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This Franchise Agreement is made the 8th day of May 1996 **between:**

- (1) **The Director Of Passenger Rail Franchising** appointed under section 1 of the Railways Act 1993 (the “*Franchising Director*”); and
- (2) ¹² *National Express Group PLC* whose registered number is 2590560 and registered office is at *National Express House, Birmingham Coach Station, Mill Lane, Digbeth, Birmingham, B5 6DD* (the “*Franchisee*”)³⁴

Whereas:

- (A) Pursuant to section 23(1) of the Railways Act 1993 the *Franchising Director* designated on 30 November 1994 certain services for the carriage of passengers by railway as eligible for provision under franchise agreements.
- (B) The *Franchising Director* issued in May 1995 an invitation to tender under section 26(2) of the Railways Act 1993 for the right to provide, or to secure that a wholly owned subsidiary provides, certain of such services and the Franchisee has submitted a tender in response to such invitation.
- (C) The *Franchising Director* has selected the Franchisee on the basis of such tender as the person who is to be the franchisee under the franchise agreement in respect of such services.
- (D) The Franchisee has proposed that it will secure the provision of such services by LTS Rail Limited⁵ (the “**Franchise Operator**”), which is currently a wholly owned subsidiary of the British Railways Board and which will become a wholly owned subsidiary of the Franchisee and be joined as a party to this agreement as a condition precedent to the commencement of the provision of such services under this agreement.
- (E) The parties wish to record their agreement regarding the provision of such services.

Now therefore it is hereby agreed as follows:

Part I – Preliminary

1 Definitions and Interpretation

1.1 Definitions

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

“ Access Agreement ”	has the meaning ascribed to the term “access agreement” in section 83(1) of the Act.
“ Accounting Rules ”	means the accounting rules set out in Part 3 of Schedule 9.
“ Act ”	means the Railways Act 1993 and any regulations or orders made

¹ Change of Control from Prism Rail to National Express Group effective 30 August 2000

² date of change 15.7.2005

³ Date of change 09/03/2010

⁴ Date of Change 12/07/2010

⁵ Registered name changed to c2c rail limited wef 3 July 2000

“Actual Capacity”

under it.

means the number of seats which are provided on any relevant train in accordance with the Train Plan at each relevant Capacity Monitoring Point (and not exceeding the Planned Capacity of any such train at such Capacity Monitoring Point) provided that, if the relevant Planned Capacity for such train is included in the Train Plan pursuant to Clause 5.1(a)(i) and not Clause 5.1(a)(ii) and such train fails to pass any relevant Capacity Monitoring Point, the Actual Capacity of such train at such Capacity Monitoring Point shall be deemed to be its Planned Capacity.

“Actuary”

has the meaning ascribed to that term in the Pension Trust.

“Adjustment Payment”

means a payment either by the **Authority** to the Franchise Operator or by the Franchise Operator to the **Authority**, as the case may be, which is determined in accordance with paragraph 3 of Part 2 of Schedule 6.

“Affiliate”

means, in respect of any person, any person by which that person is Controlled or which is Controlled by that person, or any person which is Controlled by any other Affiliate of that person.

“Agreed Cost”

means the agreed cost of acquiring New Rolling Stock specified in Part 2 of Schedule 14.

“Ancillary Services”

means the services and activities specified in Part 4 of Schedule 2.

“Annual Franchise Payment”

has the meaning ascribed to that term in Part 1 of Schedule 6.

“Average Earnings Index”

means the average earnings index for the whole economy as published from time to time by the Central Statistical Office of the Chancellor of the Exchequer or, if such index shall cease to be published or if there is a material change in the basis of the index, such other average earnings index as the **Authority** may, after consultation with the Franchise Operator, determine to be appropriate in the circumstances.

“Board”

means the British Railways Board.

“Bond Year”

means the period beginning on the Franchise Commencement Date and ending at the end of the first Reporting Period to end in October 1997 and any subsequent period of thirteen Reporting Periods beginning on the day after the end of a preceding Bond Year provided that:-

- (a) the Franchise Operator and **Authority** may agree to vary the Reporting Period in which a Bond Year ends from time to time; and
- (b) the last Bond Year shall expire on the expiry of the Franchise Period and may be less than thirteen Reporting Periods.

“Brand Licence”

means a licence between the **Authority** or any company wholly owned by **it** and the Franchise Operator in respect of any registered or unregistered trade marks, including the licences set out in Part 6 of Schedule 1.

“Breach Threshold”

means:-

- (a) in relation to Cancellations, the percentage to be set in accordance with Part 2(a) of Schedule 3 and, in relation to Total Cancellations, the percentage specified in Part 2(b)(ii) of Schedule 3, in each case of trains which are scheduled to be provided under the Timetable in the relevant Reporting Period; and

in relation to Planned Capacity, the percentage specified in Part

2(c)(ii) of Schedule 3 of the aggregate of the Planned Capacity of each relevant train in the relevant Reporting Period.

“Call-in Threshold”

means:-

- (a) in relation to Cancellations, the percentage to be set in accordance with Part 2(a) of Schedule 3 and, in relation to Total Cancellations, the percentage specified in Part 2(b)(i) of Schedule 3, in each case of trains which are scheduled to be provided under the Timetable in the relevant Reporting Period; and
- (b) in relation to the Planned Capacity, the percentage specified in Part 2(c)(i) of Schedule 3 of the aggregate of the Planned Capacity of each relevant train in the relevant Reporting Period.

“Cancellation”

means a train which is scheduled to be provided under the Timetable and which:-

- (a) is a Total Cancellation; or
- (b) begins its journey after its scheduled departure point in the Timetable or terminates its journey before its scheduled destination point in the Timetable; or
- (c) does not call at any station at which it is scheduled to call in the Timetable (or fails to call at a relevant Request Stop Station which it passes but at which a passenger or intending passenger has indicated he wishes to join or leave such train); or
- (d) is delayed at its point of destination by more than 120 minutes.

“Capacity Change”

means a Capacity Increase or Capacity Reduction.

“Capacity Increase”

has the meaning ascribed to it in Clause 6.6(a) (where applicable).

“Capacity Monitoring Points”

means such points as the **Authority** may reasonably determine from time to time for the monitoring or measuring of the provision of capacity under this Franchise Agreement by the Franchise Operator, being on the Franchise Commencement Date the points, if any, specified in Part 2(d) of Schedule 3 and references to a relevant Capacity Monitoring Point are references to a Capacity Monitoring Point which a train is scheduled to pass under the Timetable.

“Capacity Reduction”

has the meaning ascribed to it in Clause 6.6(a) (where applicable).

“Certificate of Commencement”

means the certificate to be issued by the **Authority** pursuant to Clause 2.2(f).

“Change”

means a PSR Change or a Capacity Change.

“Change Certificate”

means a certificate issued by the **Authority** under Clause 6.7 or Clause 11.5 which states:

- (a) the relevant Change;
- (b) the date of issue of the certificate; and
- (c) the adjustments, if any, to be made to the Franchise Payments in respect of the relevant Change in accordance with the relevant Implementation Plan and Part 2 of Schedule 9.

“Charter Service”

means a railway passenger service, whether operated on the same

routes as the Passenger Services or not:

- (a) which is not reflected in the Timetable; or
- (b) which does not conform to the pattern of railway passenger services normally provided by the Franchise Operator; or
- (c) for which the advance booking or booking arrangements for seats on the relevant service are materially different from those generally applicable to the railway passenger services normally provided by the Franchise Operator; or
- (d) for which tickets are available on a restricted basis or on terms and conditions materially different from those generally applicable to comparable railway passenger services provided by the Franchise Operator; or
- (e) for which the departure time, journey time and calling pattern are materially different from those of comparable railway passenger services provided by the Franchise Operator

and which, in the opinion of the **Authority**, is not a railway passenger service provided by the Franchise Operator as part of its regular scheduled service.

“Child Price”

means, in relation to any Fare, the amount charged or chargeable (including any applicable Value Added Tax) to a person under the age of 16 in respect of such Fare.

“Closure”

means a closure under Part I of the Act of any of the Passenger Services or of any network on which the Passenger Services may be operated or of any of the Stations or Depots or of any part of such network or Depot or Station.

“Collateral Agreement”

means an agreement which is required to be entered into by the Franchise Operator with Railtrack as a condition of any Access Agreement of which the Franchise Operator may be the beneficiary.

“Connection”

means a connection (however described) between any of the Passenger Services provided by the Franchise Operator and any other railway passenger service provided by it or any other passenger train operator or any bus, ferry or shipping service.

“Control”

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

- (a) has the power to appoint and/or remove all or the majority of the members of the board of directors or other governing body of that person or of any other person which Controls that person; or
- (b) controls or has the power to control the affairs and policies of that person or of any other person which Controls that person; or
- (c) is the parent undertaking of that person or of any other person which Controls that person; or
- (d) possesses or is, or will be at a future date, entitled to acquire:

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

and, for these purposes, there shall be attributed to any person the rights or powers of any nominee of his and the rights and powers of any one or more persons which he, or he and associates of his, Controls and of any one or more associates of his (and for these purposes an associate of a person shall mean a relative of his (as defined in section 417(4) of the Income and Corporation Taxes Act 1988), a partner of his or a trustee of a settlement (as defined in section 681(4) of the Income and Corporation Taxes Act 1988) of which he is a beneficiary) and cognate expressions of Control shall be construed accordingly.

“Creating”

has the meaning ascribed to that term in the Ticketing and Settlement Agreement and cognate expressions shall be construed accordingly.

“Customer Satisfaction Benchmarks”

means:

- (a) in relation to the aspects of the Franchise Services contained in the document in the agreed terms marked “A”, the levels of customer satisfaction set out therein; and
- (b) in relation to any new aspects of the Franchise Services, the levels of customer satisfaction determined in accordance with Clause 8.4(f).

“Deed of Adherence”

means the deed of adherence in the agreed terms between the *Authority*, the Franchisee and the Franchise Operator, and marked “B”.

“Deed of Subordination”

means the deed of subordination in the agreed terms between the *Authority*, the Franchise Operator and the relevant Guarantor and marked “P”.

“Default Threshold”

means:-

- (a) in relation to Cancellations, the percentage to be set in accordance with Part 2(a) of Schedule 3 and, in relation to Total Cancellations, the percentage specified in Part 2(b)(iii) of Schedule 3, in each case of trains which are scheduled to be provided under the Timetable in the relevant Reporting Period; and
- (b) in relation to Planned Capacity, the percentage specified in Part 2(c)(iii) of Schedule 3 of the aggregate of the Planned Capacity

of each relevant train in the relevant Reporting Period.

“Depot”	means a light maintenance depot listed in Part 3 of Schedule 2.
“Depot Lease”	<i>⁶means a Property Lease entered into pursuant to Clause 2.2(c)(ii) or Clause 12.13 of this Franchise Agreement in respect of a Depot.</i>
“Designated Employer”	has the meaning ascribed to that term in the Pensions Trust.
“Direct Agreement”	means any agreement made, or to be made, from time to time between the Authority and the counterparty of a Key Contract in relation to such Key Contract, including any such agreement as may be entered into by the Authority under Clause 27.1.
“Discount Card”	has the meaning ascribed to that term in the Ticketing and Settlement Agreement.
“Discount Fare Scheme”	<p>means:</p> <p>(a) a discount fare scheme set out in Part 3(b) of Schedule 1; or</p> <p>(b) any other discount fare scheme approved from time to time for the purposes of section 28 of the Act by the Authority</p> <p>in each case until such time as it may cease to be approved by the Authority for the purposes of section 28 of the Act.</p>
“Dispute Resolution Rules”	means the procedures for the resolution of disputes headed “The Railway Industry Dispute Resolution Rules” as amended from time to time, being initially in the agreed terms and marked “C”.
“Disputes Secretary”	means the person appointed as Disputes Secretary from time to time in accordance with the Dispute Resolution Rules.
“Endemic Fault”	<p>means a defect in the design, construction or materials used in the manufacture or modification of rolling stock which is used in the provision of the Passenger Services which:</p> <p>(a) renders such rolling stock either unfit for such use or incapable of meeting the performance specifications for such rolling stock;</p> <p>(b) is not a defect which was known, or ought reasonably to have been known, to the Franchise Operator at the time the relevant rolling stock was delivered to the Franchise Operator following any such manufacture or modification;</p> <p>(c) has not been caused by accidental damage to such rolling stock or as a result of the failure by the Franchise Operator to comply with its obligations under any relevant Rolling Stock Lease or any programme for the maintenance of such rolling stock;</p> <p>(d) is not scheduled to be corrected under the terms of, or in the course of, any heavy or running maintenance programme for such rolling stock; and</p> <p>(e) affects in the same manner at least 10 per cent. of any rolling stock of the same class which is operated by any Train Operator.</p>
“Evening Peak”	has, if applicable, the meaning ascribed to that term in Part 1 of Schedule 3.

⁶ Date of change 19th September 1996.

“Event of Default”	means any of the events described as such in Clause 21.
“Facility Owner”	has the meaning ascribed to the term “facility owner” in section 17(6) of the Act.
“Fare”	means the right, exercisable against one or more passenger train operators, subject to any applicable rights or restrictions and the payment of the relevant price, to make one or more journeys on the network or to carry on such a journey an item of luggage or an animal (where this right does not arise under the relevant conditions of carriage except on the payment of a fee) and, where applicable, to obtain goods or services from a person.
“Fare Year”	means the period from 1 January in any year to 31 December in the same year.
“Feasibility Study”	means a feasibility study prepared in relation to a Change by or on behalf of the Franchise Operator or the <i>Authority</i> , as provided for under this Franchise Agreement, which study shall be subject to the provisions of Part 1 of Schedule 9.
“Financial Year”	means the period from 1 April in any year to 31 March in the following year.
“Fixed Franchise Payment”	has the meaning ascribed to that term in Part 1 of Schedule 6.
“Force Majeure Event”	means any of the events described as such in Clause 5.4(b).
“Forecast Demand”	means, where applicable, the number of passengers reasonably expected to travel on the Passenger Services provided by the Franchise Operator for the Forecast Period, having regard to the level of demand for the Passenger Services at the relevant time and any information available as to the likely future level of demand.
“Forecast Period”	means, in relation to any programme of passenger counts under Clause 6, the period of eighteen months following such count or, if longer, the period for which unavoidable costs would be incurred in order to implement a Capacity Increase for the eighteen months following such counts.
“Franchise Agreement”	means this agreement, as amended from time to time, whether by the addition of the Franchise Operator as a party or otherwise.
“Franchise Assets”	means the property, rights and liabilities designated as such pursuant to Clause 32.1 but excluding such property, rights or liabilities as may, in accordance with the terms of, or by an amendment made to, this Franchise Agreement, cease to be so designated.
“Franchise Commencement Date”	means the date and, where relevant, the time of issue of the Certificate of Commencement.
“Franchise Employees”	means the employees of the Franchise Operator from time to time and any other person employed by the Franchisee or any of its Affiliates or any subcontractor or delegate of any of the Franchise Services whose contract of employment may be transferred to a Successor Operator following the expiry of the Franchise Period by virtue of the operation of Law (including the Transfer of Undertakings (Protection of Employment) Regulations 1981 (as amended, replaced or substituted from time to time)) or in respect of whom liabilities arising from a contract of employment or employment relationship may be transferred as described above.
“Franchise Operator”	means the company described as such in Recital D, whose registered number is 2938993 and whose registered office, as at the date of this Franchise Agreement, is Euston House, 24 Eversholt Street, London,

	NW1 1DZ.
“Franchise Payment”	means a payment either by the <i>Authority</i> to the Franchise Operator or by the Franchise Operator to the <i>Authority</i> , as the case may be, which is determined, subject to adjustment in accordance with the other terms of this Franchise Agreement, in accordance with paragraph 1 of Part 2 of Schedule 6.
“Franchise Period”	means the period commencing on the Franchise Commencement Date and ending on the date of expiry of the Franchise Term or, if earlier, the date of termination of this Franchise Agreement pursuant to Clause 18.2 or 22.
“Franchise Plan”	<i>means the Franchisee’s plans for improvement and investment in the Franchise Services as contained in the document in the agreed terms marked D1 and the document agreed between the parties and marked D2 and, where the context so requires, either of them.</i> ⁷
“Franchise Section”	has the meaning ascribed to it in Clause 13.1.
“Franchise Services”	means such of the Passenger Services, the Light Maintenance Services, the Station Services and the Ancillary Services as the Franchise Operator may provide or operate from time to time, including such of such services as the Franchise Operator may delegate or subcontract or otherwise secure through any other person from time to time under this Franchise Agreement.
“Franchise Term”	means the period commencing on the Franchise Commencement Date and expiring in accordance with Clause 20.
“Franchise Year” ⁸	<i>means the period of thirteen consecutive Reporting Periods beginning on the Franchise Commencement Date, and any other period of thirteen consecutive Reporting Periods beginning on the day after the end of a Franchise Year except that the last Franchise Year may be for a period of less than 13 Reporting Periods and the last Franchise Year shall end on the last day of the Franchise Term.</i>
“Guarantee”	means any guarantee or irrevocable undertaking provided under Part 1 of Schedule 10 (or any guarantee or irrevocable undertaking replacing it from time to time).
“Guarantor”	means any person or persons who may provide or be an obligor under a Performance Bond or Season Ticket Bond or Guarantee from time to time.
“Implementation Plan”	means, in relation to any Change, the plan for the implementation of such Change, which plan shall be subject to, and determined in accordance with, the provisions of Part 1 of Schedule 9.
“Incentive Payment”	means a payment to be made subject to and in accordance with the provisions of Clause 17 and Schedule 7 either by the <i>Authority</i> to the Franchise Operator or by the Franchise Operator to the <i>Authority</i> , as the case may be.
“Initial Capacity Limit”	means the capacity which would reasonably be required to be provided on the Passenger Services by the Franchise Operator in order not to exceed the Load Factor Specifications for the level of passenger demand specified in Part 4(a) of Schedule 3 (if applicable).
“Initial Flexing Rights”	means the Flexing Rights of Railtrack to the extent they entitle

⁷ Date of Change 16/11/98

⁸ Date of Change 20/12/2010

	<p>Railtrack to vary a bid of the Franchise Operator for train slots in any way within and consistent with the Franchise Operator's Firm Contractual Rights on the Franchise Commencement Date (and, for the purposes of this definition, Flexing Rights and Firm Contractual Rights have the meaning assigned to those terms in Part D of the Track Access Conditions).</p>
"Initial Number of Vehicles"	<p>means the number of Vehicles specified in Part 5 of Schedule 3.</p>
"Intellectual Property"	<p>means all legal and/or equitable interests in registered or unregistered trade marks, patents, registered and unregistered designs, applications for any of the foregoing, trading names, get-up, copyrights (including computer software), topographies of semi-conductor products, inventions, confidential information and any other similar intellectual property.</p>
"Inter-Operator Schemes"	<p>means:</p> <ul style="list-style-type: none">(a) the schemes, agreements and/or contracts set out in Part 3(a) of Schedule 1 which have been approved by the Authority and which relate to arrangements between the Franchise Operator and other participants in the railway industry for the provision of railway services;(b) any other scheme, agreement and/or contract of a similar or equivalent nature as may from time to time during the Franchise <p style="text-align: center;">Period amend, replace or substitute, in whole or in part, any of such schemes, agreements and/or contracts; and</p> <ul style="list-style-type: none">(c) any Discount Fare Scheme.
"Interest Rate"	<p>means a rate equivalent to 2 per cent. per annum above the base lending rate published by National Westminster Bank Plc (or such other bank as the Authority may, after consultation with the Franchise Operator, determine from time to time) during any period in which an amount payable under this Franchise Agreement remains unpaid.</p>
"Key Contract"	<p>means:</p> <ul style="list-style-type: none">(a) the agreements and contracts listed in Part 3 of Schedule 11;(b) any Rolling Stock Lease to which the Franchise Operator may be party from time to time; and(c) any other agreement, contract, licence or other arrangement (whether in written, oral or other form) to which the Franchise Operator may be party or under which the Franchise Operator may be the beneficiary from time to time which is designated as such pursuant to Clause 27.3.
"Law"	<p>includes any enactment, subordinate legislation, rule, regulation, order, directive or other provision, including those of the European Community, and any judicial or administrative interpretation or application thereof, which has, in each case, the force of law in the United Kingdom or any part of it (including the Act).</p>
"Letter of Release"	<p>means the letter of release from the Franchisee to the Reporting Accountants which is to be delivered to the Reporting Accountants on or before the Franchise Commencement Date, in the agreed terms and</p>

	marked “E”.
“Letter of Representation”	means the letter of representation from the Reporting Accountants to the Franchisee which is to be delivered to the Franchisee on or before the Franchise Commencement Date, in the agreed terms and marked “F”.
“Licences”	means such licences granted under section 8 of the Act as the Franchise Operator may be required from time to time to hold under the Act in order to provide or operate the Franchise Services.
“Light Maintenance Services”	means the services at the Depots and Stations specified in Part 3 of Schedule 2.
“Load Factor Specifications”	means the load factor and other specifications, if any, for the Passenger Services which are set out in Part 3 of Schedule 3, as the same may be varied in accordance with the terms of this Franchise Agreement.
“Local Authority”	<p>means:</p> <ul style="list-style-type: none">(a) in England, a county council, a district council, a passenger transport executive, a London borough council, the Common council of the City of London, or a council which is established under the Local Government Act 1992 and which is either an authority responsible for expenditure on public passenger transport services within the meaning of section 88 of the Transport Act 1985 or a local authority for the purposes of section 93 of the Transport Act 1985;(b) in Wales, a county council, a district council or a council which is established under the Local Government Act 1972 or the Local Government (Wales) Act 1994;(c) in Scotland, a regional council, a district council, the Strathclyde Passenger Transport Executive, or a district council which is established under the Local Government (Scotland) Act 1973 or the Local Government, Etc. (Scotland) Act 1994; and(d) any other body or council replacing any of the above from time to time.
“Long Stop Date”	<p>means 17 August 1996 or such later date:</p> <ul style="list-style-type: none">(a) on or before 14 September 1996 as may be determined by the Authority and notified to the Franchisee if any one or more of the conditions precedent set out in Clauses 2.2(a)(i), 2.2(a)(ii) or 2.2(e) are not satisfied by 17 August 1996 and all other conditions precedent set out in Clause 2.2 are either satisfied by that date or are reasonably likely to be satisfied as soon as all other conditions precedent are satisfied; or(b) as is agreed between the Franchisee and the Authority in any circumstances other than those specified in (a);
“Mandatory Modification”	means a modification or addition to rolling stock which is required to be made under any applicable Law or any directive of Railtrack or any government authority.
“Marks”	means such trade marks as the Franchise Operator may apply to any Primary Franchise Assets or other assets used by it under a Key

“Morning Peak”

Contract, which are so applied on the expiry of the Franchise Period and are not the subject of a Brand Licence.

has, if applicable, the meaning ascribed to that term in Part 1 of Schedule 3.

“Net Loss” or “Net Gain”

means the net financial loss or the net financial gain, as the case may be, which it is reasonably considered would be suffered or made by the Franchise Operator (as determined in each case in accordance with, and subject to, Part 2 of Schedule 9 and, in the case of a Capacity Change, Clause 6.6) as a result of:

- (a) a Change;
- (b) participation in a Local Authority Scheme;
- (c) the introduction of a new Discount Fare Scheme or any Discount Fare Scheme ceasing to be approved by the *Authority* for the purposes of section 28 of the Act;
- (d) an amendment to an existing Inter-Operator Scheme;
- (e) an increase or reduction in the rate of Value Added Tax on the provision of Passenger Services; or
- (f) an alteration to the obligations of the Franchise Operator under Schedule 5 which is made pursuant to paragraph 25 of Part 2 of Schedule 5

together with, where applicable, any other adjustment to the terms of this Franchise Agreement which may be made in connection therewith, (each such Change, participation, introduction, cessation, amendment, increase, reduction or alteration being a “Variation”).

“Network Change”

means:

- (a) any change (including any improvement or enlargement) to any relevant part of the network or to any system, system interface or format of any operational documentation (other than any railway group standards) which is owned or used by Railtrack or the Franchise Operator which, in each case, is likely materially to affect the operation of the network, or of trains operated by the Franchise Operator on the network; or
- (b) any change to the operation of the network (including a temporary speed restriction) or series of such changes which has lasted for more than six months (or such other period as may be specified in the Track Access Agreement) and which is likely materially to affect the operation of trains by the Franchise Operator on the network.

“New Rolling Stock”

means at least ⁹46 Rolling Stock Units procured for the purpose of operating the Passenger Services which:

- (a) have not been used for the provision of railway services prior to their delivery to the Franchise Operator; and

⁹ Date of Change 21.12.99

(b) meet the specification set out in Part 1 of Schedule 14.

“Participating Employer”	has the meaning ascribed to that term in the Pension Trust.
“Passenger Change Date”	means a date upon which significant changes may be made to the Timetable in accordance with or by virtue of the Track Access Conditions.
“Passenger’s Charter”	means the Franchise Operator’s code of practice in the agreed terms and marked “G”.
“Passenger Services”	means the railway passenger services specified in Part 1 of Schedule 2 and, unless the context otherwise requires, as provided by the Franchise Operator from time to time, including such of such services as the Franchise Operator may delegate or subcontract or otherwise secure through any other person from time to time under this Franchise Agreement.
“Passenger Service Requirement”	means the quantity and quality of, and other specifications and requirements for, the Passenger Services contained in Parts 1 and, where applicable, 3 of Schedule 3, as the same may be varied in accordance with the terms of this Franchise Agreement.
“Pension Trust”	means the pension trust governing the Railways Pension Scheme.
“Performance Bond”	¹⁰ <i>means the performance bond to be provided to the Authority in the agreed terms and marked “H” and such other bond as may replace it under Clause 14.3, each as replaced or amended from time to time.</i>
“Planned Capacity”	means the number of seats which are planned in accordance with the Train Plan to be provided on a train in the Train Plan at each relevant Capacity Monitoring Point.
“Power of Attorney”	means the power of attorney of the Franchise Operator in the agreed terms and marked “I”.
“Price”	means, in respect of any Fare, the price of such Fare, including any applicable Value Added Tax but before the deduction of any applicable discount to which a purchaser may be entitled, as notified to RSP in accordance with Schedule 5 of the Ticketing and Settlement Agreement.
“Primary Franchise Assets”	means the property, rights and liabilities designated as such pursuant to Clause 32.2 but excluding such property, rights or liabilities as may, in accordance with the terms of, or by an amendment made to, this Franchise Agreement, cease to be so designated.
“Profit” or “Loss”	means, subject to the other provisions of this Franchise Agreement, profit or loss before corporation tax using accounting principles generally accepted in the United Kingdom.
“Property Leases”	means the leases to be entered into pursuant to Clause 2.2(c) of this Franchise Agreement and any agreement or lease of a similar or equivalent nature which the Franchise Operator may enter into with a person who has an interest in a network or a railway facility which is to be used for or in connection with the provision or operation of the Franchise Services.
“PSR Change”	means a variation of, or amendment to, the Passenger Service

¹⁰ Date of replacement of text 19th September 1996

	Requirement under Clause 11 (whether of the quality, quantity or other specification thereof and whether by increase, decrease, introduction or removal of any such specification or otherwise and whether or not involving a Closure).
“Public Sector Operator”	means any person who provides railway passenger services or operates any station or light maintenance depot pursuant to or under section 30, 51 or 52 of the Act.
“Rail Users’ Consultative Committee”	means a consultative committee established under section 2 of the Act.
“Railtrack”	<i>means Railtrack PLC, a public company limited by shares with registered number 2904587 and having its registered office at Kings Place, 90 York Way, London, N1 9AJ and any successor in title to the network or any relevant railway facility.¹¹</i>
“Railways Pension Scheme”	means the pension scheme established by the Railways Pension Scheme Order 1994 (No. 1433).
“Reporting Accountants”	means KPMG of 8 Salisbury Square, London EC4Y 8BB
“Reporting Period”	means a period of 28 days, provided that: <ul style="list-style-type: none">(a) the first such period during the Franchise Period shall exclude any days up to but excluding the Franchise Commencement Date;(b) the first and last such period in any Reporting Year may be varied by up to 7 days by notice from the <i>Authority</i> to the Franchise Operator;(c) each such period shall start on the day following the last day of the preceding such period; and(d) the last such period during the Franchise Period shall end on the expiry of the Franchise Period.
“Reporting Year”	means a period normally commencing on 1 April in each calendar year, comprising 13 consecutive Reporting Periods.
“Request Stop Station”	means, in relation to any particular train or Passenger Service, a station at which such train or service need only call when a passenger or intending passenger wishes to join such train or service or leave such train or service at such station.
“Retail Prices Index”	means the retail prices index for all items as published from time to time by the Central Statistical Office of the Chancellor of the Exchequer or, if such index shall cease to be published or there is a material change in the basis of the index or if, at any relevant time, there is a delay in the publication of the index, such other retail prices index as the <i>Authority</i> may, after consultation with the Franchise Operator, determine to be appropriate in the circumstances.
“Rolling Stock Capacities”	means, where applicable: <ul style="list-style-type: none">(a) in relation to the rolling stock and configurations of rolling stock used in the provision of the Passenger Services on the date of this Franchise Agreement, the deemed capacities of such rolling stock and configurations as contained in the document in the

¹¹ Insert change text wef 07/02/11

agreed terms marked “J”, which capacities shall be deemed, for the purposes of Clause 6.8(b), to have been notified to the Franchise Operator on the Franchise Commencement Date; and

- (b) in relation to any other rolling stock or configurations of rolling stock used in the provision of the Passenger Services, the deemed capacities thereof as determined by the **Authority** and notified to the Franchise Operator from time to time under Clause 6.8.

“Rolling Stock Leases”

means the agreements for the leasing of rolling stock set out in Part 5 of Schedule 1 and such agreements of a similar or equivalent nature (including, for the avoidance of doubt, any agreements or arrangements for the subleasing, hiring, licensing or other use of rolling stock) as the Franchise Operator may be party to from time to time during the Franchise Period whether in addition to, or replacement or substitution for, in whole or in part, any such agreement.

“Rolling Stock Unit”

means the smallest number of rolling stock vehicles which are normally comprised in a train used by the Franchise Operator in the provision of the Passenger Services.

“RSP”

means Rail Settlement Plan Limited.

“Rules of the Plan”

means rules regulating, for any relevant part of the network, the standard timings and other matters necessary to enable trains to be scheduled into Railtrack’s working timetable applicable to that part of the network, being rules which specify (amongst other matters):

- (a) the timings (including specified allowances) allowed for travel between specified points for each type of train and for each type of traction used, taking into account any particular constraints imposed by railway vehicles which may form part of the train;
- (b) timing margins or allowances for stopping at junctions and other specified points;
- (c) minimum timing margins or headways between successive trains travelling on the same section of track;
- (d) minimum and maximum time periods for stopping at stations and other specified points; and
- (e) restrictions as to the speed of railway vehicles on any section of track.

“Rules of the Route”

means rules regulating, for any relevant part of the network, each of the following matters:

- (a) the location, number, timing and duration of any possessions of any track or section of track, which enable inspection, maintenance, renewal and repair thereof or of any other railway asset or any other works in relation thereto, and any restrictions regarding those possessions;
- (b) any temporary speed and other restrictions on the operation of trains on any section of track, which may be necessary to carry out any inspection, maintenance, renewal or repair referred to in paragraph (a) above; and

- (c) any alternative train routes or stopping patterns which may apply during any possessions referred to in paragraph (a) above and, for the purpose of this definition, track shall be regarded as subject to a possession if it has been temporarily taken out of service for the purposes stated in paragraph (a) above.

“Safety Case”	means a statement of procedures, standards and internal regulations designed to achieve the safe provision or operation of the Franchise Services prepared by the Franchise Operator and accepted by Railtrack or the Health and Safety Executive under The Railways (Safety Case) Regulations 1994.
“Season Ticket Bond”	means the season ticket bond to be provided to the <i>Authority</i> in respect of the Franchise Operator’s liabilities under certain Fares and Season Ticket Fares in the agreed terms and marked “K” and such other bond as may replace it from time to time under Clause 14.4.
“Season Ticket Fare”	means, other than in Schedule 5, a Fare which entitles the purchaser to make an unlimited number of journeys in any direction during the period for which, and between the stations and/or the zones for which, such Fare is valid.
“Security Interest”	means any mortgage, pledge, lien, hypothecation, security interest or other charge or encumbrance or any other agreement or arrangement having substantially the same economic effect and includes any security as defined in section 248(b) of the Insolvency Act 1986.
“Share Purchase Agreement”	means the agreement dated the date of signature of this Franchise Agreement for the purchase by the Franchisee from the Board of the issued share capital of the Franchise Operator in the agreed terms and marked “L”.
“Spares”	means parts and components of rolling stock which are available for the purpose of carrying out light maintenance services on rolling stock.
“Specified Franchise Assets”	means the Primary Franchise Assets designated as such pursuant to Clause 32.8 but excluding such Primary Franchise Assets as may, in accordance with the terms of, or by an amendment made to, this Franchise Agreement, cease to be designated as either Primary Franchise Assets or Specified Franchise Assets.
“Specified Personnel”	means the persons specified in Schedule 13 and any replacement thereof under Clause 14.5.
“Standard Class Accommodation”	means, in respect of any train or service, accommodation which is available to the purchasers of any Fare which, taking into account any rights or restrictions relating to that Fare (other than restrictions relating to accommodation on that train or service), entitles such purchasers to make a journey on that train or service (provided that any accommodation on such train which may have been reserved by such purchasers shall be deemed to have been made so available if, had it not been so reserved, it would have been available for use by such purchasers).
“Station”	means a station listed in Part 2 of Schedule 2.

“Station Lease”	¹² <i>means a Property Lease entered into pursuant to Clause 2.2(c)(i) or Clause 12.13 of this Franchise Agreement in respect of a Station.</i>
“Station Services”	means the services at the Stations specified in Part 2 of Schedule 2.
“Station Sublease”	means a lease or sub-lease which is in existence on the Franchise Commencement Date (as amended, varied or replaced from time to time) of premises comprising part or parts of a Station exclusively occupied by another Train Operator under any Station Lease.
“Successor Operator”	means a Train Operator succeeding the Franchise Operator in the provision or operation of all or any of the Franchise Services.
“Supplemental Agreement”	means the supplemental agreement between the Franchise Operator and a Successor Operator to be entered into pursuant to a Transfer Scheme, being substantially in the form of the agreement in the agreed terms and marked “M” but subject to such amendments as the Authority may reasonably make thereto as a result of any change of Law or other change of circumstances between the date of this Franchise Agreement and the date the relevant Transfer Scheme is made.
“Ticketing and Settlement Agreement”	means the Ticketing and Settlement Agreement dated 23 July 1995 between RSP, the Franchise Operator and the other Train Operators named therein.
“Timetable”	means the passenger timetable of the Franchise Operator in respect of the Passenger Services provided by it under this Franchise Agreement, as in force from the Passenger Change Date immediately preceding the Franchise Commencement Date and as subsequently amended, updated or renewed either on each subsequent Passenger Change Date during the Franchise Term following receipt from Railtrack of the Working Timetable for the period between any two consecutive Passenger Change Dates (excluding, for the avoidance of doubt, such minor or emergency amendments as may be made or imposed between such dates) or to reflect a PSR Change (if such PSR Change is not implemented on a Passenger Change Date), each such amended, updated or renewed Timetable constituting a new Timetable for the purpose of Clause 7.1.
“Total Cancellation”	means a train which is scheduled to be provided under the Timetable and which is cancelled or does not otherwise operate for more than half its scheduled mileage under the Timetable.
“Track Access Agreement”	means any Access Agreement(s) between Railtrack and the Franchise Operator which permits the Franchise Operator to provide the Passenger Services on track owned by Railtrack, being, on the Franchise Commencement Date, the agreement specified in Part 2(a) of Schedule 1.
“Track Access Conditions”	means the Railtrack Track Access Conditions 1995 (as subsequently replaced or amended from time to time) as incorporated into any Track Access Agreement.
“Train Mileage”	means, in relation to any period, the aggregate train mileage covered or scheduled to be covered under the Timetable during such period by

¹² Date of replacement of text 19th September 1996.

	each train used by the Franchise Operator in the provision of the Passenger Services (excluding, for the avoidance of doubt, any train mileage covered as a result of positioning or other movements of rolling stock outside the Timetable).
“Train Operator”	means a franchise operator or a Public Sector Operator.
“Train Plan”	means the plan and/or diagram of the Franchise Operator for the operation of trains and train formations under the Timetable, to the extent (if any) such plan and/or diagram relates to capacity which is required to be included in such plan and/or diagram pursuant to Clause 5.1 of this Franchise Agreement or, in respect of the period from the Franchise Commencement Date to the date such plan and/or diagram is amended or agreed following a programme of passenger counts under Clause 6.4 (to the extent applicable), the train plan and/or diagram agreed between the Franchise Operator and the <i>Authority</i> and notified to the Franchisee prior to the Franchise Commencement Date.
“Transfer Scheme”	means a transfer scheme made by the <i>Authority</i> under section 86 of the Act pursuant to Clause 35.1 being substantially in the form of the scheme in the agreed terms and marked “N” but subject to such amendments as the <i>Authority</i> may make thereto as a result of any change of Law or other change of circumstances between the date of this Franchise Agreement and the date such scheme is made.
“Turnover”	means, in relation to any period, the aggregate revenue (excluding any applicable Value Added Tax) accruing to the Franchise Operator from the sale of Fares and the receipt of Franchise Payments during such period.
“Upper Capacity Limit”	means the capacity which would reasonably be required to be provided on the Passenger Services by the Franchise Operator in order not to exceed the Load Factor Specifications for the level of passenger demand specified in Part 4(c) of Schedule 3 (if applicable).
“Value Added Tax”	means value added tax as provided for in the Value Added Tax Act 1994.
“Variation”	has the meaning ascribed to that term in the definition of Net Loss and Net Gain in this Clause 1.1.
“Vehicle”	means an item of rolling stock used in the provision of the Passenger Services which is designed principally for the carriage of passengers (including any rolling stock which provides seating accommodation and catering facilities but excluding any rolling stock which is designed principally for passengers to sleep in).
“Working Timetable”	means, in relation to the period between any two Passenger Change Dates, the working timetable in respect of the Passenger Services for such period as notified by Railtrack to the Franchise Operator under the Track Access Conditions in advance of such period (being, on the date of this Franchise Agreement, under Condition D 3.6.3 of the Track Access Conditions).
“Young Person’s Railcard”	means a Discount Card issued under the Discount Fare Scheme referred to in Part 3(b)(ii) of Schedule 1.

1.2 Construction and Interpretation

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

- (a) words and expressions defined in Part I of the Railways Act 1993 shall have the same meaning in this Franchise Agreement;

- (b) words and expressions defined in the Interpretation Act 1978 shall have the same meaning in this Franchise Agreement;
- (c) the words “include” and “including” are to be construed without limitation;
- (d) the words “subsidiary”, “holding company”, “wholly owned subsidiary” and “parent undertaking” shall have the same meaning in this Franchise Agreement as in sections 258 and 736 of the Companies Act 1985;
- (e) references to documents “in the agreed terms” are references to documents initialled by or on behalf of the **Authority** and the Franchisee;
- (f) references to Recitals, Clauses, Parts, paragraphs, Schedules and Parts of Schedules are to Recitals, Clauses, Parts, paragraphs, Schedules and Parts of Schedules of this Franchise Agreement, unless expressly specified to the contrary, and the Schedules form part of this Franchise Agreement;
- (g) headings and references to headings shall be disregarded in construing this Franchise Agreement;
- (h) references to any enactment include any subordinate legislation made from time to time under it and are to be construed as references to that enactment as for the time being amended or modified or to any enactment for the time being replacing or amending it;
- (i) references to an agreement or any other document shall be construed as referring to that agreement or document as from time to time supplemented, varied or amended;
- (j) words importing the masculine gender include the feminine and vice-versa, and words in the singular include the plural and vice-versa;
- (k) wherever provision is made for the giving or issuing of any notice, consent, approval, certificate or determination by any person, unless otherwise specified, such notice, endorsement, consent, approval, certificate or determination shall be in writing and the words “notify”, “consent”, “approval”, “certify” or “determine” and other cognate expressions shall be construed accordingly;
- (l) references to materials, information, data and other records shall be to materials, information, data and other records whether stored in electronic, written or other form;
- (m) references to the period of validity of any Fare are references to its period of validity excluding any rights of any purchasers thereof to extend such period under the Passenger’s Charter, any equivalent document, or the terms and conditions attaching to such Fare (including any applicable conditions of carriage) in the event of the cancellation or delay of any of the railway passenger services for which such Fare is valid;
- (n) references to stations at which any train calls include stations at which such train commences or terminates its journey;
- (o) references to “railway passenger services” are to be construed subject to section 47(5) of the Act;
- (p) references to the provision of railway passenger services include the organisation of the relevant train movements and making the necessary arrangements with Railtrack or any other relevant infrastructure controller; and
- (q) references in lower case letters to terms defined under Clause 1.1 of this Franchise Agreement shall be construed, where relevant, as being the terms defined as such in the franchise agreement or relevant agreement made under section 30, 51 or 52 of the Act of any other relevant Train Operator.

1.3 Strategic Rail Authority^{13 14}

The parties acknowledge that pursuant to section 215 and Schedule 16 of the Transport Act 2000 the functions of the Authority were transferred to the Strategic Rail Authority. Subsequently pursuant to a transfer scheme made under section 1(2) and Schedule 2 of the Railways Act 2005, the property, rights and liabilities of the Strategic Rail Authority used exclusively or primarily in or for the purposes of the Designated Undertaking (as defined by the transfer scheme) were transferred to the Secretary of State for Transport (“the Authority”) on 22 July 2005. References in this Franchise Agreement to “the Director of Passenger Rail Franchising”, or “the Strategic Rail Authority” shall accordingly be deemed to be and shall be construed as references to the Secretary of State”.

2 Conditions Precedent

2.1 Entry into Effect

The provisions of Parts I and VI of this Franchise Agreement shall take effect and be binding upon the **Authority** and the Franchisee immediately upon signature of this Franchise Agreement. The provisions of Parts II, III, IV and V of this Franchise Agreement shall enter into effect and become binding upon such parties and the Franchise Operator on the Franchise Commencement Date.

2.2 Conditions Precedent

(a) Following signature of this Franchise Agreement, the Franchisee shall use all reasonable endeavours to procure the satisfaction as soon as reasonably practicable of the following conditions precedent:-

(i) receipt by the **Authority** and the Franchisee of a notice from the Regulator which:-

- (x) approves, for the purposes of the Licences specified in Part 1 of Schedule 1, the change in control in the Franchise Operator to be effected pursuant to the Share Purchase Agreement;
- (y) states that he is not aware of any reason why any of the Licences set out in Part 1 of Schedule 1 should be revoked; and
- (z) states that the rights of the Franchise Operator under Schedule 10 of the Track Access Agreement will not be altered as a result of the change in control of the Franchise Operator to be effected pursuant to the Share Purchase Agreement;

(ii) receipt by:

- (x) the **Authority** and the Franchisee of confirmation from Railtrack; or
- (y) the Franchise Operator of confirmation from the Health and Safety Executive in the case of Barking and Upminster Stations;

that in each case the relevant Safety Case of the Franchise Operator will not be required to be amended as a result of the change in control in the Franchise Operator to be effected pursuant to the Share Purchase Agreement or, if amendments are required, that it is satisfied that appropriate arrangements have been made for the implementation of such amendments and, where necessary, such amendments have been approved by the Health and Safety Executive;

¹³ Date of new Text 22.5.2001

¹⁴ Date of Change 20/12/2010

- (iii) The Access Agreement set out in Part 2(a) of Schedule 1 having been amended substantially in accordance with the document in the agreed terms marked “TAA” and such amendment having been approved by the Regulator;
 - (iv) The Access Agreement set out in Part 2(b) of Schedule 1 having been amended substantially in accordance with the document in the agreed terms marked “ISA” and such amendment having been approved by the Regulator;
- (b) Following signature of this Franchise Agreement, the Franchisee shall procure the satisfaction of the following further condition precedent, as soon as reasonably practicable and so far as within its control, that the **Authority** receives evidence, satisfactory to **it** in form and substance, that the conditions precedent specified in Clause 2.2(e) will be satisfied immediately following the completion of the Share Purchase Agreement (including under such escrow arrangements as he may consider appropriate for the purpose).
- (c) Following signature of this Franchise Agreement, the Franchisee shall procure, so far as within its control, that the Franchise Operator enters into Property Leases with Railtrack as soon as reasonably practicable as follows:-
 - (i) in respect of the Stations, on substantially the same terms as the Property Leases set out in Part 4(a) of Schedule 1, but subject to such Property Leases having been conformed to the document in the agreed terms marked “SL”; and
 - (ii) in respect of the Depots, on substantially the same terms as the Property Leases set out in Part 4(b) of Schedule 1, but subject to such Property Leases having been conformed to the document in the agreed terms marked “DL”,

with the intent that, for the purposes of section 31 of the Act, the properties comprised in such Property Leases be used for or in connection with the provision of any of the Passenger Services.

- (d) Upon satisfaction of the conditions precedent in Clause 2.2(a) (except to the extent waived by the **Authority** and the Franchisee) and Clause 2.2(b) (except to the extent waived by the **Authority**) and subject to the **Authority** being satisfied (except to the extent **it** may not so require) that the Franchise Operator has entered into the Property Leases referred to in Clause 2.2(c), the **Authority** shall forthwith notify the Board and the Franchisee that the transfer of the issued share capital of the Franchise Operator pursuant to the Share Purchase Agreement may proceed and shall specify the date, time and place for such transfer, whereupon the Franchisee shall forthwith procure, so far as within its control, the completion of such transfer.
- (e) Immediately following completion of the transfer of the issued share capital of the Franchise Operator to the Franchisee, the Franchisee shall forthwith procure the satisfaction of the following further conditions precedent (so far as within its control):-
 - (i) the execution and delivery of the Power of Attorney by the Franchise Operator;
 - (ii) the execution and delivery of the Deed of Adherence by all parties to it;
 - (iii) receipt by the **Authority** of evidence, satisfactory to **it** in form and substance, that the property, rights and liabilities designated as Franchise Assets under Clause 32.1 or listed in Parts 1 and 2 of Schedule 11 will be vested in the Franchise Operator on the Franchise Commencement Date free of all Security Interests, provided that if the **Authority** is not satisfied that the property, rights and liabilities listed in Parts 1 and 2 of Schedule 11 will be vested in the Franchise Operator free of all Security Interests, the **Authority** may alter Parts 1 and 2 of Schedule 11 until **it** can be so satisfied and the Franchisee shall accept any such alteration;

- (iv) receipt by the **Authority** of evidence, satisfactory to **it** in form and substance, that the Franchise Operator is a wholly owned subsidiary of the Franchisee;
- (v) receipt by the **Authority** of the Performance Bond and the Season Ticket Bond duly executed and delivered by the relevant Guarantors and the Deed of Subordination duly executed and delivered by the Franchise Operator and the relevant Guarantor;
- (vi) receipt by the **Authority** of evidence, satisfactory to **it** in form and substance, that the provisions of Part 1 of Schedule 10 have been complied with;
- (vii) the **Authority** being satisfied that no event or matter has occurred or arisen which is or ought to be notified to the **Authority** under Clause 3.2(b) and which, if it had been known to the **Authority** before the signature of this Franchise Agreement, would, in **it's** reasonable opinion, have resulted in **it** not entering into this Franchise Agreement with the Franchisee or in **it** entering into this Franchise Agreement on materially different terms (including, for the avoidance of doubt, a change in the identity of any one person, or two or more persons acting by agreement, who may Control the Franchisee between the date of this Franchise Agreement and the Franchise Commencement Date other than as agreed with the **Authority** prior to the date of this Franchise Agreement); and
- (viii)(x) execution and delivery of the Letter of Release by the Franchisee; or
 - (y) payment by the Franchisee, following receipt of the Letter of Representation signed by the Reporting Accountants, of the proportion of the fees of the Reporting Accountants specified in the Letter of Representation.
- (f) As soon as the **Authority** is satisfied that each of the conditions precedent in Clause 2.2(e) have been satisfied (except to the extent waived by **itself**) **it** shall issue to the Franchisee and the Franchise Operator a Certificate of Commencement, which shall state the Franchise Commencement Date. If any such conditions precedent have not been so satisfied before the issue of the Certificate of Commencement, the Franchisee shall procure their satisfaction immediately thereafter.
- (g) This Clause 2.2 shall be construed subject to the **Authority's** right to take such actions or steps as **it** considers appropriate to ensure that the transfer of the issued share capital of the Franchise Operator and the issue of the Certificate of Commencement occur on such day as may, in **it's** opinion, be convenient or desirable for the purpose of facilitating the transfer of the issued share capital of the Franchise Operator under the Share Purchase Agreement and drawing up any accounts thereunder on such day (including on a day which falls at the end of an accounting period of the Board). The **Authority** may accordingly permit the Franchisee to delay satisfaction of conditions precedent or compliance with any obligation under this Clause 2.2 until such day as **it** may notify the Franchisee and shall only be obliged to give notification under Clause 2.2(d) on such day.
- (h) Where agreements or deeds are required to be entered into or executed and delivered or any steps required to be taken under this Clause 2.2 by the Franchisee, the Franchise Operator (under Clause 2.2(e) only) or the Guarantors, the **Authority** may require, to the extent appropriate and as an additional condition precedent, such evidence (including a legal opinion) of the power and authorisation of the relevant person to enter into, execute or deliver any such agreement or deed or take any such steps and the Franchisee shall supply such additional evidence.

2.3 Share Purchase Agreement

The Franchisee shall comply with its obligations under the Share Purchase Agreement.

2.4 Consequences of non-fulfilment

- (a) The **Authority** shall, give notice to the Franchisee terminating this Franchise Agreement if the Certificate of Commencement has not been issued on or before the Long Stop Date or if *it* reasonably considers that any relevant condition precedent in Clause 2.2 will not be satisfied before the Long Stop Date. If such notice is given, this Franchise Agreement shall terminate, subject to Clause 39.1, on the Long Stop Date.
- (b) On termination of this Franchise Agreement under this Clause 2.4, no party shall have any liability to any of the other parties to this Franchise Agreement save only in respect of its obligations under Clause 39 and any antecedent breach of its obligations hereunder.

3 Warranty

3.1 Pre-qualification and tendering

The Franchisee represents and warrants to the **Authority**, subject only to any matter fully and fairly disclosed to the **Authority** in writing (and accepted by *it*) or expressly referred to in the audited accounts of the Franchisee or expressly provided for under the terms of this Franchise Agreement:

- (a) that it has not acted in breach of any of the terms of the confidentiality undertaking signed by it as part of its pre-qualification for the right to tender for the Franchise Services; and
- (b) that all of the information, representations and other matters of fact communicated in writing to the **Authority** and/or *it's* advisers by the Franchisee, its directors, officers, employees, servants or agents in connection with or arising out of the Franchisee's application to pre-qualify or the Franchisee's formal tender for the right to procure the provision of the Franchise Services were (at the dates submitted to the **Authority**) and remain, in all material respects, true, accurate and not misleading.

3.2 Updating of warranty

The Franchisee further undertakes to the **Authority**, subject to Clause 3.3, that:

- (a) subject as provided in Clause 3.1, the representations and warranties contained in Clause 3.1 will be fulfilled down to, and will be true and accurate in all material respects and not misleading in any material respect at, the Franchise Commencement Date as if they had been entered into afresh at the Franchise Commencement Date; and
- (b) if after the signing of this Franchise Agreement and before the Franchise Commencement Date any event shall occur or matter arise which results or may result in any of the warranties in Clause 3.1 being unfulfilled, untrue, misleading or incorrect in any material respect at the Franchise Commencement Date, the Franchisee shall immediately notify the **Authority** in writing thereof and the Franchisee shall provide such information concerning the event or matter as the **Authority** may require.

3.3 Exceptions

Without prejudice to Clause 2.2(e)(vii), no right to damages or compensation shall arise in favour of the **Authority** under Clause 3.2 in consequence only of an event occurring or matter arising after the signing of this Franchise Agreement but before the Franchise Commencement Date which constitutes a breach or non-fulfilment of any of the warranties in Clause 3.1 (whether or not this Franchise Agreement is terminated in consequence thereof) if:

- (a) the event or matter could not reasonably have been avoided or prevented by the Franchisee; and
- (b) the event or matter was duly notified to the **Authority** in accordance with Clause 3.2.

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Part II – Operation of the Franchise

4 The Franchisee

The Franchisee undertakes to secure that the Franchise Operator provides the Passenger Services subject to and in accordance with the terms and conditions of this Franchise Agreement and otherwise complies with its obligations, duties and undertakings under this Franchise Agreement (as amended from time to time in accordance with this Franchise Agreement or by agreement between the Franchise Operator and the *Authority*).

4.2¹⁵ *The Franchisee undertakes to secure that the Franchise Operator co-operates with the Authority and acts reasonably and in good faith in and about the performance of its obligations and the exercise of its rights pursuant to the Franchise Agreement.*

4.3¹⁶ *The Authority will act reasonably and in good faith in and about the performance of his obligations and the exercise of his rights pursuant to the Franchise Agreement.*

5 Passenger Service Requirement

5.1 ^aPreparation of Timetable and Train Plan¹⁷

(a)^{b c d} The Franchise Operator shall procure that the Passenger Services contained in the Timetable and the Train Plan include and provide at all times during the Franchise Term at least:

- (i) the railway passenger services and the capacity (if any) on such services specified in the Passenger Service Requirement in Part 1 of Schedule 3; and
- (ii) where applicable, such railway passenger services and such capacity as the Franchise Operator may be required to include from time to time in the Timetable and the Train Plan pursuant to Clauses 6.3 to 6.7.

(b) The Franchise Operator shall use all reasonable endeavours to procure that the Passenger Services contained in the Timetable provide at all times during the Franchise Term the Connections (if any) specified in the Passenger Service Requirement in Part 1 of Schedule 3.

(c) Subject to the Franchise Operator taking all reasonable steps to ensure that it will be able to comply with its obligations under this Clause 5.1 (including the making of bids for relevant train slots before any relevant priority dates provided for in the Track Access Conditions) and otherwise complying with its obligations under Clause 5.2, it shall not be responsible for any failure to perform its obligations hereunder (and shall be deemed not to be in breach hereof) to the extent that such failure is caused by the exercise by Railtrack of:

- (i) its Initial Flexing Rights; or
- (ii) such rights as it may have from time to time under the Track Access Conditions in respect of any applicable Rules of the Route or Rules of the Plan or Network Change.

¹⁵ Date of Change 20/12/2010

¹⁶ Date of Change 20/12/2010

¹⁷ Please refer to derogations in Schedule 3

- (d) The Franchise Operator shall ensure that, for each period between two consecutive Passenger Change Dates during the Franchise Term, the Timetable for such period is not materially different from the relevant Working Timetable.
- (e) For the avoidance of doubt, nothing in this Clause 5.1 shall require the Franchise Operator to include in its Timetable and Train Plan the railway passenger services and capacity specified in Clause 5.1(a)(i) and (ii) to the extent the Franchise Operator has otherwise agreed to, or bid for, train slots during a timetable development period (as defined in Condition D of the Track Access Conditions) commencing prior to the Franchise Commencement Date and such agreement or bid cannot reasonably be amended or it would be unreasonable to require it to be amended.

5.2 Notification to *Authority*

- (a) Before making any bid to Railtrack under the Track Access Conditions for train slots which relate to a Timetable which is to come into effect on a Passenger Change Date, the Franchise Operator shall

notify the *Authority* of the proposed Timetable and Train Plan which it will be able to provide and operate if such bid is accepted by Railtrack. Such notification shall be accompanied by a certificate addressed to the *Authority* to the effect that such proposed Timetable and Train Plan will enable it to comply with its obligations under Clause 5.1. To the extent that the Franchise Operator cannot so certify, it shall provide reasonable details thereof to the *Authority*.
- (b) The Franchise Operator shall update such notification and certification as soon as reasonably practicable in the event that it modifies or is required to modify its proposed Timetable following Railtrack's rejection or modification of its bid or any part of it and such modification materially affects the proposed Timetable. The Franchise Operator shall in addition notify the *Authority* as soon as reasonably practicable upon it becoming aware that it may not be able to comply with its obligations under Clause 5.1 (whether such non-compliance may occur at the time of such notification or in the future and whether as a result of an amendment to, or the exercise of any rights of Railtrack under, any applicable Rules of the Route or Rules of the Plan or otherwise). The Franchise Operator shall supply such details thereof as the *Authority* may reasonably require.
- (c) The Franchise Operator shall use all reasonable endeavours to ensure that it will be able to comply with its obligations under Clause 5.1 and that the passenger timetable of the Franchise Operator will not be required to be amended between any two consecutive Passenger Change Dates by virtue of an amendment to, or the exercise of any rights of Railtrack under, any applicable Rules of the Route or Rules of the Plan which, if such amendment had been made, or such rights exercised, in connection with the setting of the Timetable in effect on the preceding Passenger Change Date, would have resulted in non-compliance with Clause 5.1. It shall accordingly, whether reasonably so requested by the *Authority* or not and to the extent appropriate in the circumstances, exercise all relevant rights it may have under any relevant agreement (including any rights under the Track Access Conditions) to object and not to consent to any act or omission, or proposed act or omission, of Railtrack or any relevant other person which might result in it being unable to comply with its obligations under Clause 5.1, whether at the relevant time or in the future, or in its passenger timetable being so amended between two Passenger Change Dates. For the avoidance of doubt, the exercise of such rights may require the Franchise Operator to dispute any act or omission or proposed act or omission of Railtrack, to submit such dispute to any relevant dispute resolution arrangements or procedures and to appeal against any relevant award or determination under such arrangements or procedures, including to the Regulator.
- (d) If the *Authority* does not consider that the Franchise Operator has taken sufficient steps under Clause 5.2(c), *it* may require the Franchise Operator to exercise such rights in such manner as *it* may consider reasonable in the circumstances and the Franchise Operator shall comply with any such requirement. The *Authority* shall, to the extent reasonably practicable, allow the Franchise Operator

a reasonable opportunity to make any representations to *it* concerning the exercise of such powers before requiring the Franchise Operator to take any such action.

- (e) The provisions of Clause 5.1(c) shall be ignored for the purposes of determining whether, under the provisions of this Clause 5.2, the Franchise Operator is or will be able to comply with its obligations under Clause 5.1.

5.3 Compliance with Timetable and Train Plan

- (a) ^{e f}The Franchise Operator shall use all reasonable endeavours to provide the Passenger Services in accordance with the Timetable and the Train Plan, except to the extent the **Authority** may, in exceptional circumstances, otherwise agree
- (b) Except to the extent that the **Authority** may otherwise agree from time to time, at least two thirds of the seats on any train which is used in the provision of the Passenger Services by the Franchise Operator shall be located in Standard Class Accommodation.
- (c) The Franchise Operator shall notify the **Authority** immediately (and provide such further information and attend such meetings as *it* may request in relation thereto) if, in relation to the Timetable and Train Plan and any Reporting Period during the Franchise Term:
 - (i) there are more Cancellations during such Reporting Period than the Call-in Threshold of Cancellations;
 - (ii) there are more Total Cancellations during such Reporting Period than the Call-in Threshold of Total Cancellations; or
 - (iii) where applicable, the aggregate of the Actual Capacity of each train included in the Train Plan in such Reporting Period is less than the Call-in Threshold of the aggregate of the Planned Capacity of each such train.
- (d) Subject as below, the Franchise Operator shall provide the Passenger Services in such a manner that it will not be obliged to notify the **Authority** three or more times in any period of thirty-nine consecutive Reporting Periods during the Franchise Term under Clauses 5.3(c)(i), 5.3(c)(ii) or 5.3(c)(iii). If the Franchise Operator is or becomes so obliged he shall be deemed to be in breach of this Franchise Agreement. The **Authority** may determine, in the light of the circumstances giving rise to any obligation under Clauses 5.3(c)(i), 5.3(c)(ii) or 5.3(c)(iii), that the occurrence of such obligation is to be disregarded for the purposes of this Clause 5.3(d) and references to such an obligation arising three or more times shall be construed accordingly.
- (e) Without prejudice to the generality of Clause 5.3(a), the Franchise Operator shall ensure that, in relation to the Timetable and the Train Plan, in each Reporting Period during the Franchise Term:
 - (i) there are fewer Cancellations during such Reporting Period than the Breach Threshold of Cancellations;
 - (ii) there are fewer Total Cancellations during such Reporting Period than the Breach Threshold of Total Cancellations; and
 - (iii) the aggregate of the Actual Capacity of each train included in the Train Plan in such Reporting Period is more than the Breach Threshold of the aggregate of the Planned Capacity of each such train.

5.4 Force Majeure

- (a) The Franchise Operator shall not be responsible for any failure to perform its obligations under Clause 5.3(b), (d) or (e) nor shall there be an Event of Default under Clause 21.7 if, and to the extent

that, other than as a result of its own or its agents' or subcontractors' actions or omissions or its own breach of, or default under, any Access Agreement, Rolling Stock Lease, Property Lease or any other agreement, such failure is caused by or is due to any *Force Majeure* Event.

(b) The following events shall constitute *Force Majeure* Events:

- (i) the Franchise Operator or its agents or subcontractors is or are prevented or restricted by Railtrack from gaining access to any relevant section or part of track for a period in excess of 12 hours;
- (ii) the Franchise Operator or its agents or subcontractors is or are prevented or restricted by Railtrack or any relevant Facility Owner (other than a Facility Owner which is an Affiliate of the Franchise Operator and which is acting principally or partly to prevent it from performing its obligations under this Franchise Agreement or in bad faith) from entering or leaving any relevant station or light maintenance depot or part thereof;
- (iii) one or more Endemic Faults or Mandatory Modifications which affects or affect the greater of two Rolling Stock Units of the Franchise Operator and 10 per cent. of all rolling stock used by the Franchise Operator in the provision of the Passenger Services;
- (iv) the greater of two Rolling Stock Units of the Franchise Operator and 10 per cent. of all rolling stock used by the Franchise Operator in the provision of the Passenger Services being damaged beyond repair or beyond economic repair;
- (v) act of God, war damage, enemy action, terrorism, riot, civil commotion, rebellion or the act of any government or government instrumentality (including the Regulator and the Health and Safety Executive but excluding the **Authority**); and
- (vi) any strike or other industrial action by any or all of the employees of the Franchise Operator or any or all of the employees of Railtrack, its agents or sub-contractors.

(c) The Franchise Operator shall use all reasonable endeavours to prevent the occurrence of any *Force Majeure* Event, to mitigate and minimise the effects of any *Force Majeure* Event on the performance of its obligations under Clause 5.3 and to restore normal operations in the event of the occurrence of a *Force Majeure* Event. The Franchise Operator shall notify the **Authority** as soon as reasonably practicable of the occurrence of any *Force Majeure* Event.

(d) The Franchise Operator shall, to the extent that it would be reasonable to do so or to the extent reasonably so requested by the **Authority**, exercise all relevant rights and remedies under any relevant agreement to prevent the occurrence or re-occurrence of any *Force Majeure* Event and to obtain appropriate redress or compensation for any such event from any relevant person.

5.5 Closures

Except to the extent that the **Authority** may otherwise agree from time to time, the Franchise Operator shall not cease to provide or withdraw or propose to discontinue any railway passenger service which might result in a Closure. In the event of a Closure or any procedures being commenced under Part I of the Act in relation to a Closure as a result of any such cessation or withdrawal or proposal or any proposed cessation or withdrawal, the Franchise Operator shall, to the extent so requested by the **Authority** and at its own cost, provide such railway passenger services or take such other action as the **Authority** may require it to take on *it's* behalf in order for the **Authority** to comply with any duty imposed on *it* under Part I of the Act in relation to the Closure.

5.6 Exclusionary Behaviour

Where the Franchise Operator operates Passenger Services which directly or indirectly compete with the railway passenger services of another Train Operator, the Franchise Operator shall not conduct its business in respect of those Passenger Services in a manner which, in the opinion of the *Authority*, is likely to result in the exclusion or limitation of competition between the Franchise Operator and any other such Train Operator to the long term detriment of passengers using such services.

6 Provision Of Capacity

6.1 General provision of capacity

The Franchise Operator shall use all reasonable endeavours to ensure that sufficient capacity is provided, on each train used in the provision of any Passenger Services which are not subject to any capacity requirement under the Passenger Service Requirement, to carry, without excessive overcrowding, all passengers intending to travel on such train and holding a valid Fare (and, if required, a reservation) for such train. The Franchise Operator shall be deemed not to have used all reasonable endeavours if and to the extent that there is excessive overcrowding and, other than as a result of a *Force Majeure* Event not resulting from its own or its agents' or subcontractors' actions or omissions or its own breach of, or default under, any Access Agreement, Rolling Stock Lease, Property Lease or any other agreement, it includes in its plan and/or diagram for the operation of trains and train formations under the Timetable at the time of such overcrowding and persistently operates at such time and at times when similar overcrowding may occur fewer Vehicles than the Initial Number of Vehicles.

6.2 Non-applicability

The provisions of Clauses 6.3 to 6.9 shall not apply where Parts 3 and 4 of Schedule 3 have been left intentionally blank.

6.3 Load Factor Specifications

The Franchise Operator shall use all reasonable endeavours to ensure that in providing the Passenger Services it provides sufficient capacity thereon such that it does not exceed the Load Factor Specifications. The Franchise Operator shall be deemed to have complied with its obligations under this Clause 6.3 to the extent it complies with its obligations under Clauses 6.4 to 6.7.

6.4 Passenger Counts

- (a) If so requested by the *Authority*, the Franchise Operator shall carry out a programme of passenger counts, or secure that a programme of passenger counts is carried out, in respect of the Passenger Services at such times as may be required and in such manner as may be approved from time to time by the *Authority* (subject to a maximum of two such programmes in any twelve month period during the Franchise Term). The manner of such counts (including their timing and location) shall be designed to ensure, so far as practicable, that the counts are typical of demand for the Passenger Services provided by the Franchise Operator at the relevant time of year and for the relevant day of the week. Any such count shall be carried out by a person or persons approved by the *Authority* (such approval not to be unreasonably withheld).
- (b) The Franchise Operator shall supply such details as may be reasonably required in respect of the results of such counts to the *Authority* and shall draw *it's* attention at the time to any particular factors which it considers relevant to whether the results of such counts are typical of demand for the Passenger Services at that time.
- (c) The *Authority* shall be entitled to audit such counts (whether by specimen checks at the time of such counts, verification of proper compliance with the manner approved by *it* or otherwise). In the event

that such audit reveals material error, or a reasonable likelihood of material error, in such counts, the **Authority** may require the counts to be repeated or the results adjusted as *it* considers reasonably appropriate, and the Franchise Operator shall pay to the **Authority** the costs of any such audit.

6.5 Preliminary statement

- (a) Within one month of any such programme of counts being completed (or such longer period as the **Authority** may determine), or at any other time as the parties may agree, the Franchise Operator shall submit to the **Authority** a preliminary statement. Such preliminary statement shall specify what changes to its Timetable and/or Train Plan are, in its opinion, required as a result of an increase in demand, or permitted as a result of a fall in demand, in order to ensure that, on the basis of the Forecast Demand following such count (if any), it does not exceed the Load Factor Specifications in providing the Passenger Services over the following eighteen months. Such statement shall also indicate what other changes may be proposed to its Timetable and Train Plan at such time.
- (b) The **Authority** and the Franchise Operator may agree on the basis of such a statement which changes are to be made to the Timetable and/or Train Plan and the period for their implementation.
- (c) Nothing in this Clause 6.5 shall prevent the Franchise Operator from planning or implementing any change to its Timetable or Train Plan which would result in more capacity being provided by the Franchise Operator on the Passenger Services than the capacity required to ensure that, on the basis of the Forecast Demand following such count, it does not exceed the Load Factor Specifications in providing the Passenger Services over the following eighteen months.

6.6 Feasibility Study

- (a) If the **Authority** so requests following the submission of any statement under Clause 6.5(a) or the expiry of the period for delivering such statement, the Franchise Operator shall, within one month of such request (or such longer period as the **Authority** may determine), submit to *it* a Feasibility Study. If the parties are otherwise unable to agree what changes are to be made to the Timetable and/or Train Plan, the Franchise Operator may submit to *it* a Feasibility Study. Any such Feasibility Study shall propose:
 - (i) what change (whether by variation to the Timetable, the Train Plan or otherwise) in the capacity provided by the Franchise Operator on the Passenger Services is reasonably required as a result of an increase in demand (a “Capacity Increase”), or reasonably permitted as a result of a fall in demand (a “Capacity Reduction”), in order to ensure that, on the basis of the Forecast Demand following the relevant count, it does not exceed the Load Factor Specifications in providing the Passenger Services over the following eighteen months; and
 - (ii) where appropriate and subject to the other provisions of this Clause 6.6, the Net Loss arising out of any such Capacity Increase or Net Gain arising out of any such Capacity Reduction over the duration of the Forecast Period.
- (b) The **Authority** and the Franchise Operator shall use all reasonable endeavours to agree, on the basis of such Feasibility Study, an Implementation Plan for the Capacity Change as soon as practicable provided that, if the Capacity Change represents an increase or reduction in capacity above the Initial Capacity Limit, the **Authority** may reduce the capacity to be provided as a result of the Capacity Change to a level no lower than the Initial Capacity Limit and the relevant Capacity Change shall be adjusted accordingly. Subject thereto, the provisions of Part 1 of Schedule 9 shall apply for determining the Implementation Plan for any such Capacity Change.
- (c) For the purposes of any Capacity Change, the Net Loss of the Franchise Operator shall be the Net Loss from increasing capacity above the Initial Capacity Limit and the Net Gain of the Franchise

Operator shall be the Net Gain from reducing capacity above the Initial Capacity Limit. Any other net loss or net gain relating to a change in capacity below such level shall be ignored. For the purpose of determining the change in revenue under Parts 2 and 3 of Schedule 9 as a result of any Capacity Change, only the revenue accruing to the Franchise Operator from passengers travelling, or predicted to travel, on the Passenger Services in excess of the number of passengers specified in Part 4(a) of Schedule 3 shall be taken into account, and the Franchise Operator shall be deemed to receive such revenue as a result of a Capacity Increase and to lose such revenue as a result of a Capacity Reduction (or such lesser amount of revenue to the extent the relevant Capacity Increase is from, or the relevant Capacity Reduction is to, a level of capacity above the Initial Capacity Limit).

- (d) For the purposes of determining the adjustments (if any) to be made to the Franchise Payments as a result of a Capacity Change, the **Authority** shall bear the percentage specified in Part 4(b) of Schedule 3 of any Net Loss and shall receive the percentage specified in Part 4(b) of Schedule 3 of any Net Gain, subject to any Net Loss or Net Gain from providing or ceasing to provide capacity above the Upper Capacity Limit being borne or received wholly by the **Authority**.

6.7 Implementation

- (a) The Franchise Operator shall implement each Capacity Change in accordance with the relevant Implementation Plan as soon as reasonably practicable but no later than the date specified in the relevant Implementation Plan for the relevant Capacity Change and shall notify the **Authority** on such implementation.
- (b) The **Authority** shall, as soon as *it* is reasonably satisfied that a Capacity Change has been implemented, issue a Change Certificate and the Franchise Payments shall be adjusted as from the date specified in such certificate in accordance with the Change Certificate.
- (c) Nothing in this Clause 6.7 shall prevent the Franchise Operator from planning or implementing any change to its Timetable or Train Plan which would result in more capacity being provided by the Franchise Operator on the Passenger Services than the capacity required to ensure that, on the basis of the Forecast Demand following such count, it does not exceed the Load Factor Specifications in providing the Passenger Services over the following eighteen months and the obligation to implement a Capacity Change or an Implementation Plan shall be construed accordingly.

6.8 Rolling Stock Capacities

- (a) The Rolling Stock Capacities shall be used to determine whether under this Clause 6 the Franchise Operator exceeds or will exceed the Load Factor Specifications in providing the Passenger Services.
- (b) The **Authority** shall notify the Franchise Operator from time to time of the Rolling Stock Capacities. No such notification shall, except in the case of patent error, amend any previous notification in respect of the same type of rolling stock or configuration of rolling stock.
- (c) The Franchise Operator may at any time request the **Authority** to notify it of the deemed capacities of any new rolling stock or configurations of rolling stock it may wish to use and shall supply such information as the **Authority** may reasonably request in relation thereto.

6.9 Other Train Operators

If and to the extent that the Franchise Operator provides Passenger Services which are subject to the Load Factor Specifications and another Train Operator also provides railway passenger services over the same section of track or route or over a route with the same originating and finishing points, then, except to the extent that the other Train Operator has previously consented, the Franchise Operator shall take no action or step or series of actions or steps (including by way of adjustment to the Timetable or Train Plan or to the quality of the Passenger Services) which might reasonably be considered to result in a material

number of passengers who would otherwise use the Passenger Services provided by the Franchise Operator using the services provided by the other Train Operator.

7 The Timetable ¹⁸

7.1 Publication of Timetable

- (a) The Franchise Operator shall send to the Authority as soon as practicable but no less than 7 weeks prior to the implementation thereof, any new Timetable and related Train Plan. Any such new Timetable shall be sent at the same time to all relevant Rail Users' Consultative Committees and any relevant Local Authorities that may have requested a copy from the Franchise Operator.*
- (b) The Franchise Operator shall publish at each Station, to the extent reasonably practicable, and in accordance with the ATOC Code of Practice on Presentation of Timetable Information, the times (as amended from time to time) of all passenger trains departing from such Station, including for the avoidance of doubt passenger trains operated by other train operators, the times of arrival of all such trains at all other stations at which they call, and details of the principal Connections at such other stations to other passenger trains. For the purpose of Clause 7.1(b) the "ATOC Code of practice on Presentation of Timetable Information" is the code of practice on presentation of timetable information issued by the Association of Train Operating Companies and in force from time to time.*
- (c) The Franchise Operator shall publish the information referred to in Clause 7.1(b) from the commencement of the Franchise Term and, subsequently publish updates or replacements to such information, to the extent necessary to reflect any changes made to such information which comes into effect on a Passenger Change Date:-*
 - (i) in the case of the booklets referred to in Clause 7.1(e)(i), such publication to be no later than 4 weeks in advance of the date the changes come into effect; and*
 - (ii) in the case of the information displays in Clause 7.1(e)(ii), such publication to be no later than the date on which the changes come into effect.*

In addition, the Franchise Operator shall display a poster at each Station advising customers of all significant alterations to trains serving that Station no later than 4 weeks in advance of the date on which the changes come into effect.

- (d) The obligation under Clause 7.1(b) shall be subject to the provision of the relevant information or booklets at the relevant time by the relevant other train operators. The Franchise Operator shall provide the equivalent information and booklets to the operators of other stations which are served by the Passenger Services and which are not Stations in sufficient time for the information to be published by such other operators within the time limits provided for in Clause 7.1(c).*
- (e) For the purposes of this Clause 7.1:-*

"publish" shall mean:

- (i) making the relevant information available upon request in one or more booklets or in other similar form at all staffed Stations; and*

¹⁸ Date of insertion of new clause 7.1 – 18 August 1999

- (ii) *displaying it on information displays at all Stations.*

For the avoidance of doubt, such information shall include or incorporate the Timetable (or any new Timetable) to the extent such information relates to the Passenger Services provided by the Franchise Operator.

“significant alterations” shall include the addition or removal of services; changes to calling patterns, destination or origin; changes of timings for first/last trains by more than 10 minutes; changes to clockface (or near clockface) service patterns; significant changes to journey times and/or key connections at the Station or at other stations at which relevant services call.

For the avoidance of doubt, the alterations listed above are not intended to be exhaustive.

- (f) *The Franchise Operator shall use all reasonable endeavours to procure (including by virtue of any arrangements made from time to time between Railtrack and RSP) that the Great Britain Passenger Rail Timetable (or any replacement of it) which is published or procured to be published by Railtrack from time to time in relation to the Passenger Services incorporates or is consistent with its Timetable from time to time.*
- (g) *The Franchise Operator shall use all reasonable endeavours to procure that information in relation to the Timetable is available to passengers through the National Rail Enquiry Scheme (or any replacement of it), and that information in relation to any new or amended Timetable is available to passengers through such Scheme not less than 4 weeks prior to its implementation.*

7.2 Notification of revisions to Timetable

- (a) The Franchise Operator shall inform passengers, as far as possible on *at least 7 days’ prior notice, except in respect of scheduled engineering work where the time limit for the provision of details shall be at least 5 days, if it will be unable to operate its trains in accordance with the Timetable. Such information shall include any revised timetable or travelling arrangements. So far as possible a summary of forthcoming scheduled engineering work (as opposed to details of that work to which the 5 day notice period applies) shall be displayed at least 7 days in advance of the work.*¹⁹
- (b) The relevant information shall be provided by revising or adding to the information displays referred to in Clause 7.1(e) and notifying the operators of other stations served by the Passenger Services as appropriate. The Franchise Operator shall revise or add to the information displays at the Stations promptly on receipt of any equivalent information relating to the railway passenger services of other train operators.
- (c) The time limits contained in Clause 7.2(a) shall not apply to any revisions which are made on an emergency basis, but the Franchise Operator shall in such circumstances notify or publish the relevant revisions as soon as reasonably practicable.

7.3 Co-operation with other Train Operators

- (a) The Franchise Operator shall co-operate with other Train Operators in the development of its working timetable and such other Train Operators’ working timetables to ensure that users of the Passenger Services are provided with reasonable Connections to and from the other Train Operators’ railway passenger services which serve the same stations as the Passenger Services. Such obligation on the Franchise Operator shall be in addition to any express obligations regarding Connections in the Passenger Service Requirement but be subject to the practicalities for the Franchise Operator and

¹⁹ Date of Change 12 February 1998.

the Train Operators in altering or adjusting their respective timetables to provide such reasonable Connections.

- (b) Subject to such restrictions or obligations as the Regulator may impose on the Franchise Operator under the Licences, the Franchise Operator shall co-operate with such other Train Operators as may provide railway passenger services which use all or a material part of the same track or route or a route which has the same originating and finishing points as any of the Passenger Services to ensure that passengers travelling or intending to travel on such services are provided with a reasonable pattern of service, taking into account the reasonable needs of such passengers and the different types of railway passenger services provided by the relevant other Train Operators and the Franchise Operator.

7.4 Notice of Changes

- (a) The Franchise Operator shall use reasonable endeavours to give all relevant Rail Users' Consultative Committees and Local Authorities sufficient notice of all significant proposed changes to the pattern of Passenger Services (other than any such changes as are to be made on a temporary basis) so that it can take due account of such bodies' views before making a bid to Railtrack under the Track Access Conditions for the train slots which would enable it to implement such proposed changes, assuming any such views are submitted to the Franchise Operator within a reasonable period from the time of such notification. Any such notification shall be copied to the **Authority** at the same time. Nothing in this Clause 7.4 shall restrict the Franchise Operator from requesting the relevant Rail Users' Consultative Committees and Local Authorities to keep any such notification confidential.
- (b) The Franchise Operator shall comply with such reasonable requirements and guidance as the **Authority** may notify to it from time to time in respect of giving notice to and consulting with Rail Users' Consultative Committees under Clause 7.4(a).

8 Passengers

8.1 Passenger's Charter

- (a) The Franchise Operator shall provide a copy of the Passenger's Charter free of charge on request to all passengers using or intending to use any of the Passenger Services.
- (b) The Franchise Operator shall make no amendments to the Passenger's Charter without the prior written consent of the **Authority** (which shall not be unreasonably withheld). For the avoidance of doubt, nothing in this Franchise Agreement shall entitle the **Authority** to require any amendment to be made to the Passenger's Charter.
- (c) The Franchise Operator shall make all payments and all extensions to Fares and offer all discounts on the price of Fares which may be due to be made or offered from time to time under the terms of the Passenger's Charter (whether or not the Franchise Operator is legally obliged to do so).
- (d)^c The Franchise Operator shall, in respect of all other obligations or statements of intention or other representations under the Passenger's Charter, use all reasonable endeavours to comply with such obligations, statements and representations and to meet such standards or targets of performance as may be comprised in the Passenger's Charter from time to time.

8.2 Disruptions to Passenger Services

- (a) In the event of a disruption to the Passenger Services the Franchise Operator shall use all reasonable endeavours to provide or secure the provision of such alternative transport arrangements as are reasonably feasible (having regard to safety and cost) such that passengers who would otherwise

have travelled on the Passenger Services are transported by such alternative transport to (or as near as reasonably practicable to) the end of their intended journeys on the Passenger Services.

- (b) Where any Passenger Services are required to be cancelled or delayed or short formations are required to be operated, the Franchise Operator shall use all reasonable endeavours to ensure that any such cancellations, delays or short formations are not concentrated on a particular route on which the Passenger Services are operated save where such concentration either:
 - (i) would be in the overall interest of passengers using the Passenger Services and would not result in disproportionate inconvenience to any group of passengers; or
 - (ii) is reasonably necessary as a result of the cause or the location of the cancellation, delay or short formation.

8.3 Bicycles

The Franchise Operator shall, so far as reasonably practicable and subject to the availability of appropriate space on its rolling stock, ensure that facilities for the transport of bicycles on trains are made available, at reasonable charges (if any), to passengers using or intending to use the Passenger Services.

8.4 Customer Satisfaction

- (a) The Franchise Operator shall carry out customer satisfaction surveys no less than once every three months during the Franchise Term (or as otherwise agreed by the **Authority**) in respect of such aspects of the Franchise Services and in such form and manner and at such times as the **Authority** may reasonably request from time to time. The manner of such surveys (including their timing) shall be designed to ensure, so far as practicable, that the results of surveys are typical of customer satisfaction for the relevant time of year and are not materially affected by any improvement or deterioration of a temporary nature in the quality of Franchise Services provided at the time. The Franchise Operator shall provide copies of the results of such surveys in relation to such aspects to the **Authority** as soon as reasonably practicable.
- (b) The **Authority** shall be entitled to verify that the Franchise Operator has carried out the surveys in the form and manner so requested and the Franchise Operator shall provide such information as he may reasonably so request for such purposes. In the event that any such verification exercise reveals that the Franchise Operator has not complied in any material respect with the requirements of the **Authority** under Clause 8.4(a), the **Authority** may require the surveys to be carried out again and the Franchise Operator shall pay to the **Authority** the costs of such verification exercise.
- (c) The Franchise Operator shall use all reasonable endeavours to secure an improvement during the Franchise Term in the overall level of customer satisfaction with the Franchise Services.
- (d) If a survey conducted under Clause 8.4(a) indicates that the level of customer satisfaction in respect of any particular aspect of the Franchise Services requested to be surveyed by the **Authority** has deteriorated below the relevant Customer Satisfaction Benchmark, the Franchise Operator shall, if so requested by the **Authority**, submit to **it** proposals which, in its opinion, will reasonably ensure that (having regard to cost and the practicalities of implementation) such deterioration will be remedied as soon as practicable. The proposals shall indicate proposed timescales for implementation and the estimated cost (if any) of implementation. Such proposals shall be submitted within 6 weeks of the results of such survey being provided to the **Authority**.
- (e) If the **Authority** does not consider that such proposals will so ensure that the deterioration will be remedied, the parties shall in good faith use their best endeavours to agree revised proposals for 2 weeks, following which the dispute may be resolved in accordance with the Dispute Resolution

Rules. Following agreement or determination of such proposals in accordance with the Dispute Resolution Rules, the Franchise Operator shall use all reasonable endeavours to remedy such deterioration in accordance with such proposals as so agreed or determined.

- (f) For the purposes of Clause 8.4(d), the Customer Satisfaction Benchmarks shall, for any new aspect of the Franchise Services for which the **Authority** may request a survey to be conducted, be determined as the average level of customer satisfaction in respect of such new aspect in the first four relevant surveys. The parties may refer any dispute relating to such determination for resolution in accordance with the Dispute Resolution Rules.

9 Fares and Fare Schemes

9.1 Fare Regulation

Schedule 5 shall have effect between the parties, and the **Authority** and the Franchise Operator shall each comply with their respective obligations thereunder.

9.2 Reduced Fares for Children

The Franchise Operator shall, where it Creates or has Created a Fare, set the Child Price for that Fare in such a way that the Fare may be purchased by or for a person under the age of 16 on terms which are no less favourable than would apply if that person were the holder of a Young Person's Railcard (as amended or replaced from time to time).

9.3 Agents of the Franchise Operator

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

- (a) for Fares whose Prices or Child Prices are regulated under Clause 9.2 or Schedule 5, do so at prices no greater than the Prices or, if the Fare is to be used by a person under the age of 16, the Child Prices set for such Fares from time to time in accordance with Clause 9.2 or Schedule 5, as the case may be; and
- (b) for all Fares, comply with the provisions of Clause 30.1 of this Franchise Agreement to the extent they apply to the selling of Fares by the Franchise Operator.

9.4 Local Authority Concessionary Travel Schemes

- (a) The Franchise Operator shall participate in the concessionary travel schemes described in Part 7(a) of Schedule 1 and, if so requested by the **Authority**, such other concessionary travel schemes as any relevant Local Authority may require or request it to participate in, provided that the terms of any such scheme or the obligations assumed by the Local Authority in connection therewith are such as to result, by way of distribution of income or otherwise, in the reasonable opinion of the **Authority**, in the Franchise Operator incurring no Net Loss as a result of any such participation.
- (b) The **Authority** shall consult with the Franchise Operator before making any request for it to participate in any new schemes under Clause 9.4(a) and shall allow the Franchise Operator a reasonable opportunity to make representations to *it* with respect to any such participation.
- (c) Subject to the terms of the relevant scheme, the Franchise Operator shall be entitled to cease to participate in any concessionary travel scheme under Clause 9.4(a) if, in the opinion of the **Authority**, continuing participation would result in the Franchise Operator incurring any Net Loss.
- (d) The Franchise Operator shall supply to the **Authority** such information within such period as *it* may reasonably require for the purposes of determining the Net Loss to be caused or caused as a result of

participation in any such scheme. If the **Authority** and the Franchise Operator are unable to agree what Net Loss would be or is so caused, they may resolve such dispute in accordance with the Dispute Resolution Rules.

9.5 Local Authority Multi-modal Schemes

- (a) The Franchise Operator shall participate in the multi-modal schemes described in Part 7 of Schedule 1 and, if so requested by the **Authority**, such multi-modal travel schemes as any relevant Local Authority may require or request it to participate in, provided that the terms of any such scheme or the obligations assumed by the Local Authority in connection therewith are such as to result, by way of distribution of income or otherwise, in the reasonable opinion of the **Authority** and subject to Clause 9.5(b), in the Franchise Operator incurring no Net Loss as a result of any such participation.
- (b) For the purposes of this Clause 9.5, the Franchise Operator shall be deemed to incur no Net Loss as a result of participation in any scheme which is reasonably similar to or replaces any such scheme or schemes as may be listed in Part 7(b) of Schedule 1 if and to the extent that the Net Loss caused as a result of such participation is no greater than the Net Loss (if any) incurred by the Franchise Operator at the date of signature of this Franchise Agreement under the relevant scheme or schemes listed in Part 7(b) of Schedule 1 as adjusted by reference to any change in the level of prices according to the Retail Prices Index since such date.
- (c) The **Authority** shall consult with the Franchise Operator before making any request under Clause 9.5(a) and shall allow the Franchise Operator a reasonable opportunity to make representations to *it* with respect to any such participation.
- (d) Subject to the terms of the relevant scheme, the Franchise Operator shall be entitled to cease to participate in any multi-modal scheme under Clause 9.5(a) if, in the opinion of the **Authority**, continuing participation would result in the Franchise Operator incurring:
 - (i) in the case of any such scheme listed in Part 7(b) of Schedule 1 (or any scheme which is reasonably similar to or replaces any such scheme), any more Net Loss than the Net Loss incurred by the Franchise Operator at the date of signature of this Franchise Agreement under such scheme (or any scheme so replaced) as adjusted by reference to any change in the level of prices according to the Retail Prices Index since such date; and
 - (ii) in the case of any other such schemes which the Franchise Operator may be required to participate in under Clause 9.5(a), any Net Loss.
- (e) The Franchise Operator shall supply to the **Authority** such information within such period as *it* may reasonably require for the purposes of determining the Net Loss to be caused or caused as a result of participation in any such scheme. If the **Authority** and the Franchise Operator are unable to agree what Net Loss would be or is so caused, they may resolve such dispute in accordance with the Dispute Resolution Rules.

9.6 Discount Fare Schemes

- (a) If the **Authority** effects, or proposes to effect, an amendment to a Discount Fare Scheme or introduces any new Discount Fare Schemes or ceases to approve a Discount Fare Scheme for the purposes of section 28 of the Act, then, if either the **Authority** or the Franchise Operator so elects within 21 days of delivery or receipt, as the case may be, of notice of the intended amendment, introduction or cessation of approval, the Franchise Payments shall, subject to Clause 9.6(c), be adjusted by an amount equivalent, in the reasonable opinion of the **Authority**, to the Net Loss or Net Gain (if any) caused to or made by the Franchise Operator as a result thereof.

- (b) The **Authority** shall provide a reasonable opportunity to the Franchise Operator to make representations to *it* before amending, introducing or ceasing to approve a Discount Fare Scheme under Clause 9.6(a).
- (c) No adjustment shall be made to the Franchise Payments unless the Net Loss or Net Gain resulting therefrom will exceed, in the year following the implementation of the amendment, introduction or cessation of approval, 0.1 per cent. of the annual Turnover of the Franchise Operator as disclosed by its latest available audited accounts or, if there are none, its predicted Turnover in the first Franchise Year.
- (d) The Franchise Operator shall supply to the **Authority** such information within such period as *it* may reasonably require for the purpose of determining the Net Loss or Net Gain (if any) to be caused as a result of the relevant amendment, introduction or cessation of approval. If there is a dispute as to such Net Loss or Net Gain, the parties may resolve such dispute in accordance with the Dispute Resolution Rules.

9.7 Inter-Operator Schemes

- (a) If an amendment is effected or proposed to be effected to an Inter-Operator Scheme which requires the consent or approval of the **Authority** in accordance with the terms thereof, then, if the **Authority** so elects within 21 days of receipt of notice of the amendment or intended amendment to the Inter-Operator Scheme, the Franchise Payments may, if the **Authority** so elects and subject to Clause 9.7(b), be adjusted by an amount equivalent, in the reasonable opinion of the **Authority**, to the Net Gain (if any) (or a proportion of the Net Gain (if any) determined by the **Authority**) made by the Franchise Operator as a result thereof.
- (b) No adjustment shall be made to the Franchise Payments unless the Net Gain resulting from any amendment of an Inter-Operator Scheme will exceed, in the year following the implementation of the amendment, 0.1 per cent of the annual Turnover of the Franchise Operator as disclosed by its latest available audited accounts or, if there are none, its predicted Turnover in the first Franchise Year.
- (c) The Franchise Operator shall supply to the **Authority** such information within such period as *it* may reasonably require for the purpose of determining the Net Gain (if any) to be caused as a result of the relevant amendment. If there is a dispute as to such Net Gain, the parties may resolve such dispute in accordance with the Dispute Resolution Rules.

9.8 Value Added Tax

If the rate of Value Added Tax on the provision of Passenger Services by the Franchise Operator is increased or reduced on or before 31 March 2003 the **Authority** may and shall, after consultation with the Franchise Operator, make such adjustment to the terms of the Franchise Agreement (including to the Passenger Service Requirement and the Franchise Payments payable hereunder) as will reasonably ensure that until 31 March 2003 the Franchise Operator suffers no Net Loss and makes no Net Gain as a result of such increase or reduction. The parties may resolve any dispute as to whether and to what extent the Franchise Operator would suffer any Net Loss or Net Gain as a result of the increase or reduction (as the case may be) and adjustment in accordance with the Dispute Resolution Rules. For the avoidance of doubt, the **Authority** shall be entitled to determine the manner of any adjustment to be made hereunder.

10 Stations and Depots

10.1 Closures

Except to the extent that the **Authority** may otherwise agree from time to time, the Franchise Operator shall not cease to operate, or cease to secure the operation of, or propose to terminate the use of, any Station or Depot, or some part of a Station or Depot, where such cessation or proposal might result in a

Closure. In the event of a Closure or any procedures being commenced under Part I of the Act in relation to a Closure in connection with any such cessation or proposed cessation or termination, the Franchise Operator shall, at its own cost and to the extent so requested by the **Authority**, take such action as the **Authority** may require it to take on *it's* behalf in order for the **Authority** to comply with any duty imposed on *it* under Part I of the Act in relation to the Closure.

10.2 Station and Depot Leases

The Franchise Operator shall not:

- (a) terminate or agree to terminate, or take or omit to take any other action which might result in the termination of any Station Lease or Depot Lease; or
- (b) assign all or part of its interest under any Station Lease or Depot Lease; or
- (c) sublet the whole or substantially the whole of the property comprised in any Station Lease or Depot Lease

except to the extent that the **Authority** may otherwise agree from time to time (such agreement not to be unreasonably withheld in the event that the Franchise Operator has made arrangements, reasonably satisfactory to the **Authority**, for the continued operation as a Station or Depot (as the case may be) of the property comprised in the relevant Station Lease or Depot Lease for the remainder of the Franchise Term or if consent to the Closure of the relevant Station or Depot has been granted).

10.3 Station standards

(a) Subject to:

- (i) the provisions of Clause 10.4;
- (ii) any applicable Law; and
- (iii) the rights of Railtrack under any relevant Station Lease, or any other person under any other contract to which the Franchise Operator or Railtrack may be party immediately before the Franchise Commencement Date, to prohibit, restrict, approve or consent to the performance of the obligations of the Franchise Operator under this Clause 10.3

the Franchise Operator shall procure that, as a minimum at each Station, the requirements of paragraphs 1 and 2 of Schedule 4 are complied with on and from the expiry of the third Franchise Year during the Franchise Term and the requirements of paragraphs 3, 4 and 5 of Schedule 4 are complied with on and from the date falling 18 months after the Franchise Commencement Date or, in relation to any paragraph of Schedule 4, if earlier, the date of any such Station ceasing to be staffed at all times of the day at which passenger trains are scheduled to call at such Station, other than as a result of temporary shortages or sickness.

(b) Where compliance by the Franchise Operator with the requirements of Schedule 4 would:

- (i) either, under any applicable Law, require the consent or approval of any other person; or
- (ii) be so subject to the rights of Railtrack or any other person,

the Franchise Operator shall use all reasonable endeavours to ensure that Railtrack or such other person consents to and approves, and does not prohibit or restrict, the performance of such obligations, whether in whole or in part and shall take such other steps and exercise such other rights as the **Authority** may reasonably require in relation thereto.

- (c) The Franchise Operator shall notify the **Authority** as soon as reasonably practicable upon it becoming aware that it may not be able to comply with its obligations under Clause 10.3(a) and shall supply such details thereof as the **Authority** may reasonably require.

10.4 Derogation

- (a) The Franchise Operator shall not be required to comply with the provisions of Clause 10.3 if it has applied to the **Authority** for a derogation from such compliance and the **Authority** grants such a derogation on the basis that the cost of such compliance to the Franchise Operator would significantly and materially outweigh the benefit to passengers using or intending to use the relevant Station.
- (b) The Franchise Operator may apply for a derogation under Clause 10.4(a) at any time. Any such application shall set out in reasonable detail the estimated cost of compliance to the Franchise Operator and the reason why a derogation should be granted.
- (c) The **Authority**, in determining whether the Franchise Operator should be granted a derogation from its obligations in Clause 10.3, wholly or partially, may take into consideration the following matters:
 - (i) the inaccessibility or remoteness of the Station;
 - (ii) the incidence of vandalism at the Station;
 - (iii) the requirements of users of the Station;
 - (iv) the volume of users of the Station;
 - (v) any objectives, instructions and guidance given to him under section 5(1)(a) of the Act; and
 - (vi) any other matters which he may consider appropriate to take into consideration from time to time.

10.5 RUCCs

If the Franchise Operator proposes to take any step on or after the Franchise Commencement Date which would result in a Station ceasing to be staffed at all times of the day at which passenger trains are scheduled to call at such Station, it shall provide at least 8 weeks' written notice of such proposal to the relevant Rail Users' Consultative Committee.

10.6 Section 55 notices

If and to the extent so requested by the **Authority**, the Franchise Operator shall publish and display at the Stations (and shall use all reasonable endeavours to procure the publication and display at any other stations served by the Passenger Services) of such notices as the **Authority** may wish to publish from time to time under sections 55 and 56 of the Act.

10.7 Double arrow symbol²⁰

The Franchise Operator shall procure that the symbol known as the double arrow symbol (and registered with trademark 2107832) shall be displayed at or near the entrance or entrances to all Stations in order to indicate the availability of access to such stations at such locations. Such display

²⁰ Date of change 20/10/2008

shall be in accordance with the Traffic Signs Regulations and General Directions 1994 and any guidelines laid down by the Secretary of State for Transport from time to time. In the event that he requires the users of such symbol to enter into a licence in respect of such symbol, the Franchise Operator shall enter into such licence and shall comply with its terms.

11 PSR Changes

11.1 Proposals for PSR Changes

- (a) If the **Authority** or the Franchise Operator wishes to propose a PSR Change, *the Franchise Operator or the Authority* shall give notice of the proposal to the other in accordance with this Clause 11.
- (b) Any notice which proposes a PSR Change shall:
 - (i) set out the particulars of the proposed PSR Change;
 - (ii) set out the date or dates on which it is proposed that the PSR Change will take effect; and
 - (iii) subject to Clause 11.1(c), be accompanied by a Feasibility Study for such PSR Change.
- (c) In respect of a PSR Change proposed by the **Authority**, the **Authority** may request the Franchise Operator to prepare the relevant Feasibility Study. Any such Feasibility Study shall be prepared within 28 days of such request or such longer period as the parties may agree.

11.2 Consideration of proposals

- (a) The **Authority** and the Franchise Operator shall give due consideration to the proposals contained in any notice of a proposed PSR Change and the related Feasibility Study.
- (b) The **Authority** or the Franchise Operator, as appropriate, shall notify the other of its preliminary response to any such proposals as soon as reasonably practicable and, subject to Clause 11.2(d), they shall procure a meeting of their respective representatives within 21 days of the date of receipt of the Feasibility Study to discuss the proposals.
- (c) Subject as provided in Clause 11.2(d) and Clause 11.4, the **Authority** and the Franchise Operator shall discuss the relevant proposals in good faith and use all reasonable endeavours to agree an Implementation Plan for the relevant PSR Change and the provisions of Part 1 of Schedule 9 shall apply for determining the Implementation Plan for any PSR Change.
- (d) The **Authority** shall be entitled at any stage to withdraw or not to accept, and not to enter into any negotiations or meetings in respect of, a PSR Change or an Implementation Plan which involves, in *it's* opinion, either a reduction in the level of service or the quality of any aspect of the service under the Passenger Service Requirement or an increase in any Franchise Payments payable, or a reduction in any Franchise Payments receivable, by *it*.
- (e) Notwithstanding the other requirements of this Clause 11, the **Authority** and the Franchise Operator shall be entitled to agree to a PSR Change on the basis that no adjustment or such adjustment as they may agree be made to the Franchise Payments payable under this Franchise Agreement.
- (f) If the **Authority** requests the Franchise Operator to prepare a Feasibility Study under Clause 11.1(c) and the relevant PSR Change is not implemented, the **Authority** will pay to the Franchise Operator its reasonable agreed direct costs in preparing the Feasibility Study (exclusive of any Value Added Tax for which credit is available under sections 25 and 26 of the Value Added Tax Act 1994).

11.3 Sharing of Net Gain

- (a) If the Franchise Operator proposes a PSR Change which is accepted by the **Authority** other than pursuant to Clause 11.2(e) and which would result in a Net Gain, then such Net Gain shall be shared between the Franchise Operator and the **Authority** in such proportions as the **Authority** shall determine.
- (b) If the Franchise Operator proposes a PSR Change in good faith in accordance with Clause 11.1, together with a Feasibility Study which complies with the provisions of Part 1 of Schedule 9, and such PSR Change would result in a Net Gain, the **Authority** shall not, within a period of two years from the date of submission of such proposal with such a Feasibility Study be entitled to require the Franchise Operator to accept the same or a substantially similar PSR Change under Clause 11.4(a) unless a proportion of the Net Gain (if any) for such PSR Change is shared with the Franchise Operator.
- (c) For the avoidance of doubt, Net Gain in this Clause 11.3 means an aggregate Net Gain between the date of implementation of the relevant PSR Change and the expiry of the Franchise Term, having regard to any net gains or net losses that may be forecast to be made or incurred, in accordance with Schedule 9, in respect of such Change at any time during such period.

11.4 Certain proposals to be accepted

- (a) Subject to any requirement to share a proportion of any Net Gain under Clause 11.3(b) and also to Clauses 11.2(d), 11.4(b) and 11.4(c), the **Authority** may require, and, if the **Authority** so requires, the Franchise Operator shall accept, any PSR Change. The parties may resolve any dispute regarding whether Clauses 11.4(b) and 11.4(c) are applicable in accordance with the Dispute Resolution Rules. Subject to the other provisions of this Clause 11, the Franchise Payments payable following the implementation of such a PSR Change shall be adjusted in accordance with the provisions of Schedule 9 by the amount of the Net Loss or Net Gain such that any Net Loss results in an overall increase in the Franchise Payments payable by the **Authority** and/or overall reduction in the Franchise Payments payable by the Franchise Operator by the amount of such Net Loss and vice versa for any Net Gain.
- (b) The Franchise Operator shall not be required to accept a PSR Change which would reasonably be expected to result in the Train Mileage being required to be included by the Franchise Operator in the Timetable under Clause 5.1(a) in the twelve months following the implementation of the PSR Change being more than 20 per cent. above the Train Mileage scheduled to be covered under the Timetable for the twelve months beginning on the Franchise Commencement Date or, if greater, such Train Mileage as may subsequently be scheduled to be covered by the Franchise Operator under the Timetable in any twelve month period pursuant to the requirements of Clause 6, where applicable.
- (c) The Franchise Operator shall not be required to accept any PSR Change which, when aggregated with any previous PSR Changes, could reasonably be expected to require it to incur capital expenditure in excess of 0.5 per cent. of the annual Turnover of the Franchise Operator, as disclosed by its latest available audited accounts.
- (d)
 - (i) Nothing in this Clause 11 shall prevent the **Authority** from requiring a PSR Change to be made such that the Passenger Services which would be required to be contained in all or part of its Timetable and Train Plan under Clause 5.1(a) would be equivalent to the Passenger Services in fact contained in all or the relevant part of its Timetable and Train Plan before such PSR Change was implemented.
 - (ii) If the **Authority** does so require, the Franchise Operator may either:

- (x) within 28 days of receipt of notice of the PSR Change under Clause 11.1, require to be compensated under this Clause 11 and Schedule 9 for the Net Loss (if any) arising from such PSR Change; or
 - (y) on one occasion thereafter and subject to Clause 11.4(d)(iii), require a PSR Change to be made which would have the effect of reversing the previous PSR Change on the basis that no Net Loss or Net Gain would arise from such further PSR Change.
- (iii) If and to the extent that the **Authority** does not accept the Franchise Operator's requirement under Clause 11.4(d)(ii)(y), the Franchise Payments shall be adjusted by the amount of the Net Gain which the Franchise Operator would have made if and to the extent that such further PSR Change had been made. Such Net Gain shall be determined in accordance with this Clause 11 and Schedule 9.
- (iv) Nothing in this Clause 11.4(d) shall apply to any PSR Change to the extent it would require Passenger Services to be included in the Timetable and Train Plan under Clause 5.1(a) beyond those contained in the Timetable and Train Plan at the time of the PSR Change.

11.5 Implementation of PSR Changes

- (a) The Franchise Operator shall amend its Timetable and Train Plan to reflect a PSR Change as soon as reasonably practicable but no later than the date specified in the relevant Implementation Plan and shall notify the **Authority** as soon as it can so do.
- (b) The **Authority**, as soon as *it* is reasonably satisfied that the Franchise Operator has amended its Timetable and Train Plan, shall issue a Change Certificate and the PSR Change shall take effect from the date specified in such certificate and the Franchise Payments shall be adjusted as from such date in accordance with such certificate.
- (c) In complying with Clause 11.5(a) and for the avoidance of doubt, the Franchise Operator shall use all reasonable endeavours to procure as soon as reasonably practicable:
 - (i) the consent or agreement of any person whose consent or agreement is necessary to give effect to the PSR Change; and
 - (ii) the completion of such other steps as may be required for the purposes of implementing the PSR Change (including the satisfaction of any safety related requirements, the securing of any additional employees and consultation with such persons and bodies as may be appropriate).

11.6 Further investment or improvement or alteration

If the Franchise Operator or the **Authority** wishes to make an investment or improvement relating to the Franchise Services or other alteration to this Franchise Agreement (which would not otherwise constitute a PSR Change), **the Franchise Operator or the Authority** may make proposals to the other, and supply such reasonable details as the other may require, in connection therewith. The parties may, following such exchange of information, agree to amend the Franchise Plan, adjust the Franchise Payments and make such other amendments to the terms of this Franchise Agreement as they may consider appropriate to reflect such investment, improvement or alteration.

12 Industry Arrangements

12.1 Inter-Operator Schemes

- (a) The Franchise Operator shall participate in, and comply with its obligations under, and the terms of, each of the Inter-Operator Schemes.
- (b) The Franchise Operator agrees to be bound by Parts IV and V of Chapter 4 of the Ticketing and Settlement Agreement.
- (c) The Franchise Operator shall not amend, agree or propose to amend, any of the Inter-Operator Schemes other than in accordance with its terms.

12.2 Licences

The Franchise Operator shall, to the extent and in the manner so requested by the **Authority** and to the extent so permitted by the Regulator, on termination of this Franchise Agreement assign to the **Authority** or as *it* may direct the Licences.

12.3 Access Agreements

- (a) The Franchise Operator shall comply with such obligations as it may have under any Access Agreement to which it may be party from time to time:
 - (i) to notify or consult with the **Authority** on any matter or proposal relating to that Access Agreement; or
 - (ii) which are contingent on a particular course of action being taken by the **Authority** or which may otherwise be expressly included in that Access Agreement for the benefit of the **Authority**.
- (b) The Franchise Operator shall, to the extent so requested by the **Authority**:
 - (i) on termination of this Franchise Agreement, in relation to any Access Agreement to which it may be party;
 - (ii) following receipt of a notice purporting to terminate any particular Access Agreement to which it may be party, in relation to such Access Agreement; or
 - (iii) following receipt of a notice purporting to terminate a Station Lease or Depot Lease or on becoming aware of any proceedings or any other steps having or purporting to have similar effect, in relation to any Access Agreement under which it is a Facility Owner by virtue of such Property Lease

novate its interest under any such relevant Access Agreement (and any related Collateral Agreement) to the **Authority** or as *it* may direct.
- (c) Such novation shall be subject to the agreement of the other party to the relevant Access Agreements and Collateral Agreements and, to the extent applicable, the Regulator. Such novation shall be on such terms as the **Authority** may reasonably require, including the following:
 - (i) that the Franchise Operator shall not be released from any accrued but unperformed obligation, the consequences of any breach of the relevant agreement which is the subject of arbitration or litigation between the parties or any liability in respect of any act or omission under or in relation to the relevant agreement prior to, or as at the date of, any such novation (except to the extent that the **Authority** or *it's* nominee agrees to assume and be responsible for such unperformed obligation, such liability or the consequences of such breach in connection with the relevant novation); and

- (ii) that neither the **Authority** nor *its* nominee shall be obliged, in connection with the novation, to agree to assume and be responsible for any unperformed obligation, liability or consequences of a breach referred to in paragraph (i).
- (d) The Franchise Operator shall, in the event of any of the circumstances specified in Clause 12.3(b) happening in relation to any other Train Operator who may be party to an Access Agreement to which the Franchise Operator is also party, agree to the novation of the relevant Train Operator's interest under the relevant Access Agreement to the **Authority** or as *it* may direct, subject, to the extent applicable, to the consent of the Regulator. Such novation shall be on such terms as the **Authority** may reasonably require, including the terms set out in Clause 12.3(c).
- (e) The Franchise Operator shall notify the **Authority** on becoming aware of any circumstances which might lead to the **Authority** being able to require the Franchise Operator to novate its interest or agree to the novation of another Train Operator's interest under this Clause 12.3.

12.4 Property Leases

- (a) Except to the extent that the **Authority** may otherwise agree from time to time (such agreement not to be unreasonably withheld) and, except to the extent required so to do by virtue of any relevant station or depot access conditions, the Franchise Operator shall not vary, or agree to a variation of, the terms of any Property Lease.
- (b) The Franchise Operator shall, on termination of this Franchise Agreement (in relation to all Property Leases) or following receipt of a notice purporting to terminate a Property Lease or on becoming aware of any proceedings or any other steps having or purporting to have similar effect (in relation to such Property Lease), to the extent so requested by the **Authority**, assign its interest under each relevant Property Lease to the **Authority** or as *it* may direct, subject, where applicable, to the agreement of any other party or the Regulator.
- (c) Such assignment shall be on such terms as the **Authority** may reasonably require, including the following:
 - (i) that the Franchise Operator shall not be released from any accrued but unperformed obligation, the consequences of any antecedent breach of a covenant or obligation in the Property Leases or any liability in respect of any act or omission under or in relation to the Property Lease prior to, or as at the date of, any such assignment (except to the extent that the **Authority** or *it's* nominee agrees to assume and be responsible for such unperformed obligation, such liability or the consequences of such breach in connection with the relevant assignment); and
 - (ii) that neither the **Authority** nor *it's* nominee shall be obliged, in connection with the assignment, to agree to assume and be responsible for any unperformed obligation, liability or consequences of a breach referred to in paragraph (i), and the Franchise Operator shall indemnify the **Authority** or *it's* nominee, as the case may be, on an after tax basis against any costs, losses, liabilities or expenses suffered or incurred in relation thereto.
- (d) The Franchise Operator shall, in the event of any of the circumstances specified in Clause 12.3(b) happening in relation to any other Train Operator who may be party to a property lease to which the Franchise Operator is also party, agree to the assignment of the relevant Train Operator's interest under the relevant property lease to the **Authority** or as *it* may direct, subject, to the extent applicable, to the consent of Railtrack. Such assignment shall be on such terms as the **Authority** may reasonably require, including the terms set out in Clause 12.4(c).

- (e) The Franchise Operator shall notify the **Authority** on becoming aware of any circumstances which might lead to the **Authority** being able to require the Franchise Operator to assign its interest or agree to the assignment of another Train Operator's interest under this Clause 12.4.

12.5 Station Subleases

- (a) The Franchise Operator shall not sublet to any Affiliate any part of the property comprised in any Property Lease (including, for the avoidance of doubt, any Station Lease) except on terms that (except to the extent the **Authority** may otherwise agree):
 - (i) any such subletting is terminable without compensation immediately upon the termination of this Franchise Agreement; and
 - (ii) any such subletting is excluded from the provisions of Part II of the Landlord and Tenant Act 1954 and the Tenancy of Shops (Scotland) Act 1949.
- (b) To the extent so requested by the **Authority**, the Franchise Operator shall, in relation to any Station Sublease and subject, to the extent relevant, to the consent of Railtrack and to the duration of the relevant Station Lease:
 - (i) extend such Station Sublease on the same terms for such period as the **Authority** may request (including a period equivalent to the franchise term of the Train Operator who is the tenant of such Sublease); and
 - (ii) if such Station Sublease terminates, grant a new Station Sublease on the same terms to such Train Operator and for such period as the **Authority** may request (including a period equivalent to the franchise term of the Train Operator who is the tenant of such Sublease).
- (c) The Franchise Operator shall notify the **Authority** immediately on it becoming aware of any event which might give rise to the right for the Franchise Operator to forfeit or terminate any Station Sublease. The Franchise Operator shall notify the **Authority** if it wishes to forfeit or terminate any such Station Sublease but shall not (without the **Authority's** written consent) effect forfeiture or termination until three months from the date of such notice.

12.6 Rolling Stock Leases

- (a) Except to the extent that the **Authority** may otherwise agree from time to time (such agreement not to be unreasonably withheld), the Franchise Operator shall not, in relation to any Rolling Stock Lease to which it may be party from time to time:
 - (i) amend the terms of any such Rolling Stock Lease; or
 - (ii) waive the obligations of any other relevant party thereunder which arise in the last twelve months of the Franchise Period (as defined in Clause 25.6); or
 - (iii) consent or agree (in accordance with any relevant provisions) that any other relevant party may perform or comply in a particular way with any relevant obligation thereunder in the last twelve months of the Franchise Period (as defined in Clause 25.6).
- (b) Except to the extent that the **Authority** may otherwise agree from time to time, the Franchise Operator shall not amend the terms of any insurance arrangements which relate to loss of or damage to rolling stock used by it in the provision of the Passenger Services ("relevant insurance arrangements") and to which it may be party on the Franchise Commencement Date. The Franchise Operator shall, in addition, in the event that it enters into any new relevant insurance arrangements, use its best endeavours to ensure that the terms of such arrangements are such that the relevant

insurers waive any rights of subrogation they may have by virtue of such arrangements against any other Train Operator or other passenger train operator which may have any other equivalent insurance arrangements which provide for a similar waiver of any rights of subrogation against the Franchise Operator, whether on a reciprocal basis or otherwise.

12.7 Brand Licences

The Franchise Operator shall comply with its obligations under each of the Brand Licences for so long as it is party to each such licence.

12.8 Other Franchise Operators

- (a) The Franchise Operator shall, in the event of the termination of the franchise agreement of another franchise operator or the making of a railway administration order in respect of another franchise operator, co-operate with the **Authority**, to the extent so requested, in ensuring that the relevant services provided or operated by the franchise operator may continue to be provided or operated by any successor Train Operator or the railway administrator.
- (b) The Franchise Operator shall, to the extent reasonably so requested by the **Authority**, ensure that, in the event of the termination of the franchise agreement of another franchise operator or the making of a railway administration order in respect of another franchise operator, the benefit of any arrangements between it and such other franchise operator which *it* may have designated as a key contract under the relevant franchise agreement will continue to be provided to the Train Operator or Train Operators who may succeed such franchise operator in the provision of the relevant passenger services or the operation of the relevant stations or light maintenance depots or to the relevant railway administrator.
- (c) Such benefit shall be provided on substantially the same terms as the relevant franchise operator previously obtained such benefit subject to the right of the **Authority** to exclude or modify any terms which were agreed or amended by the relevant franchise operator in the preceding twelve months which were, in the reasonable opinion of the **Authority**, to the material detriment of its business. Such benefit shall be provided for such period as the **Authority** may consider reasonably necessary to allow the relevant Train Operator or railway administrator to renegotiate such arrangements or make alternative arrangements.
- (d) The Franchise Operator shall notify the **Authority** of his intention to terminate any such key contract of any other Train Operator and shall give that Train Operator sufficient notice to enable him to make suitable alternative arrangements without causing disruption to the services provided by such Train Operator.

12.9 Direct agreements

The Franchise Operator shall pay to the **Authority** an amount equal to any losses, costs, liabilities, charges or expenses which may be suffered or incurred by the **Authority** under the provisions of any Direct Agreement which may be notified to the Franchise Operator as a result of, or in connection with:

- (a) any breach by the Franchise Operator of the terms of the Key Contract to which the relevant Direct Agreement relates; or
- (b) any unsuccessful claim being brought by the Franchise Operator against the counterparty of any such Key Contract in relation to the termination of such Key Contract.

12.10 Royal Train

The Franchise Operator shall, if and to the extent requested by any relevant person (including, Rail Express Systems Limited (or its successors)) and subject to the payment by any such person of any reasonable costs of the Franchise Operator, co-operate in the provision by such person of railway services for Her Majesty Queen Elizabeth II or members of her family or her representatives.

12.11 Disputes

The Franchise Operator shall notify the **Authority** of any disputes to which it is a party under any Inter-Operator Scheme, Access Agreement, Property Lease or Rolling Stock Lease and which have been submitted for resolution either to the courts or to any other procedure for dispute resolution provided for under such arrangements. Such notification shall be made both at the time of such submission (and include reasonable details of the nature of the dispute) and at the time of the resolution of the dispute (whether or not subject to appeal) (and include reasonable details of the result of the dispute, any associated award and whether it is subject to appeal). The Franchise Operator shall provide such further details of any such dispute as the **Authority** may reasonably request from time to time.

²¹12.12 Extended Track Access

- (a) *The Franchise Operator shall, at or before the expiry of the Track Access Agreement which is in place on the Franchise Commencement Date, enter into a new Track Access Agreement (or extend the existing one) in respect of the Passenger Services for the balance of the Franchise Term (including any extension thereof under Clause 20.2(a)).*
- (b) *The Franchise Operator shall use all reasonable endeavours to ensure that, under any such new or extended Track Access Agreement, it has the same or equivalent ability and rights to include the railway passenger services, Connections and capacity specified in, or required under, the Passenger Service Requirement in the Timetable and the Train Plan as it had under the Track Access Agreement in place on the Franchise Commencement Date. The Franchise Operator shall use all reasonable endeavours to ensure in particular that the Flexing Rights (as defined in Part D of the Track Access Conditions or such other equivalent rights as may replace them from time to time) of Railtrack under any new or extended Track Access Agreement are, in so far as they relate to the Passenger Service Requirement, no greater than the Initial Flexing Rights of Railtrack in relation thereto. For the avoidance of doubt, this Clause may require the Franchise Operator to submit an application to the Regulator under section 17 of the Act.*
- (c) *The Franchise Operator shall use all reasonable endeavours to ensure that, under any such new or extended Track Access Agreement:-*
 - (i) *such Track Access Agreement may be novated in accordance with Clause 12.3; and*
 - (ii) *the Franchise Operator is obliged to notify the Authority of any disputes or the exercise of any rights by Railtrack under such Track Access Agreement, to the extent so obliged under the Track Access Agreement in place on the Franchise Commencement Date.*
- (d) *If the Authority does not consider that the Franchise Operator has taken sufficient steps under Clause 12.12 (b) and (c), it may require the Franchise Operator to take such steps as it may consider reasonable in the circumstances and the Franchise Operator shall comply with any such requirement. The Authority shall, to the extent reasonably practicable, allow the Franchise*

²¹ Date of insertion of text 19th September 1996

Operator a reasonable opportunity to make any representations to it before requiring the Franchise Operator to take any such action.

- (e) The Franchise Operator shall notify and consult with the Authority before submitting any new or extended Track Access Agreement to the Regulator for approval. The Franchise Operator shall in addition notify the Authority as soon as reasonably practicable upon it becoming aware that it may not be able to enter into a new Track Access Agreement (or extend the existing one) which complies with the requirements of this Clause 12.12. The Franchise Operator shall supply such details thereof as the Authority may reasonably require.*

Station and Depot Leases

12.13 Extended Property Leases

- (a) The Franchise Operator shall, at or before the expiry of the Station Leases and Depot Leases entered into pursuant to Clause 2.2(c), use all reasonable endeavours to enter into new Property Leases (or extend the existing ones) in respect of the properties comprised in the Stations and the Depots for the balance of the Franchise Term (including any extension thereof under Clause 20.2(a)).*
- (b) The Franchise Operator shall use all reasonable endeavours to ensure that, under any such new or amended Property Leases:-*
 - (i) it has the same or the equivalent ability and rights to comply with the requirements of Schedule 4 at each Station;*
 - (ii) such Property Leases may be assigned in accordance with Clause 12.4(b) and (c);*
 - (iii) it has the same or the equivalent ability and rights to comply with its obligations under Clause 12.5(b).*
- (c) If the Authority does not consider that the Franchise Operator has taken sufficient steps under Clause 12.13(a) and (b), it may require the Franchise Operator to take such steps as it may consider reasonable in the circumstances and the Franchise Operator shall comply with any such requirement. The Authority shall, to the extent reasonably practicable, allow the Franchise Operator a reasonable opportunity to make any representations to it before requiring the Franchise Operator to take any such action.*
- (d) The Franchise Operator shall notify and consult with the Authority before entering into any new Property Leases in relation to the Stations or the Depots. The Franchise Operator shall in addition notify the Authority as soon as reasonably practicable upon it becoming aware that it may not be able to enter into Property Leases in relation to the Stations and Depots (or extend the existing ones) in compliance with the requirements of this Clause 12.13. The Franchise Operator shall supply such details thereof as the Authority may reasonably require.*

13. Pensions²²

13.1 FRANCHISE SECTIONS

The Franchise Operator shall participate in and become the Designated Employer in relation to one or more sections of the Railways Pension Scheme (the Franchise Sections) in respect of the Franchise

²² Insert Change Text wef 01/05/07

Services. Subject to Clauses 13.2 and 13.3.2.4 membership of a Franchise Section will be offered to each employee of a Franchise Operator only.

13.2 CLOSED SCHEMES

13.2.1. Subject to any requirements of Her Majesty's Revenue and Customs, the Franchise Operator 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.

13.2.2. For the purposes of this Clause 13.2, Closed Scheme Employees means such of the employees of the Franchise Operator who were, immediately prior to the commencement of their employment with the Franchise Operator, members of either of the British Railways Superannuation Fund or the BR (1974) Pension Fund.

13.3 VARIATIONS IN BENEFITS AND CONTRIBUTIONS; INVESTMENT

13.3.1. If a Franchise Operator is considering making a proposal that it considers would fall within the scope of paragraphs 13.3.2.1 to 13.3.2.6 inclusive, it shall promptly consult with the Authority in relation to that proposal prior to putting such a proposal to the Pensions Committee of any Franchise Section, the Trustee of the Railways Pension Scheme ("the Trustee"), or to any trade union. The Franchise Operator must otherwise consult in good time with the Authority in relation to any proposal it considers would fall within the scope of paragraphs 13.3.2.1 to 13.3.2.6 inclusive.

13.3.2. The Franchise Operator shall not, without the prior written consent of the Authority (which may be given on such terms and subject to such conditions as the Authority thinks fit):

13.3.2.1. restructure or change the composition of the earnings of employees of the Franchise Operator in such a way as to increase the part of those earnings which qualifies as pensionable earnings under the Rules applicable to any Franchise Section or take any action (or consent to the taking of any action) which could detrimentally affect the funding of any Franchise Section, including varying or providing different or additional benefits under that Franchise Section or promising to do so, unless this change:

13.3.2.1.1. is required by Law; or

13.3.2.1.2. only affects benefits payable in respect of past service of members of that Franchise Section and on or prior to the effective date of the change the Franchise Operator pays an additional cash payment to the Trustee which, in the opinion of the Actuary, meets in full the additional funding cost imposed on that Franchise Section; or

13.3.2.1.3. would not lead to substantial changes in the funding of any Franchise Section and is the result of the normal application of that Franchise Section's Rules in the ordinary day to day running of the business of the Franchise;

13.3.2.2. make or consent to any proposal to change any of the provisions of the Pension Trust in respect of the Franchise Sections unless the change is required by Law;

13.3.2.3. provide retirement, death or life assurance benefits in respect of any of its employees other than under any Franchise Section or as provided in Clause 13.2;

13.3.2.4 omit to provide the above-mentioned benefits in respect of its employees save that, without prejudice to any rights which any such employee may otherwise have, the

Franchise Operator shall not under this Clause 13 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;

13.3.2.5. take any action (or consent to the taking of any action) which could affect the contributions payable by Participating Employers under any Franchise Section, including exercising any discretion allowed to the Franchise Operator as Designated Employer arising out of any actuarial valuation of a Franchise Section, and varying or providing different or additional benefits under the Franchise Sections in respect of future service, unless such action is required by Law; close a Franchise Section to new members; or

13.3.2.6. take (or omit to take) any action which could result in any Franchise Section being wound up, in whole or in part.

13.3.3. The Franchise Operator shall consult with the Authority on:

13.3.3.1. any proposal made by the Trustee to change the statement of investment principles applicable to any Franchise Section; and

13.3.3.2. any proposal to alter the rate of contributions payable by the Franchise Operator or its employees under a new schedule of contributions for the Franchise Section.

13.3.4. The Franchise Operator shall also consult with the Trustee on the basis of any response it receives from the Authority in relation to any such proposal.

13.4 FUNDING LIABILITIES

13.4.1. The Franchise Operator shall pay the employer contributions required under the schedule of contributions applicable to each Franchise Section and either of the British Railways Superannuation Fund or the BR (1974) Pension Fund in which it participates in respect of the Franchise Term subject to the provisions of paragraph 13.4.2 below.

13.4.2. Where, during the Franchise Term, Franchise Services are aggregated or disaggregated by the Authority (for example, as a result of remapping) and, as a consequence, a Franchise Section of which the Franchise Operator is the Designated Employer is required to accept a transfer in or to make a transfer out of members, the Authority shall ensure that the Franchise Operator has no liability for any resulting deterioration immediately arising in the funding level of the Franchise Section measured in accordance with the Franchise Sections' technical provisions in Part 3 of the Pensions Act 2004, or for any amount arising under article 7(4) of the Railway Pensions (Protection and Designation of Schemes) Order 1994. Notwithstanding the above the Authority 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.

13.5 DISCHARGE OF OBLIGATIONS

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

13.5.2. The Franchise Operator shall, at its expense, promptly provide such information in relation to any Franchise Section, including actuarial advice and information, as the Authority may from time to time request and shall authorise and consent to the Trustee doing so.

13.5.3. The Franchise Operator shall, in respect of the Franchise Term, use all reasonable endeavours to provide to the Authority:

13.5.3.1. within one month of the expiry of each Franchise Operator Year; and

13.5.3.2. at other times as soon as practicable following a request by the Authority.

a certificate signed by the Trustee in relation to the Franchise Sections stating either that the Franchise Operator has fully complied with its obligations under the Railways Pensions Scheme, including its obligation to contribute to the Franchise Sections or, if it has not so complied, stating the extent to which it has not done so. Where the certificate is given pursuant to Clause 13.5.3.1, it shall cover the relevant Franchise Operator Year; where the certificate has been given pursuant to Clause 13.5.3.2, it shall cover such period as the Authority shall specify.

13.5.4 If the Trustee does not certify under Clause 13.5.3 in relation to the Franchise Sections that the Franchise Operator has fully complied with its obligations under the Railways Pension Scheme or if the Authority otherwise reasonably considers that the Franchise Operator has not complied with such obligations, the Authority may withhold from any Franchise Payments payable by him under Part III – Financial Provisions - an amount which is, in his opinion, no greater than the amount of any contribution that the Franchise Operator has thereby failed to make or avoided making.

13.5.5. The Authority may, under Clause 13.5.4, withhold such amount until such time as it reasonably determines that the relevant contributions have been made in full by the Franchise Operator. Following that determination, the amount withheld shall become payable (without interest) on the next day on which a Franchise Payment becomes payable under Part III – Financial Provisions, 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 Authority has not so determined within four weeks after the expiry of the Franchise Period, the Franchise Operator's right to receive the amount so withheld under the Franchise Agreement shall lapse and the Authority shall not be obliged to pay such amount.

13.6 TERMINATION OF FRANCHISE

The Authority shall at the end of the Franchise Term ensure that the Franchise Operator has no liability for any deficit in the Franchise Sections (other than for contributions due and payable by the Franchise Operator to the Franchise Sections for any period prior to the end of the Franchise Term) and shall have no right to benefit from any surplus which may exist in the Franchise Sections. For the avoidance of doubt, this Clause 13.6 shall apply where the Franchise Services are either aggregated or disaggregated (for example, as a result of remapping).

13.7 DEFINITIONS

Unless otherwise defined in the Franchise Agreement, terms used in this Clause 13 shall have the meanings given to them in the Railways Pension Scheme.

14 Other Covenants

14.1 Franchise Plan

The Franchise Operator and the Franchisee shall each comply with their respective obligations under the Franchise Plan as if they were incorporated and set out in full in this Franchise Agreement and shall provide such details as the **Authority** may reasonably require in connection therewith from time to time.

14.2 Financial Covenants

The Franchise Operator and the Franchisee shall each comply with their respective obligations in Part 2 of Schedule 10.

14.3 ²³Performance Bond²⁴

- (a) *The Franchisee shall maintain the continuing validity and effectiveness of the Performance Bond provided to the Authority under Clause 2.2 and shall comply with the provisions of Clause 14.3 (c) in relation to such Performance Bond or any replacement Performance Bond which may be accepted by the Authority in accordance with Clause 14.3 (d).*
- (b) *The Authority may, if so requested by the Franchisee, reduce the amount required to be guaranteed under a Performance Bond at any time. The Authority shall under no obligation to do so in any circumstances and may reduce such amount subject to compliance with other conditions as may be appropriate in the circumstances.*
- (c) *The Franchisee shall ensure that, no later than the expiry date of the original Performance Bond provided to the Authority under Clause 2.2, the validity and effectiveness of the Performance Bond is extended so that:*
 - (i) *for the remainder of the Franchise Term it has a minimum validity period of a rolling two years (meaning that at any given point in time during the remainder of the Franchise Term the Performance Bond is valid and effective for at least a further two years); and*
 - (ii) *it is valid and effective for no less than one year and seven months after the expiry of the Franchise Term.*

and in relation to any replacement Performance Bond accepted by the Authority in accordance with Clause 14.3 (d) the Franchisee shall ensure that at all times it complies with sub-sections (i) and (ii) of this Clause 14.3 (c).

- (d) *The Franchisee may propose at any time during the Franchise Term an alternative Performance Bond in the same amount as the Performance Bond under Clause 2.2, in a form acceptable to the Authority, duly executed and delivered by a Guarantor acceptable by the Authority. A Performance Bond in the same form as the Performance Bond provided under Clause 2.2 of this Franchise Agreement (but subject to such amendments as the Authority may reasonably require to be made thereto as a result of any change in Law) shall be deemed to be acceptable to the Authority for such purposes except that it must also comply with the requirements of Clause 14.3 (c) above. The Authority may require, and the Franchisee shall provide, such information relating to any Guarantor or proposed Guarantor and such evidence (including any legal opinions) of the power and authorisation of the Guarantor to execute any such Performance Bond and to comply with its obligations thereunder as the Authority may require.*
- (e) *The Franchisee shall ensure that at the same time as receiving any Performance Bond under Clause 14.3(d) , the Authority also receives a deed of subordination relating to such Performance Bond, duly executed by the Franchise Operator and the relevant Guarantor, and in a form acceptable to it. A deed of subordination in the same form as the Deed of Subordination provided under Clause 2.2 of this Franchise Agreement (but subject to such amendments as the Authority*

²³ Date of replacement of text 19th September 1996

²⁴ Date of replacement text 23.2.2005

may reasonably require to be made thereto as a result of any change in Law) shall be deemed to be acceptable to the Authority for such purposes.”

14.4 Season Ticket Bond

- (a) The Franchise Operator shall maintain the continuing validity and effectiveness of the Season Ticket Bond provided to the **Authority** under Clause 2.2 and any subsequent Season Ticket Bond received by **it** under Clause 14.4(b).
- (b) The Franchise Operator shall ensure that, for each Bond Year during the Franchise Term, the **Authority** receives no less than one Reporting Period before the expiry of the preceding Bond Year a Season Ticket Bond in a form acceptable to **it**, duly executed and delivered by a Guarantor acceptable to **it** and in an amount determined under Clause 14.4(c) and (d). A Season Ticket Bond in the same form as the Season Ticket Bond provided under Clause 2.2 of this Franchise Agreement shall be deemed to be acceptable to the **Authority** for such purposes. The **Authority** may require, and the Franchise Operator shall provide, such information relating to any Guarantor or proposed Guarantor and such evidence (including any legal opinions) of the power and authorisation of the Guarantor to execute any such Season Ticket Bond and to comply with its obligations thereunder as the **Authority** may require.
- (c) The amount of any Season Ticket Bond provided under Clause 14.4(d) shall be an amount which varies for each Reporting Period during the Bond Year to which the Season Ticket Bond relates, which amount shall be determined for each such Reporting Period in accordance with the following formula:-

$$STBA = \frac{STL \times ((RPI \times 100) + k) \times z}{100}$$

where

STBA equals the amount of the Season Ticket Bond in the relevant Reporting Period;

STL equals, in respect of such Reporting Period, the maximum amount which would have been payable by the Franchise Operator in respect of Season Ticket Fares under and in accordance with a Supplemental Agreement and Clause 35.3 of this Franchise Agreement if this Franchise Agreement were to terminate on any day during the Reporting Period (the “relevant Reporting Period”) falling thirteen Reporting Periods before such Reporting Period and the rights and liabilities of the Franchise Operator relating to an obligation of carriage under the terms of any Season Ticket Fares were designated as Primary Franchise Assets and transferred under a Transfer Scheme relating to that Supplemental Agreement to a Successor Operator at that time, provided that for these purposes only:-

- (i) Season Ticket Fares shall mean any Season Ticket Fare which expires more than seven days after it first comes into effect;
- (ii) the Franchise Commencement Date shall be assumed, where relevant, to have occurred before the relevant Reporting Period; and
- (iii) if STL cannot reasonably be determined at the time the Franchise Operator is required under Clause 14.4(d) to provide its estimate of the amount of the relevant Season Ticket Bond (including because the relevant Reporting Period has not yet occurred), the relevant Reporting Period shall be the Reporting Period falling twenty six Reporting Periods before the Reporting Period in the relevant Bond Year.

RPI equals the quotient of the Retail Prices Index for the month for which the Retail Prices Index has most recently been determined at the time the Franchise Operator is required under Clause 14.4(d) to provide its estimate of the amount of the relevant Season Ticket Bond divided by the Retail Prices Index for the month falling twelve months before such month.

k has the value attributed to it in paragraph 4 of Part 2 of Schedule 5 of this Franchise Agreement for the Fare Year in which the Reporting Period in the relevant Bond Year falls.

z equals 1 or, if the relevant Reporting Period falls twenty six Reporting Periods before such Reporting Period, an amount equal to

$$\frac{(RPI \times 100) + k}{100}$$

where RPI and k are determined for the twelve months and the Fare Year preceding the twelve months and the Fare Year for which RPI and k are respectively determined above.

- (d) (i) The Franchise Operator shall supply to the **Authority** not later than three Reporting Periods before the end of each Bond Year its estimate of the amount of the Season Ticket Bond for each Reporting Period during the following Bond Year and shall supply such details as the **Authority** may request in connection therewith.
- (ii) The Franchise Operator and **Authority** shall endeavour to agree with each other the amount of such Season Ticket Bond by no later than two Reporting Periods before the end of each Bond Year. If the parties are unable to agree the amount of the Season Ticket Bond in respect of any Reporting Period during the following Bond Year, they may resolve the matter in accordance with the Dispute Resolution Rules.
- (ii) If the amount of the Season Ticket Bond for each Reporting Period during a Bond Year is not agreed two Reporting Periods before the end of the preceding Bond Year, then, until the amount is agreed or determined in accordance with the Dispute Resolution Rules, the amount thereof shall be the amount determined by the **Authority**.
- (e) The **Authority** agrees that, subject to receipt of a Season Ticket Bond in accordance with Clause 14.4(b) in respect of any Bond Year, **it** will release the relevant Guarantor from any liability under any relevant Season Ticket Bond provided in relation to the preceding Bond Year on the expiry of such preceding Bond Year and subject to no Event of Default having occurred.
- (f) References in this Clause 14.4 to Reporting Period (other than in Clause 14.4(d)) shall be construed, where the Franchise Operator so requests to be references to each consecutive 7 day period (or such other period as may be agreed) during such Reporting Period.
- (g) The Franchise Operator and the **Authority** may agree to increase or reduce the amount covered or required to be covered under a Season Ticket Bond from time to time.

14.5 Specified Personnel

- (a) The Franchisee shall, except to the extent the **Authority** otherwise agrees, use its best endeavours to procure that for the three years following the Franchise Commencement Date each of the Specified Personnel is employed by either it or the Franchise Operator and spends not less than 35 hours per week performing their respective duties set out in Schedule 13 in respect of the provision and

operation of the Franchise Services (other than as a result of illness or holidays in the ordinary course of employment).

- (b) If any of the Specified Personnel ceases to be so employed and perform such duties within such period, the Franchisee shall procure that within a reasonable period of time, having regard to the circumstances of the relevant Specified Personnel ceasing to be so employed, a replacement reasonably acceptable to the **Authority** is employed by it or the Franchise Operator to perform such duties. Such replacement shall be deemed to be one of the Specified Personnel for the purposes of this Franchise Agreement.

14.6 Rolling Stock Replacement

- (a) The Franchise Operator shall use its best endeavours to enter into unconditional agreements with third parties within 18 months of the Franchise Commencement Date to acquire New Rolling Stock at a cost not greater than the Agreed Cost provided that nothing in this Clause 14.6 shall prevent the Franchise Operator entering into unconditional agreements to acquire New Rolling Stock with third parties at a cost greater than the Agreed Cost.
- (b) Any New Rolling Stock procured by the Franchise Operator pursuant to any agreement which satisfies the requirements set out in Clause 14.6(a) shall:
 - (i) be used for the provision of the Passenger Services
 - [...] ²⁵
 - (iii) be available for use by the Franchise Operator in the provision of the Passenger Services on or before ²⁶**31st July 2001**, or such later date as the **Authority** may agree.
- (c) The Franchise Operator shall notify the **Authority** of its calculation of the costs of acquiring New Rolling Stock within 15 months of the Franchise Commencement Date if it believes that the New Rolling Stock cannot be acquired at a cost not greater than the Agreed Cost.
- (d) For the purpose of this Clause 14.6, the costs of acquiring New Rolling Stock shall be calculated by aggregating any rental or leasing costs attributable to such rolling stock and, where appropriate, reasonable values attributable to any onerous terms in unconditional agreements with third parties to acquire New Rolling Stock. If the **Authority** disagrees with the calculation of the costs of acquiring New Rolling Stock, the dispute shall be resolved in accordance with the Dispute Resolution Rules.

15 Monitoring

15.1 Maintenance of records

- (a) The Franchise Operator shall maintain true, up to date and complete financial and planning records and accounts in accordance with the requirements set out in Part 1 of Schedule 8, as such requirements may reasonably be amended from time to time by the **Authority**.
- (b) The Franchise Operator shall maintain true, up to date and complete records relating to the operation and maintenance of assets which it owns or operates in accordance with the requirements set out in Part 2 of Schedule 8, as such requirements may reasonably be amended from time to time by the **Authority**.

²⁵ Date of deletion of text 16/11/98

²⁶ Date of Change 23.5.2001

- (c) The Franchise Operator shall maintain true, up to date and complete records relating to the operational performance of the Franchise Operator in accordance with the requirements set out in Part 3 of Schedule 8, as such requirements may reasonably be amended from time to time by the **Authority**.
- (d) The Franchise Operator shall make available, and, if requested by the **Authority**, provide copies of, on reasonable notice by the **Authority** and at reasonable times, the records and accounts referred to in Clauses 15.1(a), (b) and (c) for inspection by the **Authority**. The **Authority** shall be entitled to appoint one or more suitable representatives to check, verify and take copies of any such records and accounts.
- (e) All records and accounts required to be maintained in accordance with this Clause 15.1 shall be held for a period of six years or until twelve months after the expiry of the Franchise Period, whichever is the earlier.
- (f) The obligations of the Franchise Operator under this Clause 15.1 may be waived by the **Authority** to the extent *it* notifies the Franchise Operator that *it* is receiving the relevant information directly from any other relevant person (including Railtrack and RSP). The Franchise Operator shall, to the extent so requested by the **Authority**, confirm or validate any such information which is received from any other such person.

15.2 Provision of accounts

- (a) *The Franchisee and the²⁷ Franchise Operator shall each deliver to the Authority as soon as they are available but no later than 5 months after the end of each of their respective accounting reference periods, beginning with the first accounting reference period which ends within the Franchise Period, certified true copies of their respective annual reports and audited accounts as at the end of and for that accounting period, together with copies of all related directors' and auditors' reports.*²⁸
- (b) Each set of accounts delivered under Clause 15.2(a) shall, save as stated in the notes thereto, be prepared and audited in accordance with accounting principles and auditing standards and practices generally accepted in the United Kingdom and consistently applied and in accordance with the Companies Act 1985 and, together with those notes and subject to any qualifications contained in any relevant auditors' report, shall give a true and fair view of the state of affairs and profits for the period covered by such accounts.
- (c) The Franchise Operator shall in addition deliver to the **Authority**, within one month of the end of each relevant period, unaudited accounts for each Reporting Period (or other period agreed by the **Authority**) during the Franchise Term. The Franchise Operator shall in addition provide within 2 months after the end of each Reporting Year unaudited accounts for each Reporting Year which, where so requested by the **Authority**, shall be reconciled to the equivalent audited accounts of the Franchise Operator. Each set of accounts shall be drawn up in the form set out in Part 4 of Schedule 8 (or such form as may reasonably be amended from time to time by the **Authority**) and shall be prepared, subject to Clause 15.2(d) consistently in accordance with the Franchise Operator's normal accounting policies, details of which shall be supplied, on request, to the **Authority** and any changes to which should be notified to him on submission of such accounts.
- (d) The **Authority** shall be entitled to require preparation of such unaudited accounts under such accounting policies as may be prescribed by *it* from time to time.

²⁷ First four words of the sentence inserted w.e.f. 03.04.2003.

²⁸ Date of Change 14.3.2001

15.3 Provision of registered details

- (a) The Franchisee and the Franchise Operator shall inform the **Authority** on or before the Franchise Commencement Date of the following information relating to each of them and, subsequently, of any change thereto within 21 days of the occurrence of any such change:
- (i) name;
 - (ii) business address and registered office;
 - (iii) directors and company secretary;
 - (iv) auditors;
 - (v) trading name or names; and
 - (vi) to the best of the Franchisee's knowledge and belief having made due and diligent enquiry, the identity of all persons holding, separately or acting by agreement (as defined in Clause 21.2), directly or indirectly, the right to cast more than 20 per cent. of the votes capable of being cast on a poll at general meetings of the Franchisee.
- (b) The Franchisee and the Franchise Operator shall in addition provide to the **Authority** on or before the Franchise Commencement Date a certified copy of their memorandum and articles of association, and subsequently at the same time as the relevant issue or delivery (or, if effected by another person, as soon as practicable thereafter), a copy of each notice or circular or other document issued to its shareholders and a copy of any document relating to it which is delivered to the Registrar of Companies in England and Wales.

15.4 Changes in business

The Franchisee and the Franchise Operator shall inform the **Authority** of any material change or proposed material change in its business (including the employment or the termination of employment of any key employees (including the Specified Personnel), the termination of any Key Contracts, any litigation or other dispute which may have a material effect on its business and any material change in or restructuring of the capitalisation or financing of the Franchisee or the Franchise Operator).

15.5 Contravention's of Franchise Agreement

The Franchisee and the Franchise Operator shall notify the **Authority**, so far as possible before it may occur and, in any event, as soon as reasonably practicable after its occurrence, of any contravention by the Franchisee or the Franchise Operator of any provision of this Franchise Agreement.

15.6 Passenger statistics

When so requested by the **Authority** (but on no more than two occasions per calendar year), the Franchise Operator shall carry out a programme of passenger counts at such times and places and in respect of such of the Passenger Services as the **Authority** may reasonably specify and shall notify the **Authority**, within 14 days of the completion of any such programme, of the results of such counts.

15.7 Further information

The Franchise Operator shall deliver, or procure the delivery of, such other information, records or documents relating to, or connected with, the operation of the Franchise Services or this Franchise Agreement to the **Authority**, and within such period, as the **Authority** may in each case reasonably require.

15.8 Right of audit or inspection

The **Authority** and his representatives shall be permitted to inspect at any reasonable time the books, records and other material kept by or on behalf of the Franchise Operator in order to check or audit any information supplied to him under this Franchise Agreement or to monitor compliance with its obligations under this Franchise Agreement. The Franchise Operator shall make available to the **Authority** and his representatives such information and grant such access or procure the grant of such access (including to or from third parties) as they shall reasonably require in connection therewith. In the event that any such exercise reveals that information previously supplied to the **Authority** was in any material respect inaccurate on the basis of information available to the Franchise Operator at the time, the costs of any such exercise shall be borne by the Franchise Operator.

15.9 Access to third parties

- (a) The Franchise Operator shall, where so requested by the **Authority**, use all reasonable endeavours to ensure that the **Authority** may have direct access to such information, data or records relating to the Franchise Operator which is maintained by third parties and which the **Authority** is entitled to have access to, or have copies of, from the Franchise Operator under this Franchise Agreement.
- (b) The Franchise Operator shall, if and to the extent the **Authority** so requests, procure the provision by RSP to him of such information, data and records as it may be entitled to receive under the Ticketing and Settlement Agreement and in such form as the **Authority** may specify

from time to time. Such obligation shall be subject to the payment by the **Authority** of the costs incurred by RSP in providing such information.

15.10 Performance reviews

The Franchise Operator, if so requested by the **Authority**, shall from time to time attend meetings with the **Authority** or his representatives for the purpose of enabling the **Authority** to conduct periodic reviews of the financial and operational performance of the Franchise Operator and the performance of his obligations under this Franchise Agreement. Such meetings shall be held at reasonable times and no more frequently than at quarterly intervals unless the **Authority** otherwise reasonably requests. The persons attending such meetings on behalf of the Franchise Operator shall be of appropriate seniority and responsibility and shall include such directors or senior management of the Franchise Operator as the **Authority** may reasonably require. If requested to do so on reasonable notice by the **Authority**, the Franchise Operator shall prepare and present reports at such meetings in respect of such aspects of its performance as the **Authority** may reasonably request.

15.11 Compatibility of information systems

- (a) Any financial, operational or other information, data and records required to be provided to the **Authority** under this Franchise Agreement shall be provided, if so requested by the **Authority**, in such a form as may be compatible with the **Authority**'s electronic data and records systems on the Franchise Commencement Date as modified from time to time. In the event of such a modification, the **Authority** shall pay to the Franchise Operator the agreed reasonable costs (excluding any Value Added Tax) to the Franchise Operator of updating his systems or any relevant interconnection in order to be able to continue so to provide such information, data and records, to the extent that such costs exceed £10,000 in any year.
- (b) The Franchise Operator shall ensure that the interconnection of such systems or the provision of such information, data and records to the **Authority** under this Franchise Agreement will not result in any infringement of any third party Intellectual Property rights to which its systems or such information, data or records may be subject.

15.12 Franchisee information

Except to the extent expressly provided for in this Clause 15, nothing in this Clause 15 shall entitle the *Authority* to require access to any records or accounts of the Franchisee except to the extent that the records and accounts of the Franchise Operator form part of the records and accounts of the Franchisee.

Part III – Financial Provisions

16 Franchise Payments

16.1 Franchise Payments

Schedule 6 shall have effect for the purpose of determining the Franchise Payments to be paid during the Franchise Term, subject to and in accordance with this Clause 16 and the other provisions of this Franchise Agreement and the **Authority** and the Franchise Operator shall comply with their respective obligations thereunder.

16.2 Set-off

The **Authority** shall be entitled to set off against any Franchise Payment payable by him under Schedule 6 any Incentive Payment or Adjustment Payment payable or due to him under this Franchise Agreement, any monetary penalty payable under section 55 of the Act and any other amount payable to or due to him under this Franchise Agreement.

16A ²⁹Industrial Action

The Authority, in its sole discretion, may decide to reimburse or ameliorate net losses of the Franchise Operator arising from industrial action (howsoever caused and of whatever nature) in circumstances where the Franchise Operator has demonstrated to the satisfaction of the Authority that it has taken all reasonable steps to avoid the industrial action and, industrial action having nevertheless occurred, the Franchise Operator has taken all reasonable steps to mitigate its effects.

17 Incentive Payments

Schedule 7 shall have effect for the purpose of the determination and payment of the Incentive Payments to be paid during the Franchise Term, subject to and in accordance with the other provisions of the Franchise Agreement and the **Authority** and the Franchise Operator shall each comply with their respective obligations thereunder.

18 Regulatory Reviews

18.1 Track access and station charging reviews

(a) For the purposes of this Clause 18.1, the following definitions shall apply:-

- (i) “Charge Variation” shall mean a variation which is effected as a result of the 2001 Review or a Subsequent Review of the level of charges payable under the Relevant Agreements to Railtrack or any other relevant Facility Owner by the Franchise Operator on its own behalf (and excluding for the avoidance of doubt any amount payable to Railtrack by the Franchise Operator in its capacity as Facility Owner of a station on behalf of a beneficiary which is party to an Access Agreement in respect of that station).
- (ii) “Relevant Agreements” shall mean the Track Access Agreement specified in Part 2(a) of Schedule 1, the Station Leases, any Access Agreement to which the Franchise Operator may be party in respect of a station at which it is not the Facility Owner and any Access Agreement or Property Lease replacing such Track Access Agreement, Station Lease or

²⁹ New Clause inserted wef 11th July 2003

Access Agreement (and any Access Agreement or Property Lease so replacing a Relevant Agreement shall be deemed to be one and the same as and form part of the original Relevant Agreement).

- (iii) “2001 Review” shall mean the exercise by the Regulator of his powers under Part 8 of Schedule 7 of the Track Access Agreement specified in Part 2(a) of Schedule 1, Condition F 11.5 of the Franchise Station Access Conditions in relation to any station which is not an Independent Station and Condition 42.5 of the Independent Station Access Conditions in relation to any station which is an Independent Station.
 - (iv) “Subsequent Review” shall mean the exercise by the Regulator of any powers which:
 - (a) in the reasonable opinion of the **Authority**, have an equivalent effect to, or are intended to fulfil the same function as, the powers referred to in Clause 18.1(a)(iii) in relation to the Relevant Agreements; and
 - (b) are applied to all other Train Operators.
 - (v) “Independent Station” shall mean any of the stations known as Birmingham New Street, London Charing Cross, Edinburgh Waverley, London Euston, Gatwick Airport, Glasgow Central, London Kings Cross, Leeds, London Liverpool Street, London Bridge, Manchester Piccadilly, London Paddington, London Victoria and London Waterloo (excluding Waterloo International).
- (b) In the event of a Charge Variation or proposed Charge Variation, the Franchise Operator shall consult the **Authority** before exercising such rights as he may have under any relevant Access Agreement or Property Lease in relation to such Charge Variation or in relation to negotiation of any new Access Agreement or Property Lease and shall comply with such reasonable requests as the **Authority** may make at the time in respect of the exercise of such rights.
 - (c) In the event of a Charge Variation which would have the effect of increasing the level of relevant charges which would, in the absence of such variation, otherwise have been payable by the Franchise Operator, then the Franchise Operator may request, by serving notice on the **Authority** within one year of the Charge Variation coming into effect, the **Authority** to review the terms of this Franchise Agreement.
 - (d) Any such request shall, if the **Authority** so requests, be accompanied by a report prepared by an appropriate independent adviser of recognised standing which confirms, in the adviser’s opinion, the financial implications of the Charge Variation for the Franchise Operator and whether and to what extent, assuming no adjustments are made to the terms of this Franchise Agreement other than the Franchise Payments, any adjustments should be made to the Franchise Payments under this Clause 18.1 (subject to Clause 18.1(h)).
 - (e) If so requested, the **Authority** shall make such adjustment to the terms of this Franchise Agreement (including the Passenger Service Requirement and the Franchise Payments payable hereunder) as will reasonably ensure, on the basis of information available at the time of the review and subject to Clause 18.1(h) and (i), that the Franchise Operator suffers no net financial loss and makes no net financial gain (each as determined by reference to its Profit and Loss for the balance of the Franchise Term) as a direct result of such increase in charges.
 - (f) In the event of a Charge Variation which would have the effect of reducing the level of relevant charges which would, in the absence of such variation, otherwise have been payable by the Franchise Operator, then the **Authority** shall be entitled, within 1 year to the Charge Variation coming into effect, to review the terms of this Franchise Agreement and make such adjustment to the terms of this Franchise Agreement (including the Passenger Service Requirement and the Franchise Payments payable hereunder) as will reasonably ensure, on the basis of information available at the time of the

review and subject to Clause 18.1(h) and (i), that the Franchise Operator suffers no net financial loss and makes no net financial gain (each as determined by reference to its Profit and Loss for the balance of the Franchise Term) as a direct result of such reduction in charges.

- (g) The Franchise Operator shall provide to the **Authority** such information as he may reasonably require for the purposes of carrying out any review or making any adjustment under Clause 18.1(e) or (f).
- (h) No adjustment shall be required to be made to the terms of this Franchise Agreement under Clause 18.1(e) or (f) if it would result in an adjustment being made to the level of Franchise Payments payable in any Financial Year hereunder of less than 0.1 per cent of the annual Turnover of the Franchise Operator as disclosed by its latest available audited accounts.
- (i) For the purposes of Clauses 18.1(e) and (f), the net financial loss or net financial gain of the Franchise Operator from a Charge Variation shall be deemed to be the difference between the relevant charges that would have been payable in the absence of the Charge Variation and those that are payable following the implementation of the Charge Variation. The net financial loss or net financial gain of the Franchise Operator from any other adjustment to the terms of this Franchise Agreement shall be determined by reference to the Net Loss or Net Gain arising from such adjustment and for these purposes references in Parts 2 and 3 of Schedule 9 to the Net Loss, Net Gain and Variation shall be construed accordingly.
- (j) The parties may resolve any dispute relating to any such review or adjustment in accordance with the Dispute Resolution Rules. For the avoidance of doubt, the **Authority** shall be entitled to determine the manner of any adjustment to be made hereunder.
- (k) References in this Clause 18.1 to “charges” and “relevant charges” are to the aggregate charges payable by the Franchise Operator under the Relevant Agreements which may be amended by, or introduced following the 2001 Review or any Subsequent Review. If variations which are made to charges are effected at different times for different Relevant Agreements, then the **Authority** or the Franchise Operator, as the case may be, may elect to treat such variation as a separate Charge Variation for the purposes of this Clause 18.1 provided that the provisions of Clause 18.1(h) shall apply to the aggregate of each such separate Charge Variation.

18.2 Competition review

- (a) For the purposes of this Clause 18.2 a “Competition Variation” shall mean a variation which has been effected by the Regulator under Part 6 of Schedule 11 of the Track Access Agreement specified in Part 2(a) of Schedule 1 (and any equivalent provision of any other Track Access Agreement relating to the Passenger Services which, in the opinion of the **Authority**, is equivalent thereto) to the level of competition on the routes on which the Passenger Services are provided between the Passenger Services which are provided by the Franchise Operator and such other railway passenger services as may be provided by any other passenger train operator on such routes who is not an Affiliate of the Franchise Operator.
- (b) In the event of a Competition Variation, the Franchise Operator shall consult the **Authority** before exercising such rights as he may have under any Track Access Agreement in relation to such Competition Variation and shall comply with such reasonable requests as the **Authority** may make at the time in respect of the exercise of such rights.
- (c) In the event of a Competition Variation, the Franchise Operator may request on one occasion, by serving notice on the **Authority** before or not more than three years after the date such Competition Variation comes into effect, the **Authority** to review the terms of this Franchise Agreement.
- (d) Any such request shall, if the **Authority** so requests, be accompanied by a report prepared by an appropriate independent adviser of recognised standing which confirms, in the adviser’s opinion, the

financial implications of the Competition Variation for the Franchise Operator and whether and to what extent, assuming no adjustments are made to the terms of this Franchise Agreement other than the Franchise Payments, any adjustments should be made to the Franchise Payments under this Clause 18.2 (subject to Clause 18.2(i)).

- (e) If so requested, the **Authority** shall, subject to Clause 18.2(i), offer to the Franchise Operator to adjust the level of Annual Franchise Payments to such level as he considers, having regard to any adjustment he would propose to make to the other terms of this Franchise Agreement at the same time, would be set in respect of the period from the date of the notice under Clause 18.2 (c) until the expiry of the Franchise Term if he were to invite by competitive tender other persons (including persons who would provide and operate the relevant services on an economic and efficient basis) to provide, or secure the provision of, the Passenger Services under a franchise agreement for a term equivalent to the original duration of the Franchise Term.
- (f) The Franchise Operator may accept such offer (subject to the proposed adjustment to the other terms of this Franchise Agreement) within two months of the offer being made and the Franchise Agreement shall be amended accordingly subject to such other variations as the parties may agree.
- (g) The Franchise Operator may, if he does not so accept such offer, refer the matter within 2 months of the offer being made to an arbitrator under the Dispute Resolution Rules who shall be required to determine, having regard to the proposed adjustment to the other terms of this Franchise Agreement and Clause 18.2(i), the level of Annual Franchise Payments which would reasonably be expected to be set in respect of the period from the date of the notice under Clause 18.2(c) until the expiry of the Franchise Term if the **Authority** were to invite by competitive tender other persons (including persons who would provide and operate the relevant services on an economic and efficient basis) to provide, or secure the provision of, the Passenger Services under a franchise agreement for a term equivalent to the original duration of the Franchise Term.
- (h) The **Authority** may, following any such determination, either accept or reject the determination of the arbitrator. If he does so accept it, the level of Annual Franchise Payments shall be adjusted to such level as is determined by the arbitrator and (subject to the proposed adjustment to the other terms of this Franchise Agreement) this Franchise Agreement shall be amended accordingly subject to such other variations as the parties may agree. If the **Authority** rejects the determination, the Franchise Operator may, within two months of receiving notice of such rejection, either accept the original offer in accordance with Clause 18.2(e) or terminate this Franchise Agreement on twelve months' notice to the **Authority**.
- (i) No adjustment shall be required to be made to the terms of this Franchise Agreement and no offer shall be required to be made by the **Authority** under Clause 18.2(e) if:-
 - (i) it would result in an adjustment being made to the level of Franchise Payments payable in any Financial Year hereunder of less than 0.1 per cent. of the annual Turnover of the Franchise Operator as disclosed by its latest available audited accounts; or
 - (ii) the Franchise Term expires within one year of any request under Clause 18.2(c) or the date of implementation of the Competition Variation, whichever is the later.
- (j) If notice is given by the Franchise Operator to the **Authority** under Clause 18.2(h), the Franchise Operator shall, to the extent so requested by the **Authority**, exercise such rights of termination as it may have under any Key Contract to terminate such Key Contract on termination of the Franchise Agreement following such notice.

19 Franchise Viability

19.1 Threat to viability of franchise

The Franchise Operator may request the **Authority** to review the terms of this Franchise Agreement if it considers that if it is to be required to continue to comply with its obligations hereunder until the end of the Franchise Term, there would either be an Event of Default under Clause 21.1 before the end of the Franchise Term or its financial status would otherwise be threatened. Any such request shall be accompanied by a report prepared by an appropriate independent adviser of recognised standing which confirms, in the adviser's opinion, the extent to which the financial status of the Franchise Operator is threatened and any countervailing measures that might be taken by the Franchise Operator in order to improve or preserve its financial position.

19.2 Review of terms of Franchise Agreement

If the Franchise Operator so requests, the **Authority** may, but shall not be obliged to, offer to adjust the terms of this Franchise Agreement (including the Passenger Service Requirement and the level of Franchise Payments) to such extent as he considers appropriate having regard to:-

- (a) whether he considers there would either be an Event of Default under Clause 21.1 before the end of the Franchise Term or the financial status of the Franchise Operator would otherwise be threatened;
- (b) any proposed adjustment to the other terms of this Franchise Agreement, the level of Annual Franchise Payments which would reasonably be expected to be set for a period equivalent to the balance of the Franchise Term if the **Authority** were to invite by competitive tender other persons (including persons who would provide and operate the relevant services on an economic and efficient basis) to provide, or secure the provision of, the Passenger Services under a franchise agreement for a term equivalent to the original duration of the Franchise Term;
- (c) the cost of inviting other persons to provide, or secure the provision of, the Passenger Services before the expiry of the Franchise Term;
- (d) whether the threat to the financial status of the Franchise Operator has arisen as a result of circumstances beyond his control and which he could not reasonably have been expected to counteract;
- (e) whether it would be in the interests of passengers using the Passenger Services to adjust the terms of this Franchise Agreement, having regard to the quality of service provided by the Franchise Operator;
- (f) the continued motivation of the Franchise Operator following any such adjustment; and
- (g) such other matters as he may consider appropriate at the time.

19.3 Acceptance of offer

If the **Authority** does so offer, the Franchise Operator may accept such offer and the Franchise Agreement shall be amended accordingly subject to such other variations as the parties may agree.

Part IV – Term and Termination

20 Franchise Term

20.1³⁰ *Subject to clause 20.2, the Franchise Term shall expire at 2.00 am on 26 May 2013. Subject to clause 23 or any prior termination hereof, this Franchise Agreement shall terminate on the expiry of the Franchise Term.*

20.2³¹ *If the Authority gives prior notice to the Franchise Operator of not less than three months, the Franchise Term shall expire on such date as may be specified by the Authority in such notice. The date specified in such notice shall be no less than one and not more than six Reporting Periods before the date on which the Franchise Term would have otherwise expired in accordance with clause 20.1*

21 Events Of Default

The following are Events of Default and the occurrence of an Event of Default shall constitute a breach and contravention of this Franchise Agreement by the Franchise Operator and the Franchisee:

21.1 Insolvency

- (a) *Administration*: Any step being taken by any person with a view to the administration of the Franchise Operator, Franchisee or any threatening to stop or suspend payment of all or a material part of (or a particular type of) its debts, or being unable to pay its debts, or being deemed unable to pay its debts under section 123(1) or (2) of the Insolvency Act 1986 except that in the interpretation of this paragraph:
 - (i) the words “it is proved to the satisfaction of the court that” in sub-section (1)(e) and sub-section (2) of section 123 shall be deemed to be deleted;
 - (ii) section 123(1)(a) of the Insolvency Act 1986 shall have effect as if for “£750” there was substituted “£100,000” or such higher figure as the **Authority** may from time to time determine by notice in writing to the Franchise Operator and the Franchisee; and
- (iii) any of the Franchise Operator, Franchisee or any Guarantor shall not be deemed to be unable to pay its debts for the purposes of this paragraph if any such demand as is mentioned in section 123(1)(a) of the Insolvency Act 1986 is being contested in good faith by such person with recourse to all appropriate measures and procedures and such person has adequate funds to discharge the amount of such demand or if any such demand is satisfied before the expiration of 21 days from such demand; Guarantor under Part II of the Insolvency Act 1986;
- (b) *Insolvency*: Any of the Franchise Operator, Franchisee or any Guarantor stopping or suspending or
- (c) *Arrangements with Creditors*: The directors of the Franchise Operator, Franchisee or any Guarantor making any proposal under section 1 of the Insolvency Act 1986, or any of the Franchise Operator, Franchisee or any Guarantor proposing or making any agreement for the deferral, rescheduling or other readjustment (or proposing or making a general assignment or an arrangement or composition with or for the benefit of the relevant creditors) of all of (or all of a particular type of) its debts, or a

³⁰ Date of Change 20/12/2010

³¹ Date of Change 20/12/2010

moratorium being agreed or declared in respect of or affecting all or a material part of (or of a particular type of) its debts;

- (d) *Security Enforceable*: Any step being taken to enforce security over or a distress, execution or other similar process being levied or served out against the whole or a substantial part of the assets or undertaking of the Franchise Operator, Franchisee or any Guarantor, including the appointment of a receiver, administrative receiver, manager or similar person to enforce that security;
- (e) *Stopping Business/Winding-Up*: Any step being taken by the Franchise Operator, Franchisee or any Guarantor with a view to its winding-up or any person presenting a winding up petition which is not dismissed within 14 days, or any of the Franchise Operator, Franchisee or any Guarantor ceasing or threatening to cease to carry on all or a material part of its business, except for the purpose of and followed by a reconstruction, amalgamation, reorganisation, merger or consolidation on terms approved by the **Authority** before that step is taken;
- (f) *Railway Administration Order*: A railway administration order being made in relation to the Franchise Operator under sections 60 to 62 of the Act;
- (g) *Analogous Events*: Any event occurring which, under the law of any relevant jurisdiction, has an analogous or equivalent effect to any of the events listed above

unless, in the case of paragraphs (a), (d) and (e), the relevant petition, proceeding or other step is being actively contested in good faith by the relevant person with recourse to all appropriate resources and procedures and such person has adequate funds to discharge the relevant debt.

21.2 Change of Control

Without the prior consent of the **Authority**:

- (a) the Franchise Operator ceasing to be a wholly owned subsidiary of the Franchisee; or
- (b) a change in the identity of any one person, or two or more persons acting by agreement, who may Control the Franchisee during the Franchise Term which, for the avoidance of doubt, shall include a person, or two or more persons acting by agreement, ceasing to Control the Franchisee at any time during the Franchise Term, whether or not any other person Controls the Franchisee at the same time

and, for the purposes of this Clause 21.2, two or more persons shall be deemed to be acting by agreement in relation to the Franchisee if, assuming the Franchisee was a target company as defined in section 204(1) of the Companies Act 1985, such persons would be under an obligation to disclose an interest in shares in such company by virtue of an agreement between such persons.

21.3 Revocation of Licence

Revocation of any Licence held by the Franchise Operator which it may be required to hold in order to comply with its obligations under this Franchise Agreement.

21.4 Breach of Law

It becoming unlawful for the Franchise Operator to provide all or a material part of the Passenger Services or to operate all or a material number of the Stations or Depots (except to the extent not required so to do under this Franchise Agreement).

21.5 Breach of Passenger Service Requirement

The Franchise Operator failing to comply, subject to Clause 5.1(c), with its obligations under Clause 5.1(a) or (b).

21.6 Non-membership of Inter-Operator Schemes

The Franchise Operator ceasing to be a member of, or ceasing to participate in or to be party to, any of the Inter-Operator Schemes, or having its membership or participation therein suspended.

21.7 Ceasing to provide Passenger Services

Other than with the agreement in writing of the **Authority** or to the extent excused therefor under Clause 5.4 as a result of a *Force Majeure* Event, in relation to the Timetable and Train Plan, in any Reporting Period during the Franchise Term:

- (a) there being more Cancellations during such Reporting Period than the Default Threshold of Cancellations;
- (b) there being more Total Cancellations during such Reporting Period than the Default Threshold of Total Cancellations; or
- (c) where applicable, the aggregate of the Actual Capacity of each train included in the Train Plan in such Reporting Period being less than the Default Threshold of the aggregate of the Planned Capacity of each such train.

21.8 Bonds and Guarantees

- (a) Any Performance Bond, Season Ticket Bond or Guarantee ceasing to be a legal, valid and binding obligation on the relevant Guarantors (other than in accordance with their terms) or it otherwise becoming unlawful or impossible for the Guarantors to perform their respective obligations thereunder.
- (b) The **Authority** failing to receive a Season Ticket Bond in accordance with Clause 14.4(b).
- (c) The Guarantor in respect of the Season Ticket Bond exercising any right of termination under Clause 7 of the Season Ticket Bond.

21.9 Key Contracts

Termination by the Franchise Operator of any of the Key Contracts except to the extent that the Franchise Operator has demonstrated to the reasonable satisfaction of the **Authority** that it is no longer necessary for it to be party to such Key Contracts or it has made adequate alternative arrangements in order to be able to continue to provide and operate the Franchise Services.

21.10 Enforcement orders

Non-compliance by the Franchisee or the Franchise Operator with a provisional order or final order made by the **Authority** under section 55 of the Act.

21.11 Other Franchises

Termination, as a result of an event of default, of any other franchise agreement in respect of which the franchisee is the Franchisee or an Affiliate of the Franchisee.

21.12 Breach of other obligations

The Franchisee or Franchise Operator not performing or complying to a material extent with any one or more of its obligations under this Franchise Agreement (other than such non-performance or non-compliance as may constitute an Event of Default under Clauses 21.1 to 21.11) and, after a written notice from the **Authority** specifying such non-performance or non-compliance, breaching such obligation again

to a material extent or permitting the breach to continue or, if the breach is capable of remedy, failing to remedy such breach within such reasonable period as the **Authority** may specify in such written notice.

22 Consequences Of Events Of Default

22.1 Notification of Event of Default

The Franchisee and the Franchise Operator shall notify the **Authority** as soon as reasonably practicable on, and, in any event, within 24 hours of, it becoming aware of the occurrence of an Event of Default or an event which is likely to result in the occurrence of an Event of Default. The Franchisee and the Franchise Operator shall take such action or steps as the **Authority** may require for any Event of Default or potential Event of Default to be remedied.

22.2 Termination

The **Authority** shall be entitled, on the occurrence of an Event of Default which he reasonably considers to be material, to terminate this Franchise Agreement forthwith on written notice. This Franchise Agreement shall terminate on the date specified in any such notice which terminates or purports to terminate this Franchise Agreement.

23 Consequences Of Termination

Upon termination of this Franchise Agreement (whether through default or effluxion of time or otherwise) the obligations of the parties hereunder shall cease except for:

- (a) any obligations arising as a result of any antecedent breach of this Franchise Agreement;
- (b) any obligations which are expressed to continue in accordance with the terms of this Franchise Agreement; and
- (c) any other obligations which give effect to such termination or to the consequences of such termination or which otherwise apply (expressly or impliedly) on or after such termination.

Nothing in this Clause 23 shall prevent the **Authority** from bringing an action against the Franchisee or the Franchise Operator in connection with the termination of this Franchise Agreement prior to the expiry of the Franchise Term.

Part V – Obligations associated with change of Franchise Operator

24 Retendering of Franchise

The Franchise Operator acknowledges that the **Authority** may wish, at or before the expiry of the Franchise Period, to invite persons, who may include the Franchisee or the Franchise Operator, to tender for, the right to provide all or some of the Passenger Services under a franchise agreement. The Franchise Operator further acknowledges that the **Authority** is under a duty or has the power under section 30 of the Act to secure in certain circumstances the provision of the Passenger Services and the operation of the Stations and Depots if no further franchise agreement is entered into on the termination of this Franchise Agreement in respect of such Passenger Services, Stations and Depots. The Franchise Operator accordingly accepts and agrees to the restrictions and obligations imposed on it under this Part V of this Franchise Agreement.

25 Maintenance of Franchise

25.1 Maintenance as going concern

- (a) The Franchise Operator shall maintain and manage the business of providing the Franchise Services with the intent that a Successor Operator would be able to take over the business of providing the Franchise Services immediately at any time. The Franchise Operator shall use all reasonable endeavours to ensure that such Successor Operator would have immediate access to all Franchise Employees and Primary Franchise Assets for such purpose.
- (b) The Franchise Operator shall maintain and manage the business of providing the Franchise Services on the basis that, to the extent possible and practicable, such business will be transferred, in the manner contemplated under this Franchise Agreement, as a going concern at the end of the Franchise Period to, and continued immediately thereafter by, a Successor Operator. The Franchise Operator shall accordingly use all reasonable endeavours to ensure that an appropriate number of employees (having sufficient skills, qualifications and experience) will transfer by operation of Law to any Successor Operator following the expiry of the Franchise Period.

25.2 Handover packages ³²

- (a) *For the purposes of facilitating the transfer of the business of providing the Franchise Services to any Successor Operator on the expiry of the Franchise Period, the Franchise Operator shall maintain and keep up to date a handover package, which shall contain the information and objects set out in Schedule 12 and such other information and objects as the Authority may reasonably specify from time to time.*
- (b) *The Franchise Operator shall ensure that any Successor Operator will have immediate access to such package on the expiry of the Franchise Period and shall accordingly agree with the Authority from time to time the location at which such package should be kept.*
- (c) *If so requested by the Authority (but no more than once in each Franchise Year), the Franchise Operator shall provide a report from its auditors addressed to the Authority which confirms that the package maintained by the Franchise Operator pursuant to Clause 25.2(a) contains the information and objects required thereunder. The Franchise Operator shall make such package available for inspection to the Authority or his representative whenever so reasonably requested.*

³² Date of Change 13 Aug 1999

- (d) *Without prejudice to the preceding provisions of this Clause 25.2, the Franchise Operator shall provide to the Authority the following information and letters, and shall supply revised information and/or letters to the Authority as and when required to ensure they remain accurate and up to date:*
- (i) *Details of the location of the handover package, which unless otherwise agreed by the Authority shall be the offices of a solicitor approved by the Authority, and which details shall include one or more contact name(s), address(es) and telephone number (s) enabling contact during, and outside of, normal office hours with person(s) authorised and able to release the package to the Authority.*
 - (ii) *A letter in a form approved by the Authority:-*
 - (1) *from the Franchise Operator confirming that irrevocable instruction has been given to the holder of the handover package that the Authority, or his agent, is entitled to require access to and delivery of the handover package on demand, and confirming the Authority's right to audit the handover package;*
 - (2) *to the Authority from the solicitor, or other person authorised by the Authority, holding the handover package confirming that they will release the package to the Authority, or his agent, on demand, and confirming that the handover package will be made available for the purposes of auditing its contents when so required by the Authority.*
 - (iii) *A list of all directors and function managers of the Franchise Operator, together with details of the means of contacting them, or their deputies, during, and outside of, normal working hours.*
 - (iv) ³³ *A letter, or letters, in a form approved by and addressed to the Authority, either (1) authorising each of the Franchise Operator's insurers to release any insurance related information to the Authority, or its agents on demand; or (2) authorising the Franchise Operator's insurance broker to release any insurance related information to the Authority, or its agents on demand. The letter(s) shall also include (1) confirmation from each of the Franchise Operator's insurers that they agree to release such insurance related information, or (2) confirmation from the Franchise Operator's insurance broker that all insurers agree to release such insurance related information and that they will not enlist any insurer on behalf of the Franchise Operator who has not first agreed to release such information.*

25.3 Preparation for retendering

The Franchise Operator, if and to the extent so requested by the **Authority**, shall provide him and his representatives and advisers with reasonable access to the Franchise Employees and the books, records and other material kept by or on behalf of the Franchise Operator in connection with the Franchise Services for the purpose of such representatives and advisers preparing any reports or other documents in connection with any invitation to potential Successor Operators to tender for the right and obligation to provide or operate all or any of the Franchise Services or any invitation to other potential franchisees to tender for the right and obligation to provide any other railway passenger services or operate any other additional railway asset. The Franchise Operator shall make available to the **Authority** and his representatives and advisers such information, and shall assist in the verification of such information (including the provision of answers to verification questions), as they shall reasonably require in connection with such exercise provided that such exercise shall not unduly interfere with the continuing provision and operation of the Franchise Services by the Franchise Operator.

³³ Replacement Clause inserted wef 27th August 2003

25.4 Non-frustration of transfer

The Franchise Operator shall take no action or steps which is or are designed, directly or indirectly, to prejudice or frustrate the transfer as a going concern of the business of providing the Franchise Services at the end of the Franchise Period to a Successor Operator. In particular the Franchise Operator shall take no action or steps which is or are designed, directly or indirectly, to avoid, frustrate or circumvent any provision of this Franchise Agreement which is included in whole or in part for the purpose of preventing any such prejudicial or frustrating action or steps (including those contained in this Part V of the Franchise Agreement). Subject to such restrictions and the other provisions of this Franchise Agreement, the Franchise Operator shall be entitled to take such action as it may require for the purposes of bidding to become, or becoming, such a Successor Operator.

25.5 Arrangements with Affiliates

- (a) The Franchise Operator shall ensure that every contract or other arrangement or transaction to which it may be party with any Affiliate for the supply of goods, the provision of services (including the licensing of any Intellectual Property) or otherwise, is on arm's length terms.
- (b) For the avoidance of doubt, in the event that any such arrangement is a Key Contract and is not on arm's length terms, the **Authority** may require the Franchise Operator to terminate (at its own cost) such arrangement and the Franchise Operator shall comply with any such requirement.

25.6 Last twelve months of Franchise Period

Where reference is made in this Part V of this Franchise Agreement to the last twelve or thirteen months of the Franchise Period, such period shall be deemed to commence on the following dates (except and until the actual date of expiry of the Franchise Period is known):

- ³⁴(a) *the date which is the day after the expiry of the 15th Franchise Year after the Franchise Commencement Date;*
- (b) the date any notice of termination is given by the Franchise Operator under Clause 18.2; and
- (c) the date on which the **Authority** becomes aware of an Event of Default and notifies the Franchise Operator that such period of twelve or thirteen months shall be deemed to commence.

Any such period (which may be longer or shorter than twelve or thirteen months, as the case may be) shall expire on the date of termination of the Franchise Agreement or, if earlier, in the case of periods commencing under paragraph (c), the date falling twelve months after the date of any notice under paragraph (c) or, in each case, such earlier date as the **Authority** may determine.

26 Restrictions On Activities

26.1 Affiliates of Franchise Operator

Nothing in this Clause 26 shall restrict any Affiliate of the Franchise Operator (including the Franchisee) from having an interest in or participating in any business or activity other than the Franchise Services.

26.2 Restrictions on Franchise Operator

- (a) The Franchise Operator shall have the right to provide and operate the Franchise Services during the Franchise Period and shall not directly or indirectly, without the prior written consent of the

³⁴ Date of Change 20/12/2010

Authority, carry on any business or activity other than the provision and operation of the Franchise Services.

- (b) Such consent shall not be unreasonably withheld where the other business or activity proposed to be carried on by the Franchise Operator could not reasonably be so carried on by an Affiliate of the Franchise Operator unless, in the **Authority**'s reasonable opinion:
 - (i) such additional business or activity might prejudice the continuity of the provision of the Franchise Services by a Successor Operator at the end of the Franchise Period; or
 - (ii) might result in additional liabilities and obligations being assumed by such a Successor Operator.
- (c) The **Authority**, to the extent that he does so consent, may do so on such conditions agreed with the Franchise Operator at the time of the grant of his consent as he considers appropriate for the purpose of securing the continuity of the provision of the Franchise Services at the end of the Franchise Period.

26.3 Specific restrictions

Without prejudice to the generality of the provisions of Clause 26.2 and for the avoidance of doubt, the Franchise Operator shall not during the Franchise Period, without the consent of the **Authority**:

- (a) provide or operate any railway passenger services other than the Passenger Services or Charter Services;
- (b) operate any stations or light maintenance depots other than the Stations and Depots; or
- (c) hold shares, participations or any other interest in any other company or body corporate unless such company or body corporate is owned directly or indirectly by other participants in the railway industry and the holding is incidental to the Franchise Operator's participation in an Inter-Operator Scheme or some other arrangement designed to ensure or facilitate co-operation between such participants or between any such participants and any other person.

26.4 Employees

The Franchise Operator shall not engage any Franchise Employee in any activity or business which it may not conduct or engage in under this Clause 26.

27 Key Contracts

27.1 Key Contracts

Save in respect of any contract to which the Franchise Operator may be party on the Franchise Commencement Date, the Franchise Operator shall not enter into, be party to or be beneficiary under any Key Contract, unless the relevant counterparty is a Train Operator or the **Authority** has

previously entered into a Direct Agreement in respect of such Key Contract with the relevant counterparty on terms acceptable to the **Authority** for the purposes of ensuring that the Passenger Services may continue to be provided and that the Stations and Depots may continue to be operated in the event of breach or termination of such Key Contract, termination of this Franchise Agreement or the making of a railway administration order in respect of the Franchise Operator.

27.2 No amendment

The Franchise Operator shall not without the prior consent of the **Authority** (which shall not be unreasonably withheld or delayed) vary, or purport to vary, the terms or conditions of any Key Contract where such variation first takes effect in the last 12 months of the Franchise Period or where all or part of such variation first takes effect after the end of the Franchise Period.

27.3 Designation

The **Authority** may, subject to Clause 27.4, designate at any time as a Key Contract any agreement, contract, licence or other arrangement (whether in written, oral or other form) which the Franchise Operator is party to or beneficiary under or which it may propose to be party to or beneficiary under, where the **Authority** considers that such designation is reasonably necessary for securing that the Franchise Services may continue to be provided by a Successor Operator on the expiry of the Franchise Period or otherwise facilitating the transfer of the provision of the Franchise Services at such time. For the avoidance of doubt such arrangements may include any informal or formal arrangement that the Franchise Operator may have with any other person from time to time (including an Affiliate and including any arrangement for the storage or accommodation of any employees or assets (including any relevant electronic or computer systems)).

27.4 Notification of categories of Key Contracts

The **Authority** may from time to time notify the Franchise Operator of those types or categories of contracts or arrangements which he considers may be Key Contracts and those which he does not. The Franchise Operator shall be entitled to rely on such notifications until amended or revoked on reasonable notice. The Franchise Operator shall inform the **Authority** from time to time of any arrangements which it may be intending to enter into which it believes the **Authority** may reasonably wish to designate under Clause 27.3.

27.5 Designation of existing Contracts

If the **Authority** designates as a Key Contract any contract or arrangement to which the Franchise Operator may already be party and which the **Authority** has previously notified the Franchise Operator would not be considered to be a Key Contract under Clause 27.4 (and in respect of which such notice has not been revoked), the Franchise Operator shall be deemed not to be in breach of its obligations under Clause 27.1 but shall, where so reasonably requested by the **Authority**, use its reasonable endeavours to procure that the **Authority** may enter into a Direct Agreement with the relevant counterparty as soon as practicable.

27.6 Emergencies

Nothing in this Clause 27 shall prevent the Franchise Operator from entering into on a short term basis such contracts or arrangements as it may consider necessary or appropriate to deal with any emergency which may arise in connection with the provision and operation of the Franchise Services nor shall it be required to procure that the **Authority** enters into a Direct Agreement in respect of such contracts.

28 Subcontracting

28.1 Permitted subcontracting

The Franchise Operator may subcontract or delegate, subject to prior notification being received by the **Authority**, the provision of any of the Passenger Services which are to be provided under this Franchise Agreement provided that:

- (a) it continues to be party to all Access Agreements and Property Leases reasonably necessary to provide such Passenger Services and to enjoy all relevant access and operational rights thereunder;
- (b) it continues to specify and control, subject to any right of Railtrack, the Timetable, Train Plan and any bids for train slots which may be required in order to provide such Passenger Services;
- (c) it continues to specify and control the terms and conditions (subject to the requirements of the Inter-Operator Schemes) on which such Passenger Services are to be provided, including the determination of the Price of any Fares; and
- (d) the Train Mileage of the Passenger Services so delegated or subcontracted does not exceed 5 per cent. of the aggregate scheduled Train Mileage of the Franchise Operator in any Reporting Period provided that for the purpose of this Clause 28.1, the bus services between Tilbury Town Station and Tilbury Riverside shall not be taken into account in calculating Train Mileage.

For the avoidance of doubt, any such subcontracting or delegation shall not relieve the Franchise Operator from his obligations in respect of such Passenger Services under this Franchise Agreement, including his obligations under Clauses 5 and 25.1.

28.2 Other subcontracting

Any subcontracting or delegation of the provision of the Passenger Services other than in accordance with Clause 28.1 shall require the consent of the **Authority**.

28.3 Passenger Service Requirement

The obligation on the Franchise Operator under this Franchise Agreement to procure that the Timetable includes railway passenger services specified in the Passenger Service Requirement and to provide and operate such services in accordance with the Timetable applies regardless of what other services may be provided or operated by any other train operator along the same or similar route. Accordingly, the subcontracting or delegation to any other person of any of the Passenger Services which are contained in the Passenger Service Requirement shall not be effective to the extent that the relevant subcontracted or delegated Passenger Service operated by such other person or persons pursuant to the relevant subcontracting or delegation arrangements is also a railway passenger service which is required to be provided under a passenger service requirement or other similar requirement (whether subcontracted, delegated or not) imposed on another Train Operator.

29 Franchise Employees

29.1³⁵ The Franchise Operator shall not, and shall secure that each other relevant employer shall not, without the prior consent of the Authority (which shall not be unreasonably withheld or delayed), vary, or purport or promise to vary, the terms or conditions (as amended from time to time) of employment of any Franchise Employee (including promise to make any additional payment or provide any additional benefit) where such variation or addition:

(a) takes effect in the last 12 months of the Franchise Period unless it is in the ordinary course of business and, when aggregated with any other variation or addition which takes effect during such period, represents an increase in the remuneration or other variation of the terms and conditions of employment of any Franchise Employee which results in the Franchise Operator's total Staff Costs remaining less than or equal to the relevant amount set out below.

³⁵ Date of Change 20/12/2010

For the purpose of this clause 29.1(a), 'Staff Costs' means:

- (a) costs of temporary staff and staff supplied by an employment agency; and*
- (b) total salaried staff costs excluding bonuses, National Insurance and pension costs; or'*

The Franchise Agreement contains restrictions on the Franchise Operator carrying out certain activities in the last 12 months of the Franchise Period without seeking the consent of the Authority which are intended to preserve the value and facilitate the continuity of the Franchise Services on expiry of the Franchise Period. The parties agreed to amend clause 29.1(a) as part of their agreement to extend the Franchise Agreement pursuant to the provisions of clause 20.2(d), now deleted

- (b) all or part of it first takes effect after the end of the Franchise Period; or
 - (c) results in any such employment not being terminable by the employer within six months of the expiry of the Franchise Period; or
 - (d) relates to a payment or the provision of a benefit triggered by termination of employment; or
 - (e) relates to the provision of a benefit (but excluding base salary) which any such employee will or may have a contractual right to receive after the expiry of the Franchise Period; or
 - (f) prevents, restricts or hinders any such employee from working for a Successor Operator or from performing the duties such employee performed for the Franchise Operator.
- (i) ³⁷*Without limiting the foregoing the Franchise Operator shall consult the Authority as soon as reasonably practicable in any circumstances in which the Authority's consent under this Clause 29.1 may be required. ³⁸For the avoidance of doubt, the restriction on the Franchise Operator in Clause 29.1(a) has been amended and the last part of Clause 29.1 deleted on the understanding that the Authority will have no liability to the Franchise Operator arising as a result of withholding consent under clause 29.1(a) as amended.*

29.2 Terms of employment of new employees

The Franchise Operator shall not, and shall secure that each other relevant employer shall not, without the prior consent of the **Authority** (which shall not be unreasonably withheld or delayed), create or grant, or promise to create or grant, terms or conditions of employment for any Franchise Employee where such employment by the Franchise Operator or such other relevant employer may commence on or after the Franchise Commencement Date if and to the extent that:

- (a) such terms or conditions are materially different to the terms or conditions of employment of equivalent or nearest equivalent Franchise Employees at the date of commencement of employment of such new Franchise Employee; and
- (b) if such terms or conditions were granted to such equivalent Franchise Employees already employed by the Franchise Operator by way of variation to their terms or conditions of employment, the Franchise Operator would be in breach of Clause 29.1.

³⁶ 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

³⁷ New text inserted wef 11th July 2003.

³⁸ Date of Change 20/12/2010

29.3 Changes in numbers and total cost of employees

Subject to and excluding any increase in the remuneration of Franchise Employees permitted under Clause 29.1, the Franchise Operator shall not, and shall secure that each other relevant employer shall not, without the prior consent of the **Authority** (which shall not be unreasonably withheld or delayed) increase or decrease in the last twelve months of the Franchise Period the number of Franchise Employees either such that the total number of Franchise Employees or the total cost per annum to the Franchise Operator and each other relevant employer of employing all Franchise Employees is increased or such that the total number of Franchise Employees is decreased, in each case, by more than 5 per cent. during such period of twelve months.

30 Fares

30.1 Period of validity of Fares

The Franchise Operator shall not, without the consent of the **Authority** (not to be unreasonably withheld) Create or agree to Create any Fares or Discount Cards which do not expire or otherwise cease to be valid within thirteen months of the sale of such Fare or Discount Cards and shall not, except to the extent required to do so under the terms of the Ticketing and Settlement Agreement as a result of the Creation of a Fare or Discount Card by another person, sell any such Fare or Discount Card.

30.2 Reduction in Prices of Fares

- (a) During the last thirteen months of the Franchise Period the Franchise Operator shall not, without the consent of the **Authority** (not to be unreasonably withheld), set the Price or Child Price of, or sell (except to the extent required to do so under the terms of the Ticketing and Settlement Agreement as a result of the Price or Child Price, as the case may be, of a Fare being set by another person), any Fare which would entitle the purchaser thereof to travel on all or any of the Passenger Services after the Franchise Period for an amount which is less than the Price or the Child Price, as the case may be, of that Fare immediately before the commencement of such thirteen month period or, in the case of a new Fare, the Price of its nearest equivalent immediately before the commencement of such period.
- (b) Clause 30.2(a) shall not prevent the giving of any discount or reduction to which the purchaser of that Fare may be entitled by virtue of:
 - (i) presenting a Discount Card issued by the Franchise Operator before the commencement of such period (or any equivalent replacement thereof) and to which the purchaser would have been entitled before the commencement of such period;
 - (ii) presenting a Discount Card of another train operator;
 - (iii) the Passenger's Charter or the passenger's charter of any other train operator; or
 - (iv) any relevant conditions of carriage.
- (c) The Franchise Operator shall procure, to the extent applicable, that persons acting as its agent (except persons acting in such capacity by virtue of having been appointed under Parts II to VI of Chapter 9 of the Ticketing and Settlement Agreement or by being party to the Ticketing and Settlement Agreement) shall comply with the provisions of Clause 30.2(a) to the extent they apply to the selling of Fares by the Franchise Operator.

30.3 Percentage allocations

- (a) Except to the extent that the **Authority** may consent from time to time (such consent not to be unreasonably withheld), the Franchise Operator shall not, in the last thirteen months of the Franchise

Period, take any action or step which may result in its Percentage Allocation (as defined in the Ticketing and Settlement Agreement) in respect of any Rail Product (as defined in the Ticketing and Settlement Agreement) being reduced.

- (b) The Franchise Operator shall notify the **Authority** before taking any such action or step in the last thirteen months of the Franchise Period and upon becoming aware of any other person proposing to take any action or step which may have the same effect. The Franchise Operator shall take such action as the **Authority** may reasonably request in order to prevent any such reduction, including submitting any dispute to any relevant dispute resolution procedures.

31 Inter-Operator Schemes

31.1 Voting on scheme councils

Subject to Clause 31.2, during the last twelve months of the Franchise Period the Franchise Operator shall give the **Authority** reasonable notice of any meeting of a scheme council of an Inter-Operator Scheme on which the Franchise Operator is represented or a scheme management group of any Inter-Operator Scheme on which the Franchise Operator has a permanent position or employs a member and of the resolutions to be voted upon thereat and shall notify the **Authority** at the same time of his voting intentions. The Franchise Operator shall not without the consent of the **Authority** (not to be unreasonably withheld or delayed) cast his vote in favour of or against any resolution to be decided at any such meeting. Once consent has been given, the Franchise Operator shall vote in the manner so approved by the **Authority**.

31.2 Successor Operator

Where the Franchise Operator has been notified by the **Authority** that a Successor Operator has been selected (whether a franchise operator or otherwise and whether or not subject to the satisfaction of any conditions), the Franchise Operator shall notify and consult with any such Successor Operator on any decisions to be taken by the scheme council of an Inter-Operator Scheme on which the Franchise Operator is represented or a scheme management group of any Inter-Operator Scheme on which the Franchise Operator has a permanent position or employs a member, where such decision might reasonably be considered to affect the interests of the Successor Operator. The parties shall agree on which way to vote on each such decision and, failing agreement, shall refer the matter to the **Authority** who shall determine the manner in which the Franchise Operator shall vote having regard to the transfer of the Franchise Services as a going concern at the end of the Franchise Period and the Franchise Operator shall vote accordingly.

32 Franchise Assets

32.1 Designation as Franchise Assets³⁹

- (a) *Subject to Clause 32.1(b), all property, rights and liabilities of the Franchise Operator from time to time during the Franchise Period shall be designated as Franchise Assets and shall constitute franchise assets for the purposes of section 27(11) of the Act.*
- (b) *The following property, rights and liabilities shall not be designated as Franchise Assets and shall not constitute franchise assets for the purposes of section 27(11) of the Act:*
 - (i) *the rights and liabilities of the Franchise Operator under any contract of employment;*

³⁹ Date of change 6/4/2009

- (ii) *the rights and liabilities of the Franchise Operator under the Rolling Stock Leases;*
- (iii) *the rights and liabilities of the Franchise Operator under this Franchise Agreement or any Transfer Scheme or Supplemental Agreement;*
- (iv) *the rights and liabilities of the Franchise Operator under the Ticketing and Settlement Agreement;*
- (v) *the rights and liabilities of the Franchise Operator in respect of any sums placed on deposit with a bank or other financial institution; and*
- (vi) *such other property, rights and liabilities as the Franchise Operator and Authority may agree from time to time under Clause 32.13(a) or as the Authority may designate as Franchise Assets under Clause 32.13(b)*

32.2 Designation as Primary Franchise Assets

The following property, rights and liabilities shall be designated as Primary Franchise Assets with effect from the following dates:

- (a) the property, rights and liabilities listed in Parts 1 and 2 of Schedule 11, on the Franchise Commencement Date;
 - (b) any additional property, rights and liabilities designated under Clause 32.5 during the Franchise Period, on the date of their designation;
 - (c) any additional property, rights and liabilities designated under Clause 32.6 during the Franchise Period, on the date of their designation;
 - (d) *any property, rights and liabilities in Franchise Assets in which the Franchise Operator has invested funds pursuant to Clause 31.14 and, notwithstanding Clause 32.13©, the Authority may not cause such Primary Franchise Assets to cease to be so designated;*⁴⁰
 - (e) any property or right which is vested in the Franchise Operator and used for the purpose of maintaining, replacing, repairing or renewing any property designated as Primary Franchise Assets pursuant to Clause 32.2(a), (b) or (c) (whether pursuant to Clause 32.7 or not) and which forms or replaces part or all of such designated property on completion of such maintenance, replacement, renewal or repair, on the date of their use for such purpose;
 - (f) the rights and liabilities of the Franchise Operator under any Key Contract designated under Clause 32.9, on the date of their designation; and
 - (g) the rights and liabilities of the Franchise Operator in respect of the terms of any Fare or Discount Card designated under Clause 32.10, on the date of their designation.
- (h⁴¹) all wide-aisle barrier gates installed by or on behalf of the Franchise Operator in accordance with paragraph 5A of the Franchise Plan, and, notwithstanding clause 32.13(c), the Authority may not cause such Primary Franchise Assets to cease to be so designated without the consent of the Franchise Operator.*

⁴⁰ New Paragraph (d) inserted w.e.f 23rd January 2004

⁴¹ Date of Change 20/12/2010

32.3 Consent of *Authority* to certain transactions

For the purposes of section 27(3) of the Act and subject to Clause 32.4(d), the *Authority* hereby gives his consent to the Franchise Operator:

- (a) if and to the extent that the Franchise Assets are property or rights and are not designated as Primary Franchise Assets:
 - (i) to transfer or agree to transfer any such Franchise Assets or any interests in, or right over, any such Franchise Assets;
 - (ii) to create or extinguish, or agree to create or extinguish, any interest in, or right over, any such Franchise Assets; and
- (b) if and to the extent that the Franchise Assets are liabilities and are not designated as Primary Franchise Assets, to enter into any agreement under which any such liability is released or discharged, or transferred to some other person.

32.4 Security interests

- (a) For the purpose of section 27(3) of the Act, the *Authority* hereby gives his consent to the Franchise Operator, if and to the extent that the Franchise Assets are property or rights (and whether or not designated as Primary Franchise Assets), creating or agreeing to create any Security Interest over any Franchise Asset to the extent that the terms of any such Security Interest are such that:-
 - (i) if the relevant Franchise Asset becomes the subject of a transfer scheme made under section 86 of the Act, it shall be fully and automatically released from the relevant Security Interest immediately before the coming into force of such a transfer scheme; and
 - (ii) if the relevant Franchise Asset is assigned, novated or otherwise transferred to another person under Clauses 12.2, 12.3 or 12.4 of this Franchise Agreement or by virtue of any other amendment to this Franchise Agreement, it shall be fully and automatically released from the relevant Security Interest immediately before such assignment, novation or transfer; and
 - (iii) it shall not be enforced or enforceable until the date of such Franchise Asset ceasing to be designated as a Franchise Asset (whether under Clauses 32.13 or 35.1 or otherwise).
- (b) The Franchise Operator shall accordingly not create or agree to create a Security Interest over any Franchise Assets except on the terms permitted under Clause 32.4(a).
- (c) The Franchise Operator shall provide the *Authority* with such information as he may reasonably require in relation to any Security Interest over any of its property or rights.
- (d) Nothing in Clause 32.3 shall be deemed to constitute the giving of the *Authority*'s consent to the creation of, or the agreement to create, a Security Interest to which he would not give his consent under this Clause 32.4.

32.5 Designation of additional property, rights and liabilities

- (a) The *Authority* may at any time and from time to time during the Franchise Period other than, subject to Clause 32.6(b), during the last twelve months of such Franchise Period, by serving a notice on the Franchise Operator specifying the property, rights or liabilities in question, designate any or all of the Franchise Assets as Primary Franchise Assets. Such designation shall take effect from the delivery of such notice and may refer to all or certain categories of property, right or liabilities.
- (b) Any such notice shall be accompanied by a statement of the reasons why the *Authority* has so designated such property, rights or liabilities and shall specify the time (not being less than 28 days

from the date of giving the notice) within which the Franchise Operator may make representations or objections with respect to the designation. If the Franchise Operator makes representations or objections which cannot be resolved by agreement within a period of 56 days from the date of the **Authority**'s notice, the Franchise Operator may refer the dispute for resolution in accordance with the Dispute Resolution Rules for determination of whether or not the relevant property, rights or liabilities should cease to be so designated.

- (c) Any such determination shall be made only on the basis that the designation of such property, rights or liabilities was not reasonably necessary for securing that the Franchise Services may continue to be provided by a Successor Operator on the expiry of the Franchise Period or otherwise facilitating the transfer of the provision of the Franchise Services at such time. In the event of there being any outstanding dispute on the expiry of the Franchise Period in respect of any such designation, then, except to the extent that the **Authority** and the Franchise Operator may otherwise agree, such dispute shall be deemed to cease immediately before the expiry of the Franchise Period and the relevant property, rights and liabilities shall not cease to be designated as Primary Franchise Assets on or after the expiry of the Franchise Period.

32.6 Designation at expiry of Franchise Period

- (a) The Franchise Operator shall, for the purpose of ensuring that the **Authority** may designate as Primary Franchise Assets under this Clause 32.6 the relevant property, rights and liabilities, keep vested in it at all times during the Franchise Period such property, rights and liabilities as it may reasonably require in order to be able to comply with:
 - (i) the Licences;
 - (ii) any contracts of employment with Franchise Employees;
 - (iii) any relevant Fares;
 - (iv) any Key Contracts; and
 - (v) any applicable safety legislation regulations or safety standards and the Safety Case.
- (b) The **Authority** may at any time during the last 12 months of the Franchise Period (including, for the avoidance of doubt and notwithstanding the other provisions of this Clause 32.6, on or before the date of termination of this Franchise Agreement), by serving a notice on the Franchise Operator specifying the property, rights or liabilities in question, designate any or all of the Franchise Assets as Primary Franchise Assets. Such designation shall take effect from the delivery of such notice and may refer to all or certain categories of property, rights or liabilities.
- (c) The **Authority** may within 28 days of so designating such Primary Franchise Assets cause such Primary Franchise Assets to cease to be designated by serving a notice on the Franchise Operator specifying the property, rights or liabilities in question. Such ceasing to be designated shall take effect upon delivery of such notice.
- (d) The Franchise Operator may in addition, within 14 days of such designation, object in writing to the **Authority** to such designation. Such objection may be made solely on the grounds that the designation of the relevant property, rights or liabilities specified in the objection was not reasonably necessary for securing that the Franchise Services may continue to be provided by a Successor Operator on the expiry of the Franchise Period or otherwise facilitating the transfer of the provision of the Franchise Services at such time. The **Authority** shall respond to any such objection as soon as reasonably practicable and shall take account of any representations made by the Franchise Operator regarding the use of the relevant Primary Franchise Assets otherwise than in the provision and operation of the Franchise Services.

- (e) If the Franchise Operator's objections cannot be resolved by agreement within a period of 14 days from the date of the submission of the objection, the Franchise Operator may refer the dispute for resolution in accordance with the Dispute Resolution Rules which shall determine whether or not the designation of the relevant property, rights or liabilities was reasonably necessary for securing that the Franchise Services may continue to be provided by a Successor Operator after the Franchise Period or otherwise facilitating the transfer of the provision of the Franchise Services at such time, and accordingly whether or not they should cease to be so designated. In the event of there being any outstanding dispute on the expiry of the Franchise Period in respect of any such designation, then, except to the extent that the **Authority** and the Franchise Operator may otherwise agree, such dispute shall be deemed to cease immediately before the expiry of the Franchise Period and the relevant property, rights and liabilities shall not cease to be designated as Primary Franchise Assets on or after the expiry of the Franchise Period.

32.7 Maintenance of Primary Franchise Assets

- (a) The Franchise Operator shall, to the extent relevant and subject to Clauses 32.8, 33.2 and 34.2, maintain, protect and preserve the Primary Franchise Assets in good working order having regard to their state and condition at their date of designation and in accordance with the degree of skill, diligence, prudence and operating practice which would be reasonably expected of a skilled and experienced operator of railway assets engaged in the same undertaking under the same or similar circumstances.
- (b) The Franchise Operator shall so maintain, protect and preserve the Primary Franchise Assets on the assumption that they will be transferred at the end of the Franchise Period to a Successor Operator and used by such Successor Operator in the provision or operation of the Franchise Services.
- (c) Where any such Primary Franchise Assets are lost, destroyed or otherwise beyond repair, the Franchise Operator shall, subject to Clauses 32.8 and 33.2, replace such Primary Franchise Assets with equivalent property, rights or liabilities of equal or better quality than the replaced Primary Franchise Assets. Any Primary Franchise Asset so replaced shall cease to be designated as such on such replacement.
- (d) Subject to Clause 32.8, nothing in this Clause 32.7 shall require the Franchise Operator to provide replacement property, rights or liabilities in a better state or condition than that which the Primary Franchise Assets they replaced were in on the date of their designation.

32.8 Specified Franchise Assets

- (a) The **Authority** may designate at any time a property, right or liability which has been designated as a Primary Franchise Asset as a Specified Franchise Asset. Such designation shall take effect upon delivery to the Franchise Operator of a notice specifying the property, right or liability in question except that the property, rights and liabilities specified in Part 2 of Schedule 11 shall be so designated automatically on the Franchise Commencement Date.
- (b) In respect of each such Specified Franchise Asset, the Franchise Operator shall prepare a schedule of condition specifying its condition as at the date of such designation. Such schedule shall be agreed with the **Authority** and shall be in respect of such aspects of the Specified Franchise Asset as the **Authority** may reasonably require. If the Franchise Operator and **Authority** are unable to agree the relevant schedule of condition, they may refer the dispute to the Dispute Resolution Rules for determination of the condition of the relevant Specified Franchise Asset at the date of designation in respect of the aspects specified by the **Authority**.
- (c) The obligation of the Franchise Operator to maintain, preserve and protect the Franchise Assets under Clause 32.7 shall, in respect of the Specified Franchise Assets, include the obligation to

maintain the Specified Franchise Assets, subject to fair wear and tear, in at least as good a condition as the condition specified in the relevant schedule of condition.

- (d) The **Authority** may not object to any proposal to replace a Specified Franchise Asset but the Franchise Operator shall obtain the approval of the **Authority** of any proposed replacement (which shall not be unreasonably withheld) before so replacing the Specified Franchise Asset in question under Clause 32.7.

32.9 Designation of Key Contracts

The **Authority** shall be entitled to designate the rights and liabilities of the Franchise Operator under any Key Contract as a Primary Franchise Asset at any time during the Franchise Period by serving a notice on the Franchise Operator specifying the relevant rights or liabilities. Such designation shall take effect from delivery of such notice.

32.10 Designation of Fares and Discount Cards

The **Authority** shall be entitled to designate all or any rights and liabilities of the Franchise Operator under the terms of any Fare or Discount Card as a Primary Franchise Asset at any time during the Franchise Period by serving a notice on the Franchise Operator specifying the relevant rights or liabilities. Such designation shall take effect from delivery of such notice.

32.11 Rights and liabilities

The **Authority** in designating as a Primary Franchise Asset the rights and liabilities of the Franchise Operator (whether under a contract or otherwise) may restrict such rights and liabilities so designated to such extent as he may consider appropriate, including to those rights and liabilities arising after or otherwise relating to a period after a particular time (including the period after the expiry of the Franchise Period) or to those relating only to the Franchise Services or a particular part thereof.

32.12 Provision of information to Authority

The Franchise Operator shall provide such information as the **Authority** may reasonably require in order to satisfy himself, before any property, rights or liabilities are designated as Franchise Assets or Primary Franchise Assets under this Clause 32 after the Franchise Commencement Date, that, if they are so designated, they will be vested in the Franchise Operator. Such information may include details of any Security Interests over such property, rights and liabilities.

32.13 De-Designation

- (a) The **Authority** and the Franchise Operator may agree in writing at any time during the Franchise Period that a Franchise Asset shall cease to be designated as a Franchise Asset or that a Primary Franchise Asset shall cease to be designated as a Primary Franchise Asset, and the relevant property, right or liability shall cease to be designated upon such agreement coming into effect.
- (b) The **Authority** may in addition at any time during the Franchise Period, by serving notice on the Franchise Operator specifying the Franchise Assets in question, cause such Franchise Assets to cease to be designated. Such Franchise Assets shall cease to be so designated on the date specified in such notice. Such right may only be exercised in respect of Franchise Assets which are not Primary Franchise Assets.
- (c) The **Authority** may in addition, by serving notice on the Franchise Operator specifying the Primary Franchise Assets or Specified Franchise Assets in question, cause such Primary Franchise Assets or Specified Franchise Assets to cease to be designated. Such Primary Franchise Assets or Specified Franchise Assets shall cease to be so designated on the date specified in such notice. Such right may

be exercised, in respect of any Specified Franchise Assets or any rights and liabilities in respect of a Fare or Discount Card, at any time and, in respect of any other Primary Franchise Assets, no later than one year prior to the expiry of the Franchise Term.

32.14 [Deleted]⁴²

33 Spares

33.1 Maintenance of spares

The Franchise Operator shall maintain an appropriate level of Spares or an appropriate level of access to Spares from a third party for use in connection with the Franchise Services in accordance with the degree of skill, diligence, prudence and practice which would reasonably be expected of a skilled and experienced operator of railway assets engaged in the same undertaking in the same or similar circumstances.

33.2 Franchise Assets

- (a) The obligations of the Franchise Operator to maintain, preserve and protect Primary Franchise Assets under Clause 32.7 shall, in respect of Spares, include the obligation to replace any Spare which has been so designated, which subsequent to its designation ceases to be part of the stock of Spares available to the Franchise Operator for use in the provision of the Franchise Services, with an equivalent Spare of equal or better quality than the Spare so replaced.
- (b) The **Authority** hereby consents to the installation of Spares which have been designated as Primary Franchise Assets on rolling stock. Subject to Clause 32.2(d), any Spare which is so installed shall cease to be so designated on such installation.

34 Intellectual Property

34.1 Franchise Operator's Intellectual Property

- (a) On the expiry of the Franchise Period the Franchise Operator will grant to any Successor Operator such licences of any Intellectual Property which:
 - (i) is owned by or licensed to the Franchise Operator;
 - (ii) is not owned by or licensed to it immediately prior to the Franchise Commencement Date;
 - (iii) has not been designated as a Primary Franchise Asset; and
 - (iv) does not represent or constitute a Mark,as may, in the reasonable opinion of the **Authority**, be reasonably necessary for any such Successor Operator to operate the Franchise Services on an efficient and economic basis after the expiry of the Franchise Period.
- (b) Any such licence shall be granted to any such Successor Operator for such period as the **Authority** may determine to be reasonably necessary for the purpose of securing continuity of the provision of the Franchise Services and shall be free of charge and royalty free for a period of 1 month or less. If such licence is for a period in excess of 1 month the grant of the licence shall be subject to payment

⁴² Date of Change 20/12/.2010

of a reasonable royalty (backdated to the expiry of the Franchise Period) on the basis of a willing licensor and licensee entering into a licence on comparable terms to similar licences of such Intellectual Property. If the Franchise Operator and the relevant Successor Operator are unable to agree such royalty, the **Authority** or the Franchise Operator may resolve the dispute in accordance with the Dispute Resolution Rules.

- (c) Any such licence shall be in such form as the **Authority** shall reasonably determine except that it shall:
 - (i) be non-exclusive and limited to use solely for the purposes of the provision and operation of the Franchise Services and will not provide for any right to use such Intellectual Property for any other purpose (including its marketing or exploitation for any other purpose);
 - (ii) be terminable on material breach by the Successor Operator;
 - (iii) contain an indemnity from the Franchise Operator to the effect that to the best of its knowledge and belief it owns the relevant Intellectual Property or has the right to license it and the licensing of it and the subsequent use of the Intellectual Property will not infringe any third party Intellectual Property rights in such Intellectual Property;
 - (iv) require the Successor Operator, to the extent it relates to any trade marks, to use such marks in such manner as may reasonably be required by the Franchise Operator provided that it shall not be reasonable for the Franchise Operator to require such marks to be used in a manner materially different to their use during the Franchise Period.

34.2 Intellectual Property Franchise Assets

- (a) The obligation of the Franchise Operator to maintain, preserve and protect the Primary Franchise Assets under Clause 32.7 shall, subject to Clause 34.2(b), in respect of Primary Franchise Assets which constitute Intellectual Property, include the obligation to:
 - (i) maintain, preserve, and renew any registrations thereof (including payment of any renewal or other fee);
 - (ii) where appropriate, procure and prosecute the application for their registration or the registration of any appropriate licences in all relevant registers of such Intellectual Property;
 - (iii) take such action as may be reasonably necessary to prevent or prohibit the infringement of any such Intellectual Property by third parties, by the taking of legal proceedings or otherwise; and
 - (iv) where appropriate, take such action as may be reasonably necessary to defend any challenge to the validity or ownership of such Intellectual Property by third parties, by the taking of legal proceedings or otherwise.
- (b) The Franchise Operator shall be excused performance of its obligations under Clause 34.2(a) to the extent that in the opinion of the **Authority** the cost of so doing would be unreasonably high or that full performance would not be commercially reasonable having regard to the use of the relevant Intellectual Property in the provision and operation of the Franchise Services.

34.3 Branding

- (a) Subject to any applicable obligations or restrictions on the Franchise Operator (including the terms of the Rolling Stock Leases), the Franchise Operator shall be entitled to apply registered or

unregistered trade marks (including company names, livery and other distinctive get-up) to such assets as it may use or own in the operation and provision of the Franchise Services.

- (b) Subject to Clauses 34.3(d) and 34.3(h), the Franchise Operator may:
 - (i) in respect of unregistered Marks, provide or procure the provision of an irrevocable undertaking to any relevant Successor Operator to the effect that neither it nor the owner of the Marks will enforce such rights as it may have or may in the future have in respect of such Marks against such Successor Operator and its successors; and
 - (ii) in respect of registered Marks, which it has the power to license and is not restricted from licensing, grant or procure the grant of an irrevocable royalty-free licence to use such Marks to such Successor Operator and its successors.
- (c) Any such licence or undertaking under Clause 34.3(b) shall be in such form as the **Authority** shall reasonably determine except that the terms of any such licence and, to the extent appropriate, any such undertaking shall accord with the provisions of sub-Clauses 34.1(c)(i) to 34.1(c)(iv).
- (d) Subject to Clause 34.3(h), to the extent that:
 - (i) the Franchise Operator does not provide a relevant licence or undertaking under Clause 34.3(b); or
 - (ii) the **Authority** considers the relevant Marks to be so distinctive or otherwise such that a Successor Operator could not reasonably be asked to use the relevant assets to which the Marks are applied; or
 - (iii) the Franchise Operator has not otherwise removed or covered such Marks in such a way as may be reasonably acceptable to the **Authority** prior to the expiry of the Franchise Period,

the Franchise Operator shall pay to the relevant Successor Operator such amount as may be agreed between the Franchise Operator and such Successor Operator, subject to Clause 34.3(g), as being the reasonable cost (including any Value Added Tax for which credit is not available under sections 25 and 26 of the Value Added Tax Act 1994) of covering such Marks or otherwise removing all indications of or reference to the Marks in a manner reasonably acceptable to the **Authority**. Such cost shall not in any event exceed the cost to the Successor Operator of replacing such Marks with his own. In the event that the Franchise Operator and the relevant Successor Operator fail to agree such cost within 28 days of the expiry of the Franchise Period, the Franchise Operator or the **Authority** may refer such dispute for resolution, subject to Clause 34.3(g), in accordance with the Dispute Resolution Rules.

- (e) Such costs under Clause 34.3(d) may include the reasonable cost of:
 - (i) removing or covering Marks from the exterior of a train;
 - (ii) removing or covering interior indications of the Marks including upholstery and carpets;
 - (iii) replacing or covering all station or other signs including bill boards; and
 - (iv) otherwise ensuring that such removal, covering or replacement is effected with all reasonable care and in such manner that the relevant assets may reasonably continue to be used by a Successor Operator in the provision of the Franchise Services.
- (f) The Franchise Operator shall, in addition to making a payment under Clause 34.3(d), grant a licence or undertaking complying with Clauses 34.3(b) and (c) except that it shall only be for such period as

may be agreed between the Franchise Operator and the Successor Operator as being reasonably required by the Successor Operator to remove the Marks from all relevant assets without causing excessive disruption to the operation of the Franchise Services. In the event that such period cannot be agreed, the **Authority** or the Franchise Operator may refer such dispute for resolution, subject to Clause 34.3(g), in accordance with the Dispute Resolution Rules.

- (g) The **Authority** shall determine at the end of the Franchise Period, and after consultation with the Franchise Operator, the maximum liability of the Franchise Operator under Clause 34.3(d) and the maximum length of licence or undertaking under Clause 34.3(f).
- (h) The provisions of Clauses 34.3(b) to (g) shall not apply to the extent the relevant asset is not to be used by a Successor Operator. The **Authority** shall notify the Franchise Operator as soon as he is aware of whether or not any such asset is to be so used.

34.4 Non-designation of new brands

The **Authority** agrees not to designate as a Primary Franchise Asset any registered or unregistered trade mark which is developed by the Franchise Operator.

35 Transfer of Primary Franchise Assets

35.1 Option Arrangements

The **Authority** hereby grants to the Franchise Operator the right to require him to make, and the Franchise Operator hereby grants to the **Authority** the right to make, a Transfer Scheme in accordance with section 86 of the Act for the transfer of any or all of such property, rights or liabilities as may be designated as Primary Franchise Assets on the expiry of the Franchise Period. Each such right may be exercised on, or within 14 days before, the expiry of the Franchise Period by serving notice on the other party specifying the Primary Franchise Assets in question. Following any such exercise of such rights the **Authority** may and shall make one or more such Transfer Schemes for the transfer of the Primary Franchise Assets specified in any such notice before, or within 14 days after the expiry of the Franchise Period. Any Franchise Assets or Primary Franchise Assets which are not so transferred shall cease to be designated as such 14 days after the expiry of the Franchise Period.

35.2 Supplemental Agreement

Without prejudice to the duties, powers, rights and obligations of the **Authority** under the Act in respect of any Transfer Scheme, any Transfer Scheme shall impose on the Franchise Operator and the transferee an obligation to enter into an agreement substantially in the form of the Supplemental Agreement which shall provide for the determination of amounts to be paid in respect of the property rights and liabilities which are transferred under the relevant Transfer Scheme. The Franchise Operator shall enter into any such agreement and shall comply with its obligations thereunder.

35.3 Payment of estimated transfer price

- (a) The **Authority** may require the Franchise Operator to pay to any relevant transferee under a Transfer Scheme or any relevant transferee under a Transfer Scheme to pay to the Franchise Operator, as the case may require, on the day on which the Transfer Scheme comes into force such sum as he may determine should be so paid between them having regard to:
 - (i) his estimate of the sum likely to be paid under the relevant Supplemental Agreement in respect of the Primary Franchise Assets being transferred under the relevant Transfer Scheme;
 - (ii) his estimate of any other sums likely to be paid thereunder;

(iii) the status of the Franchise Operator and the transferee and whether any estimate so paid would be likely to be repaid, if in excess of the sums eventually payable thereunder; and

(iv) such other matters as he may consider appropriate to have regard to at the time.

(b) The Franchise Operator shall pay to any such transferee such sum as the **Authority** may determine under Clause 35.3(a) on the day any relevant Transfer Scheme comes into force.

35.4 Possession of Franchise Assets

On the coming into force of a Transfer Scheme, the Franchise Operator shall deliver up to the **Authority** (or such other person as he may specify) possession of such Primary Franchise Assets as may be transferred under such Transfer Scheme.

35.5 Repayment of Bond monies

The **Authority** shall pay to the Franchise Operator, within six months of the last date any demand can be made on the relevant Guarantor under the Performance Bond, an amount equal to:-

- (a) the aggregate of any monies paid to the **Authority** under the Season Ticket Bond and the Performance Bond; less
- (b) the amount, in the **Authority**'s reasonable opinion, of the losses, liabilities, costs or expenses (if any) which the **Authority**, the Secretary of State for Transport or a Successor Operator may have incurred or suffered or may be reasonably likely to incur or suffer as a result of:-
 - (i) the failure of the Franchise Operator to perform or comply with its obligations under any Supplemental Agreement or Part V or Clauses 12.2, 12.3(b), 12.4(a) and (b), 12.5(a), 12.6(a), 12.9 or 13.4 of this Franchise Agreement; or
 - (ii) termination of this Franchise Agreement as a result of an Event of Default; or
 - (iii) the making of a railway administration order in relation to the Franchise Operator pursuant to sections 60 to 62 of the Act.

36 Associated Obligations on Termination

36.1 Assistance in securing continuity

In order to facilitate the continuity of the Franchise Services on expiry of the Franchise Period the Franchise Operator shall take such steps, both before and after the expiry of the Franchise Period, as the **Authority** may reasonably require, having regard to the cost to the Franchise Operator, to assist and advise any Successor Operator in providing and operating the Franchise Services. In particular, the Franchise Operator shall provide any Successor Operator with such records and information relating to or connected with the Franchise Services as the **Authority** may reasonably request (other than confidential financial information but including all relevant records relating to the Franchise Employees).

36.2 Access

The Franchise Operator hereby authorises the **Authority** and his representatives to have such access as he may reasonably request on the expiry of the Franchise Period to such property as it may own, lease or operate at such time, for the purpose of facilitating the continuity of the Franchise Services.

36.3 Key Contracts

The Franchise Operator shall provide such assistance to any Successor Operator as the **Authority** may reasonably require in ensuring that pursuant to any Direct Agreements any such Successor Operator may

enter into (or enjoy the benefit of) contracts equivalent to the relevant Key Contracts with the relevant counterparties.

36.4 Change of Name

The Franchise Operator and the Franchisee shall cease to use any trade marks which are licensed to the Franchise Operator under any of the Brand Licences forthwith upon expiry of the Franchise Period and shall take all necessary steps to change any company name which incorporates any such marks as soon as practicable.

Part VI – General Provisions

37 Compliance With Laws

The Franchise Operator shall comply with all applicable Laws relating to the provision and operation of the Franchise Services and the conduct of the Franchise Operator's business under this Franchise Agreement.

38 Exclusion of Liability

38.1 Liability with respect to Passengers and Third Parties

The Franchisee and Franchise Operator each hereby acknowledge that the **Authority** will not be responsible for the actions of the Franchisee, Franchise Operator or any Affiliate of the Franchisee and that, otherwise than as expressly provided in this Franchise Agreement, the Franchise Operator will provide and operate the Franchise Services at its own cost and risk without recourse to the **Authority** or government funds or guarantees. The Franchisee and the Franchise Operator will accordingly hold the **Authority** fully protected and indemnified in respect of all losses, liabilities, costs, charges, expenses, actions, proceedings, claims or demands incurred by or made on the **Authority** in connection with any death, personal injury, loss or damage suffered by passengers or by any third party using or affected by the Franchise Services caused or contributed to by the Franchisee, the Franchise Operator, any Affiliate of the Franchisee, their employees, agents, contractors or sub-contractors.

38.2 Liability of Authority

Neither the **Authority** nor any of his officers, agents or employees shall in any circumstances be liable to the Franchisee or the Franchise Operator for any loss or damage caused by the negligent exercise of any powers reserved to the **Authority** under this Franchise Agreement, except to the extent that such negligence also constitutes a breach of an obligation of the **Authority** under this Franchise Agreement. Neither the Franchisee nor the Franchise Operator may recover from the **Authority** or any of his officers, agents, or employees any amount in respect of loss of profit or other consequential loss.

38.3 Entire Agreement

- (a) This Franchise Agreement contains the entire agreement between the parties in relation to the subject matter of this Franchise Agreement and supersedes all prior agreements and arrangements other than such confidentiality agreements or undertakings as the Franchisee may have entered into in connection with tendering for the provision of the Passenger Services under this Franchise Agreement.
- (b) The Franchisee and Franchise Operator each hereby acknowledges that it is not entering into this Franchise Agreement in reliance on any warranties, representations or undertakings howsoever or to whomsoever made except in so far as such are contained in this Franchise Agreement or, if received under Clause 2.2(e)(viii), are embodied in any warranties, representations and undertakings on the part of the Reporting Accountants contained in the Letter of Representation. The Franchisee and Franchise Operator each hereby acknowledges and agrees with the **Authority** (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 the documents entitled "Passenger Rail Industry Overview" and "Invitation to Tender" relating to the Franchise Operator.
- (c) The Franchisee irrevocably and unconditionally waives any right which it may otherwise have to claim damages in respect of and/or to rescind this Franchise Agreement on the basis of any warranty, representation or undertaking unless and to the extent that such warranty, representation or undertaking was made fraudulently.

39 Confidentiality

39.1 Confidentiality

Subject to the provisions of the Act and Clauses 39.2 to 39.7, each party shall hold in confidence all documents, materials and other information, whether technical or commercial, supplied by or on behalf of another party to this Franchise Agreement (including without limitation all documents and information supplied in the course of proceedings under the Dispute Resolution Rules) and shall not, except with that other party's written authority, publish or otherwise disclose the same otherwise than as expressly provided for in this Franchise Agreement unless or until the recipient party can reasonably demonstrate that any such document, material or information is in the public domain through no fault of its own and through no breach of this Franchise Agreement, whereupon to the extent that it is in the public domain this obligation shall cease.

39.2 Disclosure of Confidential Information

A party shall be entitled to disclose any data or information acquired by it under or pursuant to this Franchise Agreement or information relating to a dispute arising under this Franchise Agreement without the prior written consent of any other party if such disclosure is made in good faith:

- (a) to any Affiliate of such party upon obtaining from such Affiliate an undertaking of confidentiality equivalent to that contained in Clause 39.1;
- (b) to any outside consultants or advisers engaged by or on behalf of such party and acting in that capacity upon obtaining from such consultants or advisers an undertaking of confidentiality equivalent to that contained in Clause 39.1;
- (c) to any lenders, security trustee, bank or other financial institution (and their advisers) from which such party is seeking or obtaining finance upon obtaining from any such person an undertaking of confidentiality equivalent to that contained in Clause 39.1;
- (d) to the extent required by Law or pursuant to an order of any court of competent jurisdiction or under the Dispute Resolution Rules or the rules of a recognised stock exchange or a formal or informal request of any taxation authority;
- (e) to any insurer upon obtaining from such insurer an undertaking of confidentiality equivalent to that contained in Clause 39.1;
- (f) to directors, employees and officers of such party, to the extent necessary to enable such party to perform its obligations under this Franchise Agreement or to protect or enforce its rights under this Franchise Agreement; or
- (g) by the Franchise Operator, to the Regulator, a Rail Users' Consultative Committee or a Local Authority.

39.3 Publication of certain information

- (a) Notwithstanding the provisions of Clause 39.1 above, the **Authority** shall be entitled to publish in such form and at such times as he sees fit (including to prospective Successor Operators), the following:
 - (i) the amount of Franchise Payments payable under this Franchise Agreement and the aggregate amount of Franchise Payments and Incentives paid in each year under this Franchise Agreement;

- (ii) such information as the **Authority** may consider reasonably necessary to publish in connection with the performance of his functions under the Act in relation to any Closures or proposed Closures;
 - (iii) the amounts of any payments by the Franchise Operator under the Passenger's Charter;
 - (iv) such information as the **Authority** may reasonably require to publish in order to explain the nature of, and reasons for, or to consult on any PSR Changes or proposed PSR Changes;
 - (v) such information as may reasonably be required in connection with the retendering of the franchise or any part thereof, provided that such information may only be published during the period of, or during the period leading up to, such retendering;
 - (vi) any reports and accounts delivered to him under Clause 15.2(a);
 - (vii) the results, on a service group, route, station or other comparable basis, of any monitoring or measurement of the operational performance of the Franchise Operator in the provision of the Franchise Services (including any information provided under Clause 15.1(c) of this Franchise Agreement);
 - (viii) the results, on a service group, route, station or other comparable basis, of any passenger counts under Clause 15.6;
 - (ix) such information as the **Authority** may reasonably require to publish in connection with the provision of the Passenger Services by the Franchise Operator in accordance with the Load Factor Specifications;
 - (x) the results of any customer satisfaction surveys under Clause 8.4;
 - (xi) subject to section 75(3) of the Act, such information as the **Authority** may reasonably require to include in his annual report in respect of all franchise operators; and
 - (xii) such information as the **Authority** may reasonably require to publish at or around the expiry of the Franchise Period in order to secure continuity of the provision and operation of the Franchise Services.
- (b) Except to the extent permitted above or otherwise under this Clause 39, the **Authority** may publish any other information relating to the Franchise Operator if he has previously notified the Franchise Operator and the Franchise Operator does not demonstrate to the reasonable satisfaction of the **Authority** within 14 days of such notification that the publication of such information would be materially detrimental to its business. If the Franchisee or Franchise Operator attempts so to demonstrate to the **Authority** but he is not so satisfied, the **Authority** shall allow seven more days before publishing the relevant information.

39.4 Publication by Authority

Nothing in this Clause 39 shall be deemed to prohibit, prevent or hinder, or render the **Authority** liable for, the disclosure of any information by the **Authority** to the Regulator, the Parliamentary Commissioner for Administration, a Minister of the Crown or any department of the government of the United Kingdom or of information which is otherwise disclosed for the purpose of facilitating the carrying out of his functions under the Act.

39.5 Provision of information to Regulator

The Franchise Operator hereby authorises the **Authority** to provide to the Regulator, to the extent so requested by the Regulator, such information as may be provided to the **Authority** in relation to the Franchise Operator under this Franchise Agreement.

39.6 Disclosure by Comptroller and Auditor General

The parties to this agreement recognise that the Comptroller and Auditor General may in pursuance of his functions under the Exchequer and Audit Department Acts 1866 and 1921 and the National Audit Act 1983 disclose information which he has obtained pursuant to those Acts and which a party to this Franchise Agreement would not be able to disclose otherwise than under this Clause 39.

39.7 Continuing Obligation

This Clause 39 (and any other Clauses necessary to give effect thereto) shall survive the termination of this Franchise Agreement irrespective of the reason for termination.

40 Notices

40.1 Notices

⁴³Any notice, notification or other communication under or in connection with this Franchise Agreement shall be in writing and shall be delivered by hand or recorded delivery or sent by pre-paid first class post, or by electronic data transfer (subject to notification by the recipient of any facility it may operate for receipt of such data transfers) to the relevant parties at the relevant address for service set out below, or to such other address in the United Kingdom as each party may specify by notice in writing to the other parties to this Franchise Agreement (provided that the Franchisee and Franchise Operator agree to keep the same address for service as each other throughout the Franchise Period).

Address:⁴⁴ **Department for Transport
Great Minster House
33 Horseferry Road
London SW1P 4DR**

Email: **franchise.notices@dft.gsi.gov.uk**

Attention: **Director, Rail Commercial Contracts**

Name:⁴⁵ **c2c Rail Limited**

Address: **National Express House
Birmingham Coach Station
Mill Lane
Digbeth
Birmingham
B5 6DD⁴⁶**

Attention: **The Company Secretary**

⁴³ Insert change text wef 07/02/11

⁴⁴ Date of Change 01/10/2011

⁴⁵ Insert change text wef 02/01/08

⁴⁶ Date of Change 12/07/2010

40.2 Deemed Receipt

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

- (a) if sent by hand or recorded delivery, when so delivered;
- (b) if sent by pre-paid first class post, from and to any place within the United Kingdom, three business days after posting unless otherwise proven; and
- (c) if by electronic data transfer, upon sending.

41 Assignment

The Franchisee and the Franchise Operator shall not without the prior written consent of the **Authority** assign, or grant a Security Interest in or over, this Franchise Agreement or any part thereof or any benefit or interest or rights therein or thereunder (other than any rights that the Franchise Operator may have to receive monies under a Supplemental Agreement or Clause 35.5).

42 Delegation

Anything authorised or required to be done by or under this Franchise Agreement by the **Authority** may be done by any member of his staff who is authorised generally or specially in that behalf by the **Authority** or any of his or their agents or representatives.

43 Settlement Of Disputes

Where any of the parties are entitled, pursuant to the terms of this Franchise Agreement, to refer a dispute arising out of or in connection with this Franchise Agreement for resolution or determination in accordance with the Dispute Resolution Rules, then such dispute shall, unless the parties otherwise agree and subject to any duty of the **Authority** under section 55 of the Act, be resolved or determined by arbitration pursuant to the Dispute Resolution Rules, save that the arbitrator shall be a suitably qualified person chosen by agreement between the parties or, in default of agreement, chosen by the Disputes Secretary from a panel of persons agreed from time to time for such purposes between the **Authority** and the Franchise Operator or, in default of agreement as to the arbitrator or as to such panel, selected on the application of any party by the President of the Law Society or the President of the Institute of Chartered Accountants in England and Wales from time to time (or such other person to whom they may delegate such selection).

44 Miscellaneous Provisions

44.1 Variations in Writing

- (a) Subject to Clause 44.1(b), no variation of this Franchise Agreement (other than pursuant to a Change Certificate or otherwise expressly contemplated under this Franchise Agreement) shall be effective unless in writing and signed by duly authorised representatives of the parties.
- (b) If the Franchisee believes that any amendments required by the **Authority** exceed what is necessary to give effect to the provisions of Clause 44.7(a), the dispute shall be resolved in accordance with the Dispute Resolution Rules. The consent or approval of the Franchisee shall not be required for any variation or amendment of the rights or obligations of the **Authority** and Franchise Operator under this Franchise Agreement.
- (c) Subject thereto, the parties may make such variations as they may consider appropriate from time to time.

44.2 Waivers

- (a) The **Authority** may at any time waive the obligations of the Franchisee and the Franchise Operator under this Franchise Agreement and their obligations hereunder shall be construed accordingly.
- (b) No waiver by any party of any default by another in the performance of any of the provisions of this Franchise Agreement shall operate or be construed as a waiver of any other or further default whether of a like or different character. The failure to exercise or delay in exercising a right or remedy under this Franchise Agreement shall not constitute a waiver of the right or remedy or a waiver of any other rights or remedies and no single or partial exercise of any right or remedy under this Franchise Agreement shall prevent any further exercise of the right or remedy or the exercise of any other right or remedy.

44.3 Time Limits

Where in this Franchise Agreement, any obligation of a party is required to be performed within a specified time limit that obligation shall be deemed to continue after that time limit if the party fails to comply with that obligation within the time limit.

44.4 Payments to be Free and Clear

All sums payable by any party under this Franchise Agreement shall be paid free and clear of any deductions, withholdings, set-offs or counter-claims, save only as may be required by law or as expressly permitted or required under this Franchise Agreement.

44.5 Partial Invalidity

If any provision in this Franchise 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 Franchise Agreement but the legality, validity and enforceability of the remainder of this Franchise Agreement shall not be affected.

44.6 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 Franchise Agreement.

44.7 Revision to reflect 15 year term

- (a) Subject to Clause 44.7(b), the **Authority** may require such amendments to be made to this Franchise Agreement as he reasonably believes are necessary in order to give the provisions of this Franchise Agreement (other than those which are specifically limited by reference to time) the same effect over a 15 year Franchise Term as they would have over a seven year Franchise Term provided that any such amendments will be notified to the Franchisee on or before the Franchise Commencement Date.
- (b) If the Franchisee believes that any amendments required by the **Authority** exceed what is necessary to give effect to the provisions of Clause 44.7(a), it may refuse to accept such amendments. Any disputes as to whether the amendments required by the **Authority** are necessary shall be resolved after the Franchise Commencement Date and in accordance with the Dispute Resolution Rules.
- (c) For the avoidance of doubt, the parties agree that the exercise of their respective rights and obligations pursuant to this Clause 44.7 is not a condition precedent to the Franchise Commencement Date.

45 Governing Law

This Franchise Agreement shall be governed by and construed in accordance with the laws of England and Wales and, subject to the provisions of Clause 43, 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 Franchise Agreement.

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

THE CORPORATE SEAL
OF THE DIRECTOR OF
PASSENGER RAIL FRANCHISING
hereunto affixed is
authenticated by:

}

SEAL
JONATHAN MYERS

Authorised by the Director of Passenger Rail Franchising

SIGNED BY GODFREY BURLEY
for and on behalf of
PRISM RAIL PLC

}

GODFREY BURLEY

Schedule 1 – Conditions Precedent and Other Documents (Clause 2.2)

Part 1 – Licences

- (a) Passenger Train Operators Licence granted to the Franchise Operator on 16 December 1994.
- (b) Station Operators Licence granted to the Franchise Operator on 16 December 1994.
- (c) Depot Operators Licence granted to the Franchise Operator on 16 December 1994.

Part 2 – Access Agreements

(a) *Track access*

Track Access Agreement dated 18 December 1994 between Railtrack and the Franchise Operator as amended by supplemental agreements dated 23 May 1995, 4 August 1995, 12 September 1995, 7 December 1995, 22 December 1995 and 2 February 1996.

(b) *Independent station access*

Station Access Agreement dated 7 April 1995 between Railtrack and the Franchise Operator relating to Liverpool Street station.

Part 3(a) – Inter-Operator Schemes

- (i) ATOC Staff travel scheme dated 23 July 1995, between the Franchise Operator and the other participants named therein;
- (ii) Ticketing and Settlement Agreement;
- (iii) ATOC LRT Scheme dated 23 July 1995, between the Franchise Operator and the other participants named therein;
- (iv) Travelcard Agreement dated 15 October 1995, between London Regional Transport, the Franchise Operator and the other train operators named therein;
- (v) Through Ticketing (Non-Travelcard) Agreement dated 15 October 1995, between London Regional Transport, the Franchise Operator and the other train operators named therein; and
- (vi) ATOC Telephone Enquiry Bureaux Scheme dated 23 July 1995, between the Franchise Operator and the other participants named therein.

Part 3(b) – Discount Fare Schemes

- (i) ATOC Disabled Persons Railcard Scheme dated 23 July 1995, between the Franchise Operator and the other participants named therein;
- (ii) ATOC Young Persons Railcard Scheme dated 23 July 1995, between the Franchise Operator and the other participants named therein; and
- (iii) ATOC Senior Railcard Scheme dated 23 July 1995, between the Franchise Operator and the other participants named therein.

Part 4 – Property Leases

(a) Stations

- (i) Lease dated 18 December 1994 between Railtrack and the Franchise Operator in respect of Barking Station.
- (ii) Lease dated 18 December 1994 between Railtrack and the Franchise Operator in respect of Upminster Station.
- (iii) Lease dated 18 December 1994 between Railtrack and the Franchise Operator in respect of Fenchurch Street Station.
- (iv) Lease dated 18 December 1994 between Railtrack and the Franchise Operator in respect of Limehouse Station.
- (v) Lease dated 18 December 1994 between Railtrack and the Franchise Operator in respect of West Horndon Station.
- (vi) Lease dated 18 December 1994 between Railtrack and the Franchise Operator in respect of Laindon Station.
- (vii) Lease dated 18 December 1994 between Railtrack and the Franchise Operator in respect of Basildon Station.
- (viii) Lease dated 18 December 1994 between Railtrack and the Franchise Operator in respect of Pitsea Station.
- (ix) Lease dated 18 December 1994 between Railtrack and the Franchise Operator in respect of Benfleet Station.
- (x) Lease dated 18 December 1994 between Railtrack and the Franchise Operator in respect of Leigh-on-Sea Station.
- (xi) Lease dated 18 December 1994 between Railtrack and the Franchise Operator in respect of Chalkwell Station.
- (xii) Lease dated 18 December 1994 between Railtrack and the Franchise Operator in respect of Westcliff-on-Sea Station.
- (xiii) Lease dated 18 December 1994 between Railtrack and the Franchise Operator in respect of Southend Central Station.
- (xiv) Lease dated 18 December 1994 between Railtrack and the Franchise Operator in respect of Southend East Station.
- (xv) Lease dated 18 December 1994 between Railtrack and the Franchise Operator in respect of Thorpe Bay Station.
- (xvi) Lease dated 18 December 1994 between Railtrack and the Franchise Operator in respect of Shoeburyness Station.
- (xvii) Lease dated 18 December 1994 between Railtrack and the Franchise Operator in respect of Stanford-le-Hope Station.
- (xviii) Lease dated 18 December 1994 between Railtrack and the Franchise Operator in respect of East Tilbury Station.
- (xix) Lease dated 18 December 1994 between Railtrack and the Franchise Operator in respect of Tilbury Town Station.

- (xx) Lease dated 18 December 1994 between Railtrack and the Franchise Operator in respect of Grays Station.
- (xxi) Lease dated 18 December 1994 between Railtrack and the Franchise Operator in respect of Purfleet Station.
- (xxii) Lease dated 18 December 1994 between Railtrack and the Franchise Operator in respect of Rainham Station.
- (xxiii) Lease dated 18 December 1994 between Railtrack and the Franchise Operator in respect of Dagenham Dock Station.
- (xxiv) Lease dated 18 December 1994 between Railtrack and the Franchise Operator in respect of Ockendon Station.
- (xxv) Lease dated 2 February 1996 between Railtrack and the Franchise Operator in respect of Chafford Hundred Station.

All such leases as varied by a Global Deed of Variation dated 14 February 1996.

(b) Depots

- (1) Lease dated 18 December 1995 between Railtrack and the Franchise Operator in respect of East Ham depot.
- (2) Lease dated 18 December 1995 between Railtrack and the Franchise Operator in respect of Shoburyness depot.

Part 5 – Rolling Stock Leases

- (i) Rolling stock master operating lease between Angel Train Contracts Limited (Angel) and the Franchise Operator dated 14 March 1995 (as amended and restated on 16 October 1995) and an effectiveness letter from Angel to the Franchise Operator dated 14 March 1995.
- (ii) Lease supplemental agreement between Angel and the Franchise Operator dated 14 March 1995 (as amended and restated on 16 October 1995).
- (iii) Rolling stock master operating lease between Eversholt Leasing Limited (Eversholt) and the Franchise Operator dated 14 March 1995 and an effectiveness letter from Eversholt to the Franchise Operator dated 14 March 1995 (as amended and restated on 16 October 1995).
- (iv) Lease supplemental agreement between Eversholt and the Franchise Operator dated 14 March 1995 (as amended and restated on 16 October 1995).
- (v) Agreement between the Franchise Operator, Angel and the British Railways Board on behalf of West Anglia Great Northern Train Operating Unit dated 2 November 1995.

Part 6 – Brand Licences

- (a) Exclusive Trade Mark Licence Agreement dated 10 December 1995 between the **Authority** and the Franchise Operator in respect of certain trade marks relating exclusively to the Franchise Operator.
- (b) Non-exclusive Trade Mark Licence Agreement dated 10 December 1995 between the **Authority** and the Franchise Operator in respect of certain other trade marks not relating exclusively to the Franchise Operator.

Part 7 – Local Authority Schemes

- (a) Concessionary fares schemes
 - London Concessionary Fares Scheme
 - Essex County Council Educational Season Ticket Scheme.
- (b) Multi-modal fares schemes
 - None

Schedule 2 – Franchise Services (Clause 26 and others)

Part 1 – Passenger Services

Railway passenger services (excluding any Charter Services) in each direction between the following Stations and via the following routes (and, in the event of a disruption, any reasonable diversionary route) and calling at the following Stations:

- (i) between Fenchurch Street Station and Shoeburyness Station via Limehouse, ⁴⁷**West Ham**, Barking, Upminster, West Horndon, Laindon, Basildon, Pitsea, Benfleet, Leigh-on-Sea, Chalkwell, Westcliff-on-Sea, Southend Central, Southend East and Thorpe Bay Stations;
- (ii) between Liverpool Street Station and Barking Station via Stratford Station;
- (iii) between Barking Station and Pitsea Station via Dagenham Dock, Rainham, Purfleet, Grays, Tilbury Town, East Tilbury and Stanford-le-Hope Stations;
- (iv) between Upminster Station and Grays Station via Ockendon and Chafford Hundred Stations; and
- (v) the bus service between Tilbury Town Station and Tilbury Riverside.

Part 2 – Station Services

(a) The provision of any services to persons at the following stations or to train operators whose trains call at the following stations (provided that such services:

- (i) are made available only or principally to passengers alighting from or joining trains calling at such stations and to such train operators;
- (ii) are provided in connection with the calling of trains at such stations and are not designed to encourage passengers or other persons to use such services other than in connection with a journey on a train calling at such stations; and
- (iii) exclude the selling or issuing (for a charge) of any goods other than railway timetables); and

(b) the provision of access to any person under an Access Agreement at the following stations:

Fenchurch Street; Limehouse; ⁴⁸**West Ham**; Barking; Upminster; West Horndon; Laindon; Basildon; Pitsea; Benfleet; Leigh-on-Sea; Chalkwell; Westcliff-on-Sea; Southend Central; Southend East; Thorpe Bay; Shoeburyness; Dagenham Dock; Rainham; Purfleet; Grays; Tilbury Town; East Tilbury; Stanford-le-Hope; Ockendon and Chafford Hundred stations.

For the avoidance of doubt Station Services shall include the provision of any service which the Franchise Operator may provide, or may be required to provide, under any Access Agreement in effect on the Franchise Commencement Date.

⁴⁷ Date of insertion of new text 5 December 2000

⁴⁸ Date of insertion of new text 5 December 2000

Part 3 – Light Maintenance Services

The provision of access to any other person under an Access Agreement and the carrying out to rolling stock of maintenance work of a kind which is normally carried out at regular intervals of twelve months or less to prepare such rolling stock for service, the stabling or other temporary holding of rolling stock, the refuelling of rolling stock and the cleaning of the exterior or the interior of rolling stock, in each case for itself and/or other train operators, at the Stations and at the following light maintenance depots:

East Ham and Shoeburyness Depots.

For the avoidance of doubt Light Maintenance Services shall include the provision of any service which the Franchise Operator may provide, or may be required to provide, under any Access Agreement in effect on the Franchise Commencement Date.

Part 4 – Ancillary Services

- (a) The selling, lending or hiring of any goods or rights and the provision of any services (whether for a charge or not) on any train used in the provision of the Passenger Services where such goods or services are sold or provided principally for consumption or use on the relevant train, including the sale of any Fares, meals, light refreshments, newspapers, magazines, books or phone cards.
- (b) The provision of any service at any station served by the Passenger Services which, if provided on a train used in the provision of the Passenger Services, would fall within paragraph (a) of this Part 4 of Schedule 2, or which, if provided at a Station, would fall within Part 2 of Schedule 2 and which, in each case, is made available only or principally to persons at such stations who either are about to travel or have recently travelled on a train used by the Franchise Operator in the provision of the Passenger Services.
- (c) In any Reporting Period, the subleasing, hiring or licensing of up to 15 per cent. of the rolling stock used by the Franchise Operator from time to time in the provision of the Passenger Services (such percentage to be determined by reference to the aggregate period of time for which such rolling stock is sub-let, hired or licensed and the aggregate period of time for which it is used in the provision of the Passenger Services).
- (d) The lending, seconding, hiring or contracting out during any Reporting Period to another person or persons (whether for a charge or not) of:
 - (i) up to 1 per cent. of the number of employees of the Franchise Operator during such Reporting Period (or, if greater, on the Franchise Commencement Date) for over 90 per cent. of their normal working hours during such Reporting Period (including on a full-time basis); and
 - (ii) up to 1 per cent. of any other employees of the Franchise Operator during such Reporting Period (such percentage to be determined on the basis of the aggregate number of hours in such Reporting Period for which each employee is employed by the Franchise Operator (or, if greater, such aggregate number of hours in the first Reporting Period under this Franchise Agreement pro rata to the number of days in the relevant Reporting Period) and the aggregate number of hours in such Reporting Period for which any such employee is so lent, seconded, hired or contracted out)

(provided that no employee lent, seconded, hired or contracted out under any other paragraph of this Part 4 and, for the avoidance of doubt, no employee who is engaged in

any other activity which is permitted under this Schedule 2 shall constitute an employee who is lent, seconded, hired or contracted out under this paragraph).⁴⁹

- (e) The selling at any location of any Fare which is valid, in whole or in part, on the Passenger Services and the selling of any other Fare at any location where such Fares may be purchased from the Franchise Operator on or before the date of signature of this Franchise Agreement or at any new location provided that the majority of Fares sold at any such new location shall be Fares which are valid, in whole or in part, on the Passenger Services.
- (f) The selling, in conjunction with any Fare, of any other rights which entitle the purchaser thereof to:
 - (i) travel on any other train within Great Britain; or
 - (ii) travel on any shipping or ferry service within or from within Great Britain; or
 - (iii) travel on any train whose journey commences or ends within the European Union; or
 - (iv) travel on any bus whose journey commences or ends at, or at a location reasonably proximate to, a station served by the Passenger Services;
 - (v) attend any event or attraction or enter any location which is situated reasonably proximate to the end of an intended journey by train within Great Britain.
- (g) The lending, seconding, hiring or contracting out of employees of the Franchise Operator to other train operators in order to enable such persons to provide services at the Stations to passengers travelling on their trains.
- (h) The provision of telephone information relating to railway passenger services within Great Britain to passengers.
- (i) The supervision, management and training of train crew of other train operators provided such activity is necessarily incidental to the provision of the Passenger Services and could not reasonably be carried out by or through an Affiliate of the Franchise Operator.
- (j) The subleasing, hiring, licensing, lending, selling of any rolling stock or other assets of the Franchise Operator or the lending, hiring or contracting out of any employees of the Franchise Operator or the provision of any other services to Railtrack or any other train operator on an emergency basis.
- (k) The licensing or permitting of any other person (including Affiliates of the Franchise Operator) to carry out any activity or business, in connection with the provision of the Franchise Services, or otherwise, on any train operated by the Franchise Operator, at any station served by the Passenger Services, at any Depot, or otherwise (including the letting, leasing or licensing (on an exclusive basis or otherwise) of any part or all of a Station or Depot to such other person).

⁴⁹ SRA formal approval of management synergy arrangements between c2c, Silverlink and WAGN ('London Lines Synergy' letter dated 1 August 2002) included consent for each of the three TOC's to exceed the 1% threshold for inter-TOC trading of staff to a maximum level of 4%. This consent only applies to staff trading arrangements between c2c, Silverlink and WAGN. A 1% threshold continues to apply to trading with other organisations, including other National Express Group companies. w.e.f 1 August 2002.

- (l) Such other activity or business as may be reasonably necessary for the purpose of providing the other Franchise Services specified in this Schedule 2 or complying with this Franchise Agreement provided that it could not reasonably be carried out by or through an Affiliate of the Franchise Operator.
- (m) The provision or operation of Charter Services, subject to the Train Mileage of such Charter Services not exceeding in any Reporting Period 2 per cent. of the scheduled Train Mileage of Passenger Services provided by the Franchise Operator in such Reporting Period.
- (n) Any services or activity not falling within Parts 1 to 3 of this Schedule 2 or paragraphs (a) to (m) above, subject to the gross value of any such services or activity (excluding any attribution of costs) not exceeding £25,000 per annum each and in aggregate no more than £250,000 per annum.

⁵⁰ *Schedule 3 – Passenger Service Requirement*

Part 1 – Passenger Service Requirement (Clause 5.1)

Definitions, Construction and Interpretation

(a) *The following definitions shall apply in this Schedule 3, Part 1 except to the extent the context otherwise requires:*

“Bank Holiday” means a Weekday on which banks in the City of London are not open for business;

“Christmas” means 25 and 26 December of any year;

“Journey time” means the time in the Timetable to be taken by a service in travelling between the departure point and destination for that service specified in this Part 1 of Schedule 3;

“New Year” means 1 January of any year;

“Peak” means, in relation to any service, a Weekday service (except services on a Bank Holiday or other local holiday) which arrives at Fenchurch Street Station between 07.00 and 09.59 (the “Morning Peak”) or departs from Fenchurch Street Station between 16.00 and 18.59 (the “Evening Peak”) and

(a) references to “Peak” periods shall be construed accordingly; and

“Weekday” means any day other than a Saturday or Sunday.

(b) *In this Schedule 3, Part 1, except to the extent the context otherwise requires:*

(i) *references to periods of times and periods of days include the times and dates such periods start and finish;*

(ii) *except where expressly indicated to the contrary, references to all services or parts or proportions of services in this Part 1 of Schedule 3, are references to the Passenger Services (or the relevant part or proportion thereof) required to be included by, or on behalf of, the Franchise Operator in the Timetable pursuant to Clause 5.1(a) of this Franchise Agreement, and do not include such additional railway passenger services as may be provided from time to time by the Franchise Operator;*

(iii) *references to a day mean the period commencing at 0200 on the day and ending at 0159 on the following day and references to Weekdays and particular days of the week shall be construed accordingly;*

⁵⁰ Insert New Text wef 5/12/07

- (iv) *except where expressly indicated to the contrary, the Franchise Operator shall procure that all services are scheduled to call at all intermediate stations specified in Paragraph 1 of each route section;*
- (v) *in respect of a Bank Holiday, the Franchise Operator shall procure that the services usually required to be included for Sundays to each station are included in the Timetable;*
- (vi) *in respect of Christmas, the Franchise Operator may procure that no services to any station are included in the Timetable;*
- (vii) *in respect of a Weekday between Christmas and New Year (excluding a Bank Holiday), the Franchise Operator shall procure that the services usually required to be included for Saturdays to each station are included in the Timetable provided that any services run at the times of the Morning Peak and Evening Peak shall not exceed the Load Factor Specifications;*
- (viii) *in respect of a Saturday between Christmas and New Year, the Franchise Operator shall procure that the services usually required to be included for Sundays to each station are included in the Timetable;*
- (ix) *except where expressly indicated to the contrary, where one period of time ends and another period of time begins immediately thereafter and services are specified at different service intervals for each such period, the maximum service interval between the last service in the first period and the first service in the second period shall be the longer of the maximum service intervals allowed for each such period;*
- (x) *except where expressly indicated to the contrary, where an interval is specified, such specification shall apply at the departure point, arrival point and all intervening stops for the relevant service;*
- (xi) *except where expressly indicated to the contrary and subject always to compliance with the other provisions of this Part 1 of Schedule 3 (including any maximum journey times) and any restrictions placed on the Franchise Operator under Part 1 of Schedule 2, nothing in this Part 1 of Schedule 3 shall prevent services which are required to be included by, or on behalf of, the Franchise Operator in the Timetable pursuant to Clause 5.1(a) of the Franchise Agreement calling at any stations which are not specified in this Part 1 of Schedule 3 or any relevant part of it;*
- (xii) *except where expressly indicated to the contrary, where services are required to be included in the Timetable for a period of time between a specified start time and a specified finish time (the “Specified Period”) with a specified service interval during such Specified Period, then:*
 - (aa) *the interval between the start of such Specified Period and the first service in such Specified Period and between the last service in such Specified Period and the end of such Specified Period shall each be no more than the service interval*

specified for such Specified Period and one of such intervals shall be no more than half such service interval between each service;

- (bb) the minimum number of services to be included in the Timetable in such Specified Period shall be the quotient of the number of minutes in the Specified Period divided by the number of minutes in the specified service interval, rounded to the nearest whole number;*
- (cc) the service interval during such Specified Period may be extended, subject to the other provisions of this paragraph (xiii), either by five minutes or, if greater, an amount of minutes equivalent to one sixth of the specified service interval rounded down to the nearest whole number, subject to a maximum extension of 10 minutes;*
- (dd) the service interval may be reduced, subject to the other provisions of this paragraph (xii), below the service interval specified for such Specified Period by such amount as the Franchise Operator may determine; and*
- (ee) the service intervals during such Specified Period of time shall be such that, for any part of the day which occurs during such Specified Period and has a duration equivalent to $((4 \times I) + E)$ minutes (where I is equal to the specified interval expressed in minutes and E is equal to the extension permitted to such interval under paragraph (xiii)(cc)), at least four services shall be included in the Timetable in that part of the day; and*
- (xiii) all references to time are to the twenty-four hour clock.*

A FENCHURCH STREET – SHOEBURYNNESS VIA LAINDON

1 SERVICE PROVISION

Subject to the following paragraphs, the Franchise Operator shall provide services between London Fenchurch Street and Shoeburyness calling at Limehouse, West Ham, Barking, Upminster, West Horndon, Laindon, Basildon, Pitsea, Benfleet, Leigh-on-Sea, Chalkwell, Westcliff, Southend Central, Southend East and Thorpe Bay.

2 FROM LONDON FENCHURCH STREET – WEEKDAYS AND SATURDAYS

2.1 Between the Early Service and the Late Service, a half hour service shall be provided. Between the penultimate service and Late Service the interval may be extended to 45 minutes.

2.2 Between 0745 (0845 Saturday) and 2215 departure time from London Fenchurch Street an additional service shall be provided at hourly intervals. Such service may omit to call at Limehouse, West Horndon and Pitsea.

2.3 During the Evening Peak, services may omit to call at intermediate stations provided that:

a) subject to sub-paragraph 2.3(b) a maximum interval of 20 minutes is maintained between London Fenchurch Street and each intermediate station; and

b) a maximum interval of 30 minutes is maintained between London Fenchurch Street and West Ham; London Fenchurch Street and West Horndon, and London Fenchurch Street and Pitsea.

2.4 The Early Service shall arrive at Shoeburyness no later than 0630, and the Late Service shall depart from London Fenchurch Street no earlier than 0015

2.5 The maximum journey time shall be 1 hour 10 minutes.

3 TO LONDON FENCHURCH STREET – WEEKDAYS AND SATURDAYS

3.1 Between the Early Service and the Late Service, a half hourly service shall be provided. Between the Early Service and the second service the interval may be extended to 45 minutes.

3.2 Between 0900 and 2100 departure time from Shoeburyness an additional service shall be provided at hourly intervals. Such service may omit to call at Pitsea, West Horndon and Limehouse.

3.3 During the Morning Peak, services may omit to call at intermediate stations provided that:

a) subject to sub-paragraph 3.3(b) a maximum interval of 20 minutes is maintained between each intermediate station and London Fenchurch Street; and

b) a maximum interval of 30 minutes is maintained between Pitsea and London Fenchurch Street, West Horndon and London Fenchurch Street, and West Ham and London Fenchurch Street.

3.4 The Early Service shall arrive at London Fenchurch Street no later than 0545, and the Late Service shall depart from Shoeburyness no earlier than 2300.

3.5 The maximum journey time shall be 1 hour 8 minutes.

4 FROM LONDON FENCHURCH STREET - SUNDAYS

4.1 Between the Early Service and the Late Services, a half hourly service shall be provided.

4.2 The Early Service shall arrive at Shoeburyness no later than 0800, and the Late Service shall depart London Fenchurch Street no earlier than 0005.

4.3 The maximum journey time shall be 1 hour 10 minutes.

5 TO LONDON FENCHURCH STREET – SUNDAYS

5.1 Between the Early Service and the Late Services, a half hourly service shall be provided.

5.2 The Early Service shall arrive at London Fenchurch Street no later than 0645, and the Late Service shall depart from Shoeburyness no earlier than 2230.

5.3 The maximum journey time shall be 1 hour 8 minutes.

B LONDON FENCHURCH STREET – PITSEA VIA OCKENDON

1 SERVICE PROVISION

Subject to the following paragraphs the Franchise Operator shall provide services between London Fenchurch Street and Pitsea, calling at Limehouse, West Ham, Barking, Upminster, Ockendon, Chafford Hundred, Grays, Tilbury Town, East Tilbury, Stanford-le-Hope and Pitsea.

2 FROM LONDON FENCHURCH STREET – WEEKDAYS AND SATURDAYS

- 2.1 Between the Early Service and the Late Service, a half hourly service shall be provided. After 2100 the interval may be extended to hourly.*
- 2.2 Between 1630 and 1910 departure time from London Fenchurch Street on Mondays to Fridays services may omit to call at West Ham.*
- 2.3 Services before 0700 on Mondays to Fridays may originate from Barking provided that such services connect out of a service from London Fenchurch Street within 10 minutes.*
- 2.4 The Early Service shall arrive at Pitsea no later than 0650, and the Late Service shall depart from London Fenchurch Street no earlier than 2345.*
- 2.5 The maximum journey time shall be 1 hour.*

3 TO LONDON FENCHURCH STREET – WEEKDAYS AND SATURDAYS

- 3.1 Between the Early Service and the Late Service a half hourly shall be provided. Between the Early Service and the second service the interval may be extended to 45 minutes, and after 2100 the interval may be extended to hourly.*
- 3.3 During the Morning Peak, services may omit to call at West Ham.*
- 3.4 The Early Service shall arrive at London Fenchurch Street no later than 0610 (0640 Saturday), and the Late Service shall depart from Pitsea no earlier than 2300.*
- 3.5 The maximum journey time shall be 1 hour.*

7 FROM LONDON FENCHURCH STREET – SUNDAYS

- 7.1 Between the Early Service and the Late Service an hourly service shall be provided.*
- 7.2 The Early Service may originate from Barking provided that such service connects out of a service from London Fenchurch Street within 10 minutes.*

7.3 The Early Service shall arrive at Pitsea no later than 0750 and the Late Service shall depart London Fenchurch Street no earlier than 2245.

7.4 The maximum journey time shall be 1 hour.

8 TO LONDON FENCHURCH STREET – SUNDAYS

8.2. Between the Early Service and the Late Service an hourly service shall be provided.

8.3. The Early Service shall arrive at London Fenchurch Street no later than 0745 and the Late Service shall depart from Pitsea no earlier than 2230.

8.4. The maximum journey time shall be 1 hour.

C LONDON FENCHURCH STREET TO GRAYS VIA RAINHAM

1 SERVICE PROVISION

Subject to the following paragraphs the Franchise Operator shall provide services from London Fenchurch Street to Grays calling at Limehouse, West Ham, Barking, Dagenham Dock, Rainham and Purfleet.

2 FROM LONDON FENCHURCH STREET – WEEKDAYS AND SATURDAYS

2.1 Between the Early Service and the Late Service a half hourly service shall be provided. After 2100 the interval may be extended to hourly.

2.2 The Early Service and the second service may originate from Barking.

2.3 Between 1630 and 1859 departure time from London Fenchurch Street on Mondays to Fridays services may omit to call at West Ham provided that a maximum interval of 20 minutes is maintained.

2.4 One service between 1900 and 2000 may omit to call at Limehouse.

2.5 The Early Service shall arrive at Grays no later than 0615, and the Late Service shall depart from London Fenchurch Street no earlier than 2330.

2.6 The maximum journey time shall be 38 minutes.

3 TO LONDON FENCHURCH STREET - WEEKDAYS AND SATURDAYS

3.1 Between the Early Service and the Late Service a half hourly service shall be provided. After 2100 the interval may be extended to hourly.

3.2 During the Morning Peak, services may omit to call at West Ham provided that a maximum interval of 20 minutes is maintained.

3.3 One service between 0830 and 0930 may omit to call at Limehouse.

3.4 The Early Service shall arrive at London Fenchurch Street no later than 0615 (0630 Saturdays), and the Late Service shall depart from Grays no earlier than 2315 (2245 Saturdays).

3.5 The maximum journey time shall be 38 minutes.

9. ALTERNATIVE ROUTEING

9.1 Any service between London Fenchurch Street and Pitsea in Route B may be routed via Rainham provided that:

- a) subject to sub-paragraph 9(b), an additional service or additional services are provided between Upminster and Grays in order that the required interval is maintained between those stations, and any such additional service or services shall, at Upminster, connect out of a service from London Fenchurch Street or connect into a service to Fenchurch Street (as the case may be) within 10 minutes;*

- b) before 0700 the interval between any additional services between Upminster and Grays provided under sub-paragraph 9(a) may be extended to 60 minutes and any such services are not subject to connectional requirements;*
- c) unless also satisfying the requirements of a service in Route C, it may omit to call at Dagenham Dock, Rainham and Purfleet; and*
- d) the maximum journey time is not exceeded.*

9.2 After 1900 on Mondays to Fridays up to 4 services in each direction may be routed from Barking to London Liverpool Street, calling at Stratford.

D TILBURY TOWN STATION - TILBURY RIVERSIDE (BUS SERVICE)

1 WEEKDAYS AND SATURDAYS

Service Provision

1.1 *25 services from Tilbury Town and 25 services from Tilbury Riverside shall be provided. The maximum interval shall be 40 minutes provide that:*

(a) on Weekdays, one interval commencing between 0900 and 1000 may be extended to one hour and ten minutes and one interval commencing between 1400 and 1500 may be extended to one hour and ten minutes; and

(b) on Saturdays, one interval commencing between 0800 and 0900 may be extended to one hour and ten minutes and one interval commencing between 1400 and 1500 may be extended to one hour and ten minutes.

1.2 *The first bus service shall arrive no later than:*

(a) 0600 at Tilbury Town and 0600 at Tilbury Riverside.

1.3 *The last bus service shall depart no earlier than:*

(a) 1900 from Tilbury Town and 1900 from Tilbury Riverside.

1.4 *The maximum journey time shall be 10 minutes.*

1.5 *The Franchise Operator shall use reasonable endeavours to include the bus services in the Timetable to the effect that the interval between the arrival of the bus service at Tilbury Riverside and the departure of the ferry service from Tilbury Riverside to Gravesend, and the interval between the departure of the bus service and the arrival of the ferry service at Tilbury Riverside from Gravesend is reasonable.*

Part 2 – Cancellations and Capacity Thresholds (Clauses 5.3 and 21.7)⁵¹

- (a) *The percentage of Cancellations for the purposes of the Call-in Threshold, the Breach Threshold and the Default Threshold shall be determined following the end of the second Franchise Year. Within one month of such date the Franchise Operator shall provide to the Authority (to the extent not previously provided) such information as he may reasonably require for the purpose of determining the percentage of trains scheduled under the Timetable in each Reporting Period during such two Franchise Years, which are Total Cancellations or Cancellations where any such Total Cancellation or Cancellation is not attributable to a Force Majeure Event within the terms of Clause 5.4.*

The percentage of Cancellations for the purposes of the Call-in Threshold, the Breach Threshold and the Default Threshold shall be set on the basis of such determinations at a level which, if they had been set for the first two years of the Franchise Term, would have resulted in the Franchise Operator breaching and/or satisfying the Call-in Threshold, the Breach Threshold and the Default Threshold of Cancellations to the same extent (or as near as reasonably practicable the same extent) as the Franchise Operator did breach and/or satisfy the Call-in Threshold, the Breach Threshold and the Default Threshold of Total Cancellations over such two Franchise Year period. If the Franchise Operator disagrees with such determinations or percentages so set, the parties may refer the dispute for determination in accordance with the Dispute Resolution Rules. Until so set or determined there shall be no relevant percentage. The percentage of Cancellations for the purposes of the Call-In Threshold, the Breach Threshold and the Default Threshold set or determined pursuant to the preceding paragraphs shall be reduced by 0.5% with effect from the Reporting Period commencing on 1 April 2000.

- (i) *The Call-in Threshold percentage of Cancellations shall be 4.8%.*
- (ii) *The Breach Threshold percentage of Cancellations shall be 7.8%.*
- (iii) *The Default Threshold percentage of Cancellations shall be 22.2%.*

⁵² (b)

- (i) *The Call-in Threshold percentage of Total Cancellations shall be 2.5 per cent.*
- (ii) *The Breach Threshold percentage of Total Cancellations shall be 4.5 per cent.*
- (iii) *The Default Threshold percentage of Total Cancellations shall be 14 per cent.*

(c)

- (i) *The Call-in Threshold percentage of Planned Capacity shall be 97 per cent.*
- (ii) *The Breach Threshold percentage of Planned Capacity shall be 89 per cent.*
- (iii) *The Default Threshold percentage of Planned Capacity shall be 81 per cent.*

- (d) *The initial Capacity Monitoring Point shall be London Frenchchurch Street Station.*

⁵¹ Date of change 12.4.2006

⁵² Date of Change 05.10.2006

Part 3 – Load Factor Specifications (Clause 6)

(a) *The Load Factor Specifications are as follows:*

In respect of all trains operated by the Franchise Operator on the following routes and services, (i) the PIXC in the Morning Peak shall not exceed 4.5 per cent., (ii) the PIXC in the Evening Peak shall not exceed 4.5 per cent., (iii) the PIXC in the Morning Peak and the Evening Peak shall not exceed 3 per cent. and (iv) the PIXC shall not be unduly concentrated on any particular route or service:

(i) Fenchurch Street Station to Shoeburyness Station (via Laindon Station); and

(ii) Fenchurch Street Station to Pitsea Station (via Rainham Station).

(b) *For the purposes of this Part 3 of Schedule 3:*

“PIXC” shall mean

$$\frac{\sum(P-C)}{\sum(P)} \times 100 \text{ per cent.}$$

where:

$\sum(P-C)$ is the aggregate of (P-C) determined for all relevant trains operated by the Franchise Operator during the relevant period;

(P-C) is for each train the greater of:

- (i) the greatest number of passengers at any point during the journey of such train who have been travelling in Standard Class Accommodation for a period of more than 20 minutes, less the number of seats in Standard Class Accommodation on such train; and*
- (ii) the greatest number of passengers travelling in Standard Class Accommodation on such train, at any point during the journey of such train, less the capacity of such accommodation based on the Rolling Stock Capacities*

provided that for any train (P-C) shall not be less than zero;

$\sum(P)$ is the aggregate of P determined for all relevant trains operated by the Franchise Operator during the relevant period; and

P is, for each train, the greatest number of passengers travelling in Standard Class Accommodation at any time on such train.

Part 4 – Capacity Limits (Clause 6)

(a) *27,500 passengers on trains arriving at Fenchurch Street Station in the Morning Peak;*

(b) *80 per cent.;*

- (c) *33,000 passengers on trains arriving at Fenchurch Street Station in the Morning Peak.*

Part 5 – Initial Number of Vehicles (Clause 6)

⁵³*The Initial Number of Vehicles is 288 Vehicles.*

⁵³ Date of change 13.2.2006

Schedule 4 – Station Standards (Clause 10.3)

1 Communication and Information Systems

Each Station shall have a public address and/or a public information display and/or a freephone link/help point communications system for use in an emergency and so that passengers may obtain information about train delays and cancellations. Such communication links shall be maintained in working order and shall be used effectively by the Franchise Operator's staff to provide, in the event of a delay or cancellation, details of the delay or cancellation and any alternative journey arrangements (and any other relevant information).

⁵⁴*If public telephones are provided within the station lease area the Franchise Operator shall be required to seek the prior written approval of the Franchise Director if it intends to allow the removal of all of the public telephones from within that station.*

2 Waiting Accommodation

Each Station shall have weather proof covered waiting accommodation or other adequate shelter which offers reasonable protection from the weather. Adequate alternative shelter shall be available when such waiting accommodation is not provided or is temporarily out of use. Seating shall also be provided, where reasonably practicable, in such waiting accommodation and shelter and on station platforms.

3 Display of Information and Signing

Each Station shall have information displays and/or signing which provide the following information:

- (a) *Contact details (address, telephone, fax and e-mail) which passengers can use to make comments or complaints concerning station or services.*⁵⁵
- (b) The location of the nearest public telephone or "freephone" if provided (unless such telephone or "freephone" is located within the Station and is adequately signed).
- (c) The telephone number of the nearest appropriate Telephone Enquiry Bureau including its opening hours.
- (d) The telephone number of an alternative location from which current train running information can be obtained if a public address or "freephone" facility is not provided at the Station.
- (e) Wherever appropriate, the location and telephone number of the nearest taxi rank or operator, other public transport services, and, for Stations which are not staffed at all times of the day at which passenger trains are scheduled to call, the nearest person authorised to sell tickets for use on the Passenger Services.

⁵⁴ Daste of Change 15.02.05

⁵⁵ Insertion of new text w.e.f. 3rd April 2003.

- (f) A list of tickets which may be purchased on trains calling at that Station at times at which such Station is not staffed (if at all).
- (g) Arrangements for the issue of season tickets, railcards and other facilities relating to trains calling at such Station and which cannot be purchased at the Station.
- (h) For Stations which have two or more platforms, customer information displays or directional signs indicating the destinations served by trains calling at each platform.
- (i) The nearest station with access for mobility-impaired customers if no such access is provided at the Station.

4 Regular Cleaning and Maintenance

All Stations shall be kept reasonably clean. Poster displays and other items of an informational nature shall be regularly monitored and shall be replaced promptly in the event of changes to the information shown or on it becoming defaced or maliciously removed.

5 Lighting

Each Station shall have adequate lighting which shall be switched on throughout the hours of darkness during which trains are scheduled to call at the relevant Station (including for a reasonable period of time before and after the first and last scheduled train in order to allow passengers to await the first scheduled train at the Station or depart from the Station following the departure of the last scheduled train).

⁵⁶Schedule 5 – Fares (Clause 9.1)

Part 1 – Definitions and Construction

1 Definitions

The following definitions shall apply in this Schedule 5 and each Fare Document except to the extent the context otherwise requires:

“Adult Weighting”⁵⁷

means, in respect of any Fare, the Gross Revenue in respect of the sales of such Fare to individuals of the age of sixteen or over for the Financial Year ended 31 March 2010 divided by the Initial Adult Price of such Fare, except for Fares Documents created in the Fares Years 2010 to 2012 and to the extent that such Fare is a PAYG Peak Fare or a PAYG Off-Peak Fare in which case the weighting is calculated as per paragraph 2 (f) below, which weighting is, in respect of any Fare which is included in a Fare Basket, set out in the relevant Fare Document.”

“Annual Season Ticket”

means a Season Ticket Fare which is valid in Standard Class accommodation from (and including) the day it first comes into effect until (but excluding) the day which falls twelve months after such day.

“Cash Commuter Fare”⁵⁸

means, on and from 2nd January 2010 any unrestricted Single Fare and unrestricted Return Fare between each Fare between each London Station and each other London station; and

“Child Weighting”⁵⁹

means, in respect of any Fare, the Gross Revenue in respect of the sales of such Fare to individuals under the age of sixteen for the Financial Year ended 31 March 2010 divided by the Initial Child Price of such Fare, except for Fares Documents created in the Fares Years 2010 to 2012 and to the extent that such Fare is a PAYG Peak Fare or a PAYG Off-Peak Fare in which case the weighting is calculated as per paragraph 2 (f) below, which weighting is, in respect of any Fare which is included in a Fare Basket, set

⁵⁶ date of new schedule 5 23.12.2003

⁵⁷ Date of change 16/10/2009

⁵⁸ Date of change 16/10/2009

out in the relevant Fare Document.”

“Computer Fare”	<i>has the meaning specified in paragraph 1 of Part 3 of this Schedule 5.</i>
“Commuter Fare Basket”	<i>means the group of Commuter Fares determined in accordance with paragraph 2 of Part 3 of this Schedule 5, which Fares are listed in the Commuter Fare Document.</i>
“Commuter Fare Document”	<i>means the document in the agreed terms marked “Commuter Fare Document” as the same may be amended from time to time in accordance with Part 3 of this Schedule 5.</i>
“Compulsory Inter-available Flow”	<i>has the meaning ascribed to that term in the Ticketing and settlement Agreement.</i>
“Fare”	<i>means, for the purposes of this Schedule 5 only, a Fare (as defined in Clause 1.1 of this Franchise Agreement) which is:</i> <ul style="list-style-type: none"><i>(a) valid for a journey or journeys on railway passenger services which are provided on that part of the network either on which railway passenger services are provided which are required to be included in the Timetable pursuant to Clause 5.1 of this Franchise Agreement or are required to be included in another relevant Train Operator’s passenger timetable under a passenger service requirement imposed on them by the Authority;</i><i>(b) sold under the Travelcard Agreement referred to in Part 3(a)(iv) of Schedule 1 of this Franchise Agreement; or</i><i>(c) a Cross-London Ticket (as defined in the Through Ticketing (Non Travelcard) Agreement referred to in Part 3(a)(v) of such Schedule 1).</i>
“Fare Basket”	<i>means any of the Commuter Fare Basket or the Protected Fare Basket.</i>
“Fare Document”	<i>means any of the “Commuter Fare Document” or the “Protected Fare Document”</i>
“Fares Setting Round”	<i>has the meaning ascribed to that term in the Ticketing and Settlement Agreement.</i>
“Flow”	<i>has the meaning ascribed to that term in the Ticketing and Settlement Agreement.</i>
“Gross Revenue”	<i>means, in relation to any period and any Fare, the gross revenue (excluding any applicable Value Added</i>

⁵⁹ Date of change 16/10/2009

	<i>Tax) to the Franchise Operator attributable to such Fare over the relevant period, excluding any costs, commissions or other expenses which may be paid or incurred in connection with such Fare.</i>
“Initial Adult Price”	<i>means, in respect of any Fare, the Price of such Fare as shown in the fares manuals and systems of the RSP in February 2010, which Price is, in respect of any Fare which is included in a Fare Basket, set out in the relevant Fare Document.</i>
“Initial Child Price”	<i>means, in respect of any Fare, the Child Price of such Fare as shown in the fares manuals and systems of the RSP in February 2010, which Child Price is, in respect of any Fare which is included in a Fare Basket, set out in the relevant Fare Document.</i>
“Initial Permanent Fare”	<i>has the meaning ascribed to that term in the Ticketing and Settlement Agreement.</i>
“Initial Price”	<i>means an Initial Adult Price or an Initial Child Price, as the case may be.</i>
“Inter-available Fare”	<i>has the meaning ascribed to that term in the Ticketing and Settlement Agreement.</i>
“ITSO”	<i>means the Integrated Transport Smartcard Organisation;</i>
“ITSO-certified”	<i>means for the purposes of paragraph 31 C of Part 2 to this Schedule 5 that ITSO has tested the device in accordance with the testing requirements applicable to the device category and had awarded the device full certification to the standard of ITSO specification as required by the IOP Agreement (such agreement as defined in paragraph 31 C of Part 2 to this Schedule 5) (or such subsequent ITSO specification as the Franchise Operator and Secretary of State may agree).”</i>
“Lead Operator”	<i>has the meaning ascribed to that term in the Ticketing and Settlement Agreement.</i>
“London Station”	<i>means any station served by the Railway Passenger Services in the Zones and any Zone to or from which a passenger may travel from or to such station.</i>
“Major Flow Operator”	<i>has the meaning ascribed to that term in the Ticketing and Settlement Agreement.</i>
“Monthly Season Ticket”	<i>means a Season Ticket Fare which is valid in Standard</i>

Class Accommodation from (and including) the day it first comes into effect until (but excluding) the day which falls one month after such day.

“New Station”

means a station not served by railway passenger services as at February 2003, but which has since that time been, or is subsequently, served by railway passenger service which have been, or are subsequently to be, included in the Timetable or in another relevant Train Operator’s timetable. “New Station” may, if the Authority requires, also include any station other than those set out in Part 1 of Schedule 2 of which, with the consent of the Authority, (whether by amendment to this Franchise Agreement or otherwise), railway passenger services operated by the Franchise Operator call.

⁶⁰Off-peak Return Fare

means a Fare which is a Permanent Fare and which entitles the purchaser to make a journey in each direction in Standard Class Accommodation between the stations and/or the zones for which the fare is valid, at any time on Saturdays & Sundays and at such times as the Franchise Operator may designate on Mondays to Fridays, and which expires no earlier than 02:00 on the day after the day of the outward journey, or if later, the time the relevant journey may be completed if commenced before 02:00

“Pay As You Go Agreement”⁶¹

means an agreement between Transport Trading Limited (“TTL”) and the participants in the PAYG Scheme providing for the acceptance by those participants of Pay As You Go (utilising TTL smartmedia) as a payment medium for journeys on the participant’s services.”

“PAYG Launch Date”⁶²

means the Franchise Operator’s Operator Launch Date (as the same is defined in its PAYG Agreement)”

“PAYG Peak Fare”⁶³

means a Fare which is a Permanent Fare and which entitles the purchaser to make a single journey under the Pay As You Go Agreement in Standard Class Accommodation between

⁶⁰

date of change 1.8.2006

⁶¹ date of change 16/10/2009

⁶² Date of change 16/10/2009

and within the PAYG Zones for which the fare is valid, at any time”

PAYG Off-Peak Fare”⁶⁴

means a Fare which is a Permanent Fare and which entitles the purchaser to make a single journey under the Pay As You Go Agreement in Standard Class Accommodation between and within the PAYG Zones for which the fare is valid, at any time”

“PAYG Zone”⁶⁵

shall have the same meaning as “Zone” with the addition of the following stations

*Rickmansworth
Carpenders Park
Chorleywood,
Chalfont and Latimer
Amersham
Bushey
Watford Junction
Watford High Street.”*

“Permanent Fare”⁶⁶

has the meaning given to it in the Ticketing and Settlement Agreement.”

(ii) To the definition of:

“Fare” shall be added a new sub clause as follows:

“or

(d) sold under the Pay As You Go Agreement using TTL Smartmedia as defined in that agreement.”

“Permitted Aggregate Increase”

has the meaning ascribed to that term in paragraph 4 of Part 2 of this Schedule.

“Permitted Individual Increase”

has the meaning ascribed to that term in paragraph 8 of Part 2 of this Schedule.

“Protected Fare”

means a Protected Return Fare or a Protected Weekly Season Ticket.

“Protected Fare Basket”

means the group of Protected Fares determined in

⁶³ Date of change 16/10/2009

⁶⁴ Date of change 16/10/2009

⁶⁵ Date of change 16/10/2009

⁶⁶ Date of change 16/10/2009

accordance with paragraph 3 of Part 3 of this Schedule 5, which Fares are listed in the Protected Fare Document.

“Protected Fare Document”

means the document in the agreed terms marked “Protected Fare Document” as the same may be amended from time to time in accordance with Part 3 of this Schedule 5.

“Protected Return Fare”

means:

(a) in respect of a Fare for a Flow for which there was a Saver Return Fare in February 2003, a Return Fare for each such Flow in respect of which the Franchise Operator is entitled from time to time to set the Price or Child Price under the Ticketing and Settlement Agreement, subject to the following additional rights and restrictions:

(i) it shall be valid for no less than one month;

(ii) it shall be valid all day on a Saturday or Sunday and from no later than 1030 on any other day;

(iii) it need not be valid for any journey beginning between 1500 and 1900 on any day other than a Saturday or Sunday where the journey begins from a London Station or any station between London and Reading station, Watford station, Luton station or Stevenage station (inclusively) which in each case is in a direction away from London; or

(b) in respect of a Fare for a Flow for which there was no Saver Return Fare in February 2003, a Return Fare for each such Flow in respect of which the Franchise Operator is entitled from time to time to set the Price or Child Price under the Ticketing and Settlement Agreement

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

“Protected Weekly Season Ticket”

means a Weekly Season Ticket for any Flow for which there was a weekly season ticket in the fares manuals and systems of the RSP in February 2003 and for which the Franchise Operator is entitled to set the Price or Child Price of under the Ticketing and Settlement Agreement except to the extent that a Weekly Season Ticket for any such Flow is a Commuter Fare.

“Quarterly Season Ticket”

means a Season Ticket Fare which is valid in Standard

Class Accommodation from (and including) the day it first comes into effect until (but excluding) the day which falls three months after such day.

“Railway Passenger Services”

means services for the carriage of passengers by railway which are provided by a person who is bound by the Ticketing and Settlement Agreement, or any part of it, and including the Franchise Operator and any other Train Operator from time to time.

“Return Fare”

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

“Saver Return Fare”

means a return fare which is shown as a saver fare in the fares manuals and systems of the RSP at the relevant time.

“Season Ticket Fare”

means, for the purposes of this Schedule 5 only, a Fare which entitles the purchaser to make, without further restriction except as to class of accommodation, an unlimited number of journeys in any direction during the period for which, and between the stations and/or the zones for which the Fare is valid.

“Single Fare”

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

“Suburban Station”

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

Shoeburyness, Southend Victoria, Southminster, Marks Tey (excluding Sudbury Branch), Audley End (but not including origin Stanstead Airport), Ashwell and Morden. Arlesey. Harlington, Bletchley (excluding Bedford branch), Aylesbury, Haddenham & Thame Parkway. Twyford (including Henley branch), Earley, Fleet, Alton, Whitley, Christ’s Hospital, Brighton (excluding Coastway), Windsor & Eton Riverside, East Grinstead, Crowborough, Wadhurst, Paddock Wood (including the line between Strood and Paddock Wood), Maidstone East, Canterbury East, Margate.

“Weekly Season Ticket”

means a Season Ticket Fare which is valid in Standard Class Accommodation from (and including) the day it

	<i>first comes into effect until (but excluding) the day which falls seven days after such day.</i>
“Weighted Adult Price”	<i>means, in respect of any Fare, the Price of such Fare at the relevant time multiplied by the Adult Weighting attributable to such Fare.</i>
“Weighted Child Price”	<i>means, in respect of any Fare, the Child Price of such Fare at the relevant time multiplied by the Child Weighting attributable to such Fare.</i>
“Weighted Initial Adult Price”	<i>means, in respect of any Fare, the Initial Adult Price of such Fare multiplied by the Adult Weighting attributable to such Fare.</i>
“Weighted Initial Child Price”	<i>means, in respect of any Fare, the Initial Child Price of such Fare multiplied by the Child Weighting attributable to such Fare.</i>
“Weighted Initial Price”⁶⁷	<i>means a weighted Adult Price or a Weighted Child except where the relevant fare is a PAYG Peak Fare or a PAYG Off Peak fare where the PAYG Fares shall be deemed to be replaced by the Commuter Fares which applied before January 2010.</i>
“Weighted Price”	<i>means a Weighted Adult Price or a Weighted Child Price.</i>
“Weighting”	<i>means an Adult Weighting or a Child Weighting, as the case may be.</i>
“Zone”	<i>or as amended by agreement with the Secretary of State</i>

2 Construction

- (a) *In the event of an immaterial inconsistency between the Fares, Weightings or Initial Prices described in or determined in accordance with this Schedule 5 and the Fares, Weightings or Initial Prices described in the relevant Fare Document the relevant Fare Document shall prevail except to the extent that the inconsistency is material in which case this Schedule 5 shall prevail.*
- (b) *References in this Schedule to a Fare shall, except to the extent the context otherwise requires, be construed as references to the Fare which is or can be Created by the Lead Operator for the Flow to which the Fare relates or, if such Flow shall not be a Compulsory Inter-available Flow, any Fare which the Franchise Operator has Created or can Create in respect of that Flow as the Authority may specify.*

⁶⁷ Date of change 16/10/2009

(c) *Any requirement under this Schedule set a Child Price in respect of a Fare may be satisfied by the Creation of a Fare which is only valid for use by persons under the age of sixteen and the setting of a Price for that new Fare at a level which, if set as a Child Price for the original Fare, would comply with the restrictions on such Child Price under this Schedule.*

(d) *Subject to paragraph (b) above, the Authority shall be entitled to include within the definitions of Fare Baskets, Commuter Fares or Protected Fare, Fares to or from any New Station on such basis as it may, after consultation with the Franchise Operator, reasonably determine and references in this Schedule 5 to Fares, Fare Baskets, Commuter Fares and Protected Fares and other relevant definitions shall be construed accordingly.*

(e) *“The Adult Weighting for a PAYG Peak Fare will each be calculated as the sum of:⁶⁸*

(i) *1.6 times the sum of the Adult Weighting of all the Return Fares in the Commuter Fares Basket on 31st December 2009 in both directions between the stations in the origin Zone and the stations in the destination Zone between which the PAYG Peak Fare is valid; and*

(ii) *0.6 times of the sum of the Adult Weightings of all Single Fares in the Commuter Fares Basket on 31st December 2009 in both directions between the stations in the origin Zone and the stations in the destination Zone between which the PAYG Peak Fare is valid*

The Adult Weighting for a PAYG Off-Peak Fare will each be calculated as the 0/4 times the sum of the Adult Weighting of all the Return Fares and the Single Fares in the Commuter Fares Basket on 31st December 2009 in both directions between the stations in the origin Zone and the stations in the destination Zone between which the PAYG Peak Fare is valid.

The Child Weighting for a PAYG Peak Fare will each be calculated as the sum of:

(i) *1.6 times the sum of the Child Weightings of all Return Fares in the Commuter Fares Basket on 31st December 2009 in both directions between the stations in the origin Zone and the stations in the destination Zone between which the PAYG Peak Fare is valid; and*

(ii) *0.6 times the sum of the Child Weighting of all Single Fares in the Commuter Fares Basket on 31st December 2009 in both directions between the stations in the origin Zone and the stations in the destination Zone between which the PAYG Peak Fare is valid*

The Child Weighting for a PAYG Off-Peak Fare will each be calculated as the 0/4 times the sum of the Child Weighting of all the Return Fares and the Single Fares in the Commuter Fares Basket on 31st December 2009 in both directions between the stations in the origin Zone and the stations in the destination Zone between which the PAYG Peak Fare is valid.

Part 2 – Fare Regulation

General

¹⁸ *The Franchise Operator shall comply with its obligations under this Schedule 5, when Creating or setting the Price or Child Price for any relevant Fare or otherwise. By no later than week 17 of each Fares Setting Round the Franchise Operator will provide the Authority with written confirmation from a statutory director of the Franchise Operator of whether the Franchise Operator complied with its obligations under this Schedule 5 during such Fares Setting Round*

⁶⁸ Date of new text 16/10/2009

Creation of Fares

2. *The Franchise Operator shall, to the extent it is entitled to do so under the terms of the Ticketing and Settlement Agreement, ensure that each Commuter Fare and each Protected Fare has been created.*

Restrictions on Fare Baskets

3. *The Franchise Operator shall procure that, for each Fare Basket and for each Fare Year during the Franchise Term, the aggregate of all the Weighted Prices of all the Fares in each such Fare Basket shall not exceed an amount equal to (WIP x PPAI x V) where:*

“WIP” is the aggregate of all the Weighted Initial Prices of all the Fares in that Fare Basket;

“PPAI” is

- (i) in respect of the Fare Year commencing 1 January 2011⁶⁹, the permitted Aggregate Increase for that Fare Year; and*
- (ii) in respect of each Fare Year commencing on or after 1 January ⁷⁰2012, the product of the Permitted Aggregate Increase for each Fare Year between that Fare Year and the Fare Year which begins on 1 January 2011⁷¹ (inclusively); and*

“V” equals the rate of Value Added Tax on the provision of Passenger Services at the relevant time, expressed as the quotient of the price of a Fare (inclusive of Value Added Tax) divided by the price of a Fare (exclusive of Value Added Tax).

- 4.^{72 73} The Permitted Aggregate Increase in any Fare Year shall be determined in accordance with the following formula:

$$\text{PAI} = \frac{(100 \times \text{RPI}) + k}{100}$$

where:

- PAI is the Permitted Aggregate Increase in that Fare Year;
- RPI is the quotient of the Retail Prices Index for the July of the calendar year preceding that Fare Year divided by the Retail Prices Index for the July of the calendar year preceding that calendar year;
- k equals, subject to paragraph 25, + 1.

⁶⁹ Date of Change 11/11/2010

⁷⁰ Date of Change 11/11/2010

⁷¹ Date of Change 11/11/2010

⁷² Deleted – the position has been reversed by the agreement to a Deed of Amendment dated 29/11/2012, whereby the value of ‘k’ was confirmed to be equal to ‘+1’.

⁷³ As a result of the agreed Deed of Amendment dated 29/11/2012, the value of ‘k’ is equal to ‘+1’ and the original wording is confirmed and restated.

5. *The Franchise Operator shall be deemed not to be in breach of paragraph 3 if and to the extent that such breach results from the Price or Child Price for any relevant Commuter Fare being set by another person (not being an Affiliate of the Franchise Operator) pursuant to the terms of the Ticketing and Settlement Agreement in circumstances where the Franchise Operator does not have a reasonable opportunity, under any procedure for consulting or notifying operators of alterations to the Prices or Child Prices of Fares under the Ticketing and Settlement Agreement or otherwise, to alter some or all of the other Commuter Fares in the relevant Commuter Fare Basket in order to avoid being so in breach. If and to the extent that the Franchise Operator is so in breach, it shall not subsequently increase the Prices or Child Prices of any Commuter Fares in the Commuter Fare Basket which are not set by another such person pursuant to the terms of the Ticketing and Settlement Agreement unless, following such increase, it would, otherwise than under this paragraph 5, comply with the provisions of paragraph 3 in relation to that Fare Basket.*
6. *.Nothing in paragraph 5 shall require the Franchise Operator to reduce the Price or Child Price of any Commuter Fare at any time where such Price or Child Price has previously been set in a Fares Setting Round.*

Restriction on individual Fares in Fare Baskets

7. ^{74hi}*The Franchise Operator shall for any Fare Year commencing on or after 1 January 2004 during the Franchise Period, set the Price and Child Price of each Fare in a Fare Basket and for any Fare Year Commencing on or after 1 January 2010 set the Price and Child Price of each Cash Commuter Fare provided that, for the Fare Year 2010, the Price or Child Price (as the case may be) for each Cash Commuter Fare shall be as specified for such Cash Commuter Fare in the Annex to paragraph 30.2 of Part 2 of Schedule 5 except where such Fares are valid on Inter-Available Routes as defined in the Through Ticketing (non-Travelcard) Agreement such Fares are set in accordance with the terms of that agreement” which it is entitled to set pursuant to the Ticketing and Settlement Agreement (except to the extent that some other person is so entitled by virtue of the Through-Ticketing Non-Travelcard Agreement referred to in Part 3(a)(v) of Schedule 1 of this Franchise Agreement) at a level which shall not exceed an amount equal to the greater of:*

- (i) *P + £0.10p; and*
- (ii) *(P x PII x V) where:*

“P” is the maximum Price or Child Price, as the case may be, for the relevant Fare during the immediately preceding Fare Year as shown in the fares manuals and systems of the RSP;

“PII” is the Permitted Individual Increase in any Fare Year as determined in accordance with paragraph 8 of this Part 2; and

“V” has the value attributed to it in paragraph 3 of this Part 2 of Schedule 5.

The Authority may disregard for the purpose of the definition of “P” in paragraph 7(ii) any Price or Child Price of any Fare which the Authority, acting reasonably, considers was set by the Franchise Operator in order to allow the Franchise Operator to increase the Price or Child Price of such Fare in any subsequent Fare Year by a greater amount than it would otherwise have been entitled to.

⁷⁴ Date of amendment 16/10/2009

- 8⁷⁵ 76 ^jThe Permitted Individual Increase in any Fare Year commencing on or after 1 January 2004 shall be determined in accordance with the following formula:

$$PII = \frac{(100 \times RPI) + k + 5}{100}$$

100

where:

P11 is the permitted individual Increase in such Fare Year; and

RPI is the quotient of the Retail Prices Index for the July of the calendar year preceding that Fare Year divided by the Retail Prices Index for the July of the calendar year preceding that calendar year.

K has the value attributed to it in paragraph 4 of this Part 2 of Schedule 5.

9 [NOT USED]

Change of Lead Operator/Major Flow Operator

10. *The Franchise Operator shall not in respect of any Flow in respect of which it is the Lead Operator, agree to any request under the Ticketing and Settlement Agreement that the identity of the Lead Operator for such Flow be changed without the Authority's prior approval.*
11. *The Franchise Operator shall inform the Authority if it ceases to be a Major Flow Operator in respect of any Flow.*
12. *The Franchise Operator shall inform the Authority if it becomes the Lead Operator in respect of any Flow. Upon the Franchise Operator becoming the Lead Operator in respect of any Flow the Authority may exercise its rights under paragraph 5 of Part 3 to require the Fares included in any Fare Basket to be revised by reapplying the rules set out in Part 3 of this Schedule 5.*

Fares Setting Rounds

13. *If the Franchise Operator is in breach of paragraph 3 or 7 (and to the extent not excused under paragraph 5), it shall reduce the Price or Child Price of any relevant Fare at the next Fares Setting Round or, if earlier, at the next available opportunity so as to comply with the requirements of paragraph 3 or 7 (as appropriate) from such date.*
14. *Where the Franchise Operator is a Lead Operator in respect of a Compulsory Inter-available Flow and a Fare for such Flow is a Commuter Fare, it shall not increase the Price or Child Price of the relevant Fare in a Fares Setting Round after it has initially notified RSP of such Price or Child Price in such Fares Setting Round without the consent of either the Authority or each other Train Operator which provides railway passenger services for such Flow.*

Sale of Fares

⁷⁵ Deleted – the position has been reversed by the agreement to a Deed of Amendment dated 29/11/2012, whereby the value of 'k' was confirmed to be equal to '+1'.

⁷⁶ As a result of the agreed Deed of Amendment dated 29/11/2012, the value of 'k' is equal to '+1' and the original wording is confirmed and restated.

- 15 *The Franchise Operator shall ensure that the purchaser of any Commuter Fare or any Protected Fare shall be entitled, without further charge, to such rights of access and egress and other similar rights at the commencement and end of the relevant intended journey or journeys as may be reasonably necessary for such purchaser to travel on the Passenger Services. Such obligation shall not preclude the Franchise Operator from charging any purchaser for such additional services as may not be so necessary but which any such purchaser may choose to use (including any car parking, catering or other similar ancillary services).*
- 16 *The Franchise Operator shall ensure that no purchaser of any Commuter Fare or any Protected Fare shall be required to incur any cost or take any action beyond the payment of an amount not exceeding the Price or Child Price of such Fare, as the case may be, and, in relation to the issue of a Season Ticket Fare, the completion of such identity card as the Franchise Operator may reasonably require.*
- 17 *The Franchise Operator shall not require any purchaser of any Commuter Fare or any Protected Fare to pay any amount in respect of a seat reservation or other similar right which it may be compulsory for such purchaser to have in order to make a journey with such Fare on a Passenger Service provided by the Franchise Operator. Where the Franchise Operator sets a limit on the number of Protected Fares or Commuter Fares that may be used on any particular train, such limit shall not be less than the number of seats in Standard Class Accommodation on such train or, if greater, the deemed capacity of such train in Standard Class Accommodation according to the Rolling Stock Capacities.*
- 18 *The Franchise Operator shall procure that, for any Protected Return Fare or for any Single Fare or Return Fare which is a Commuter Fare, such Fare shall be offered for sale wherever and whenever any other Fare (not being a Season Ticket Fare) for a journey between the same origin and destination stations is offered for sale either by it or its agents (except persons acting in such capacity by virtue of having been appointed under Parts 11 to VI of Chapter 9 of the Ticketing and Settlement Agreement or by being party to the Ticketing and Settlement Agreement).*
19. *The Franchise Operator shall procure that, for any Season Ticket Fare which is a Commuter Fare or for any Protected Weekly Season Ticket, such Fare shall be offered for sale at all staffed ticket offices at which Fares for a journey between the same origin and destination stations are sold and otherwise wherever and whenever any Season Ticket Fare is offered for sale either by it or its agents (except persons acting in such capacity by virtue of having been appointed under Parts 11 to VI of Chapter 9 of the Ticketing and Settlement Agreement or by being party to the Ticketing and Settlement Agreement).*

Monitoring

- 20 *The Franchise Operator shall notify, or procure the notification to, the Authority of any proposed increase to the Price and Child Price of any Commuter Fare or Protected Fare and shall provide such details of any such proposal at such times (including before and during each Fares Setting Round) and in such form (including by electronic data transfer) as the Authority may reasonably request from time to time. In particular, the Franchise Operator shall make available, or procure that RSP makes available, to the Authority, for any Fare Setting Round falling during the Franchise Term, such details (including the proposed Prices and Child Prices) of the Initial Permanent Fares for such Fares Setting Round of such Commuter Fares or Protected Fares as the Authority may notify the Franchise Operator. The Franchise Operator shall take such action as the Authority may require following receipt of such details in order to ensure that it will comply with the provisions of this Schedule 5.*
21. *The Franchise Operator shall provide the Authority with such access as it may require to the Prices and Child Prices of Commuter Fares and Protected Fares from time to time.*

22. *The Franchise Operator shall provide such information as the Authority may require for the purpose of determining the Gross Revenue of the Franchise Operator in relation to any particular Fare or Fares or in any particular period.*

Changes in restrictions and weightings

23. *The Franchise Operator may request permission from the Authority from time to time to increase any prices or Child Prices beyond the levels permitted under this Schedule in connection with any proposed or actual improvement in any aspect of the Passenger Services relating to such Fares. The Authority shall act reasonably in relation to any such request but shall not under any circumstances be obliged to accept any such request in whole or in part.*

“The Secretary of State shall, where reasonably necessary to enable the Franchise Operator to comply with its obligations under this Schedule 5, grant such waivers of the terms of Schedule 5 as are reasonably necessary in respect of the Fare Year in which PAYG Peak Fares and PAYG Off-Peak Fares are first set on a zonal basis in order to comply with the provisions of paragraph 30 below”⁷⁷

24. *The Franchise Operator may, in the event of significant changes to the pattern of travel on the Passenger Services during the Franchise Period, apply to the Authority for the Weightings attributable to the Fares in any Fare Basket to be altered (by such Weightings being re-calculated using the Gross Revenue in respect of the sales of the relevant Fares for the most recent Financial Year to have ended) to take account of such changes. The Authority shall act reasonably in relation to any such application but shall not under any circumstances be obliged to accept such application in whole or in part.*
25. *The Authority shall have the power at any time and on more than one occasion to alter the obligations of, and restrictions on, The Franchise Operator under this Schedule 5 for any Fare Year (or any part thereof) (whether by alteration of the value of “k” under paragraph 4 or otherwise) and the Franchise Operator shall accept any such alteration. In the event of such power being exercised [the No Net Gain Regime will apply][the Authority may and shall, after consultation with the Franchise Operator, make such adjustment to the terms of the Franchise Agreement (including to the Passenger Service Requirement and the Franchise Payments payable hereunder) as will reasonably ensure that the Franchise Operator suffers no Net Loss and makes no Net Gain as a result of such alteration. The parties may resolve any dispute as to whether and to what extent the Franchise Operator would suffer any Net Loss or Net Gain as a result of the increase and adjustment in accordance with the Dispute Resolutions Rules. For the avoidance of doubt, the Authority shall be entitled to determine the manner of any adjustment to be made hereunder].*

26. Where:

- (a) pursuant to Clause 4-7 of the Ticketing and Settlement Agreement the consent of the Authority is requested for the abolition of a Compulsory Inter-available Flow in respect of which any Fares Created would be Protected Fares or included in a Fares Basket (the “Reference Fares”); and*
- (b) a Flow exists which, in the Authority’s opinion, is substantially similar to the Flow to which the request relates (the “Equivalent Flow”),*

⁷⁷ Date of new text 16/10/2009

then the Authority may, as a condition of granting this consent to the abolition of such Flow, by written notice to the Train Operators, deem any Fares Created in respect of the Equivalent Flow which have substantially the same characteristics as the Reference Fares to be included in a Fares Basket. The initial Price of any such Fare shall be the initial Price of the equivalent Reference Fare (and, for the purpose of paragraph 7 of this Part 2, “P” construed accordingly). However, the Authority shall not issue such a notice unless its provisions have first been approved by the Ticketing and Settlement Scheme Council (as defined in the Ticketing and Settlement Agreement) or a delegate of it.

Financial consequences of breach

27 *The Franchisee and Franchise Operator each hereby acknowledges that:*

- (a) in the event that Fares are sold for amounts in excess of the Prices or Child Prices which should be set for such Fares in accordance with this Schedule 5, no loss may be suffered by the Authority as a result thereof;*
- (b) the Authority has a duty under section 28 of the Act in certain circumstances to include provision in the Franchise Agreement to secure that the amounts to be charged for certain Fares are reasonable in all the circumstances of the case;*
- (c) such a duty arises where the Authority considers that the interests of persons who use, or who are likely to use, the Passenger Services so require;*
- (d) such persons would be directly affected by the sale of Fares other than in accordance with this Schedule 5; and*
- (e) the Authority has agreed to enter into this Franchise Agreement in reliance on the Franchise Operator’s acknowledgement and agreement that the Authority shall be entitled to adjust Franchise Payments as provided in paragraph 28 even though it may suffer no loss as a result of any non-compliance with the provisions of this Schedule 5.*

28. *The parties accordingly agree that the Authority shall be entitled to adjust the Franchise Payments payable under Clause 16 and Schedule 6 by an amount equivalent in its opinion to the sum of:*

- (i) any additional gross revenue accruing to it or any person selling Fares on its behalf as a result of the sale of Fares in excess of the Prices or Child Prices set (or which should have been) for such Fares in accordance with Schedule 5; and*
- (ii) any costs incurred by the Authority in determining the amount of such additional revenue.*

Such adjustment shall be made without prejudice to any other rights or remedies of the Authority under the Act or this Franchise Agreement in respect of such non-compliance.

⁷⁸**29.** *Fares between London Stations*⁷⁹

⁷⁸ date of change 1.8..2006

- 29.1** *The Franchise Operator shall negotiate during each Fares Setting Round with Transport Trading Limited and each other Train Operator or other licensed train operator that is a Lead Operator in respect of services that call at or operate between any London Stations on which Fares are to be set and in any case set and agree the prices to be charged for Single Fares, Return Fares, and Season Ticket Fares travel between (i) each station which is a London Station or a station (other than Watford Junction) in Zones 7, 8 and 9 as defined in the PAYG Agreement and (ii) every other such station.*
- 29.2** *With effect from 1 January 2007, unless otherwise agreed with the Secretary of State, Single Fares and Return Fares shall be set so that the same price shall apply for any journey which involves travel within or across the same Zone or Zones. The Franchise Operator shall:*
- (a) use all reasonable endeavours to agree with such other Lead Operators, any terms and conditions necessary for those Fares or for those journeys, so that the same terms, conditions and shall apply to journeys between any two London Stations; and*
 - (b) for those purposes, exchange such information as may be reasonably necessary for or associated with reaching and reviewing such agreement.*
- 29.3** *The Single Fares and Return Fares set in line with paragraphs 29.1 and 29.2 shall remain subject to the Fares regulation set out in this Schedule 5 (Fares). The Secretary of State shall, where reasonably necessary to enable the Franchise Operator to comply with its obligations under this paragraph 29, grant such waivers of the terms of Schedule 5.5 (Regulation of Individual Fares) as are reasonably necessary in respect of the Fare Year in which Fares are first set on a zonal basis in order to comply with the provisions of paragraph 29.2.”*
- 30. Fares in PAYG Zones**
- 30.1** *The Franchise Operator shall negotiate during each Fares Setting Round with Transport Trading Limited and each other Train Operator or other licensed train operator that is a Lead Operator in respect of services that call at or operate between any London Stations and agree the prices to be charged for PAYG Peak Fares and PAYG Off-Peak Fares and the terms and conditions and ancillary charges as envisaged by the PAYG Agreement.*
- 30.2** *With effect from 2nd January 2010 (or the PAYG Launch Date if later), unless otherwise agreed with the Secretary of State, PAYG Peak Fares and PAYG Off-Peak Fares shall be set so that the same price shall apply for any rail journey (being a journey on railway passenger services operated by a Train Operator pursuant to a franchise agreement with the Secretary of State) which involves travel within or across the same PAYG Zone or PAYG Zones except to the extent that where such Fares are valid on Inter-Available Routes as defined in the Through Ticketing (non-Travelcard) Agreement they are set in accordance with the terms of that Agreement. The Franchise Operator shall:*
- (a) use all reasonable endeavours to agree with Transport Trading Limited and such other Lead Operators, any terms and conditions necessary for those Fares or for those rail journeys, including the time period to be designated “Off-peak”, so that the same terms, conditions and (in the case of PAYG Off-Peak Fares) time restrictions shall apply to journeys within or across the PAYG Zone or PAYG Zones and that for the Fares Year commencing 1st January 2010 the prices of these fares are set out in the Annex to this paragraph; and*
 - (b) for those purposes, exchange such information as may be reasonably necessary for or associated with reaching and reviewing such agreement.*

⁷⁹ Date of change 16/10/2009

- 30.3 *The PAYG Peak Fares and PAYG Off-Peak Fares and ancillary charges set in line with paragraphs 30.1 and 30.2 shall be subject to the Fares regulation set out in this Schedule 5 (Fares) but in relation only to rail journeys (being journeys on railway passenger services operated by a Train Operator pursuant to a franchise agreement with the Secretary of State) within or across the Zones and shall not be subject to the restrictions set out in paragraphs 15 and 16 of Part 2 of Schedule 5 to the extent anticipated under the PAYG Agreement.*

⁸⁰ 31.. “A. PAYG Ancillary Agreement

The Secretary of State shall comply with his obligations under Clause 3 of an agreement dated [16th October 2009] between the Secretary of State and Transport Trading Limited (the PAYG Ancillary Agreement”) and acknowledges that the Franchise Operator from time to time has the right to enforce Clause 3 of that Agreement against the Secretary of State in accordance with the provisions of the Contracts (Rights of Third Parties) Act 1999 provided that for the avoidance of doubt, this shall not mean that the Franchise Operator is entitled to receive any sum expressed to be payable by the Secretary of State to TTL thereunder, but only to enforce the Secretary of State’s obligation to pay and noting that as between the parties to the PAYG Ancillary Agreement, they have reserved the right to rescind or vary that Agreement without the consent of the Franchise Operator.

B. Set Up Cost

Only in circumstances where the PAYG Agreement terminates either in its entirety or in relation to the Franchise Operator otherwise than on the expiry or early termination of the Franchise Agreement and in either case such termination is as required by the Secretary of State, the Secretary of State will reimburse to the Franchise Operator within 60 days the amount of the “Set Up Cost” unamortised as at the date of termination on the basis that the total amount Set Up Cost is equal to £⁸¹ and is deemed to be amortised on a straight line basis over a period commencing on the Franchise Operator’s Operator Launch Date (as the same is defined in the PAYG Agreement) and ending on 31st December 2015 or the Expiry Date whichever is the earlier.

C. Introduction of Tickets on IOP

C.1. The Franchise Operator will co-operate with all other train operators and Transport for London (“TfL”) to facilitate the use of ITSO-certified smartmedia within the Zones of tickets sold under the Travelcard Agreement and Through Ticketing (Non-Travelcard) Agreement utilising the ITSO on Prestige (IOP) infrastructure and services which are within the scope of an agreement between the Secretary of State and TfL for the acceptance of ITSO (“IOP Agreement”).

C.2 The Franchise Operator will co-operate with all other train operators and TfL and with the Secretary of State in agreeing its reasonable costs associated with the acceptance on ITSO of the tickets in paragraph C.1 above, including but not limited to all activities defined in this paragraph and any ongoing operating costs.

C.3 Provided that the costs referred to in paragraph C2 above are agreed to be met (by any person or persons) then the Franchise Operator shall use all reasonable endeavours to take all agreed actions (including but not limited to implementation works, negotiation of any consequential derogations to its ITSO licence, any necessary testing and operational readiness activities) for the acceptance on ITSO of the products defined in paragraph C1 above by the date that IOP is accepted under the IOP Agreement (currently expected to be 31st August 2011) or as soon as reasonably practicable thereafter.

⁸⁰ Date of change 16/10/2009

⁸¹ Where text has been omitted from the document, this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

C.4 The Franchise Operator shall use all reasonable endeavours to agree with relevant train operators and TfL reasonable commercial terms for an IOP Services Agreement under which TfL will provide services to the Franchise Operator associated with the operation of IOP in accordance with the provisions of paragraph C.1

C.5 The Franchise Operator is not obliged to accept on ITSO the tickets in accordance with paragraph C.1 above until the requirements of paragraphs C.3 and C.4 above have been completed and are in place and the IOP scope as defined in the IOP Agreement has been implemented in full. For the avoidance of doubt the IOP scope shall include but not be limited to all the stations listed in Annex 1 of the IOP agreement as of 28 May 2009.

C.6 These clauses C.1 to C.5 are without prejudice to any other agreement with the Franchise Operator relating to the implementation of ITSO smart card ticketing which latter shall prevail in the case of any inconsistency.

D. TfL's costs for operation of IOP

The Franchise Operator will co-operate with TfL and the Secretary of State and relevant train operators in making such reasonable changes to joint ticketing products as are required to permit TfL to generate sufficient additional revenue to meet the IOP operating and maintenance costs as set out in the IOP Agreement subject to:

- (i) TfL meeting the Franchise Operator's reasonable and demonstrable costs and revenue losses as agreed in advance by The Secretary of State that are directly associated with the changes to these joint ticketing products;*
- (ii) any necessary changes to, or derogations from, fares regulation being granted by the Secretary of State; and*
- (iii) The Franchise Operator not being obliged to make any payment or transfer of revenue to TfL to cover TfL's IOP operating and maintenance costs as defined in the scope of the IOP Agreement, except in the case of a change where the Franchise Operator has agreed to pay for all or part of TfL's operating and maintenance costs associated with that change.*

E. PAYG Funding

E.1 Provided that from 2nd January 2010 or the PAYG Launch date if later for the remainder of the Fare Year in respect of 2010

(i) The prices of PAYG Peak Fares and PAYG Off-Peak Fares are set at the price in the Annex to this Appendix 1 ("the Annex") or where such fares are valid on Inter-Available Routes as defined under the Through Ticketing (Non-Travelcard) Agreement and are set in accordance with the terms of that agreement;; and

(ii) The Prices for Fares valid for travel solely within the Zones (including but not limited to Cash Commuter Fares and Season Ticket Fares) are set at the same price as for the Fares Year 2009 (where the prices of the Cash Commuter Fares and the relevant Fares sold under the Travelcard Agreements are set out in the Annex)

then the Secretary of State shall pay to the Franchisee an amount equal to ⁸²in each Reporting Period of the 2010 Fare Year after 2nd January (or PAYG Launch Date whichever is the later) at the

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.

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same time as the Franchise Payment due for that Reporting Period, where RPD and FYD have the same meanings as given to them in paragraph 4 of Schedule 6 of the Franchise Agreement

F. PAYG Scheme

There shall be added to the list of Inter-Operator Schemes set out in Part 3(a) of Schedule 1
“-the PAYG Scheme dated [16 October 2009] between the participants listed therein

ANNEX TO APPENDIX 1

PAYG		DAILY CAPS			PAYG RAIL ONLY Category 1 Fares		PAYG RAIL TUBE category 3 Fares	
	Number of Zones Validity		Peak	Off-Peak	PAYG Peak Fare	PAYG Off-Peak Fare	Peak	Off-Peak
Including Z1	1		£7.20	£5.60	£1.90	£1.50	£3.00	£2.60
	2		£7.20	£5.60	£2.10	£1.70	£3.20	£2.80
	3		£8.60	£6.30	£2.60	£2.00	£3.70	£3.10
	4		£10.00	£6.30	£3.10	£2.30	£4.20	£3.40
	5		£12.60	£7.50	£3.90	£2.60	£5.00	£3.70
	6		£14.80	£7.50	£4.90	£3.20	£6.00	£4.30
Excluding Zone 1	1		£9.00	£5.10	£1.40	£1.30	£1.40	£1.30
	2		£9.00	£5.10	£1.80	£1.50	£1.80	£1.50
	3		£9.00	£5.10	£2.20	£1.70	£2.20	£1.70
	4		£9.00	£5.10	£2.70	£2.00	£2.70	£2.00
	5		£9.00	£5.10	£3.20	£2.20	£3.20	£2.20
CASH		TRAVELCARD			Cash Commuter Fares		Traintube/Rail-Tube-Rail	
	Number of Zones	Weekly Season Ticket	ADT	ODT	Single	Return	SDS	SDR

	Validity							
Including Zone1	1	-	-	-	£2.00	£3.90	£4.00	£7.20
	2	£25.80	£7.20	£5.60	£2.40	£4.30	£4.40	£7.20
	3	£30.20	£8.60	-	£3.10	£5.30	£5.10	£8.60
	4	£36.80	£10.00	£6.30	£3.70	£6.20	£5.60	£10.00
	5	£44.00	£12.60	£7.50	£4.40	£7.90	£6.30	£11.90
	6	£47.60	£14.80	£7.50	£5.00	£9.80	£7.00	£13.80
Excluding Zone 1	1	-	-	-	£1.70	£2.90	£3.20	£5.90
	2	£16.60	-	-	£2.10	£3.70	£3.60	£6.70
	3	£21.40	-	-	£2.60	£4.50	£4.10	£7.50
	4	£25.60	-	-	£3.00	£5.40	£4.50	£8.30
	5	£32.40	£9.00	£5.10	£3.40	£6.40	£4.90	£9.00
Travelcard Railcard discounted (only Z1-6 ODT)				£5.00				

Part 3 –Fare Baskets

Commuter Fares

1. *For the purpose of this Schedule 5 a “Commuter Fare” means:*
 - (a) *any Weekly Season Ticket, Monthly Season Ticket, Quarterly Season Ticket and Annual Season Ticket between each London Station and any other station or London Station; and*
 - (b) *any unrestricted Single Fare and unrestricted Return Fare between each London Station and each other London station; and*
 - (c) *any unrestricted Single Fare and unrestricted Return Fare from each Suburban Station to each London Station (but not in the other direction)**for which the Franchise Operator is entitled to be allocated all or part of the revenue there from pursuant to the Ticketing and Settlement Agreement*

Commuter Fare Basket

2. *Subject to paragraphs 4 and 5 of this Part 3, the Commuter Fare Basket shall include all Commuter Fares excluding those Commuter Fares with the lowest Gross Revenue up to 5% of the total Gross Revenue generated by all Commuter Fares during the Financial Year ended 31 March 2010.*

Protected Fare Basket

3. *Subject to paragraphs 4 and 5 of this Part 3, the Protected Fare Basket shall include all Protected Fares excluding those Protected Fares with the lowest Gross Revenue up to 5% of the total Gross Revenue generated by all Protected Fares during the Financial Year ended 31 March 2010.*

Adjustment of Fare Basket

4. *Following determination of each Fare Basket in accordance with paragraph 2 or 3 of this Part, the Authority may review the Fares included in each Fare Basket to ensure that:*
 - 4.1 *for each Flow in respect of which a Commuter Fare is included in the Commuter Fare Basket in accordance with paragraph 2, there is also included in the Commuter Fare Basket one of each of the other types of Commuter Fare which existed on that Flow in February 2010;*
 - 4.2 *for each Flow in respect of which Protected Fare is included in the Protected Fare Basket in accordance with paragraph 3, there is also included in the Protected Fare Basket one of each of the other types of Protected Fare which existed on that Flow in February 2010; and*
 - 4.3 *the Franchise Operator’s ability to increase the Price or Child Price of any Fare which is excluded from a Fare Basket pursuant to paragraph 2 or 3 of this Part, is effectively regulated by the geographic spread of the Fares which are included in the relevant Fare Basket.*

If the Authority is not satisfied as to the matters referred to in paragraphs 4.1, 4.2 and 4.3 the Authority may include any Fare excluded from a Fare Basket by the operation of paragraph 2 or 3 in the relevant Fare Basket.

5. *The Authority may, by notice in writing served upon the Franchise Operator no later than the commencement of any Fares Setting Round, require the Fares included in any Fare Basket to be revised by reapplying the rules set out in paragraphs 2 or 3 of this Part by reference to the Gross Revenue generated during such revised period as the Authority may specify in such notice and/or by adjusting any Fare Basket in accordance with paragraph 4 of this Part. Any Fare Basket which is revised in accordance with this paragraph shall take effect upon commencement of the next Fare Year to commence after such Fares Setting Round.*

Fare Documents

6. *Following any determination of the Fares to be included in any Fare Basket pursuant to paragraphs 2 or 3 of this Part, or any subsequent adjustment thereof pursuant to paragraphs 4 or 5 of this Part, the Authority shall produce or revise (as appropriate) the relevant Fare Documents showing the Fares included in each Fare Basket.*

Schedule 6 – Franchise Payments

Part 1 – Definitions

Part 1 – Definitions

*The following definitions shall apply in this Schedule 6 except to the extent the context otherwise requires:*⁸³

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“Benefit Share Adjustment Payment”	<i>means, in relation to any Franchise Year, the amount determined as such in accordance with Part 3 of this Schedule.</i>
“CTRL”	<i>means the rail link between St Pancras in London and the Channel Tunnel portal at Castle Hill, Folkestone, in Kent known as the new Channel Tunnel Rail Link, and its associated works, facilities and installations.</i>
“CTRL Event”	<i>means any event which is caused by or arises as a consequence of CTRL and for which the Franchise Operator receives compensation in accordance with a Track Access Agreement.</i>
“Fixed Franchise Payment”	<i>means, in relation to any Reporting Period, the amount determined as such in accordance with paragraph 4 of Part 2 of this Schedule for such Reporting Period.</i>
“Force Majeure Payment”	<i>means an amount determined as such in accordance with paragraph 6 of Part 2 of this Schedule.</i>
‘Olympic Payment Adjustment’	<i>means, in relation to any Reporting Period, the amount determined as such in accordance with Part 8 of the Franchise Plan D1.</i>
‘Regulator’	<i>Means the Office of Rail Regulation established by section 15 of the Railways and Transport Safety Act 2003 and having duties and obligations as set out in the Act;</i>
“Rolling Stock Mandatory Modification Payment”	<i>means, in relation to any Reporting Period, the amount determined as such in accordance with paragraph 9 of Part 2 of this Schedule for the Reporting Period preceding such Reporting Period or, if such Reporting Period ends on the expiry of the Franchise Period, the amount determined for such Reporting Period and the Reporting Period preceding it.</i>
‘Service Group’	<i>has the meaning given in Schedule 8 of the Track Access Agreement</i>
“Station Charge Adjustment Payment”	<i>means, in relation to any Reporting Period, the amount determined as such in accordance with paragraph 8 of Part 2 of this Schedule for such Reporting Period.</i>

⁸³ Date of Change 20/12/2010

⁸⁴ 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.

“Track Access Adjustment Payment”	<i>means, in relation to any Reporting Period, the amount determined as such in accordance with paragraph 7 of Part 2 of this Schedule for such Reporting Period.</i>
“Traction Electricity Charge Payment”	<i>means, in relation to any Reporting Period, the amount determined as such in accordance with paragraph 5 of Part 2 of this Schedule for such Reporting Period.</i>

Part 2 – Franchise Payments

1 Principal Formula

For each Reporting Period during the Franchise Term, a Franchise Payment shall be made which shall be determined in accordance with the following formula:

$$FP = FF - (FM + BS + OPA) + {}^{85}ATEC + TAA + SCA + RSMM + C - NRR\ 10/11{}^{86}$$

where:

ATEC	<i>means the Traction Electricity Charge Payment for such Reporting Period (which may have a positive or negative value)</i> <small>⁸⁷</small>
BS	<i>means the Benefit Share Adjustment Payment (if any) for such Reporting Period (which may have only a positive value)</i>
FP	<i>means the Franchise Payment payable in that Reporting Period (which may have a positive or negative value)</i>
FF	<i>means the Fixed Franchise Payment for such Reporting Period (which may have a positive or negative value)</i>
FM	<i>means the sum of any Force Majeure Payments payable in respect of any Force Majeure Event occurring during such Reporting Period (which may have only a positive value)</i>
OPA	<i>means the Olympics Payment Adjustment (if any) for such Reporting Period (which may have only a positive value)</i>
SCA	<i>means the Station Charge Adjustment Payment (if any) for such Reporting Period (which may have a positive or negative value)</i>
RSMM	<i>means the Rolling Stock Mandatory Modification Payment (if any) for such Reporting Period (which may have a positive or negative value)</i>
TAA	<i>means the Track Access Adjustment Payment (if any) for such Reporting Period (which may have a positive or negative value)</i>
C	<i>means such adjustment (if any) to the Franchise Payments for such Reporting Period as may be made in accordance with the other provisions of this Franchise Agreement except to the extent that any such adjustment has</i>

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 Date of change 23/03/2011

⁸⁷ 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

already been made to the Fixed Franchise Payments (and which may have a positive or negative value)

⁸⁸ *NRR10/11 means an amount equivalent to the amount received by the Franchisee from Network Rail in that Reporting Period by way of Network Rail Rebate. For this purpose, “Network Rail Rebate” has the meaning given to it in the Track Access Agreement.*

and each of ATEC, BS, FF, FM, OPA, ⁸⁹, SCA, RSMM, TAA, and C shall be deemed to be a “component” of a Franchise Payment for the purposes of paragraph 3.

2 Payment of Franchise Payments

- 2.1** *The Authority shall notify the Franchise Operator, no less than 7 days prior to the end of each Reporting Period, of the Franchise Payment payable for such Reporting Period (to the extent that it can be reasonably determined at such time) and of any Adjustment Payment becoming payable for such Reporting Period. Each such notification shall set out in reasonable detail the basis of the determination of the Franchise Payment and any Adjustment Payment.*
- 2.2** *Any Franchise Payment or Adjustment Payment so notified shall be payable in the absence of manifest error agreed between the parties and shall be payable even if the Authority has made a mistake in calculating the relevant amounts.*
- 2.3** *The Authority shall pay to the Franchise Operator any Franchise Payment which has a positive value and the Franchise Operator shall pay to the Authority any Franchise Payment which has a negative value.*
- 2.4** *Each Franchise Payment shall be payable by the relevant person in the amount notified by the Authority under paragraph 2.1 on the last day of the Reporting Period to which the Franchise Payment relates.*
- 2.5** *Any payment of a Franchise Payment or Adjustment Payment shall be made by automatic electronic funds transfer in pounds sterling to such bank account in the United Kingdom as the payee of such payment may have previously specified to the payer in writing and shall be made so that cleared funds are received in that account on or before the date such payment becomes payable under this Schedule 6.*
- 2.6** *In the event that there is a dispute as to the amount of a Franchise Payment or Adjustment Payment, such dispute shall be resolved in accordance with the Dispute Resolution Rules but shall not affect the obligation of any party to pay a Franchise Payment or Adjustment Payment notified under paragraph 2.2.*
- 2.7** *If following resolution of a dispute as to the amount of a Franchise Payment or an Adjustment Payment under the Dispute Resolution Rules, any amounts are required to be paid by any party, such amounts shall become payable on the next day a Franchise Payment becomes payable under this Schedule 6 which falls no less than 7 days after such resolution or, if there is no such day, 14 days after the date of such resolution.*

⁸⁸ Date of change 23/03/2011

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**

- 2.8 *Without prejudice to any payee's right to receive payment of a Franchise Payment or Adjustment Payment in accordance with this Schedule 6, interest shall accrue on any sum due and owing to the Authority at the Interest Rate calculated on a daily basis if and to the extent that payment is not received in accordance with this Schedule 6 from the Franchise Operator (except to the extent set off by the Authority under Clause 16.2). For the avoidance of doubt, no interest shall accrue on any part of a Franchise Payment which is not received in accordance with this paragraph 2, if and to the extent that it is subsequently payable as an Adjustment Payment under paragraph 3.*

3 Adjustment Payments

- 3.1 *If any component (or part of a component) of a Franchise Payment is not, or cannot reasonably be, determined more than 7 days before the end of the Reporting Period in which the Franchise Payment becomes payable, then, unless paragraph 3.2 of Part 2 of this Schedule applies, no amount in respect of such component (or part of a component) will be included in the Franchise Payment for such Reporting Period. As soon as such component (or part of a component) has been determined in accordance with this Franchise Agreement, it shall become payable as an Adjustment Payment on the next day on which a Franchise Payment becomes payable under this Franchise Agreement which is no less than 7 days after the date of such determination.*
- 3.2 *Where C (or any part of C) is not, or cannot reasonably be, determined more than 7 days before the end of the Reporting Period to which it relates, the Authority and the Franchise Operator may agree a good faith best estimate of C. If such an estimate is agreed:*
- 3.2.1 *C, and therefore the Franchise Payment, for such Reporting Period, shall be calculated by reference to such estimate; and*
- 3.2.2 *further adjustment shall be made to the Franchise Payments as soon as reasonably practicable to the extent necessary to correct any difference between the estimate so used and the actual C adjustment.*
- 3.3 *If the Authority determines that there has been a mistake in the calculation or payment of a Franchise Payment or an Adjustment Payment, he shall notify the Franchise Operator of such mistake. The mistake shall be rectified by the payment of an Adjustment Payment of the relevant amount on the next day on which a Franchise Payment becomes payable under this Franchise Agreement which is no less than 7 days after the date of such notification.*
- 3.4 *If there is no such day on which a subsequent Franchise Payment is to become payable (including because this Franchise Agreement has terminated) the Adjustment Payment will become payable 14 days after the date of determination.*
- 3.5 *The Authority shall pay to the Franchise Operator any Adjustment Payment which would have increased the positive value or reduced the negative value of a Franchise Payment or an Adjustment Payment and the Franchise Operator shall pay to the Authority any Adjustment Payment which would have reduced the positive value or increased the negative value of a Franchise Payment or an Adjustment Payment.*

4 Fixed Franchise Payments

The Fixed Franchise Payment payable in respect of any Reporting Period shall be determined in accordance with the following formula:

$$FF = FRA \times RPI$$

where:

- FF** means the Fixed Franchise Payment for such Reporting Period
- FRA** Equals the Fixed Franchise Payment Real Amount for that Reporting Period as provided in paragraph 4.1 of this Part 2 of Schedule 6
- RPI** means the quotient of the Retail Prices Index for the month of March which immediately precedes the commencement of the relevant Franchise Year divided by the Retail Prices Index for February 2010.

4.1 The Fixed Franchise Payment Real Amount for each Reporting Period following the expiry of the 15th Franchise Year is indicated in the final column of the table below:

Franchise Year	Extension period	Reporting Year	Reporting Period	Fixed Franchise Payment Real Amount (real terms) £
16	1	2011/12	Period 3	⁹⁰
	2	2011/12	Period 4	“
	3	2011/12	Period 5	
	4	2011/12	Period 6	
	5	2011/12	Period 7	
	6	2011/12	Period 8	
	7	2011/12	Period 9	
	8	2011/12	Period 10	
	9	2011/12	Period 11	
	10	2011/12	Period 12	
	11	2011/12	Period 13	
	12	2012/13	Period 1	
	13	2012/13	Period 2	
17	14	2012/13	Period 3	
	15	2012/13	Period 4	
	16	2012/13	Period 5	
	17	2012/13	Period 6	
	18	2012/13	Period 7	
	19	2012/13	Period 8	
	20	2012/13	Period 9	
	21	2012/13	Period 10	
	22	2012/13	Period 11	
	23	2012/13	Period 12	

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

24	2012/13	Period 13	
25	2013/14	Period 1	
26	2013/14	Period 2	

5. Traction Electricity Charge Payment

5.1 For each Reporting Period commencing on or after 1 April 2009, ATEC referred to in the formula in paragraph 1 of this Part shall be calculated according to the following formula:

$$ATEC = \Sigma(AEC_{RP} \times ECCAF)$$

Where:

ATEC	means ATEC referred to in paragraph 1 of this Part;
Σ	means the aggregate for all Service Groups in respect of that Reporting Period;
AEC_{RP}	means the amount of the electricity consumption charge (after indexation) actually payable by the Franchise Operator under the TAA for each Service Group in respect of that Reporting Period; and
ECCAF	means the electricity consumption charge adjustment factor for each Service Group relevant to the Franchise Operator, being as set out in Appendix 4 to Schedule 6 having been calculated as follows:

$$\frac{(AEC - MEC)}{MEC}$$

MEC

Where:

AEC	means the total electricity consumption charge over all classes of vehicles operated within a particular Service Group by the Franchise Operator in the year 1 April 1999 to 31 March 2000 and which was paid by the Franchise Operator under the TAA in respect of such year; and
MEC	means the total modelled electricity consumption charge for all classes of vehicles operated within a particular Service Group by the Franchise Operator in such year which has been used by the Regulator for the purposes of setting the electricity consumption and tariff rates.

5.2 Where the TAA provides for an adjustment of the electricity consumption charge to reflect the difference between the modelled and actual rates of consumption of electricity:

5.2.1 if such adjustment results in an amount being due from Network Rail to the Franchise Operator, such amount will be paid by the Franchise Operator to the Authority; and

5.2.2 if such adjustment results in an amount being due from the Franchise Operator to Network Rail, such amount will be paid by the Authority to the Franchise Operator.

6 Force Majeure Payments

- 6.1 Subject to paragraph 6.4 a Force Majeure Payment shall be determined in respect of each Force Majeure Event occurring during a Reporting Period in accordance with the following formula:-

$$FM = \left(\frac{P - NP}{X} \right) \times \left(\frac{CTM}{STM} \right)$$

where:

FM is the Force Majeure Payment in respect of any Force Majeure Event;

P is an amount equal to the Profit of the Franchise Operator during the period of such Force Majeure Event;

NP is an amount equal to the Profit which the Franchise Operator would have made during the period of such Force Majeure event if such Force Majeure Event had not taken place;

X equals 1 if the Force Majeure Event is, or results from, a CTRL Event, and 2 in all other circumstances

STM is the aggregate Train Mileage scheduled to be covered under the Timetable during the period of such Force Majeure Event;

CTM is the aggregate Train Mileage which is scheduled to be covered but which is not covered during the period of such Force Majeure Event as a result of such Force Majeure Event;

provided that where P is less than NP/2 or where CTM/STM is less than 0.05, FM shall be deemed to equal zero.

- 6.2 The Franchise Operator shall provide to the Authority such information as he may reasonably require for the purpose of enabling him to determine the amount of any such Force Majeure Payment.
- 6.3 The Authority shall, in computing the Profit of the Franchise Operator for the purposes of this paragraph 6 and where the Franchise Operator has entered into arrangements with Affiliates other than on arm's length terms, be entitled to determine the amount of such Profit as if the Franchise Operator had entered into any such arrangements on arm's length terms. The Authority shall accordingly be entitled, except to the extent that the Franchise Operator is otherwise able to establish to his reasonable satisfaction, to substitute reasonable arm's length terms in place of such terms on which the Franchise Operator may have entered into any relevant contract or arrangement with any Affiliate.
- 6.4 No Force Majeure Payment shall be payable unless the sum of all Force Majeure Payments in the relevant Reporting Period would exceed £50,000.
- 6.5 The Force Majeure Payment payable in respect of any Reporting Period in which a CTRL Event occurs shall not exceed the Fixed Franchise Payment for such Reporting Period.

7 Track Access Adjustment Payment

- 7.1 Subject to compliance by the Franchise Operator with its obligations under paragraph 7.2, the Track Access Adjustment Payment payable in respect of any Reporting Period shall be determined in accordance with the following formula:**

$$TAA = L \times \frac{RPD}{FYD}$$

where:

TAA means the Track Access Adjustment Payment for that Reporting Period;

L is the value of “ L_i ” for the Financial Year in which the Reporting Period falls under Part 3 of Schedule 7 of the Track Access Agreement;

RPD means the number of days in that Reporting Period;

FYD means the number of days in the Financial Year in which that Reporting Period falls;

except that, where a Reporting Period falls during two Financial Years, TAA shall be determined as if the references to Reporting Period were to each of the two periods within such Reporting Period which fall wholly within one of such Financial Years and the Track Access Adjustment Payment for such Reporting Period shall be the sum of TAA as determined for each such period.

- 7.2 The Franchise Operator shall notify the Authority upon becoming aware that any Track Access Adjustment Payment may be payable and shall supply such information as the Authority may require in relation thereto. The Franchise Operator shall exercise such rights as it may have under the Track Access Agreement in such manner and take such other action as the Authority may reasonably require in connection with any related payment thereunder (including in relation to any agreement of the amount of any such payment and including submitting any relevant dispute to any relevant dispute resolution procedures). The Franchise Operator shall not, without the consent of the Authority, agree or propose to agree a value for “ L_i ” under Part 3 of Schedule 7 of the Track Access Agreement.**

7.3 The Franchise Operator shall provide such evidence of payment as the Authority may require (including any certificates) for the purpose of determining the value of L under paragraph 7.1 above.

7.4 The Franchise Operator shall not amend, agree or propose to amend, the provisions of Part 3 of Schedule 7 of the Track Access Agreement (or enter into a Track Access Agreement containing no such provisions or amended versions of such provisions) without the consent of the Authority.

7.5 For the avoidance of doubt, in the event that no value is ascertained for L prior to the date the Franchise Payment for the relevant Reporting Period is determined, then a Track Access Adjustment Payment shall only be determined to the extent that such value can be ascertained at such time and, when such value is subsequently ascertained, an Adjustment Payment shall be made to reflect the full Track Access Adjustment Payment for such Reporting Period.

7.6 The value of L when used in the computation in paragraph 7.1 above shall be taken to exclude any input Value Added Tax which is recoverable in respect of the payments it represents by the Franchise Operator under sections 24 to 26 of the Value Added Tax Act 1994.

7.7 References in this paragraph 7 to “L_i” and Part 3 of Schedule 7 of the Track Access Agreement shall be deemed also to be references to such other provisions, and such other algebra under any such other provisions, of any Track Access Agreement as the Authority may reasonably consider have an equivalent effect, or are intended to fulfil the same function, as “L_i” and Part 3 of Schedule 7 of the Track Access Agreement which is in place on the Franchise Commencement Date.⁹¹

8 Station Charge Adjustment Payment

- 8.1 Subject to compliance by the Franchise Operator with its obligations under paragraph 8.2, the Station Charge Adjustment Payment payable in respect of any Reporting Period shall be the aggregate of the Individual Station Charge Adjustments as determined in accordance with the following formula for each Station and each other station at which the Passenger Services call:*

$$ISCA = (L - P) \times \frac{RPD}{FYD}$$

where:

ISCA means the Individual Station Charge Adjustment Payment for the relevant station for that Reporting Period;

L is the value of “L_i” for the Financial Year in which the Reporting Period falls under:

- (a) if the relevant station is not an Independent Station, Condition F11.2 of the Franchise Station Access Conditions relating to such station; or*
- (b) if the relevant station is an Independent Station, Condition 42.3 of the Independent Station Access Conditions relating to that Independent Station*

in each case, to the extent that value represents an amount payable to or by Railtrack or any other relevant Facility Owner by or to the Franchise Operator on its own behalf under the relevant Station Lease or Access Agreement (and excluding for the avoidance of doubt any amount payable to Railtrack by the Franchise Operator in its capacity as Facility Owner of a station on behalf of a beneficiary which is party to an Access Agreement in respect of that Station);

P is the value of “P_i” for the Financial Year in which the Reporting Period falls under:

- (a) if the relevant station is not an Independent Station, Condition F11.2*

⁹¹ *Prior to the adjustment to the terms of this Franchise Agreement made by the Authority pursuant to Clause 18.1 of the Franchise Agreement in relation to the 2003 Review this paragraph 7 contained a pass through to the Authority of amounts payable by Network Rail to the Franchise Operator in respect of the “Property Allowance Scheme” under Part 4 of Schedule 7 of the Track Access Agreement (as that agreement existed immediately prior to implementation of the 2003 Review). As part of the 2003 Review, the Regulator abolished the Property Allowance Scheme and as part of the adjustments to the terms of the Franchise Agreement made by the Authority pursuant to Clause 18.1 the Authority removed the pass through provision.*

*of the Franchise Station Access Conditions relating to such station;
or*

- (b) if the relevant station is an Independent Station, Condition 42.3 of the Independent Station Access Conditions relating to that Independent Station*

in each case, to the extent that value represents an amount payable to or by Railtrack or any other relevant Facility Owner by or to the Franchise Operator on its own behalf under the relevant Station Lease or Access Agreement (and excluding for the avoidance of doubt any amount payable to Railtrack by the Franchise Operator in its capacity as Facility Owner of a station on behalf of a beneficiary which is party to an Access Agreement in respect of that Station);

RPD *means the number of days in that Reporting Period;*

FYD *means the number of days in the Financial Year in which that Reporting Period falls*

except that, where a Reporting Period falls during two Financial Years, the Station Charge Adjustment Payment shall be determined as if the references to Reporting Period were to each of the two periods within such Reporting Period which fall wholly within one of such Financial Years and the Station Charge Adjustment Payment for such Reporting Period shall be the sum of the Station Charge Adjustment Payment as determined for each such period.

- 8.2** *The Franchise Operator shall notify the Authority upon becoming aware that any Station Charge Adjustment Payment may be payable and shall supply such information as the Authority may require in relation thereto. The Franchise Operator shall exercise such rights as it may have under any relevant Station Lease or Access Agreement in such manner and take such other action as the Authority may reasonably require in connection with any related payment thereunder (including in relation to any agreement of the amount of any such payment and including submitting any relevant dispute to any relevant dispute resolution procedures). The Franchise Operator shall not, without the consent of the Authority, agree or propose to agree a value for “L_i” or “P_i” under any relevant Station Lease or Access Agreement.*
- 8.3** *The Franchise Operator shall provide such evidence of payment as the Authority may require (including any certificates) for the purpose of determining the value of L and P under paragraph 8.1 above.*
- 8.4** *The Franchise Operator shall not amend, agree or propose to amend, the provisions of any relevant part of a Station Lease or Access Agreement (or enter into a Station Lease or Access Agreement containing no such provisions or an amended version of such provisions) without the consent of the Authority.*
- 8.5** *For the avoidance of doubt, in the event that no value is ascertained for any of L or P prior to the date for Franchise Payment for the relevant Reporting Period is determined, then a Station Charge Adjustment Payment shall only be determined to the extent such values can be ascertained at such time and, when such values are subsequently ascertained, an Adjustment Payment shall be made to reflect the full Station Charge Adjustment Payment for such Reporting Period.*

- 8.6 *The values of L and P when used in the computation in paragraph 8.1 above shall be taken to exclude any input Value Added Tax which is recoverable in respect of the payments they represent by the Franchise Operator under sections 24 to 26 of the Value Added Tax Act 1994.*
- 8.7 *For the purposes of this paragraph 8, “Independent Station” shall mean any of the stations known as Birmingham New Street, London Charing Cross, Edinburgh Waverley, London Euston, Gatwick Airport, Glasgow Central, London King’s Cross, Leeds, London Liverpool Street, London Bridge, Manchester Piccadilly, London Paddington, London Victoria and London Waterloo (excluding Waterloo International).*
- 8.8 *References in this Paragraph 8 to “L_i” “P_i”, Condition F11.2 of the Franchise Station Access Condition and Conditions 42.3 of the Independent Station Access Condition shall be deemed also to be references to such other provisions, and such other algebra under any such other provisions, of any relevant station access conditions (including any relating to any Station Lease entered into pursuant to Clause 12.13 or any new set of conditions in the event that a station ceases to be operated by a Train Operator and is operated by Railtrack) as the Authority may reasonably consider have an equivalent effect, or are intended to fulfil the same function as “L_i” “P_i” and Condition F11.2 of the Franchise Station Access Conditions and Condition 42.3 of the Independent Station Access Conditions which are in effect on the Franchise Commencement Date.*

9 Rolling Stock Mandatory Modifications

- 9.1 *Subject to compliance by the Franchise Operator with its obligations under paragraph 9.4 and Clause 12.6, a Rolling Stock Mandatory Modification Payment shall be payable in respect of each Reporting Period during the Franchise Term.*
- 9.2 *For the purpose of this paragraph 9 of Part 2 of Schedule 6:*
- (a) *“Relevant Rolling Stock” shall mean any rolling stock which is leased to a Train Operator on 16 October 1995 by any of Angel Train Contracts Limited, Eversholt Leasing Limited or Porterbrook Leasing Company Limited or any operationally comparable items of rolling stock which are provided at any time in accordance with the terms of the relevant MOLA (as defined below); and*
- (b) *“Initial Lease Period” means, in relation to any rolling stock the period ending on the expiry date specified in the lease supplement which relates to such rolling stock on 16 October 1995 (as extended in accordance with any such lease supplement).*
- 9.3 *The Rolling Stock Mandatory Modification Payment payable in respect of any Reporting Period shall be determined in accordance with the following formula:*

$$RSMM = (AMM - (AR \times 5/100)) - PRSMM$$

where

RSMM *equals the Rolling Stock Mandatory Modification Payment for that Reporting Period.*

AMM *equals (subject as below) the aggregate amount of any payments made by the Franchise Operator under paragraph 11(e) of Schedule 3 of the Master Operating Lease Agreements specified in Part 5 of Schedule 1 of this Franchise Agreement (the MOLAs) in respect of any Mandatory Modification (as defined in such MOLAs) (Mandatory Modification) in relation to Relevant Rolling Stock*

during the respective Initial Lease Periods of such Relevant Rolling Stock in such Reporting Period and any preceding Reporting Period in the Reporting Year in which such Reporting Period falls.

AR *equals the aggregate amount of Rent (as defined in each such Rolling Stock Lease) which is payable by the Franchise Operator in respect of Relevant Rolling Stock in the Reporting Year in which such Reporting Period falls.*

PRSM *equals the aggregate of any other Rolling Stock Mandatory Modification Payments in any preceding Reporting Period in the Reporting Year in which such Reporting Period falls.*

provided always that $(AMM - (AR \times 5/100))$ shall never be less than zero.

- 9.4 (a) *The Franchise Operator shall notify the Authority upon becoming aware of any, or the possibility of any, Mandatory Modification, and shall supply such information and invoices as the Authority may require in relation thereto.*
- (b) *The Franchise Operator shall exercise such rights as it may have under the MOLAs and any relevant Rolling Stock Lease in such manner and take such other action as the Authority may reasonably require in connection with any Mandatory Modification (including in relation to any agreement of or consultation on the extent of any Mandatory Modification, the manner in which it is to be carried out and the time at which the Franchise Operator may be obliged to pay for it).*
- (c) *The Franchise Operator shall include such representatives as the Authority may request in any discussion or meeting with any relevant lessor in relation to any Mandatory Modification.*
- (d) *The Franchise Operator shall provide such evidence of payment by it as the Authority may require (including any certificates or invoices) for the purpose of determining the value of AMM and AR under paragraph 9.3 above.*
- 9.5 *For the purposes of the calculation in paragraph 9.3 above the amount of any payment made by the Franchise Operator shall be taken after excluding any input Value Added Tax relating to that payment which is recoverable under sections 24 to 26 of the Value Added Tax Act 1994.*

10. ⁹².

Part 3 – Benefit Share

Determination of the Benefit Share Adjustment Payment

- 1** *The Franchise Operator shall pay to the Authority a Benefit Share Adjustment Payment equal to half of the amount by which Relevant Profit exceeds the Threshold Relevant Profit in respect of any Franchise Year following the expiry of the 15th Franchise Year after the Commencement Date.*

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

- 2 *Any Benefit Share Adjustment Payment in respect of any Franchise Year shall be payable by the Franchise Operator after determination by the Authority by adjustment of a subsequent Franchise Payment in accordance with the provisions of Schedule 6 (Franchise Payments).*
- 3 *For the avoidance of doubt the provisions of paragraph 3.4 of part 2 of Schedule 6 shall apply in respect of any Benefit Share Adjustment Payment where there is no date on which a subsequent Franchise Payment is payable (including because the Franchise Agreement has terminated) in which case the Adjustment Payment becomes payable within 14 days of determination by the Authority under this Part 3.*
- 4 *In order to determine the Benefit Share Adjustment Payment, the Franchise Operator shall provide to the Authority:*
- 4.1 *Within 3 Reporting Periods of the expiry of the 15th Franchise Year after the Franchise Commencement Date a certified true copy of the audited accounts for that Franchise Year (for the avoidance of doubt whether or not such Franchise Year covers the same period as an accounting reference period of the Franchise Operator);*
- 4.2 *Within 3 Reporting Periods of the expiry of each Franchise Year following the expiry of the 15th Franchise Year after the Franchise Commencement Date:*
- (a) *A statement showing the calculation of Relevant Profit for the relevant preceding Franchise Year consistent with the definition in paragraph 10 of this Part 3 of Schedule 6 and including a breakdown of such Relevant Profit identifying the amount in respect of each line item specified in such definition (the ‘Actual Relevant Profit Statement’) together with any explanatory notes which the Franchisee and the Franchise Operator reasonably believe would assist the Authority in determining the Benefit Share Adjustment Payment;*
 - (b) *a certified true copy of the audited profit and loss account and balance sheet of the Franchise Operator for the relevant Franchise Year (for the avoidance of doubt whether or not each such Franchise Year covers the same period as an accounting reference period of the Franchise Operator);*
 - (c) *reconciliation of the audited accounts to the Actual Relevant Profit Statement and a certificate from the auditors of the Franchise Operator (unqualified except in regard to the scope of the audit) addressed to the Authority confirming that such reconciliation has been properly prepared and:*
 - (i) *complies with the requirements of clause 15.2(b) (Provision of accounts) (unless these conflict with the requirements of this Part 3, in which case the requirements of this Part 3 shall prevail);*
 - (ii) *consistently applies the same accounting policies as the Threshold Relevant Profit;*
and
 - (iii) *gives a true and fair view of the amount of Relevant Profit during the relevant Franchise Year (for the avoidance of doubt excluding any item arising in any Franchise Year prior to the expiry of the 15th Franchise Year following the Franchise Commencement Date);*
and
 - (d) *such other information as the Authority may reasonably request (together the ‘Benefit Share Adjustment Information’).*

- 5 *The Franchise Operator shall prepare and audit the Benefit Share Adjustment Information in accordance with the accounting requirements of clause 15.2(b) (unless these conflict with the requirements of this Part 3, in which case the requirements of this Part 3 shall prevail).*
- 6 *For the avoidance of doubt, the Authority's rights in clauses 15.7 (Further Information) and 15.8 (Right of audit or inspection) shall apply in respect of the Benefit Share Adjustment Information and any other matter in connection with the obligations of the Franchise Operator under this Part 3. In the event that any such exercise reveals any inaccuracy in the amount of the Benefit Share Adjustment determined under paragraph 1, the Benefit Share Adjustment shall be amended accordingly.*
- 7 *In determining the Benefit Share Adjustment Payment, the Authority will be entitled to require any particular item in the Actual Relevant Profit Statement to be adjusted where he reasonably considers that any particular item of Relevant Profit has been calculated inconsistently with the requirements of this Part 3. The Authority may require such item to be calculated on such other basis consistent with the requirements of this Part 3 as he may reasonably determine and notify to the Franchise Operator.*
- 8 *Where the Franchise Operator fails to provide or does not provide the Benefit Share Adjustment Information in full within 3 Reporting Periods of the end of the relevant Franchise Year, the Authority may reasonably determine the Benefit Share Adjustment Payment.*

Threshold Relevant Profit

9.1 *The relevant amount of Threshold Relevant Profit for the determination of the Benefit Share Adjustment Payment shall be the sum of the amounts set out in the table below in respect of each Reporting Period during the relevant preceding Franchise Year.*

9.2 *If the Franchise Agreement terminates at any time before the date on which it would otherwise have expired in accordance with clause 20.1, the calculation of Threshold Relevant Profit under this clause 9 shall be the sum of the amounts set out in the table below in respect of all Reporting Periods up to and including the Reporting Period during which the Franchise Agreement terminates (whether or not the Franchise Agreement terminates on the last day of a Reporting Period).*

<i>Franchise Year</i>	<i>Extension period</i>	<i>Reporting Year</i>	<i>Reporting Period</i>	<i>Threshold Relevant Profit (real terms) £</i>
16	1	2011/12	Period 3	⁹³
	2	2011/12	Period 4	
	3	2011/12	Period 5	
	4	2011/12	Period 6	
	5	2011/12	Period 7	

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

	6	2011/12	Period 8	
	7	2011/12	Period 9	
	8	2011/12	Period 10	
	9	2011/12	Period 11	
	10	2011/12	Period 12	
	11	2011/12	Period 13	
	12	2012/13	Period 1	
	13	2012/13	Period 2	
	14	2012/13	Period 3	
	15	2012/13	Period 4	
17	16	2012/13	Period 5	
	17	2012/13	Period 6	
	18	2012/13	Period 7	
	19	2012/13	Period 8	
	20	2012/13	Period 9	
	21	2012/13	Period 10	
	22	2012/13	Period 11	
	23	2012/13	Period 12	
	24	2012/13	Period 13	
	25	2013/14	Period 1	
	26	2013/14	Period 2	

Relevant Profit

10 For the purpose of this paragraph, **Relevant Profit** means, in relation to any Franchise Year following the expiry of the 15th Franchise Year, the total retained Profit of the Franchise Operator arising during that Franchise Year:

(a) before taking into account:

- (i) interest expense;
- (ii) corporation tax;
- (iii) all extraordinary and exceptional items for which there is not a corresponding cash flow;
- (iv) non-cash entries in respect of Franchise Sections and other pension schemes to the extent connected with the Franchise, excluding accruals or prepayments of any normal pension contributions due;
- (v) dividends paid;
- (vi) all amounts provided for depreciation, amortisation and write downs of goodwill;
- (vii) all payments made to the Authority in respect of non-compliance (under the Franchise Agreement or the Act) with the Franchise Agreement;
- (viii) all payments made to Affiliates including but not limited to:
 - management and shared service fees;
 - royalties;
 - group recharges (including all bus replacement costs);
 - intercompany transactions; and
 - any other transactions with Affiliates;

And excluding rail replacement bus costs under the Network Rail performance regime;

- (ix) all discretionary, non-contractual bonus payments made to Franchise Employees;

- (x) all receipts and payments made under a Supplemental Agreement in respect of assets and liabilities transferred under the relevant Transfer Scheme;*
- (xi) all previous Benefit Share Adjustment Payments;*
- (xii) ⁹⁴*
- (xiii) all decrease in Profit caused by any strike or other industrial action by any or all of the Franchise Employees arising as a result of the Franchise Operator's variation of the terms of employment of Franchise Employees.*

For the purpose of this paragraph industrial action shall include any concerted action taken in connection with the employment of such employees (whether or not that action involves any breach of such employees' conditions of employment, and including any action taken in furtherance of a dispute, or with a view to improving the terms of employment of the relevant employees or by way of support for any other person).

(b) for the avoidance of doubt after taking into account Franchise Payments and Incentive Payments.

(c) for the avoidance of doubt no adjustment shall be made for Affiliate trading in respect of corporation tax payments, settlement of annual insurance premiums or other balance sheet settlements which do not impact the profit and loss account.

Part 4 – Additional financial provisions applicable from the Effective Date of the Deed of Amendment for the extension of the Franchise Agreement

In addition to the amendments made to the other parts of this Schedule 6 by Deed of Amendment for the extension of the Franchise Agreement, this Part 4 sets out the financial provisions which shall be applicable from the Effective Date of the Deed of Amendment on fulfilment of the relevant conditions.

1. Property costs

1.1 *The impact on the Franchise Operator's head office property costs at Cutlers Court of the expiry of the franchise agreement between the Authority and London Eastern Railway Limited dated 29 January 2004 has been taken into account in calculating the Fixed Franchise Payments.*

1.2 *Accordingly should the Franchisee control the party to the agreement for provision of services in the Greater Anglia Franchise after 5 February 2012, an Adjustment Payment shall be payable by the Franchise Operator to the Authority in accordance with the provisions of Part 2 of this Schedule 6 equal to the amount paid by that party to the Franchise Operator in respect of the occupation of the Cutlers Court property (and this will not constitute a Variation for the purpose of part 2 of Schedule 9 (Net Loss and Net Gain)).*

1.3 *The Franchise Operator shall provide such evidence of payment as the Authority may require (including any invoices) for the purpose of determining such Adjustment Payment.*

2. ⁹⁵

⁹⁴ 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

⁹⁵ Where text has been omitted from the document this is because the Director General Rail or Secretary of State

3. PSR Changes

West Ham

- 3.1** *The Franchise Operator shall amend its December 2011 Timetable and Train Plan in accordance with paragraph 11.5 of Part 2 (Implementation of PSR Changes) so that no less than the proportion of Franchise Services indicated in the table below stop at West Ham during the times indicated in the table below:*

Morning Peak Hours

07.00 – 07.59 – 77%

08.00 – 08.59 – 60%

09.00 – 10.00 – 54%

Evening Peak Hours

16.00 – 16.59 – 91%

17.00 – 17.59 – 50%

18.00 – 19.00 – 71%

- 3.2** *From the date specified in any Change Certificate issued by the Authority in respect of such PSR Change:*

(i) an Adjustment Payment will be made to the Franchise Payments in accordance with Part 2 of this Schedule 6 of the amount indicated in the relevant column in the table in Appendix 2 of this Schedule 6 after inflation by RPI, payable by the Authority to the Franchise Operator (and such a PSR Change shall not constitute a Variation for the purpose of part 2 of Schedule 9 (Net Loss and Net Gain)); and

(ii) the amounts of Threshold Relevant Profit in paragraph 9.2 of Part 3 of this Schedule 6 shall be decreased by the amount indicated in the relevant column in Appendix 2 of this Schedule 6.

Tilbury Bus

- 3.3** *If, after the proper completion of all necessary steps, a PSR Change is implemented in order to remove from the PSR the bus service from Tilbury Town Station to Tilbury Riverside (Part D), an Adjustment Payment will be made to the Franchise Payments in accordance with Part 2 of this Schedule 6 of the amount indicated in the final column in the table in Appendix 3 of this Schedule 6 after inflation by RPI, payable from the Franchise Operator to the Authority (and such a PSR Change shall not constitute a Variation for the purpose of part 2 of Schedule 9 (Net Loss and Net Gain)).*

- 3.4** *For the purpose of this clause 3 (PSR Changes) RPI means the quotient of the Retail Prices Index for the month of March which immediately precedes the commencement of the relevant Franchise Year in which the calculation is made divided by the Retail Prices Index for February 2010*

4. Regenerative Braking

4.1 *The Franchisee is investigating the possibility of further enhancing the regenerative braking capabilities of the rolling stock by the introduction of new software. The parties agree that to the extent the regenerative braking capabilities are improved by the introduction of such new software and this leads to cost saving to the Franchise Operator, the parties will share such savings equally.*

4.2 *The parties acknowledge that it is not possible at this stage to establish how the cost saving will be calculated. Once the new software has been introduced the parties will discuss in good faith how to isolate any such cost savings so as to enable the equal sharing of the benefits (including the consideration of existing relevant provisions of this Agreement and any necessary amendments). The parties agree the cost saving shall be applied to the net cost saving achieved by the Franchise Operator who shall be entitled to recover 100% of its upfront costs.*

5. ⁹⁶

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

New Appendix 1 of Schedule 6^{97 98}

⁹⁷ Date of Change 20/12/2010

⁹⁸ **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**

New Appendix 2 of Schedule 6

For the purpose of paragraph 3.2 of Part 4 of Schedule 6 (PSR Changes, West Ham), the Adjustment Payment shall be the amount indicated in the relevant column in the table below (payable from the Authority to the Franchise Operator):

<i>Franchise Year</i>	<i>Extension period</i>	<i>Reporting Year</i>	<i>Reporting Period</i>	<i>Adjustment Payment (Real terms) £</i>	<i>Threshold Relevant Profit Adjustment (real terms) £</i>
16	1	2011/12	Period 3	-	-
	2	2011/12	Period 4	-	-
	3	2011/12	Period 5	-	-
	4	2011/12	Period 6	-	-
	5	2011/12	Period 7	-	-
	6	2011/12	Period 8	-	-
	7	2011/12	Period 9	-	-
	8	2011/12	Period 10	⁹⁹	¹⁰⁰
	9	2011/12	Period 11	“	“
	10	2011/12	Period 12		
	11	2011/12	Period 13		
	12	2012/13	Period 1		
	13	2012/13	Period 2		
17	14	2012/13	Period 3		
	15	2012/13	Period 4		
	16	2012/13	Period 5		
	17	2012/13	Period 6		
	18	2012/13	Period 7		
	19	2012/13	Period 8		
	20	2012/13	Period 9		
	21	2012/13	Period 10		
	22	2012/13	Period 11		
	23	2012/13	Period 12		
	24	2012/13	Period 13		
	25	2013/14	Period 1		
	26	2013/14	Period 2		

⁹⁹ 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

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

New Appendix 3 of Schedule 6

For the purpose of paragraph 3.3 of Part 4 of Schedule 6 (PSR Changes, Tilbury Bus), the Adjustment Payment shall be the amount indicated in the final column in the table below (payable from the Franchise Operator to the Authority):

<i>Franchise Year</i>	<i>Extension period</i>	<i>Reporting Year</i>	<i>Reporting Period</i>	<i>Adjustment Payment (real terms) £</i>
<i>16</i>	<i>1</i>	<i>2011/12</i>	<i>Period 3</i>	<i>-</i>
	<i>2</i>	<i>2011/12</i>	<i>Period 4</i>	<i>-</i>
	<i>3</i>	<i>2011/12</i>	<i>Period 5</i>	<i>-</i>
	<i>4</i>	<i>2011/12</i>	<i>Period 6</i>	<i>-</i>
	<i>5</i>	<i>2011/12</i>	<i>Period 7</i>	<i>-</i>
	<i>6</i>	<i>2011/12</i>	<i>Period 8</i>	<i>-</i>
	<i>7</i>	<i>2011/12</i>	<i>Period 9</i>	<i>-</i>
	<i>8</i>	<i>2011/12</i>	<i>Period 10</i>	<i>¹⁰¹</i>
	<i>9</i>	<i>2011/12</i>	<i>Period 11</i>	<i>“</i>
	<i>10</i>	<i>2011/12</i>	<i>Period 12</i>	
	<i>11</i>	<i>2011/12</i>	<i>Period 13</i>	
	<i>12</i>	<i>2012/13</i>	<i>Period 1</i>	
	<i>13</i>	<i>2012/13</i>	<i>Period 2</i>	
<i>17</i>	<i>14</i>	<i>2012/13</i>	<i>Period 3</i>	
	<i>15</i>	<i>2012/13</i>	<i>Period 4</i>	
	<i>16</i>	<i>2012/13</i>	<i>Period 5</i>	
	<i>17</i>	<i>2012/13</i>	<i>Period 6</i>	
	<i>18</i>	<i>2012/13</i>	<i>Period 7</i>	
	<i>19</i>	<i>2012/13</i>	<i>Period 8</i>	
	<i>20</i>	<i>2012/13</i>	<i>Period 9</i>	
	<i>21</i>	<i>2012/13</i>	<i>Period 10</i>	
	<i>22</i>	<i>2012/13</i>	<i>Period 11</i>	
	<i>23</i>	<i>2012/13</i>	<i>Period 12</i>	
	<i>24</i>	<i>2012/13</i>	<i>Period 13</i>	
	<i>25</i>	<i>2013/14</i>	<i>Period 1</i>	
	<i>26</i>	<i>2013/14</i>	<i>Period 2</i>	

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

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Appendix 4 of Schedule 6

ECCAF (paragraph 5 of Part 4 - Traction Electricity Charges)*Electric Current For Traction - Consumption and Charges using traffic data from Financial Year 1999/2000*

C2C				Traffic						
Service Group	Service Group Name	Service Code	Description (units)	Electric Train Miles	Current Rates - post Washup kwh	New Consumption Rates kwh	Current Consumption and Tariff Rates £(00/01)	Inflated Consumption (Current)	New Consumption Rates and Tariff Rates £ (01/02)	Change factor from old rates %
HT01	LTS - ALL SERVICES	21936004	Fenchurch St-Shoe Via Laindon (Not Peak)	1,800,230	29,402,576	32,873,968	1,195,525	1,107,370	1,627,374	-31.95%
HT01	LTS - ALL SERVICES	24936004	Fenchurch St-Shoeburyness Via Chafford Hundred	619,935	9,268,894	10,928,830	397,430	368,125	542,111	-32.09%
HT01	LTS - ALL SERVICES	26936004	Fenchurch St-Shoe Via Laindon (Peak)	574,460	13,211,369	14,535,150	634,028	587,276	895,170	-34.39%
HT01	LTS - ALL SERVICES	27936004	Fenchurch St-Shoe Via Rainham (Not Peak)	865,725	14,090,851	14,371,993	531,745	492,536	666,446	-26.10%
HT01	LTS - ALL SERVICES	28936004	Fenchurch St-Shoe Via Rainham (Peak)	184,413	3,864,367	3,932,978	178,360	165,208	234,449	-29.53%
HT01	LTS - ALL SERVICES	29936004	Grays-Upminster Via Chafford Hundred	91,403	1,433,178	1,521,385	65,531	60,699	92,824	-34.61%
	HT01Total			4,136,166	71,271,235	78,164,305	3,002,619	2,781,214	4,058,374	-31.47%
	Grand Total			4,136,166	71,271,235	78,164,305	3,002,619	2,781,214	4,058,374	-31.47%

Notes/Assumptions

- (1) Current Charge uses current tariff zone definition*
 - (2) Current Charge at new consumption rates uses current tariff zone definition*
 - (3) New Charge at new tariff rates uses new tariff zone definition*
 - (4) New Consumption Rates for Class 323 are already net of 20% for Regenerative Breaking”*
- Inflation on current prices (Electric fuel price - 1999/2000) 0.926262626*

Schedule 7 – Incentive Regime (Clause 17) ¹⁰²

Part 1 – Definitions and construction ¹⁰³

1. Definitions

The following definitions shall apply in this Schedule 7 except to the extent the context otherwise requires:

“Allowable Change” means a change to the Timetable which is caused by:-

- (a) any Network Rail Restriction of Use notified to the Franchise Operator or included in the Timetable;
or*
- (b) any other matter which may be specified from time to time by the Authority.*

“Amended Timetable” means, in respect of any particular day, the passenger timetable which reflects the working timetable for the Passenger Services required to be drawn up by Network Rail in accordance with the Network Code, as at 2200 on the immediately preceding day, being the Timetable for that particular day, as amended from time to time (including to reflect the following:

- (a) any amendment to the working timetable for the Passenger Services under the applicable Rules of the Route or Rules of the Plan;*
- (b) any amendment to the working timetable for the Passenger Services under Condition H of the Network Code; and*
- (c) any amendment which is required to the Timetable to reflect the introduction, removal or alteration of a service by the Franchise Operator).*

“Annual Timetable” means, in respect of any Reporting Period, the Franchise Operator’s published passenger timetable in which falls the last day of such Reporting Period, after taking into account any errata published after its initial publication and any changes to such published passenger timetable that the Authority considers material in relation to the calculation, in paragraphs 4 and 6 of Part 2 of this Schedule 7, of the

¹⁰² Insert change text wef 08/11/07

¹⁰³ Date of Change 20.4.2006

average number of Stops at a Monitoring Point per day scheduled in the Annual Timetable.

“Applicable Timetable”

means, in respect of any particular day, the Timetable for such day or, if an Amended Timetable is in effect for such day, the Amended Timetable for such day.

“Authority Systems”

has the meaning ascribed to that term in paragraph 9.2 of Part 3 of this Schedule 7.

“Capacity”

means, in respect of any train and any Formation Monitoring Point, the number of seats in Standard Class Accommodation on such train which the Franchise Operator provides or (as the case may be) plans to provide under any relevant Train Plan, on such train at such Formation Monitoring Point, provided that to the extent that a Train Plan specifies an aggregate capacity for a number of trains, the Capacity in respect of such trains and any Formation Monitoring Point will be the aggregate of that which the Franchise Operator provides or (as the case may be) plans to provide under any relevant Train Plan, on each of such trains.

“Connection”

means a Connection (as defined in Clause 1.1 of this Franchise Agreement) which is either included in the Passenger Service Requirement (however described therein) or which is otherwise included by the Franchise Operator in the Timetable and is notified by it to the Authority from time to time as constituting a Connection for the purposes of this Schedule 7.

“Formation Monitoring Point”

means the point (not being more than one per train) for each train in each Service Code which the Authority may designate as such by notice to the Franchise Operator from time to time (being the point at which it considers that passenger numbers are likely to be most concentrated for that train in that Service Code).

“Maximum Lateness”

means, in respect of any train in a Service Group, the number of minutes specified in the relevant section of Part 4 of this Schedule 7 for that Service Group.

“Minutes Late”

means, in relation to any train and any Monitoring Point, the number of minutes (not being less than zero and rounded down to the nearest whole minute) by which such train Stops at such Monitoring Point after the time it was scheduled so to do in the Applicable Timetable provided that if such number is greater than the Maximum Lateness of the train the number of minutes shall be deemed to equal the

Maximum Lateness of that train.

“Monitoring Point”

means, in respect of any train, any monitoring point listed in Part 4 of this Schedule 7 for a service whose Service Code, timing, direction and description that train satisfies and each such monitoring point shall be treated as a separate Monitoring Point notwithstanding that it may also be a monitoring point for the same Service Code in the opposite direction and/or for other Passenger Services.

“Network Rail Restriction of Use”

means, in respect of any day, any restriction on use of any relevant section of track notified by Network Rail to the Franchise Operator which necessitates any difference between the Applicable Timetable on that day as compared to the Timetable in respect of that day.

"Network Rail Systems"

has the meaning ascribed to that term in paragraph 9.1 of Part 3 of this Schedule 7.

“Pass”

means, in relation to any Formation Monitoring Point, the act of a train arriving at, passing or departing from (as the context may require) such Formation Monitoring Point.

"2003 Review"

has the meaning given in Part 4 of Schedule 6 of this Franchise Agreement.

"2003 Review Date"

means 1 April 2004.

“2006 Review”¹⁰⁴

review by the Office of Rail Regulation of Schedule 8 of the Track Access Agreement in respect of the performance regime and the amounts payable by Network Rail and franchise operators to each other.

“2006 Review Date”¹⁰⁵

means 1 April 2006

“Service Code”

means the third, fourth and fifth digits of an eight-character train service code applied in Network Rail’s performance monitoring system to trains and used to identify them.

“Service Group”

means any of Service Group A or Service Group B.

“Service Group A”

means the Passenger Services described in Part 4(a) of this Schedule 7.

¹⁰⁴ Insert New Text wef 29/3/07

¹⁰⁵ Insert New Text wef 29/3/07

“Service Group B”	<i>means the Passenger Services described in Part 4(b) of this Schedule 7.</i>
“SFIP Service Group”	<i>means any of Service Group A.</i>
“Stop”	<i>means, in relation to a Monitoring Point, the act of a train arriving at the station associated with the Monitoring Point where scheduled in the relevant timetable to stop to set down passengers.</i>
“Systems”	<i>means the Authority Systems and the Network Rail Systems.</i>

2. Construction

- 2.1** *For the purposes of this Schedule 7, a day shall be deemed to begin at 0000 and end at 2359 on the same day, and all references to a day in this Schedule 7 shall be construed accordingly.*
- 2.2** *Subject to paragraph 2.1 above, where any train is scheduled to depart from its point of origin on one day and arrive at its destination point on the following day, any minutes late recorded or deemed in respect of the train on the day shall be treated as occurring on the day on which the train was scheduled to depart from its point of origin.*
- 2.3** *References in this Schedule 7 to “trains” do not include Charter Services or other movements of rolling stock outside the Timetable (but which may be included in any relevant working timetable).*
- 2.4** *A train is treated as being in a Service Group for that part of its journey during which it satisfies the Service Code, timing, direction and description set out in Part 4 of this Schedule 7 as forming a service which is included in that Service Group.*
- 2.5** *This paragraph applies:-*
 - 2.5.1** *any train whose journey characteristics are such that it would otherwise be included, for the purposes of this Schedule 7, in a ‘Peak’ Service Group; and*
 - 2.5.2** *where Schedule 8 of the Franchise Operator’s Track Access Agreement with Network Rail from time to time provides, or has the effect, that the train may in any circumstances be treated for the purposes of that Schedule 8, as if it were included in an ‘Off-Peak’ Service Group. This may include, for example only, in respect of any days falling between Christmas and New Year which are not Bank Holidays.*

The Authority shall have the right, in those circumstances, to treat those trains for the purpose of this Schedule 7, as if they were included in the ‘Off-Peak’ Service Group which corresponds with the ‘Peak’ Service Group in which they normally fall. This Schedule 7 shall be construed accordingly.
- 2.6** *For the purpose of this Schedule 7, the Service Group within which a service falls is the Service Group applicable to that service as scheduled in the Timetable (notwithstanding any change in the characteristics of that service as actually operated on any day, or the introduction of any Applicable Timetable affecting the provision of that service).*

Part 2 — Determination of Incentive Payment
Total Incentive Payment

3. *The Incentive Payment for each Reporting Period during the Franchise Term shall be determined in accordance with the following formula:*

$$I = TPIP - (TTCIP + TSFIP)$$

Where:

I equals the Incentive Payment for the relevant Reporting Period (and may be either a positive or a negative number);

TPIP equals the Total Punctuality Incentive Payment for the relevant Reporting Period, as determined in accordance with paragraph 4 of this Part 2 (and may be either a positive or a negative number);

TTCIP equals the Total Timetable Change Incentive Payment (if any) for the relevant Reporting Period, as determined in accordance with paragraphs 6 and 7 of this Part 2 (and may be only a positive number);

TSFIP equals the Total Short Formation Incentive Payment (if any) for the relevant Reporting Period, as determined in accordance with paragraph 8 of this Part 2 (and may be only a positive number).

4. **"Punctuality Incentive Payment**

The Total Punctuality Incentive Payment in each Reporting Period shall be the Punctuality Incentive Payment for Service Group A for that Reporting Period as determined in accordance with the following formula:

$$PIP = (TB_2 - ATL_2) \times N_2 \times J_2 \times V_2 \times RPI_2 \times BF$$

where:

PIP equals the Punctuality Incentive Payment for that Service Group for that Reporting Period;

TB₂ equals the franchise agreement train operator performance point expressed as an average train operator lateness for that Service Group for that Reporting Period (expressed as an average number of minutes late) as set out in Part 4 of this Schedule 7;

ATL₂ $ATL_2 = (TLPM + (TREPM \times \frac{(TCML_2)}{(TCML)}))$

Where:

TLPM is the value of TOC Lateness Performance Minutes, and

- TREPM** is the value of TOC Reliability Event Performance Minutes, for that Reporting Period (expressed as a number of minutes late) determined under, and used for the purpose of calculating the train operator performance payment under, the Franchise Operator's Track Access Agreement with Network Rail.
- TCML** } takes the values as detailed in Part 4 of this Schedule 7
TCML₁ } takes the values as detailed in Part 4 of this Schedule 7
- N₂** equals the agreed number of trains per day in that Service Group (if any) as set out in Part 4 of this Schedule 7;
- J₂** equals the agreed number of passenger journeys on each train in that Service Group (if any) as set out in Part 4 of this Schedule 7;
- V₂** equals the value, in pence, attributed to a minute late per passenger for that Service Group (if any) as set out in Part 4 of this Schedule 7;
- RPI₂** equals the quotient of the Retail Prices Index for the November of the Reporting Year prior to the Reporting Year in which such Reporting Period falls divided by the Retail Prices Index for November 1994 (and for the avoidance of doubt shall equal 1.332 in respect of the Reporting Year commencing 1 April 2006), and;
- BF** is (subject to paragraph 21.3 of Part 3 of this Schedule 7) the value of the relevant 'busyness factor' for that Service Group for that Reporting Period, as determined under and used for the purpose of calculating both Network Rail's and the Franchise Operator's performance payments under the Franchise Operator's Track Access Agreement with Network Rail. For the avoidance of doubt, it is acknowledged that this "busyness factor" is the value described in the Franchise Operator's Track Access Agreement with Network Rail as at immediately after the implementation of the 2006 Review."

5. [NOT USED]

*Timetable Change Incentive Payment*¹⁰⁶

6. *The Total Timetable Change Incentive Payment for each Reporting Period shall be the aggregate of the Timetable Change Incentive Payments (if any) determined for Service Group A on each day in that Reporting Period on which the Applicable Timetable for that Service Group is an Amended Timetable. If an Amended Timetable is in effect the Timetable Change Incentive Payment for such day and for such Service Group shall be, subject to paragraph 7, determined in accordance with the following formula:*

$$TCIP = (TL-AB) \times N_2 \times J_2 \times V_2 \times RPI_2 \times DBF \times I$$

Where:

TCIP equals the Timetable Change Incentive Payment for any relevant day for any relevant Service Group (which, if TCIP is a negative number, shall be deemed to be zero);

AB equals the adjusted benchmark number of minutes late for that Service Group determined in accordance with the following formula:

$$AB = B_2 \times \Sigma \frac{MPW \times (ST - T)}{ST}$$

Where:

B₂ equals the benchmark number of minutes late for the relevant Service Group, as set out in Part 4 of Schedule 7;

Σ means the sum for each Monitoring Point listed under that Service Group in Part 4 of Schedule 7;

MPW means, in relation to any Monitoring Point, the weighting attributable to such Monitoring Point in the relevant section of Part 4 of this Schedule 7;

ST equals the number of Stops at that Monitoring Point scheduled for the relevant day in the Timetable which would have been in effect on that day but for the Amended Timetable; and

T equals the number of Stops at that Monitoring Point scheduled for that day in the Applicable Timetable; provided that if T is greater than ST, then T shall be deemed to have the same value as ST.

¹⁰⁶ Insert change text wef 29/03/07

TL equals the lateness of that Service Group caused by the Amended Timetable coming into effect on the relevant day determined in accordance with the following formula:

$$TL = (CP \times TCML_2) + ((1 - CP) \times 0.9 \times EJM)$$

Where:

CP equals the cancellation proportion, having the same value as the component:

$$\Sigma \frac{MPW \times (ST - T)}{ST}$$

determined in accordance with the formula for “AB” above;

TCML₂ means the number of minutes late attributed to cancellations for the relevant Service Group immediately prior to 1 April 2006 in the Track Access Agreement as set out in Part 4 of this Schedule 7;

TCML means the number of minutes late attributed to cancellations for the relevant Service Group with effect from 1 April 2006 in the Track Access Agreement as set out in Part 4 of this Schedule 7;

EJM means extended journey minutes determined in accordance with the following formula:

$$EJM = AJT \times \frac{(W - U)}{U}$$

Where:

AJT means the average journey time for trains in the Service Group scheduled for that day in the Timetable which would have been in effect on that day but for the Amended Timetable, and shall be equal to the aggregate of the end-to-end journey times scheduled in such Timetable for such trains divided by the aggregate number of end-to-end journeys scheduled in such Timetable for such trains;

W means the average speed of trains in that Service Group scheduled for that day in the Timetable which would have been in effect on that day but for the Amended Timetable, and shall be equal to the aggregate of the number of miles which such trains are scheduled in such Timetable to run divided by the aggregate of the end-to-end journey times scheduled in such Timetable for such trains; and

U means the average speed of trains in that Service Group scheduled for that day in the Applicable Timetable, and

shall be equal to the aggregate of the number of miles which such trains are scheduled in such Applicable Timetable to run divided by the aggregate of the end-to-end journey times scheduled in such Applicable Timetable for such trains; provided that if U is greater than W, then U shall be deemed to have the same value as W; provided that if EJM is greater than the Maximum Lateness for trains in the relevant Service Group, EJM shall be deemed to be that Maximum Lateness.

N₂, J₂, V₂ and RPI₂ have the same meanings set out in paragraph 4 of this Part 2;

I equals 1.0 if there are no trains in that Service Group scheduled in the Applicable Timetable for that day, but otherwise equals 0.8; and

DBF means the daily busyness factor of that Service Group on that day, as determined in accordance with the following formula:

$$DBF = \frac{\Sigma \text{ MPW } \times DS}{AS}$$

Where:

Σ equals the sum for each Monitoring Point listed under the Service Group in Part 4 of this Schedule 7;

MPW equals, in relation to any Monitoring Point, the weighting attributable to such Monitoring Point in the relevant section of Part 4 of this Schedule 7;

DS equals the number of Stops at that Monitoring Point scheduled for the relevant day in the Timetable which would have been in effect on that day but for the Amended Timetable; and

AS equals the average number of Stops at that Monitoring Point per day scheduled in the Annual Timetable in respect of the Reporting Period in which that day falls, such average number being equal to the aggregate number of Stops at that Monitoring Point scheduled in that Annual Timetable for the period when such Annual Timetable is in force, divided by the number of days that such Annual Timetable is in force.”

7. Reductions in the Timetable Change Incentive Payment

To the extent that any part of the Total Timetable Change Incentive Payment for any day relates to a difference between the Timetable and Amended Timetable caused by an Allowable Change, then that part of such payment shall be reduced:

7.1 by 100 per cent. where the Allowable Change is a Network Rail Restriction of Use; and

- 7.2 ^kby such proportion as the Authority may decide (having regard to any compensation received therefore by the Franchise Operator under its track access agreement) where the Allowable Change is any other matter.

Short Formation Incentive Payment¹⁰⁷

8. The Total Short Formation Incentive Payment in each Reporting Period shall be the aggregate of the Short Formation Incentive Payment for each train in any SFIP Service Group which is included in the Train Plan of the Franchise Operator during that Reporting Period, as determined in accordance with the following formula:

$$SFIP = \left(1 - \frac{ATC}{PTC} \right) \times TCML_2 \times J_2 \times (V_2 \times RPI_2)$$

Where:

SFIP equals the Short Formation Incentive Payment (which, if SFIP is a negative number, shall be deemed to be zero);

ATC equals the Capacity provided at the Formation Monitoring Point for that train, provided that, if such train does not Pass such Formation Monitoring Point and such train is part of a Service Group, SFIP shall be deemed to be zero for such train;

PTC equals the Capacity planned to be provided at the Formation Monitoring Point for that train in accordance with the Train Plan;

TCML₂ equals the number of minutes late attributed to cancellations for the SFIP Service Group to which the train belongs as set out in Part 4 of this Schedule 7;

J₂ equals the agreed number of passenger journeys on each train in the SFIP Service Group to which the train belongs (if any), as set out in Part 4 of this Schedule 7

V₂ equals the value, in pence, attributed to a minute late per passenger for that SFIP Service Group (if any), as set out in Part 4 of this Schedule 7; and

RPI₂ equals the quotient of the Retail Prices Index for the November of the Reporting Year prior to the Reporting Year in which such Reporting Period falls divided by the Retail Prices Index for November 1996 (and for the avoidance of doubt shall equal 1.332 in respect of the Reporting Year commencing 1 April 2006)

¹⁰⁷ Insert Change Text wef 29/03/07

"Part 2A – Adjustment of Incentive Payment

[DELETED]¹⁰⁸

Part 3 — Systems and Payment¹⁰⁹

Systems

- 9. *The Authority and the Franchise Operator agree that the Incentive Payment in each Reporting Period shall be determined by reference to:***
 - 9.1 *such systems as may be used by Network Rail from time to time for recording or monitoring the operation of the Passenger Services and may be selected by the Authority and notified to the Franchise Operator by the Authority from time to time (the “Network Rail Systems”);***
 - 9.2 *such systems as the Authority may put in place for determining the amount of Incentive Payments on the basis of the information and data in the Network Rail Systems and the other information and data available to it (the “Authority Systems”);***
 - 9.3 *such other systems as the Authority and the Franchise Operator may agree; and***
 - 9.4 *such other relevant information, data and records as may be available to the Authority or which the Authority may reasonably require the Franchise Operator to provide to it from time to time, including the information specified in paragraphs 10 and 11 of this Part 3.***
- 10. *The Franchise Operator shall, except where the Authority otherwise agrees, use all reasonable endeavours to procure that there are entered into the Network Rail Systems and/or provided to the Authority:***
 - 10.1 *each Timetable and/or Amended Timetable;***
 - 10.2 *each Train Plan;***
 - 10.3 *each item of rolling stock used in the provision of the Passenger Services which is planned under a Train Plan to Pass a relevant Formation Monitoring Point but does not so Pass at such Formation Monitoring Point (except in circumstances where the whole train of which such rolling stock forms part is part of a Service Group and does not Pass such Formation Monitoring Point); and***
 - 10.4 *such other information and data as the Authority may require to facilitate the proper or efficient determination of Incentive Payments under this Schedule 7.***
- 11. *The Franchise Operator shall provide such information as the Authority may require in relation to any differences between a Timetable and an Amended Timetable for any day which result from an Allowable Change, such information to include, without limitation:***

¹⁰⁸ Date of Change 20/12/2010

¹⁰⁹ Date of Change 20/12/2010

11.1 *where the Allowable Change is a Network Rail Restriction of Use, details of compensation therefore under the Franchise Operator's track access agreement; and*

11.2 *evidence of the manner and time of publication to passengers of details of such difference from the Timetable,*

The Franchise Operator shall provide to the Authority details of the number of Minutes Late which a train may be at a Monitoring Point as a result of being delayed awaiting a Connection (to be provided within 7 days of the day on which the relevant train may be delayed)

12. *The Franchise Operator shall provide to the Authority the information required under paragraphs 10 and 11 in such form and format as the Authority may require from time to time. The Franchise Operator shall provide to the Authority such further details or information as it may reasonably require in relation to such information.*

13. *The Authority and the Franchise Operator will co-operate with each other to ensure that Incentive Payments payable under this Schedule 7 are determined correctly and efficiently on the basis of the information available to each of them from time to time.*

Access and review of systems

14. *The Franchise Operator and the Authority each agree to use all reasonable endeavours to ensure that each other may have such access to the Network Rail Systems as they may be able to procure during the Franchise Period.*

15. *The Authority agrees to permit the Franchise Operator to inspect the Authority Systems at any reasonable time during the Franchise Period and on reasonable notice if the Franchise Operator has reasonable grounds to believe that a fault in the Authority Systems is resulting in the incorrect determination of the Incentive Payments payable under this Schedule 7.*

16. *If either the Authority or the Franchise Operator notifies the other that it has reasonable grounds to believe that either of the Systems is not satisfying any relevant requirements and it is established, following any investigation or inspection, that such Systems are not satisfying any relevant requirements, the information or determination obtained from the relevant System for any relevant Reporting Periods commencing after the date which is two months prior to such notification may be adjusted in such a manner which is fair and reasonable to correct such information or determination, and any Incentive Payments previously paid under this Schedule 7 may be adjusted accordingly. The parties may refer any dispute relating thereto for resolution in accordance with the Dispute Resolution Rules.*

17. *Any inspection or investigation of any System shall be carried out at the cost of the party conducting the investigation or inspection.*

Failure to record or supply information

18. *If the Franchise Operator fails to comply with its obligations under paragraphs 10, 11 or 12 of this Part 3, the Authority may, if it reasonably considers that Incentive Payments have been incorrectly calculated as a result of such non-compliance (whether as a result of new information or data becoming available or otherwise), require any relevant Incentive Payments which may be affected by such non-compliance to be*

adjusted in a manner which is fair and reasonable to reflect the Incentive Payments which, so far as reasonably determinable on the basis of any relevant data (including any new information or data), should have been calculated. The parties may refer any dispute relating thereto for resolution in accordance with the Dispute Resolution Rules.

19. *If as a result of a failure to record any Minutes Late for any relevant train or for any other reason Minutes Late at any individual Monitoring Point cannot be determined for any train, then, subject to paragraph 20, the Minutes Late of that train at such Monitoring Point shall be the number of Minutes Late at which such train is at the immediately preceding relevant recording point (if any) at which Network Rail may record information in respect of actual minutes late for such train (or, if there is no such preceding point, the immediately succeeding point).*
20. *If, as a result of any fault in the Systems or failure to record any or all relevant information, Incentive Payments cannot be reasonably determined then the parties shall use all reasonable endeavours to determine the relevant Incentive Payment on the basis of such manual information as may have been recorded by Network Rail and other relevant sources, including those of the Franchise Operator. Nothing in this paragraph 20 shall however prevent the Authority from determining any Incentive Payment on the basis of information available to it at any relevant time.*

Payment

21. *The Authority shall as soon as reasonably practicable after the end of each Reporting Period notify the Franchise Operator of each component of the Incentive Payment payable in respect of such Reporting Period. Each such notification shall set out in reasonable detail the basis of the determination of such Incentive Payment. Nothing in this paragraph 21 shall require the Authority to notify the Franchise Operator of:*
 - 21.1 *(subject to paragraph 21.2), any Incentive Payment less than 21 days after the end of each relevant Reporting Period; and*
 - 21.2 *the TTCIP component of any Incentive Payment less than 21 days after the end of the next succeeding Reporting Period.*
22. *Any Incentive Payment (or component thereof) so notified shall be payable in the absence of manifest error agreed between the parties and shall be payable even if the Authority has made a mistake in calculating the relevant amounts.*
23. *The Authority shall pay to the Franchise Operator any Incentive Payment (or component thereof) which has a positive value and the Franchise Operator shall pay to the Authority any Incentive Payment (or component thereof) which has a negative value or, if such Incentive Payment (or component thereof) is payable on the same day as a Franchise Payment and the Authority so elects, shall be paid by way of adjustment to such Franchise Payment.*
24. *Each Incentive Payment (or component thereof) shall become payable by the relevant person on day 34, or such day as the payment becomes due from Network Rail to the Franchise Operator, of the Reporting Period immediately succeeding the Reporting Period to which the Incentive Payment (or component thereof) relates or, if the Authority does not notify the Franchise Operator of the relevant Incentive*

Payment (or component thereof) more than 4 days before the last day of such Reporting Period, 7 days after the Authority shall have notified the Franchise Operator under paragraph 21 or, if the Authority so elects, on the next day a Franchise Payment becomes payable under Schedule 6. For the purposes of this paragraph 16, that part of an Incentive Payment relating to a Reporting Period shall, in so far as it comprises the other components, be treated as having been notified even if the TTCIP component, of that Incentive Payment has not been notified.

25. *Any payment of an Incentive Payment (or component thereof) shall be made by automatic electronic funds transfer in pounds sterling to such bank account in the United Kingdom as the payee of such payment may have previously specified to the payer in writing and shall be made so that cleared funds are received in that account on or before the date such payment becomes payable under this Schedule 7.*

Disputes

26. *In the event that there is a dispute as to the amount of an Incentive Payment (which for this purpose includes any component of an Incentive Payment), the parties shall use their best endeavours to resolve such dispute for 28 days following the date of notification under paragraph 21. If such dispute is not resolved by the end of such period, it shall be resolved in accordance with the Dispute Resolution Rules.*
27. *The amount of any Incentive Payment (or any component thereof) may not be disputed by the Authority or the Franchise Operator unless the Authority or the Franchise Operator, as the case may be, has notified the other within 28 days of notification of the amount of the Incentive Payment (or component) under paragraph 21 or such dispute arises as a result of a fault in any System or failure to record information under paragraphs 16 or 18. For the avoidance of doubt, the Authority shall be entitled to dispute the amount of an Incentive Payment (or component) of which it may have notified the Franchise Operator under paragraph 21 within 28 days of such notification.*
28. *If following resolution of a dispute under the Dispute Resolution Rules or by agreement between the parties, any amounts are required to be repaid or additional amounts paid or if any adjustments are to be made to previous Incentive Payments under paragraphs 16 or 18, such amounts shall become payable on the next day an Incentive Payment becomes payable under this Schedule 7 which falls no less than 4 days after such resolution or the date of the determination of such adjustment or, if there is no such day, 14 days after the date of such resolution or such date of determination.*
29. *Interest shall accrue on any sum due and owing to the Authority at the Interest Rate calculated on a daily basis if and to the extent that payment is not received by the Authority on the date such payment becomes payable under this Schedule 7.*

Miscellaneous

30. *The operation of any bus by the Franchise Operator under the Timetable shall be ignored for the purposes of determining any Incentive Payment, unless that bus is required to be operated in connection with any Closure.*
31. *The Franchise Operator will promptly notify the Authority if it forms an intention to change the Service Code applicable to any particular journey characteristics of any train, alter the journey characteristics of any train to which a particular Service Code is applied or introduce a new Service Code which is applicable to any train or if Schedule 8 to its Track Access Agreement with Network Rail (including,*

without limitation, Appendix I of such Schedule) is amended. Within 60 days of service of any notice under this paragraph 31, the Authority may by notice to the Franchise Operator:

31.1 require that Part 4 of this Schedule 7 be amended to reflect such change or introduction of a Service Code, provided that (subject to paragraphs 31.2 and 31.3) such amendments should be limited to:

31.1.1 adding new services (including new Monitoring Points and weightings) to existing Service Groups; and

31.1.2 amending or deleting existing services (including by adding, amending or deleting Monitoring Points and weightings),

and shall include making consequential amendments to the weightings of other Monitoring Points in the affected Service Group so as to ensure the amendment does not result in any variation in the aggregate value of all the weightings of the Monitoring Points in that Service Group; and/or

31.2 state that such change or introduction has a material impact on the incentive regime established by this Schedule 7 either by itself or when taken together with other similar changes or introductions by the Franchise Operator and require that Part 4 of this Schedule 7 be amended, provided that (subject to paragraph 31.3) such amendments should be limited to:

31.2.1 such matters as are referred to in paragraph 31.1; and/or

31.2.2 an amendment to the benchmark number of minutes late for a Service Group.

31.3 If the Track Access Agreement with Network Rail is amended with the approval of the Regulator, make such changes to this Schedule 7 as the Authority may consider appropriate in consequence of such amendment. Without limitation, such changes may include:

31.3.1 such amendment to the benchmark number of minutes late for a Service Group as the Authority may consider appropriate in consequence of an amendment of the Network Rail performance point and/or the Train Operator performance point for that Service Group specified in Appendix I of Schedule 8 to the Franchise Operator's track access agreement with Network Rail; or

31.3.2 such amendment to the value, in pence, attributed to a minute late per passenger for a Service Group as the Authority may consider appropriate in consequence of any change to the Network Rail payment rate and/or the train operator payment rate for the Franchise Operator in respect of that Service Group as specified in Appendix I of Schedule 8 to the Franchise Operator's Track Access Agreement with Network Rail.

Provided that any changes to the Franchise Operator's track access agreement with Network Rail which amount to a Charge Variation in accordance with Clause 18.1 of the Franchise Agreement shall be dealt with pursuant to Clause 18.1 of this Franchise Agreement.

References in this paragraph 31 to Appendix I of Schedule 8 (or terms specified therein) shall include references to such other provisions of the Franchise Operator's Track Access Agreement with Network Rail which the Authority notifies the Franchise Operator as having (in his reasonable opinion) an equivalent effect to or being intended to fulfil an equivalent function to Appendix I of Schedule 8 of the

Franchise Operator's track access agreement with Network Rail as at immediately after implementation of the 2008 Review.

32. *The following procedure will apply where it is necessary, for the purposes of paragraph 4 of Part 2 of this Schedule 7, to determine in respect of any Reporting Period the number of minutes late responsibility for which is attributed to Network Rail or to the Franchise Operator and/or to determine the busyness factor, in each case under the Franchise Operator's Track Access Agreement with Network Rail:-*

32.1 *the Franchise Operator will promptly and in any event within 17 days of the end of that Reporting Period notify the Authority, in respect of that Reporting Period, of:-*

- (i) *the average train operator lateness value ("ATL"), train operator lateness performance minutes ("TLPM") and "train operator reliability event performance minutes ("TREPM") referred to in Part 2 of this Schedule 7; and*
- (ii) *the busyness factor ("BF") referred to in Part 2 of this Schedule 7.*

calculated under and for the purpose of the Franchise Operator's Track Access Agreement with Network Rail. In the case of each of ATL, TLPM and TREPM the value shown must be based on the number of minutes late which are undisputed ("the Undisputed Minutes") and must exclude (and show separately) the number of minutes late which are subject to dispute ("Disputed Minutes"). Where there are Disputed Minutes, the Franchise Operator will include in the notice a description of each incident giving rise to Disputed Minutes, and the number of Disputed Minutes referable to each incident."

32.2 *Unless otherwise agreed by the Authority, such advice will be accompanied by a copy of the statement supplied by Network Rail to the Franchise Operator under the Franchise Operator's Track Access Agreement with Network Rail after the end of the relevant Reporting Period, identifying the number of minutes late for which Network Rail and the Franchise Operator are respectively attributed responsibility, and the corresponding "TLPM", "TREPM", "ATL" values and "BF" value referred to in paragraph 4 of Part 2. (It is acknowledged that as at immediately after implementation of the 2006 Review, such statement is known as the 'Day 42' statement and is provided by Network Rail under paragraph 11 of Schedule 8 of the Franchise Operator's then current Track Access Agreement with Network Rail. If the nature of the statement or Network Rail's obligation to supply such information is amended, then without limiting paragraph 32.7 below, the Authority shall be entitled to request such other evidence of the attribution of responsibility of minutes late and/or the calculation of average Network Rail lateness and average train operator lateness and/or the calculation of the busyness factor for the purposes of the Franchise Operator's Track Access Agreement with Network Rail as it considers reasonably necessary for the purposes of determining the amount of the Incentive Payments).*

32.3 *The Franchise Operator shall further notify the Authority of any aspects of the Network Rail (i.e. Day 42) statement referred to in paragraph 32.2 which it disputes. Such notice will be given no*

later than 2 days after the date by which the Franchise Operator is required to notify Network Rail of any disputes under the Franchise Operator's Track Access Agreement with Network Rail, and will be accompanied by a copy of any notice given by the Franchise Operator under that Track Access Agreement. Where the dispute concerns the number of minutes late for which either of Network Rail or the Franchise Operator is allocated responsibility under that Track Access Agreement (and the consequential values of "ATL" "TLPM", and "TREPM"), such number of minutes shall be regarded as "Disputed Minutes" for the purposes of this paragraph 32 and the Franchise Operator will provide the detail required under paragraph 32.1 in respect of Disputed Minutes, to the extent it has not already done so.

- 32.4 For the purposes of the notification to be given by the Authority under paragraph 21 of this Part 3, the authority shall be entitled (but not obliged) provisionally to determine and notify any relevant component or adjustment to the Incentive Payment on the basis of the Undisputed Minutes notified in accordance with paragraph 32.1 or (if applicable) the adjusted number of Undisputed Minutes after taking account of any further Disputed Minutes notified by the Franchise Operator under paragraph 32.3. In such a case, the Incentive Payment (or relevant component or adjustment) will be subject to further adjustment by the Authority upon the resolution or determination of the dispute in respect of the relevant Disputed Minutes, notwithstanding paragraph 27 of this Part 3. For the avoidance of doubt, it is acknowledged that any adjustment to the respective values of average Network Rail lateness or average train operator lateness will require an adjustment to the Punctuality Incentive Payment component under paragraph 4 of Part 2 of this Schedule 7.*
- 32.5 The Franchise Operator shall notify the Authority as soon is reasonably practicable of the resolution of any dispute in respect of any Disputed Minutes, and provide such evidence of the resulting attribution as the Authority may require.*
- 32.6 If the dispute in respect of any Disputed Minutes has not been resolved within 3 Reporting Periods after the end of the Reporting Period to which the Disputed Minutes relate, then unless the Authority otherwise agrees, the Authority shall be entitled to determine that responsibility for all the Disputed Minutes shall be allocated to Network Rail. The Authority will not unreasonably withhold such agreement where it is satisfied that the Disputed Minutes relate to a Joint Inquiry (as defined for the purpose of the Franchise Operator's Track Access Agreement with Network Rail as at immediately after implementation of the 2006 Review) which has not yet concluded, or are at that time still subject to the disputes procedure under and for the purpose of the Franchise Operator's Track Access Agreement with Network Rail.*
- 32.7 Subject to paragraph 32.6, it is acknowledged that the provisions of this Schedule 7 (and in particular the calculation of the Punctuality Incentive Payment under paragraph 4 of Part 2) are based on the understanding and agreement that the allocation of responsibility for minutes late, the calculation of the value equivalent to "ATL" "TLPM", and "TREPM", the calculation of the busyness factor, and all compensation or payments associated therewith (however described) are determined as between Network Rail and the Franchise Operator solely on the terms of the*

Franchise Operator's Track Access Agreement with Network Rail as at immediately after the implementation of the 2006 Review. Accordingly, the Franchise Operator agrees that (except where directed to do so by the Regulator) the Franchise Operator will not without the Authority's prior consent:-

- (i) agree any amendment to such Track Access Agreement; or*
- (ii) enter into any other agreement, compromise, settlement or other arrangement with Network Rail*

which would or might affect the relationship described in this paragraph 32.7 between the components of the Incentive Payment and/or the mechanisms for the adjustment of the Incentive Payment, identified in this paragraph 32.7 and such Track Access Agreement;

In any case where the Regulator does so direct or the Authority does so consent, the Authority shall be entitled to make such adjustments to this Schedule 7 as the Authority reasonably considers appropriate in consequence of such amendment, agreement, compromise, settlement or other arrangement.

- 32.8** *Where under and in accordance with this paragraph 32, the Authority is entitled to adjust any Incentive Payments already paid, then paragraph 32 of this Part 3 shall apply.*

Annex A^{110 111}

Part 4 — Service Groups

Part 4(a) — Service Group A – HT01 London to Shoeburyness (Peak)

These values apply in respect of the period from 1st April 2009 until otherwise notified by the Authority.

<i>Services</i>	<i>Monitoring Points</i>	<i>MPW</i>
<i>Passenger Services from Shoeburyness to London</i>	<i>Barking</i>	<i>0.1958</i>
<i>Fenchurch Street in the Peak with Service Code 936.</i>	<i>London Fenchurch Street</i>	<i>0.3042</i>
<i>Passenger Services from London Fenchurch Street</i>	<i>Barking</i>	<i>0.0222</i>
<i>to Shoeburyness in the Peak with Service Code 936.</i>	<i>Grays</i>	<i>0.0943</i>
	<i>Laindon</i>	<i>0.0247</i>
	<i>Ockendon</i>	<i>0.0091</i>
	<i>Pitsea</i>	<i>0.0782</i>
	<i>Shoeburyness</i>	<i>0.0470</i>
	<i>Southend Central</i>	<i>0.1807</i>
	<i>Stanford-le-Hope</i>	<i>0.0314</i>
	<i>Upminster</i>	<i>0.0124</i>

For the purposes of this Part 4 (a), “Peak” means, in relation to any service, a service which is scheduled to arrive at London Fenchurch Street Station between 0700 and 0959 or is scheduled to depart from London Fenchurch Street Station between 1600 and 1859 Monday to Friday (inclusive) excluding Bank Holidays. In this context, "Bank Holiday" means any day (other than a Saturday or Sunday) on which banks in the City of London are not open for business.

<i>TCML</i>	<i>TCML₂</i>	<i>Maximum Lateness</i>	<i>Formation Monitoring Point</i>
<i>23 minutes</i>	<i>15 minutes</i>	<i>60 minutes</i>	<i>London Fenchurch Street</i>

<i>B₂</i>	<i>2.805 minutes</i>
<i>TB₂</i>	<i>1.960 minutes</i>
<i>N₂</i>	<i>58.86</i>
<i>J₂</i>	<i>552</i>
<i>V₂</i>	<i>7.5p</i>

¹¹⁰ Insert Change Text wef 29/03/07

¹¹¹ Date of Change 20/12/2010

Part 4(b) - Service Group B – HT02 London to Shoeburyness (off-peak)

These values apply in respect of the period from 1st April 2006 until 9th December 2006

For the purposes of this Part 4 (b), “Off-Peak” means, in relation to any service, any service which is scheduled to operate other than if it is defined as “Peak” in Part 4 (a) of this Schedule 7.

TCML	TCML₂	Maximum Lateness
45 minutes	30 minutes	120 minutes

RB	0.710 minutes	From 1 April 2006
	0.666 minutes	From 1 April 2007
	0.625 minutes	From 1 April 2008
RB₁	0.547 minutes	
MRE	£ 3,914.82	
MRE₁	£ 4,263.00	
TS8	£ 68.44	
TS8₁	£ 0.00	
TB₁	0.000 minutes	
TB	1.949 minutes	

These values apply in respect of the period from 10th December 2006 until otherwise advised

For the purposes of this Part 4 (b), “Off-Peak” means, in relation to any service, any service which is scheduled to operate other than if it is defined as “Peak” in Part 4 (a) of this Schedule 7.

TCML	TCML₂	Maximum Lateness
45 minutes	30 minutes	120 minutes

RB	0.739 minutes	From 1 April 2006
	0.693 minutes	From 1 April 2007
	0.651 minutes	From 1 April 2008
RB₁	0.570 minutes	

«COPY»

<i>MRE</i>	<i>£ 3,914.82</i>
<i>MRE₁</i>	<i>£ 4,263.00</i>
<i>TS8</i>	<i>£ 68.44</i>
<i>TS8₁</i>	<i>£ 0.00</i>
<i>TB₁</i>	<i>0.000 minutes</i>
<i>TB</i>	<i>2.029 minutes ”</i>

Schedule 8 – Franchise Records (Clauses 15.1 and 15.2)

Part 1 – Financial and Planning Information

- (a) Such accounting records as are required to be kept under section 221 of the Companies Act 1985. Such records shall be prepared on a consistent basis for each consecutive period not exceeding one month.
- (b) Such records shall include an analysis of revenue and costs of commercially identifiable segments of the business of the Franchise Operator both in terms of the activity such as commercial, fleet, operations and general, but also by service group or other suitable analysis of the Franchise Operator's operations.
- (c) Such records shall also include for each period at least the following measures:
 - (i) Revenue analysis by ticket type;
 - (ii) Staff cost analysis by activity and number of employees;
 - (iii) Measures of cost efficiency;
 - (iv) Aged debtor and maintenance stock turnover analyses.
- (d) Such records shall be available no later than one month after the end of each relevant period.
- (e) Such records shall include details of any arrangements or contracts with Affiliates which fall within the terms of Clause 25.5 (including the subject matter of such arrangements, their duration and any associated charges or payment obligations).

Part 2 – Key Assets

For each tangible Primary Franchise Asset or other asset which is the subject of, or operated under, a Key Contract or other contract the rights and liabilities of the Franchise Operator under which have been designated as a Primary Franchise Asset:

- (i) all relevant maintenance schedules;
- (ii) all operating manuals (including any safety related regulations); and
- (iii) all permits, licences, certificates or other documents required to operate it.

Part 3 – Operational Information

The following information (together with reasonable details of the cause of any relevant cancellation, curtailment, diversion or delay) shall be kept, in each case, in such form so that it is available for review by reference to any particular day, week or other period and any line of route or service group. Such information shall include details of whether or not any such cancellation, curtailment, diversion or delay is attributable to a Force Majeure Event within the terms of Clause 5.4.

(a) Cancellations

- (i) Number of services in the Timetable which are Total Cancellations.
- (ii) Number of services in the Timetable which are Cancellations.
- (iii) Number of services in the Timetable which are neither Cancellations nor Total Cancellations.

- (iv) Number of services in the Timetable.
- (v) Any instance of 50 per cent. or more of any particular service or group of services being the subject of a Total Cancellation or Cancellation in any given time period.

(b) Mileage

- (i) Total scheduled Train Mileage under the Timetable.
- (ii) Actual Train Mileage covered in accordance with the Timetable.
- (iii) Any additional Train Mileage covered as a result of diversions or extra services.

(c) Punctuality

- (i) Percentage of Passenger Services provided by the Franchise Operator which are, in relation to the Timetable (as amended and to the extent made known to passengers in accordance with Clause 7.1(c)):

On time

Early

0.01 to 4.59 minutes late

5 to 9.59 minutes late

10 to 19.59 minutes late

20 to 29.59 minutes late

30 to 59.59 minutes late

60 or more minutes late

except that prior to Automatic Trust being available and operational in accordance with Part V of Schedule 8 to the Track Access Agreement specified in Part 2(a) of Schedule 1 on those routes on which the Passenger Services operate, the percentage of Passenger Services provided by the Franchise Operator in relation to the Timetable (as amended and to the extent made known to passengers in accordance with Clause 7.1(c)):

On time

0.01 to 4.59 minutes late

5 to 14.59 minutes late

15 to 29.59 minutes late

30 to 44.59 minutes late

45 or more minutes late

and “Automatic Trust” shall have the meaning given to it in the Track Access Agreement specified in Part 2(a) of Schedule 1.

- (ii) Any instance of 50 per cent. or more of any particular service or group of services being 5 /10 or more minutes late in any given time period.

(d) Connections

Percentage of Connections which are not provided by the Franchise Operator.

For the purposes of this Part 3(d) of Schedule 8, “Connection” means a Connection which is either included in the Passenger Service Requirement (however described therein) or which is otherwise provided by the Franchise Operator and is notified to it by the **Authority** from time to time as constituting a Connection for the purposes of this Part 3(d) of Schedule 8.

(e) Capacity

At each Capacity Monitoring Point:

- (i) Number of seats planned under Train Plan;
- (ii) Type (and number) of each item of rolling stock planned under Train Plan;
- (iii) Number of seats actually provided for period(s) in which capacity is planned to be provided under Train Plan;
- (iv) Type (and number) of rolling stock actually provided for period(s) in which capacity is planned to be provided under Train Plan.

Part 4 – Reporting Accounts

For each Reporting Period (“period”) in each Reporting Year (“year”) during the Franchise Term and for each such Reporting Year, a balance sheet, profit and loss account and cashflow statement in the following formats (or containing the equivalent information):

(a) Balance Sheet

For the period ended 333 (period X)	Year to date				Year Outturn	
	Actual Budget	Budget variance			Budget	Period Forecast
	£m	£m	£m	%	£m	£m
Fixed Assets						
Current Assets						
Stock and work in progress						
Debtors						
Prepayments						
Cash						
VAT						
Current Liabilities						
Trade creditors						
Corporation tax						
Season ticket suspense						
Accruals and deferred income						
Net Current Assets						
Long term borrowings						
Provision for liabilities and charges						
Net Assets						
Net balance with Affiliates						

(b) Profit and Loss Account

For the period ended 2022 (period X)	Period ended 2022				Year to date ended 2022				Year outturn 2022		Projection - next 6 periods	
	Actual		Budget		Actual		Budget		Budget	Period X	Projection	Projection
	Budget		variance		Budget		variance		Forecast		period x-1	period x
	£m	£m	£m	%	£m	£m	£m	%	£m	£m	£m	£m
Income before												
Franchise Payments												
Farebox income												
(note 1)												
Miscellaneous income												
Franchise Payment income												
Incentive Payment income												
Total income												
Operating expenses												
(note 2)												
Franchise Payments												
Incentive Payments												
Profit before leasing												
and access												
Rolling stock leasing												
charges												
Railtrack access charges												
Operating profit/(loss)												
before interest												
Interest												
Received												
Paid												
Profit/(loss) on ordinary												
activities												
Exceptional												

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For the period ended YYYY (period X)	Period ended YYYY				Year to date ended YYYY				Year outturn YYYY		Projection - next 6 periods	
	Actual		Budget		Actual		Budget		Budget	Period X	Projection	Projection
	Budget		variance		Budget		variance		Forecast		period x-1	period x
	£m	£m	£m	%	£m	£m	£m	%	£m	£m	£m	£m
profits/(losses)												
Profit/(loss) before tax												

(b) Profit and Loss Account (continued)

For the period ended XXXX (period X)	Period ended XXXX				Year to date ended XXXX				Year outturn XXXX		Projection - next 6 periods	
	Actual		Budget		Actual		Budget		Budget	Period X	Projection	Projection
	Budget		variance		Budget		variance		Forecast		period x-1	period x
	£m	£m	£m	%	£m	£m	£m	%	£m	£m	£m	£m
Profit and Loss - Backing Schedules Note 1: Farebox income analysis (e.g.)												
Carrier income: First Standard Discounted Seasons - zonal Seasons - other Other Retail commission Total farebox income Note 2: Operating expenses (e.g.) Train Operations Train Maintenance Retailing/commercial Retail commission ATOC General expenses Affiliates Total operating expenses												

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For the period ended YYYY (period X)	Period ended YYYY				Year to date ended YYYY				Year outturn YYYY		Projection - next 6 periods	
	Actual		Budget		Actual		Budget		Budget	Period X	Projection	Projection
	Budget		variance		Budget		variance		Forecast		period x-1	period x
	£m	£m	£m	%	£m	£m	£m	%	£m	£m	£m	£m
Note 3: Affiliates												
Income												
Expenses												
Interest												

(c) Cashflow Statement

For the period ended YYYY (period X)	Period ended YYYY				Year to date ended YYYY				Year outturn YYYY		Projection - next 6 periods	
	Actual		Budget		Actual		Budget		Budget	Period	Projection	Projection
	Budget		variance		Budget		variance		Forecast		period x-1	period x
	£m	£m	£m	%	£m	£m	£m	%	£m	£m	£m	£m
Receipts												
Farebox - direct												
Farebox - RSP												
Retail commission												
Franchise Payment receipts												
Incentive Payment receipts												
Other receipts												
Total receipts												
Payments												
Franchise Payments												
Incentive Payments												
ATOC												
Operations												
Maintenance												
Retailing/commercial												
Retail commission												
General expenses												
Rolling stock leasing charges												
Railtrack access charges												
Total payments												
Cash generated from												

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For the period ended XXXX (period X)	Period ended XXXX				Year to date ended XXXX				Year outturn XXXX		Projection - next 6 periods	
	Actual		Budget		Actual		Budget		Budget	Period	Projection	Projection
	Budget		variance		Budget		variance		Forecast		period x-1	period x
	£m	£m	£m	%	£m	£m	£m	%	£m	£m	£m	£m
operations												

(c) Cashflow Statement (continued)

For the period ended 3333 (period X)	Period ended 3333				Year to date ended 3333				Year outturn 3333		Projection - next 6 periods	
	Actual		Budget		Actual		Budget		Budget	Period Forecast	Projection period x-1	Projection period x
	Budget		variance		Budget		variance					
	£m	£m	£m	%	£m	£m	£m	%	£m	£m	£m	£m
Returns on investment and servicing of finance												
Interest received												
Interest paid												
Dividends paid												
Net cash outflow from returns on investments and servicing of finance												
Taxation paid												
Net investment in fixed assets												
Cash inflow/(outflow) before financing												
Financing												
Finance leases												
Loans												
Other financing												
Net cash inflow/(outflow) from financing												
Increase/(decrease) in cash and cash equivalents												
Net cash flow with Affiliates												

Schedule 9 – Change Assessment Procedures and Accounting (Clauses 6, 9.4, 9.5, 9.6, 9.7, 9.8, 11 and Schedule 5)

Part 1 – Feasibility Study and Implementation Plan

Feasibility Study

- 1 In certain circumstances under this Franchise Agreement, the **Authority** and Franchise Operator are required to or may prepare a Feasibility Study with respect to, inter alia, the likely financial effect on the Franchise Operator of a Change.
- 2 Each such Feasibility Study shall contain:
 - (a) details of the relevant Change and, in the case of a Capacity Change, details of the relevant Forecast Demand that has resulted in the need for the Change;
 - (b) a proposed manner of implementation for the Change and, where the Change could be implemented in more than one manner, any reasonable alternatives (except that, where the Feasibility Study is being prepared by or at the request of the **Authority**, he may specify one or more manners of implementation);
 - (c) a statement of the steps which it is reasonably estimated will be necessary to take to implement the proposed Change for each proposed manner of implementation (including a proposed Timetable and Train Plan and details of any amendments that will be required to the terms of any Access Agreement, Rolling Stock Lease or other relevant agreement to which the Franchise Operator is party and any consents that may be required);
 - (d) a reasonable estimate of the time within which the Change can be implemented for each of such alternatives (if any) which, for the avoidance of doubt, may be, so far as practicable, at a time falling between two Passenger Change Dates;
 - (e) a reasonable estimate of the Net Loss or Net Gain to be incurred or made by the Franchise Operator as a result of the proposed Change (together with all relevant supporting information and calculations) except that in the case of a Capacity Change not involving an increase or reduction in capacity above the Initial Capacity Limit, the Franchise Operator need not include any such estimate; and
 - (f) any other matter which the person preparing the Feasibility Study may consider appropriate to include or which, if prepared by the Franchise Operator, the **Authority** may reasonably request should be so included.
- 3 Where the Feasibility Study has been prepared by the Franchise Operator and whenever the **Authority** may so require, it shall prepare and deliver or procure the preparation and delivery of such further reports, documents or information relating to the Feasibility Study as the **Authority** may reasonably consider to be required in order to enable him properly to consider it. The Franchise Operator shall further, whenever the **Authority** may so require, grant access to, and, where requested, supply copies of, such books, records and other material kept by or on behalf of the Franchise Operator or otherwise as the **Authority** or his representatives may reasonably require in order to enable them to prepare a Feasibility Study to be prepared by the **Authority** and to check, verify or audit a Feasibility Study prepared by the Franchise Operator.

Implementation Plan

- 4 In certain circumstances under the Franchise Agreement and for certain Changes, the **Authority** and Franchise Operator are required to endeavour to agree or to determine an Implementation Plan. Each such Implementation Plan shall specify:
- (a) the relevant Change;
 - (b) the time within which it is reasonably considered the Franchise Operator should be obliged to implement the Change having regard to the time within which the Franchise Operator may procure:
 - (i) the consent or agreement of any person whose consent or agreement is necessary to give effect to the Change; and
 - (ii) the completion of such other steps as may be required for the purposes of implementing the PSR Change (including the satisfaction of any safety related requirements, the securing of any additional employees and consultation with such persons and bodies as may be appropriate);
 - (c) in the case of a Capacity Change, the manner of implementation of the Change, being, except to the extent the parties may otherwise agree, the manner which it is reasonably considered will ensure that the Franchise Operator will not exceed the Load Factor Specifications in providing the Passenger Services for the following eighteen months;
 - (d) except in the case of a Capacity Change involving an increase or reduction in capacity below the Initial Capacity Limit, the Net Loss or Net Gain which it is reasonably considered will result from the Change, being (except to the extent that the **Authority** may specify the manner of implementation of the Change under paragraph 2(b)) the lowest aggregate Net Loss that can be incurred, or the highest aggregate Net Gain that can be made, in respect of the Change taking into account any alternative methods of implementing the Change; and
 - (e) the consequential adjustment to be made to the Franchise Payments in accordance with Part 2 of this Schedule 9.
- 5 In the event that there is a dispute over any aspect of the Implementation Plan, the following shall apply:
- (a) subject to Clause 6.6(b), if the Change is a Capacity Change, any dispute regarding the relevant Forecast Demand, the Change or the manner of implementation of the Change may be resolved in accordance with the Dispute Resolution Rules;
 - (b) any dispute regarding the Net Loss or Net Gain, as the case may be, resulting from the Change or any dispute regarding any adjustments to the Franchise Payments following the Change may be resolved in accordance with the Dispute Resolution Rules; and
 - (c) any dispute regarding the time within which the Change is to be implemented may be resolved in accordance with the Dispute Resolution Rules.

Part 2 – Net Loss and Net Gain

Net Loss and Net Gain

- 1 Subject as below and to Clause 6.6(c) and 9.8, the Net Loss or Net Gain, as the case may be, shall be measured in accordance with the Accounting Rules by reference to the Profit or Loss of the Franchise Operator in each Reporting Period for the period between the date of implementation of the relevant Variation and the end of the Franchise Term or, if earlier, the date such Variation will cease to have effect or after which no further adjustment may be made in accordance with this Franchise Agreement.
- 2 The cost of determining the Net Loss or Net Gain (and, where appropriate, the Implementation Plan) shall be ignored in calculating the Net Loss or Net Gain except:
 - (a) the reasonable agreed direct costs of the Franchise Operator (exclusive of any Value Added Tax for which credit is available under sections 25 and 26 of the Value Added Tax Act 1994) in determining the Net Loss to be caused to it as a result of participation in a new Local Authority Scheme under Clause 9.4 or 9.5 or the introduction of a new Discount Fare Scheme or amendment to, or cessation of approval of, an existing Discount Fare Scheme under Clause 9.6 may be included in the calculation of the relevant Net Loss; and
 - (b) to the extent a Capacity Change involves a change in capacity above the Initial Capacity Limit or the Franchise Operator is requested to prepare a Feasibility Study under Clause 11.1(c), the reasonable agreed direct costs of the Franchise Operator (exclusive of any Value Added Tax for which credit is available under sections 25 and 26 of the Value Added Tax Act 1994) in preparing the relevant Feasibility Study may be included in the calculation of the relevant Net Loss or Net Gain.

Adjustment to Franchise Payments

- 3 Subject to Clauses 6.6 and 11.3, the Franchise Payments payable following the implementation of a Variation shall be adjusted by the amount of the Net Loss or Net Gain such that any Net Loss results in an overall increase in the Franchise Payments payable by the **Authority** and/or overall reduction in the Franchise Payments payable by the Franchise Operator by the amount of such Net Loss and vice versa for any Net Gain.
- 4 The Accounting Rules provide for determination of the Net Loss and Net Gain in two elements and any consequential adjustment to the Franchise Payments or any part thereof will accordingly be determined in two parts:
 - (a) one-off element or elements, reflecting the estimated one-off effects of the Variation and estimated delays in the full impact of the Variation; and
 - (b) a recurring element, which will be a fixed amount for the balance of the Franchise Period, unless the Franchise Operator and the **Authority** have explicitly agreed to apply an inflator index to Annual Franchise Payments, when the continuing element of the adjustment will be brought within the terms of such agreement.
- 5 Unless the parties otherwise agree:
 - (a) any one-off element will result in an adjustment to the Franchise Payment payable in the Reporting Period in which such element occurs or is deemed to occur; and

- (b) the recurring element of any Net Gain or Net Loss shall be deemed to be made or incurred evenly throughout the balance of the Franchise Term and the Franchise Payments (or Annual Franchise Payments) shall be adjusted accordingly.

Part 3 – Accounting Rules

1 Objectives

- 1.1 The Accounting Rules form the basis on which the Net Loss or Net Gain of the Franchise Operator as a result of a Variation will be assessed.
- 1.2 It is recognised that, as with all prospective financial information, it is not possible to measure wholly accurately the actual effect of any Variation on the Profit or Loss of the Franchise Operator. In particular the measurement of the precise effect of any Variation on specified costs or revenues may be an uncertain exercise. Accordingly these Accounting Rules are designed not to achieve precision but to provide an agreed basis for the assessment of the effect of a Variation. They are accordingly to be applied in all circumstances except to the extent that the parties otherwise agree.

2 General Rules

- 2.1 The prospective effect of any Variation on the Profit or Loss of the Franchise Operator will comprise (and be determined in) two elements:
 - (a) a recurring element representing the expected overall annual effect of the Variation once its effects have stabilised; and
 - (b) a one-off element representing any one-off effects of the Variation and taking into account any delays in the full impact of the Variation.
- 2.2 The recurring element of the effect of the Variation will be based on certain estimated revenues and costs of the Franchise Operator for a nominal period of twelve months selected by the Franchise Operator which starts no later than the start of its next Accounting Year. Such estimated revenues and costs will be determined for such period on the basis that firstly the Variation has not been implemented and secondly the Variation has been implemented and the impact of the Variation has stabilised so that all one-off effects have occurred and there are no further delays in the impact of any other effects. The estimates are in each case to be reconciled, so far as possible, to the latest available audited accounts of the Franchise Operator and any subsequent unaudited accounts delivered to the **Authority** under Clause 15.2.
- 2.3 The one-off element of the effect of the Variation will be determined by reference to the one-off effects of the Variation and any delays in the full impact of the Variation on certain revenues and costs of the Franchise Operator, so far as it is reasonably considered that they will occur as a result of the Variation. Except to the extent expressly provided for in these Accounting Rules, such effects shall be estimated to occur at the time at which it is reasonably considered they will occur.

3 Detailed Rules: Revenues

- 3.1 The only revenues of the Franchise Operator which may be taken into account in determining the effect of the Variation are the revenues of the Franchise Operator arising from the sale of Fares, the provision of any service to another train operator under any

Access Agreement, the subleasing, hiring or lending of rolling stock to another train operator, the lending, hiring, seconding or contracting out of any employees (including drivers, trainmen and conductors) to any other train operator and any commissions earned by the Franchise Operator from the sale of fares on behalf of any other passenger train operator. Franchise Payments, Incentive Payments and, for the avoidance of doubt, payments under the Track Access Agreement relating to the performance of Railtrack or the Franchise Operator shall not be taken into account.

- 3.2 Estimates of revenue change should take into account the overall effect of the Variation on the Passenger Services, including the effect, if any, on feeder services operated by the Franchise Operator.
- 3.3 Where the Variation involves the withdrawal of a service, the principal estimate of the effect on revenue should be obtained from CAPRI or any successor system. If it is expected that significant numbers of passengers using the service to be withdrawn will use other services operated by the Franchise Operator, the effect should be estimated using the Passenger Demand Forecasting Handbook, MOIRA or the best available alternative or alternatives (including the results of such independent surveys or assessments (whether old or new) as either the **Authority** or the Franchise Operator may select and, where relevant, any passenger counts carried out under Clause 6 of this Franchise Agreement).
- 3.4 Where the Variation involves the introduction of a service, the estimate of the effect on revenue should be estimated using the Passenger Demand Forecasting Handbook, MOIRA or the best available alternative or alternatives (including the results of such independent surveys or assessments (whether old or new) as either the **Authority** or the Franchise Operator may select and, where relevant, any passenger counts carried out under Clause 6 of this Franchise Agreement).
- 3.5 Allowance should, where appropriate, be made for an expected time lag between a service being introduced and full use of the service by passengers. It is recognised however that the length of the time lag is of course to some extent dependent on the operator's promotion of the service and that there is considerable difficulty in forecasting revenue changes accurately. Accordingly, except to the extent that the Franchise Operator or the **Authority** can demonstrate that the build-up of revenue is likely to differ significantly:
 - (a) any revenue change expected from a transfer of passengers from other operators will be assumed to have an immediate effect; and
 - (b) where new passengers are to be attracted to the service, it will be assumed that full revenue will be achieved after 12 months with half revenue for the first 12 months.
- 3.6 The effect of a change in the Price of any Fare which may be required as part of the Variation shall be determined using the Passenger Demand Forecasting Handbook or the best available alternative or alternatives (including such independent surveys or assessments (whether old or new) as the **Authority** or Franchise Operator may select).

4 Detailed Rules: Costs

- 4.1 The costs to be taken into account include all those which may be directly affected by the Variation, whether or not they are directly attributable to the service which is the subject of a Variation provided that they shall exclude any costs not attributable to the items of revenue referred to in paragraph 3.1. Franchise Payments and Incentive Payments and, for the avoidance of doubt, payments under the Track Access Agreement relating to the performance of Railtrack or the Franchise Operator shall not be taken into account.

- 4.2 Where changes in costs can only be estimated using apportionment of the costs in question, the apportionment should be based on the average cost per unit of measurement.
- 4.3 In respect of costs for rolling stock, a separate calculation should be carried out so far as possible for each rolling stock type rather than using averages involving two or more rolling stock types.
- 4.4 Employment costs for drivers, trainmen and conductors, comprising all employment-related costs including overtime and national insurance, should be dealt with separately for each category. The unit of measurement for apportionment purposes should be individual train crew diagrams, having regard to the variable lengths of such diagrams.
- 4.5 Changes in diesel fuel cost should be based on total variable diesel fuel costs. The unit of measurement for apportionment purposes will be total vehicle miles for diesel units. Costs of power for electric units should be the variable electronic traction charge payable under the relevant Track Access Agreement in respect of those units.
- 4.6 Changes in track access charges should be any variations to the charges payable under the relevant Track Access Agreement, specific to the service in question. No apportionment should be made of any fixed charges.
- 4.7 Changes in maintenance and fleet cleaning costs should be based on total direct costs excluding overheads. The unit of apportionment will be vehicle miles. Separate calculation by rolling stock type by depot will be required. Where maintenance is carried out by or on behalf of a rolling stock company, the cost change will comprise the variable charges payable under the relevant Rolling Stock Lease, apportioned on the same basis.
- 4.8 Changes in Rolling Stock Lease charges should be variations to the charges payable under the relevant Rolling Stock Leases or any increase or reduction in costs where the Variation requires an increase or permits a reduction in the amount of rolling stock leased by the Franchise Operator. No apportionment should be made of any fixed charges.
- 4.9 Where the Franchise Operator is the Facility Owner of a station, changes in relevant station costs will comprise those specific costs required or saved as a result of the Variation net of any consequential adjustment to access charges payable by other operators. Where the Franchise Operator is not such a Facility Owner, the variation in station costs will comprise the variations in access charges under the Access Agreement for that station.
- 4.10 Redundancy costs may only be taken into account if the Variation will involve a reduction of more than ten per cent. of the aggregate Train Mileage operated by the Franchise Operator in any one year.

5 Transactions with Affiliates

In computing the Net Gain or Net Loss of the Franchise Operator and where the Franchise Operator has entered into arrangements with Affiliates other than on arm's length terms, the **Authority** shall be entitled to require that such Net Loss or Net Gain be determined as if the Franchise Operator had not so entered into any such arrangements and to require reasonable arm's length terms to be substituted in place of such terms on which the Franchise Operator may have entered into any relevant contract or arrangement with any Affiliate.

Schedule 10 – Financial Covenants (Clause 14.2)

Part 1 – Minimum Capital

- 1 The Franchisee will subscribe for, and the Franchise Operator will issue and allot, ordinary shares in the Franchise Operator before the Franchise Commencement Date. The aggregate of the nominal value of such shares and any premium paid on issue shall be an amount not less than £7,200,000. Such amount shall be paid in cash by the Franchisee to the Franchise Operator as part of the subscription of such shares before the Franchise Commencement Date.
- 2 The terms of such shares and such subscription shall be such that the Franchise Operator may call upon the Franchisee to pay, in aggregate, at any time after such subscription, an additional amount of £800,000 in cash and immediately in respect of such shares. Such amount may represent the nominal value of such shares or premium. The terms of such shares and such subscription shall be subject to the prior approval of the **Authority**.
- 3 The Franchisee shall provide to the **Authority** before the Franchise Commencement Date a guarantee that it will comply with its obligations under Clause 14.2 of this Franchise Agreement, duly executed by the relevant Guarantor. Such guarantee shall be in the form of the document in the agreed terms and marked “0”.

Part 2 – Obligations

- 1 Except to the extent the **Authority** may otherwise agree from time to time, the Franchise Operator shall not (and, in relation to paragraph (vi) below, the Franchisee shall not, and shall procure that the Franchise Operator shall not):
 - (i) incur any liability or financial indebtedness except in the ordinary course of providing and operating the Franchise Services;
 - (ii) make any loan or grant any credit, or have or permit to subsist any loan or any credit, to any person (other than as permitted under paragraph (v) below or to a director or employee in the ordinary course of its business);
 - (iii) create or permit to subsist any Security Interest over any of its assets and property or give any guarantee or indemnity to or for the benefit of any person or otherwise assume liability or become obliged (actually or contingently) in respect of any obligation of any other person, in each case other than in the ordinary course of the business of providing and operating the Franchise Services;
 - (iv) create or permit to subsist any right of set off or other equivalent right or any other circumstance which may, in each case, result in all or part of any uncalled element of the Minimum Capital not being available, when called, to the Franchise Operator for use in the business of providing and operating the Franchise Services;
 - (v) create or acquire any subsidiary or make or have any investment in any other entity, except for the deposit of cash with a bank authorised under Part I of the Banking Act 1987;
 - (vi) purchase, redeem or cancel any of the Minimum Capital or alter any of the terms or rights relating to the power of, or the terms on which, the Franchise Operator may call any uncalled element of the Minimum Capital.

- 2 Except to the extent the **Authority** may otherwise agree from time to time, the Franchise Operator shall not incur any liability or financial indebtedness in connection with the Performance Bond, create or permit to subsist any Security Interest over any of its assets and property in connection with the Performance Bond or give any guarantee or indemnity to or for the benefit of any person or otherwise assume liability or become obliged (actually or contingently) in respect of any obligation of any other person in connection with the Performance Bond. Nothing in this Part 2 of Schedule 10 shall prevent the Franchise Operator depositing cash with, making a loan to, or having a deposit of cash or loan with any persons at any time, to the extent that the aggregate amount of any such cash and any such loan is an amount equal to the amount of the distribution which the Franchise Operator could make at that time in accordance with the Companies Act 1985 and the provisions of Clause 25.5 of this Franchise Agreement shall not apply to any such deposit or loan.
- 3 The Franchise Operator shall, to the extent so requested by the **Authority** and when so requested by him, require, and exercise such rights as it may have to require, the Franchisee to pay, in cash, to the Franchise Operator such moneys as may be unpaid on the Minimum Capital at such time. The Franchisee shall comply with any such requirement and shall pay the relevant moneys in cash immediately upon such requirement being notified to it.
- 4 For the purpose of this Part 2 of Schedule 10, “Minimum Capital” shall mean the shares in the Franchise Operator referred to in paragraphs 1 and 2 of Part 1 of this Schedule 10.
- 5 The Franchise Operator shall maintain the continuing validity and effectiveness of the Guarantee.

Schedule 11 – Franchise Assets and Key Contracts

Part 1 – Primary Franchise Assets (Clause 32.2(a))

- 1 The rights and liabilities of the Franchise Operator under the Universal Licence Agreement between the Board and the Franchise Operator dated 27 October 1995.
- 2 The rights and liabilities of the Franchise Operator under the Sub-licence Deed between the Board and the Franchise Operator dated 27 October 1995.
- 3 The rights and liabilities of the Franchise Operator under the Master Software Licence between the Board and the Franchise Operator dated 27 October 1995.
- 4 The rights and liabilities of the Franchise Operator under the Computer Services Agreement between the Board and the Franchise Operator dated 27 October 1995.

[...] ¹¹²

- 5 ¹¹³*Matterson Jacks – Serial number B713323-BR62748/1*

B713321-BR62748/2

B713322-BR62748/3

B713320-BR62748/4

- 6 *Matterson Jacks Console Trolley BR62749*

- 7 *Hiforce 20T Jack – Serial number JAH 620/AA7423*

- 8 *Hiforce 20T Jack – Serial number JAH 620/AA4427*

- 9 *Tangye 30T Jack – Serial number PS 1230/5253*

- 10 *Tangye 30T Jack – Serial number PS 1230/5254*

- 11 *Tangye 30T Jack – Serial number PS 630/15225*

- 12 *Tangye 30T Jack – Serial number PS 630/15336*

- 13 *Tangye 40T Jack – Serial number PS 1840/2450*

- 14 *Tangye 40T Jack – Serial number PS 1840/2451*

- 15 ¹¹⁴*All wide-aisle gates installed by or on behalf of the Franchise Operator in accordance with paragraph 5A of the Franchise Plan*

Part 2 – Specified Franchise Assets (Clause 32.8)

There are no Specified Franchise Assets.

¹¹² Date of Deletion of Text- 13 August 1997

¹¹³ New paragraphs 5 – 14 inserted wef 13th August 1997.

¹¹⁴ Date of Change 20/12/2010

Part 3 – Key Contracts (Clause 27)

The following contracts shall be Key Contracts:

- (1) Any Access Agreement to which the Franchise Operator may be a party other than in its capacity as Facility Owner.
- (2) The Property Leases to be entered into pursuant to Clause 2.2(c) of this Franchise Agreement.
- (3) The Rolling Stock Leases listed in Part 5 of Schedule 1.
- (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 Franchise Operator in the provision of the Passenger Services.
- (5) Any other Property Lease with a Train Operator.
- (6) 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 **Authority** is required to such subcontracting or delegation under Clause 28).
- (7) Any contract or arrangement for the leasing, subleasing, hiring or licensing by another Train Operator to the Franchise Operator of rolling stock used by the Franchise Operator in the provision of the Passenger Services.
- (8) Any contract or arrangement with a Train Operator (other than an Access Agreement) for the provision to the Franchise Operator 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.
- (9) 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.
- (10) Agreement dated 30 September 1994 comprising terms and conditions for the provision of business telecommunications services between BR Telecommunications Ltd and the Franchise Operator (as varied by deed on 31 March 1995).
- (11) Agreement dated 30 September 1994 relating to retail telecommunications maintenance between BR Telecommunications Ltd and the Franchise Operator (as varied by deed on 31 March 1995).
- (12) ¹¹⁵***Agreement dated 14 August 1995 relating to Ilford Level 5 wheel reprofiling between Ilford Rail Maintenance Limited and the Franchise Operator.***
- (13) Depot maintenance agreement dated 20 October 1995 between the Board for Anglia ISU and the Franchise Operator.
- (14) Spare part supply contract dated 9 August 1995 between the Board for Railpart.

¹¹⁵ Replacement text inserted wef 4th September 2003.

- (15) Computer services agreement dated 8 December 1995 between Railtrack and the Franchise Operator.
- (16) Railtrack software licence dated 8 December 1995 between Railtrack and the Franchise Operator.
- (17) ¹¹⁶*The contract for the provision of rail journey information systems between LTS Rail Ltd and International Computers Ltd (ICL).*
- (18) ¹¹⁷*Master Software Licence between the Board and the Franchise Operator dated 18 December 1994.*
- (19) *Sub-licence Deed relating to third party software between the Board and the Franchise Operator dated 18 December 1994.*
- (20) *Universal Licence Agreement between the Board and the Franchise Operator dated 18 December 1994.*
- (21) *Agreement relating to the provision of computer services between Railtrack and the Franchise Operator dated 18 December 1994.*
- (22) ¹¹⁸*Finance Lease Master Agreement dated 11 July 2011 between ING Lease (UK) Limited and c2c Rail Limited for the hire of Ticket Vending Machines*

Part 4 – Notifications (clause 27.4)

- (1) ¹¹⁹*Any agreement, contract, licence or other arrangement (whether in written, oral or other form) involving the supply of spares.*
- (2) ¹²⁰*Any agreement for the provision of a Rail Journey Information Service.*
- (3) ¹²¹*Any agreement, contract, licence or other arrangement (whether in written, oral or other form) involving the provision of maintenance services in respect of rolling stock operated by the Franchise Operator other than any Access Agreement identified in Paragraph 1 of Schedule 11 Part 3 of the Franchise Agreement or any Rolling Stock Lease identified in Paragraph 3 of Schedule 11 of the Franchise Agreement.*
- (4) ¹²²*Any agreement for the facilities management of information technology systems.*
- (5) ¹²³*Any agreement including or for the provision of Control Point Accommodation in respect of the operation /delivery of any Passenger Services as specified in the Franchise Agreement.*

¹¹⁶ New paragraph 17 inserted wef 10th July 2003

¹¹⁷ New paragraphs 18 – 21 inserted wef 19th October 1998

¹¹⁸ Date of Change 11/07/2011

¹¹⁹ New paragraph inserted wef 22nd December 1997

¹²⁰ New paragraph inserted wef 3rd June 2003

¹²¹ New paragraph inserted wef 22nd December 1997

¹²² New paragraph inserted wef 29th October 1998

¹²³ New paragraph inserted wef 23 November 1998

- (6) ¹²⁴Any agreement, contract, licence or other arrangement (whether in written, oral or other form) involving the use by the Franchise Operator of, or the utilisation for the benefit of the Franchise Operator of, or any arrangement for the supply of support services for, software designed or used for the processing and analysis of TRUST data, including (without limitation) the software known as 'the Aves Suite.'

Appendix

1 The parties agree that for the purpose of this Franchise Agreement, as at the date of expiry of the Franchise Term, the Authority shall ensure that any relevant transferee under a Transfer Scheme pays to the Franchise Operator an amount in respect of the assets referred to in paragraph 15 of Part 1 of this Schedule 11 equal to their book value, calculated in accordance with paragraph 2.

2. The book value of each wide-aisle gate referred to in paragraph 1 shall be the average capital cost of all such gates (provided that such average capital cost shall not exceed¹²⁵) less an amount for depreciation in respect of each Reporting Period (such depreciation to be calculated on an 8 year straight line basis) from the earlier of (i) the date on which the obligation in paragraph 5A of the Franchise Plan is fulfilled or (ii) 31 October 2011, to the expiry of the Franchise Term.

¹²⁴ New paragraph inserted wef 22nd December 1997

¹²⁵ 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 12 – Handover Packages (Clause 25.2)

(a) **Key Personnel:** ¹²⁶

A list of key personnel to include all directors (statutory or otherwise) and all managers with responsibility for a department/function within the business. This must include Operations, Commercial, Personnel and Public Affairs departments (or in each case their nearest equivalents). This list must include the name; address; home, office and mobile telephone numbers; and a brief description of the person's role and responsibilities in the business.

(b) **Property:**

A list of all property owned leased, operated or occupied by the Franchise Operator which shall include the address, telephone number and contact telephone number of each property. Where applicable, the list will also include the name, address and telephone number of the lessor and/or the party which has granted authority to use or occupy the property, and any relevant reference numbers applicable to that lease or occupation.

(c) **Contracts:**

A printed or electronic list (in a format acceptable to the Authority) of all contracts (sales, purchase or otherwise including leases and licences) between the Franchise Operator and any other party showing the name, address and telephone number of the counterparty; the contract reference number of the Franchise Operator and the counterparty (if any); contract price/value; term and expiry date. This requirement applies to all contracts unless otherwise agreed by the Authority.

(d) **Systems:**

A list of the electronic systems in use by the Franchise Operator together with the name, office address and telephone number of the manager¹²⁷ responsible for administration of each system.

(e) **Daily Operations:**

A printed or electronic list (in a format acceptable to the Authority) of all assets owned or operated by the Franchise Operator which are essential to the effective operation of the business.

(f) **Insurance:**

¹²⁸*Either (1) a list of the names, addresses and telephone numbers of all insurers providing insurance to the Franchise Operator, together with the relevant policy numbers and other references for each policy of insurance; or, where a guarantee from the Franchise Operator's insurance broker has been provided pursuant to clause 25.2(d)(iv), (2) the name, address and telephone number of that insurance broker.*

¹²⁶ Date of change 13 Aug 1999

¹²⁷ Insertion of the word 'manager' w.e.f. 3rd April 2003.

¹²⁸ Replacement text inserted w.e.f. 27th August 2003.

Schedule 13 – Specified Personnel (Clause 14.5)

Name	Duties
[.....]	[.....]
[...]	[...] ¹²⁹
[.....]	[.....] ¹³⁰

This Schedule has been intentionally left blank

¹²⁹ Date of Deletion of Text – 24/11/98
¹³⁰ Date of Deletion of Text and Change – 4 April 1997

Schedule 14 - New Rolling Stock

Part 1 – New Rolling Stock Specification

- 1** Each Rolling Stock Unit shall:
 - (a) be an electric multiple unit comprised of four rolling stock vehicles;
 - (b) be comprised of rolling stock vehicles no longer than 20 metres in length;
 - (c) be electrically powered and designed for dual voltage operation being capable of operating using 25kv ac and of being converted to allow direct pick up of 750v dc power. For the avoidance of doubt, through power cables, including intermediate and end power jumpers, should be fitted. Shoe gear, shoe beams and associated equipment should be capable of fitting at a later date if required;
 - (d) be capable of a top speed of 160 km/h if operated on suitable track with a suitable power supply;
 - (e) be constructed using best current practice to facilitate access by the elderly and the disabled, including specific space for wheelchairs;
 - (f) be equipped with a 3 plus 2 seating in accordance with the OPRAF guidance on seating pitch;
 - (g) be equipped with a toilet with a disabled facility;
 - (h) have a bodyshell design and construction which complies with Railway Group Standards;
 - (i) have the benefit of a current safety case to operate on LTS's routes;
 - (j) be capable of carrying bicycles; and
 - (k) have sliding doors on one third and two third positions.
- 2** If the Franchise Operator can procure the following at not greater than the Agreed Cost, each Rolling Stock Unit shall:
 - (a) [.....] ¹³¹
 - (b) incorporate air conditioning.

¹³¹ Date of Deletion of Text 25 April 1997 – New Rolling Stock will not be fitted with through gangways.

Part 2 – Agreed Cost

The Agreed Cost of acquiring the New Rolling Stock shall be calculated as follows for each Franchise Year from 1 April 1999:

$$AC = 44 \times RSP \times RPI$$

RSP means £485,000 per four railway vehicle Rolling Stock Unit;

RPI means the quotient of the Retail Prices Index for the 1 June of the relevant Franchise Year divided by the Retail Prices Index for 1 June 1996.

New Schedule 17 of the Franchise Agreement^{132 133}

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.

¹³² Date of Change 20/12/2010

¹³³ 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.

Derogations

^a ~~By virtue of a derogation the Secretary of State has granted the Franchise Operator the following: a derogation to enable c2c to operate a revised timetable on Thursday 24th December 2009 with the last service departing Fenchurch Street between 2135 and 2200 and the final service from Shoeburyness departing 2020.~~

~~Start Date 24/12/2009 End Date 24/12/2009~~

^b ~~By virtue of a derogation the Authority has granted the Franchise Operator the following: A derogation against Clause 5.1(a) giving c2c a specific derogation from requirements of Route D of the PSR's regarding the service between Tilbury Town and Tilbury Riverside.~~

~~Start Date 1.12.2005 End Date 31.12.2006~~

^e ~~By virtue of a derogation, the Secretary of State for Transport has granted the Franchise Operator the following; for c2c to operate a Saturday service (SO) as specified in Part 1 of Schedule 3 of the Franchise Agreement on January 2 2009.~~

~~Start Date 02/01/2009 End Date 02/01/2009~~

^d ~~By virtue of a derogation the Secretary of State for Transport has granted the Franchise Operator the following: A revised Train Plan for the 24th December~~

~~Start Date: 24/12/2010 ————— End Date: 24/12/2010~~

^e ~~By virtue of a derogation, the Secretary of State for Transport has granted the Franchise Operator the following: A derogation against 5.3(a) of Part of the Franchise Agreement pertaining to notification of timetable changes.~~

~~Start Date 19.12.06 End Date 14.01.07~~

^f ~~By virtue of a derogation, the Secretary of State for Transport has granted the Franchise Operator the following: An extension to the derogation against 5.3(a) of Part of the Franchise Agreement pertaining to timetable changes.~~

~~Start Date 14.1.07 End Date 18.05.07~~

^g ~~By virtue of a derogation the Secretary of State has granted the Franchise Operator the following; A one week extension for the Fares Setting Round for January 2011(NFM 08) to provide the Secretary of state with written confirmation from the Statutory Director that the Franchisee has complied with it's obligations under Schedule 5.~~

~~Start date: 12/11/10 ————— End date: 19/11/10~~

^h ~~By virtue of a derogation, the Secretary of State for Transport has granted the Franchise Operator the following: The extent necessary to implement the Zonal Prices and for compliance with the Through Ticketing agreement with TfL where TfL sets the fare on an inter available route. This refers to Clauses 7 & 8 of Part 2 of Schedule 5.~~

Fare Type & From	To	Jan 06 Price	Zonal 07 Price	% Change
Adult SDS London	Rainham	420	480	14.3%
Child SDS London	Rainham	210	240	14.3%
Adult SDS London	Limehouse	180	210	16.7%
Child SDS London	Limehouse	90	105	16.7%
Adult SDS Rainham	London	420	480	14.3%

Child SDS Rainham	London	210	240	14.3%
Adult SDR London	Rainham	790	920	16.5%
Adult SDR Rainham	London	790	920	16.5%
Child SDR Rainham	London	395	460	16.5%

Fare Type & From	To	Jan-06	Jan-07	% Change
Adult SDS London	Barking	300	400	33.3%
Child SDS London	Barking	150	200	33.3%
Adult SDS Barking	London	300	400	33.3%
Child SDS Barking	London	150	200	33.3%
Adult SDR London	Barking	420	480	14.3%
Child SDR London	Barking	210	240	14.3%
Adult SDR Barking	London	180	210	16.7%
Child SDR Barking	London	90	105	16.7%

Start Date 2.1.07 End Date 1.1.08

ⁱ By virtue of a derogation the Secretary of State has granted the Franchise Operator the following: due to the following this derogation allows c2c to exceed the individual price cap of RPI + 1 on the flows below. With the price of other fares being held, decreased or off set against unusable headroom under the 2010 flat cap fares regulation charges, the aggregate fares basket limit will not be breached.

	SDS	SDR
CURRENT FARE	£4.00	£8.00
January 2010 Fare	34.50	£9.00

Start Date 2/1/2010 End Date 31/12/2010

ⁱ By virtue of a derogation the Authority has granted the Franchise Operator the following: For changes that are needed to accommodate an increase in TfL's all zones weekly bus pass, there pricing strategy for zone 1 and to bring child Travelcard fares into line with other child fares, at 50% the adult rate. The proposed increases breach regulation of individual fares within fares basket set out in schedule 5. The Department is content to grant a derogation from Clause 8 of Part 2 in Schedule 5, this will only apply on specific increases in the price of Travelcards shown in the table below. For the avoidance of doubt each operator must continue to meet the overall RPI + 1% limit on the aggregate increase in each Fare Basket, inclusive of these increases in Travelcard prices.

Zonal combination and type	Current	Jan-2006	Increase
Zone 1 only Period 7 Day Travelcard—adult	£18.50	£22.20	20.0%
Zone 2,3,4,5 or 6 Period 7 Day Travelcard adult	£11.20	£14.00	25.0%
Zone 1 only period 7 Day Travelcard child	£7.30	£11.10	52.1%
Zone 2,3,4,5 or 6 Period 7 Day Travelcard adult	£4.90	£7.00	42.9%
Zone 12 Period 7 Day Travelcard child	£8.60	£11.10	29.1%
Zone 123 Period 7 Day Tarvelcard—child	£11.50	£13.00	13.0%
Zone 1234 Period 7 Day Tarvelcard—child	£14.20	£15.80	11.3%
Zone 12345 Period 7 Day Tarvelcard—child	£15.70	£18.90	20.4%
Zone 123456 Period 7 Day Tarvelcard—child	£17.20	£20.50	19.2%

Zone 4-6 Adult Single (Upminster — Barking)	£2.10	£3.00	42.9%
Zone 4-6 Adult Return (Upminster — Barking)	£4.20	£6.00	42.9%
Zone 4-6 Child Single (Upminster — Barking)	£0.80	£1.50	87.5%
Zone 4-6 Child Return (Upminster — Barking)	£1.60	£3.00	87.5%

~~Start Date 31 December 2005 End Date 31 December 2006~~

^k ~~By virtue of a derogation the Secretary of State has granted the Franchise Operator the following: a derogation against Schedule 7, part 2, to provide relief to any TCIP penalties incurred from the running of amended services while c2c trials the December timetable on 2 August 2011.~~

~~Start Date: 02:00 2 August 2011 — End Date: 01:59 3 August 2011~~