfair dismissal, redundancy, statutory redundancy, equal pay, sex or race discrimination) as a result of any act or omission by the Transferee after the Transfer Date.

7.3 Details of Relevant Employees

- 7.3.1 The Transferor warrants to the Transferee that it has (to the extent not made available to the Authority under Clause 25.2 of the Franchise Agreement prior to the Transfer Date) provided the Transferee prior to the Transfer Date with full particulars of:
 - (i) each Relevant Employee, including name, sex, and the date on which continuity of employment began for each Relevant Employee for statutory purposes;
 - (ii) terms and conditions of employment of each such person;
 - (iii) all payments, benefits or changes to terms and conditions of employment promised to any such person;
 - (iv) dismissals of Relevant Employees or termination of employment effected within 12 months of the Transfer Date including the Transfer Date;
 - (v) all agreements or arrangements entered into in relation to the Relevant Employees between the Transferor, any Affiliate of the Transferor or any other relevant employer and any trade union or association of trade unions or organisation or body of employees including employee representatives and elected representatives; and

- (vi) all strikes or other industrial action taken by any Relevant Employee within 12 months of the Transfer Date including the Transfer Date.

7.3.2 The Transferor and Transferee shall deliver to each of the Relevant Employees letters in an agreed form from the Transferor and Transferee as soon as is practicable after the execution of this Agreement (to the extent not already delivered prior to the Transfer Date).

7.4 **Transferor's Indemnity**

The Transferee shall indemnify the Transferor and keep the Transferor indemnified against each and every action, proceeding, liability, cost, claim, loss, expense (including reasonable legal fees) and demand which arises as a result of it not providing or not having provided, in accordance with its obligations under the Transfer Regulations, the Transferor in writing with such information and at such time as will enable the Transferor to carry out its duties under Regulation 10(2)(d) and 10(6) of the Transfer Regulations concerning measures envisaged by the Transferee in relation to the Relevant Employees.

8. **Miscellaneous Provisions**

8.1 **Variations in Writing**

No variation of this Agreement shall be effective unless in writing and signed by duly authorised representatives of the parties.

8.2 **Partial Invalidity**

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

8.3 **Further Assurance**

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

8.4 **Information**

The Transfer and the Transferee agree to allow each other reasonable access to, including so as to take copies of all books records and other information to the extent they relate to the Business conducted prior to the Transfer Date and which is in their possession or control from time to time and as the other party or the Authority may reasonably require.

8.5 **Notices**

- 8.5.1 Any notice or other communication requiring to be given or served under or in connection with this Agreement shall be in writing and shall be sufficiently given or served if delivered or sent to the registered office of the recipient or:

In the case of the Transferor to [] at:

[Address]

Fax:

In the case of the Transferee to [] at:

[Address]

Fax:

Attention:

In the case of the Eligible Person to [] at:

[Address]

Fax:

Attention:

- 8.5.2 Any such notice or other communication shall be delivered by hand or sent by courier, fax or prepaid first class post. If sent by courier or fax such notice or communication shall conclusively be deemed to have been given or served at the time of despatch. If sent by post such notice or communication shall conclusively be deemed to have been received two business days from the time of posting.

8.6 Counterparts

This Agreement may be executed in any number of counterparts each of which shall be deemed an original, but all the counterparts shall together constitute one and the same instrument.

8.7 Third Parties

The Authority may enforce and rely on the provisions of Clause 2 of this Agreement to the same extent as if it were a party. Except as stated in this Clause 8.7, the parties to this Agreement do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it. This Agreement does not create any rights under the Contracts (Rights of Third Parties) Act 1999 which is enforceable by any person who is not a party to it.

9. Governing Law

This Agreement shall be governed by and construed in accordance with the laws of England and Wales and the parties irrevocably agree that the courts of England and Wales are to have exclusive jurisdiction to settle any disputes which may arise out of or in connection with this Agreement.

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

Schedule
NET ASSET STATEMENT

The Net Asset Statement shall be drawn up (except to the extent otherwise agreed by the Transferor and the Transferee) in accordance with accounting principles generally accepted in the United Kingdom and such that the Relevant Franchise Assets, Relevant Contract Liabilities, Relevant Debits and Credits and Relevant Employee Liabilities are valued on the following basis:

1. Rights and liabilities relating to an obligation of carriage under the terms of any Fare shall be valued in accordance with the following formula:

$$((C - D) \times A/B) + E$$

where:

C equals the Credit (exclusive of any Valued Added Tax) received by the Transferor in respect of the Fare provided that:

- (a) such Credit shall be deemed not to include any reduction in respect of a discount allowed to the purchaser of the Fare pursuant to the Passenger's Charter or any other passenger's charter of the Transferor; and
- (b) if the Fare is a Season Ticket Fare, such Credit shall be the New Credit (as defined in the Ticketing and Settlement Agreement) relating to that Season Ticket Fare on the Transfer Date if different to the Credit that was in fact received by the Transferor in respect of such Season Ticket Fare;
- (c) such Credit shall be net of any Private Settlement Credit (as defined in the Ticketing and Settlement Agreement) arising in respect of that Fare; and
- (d) such Credit shall be deemed to exclude any Credit received by the Transferor in respect of any commission due to it in respect of the sale of such Fare (provided that for these purposes the amount of such commission shall not exceed the National Standard Rate of Commission (as defined in the Ticketing and Settlement Agreement) in respect of the Fare);

D equals the Debit (exclusive of any Value Added Tax) received by the Transferor in respect of the commission due in respect of the sale of the Fare (provided that for these purposes the amount of such commission shall not exceed the National Standard Rate of Commission (as defined in the Ticketing and Settlement Agreement) in respect of the Fare);

A/B equals:

in the case of a Season Ticket Fare, the number of journeys which the purchaser of the Fare is estimated to make from (and including) the Transfer Date to (and including) the last day on which the Fare is valid (including any extensions to its original period of validity) divided by the total number of journeys which the purchaser of the Fare is estimated to make with that Fare (as determined in each

case in accordance with Schedule 28 of the Ticketing and Settlement Agreement);
or

in the case of any other Fare which entitles the holder thereof to make more than two journeys, the number of days for which the Fare continues to be valid after the Transfer Date (including any extensions to its original period of validity) divided by the total number of days for which such Fare is valid on issue (except to the extent that it can reasonably be estimated what proportion of the journeys which could be made on issue of the Fare have not been made prior to the Transfer Date); or

in the case of any other Fare, zero;

E equals, if A/B is greater than zero, the amount of any discount to which it can be reasonably estimated that the purchaser of the Fare would be entitled pursuant to the Passenger's Charter or any other passenger's charter of the Transferor on purchasing an equivalent Fare on the expiry of the relevant Fare;

and for these purposes a Credit or Debit shall be deemed to be received when the relevant Fare is Accepted for Clearing (as defined in the Ticketing and Settlement Agreement).

2. Rights and liabilities relating to an Excess Fare, Reservation or Upgrade (as such terms are defined in the Ticketing and Settlement Agreement) shall be valued at zero unless such Excess Fare, Reservation or Upgrade involves more than two journeys, in which case they shall be valued in accordance with paragraph 1 and references to Fare in paragraph 1 shall be construed accordingly.

3. Rights and liabilities under a Discount Card shall be valued in accordance with the following formula:

$$(C - D) \times A/B$$

where:

C equals the Credit (exclusive of any Value Added Tax) received by the Transferor in respect of the Discount Card;

D equals the Debit (exclusive of any Value Added Tax) received by the Transferor in respect of the commission due in respect of the sale of the Discount Card (provided that for these purposes the amount of such commission shall not exceed the National Standard Rate of Commission (as defined in the Ticketing and Settlement Agreement) in respect of the Discount Card);

A/B equals the number of days for which the Discount Card continues to be valid after the Transfer Date (including any extensions to its original period of validity) divided by the total number of days for which such Discount Card is valid on issue, or in the case of any Discount Card listed in Schedules 12 or 39 of the Ticketing and Settlement Agreement on the Franchise Commencement Date, zero;

and for these purposes a Credit or Debit shall be deemed to be received when the relevant Discount Card is Accepted for Clearing (as defined in the Ticketing and Settlement Agreement).

4. Relevant Debits and Credits shall be valued at the full amount of such Debits and Credits (inclusive of any Value Added Tax) but excluding any Debits and Credits arising in respect of Adjustment Amounts (as defined in the Ticketing and Settlement Agreement) which are received by the Transferee in respect of a change to the Credit which is used to value any relevant Season Ticket Fare under paragraph 1 of this Schedule to the extent such Adjustment Amounts relate to a period after the Transfer Date.
5. Rights and liabilities in respect of any contract, lease, licence or other equivalent arrangement (excluding rights and liabilities valued under paragraphs 1 to 4) shall be valued at nil except to the extent that the relevant rights and liabilities include:
 - (a) any accrued rights to receive payment;
 - (b) any accrued liabilities to make payment;
 - (c) any rights in respect of which payment has already been made by the Transferor;
or
 - (d) any liabilities in respect of which payment has already been received by the Transferor;

in which case such rights and liabilities shall be valued on the basis of the monetary amounts so accrued or paid or received, subject to any provision being made for payment not being received from, or other rights not being exercisable against, any other person.
6. Any other property, rights or liabilities shall be valued on the basis of a willing vendor and purchaser and ongoing usage within the railway industry.