

Dated 20 June 2007

- (1) The Secretary of State for Transport
- (2) London & Birmingham Railway Limited

WEST MIDLANDS Franchise Agreement
incorporating by reference the National Rail Franchise Terms
Third Edition

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¹ Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

THIS AGREEMENT is dated 20 June 2007

BETWEEN

- (1) **THE SECRETARY OF STATE FOR TRANSPORT**, whose principal address is at 76 Marsham Street, London SW1P 4DR (the **Secretary of State**); and
- (2) **LONDON & BIRMINGHAM RAILWAY LIMITED** (Company Registration number 05814584) whose registered office is at 3rd Floor, 41-51 Grey Street, Newcastle upon Tyne NE1 6EE (the **Franchisee**).

WHEREAS

- (A) The Secretary of State wishes to appoint a franchisee to provide railway passenger services within the Franchise and expects his franchisee, on the terms of this Agreement, actively to seek, in all reasonable business ways, greatly improved performance over the Franchise Term from its employees, its Train Fleet and other assets, and from Network Rail and its other suppliers, so as to deliver to the passenger the best railway passenger service that can be obtained from the resources that are available to it.
- (B) The Franchisee wishes to be appointed as the Secretary of State's franchisee for the Franchise and intends, on the terms of this Agreement, actively to seek, in all reasonable business ways, greatly improved performance over the Franchise Term from its employees, its Train Fleet and other assets, and from Network Rail and its other suppliers, so as to deliver to the passenger the best railway passenger service that can be obtained from the resources that are available to it.
- (C) This Agreement has been entered into pursuant to and incorporates by reference the Terms. This Agreement specifies the matters which the Terms require to be addressed in a franchise agreement and which are to be agreed between the parties or prescribed by the Secretary of State, together with any other provisions that the parties have agreed should amend or supplement the Terms.
- (D) The following provisions of this Agreement are intended to reflect and give effect to the matters referred to in Recitals (A) to (C) inclusive.

1. INTERPRETATION AND DEFINITIONS

1.1 In this Agreement:

Conditions Precedent Agreement

means the agreement between the Secretary of State and the Franchisee of even date herewith specifying certain conditions to be satisfied prior to issue of a Certificate of

Commencement.

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

- 1.2 The Terms are hereby incorporated by reference in this Agreement.
- 1.3 This Agreement, the Conditions Precedent Agreement and the Terms together constitute a single agreement, which is a "franchise agreement" for the purposes of the Act.
- 1.4 This Agreement shall be interpreted in accordance with the Terms, for which purpose terms defined therein shall have the same meanings where used in this Agreement, unless this Agreement expressly provides to the contrary.
- 1.5 If there is any conflict between the terms of this Agreement and the Terms, the terms of this Agreement shall prevail.

2. **COMMENCEMENT**

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

- (a) paragraph 5.3 of Schedule 1.4 (*Passenger Facing Obligations*);
- (b) paragraph 2 of Schedule 2.2 (*Security of Access Agreements, Rolling Stock Leases, Station and Depot Leases*);
- (c) paragraph 2 of Schedule 2.3 (*Third Party Delivery of Passenger Services and Other Franchisees*);
- (d) Schedule 5.1 (*Purpose, Structure and Construction*);
- (e) Schedule 5.3 (*Allocation of Fares to Fares Baskets*);
- (f) Schedule 5.7 (*Changes to Fares and Fares Regulation*);
- (g) Schedule 9 (*Changes*);
- (h) Schedule 10 (*Remedies, Termination and Expiry*);
- (i) paragraphs 1 to 3 (inclusive) of Schedule 11 (*Agreement Management Provisions*);

- (j) paragraph 4 of Schedule 12 (*Financial Obligations and Covenants*);
- (k) paragraphs 1, 2, 5, 6, 7 and 8 of Schedule 13 (*Information and Industry Initiatives*);
- (l) paragraphs 1 and 7 of Appendix 13 (*West Midlands Specific Provisions*);
- (m) Schedule 14.3 (*Key Contracts*);
- (n) paragraph 1 of Schedule 16 (*Pensions*);
- (o) Schedule 17 (*Confidentiality*); and
- (p) Schedule 19 (*Other Provisions*).

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

3. **TERM**

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

4. **GENERAL OBLIGATIONS**

- 4.1 The Franchisee shall perform its obligations under this Agreement in accordance with its terms and with that degree of skill, diligence, prudence and foresight which would be exercised by a skilled and experienced Train Operator of the Franchise.
- 4.2 Any obligation on the part of the Franchisee to use all reasonable endeavours shall extend to consequent obligations adequately to plan and resource its activities, and to implement those plans and resources, with all due efficiency and economy.
- 4.3 The Franchisee shall co-operate with the Secretary of State and act reasonably and in good faith in and about the performance of its obligations and the exercise of its rights pursuant to this Agreement.
- 4.4 The Secretary of State shall act reasonably and in good faith in and about the performance of his obligations and the exercise of his rights pursuant to this Agreement.
- 4.5 The Franchisee and the Secretary of State shall agree a conformed copy of the Terms, incorporating those changes to the Terms set out in this Agreement, by no later than one month after the date of this Agreement or such other date as

the Secretary of State and the Franchisee may agree. In the case of any dispute or inconsistency between such conformed copy and this Agreement, this Agreement shall prevail.

5. **SPECIFIC OBLIGATIONS**

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

Clause 3 (Definitions)

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

- (a) the prescribed month for the purpose of the definition of ***Bond Year*** is March;
- (b) [Not Used];
- (c) [Not Used];
- (d) the schemes for the purpose of the definition of ***Discount Fare Scheme*** are:
 - (i) ATOC Disabled Persons Railcard Scheme dated 23 July 1995 between the participants named therein;
 - (ii) ATOC Young Persons Railcard Scheme dated 23 July 1995 between the participants named therein; and
 - (iii) ATOC Senior Railcard Scheme dated 23 July 1995 between the participants named therein;
- (e) the prescribed period for the purpose of the definition of ***Evening Peak*** is the period between 1600 hours and 1859 hours (inclusive) during a Weekday or such other continuous three hour period between 1200 hours and 2359 hours (inclusive) as the Secretary of State may specify from time to time;
- (f) the prescribed time and date for the purpose of paragraph (b) of the definition of ***Expiry Date*** is 0159 hours on 20 September 2015;
- (g) for the purposes of the definition of ***Franchise***:
 - (i) the prescribed date is 31 October 2006; and
 - (ii) the prescribed places are London, Northampton, Rugby, Coventry, Birmingham, Wolverhampton, Shrewsbury, Stafford,

Crewe and Liverpool amongst others and as may be varied from time to time in accordance with the Franchise Agreement;

- (h) the date for the purposes of the definition of **Franchise Letting Process Agreement** is 31 July 2006;
- (i) each **Franchisee Year** shall, subject to the terms of that definition, begin on 1 April and end on 31 March;
- (j) the **Initial Business Plan** in the agreed terms is attached to this Agreement marked **IBP**;
- (k) the time and date for the purpose of the definition of **Initial Expiry Date** is 0159 hours on 10 November 2013;
- (l) the schemes for the purpose of the definition of **Inter-Operator Scheme** are:
 - (i) ATOC Staff Travel Scheme dated 23 July 1995 between the participants named therein;
 - (ii) Ticketing and Settlement Agreement;
 - (iii) ATOC LRT Scheme dated 23 July 1995 between the participants named therein;
 - (iv) Travelcard Agreement dated 15 October 1995 between London Regional Transport and the parties named therein;
 - (v) Through Ticketing (Non-Travelcard) Agreement dated 15 October 1995 between London Regional Transport and the parties named therein; and
 - (vi) National Rail Enquiry Scheme dated 11 June 1996 between the participants named therein;
- (m) the prescribed stations for the purpose of the definition of **Managed Station** are Birmingham New Street, Liverpool Lime Street and London Euston;
- (n) the prescribed amount for the purpose of the definition of **Minor Works' Budget** is £250,000 for each Franchisee Year;
- (o) the prescribed period for the purpose of the definition of **Morning Peak** is the period between 0700 hours and 0959 hours (inclusive) during a Weekday or such other continuous morning three hour period as the Secretary of State may specify from time to time;

- (p) the ***Operational Model*** in the agreed terms is attached to this Agreement marked ***OM***;
- (q) ***Parent*** means Govia Limited whose registered number is 3278419 and registered office is at 3rd Floor, 41 - 51 Grey Street, Newcastle upon Tyne, NE1 6EE;
- (r) the ***Passenger's Charter*** in the agreed terms is attached to this Agreement marked ***PC***;
- (s) the ***Power of Attorney*** in the agreed terms is attached to this Agreement marked ***POA***;
- (t) the ***Protected Fares Document*** means the document to be issued by the Secretary of State to the Franchisee at the Start Date which sets out the allocation of each Protected Fare to the relevant Fares Basket as required by paragraph 1 of Schedule 5.3 (Allocation of Fares to Fares Baskets) as the same may be amended or re-issued from time to time in accordance with paragraph 8.1 of Schedule 5.7 (Changes to Fares and Fares Regulation);
- (u) for the purpose of the definition of ***Qualifying Change***, the prevailing discount rate is 3.5 per cent. per annum (in real terms) at the date of this Agreement;
- (v) the ***Record of Assumptions*** in the agreed terms is attached to this Agreement marked ***ROA***;
- (w) the ***Reporting Accountants*** are Ernst & Young LLP;
- (x) the date for the purpose of paragraph (a) of the definition of ***Review Date*** is 1st October 2007;
- (y) the agreed assumptions for the purpose of the definition of ***Secretary of State Risk Assumptions*** are set out in Appendix 1 (Secretary of State Risk Assumptions);
- (z) the ***Service Level Commitment*** in the agreed terms is attached to this Agreement marked ***SLC1 and SLC2***;
- (aa) the ***Service Quality Audit Programme*** in the agreed terms is attached to this Agreement marked ***SQAP***;
- (ab) the ***Service Quality Management System*** in the agreed terms is attached to this Agreement marked ***SQMS***;

- (ac) the ***Service Quality Standards*** in the agreed terms are attached to this Agreement marked ***SQS***;
- (ad) the time and date for the purpose of paragraph (a) of the definition of ***Start Date*** is 0200 hours on 11 November 2007;
- (ae) the agreed amounts of "TR" for the purpose of the definition of ***Target Revenue*** are set out in Appendix 2 (Target Revenue (expressed in real terms));
- (af) for the purposes of the formula set out in the definition of ***Threshold Amount***:
 - (i) the prescribed threshold amount for any Franchisee Year, referred to by the acronym "FAT" is £²;
 - (ii) the prescribed month for the purpose of the definition of "CRPI" is January; and
 - (iii) the prescribed base month and year for the purpose of the definition of "ORPI" are January 2007;
- (ag) the ***Train Plan*** in the agreed terms is attached to this Agreement marked ***TP***;
- (ah) the prescribed stations for the purpose of the definition of ***London Commuter Fare*** are:
 - (i) London Stations; and
 - (ii) Suburban Stations;
- (ai) the ***Seasonally Adjusted Target Revenue Table*** in the agreed terms is attached to this Agreement marked ***SATRT***; and
- (aj) the prescribed date for the purpose of paragraph (b) of the definition of Pre-Force Majeure Event Period and the definition of Year 0 is 20 June 2007.

Changes to the Terms

5.2 The Terms shall be amended by:

- (a) the following definitions in Clause 3.1 thereof being deleted:

² Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

- (i) ***Commuter Fare***;
 - (ii) ***Commuter Fares Basket***; and
 - (iii) ***Commuter Fares Document***
- (b) The amendment of the following definitions in Clause 3.1 thereof:
- (i) ³;
 - (ii) ⁴;
 - (iii) the definition of ***Change***:
 - (1) by the addition of new paragraphs (t) and (u) as follows:

“(t) the Secretary of State effects an amendment to the terms of the Franchise Agreement and/or terms of the Coleshill Station Lease pursuant to paragraph 7.3 of Appendix 13 (*West Midlands Specific Provisions*) of this Agreement;

(u) if the provisions of any of paragraphs 1.5(c), 2.5(c), 3.5(c), 4.5(c), 5.5(c), 7.5(c), 9.5(c) or 14.5(c) of Part 1 of Appendix 4 (*List of Priced Options*) apply, but only to the extent provided therein;” and
 - (2) the renumbering of all subsequent paragraphs so that old paragraph (t) becomes new paragraph (v), old paragraph (u) becomes new paragraph (w) and old paragraph (v) becomes new paragraph (x);
 - (3) by the addition of the following new sentence to the end of paragraph (e):

“For the avoidance of doubt the coming into force of SLC2 on the Passenger Change Date occurring in or around December 2008 shall not be a Change”;
 - (iv) ⁵;

³ Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

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

- (v) the definition of **Fare** by the deletion of the words "Commuter Fare" in paragraph (b) of that definition and the replacement with the following:

"Birmingham Commuter Fare, London Commuter Fare"

- (vi) the definition of **Fares Basket** by the deletion of the words "Commuter Fares Basket" and replacement with the following words:

"Birmingham Commuter Fares Basket or the London Commuter Fares Basket" so that it reads as follows:

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

- (vii) the definition of **Fares Document** by the deletion of the words "Commuter Fares Document" and replacement with the following words:

"Birmingham Commuter Fares Document or the London Commuter Fares Document" so that it reads as follows:

"means any of the Birmingham Commuter Fares Document or the London Commuter Fares Document or the Protected Fares Document";

- (viii) ⁶;

- (ix) the definitions of **Protected Weekly Season Ticket** and **Protected Return Fare** by the deletion of the words "Commuter Fare" and the replacement with the words "Birmingham Commuter Fare or London Commuter Fare";

- (x) the definition of **Reference Revenue** by the deletion of the words "Commuter Fares" and the replacement with the following:

"Birmingham Commuter Fares, London Commuter Fares";

⁵ Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁶ Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

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

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

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

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

- (c) The insertion in Clause 3.1 thereof of the following definitions:

80% Snow Hill Stations means any of the following stations:

Acocks Green, Birmingham Snow Hill, Dorridge, Kidderminster, Rowley Regis, Smethwick Galton Bridge, Solihull, Stourbridge Junction, Stourbridge Town, Stratford -Upon - Avon, Widney Manor and Yardley Wood;

80% Non-Snow Hill Stations means such other stations as the Franchisee may specify and which:

- (i) are not 80% Snow Hill Stations;
- (ii) together account for 80% of station footfall as derived from "Lennon" or such other sources as the Secretary of State may reasonably agree; and
- (iii) include all the stations which have been identified by BTP as high risk locations;

95% Snow Hill Stations means any of the following stations:

Acocks Green, Birmingham Snow Hill, Dorridge, Hagley, Hall Green, Jewellery Quarter, Kidderminster, Old Hill, Rowley Regis, Shirley, Smethwick Galton Bridge, Spring Road, Solihull, Stourbridge Junction, Stourbridge Town, Stratford-Upon-Avon, The Hawthorns, Widney Manor and Yardley Wood;

95% Non-Snow Hill Stations is as defined in paragraph 7.1(b) of Appendix 4 (*List of Priced Options*);

2012 ITSO Amount means the amount equal to:

$$\left(1 - \frac{A}{20}\right) \times \text{£}^7$$

where:

A means the lower of 20 and P:

P means the percentage of Passenger Journeys which are made using ITSO Certified Smartcards in the thirteen Reporting Periods ending on 4 February 2012 as calculated in accordance with paragraph 4.9 of Appendix 13 (*West Midlands Specific Provisions*);

2014 ITSO Amount means the amount equal to:

$$\left(1 - \frac{A}{50}\right) \times \text{£}^8$$

where:

A means the lower of 50 and Q:

Q means the percentage of Passenger Journeys which are made using ITSO Certified Smartcards in the thirteen Reporting Periods ending on 1st February 2014 as calculated in accordance with paragraph 4.9 of Appendix 13 (*West Midlands Specific Provisions*);

Birmingham Commuter Fare means any:

- (i) unrestricted Single Fare;

⁷ Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁸ Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

- (ii) unrestricted Return Fare;
- (iii) Weekly Season Ticket;
- (iv) Monthly Season Ticket;
- (v) Quarterly Season Ticket; or
- (vi) Annual Season Ticket;

which is valid for use only on the Railway Passenger Services and not on any other form of transport, including bus, tram, or light rail for a journey where the origin and destination stations are both Birmingham Stations;

Birmingham Commuter Fares Basket means the grouping of the Birmingham Commuter Fares:

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

Birmingham Commuter Fares Document means the document to be issued by the Secretary of State to the Franchisee at the Start Date which sets out the allocation of each Birmingham Commuter Fare to the relevant Fares Basket as required by paragraph 1 of Schedule 5.3 (*Allocation of Fares to Fares Baskets*) as the same may be amended or re-issued from time to time in accordance with paragraph 8.1 of Schedule 5.7 (*Changes to Fares and Fares Regulation*);

Birmingham Services means services provided between the Birmingham Stations but in respect of services beginning or ending outside of the Metropolitan County of the West Midlands ignoring such portions of their journey outside the Metropolitan County of West Midlands;

Birmingham Stations means for the purposes of;

- (i) Schedule 5 (*Fares*), the definitions of Birmingham Commuter Fare and Birmingham Services only, any of those stations located within the Metropolitan County of the West Midlands; and
- (ii) paragraph 4 of Part 1 of Appendix 11 (*List of Committed Obligations and Related Provisions*) any of the stations located within the Metropolitan County of the West Midlands where the Franchisee is the Facility Owner;

Birmingham Routes means, for the purposes of paragraphs 1.6 and 1.7 of Schedule 1.5 (*Information about Passengers*) the routes specified in Sections 1A, B and D, 3H, I, J1, J2, L, M1, 40 and 4P of the Service Level Commitment;

BTP means the British Transport Police;

Central Trains means Central Trains Limited whose registered number is 03007938 and registered office is at 75 Davies Street, London W1K 5HT;

Coleshill Commencement Date means the later of the date upon which:

- (a) the Coleshill Company notifies or has notified the Secretary of State that all the Coleshill Pre-Conditions have been met; and
- (b) Coleshill Station is constructed;

Coleshill Company means Coleshill Parkway Limited (registered no. 5608780) whose registered office is at Allington House, 150 Victoria Street, London SW1E 5LB;

Coleshill Concession means the period of 20 years from the Coleshill Commencement Date together with such extensions as may be agreed by the Secretary of State and the Coleshill Company following a Coleshill Expansion Negotiation;

Coleshill Expansion Negotiation is as defined in paragraph 7.1(b) of Appendix 13 (*West Midlands Specific Provisions*);

Coleshill Pre-Conditions means holding:

- (a) a station licence issued pursuant to the Act in respect of Coleshill Station or an exemption for the requirement to hold such a licence;

- (b) a current and accepted safety case under the terms of the Railways (Safety Case) Regulations 2000 in respect of the operation of Coleshill Station;
- (c) business interruption insurance with the Coleshill Company named as an interested party; and
- (d) public liability, employer's liability and property insurance with the Coleshill Company named as an interested party and Coleshill Station as a specific activity location named within the policies;

Coleshill Station means the station situated at Coleshill;

Coleshill Station Lease is as defined in paragraph 7.2 of Appendix 13 (*West Midlands Specific Provisions*);

Demand Management Principles has the meaning given to it in paragraph 2.2 of Appendix 13 (*West Midlands Specific Provisions*);

Demand Management Principles Document means the principles document in the agreed terms marked ***DMPD***;

Demand Management Regulation has the meaning given to it in paragraph 2.1(a) of Appendix 13 (*West Midlands Specific Provisions*);

Dual Compatible means that the smartcard ticketing system is both ITSO-certified and capable of interfacing with Oystercard in accordance with the specification provided by TfL;

East Midlands Franchise means the rights tendered by the Secretary of State on the 31 October 2006 to operate railway passenger services to and from London St Pancras, Leicester, Nottingham, Derby, Sheffield, Leeds, Liverpool Lime Street, Manchester Piccadilly, Peterborough, Lincoln Central amongst others and as may be varied from time to time in accordance with the franchise agreement in respect thereof;

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

Further Investment Negotiation Event means the point at which 85% of the capacity of Coleshill Station car park is occupied on a regular basis;

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

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

Light Maintenance Services means the light maintenance services to be provided by the Franchisee to each of the NCC Franchisee and the East Midlands Franchisee at Tyseley Depot pursuant to paragraph 1 of Appendix 13 (*West Midlands Specific Provisions*);

London Commuter Fare means any:

- (i) Weekly Season Ticket, Monthly Season Ticket, Quarterly Season Ticket and Annual Season Ticket between each station prescribed for the purpose in clause 5.1(ah)(i) of the Franchise Agreement and any other such station or other station;
- (ii) any unrestricted Single Fare and unrestricted Return Fare between each station prescribed for the purpose in clause 5.1(ah)(i) of the Franchise Agreement; and
- (iii) any unrestricted Single Fare and unrestricted Return Fare from each station prescribed for the purpose in clause 5.1(ah)(ii) of the Franchise Agreement to each station prescribed for the purpose in clause 5.1(ah)(i) of the Franchise Agreement (but not in the other direction);

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

London Commuter Fares Basket means the grouping of the London Commuter Fares:

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

- (d) **London Commuter Fares Document** means the document to be issued by the Secretary of State to the Franchisee at the Start Date which sets out the allocation of each London Commuter Fare to the relevant Fares Basket as required by paragraph 1 of Schedule 5.3 (*Allocation of Fares to Fares Baskets*) as the same may be amended or re-issued from time to time in accordance with paragraph 8.1 of Schedule 5.7 (*Changes to Fares and Fares Regulation*);

London Routes means, for the purposes of paragraphs 1.6 and 1.7 of Schedule 1.5 (*Information about Passengers*), the routes specified in Section 5 of the Service Level Commitment;

LRC Concession means the rights tendered by TfL on 14 July 2006 to operate railway passengers services between Richmond and North Woolwich, Gospel Oak and Barking, Clapham Junction to Willesden Junction and between Watford and London Euston;

LRC Concessionaire means the concessionaire of the LRC Concession;

Maintrain Agreement means the agreement in the agreed terms marked MAA between Maintrain and Central Trains dated 23 July 1999 and relating to the provision of light maintenance services at Tyseley Depot;

Maintrain means Maintrain Limited whose registered number is 2918124 and registered office is at 75 Davies Street, London W1K 5HT;

NCC Franchise means the rights tendered by the Secretary of State on the 31 October 2006 to operate railway passenger services to and from Plymouth, Edinburgh, Leeds, Penzance, Aberdeen, Glasgow, Reading, Newcastle, Bristol, Manchester, Bournemouth, Cardiff, Birmingham, Nottingham, Stansted Airport, Cambridge, Leicester and Guildford, amongst others and as may be varied from time to time in accordance with the franchise agreement in respect thereof;

NCC Franchisee means the franchisee of the NCC Franchise;

Oystercard means the contactless smartcard provided by TfL through the "Prestige" contract with TranSys to hold fare and travel information and the monetary or other value encoded onto the card and any additional or replacement card;

Oyster Pay As You Go means the scheme operated by TfL for prepaid travel using a monetary value added onto an Oystercard before the start of a journey;

Passenger Counts has the meaning given to it in paragraph 1.6 of Schedule 1.5 (*Information about Passengers*);

Passenger Journeys means travel by passengers from the stations where such passengers join the Passenger Services to the stations where such passengers exit the Passenger Services as derived from "Lennon" or such other industry systems as the Secretary of State may reasonably determine;

Residual Risk Charge has the meaning given to that term in the second schedule of the Template Coleshill Lease in agreed terms marked **TCL**;

SLC1 means the service level commitment more particularly described as "SLC1" in paragraph 1 of Schedule 1.1 (*Service Development*) as it may subsequently be amended or replaced in accordance with Schedule 1.1;

SLC2 means the service level commitment more particularly described as "SLC2" in paragraph 1 of Schedule 1.1 (*Service Development*) as it may subsequently be amended or replaced in accordance with Schedule 1.1;

⁹;

TranSys means Transaction Systems Limited;

TfL means Transport for London; and

Tyseley Depot means the depot situated at Tyseley in Birmingham;

(e) The following provisions being amended:

(i) paragraph 5(d) of Schedule 1.6 (*Franchise Services*), by the addition of the following words after the words "Schedule 1.6":

"or paragraph 1 of Appendix 13 (*West Midlands Specific Provisions*) of the Franchise Agreement";

(ii) Schedule 1.5 (*Information about Passengers*) by the addition of new paragraphs 1.5, 1.6, 1.7, 1.8 and 1.9 as follows:

"1.5 By the date that is ¹⁰ from the Start Date, the Franchisee shall procure that as a minimum 10% in

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aggregate of the Train Fleet is fitted with the technology prescribed in paragraph 5.4 of the Franchise Agreement.

- 1.6 In addition to the Franchisee's obligations under paragraph 1.1 the Franchisee shall, once in every Franchisee Year, carry out a programme of passenger counts or secure that a programme of passenger counts is carried out, in respect of the Passenger Services operated on the Birmingham Routes and the London Routes ("**Passenger Counts**"), at such times and in such manner (including as to levels of accuracy and the number of days (not being more than 7 consecutive days) over which the programme of counts is carried out) as may be approved from time to time by the Secretary of State.
- 1.7 The manner of undertaking the Passenger Counts shall be designed to ensure so far as practicable that the Passenger Counts are typical of demand for the Passenger Services operated on the Birmingham Routes and the London Routes at the relevant time of the year and for the relevant day of the week. Where applicable, any such Passenger Count shall be carried out by a person or persons approved by the Secretary of State (such approval not to be unreasonably withheld).
- 1.8 The Franchisee shall supply the details of such Passenger Counts to the Secretary of State in accordance with the requirements in paragraphs 1.1 and 1.3.
- 1.9 The Secretary of State shall be entitled to audit any of the Passenger Counts (whether by specimen checks at the time of such Passenger Counts, verification of proper compliance with the manner approved by the Secretary of State or otherwise). If such audit reveals material error, or a reasonable likelihood of material error, in such Passenger Counts, the Secretary of State may require such Passenger Counts to be repeated or

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the results adjusted as the Secretary of State considers appropriate, and in these circumstances the Franchisee shall pay the Secretary of State the costs of any such audit."

(iii) paragraph 1.2 (b) of Part 2 of Schedule 2.1 (*Asset Vesting and Transfer*) by deleting and replacing the words "in the agreed terms" with the words "on substantially the same terms";

(iv) paragraph 1.1 of Schedule 5.1 (*Purpose, Structure and Construction*) by the deletion of the words Commuter Fares and the replacement with the following:

"Birmingham Commuter Fares, London Commuter Fares";

(v) paragraph 1.3 of Schedule 5.1 (*Purpose, Structure and Construction*) by the deletion of paragraphs 1.3(a) and 1.3(b) and replacement with new paragraphs 1.3(a), 1.3(b) and 1.3(c) as follows:

"(a) the Birmingham Fares Basket;

(b) the London Fares Basket; or

(c) the Protected Fares Basket.";

(vi) paragraph 3.6 of Schedule 5.1 (*Purpose, Structure and Construction*) by the deletion of paragraph 3.6 and replacement with the following:

"Subject to paragraph 3.2, the Secretary of State may include within the definitions of:

(a) Fares Basket;

(b) Birmingham Commuter Fare;

(c) London Commuter Fare; and

(d) Protected Fare;

Fares to or from any New Station, on such basis as he may, after consultation with the Franchisee, reasonably determine and references in this Schedule 5 (*Fares*) to Fares Basket, Birmingham Commuter Fare, London Commuter Fare, Protected Fare and Fares and other relevant definitions shall be construed accordingly.";

- (vii) paragraph 1 of Schedule 5.2 (*Franchisee's Obligation to Create Fares*) by the deletion of the words "Commuter Fares" in the heading and the replacement with the following:

"Birmingham Commuter Fares, London Commuter Fares" so that it reads:

"Creation of Birmingham Commuter Fares, London Commuter Fares and Protected Fares";

- (viii) paragraphs 1 of Schedule 5.2 (*Franchisee's Obligation to Create Fares*) and paragraph 1.1 of Schedule 5.3 (*Allocation of Fares to Fares Baskets*) by the deletion of the words "Commuter Fares" in those paragraphs and the replacement with the following:

"Birmingham Commuter Fare, each London Commuter Fare";

- (ix) paragraph 1.2 of Schedule 5.3 (*Allocation of Fares to Fares Baskets*) by the deletion of the words "Commuter Fare shall be allocated by the Secretary of State to the Commuter Fares Basket" and the replacement with the following:

"Birmingham Commuter Fare shall be allocated by the Secretary of State to the Birmingham Commuter Fares Basket, every London Commuter Fare shall be allocated by the Secretary of State to the London Commuter Fares Basket";

- (x) paragraph 2.1(a) of Schedule 5.3 (*Allocation of Fares to Fares Baskets*) by:

(1) the deletion of the words "Commuter Fares; and" in paragraph 2.1(a)(i) and replacement with the words "Birmingham Commuter Fares";

(2) the insertion of the word "and" after the semi colon in paragraph 2.1(a)(ii); and

(3) the insertion of a new paragraph 2.1(a)(iii) as follows:

"(iii) all London Commuter Fares";

- (xi) paragraph 2.1(b) of Schedule 5.3 (*Allocation of Fares to Fares Baskets*) by:

(1) the deletion of the word "Commuter Fares" in the first line of paragraph 2(b)(i) and replacement of same with the words "Birmingham Commuter Fares";

- (2) the deletion of the words "Commuter Fares; and" in the last line in paragraph 2(b)(i) and the replacement with the words "Birmingham Commuter Fares";
 - (3) the insertion of a new paragraph 2.1(b)(iii) as follows:

"(iii) those London Commuter Fares with the lowest Gross Revenue, until the total of the aggregated Gross Revenue of such fares accounts for up to five per cent. of the aggregate Reference Revenue of all London Commuter Fares; and";
- (xii) paragraph 2.1(c) of Schedule 5.3 (*Allocation of Fares to Fares Baskets*) by:
- (1) the deletion of the words "Commuter Fares" in paragraph 2.1(c)(i) and the replacement with the words "Birmingham Commuter Fares";
 - (2) the deletion of the word "and" in paragraph 2.1(c)(i);
 - (3) the deletion of "and ." in paragraph 2.1(c)(ii) and the replacement with "; and"; and
 - (4) the insertion of new paragraph 2.1(c)(iii) as follows:

"(iii) those London Commuter Fares referred to in paragraph 2.1(b)(iii) as Non-Fares Basket Fares.";
- (xiii) paragraph 2.2 of Schedule 5.3 (*Allocation of Fares to Fares Baskets*) by the deletion of the words "Commuter Fare" and replacement with the words "Birmingham Commuter Fare, or any London Commuter Fare";
- (xiv) paragraph 1.1 of Schedule 5.5 (*Regulation of Individual Fares*) by:
- (1) the deletion of words "Commuter Fare" in paragraph 1.1(a) and the replacement with the words "Birmingham Commuter Fare";
 - (2) the deletion of the provisions " Commuter Fares Baskets; or" and the replacement with "Birmingham Commuter Fares Basket;";

- (3) the deletion of the “,” in paragraph 1.1(b) and the replacement with “; or”; and
- (4) the insertion of new paragraph 1.1(c) as follows:
 - “(c) each London Commuter Fare included in the London Commuter Fares Basket”;
- (xv) paragraph 2.3 of Schedule 5.5 (*Regulation of Individual Fares*) by the deletion of the words “Commuter Fare” in paragraphs 2.3(a) and 2.3(b) and the replacement with the words “Birmingham Commuter Fare, London Commuter Fare” ;
- (xvi) paragraph 3 of Schedule 5.5 (*Regulation of Individual Fares*) by the deletion of all references in that paragraph to the words “Commuter Fare” and the replacement with the words “Birmingham Commuter Fare or London Commuter Fare (as the case may be)”;
- (xvii) paragraph 1.1 of Schedule 5.6 (*Exceeding the Regulated Value, Regulated Price or Registered Child Price*) by the deletion of the words “Commuter Fares Basket” and the replacement with the words “Birmingham Commuter Fares Basket, London Commuter Fares Basket”;
- (xviii) paragraph 1.3 of Schedule 5.6 (*Exceeding the Regulated Value, Regulated Price or Registered Child Price*) by the deletion of the words:
 - (1) “the Commuter Fares Basket” in paragraphs (a) and the replacement with the words “ either the Birmingham Commuter Fares Basket or the London Commuter Fares Basket”;
 - (2) “Commuter Fare” in paragraph (b) and the replacement with the words “Birmingham Commuter Fare or London Commuter Fare”; and
 - (3) “Commuter Fares in the Commuter Fares basket so as to avoid the Value of the Commuter Fares Basket” in paragraph (c) and the replacement with the words “Birmingham Commuter Fare in the Birmingham Commuter Fares Basket and/or other London Commuter Fares in the London Commuter Fares Basket so as to avoid the Value of such Birmingham Commuter Fares Basket and/or London Commuter Fares Basket”;

- (xix) paragraph 1.4 of Schedule 5.6 (*Exceeding the Regulated Value, Regulated Price or Registered Child Price*) by the deletion of the words:
- (1) "Commuter Fare in the Commuter Fares Basket" in that paragraph and the replacement with the words "Birmingham Commuter Fare in the Birmingham Commuter Fares Basket or any London Commuter Fare in the London Commuter Fares basket (as the case may be)" ; and
 - (2) "Commuter Fares Basket in the 7th line of that paragraph and the replacement with the words "Birmingham Commuter Fares Basket or London Commuter Fares Basket (as the case may be)";
- (xx) paragraph 1.5 of Schedule 5.6 (*Exceeding the Regulated Value, Regulated Price or Registered Child Price*) by the deletion of the words "Commuter Fare" and the replacement with the words "Birmingham Commuter Fare or London Commuter Fare (as the case may be)";
- (xxi) paragraph 1.1 of Schedule 5.7 (*Changes to Fares and Fares Regulation*) by:
- (1) the deletion of the words "Commuter Fares Basket" and the replacement with the words any "Fares Basket";
 - (2) the deletion of the words "Commuter Fare" and "Commuter Fares basket" in paragraph (b) and the replacement with the words "Birmingham Commuter Fare" and "Birmingham Commuter Fares Basket" respectively;
 - (3) insertion of a new paragraph as follows:

"(c) where any London Commuter Fare for a Flow has been included in the London Commuter Fares Basket, the Secretary of State may require the inclusion in the London Commuter Fares Basket of any Weekly Season Ticket, Monthly Season Ticket, Quarterly Season Ticket, Annual Season Ticket, unrestricted Single Fare or unrestricted Return Fare that existed on that Flow in February 2003;"

- (4) the renumbering of all subsequent paragraphs in paragraph 1.1 so that old paragraph (c) becomes new paragraph (d) and old paragraph (d) becomes new paragraph (e); and
 - (5) the deletion of the "(c)" before the word "inclusive" in new paragraph (e) and the replacement with "(d)".
- (xxii) paragraph 3.1(b) of Schedule 5.7 (*Changes to Fares and Fares Regulation*) by the deletion of the words "Commuter Fares" and the replacement with the words "Birmingham Commuter Fares, London Commuter Fares";
- (xxiii) Paragraph 6.1(a) of Schedule 5.7 (*Changes to Fares and Fares Regulation*) by the deletion of the words "Commuter Fare" and the replacement with the words "Birmingham Commuter Fare, London Commuter Fare";
- (xxiv) paragraph 8 of Schedule 5.7 (*Changes to Fares and Fares Regulation*) by the deletion of the words "Commuter Fares Document" and the replacement with the words "Birmingham Commuter Fares Document, London Commuter Fares Document";
- (xxv) paragraph 1 of Schedule 5.8 (*Fares Regulation Information and Monitoring*) by the deletion of the words:
 - (1) "Commuter Fares" in paragraph 1.1 and the replacement with the words " Birmingham Commuter Fare, London Commuter Fare";
 - (2) "Commuter Fare" in paragraph 1.2 and the replacement with the words "Birmingham Commuter Fare or any London Commuter Fare"; and
 - (3) "Commuter Fare" in paragraph 1.3 and the replacement with the words "Birmingham Commuter Fare, London Commuter Fare".
- (xxvi) paragraph 2 of Schedule 5.8 (*Fares Regulation Information and Monitoring*) by the deletion of the words "Commuter Fares" in paragraph 2.1(a) and the replacement with the words "Birmingham Commuter Fares, London Commuter Fares";

(xxvii) ¹¹

(xxviii) ¹²

(xxix) paragraph 2.12 of Schedule 7.1 (*Performance Benchmarks*) by the deletion of the "and 2.8" and the replacement with ",2.8 and 2.17";

(xxx) paragraph 2.13 of Schedule 7.1 (*Performance Benchmarks*) by the deletion of the "and 2.8" and the replacement with ",2.8 and 2.17" ;

(xxxi) paragraph 4.1 of Schedule 7.1 (*Performance Benchmarks*) to be amended by:

(1) the deletion of the word "and" in paragraph 4.1(b);

(2) the insertion of "; and" and the deletion of "." in paragraph 4.1(c); ¹³

(xxxii) paragraph 4.4 of Schedule 7.1 (*Performance Benchmarks*) to be amended by:

(1) the deletion of the word "and" in paragraph 4.4(b);

(2) the insertion of ";and" and the deletion of "." in paragraph 4.4(c); and ¹⁴

(xxxiii) ¹⁵

(xxxiv) ¹⁶

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¹² 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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¹⁴ 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.

¹⁵ 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.

(xxxv) ¹⁷

(xxxvi) ¹⁸

(xxxvii) ¹⁹

(xxxviii) amendments to Schedule 8.1 (*Franchise Payments*) as follows:

(1) paragraph 1.1 by adding "Subject to paragraph 1.4" at the beginning;

(2) add new paragraph 1.4 as follows:

"1.4 This paragraph 1.4 shall only apply where:-i) the Franchisee has paid the West Midlands Top Up Liability as defined in paragraph 1 of Appendix 1 (*Secretary of State Risk Assumptions*) of the Franchise Agreement; and ii) the Franchise Period expires or terminates prior to the Expiry Date as described in paragraph (b) of the definition of "Expiry Date".

Where this paragraph 1.4 applies:

(a) the Franchise Payment for the last Reporting Period of the Franchise Period ("***the Last Period***") shall be adjusted by amending the formula set out in paragraph 1 by adding the following:

" + WMTLA "

where:

WMTLA means $WMTL - (NRP \times PA)$

where:

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¹⁸ Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹⁹ Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

WMTL is the amount of the West Midlands Top-Up Liability;

NRP is the number of Reporting Periods (including the Last Period) which have elapsed between the end of the second Reporting Period after the Start Date and the end of the Franchise Period;

PA is the amount of the West Midlands Top-Up Liability per Reporting Period calculated on an equal instalment basis, over the period from the end of the second Reporting Period after the Start Date to the Expiry Date described in paragraph (b) of the definition of "Expiry Date", as follows:-

$$\frac{\text{WMTL}}{96}$$

and provided that where WMTLA is negative it shall be deemed to be zero.

(b) where the amount of "WMTLA" is not known at the time when the Franchise Payment is otherwise to be notified or paid to the Franchisee under paragraph 2, the Secretary of State shall:-

i) pay the Franchise Payment without the adjustment referred to in paragraph 1.4(a); and

ii) pay to the Franchisee an amount equivalent to WMTLA as soon as reasonably practicable thereafter.

(c) where there is a Change pursuant to paragraph 4.1 (*Pensions*) of Appendix 1 of the Franchise Agreement, the Change shall be implemented such that the provisions of this paragraph 1.4 shall continue to have effect so as to ensure that:

(i) $\text{WMTL} - (\text{NRP} \times \text{PA})$ will equal zero by the same date as that provided for in the Financial Model; and

(ii) it takes into account all Reporting Periods from after the end of the second Reporting Period after the Start Date, including those both before and after the Change."

(xxxix) Schedule 16 (*Pensions*), by replacing Schedule 16 in its entirety with the version of Schedule 16 set out in Appendix 16 (*New Schedule 16 (Pensions)*).

Schedule 1.1 (Service Development)

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

Schedule 1.5 (Information about Passengers)

5.4 ²⁰

Schedule 1.6 (Franchise Services)

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

(a) 1 per cent.; and

(b) 1 per cent.

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

(a) Bletchley; and

(b) Tyseley (Birmingham).

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

None.

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

(a) £25,000 per annum per item; and

(b) £250,000 per annum in aggregate.

Schedule 2.1 (Asset Vesting and Transfer)

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

- 5.9 The provisions of Part 2 of Schedule 2.1 (Asset Vesting and Transfer) of the Terms shall apply, for which purpose the Property Leases shall be in the agreed terms attached to this Agreement marked **SL** and **DL** (as appropriate).

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

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

Schedule 2.5 (Transport, Travel and Other Schemes)

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

None

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

- (a) London Concessionary Fares Scheme;
- (b) West Midlands PTE Concessionary Fares Scheme.

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

- (a) West Midlands PTE Centrocard Scheme

Schedule 3 (Priced Options)

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

Schedule 7.1 (Performance Benchmarks)

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

- 5.15A The Sunday Cancellations Benchmarks for the purposes of paragraph 1.2 of Schedule 7.1 (Performance Benchmarks) of the Terms are set out in Appendix 5A (Sunday Cancellations Benchmark Table).

5.15B²¹ The Remedial (Individual) Cancellations Benchmarks for the purposes of paragraph Error! Reference source not found. of Appendix 1 (Remedial Cancellations Benchmarks) to Schedule 7.1 (Performance Benchmarks) of the Terms are set out in Appendix 5B (Remedial (Individual) Cancellations Benchmark Table).

5.15C²² The Remedial (MAA) Cancellations Benchmarks for the purposes of paragraph Error! Reference source not found. of Appendix 1 (Remedial Cancellations Benchmarks) to Schedule 7.1 (Performance Benchmarks) of the Terms are set out in Appendix 5C (Remedial (MAA) Cancellations Benchmark Table).

5.15D²³ The Assumed Cancellations Performance (Pre Remedial Period) Table for the purposes of paragraph 4.4 of Appendix 1 (Remedial Cancellations Benchmarks) to Schedule 7.1 (Performance Benchmarks) of the Terms is set out in Appendix 5D (Assumed Cancellations Performance (Pre Remedial Period) Table).

5.16 The Capacity Benchmarks for the purpose of paragraph 1.3 of Schedule 7.1 (*Performance Benchmarks*) of the Terms are set out in Appendix 6 (*Capacity Benchmark Table*).

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

Schedule 8.1 (Franchise Payments)

5.18 The prescribed percentage for the purpose of paragraph 3.1 of Schedule 8.1²⁴ of the Terms is ²⁵ per cent.

5.19 The prescribed percentages to be applied to the formula set out in paragraph 3.2(c) of Schedule 8.1 ²⁶ of the Terms are, respectively:

(a) for paragraph (a) of factor "A", ²⁷per cent;

²¹ Date of Change 22/01/2010

²² Date of Change 22/01/2010

²³ Date of Change 22/01/2010

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- (b) for paragraph (b) of factor "A", ²⁸per cent;
- (c) for factor "X", ²⁹ per cent;
- (d) for factor "B", ³⁰per cent; and
- (e) for factor "Y", ³¹per cent.

Schedule 8.2 (Annual Franchise Payments)

- 5.20 The agreed figures for the purposes of the definitions of "FXD", "VCRPI", "VCAEI", "PRPI" and "TRRPI" in the formula set out in Schedule 8.2 (*Annual Franchise Payments*) of the Terms are shown in the table set out in Appendix 8 (*Figures for Calculation of Annual Franchise Payments*).
- 5.21³² ***The prescribed month and the prescribed date for the purposes of the definitions of "RPI" and "AEI" in the formula set out in Schedule 8.2 (Annual Franchise Payments) and Schedule 8.2A (Annual HLOS Franchise Payments) of the Terms are, respectively, January and January 2007.***

Schedule 9.3 (Runs of the Financial Model)

- 5.22 The percentage agreed profit margin for the purpose of paragraphs 7.1(a) and (b)(i) of Schedule 9.3 (*Runs of the Financial Model*) of the Terms shall be determined by reference to the following table:³³

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³² Date of change 30/9/2009

³³ 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 (Financial Obligations and Covenants)

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

- (a) £³⁴ being 5.5 per cent. of the aggregate forecast operating costs of the Franchisee for the period from the Start Date to the first anniversary of the Start Date, as forecast in the Initial Business Plan;
- (b) £³⁵ being 5.5 per cent. of the annual aggregate forecast operating costs of the Franchisee for the year commencing on the first anniversary of the Start Date, as forecast in the Initial Business Plan; and
- (c) £³⁶ being 5.5 per cent. of the annual aggregate forecast operating costs of the Franchisee for the year commencing on the second anniversary of the Start Date, as forecast in the latest practicably available Business Plan; and
- (d) 5.5 per cent. of the aggregate forecast operating costs of the Franchisee for each subsequent year (or part thereof) during the Franchise Term as forecast in the latest practicably available Business Plan, provided that for the purposes of determining the amount of any Performance Bond in respect of any part year, the aggregate forecast operating costs of the Franchisee for such part year shall be increased by dividing such costs by the number of the Reporting Periods in such part year and multiplying by 13.

Schedule 14.3 (Key Contracts)

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

Schedule 14.4 (Designation of Franchise Assets)

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

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

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.

- 5.25 The Primary Franchise Assets as at the date of this Agreement for the purpose of paragraph 2.1(a) of Schedule 14.4 (*Designation of Franchise Assets*) of the Terms are listed in Appendix 10 (*List of Primary Franchise Assets*).

Schedule 16 (Pensions)

- 5.26 [NOT USED]

Schedule 18 (Franchise Continuation Criteria)

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

Schedule 19 (Other Provisions)

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

Name: *The Department for Transport*

Address:³⁷ *33 Horseferry Road, London SW1P 4DR*

Facsimile: *020 7944 2446*

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

Attention: *Director, Rail Commercial Contracts*

Name: *London & Birmingham Railway Limited*

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

Facsimile: *0191 2113218*

E-mail: *carolyn.sephton@go-ahead.com*

Attention: *Managing Director*³⁸

6. ³⁹COMMITTED OBLIGATIONS

⁴⁰*The Franchisee shall deliver the Committed Obligations, the HLOS Committed Obligations and the Remedial Plan Key Inputs that are set out in Appendix 11 in accordance with the terms thereof*

7. SUPPLEMENTAL TERMS

³⁷ Date of Change 01/10/2011

³⁸ Insert new text wef 10/03/11

³⁹ Date of change 30/9/2009

⁴⁰ Date of Change 22/01/2010

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

7.2 The provisions of Appendix 13 (*West Midlands Specific Provisions*) shall apply.

8. RECALIBRATION OF THE BENCHMARKS

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

9. DOCUMENTS IN THE AGREED TERMS

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

10. ENTIRE AGREEMENT

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

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

(a) contained in this Agreement; or

(b) embodied in any warranties, representations or undertakings contained in the long form reports provided by the Reporting Accountants in respect of Central Trains Limited and Silverlink Trains Limited (County Services) each dated 19th September 2006.

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

10.4 The Franchisee irrevocably and unconditionally waives any right which it may otherwise have to claim damages in respect of and/or to rescind this Agreement,

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

)

)

)

Authenticated by authority of the
Secretary of State for Transport

)

)

)

Director:

Director/Secretary:

APPENDIX 1

Secretary of State Risk Assumptions (Clause 5.1(y))⁴¹

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

APPENDIX 2

Target Revenue (expressed in real terms) (Clause 5.1(ae)) ^{42 43}

<i>Column 1</i>	<i>Column 2</i>
<i>Franchise Year</i>	<i>Target Revenue (£m)</i>
<i>Year 0</i>	
<i>Year 1 part year</i>	
<i>Year 2</i>	
<i>Year 3</i>	
<i>Year 4</i>	
<i>Year 5</i>	
<i>Year 6</i>	
<i>Year 7</i>	
<i>Year 7 (Up to 7 Year End Date)</i>	
<i>Year 7 (up to 7 Reporting Period Extension)</i>	
<i>Year 7 part year</i>	
<i>Year 8</i>	
<i>Year 9 (up to full Franchise End)</i>	
<i>Year 9 (up to Reporting Period Extension)</i>	

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

⁴³ Date of new text 30/9/2009

APPENDIX 3

The Train Fleet (Clause 5.3)

1. The Composition of the Train Fleet

The Train Fleet consists of:

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

2. Passenger Carrying Capacity for the Parry People Mover and the Class 172 Rolling Stock

The provisions of paragraph 13.5 of Schedule 1.1 (*Service Development*) shall apply on the same basis as if there was a change to the Train Fleet table for the purposes of determining the passenger carrying capacity in respect of the Parry People Mover (as that term is defined in paragraph 11.3 of Appendix 13 (*West Midlands Specific Provisions*)) and the Class 172 Rolling Stock (as that term is defined in paragraph 9.1(b) of Appendix 11 (*List of Committed Obligations and Related Provisions*)).

Table 1 (existing vehicles)

Column 1	Column 2	Column 3				Column 4	Column 5
Class of vehicle	Number of vehicles and unit configuration	Capacity of units				Owner/ Lessor	Lease expiry date(s)
		Seats	Standing*	Total	Standard Class		
Class 150	24 (2 car)	148	50	198	148	Angel Trains Limited	30 June 2010
Class 150	4 (2 car)	148	50	198	148	Angel Trains Limited/LRC	13 December 2008
Class 150	48 (3 car)	221	65	286	221	Angel Trains Limited	30 June 2010
Class 153	10 (1 car)	73	25	98	73	Porterbrook Leasing Company Limited	19 September 2015
Class 170	34 (2 car)	122	88	210	122	Porterbrook Leasing Company Limited	19 September 2015
Class 170	18 (3 car)	196	129	325	196	Porterbrook Leasing Company Limited	19 September 2015
Class 313	3 (3 car)	318	113	431	318	HSBC Rail (UK) Limited/LRC	13 December 2008
Class 321	148 (4 car)	271 (Stand ard Class) 28 (First Class)	100	371	271	HSBC Rail (UK) Limited	13 July 2009
Class 323	78 (3 car)	290	67	357	290	Porterbrook Leasing Company	19 September

Column 1	Column 2	Column 3				Column 4	Column 5
Class of vehicle	Number of vehicles and unit configuration	Capacity of units				Owner/ Lessor	Lease expiry date(s)
		Seats	Standing*	Total	Standard Class		
						Limited	2015
350 Desiro	120 (4 car)	206 (Standard Class) 24 (First Class)	154	360	206	Angel Trains Limited	19 September 2015

Table 2 (additional vehicles) ⁴⁴

⁴⁴ Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

APPENDIX 4

List of Priced Options (Clause 5.14)

Part 1

1. Walsall to Wolverhampton Service

1.1 Description, objective and specification

This Priced Option relates to the continued operation of the services specified in Route K of the Service Level Commitment from the Passenger Change Date occurring in or around December 2008 until the end of the Franchise Term.

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

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

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

Provided that the Secretary of State has called this Priced Option by no later than one week before the first day of any annual timetable conference specified under the Network Code, the Franchisee shall procure that this Priced Option is implemented on and from the Passenger Change Date occurring in the first December following that conference unless otherwise agreed by the parties. The first Passenger Change Date on which this Priced Option is capable of being implemented from is that occurring in December 2008.

1.4 Other effects on the Franchise Agreement

(a) The effects on the Franchise Agreement will be:

- (i) the deletion of the words "This page has been intentionally left blank" on page 59 of SLC2 (Route K) and the replacement with the service specification as set out in Route K of SLC1;
- (ii) the addition of a new entry in Table 1 of Appendix 3 (*The Train Fleet*) to include the details of the appropriate rolling stock unit (such as a Class 153 (1 car) rolling stock unit) procured by the Franchisee for the purposes of implementing this Priced Option;
- (iii) the need to make such consequential changes:

- (1) to the Priced Option specified in paragraph 6 of this Appendix ("GSM-R Option") where the GSM-R Option has not been called; or
- (2) the Franchise Agreement in relation to the subject matter of the GSM-R Option, where the GSM-R Option has been called

as are reasonably required to give effect to the implementation of this Priced Option. In the absence of agreement, such consequential amendments shall be as reasonably determined by the Secretary of State.

- (b) The Secretary of State and the Franchisee agree that the amendments to the Service Level Commitment described in paragraph 1.4(a)(i) shall not be a Change for the purposes of the Franchise Agreement.

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

- (a) The latest date on which the Secretary of State may call this Priced Option in order to maintain the price quoted at paragraph 1.2 is the date which is two years after the Start Date;
- (b) If the Secretary of State calls this Priced Option at any time later than the date specified in paragraph 1.5(a) then the provisions of paragraph (b) of the definition of Change shall apply;
- (c) Where this Priced Option:
 - (i) is called on or before the date specified in paragraph 1.5(a); and
 - (ii) the relevant date of implementation is not the Passenger Change Date occurring in December 2008;

then it shall be a Qualifying Change provided that the only Revised Inputs shall be those agreed or reasonably determined by the Secretary of State to be necessary for the purposes of reprofiling the price set out in Tables 1A and 1B in Part 2 to this Appendix 4 to take account of the different times at which and periods for which costs may be incurred and/or revenue received compared with implementation on the Passenger Change Date occurring in December 2008.

1.6 Condition to the calling of this Priced Option

- (a) The Secretary of State agrees only to call this Priced Option at such time as he reasonably determines that:
 - (i) the Franchisee if it complies with its obligations under paragraph 8.1 or 8.3 of Schedule 1.1 (*Service Development*) will be able to obtain the relevant timetable development rights that it requires in order to secure a Timetable that will enable it to operate the railway passenger services described in paragraph 1.1; or
 - (ii) an appropriate additional rolling stock unit (such as a Class 153 (1 car) rolling stock unit) is available in the market and can be procured by the Franchisee for use in the operation of the railway passenger services described in paragraph 1.1.

2. Birmingham New Street to Rugeley Trent Valley Services

2.1 Description, objective and specification

This Priced Option relates to the inclusion in the Service Level Commitment of a half hourly Off-Peak service between Birmingham New Street and Rugeley Trent Valley.

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

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

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

Provided that the Secretary of State has called this Priced Option by no later than five months before the first day of any annual timetable conference specified under the Network Code, the Franchisee shall procure that this Priced Option is implemented on and from the Passenger Change Date occurring in the first December following that conference unless otherwise agreed by the parties. The first Passenger Change Date on which this Priced Option is capable of being implemented from is that occurring in December 2008.

2.4 Other effects on the Franchise Agreement

The effects on the Franchise Agreement will be the need to make such consequential amendments to the rights and obligations of the parties including the Service Level Commitment and the Train Plan as are reasonably required to give effect to the implementation of this Priced Option. In the absence of

agreement, such consequential amendments shall be as reasonably determined by the Secretary of State. The Secretary of State and the Franchisee agree that any amendments made by the Secretary of State to the Service Level Commitment and/or the Train Plan in order to give effect to the implementation of this Priced Option under the Franchise Agreement shall not be a Change.

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

- (a) The latest date on which the Secretary of State may call this Priced Option in order to maintain the price quoted at paragraph 2.2 is the date which is two years after the Start Date;
- (b) If the Secretary of State calls this Priced Option at any time later than the date specified in paragraph 2.5(a) then the provisions of paragraph (b) of the definition of Change shall apply;
- (c) Where this Priced Option:
 - (i) is called on or before the date specified in paragraph 2.5(a); and
 - (ii) the relevant date of implementation is not the Passenger Change Date occurring in December 2008;

then it shall be a Qualifying Change provided that the only Revised Inputs shall be those agreed or reasonably determined by the Secretary of State to be necessary for the purposes of reprofiling the price set out in Tables 2A and 2B in Part 2 to this Appendix 4 to take account of the different times at which and periods for which costs may be incurred and/or revenue received compared with implementation on the Passenger Change Date occurring in December 2008.

2.6 Condition to the calling of this Priced Option

- (a) The Secretary of State agrees only to call this Priced Option in accordance with its terms at such time as he reasonably determines that:
 - (i) Network Rail is committed to provide the required infrastructure works in time for the date for implementation of this Priced Option, as determined in accordance with paragraph 2.3; and/or
 - (ii) the Franchisee if it complies with its obligations under paragraph 8.1 or 8.3 of Schedule 1.1 (*Service Development*) will be able to obtain the relevant timetable development rights

that it requires in order to secure a Timetable that will enable it to operate the railway passenger services described in paragraph 2.1.

3. Extension of Birmingham - Shirley Service to Whitlock's End

3.1 Description, objective and specification

This Priced Option relates to the extension of all of the Birmingham to Shirley services included in Route A of the Service Level Commitment to Whitlock's End.

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

Where this Priced Option is called in accordance with its terms, the price for this Priced Option shall be the price set out in Tables 3A and 3B in Part 2 to this Appendix 4 and adjustments to Franchise Payments shall be made accordingly.

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

Provided that the Secretary of State has called this Priced Option by no later than one week before the first day of any annual timetable conference specified under the Network Code, the Franchisee shall procure that this Priced Option is implemented on and from the Passenger Change Date occurring in the first December following that conference unless otherwise agreed by the parties. The first Passenger Change Date on which this Priced Option is capable of being implemented from is that occurring in December 2008.

3.4 Other effects on the Franchise Agreement

The effects on the Franchise Agreement will be the need to make such consequential amendments to the rights and obligations of the parties including the Service Level Commitment and the Train Plan as are reasonably required to give effect to the implementation of this Priced Option. In the absence of agreement, such consequential amendments shall be as reasonably determined by the Secretary of State. The Secretary of State and the Franchisee agree that any amendments made by the Secretary of State to the Service Level Commitment and/or the Train Plan in order to give effect to the implementation of this Priced Option under the Franchise Agreement shall not be a Change.

3.5 Latest date for calling this Priced Option to maintain the price in paragraph 3.2

- (a) The latest date on which the Secretary of State may call this Priced Option in order to maintain the price quoted at paragraph 3.2 is the date which is two years after the Start Date;

- (b) If the Secretary of State calls this Priced Option at any time later than the date specified in paragraph 3.5(a) then the provisions of paragraph (b) of the definition of Change shall apply;
- (c) Where this Priced Option:
 - (i) is called on or before the date specified in paragraph 3.5(a); and
 - (ii) the relevant date of implementation is not the Passenger Change Date occurring in December 2008;

then it shall be a Qualifying Change provided that the only Revised Inputs shall be those agreed or reasonably determined by the Secretary of State to be necessary for the purposes of reprofiling the price set out in Tables 3A and 3B in Part 2 to this Appendix 4 to take account of the different times at which and periods for which costs may be incurred and/or revenue received compared with implementation on the Passenger Change Date occurring in December 2008.

3.6 Condition to the calling of this Priced Option

- (a) The Secretary of State agrees only to call this Priced Option in accordance with its terms at such time as he reasonably determines that:
 - (i) Network Rail is committed to provide the required crossover at Whitlock's End in time for the date for implementation of this Priced Option, as determined in accordance with paragraph 3.3; and/or
 - (ii) the Franchisee if it complies with its obligations under paragraph 8.1 or 8.3 of Schedule 1.1 (*Service Development*) will be able to obtain the relevant timetable development rights that it requires in order to secure a Timetable that will enable it to operate the railway passenger services described in paragraph 3.1.

4. Watford Junction to St Albans Abbey Service

4.1 Description, objective and specification

This Priced Option relates to the inclusion in the Service Level Commitment of a half hourly service between Watford Junction and St Albans Abbey.

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

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

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

Provided that the Secretary of State has called this Priced Option by no later than five months before the first day of any annual timetable conference specified under the Network Code, the Franchisee shall procure that this Priced Option is implemented on and from the Passenger Change Date occurring in the first December following that conference unless otherwise agreed by the parties. The first Passenger Change Date on which this Priced Option is capable of being implemented from is that occurring in December 2008.

4.4 **Other effects on the Franchise Agreement**

(a) The effects on the Franchise Agreement will be:

(i) the need to make such consequential changes:

- (1) to the Priced Option specified in paragraph 6 of this Appendix ("GSM-R Option") where the GSM-R Option has not been called; or
- (2) the Franchise Agreement in relation to the subject matter of the GSM-R Option, where the GSM-R Option has been called

as are reasonably required to give effect to the implementation of this Priced Option. In the absence of agreement, such consequential amendments shall be as reasonably determined by the Secretary of State;

(ii) the addition of a new entry in Table 1 of Appendix 3 (*The Train Fleet*) in order to include the details of the appropriate rolling stock unit (such as a Class 170 (2 car)) rolling stock unit procured by the Franchisee for the purposes of implementing this Priced Option; and

(iii) the need to make such other consequential amendments to the rights and obligations of the parties including the Service Level Commitment and/or the Train Plan as are reasonably required to give effect to the implementation of this Priced Option. In the absence of agreement, such consequential amendments shall be as reasonably determined by the Secretary of State;

- (b) The Secretary of State and the Franchisee agree that any amendments made by the Secretary of State to the Service Level Commitment and/or the Train Plan in order to give effect to the implementation of this Priced Option under the Franchise Agreement shall not be a Change.

4.5 Latest date for calling this Priced Option to maintain the price in paragraph 4.2

- (a) The latest date on which the Secretary of State may call this Priced Option in order to maintain the price quoted at paragraph 4.2 is the date which is two years after the Start Date;
- (b) If the Secretary of State calls this Priced Option at any time later than the date specified in paragraph 4.5(a) then the provisions of paragraph (b) of the definition of Change shall apply;
- (c) Where this Priced Option:
 - (i) is called on or before the date specified in paragraph 4.5(a); and
 - (ii) the relevant date of implementation is not the Passenger Change Date occurring in December 2008;

then it shall be a Qualifying Change provided that the only Revised Inputs shall be those agreed or reasonably determined by the Secretary of State to be necessary for the purposes of reprofiling the price set out in Tables 4A and 4B in Part 2 to this Appendix 4 to take account of the different times at which and periods for which costs may be incurred and/or revenue received compared with implementation on the Passenger Change Date occurring in December 2008.

4.6 Condition to the calling of this Priced Option

- (a) The Secretary of State agrees only to call this Priced Option in accordance with its terms at such time as he reasonably determines that:
 - (i) Network Rail is committed to provide the required passing loop for the date of implementation of this Priced Option, as determined in accordance with paragraph 4.3;
 - (ii) the Franchisee if it complies with its obligations under paragraph 8.1 or 8.3 of Schedule 1.1 (*Service Development*) will be able to obtain the relevant timetable development rights that it requires in order to secure a Timetable that will enable it

to operate the railway passenger services described in paragraph 4.1; and/or

- (iii) an appropriate additional rolling stock unit (such as Class 170 (2 car) rolling stock unit is available in the market and can be procured by the Franchisee for use in the operation of the railway passenger services described in paragraph 4.1.

5. Extension of Bedford-Bletchley Services to Milton Keynes Central

5.1 Description, objective and specification

This Priced Option relates to the extension of all of the Bedford to Bletchley services included in Route S of the Service Level Commitment to Milton Keynes.

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

Where this Priced Option is called in accordance with its terms, the price for this Priced Option shall be the price set out in Tables 5A and 5B in Part 2 to this Appendix 4 and adjustments to Franchise Payments shall be made accordingly.

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

Provided that the Secretary of State has called this Priced Option by no later than one week before the first day of any annual timetable conference specified under the Network Code, the Franchisee shall procure that this Priced Option is implemented on and from the Passenger Change Date occurring in the first December following that conference unless otherwise agreed by the parties. The first Passenger Change Date on which this Priced Option is capable of being implemented from is that occurring in December 2008.

5.4 Other effects on the Franchise Agreement

The effects on the Franchise Agreement will be the need to make such consequential amendments to the rights and obligations of the parties including the Service Level Commitment and the Train Plan as are reasonably required to give effect to the implementation of this Priced Option. In the absence of agreement, such consequential amendments shall be as reasonably determined by the Secretary of State. The Secretary of State and the Franchisee agree that any amendments made by the Secretary of State to the Service Level Commitment and/or the Train Plan in order to give effect to the implementation of this Priced Option under the Franchise Agreement shall not be a Change.

5.5 Latest date for calling this Priced Option to maintain the price in paragraph 5.2

- (a) The latest date on which the Secretary of State may call this Priced Option in order to maintain the price quoted at paragraph 5.2 is the date which is two years after the Start Date;
- (b) If the Secretary of State calls this Priced Option at any time later than the date specified in paragraph 5.5(a) then the provisions of paragraph (b) of the definition of Change shall apply;
- (c) Where this Priced Option:
 - (i) is called on or before the date specified in paragraph 5.5(a); and
 - (ii) the relevant date of implementation is not the Passenger Change Date occurring in December 2008;

then it shall be a Qualifying Change provided that the only Revised Inputs shall be those agreed or reasonably determined by the Secretary of State to be necessary for the purposes of reprofiling the price set out in Tables 5A and 5B in Part 2 to this Appendix 4 to take account of the different times at which and periods for which costs may be incurred and/or revenue received compared with implementation on the Passenger Change Date occurring in December 2008.

5.6 Condition to the calling of this Priced Option

- (a) The Secretary of State agrees only to call this Priced Option in accordance with its terms at such time as he reasonably determines that:
 - (i) Network Rail is committed to provide the required infrastructure works in time for the date of implementation of this Priced Option, as determined in accordance with paragraph 5.3; and/or
 - (ii) the Franchisee if it complies with its obligations under paragraph 8.1 or 8.3 of Schedule 1.1 (Service Development) will be able to obtain the relevant timetable development rights that it requires in order to secure a Timetable that will enable it to operate the railway passenger services described in paragraph 5.1.

6. GSM-R

6.1 Description, objective and specification

This option relates to:

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

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

Where this Priced Option is called in accordance with its terms, the price for this Priced Option shall be the price set out in Tables 6A and 6B in Part 2 to this Appendix 4 and adjustments to Franchise Payments shall be made accordingly.

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

The timescale for the implementation of this Priced Option will be no later than three years from the date on which this Priced Option is called.

6.4 Other effects on the Franchise Agreement

The only effects on the Franchise Agreement will be:

- (a) the inclusion of the following in Appendix 11 (*List of Committed Obligations and Related Provisions*):
 - (i) a new Committed Obligation in Part 1 to Appendix 11 (*List of Committed Obligations and Related Provisions*) which reads:

[x] "On or before [*insert date which is three years from the date on which this Priced Option is called*] the Franchisee shall procure and install GSM-R Radio Equipment to the driving cabs of the Train Fleet and provide training to its train drivers in the use of the GSM-R Radio Equipment.

[xi] The Franchisee shall not be liable for any failure to comply with its obligations in paragraph [x] to the extent that such failure is wholly attributable to Network Rail not providing

any relevant infrastructure equipment (including the relevant trackside equipment, radio masts and base stations) across the network on which the Passenger Services operate ("Infrastructure Equipment") and such Infrastructure Equipment is essential to the successful introduction by the Franchisee of the GSM-R Radio Equipment."

- (ii) the inclusion of a new definition in Clause 5.2 as follows:

"GSM-R Radio Equipment means a digital radio system based on the GSM-R radio communication standard adapted for use on the European railways and which as a minimum meets all the mandatory requirements for an operational radio within the Control, Command and Signalling TSI (including Notified National Technical Rules) and which is to be used as a train radio (either fixed or transportable) within the meaning set out in the Railway Group Standard GE/RT 8080 Train Radio Systems for Voice and Related Messaging Communications issue 1, December 2003 (as amended from time to time)"; and

- (iii) the addition of a new entry in the Table in Part 3 to Appendix 11 (*List of Committed Obligations and Related Provisions*) which reads:⁴⁵

- (b) ⁴⁶

6.5 Latest date for calling this Priced Option to maintain the price in paragraph 6.2

- (a) The latest date on which the Secretary of State may call this Priced Option in order to maintain the price quoted at paragraph 6.2 is the Start Date;
- (b) If the Secretary of State calls this Priced Option at any time later than the date specified in paragraph 6.5(a) then the provisions of paragraph (b) of the definition of Change shall apply.

7. Secure Station Accreditation

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

⁴⁶ Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

7.1 Description, objective and specification

This option relates to the achievement of secure station accreditation ('**SSA**') in respect of:

- (a) each of the 95% Snow Hill Stations; and
- (b) such stations as the Franchisee may specify and which:
 - (i) are not 95% Snow Hill Stations;
 - (ii) together account for 95% of station footfall as derived from "Lennon" or such other sources as the Secretary of State may reasonably agree; and
 - (iii) include all the stations which have been identified by BTP as high risk locations;

("together 95% Non-Snow Hill Stations").

The SSA guidelines on which this Priced Option is based are those published on 24 May 2005 (as modified on 22 May 2006).

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

Where this Priced Option is called in accordance with its terms, the price for this Priced Option shall be the price set out in Tables 7A and 7B in Part 2 to this Appendix 4 and adjustments to Franchise Payments shall be made accordingly.

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

The timescale for implementation of this Priced Option will be the date that is the later of 3 years from the date on which the Priced Option is called and 11 November 2010.

7.4 Other effects on the Franchise Agreement

The only effects on the Franchise Agreement will be:

- (a) the inclusion of the following in Appendix 11 (*List of Committed Obligations and Related Provisions*):
 - (i) a new Committed Obligation in Part 1 to Appendix 11 (*List of Committed Obligations and Related Provisions*) which reads:

"On or before [*Insert the date that is the later of 3 years from the date on which Priced Option is called and 11 November 2010*] the Franchisee shall achieve 'Secure Station Accreditation

for each of the 95% Snow Hill Stations and each of the 95% Non-Snow Hill Stations”;

- (ii) the addition of a new entry in the Table in Part 3 to Appendix 11 (*List of Committed Obligations and Related Provisions*) which reads:⁴⁷

7.5 Latest date for calling this Priced Option to maintain the price in paragraph 7.2

- (a) The latest date on which the Secretary of State may call this Priced Option in order to maintain the Price quoted at paragraph 7.2 is 11 November 2009.
- (b) If the Secretary of State calls this Priced Option at any time later than the date specified in paragraph 7.5(a) then the provisions of paragraph (b) of the definition of Change shall apply;
- (c) Where this Priced Option:
 - (i) is called on or before the date specified in paragraph 7.5(a); and
 - (ii) the relevant date of implementation is not the 11 November 2010;

then it shall be a Qualifying Change provided that the only Revised Inputs shall be those agreed or reasonably determined by the Secretary of State to be necessary for the purposes of reprofiling the price set out in Tables 7A and 7B in Part 2 to this Appendix 4 to take account of the different times at which and periods for which costs may be incurred and/or revenue received compared with implementation by 11 November 2010.

8. [Not Used]

9. Enhanced Station Improvements

9.1 Description, objective and specification

This option relates to the implementation of an enhanced programme to improve facilities at the following 20 Stations:

⁴⁷ 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.

Berkhamsted; Birmingham Snow Hill; Bletchley; Hemel Hempstead; Kidderminster; Kings Langley; Leighton Buzzard; Lichfield Trent Valley; Milton Keynes Central; Northampton; Nuneaton; Sandwell and Dudley; Solihull; Stourbridge Junction; Tamworth; Telford Central; Tring; Watford Junction; Worcester Foregate Street; and Worcester Shrub Hill.

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

Where this Priced Option is called in accordance with its terms, the price for this Priced Option shall be the price set out in Tables 9A and 9B in Part 2 to this Appendix 4 and adjustments to Franchise Payments shall be made accordingly.

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

The timescale for implementation of this Priced Option will be the date that is the later of 3 years of the date on which this Priced Option is called and 11 November 2010.

9.4 Other effects on the Franchise Agreement

The only effects on the Franchise Agreement will be:

(a) the inclusion of the following in Appendix 11 (*List of Committed Obligations and Related Provisions*):

(i) a new Committed Obligation in Part 1 to Appendix 11 (*List of Committed Obligations and Related Provisions*) which reads:

"[xa] In addition to its obligations in paragraphs 1 and 2 of this Appendix 11 the Franchisee shall, on or before [*Insert the date that is the later of three years from the date on which this Priced Option is called and 11 November 2010*], improve facilities at the following 20 Stations and in so doing incur expenditure of not less than £⁴⁸:

Berkhamsted; Birmingham Snow Hill; Bletchley; Hemel Hempstead; Kidderminster; Kings Langley; Leighton Buzzard; Lichfield Trent Valley; Milton Keynes Central; Northampton; Nuneaton; Sandwell and Dudley; Solihull; Stourbridge Junction; Tamworth; Telford Central; Tring; Watford Junction; Worcester Foregate Street; and Worcester Shrub Hill.

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

The improvements to be made at Stations and facilities at Stations shall include the following (but there is no requirement for all of the following improvements to be made at every Station):

[xai] improved signage, poster boards and booking hall decoration;

[xaii] improved waiting room including the fitting of automatic doors, warm seating, new flooring and new waiting shelters;

[xaiii] replacement of toilets with disabled and baby changing facilities where appropriate;

[xaiv] upgrade and refurbishment of unused and poor quality station buildings; and/or

[xav] replacement of and provision of additional platform seating.

[xb] In order to assist the Secretary of State in the monitoring of the Franchisee's compliance with its obligations under this paragraph the Franchisee shall provide to the Secretary of State by no later than 6 months from [*insert the Start Date or if later the date on which this Priced Option is called*] a delivery plan which sets out as a minimum:

[xbi] the improvements (together with any associated improvements to facilities) that will be made at each of the Stations listed above; and

[xbii] the planned dates of completion of such improvements at each such Station."

- (ii) the addition of a new entry in the Table in Part 3 to Appendix 11 (*List of Committed Obligations and Related Provisions*) which reads:⁴⁹

⁴⁹ Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

9.5 Latest date for calling this Priced Option to maintain the price in paragraph 9.2

- (a) The latest date on which the Secretary of State may call this Priced Option in order to maintain the Price quoted at paragraph 9.2 is the Start Date.
- (b) If the Secretary of State calls this Priced Option at any time later than the date specified in paragraph 9.5(a) then the provisions of paragraph (b) of the definition of Change shall apply;
- (c) Where this Priced Option:
 - (i) is called on or before the date specified in paragraph 9.5(a); and
 - (ii) the relevant date of implementation is not the 11 November 2010;

then it shall be a Qualifying Change provided that the only Revised Inputs shall be those agreed or reasonably determined by the Secretary of State to be necessary for the purposes of reprofiling the price set out in Tables 9A and 9B in Part 2 to this Appendix 4 to take account of the different times at which and periods for which costs may be incurred and/or revenue received compared with implementation by 11 November 2010.

10. Full Roll Out of CIS and PA at Stations

10.1 Description, objective and specification

This option relates to the installation of customer information systems and/or passenger announcement systems at the Stations listed in the second column of the table in paragraph 10.4(a)(i) of this Appendix.

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

Where this Priced Option is called in accordance with its terms, the price for this Priced Option shall be the price set out in Tables 10A and 10B in Part 2 to this Appendix 4 and adjustments to Franchise Payments shall be made accordingly.

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

The timescale for implementation of this Priced Option will be the dates specified in the first column of the table in paragraph 10.4(a)(i) where this Priced Option is called by the Start Date.

10.4 Other effects on the Franchise Agreement

The only effects on the Franchise Agreement will be:

(a) the inclusion of the following in Appendix 11 (List of Committed Obligations and Related Provisions):

(i) a new Committed Obligation in Part 1 to Appendix 11 (*List of Committed Obligations and Related Provisions*) which reads:

"By no later than the dates specified in the first column of the following table the Franchisee shall provide customer information systems (CIS) and/or passenger announcement systems (PA) (as indicated in the third and fourth column of that table) at the stations specified in the second column of the table:

Date ⁵⁰	Station	CIS	PA
	Polesworth	✓	✓
	Tamworth		✓
	Acton Bridge	✓	✓
	Penkridge	✓	✓
	Landywood	✓	✓
	Cannock	✓	✓
	Hednesford	✓	✓
	Rugeley Town	✓	✓
	Hagley	✓	✓
	Blakedown	✓	✓
	Hartlebury	✓	✓
	Barnt Green	✓	✓
	Alvechurch	✓	✓
	The Lakes	✓	✓
	Wood End	✓	✓
	Danzey	✓	✓

⁵⁰ 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.

Date ⁵⁰	Station	CIS	PA
	Wooton Wawen	✓	✓
	Wilmcote	✓	✓
	Bordesley	✓	✓
	Claverdon	✓	✓
	Bearley	✓	✓
	Aspley Guise	✓	
	Bedford St Johns	✓	
	Bow Brickhill	✓	
	Fenny Stratford	✓	
	Kempson Hardwick	✓	
	Lidlington	✓	
	Millbrook (Bedfordshire)	✓	
	Ridgmont	✓	
	Stewartby	✓	
	Woburn Sands	✓	
	Bricket Wood	✓	
	Garston (Hertfordshire)	✓	
	How Wood (Hertfordshire)	✓	
	Park Street	✓	
	St Albans Abbey	✓	
	Watford North	✓	
	Droitwich Spa		✓
	Bedworth	✓	✓
	Bilbrook	✓	✓
	Codsall	✓	✓
	Albrighton	✓	✓
	Cosford	✓	✓
	Shifnal	✓	✓
	Oakengates	✓	✓
	Water Orton	✓	✓

Date ⁵⁰	Station	CIS	PA
	Wilnecote	✓	✓

- (ii) the addition of a new entry in the Table in Part 3 to Appendix 11 (*List of Committed Obligations and Related Provisions*) which reads:⁵¹

10.5 Latest date for calling this Priced Option to maintain the price in paragraph 10.2

- (a) The latest date on which the Secretary of State may call this Priced Option in order to maintain the Price quoted at paragraph 10.2 is the Start Date.
- (b) If the Secretary of State calls this Priced Option at any time later than the date specified in paragraph 10.5(a) then the provisions of paragraph (b) of the definition of Change shall apply.

11. Enhanced Birmingham to Shirley and Dorridge Sunday Services

11.1 Description, objective and specification

This Priced Option relates to the inclusion in the Service Level Commitment of an hourly Sunday service to and from Birmingham to each of Shirley and Dorridge until 2230.

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

Where this Priced Option is called in accordance with its terms, the price for this Priced Option shall be the price set out in Tables 11A and 11B in Part 2 to this Appendix 4 and adjustments to Franchise Payments shall be made accordingly.

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

Provided that the Secretary of State has called this Priced Option by no later than one week before the first day of any annual timetable conference specified under the Network Code, the Franchisee shall procure that this Priced Option is implemented on and from the Passenger Change Date occurring in the first December following that conference unless otherwise agreed by the parties. The first Passenger Change Date on which this Priced Option is capable of being implemented from is that occurring in December 2008.

⁵¹ 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.

11.4 Other effects on the Franchise Agreement

The effects on the Franchise Agreement will be the need to make such consequential amendments to the rights and obligations of the parties including the Service Level Commitment and the Train Plan as are reasonably required to give effect to the implementation of this Priced Option. In the absence of agreement, such consequential amendments shall be as reasonably determined by the Secretary of State. The Secretary of State and the Franchisee agree that any amendments made by the Secretary of State to the Service Level Commitment and/or the Train Plan in order to give effect to the implementation of this Priced Option under the Franchise Agreement shall not be a Change.

11.5 Latest date for calling this Priced Option to maintain the price in paragraph 11.2

- (a) The latest date on which the Secretary of State may call this Priced Option in order to maintain the price quoted at paragraph 11.2 is the Start Date;
- (b) If the Secretary of State calls this Priced Option at any time later than the date specified in paragraph 11.5(a) then the provisions of paragraph (b) of the definition of Change shall apply.

11.6 Condition to the calling of this Priced Option

The Secretary of State agrees only to call this Priced Option in accordance with its terms at such time as he reasonably determines that the Franchisee if it complies with its obligations under paragraph 8.1 or 8.3 of Schedule 1.1 (Service Development) will be able to obtain the relevant timetable development rights that it requires in order to secure a Timetable that will enable it to operate the railway passenger services described in paragraph 11.1.

12. Enhanced Shirley and Dorridge Monday to Saturday Evening Services

12.1 Description, objective and specification

This Priced Option relates to the inclusion in the Service Level Commitment of a half hourly Monday to Saturday evening service to and from Birmingham to each of Shirley and Dorridge until 2300.

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

Where this Priced Option is called in accordance with its terms, the price for this Priced Option shall be the price set out in Tables 12A and 12B in Part 2 to this Appendix 4 and adjustments to Franchise Payments shall be made accordingly.

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

Provided that the Secretary of State has called this Priced Option by no later than one week before the first day of any annual timetable conference specified under the Network Code, the Franchisee shall procure that this Priced Option is implemented on and from the Passenger Change Date occurring in the first December following that conference unless otherwise agreed by the parties. The first Passenger Change Date on which this Priced Option is capable of being implemented from is that occurring in December 2008.

12.4 Other effects on the Franchise Agreement

The effects on the Franchise Agreement will be the need to make such consequential amendments to the rights and obligations of the parties including the Service Level Commitment and the Train Plan as are reasonably required to give effect to the implementation of this Priced Option. In the absence of agreement, such consequential amendments shall be as reasonably determined by the Secretary of State. The Secretary of State and the Franchisee agree that any amendments made by the Secretary of State to the Service Level Commitment and/or the Train Plan in order to give effect to the implementation of this Priced Option under the Franchise Agreement shall not be a Change.

12.5 Latest date for calling this Priced Option to maintain the price in paragraph 12.2

- (a) The latest date on which the Secretary of State may call this Priced Option in order to maintain the price quoted at paragraph 13.2 is the Start Date;
- (b) If the Secretary of State calls this Priced Option at any time later than the date specified in paragraph 12.5(a) then the provisions of paragraph (b) of the definition of Change shall apply.

12.6 Condition to the calling of this Priced Option

The Secretary of State agrees only to call this Priced Option in accordance with its terms at such time as he reasonably determines that the Franchisee if it complies with its obligations under paragraph 8.1 or 8.3 of Schedule 1.1 (*Service Development*) will be able to obtain the relevant timetable development rights that it requires in order to secure a Timetable that will enable it to operate the railway passenger services described in paragraph 12.1.

13. Enhanced Birmingham to Stratford Saturday Services

13.1 Description, objective and specification

This Priced Option relates to the inclusion in the Service Level Commitment for the provision of an enhanced Saturday service (from 1 to 2 trains per hour) to

and from each of Birmingham and Stratford upon Avon between approximately 1000 and 1800.

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

Where this Priced Option is called in accordance with its terms, the price for this Priced Option shall be the price set out in Tables 13A and 13B in Part 2 to this Appendix 4 and adjustments to Franchise Payments shall be made accordingly.

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

Provided that the Secretary of State has called this Priced Option by no later than one week before the first day of any annual timetable conference specified under the Network Code, the Franchisee shall procure that this Priced Option is implemented on and from the Passenger Change Date occurring in the first December following that conference unless otherwise agreed by the parties. The first Passenger Change Date on which this Priced Option is capable of being implemented from is that occurring in December 2008.

13.4 Other effects on the Franchise Agreement

The effects on the Franchise Agreement will be the need to make such consequential amendments to the rights and obligations of the parties including the Service Level Commitment and the Train Plan as are reasonably required to give effect to the implementation of this Priced Option. In the absence of agreement, such consequential amendments shall be as reasonably determined by the Secretary of State. The Secretary of State and the Franchisee agree that any amendments made by the Secretary of State to the Service Level Commitment and/or the Train Plan in order to give effect to the implementation of this Priced Option under the Franchise Agreement shall not be a Change.

13.5 Latest date for calling this Priced Option to maintain the price in paragraph 13.2

- (a) The latest date on which the Secretary of State may call this Priced Option in order to maintain the price quoted at paragraph 14.2 is the Start Date;
- (b) If the Secretary of State calls this Priced Option at any time later than the date specified in paragraph 13.5(a) then the provisions of paragraph (b) of the definition of Change shall apply.

13.6 Condition to the calling of this Priced Option

The Secretary of State agrees only to call this Priced Option in accordance with its terms at such time as he reasonably determines that the Franchisee if it complies with its obligations under paragraph 8.1 or 8.3 of Schedule 1.1 (*Service*

Development) will be able to obtain the relevant timetable development rights that it requires in order to secure a Timetable that will enable it to operate the railway passenger services described in paragraph 13.1.

14. Birmingham New Street to Rugeley Town Service

14.1 Description, objective and specification

This Priced Option relates to the inclusion in the Service Level Commitment of an Off Peak service of two trains per hour to and from Birmingham New Street to each of Walsall and Rugeley Trent Valley with the Walsall service extended to operate to and from Rugeley Town.

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

Where this Priced Option is called in accordance with its terms, the price for this Priced Option shall be the price set out in Tables 14A and 14B in Part 2 to this Appendix 4 and adjustments to Franchise Payments shall be made accordingly.

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

Provided that the Secretary of State has called this Priced Option by no later than one week before the first day of any annual timetable conference specified under the Network Code, the Franchisee shall procure that this Priced Option is implemented on and from the Passenger Change Date occurring in the first December following that conference unless otherwise agreed by the parties. The first Passenger Change Date on which this Priced Option is capable of being implemented from is that occurring in December 2008.

14.4 Other effects on the Franchise Agreement

The effects on the Franchise Agreement will be the need to make such consequential amendments to the rights and obligations of the parties including the Service Level Commitment and the Train Plan as are reasonably required to give effect to the implementation of this Priced Option. In the absence of agreement, such consequential amendments shall be as reasonably determined by the Secretary of State. The Secretary of State and the Franchisee agree that any amendments made by the Secretary of State to the Service Level Commitment and/or the Train Plan in order to give effect to the implementation of this Priced Option under the Franchise Agreement shall not be a Change.

14.5 Latest date for calling this Priced Option to maintain the price in paragraph 14.2

- (a) The latest date on which the Secretary of State may call this Priced Option in order to maintain the price quoted at paragraph 14.2 is 11 November 2008;

- (b) If the Secretary of State calls this Priced Option at any time later than the date specified in paragraph 14.5(a) then the provisions of paragraph (b) of the definition of Change shall apply;
- (c) Where this Priced Option:
 - (i) is called on or before the date specified in paragraph 14.5(a); and
 - (ii) the relevant date of implementation is not the Passenger Change Date occurring in December 2008;

then it shall be a Qualifying Change provided that the only Revised Inputs shall be those agreed or reasonably determined by the Secretary of State to be necessary for the purposes of reprofiling the price set out in Tables 14A and 14B in Part 2 to this Appendix 4 to take account of the different times at which and periods for which costs may be incurred and/or revenue received compared with implementation on the Passenger Change Date occurring in December 2008.

14.6 Condition to the calling of this Priced Option

- (a) The Secretary of State agrees only to call this Priced Option in accordance with its terms at such time as he reasonably determines that:
 - (i) Network Rail is committed to provide the required infrastructure works in time for the date for implementation of this Priced Option, as determined in accordance with paragraph 14.3; and/or
 - (ii) the Franchisee if it complies with its obligations under paragraph 8.1 or 8.3 of Schedule 1.1 (*Service Development*) will be able to obtain the relevant timetable development rights that it requires in order to secure a Timetable that will enable it to operate the railway passenger services described in paragraph 14.1.

15. Fitment of PIS and CCTV on Class 323 Rolling Stock

15.1 Description, objective and specification

Fitment of the Class 323 Rolling Stock (as defined in paragraph 5.1(d) of Part 1 of Appendix 11 (*List of Committed Obligations and Related Provisions*)) with passenger information systems (PIS) and CCTV. Each rolling stock vehicle comprised in the Class 323 Rolling Stock will have 2 CCTV cameras and a digital video recorder. The saloon mounted PIS displays will be in a centre ceiling

mounted double sided display to be fitted in a suitable vandal resistant enclosure.

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

Where this Priced Option is called in accordance with its terms, the price for this Priced Option shall be the price set out in Tables 15A and 15B in Part 2 to this Appendix 4 and adjustments to Franchise Payments shall be made accordingly.

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

The timescale for the implementation of this Priced Option is twenty-one Reporting Periods after the date on which this Priced Option is called.

15.4 Other effects on the Franchise Agreement

The only effects on the Franchise Agreement will be:

- (a) the inclusion of the following in Appendix 11 (*List of Committed Obligations and Related Provisions*):
 - (i) a new Committed Obligation in Part 1 to Appendix 11 (*List of Committed Obligations and Related Provisions*) which reads:

"On or before [*insert the date that is 21 Reporting Periods after the date on which this Priced Option is called*] the Franchisee shall procure that each rolling stock vehicle comprised in its Class 323 Rolling Stock (as defined in paragraph 5.1(d)) is fitted with at least:

two CCTV cameras;

a digital video recorder; and

a PIS display."
 - (ii) the addition of a new entry in the Table in Part 3 to Appendix 11 (*List of Committed Obligations and Related Provisions*) which reads:⁵²

15.5 Latest date for calling this Priced Option to maintain the price in paragraph 15.2

⁵² Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

- (a) The latest date on which the Secretary of State may call this Priced Option in order to maintain the Price quoted at paragraph 15.2 is the Start Date.
- (b) If the Secretary of State calls this Priced Option at any time later than the date specified in paragraph 15.5(a) then the provisions of paragraph (b) of the definition of Change shall apply.

16. **Additional Class 350 Desiros**⁵³

17. For the avoidance of doubt, following the exercise of any of the above Priced Options by the Secretary of State, the corresponding option shall be switched on in the Financial Model so that the outputs of the Financial Model incorporate the agreed cost and revenue amounts for that Priced Option.

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

Part 2

1. Walsall to Wolverhampton Service

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

This table sets out the increment to the Target Revenue set out in Appendix 2 (*Target Revenue (expressed in real terms)*) to this Agreement where this Priced Option is to be implemented by the Passenger Change Date occurring in December 2008 and is subject to Change in accordance with paragraph 1.5(c) of Part 1 of Appendix 4:⁵⁴

⁵⁴ Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

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

This table sets out the increment to the figures for calculation of the Annual Franchise Payments set out in Appendix 8 (*Figures for Calculation of Annual Franchise Payments*) to this Agreement where this Priced Option is to be implemented by the Passenger Change Date occurring in December 2008 and is subject to Change in accordance with paragraph 1.5(c) of Part 1 of Appendix 4:⁵⁵

2. Birmingham New Street to Rugeley Trent Valley Services

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

This table sets out the increment to the Target Revenue set out in Appendix 2 (Target Revenue (expressed in real terms)) to this Agreement where this Priced Option is to be implemented by the Passenger Change Date occurring in December 2008 and is subject to Change in accordance with paragraph 2.5(c) of Part 1 of Appendix 4:⁵⁶

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

This table sets out the increment to the figures for calculation of the Annual Franchise Payments set out in Appendix 8 (*Figures for Calculation of Annual Franchise Payments*) to this Agreement where this Priced Option is to be implemented by the Passenger Change Date occurring in December 2008 and is subject to Change in accordance with paragraph 2.5(c) of Part 1 of Appendix 4:⁵⁷

3. Extension of Birmingham-Shirley Service to Whitlock's End

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

This table sets out the increment to the Target Revenue set out in Appendix 2 (Target Revenue (expressed in real terms)) to this Agreement where this Priced Option is to be implemented by the Passenger Change Date occurring in December 2008 and is subject to Change in accordance with paragraph 3.5(c) of Part 1 of Appendix 4:⁵⁸

⁵⁵ 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.

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

⁵⁷ 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.

⁵⁸ Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

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

This table sets out the increment to the figures for calculation of the Annual Franchise Payments set out in Appendix 8 (*Figures for Calculation of Annual Franchise Payments*) to this Agreement where this Priced Option is to be implemented by the Passenger Change Date occurring in December 2008 and is subject to Change in accordance with paragraph 3.5(c) of Part 1 of Appendix 4:⁵⁹

4. Watford Junction to St Albans Abbey Service

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

This table sets out the increment to the Target Revenue set out in Appendix 2 (Target Revenue (expressed in real terms)) to this Agreement where this Priced Option is to be implemented by the Passenger Change Date occurring in December 2008 and is subject to Change in accordance with paragraph 4.5(c) of Part 1 of Appendix 4:

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

This table sets out the increment to the figures for calculation of the Annual Franchise Payments set out in Appendix 8 (*Figures for Calculation of Annual Franchise Payments*) to this Agreement where this Priced Option is to be implemented by the Passenger Change Date occurring in December 2008 and is subject to Change in accordance with paragraph 4.5(c) of Part 1 of Appendix 4 :⁶⁰

5. Extension of Bedford-Bletchley Service to Milton Keynes Central

Table 5A: Target Revenue (expressed in real terms) (*Clause 5.1(ae)*)

This table sets out the increment to the Target Revenue set out in Appendix 2 (Target Revenue (expressed in real terms)) to this Agreement where this Priced Option is to be implemented by the Passenger Change Date occurring in December 2008 and is subject to Change in accordance with paragraph 5.5(c) of Part 1 of Appendix 4:⁶¹

Table 5B: Figures for Calculation of Annual Franchise Payments (*Clause 5.20*)

This table sets out the increment to the figures for calculation of the Annual Franchise Payments set out in Appendix 8 (*Figures for Calculation of Annual Franchise Payments*)

⁵⁹ 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.

⁶⁰ 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.

⁶¹ 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.

to this Agreement where this Priced Option is to be implemented by the Passenger Change Date occurring in December 2008 and is subject to Change in accordance with paragraph 5.5(c) of Part 1 of Appendix 4:⁶²

6. GSM-R

Table 6A: Target Revenue (expressed in real terms) (*Clause 5.1(ae)*)

This table sets out the increment to the Target Revenue set out in Appendix 2 (Target Revenue (expressed in real terms)) to this Agreement where this Priced Option is to be implemented by the date that is three years from the date on which this Priced Option is called:⁶³

Table 6B: Figures for Calculation of Annual Franchise Payments (*Clause 5.20*)

This table sets out the increment to the figures for calculation of the Annual Franchise Payments set out in Appendix 8 (*Figures for Calculation of Annual Franchise Payments*) to this Agreement where this Priced Option is to be implemented by the date that is three years from the date on which this Priced Option is called:⁶⁴

7. Secure Station Accreditation

Table 7A: Target Revenue (expressed in real terms) (*Clause 5.1(ae)*)

This table sets out the increment to the Target Revenue set out in Appendix 2 (Target Revenue (expressed in real terms)) to this Agreement where this Priced Option is to be implemented by 11 November 2010 and is subject to Change in accordance with paragraph 7.5(c) of Part 1 of Appendix 4:⁶⁵

Table 7B: Figures for Calculation of Annual Franchise Payments (*Clause 5.20*)

This table sets out the increment to the figures for calculation of the Annual Franchise Payments set out in Appendix 8 (*Figures for Calculation of Annual Franchise Payments*)

⁶² 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.

⁶³ 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.

⁶⁴ 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.

⁶⁵ 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.

to this Agreement where this Priced Option is to be implemented by 11 November 2010 and is subject to Change in accordance with paragraph 7.5(c) of Part 1 of Appendix 4:⁶⁶

8. **[Not Used]**

9. **Enhanced Station Improvements**

Table 9A: Target Revenue (expressed in real terms) (Clause 5.1(ae))

This table sets out the increment to the Target Revenue set out in Appendix 2 (*Target Revenue (expressed in real terms)*) to this Agreement where this Priced Option is to be implemented by 11 November 2010 and is subject to Change in accordance with paragraph 9.5(c) of Part 1 of Appendix 4:⁶⁷

Table 9B: Figures for Calculation of Annual Franchise Payments (Clause 5.20)

This table sets out the increment to the figures for calculation of the Annual Franchise Payments set out in Appendix 8 (*Figures for Calculation of Annual Franchise Payments*) to this Agreement where this Priced Option is to be implemented by 11 November 2010 and is subject to Change in accordance with paragraph 9.5(c) of Part 1 of Appendix 4:⁶⁸

10. **Full Roll Out of CIS and PA at Stations**

Table 10A: Target Revenue (expressed in real terms) (Clause 5.1(ae))

This table sets out the increment to the Target Revenue set out in Appendix 2 (*Target Revenue (expressed in real terms)*) to this Agreement where this Priced Option is to be implemented by the dates specified in the first column of the table in paragraph 10.4(a) of Part 1 of this Appendix 4 (but subject to the Secretary of State calling this Priced Option by the Start Date):⁶⁹

Table 10B: Figures for Calculation of Annual Franchise Payments (Clause 5.20)

This table sets out the increment to the figures for calculation of the Annual Franchise Payments set out in Appendix 8 (*Figures for Calculation of Annual Franchise Payments*)

⁶⁶ 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.

⁶⁷ 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.

⁶⁸ 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.

⁶⁹ 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.

to this Agreement where this Priced Option is to be implemented by the dates specified in the first column of the table in paragraph 10.4(a) of Part 1 of this Appendix 4 (but subject to the Secretary of State calling this Priced Option by the Start Date):⁷⁰

11. Enhanced Shirley and Dorridge Sunday Services

Table 11A: Target Revenue (expressed in real terms) (*Clause 5.1(ae)*)

This table sets out the increment to the Target Revenue set out in Appendix 2 (*Target Revenue (expressed in real terms)*) to this Agreement where this Priced Option is to be implemented by the Passenger Change Date occurring in December 2008:⁷¹

Table 11B: Figures for Calculation of Annual Franchise Payments (*Clause 5.20*)

This table sets out the increment to the figures for calculation of the Annual Franchise Payments set out in Appendix 8 (*Figures for Calculation of Annual Franchise Payments*) to this Agreement where this Priced Option is to be implemented by the Passenger Change Date occurring in December 2008:⁷²

12. Enhanced Shirley and Dorridge Monday to Saturday Evening Services

Table 12A: Target Revenue (expressed in real terms) (*Clause 5.1(ae)*)

This table sets out the increment to the Target Revenue set out in Appendix 2 (*Target Revenue (expressed in real terms)*) to this Agreement where this Priced Option is to be implemented by the Passenger Change Date occurring in December 2008:⁷³

⁷⁰ 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.

⁷¹ 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.

⁷² 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.

⁷³ Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

Table 12B: Figures for Calculation of Annual Franchise Payments (*Clause 5.20*)

This table sets out the increment to the figures for calculation of the Annual Franchise Payments set out in Appendix 8 (*Figures for Calculation of Annual Franchise Payments*) to this Agreement where this Priced Option is to be implemented by the Passenger Change Date occurring in December 2008:⁷⁴

13. Enhanced Birmingham to Stratford Saturday Services

Table 13A: Target Revenue (expressed in real terms) (*Clause 5.1(ae)*)

This table sets out the increment to the Target Revenue set out in Appendix 2 (*Target Revenue (expressed in real terms)*) to this Agreement where this Priced Option is to be implemented by the Passenger Change Date occurring in December 2008:⁷⁵

Table 13B: Figures for Calculation of Annual Franchise Payments (*Clause 5.20*)

This table sets out the increment to the figures for calculation of the Annual Franchise Payments set out in Appendix 8 (*Figures for Calculation of Annual Franchise Payments*) to this Agreement where this Priced Option is to be implemented by the Passenger Change Date occurring in December 2008:⁷⁶

14. Birmingham New Street to Rugeley Town Service

Table 14A: Target Revenue (expressed in real terms) (*Clause 5.1(ae)*)

This table sets out the increment to the Target Revenue set out in Appendix 2 (*Target Revenue (expressed in real terms)*) to this Agreement where this Priced Option is to be implemented by the Passenger Change Date occurring in December 2008 and is subject to Change in accordance with paragraph 14.5(c) of Part 1 of Appendix 4:⁷⁷

Table 14B: Figures for Calculation of Annual Franchise Payments (*Clause 5.20*)

This table sets out the increment to the figures for calculation of the Annual Franchise Payments set out in Appendix 8 (*Figures for Calculation of Annual Franchise Payments*)

⁷⁴ 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.

⁷⁵ 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.

⁷⁶ 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.

⁷⁷ 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.

to this Agreement where this Priced Option is to be implemented by the Passenger Change Date occurring in December 2008 and is subject to Change in accordance with paragraph 14.5(c) of Part 1 of Appendix 4:⁷⁸

15. Fitment of PIS and CCTV on Class 323 Rolling Stock

Table 15A: Target Revenue (expressed in real terms) (*Clause 5.1(ae)*)

This table sets out the increment to the Target Revenue set out in Appendix 2 (*Target Revenue (expressed in real terms)*) to this Agreement where this Priced Option is to be implemented by the date which is⁷⁹ ;⁸⁰

Table 15B: Figures for Calculation of Annual Franchise Payments (*Clause 5.20*)

This table sets out the increment to the figures for calculation of the Annual Franchise Payments set out in Appendix 8 (*Figures for Calculation of Annual Franchise Payments*) to this Agreement where this Priced Option is to be implemented by the date which is⁸¹ ;⁸²

16. Additional Class 350 Desiros

Table 16A: Target Revenue (expressed in real terms) (*Clause 5.1(ae)*)

This table sets out the increment to the Target Revenue set out in Appendix 2 (*Target Revenue (expressed in real terms)*) to this Agreement where this Priced Option is to be implemented by the date which is⁸³ ;⁸⁴

⁷⁸ 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.

⁷⁹ 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.

⁸⁰ Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

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.

⁸² Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁸³ Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

⁸⁴

Table 16B: Figures for Calculation of Annual Franchise Payments (*Clause 5.20*)

This table sets out the increment to the figures for calculation of the Annual Franchise Payments set out in Appendix 8 (*Figures for Calculation of Annual Franchise Payments*) to this Agreement where this Priced Option is to be implemented by the date which is⁸⁵
.⁸⁶

⁸⁵ Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

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

APPENDIX 5⁸⁷

Cancellations Benchmark Table (Clause 5.15)

Column 1		Column 2	Column 3	Column 4	Column 5
Reporting Year Reporting Period		Target Performance Level (%)	Improvement Plan Performance Level (%)	Breach Performance Level (%)	Default Performance Level (%)
Year 1	Period 9	0.95%	1.02%	1.09%	1.13%
	Period 10	0.94%	1.01%	1.08%	1.13%
	Period 11	0.94%	1.01%	1.08%	1.13%
	Period 12	0.94%	1.01%	1.08%	1.13%
	Period 13	0.94%	1.01%	1.08%	1.12%
Year 2	Period 1	0.93%	1.00%	1.08%	1.12%
	Period 2	0.93%	1.00%	1.07%	1.12%
	Period 3	0.93%	1.00%	1.07%	1.12%
	Period 4	0.93%	1.00%	1.07%	1.12%
	Period 5	0.93%	1.00%	1.07%	1.11%
	Period 6	0.92%	0.99%	1.06%	1.11%
	Period 7	0.92%	0.99%	1.06%	1.11%
	Period 8	0.92%	0.99%	1.06%	1.11%
	Period 9	0.91%	0.98%	1.06%	1.10%
	Period 10	0.91%	0.98%	1.05%	1.10%
	Period 11	0.90%	0.97%	1.05%	1.09%
	Period 12	0.90%	0.97%	1.04%	1.09%
	Period 13	0.89%	0.96%	1.04%	1.08%
Year 3	Period 1	0.89%	0.96%	1.03%	1.08%
	Period 2	0.88%	0.95%	1.03%	1.07%
	Period 3	0.88%	0.95%	1.02%	1.07%
	Period 4	0.87%	0.94%	1.02%	1.06%
	Period 5	0.87%	0.94%	1.01%	1.06%
	Period 6	0.86%	0.93%	1.01%	1.05%
	Period 7	0.86%	0.93%	1.00%	1.05%
	Period 8	0.85%	0.92%	1.00%	1.04%
	Period 9	0.85%	0.92%	0.99%	1.04%
	Period 10	0.85%	0.92%	0.99%	1.04%
	Period 11	0.84%	0.91%	0.99%	1.03%
	Period 12	0.84%	0.91%	0.98%	1.03%

⁸⁷ Date of Change 26/06/2008

Column 1		Column 2	Column 3	Column 4	Column 5
Reporting Year Reporting Period		Target Performance Level (%)	Improvement Plan Performance Level (%)	Breach Performance Level (%)	Default Performance Level (%)
	Period 13	0.84%	0.91%	0.98%	1.03%
Year 4	Period 1	0.83%	0.90%	0.98%	1.02%
	Period 2	0.83%	0.90%	0.97%	1.02%
	Period 3	0.83%	0.90%	0.97%	1.02%
	Period 4	0.82%	0.89%	0.97%	1.01%
	Period 5	0.82%	0.89%	0.96%	1.01%
	Period 6	0.82%	0.89%	0.96%	1.01%
	Period 7	0.81%	0.89%	0.96%	1.00%
	Period 8	0.81%	0.88%	0.95%	1.00%
	Period 9	0.81%	0.88%	0.95%	1.00%
	Period 10	0.80%	0.88%	0.95%	0.99%
	Period 11	0.80%	0.87%	0.94%	0.99%
	Period 12	0.80%	0.87%	0.94%	0.99%
	Period 13	0.80%	0.87%	0.94%	0.98%
Year 5	Period 1	0.79%	0.86%	0.93%	0.98%
	Period 2	0.79%	0.86%	0.93%	0.98%
	Period 3	0.70%	0.86%	0.93%	0.98%
	Period 4	0.78%	0.85%	0.92%	0.97%
	Period 5	0.78%	0.85%	0.92%	0.97%
	Period 6	0.78%	0.85%	0.92%	0.97%
	Period 7	0.77%	0.84%	0.92%	0.96%
	Period 8	0.77%	0.84%	0.91%	0.96%
	Period 9	0.77%	0.84%	0.91%	0.96%
	Period 10	0.76%	0.84%	0.91%	0.95%
	Period 11	0.76%	0.83%	0.90%	0.95%
	Period 12	0.76%	0.83%	0.90%	0.95%
	Period 13	0.76%	0.83%	0.90%	0.94%
Year 6	Period 1	0.75%	0.82%	0.89%	0.94%
	Period 2	0.75%	0.82%	0.89%	0.94%
	Period 3	0.75%	0.82%	0.89%	0.94%
	Period 4	0.74%	0.81%	0.89%	0.93%
	Period 5	0.74%	0.81%	0.88%	0.93%
	Period 6	0.74%	0.81%	0.88%	0.93%
	Period 7	0.73%	0.81%	0.88%	0.92%
	Period 8	0.73%	0.80%	0.87%	0.92%

Column 1		Column 2	Column 3	Column 4	Column 5
Reporting Year Reporting Period		Target Performance Level (%)	Improvement Plan Performance Level (%)	Breach Performance Level (%)	Default Performance Level (%)
	Period 9	0.73%	0.80%	0.87%	0.92%
	Period 10	0.73%	0.80%	0.87%	0.92%
	Period 11	0.72%	0.79%	0.86%	0.91%
	Period 12	0.72%	0.79%	0.86%	0.91%
	Period 13	0.72%	0.79%	0.86%	0.91%
Year 7	Period 1	0.71%	0.78%	0.86%	0.90%
	Period 2	0.71%	0.78%	0.85%	0.90%
	Period 3	0.71%	0.78%	0.85%	0.90%
	Period 4	0.71%	0.78%	0.85%	0.89%
	Period 5	0.70%	0.77%	0.84%	0.89%
	Period 6	0.70%	0.77%	0.84%	0.89%
	Period 7	0.70%	0.77%	0.84%	0.89%
	Period 8	0.69%	0.76%	0.84%	0.88%
Until end of Franchise Term					

1. Start of the Franchise

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

APPENDIX 5A⁸⁸

⁸⁸ Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

APPENDIX 5B⁸⁹

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

⁹⁰ **APPENDIX 5C**

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.

APPENDIX 5D⁹¹

⁹¹

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

APPENDIX 6

Capacity Benchmark Table (Clause 5.16)

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

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

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

Until Franchise ends

1. Start of the Franchise

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

APPENDIX 7

Service Delivery Benchmark Table (Clause 5.17) ^{92 93 94 95}

Column 1		Column 2	Column 3	Column 4	Column 5
		Target Performance Level	Improvement Plan Performance Level	Breach Performance Level	Default Performance Level
Reporting Period		(Minutes Delay)	(Minutes Delay)	(Minutes Delay)	(Minutes Delay)
Year 1, Period 9	2007/2008	15,770	16,960	18,140	18,930
Year 1, Period 10	2007/2008	15,650	16,830	18,000	18,790
Year 1, Period 11	2007/2008	15,600	16,770	17,930	18,710
Year 1, Period 12	2007/2008	15,540	16,700	17,870	18,640
Year 1, Period 13	2007/2008	15,480	16,640	17,800	18,570
Year 2, Period 1	2008/2009	15,420	16,570	17,730	18,500
Year 2, Period 2	2008/2009	15,360	16,510	17,660	18,430
Year 2, Period 3	2008/2009	15,300	16,450	17,590	18,360
Year 2, Period 4	2008/2009	15,240	16,380	17,520	18,290
Year 2, Period 5	2008/2009	15,180	16,320	17,460	18,210
Year 2, Period 6	2008/2009	15,120	16,250	17,390	18,140
Year 2, Period 7	2008/2009	15,060	16,190	17,320	18,070
Year 2, Period 8	2008/2009	15,000	16,130	17,250	18,000
Year 2, Period 9	2008/2009	14,960	16,080	17,200	17,950
Year 2, Period 10	2008/2009	17,880	19,220	20,570	21,470
Year 2, Period 11	2008/2009	17,830	19,180	20,510	21,410
Year 2, Period 12	2008/2009	17,790	19,130	20,460	21,350
Year 2, Period 13	2008/2009	17,740	19,070	20,400	21,290

⁹² Date of Change 22/4/2008

⁹³ DATE OF CHANGE 31/3/2009

⁹⁴ Date of Change 20/10/2010

⁹⁵ Date of Change 20/06/2012

Period 13					
Year 3, Period 1	2009/2010	17,690	19,020	20,350	21,240
Year 3, Period 2	2009/2010	17,650	18,970	20,290	21,180
Year 3, Period 3	2009/2010	17,610	18,930	20,240	21,120
Year 3, Period 4	2009/2010	17,560	18,880	20,180	21,070
Year 3, Period 5	2009/2010	17,510	18,820	20,140	21,010
Year 3, Period 6	2009/2010	17,460	18,770	20,080	20,950
Year 3, Period 7	2009/2010	17,410	18,720	20,030	20,900
Year 3, Period 8	2009/2010	17,370	18,670	19,970	20,840
Year 3, Period 9	2009/2010	17,300	18,600	19,900	20,760
Year 3, Period 10	2009/2010	17,890	19,220	20,560	21,450
Year 3, Period 11	2009/2010	17,810	19,150	20,490	21,370
Year 3, Period 12	2009/2010	17,740	19,070	20,410	21,290
Year 3, Period 13	2009/2010	17,680	18,990	20,320	21,210
Year 4, Period 1	2010/2011	17,600	18,920	20,240	21,120
Year 4, Period 2	2010/2011	17,530	18,850	20,170	21,040
Year 4, Period 3	2010/2011	16,680	17,940	19,180	20,020
Year 4, Period 4	2010/2011	16,620	17,860	19,100	19,940
Year 4, Period 5	2010/2011	16,550	17,780	19,030	19,860
Year 4, Period 6	2010/2011	16,480	17,720	18,950	19,780
Year 4, Period 7	2010/2011	16,420	17,650	18,880	19,700
Year 4, Period 8	2010/2011	16,350	17,570	18,800	19,620
Year 4, Period 9	2010/2011	16,280	17,500	18,730	19,530
Year 4, Period 10	2010/2011	16,220	17,430	18,650	19,460
Year 4, Period 11	2010/2011	16,150	17,370	18,580	19,390
Year 4, Period 12	2010/2011	16,080	17,300	18,500	19,300
Year 4, Period 13	2010/2011	16,020	17,220	18,430	19,220
Year 5, Period 1	2011/2012	15,950	17,140	18,340	19,130
Year 5,	2011/2012	15,880	17,070	18,260	19,050

Period 2					
Year 5, Period 3	2011/2012	15,790	16,980	18,170	18,950
Year 5, Period 4	2011/2012	15,730	16,910	18,080	18,870
Year 5, Period 5	2011/2012	15,660	16,830	18,010	18,790
Year 5, Period 6	2011/2012	15,580	16,760	17,930	18,720
Year 5, Period 7	2011/2012	15,530	16,690	17,850	18,630
Year 5, Period 8	2011/2012	15,450	16,620	17,770	18,550
Year 5, Period 9	2011/2012	15,380	16,530	17,700	18,470
Year 5, Period 10	2011/2012	15,500	16,650	17,810	18,590
Year 5, Period 11	2011/2012	15,430	16,580	17,740	18,510
Year 5, Period 12	2011/2012	15,360	16,510	17,660	18,430
Year 5, Period 13	2011/2012	15,300	16,440	17,570	18,340
Year 6, Period 1	2012/2013	15,230	16,360	17,500	18,260
Year 6, Period 2	2012/2013	15,150	16,290	17,420	18,170
Year 6, Period 3	2012/2013	15,080	16,220	17,350	18,100
Year 6, Period 4	2012/2013	15,020	16,150	17,260	18,020
Year 6, Period 5	2012/2013	14,950	16,060	17,190	17,930
Year 6, Period 6	2012/2013	14,880	15,990	17,110	17,850
Year 6, Period 7	2012/2013	14,820	15,920	17,040	17,770
Year 6, Period 8	2012/2013	14,750	15,850	16,950	17,680
Year 6, Period 9	2012/2013	14,670	15,780	16,880	17,610
Year 6, Period 10	2012/2013	14,610	15,710	16,800	17,530
Year 6, Period 11	2012/2013	14,530	15,630	16,710	17,440
Year 6, Period 12	2012/2013	14,460	15,560	16,640	17,360
Year 6, Period 13	2012/2013	14,400	15,480	16,560	17,280
Year 7, Period 1	2013/2014	14,330	15,410	16,480	17,190
Year 7, Period 2	2013/2014	14,260	15,330	16,400	17,120
Year 7, Period 3	2013/2014	14,180	15,260	16,330	17,040
Year 7, Period 4	2013/2014	14,120	15,190	16,240	16,950

Period 4					
Year 7, Period 5	2013/2014	14,050	15,120	16,170	16,870
Year 7, Period 6	2013/2014	13,980	15,050	16,090	16,780
Year 7, Period 7	2013/2014	13,920	14,970	16,000	16,700
Year 7, Period 8	2013/2014	13,850	14,890	15,930	16,630

Until Franchise ends

1. **Start of the Franchise**

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

APPENDIX 8

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

APPENDIX 8A

Figures for Calculation of Annual HLOS Franchise Payments⁹⁷

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>	<i>Column 4</i>	<i>Column 5</i>	<i>Column 6</i>
<i>Franchise Year</i>	<i>FXD (£)</i>	<i>VCRPI (£)</i>	<i>VCAEI (£)</i>	<i>PRPI (£)</i>	<i>TRRPI (£)</i>
<i>Year 1 part year</i>					
<i>Year 2</i>					
<i>Year 3</i>					
<i>Year 4</i>					
<i>Year 5</i>					
<i>Year 6</i>					
<i>Year 7</i>					
<i>Year 7 (up to 7 Year End Date)</i>					
<i>Year 7 (up to 7 Reporting Period Extension)</i>					
<i>Year 7 part year</i>					
<i>Year 8 part year</i>					
<i>Year 8</i>					
<i>Year 9 (up to full Franchise End)</i>					
<i>Year 9 (up to 7 Reporting Period)</i>					

⁹⁷ 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.

<i>Extension)</i>					
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APPENDIX 9

List of Key Contracts (Clause 5.24)

The following items have as at the date of the Franchise Agreement been agreed between the parties to be Key Contracts:

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

APPENDIX 10

List of Primary Franchise Assets (Clause 5.25)

Description of Primary Franchise Asset	Commitment not to de-designate
Gates at the following stations (with corresponding asset numbers in brackets): Euston (SLI009545), Watford Junction (SLI009545A), Hemel Hempstead (SLI0095451), Bletchley (SLI009545H), Northampton (SLI009545H) and Milton Keynes (SLI009545B)	No
Tribute including chip and pin with asset number SLCOA70001	No
Quickfare Replacement (S&B Machines) with asset number SLCOA 70002	No
Swecoin printers (Tribute) with asset number 310065	No
CCTV installations at Wythall and Alvechurch with asset number 330077	No
New Waiting Shelters at Hampton in Arden, Lye, Blake Street, Widney Manor, Barnt Green, Four Oaks, Perry Barr, Hamstead, Stechford, Acocks Green and Tile Hill all with asset number 150142	No
Local Information Control Centre Server currently located at PO Box 4323 102 New Street, Birmingham, B2 4JB with asset number 310067	No
Real Time CIS Installations at the following stations, all with asset number 310066: Birmingham Snow Hill, Bromsgrove, Colwall, Great Malvern, Kidderminster, Ledbury, Malvern Link, Stourbridge Junction, Stourbridge Town, Stratford Upon Avon, Telford Central, Wellington, Worcester Foregate Street and Worcester Shrub Hill	No
Automated PA Installations at the following stations all with asset number 31066: Birmingham Snow Hill, Bromsgrove, Colwall, Great Malvern, Henley in Arden, Kidderminster, Ledbury, Malvern Link, Redditch, Stourbridge Junction, Stourbridge Town, Stratford Upon Avon, Telford Central, Wellington, Worcester Foregate Street, Worcester Foregate Street, Worcester Shrub Hill, Acocks Green, Adderley Park, Berkswell, Canley, Coseley, Dudley Port, Gravelly Hill, Hampton in Arden, Lee Hall, Smethwick Rolfe Street,	No

Description of Primary Franchise Asset	Commitment not to de-designate
Stetchford, Tile Hill, Tipton and Widney Manor.	
Scheidt and Bachman Ticket Vending Machines at the following Stations all with asset number 150137: Barnt Green (1), Bournville (1), Four Oaks (1), Kings Norton (2), Lichfield City (1), Longbridge (1), Northfield (1), Redditch (1), Selly Oak (2), Solihull (1), Stourbridge Junction (1), Sutton Coldfield (1), University (2), Walsall (2), Nuneaton (1), Telford (1), Worcester Foregate Street (1) and Worcester Shrub Hill (1).	No

APPENDIX 11

⁹⁸***List of Committed Obligations ,HLOS Committed Obligations Remedial Plan Key Inputs and Related Provisions.***

Part 1 to Appendix 11

List of Committed Obligations

1. Secure Station Accreditation

1.1 On or before the date that is 2 years from the Start Date, the Franchisee shall achieve "Secure Station Scheme" accreditation (in accordance with the guidelines published on the 24 March 2005 (as modified in 22 May 2006) for:

- (a) each of the 80% Snow Hill Stations; and
- (b) each of the 80% Non-Snow Hill Stations.

2. Improvements at Stations

2.1 Rugeley Trent Valley

- (a) By and from the Passenger Change Date commencing in or around December 2008 the Franchisee shall provide the following facilities at Rugeley Trent Valley station:
 - (i) long line public address system for use in an emergency and so that passengers may receive information about train delays and cancellations;
 - (ii) "real time" passenger information monitors on each platform used by the Passenger Services;
 - (iii) weather proof covered waiting accommodation sufficient for the anticipated volume of passengers expected to change trains at Rugeley Trent Valley Station and which includes some seating; and
 - (iv) CCTV equipment (monitored in real time) which as a minimum, complies with such standards as may be required for evidence in criminal proceedings.
- (b) The Franchisee shall ensure that from the Passenger Change Date commencing in or around December 2008 the long line public address system provided pursuant to paragraph 2.1(a)(i) is used effectively by

⁹⁸ Date of Change 22/01/2010

its Franchise Employees to provide, in the event of delay or cancellation to passenger services, details of such delay or cancellations and any alternative journey arrangements (and any other relevant information).

- (c) The Franchisee shall ensure that from the Passenger Change Date commencing in or around December 2008 any CCTV or "real time" passenger information monitors provided pursuant to paragraphs 2.1(a)(iv) and 2.1(a)(ii) respectively is fully operational and in the case of the CCTV is linked to a central monitoring facility.

2.2 Station Environment

- (a) On or before the date that is three years from the Start Date ("Investment Period") the Franchisee shall improve the Stations and facilities at Stations, and in so doing shall incur expenditure of not less than £⁹⁹. The improvements to be made at Stations and facilities at Stations shall include the following (but there is no requirement for all of the following improvements to be made at every Station):
 - (i) the introduction of a range of measures including platform markings, lighting, CCTV and/or help points at Stations;
 - (ii) refurbishment of waiting rooms, waiting shelters and toilets;
 - (iii) provision of additional cycling facilities;
 - (iv) introduction of and/or improvement to customer information systems and passenger announcement systems; and
 - (v) repainting and rebranding of Stations.
- (b) In order to assist the Secretary of State in the monitoring of the Franchisee's compliance with its obligations under paragraph 2.2(a) the Franchisee shall on or before the end of the ninth Reporting Period following the Start Date provide to the Secretary of State a delivery plan which sets out as a minimum:
 - (i) the affected Stations and the improvements (together with any associated improvements to facilities) that will be made at each of the affected Stations pursuant to paragraph 2.2(a);
 - (ii) the dates of planned completion of such improvements at each affected Station; and

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.

- (iii) a brief explanation as to the reasons why the Franchisee has prioritised such improvements at such Stations.
- (c) Subject to the Franchisee obtaining the approval of HM Railway Inspectorate and any consents that may be required under the relevant Station Leases or relevant Access Agreements (as the case may be) the Franchisee shall, on or before 30 April 2009:
 - (i) install full automatic ticket gates at the following Stations:
 - (1) Birmingham New Street;
 - (2) Birmingham Snow Hill;
 - (3) Birmingham Moor Street;
 - (4) University; and
 - (5) Five Ways;

and in so doing incur expenditure of not less than £¹⁰⁰;
 - (ii) install 18 ticket vending machines at Stations and in so doing incur expenditure of not less than £¹⁰¹;
- (d) In order to assist the Secretary of State in the monitoring of the Franchisee's compliance with its obligations under paragraph 2.2(c)(ii) the Franchisee shall on or before the end of the fifth Reporting Period following the Start Date provide to the Secretary of State a delivery plan which sets out as a minimum:
 - (i) the Stations where the ticket vending machines will be installed (specifying the numbers to be installed at each such station);
 - (ii) the dates of planned completion of such installation at each such station; and
 - (iii) a brief explanation as to the reasons why the Franchisee has opted to install the ticket vending machines at such stations.

¹⁰⁰ Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹⁰¹ Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

(e) ¹⁰² ***Subject to obtaining all necessary planning and other consents the Franchisee shall:***

(i) ***on or before 30 April 2009, provide additional car parking spaces at the following Stations ("Car Park Stations") so as to generate no less than 1,000 new car parking spaces at such Stations and in so doing shall incur expenditure of not less than £¹⁰³:***

Berkhamsted, Bletchley, Kings Langley, Leighton Buzzard, Northampton, Nuneaton, Tamworth, Wolverton and Worcester Shrub Hill;

(ii) ***in addition to its obligations in paragraph 2.2(e)(i), the Franchisee shall use all reasonable endeavours to secure sources of third party funding (other than from itself or an Affiliate) for the provision of additional car parking spaces so as to generate no less than 2,250 additional car parking spaces at the following stations by the Passenger Change Date in December 2012:***

Lichfield Trent Valley, Milton Keynes Central, and Watford Junction;

(iii) in addition to its obligations in paragraph 2.2(a)(iii) within two years of the Start Date, provide improved bicycle storage facilities at the Stations listed in the delivery plan to be provided pursuant to paragraph 2.2(f), and in so doing incur expenditure of not less than £¹⁰⁴.

(f) In order to assist the Secretary of State in the monitoring of the Franchisee's compliance with its obligations under paragraph:

(i) 2.2(e)(i) the Franchisee shall, on or before the end of the sixth Reporting Period following the Start Date, provide to the Secretary of State a delivery plan which specifies as a minimum:

¹⁰² Date of change 16/12/2009

¹⁰³ Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

¹⁰⁴ Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

- (1) a plan showing the location of the additional car parking spaces at each Car Park Station; and
 - (2) the dates by which such additional car parking spaces will be provided at each Car Park Station;
- (ii) 2.2(e)(iii) the Franchisee shall, on or before the end of the sixth Reporting Period following the Start Date, provide to the Secretary of State a delivery plan which specifies as a minimum:
 - (1) the Stations where the improved bicycles storage facilities will be installed (specifying the numbers to be installed at each station);
 - (2) the dates of planned completion of such installation at each such station; and
 - (3) a brief explanation as to why the Franchisee has opted to install the improved bicycle storage facility at such stations.

3. **Co-Operation with Infrastructure/Station Projects**

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

- (a) Bletchley area signalling renewals and network simplification;
- (b) West Coast Route Modernisation;
- (c) any project identified in any high level output specification issued by the Secretary of State from time to time;
- (d) Milton Keynes station remodelling;
- (e) Rugby remodelling;
- (f) Trent Valley four tracking;
- (g) Birmingham New Street redevelopment 'Gateway' project;
- (h) Coventry area signalling;

- (i) West Midlands area re-signalling schemes;
- (j) European Rail Traffic Management System;
- (k) Intercity Express Project;
- (l) Cannock line improvements;
- (m) Snow Hill station second access;
- (n) West Midlands area station/park and ride enhancement schemes;
- (o) Bromsgrove station enhancements;
- (p) Watford Junction station redevelopment;
- (q) Tring station 'Gateway' project;
- (r) Northampton station development;
- (s) Brinsford proposed new station;
- (t) East-West Rail;
- (u) Croxley Rail link;
- (v) Bricket Wood passing loop; and
- (w) improvements at Kidderminster Station.

3.2 In fulfilling its obligation to co-operate and liaise pursuant to paragraph 3.1 the Franchisee shall amongst other things seek to:

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

4. West Midlands Passenger Transport Executive

4.1 Advertising and Promotion of the Birmingham Services

- (a) The Franchisee shall at its own cost co-operate and liaise with the West Midlands Passenger Transport Executive ("PTE") in the PTE's advertising and promotion of any service which constitutes a Birmingham Service.
- (b) The Franchisee shall(at its own cost):

- (i) publish such advertising and promotional material as the PTE may reasonably require; and
- (ii) ensure that the PTE brand is used:
 - (1) for all publicity material published at the Birmingham Stations in respect of Birmingham Services; and
 - (2) to the extent reasonably practicable having regard to the need to diagram rolling stock efficiently, on the rolling stock used predominantly in the provision of the Birmingham Services.
- (c) Unless as otherwise agreed by the PTE, the Franchisee agrees not to remove any Network West Midlands branding that is affixed, as at the Start Date, on station totems and running boards located at the Birmingham Stations.
- (d) For the purposes of this paragraph 4.1:
 - (i) "Co-operate" shall include attendance at meetings and assistance with the co-ordination of advertising and promotional activities and, at the reasonable request of the PTE, provision of free advertising space to enable the PTE to advertise and promote its publicity materials provided that such free advertising space shall be limited to 33 % of all available advertising space; and
 - (ii) "publish" shall include making the relevant advertising and promotional material available as directed by the PTE at all Birmingham Stations.

4.2 Provision of Information to the PTE

- (a) The Franchisee shall provide in relation to the Birmingham Stations and the Birmingham Services the following disaggregated information;
 - (i) passenger number information collected pursuant to paragraph 1 of Schedule 1.5 (*Information about Passengers*) of the Terms;
 - (ii) **NOT USED;**¹⁰⁵
 - (iii) information in respect of self certified compliance with Service Quality Benchmarks pursuant to paragraph 4.1 of Schedule 7.2 (*Service Quality Management*) of the Terms.

¹⁰⁵ Delete text wef 25/04/08

- (b) The Franchisee shall with regard to the Birmingham Services operated in the Morning Peak or the Evening Peak provide to the PTE information in respect of each day in respect of Cancellations, Partial Cancellations and Minutes Delay occurring or incurred such information to be provided in respect of any day as soon as reasonably practicable but by no later than 12 noon the next day.
- (c) In respect of the Birmingham Services scheduled to be operated in the Morning Peak or the Evening Peak only the Franchisee shall within 10 days of the end of each Reporting Period provide the PTE with a summary of Cancellations, Partial Cancellations, Minutes Delay, trains operated with less passenger carrying capacity than provided for in the Train Plan and incidences of significant general disruption to services during that Reporting Period.
- (d) The Franchisee shall make such arrangements as may be considered reasonable to provide the information referred to in paragraph 4.2(b) on a "real time basis" through pagers or mobile phones to no more than 3 nominated representatives of the PTE.

4.3 Rolling Stock Requirement

Unless as otherwise agreed by the PTE, the EMU fleet comprised in the Train Fleet shall include the four Class 323 sets leased by the PTE from Royal Bank Leasing Limited and subleased by the PTE to Porterbrook Leasing.

5. Operational Performance

5.1 The Franchisee in seeking to perform at a level which is equal to or better than the Target Performance Levels set out in each of the Cancellations Benchmark Table, Sunday Cancellations Benchmark Table and the Service Delivery Benchmark table shall use all reasonable endeavours to procure that within two years of the Start Date the Miles Per Casualty Rates of the:

- (a) Class 153 rolling stock comprised in its Train Fleet ("Class 153 Rolling Stock") is no less than 8,446;
- (b) Class 170 rolling stock comprised in its Train Fleet ("Class 170 Rolling Stock") is no less than 10,729; and
- (c) Class 323 rolling stock comprised in its Train Fleet ("Class 323 Rolling Stock") is no less than 15,800;

For the purposes of this paragraph 5.1:

Miles Per Casualty Rates means the total fleet unit miles in the Reporting Period divided by the number of Qualifying Incidents in that Reporting Period; and

Qualifying Incidents means a direct delay anywhere along the route of five or more minutes, a Cancellation or a Partial Cancellation in each case caused by a technical defect with the train.

- 5.2 The Franchisee shall use all reasonable endeavours to ensure that the percentage for the Public Performance Measure measured as a moving annual average for the end of the Franchisee Year specified in the left hand column of the following table exceeds or is at the percentage specified in the right hand column of such table:

Franchisee Year Ending	Percentage
31 March 2008	86.45%
31 March 2009	87.48%
31 March 2010	88.58%
31 March 2011	89.14%
31 March 2012	89.55%
31 March 2013	89.88%
31 March 2014	90.19%
31 March 2015	90.49%
31 March 2015 until end of Franchise Term.	90.70%

For the purposes of this paragraph 5.2 Public Performance Measure means the measure of the number of Passenger Services (expressed as a percentage of the number of Passenger Services which are scheduled to be provided under the Plan of the Day) which arrive punctually at their final scheduled destination in the Plan of the Day measured on the basis that:

- (a) for this purpose, "punctually" means within 4 minutes 59 seconds of the scheduled arrival time as shown in the Plan of the Day; and
- (b) any train which is a Cancellation will be regarded as not arriving punctually;

and as such measure is produced and/or published by Network Rail from time to time.

- 5.3 Subject to the approval of Network Rail and in order to improve performance of the Passenger Services through better co-operation and liaison with Network Rail (in particular when there is disruption to the Passenger Services) the Franchisee shall by the Passenger Change Date occurring on or around December 2008

establish and maintain throughout the Franchise Term an integrated control centre currently located at The Mailbox in Birmingham (or such other location as may be agreed by Network Rail from time to time) in which all Network Rail's relevant control and signalling staff will be co-located with the Franchisee's control staff in order to assist in the planning and delivery of the Passenger Services.

5.4 Subject to paragraph 5.5, the Franchisee shall with effect from the Start Date establish a performance improvement fund and expend the following amounts out of such fund:

- (a) £300,000 in relation to the period commencing on the Start Date and ending on the third anniversary of the Start Date;
- (b) £300,000 in relation to the period commencing on the third anniversary of the Start Date and ending on the sixth anniversary of the Start Date; and
- (c) £150,000 in relation to the period commencing on the sixth anniversary of the Start Date and ending on the date of expiry of the Franchise Term.

5.5 The amount of the fund that is unspent or overspent in relation to a period described at paragraph 5.4(a) or 5.4(b) above up to a maximum of £75,000 may be carried across to increase or decrease the fund for the subsequent period (as appropriate) and the Franchisee shall pay to the Secretary of State in cash on the next Payment Date (or such other date as the Secretary of State may specify) the balance of any remaining shortfall (being the amount by which expenditure is more than £75,000 below the amount planned for that period).

5.6 If any amount of the aggregate performance fund established pursuant to paragraph 5.4 above has not been spent by the end of the Franchisee Term, then the Franchisee shall pay to the Secretary of State in cash on such date as the Secretary of State may specify an amount equal to such shortfall (after deduction of any amount paid to the Secretary of State pursuant to paragraph 5.5).

5.7 On or before the end of the sixth Reporting Period following the commencement of each of the periods specified in paragraph 5.4 the Franchisee shall submit to the Secretary of State a performance plan which as a minimum shall specify:

- (a) a breakdown and full description of the performance initiatives to be delivered pursuant to paragraph 5.4(a);
- (b) the timescales by which each such performance initiative shall be fully delivered; and

- (c) the benefits to performance that the Franchisee expects will be achieved by the implementation of such performance initiatives.

6. Station and Train Presentation

6.1 Subject to paragraph 6.2, the Franchisee shall normally remove graffiti:

- (a) from Stations, within twenty-four hours of it being reported either by a Franchise Employee or a passenger; and
- (b) from rolling stock vehicles, within twenty-four hours or if later prior to such rolling stock entering into Passenger Service (so far as is reasonably practicable without causing unreasonable delay or Cancellation to such Passenger Service);

and subject to paragraph 6.2 shall in any event do so within 14 days in accordance with the procedure for the removal of graffiti having been commenced within twenty-four hours of it being reported either by a Franchise Employee or a passenger.

6.2 In circumstances where the removal of such graffiti requires a Restriction of Use, a risk assessment or specialist attention or is outside the area of the Station Lease of the affected Station or cannot be rectified at the reported location, appears on out-berthed stock or requires specialist chemicals or parts or involves window etching (or such other exceptional circumstances as may be agreed by the Secretary of State) the Franchisee shall remove such graffiti as soon as reasonably practicable having commenced the procedure for such removal within seven days of it being reported either by a Franchise Employee or a passenger. For the purposes of this paragraph 6.2, "out-berthed stock" means rolling stock that is not returned overnight to one of the following locations overnight: Tyseley Depot; Soho Depot; Northampton King Heath depot; Crewe depot; and Worcester Depot.

7. Staff Development

7.1 Training

- (a) Without prejudice to any other obligation of the Franchisee under this paragraph 7 the Franchisee shall introduce a comprehensive staff training and development programme and in so doing incur expenditure (on items not of a capital nature) of not less than £¹⁰⁶ over the Franchise Term. Such staff training and development programme will be offered to the Franchise Employees and shall include the training of the

¹⁰⁶ Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

Franchise Employees who are revenue protection inspectors on the industry recognised training known as PACE.

- (b) The Franchisee shall provide to the Secretary of State at the beginning of each Franchisee Year (the first of which will be provided at the end of the third Reporting Period following the Start Date) the annual training plan for that Franchisee Year specifying as a minimum:
 - (i) a breakdown of the expenditure that will be incurred by the Franchisee for training in that Franchisee Year; and
 - (ii) the Franchisee's training requirements for that Franchisee Year together with the allocated spend for each such requirement.
- (c) Subject to paragraph 7.1(d), the Franchisee shall incur training and development expenditure in each Franchisee Year that is not less than the amount set out in the annual training plan for that year provided pursuant to paragraph 7.1(b).
- (d) The amount of training and development expenditure for a Franchisee Year (as set out in the annual training plan for that Franchisee Year provided pursuant to paragraph 7.1(b)) that is unspent at the end of that Franchisee Year up to a maximum of 25 per cent of the planned amount of training and development expenditure for that Franchisee Year (as set out in the annual training plan for the Franchisee Year provided pursuant to paragraph 7.1(b)) shall be carried across to increase the training and development expenditure planned for the subsequent Franchisee Year.
- (e) If by the end of any Franchisee Year the Franchisee has incurred expenditure on training and development that is less than 75 per cent of the amount of training and development expenditure planned for that Franchisee Year (as set out in the annual training plan for that Franchisee Year as provided pursuant to paragraph 7.1(b)), then the Franchisee shall pay to the Secretary of State in cash on the next Payment Date (or such other date as the Secretary of State may specify) an amount equal to such shortfall below 75 per cent.
- (f) In any event, if the Franchisee has not incurred training and development expenditure of not less than £5,096,000 over the Franchise Term, then the Franchisee shall pay to the Secretary of State in cash on such date as the Secretary of State may specify an amount equal to such shortfall (after deduction of any amount paid to the Secretary of State pursuant to paragraph 7.1(e)).

7.2 Customer Service Training¹⁰⁷

- (a) *“Within 12 months of the date that is the Start Date the Franchisee shall commence, and on or before the date that is three years from the Start Date shall complete, a programme of development training for all Franchise Employees to the equivalent level of NVQ Level 2 (including equality and diversity training and for passenger facing staff only, customer service training),”*

7.3 Investors in People

- (a) The Franchisee shall:
- (i) use all reasonable endeavours to achieve the “Investors in People” accreditation within three years of the Start Date; and
 - (ii) in any event shall achieve the “Investors in People” accreditation by no later than the fifth anniversary of the Start Date.

7.4 Training Centre

- (a) The Franchisee shall on or before the date that is one year from the Start Date:
- (i) establish a staff training centre; and
 - (ii) procure a PC based driver simulator for that training centre;
- to be used by the Franchisee in the provision of training to the Franchise Employees.

7.5 EFQM

- (a) Within three years of the Start Date the Franchisee shall implement across the whole of the Franchise a business excellence model based on the “EFQM” excellence model with the principal features of such a model being the rigorous setting of processes that have as their objective the delivery of realistic and measurable targets.
- (b) The Franchisee shall conduct an annual self assessment (the first of which will be carried out on or before 1 October 2009) in order to review and assess progress against any targets that have been set as part of its commitment in paragraph 7.5(a) or otherwise. The results of any such

¹⁰⁷ Date of change 23/12/2009

self assessment shall be used by the Franchisee to redefine processes and targets for the following year and shall be provided to the Secretary of State at his request.

- (c) To assist in the delivery of its obligations in paragraph 7.5(b) the Franchisee will appoint a team of assessors ("EFQM Assessors") from within the Franchise and during the first Franchisee Year ensure that the EFQM Assessors are sufficiently trained in the use and application of the "EFQM" excellence model and "RADAR" to enable them to carry out the assessments required by this paragraph 7.5.
- (d) In the first Franchisee Year, the Franchisee shall introduce and deliver to its Franchise Employees a quality management briefing programme. Such briefing programme shall as a minimum explain the EFQM model and how the model links in with the business processes of the Franchisee.
- (e) Without prejudice to any of its obligations in this paragraph 7.5 the Franchisee shall ensure that within the first 18 months of the Franchise Term all of its Franchise Employees who are senior managers are trained in the use of the EFQM excellence model.

8. Staff Accommodation

8.1¹⁰⁸ ***On or before the date that is four years from the Start Date the Franchisee shall improve its staff accommodation (including refurbishing the staff amenity block situated at the Depot at Tyseley) and in so doing shall incur expenditure of not less than £517,000.***

8.2 In order to assist the Secretary of State in the monitoring of the Franchisee's compliance with its obligations under paragraph 8.1 the Franchisee shall on or before the end of the sixth Reporting Period following the Start Date provide to the Secretary of State a delivery plan which sets out as a minimum:

- (a) a list of the relevant staff accommodation which will be subject to improvement pursuant to paragraph 8.1;
- (b) the dates of planned completion of such improvements at each such staff accommodation;
- (c) the extent of the improvements and the expenditure to be incurred on such improvements at each such staff accommodation; and
- (d) a brief explanation as to the reasons why the Franchisee has prioritised such improvements at each such staff accommodation.

¹⁰⁸ Date of change 05/04/2011

9. **Rolling Stock/Depots**

9.1 **New Rolling Stock**¹⁰⁹

9.2 **Rolling Stock Interior Refreshment and Reliability Improvements**¹¹⁰

9.3 ¹¹¹*The Franchisee shall procure that on or before the date that is two years from the Start Date, with the exception of the 7 x4-car Class 321 units retained by the Franchisee pursuant to the terms of the HLOS Phase 1 Deed of Amendment, all of its rolling stock vehicles comprised in its Train Fleet and used for the provision of the Passenger Services on the West Coast mainline are fitted with retention tanks.*

9.4 By developing a mutually beneficial partnership relationship with Siemens Transportation Systems the Franchisee shall by the Passenger Change Date in December 2008 establish an EMU centre of excellence at the depot located at Northampton Kings Heath which provides for reliability centred maintenance reviews and integrated maintenance management systems for the entire EMU rolling stock fleet operated by the Franchisee.

9.5 The Franchisee shall on or before the date that is eighteen months from the Start Date establish a DMU centre of excellence at Tyseley Depot which provides for reliability centred maintenance reviews and integrated maintenance management systems for the entire DMU rolling stock fleet operated by the Franchisee.

9.6 The Franchisee shall, on or before the date that is four months from the Start Date deep clean the rolling stock vehicles comprised in the Train Fleet and in so doing incur expenditure of not less than £85,000.

9.7 Within 24 months of the Start Date the Franchisee shall:

- (a) implement the ISO9001 management system for all its engineering activities within the Franchise; and
- (b) achieve the accreditation of such ISO 9001 management system.

9.8 *On or before 30 May 2011 the Franchise shall extend two roads in the maintenance shed located at Tyseley Depot and in so doing incur*

¹⁰⁹ 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.

¹¹⁰ 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.

¹¹¹ Date of change 30/9/2009

*expenditure of not less than £250,000 so that such maintenance shed can accommodate 3 car rolling stock units of 23 metres long.*¹¹²

10. Franchise Management

- 10.1 On or before the date that is one year from the Start Date the Franchisee shall establish a stakeholder advisory board ("Stakeholder Advisory Board"). The Stakeholder Advisory Board shall include (but not be limited to) the managing director of the Franchisee and the Franchisee shall seek to include a passenger representative and a special needs passenger representative. The Stakeholder Advisory Board will be formally constituted to provide advice and recommendations to the Franchisee on strategic and policy issues. The Franchisee shall have due regard to any advice and recommendations of the Stakeholder Advisory Board.
- 10.2 On or before the date that is six months from the Start Date the Franchisee shall establish a single headquarters for the Franchise located in Birmingham.
- 10.3 With effect from the Start Date and until the 30 April 2009, the Franchisee shall appoint and employ a migration manager whose duties shall include (but not be limited to) the implementation of the timetable change due to take effect in or around December 2008.

11. Customer Satisfaction

- 11.1 The Franchisee shall use all reasonable endeavours to ensure that in respect of the National Passenger Survey categories described in each row of the table at paragraph 11.2 it achieves in respect of 'very satisfied/satisfied/good' responses:-
- (a) by Spring 2010 the lower of:
- (i) the level of the percentage score achieved for such category in the Spring 2008 National Passenger Survey plus the percentage score specified in the second column of each such row; and
 - (ii) the level of the percentage score specified in the third column of each such row; and
- (b) by Spring 2015 the lower of:
- (i) the level of the percentage score achieved for such category in the Spring 2008 National Passenger Survey plus the percentage score specified in the fourth column of each such row; and

¹¹² Date of Change 29/07/2010

- (ii) the level of the percentage score specified in the fifth column of each such row.

11.2 NPS Table

NPS Category	Spring 2010 increment	By Spring 2010	Spring 2015 increment	By Spring 2015
Overall Satisfaction	5%	85%	8%	88%
Overall station environment	20%	80%	25%	85%
Punctuality/Reliability	7%	82%	13%	88%
Helpfulness and attitude of the staff	9%	80%	14%	85%
Helpfulness and attitude of staff on Train	13%	75%	18%	80%
How well the company dealt with delays	5%	35%	10%	40%
Provision of information during the passenger's journey	15%	75%	17%	77%
Provision of information at Stations about train times and platforms	5%	85%	7%	87%
Train Environment	6%	75%	9%	78%

- 11.3 Without prejudice to the Secretary of State's rights if the Franchisee is in breach of its obligations under paragraph 11.1, if and to the extent that the Franchisee does not achieve the level of the percentage score for 'very satisfied/satisfied/good' responses as contemplated by paragraph 11.1, the Franchisee shall prepare a plan which shall set out an explanation of the reasons for such non-achievement and the steps proposed by the Franchisee for the purposes of improving the percentage score at the following National Passenger Survey. The steps proposed by the Franchisee shall be those reasonably required in order to achieve the responses contemplated by paragraph 11.1 provided that the Franchisee shall not be required to incur any expenditure additional to that which it is otherwise required by this Franchise Agreement to incur.

- 11.4 The Franchisee shall:-

- meet with the Secretary of State to discuss any plan produced by it pursuant to paragraph 11.3,
- take into account any reasonable comments of the Secretary of State in respect thereof consistent with the provisions of paragraph 11.3, and
- subsequently implement the steps proposed in such plan.

12. Environment

- 12.1 On or before the date that is six months from the Start Date the Franchisee shall undertake a comprehensive environmental benchmarking review of the Franchise.
- 12.2 The Franchisee shall using the quantified baseline performance data established by the review pursuant to paragraph 12.1 develop an annual performance improvement target in relation to the following areas:
- (a) carbon emissions and energy use;
 - (b) sustainable use of resources;
 - (c) air quality;
 - (d) waste, recycling and litter management;
 - (e) land and water pollution and effluent discharge;
 - (f) noise and light pollution;
 - (g) natural environment and biodiversity; and
 - (h) socio-economic sustainability.

The Franchisee shall monitor its performance against such improvement targets and shall publish annually the results of its performance against such targets as well as the performance improvement targets for the following year.

- 12.3 The Franchisee shall, on or before the date that is six months from the Start Date introduce on a trial basis:
- (a) a car parking season ticket discount of 50% at all car parks at Relevant Stations to drivers of low emission hybrid vehicles (101-120 CO₂g/km); and
 - (b) free car parking season tickets at Relevant Stations to drivers of electric vehicles

(together to be known as the "Environmental Incentives").

The Franchisee shall conduct this trial until the later of the third anniversary of the commencement of the trial and the date on which the aggregate number of beneficiaries of the Environmental Incentives exceeds 10 per cent of the aggregate number of car parking spaces at the Relevant Stations. The Franchisee shall ensure that passengers are made aware of the Environmental Incentives and the duration of the trial contemplated hereunder. For the purpose of this paragraph 12.3, the "Relevant Stations" are those Stations at which the Franchisee controls the pricing of car parking spaces.

- 12.4 Within three years of the Start Date, the Franchisee shall procure that its "Energy Management System" achieves the ISO 14001 accreditation.

13. Customer Information

- 13.1 The Franchisee shall provide comprehensive information on peak train loading levels and rolling stock formation to passengers at twenty-five stations (to include the stations listed in paragraph 13.2) including by (but there is no requirement for all of the following improvements to be made at every station):

- (a) painting boarding zones on platforms (so that passengers know exactly where to board) within three years of the Start Date;
- (b) displaying posters showing peak crowding levels by train in the most recent Reporting Period, from 31 January 2009;
- (c) implementing specific staff training on crowd management techniques within one year of the Start Date; and
- (d) ensuring that within six months of the Start Date the customer information screens at those stations provide information on the number of carriages comprised in the relevant Passenger Service.ⁱ

- 13.2 The stations for the purposes of paragraph 13.1 shall include:

Milton Keynes Central, Watford Junction, Northampton, Kidderminster, Hemel Hempstead, Worcester Shrub Hill, Leighton Buzzard, Berkhamsted, University and Telford Central.

- 13.3 Subject to the approval of Birmingham International Airport Limited and the Franchisee obtaining all necessary planning and other consents the Franchisee shall by 30 April 2009 install a customer information desk and ticket sales point at Birmingham International Airport and in so doing shall spend not less than £¹¹³.

- 13.4 On or before the date that is six months from the Start Date the Franchisee shall develop and introduce a dedicated customer contact centre and inform the Secretary of State of its location.

- 13.5 The Franchisee shall by 30 April 2008 establish a website which shall publish amongst other things:

- (a) real time train running information from 31 May 2008;

¹¹³ 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.

- (b) information showing peak crowding levels by train in the most recent Reporting Period at the twenty five stations listed in paragraph 13.2 from 31 January 2009.

13.6 On or before the date that is six months from the Start Date the Franchisee shall provide personal digital assistants to all its conductors, revenue protection inspectors and service quality managers. ⁱⁱ

13.7 On or before 31 December 2008 the Franchisee shall establish a 24 hour integrated passenger information security centre and in so doing shall incur expenditure of not less than £¹¹⁴. The facilities provided at such integrated passenger information security centre shall include the monitoring of the Franchisee's customer information systems and CCTVs as appropriate.

14. **Security**

14.1 The Franchisee shall on or before the date that is two years from the Start Date achieve "Park Mark Safer Parking" accreditation at ten Station car parks.

14.2 On or before the date that is one year from the Start Date, the Franchisee shall establish a security task force comprised of the relevant Franchise Employees, security personnel (who are not Franchise Employees) and members of the British Transport Police to be responsible for taking an intelligence led approach to targeting crime and disorder hot spots across the Franchise.

15. **Commercial**

15.1 On or before the date that is six months from the Start Date the Franchisee shall appoint a business development and promotions manager who shall be responsible for developing and improving the passenger markets in the West Midlands franchise area including, in particular, Milton Keynes, Northampton and Birmingham.

15.2 Subject to the approval of the Secretary of State and the Franchisee obtaining all necessary consents the Franchisee shall by 31 January 2009 introduce a Franchise wide penalty fare scheme.

16. **Meet the Manager Sessions**

Every Reporting Period for the whole of the Franchise Term the Franchisee shall hold a meeting session at a Station or an Independent Station for at least one hour in the Morning Peak or Evening Peak ("Meet the Manager Sessions"). The Franchisee may vary the venue for any Meet the Manager Session from

¹¹⁴ 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.

Reporting Period to Reporting Period. Every Meet the Manager Session shall be attended by at least one local manager and one senior manager or a Director of the Franchisee and shall be publicised to passengers at least one week in advance.

17. Passengers

17.1 The Franchisee shall introduce on a trial basis the provision of on-board catering services on a proportion of its:

- (a) Birmingham to Liverpool services within six months of the Start Date; and
- (b) London Euston to Crewe service from the date of commencement of the operation of such service on the Passenger Change Date in December 2008.

17.2 The Franchisee shall continue to provide the on-board catering services prescribed in paragraph 17.1 until at least the Passenger Change Date in December 2010 and (subject to the Franchisee's view on passenger demand for on-board catering services) thereafter.

17.3 The Franchisee shall within six months of the Start Date introduce payment for car parking by scratch card at all Relevant Stations (as that term is defined in paragraph 12.3).

17.4 The Franchisee shall within six months of the Start Date introduce on a trial basis payment by mobile phone for car parking at the station at Berkhamsted. Such trial shall be conducted by the Franchisee for at least six months.

18. *Class 321 Rolling Stock*¹¹⁵

18.1 *The Franchisee has submitted to the Secretary of State an amended Train Plan reflecting the deployment of the Retained Class 321 Rolling Stock with effect from 15 December 2008 in accordance with paragraph 2 of Schedule 1.1 of the Terms. Such amended Train Plan has been drawn up on the basis that:*

- (a) *the Retained Class 321 Rolling Stock shall be used to provide additional capacity in the London Euston Peak; and***
- (b) *the Retained Class 321 Rolling Stock shall be allocated for use on the Northampton-London Euston route with effect from 15 December 2008.***

¹¹⁵ Date of change 30/09/2009

- 18.2 *The Franchisee shall on or before 14 July 2009, take the Retained Class 321 Rolling Stock on lease from HSBCR with effect from 14 July 2009 until a date no earlier than the Expiry Date of the Franchise Agreement, on terms approved in writing by the Secretary of State.*
- 18.3 *The Franchisee shall, on receipt of written notice from the Secretary of State requiring it to do so and subject to the consent of HSBCR (which consent the Franchisee shall use all reasonable endeavours to obtain), with effect from the date specified in such notice transfer, assign or novate any or all of its rights and obligations under the New Class 321 Lease to such other Train Operator as the Secretary of State may nominate on terms approved in writing by the Secretary of State.*
- 18.4 *The Franchisee shall, on receipt of written notice from the Secretary of State requiring it to do so and subject to the consent of HSBCR (which consent the Franchisee shall use all reasonable endeavours to obtain), with effect from the date specified in such notice sub-lease any or all of the Retained Class 321 Rolling Stock (the "Relevant Rolling Stock") to such other Train Operator as the Secretary of State may nominate (the "Sub-Lessee") on terms approved in writing by the Secretary of State. The terms of any such sub-leasing shall be such that:*
- (a) the Franchisee, and not the Sub-Lessee, shall be required to perform all obligations of the lessee in respect of the Relevant Rolling Stock under the New Class 321 Lease which as at the effective date and time of such sub-leasing (the "Effective Date") have accrued but have not been performed (including for the avoidance of doubt any obligation to make payment in respect of any period prior to the Effective Date where the obligation to make payment does not arise prior to the Effective Date) or which result from any breach of the New Class 321 Lease occurring prior to the Effective Date;*
 - (b) the Sub-Lessee shall be required to perform mutatis mutandis all other obligations of the lessee in respect of the Relevant Rolling Stock under the New Class 321 Lease; and*
 - (c) without prejudice to the generality of the foregoing, the Sub-Lessee shall be required to perform all redelivery obligations in respect of the Relevant Rolling Stock under the New Class 321 Lease.*
- 18.5 *The Franchisee shall, on receipt of written notice from the Secretary of State requiring it to do so and subject to the agreement of HSBCR, terminate the leasing of any or all of the Retained Class 321 Rolling Stock with effect from the date specified in such notice. Such termination shall take effect on and subject to such terms as are*

specified in such notice or otherwise agreed between the Franchisee and HSBCR with prior written consent of the Secretary of State.

19. ¹¹⁶**PASSENGER BENEFITS**

19.1 The Franchisee shall:

- (a) *by no later than 1 February 2010, the Franchisee shall provide to the Secretary of State for approval a delivery plan which sets out its planned improvements to customer information systems at Stations and the dates of planned completion;*
- (b) *subject to obtaining both the approval of Network Rail and the approval of the plan by the Secretary of State pursuant to paragraph 19.1(a), on or before¹¹⁷invest in improvements to customer information systems at Stations in addition to its obligations in paragraph 2.2 and in so doing (and for the purposes of paragraph 6.3 of Part 2 of Appendix 11) shall incur expenditure of not less than¹¹⁸; and*
- (c) *subject to obtaining both the approval of Network Rail and the approval of the plan by the Secretary of State pursuant to paragraph 19.1(a), enter into a maintenance contract for such customer information systems and shall incur expenditure pursuant to such maintenance contract (and for the purposes of paragraph 6.3 of Part 2 of Appendix 11) of not less than¹¹⁹between the date of installation of such systems and the Expiry Date provided that, if this Agreement expires on the Initial Expiry Date, such sum of¹²⁰shall reduce in proportion to the shortening of the period from the date of installation of such systems to the end of the Franchise Period.*

19.2 The Franchisee shall:

- (a) *by no later than 31st March 2010, the Franchisee shall provide to the Secretary of State for approval a plan to improve the provision of information to passengers at London Euston station during periods of disruption to Passenger Services; and*

¹¹⁶ Date of Change 22/01/2010

¹¹⁷ 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

¹¹⁸ 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

¹¹⁹ 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

¹²⁰ 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

- (b) *subject to the prior approval of the plan by the Secretary of State pursuant to paragraph 19.2(a), implement such plan and in so doing (and for the purposes of paragraph 6.3 of Part 2 of Appendix 11) shall incur expenditure of not less than¹²¹.*

19.3 ¹²².

19.4 *The Franchisee shall make available to passengers 50,000 'Day Ranger' tickets providing unlimited travel on all of the Franchisee's services from and including 27 December 2009 and 3 January 2010. The Price shall be no more than £10 for an adult and £5 for each accompanied child in standard accommodation (£20 for an adult and £10 for each accompanied child in first class accommodation).*

19.5 ¹²³

19.6 ¹²⁴

¹²¹ 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

¹²² 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

¹²³ 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

¹²⁴ 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

Part 2 to Appendix 11^{125 126}

Miscellaneous Provisions – Committed Obligations and Remedial Plan Key Inputs

1. Application^{127 128}

This Appendix sets out further terms which apply to the Committed Obligations set out in Part 1 (List of Committed Obligations) and Part 8 (Remedial Plan Key Inputs) to this Appendix 11 and the references to Committed Obligations in Parts 1, 2, 3, 4 and 8 of this Appendix 11 are only to the Committed Obligations in Part 1 and the Remedial Plan Key Inputs in Part 8 provided that paragraphs 2.1, 3.2 and 7.3 shall not apply to the Remedial Plan Key Inputs in Part 8.

2. Continuation of Availability

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

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

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

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

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

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

¹²⁵ Date of change 30/9/2009

¹²⁶ Date of Change 22/01/2010

¹²⁷ Date of change 30/9/2009

¹²⁸ Date of Change 22/01/2010

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

3. Expenditure Commitments

Annual Expenditure

- 3.1 ***Part 1 or Part 8 to this Appendix 11***¹²⁹ provides for the expenditure of an annual amount (or an amount over some other period) by the Franchisee, that amount:

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

Expenditure Commitments in real amounts

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

Expenditure by Network Rail

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

Expenditure by Third Parties

- 3.4 Except as specified in paragraph 2.2(e)(ii) of Part 1 to this Appendix 11 and without limiting paragraph 3.3 all amounts which the Franchisee has committed (whether unconditionally or otherwise) ***pursuant to Part 1 or Part 8 to this Appendix 11***¹³⁰ to expend in connection with such commitment shall be in addition to any expenditure made by any third party (including any Train Operator, Passenger Transport Executive or Local Authority) to the extent such expenditure is not directly funded or is not reimbursed by the Franchisee.

¹²⁹ Date of Change 22/01/2010

¹³⁰ Date of Change 22/01/2010

4. **Liaison and Co-Operation**

Where the Franchisee is committed to liaison and co-operation under **Part 1 or Part 8 to this Appendix 11**¹³¹, it shall participate actively in the relevant measures including through the application of management time and internal resources, correspondence and attendance at meetings, in each case as the Franchisee reasonably considers in all the circumstances to be an appropriate use of its resources and effective to help achieve the relevant objective.

5. **Nature of Commitment**

5.1 Any commitment in terms of **Part 1 or Part 8 to this Appendix 11**¹³² shall be in addition to any obligation of the Franchisee elsewhere in this Agreement and nothing in this Appendix 11 shall limit or restrict an obligation imposed on the Franchisee elsewhere in this Agreement..

5.2 Where **in Part 1 or Part 8 to this Appendix 11**¹³³, references are made to particular manufacturers or suppliers of equipment or services, the Franchisee may fulfil its relevant commitment by using reasonable equivalents.

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

6. **Third Party Consents, Agreement and Conditions**

6.1 Where, **in Part 1 or Part 8 to this Appendix 11**¹³⁴, any commitment of the Franchisee is expressed to be conditional upon the satisfaction of any condition (including the occurrence of any event or the obtaining of any third party consents, approvals and/or entering into any agreement or arrangement with a third party) the Franchisee shall use all reasonable endeavours to procure that such condition is satisfied within such timescales (if any) as are set out in Part 1 to this Appendix 11 in relation to such obligations

6.2 Without limiting paragraph 6.1 or any other commitment of the Franchisee if any commitment of the Franchisee set out **in Part 1 or Part 8 to this Appendix 11**¹³⁵ is expressly subject to the satisfaction of any condition (including the occurrence of any event or the obtaining of any third party consents, approvals

¹³¹ Date of Change 22/01/2010

¹³² Date of Change 22/01/2010

¹³³ Date of Change 22/01/2010

¹³⁴ Date of Change 22/01/2010

¹³⁵ Date of Change 22/01/2010

and/or entering into any agreement or arrangement with a third party) and the Franchisee is unable to satisfy such condition within the timescales set out in Part 1 of this Appendix 11 then paragraph 6.3 shall apply.

6.3 The Franchisee shall:

- (a) as soon as reasonably practicable notify the Secretary of State if it is unable to procure the satisfaction of any condition (including the occurrence of any event or the obtaining of any third party consents, approvals and/or entering into any agreement or arrangement with a third party) relating to any commitment set out ***in Part 1 or Part 8 to this Appendix 11***¹³⁶ despite having complied with its obligations in paragraph 6.1;
- (b) to the extent required by the Secretary of State (and at his absolute discretion) ensure that any amount that cannot be spent due to the non-fulfilment of any such condition is either expended as soon as reasonably practicable on such other improvements to enhance the quality of the Passenger Services and/or Station Services as are approved by the Secretary of State or paid by the Franchisee to the Secretary of State at the next Payment Date or such other date as the Secretary of State may specify.

7. **Review of Compliance**

- 7.1 Progress with Committed Obligations is an agenda item for Franchise Performance Meetings and the Franchisee shall ensure that at such meetings, the Secretary of State is given such progress reports as he may reasonably request.
- 7.2 In addition to its obligation under paragraph 7.1, the Franchisee shall from time to time promptly provide such evidence of its compliance with any Committed Obligation as the Secretary of State may reasonably request.
- 7.3 Where in respect of any commitment in Part 1 to this Appendix 11 the Franchisee is required to provide a plan to assist the Secretary of State in the monitoring of the Franchisee's compliance with such commitment the Franchisee shall provide regular updates at the Franchise Performance Meetings of:
 - (a) any progress it has made in the implementation of such plan since the last Franchise Performance Meeting;
 - (b) any material change to such plan; and

¹³⁶ Date of Change 22/01/2010

- (c) the occurrence or non-occurrence (as the case may be) of any event or series of events which were anticipated or not anticipated (as the case may be) at the time such plan was being finalised; and
- (d) its informed opinion as to any amendments to such plan that it considers would be required to enable it to fulfil its obligations in respect of such commitment.

Part 3 to Appendix 11

Late/Non Completion of Committed Obligations

1. Late Completion or Non-Delivery of Committed Obligations

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

2. Committed Obligation Payment Adjustment

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

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

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

a Committed Obligation Payment Adjustment, being the amount set out in column 4 of the Table, as adjusted in accordance with paragraph 2.3 or 2.4 (as appropriate).

2.2 Column 5 of the Table shall specify which of paragraphs 2.3 or 2.4 shall apply to each Committed Obligation specified therein, should any such Committed Obligation be partially delivered by the date specified for that Committed Obligation in column 3 of the Table.

Pro-rating of Committed Obligation Payment Adjustment where partial delivery

2.3 Where:

(a) in relation to any Committed Obligation referred to in column 5 of the Table to be subject to the terms of this paragraph 2.3 that is expressed in terms of a requirement to deliver or carry out activities in respect of a specified number of facilities; and

(b) the Franchisee has delivered or carried out the relevant activity in respect of one or more but less than the number of facilities specified in that Committed Obligation by the relevant delivery date,

then the relevant Committed Obligation Payment Adjustment shall be reduced pro rata by reference to the number of facilities so delivered or by reference to the number of those activities that have been carried out (as appropriate).

Adjustment to Committed Obligation Payment Adjustment where partial spend

2.4 Where:

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

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

2.5

- (a) Where in relation to any Committed Obligation that is expressed in terms of a requirement to spend a specified a sum in fulfilling its stated objective, the Franchisee is able to achieve that stated objective within the timeframe specified for its delivery without investing the full amount referred to in that Committed Obligation, whether because of cost savings or securing additional investment from third parties, the Franchisee may apply to the Secretary of State for the consent referred to in paragraph 2.5(b).
- (b) The Secretary of State's consent for the purposes of paragraph 2.5(a) is his consent for the Franchisee to invest any unspent amount towards the fulfilment of such other commitments as the Franchisee proposes at that time. That consent may not be unreasonably withheld.
- (c) If the Secretary of State consents to an application pursuant to paragraph 2.5(a) in respect of any Committed Obligation, then:
 - (i) Part 1 to this Appendix 11 and this Part 3 shall be amended to reflect the terms of any new commitments; and
 - (ii) no Committed Obligation Payment Adjustment shall be payable in respect of the unspent amount that relates to that Committed Obligation.

- 2.6 The Committed Obligation Payment Adjustment shall be payable in accordance with Schedule 8.1 (*Franchise Payments*) of the Terms.
- 2.7 It is acknowledged by the parties that the Secretary of State has rights under Section 57A of the Act to impose on the Franchisee a penalty of such amount as is considered reasonable where the Secretary of State is satisfied that the Franchisee has contravened or is contravening the provisions of this Franchise Agreement. The parties hereby agree that the Franchisee's obligation to pay a Committed Obligation Payment Adjustment is without prejudice to the Secretary of State's rights under the Act and the amounts of each Committed Obligation Payment Adjustment is not representative of what may be considered by the Secretary of State to be a reasonable amount in respect of the exercise of his rights under Section 57A of the Act. In determining what is a reasonable amount for the purposes of Section 57A of the Act the Secretary of State shall, subject to and without prejudice to his duties under the Act, take into account any amount that has already been paid by the Franchisee under Part 3 to this Appendix 11 in respect of the contravention of the relevant provision of the Franchise Agreement.

Table : **Committed Obligations where a Committed Obligation Payment Adjustment applies**¹³⁷

3. Waiver of Payments Under this Part 3

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

¹³⁷ 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.

Part 4 to Appendix 11

Reliability Improvements/Interior refreshment specification¹³⁸

Annex A

Incremental Revenue for the Class 172 Rolling Stock¹³⁹

¹³⁸ 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.

¹³⁹ Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

Appendix 11 Part 5

Part 5

List of HLOS Committed Obligations

*List of HLOS Committed Obligations*¹⁴⁰

1. Definitions

In this Part 5:

Additional means additional to the passenger carrying capacity provided by the Franchisee's Train Plan as at the Passenger Change Date in December 2008.

2. Additional Passenger Services

2.1 *The Franchisee shall introduce additional passenger services between Milton Keynes Central/Bletchley/Watford and London Euston (in each direction) with effect from the Passenger Change Date in December 2009.*

2.2 *As at the date of the HLOS Phase 2A Deed of Amendment the Franchisee and the Secretary of State intend that each Train Plan submitted to the Secretary of State by the Franchisee from time to time pursuant to paragraph 2.2 of Schedule 1.1 (Service Development) of the Terms in respect of a Timetable incorporating the additional passenger services required by paragraph 2.1 will show the services listed below.*

*06:33 Bletchley to London Euston
07:57 Watford Junction to London Euston
08:15 Watford Junction to London Euston
17:40 London Euston to Watford Junction
18:20 London Euston to Milton Keynes Central*

2.3 *Notwithstanding the intention stated in paragraph 2.2:*

- (a) where Network Rail exercises its flexing rights from time to time under the Track Access Agreement; or*
- (b) the Franchisee reasonably considers it to be necessary in order to comply with its obligations under Schedule 1.1 (Service Development) of the Terms and Schedule 1.2 (Operating Obligations) of the Terms,*

the Franchisee may submit a Train Plan to the Secretary of State from time to time pursuant to paragraph 2.2 of Schedule 1.1 (Service Development) of the Terms in respect of a Timetable which shows an equivalent number of additional passenger services running between Milton Keynes Central/Bletchley/Watford and London Euston but at different times.

¹⁴⁰ Date of change 30/9/2009

2.4 *SLC2 shall be amended to incorporate the additional passenger services referred to in this paragraph 2.*

2.5 *No later than the third business day prior to each Franchise Performance Meeting, the Franchisee shall provide to the Secretary of State, in accordance with any guidance the Secretary of State may issue to the Franchisee from time to time, a report detailing the Franchisee's progress with respect to the delivery of the additional passenger services required by paragraph 2.1.*

3. Capacity Requirements into London Euston

3.1 *Through the continued implementation of the London Midland HLOS Phase 1 Outputs and the implementation of the HLOS Committed Obligation set out in paragraph 2, the Franchisee shall ensure that with effect on and from the Passenger Change Date in December 2009 the Franchisee's Train Plan includes in respect of Passenger Services arriving at London Euston in the Morning Peak, provision of Additional passenger carrying capacity (standard class) for at least 3315 in the Morning Peak, of which at least 2201 are in the middle hour of the Morning Peak.*

4. Stabling berths at Camden carriage sidings

4.1 *Subject to Network Rail's consent, the Franchisee shall procure that by 31 December 2010 siding number 4 at Camden carriage sidings is capable of lawful operational use to stable trains consisting of 12 Class 321 and/or Class 350 vehicles and in doing so the Franchisee shall incur expenditure of not less than £¹⁴¹.*

4.2 *Subject to Network Rail's consent, the Franchisee shall procure that by 31 December 2010 siding number 7 at Camden carriage sidings is capable of lawful operational use to stable trains consisting of 12 Class 321 and/or Class 350 vehicles and in doing so the Franchisee shall incur expenditure of not less than £¹⁴².*

5. Installation of auto-gateline at London Euston station on platforms 8, 9, 10 & 11

¹⁴³**5.1** *Subject to Network Rail's consent, the Franchisee shall procure that by 31 December 2010 the existing gateline at London Euston station is removed and not less than 13 standard bi-directional gates and 2 wide-aisle bi-directional gate are installed and brought into operational use on platforms 8, 9, 10 and 11, which for the avoidance of doubt shall include the provision of such staff as are required to ensure the safe operation of the auto-gateline between the hours of 0700 and 1900 Mondays to Fridays and 0900 and 1900 Saturdays and Sundays.*

¹⁴¹ 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.

¹⁴² 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.

¹⁴³ Date of Change 20/12/2010

5.2 The Parties agree that Appendix 10 to the Franchise Agreement shall be amended to reflect any change in asset number resulting from the installation of the auto-gateline in accordance with paragraph 5.1.

6. Stabling for vehicles currently stabled in sidings at Bletchley LMD

The Franchisee shall continue at all times to provide capacity for at least 32 vehicles which, as at the date of the HLOS Phase 2A Deed of Amendment, is provided at sidings at Bletchley LMD and in doing so the Franchisee shall incur expenditure of not less than £¹⁴⁴ in each Franchisee Year (pro rated on the basis of a 365 day year in the case of any Franchisee Year which is a part year).

¹⁴⁴ 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.

Miscellaneous Provisions – HLOS Committed Obligations

1. Application

This Appendix sets out further terms which apply to the HLOS Committed Obligations set out in Part 5 (List of HLOS Committed Obligations) of this Appendix 11 and the references to HLOS Committed Obligations in Parts 5, 6 and 7 of this Appendix 11 are only to the HLOS Committed Obligations in Part 5.

2 Continuation of Availability

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

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

3. Expenditure Commitments

Annual Expenditure

3.1 *Where Part 5 (List of HLOS Committed Obligations) of this Appendix 11 provides for the expenditure of an annual amount (or an amount over some other period) by the Franchisee, that amount:*

(a) is assessed net of Value Added Tax; and

(b) is the amount required to be expended by the Franchisee itself or procured by the Franchisee to be expended.

Expenditure Commitments in real amounts

3.2 *All expenditure commitments set out in Part 5 (List of HLOS Committed Obligations) of this Appendix 11, to the extent they have not already been incurred by the Franchisee, shall be indexed by the Retail Prices Index in the same way as variable costs are indexed in Schedule 8.2 (Annual Franchise Payments) of the Terms.*

Expenditure by Network Rail

3.3 *All amounts which the Franchisee has committed (whether unconditionally or otherwise) pursuant to Part 5 (List of HLOS Committed Obligations) of this Appendix 11 to expend in connection with improvements to track or Stations shall be in addition to any expenditure made by Network Rail as part of its infrastructure improvements or maintenance programme to the extent such expenditure is not directly funded or reimbursed by the Franchisee.*

¹⁴⁵ Date of change 30/9/2009

Expenditure by Third Parties

- 3.4** *Without limiting paragraph 3.3, all amounts which the Franchisee has committed (whether unconditionally or otherwise) pursuant to this Part 5 (List of HLOS Committed Obligations) of this Appendix 11 to expend in connection with such commitment shall be in addition to any expenditure made by any third party (including any Train Operator, Passenger Transport Executive or Local Authority) to the extent such expenditure is not directly funded or is not reimbursed by the Franchisee.*

4. *Nature of Commitment*

- 4.1** *Any commitment in terms of Part 5 (List of HLOS Committed Obligations) of this Appendix 11 shall be in addition to any obligation of the Franchisee elsewhere in this Agreement and nothing in this Appendix 11 shall limit or restrict an obligation imposed on the Franchisee elsewhere in the Franchise Agreement.*
- 4.2** *Each commitment under Part 5 (List of HLOS Committed Obligations) of this Appendix 11 shall come to an end on expiry of the Franchise Term for whatever reason, save in respect of any accrued payments owed pursuant to Part 7 (Late/Non-Completion of HLOS Committed Obligations) to this Appendix 11 but not yet paid.*

5 *Third Party Consents, Agreement and Conditions*

- 5.1** *Where, in Part 5 (List of HLOS Committed Obligations) of this Appendix 11, any commitment of the Franchisee is expressed to be conditional upon the satisfaction of any condition (including the occurrence of any event or the obtaining of any third party consents, approvals and/or entering into any agreement or arrangement with a third party) the Franchisee shall use all reasonable endeavours to procure that such condition is satisfied within such timescales (if any) as are set out in Part 5 (List of HLOS Committed Obligations) of this Appendix 11 in relation to such obligations.*
- 5.2** *Without limiting paragraph 5.1 or any other commitment of the Franchisee, if any commitment of the Franchisee set out in Part 5 (List of HLOS Committed Obligations) of this Appendix 11 is expressly subject to the satisfaction of any condition (including the occurrence of any event or the obtaining of any third party consents, approvals and/or entering into any agreement or arrangement with a third party) and the Franchisee is unable to satisfy such condition within the timescales set out in Part 5 (List of HLOS Committed Obligations) of this Appendix 11 then paragraph 0 shall apply.*
- 5.3** *The Franchisee shall:*
- (a) as soon as reasonably practicable notify the Secretary of State if it is unable to procure the satisfaction of any condition (including the occurrence of any event or the obtaining of any third party consents, approvals and/or entering into any agreement or arrangement with a third party) relating to any commitment set out in Part 5 (List of HLOS Committed Obligations) of this Appendix 11 despite having complied with its obligations in paragraph 5.1;*
 - (b) to the extent required by the Secretary of State (and at his absolute discretion) ensure that any amount that cannot be spent*

due to the non-fulfilment of any such condition is either spent as soon as reasonably practicable on such other improvements to enhance the quality of the Passenger Services and/or Station Services as are approved by the Secretary of State, or paid by the Franchisee to the Secretary of State at the next Payment Date or such other date as the Secretary of State may specify.

6. Review of Compliance

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

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

6.3 *Where in respect of any commitment in Part 5 (List of HLOS Committed Obligations) of this Appendix 11 the Franchisee is required to provide a plan to assist the Secretary of State in the monitoring of the Franchisee's compliance with such commitment the Franchisee shall provide regular updates at the Franchise Performance Meetings of:*

- (a) any progress it has made in the implementation of such plan since the last Franchise Performance Meeting;*
- (b) any material change to such plan;*
- (c) the occurrence or non-occurrence (as the case may be) of any event or series of events which were anticipated or not anticipated (as the case may be) at the time such plan was being finalised; and*
- (d) its informed opinion as to any amendments to such plan that it considers would be required to enable it to fulfil its obligations in respect of such commitment.*

7. Transfer of Franchise Assets arising from HLOS Committed Obligations

Notwithstanding any provision to the contrary in any Supplemental Agreement, the Franchisee shall transfer to a Successor Operator for nil value any Franchise Asset arising from the delivery by the Franchisee of its HLOS Committed Obligations which is made the subject of a Transfer Scheme.

Late/Non Completion of HLOS Committed Obligations

1. Definitions and references to the Table

1.1 In this Part 7:

HLOS Committed Obligation Payment Adjustment means, for any HLOS Committed Obligation, the amount specified as such for that HLOS Committed Obligation in column 5 of the Table; and

Net Subsidy Amount means, for any HLOS Committed Obligation, the amount specified as such for that HLOS Committed Obligation in column 4 of the Table.

1.2 In this Part 7 references to the Table are references to the Table entitled 'HLOS Committed Obligations where HLOS Committed Obligation Payment Adjustments apply' set out in the Annex to this Part 7.

2. Late Completion or Non-Delivery of HLOS Committed Obligations

2.1 If the Franchisee fails to deliver in full an HLOS Committed Obligation in accordance with and by the timeframe specified for its delivery in Part 5 (List of HLOS Committed Obligations) of Appendix 11 (Committed Obligations and HLOS Committed Obligations and Related Provisions), such late, partial or non-delivery shall constitute a contravention of this Agreement.

3. HLOS Committed Obligation Payment Adjustments

3.1 In addition to being a contravention of this Agreement pursuant to paragraph 2, if any HLOS Committed Obligation referred to in the Table is not delivered in full by the date specified for that HLOS Committed Obligation in column 3 of the Table, the Franchisee shall pay to the Secretary of State for each Reporting Period, or part thereof, for which that HLOS Committed Obligation remains undelivered in full (save as otherwise provided in the Table) an HLOS Committed Obligation Payment Adjustment of the amount set out in column 5 of the Table in respect of that HLOS Committed Obligation.

3.2 Subject to paragraph 3.4, if any HLOS Committed Obligation referred to in the Table is not delivered in full by the second anniversary of the date specified for that HLOS Committed Obligation in column 3 of the Table and the aggregate amount of all HLOS Committed Obligation Payment Adjustments paid by the Franchisee in respect of the non-delivery of that HLOS Committed Obligation by that date is less than the Net Subsidy

¹⁴⁶ Date of change 30/9/2009

¹⁴⁷ 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.

Amount for that HLOS Committed Obligation, the Secretary of State may, by notice served on the Franchisee at any time thereafter, require that the Franchisee pays to the Secretary of State on the next Payment Date a sum equal to the difference such that the total amount paid by the Franchisee in respect of the non-delivery of that HLOS Committed Obligation is then equal to the Net Subsidy Amount for that HLOS Committed Obligation. Any such payment shall be paid in accordance with Schedule 8.1 (Franchise Payments) of the Terms as if it were an HLOS Committed Obligation Payment Adjustment.

- 3.3** *Subject to paragraph 3.4, if any HLOS Committed Obligation referred to in the Table is not delivered in full by the last day of the Franchise Term and the aggregate amount of all HLOS Committed Obligation Payment Adjustments paid by the Franchisee in respect of the non-delivery of that HLOS Committed Obligation by that date is less than the Net Subsidy Amount for that HLOS Committed Obligation and the Franchisee has not already made a payment to the Secretary of State in relation to that HLOS Committed Obligation under paragraph 0, the Franchisee shall pay to the Secretary of State a sum equal to the difference such that the total amount paid by the Franchisee in respect of the non-delivery of that HLOS Committed Obligation is then equal to the Net Subsidy Amount for that HLOS Committed Obligation. Any such payment shall be paid in accordance with Schedule 8.1 (Franchise Payments) of the Terms as if it were an HLOS Committed Obligation Payment Adjustment.*
- 3.4** *The provisions of paragraphs 3.2 and 3.3 shall not apply in relation to the HLOS Committed Obligation set out in paragraph 2 of Part 5 (List of HLOS Committed Obligations) of Appendix 11 (Committed Obligations and HLOS Committed Obligations and Related Provisions)*
- 3.5** *All Net Subsidy Amounts and HLOS Committed Obligation Payment Adjustments set out in the Table shall be indexed by the Retail Prices Index in the same way as variable costs are indexed in Schedule 8.2 (Annual Franchise Payments) of the Terms.*
- 3.6** *Any HLOS Committed Obligation Payment Adjustment payable in accordance with this paragraph 3 shall be paid in accordance with Schedule 8.1 (Franchise Payments) of the Terms.*
- 3.7** *Where, in relation to any HLOS Committed Obligation that is expressed in terms of a requirement to spend a specified sum in fulfilling its stated objective:*
- (a) the Franchisee is able to achieve that stated objective (either by the original intended means or by other means which have been first approved by the Secretary of State) within the timeframe specified for its delivery without spending the full amount referred to in that HLOS Committed Obligation, the Franchisee shall to the extent required by the Secretary of State (and at his absolute discretion), ensure that a sum equal to the unspent amount is either spent as soon as reasonably practicable on such other improvements to enhance the quality of the Passenger Services and/or Station Services as are approved by the Secretary of State, or paid by the Franchisee to the Secretary of State at the next Payment Date or such other date as the Secretary of State may specify; or*

(b) the Franchisee at any time abandons its attempts to achieve the stated objective:

- (i) the Franchisee shall, to the extent required by the Secretary of State (and at his absolute discretion), ensure that a sum equal to the aggregate amount of the part of the Annual HLOS Franchise Payments which the Franchisee has already received from the Secretary of State for the fulfilment of the stated objective is either spent as soon as reasonably practicable on such other improvements to enhance the quality of the Passenger Services and/or Station Services as are approved by the Secretary of State, or paid by the Franchisee to the Secretary of State at the next Payment Date or such other date as the Secretary of State may specify; and**
- (ii) any part of the Annual HLOS Franchise Payments relating to the fulfilment of the stated objective which the Franchisee has not yet received from the Secretary of State shall, to the extent required by the Secretary of State (and at his absolute discretion), either be treated as payable to the Franchisee for the delivery of such other improvements as have been approved by the Secretary of State under paragraph 3.7(b)(i), or shall immediately cease to be due and payable in which case the Annual HLOS Franchise Payments shall be adjusted accordingly.**

3.8 If the Secretary of State approves other improvements to enhance the quality of the Passenger Services and/or Station Services pursuant to paragraph 3.7:

- (a) Part 5 (List of HLOS Committed Obligations) of Appendix 11 (Committed Obligations and HLOS Committed Obligations and Related Provisions) and this Part 7 shall be amended to reflect the terms of any new commitments; and**
- (b) no HLOS Committed Obligation Payment Adjustment shall be payable in respect of any unspent amount that relates to that HLOS Committed Obligation.**

3.9 It is acknowledged by the parties that the Secretary of State has rights under Section 57A of the Act to impose on the Franchisee a penalty of such amount as is considered reasonable where the Secretary of State is satisfied that the Franchisee has contravened or is contravening the provisions of this Agreement. The parties hereby agree that the Franchisee's obligation to pay an HLOS Committed Obligation Adjustment is without prejudice to the Secretary of State's rights under the Act and the amounts of each HLOS Committed Obligation Adjustment is not representative of what may be considered by the Secretary of State to be a reasonable amount in respect of the exercise of his rights under Section 57A of the Act. In determining what is a reasonable amount for the purposes of Section 57A of the Act, the Secretary of State shall, subject to and without prejudice to his duties under the Act, take into account any amount that has already been paid by the Franchisee under this Part 7 in respect of the contravention of the relevant provision of this Agreement.

4 Waiver and adjustment of payments under this Part 7 and extension of time for delivery

- 4.1** *Subject to paragraph 4.2, the Secretary of State may at his reasonable discretion decide to waive his rights to receive any payments payable under this Part 7 in respect of a late, partial or non-delivery of any HLOS Committed Obligation.*
- 4.2** *In deciding whether to waive such rights the Secretary of State may, but shall not be obliged to:*
- (a) take into consideration the circumstances under which the late, partial or non-delivery of any HLOS Committed Obligation arose; and*
 - (b) in the case of the HLOS Committed Obligation set out in paragraph 5 of Part 5 (List of HLOS Committed Obligations) of Appendix 11 (Committed Obligations and HLOS Committed Obligations and Related Provisions) consider a partial waiver on a fair and reasonable basis of his right to receive payments under this Part 7 where the Franchisee is unable to install the required number of standard gates and/or wide-aisle gates by the relevant delivery date but has installed a lesser number.*

Part 8¹⁴⁸
List of Remedial Plan Key Inputs

1. ¹⁴⁹

2. **Rolling Stock Alterations**

2.1 ***By no later than ¹⁵⁰ the Franchisee shall incur aggregate net expenditure of not less than ¹⁵¹ on initiatives in relation to the ¹⁵², such initiatives to include (but not limited to) modifications and improved maintenance regimes. In doing so the Franchisee shall employ dedicated personnel to oversee such initiatives and shall co-operate with Parry Associates, Pre-Metro Operations Limited and Porterbrook Train Leasing.***

2.2 ***By no later than ¹⁵³ the Franchisee shall procure that ¹⁵⁴ incur expenditure of not less than ¹⁵⁵ in aggregate on the modifications described in paragraph 6.2.2 of the Remedial Plan (pantograph pan head replacement, coupler pin cleaning regime, coupler guide bushes replacement, PIS software upgrade, heated horns, insulation of VCB shunt, interactive DVD based fault finding training package and enhanced carpet cleaning regime) to the ¹⁵⁶ Rolling Stock operated by***

¹⁴⁸ Date of Change 22/01/2010

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the Franchisee. The Franchisee shall co-operate with ¹⁵⁷in relation to such modifications. If the Franchisee cannot procure the fulfilment of such obligation, clause 6.3 of Part 2 of Appendix 11 shall apply

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APPENDIX 12

2012 Olympic Games and Paralympic Games (Clause 7.1)

1. Acknowledgement

The parties acknowledge that:

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

2. Franchisee Co-Operation

The Franchisee:

- (a) shall at its own cost, co-operate and consult as reasonably required by and with the Olympic Delivery Authority, the LOCOG, the Secretary of State, Transport for London, Network Rail, the British Transport Police and any other relevant party in connection with any arrangements directly or indirectly connected with the Games, including:
 - (i) the provision of additional and/or specific railway passenger services;
 - (ii) the carrying out of necessary works to the network;
 - (iii) the provision of additional and/or specific security arrangements at stations at which the Passenger Services call and on the Passenger Services;
 - (iv) the provision of specific integrated ticketing in relation to the Passenger Services; and
 - (v) advertising and marketing of the Games in relation to the Franchise Services; and
- (b) shall not for the purposes of publicity, advertising, marketing or any other reason, without the prior written consent of LOCOG, represent that any product or service provided by the Franchisee under this Agreement:

- (i) has been endorsed or approved by LOCOG, the Olympic Delivery Authority or any other Olympic body; or
- (ii) is in any way associated with those organisations or the Games,

including by publishing or issuing any statement (factual or otherwise) about the Franchisee's products or services under this Agreement.

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

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

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

(the *Olympic Services Delivery Plan*).

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

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

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

3.5 On the date notified to the Franchisee by the Secretary of State pursuant to paragraph 3.2, the Secretary of State and the Franchisee shall enter into the Olympic Services Delivery Plan.

4. **Financial Effects of the Olympic Services Delivery Plan**

For the purpose of paragraph (j) of the definition of Change, the Franchisee's implementation of the Olympic Services Delivery Plan shall be a Change, insofar as such implementation results in the imposition of costs on and receipt of revenue by the Franchisee.

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

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

APPENDIX 13

West Midlands Specific Provisions (Clause 7.2)

1. Trading Arrangements

Train Crew Trading Arrangements

1.1 The Franchisee shall on or before the Start Date seek to agree and enter into:

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

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

1.2 If the Franchisee has not agreed all of the terms of either or both of the New Cross Country Train Crew Trading Agreement or the East Midlands Train Crew Trading Agreement on or before 11 September 2007, the Secretary of State may reasonably determine (by reference to the principles set out in paragraphs 1.1(a) and 1.1(b)) any terms that have not then been agreed (or at his option may appoint an industry expert to make such determination). The Franchisee shall then promptly execute the New Cross Country Train Crew Trading Agreement and the East Midlands Train Crew Trading Agreement (as appropriate) as agreed or determined.

Tyseley Depot Trading Arrangements

1.3 If the Franchisee becomes the Facility Owner at Tyseley Depot the Franchisee agrees to enter into a depot access agreement with each of the East Midlands Franchisee and the NCC Franchisee in relation to Tyseley Depot ("the Tyseley Depot Access Agreements").

1.4 Each of the Tyseley Depot Access Agreements shall commence on the Start Date and continue at least until the Passenger Change Date in December 2008 or such later date as the parties to it may agree. They shall, subject to the approval

of the ORR (which the Franchisee shall use all reasonable endeavours to obtain), provide for the Franchisee to provide at least the volumes of Light Maintenance Services specified in Annex C to this Appendix 13 at the rates prescribed in the Maintrain Agreement.

- 1.5 If the Franchisee has not agreed all of the other terms of the Tyseley Depot Access Agreements to be submitted to the ORR for approval on or before 11 September 2007, the Secretary of State may reasonably determine, for the purposes of such submission, any terms that have not then been agreed (or at his option may appoint an industry expert to make such determination). The Franchisee shall then promptly, upon approval by the ORR of the agreed or determined terms (which the Franchisee shall use all reasonable endeavours to obtain), enter into the forms of the Tyseley Depot Access Agreements approved by the ORR.
- 1.6 If the form of the Tyseley Depot Access Agreements approved by the ORR specifies rates which are different from that prescribed in the Maintrain Agreement in consequence of a decision of the ORR, there shall be a one-off adjustment to the Franchise Payment for the second Reporting Period starting after the date of the ORR's approval ("Specified Period") of an amount equal to the difference between:
 - (a) the amount which the Secretary of State reasonably determines (on the basis of the form of the relevant Tyseley Depot Access Agreement approved by the ORR) as the aggregate amount which will be payable by the East Midlands Franchisee or the NCC Franchisee under their respective Tyseley Depot Access Agreements in respect of the receipt by them of the Light Maintenance Services during the period from the Start Date until the Passenger Change Date in December 2008 (the "Relevant Period"); and
 - (b) the amount which the Secretary of State reasonably determines as the amount which would have been payable by the East Midlands Franchisee or the NCC Franchisee under their respective Tyseley Depot Access Agreements in respect of the receipt by them of the Light Maintenance Services during the Relevant Period had the form of such Tyseley Depot Access Agreement approved by the ORR not contained rates different to those prescribed in the Maintrain Agreement,

in each case on the assumption that the volume of Light Maintenance Services provided to each of the East Midlands Franchisee or the NCC Franchisee under their respective Tyseley Depot Access Agreements during the Relevant Period is as set out in Annex C to this Appendix 13.

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

2. Demand Management Regulation

Purpose of Demand Management Regulation and Agreement of Principles

2.1 The Franchisee and the Secretary of State acknowledge:

- (a) their mutual desire to regulate certain Fares differently ("*Demand Management Regulation*") from the way in which those Fares are regulated under Schedule 5 (*Fares*) of the Terms as at the Start Date;
- (b) that the intended purpose of Demand Management Regulation is to enable the Franchisee to:
 - (i) address overcrowding on certain Passenger Services at peak times of the day; and
 - (ii) be innovative in its approach to Fares pricing to reflect changes in working practices, and therefore London and Birmingham commuting practices; and
- (c) that it is intended that Demand Management Regulation will provide for such overcrowding and innovation to be addressed through the setting by the Franchisee of certain Fares in relation to those peak periods under such terms and conditions and at such prices as would not be permitted under Schedule 5 of the Terms as at the date of this Agreement.

2.2ⁱⁱⁱ Subject to paragraph 2.3, the Franchisee and the Secretary of State shall use all reasonable endeavours to discuss and to seek to reach agreement, by no later than 1st October 2008, on the methodology, terms and conditions and implementation of Demand Management Regulation in accordance with the principles (the "*Demand Management Principles*") set out in the Demand Management Principles Document. The Demand Management Principles are not intended to be legally binding on the parties and shall not give rise to any legal rights or obligations between them, save in so far as incorporated in any amendments to this Agreement which are agreed between the parties as set out in paragraph 2.3.

Amendments to this Agreement

- 2.3 Where the Franchisee and the Secretary of State are able to reach agreement in relation to the methodology, terms and conditions and implementation of Demand Management Regulation as set out in paragraph 2.2, they shall as soon as reasonably practicable thereafter seek to agree appropriate amendments to this Agreement to effect such agreement.

Failure to agree Demand Management Regulation

- 2.4 Where the Franchisee and the Secretary of State have not reached agreement on each of the methodology, terms and conditions and implementation of Demand Management Regulation, as set out in paragraph 2.2, and the appropriate amendments to this Agreement to reflect them, as set out in paragraph 2.3, by 1st December 2008 then:

- (a) the Target Revenue set out in Appendix 2 (*Target Revenue (expressed in real terms)*) shall be amended in accordance with the incremental changes shown in Table 1 and adjustments to Franchise Payments shall be made accordingly; and
- (b) the figures for calculation of the Annual Franchise Payments set out in Appendix 8 (*Figures for Calculation of Annual Franchise Payments*) shall be amended in accordance with the incremental changes shown in Table 2 and adjustments to Franchise Payments shall be made accordingly,

in each case subject to:

- (i) adjustment in accordance with Schedule 9 (Changes) to the Terms to reflect any Change that occurs prior to 1st October 2008; and
 - (ii) indexation in accordance with the principles set out in Schedule 8.2 (*Annual Franchise Payments*) of the Terms.
- 2.5 No amendments may be made to this Agreement to implement Demand Management Regulation (whether in accordance with the Demand Management Principles or otherwise) without the express agreement of both the Franchisee and the Secretary of State (which each party may withhold in its absolute discretion) and in particular it is not the parties' intention that amendments should be determined by a third party (whether pursuant to paragraph 4 of Schedule 19 (*Other Provisions*) of the Terms or otherwise).

Table 1: Target Revenue (expressed in real terms)¹⁵⁸

Table 2: Figures for the calculation of Annual Franchise Payments (Clause 5.21)¹⁵⁹

3. Rolling Stock Costs

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

- (a) reduce, taking into account any change in the allocation of risk between the parties, the aggregate net costs relating to the leasing and/or maintenance arrangements in respect of relevant rolling stock vehicles under the Rolling Stock Related Contracts without any corresponding reduction in the performance and/or other output related requirements, and/or the specification or quantum of associated services that are available for those rolling stock vehicles under any Rolling Stock Related Contract; and
- (b) enable the Secretary of State to realise any consequent savings that arise in accordance with paragraph 3.3,

3.2 Without limiting paragraph 3.1, the Franchisee shall:

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

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in accordance of the Freedom of Information Act 2000 may prejudice the commercial interests of the Franchisee and that he shall have due regard to any representations made by the Franchisee in this regard.

- (c) review and comment on implementation timetables and programmes for any reductions in costs relating to the operation of rolling stock vehicles;
- (d) agree, and where required use all reasonable endeavours to achieve, any amendments to any Rolling Stock Related Contract which the Secretary of State considers to be necessary or desirable, and in such form as he may specify, in order to facilitate the implementation of those proposals and use all reasonable endeavours to maximise the reductions referred to in paragraph 3.1(a);
- (e) where and to the extent that the Secretary of State considers it requisite for the purpose of implementing or facilitating the implementation of those proposals, to exercise any or all of the Franchisee's rights under any Rolling Stock Related Contract or any related rights which the Franchisee may have, in each case as the Secretary of State may specify. The Franchisee's obligations under this paragraph 3.2 include, where the Secretary of State so requires, the pursuit of any disputed issue by litigation or other form of dispute resolution provided for by the relevant Rolling Stock Related Contract. The Franchisee shall comply with the requirements of the Secretary of State in respect of the prosecution and resolution or determination of any such disputed issue. The Secretary of State shall indemnify the Franchisee against all direct losses, costs and expenses (including, without limitation, reasonable legal fees) relating to or arising out of the Franchisee's performance of its obligations under this paragraph 3.2(e). The Franchisee shall, to the extent reasonably practicable and without prejudice to the foregoing provisions of this paragraph 3.2(e), give prior notice of the nature and likely extent of such losses, costs and expense and shall be under an obligation to mitigate such direct losses, costs and expenses to the extent reasonably practicable; and
- (f) make available to the Secretary of State on an open book basis as and when reasonably requested, full information and explanation as to the extent of the costs that may be saved by the implementation of any such proposals,

3.3 The parties hereby agree that to the extent that the Franchisee is required to take any action under paragraph 3.1 or 3.2 and/or that the aggregate net costs relating to rolling stock vehicle leasing and/or maintenance arrangements payable by the Franchisee under any Rolling Stock Related Contract are reduced,

taking into account any change in the allocation of risk between the parties, as a consequence of:

- (a) the implementation of any or all of the Secretary of State's proposals referred to in paragraph 3.1 including:
 - (i) the entering into of any agreement between the counterparty to any Rolling Stock Related Contract and the Secretary of State or any other government instrumentality under which it has been agreed to alter amounts payable under the relevant contract;
 - (ii) any revision (with the agreement of the ORR, where applicable) of any existing code of practice which the counterparty has in place, or the creation of a new code of practice, where the effect of the revision or new code is to change, directly or indirectly, the basis upon which rentals or other payments are fixed, determined, set or agreed under rolling stock leases or other Rolling Stock Related Contracts whether entered into before or after the coming into effect of the revised or new code of practice; and/or
 - (iii) the giving by the counterparty of any undertaking to any competition authority whether voluntarily or as required by law in respect of its participation in the rolling stock leasing and/or maintenance market in Great Britain; and/or
- (b) the determination, finding, decision or requirements of any competition authority,

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

3.4 For the purposes of paragraph 3.3:

- (a) the reference to a Rolling Stock Related Contract includes any such contract which is in place at the Start Date and also any further replacement or additional such contract to which the Franchisee is a party at any time during the Franchise Term;
- (b) the additional assumptions which the parties shall agree or the Secretary of State shall reasonably determine pursuant to paragraph 5.2 of Schedule 9.3 (*Runs of the Financial Model*) of the Terms shall include (where relevant) those necessary in order to ascertain the extent of the reduction in costs payable under any Rolling Stock Related Contract:
 - (i) to which the Franchisee is not a party as at the date of this Franchise Agreement; and

- (ii) in respect of which no relevant assumption has been included in the Record of Assumptions;
- (c) the reference to aggregate net costs payable by the Franchisee under the Rolling Stock Related Contracts shall be deemed to include any introduction of or increase in amounts paid by any party to the Franchisee the effect of which, taken together with the costs payable by the Franchisee under the relevant contracts and any change in the allocation of risk between the parties, is to produce a net reduction in costs incurred by the Franchisee in relation to those Rolling Stock Related Contracts; and
- (d) in determining any Revised Inputs the Secretary of State shall have due regard to the rolling stock assumptions and proposals made by the Franchisee which are included in the Financial Model, the Operational Model and/or the Record of Assumptions, (which shall constitute the basis on which any reduction in aggregate net costs shall be assessed) and to any other effects of the proposals on the other costs and risks of the Franchisee in connection with the leasing, operation and maintenance of the relevant rolling stock vehicles, including (without limitation) external costs.

4. **ITSO Smartcard Ticketing**

- 4.1 The Franchisee shall ensure that by no later than ¹⁶⁰ passengers travelling on some (but not necessarily all) of its Passenger Services can purchase and use ITSO Certified Smartcards.
- 4.2 The Franchisee shall use reasonable endeavours to ensure that:
 - (a) in the thirteen Reporting Periods ending on ¹⁶¹ at least ¹⁶² in aggregate of Passenger Journeys; and
 - (b) in the thirteen Reporting Periods ending on ¹⁶³ at least ¹⁶⁴ in aggregate of Passenger Journeys;

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are made using ITSO Certified Smartcards.

- 4.3 In the event that the target referred to in paragraph 4.2(a) is not achieved the Franchisee will spend the 2012 ITSO Amount and in the event that the target referred to in paragraph 4.2(b) is not achieved the Franchisee will, subject to paragraph 4.6, spend the 2014 ITSO Amount in both cases on the marketing and promotion of ITSO Certified Smartcards.
- 4.4 Any such expenditure shall be additional to the amounts the Franchisee would in any event spend on the marketing and promotion of ITSO Certified Smartcards as identified in the Financial Model.
- 4.5 The 2012 ITSO Amount shall be expended within 12 months of the 4th February 2012 and the 2014 ITSO Amount shall be expended within 12 months of the 1st February 2014. Any expenditure shall be made in accordance with an expenditure plan to be submitted to the Secretary of State for approval within twenty days of:
- (a) 4th February 2012 if the Franchisee is obliged to spend the 2012 ITSO Amount; or
 - (b) 1st February 2014 if the Franchisee is obliged to spend the 2014 ITSO Amount.
- 4.6 Any expenditure of the 2012 ITSO Amount or the 2014 ITSO Amount shall be made with the intention of rectifying the relevant shortfall in Passenger Journeys using ITSO Certified Smartcards as soon as reasonably practicable on a long term and sustainable basis. The Franchisee acting as a skilled and experienced Train Operator of the Franchise will use all reasonable endeavours to obtain value for money from the expenditure of the 2012 ITSO Amount or the 2014 ITSO Amount as the case may be.
- 4.7 The Secretary of State will not unreasonably withhold or delay approval of any expenditure plan. It is agreed that it will be appropriate for the Secretary of State to withhold consent if any proposed expenditure plan does not comply with the provisions of paragraph 4.6 and it is further agreed that in such circumstances the Secretary of State shall be permitted to approve the expenditure plan with such amendments as he may reasonably propose and the Franchisee shall be obliged to comply with such amended expenditure plan.

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Monitoring Requirements and Co-Operation

4.8 Commencing with the Reporting Period ending on 5th February 2011 the Franchisee shall within 10 days of the end of each Reporting Period report to the Secretary of State the number of Passenger Journeys made using ITSO Certified Smartcards.

4.9 For the purposes of monitoring compliance with the provisions of paragraph 4.1, the Secretary of State shall within 10 days of receipt from the Franchisee of information provided pursuant to paragraph 4.8 in respect of the Reporting Periods ending on 4th February 2012 and 1st February 2014 calculate the percentage number of Passenger Journeys made using ITSO Certified Smartcards in accordance with the following formula:

$$\frac{Y}{Z} \times 100$$

where:

Y is the total number of Passenger Journeys made in the preceding 13 Reporting Periods using ITSO Certified Smartcards;

Z is the total number of Passenger Journeys made in the preceding 13 Reporting Periods.

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

- (a) developing an approach to the provision of information regarding the use of ITSO Certified Smartcards to facilitate use of more sophisticated ticket types and demand management over time; and
- (b) establishing processes, business rules and necessary system changes in order to achieve the effective delivery of its obligations under paragraph 4.1.

5. Oyster Pay As You Go Provisions

5.1 The Franchisee shall co-operate and liaise with the Secretary of State, TfL, TranSys and their respective contractors and agents to enable TfL, TranSys and their respective contractors and/or agents to:

- (a) fit Oystercard validation equipment which is dual compatible at all Stations in Zones 1 to 6 which do not (as at the Start Date) have Oystercard readers and validators installed; and

- (b) convert Oystercard validation equipment installed prior to the Start Date at Stations in Zones 1 to 6 to become dual compatible;

including, where appropriate in either case, by the Franchisee co-operating in the fitting of such equipment provided to it for this purpose by TfL, TranSys and their respective contractors and/or agents.

5.2 The Franchisee shall ensure that upon the installation of the Oystercard validation equipment and the conversion of existing oyster validation equipment by TfL, TranSys and their respective contractors and/or agents pursuant to paragraph 5.1 it will for the duration of the Franchise Term:

- (a) procure, the supply of power and communications required for the purposes of such equipment; and
- (b) ensure that passengers are able to utilise Oystercards at any Station within Zones 1 to 6.

5.3 The Franchisee shall co-operate and liaise with TfL and TranSys to:

- (a) attempt to agree with TfL and other stakeholders as necessary acceptable business rules governing the use and settlement of the Oyster Pay As You Go product within Zones 1 to 6 prior to implementation of paragraph 5.1 above;
- (b) attempt to agree (and then join) such ATOC approved ticketing schemes and Oystercard scheme management agreements as may be established to govern operation of Oystercard in Zones 1 to 6, the inter-relationship of ITSO Certified Smartcards and Oystercards and the ongoing operation of Oystercards and ITSO Certified Smartcards (or, in the absence any such ATOC approved scheme, to seek to agree a bilateral agreement with TfL regarding such arrangements at Stations within Zones 1 to 6).

5.4 The Franchisee shall keep the Secretary of State informed of progress made towards achieving the arrangements under paragraphs 5.1 to 5.3 including notifying the Secretary of State of any circumstances which may reasonably be expected to prejudice the delivery of the Franchisee's obligations under paragraphs 5.1 to 5.3. The Franchisee shall provide to the Secretary of State all information that he reasonably requests in connection with those arrangements.

6. Electronic Advertising Media

6.1 The Franchisee shall not without the prior consent of the Secretary of State (such consent not to be unreasonably withheld) install or procure the installation of electronic advertising media (including video or audio broadcast) on any

rolling stock vehicle within the Train Fleet which as at the Start Date did not have any such electronic advertising media installed.

6.2 In seeking the Secretary of State's consent to the installation of such electronic advertising media, the Franchisee shall provide to the Secretary of State:

- (a) the results of representative surveys carried out on no less than two separate occasions that demonstrate that the users of the Passenger Services are in favour of the installation and proposed content of such electronic advertising media; and
- (b) a detailed report of its proposals explaining amongst other things:
 - (i) the impact on the passenger environment of the relevant rolling stock vehicles within the Train Fleet; and
 - (ii) a forecast of the net financial benefit to the Franchisee of installing such electronic advertising media.

7. **Coleshill Station**¹⁶⁵

8. **December 2006 Capacity Regime**

8.1 Without limiting paragraphs 6.2 to 6.5 of Schedule 1.1 (*Service Development*) or any other obligations of the Franchisee, the Franchisee shall ensure that each Train Plan shall, in respect of those Passenger Services:

- (a) operated on the routes specified in the left hand column of the table in paragraph 8.2; and
- (b) either:-
 - (i) arriving at either Birmingham Snow Hill, Birmingham New Street or London Euston stations in the Morning Peak; or
 - (ii) departing from either Birmingham Snow Hill, Birmingham New Street or London Euston stations in the Evening Peak;

provide for the minimum passenger carrying capacity equivalent to that specified in the second and third columns of such table. The passenger carrying capacity of any vehicle shall be as stated in Table 1 and/or 2 (as the case may be) of Appendix 3 (*The Train Fleet*).

8.2 **Total Capacity Table**

¹⁶⁵ 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.

Route	Total Capacity Morning Peak	Total Capacity Evening Peak
Leamington Spa / Dorridge and Birmingham Snow Hill;	3,721	3,053
Stratford-upon-Avon / Shirley and Birmingham Snow Hill;	2,956	2,860
Worcester / Kidderminster / Stourbridge Junction and Birmingham Snow Hill;	4,579	4,959
Lichfield / Four Oaks and Birmingham New Street;	8,568	7,497
Redditch / Longbridge and Birmingham New Street;	8,568	7,140
Stafford / Rugeley / Hednesford / Walsall and Birmingham New Street;	2,605	2,930
Shrewsbury and Birmingham New Street;	1,195	1,168
Wolverhampton and Birmingham New Street;	2,142	2,142
Northampton / Coventry / Birmingham International and Birmingham New Street;	5,441	5,382
Liverpool / Crewe / Stafford and Birmingham New Street;	1,849	2,160
Hereford / Great Malvern / Worcester and Birmingham New Street; and	1,693	1,605
<i>Northampton / Milton Keynes / Bletchley / ¹⁶⁶Tring / Watford Junction and London Euston</i>	17,542	16,789

9. Additional Services

9.1 Paragraph 8.7 of Schedule 1.1 (*Service Development*) of the Terms shall not apply in respect of the services specified in the sections of the SLC2 set out in paragraph 9.2. Accordingly, if the Franchisee is not able to secure the timetable development rights that it requires in order to provide such services, the Secretary of State shall not be obliged to issue an SLC (TDR) Amendment pursuant to paragraph 8.7 of Schedule 1.1 (*Service Development*) of the Terms.

9.2 The sections of SLC2 referred to in paragraph 9.1 are:

- (a) Route J2 Birmingham New Street - Walsall/Hednesford (WM) - Rugeley - Trent Valley (Cannock Line Services);
- (b) Route Q London Euston - Northampton ;
- (c) Route I Northampton - Rugby - Birmingham New Street.

10. Ticket Office Opening Hours

¹⁶⁶ Date of change 23/4/2009

Except to the extent that the Secretary of State may otherwise agree from time to time the Franchisee shall maintain the ticket office opening hours in operation as at the Start Date at all Stations and shall not seek to change such ticket office opening hours or change the ticket office opening hours as specified as at the Start Date in Schedule 17 of the Ticketing and Settlement Agreement.

11. **Parry People Mover**¹⁶⁷

12. ¹⁶⁸ ***On the termination of the Franchise Agreement (for whatever reason), the Franchisee shall immediately at the request of the Secretary of State, exercise its rights under the Stourbridge POA to transfer or assign PMOL's rights and/or obligations under the lease relating to the depot at Stourbridge to the Secretary of State or his nominee.***

For the purposes of this paragraph 12:

"Stourbridge POA" is the power of attorney dated on or about 30th April 2008 made between PMOL and London & Birmingham Railway Limited.

"PMOL" means Pre Metro Operations Limited (registered no. 3867712, registered office 21 Woodglade Croft, Birmingham B38 8TD)".

¹⁶⁷ 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.

¹⁶⁸ Date of Change 05/05/2008

ANNEX A: NCC FRANCHISEE TRAIN CREW TRADING VOLUMES AND RATES¹⁶⁹

¹⁶⁹ 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.

**ANNEX B: TABLE OF RATES AND VOLUMES FOR TRAIN CREW TRADING:
FRANCHISEE TO THE EAST MIDLANDS FRANCHISEE.¹⁷⁰**

¹⁷⁰ 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.

ANNEX C: TABLE OF VOLUMES OF TRADING IN RESPECT OF TYSELEY DEPOT ¹⁷¹

¹⁷¹ Where text has been omitted from the document this is because the Director General Rail or Secretary of State has decided to exclude the text in accordance with the provisions within the Freedom of Information Act 2000.

APPENDIX 14

Recalibration of the Benchmarks (Clause 8)

1. Cancellations Target Performance Level for first Reporting Period

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

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

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

where:

- A equals the number determined in accordance with paragraph 1(a), as divided in accordance with paragraph 1(b); and
- B equals the total number of Previous Passenger Services that were scheduled to be operated during the last Reporting Period prior to the Start Date.

2. Capacity Target Performance Level for first Reporting Period

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

- (a) taking the number of instances where a Previous Passenger Service operated in the period equivalent to the Peak was short formed in accordance with the definition of Short Formation during the Performance Measurement Period; and
- (b) dividing the sum of that number by 13; and

- (c) calculating a percentage in respect of that number in accordance with the following:

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

where:

- A equals the number determined in accordance with paragraph 2(a), as divided in accordance with paragraph 2(b);
- B equals the total number of Previous Passenger Services operated in the period equivalent to the Peak that were scheduled to be formed of more than one rolling stock vehicle in the last Reporting Period prior to the Start Date;
- C equals the total number of Passenger Services scheduled in the first Reporting Period of the Franchise Term to be operated by the Franchisee and formed of more than one rolling stock vehicle in the Train Plan; and
- D equals the total number of Passenger Services scheduled to be operated in the first Reporting Period of the Franchise Term.

3. Service Delivery Target Performance Level for first Reporting Period

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

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

4. Target Performance Levels for each Benchmark for all subsequent Reporting Periods

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

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

$$\frac{(100 - 26.8)}{100} \times \text{TPL}$$

where:

TPL equals the relevant Target Performance Level for the first Reporting Period of the Franchise Term as determined pursuant to paragraph 1, 2 or 3 (as appropriate);

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

5. **Improvement Plan Performance Levels for each Benchmark for all Reporting Periods**

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

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

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

where:

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

- (b) the relevant Improvement Plan Performance Levels for each intervening Reporting Period between the first Reporting Period of the Franchise Term and Period 8 of Reporting Year 7, by decreasing each such level on

a straight-line basis from the level set for the first Reporting Period of the Franchise Term to the level set for Period 8 of Reporting Year 7; and

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

6. Breach Performance Levels for each Benchmark for all Reporting Periods

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

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

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

where:

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

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

7. Default Performance Levels for each Benchmark for all Reporting Periods

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

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

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

where:

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

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

8. Roundings

8.1 The:

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

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

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

9. Definitions

For the purposes of this Appendix 14:

- 9.1 ***Previous Passenger Services*** means:

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

9.2 **Short Formation** means the operation of a railway passenger service with fewer rolling stock vehicles than the number of rolling stock vehicles scheduled to be operated by a Train Operator under the Previous Franchise Agreement or by the Franchisee, as applicable.

APPENDIX 15

List of Documents in the Agreed Terms (Clause 9)

<i>DL</i>	Depot Lease
<i>DMPD</i>	Demand Management Principles Document
<i>FM</i>	Financial Model
<i>IBP</i>	Initial Business Plan
<i>MAA</i>	Maintrain Agreement
<i>OM</i>	Operational Model
<i>OOA</i>	Olympic Option Agreement
<i>PC</i>	Passenger's Charter
<i>POA</i>	Power of Attorney
<i>ROA</i>	Record of Assumptions
<i>SATRT</i>	Seasonally Adjusted Target Revenue Table
<i>SLC</i>	Service Level Commitment
<i>SL</i>	Station Lease
<i>SQAP</i>	Service Quality Audit Programme
<i>SQMS</i>	Service Quality Management System
<i>SQS</i>	Service Quality Standards
<i>TCL</i>	Template Coleshill Lease
<i>TCHA</i>	Train Crew Hire Agreement
<i>TP</i>	Train Plan

APPENDIX 16

New Schedule 16 (Pensions)

1. Franchise Section

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

- (a) those relating to employees who are active members of the Central Trains Section and whose employment transfers to the Franchisee on the Start Date;
- (b) those relating to any person who :-
 - (i) was an active member of the Central Trains Section as at 31 May 2007 but becomes a deferred or pensioner member of that section on or prior to the Start Date; or
 - (ii) became a member of the Central Trains Section after 31 May 2007 and becomes a deferred or pensioner member of that section on or prior to the Start Date

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

- (c) those relating to a specific number of active members of the Central Trains section immediately before the Start Date:
 - (i) who the Secretary of State reasonably determines to be persons whose employment will not automatically transfer on the Start Date to any of the Franchisee, the East Midlands Franchisee, the NCC Franchisee or any other person; and
 - (ii) which the Secretary of State notifies the Franchisee are to transfer to the Franchise Section under this paragraph 1.1(c) at that date.

The Secretary of State will consider representations made to him by any of the Franchisee, the East Midlands Franchisee and the NCC Franchisee in respect of the operation of this paragraph 1.1(c);

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

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

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

Where:

A = the percentage of the total liabilities of the Central Trains Section relating to deferred and pensioner members which are to be transferred;

B = the ongoing value of the liabilities relating to the total number of active employees who have been identified by Central Trains as at 31 May 2007 as to be transferred to the Franchise Section; and

C = the ongoing value of the liabilities relating to the total number of active members of the Central Trains Section as at 31 May 2007.

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

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

- (a) the Secretary of State shall be deemed to have reasonably determined the identity of the Transferring Members where it agrees to another party's identification of them, on the condition that the identification process must still comply with the principles set out in this paragraph 1.3;
- (b) the deferred and pensioner members' service records shall be examined with a view to these members' liabilities transferring to one of the Franchise Section, or the section of the Railways Pension Scheme relating to the East Midlands Franchisee or the NCC Franchisee, in any case by reference to what is most appropriate to their service. Those members who are to transfer to the Franchise Section on this basis shall be Transferring Members; and
- (c) if there are deferred and pensioner members whose service records do not make it appropriate for them to transfer to any of these sections of the Railways Pension Scheme (***Unallocated Members***), some of them

may then be identified as Transferring Members by the Secretary of State if he determines this to be appropriate to ensure that the amount of the liabilities transferred to the Franchise Section under paragraph 1.1 complies with the requirements of paragraph 1.2 above. If more than one method of identifying Unallocated Members as Transferring Members results in the requirements of paragraph 1.2 above equally being met, the method chosen shall be that which results in the Transferring Members' liability profile being closest to the liability profile of all the deferred and pensioner members of the Central Trains Section as at 31 May 2007.

- 1.4 The asset transfer amount payable in respect of a transfer of liabilities under this paragraph 1 shall be calculated on a share of fund basis, or any other basis that the trustee of the Central Trains Section determines from time to time. The Secretary of State shall reasonably determine the ongoing value of the liabilities referred to in paragraph 1.2.
- 1.5 The Franchisee shall be the Designated Employer in relation to the Franchise Section for the duration of the Franchise Term.
- 1.6 The Franchisee shall pay to the Franchise Section as soon as practicable after the start of the Franchise Term an amount equal to:
 - (a) the amount required under article 7(4) of the Railway Pensions (Protection and Designation of Schemes) Order 1994 (**article 7(4)**) in respect of the transfer to the Franchise Section from the Central Trains Section of Protected Persons; plus
 - (b) the amount that would have been required under article 7(4) in respect of the transfer to the Franchise Section from the Central Trains Section of Non Protected Persons had article 7(4) applied to Non Protected Persons in the same way as it applies to Protected Persons; plus
 - (c) the amount that would have been required to be paid under paragraph 1.6 (a) and (b) of this Schedule in respect of the Relevant Silverlink Members if:-
 - (i) the Relevant Silverlink Members had transferred from the Silverlink Section to another section of the Railways Pension Scheme ("a New Section"), and
 - (ii) references in paragraphs 1.6(a) and (b) to the "Central Trains Section" and the "Franchise Section" were references to the Silverlink Section and the New Section respectively.

and for the purposes of this paragraph 1.6:-

"Protected Persons" has the same meaning as in the Railways Act 1993;

"Non Protected Persons" are members who are not Protected Persons and whose liabilities transfer under paragraph 1.1 or who are notionally treated as having transferred pursuant to paragraph 1.6(c); and

"Relevant Silverlink Members" means the members of the Silverlink Section as at the Start Date excluding those persons whose employment transfers on or around the Start Date to the LRC Concessionaire or any other party in connection with the operation of the LRC Concession.

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

2. **Closed Schemes**

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

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

- 3.1 If the Franchisee is considering making a proposal that it considers would fall within the scope of paragraphs 3.2(a) to (f) inclusive, it shall promptly consult with the Secretary of State in relation to that proposal prior to putting such a proposal to the Pensions Committee of the Franchise Section, the Trustee of the

Railways Pension Scheme ("the Trustee"), or to any trade union. The Franchisee must otherwise consult in good time with the Secretary of State in relation to any proposal it considers would fall within the scope of paragraphs 3.2(a) to (f) inclusive.

3.2 The Franchisee shall not, without the prior written consent of the Secretary of State (which may be given on such terms and subject to such conditions as the Secretary of State thinks fit):

- (a) restructure or change the composition of the earnings of employees of the Franchisee in such a way as to increase the part of those earnings which qualifies as pensionable earnings under the Rules applicable to the Franchise Section or take any action (or consent to the taking of any action) which could detrimentally affect the funding of the Franchise Section, including varying or providing different or additional benefits under the Franchise Section or promising to do so, unless this change:
 - (i) is required by Law; or
 - (ii) only affects benefits payable in respect of past service of members of the Franchise Section and on or prior to the effective date of the change the Franchisee pays an additional cash payment to the Trustee which, in the opinion of the Actuary, meets in full the additional funding cost imposed on the Franchise Section; or
 - (iii) would not lead to substantial changes in the funding of the Franchise Section and is the result of the normal application of the Franchise Section's Rules in the ordinary day to day running of the business of the Franchise, for example, where individual employees are, from time to time promoted or transferred to higher paid or different employment which has a different composition of earnings;
- (b) make or consent to any proposal to change any of the provisions of the Pension Trust in respect of the Franchise Section unless the change is required by Law;
- (c) provide retirement, death or life assurance benefits in respect of any of its employees other than under the Franchise Section or as provided in paragraph 2;
- (d) omit to provide the above-mentioned benefits in respect of its employees save that, without prejudice to any rights which any such employee may otherwise have, the Franchisee shall not under this Schedule 16 be obliged for the purposes of the Franchise Agreement to

offer such benefits to any employee employed on a fixed term contract of 12 months or less;

- (e) take any action (or consent to the taking of any action) which could affect the contributions payable by Participating Employers under the Franchise Section, including exercising any discretion allowed to the Franchisee as Designated Employer arising out of any actuarial valuation of the Franchise Section, and varying or providing different or additional benefits under the Franchise Section in respect of future service, unless such action is required by Law;
- (f) close the Franchise Section to new members; or
- (g) take (or omit to take) any action which could result in the Franchise Section being wound up, in whole or in part.

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

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

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

4. Funding Liabilities

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

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

of State shall have no liability for any future deterioration in the funding levels of the Franchise Section linked to such transfer in or out of members.

5. Discharge of Obligations

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

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

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

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

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

5.4 If the Trustee does not certify under paragraph 5.3 in relation to the Franchise Section that the Franchisee has fully complied with its obligations under the Railways Pension Scheme or if the Secretary of State otherwise reasonably considers that the Franchisee has not complied with such obligations, the Secretary of State may withhold from any Franchise Payments payable by him under Schedule 8 (Payments) an amount which is, in his opinion, no greater than the amount of any contribution that the Franchisee has thereby failed to make or avoided making.

5.5 The Secretary of State may, under paragraph 5.4, withhold such amount until such time as he reasonably determines that the relevant contributions have been made in full by the Franchisee. Following that determination, the amount withheld shall become payable (without interest) on the next day on which a

Franchise Payment becomes payable under Schedule 8, being a day which falls no less than seven days after such determination or, if there is no such day, 14 days after the date of such determination. To the extent that the Secretary of State has not so determined within four weeks after the expiry of the Franchise Period, the Franchisee's right to receive the amount so withheld under the Franchise Agreement shall lapse and the Secretary of State shall not be obliged to pay such amount.

6. Termination of Franchise

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

7. Definitions

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

Derogation Page

ⁱ ~~By Virtue of a Derogation, the Secretary of State has granted the Franchise Operator the following: A further week to prepare train formation data across CIS at all relevant stations.~~

~~Start Date 11/04/08 End Date 18/04/08~~

ⁱⁱ ~~By Virtue of a Derogation, the Secretary of State has granted the Franchise Operator the following: A further four months to rollout PDA devices to all conductors, revenue protection managers and service quality managers.~~

~~Start Date 11/04/08 End Date 30/09/08~~

ⁱⁱⁱ ~~By virtue of a derogation the Secretary of State has granted the Franchise Operator the following; The Department will grant London Midland a derogation on reaching the agreement on Demand Management principles to a revised date of 1 October 2009, on the condition that London Midland undertakes to start discussions to achieve agreement on this matter by 1 October 2008.~~

~~Start Date 1 October 2008 End Date 1 October 2009~~