

**DOCUMENT OP (in agreed terms)**

**OUTPUT PLAN**

**PART 1 – DEFINITIONS**

**1. Definitions and Interpretation**

In this Output Plan, except to the extent the context otherwise requires:

**Adjusted Actual Final Cost**” means the Actual Final Cost further adjusted to take account of the Railtrack Incentive (as such term is defined in the Implementation Agreement).

**“ Actual Final Cost”** has the meaning ascribed to that term in the Implementation Agreement.

**“ATP”** means automatic train protection equipment (constituting a system which provides continuous monitored train protection and speed supervision) as may be approved from time to time by the Authority.

**“Backstop Delivery Date”** means the final date by which the relevant Output Commitment(s) must be complied with by the Franchise Operator as specified in this Output Plan.

**“Cherwell Valley Robust Outputs”** means those Output Commitments specified in paragraph 1.1.6 of Part 2.

**“Crossrail Project”** means the project described in paragraph 2.1 of Part 3 of Schedule 14.

**“Depot Robust Outputs”** means the Output Commitments specified in paragraph 1.1.3 of Part 2.

**“Evergreen Outputs”** means the Evergreen Timetable Outputs and the Evergreen Robust Outputs.

**“Evergreen Phase A Robust Outputs”** means those Output Commitments specified in paragraph 1.2.2 of Part 2 to be complied with by the Franchise Operator in the fulfilment of Phase A of Project Evergreen.

**“Evergreen Phase B Robust Outputs”** means those Output Commitments specified in paragraph 1.2.2 of Part 2 to be complied with by the Franchise Operation in fulfilment of Phase B of Project Evergreen.

**“Evergreen Robust Outputs”** means the Evergreen Phase A Robust Outputs and the Evergreen Phase B Robust Outputs.

**“Evergreen Timetable Outputs”** means those Timetable Outputs specified in paragraph 1.2.1.1 of Part 2 to be complied with by the Franchise Operator in the fulfilment of Phases A and B of Project Evergreen.

**“Finalisation Date”** means each of the following:

- (a) the date of the Taking-Over Certificate of Section 1;
- (b) the date of the Taking-Over Certificate of Section 3;
- (c) the Long Stop Date unless Railtrack continues to fund the Works beyond such date, in which case the date upon which Railtrack ceases to fund the Works;
- (d) (where the Implementation Agreement is terminated and such termination occurs before completion of the Works and the Authority does not exercise its right of step in pursuant to clause 3.4 of the Collateral Warranties or exercise its call option to require Railtrack to continue to fund the Works) the date of completion of rectification works;
- (e) the Final Accounts Date;
- (f) subsequent to the Final Accounts Date, the date that any adjustment to the Periodic Payments is agreed or determined in accordance with the terms of the Implementation Agreement

in each case, as each of such terms is defined in the Implementation Agreement.

**“Implementation Agreement”** means the agreement between Railtrack, the Authority, the Franchise Operator and the Franchisee relating to the implementation of the Track Doubling Robust Outputs.

**“Kidderminster Robust Infrastructure Outputs”** means the Output Commitments specified in paragraph 1.1.4.1 of Part 2.

**“Kidderminster Timetable Outputs”** means the Output Commitments specified in paragraph 1.1.4.2 of Part 2.

**“Kidderminster Sunday Timetable Outputs”** means the Output Commitments specified in paragraph 1.1.4.3 of Part 2.

**“Likely Delivery Date”** means, where applicable, the date by which the Franchise Operator is required to have used all reasonable endeavours to comply with the relevant Output Commitment(s) as specified in this Output Plan.

**“Lump Sum Payment”** means (a) the lump sum payment referred to in clause 9.2(B) of the Implementation Agreement; and (b) any payment which falls due under clause 9.1 of the

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Implementation Agreement as a consequence of Project Costs (as such terms is defined in the Implementation Agreement) being incurred after the Long Stop Date.

**“M40 Cost Share”** means the amount calculated in accordance with paragraph 1.10.6 of Part 2.

**“Moor Street Robust Outputs”** means the Output Commitment specified in paragraph 1.1.5 of Part 2.

**“Out of Peak”** means, in relation to a Passenger Service, a service which is not either (a) a Peak service; or (b) a service which is scheduled to arrive at Birmingham Moor Street station between 0700 and 0959 on Weekdays or is scheduled to depart from Birmingham Moor Street station between 1600 and 1859 on Weekdays.

**“Parking Improvement Outputs”** means those Output Commitments specified in paragraph 4.1 of Part 2 and the Parking Plan Outputs.

**“Parking Percentage Outputs”** means those Parking Improvement Outputs specified in paragraph 4.1.1.1 of Part 2.

**“Parking Plan Outputs”** means those Output Commitments agreed or determined pursuant to paragraph 4.2.5 of Part 2.

**“Peak Hours”** means the hours of the Peak.

**“Platform Extension Robust Outputs”** means the Output Commitments specified in paragraph 1.1.7 of Part 2.

**“Principal Steps”** means, where applicable, the principal steps to be taken by the Franchise Operator in order to comply with a specified Output Commitment.

**“Project Evergreen Phases A and B”** means the projects referred to in paragraph 1.2 of Part 2 of this Output Plan.

**“Railtrack Level”** means the ranking attributed to the relevant Proposal to indicate the level of certainty of the capital cost estimates in accordance with the ‘1-5’ classification system described in the document in the agreed terms marked “RTL”.

**“Revised Final Cost”** means the amount calculated in accordance with paragraph 1.10.2 of Part 2 of this Output Plan.

**“Robust Outputs”** means any or all of the Track Doubling Robust Outputs, the Depot Robust Outputs, the Kidderminster Robust Infrastructure Outputs, the Moor Street Robust Outputs, the Evergreen Robust Outputs, the Cherwell Valley Robust Outputs or the Platform Extension Robust Outputs.

**“Rolling Stock Outputs”** means those Output Commitments specified in paragraph 5.1 of Part 2.

**“Standard Off-Peak Hour”** means any hour on Weekdays and Saturdays between 0700 and 2100 which is not a Peak Hour.

**“Station Trio”** means a group of three Stations which each have a car park with capacity for at least 20 vehicles and which follow each other consecutively on any route on which the Passenger Services operate. For the avoidance of doubt, any Station may form a part of more than one Station Trio.

**“Target Final Cost”** has the meaning ascribed to such term in the Implementation Agreement.

**“Timetable Outputs”** means in relation to any specified provision of this Output Plan those Output Commitments representing the commitment of the Franchise Operator to achieve any specified Timetable improvements or changes.

**“Track Doubling Amount”** means the costs accruing to the Franchise Operator in any year for the Works (as such term is defined in the Implementation Agreement).

**“Track Doubling Annual Charges”** means the charges payable pursuant to the Implementation Agreement and which the Franchise Operator demonstrates to the Authority's reasonable satisfaction have arisen as a direct result of the Franchise Operator's compliance with the Track Doubling Robust Outputs.

**“Track Doubling Blockade Timetable Outputs”** means those of the Track Doubling Timetable Outputs set out in tables 3 and 7 of Annex 1 to paragraph 1 of Part 2 and marked with the notation “a”.

**“Track Doubling Robust Outputs”** means the Output Commitments specified in paragraph 1.1.2 of Part 2.

**“Track Doubling Timetable Outputs”** means the Output Commitments specified in paragraph 1.1.1.1 of Part 2.

**“Total Timetable Outputs Incentive Payment”** means the payment to be made by the Franchise Operator to the Authority if any of the Timetable Outputs are not complied with by the applicable Likely Delivery Date, which payment shall be calculated as determined in accordance with paragraph 1.7.2 of Part 2.

## 2. **Construction and Interpretation**

In this Output Plan:

- 2.1 Terms and expressions defined in the Franchise Agreement shall have the same meaning and the rules of construction and interpretation set out in the Franchise Agreement shall apply unless the context otherwise requires.
- 2.2 Any reference to a Schedule shall be a reference to the corresponding Schedule to the Franchise Agreement.
- 2.3 Unless otherwise specified any reference to a paragraph or Part shall be a reference to the corresponding paragraph or Part of this Output Plan.
- 2.4 Where the context so admits any reference to the Franchise Agreement shall be a reference to the Franchise Agreement as the same may be modified, or deemed modified, by this Output Plan or otherwise, from time to time.

## **PART 2 – OUTPUT COMMITMENTS**

### **1. Committed Outputs**

#### **1.1 NON PROJECT EVERGREEN OUTPUTS TO BE DELIVERED**

The Franchise Operator shall except to the extent otherwise provided in this Part 2 use all reasonable endeavours to comply with the following Timetable Outputs by the applicable Likely Delivery Dates and shall, in any event, comply with such Timetable Outputs by the applicable Backstop Delivery Dates. In addition, the Franchise Operator shall use all reasonable endeavours to comply with the following Robust Outputs by the applicable Likely Delivery Dates and shall, in any event, comply with such Robust Outputs by the applicable Backstop Delivery Dates. Subject to this:

##### **1.1.1 Track Doubling Timetable Outputs**

1.1.1.1 Subject to paragraphs 1.1.1.2 and 1.1.1.3 of this Part 2, clause 5 of the Franchise Agreement shall apply and the Franchise Operator shall, to the extent required by that clause, include the Track Doubling Timetable Outputs in the Timetable and the Train Plan as if the Timetable Outputs described below were specified in Part 1 of Schedule 3 of the Franchise Agreement:

(a) prior to both the Backstop Delivery Date applicable to the Cherwell Valley Robust Outputs and, where the Franchise Operator is required to comply with the Evergreen Outputs pursuant to the Special Output Review, the Likely Delivery Date applicable to the Evergreen Timetable Outputs, the Track Doubling Timetable Outputs shall be as set out in column 1 (but excluding the stops at Kidderminster and Stourbridge stations) of the tables attached as Annex 1 of this Part 2; and

(b) after the Backstop Delivery Date applicable to the Cherwell Valley Robust Outputs but, where the Franchise Operator is required to comply with the Evergreen Outputs pursuant to the Special Output Review, prior to the Likely Delivery Date applicable to the Evergreen Timetable Outputs, the Track Doubling Timetable Outputs shall be as set out in column 2 (but excluding the stops at Kidderminster and Stourbridge stations) of the tables attached as Annex 1 of this Part 2.

1.1.1.2 The Franchise Operator shall make application under the Railways Act to either amend the Track Access Agreement (as it exists as at the Franchise Commencement Date) or enter into a new Track Access Agreement so as to enable it to comply with the Track Doubling Timetable Outputs. The Franchise Operator shall use reasonable endeavours to make such application to the Regulator as soon as possible and in any event shall make such application by 31 May 2002. The Franchise Operator shall use all reasonable endeavours to

procure the success of its application. The parties acknowledge that the access rights granted to other Train Operators, the extent to which such Train Operator's propose to exercise such rights and the available capacity on the route (excluding the effect of any capacity restraints between Bicester and Aynho Junction which restraints are to be resolved by the Franchise Operator's compliance with the Track Doubling Outputs) will impact on the Regulator's decision. The Authority agrees that if the Franchise Operator is able to demonstrate to the Authority's reasonable satisfaction that such factors are likely to result in the unavailability of the train paths necessary to comply with the Track Doubling Timetable Outputs then the Authority shall either provide that the Franchise Operator shall not be obliged to make the application referred to above or, may direct the Franchise Operator to amend its application to such an extent as shall increase its chances of success and the Track Doubling Timetable Outputs shall be amended accordingly (as provided for in paragraph 1.1.1.3 below).

1.1.1.3 If, despite the Franchise Operator having complied with its obligations under paragraph 1.1.1.2 of this Part 2, the Franchise Operator is unable to procure a Track Access Agreement which would enable it to comply with the Track Doubling Timetable Outputs either in whole or in part then the Authority shall (a) amend the Track Doubling Timetable Outputs so as to reflect the rights procured in the Track Access Agreement; and (b) the No Net Loss No Net Gain Regime shall apply in respect of any Net Loss or Net Gain suffered or made (as applicable) as a result of such amendment to the Track Doubling Timetable Outputs provided that the principles set out in paragraph 1.1.1.4 of this Part 2 shall apply in respect of the application of the No Net Loss No Net Gain Regime. The parties may resolve any dispute as to whether and to what extent the Track Doubling Timetable Outputs should be amended and/or the application of the No Net Loss No Net Gain Regime in accordance with the Dispute Resolution Rules.

1.1.1.4 The No Net Loss No Net Gain Regime shall apply subject to the following principles:

(a) the Real Amounts have been agreed on the basis that the Franchise Operator would have been adequately compensated if the application made pursuant to paragraph 1.1.1.2 of this Part 2 was successful;

(b) the Real Amounts which may be derived from the Committed Outputs Business Plan entitled "Model 2 minus" would result in the Franchise Operator making no Net Loss and making no Net Gain if the application made pursuant to paragraph 1.1.1.2 of this Part 2 was wholly unsuccessful provided that in such circumstances the

Franchise Operator would not be required to comply with the Track Doubling Timetable Outputs or pay the Track Doubling Payment;

(c) if the application made pursuant to paragraph 1.1.1.2 of this Part 2 is partially successful then the No Net Loss No Net Gain Regime shall apply so as to ensure that, having made the appropriate adjustments to the Franchise Agreement, the Franchise Operator is in no better and no worse a position than that described in sub-paragraphs (a) and (b) above.

#### 1.1.2 **Track Doubling Robust Outputs**

The Franchise Operator shall provide or procure enhancements to the network and/or such other works so as to:

1.1.2.1 permit the creation of Rules of the Plan specifying the headways identified in respect of the line section described below (and including the two independent lines referred to in paragraph 1.1.2.2) and shall procure that the Rules of the Plan are amended to specify such headways in sufficient time to allow the introduction of a Timetable and Train Plan which includes the Track Doubling Timetable Outputs.

<b>Line section</b>	<b>Rules of the Plan headway (in minutes) for the normal direction</b>	<b>Rules of the Plan headway (in minutes) for the reverse direction on the up line</b>
Bicester to Aynho Junction	5	10

1.1.2.2 in respect of the line from Bicester to Aynho Junction provide two independent lines with the line speeds shown in Part A of Annex 5 to this paragraph 1.

1.1.2.3 accommodate the operation of the sample timetable attached at Annex 3 to this paragraph 1 and on the basis that such sample timetable shall be capable of being operated in accordance with the provisions of this Franchise Agreement and the then applicable Rules of the Plan. For the avoidance of doubt, the Franchise Operator is not bound to introduce a timetable in the same form as the relevant sample timetable.

1.1.2.4 ensure that condition monitoring equipment is installed at Aynho Junction and Bicester in order to monitor the condition of the following equipment:



- (a) point ends;
- (b) points machines;
- (c) points heater;
- (d) generator which ensures uninterruptable power supply;
- (e) earth leakage.

The Franchise Operator shall, during the design phase for the necessary enhancements and/or other works, demonstrate to the Authority's reasonable satisfaction that the enhancements and/or other works which the Franchise Operator plans to effect will comply with its obligations under this paragraph 1.1.2 and shall, as soon as reasonably practicable, further demonstrate continued compliance if the Franchise Operator's plans with regard to such enhancements and/or other works subsequently change. In addition, upon completion of such enhancements and/or other works the Franchise Operator shall demonstrate its compliance with its obligations under paragraph 1.1.2 to the Authority's reasonable satisfaction.

#### **1.1.3 Depot Robust Outputs**

The Franchise Operator will create new depot facilities to replace the existing Marylebone depot within a reasonable distance of Marylebone Station and provide 2 independent access lines from the mainline to such depot. Such depot will have light maintenance, carriage wash and stabling facilities. In addition Aylesbury light maintenance depot will be provided with a wheel lathe and additional fuelling point.

#### **1.1.4 Kidderminster Robust Infrastructure Outputs Kidderminster Timetable Outputs and Kidderminster Sunday Timetable Outputs**

- 1.1.4.1 The Franchise Operator will provide a turn-back siding enabling one train per hour to terminate at Kidderminster clear of the through running lines, reverse and travel back in the direction of Stourbridge.
- 1.1.4.2 Clause 5 of the Franchise Agreement shall apply and the Franchise Operator shall, to the extent required by that clause, include the Kidderminster Timetable Outputs in the Timetable and the Train Plan as if the Timetable Outputs in relation to stops at Kidderminster and Stourbridge stations set out in Column 1 of each of tables 1 to 6 attached at Annex 1 to this Part 2 were specified in Part 1 of Schedule 3 of the Franchise Agreement.

Clause 5 of the Franchise Agreement shall apply and the Franchise Operator shall, to the extent required by that clause, include the Kidderminster Sunday Timetable Outputs in the Timetable and the Train Plan as if the Timetable Outputs in relation to stops at Kidderminster and Stourbridge Stations

set out in Column 1 of table 7 of Annex 1 to this Part 2 were specified in Part 1 of Schedule 3 of the Franchise Agreement. Provided that the Franchise Operator shall be entitled to cease to deliver the Kidderminster Sunday Timetable Outputs after providing them for 12 consecutive calendar months, or throughout the period of two consecutive Timetables, whichever period is shorter, if it can demonstrate to the reasonable satisfaction of the Authority that their continued provision would result in a Net Loss to the Franchise Operator.

#### 1.1.5 **Moor Street Robust Outputs**

The Franchise Operator will provide two terminal platforms adjacent to the existing Moor Street Station for 2 eight-Vehicle trains with Vehicles of a nominal length of 23 metres, which shall be additional to the platforms in existence at Moor Street Station at the Franchise Commencement Date, with a connection to the through lines, without adverse impact on the design capacity for services to and from Snow Hill.

#### 1.1.6 ***Cherwell Valley Robust Outputs***<sup>1</sup>

*The Franchise Operator shall co-operate with Railtrack and the Authority to provide a solution in respect of the line section from Aynho Junction to the boundary of Leamington (including signalling in the area towards Dorridge) which allows the Operation of 4 Passenger Services per hour in each direction of which 2 are turn back movements at Banbury and 2 continue beyond Leamington and which allows the creation and implementation of a 3 minute headway in the normal direction (unless the immediate block signal solution is chosen in which case such headway shall be approximately 4 minutes) and, in respect of the line section from Bicester to Aynho Junction, a 10 minute headway in the reverse direction on the down line in the Rules of the Plan. It is agreed that the solution might be a comprehensive resignalling or, alternatively, the addition of immediate block signals between Banbury and Leamington Spa exclusive to the existing signalling system and this will not be known until consultations between Railtrack and all relevant parties including the Authority and the Franchise Operator are completed. It is agreed that if the intermediate block signal solution is chosen the Franchise Operator might, if agreed with Railtrack, have a role in the design, construction and project management of the solution. The solution if and when agreed for the implementation by all parties with the locus in respect of a decision to implement it shall become the Cherwell Valley Robust Outputs for the purposes of this Output Plan.*

#### 1.1.7 ***Platform Extension Robust Outputs***<sup>2</sup>

*The Franchise Operator will deliver the following platform extensions (including all necessary associated work including signalling and*

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<sup>1</sup> Replacement text inserted wef 3<sup>rd</sup> December 2004.

*communications) to enable trains comprised of the specified number of vehicles to call in the up and down direction:-*

**1.1.7.1 8 x 23 metre vehicles**

*Solihull – up and down*

*Dorridge – up and down main*

*Warwick – up and down main*

*Bicester – up and down*

*Haddenham and Thame – up and down*

*Wembley Stadium – up and down*

**1.1.7.2 7 x 23 metre vehicles**

*Princess Risborough – up and down main*

*High Wycombe – up and down main*

*Beaconsfield – up and down*

*Seer Green & Jordan's – up and down*

*Denham Golf Club – up and down*

*Denham – up and down*

**1.1.7.3** *On receipt of a preliminary statement of forecast demand from the Franchise Operator pursuant to Clause 6.5 of the Franchise Agreement indicating that additional capacity is required on the route serving the stations listed in Sub-clause 1.1.7.2, the Authority [may/will] require Franchise Operator to submit to it a Feasibility Study pursuant to Clause 6.6 of the Franchise Agreement for the provision of additional capacity by means of further extension to the platforms listed in Sub-clause 1.1.7.2 to 8 x 23 metre vehicle length. For the purposes of this sub-clause 1.1.7.2 to 8 x 23 metre vehicle length. For the purposes of this sub-clause, the No Net Loss No Net Gain Regime will not apply.*

*For the avoidance of doubt the Franchise Operator shall be responsible for securing all consents and approvals required.*

**1.2 PROJECT EVERGREEN OUTPUTS TO BE DELIVERED**

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<sup>2</sup> New text inserted wef 25<sup>th</sup> August 2004.

Subject to paragraph 5 of the Special Output Review, the Franchise Operator shall use all reasonable endeavours to comply with the following Timetable Outputs by the applicable Likely Delivery Dates and shall, in any event, comply with such Timetable Outputs by the applicable Backstop Delivery Dates. In addition, the Franchise Operator shall comply with the following Robust Outputs by the applicable Backstop Delivery Dates. Subject to this:

#### 1.2.1 Project Evergreen Timetable Outputs

1.2.1.1 Clause 5 of the Franchise Agreement shall apply and the Franchise Operator shall, to the extent required by that clause, include each of the Evergreen Timetable Outputs in the Timetable and the Train Plan as if the Timetable Outputs described below were specified in Part 1 of Schedule 3 of the Franchise Agreement:

- (a) prior to the Backstop Delivery Date applicable to the Cherwell Valley Robust Outputs, the Evergreen Timetable Outputs shall be as set out in column 3 in the tables attached as Annex 1 of this Part 2
- (b) after the Backstop Delivery Date applicable to the Cherwell Valley Robust Outputs, the Evergreen Timetable Outputs shall be as set out in column 4 in the tables attached as Annex 1 of this Part 2.

1.2.1.2 The Franchise Operator shall negotiate and enter into one or more new Track Access Agreement(s) and/or amend the Track Access Agreements (as they exist as at the Franchise Commencement Date) so as to enable it to comply with the Evergreen Timetable Outputs.

1.2.1.3 The Franchise Operator shall procure that the Rules of the Plan are amended as required pursuant to paragraph 1.2.2.1 in sufficient time to allow the introduction of a Timetable and Train Plan which includes the Evergreen Timetable Outputs.

#### 1.2.2 Project Evergreen Robust Outputs

The Franchise Operator shall provide or procure enhancements to the network and/or such other works so as to:

1.2.2.1 ***permit the creation of Rules of the Plan specifying the headways identified in respect of the various line sections which, in respect of Project Evergreen Phase A and Project Evergreen Phase B are described below and shall procure that the Rules of the Plan are amended to specify such headways.***

<b>Project Evergreen Line section</b>	<b>Rules of the Plan headway (in minutes) for the Normal direction</b>	<b>Rules of the Plan headway (in minutes) for the Reverse direction</b>
<b>Princes Risborough to Aylesbury</b>	<b>8</b>	<b>-</b>
<b>High Wycombe to Saunderton</b>	<b>4*<sup>1</sup></b>	<b>-</b>
<b>Saunderton to Princes Risborough</b>	<b>4</b>	<b>-</b>
<b>Princes Risborough to Bicester</b>	<b>5</b>	<b>11 (down line only)</b>
<b>Marylebone Station to Neasden South Junction</b>	<b>3</b>	<b>-</b>
<b>Neasden South Junction to Wembley Stadium Station</b>	<b>3</b>	<b>-</b>
<b>Wembley Stadium Station to South Ruislip</b>	<b>3</b>	<b>-</b>
<b>South Ruislip to Gerrards Cross</b>	<b>3</b>	<b>-</b>
<b>Gerrards Cross To High Wycombe</b>	<b>3</b>	<b>-</b>
<b>Neasden South Junction to Harrow on the Hill</b>	<b>4</b>	<b>-</b>

**\*<sup>1</sup> 5 if preceding train calls at Saunderton**

1.2.2.2 comply with the additional obligations described below:

**(i) in respect of the line section from Marylebone Station, provide simultaneous terminal capacity at Marylebone Station for at least 5 eight-Vehicle and 1 five-Vehicle trains, with a nominal Vehicle length of 23 metres and accommodate 20 trains per hour arriving during the Morning Peak and 20 trains per hour departing during the Evening Peak and all ancillary and consequential empty train movements.**

(ii) in respect of the line section from Marylebone Station to Neasden South Junction, undertake improvements to the signalled headway and make provision in the signalling system which will accommodate a station stop at West Hampstead for all trains whilst retaining the capability to run 20 trains per hour and such that material signalling enhancements will not be required if the Secondary Aspiration for a new interchange at West Hampstead described at paragraph 2.10 of Part 3 of Schedule 14 of the Franchise Agreement is implemented.

1.2.2.3 comply in all material aspects with the schematic track plan attached as Annex 2 to this paragraph 1

1.2.2.4 provide the improved line speeds shown in Part B of Annex 5 to this paragraph 1

1.2.2.5 accommodate the operation of the sample timetable attached at Annex 4 to this paragraph 1 and on the basis that such sample timetable shall be capable of being operated in accordance with the provisions of this Franchise Agreement and the then applicable Rules of the Plan. For the avoidance of doubt, the Franchise Operator is not bound to introduce a timetable in the same form as the sample timetable.

1.2.2.6 ensure that condition monitoring equipment is installed at appropriate locations in order to monitor the condition of the following equipment:

- (a) point ends;
- (b) points machines;
- (c) points heater;
- (d) generator which ensures uninterruptable power supply;
- (e) earth leakage.

1.2.2.7 The Franchise Operator shall, during the design phase for the necessary enhancements and/or other works, demonstrate to the Authority's reasonable satisfaction that the enhancements and/or other works which the Franchise Operator plans to effect will comply

with its obligations under this paragraph 1.2.2 and shall, as soon as reasonably practicable, further demonstrate continued compliance if the Franchise Operator's plans with regard to such enhancements and/or other works subsequently change. In addition, upon completion of such enhancements and/or other works the Franchise Operator shall demonstrate its compliance with its obligations under paragraph 1.2.2 to the Authority's reasonable satisfaction.

### 1.2.3 **Associated Investments**

1.2.3.1 It is envisaged that the following infrastructure works will be undertaken in the course of ensuring compliance with the Evergreen Outputs :

(a) Project Evergreen Phase A

(a) Undertake signalling works to reduce signalling headways and improve line speeds and introduce bi-directional signalling between Princes Risborough and High Wycombe

(b) Undertake signalling works to reduce signalling headways and extend bi-directional signalling between Princes Risborough and Bicester

(b) Project Evergreen Phase B

(a) Enhance capacity at Marylebone

(a) (a) Undertake signalling works to allow for 2 minute timetable headways, Wembley to Marylebone

1.2.3.2 The Franchise Operator shall be obliged to obtain the Authority's prior written consent (such consent not to be unreasonably withheld or delayed) if, in order to comply with any Evergreen Output, it proposes to carry out or procure (or any other party proposes to carry out or procure) infrastructure works which are different from those referred to in this paragraph 1.2.3.

For the avoidance of doubt, nothing in this paragraph 1.2.3 shall relieve or restrict the Franchise Operator's obligations under the Franchise Agreement in respect of the provision of the Evergreen Outputs and it is the Franchise Operator's obligation to obtain any form of approval, consent or permission, or satisfy any condition required in relation thereto, or otherwise.

## 1.3 **DELIVERY OF OUTPUTS AND TIME FRAMES**

### 1.3.1 **Evergreen Timetable Outputs**

(a) Unless otherwise agreed pursuant to the Special Outputs Review, the Likely Delivery Date for the Evergreen Timetable Outputs shall be the Passenger Change Date for the Winter 2003/04 Timetable

- (b) If the Evergreen Timetable Outputs are not complied with, either in whole or in part, by the relevant Likely Delivery Date whether or not all reasonable endeavours have been used by the Franchise Operator then the Franchise Operator shall pay to the Authority the Total Timetable Outputs Incentive Payment, which payment shall be made by way of an adjustment to the Incentive Payment.
- (c) Unless otherwise agreed pursuant to the Special Outputs Review, the Backstop Delivery Dates for the Evergreen Timetable Outputs shall be the Passenger Change Date for the Winter 2005/06 Timetable

### 1.3.2 Evergreen Robust Outputs

Unless otherwise agreed pursuant to the Special Outputs Review:

- (a) the Likely Delivery Date for the Evergreen Robust Outputs shall be the Passenger Change Date for the Winter 2004/05 Timetable
- (b) the Backstop Delivery Date for the Evergreen Robust Outputs shall be the Passenger Change Date for the Winter 2005/06 Timetable

### 1.3.3 Non Project Evergreen Robust Outputs and Timetable Outputs

#### 1.3.3.1 Track Doubling Timetable Outputs and Track Doubling Robust Outputs

- (a) ***In respect of the Track Doubling Timetable Outputs and the Track Doubling Robust Outputs, the Likely Delivery Date shall be the Passenger Change Date for the Winter 2002/03 Timetable and the Backstop Delivery Date shall be the Passenger Change Date for the Winter 2004/05 Timetable except for the Rules of the Plan headway (in minutes) for the reverse direction on the up line where the Likely Delivery Date shall be 27<sup>th</sup> January 2003 and the Backstop Delivery Date shall be the Passenger Change Date for the Winter 2004/05 Timetable provided that in respect of the Track Doubling Blockade Timetable Outputs the Likely Delivery Date shall be 10<sup>th</sup> August 2002<sup>3</sup>***
- (b) If the Track Doubling Timetable Outputs (including the Track Doubling Blockade Timetable Outputs) are not complied with, either in whole or in part, by the relevant Likely Delivery Date whether or not all reasonable endeavours have been used by the Franchise Operator then the Franchise Operator shall pay to the Authority the Track Doubling Payment. Provided that the Track Doubling Payment shall not be payable or shall cease to be payable (as applicable) from the date that the Track Doubling Annual Charges begin to accrue.

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<sup>3</sup> Insertion of new text w.e.f. 23.09.2002.



- (c) The Track Doubling Payment in respect of any Reporting Period commencing on or after the Passenger Change Date for the Winter 2002/3 Timetable shall be calculated in accordance with paragraph 1.7.2.

1.3.3.2 **Wembley Light Maintenance Depot<sup>4</sup>**

***In respect of the Depot Robust Outputs, the reasonable endeavours date for the delivery of the Depot Robust Outputs shall be 30 September 2005. The Backstop Delivery Date for the Depot Robust Outputs shall be 31 December 2005. The Authority agrees that if Network Rail refuses to make sufficient personnel available, or frustrates the availability of such personnel, to perform the signalling works required to enable the Franchise Operator to comply with the Depot Robust Outputs then the Backstop Delivery Date shall not apply and the Franchise Operator's obligation to comply with this Committed Output shall become an obligation to use all reasonable endeavours to deliver the Committed Output as soon as reasonably practicable.***

1.3.3.3 **Kidderminster Timetable Outputs and Kidderminster Robust Infrastructure Outputs**

- (a) In respect of the Kidderminster Robust Infrastructure Outputs the Backstop Delivery Date shall be the Passenger Change Date for the Summer 2004 Timetable. The Authority agrees that if Railtrack refuses to make sufficient personnel available, or frustrates the availability of such personnel, to perform the necessary signalling works required to enable the Franchise Operator to comply with the Kidderminster Robust Infrastructure Outputs then the Backstop Delivery Date shall not apply and the Franchise Operator's obligation to comply with this Committed Output shall become an obligation to use all reasonable endeavours to deliver the Committed Output as soon as reasonably practicable.
- (b) In respect of the Kidderminster Timetable Outputs (in relation to the stops set out in Tables 1 and 5 at Stourbridge only), the Backstop Delivery Date shall be the Franchise Commencement Date.
- (c) In respect of the Kidderminster Timetable Outputs (excluding those referred to in paragraph 1.3.3.3(b) above), the Likely Delivery Date shall be the Passenger Change Date for the Winter 2002/2003 Timetable and the Backstop Delivery Date shall be the Passenger Change Date for the Summer 2004 Timetable.

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<sup>4</sup> Replacement text inserted wef 3<sup>rd</sup> December 2004.

- (d) In respect of the Kidderminster Sunday Timetable Outputs, the Likely Delivery Date shall be the Passenger Change Date for the Winter 2003/04 Timetable and the Backstop Delivery Date shall be the Passenger Change Date for the Summer 2004 Timetable provided, in each case, that no major engineering works are taking place between Banbury and Birmingham at the time of the Likely Delivery Date. If such major engineering works are taking place then the Franchise Operator shall be entitled to apply to the Authority for a postponement of the introduction of the Kidderminster Sunday Timetable Outputs and in such event the Likely Delivery Date shall be the Passenger Change Date for the Summer 2004 Timetable and the Backstop Delivery Date shall be the Passenger Change Date for the Winter 2004/05 Timetable.
- (e) If the Kidderminster Timetable Outputs and/or the Kidderminster Sunday Timetable Outputs are not complied with, either in whole or in part, by the relevant Likely Delivery Date whether or not all reasonable endeavours have been used by the Franchise Operator then the Franchise Operator shall pay to the Authority the Total Timetable Outputs Incentive Payment which payment shall be made by way of an adjustment to the Incentive Payment.

#### 1.3.3.4 **Moor Street Robust Output**

In respect of the Moor Street Robust Output, the Likely Delivery Date shall be the Passenger Change Date for the Summer 2003 Timetable and the Backstop Delivery Date shall be the Passenger Change Date for the Summer 2004 Timetable. The Authority agrees that if Railtrack refuses to make sufficient personnel available, or frustrates the availability of such personnel, to perform the signalling works required to enable the Franchise Operator to comply with the Moor Street Robust Output then the Backstop Delivery Date shall not apply and the Franchise Operator's obligation to comply with this Committed Output shall become an obligation to use all reasonable endeavours to deliver the Committed Output as soon as reasonably practicable. Where the slippage in the Franchise Commencement Date from the anticipated date of commencement on 1 October 2001 causes undue difficulty to the Franchise Operator in meeting its reasonable endeavours obligation under this clause 1.3.3.4 then the Authority shall take this into account when determining whether the Franchise Operator has used such reasonable endeavours.

#### 1.3.3.5 **Cherwell Valley Robust Outputs**

- (a) In respect of the Cherwell Valley Robust Outputs, the Authority shall be entitled to issue a notice ("the Backstop Date Notice") specifying the Backstop Delivery Date which shall be applicable in respect of the Cherwell Valley Robust Outputs. Provided that such Backstop Delivery Date shall:
- (i) fall on a Passenger Change Date;
  - (ii) be no less than 24 months after the date of the Backstop Date Notice; and
  - (b) (iii) fall after the date that it is reasonably anticipated by the Authority that the Cherwell Valley Robust Outputs will be complete.

In addition, the Backstop Date Notice shall attach a statement from Railtrack confirming that the specification for the enhancements to the network and/or such other works to be carried out are such as to accommodate the operation of the relevant sample timetable annexed at Annex 4 to this paragraph 1 (the relevant timetable depending on which Evergreen Outputs are authorised at the Special Outputs Review) and on the basis that such sample timetable shall be capable of being operated in accordance with the provisions of this Franchise Agreement and the then applicable Rules of the Plan. The Authority shall use reasonable endeavours to procure that the Franchise Operator is provided with quarterly updates on the progress of the works being undertaken to achieve compliance with the Cherwell Valley Robust Output. The Authority may at any time issue a further notice ("the Revised Backstop Date Notice") providing for a revised Backstop Delivery Date in respect of the Cherwell Valley Robust Outputs provided that such date shall not (unless otherwise agreed) precede the Backstop Delivery Date being replaced and, where the revised Backstop Delivery Date is materially later than the date being replaced, the revised Backstop Delivery Date shall fall on a Passenger Change Date which shall be no less than 6 months after the date of the Revised Backstop Date Notice. The Franchise Operator shall be entitled to dispute the accuracy of any Backstop Date Notice or Revised Backstop Date Notice (including the accuracy of the Backstop Delivery Date) and shall serve notice of any dispute upon the Authority as soon as reasonably practicable. Any such disputes shall be resolved using the Dispute Resolution Rules and where the dispute is decided in favour of the Franchise Operator then the Backstop Delivery Date in the Backstop Date Notice or Revised Backstop Date Notice (as applicable) shall be either:

- (i) six months from the date the dispute is decided; or, if later

(ii) fall after the date that it is reasonably anticipated by the Authority that the Cherwell Valley Robust Outputs will be complete.

- (c) The No Net Loss No Net Gain Regime shall apply in respect of any Net Loss or Net Gain suffered or made (as applicable) as a result of the Franchise Operator's compliance with the Cherwell Valley Robust Outputs and the additional Timetable Outputs with which the Franchise Operator must comply pursuant to paragraphs 1.1.1(b) and/or 1.2.1.2.

**1.3.3.6** <sup>5</sup>*In respect of the Platform Extension Robust Outputs referred to in paragraphs 1.1.7.1 for Solihull, Dorridge, Warwick, Bicester and Haddenham and Thame, the Likely Delivery Date is the Passenger Change Date for the Summer 2003 Timetable and the Backstop Delivery Date is the Passenger Change Date for the Winter 2002/03 Timetable.*

*In respect of the Platform Extension Robust Outputs referred to in paragraphs 1.1.7.1. and 1.1.7.2 for Wembley Stadium, Princess Risborough, High Wycombe, Beaconsfield, Seer green and Jordan's, Gerrards Cross, Denham Golf Club and Denham, the Likely Delivery Date shall be 30 June 2004 and Backstop Delivery Date is 30 September 2004.*

**1.3.4 Proposed Amendments to Robust Outputs**

- 1.3.4.1 The Franchise Operator may propose amendments to any of the Robust Outputs (including the Backstop Delivery Date applicable to such Robust Outputs) referred to in this paragraph 1 from time to time where, in relation to a particular Robust Output for material reasons beyond the control (excluding the costs of compliance) of the Franchise Operator, and despite the use of all reasonable endeavours by the Franchise Operator, it cannot comply with a particular output.
- 1.3.4.2 Any such amendment to Robust Outputs shall require the Authority's approval (such approval not to be unreasonably withheld or delayed) in writing.
- 1.3.4.2 The Authority and the Franchise Operator shall discuss any such proposed amendments to the Robust Outputs in good faith. Without prejudice to the foregoing, the Authority shall be entitled to request any further information (including studies of possible alternative means of implementation of the relevant Robust Outputs and any sensitivities relating thereto) which it reasonably considers necessary

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<sup>5</sup> Replacement text inserted wef 23<sup>rd</sup> January 2004

for the evaluation of any proposed amendment to the Robust Outputs.  
The Franchise Operator shall deliver such information to the Authority as soon as practicable.

#### **1.3.5 Relationship between Timetable Outputs**

Notwithstanding any other provision of this Output Plan, in any case where the Franchise Operator has used all reasonable endeavours to comply with the Timetable Outputs specified in any Column in any of the Tables 1, 3 and/or 5 by the applicable Likely Delivery Date but nevertheless is unable to comply with such Timetable Outputs (in which case a Timetable Output Incentive Payment shall be payable) and as a consequence, despite using all reasonable endeavours, it is unable to comply with its obligations in respect of the Timetable Outputs specified in the corresponding Column of Table 2, 4 and/or 6, respectively then, in respect of such Timetable Outputs, the Franchise Operator will not be in breach of its obligations under this Output Plan. For the avoidance of doubt, any Total Timetable Outputs Incentive Payments payable in accordance with clause 1.7.2 shall remain so payable.

#### **1.4 MONITORING DELIVERY OF OUTPUTS**

In order to enable the Authority to monitor the Franchise Operator's compliance with (or prospect of compliance with) the Robust Outputs, the parties shall comply with the terms of Part 3 of this Output Plan.

#### **1.5 CONTINUING OBLIGATIONS OVER WHOLE FRANCHISE TERM**

Once implemented the Franchise Operator shall (unless specifically provided to the contrary) continue to comply with the Robust Outputs for the remainder of the Franchise Term.

#### **1.6 RIGHTS OF AUTHORITY IN RELATION TO INVESTMENTS**

Without prejudice to the generality of Clause 27 of the Franchise Agreement, in relation to the construction of any new Depot or Station in relation to which neither the Franchise Operator nor any other Train Operator is or is to be the Facility Owner, the Franchise Operator shall procure that the Facility Owner of the Depot or Station enters into a Direct Agreement with the Authority in a form reasonably satisfactory to the Authority. In particular, such Direct Agreement shall contain an obligation on the Facility Owner which shall be in substantially the same form as the obligation placed on the Franchise Operator in Clause 10.1 of the Franchise Agreement.

#### **1.7 CONSEQUENTIAL AMENDMENTS TO FRANCHISE AGREEMENT**

- 1.7.1 The following amendments shall be made to the Maximum Capacity Limits and the Passenger Demand Limit:

- 1.7.1.1 With effect from the Passenger Change Date for the Winter 2002/03 Timetable:

The Maximum Capacity Limit shall be 20,243 passengers on trains arriving at London Marylebone Station in the Morning Peak; and

The Passenger Demand Limit shall be 13,639 passengers on trains arriving at London Marylebone in the Morning Peak.

- 1.7.1.2 With effect from the Passenger Change Date for the Winter 2004/05 Timetable where the Franchise Operator is required to comply with the Evergreen Robust Outputs

The Maximum Capacity Limit shall be 22,402 passengers on trains arriving at London Marylebone Station in the Morning Peak; and

The Passenger Demand Limit shall be 14,817 passengers on trains arriving at London Marylebone Station in the Morning Peak; or

1.7.2 **[NOT USED]**<sup>6</sup>

1.7.3 Balancing Payments

- 1.7.3.1 The amount of £1,412,722 shall be paid by the Authority to the Franchise Operator in respect of underpayments of the Franchise Payments during the period 1 October 2001 to 5 January 2002.

- 1.7.3.2 In respect of the period commencing on 6 January 2002 and ending on the Franchise Commencement Date the Authority shall pay to the Franchise Operator an amount ("the New Franchise Adjustment Payment") which shall be calculated in accordance with the following formula:

$$\text{NFAP} = \text{ARP} + \frac{\text{PRP} \times \text{N}}{28}$$

where

NFAP equals the New Franchise Adjustment Payment

ARP equals the aggregate of the balancing payment amounts set out in Table A below for each complete Reporting Period that has passed since 5 January 2002 up to, and excluding, the Reporting Period in which the Franchise Commencement Date falls

PRP equals the balancing payment amount set out in Table A for the Reporting Period in which the Franchise Commencement Date falls

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<sup>6</sup> DATE OF CHANGE 25.9.2006

N equals the number of days from and including the first day of the Reporting Period in which the Franchise Commencement Date falls to and excluding the Franchise Commencement Date

Table A

Reporting Period	Balancing Payment Amount
6 January 2002 to 2 February 2002	£584,109
3 February 2002 to 2 March 2002	£588,264
3 March 2002 to 31 March 2002	£595,707
1 April 2002 to 27 April 2002	£929,807
28 April 2002 to 25 May 2002	£964,245

- 1.7.3.3 In respect of the period commencing on 1 April 2001 and ending on 5 January 2002 the Authority shall pay to the Franchise Operator £249,580, such amount representing a retrospective rebate in relation to payments made under Schedule 7 of the Previous Franchise Agreement.
- 1.7.3.4 In respect of the period commencing on 6 January 2002 and ending on the Franchise Commencement Date there shall be a payment ("the Schedule 7 Adjustment Payment") which shall equal the difference between the incentive payments payable by the Franchise Operator under Schedule 7 of the Previous Franchise Agreement during such period and the incentive payments which would have been payable during such period had Schedule 7 of this Franchise Agreement been effective during such period. If the Franchise Operator would have paid a lower incentive payment under this Franchise Agreement or would have received a greater incentive payment from the Authority, in each case during such period, then the Schedule 7 Adjustment Payment shall be paid by the Authority to the Franchise Operator. If the Franchise Operator would have paid a higher incentive payment under this Franchise Agreement or would have received a lower incentive payment from the Authority, in each case during such period, then the Schedule 7 Adjustment Payment shall be paid by the Franchise Operator to the Authority.
- 1.7.3.5 The payments referred to in:
- (a) paragraphs 1.7.3.1 and 1.7.3.2 shall be paid by the Authority on the Franchise Commencement Date;
  - (b) paragraph 1.7.3.3 shall be paid by the Authority as soon as reasonably practicable after the Franchise Commencement Date;

- (c) paragraph 1.7.3.4 shall be paid by the relevant party as soon as reasonably practicable upon the calculation of the Schedule 7 Adjustment Payment.

## 1.8 **PERFORMANCE BOND**

The amount of the Performance Bond provided by the Franchise Operator under Clause 14.3 of the Franchise Agreement shall be adjusted if and to the extent necessary to ensure that the amount of the bond is equal to 7.5 per cent of the average annual aggregate forecast operating costs of the Franchise Operator for the next five years as set out in the Committed Outputs Business Plan which forms part of the revised Long Term Business Plan (if any) agreed or determined under the Special Output Review. Where the principal amount of the then current Performance Bond is to be amended in accordance with this paragraph 1.8, Clause 14.3 (e) of the Franchise Agreement shall apply as if the amendment were made under Clause 14.3(d).

## 1.9 **ADJUSTMENTS TO ANNUAL FRANCHISE PAYMENTS FOR TRACK DOUBLING**

Within 28 days of each of the Finalisation Dates the Real Amounts set out in Part 3 of Schedule 6 shall be adjusted in accordance with the following provisions:

- 1.9.1 The Franchise Operator shall as soon as reasonably practicable after each Finalisation Date (and in any event within 7 days) supply to the Authority together with all relevant supporting information and calculations:
  - 1.9.1.1 The Franchise Operator's draft revised Long-Term Business Plans as relevant to produce revised Track Doubling Amounts and revised Real Amounts for each of paragraphs 1.2, 2.2 and 3.2 of Part 3 of Schedule 6 of the Franchise Agreement.
  - 1.9.1.2 The Franchise Operator's proposed adjustments to the Track Doubling Amounts in respect of each of the Committed Outputs Business Plans which shall be calculated by replacing the amount of the Target Final Cost or, in relation to the second and subsequent Finalisation Date, the Revised Final Cost with the Revised Final Cost calculated at the relevant Finalisation Date.
  - 1.9.1.3 The Franchise Operator's proposed adjustments to the Real Amounts set out in paragraphs 1.2, 2.2 and 3.2 of Part 3 of Schedule 6 of the Franchise Agreement to reflect the revisions referred to in paragraph 1.9.1.2 and calculated on the following basis:
    - (a) the Authority shall receive the benefit of any decrease and bear the risk of any increase in the Track Doubling Amounts.
    - (b) For the avoidance of doubt, references in this paragraph 1.9.1.3 to the Authority receiving the benefit of any decrease and bearing the risk of any increase in the Track Doubling Amount means that:-



(i) in any case where the Real Amount would (but for this paragraph 1.9.1.3) be a positive amount, that Real Amount shall be reduced (so as to become a smaller positive amount, or where relevant, a negative sum) in the case of a decrease in the Track Doubling Amount, and increased in the case of an increase in the Track Doubling Amount; and

(ii) in any case where the Real Amount would (but for this paragraph 1.9.1.3) be a negative amount, that Real Amount shall be increased (so as to become a greater negative amount) in the case of a decrease in the Track Doubling Amount, and reduced (so as to become a smaller negative amount, or where relevant, a positive sum) in the case of an increase in the Track Doubling Amount.

**1.9.2 The Franchise Operator shall calculate the Revised Final Cost on the following basis:**

$$RFC = TFC + ((CL - FCL) \div RPI) + RSC + SC + 410,000 - 1,121,472 - (FCL \div RPI + RSC) \times RSAA$$

**Where**

***RFC equals the Revised Final Cost***

***TFC equals the Target Final Cost***

***CL equals the amount by which the Target Final Amount has increased or reduced as a result of any Change of Law and shall be a positive amount where there has been an increase and a negative amount where there has been a reduction. The provisions of Clause 18.3 of the Franchise Agreement shall apply to determine the proportions in respect of which CL shall be borne by the Authority and the Franchise Operator.***

***FCL equals the amount (if any) in relation to any Change of Law referred to in relation to CL above to be borne by the Franchise Operator in accordance with Clause 18.3 and shall be a positive amount where the Franchise Operator's liability has increased and a negative amount where the Franchise Operator's liability has decreased.***

***"RPI" equals the quotient of the Retail Prices Index for two months prior to the month in which the relevant Finalisation Date falls divided by the Retail Prices Index for September 2001.***

$$RSC = \frac{AAFC + 1,121,472 - (TFC + 1,121,472(CL \div RPI) + SC)}{2}$$

***AAFC equals the Adjusted Actual Final Cost***

**SC represents the proportion of the Actual Final Cost which is in excess of the Franchise Operator's cap on its liability for increase in the Target Final Cost, where:**

**(i) If  $AFC > TFC + (CL \div RPI) + 8,000,000$ , then**

$$SC = AFC - (TFC + (CL \div RPI) + 8,000,000)$$

**(ii) If  $AFC \leq TFC + (CL \div RPI) + 8,000,000$ , then**

$$SC = 0$$

**AFC equals the Actual Final Cost**

**RSAA equals 0.1466, and is the adjustment to the RFC required to ensure that the Franchise Operator's share of the increase (or benefit of the decrease) in the Actual Final Cost is amortised over 20 years instead of 30 years.<sup>7</sup>**

1.9.3 In respect of the Long-Term Business Plan:

- (a) any revisions shall (unless otherwise agreed) be determined using the same principles and methodology used in the preparation of the First Long-Term Business Plan except for revisions required as a result of changes to:
  - (i) GAAP;
  - (ii) the Track Doubling Amount;
  - (iii) ensure that the Real Amounts for each Franchise Operator Year remain the same as the Real Amounts then set out in Schedule 6 until the Franchise Operator Year in which the next Reporting Period falls;
  - (iv) any other changes which may be agreed, or which have been agreed, by the parties since the date of signature of the Franchise Agreement;
- (b) the parties shall jointly commission an independent audit of the Long-Term Business Plan in order to review changes to the relevant sections of the franchise model which shall be paid for by the Franchise Operator. The identity of the auditor shall be subject to the Authority's reasonable approval. The auditor's terms of reference shall be determined by the Franchise Operator (subject to the Authority's reasonable approval) and shall place the auditor under an obligation to report to both the Franchise Operator and the Authority.

1.9.4 If there is any dispute as to the assumptions made in or amendments made to the First Long-Term Business Plan, as to the calculation of the Revised Track Doubling Amount

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<sup>7</sup> Replacement of paragraph w.e.f 7<sup>th</sup> July 2003.

or the corresponding adjustments to the Real Amounts, in each case as is required to give effect to the principles referred to in paragraphs 1.9.2 and 1.9.3 any such dispute may be referred by either the Authority or the Franchise Operator for resolution in accordance with the Dispute Resolution Rules.

1.9.5 Pending the resolution of any dispute (as referred to in paragraph 1.9.4) the Real Amounts set out at paragraphs 1.2, 2.2 and 3.2 of Part 3 of Schedule 6 shall be adjusted in accordance with the proposals made by the Franchise Operator (including any subsequently agreed adjustments) and, where there has been a reference for resolution in accordance with the Dispute Resolution Rules, shall be further adjusted as required to take account of the outcome of such reference. Where the adjustments to the Real Amounts result in a change to the Real Amounts applicable to a Franchise Operator Year which has already commenced then an appropriate adjustment shall be made to the first payment payable after the adjustment of the Real Amounts so as to take account of any shortfall or excess payment of the Annual Franchise Payment that would otherwise be made in respect of such Franchise Operator Year.

1.9.6 The parties acknowledge that the Franchise Operator is bearing part of the risk of an increase (or benefit of a decrease) in the Actual Final Cost itself, the Franchise Operator's share of the risk (or benefit) equals the amount of the M40 Cost Share and may be determined in accordance with the following formula:

$$MCS = RSC + (FCL \div RPI)$$

Where

MCS equals the M40 Cost Share (and may be a positive or negative number); and

RSC, FCL and RPI equal the amounts calculated in accordance with paragraph 1.9.2 (such amounts being calculated in respect of the most recently past Finalisation Date).

The M40 Cost Share shall be taken into account in the circumstances described in paragraph 1.10.3 below.

1.9.7 The Authority shall make the following payments to the Franchise Operator upon receipt of a written demand from the Franchise Operator properly supported by an invoice for the relevant Lump Sum Payment from Railtrack:

1.9.7.1 half of any Lump Sum Payment which falls due under the Implementation Agreement and, subject to paragraph 1.9.7.2, the Franchise Operator shall pay the remainder ("the F.O. Share"); and

1.9.7.2 if the F.O Share when aggregated with any other F.O Share payments previously made by the Franchise Operator plus (or less) the amount of any M40 Cost Share borne (or gained) by the Franchise Operator would exceed £4 million then the Authority shall, in addition, pay an

amount equal to such excess and the F.O Share shall be reduced accordingly.

For the avoidance of doubt the Lump Sum Payment(s) shall not be included within the Adjusted Aggregate Final Cost or Actual Final Cost.

## 1.10 THE IMPLEMENTATION AGREEMENT

- 1.10.1 The Authority, Franchise Operator and Franchisee each agree to comply with their respective obligations under the Implementation Agreement.
- 1.10.2 Where the Authority becomes liable to make any payment to Railtrack under clause 2.2 of the Implementation Agreement Direct Agreement and such payment relates to a period falling within the Franchise Period then an amount equal to the payment made shall be paid by the Franchise Operator to the Authority, such payment to be made by way of an adjustment to the Franchise Payment. The Authority undertakes that it will not agree to amend clause 2.2 of the Implementation Agreement Direct Agreement without the Franchise Operator's consent (such consent not to be unreasonably withheld).
- 1.10.3 If an Authority Change Instruction pursuant to clause 6.4(B) of the Implementation Agreement reduces the scope of the Works to such an extent that the Franchise Operator will no longer be able to comply with the Track Doubling Timetable Outputs and/or the Track Doubling Robust Outputs, the parties shall use reasonable endeavours to agree, if appropriate, amendments to the Output Commitments as may be reasonable in all the circumstances. If the Authority and the Franchise Operator are unable to reach agreement, then either party may at any time refer the matter for resolution in accordance with the Dispute Resolution Rules.
- 1.10.4 Where the completion of the Works is delayed or is likely to be delayed such that the Franchise Operator shall not be able to comply with the Track Doubling Timetable Outputs and/or the Track Doubling Robust Outputs by the applicable Backstop Delivery Date, and such delay is attributable to any or a combination of the following:
  - 1.10.4.1 the Wilful Default or Gross Negligence of Railtrack;
  - 1.10.4.2 implementation of any Railtrack Change Instruction to prevent, address alleviate or comply with a Railtrack Issue pursuant to clause 6.3(B)(i) of the Implementation Agreement;
  - 1.10.4.3 implementation of any Authority Change Instruction pursuant to clause 6.4(B) of the Implementation Agreement;
  - 1.10.4.4 any redeployment of SSI signal design engineers which is permitted pursuant to clause 3.3 of the Implementation Agreement;
  - 1.10.4.5 any termination of the Implementation Agreement as a result of the Insolvency of Railtrack, the occurrence of a Railtrack Termination Event or Force Majeure;

1.10.4.6 the termination of a Works Contract;

the Franchise Operator may submit proposals for the deferral of the applicable Backstop Delivery Date. Any such proposals shall demonstrate that the Franchise Operator and Franchisee have used and will use all reasonable endeavours to minimise the period of any such deferral. The Authority shall consider and act reasonably in relation to such proposals taking all relevant circumstances into account. If the Authority agrees to defer the applicable Backstop Delivery Date then it shall, in addition, make appropriate adjustments to the value of "z" in the calculation of the Track Doubling Payments (as such term is defined in Schedule 7 of the Franchise Agreement), such adjustments shall reflect the difference between the total real revenues less real operating costs which may be derived from the Committed Outputs Business Plan entitled, "Model 2" and that entitled "Model 2 minus" during the period of the delay. Alternatively, the Authority and the Franchise Operator may agree a package of passenger benefits to be provided by the Franchise Operator which are of equivalent value to the Track Doubling Payments which would otherwise be payable.

- 1.10.5 Where the Works are abandoned prior to completion the Franchise Operator shall submit proposals for appropriate amendments to the Output Plan which shall include details of suitable alternative projects which will be of benefit to the Passenger Services. The Authority shall consider and act reasonably in relation to such proposals taking all relevant circumstances into account.
- 1.10.6 If the Authority proposes to terminate the Implementation Agreement it shall, where reasonably practicable, first consult with the Franchise Operator.
- 1.10.7 If the Authority steps in to the Works Contracts pursuant to clause 3.4 of the Collateral Warranties, the Franchisee will (if so requested by the Authority) act as the Authority's project manager in relation to such Works Contracts. Such appointment shall be on the basis that the Franchisee shall carry out such role using the standard of skill and care and diligence to be expected of a professionally qualified and competent project manager experienced in project managing works of a similar size, nature, scope and complexity to the Works, and shall act in accordance with and take account of the statutory requirements and the mandatory standards applicable to the rail industry from time to time. The Franchisee will be entitled to be paid its reasonable costs for carrying out such role provided that only the costs arising out of additional project management roles and responsibilities as a result of such step in shall be compensated. Whether or not the Franchisee is appointed as Project Manager the Authority will grant to it rights equivalent to those that the Franchisee has pursuant to clauses 4.5(C), 6.3(A) and 6.4(C) but subject to the same limitations and the transfer of rights to the Authority consequent upon such step in equivalent (where applicable) to those enjoyed by Railtrack under the Implementation Agreement.
- 1.10.8 If the Implementation Agreement is terminated and the Works are not abandoned the Authority shall put in place reasonable insurance provisions in replacement for those provided by Railtrack under Clause 21(A) of the Implementation Agreement ( but without prejudice to any duty of the Franchisee or Franchise Operator to insure imposed

by law or pursuant to any binding requirement of Railtrack, the Health and Safety Executive or any other relevant body).

1.10.9 Where the Regulator determines that the Works shall be included in Railtrack's regulated asset base then the No Net Loss No Net Gain Regime shall apply. Where such determination is made as part of a Charging Review then the provisions of Clause 18.1 of the Franchise Agreement shall apply and where such determination is made at any other time then the principles set out in Clause 18.1 shall apply in any event. In addition, the No Net Loss No Net Gain Regime shall be applied having regard to the following factors which shall be taken into account when calculating the Franchise Operator's Net Gain as a result of the Regulator's determination:

1.10.9.1 that the Real Amounts have been adjusted to include a proportion of the costs attributable to the Works in accordance with paragraph 1.9;

1.10.9.2 that the Franchise Operator has agreed to bear a share of the costs (or receive the benefit of a reduction in the costs) of such Works, namely the M40 Cost Share, such share being amortised over 20 years (instead of the usual life of 30 years); and

1.10.9.3 the aggregate of any F.O Share Payments borne by the Franchise Operator.

1.10.10 If this Franchise Agreement is terminated by the Authority under Clause 22.2 of the Franchise Agreement or the Authority serves notice terminating this Franchise Agreement under paragraph 9.6(b)(ii) of Part IV of Schedule 14 of the Franchise Agreement then the Franchise Operator shall, on demand, make a payment ("the Franchise Operator Termination Payment") to the Authority. The Franchise Operator shall calculate the Franchise Operator Termination Payment on the following basis:

$$\text{FOTP} = \text{RPI} \times \text{MCS} \times \left( \text{OMP} - \frac{(20 \times 13) - M}{20 \times 13} \right)$$

Where

FOTP equals the Franchise Operator Termination Payment.

RPI equals the quotient of the Retail Prices Index for 2 months prior to the month in which the Franchise Agreement terminates divided by the Retail Prices Index for September 2001.

MCS equals the M40 Cost Share and shall be a positive number if it represents an amount paid by the Franchise Operator and, if it represents an amount received by the Franchise Operator, then MCS shall be nil.

M equals the number of Reporting Periods comprised within the Franchise Term.

OMP equals the percentage applicable to the Franchise Operator Year in which the Franchise Term comes to an end as set out in Table B below:

**Table B**

<b>Franchise Operator Year</b>	<b>Percentage</b>
1 January 2002 – 31 December 2002	97.8%
1 January 2003 – 31 December 2003	95.5%
1 January 2004 – 31 December 2004	92.9%
1 January 2005 – 31 December 2005	90.2%
1 January 2006 – 31 December 2006	87.2%
1 January 2007 – 31 December 2007	84.0%
1 January 2008 – 31 December 2008	80.5%
1 January 2009 – 31 December 2009	76.8%
1 January 2010 – 31 December 2010	72.7%
1 January 2011 – 31 December 2011	68.3%
1 January 2012 – 31 December 2012	63.6%
1 January 2013 – 31 December 2013	58.5%
1 January 2014 – 31 December 2014	53.0%
1 January 2015 – 31 December 2015	47.1%
1 January 2016 – 31 December 2016	40.7%
1 January 2017 – 31 December 2017	33.7%
1 January 2018 – 31 December 2018	26.2%
1 January 2019 – 31 December 2019	18.2%
1 January 2020 – 31 December 2020	9.4%
1 January 2021 – 31 December 2021	NIL

- 1.10.11 If this Franchise Agreement is terminated pursuant to a notice served by the Authority under paragraph 9.7 of Part IV of Schedule 14 of the Franchise Agreement the Authority shall, on demand, make a payment (“the Authority Termination Payment”) to the Franchise Operator. The Authority shall calculate the Authority Termination Payment on the following basis:

$$SRATP = RPI \times MCS \times \frac{(OMP - (20 \times 13) - M)}{20 - 13}$$

Where

SRATP equals the Authority Termination Payment.

RPI equals the quotient of the Retail Prices Index for 2 months prior to the month in which the Franchise Agreement terminates divided by the Retail Prices Index for September 2001.

MCS equals the M40 Cost Share and shall be a positive number if it represents an amount received by the Franchise Operator and, if it represents an amount paid by the Franchise Operator, then MCS shall be nil.

OMP equals the percentage applicable to the Franchise Operator Year in which the Franchise Term comes to an end as set out in Table B in paragraph 1.10.10.

M equals the number of Reporting Periods comprised within the Franchise Term.

- 1.10.12 If this Franchise Agreement expires at the end of the Franchise Term in circumstances where such term expires prior to 31 December 2021 the Franchise Operator or the Authority (as applicable) shall, on demand, make a payment ("the Balancing Termination Payment") to the other. The Franchise Operator shall calculate the Balancing Termination Payment on the following basis:

$$BTP = RPI \times MCS \times (OMP - \frac{(20 \times 13) - N}{20 \times 13})$$

BTP equals the Balancing Termination Payment and, if a positive number, it shall be paid by the Franchise Operator and, if a negative number, it shall be paid by the Authority.

RPI equals the quotient of the Retail Prices Index for 2 months prior to the month in which the Franchise Agreement terminates divided by the Retail Prices Index for September 2001.

MCS equals the M40 Cost Share and shall be a positive number if it represents an amount paid by the Franchise Operator and shall be a negative number if it represents an amount received by the Franchise Operator.

OMP equals the percentage applicable to the Franchise Operating Year in which the Franchise Term comes to an end as set out in Table B in paragraph 1.10.10.

N equals the number of Reporting Periods comprised within the Franchise Term.

For the avoidance of doubt, no Balancing Termination Payment shall be payable in circumstances where the Franchise Operator Termination Payment or the Authority Termination Payment is payable.

- 1.10.13 For the purposes of this paragraph 1.10, the words and phrases "Authority Change Instruction", "Collateral Warranties", "Force Majeure", "Gross Negligence", "Insolvency", "Long Stop Date", "Project Cost", "Railtrack Change Instruction", "Railtrack Issue", "Railtrack Termination Event", "Wilful Default", "Works" or "Works Contract" shall each have the meaning ascribed to such terms in the Implementation Agreement.



**Annex 1 to Paragraph 1 of Part 2**

**Train Service Proposals**

**Frequency and Journey Time Improvements**

**TABLE 1: NUMBER OF TRAINS ARRIVING AT LONDON MARYLEBONE IN THE MORNING PEAK (0700 TO 0959) FROM KEY STATION STOPS**

Column No	0	1	2	3	4
	Summer 2001 T/T (incl Deed Commitments)	Winter 2002 T/T	Column 1 plus North of Aynho Enhancement	Partial Evergreen: (Winter 2003)	Column 3 plus North of Aynho Enhancement
Kidderminster	0	3	3	3	3
Stourbridge Jn	3	3	3	3	3
Birmingham (Snow Hill or Moor St)	4	4	6	4	7+
Solihull	4	4	6	4	7+
Dorridge	4	4	6	4	7+
Warwick Parkway	4	4	6	4	7+
Leamington	5	5	6	5	7+
Banbury	7	9	9	9	12+
Bicester	9	9	9	10	10
Haddenham	8	8	8	10	10
Princes Risborough	11	11	11	11	11
High Wycombe	17	17	17	17	17
Beaconsfield	16	16	16	16	16
Gerrards Cross	16	16	16	16	16
Aylesbury via Amersham	9	9	9	9	9
Stoke Mandeville, Wendover & Great Missenden	9	9	9	9	9
Amersham	7	7	7	7	7
Chalfont & Latimer and Chorleywood	6	6	6	6	6

Notes: + This Timetable Output is subject to the Authority agreeing to make an appropriate change to the Passenger Service Requirement in paragraph 2.4(iv)(b) of Part 2 of Schedule 3 of the Franchise Agreement and if such change is not agreed then this Timetable Output shall be one less train.

**TABLE 2: NUMBER OF TRAINS ARRIVING AT LONDON MARYLEBONE IN THE MORNING PEAK (0700 TO 0959) FROM KEY STATION STOPS MAKING NO MORE THAN THREE STOPS IN BETWEEN**

Column No	0	1	2	3	4
	Summer 2001 T/T (incl Deed Commitments)	Winter 2002 T/T	Column 1 plus North of Aynho Enhancement	Partial Evergreen: (Winter 2003)	Column 3 plus North of Aynho Enhancement
Kidderminster	0	0	0	0	0
Stourbridge Jn	0	0	0	0	0
Birmingham (Snow Hill or Moor St)	0	0	0	0	0
Solihull	0	0	0	0	1
Dorridge	0	0	0	0	1
Warwick Parkway	0	0	0	0	4+
Leamington	3	3	3	3	6+
Banbury	4	4	4	4	7+
Bicester	4	4	4	6	6
Haddenham	3	4	4	7	7
Princes Risborough	3	3	3	3	3
High Wycombe	6	9	9	10	10
Aylesbury via Amersham	2	2	2	2	2
Stoke Mandeville, Wendover & Great Missenden	3	3	3	3	3

Notes: + This Timetable Output is subject to the Authority agreeing to make an appropriate change to the Passenger Service Requirement in paragraph 2.4(iv)(b) of Part 2 of Schedule 3 of the Franchise Agreement and if such change is not agreed then this Timetable Output shall be one less train.

<sup>a b8</sup> **TABLE 3: NUMBER OF TRAINS PER HOUR ARRIVING AT OR DEPARTING FROM LONDON MARYLEBONE BETWEEN 0700 AND 2100 MONDAY TO SATURDAY EXCLUDING PEAK HOURS TO/FROM KEY STATION STOPS**

**Note:** Trains which have been included in Tables 5 or 6 shall not be counted in this Table 3

<b>Column No</b>	<b>0</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>
	<b>Summer 2001 T/T (incl Deed Commitments)</b>	<b>Winter 2002 T/T</b>	<b>From the December 2004 Passenger Timetable Change Date</b>	<b>Partial Evergreen</b>	<b>Column 3 plus North of Aynho Enhancement</b>
<b>Kidderminster</b>	0	1dh	0d	0d	0d
<b>Stourbridge Jn</b>	0	1dh	0d	0d	0d
<b>Birmingham (Snow Hill or Moor St)</b>	1+d	1+adj	2dm	1+d	2
<b>Solihull</b>	1+d	1+ad	2m	1+d	2
<b>Dorridge</b>	1+dg	1+adg	2m	1+dg	2
<b>Warwick Parkway</b>	2*d	2*ad	2m	2*d	2
<b>Leamington</b>	2*d	2*ad	2m	2*d	2
<b>Banbury</b>	2*	2*a	2m	3l	4l
<b>Bicester</b>	2\$	2jk	2jkm	3	3
<b>Haddenham</b>	2\$	2	2m	3	3
<b>Princes Risborough</b>	3f	3	3m	4	4
<b>High Wycombe</b>	4be	4ejk	4ejk	5e	5e
<b>Beaconsfield</b>	3e	3e	3e	3e	3e
<b>Gerrards Cross</b>	3e	3e	3e	4e	4e
<b>Aylesbury via Amersham</b>	2c	2c	2c	2c	2c
<b>Stoke Mandeville, Wendover &amp; Great Missenden</b>	2c	2c	2c	2c	2c
<b>Amersham</b>	2c	2c	2c	2c	2c
<b>Chalfont &amp; Latimer and Chorleywood</b>	2c	2c	2c	2c	2c

<sup>8</sup> New Table 3 and replacement text inserted wef 3<sup>rd</sup> December 2004

- Notes:**
- \* In 2 of the specified hours there will be 1 train in each direction on Monday to Friday, in 4 of the specified hours there will be 1 train in each direction on Saturdays**
  - + In 3 of the specified hours there will be 2 trains in each direction**
  - a This notation supersedes \* and +. There will be 2 trains per hour on Saturdays between 10/8/02 and 14/12/02. Chiltern Railways will use best endeavours (only utilising vehicles in the Chiltern fleet) to provide extra seating capacity at times when services on the West Coast Main Line are disrupted as a consequence of planned engineering works, and, if agreed, use reasonable endeavours to provide additional services to cover the same planned disruption. The train plan (detailing how the extra capacity will be provided) and timetable for the additional capacity shall be submitted to the SRA for its approval three weeks before the first implementation date.**
  - \$ In 1 of the specified hours between Monday to Friday there will be 1 train in the up direction and in 3 of the specified hours on Saturdays there will be 1 train in each direction**
  - b In 1 of the specified hours there will be 3 trains (i) between Monday to Friday in the up direction; and (ii) on Saturdays in each direction**
  - c In 1 of the specified hours there will be 1 train between Monday to Saturday in the down direction and in 2 of the specified hours there will be one train on Saturday in the up direction**
  - d The first train in the up direction on Saturdays may arrive between 08:00 and 09:00**
  - e In 1 of the specified hours 1 of the trains may arrive at or depart from London Paddington instead of London Marylebone**
  - f In 1 of the specified hours on Saturdays there will be 2 trains in the down direction**
  - g In 3 of the specified hours between Monday to Friday there will be no trains in the up direction and in 1 of the specified hours between Monday to Friday there will be no trains in the down direction**
  - h In 3 of the specified hours in each direction between Monday to Friday there will be no trains until the earlier of (i) the vehicles referred to in paragraph 5.1.2 are introduced into operation on the Passenger Services; or (ii) the Backstop Delivery Date referred to in paragraph 5.2.1**
  - j Between Monday to Friday, in hours when there are 2 Birmingham trains, there will be 3 trains at Bicester and 5 trains at High Wycombe, in each case, in each direction.**
  - k On Saturdays between the Passenger Change Date for the Winter 2002/2003 Timetable and 14/12/02, the Franchise Operator will use reasonable endeavours to operate an additional train per hour in each direction at Bicester and High Wycombe to make a total of 3 trains and 5 trains per hour respectively.**
  - l Three trains every 2 hours shall be permitted until the resignalling of the Banbury station area is completed**
  - m For arrivals at London Marylebone between 2000 and 2100 there may be one less service**

**<sup>b</sup>TABLE 4: NUMBER OF TRAINS PER HOUR ARRIVING AT OR DEPARTING FROM LONDON MARYLEBONE BETWEEN 0700 AND 2100 MONDAY TO SATURDAY EXCLUDING PEAK HOURS TO/FROM KEY STATION STOPS MAKING NO MORE THAN THREE STOPS IN BETWEEN**

NOTE: Trains which have been included in Tables 5 or 6 shall not be counted in this Table 4

Column No	0	1	2	3	4
	Summer 2001 T/T (incl Deed Commitments)	Winter 2002 T/T	Column 1 plus North of Aynho Enhancement	Partial Evergreen: (Winter 2003)	Column 3 plus North of Aynho Enhancement
Kidderminster	0	0	0	0	0
Stourbridge Jn	0	0	0	0	0
Birmingham (Snow Hill or Moor St)	0	0	0	0	0
Solihull	0	0	0	0	0
Dorridge	0	0	0	0	0
Warwick Parkway	0	0	0	0	0
Leamington	0	0 c	0 c	0 c	1
Banbury	0	0 c	0 c	0 c	1
Bicester	1+a	2 cd	2 cd	2 cd	1
Haddenham	1+b	2 cd	2 cd	2 cd	1
Princes Risborough	2*	2	2	2	2
High Wycombe	2\$	3d	3d	4	4
Aylesbury via Amersham	0	0	0	0	0
Stoke Mandeville, Wendover & Great Missenden	0	0	0	0	0

Notes: + In 3 of the specified hours between Monday to Friday there will be no trains in the up direction and in 1 of the specified hours between Monday to Friday there will be no trains in the down direction

\* In 2 of the specified hours between Monday to Friday there will be 1 train in the up direction and in 3 of the specified hours there will be 1 train in the down direction, in 1 of the specified hours between Monday to Friday there will be no trains in the up direction, in 4 of the specified hours on

Saturday there will be 1 train in the up direction and in 5 of the specified hours on a Saturday there will be 1 train in the down direction, in 1 of the specified hours on Saturdays there will be no trains in the down direction

- \$ In 1 of the specified hours between Monday to Friday there will be 1 train in each direction and in 2 of the specified hours on Saturdays there will be 1 train in each direction
- a On Saturdays the following shall apply, in 2 of the specified hours and after 17:00 there will be no trains in the up direction and in 3 of the specified hours and after 17:00 there will be no trains in the down direction.
- b On Saturdays the following shall apply, in 1 of the specified hours and after 17:00 there will be no trains in the up direction and in 3 of the specified hours and after 17:00 there will be no trains in the down direction.
- c As an alternative to the requirements specified in respect of the Station stops marked c, the Franchise Operator may provide that at each of the Station stops specified there will be 1 train in each of the specified hours in each direction.
- d In hours where the Franchise Operator provides 1 train to or from Birmingham (as envisaged in Table 3) there will be 2 trains in each direction to High Wycombe, 1 train in each direction to Bicester and 1 train in each direction to Haddenham.

**TABLE 5: NUMBER OF TRAINS DEPARTING FROM LONDON MARYLEBONE IN THE EVENING PEAK (1600 TO 1900) TO KEY STATION STOPS**

Column No	0	1	2	3	4
	Summer 2001 T/T (incl Deed Commitments)	Winter 2002 T/T	Column 1 plus North of Aynho Enhancement	Partial Evergreen: (Winter 2003)	Column 3 plus North of Aynho Enhancement
Kidderminster	0	3	3	3	3
Stourbridge Jn	3	3	3	3	3
Birmingham (Snow Hill or Moor St)	6	6	6	6	6
Solihull	6	6	6	6	6
Dorridge	6	6	6	6	6
Warwick Parkway	6	6	6	6	6
Leamington	6	6	6	6	6
Banbury	6	9+	9+	10+	10+
Bicester	10	11+	11+	12+	12+
Haddenham	8	9+	9+	11+	11+
Princes Risborough	12	12	12	14	14
High Wycombe	17	19	19	19	19
Beaconsfield	12	12	12	12	12
Gerrards Cross	13	13	13	13	13
Aylesbury via Amersham	10	10	10	10	10
Stoke Mandeville, Wendover & Great Missenden	10	10	10	10	10
Amersham	8	8	8	8	8
Chalfont & Latimer and Chorleywood	6	6	6	6	6

Note: + 1 of the required number of trains may depart between 15:45 and 16:00 or between 19:00 and 19:15.



**TABLE 6: NUMBER OF TRAINS DEPARTING FROM LONDON MARYLEBONE IN THE EVENING PEAK (1600 TO 1900) TO KEY STATION STOPS MAKING NO MORE THAN THREE STOPS IN BETWEEN**

Column No	0	1	2	3	4
	Summer 2001 T/T (incl Deed Commitments)	Winter 2002 T/T	Column 1 plus North of Aynho Enhancement	Partial Evergreen: (Winter 2003)	Column 3 plus North of Aynho Enhancement
Kidderminster	0	0	0	0	0
Stourbridge Jn	0	0	0	0	0
Birmingham (Snow Hill or Moor St)	0	0	0	0	0
Solihull	0	0	0	0	0
Dorridge	0	0	0	1	1
Warwick Parkway	0	0	0	3+	3+
Leamington	3	3	3	4+	4+
Banbury	3	3	3	4+	4+
Bicester	3	6+	6+	8+	8+
Haddenham	4	7+	7+	9+	9+
Princes Risborough	7	8	8	8	8
High Wycombe	7	11	11	11	11
Aylesbury via Amersham	2	2	2	2	2
Stoke Mandeville, Wendover & Great Missenden	3	3	3	3	3

Note: + 1 of the required number of trains may depart between 15:45 and 16:00 or between 19:00 and 19:15.

<sup>9</sup> **TABLE 7: NUMBER OF TRAINS PER HOUR ARRIVING AT OR DEPARTING FROM LONDON MARYLEBONE ON SUNDAYS BETWEEN 1200 AND 2100 TO/ FROM KEY STATION STOPS**

<b>Column No</b>	<b>0</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>4</b>
	<b>Summer 2001 T/T (incl Deed Commitments)</b>	<b>Winter 2002 T/T</b>	<b>From the December 2004 Passenger Change Date</b>	<b>Partial Evergreen:</b>	<b>Column 3 plus North of Aynho Enhancement</b>
<b>Kidderminster</b>	<b>0</b>	<b>1#</b>	<b>0#</b>	<b>0#</b>	<b>0#</b>
<b>Stourbridge Jn</b>	<b>0</b>	<b>1#</b>	<b>0#</b>	<b>0#</b>	<b>0#</b>
<b>Birmingham (Snow Hill or Moor St)</b>	<b>1+</b>	<b>1+a</b>	<b>1+</b>	<b>1+</b>	<b>1+</b>
<b>Solihull</b>	<b>1+</b>	<b>1+a</b>	<b>1+</b>	<b>1+</b>	<b>1+</b>
<b>Dorridge</b>	<b>1+</b>	<b>1+a</b>	<b>1+</b>	<b>1+</b>	<b>1+</b>
<b>Warwick Parkway</b>	<b>1+</b>	<b>1+a</b>	<b>1+</b>	<b>1+</b>	<b>1+</b>
<b>Leamington</b>	<b>1+</b>	<b>1+a</b>	<b>1+</b>	<b>1+</b>	<b>1+</b>
<b>Banbury</b>	<b>1+</b>	<b>2</b>	<b>2</b>	<b>2</b>	<b>2</b>
<b>Bicester</b>	<b>2</b>	<b>2</b>	<b>2</b>	<b>2</b>	<b>2</b>
<b>Haddenham</b>	<b>2*</b>	<b>2</b>	<b>2</b>	<b>2</b>	<b>2</b>
<b>Princes Risborough</b>	<b>3b</b>	<b>3</b>	<b>3</b>	<b>3</b>	<b>3</b>
<b>High Wycombe</b>	<b>3</b>	<b>3</b>	<b>3</b>	<b>3</b>	<b>3</b>
<b>Beaconsfield</b>	<b>3b</b>	<b>3</b>	<b>3</b>	<b>3</b>	<b>3</b>
<b>Gerrards Cross</b>	<b>3b</b>	<b>3</b>	<b>3</b>	<b>3</b>	<b>3</b>
<b>Aylesbury via Amersham</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>1</b>
<b>Stoke Mandeville Wendover &amp; Great Missenden</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>1</b>
<b>Amersham</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>1</b>
<b>Chalfont &amp;</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>

<sup>9</sup> Replacement Table 7 inserted wef 3<sup>rd</sup> December 2004.

<b>Latimer and Chorleywood</b>					
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- Notes:**
- + In 3 of the specified hours there will be 2 trains in each direction**
  - a This notification supersedes +. There will be 2 trains per hour on Sundays between 10/08/02 and 15/12/02. Chiltern Railways will use best endeavours (only utilising vehicles in the Chiltern fleet) to provide extra seating capacity at times when services on the West Coast Main Line are disrupted as a consequence of planned engineering works, and, if agreed, use reasonable endeavours to provide additional services to cover the same planned disruption. The train plan (detailing how the extra capacity will be provided) and timetable for the additional capacity shall be submitted to the SRA for its approval three weeks before the first implementation date.**
  - # Subject to paragraph 1.1.3.3**
  - \* In 1 of the specified hours there will be 1 train in the down direction**
  - b In 1 of the specified hours there will be 2 trains in the down direction**

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***Annex 2 to Paragraph 1 of Part 2***  
***Schematic Track Plan***  
***(attached)***<sup>10</sup>

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<sup>10</sup> Text replaced w.e.f 10<sup>th</sup> September 2003

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**Annex 3 to Paragraph 1 of Part 2**  
**Sample Timetable for Track Doubling**  
**(attached)**

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**Annex 4 to Paragraph 1 of Part 2**  
**Sample Timetables for Project Evergreen**  
**(attached)**

**Annex 5 of Paragraph 1 of Part 2**

**Line Speeds**

**PART A**

**Track Doubling – Line Speeds**

**Down Line**

<b>Location (approx. miles and chains)</b>	<b>Existing</b>	<b>Proposed</b>	<b>Location</b>
8m 72 to 9m 60	40	75	Bicester North
9m 60 to 17m 45	75	100	
17m 45 to 18m 23	50	50	

**Up Line**

18m 29 to 17m 45	75	75	Aynho Junction
17m 45 to 9m 44	75	90	Bicester North
9m 44 to 9m 20	25	35	Bicester North

**Part B**

***Evergreen – Existing and Revised Linespeeds***

***Up and Down Line***

<b><i>Location (approx. miles and chains)</i></b>	<b><i>Existing</i></b>	<b><i>Proposed</i></b>	<b><i>Location</i></b>
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<b>11m 56ch to 11m 17ch</b>	<b>40</b>	<b>75</b>	<b><i>Through Beaconsfield station – up direction</i></b>
<b>11m 20ch to 11m 54ch</b>	<b>40</b>	<b>75</b>	<b><i>Through Beaconsfield station – down direction</i></b>

***Note Mileposts record miles and chains running from Northolt Junction to Ashendon Junction  
and Ashendon Junction to Aynho Junction.<sup>11</sup>***

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<sup>11</sup> Replacement of Part B of Annex 5 w.e.f 10<sup>th</sup> September 2003.



## **2. Operation of Clause 5 of the Franchise Agreement**

2.1 The Authority shall, to the extent that it is able to do so having regard to its statutory obligations, support any reasonable application made to the Regulator by the Franchise Operator, in order to enable the Franchise Operator to comply with its obligations under clause 5 of the Franchise Agreement, provided that if:

2.1.1 having regard to its statutory obligations, the Authority is unable to, or does not, support the Franchise Operator's application; and

2.1.2 the Franchise Operator's application is reasonable in all the circumstances (and if the parties are unable to agree, the matter shall be resolved in accordance with the Dispute Resolution Rules)

2.2 then, with effect from the expiry of the Franchise Operator's existing Track Access Agreement the Franchise Operator's obligations under clause 5.1(a) of the Franchise Agreement in respect of those Passenger Services which are the subject of the application to the Regulator and which have not been supported by the Authority, shall be construed as an obligation to use all reasonable endeavours.

## **3. PROVIDING THE CAPACITY TO MEET DEMAND**

The Franchise Operator's Output Commitments in respect of the provision of sufficient capacity to meet demand for the Passenger Services are set out in this paragraph 3. The Output Commitments are in addition and without prejudice to the Franchise Operator's other obligations under the Franchise Agreement, including (without limitation) Clause 6 of the Franchise Agreement. If there is any inconsistency between the provisions of the Franchise Agreement and this paragraph 3, then the provisions of the Franchise Agreement will prevail provided that neither the imposition of any additional obligation under this paragraph 3 nor the specific amendments referred to in paragraph 1.7 shall of themselves be an inconsistency for this purpose.

### **3.1 PASSENGER SERVICES SUBJECT TO LOAD FACTOR SPECIFICATIONS**

3.1.1 The Franchise Operator will comply with its obligations under Clauses 6.3 – 6.9 (inclusive) of the Franchise Agreement, as supplemented by the provisions of this paragraph 3.1.

3.1.2 For the avoidance of doubt, it is acknowledged and agreed that the Franchise Operator will, at its own cost:-

3.1.2.1 procure the availability of any necessary rolling stock; and

- 3.1.2.2 extend or procure the extension of the platforms referred to in paragraph 3.1.3 below ("the Platform Extensions")

in order to meet the requirements for any increase in the capacity to be provided by the Passenger Services pursuant to Clause 6 of the Franchise Agreement or this paragraph 3.

- 3.1.3 The Platform Extensions are extensions (including the provision of all necessary or associated works, including associated signalling and communication works) of platforms (in addition to those to be extended pursuant to paragraph 1.1.7 of Part 2) up to the following maximum lengths:-

- 3.1.3.1 the length necessary to accommodate trains comprised of 8 x 23 metre length Vehicles at stations where the Passenger Services call between and including London Marylebone and Birmingham Snow Hill and between and including Birmingham Snow Hill and Kidderminster; and

- 3.1.3.2 the length necessary to accommodate trains comprised of 7 x 23 metre length Vehicles at stations where the Passenger Services call between and including London Marylebone and Aylesbury via Amersham

save only to the extent, in relation to any particular station (excluding for the avoidance of doubt those to have platform extensions built pursuant to paragraph 1.1.7 of Part 2) that the Franchise Operator demonstrates to the Authority's satisfaction that such extension is not necessary in order to enable the Franchise Operator to ensure that, on the basis of the relevant Forecast Demand, it does not exceed the Load Factor Specifications in providing the Passenger Services.

- 3.1.4 The Maximum Capacity Limit and the Passenger Demand Limit as at the date of the Franchise Agreement have been calculated on the basis that the Franchise Operator shall be responsible for meeting all costs associated with the steps referred to in paragraphs 1 and 3.1.2. Accordingly, for the avoidance of doubt, there shall be no Net Loss adjustment under Clauses 6.5(c) or 6.6(c) of the Franchise Agreement or otherwise in respect of such steps.

- 3.1.5 For the avoidance of doubt, the Franchise Operator shall be responsible for securing all consents and approvals required in order to enable the Platform Extensions to be carried out.

## 3.2 **OUT OF PEAK SERVICES**

- 3.2.1 The Franchise Operator shall comply with its obligations under this paragraph 3.2. as if such obligations were contained in Clause 5.1(a) of the Franchise Agreement and

accordingly any reference in this Output Plan or in the Franchise Agreement to the Franchise Operator's Train Plan shall include the plan or diagram provided by the Franchise Operator for the operation of trains and train formations and relating to capacity which the Franchise Operator is to plan to provide in accordance with this paragraph 3.2.

3.2.2 Subject to paragraph 3.2.3, the Franchise Operator shall plan the provision of the Passenger Services such that the railway passenger services and capacity included in the Franchise Operator's Timetable and Train Plan are sufficient to ensure that on the basis of the Forecast Demand from time to time, all passengers travelling or expected (in accordance with the Forecast Demand) to travel in Standard Class Accommodation on the Out of Peak Services have a seat in Standard Class Accommodation (when measured in London).

3.2.3 The parties acknowledge that the Forecast Demand for any particular Timetable Period may include individual peaks of exceptional demand for Out of Peak Services associated with special events or circumstances (including, by way of example only, events at Wembley Stadium or school half terms). Subject to the Franchise Operator demonstrating to the reasonable satisfaction of the Authority that:-

3.2.3.1 such events do represent exceptional levels of demand; and

3.2.3.2 the Franchise Operator has taken all reasonable steps to deal with such exceptional demand, taking into account the requirements of the Passenger Services on that particular day and the availability to the Franchise Operator of appropriate rolling stock,

then provided that the Franchise Operator has done what it may reasonably be expected to do it is acknowledged and agreed that the Franchise Operator shall not be required by paragraph 3.2 to include in its Timetable and Train Plan sufficient capacity to ensure that all passengers on Out of Peak Services have a seat during such peaks of exceptional demand.

3.2.4 For the avoidance of doubt, the Franchise Operator will, to the extent requested by the Authority from time to time, include within the counts to be carried out by the Franchise Operator under Clause 6.2 of the Franchise Agreement, counts in respect of the Out of Peak Services.

3.2.5 The Franchise Operator will, to the extent required by the Authority, include with any Preliminary Statement to be delivered by the Franchise Operator under Clause 6.5 of the Franchise Agreement a statement of what railway passenger services and capacity are, in its opinion, required to be included in the Timetable and the Train Plan in order to ensure that, on the basis of the Forecast Demand following such count, the Franchise Operator will comply with its obligations under paragraph 3.2.2.

- 3.2.6 The Authority and the Franchise Operator may agree, on the basis of such a statement or pursuant to the arrangements described in paragraph 3.5 or otherwise, what railway services and capacity are to be included in the Franchise Operator's Timetable and Train Plan in respect of the Out of Peak Services and the timescale for their implementation provided that:-
- 3.2.6.1 it is acknowledged that it is the intention of the parties that any additional railway services and/or capacity required to be provided in order for the Franchise Operator to comply with its obligations under paragraph 3.2.2 shall be implemented as soon as reasonably practicable; and
- 3.2.6.2 all costs and expenses associated with the provision of any such railway services and/or capacity shall be borne solely by the Franchise Operator and for the avoidance of doubt there will be no application of the no Net Loss No Net Gain Regime or other adjustment to the Franchise Payments associated therewith in any circumstances unless otherwise agreed by the Authority.
- 3.2.7 If the parties are unable to agree the railway services and capacity to be included in the Franchise Operator's Timetable and Train Plan in respect of the Out of Peak Services (whether as a result of any dispute in relation to the relevant Forecast Demand, or the railway services or capacity to be provided in response thereto, or the manner or timing of its implementation or otherwise) the dispute may be resolved in accordance with the Dispute Resolution Rules.
- 3.2.8 For the avoidance of doubt, if and to the extent that the parties have agreed the Timetable and the Train Plan under and for the purposes of this paragraph 3.2, the Franchise Operator will be deemed to have complied with its obligations under paragraph 3.2.2. The parties acknowledge that the first Timetable and Train Plan due to be agreed pursuant to this Output Plan shall be the Timetable and Train Plan which come into effect on the Passenger Change Date for the Winter 2001/2002 Timetable.
- 3.2.9 Clause 6.9 of the Franchise Agreement shall apply in respect of the Out of Peak Services to the same extent as it applies in relation to the Passenger Services which are subject to the Load Factor Specifications.
- 3.2.10 If the Franchise Operator's Train Plan in respect of the provision of the Passenger Services on any Saturday and/or Sunday is amended to the extent necessary as a consequence of engineering works being carried out on such day(s) then, provided that the Franchise Operator has used all reasonable endeavours to comply with its obligations under paragraph 3.2.2, such amended Train Plan shall be deemed approved by the Authority. The Franchise Operator's compliance with such amended Train Plan shall be subject to audit at the request of the Authority which request may be made from time to time.

### 3.3 CO-OPERATION WITH OTHER FRANCHISE OPERATORS

The Franchise Operator will co-operate with Central Trains Limited or such other Train Operator as the Authority may specify from time to time and which is primarily responsible for providing passenger services to all stations along the corridor between and including Kidderminster and Leamington Spa via Birmingham Snow Hill with regard to contributing towards the provision of such railway services and capacity as is required from time to time in order to meet demand for such passenger services. Such co-operation may include (but shall not be limited to) not unreasonably refusing to strengthen any Passenger Service operated by the Franchise Operator by the provision of additional Vehicle(s) subject to appropriate agreements being reached on a commercial basis and provided that such provision is not detrimental to the provision of the Passenger Services.

### 3.4 CAPACITY OF PASSENGER SERVICES SERVICING BIRMINGHAM

3.4.1 The Franchise Operator agrees to comply with its obligations under Clause 5.1 of the Franchise Agreement as if the commitments referred to in paragraph 3.4.2 were included in Part 1 of Schedule 3 of the Franchise Agreement.

3.4.2 ***Passenger Services scheduled to:-***<sup>12 13 cd14</sup>

3.4.2.1 ***arrive at Birmingham Moor Street station between 0800 and 0905 on Weekdays (excluding Bank Holidays) and which have previously called at Leamington Spa station shall convey in aggregate a minimum of :-***

(a) ***480 seats in Standard Class Accommodation up until 17 May 2009 Subsidiary Change Date.***

(b) ***520 seats in Standard Class Accommodation from 17 May 2009 Subsidiary Change Date.***

3.4.2.2 ***depart from Birmingham Moor Street station between 1700 and 1800 on Weekdays (excluding Bank Holidays) to destinations which include Leamington Spa station convey in aggregate a minimum of:***

(a) ***470 seats in Standard Class Accommodation until 17 May Subsidiary Change Date***

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<sup>12</sup> Date of First Change 1.3.2006

<sup>13</sup> Date of Second Change 6/3/07

<sup>14</sup> Change of date 19/5/2008

- (b) **370 seats in Standard Class Accommodation from 17 May Subsidiary Change Date.**

**The above Clauses 3.4.2.1 and 3.4.2.2 shall be subject to a review for 17 May Subsidiary Change Date.**

- 3.4.2.3 **Arrive at Birmingham Moor Street station between 0800 and 0900 on Weekdays (excluding Bank Holidays) and which have previously called at Stourbridge Junction shall from June 2005 Subsidiary Date convey in aggregate a minimum of 200 seats in Standard Class Accommodation.**

- 3.4.3 It is acknowledged that Schedule 7 of the Franchise Agreement includes a Short Formation Incentive Payment regime in relation to the commitments referred to in this paragraph 3.4 and that the Authority's remedy for failure by the Franchise Operator to comply with this paragraph 3.4 to provide the required number of seats shall be limited to the payment of the Short Formation Incentive Payment and save as provided in paragraph 3.4.4 below any failure to comply with this paragraph 3.4 shall not of itself be a breach of the Franchise Agreement.

- 3.4.4 The Franchise Operator shall ensure that the commitment referred to in paragraph 3.4.2.1(c) shall be complied with across 2 trains from the Cherwell Valley Backstop Delivery Date.

### 3.5 **PLANNING, MONITORING AND REPORTING**

In addition to and without limiting any other provision of this paragraph 3, this Output Plan or the Franchise Agreement:-

- 3.5.1 The Franchise Operator shall in its Annual Business Plan to be provided to the Authority pursuant to Clause 15.3 of the Franchise Agreement, forecast the rolling stock (and, where applicable, platform length requirements) which the Franchise Operator considers are likely to be necessary and proposes to procure during the next three Franchise Operator Years in order to enable the Franchise Operator to comply with its commitments under this paragraph 3. Such forecasts shall take into account:-

- 3.5.1.1 the demand forecasts prepared for the first Committed Outputs Business Plan (which forms the first Annual Business Plan for the purpose of Clause 15.3 of the Franchise Agreement);
- 3.5.1.2 any Forecast Demand prepared by the Franchise Operator under the Franchise Agreement;
- 3.5.1.3 passenger loadings measured by counts carried out under the Franchise Agreement and this Output Plan together with such other

counts (if any) as the Franchise Operator may have carried out and have been approved for the purpose by the Authority; and

- 3.5.1.4 any Agreed Capacity Plan, Implementation Plan or other Train Plan already agreed or determined, or already proposed.

Provided that, in respect of the first Annual Business Plan, the Franchise Operator shall provide such forecasts within three months of the Franchise Commencement Date.

- 3.5.2 The Franchise Operator and the Authority will (without prejudice to paragraphs 1.3.3.6 and 5.2 of this Part 2) agree Likely Delivery Dates and Backstop Delivery Dates for the introduction of the relevant rolling stock and/or Platform Extensions and the implementation of the associated additional capacity (such dates to be consistent with and no later than those provided in any Implementation Plan agreed under Clause 6.7 of the Franchise Agreement and/or any plan for the implementation of any Train Plan agreed under paragraph 3.2 above or any other agreement for the implementation of additional capacity already agreed between the parties). Such matters may be revised subsequently as may be agreed by the parties.
- 3.5.3 If the parties are unable to agree such Likely Delivery Dates and/or Backstop Delivery Dates then subject always to any other provision under this paragraph 3 or under the Franchise Agreement for the determination of the dispute, such dispute may be referred for resolution in accordance with the Dispute Resolution Rules
- 3.5.4 Once any Likely Delivery Dates or Backstop Delivery Dates have been agreed or determined in accordance with this paragraph 3.5, then in order to enable the Authority to monitor the achievement of them, the parties will comply with Part 3 of this Output Plan.

#### **4. Providing Car Parking Capacity to Meet Demand**

##### **4.1 OUTPUTS TO BE DELIVERED**

4.1.1 The Franchise Operator shall comply with the following Parking Improvement Outputs:

4.1.1.1 Subject to the provisions of paragraph 4.1.2 below, the Franchise Operator shall take such steps as are necessary to provide such sufficient additional car parking at Stations or adequate alternative solutions as may be reasonably agreed by the Authority to ensure that the average number of occupied car parking spaces on Weekdays does not exceed either 90% at a Station Trio or 95% at any individual Station. For the purposes of this measure, occupation will be assessed at each relevant car park (as falls within the definition of "station" in s83 of the Railways Act 1993) at noon or at such other time or over such period as the Authority may agree.

4.1.1.2 Such average percentages shall be calculated on a moving annual average per Reporting Period basis using such methodology as the Authority shall reasonably approve.

4.1.1.3 The Franchise Operator shall provide the Authority at each of the quarterly review meetings held pursuant to Clause 15.8 of the Franchise Agreement (and thereafter as may be otherwise agreed) with such information as the Authority may reasonably require in relation to the Franchise Operator's compliance with this obligation.

4.1.1.4 The Authority may request at any time and the Franchise Operator shall provide information relating to the Franchise Operator's existing and historic car parking charging policy. If on the basis of the information provided the Authority has reasonable grounds to believe that the Franchise Operator has used adverse pricing mechanisms so as to reduce demand for car parking spaces and avoid having to comply with its obligations under this paragraph 4.1 in respect of the provision of additional car parking spaces, the Authority may require the Franchise Operator to replace such pricing mechanisms with such pricing mechanisms (if any) as were in place before the adverse pricing mechanisms were adopted until the Franchise Operator has submitted and agreed new pricing mechanisms with the Authority, such agreement not to be unreasonably withheld or delayed.

4.1.2 The Franchise Operator shall be deemed to have complied with its obligations in respect of the Parking Percentage Outputs to the extent it complies with its obligations



under paragraphs 4.2 to 4.4 and, provided that it so complies, failure to ensure the number of occupied car parking spaces does not exceed the relevant percentage will not of itself be a breach of the Franchise Agreement. The parties acknowledge that the first action to be taken in respect of such paragraphs is the delivery of a statement of car parking capacity by the Franchise Operator pursuant to paragraph 4.2.3 and that the Franchise Operator shall not be in breach of its obligations in respect of the Parking Percentage Outputs prior to the date for delivery of such statement.

#### 4.2 **MONITORING DELIVERY OF PARKING IMPROVEMENT OUTPUTS**

4.2.1 The parties acknowledge that forecasting capacity requirements is an inexact science and that the provisions set out in this paragraph 4.2 are designed to:

4.2.1.1 provide a mechanism through which the Authority and the Franchise Operator can consult and agree on the number of car parking spaces or, where appropriate, other measures required;

4.2.1.2 turn forecasts of capacity required progressively into commitments by the Franchise Operator for compliance with the Parking Percentage Outputs;

4.2.1.3 ensure compliance with the Parking Percentage Outputs.

4.2.2 <sup>e</sup>The Franchise Operator shall in its Annual Business Plan to be provided to the Authority pursuant to Clause 15.3 of the Franchise Agreement, forecast the car parking capacity which the Franchise Operator considers is likely to be necessary and proposes to procure during the next three Franchise Operator Years in order to enable the Franchise Operator to comply with its commitments under this paragraph 4. Such forecasts shall take into account:

4.2.2.1 the demand forecasts prepared for the first Committed Outputs Business Plan (which forms the first Annual Business Plan for the purpose of Clause 15.3 of the Franchise Agreement);

4.2.2.2 passenger loadings measured by counts carried out under the Franchise Agreement and this Output Plan together with such other counts (if any) as the Franchise Operator may have carried out and have been approved for the purpose by the Authority; and

4.2.2.3 any Train Plan already agreed or determined, or already proposed.

4.2.3 The Franchise Operator will include with its Annual Business Plan a statement of what car parking capacity is, in its opinion, required at the Stations in order to ensure that the Franchise Operator will comply with its obligations in respect of the Parking Percentage

Outputs. Such statement shall include details of the Franchise Operator's plans to provide such car parking capacity (or other adequate alternative solutions), the output(s) of such plan, together with the Likely Delivery Date(s) and Backstop Delivery Date(s) associated with such outputs (which dates shall be designed, so far as practicable, to ensure compliance with the Parking Percentage Outputs) and, where applicable, the Franchise Operator shall give details of any Principal Steps which will be required in order to put its plans into effect. Provided that, in respect of the first Annual Business Plan, the Franchise Operator shall deliver such statement within three months of the Franchise Commencement Date.

- 4.2.4 If during any period of three consecutive months the average number of occupied car parking spaces on Weekdays at a Station Trio or at any individual Station is materially different from the forecasts submitted by the Franchise Operator pursuant to paragraph 4.2.2, then the Franchise Operator will review its plan and the output(s) of such plan with a view to ensuring compliance with the Parking Percentage Outputs. It is acknowledged that, in relation to insufficient car parking at an individual Station, this may include (but not be limited to) steps to manage demand by encouraging passengers to use other stations in the relevant Station Trio(s).
- 4.2.5 If so requested by the Authority the Franchise Operator shall review and (where appropriate) revise its plan and the output(s) of such plan for the achievement of the Parking Percentage Outputs submitted pursuant to paragraph 4.2.3 or submit any review and revisions requested pursuant to paragraph 4.2.4 within one month of the Authority's request. The Authority and the Franchise Operator may agree a plan ("the Parking Plan") for the provision of sufficient car parking capacity by the provision of additional car parking spaces or adequate alternative solutions, including (without limiting the foregoing) the provision of bus links, to comply with the Parking Percentage Outputs, the output(s) of such Parking Plan ("the Parking Plan Outputs") and the Likely Delivery Date(s) and Backstop Delivery Date(s) by which the Franchise Operator is to comply with the Parking Plan Outputs. In the absence of agreement, any dispute over the adequacy of the Franchise Operator's plans, the Parking Plan Outputs and/or the Likely Delivery Dates and/or Backstop Delivery Dates by which the Franchise Operator is to comply with the Parking Plan Outputs may be referred for resolution in accordance with the Dispute Resolution Rules.
- 4.2.6 The Franchise Operator shall use reasonable endeavours to provide the number of spaces specified in the first column of Table A below at the Stations specified in the second column of Table A by the applicable Likely Delivery Date specified in the third column of Table A and shall in any event introduce such car parking spaces by the

applicable Backstop Delivery Date specified in the fourth column of Table A. The provision of the car parking spaces specified in Table A at the Stations identified shall be Parking Plan Outputs.

**Table A**

<b>Number of Car Parking Spaces</b>	<b>Station</b>	<b>Likely Delivery Date</b>	<b>Backstop Delivery Date</b>
<b>167</b> <sup>15</sup>	Beaconsfield	31 August 2002	28 February 2003
<sup>16</sup> <b>[.....]</b>			
<sup>17</sup>	Wendover	31 January 2002	30 April 2002
<sup>17</sup> <b>130</b>	Haddenham and Thame Parkway	19 April 2002	31 July 2002
<b>125</b> <sup>18</sup>	Gerrards Cross	<sup>19</sup> <b>30 June 2002</b>	<b>31 October 2002</b> <sup>20</sup>

**4.2.6.1.** <sup>21</sup>*The Franchise Operator shall provide improved surfacing and lighting to the footpath between the new car parking area at Gerrards Cross and the Station entrance by the completion of the new car park extension at Gerrards Cross pursuant to Clause 4.2.6 (Table A).*

**4.2.6.2.** *The Franchise Operator shall use all reasonable endeavours to deliver an increase in the amount of parking spaces available in the vicinity of High Wycombe Station to fulfil the Parking*

<sup>15</sup> Date of replacement text w.e.f. 9<sup>th</sup> October 2002.

<sup>16</sup> Date of deletion of text 27<sup>th</sup> March 2002

<sup>17</sup> Date of replacement of text 27<sup>th</sup> March 2002

<sup>18</sup> Date of replacement text w.e.f. 9<sup>th</sup> October 2002

<sup>19</sup> Date of insertion of new dates 27<sup>th</sup> March 2002.

<sup>20</sup> Date of replacement text w.e.f. 9<sup>th</sup> October 2002.

<sup>21</sup> Date of insertion of two new paragraphs 27<sup>th</sup> March 2002

***Improvement Outputs through negotiation with Wycombe District Council.***

**4.2.6.3. *The Franchise Operator shall ensure when constructing the deck at Beaconsfield that passive provision is made for further decks to be installed in future [in line with clause 4.1.1.1].***<sup>22</sup>

4.2.7 Following agreement or determination of the Parking Plan, the Parking Plan Outputs and the Likely Delivery Dates and Backstop Delivery Dates by which the Franchise Operator is to comply with the Parking Plan Outputs, the applicable Likely Delivery Dates and Backstop Delivery Dates in relation to each Parking Plan Outputs shall unless revised by agreement of the parties at the next review meeting be deemed to have been set out in this paragraph 4.

4.2.8 Once Likely Delivery Dates and Backstop Delivery Dates in relation to any Parking Plan Output are known, in order to enable the Authority to monitor compliance with the Parking Plan Output, the parties shall comply with the terms of Part 3 of this Output Plan.

**4.3 PRINCIPAL STEPS TO BE COMPLETED BY THE FRANCHISE OPERATOR IN RESPECT OF ANY PARKING IMPROVEMENT OUTPUT AND DELIVERY AND TIME FRAMES**

**4.3.1 Principal Steps**

The following are the Principal Steps which may need to be completed in order to implement the Parking Plan Outputs:

4.3.1.1 The acquisition of suitable land; and

4.3.1.2 Obtaining planning permission

4.3.1.3 Provided that, in relation to the Parking Plan Outputs described at paragraph 4.2.6, the parties acknowledge that the Principal Steps have been completed at all of the Stations referred to in that paragraph except Gerrards Cross.

4.3.2 Following agreement or determination of the Parking Plan Outputs the Franchise Operator shall use all reasonable endeavours to complete any applicable Principal

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<sup>22</sup> Insertion of new paragraph 4.2.6.3 w.e.f 9<sup>th</sup> October 2002.

Steps and to do so within such timescales as may be necessary in order to comply with the Parking Plan Outputs in accordance with the associated Backstop Delivery Dates.

- 4.3.3 If, notwithstanding the use of all reasonable endeavours, either of the Principal Steps specified in paragraph 4.3.1 cannot be completed at all, or in time or on reasonable terms as necessary to comply with the Parking Plan Outputs in accordance with the associated Backstop Delivery Dates then the Franchise Operator shall:

- (1) explore the feasibility of undertaking reasonable alternative plans which have as their output alternative Parking Plan Outputs designed to ensure compliance with the Parking Percentage Outputs and, where feasible, shall propose these to the Authority; and
- (2) where appropriate, and agreed by the Authority comply with the alternative Parking Plan Outputs.

The cost risk associated with complying with the alternative Parking Plan Outputs shall lie with the Franchise Operator. If any Principal Steps of the type referred to in paragraph 4.3.1 are required in order to comply with any such alternative Parking Plan Outputs then paragraph 4.3.2 shall apply.

Any dispute as to whether or not such Principal Steps can be completed at all, in time and/or on reasonable terms may, if the parties are unable to agree, be referred by either party for determination in accordance with the Dispute Resolution Rules.

- 4.3.4 Where there are no Principal Steps of the type referred to in paragraph 4.3.1 or, where there are such Principal Steps, these have been completed in circumstances where paragraph 4.3.3 does not apply:

4.3.4.1 Likely Delivery Dates

The Franchise Operator will use all reasonable endeavours to comply with the Parking Plan Outputs by the applicable Likely Delivery Date, as agreed pursuant to paragraph 4.2 above.

4.3.4.2 Backstop Delivery Dates

The Franchise Operator shall comply with the Parking Plan Outputs by the applicable Backstop Delivery Date, as agreed pursuant to paragraph 4.2 above.

#### 4.3.5 Alternative Expenditure

Without prejudice to the Franchise Operator's obligations under this paragraph 4.3, the Franchise Operator has allocated £2,500,000 (two million five hundred thousand pounds) for the period to 31 March 2005 to fund the provision of additional parking spaces as additional expenditure in respect of the Franchise Services in a manner to be approved by the Authority. Without prejudice to the foregoing, the Franchise Operator shall be responsible for all costs incurred by it in complying with the Parking Percentage Outputs in excess of the £2,500,000 allocated. The amount referred to in this paragraph 4.3.5 shall be subject to the provisions of paragraph 1.4 of the Franchise Plan. If in the Authority's reasonable opinion, the Franchise Operator does not spend or is not likely to spend this allocated amount in complying with the Parking Percentage Outputs then the Authority may require the Franchise Operator to expend any unspent amount on such projects or items relating to the Franchise Services as the Authority may in its absolute discretion direct.

#### 4.4 **CONTINUING OBLIGATIONS OVER WHOLE FRANCHISE TERM**

- 4.4.1 The Franchise Operator shall comply with the Parking Improvement Outputs for the remainder of the Franchise Term, with the effect that the additional capacity, or the provision of any other system offering improvements to parking facilities, shall continue to be available or provided throughout the remainder of the Franchise Term save to the extent that paragraph 4.4.2 applies.
- 4.4.2 Without prejudice to the Franchise Operator's obligation to comply with the Parking Improvement Outputs, where demand for car parking at Stations has reduced the Franchise Operator may from time to time and subject to obtaining the Authority's prior written approval (such approval not to be unreasonably withheld) reduce the car parking facilities available at Stations.

#### 4.5 **RIGHTS OF AUTHORITY IN RELATION TO INVESTMENTS**

Without prejudice to the provisions of Clause 27 of the Franchise Agreement, the Franchise Operator shall procure Direct Agreement(s) in favour of the Authority to the extent required by the Authority in relation to the Parking Improvement Outputs.

## 5. Enhanced Quality Rolling Stock

### 5.1 ROLLING STOCK OUTPUTS TO BE DELIVERED

#### 5.1.1 Rolling stock standards

Unless otherwise agreed in writing by the Authority and subject to paragraphs 5.1.2 and 5.1.3 below all rolling stock used by the Franchise Operator in the provision of the Passenger Services will be to a specification which, if the rolling stock is new, shall include the items referred to in the third column of the table set out in Appendix 2.

- 5.1.2 The Franchise Operator shall refurbish those units of rolling stock specified in Appendix 1<sup>23</sup> to a specification which shall include the items referred to in the second column of the table set out in Appendix 2 and shall introduce such refurbished units into revenue earning service in the provision of the Passenger Services by no later than the Backstop Delivery Date specified in paragraph 5.2.1.

#### **5.1.2.1**

- (i) The Franchise Operator shall ensure that 24 Class 165 vehicles are fitted with a Passenger Load Determination System (infra red system) by 10 December 2006;**
- (ii) the Franchise Operator shall ensure that 14 Class 168 vehicles are fitted with a Passenger Load Determination System (infra red system) by 30 June 2007;**
- (iii) the Franchise Operator shall ensure that 21 Class 168 vehicles are fitted with a Passenger Load Determination System (weighing system) by 30 June 2007.**

- 5.1.3 Where, following the Franchise Commencement Date, the Franchise Operator proposes to acquire rolling stock for use in the provision of the Passenger Services which is not new and which does not meet the specifications in paragraph 5.1.2 for refurbished rolling stock, the Franchise Operator shall propose for the Authority's approval (such approval not to be unreasonably withheld) a Backstop Delivery Date by which time the Franchise Operator shall ensure that such rolling stock shall (unless otherwise agreed) meet the specifications for refurbished rolling stock referred to in paragraph 5.1.2 or higher and the Franchise Operator shall ensure that such date shall be the earliest practicable date for completing such refurbishment and that such rolling stock shall be

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<sup>23</sup> Date of deletion 11.4.2005

refurbished by such agreed date provided that where the units of rolling stock identified are to be used in the provision of the Passenger Services for a period of 6 months or less, then the Franchise Operator shall provide details to the Authority and it is agreed that such rolling stock will not need to be refurbished or replaced to ensure that it meets the standard specified.

- 5.1.4 Without prejudice to the obligations of the Franchise Operator under paragraph 3 of Part 2, the Franchise Operator shall acquire and use in the provision of the Passenger Services Vehicles additional to those in use at the Franchise Commencement Date and to a standard equivalent or superior to that specified in paragraph 5.1.1 in the following tranches:-

5.1.4.1 <sup>24</sup>seven Vehicles;

5.1.4.2 six Vehicles;

5.1.4.3 three Vehicles;

5.1.4.4 six Vehicles.

5.1.4.5 <sup>25</sup> *six vehicles*

## 5.2 Delivery Dates

- 5.2.1 <sup>26</sup>***The Delivery Date for the Rolling Stock Output specified in paragraph 5.1.2 is 15<sup>th</sup> April 2005 for 31 units, where up to 10 of those 31 units will not have had the Air Conditioning element of the refurbishment completed by that date. The Backstop Delivery Date for the completion of the refurbishment of all units specified in Appendix 1 to the specification which shall include the items referred to in the second column of the table set out in Appendix 2 is 31 January 2006.***

- 5.2.2 The Likely Delivery Date for the Rolling Stock Output Specified in paragraph 5.1.4.1 is 31 July 2002 and the Backstop Delivery Date is 30 September 2002.

- 5.2.3 The Likely Delivery Date for the Rolling Stock Output specified in paragraph 5.1.4.2 is the Passenger Change Date for the Winter 2002/03 Timetable and the Backstop Delivery Date is the Passenger Change Date for the Summer 2003 Timetable. For the avoidance of doubt the Franchise Operator shall not be in breach of its obligations to comply with the Rolling Stock Output specified in paragraph 5.1.4.2 by the Likely Delivery Date if such failure is due to it being unable, having used all reasonable endeavours, to procure the installation of ATP on the Vehicles referred to in paragraph

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<sup>24</sup> A derogation has been granted against Clause 5.1.4.1 see Clause 5.2.2 for more information.

<sup>25</sup> Date of change 11.4.2005

<sup>26</sup> Date of new text 11.4.2005



5.1.4.2 on reasonable terms and/or within a timescale that would allow compliance with the Rolling Stock Output by the Likely Delivery Date.

5.2.4 The Likely Delivery Date for the Rolling Stock Output specified in paragraph 5.1.4.3 is the Passenger Change Date for the Summer 2003 Timetable and the Backstop Delivery Date is the Passenger Change Date for the Winter 2003/04 Timetable.

5.2.5 The Likely Delivery Date for the Rolling Stock Output specified in paragraph 5.1.4.4 is the Passenger Change Date for the Winter 2004/05 Timetable and the Backstop Delivery Date is the Passenger Change Date for the Summer 2005 Timetable.

5.2.6 <sup>27</sup>***The Likely Delivery Date for the Rolling Stock Output specified in paragraph 5.1.4.5 is the Passenger Change Date for the Winter 2005/6 Timetable and the Backstop Delivery Date is the Passenger Change Date for the Summer 2006 timetable.***

### 5.3 CONTINUING OBLIGATIONS OVER WHOLE FRANCHISE TERM

The Output Commitments in this paragraph 5 shall continue for the duration of the Franchise Term, subject to the provisions of paragraph 18 of the Franchise Plan.

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<sup>27</sup> date of new text 11.4.2005

## **6. Development of Proposals for Metropolitan Line Upgrade**

### **6.1 CONTEXT**

- 6.1.1 The parties have agreed a Primary Aspiration in relation to the Upgrade of the Metropolitan Line more particularly described in paragraph 1.1 of Part 3 of Schedule 14 to the Franchise Agreement ("the Metropolitan Line Upgrade Primary Aspiration").
- 6.1.2 Where the Crossrail Project does not include the route to Aylesbury via Amersham the Franchise Operator shall undertake the development obligations set out in this paragraph 6 as Output Commitments under this Output Plan.
- 6.1.3 The Franchise Operator shall ensure that its obligations under this paragraph 6 are carried out using the standard of skill and care and diligence of a professionally qualified and competent rail infrastructure provider experienced in the design and construction of public transport infrastructure, and shall act in accordance with and take account of the statutory requirements and the mandatory standards applicable to the rail industry from time to time.
- 6.1.4 The Franchise Operator agrees that, for the purpose of agreeing and reviewing the estimates of capital costs made pursuant to this paragraph 6, it shall allow the Authority (including the Authority's accountants and other professional advisors) full access (including the right to take copies) to its financial and other relevant records. The Franchise Operator agrees that it will at all times during the currency of the Franchise Agreement maintain accurate and up to date financial and other records of all costs and other matters relevant to the provisions of this paragraph 6.

### **6.2 INITIAL PROPOSAL DEVELOPMENT OBLIGATIONS**

- 6.2.1 The Franchise Operator will (using the standard of skill and care described in paragraph 6.1.3) develop and submit to the Authority initial proposals ("the Initial Proposals") in respect of complying with the Metropolitan Line Outputs described and defined in paragraph 1.1 of Part 3 of Schedule 14 of the Franchise Agreement.
- 6.2.2 Subject to paragraphs 6.2.3 and 6.2.4 below, the Initial Proposals shall include:-
- a proposed manner of implementation for the Metropolitan Line Outputs and, where any Metropolitan Line Output could be implemented in more than one manner, any reasonable alternatives (except to the extent that the Authority specifies one or more manners of implementation in which case at least such manners shall be included);
  - an estimate of the cost of the Metropolitan Line Outputs, and in particular:-

- (i) an estimate of the capital cost of such proposal(s), at a level of certainty equivalent to Railtrack Level 2.
- (ii) such capital costs shall include full provision for the costs of obtaining all necessary consents and approvals from LUL (including safety consents and approvals).
- (iii) a replacement Long-Term Business Plan for the period from the First Update Point until the expiry of the Franchise Term;

details of the extent to which the Franchise Operator has discussed such proposal(s) with LUL and the response of LUL;

an indication of the Likely Delivery Date for the commencement of each Metropolitan Line Output.

6.2.3 Such proposals may include proposals for any reasonable alternative or modified outputs (including alternative dates for compliance with such outputs) in relation to the development of the Metropolitan line ("the Alternative Metropolitan Line Outputs"). The Franchise Operator will (using the standard of skill and care described in 6.1.3) supply the information described in paragraphs 6.2.2(a) – (d) in respect of any and each such Alternative Metropolitan Line Outputs proposal.

6.2.4 If the Franchise Operator, consistent with its obligations in paragraph 6.1.3, considers that it is not possible to comply with the Metropolitan Line Outputs at all or, that it is not possible to do so within the timescales for compliance with the Metropolitan Line Outputs, (as described in paragraph 1.1.5 of Part 3 of Schedule 14 of the Franchise Agreement) then:-

- (a) the proposals to be delivered by the Franchise Operator pursuant to paragraph 6.2.2 shall include notice to this effect ("the Impossibility Notice") together with evidence supporting the Franchise Operator's conclusions; and
- (b) the provisions of paragraph 6.3.4 shall apply.

6.2.5 The Franchise Operator shall use all reasonable endeavours to deliver the Initial Proposals by no later than the date ("the Initial Proposal Date") falling 18 months after the date of completion of the definition stage of the Crossrail Project as specified by Cross London Rail Links Limited.

### 6.3 **CONSIDERATION OF INITIAL PROPOSALS**

6.3.1 The Authority shall consider the Initial Proposals.

6.3.2 The Authority shall be entitled at any time to request any further information or calculations, which it reasonably considers necessary for the evaluation of the Initial

Proposals delivered by the Franchise Operator under paragraph 6.2. The Franchise Operator shall deliver such information or calculations to the Authority as soon as reasonably practicable or within such other period as the parties may agree.

6.3.3 The Authority and the Franchise Operator may, but shall not be obliged to, agree that any of the Alternative Metropolitan Line Outputs shall be substituted for the original Metropolitan Line Outputs. If and to the extent that such agreement is reached:-

- (a) the Alternative Metropolitan Line Outputs shall, from the date of that agreement, be deemed to be the Metropolitan Line Outputs for the purposes of the following provisions of this paragraph 6 and paragraph 1.1.1 of Part 3 of Schedule 14 of the Franchise Agreement;
- (b) for the avoidance of doubt and without limiting the foregoing, the parties shall also agree changes (if any) to the descriptions of the 'Associated Investments' and the "Delivery of Outputs and Timeframes" contained in paragraphs 1.1.2 and 1.1.4 respectively of Part 3 of Schedule 14 of the Franchise Agreement;
- (c) the Franchise Operator shall proceed to produce developed proposals for the Metropolitan Line Outputs (as amended) in accordance with paragraph 6.4

6.3.4 Where:

- (a) the Franchise Operator has complied with its obligations in paragraph 6.2 and has served an Impossibility Notice in accordance with paragraph 6.2.4;
- (b) the Authority considers, in its reasonable opinion, that the matters specified in paragraph 9.2 of Part 4 of Schedule 14 of the Franchise Agreement apply or, that it is not possible for the Franchise Operator to comply with the Metropolitan Line Upgrade Primary Aspirations at all or that it is not possible to do so within the timescales for compliance with the Metropolitan Line Outputs as described in paragraph 1.1.4 of Part 3 of Schedule 14 of the Franchise Agreement); or
- (c) it is determined that the Metropolitan Line will be upgraded as part of the Crossrail Project

Then where paragraph 6.3.4(a) applies, the Franchise Operator, where paragraph 6.3.4(b) applies, the Authority and where paragraph 6.3.4(c) applies either of them may serve a notice ("the Stop Notice") on the other provided that neither party shall be entitled to serve a Stop Notice, except where paragraph 6.3.4(c) applies, while Alternative Metropolitan Line Outputs are being discussed unless the parties have not reached agreement for the development of any of the Alternative Metropolitan

Line Outputs no later than 3 months after the Initial Proposal Date or such other date as the parties may agree.

6.3.5 Where no Stop Notice is served under paragraph 6.3.4 or the parties have agreed that no such Stop Notice will be served, the Franchise Operator shall proceed to produce/develop proposals for the Metropolitan Line Upgrade Primary Aspiration. Subject to paragraph 6.3.6 the Franchise Operator shall have due regard to and take account of, any written comments made by the Authority in respect of the Initial Proposals (which, without limitation, may include a specified preferred manner of implementation). Provided that, where it is anticipated that the capital cost estimates in respect of the Developed Proposals may exceed the estimates put forward in the Initial Proposal by 30% or more, then the Authority may require the Franchise Operator to consider more than one manner of implementation.

6.3.6 For the avoidance of doubt, and in accordance with and without prejudice to Clause 38.4 of the Franchise Agreement, no agreement by the Authority for the substitution of any Alternative Metropolitan Line Outputs in accordance with paragraph 6.3.3 or comments by the Authority in respect of the Initial Proposals under paragraph 6.3.5 (nor the failure to so agree or to make any such comments) shall operate to exclude or relieve the Franchise Operator's obligations under this Output Plan or the Franchise Agreement save to the extent that the Authority may expressly agree in writing.

#### 6.4 **FULLY COSTED PROPOSAL DEVELOPMENT OBLIGATIONS**

6.4.1 This paragraph shall apply where, in accordance with paragraph 6.3.5, the Franchise Operator is required to deliver fully costed proposals.

6.4.2 The Franchise Operator will (using the standard of skill and care described in paragraph 6.1.3) develop and submit to the Authority costed proposals for compliance with the Metropolitan Line Outputs ("the Developed Proposals").

6.4.3 Such proposals:-

- (a) shall so far as possible and subject to the following requirements of this paragraph 6.4.3, comply with the requirements for an 'Output Study' as set out in paragraph 7.2 of Part 4 of Schedule 14 of the Franchise Agreement;
- (b) for the purposes of paragraph (a), the Developed Proposals shall contain reasonable alternatives where this has been requested by the Authority pursuant to paragraph 6.3.5;
- (c) shall be based on capital cost estimates at a level of certainty equivalent to at least Railtrack Level 4 or, if having used its best endeavours the Franchise Operator is not able to attain such level of certainty, the most up-to-date capital cost estimates available;

- (d) shall contain an audit trail which shall include details of any moves in the cost of the Metropolitan Line Upgrade Primary Aspiration since the Initial Proposals, the cause of such cost moves and, to the extent required by the Authority, demonstrate that there has been appropriate market testing;
- (e) shall contain a replacement Long-Term Business Plan for the period from the First Update Point until the expiry of the Franchise Term;
- (f) may remain subject to the obtaining of any order under the Transport & Proposed Works Act which is reasonably required in order to comply with the Metropolitan Line Outputs and which the Authority has agreed that it is not reasonable for the Franchise Operator to have obtained prior to it being agreed or determined, in accordance with the terms of this paragraph 6, that the Metropolitan Line Upgrade Primary Aspiration is to be pursued;
- (g) shall contain evidence, to the reasonable satisfaction of the Authority, of the agreement in principle of LUL to such proposals, so that the parties may reasonably expect agreement with LUL to be concluded if it is agreed or determined, in accordance with this paragraph 6, that the Metropolitan Line Upgrade Primary Aspiration is to be pursued;
- (h) shall include provision for the costs of obtaining any remaining necessary consents and approvals from LUL (including safety consents and approvals); and
- (i) shall demonstrate to the Authority's reasonable satisfaction and using such methodology as may be reasonably specified by the Authority that the infrastructure works proposed by the Franchise Operator are necessary and sufficient to enable the Franchise Operator to comply with the Metropolitan Line Outputs.

6.4.4 If the Franchise Operator, consistent with its obligations in paragraph 6.1.3, considers that it is not possible to comply with the Metropolitan Line Outputs at all or that it is not possible to do so within the timescales for compliance with the Metropolitan Line Outputs as described in paragraph 1.1.4 of Part 3 of Schedule 14 of the Franchise Agreement, subject where applicable to any variation agreed under paragraph 6.3.3 of this Output Plan) then:-

- (a) the proposals to be delivered by the Franchise Operator pursuant to paragraph 6.4.2 shall include notice to this effect ("the Impossibility Notice") together with evidence supporting the Franchise Operator's conclusions;
- (b) the provisions of paragraph 6.5.5 shall apply.

- 6.4.5 The Franchise Operator shall deliver such proposals no later than 12 months after the Initial Proposal Date or such later date as the parties may agree.

**6.5 CONSIDERATION OF DEVELOPED PROPOSALS**

- 6.5.1 The Authority shall consider the Developed Proposals.
- 6.5.2 The Authority shall be entitled at any time to request any further information or calculations which it reasonably considers necessary for the evaluation of the Developed Proposals delivered by the Franchise Operator under paragraph 6.4. The Franchise Operator shall deliver such information or calculations to the Authority as soon as reasonably practicable or within such other period as the parties may agree.
- 6.5.3 Where, in accordance with the provisions of paragraphs 6.4.3 (f) and (g), the Franchise Operator proposes that compliance with the Metropolitan Line Outputs shall remain subject to any of the following conditions:

- (a) the obtaining of any Transport and Works Act Order; and/or
- (b) any necessary agreement consent or approval by LUL;

then the parties shall agree the terms which are to apply in any Output Plan which contains obligations to comply with the Metropolitan Line Outputs in the event that either of such conditions is not met (provided that if the parties are unable to agree such terms either party may refer the matter to the Mediator and/or the Panel in accordance with the provisions of Part 4 of Schedule 14).

- 6.5.4 The Authority and the Franchise Operator may, but shall not be obliged to, agree to vary any of the Metropolitan Line Outputs and/or any of the then current descriptions of “Associated Investments”, and/or the “Delivery of Outputs and Timeframes” contained in paragraphs 1.1.2, and 1.1.4 respectively of Part 3 of Schedule 14 of the Franchise Agreement (as the same may already have been varied in accordance with paragraph 6.3.4 of this Output Plan).

- 6.5.5 Where:-

- (a) the Franchise Operator has complied with its obligations in paragraph 6.4 and has delivered an Impossibility Notice in accordance with paragraph 6.4.4(a); or
- (b) where the Authority considers, in its reasonable opinion, that the matters specified in paragraph 9.2 of Part 4 of Schedule 14 of the Franchise Agreement apply or, that it is not possible for the Franchise Operator to comply with the Metropolitan Line Upgrade Primary Aspirations at all or that it is not possible to do so within the timescales for compliance with the Metropolitan Line Outputs (as described in paragraph 1.1.4 of Part 3 of

Schedule 14 of the Franchise Agreement or as agreed under paragraph 6.3.4 of this Output Plan); or

- (c) without prejudice to the Franchise Operator's obligations under paragraph 6.1.3, the Authority is not satisfied, in its reasonable opinion, that the Developed Proposals satisfy the requirements of paragraph 6.4.3 having first given notice to the Franchise Operator to that effect and allowed a reasonable period for it to amend the Developed Proposals.

Then, where paragraph 6.5.5(a) applies, the Franchise Operator and, where paragraph 6.5.5(b) or 6.5.5(c) applies, the Authority may serve a notice ("the Stop Notice") on the other provided that neither party be entitled to serve a Stop Notice while variations to the Metropolitan Line Outputs are being discussed unless the parties have not reached agreement no later than 15 months after the Initial Proposal Date referred to in paragraph 6.4.5 or such other date as the parties may agree.

## **6.6 CONSEQUENCE OF THE SERVICE OF A STOP NOTICE**

- 6.6.1 Once a Stop Notice has been served under paragraphs 6.3.4 or 6.5.5 the Franchise Operator shall not be required to develop further the Metropolitan Line Upgrade Primary Aspiration during the first Phase.
- 6.6.2 If a Stop Notice is served under either paragraph 6.3.4, where the circumstances described in paragraphs 6.3.4 (a) or 6.3.4 (b) have arisen, or paragraph 6.5.5 then the Authority may, but shall not be obliged to, serve notice on the Franchise Operator that the Metropolitan Line Primary Aspiration shall from the date of such notice cease to be designated as a Primary Aspiration. The Authority shall serve such notice where the circumstance described in paragraph 6.3.4 (c) has arisen.
- 6.6.3 Where either party believes that it is possible for the Franchise Operator to comply with the Metropolitan Line Upgrade Primary Aspiration within the timescales for compliance with the Metropolitan Line Outputs then either party, may refer such matter to a Panel (as such term is defined in Part 1 of Schedule 14 of the Franchise Agreement) by means of a notice to the Franchise Operator or the Authority, as applicable, to be copied to the Panel, once the Chairman has been appointed under Part 7 of Schedule 14 with a view to the Panel determining an appropriate programme for the development of such Primary Aspiration, provided that where the Authority considers that the matters specified in paragraph 9.2 of Part 4 of Schedule 14 of the Franchise Agreement apply, the Franchise Operator shall not be entitled to refer such matter to a Panel. The provisions of Part 7 of Schedule 14 of the Franchise Agreement will apply in the appointment, procedure and determinations of the Panel.



6.6.4 If the Crossrail Project includes the route to Aylesbury via Amersham or a Stop Notice is served under either paragraph 6.3.4 or paragraph 6.5.5 then:-

- (a) The Franchise Operator will produce to the Authority details and evidence (in such form and detail as the Authority may reasonably require) of the amount of expenditure incurred and made by the Franchise Operator directly and solely for the purpose of complying with its obligations under this paragraph 6 ("the Development Expenditure").
- (b) To the extent that the amount of the Development Expenditure is less than the Committed Amount then to the extent required by the Authority at the Authority's absolute discretion, the Franchise Operator shall ensure that the amount of the shortfall is expended as soon as reasonably practicable within the Franchise Term on such improvements in the quality of Passenger Services and/or Station Services as are approved by the Authority.
- (c) Without prejudice to the Authority's rights for any breach by the Franchise Operator of its obligations under paragraph 6.1.3 or any other of its obligations under this paragraph 6, to the extent that the Franchise Operator has not acted in accordance with its obligations under paragraph 6.1.3 and has incurred costs included in the Development Expenditure through inefficiency or which cannot be properly justified, then such costs shall not be considered as valid expenditure. In the absence of agreement, any dispute regarding the Development Expenditure properly incurred may be referred by either party for resolution in accordance with the Dispute Resolution Rules.
- (d) For the purposes of paragraph 6.6.4, the "Committed Amount" means £1.3 million multiplied by the Retail Prices Index as at the 1<sup>st</sup> April immediately preceding the time the calculation is performed under paragraph 6.6.4, divided by the Retail Prices Index for 1 April 2000.

## 6.7 **FIRST UPDATE POINT**

6.7.1 If a Stop Notice is not served under paragraphs 6.3.4 or 6.5.5, then the Metropolitan Line Upgrade Primary Aspiration will, subject to paragraph 3 of Part 4 of Schedule 14 of the Franchise Agreement and the following provisions of this paragraph 6.7 be considered at the First Update Point.

6.7.2 In respect of the consideration of the Metropolitan Line Upgrade Primary Aspiration at the First Update Point, the procedure outlined in Part 4 of Schedule 14 of the Franchise Agreement shall be amended as follows:-

- (a) the Metropolitan Line Upgrade Primary Aspiration shall be considered to be a Proposal for the purposes of Schedule 14 of the Franchise Agreement which, subject to the provisions of this paragraph 6, the Franchise Operator shall be

required to include as part of its Output Study and no further action shall be required by either party under paragraphs 5, 6 or 7.1(a) of Part 4 of Schedule 14 in respect of such Proposal;

- (b) the Developed Proposals submitted by the Franchise Operator under paragraph 6.4.2 shall form part of the Franchise Operator's Output Study under and for the purpose of paragraph 7.2 of Part 4 of Schedule 14 of the Franchise Agreement save that, to the extent that the parties have agreed or it has been determined, in accordance with paragraph 6.5.3, the terms which are to apply in the event that:-

- (i) any Transport and Works Act Order; and
- (ii) any necessary agreement consent or approval by LUL;

to which the Franchise Operator's Proposals are subject is not obtained, such terms shall be deemed included in the Franchise Operator's Output Study (and in any Output Plan to be agreed or determined pursuant to Part 4 of Schedule 14 of the Franchise Agreement).

<sup>28</sup> ***7<sup>28</sup>. Deleted now combined in Schedule 14 of the Franchise Agreement.***

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<sup>28</sup> Date of Change 30.6.2005 dft 38/05

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## **8. DEVELOPMENT OF SPECIFIC SECONDARY ASPIRATIONS**

8.1 The Franchise Operator shall demonstrate by **1 July 2004**<sup>29</sup> that it has spent £300,000 on:

8.1.1 developing the scheme set out at paragraph 8.3 below; and

8.1.2 if the scheme set out at paragraph 8.3 costs less than £300,000, such other of the schemes set out in paragraph 8.4 as the Franchise Operator may choose or any other scheme(s) which the Authority may approve from time to time.

For the avoidance of doubt, the reasonable cost of the time of staff employed by the Franchisee and the Franchise Operator in developing such schemes will qualify as expenditure under this paragraph. The provisions of paragraph 1.4 of the Franchise Plan shall also apply in relation to this expenditure commitment.

8.2 In relation to the Secondary Aspiration set out in paragraph 2.5 of Part 3 of Schedule 14 of the Franchise Agreement, the Franchise Operator shall co-operate with the development of any feasibility study which may be sponsored by the Authority or Centro PTE into the electrification of the railway lines on routes where the Franchise Operator provides Passenger Services.

8.3 In relation to the Secondary Aspiration set out in paragraph 2.12 of Part 3 of Schedule 14 of the Franchise Agreement (Aylesbury North), the parties agree that such Proposal shall be categorised as a Proposed Output for the development of Initial Proposals in accordance with the provisions of paragraph 7.3 of Part 2. Accordingly, the parties agree that:

8.3.1 The Authority Expenditure in relation to the development of such Proposed Output in accordance with the provisions of paragraph 7.3 of Part 2 has already been factored into the Real Amount;

8.3.2 The Initial Proposal Date by which the Franchise Operator is to submit its Initial Proposal in respect of such Proposed Output shall be 31 December 2002; and

8.3.3 The Franchise Operator's Initial Proposals shall include estimates of the financial and economic benefits of the Proposed Output, together with an analysis of any risks which it may involve.

8.4 The Franchise Operator may chose to develop any of the following schemes:

8.4.1 In relation to the Secondary Aspiration set out in paragraph 2.1 of Part 3 of Schedule 14 of the Franchise Agreement (Crossrail), if upon the completion of the definition stage of the Crossrail Project as specified by the Cross London Rail Links Limited, the Crossrail Project involves a diversion of trains onto any route currently used by the

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<sup>29</sup> Replacement text inserted wef 30<sup>th</sup> December 2003

Passenger Services then the Franchise Operator may, with the Authority's agreement, provide business development support to Cross London Rail Links Limited to assist in the progression of the Crossrail Project.

8.4.2 In relation to the Secondary Aspiration set out in paragraph 2.10 of Part 4 of the Franchise Agreement (New Interchange at West Hampstead), if Transport for London decides that there is a realistic and deliverable scheme for the integration of the Railtrack Midland Mainline, North London line, Chiltern line and the LUL Jubilee and Metropolitan line then the Franchise Operator may, with the Authority's agreement, provide business development support to assist with the development of the scheme.

8.4.3 The Franchise Operator shall submit to the Authority by 28 February 2003 a feasibility study which shall examine all reasonable options for linking South Oxfordshire with the Passenger Services. For the avoidance of doubt, the feasibility study shall provide estimates of the financial and economic costs and benefits of the schemes, together with an assessment of the technical feasibility of the schemes, and any risks which they may contain. The objective of the feasibility study is to provide the context in which the Authority and the Franchise Operator will discuss whether this scheme could form an Initial Proposal for the purposes of paragraph 7 of Part 2.

## **9. SYSTEMIC SHOCK**

The Franchise Operator may submit proposals at any time for appropriate amendments to the Output Plan where further systemic shocks resulting from the "war against terrorism" following the terrorist attacks on 11 September 2001 lead to a material deterioration in the Franchise Operator's passenger revenues as compared to the projections incorporated in the Long-Term Business Plans. The Authority shall consider and act reasonably in relation to such proposals taking all relevant circumstances into account.

## **10. FURTHER PROVISIONS RELATING TO INTELLECTUAL PROPERTY RIGHTS**

**10.1 Subject to paragraph 10.3,** The Franchise Operator shall procure that all Intellectual Property arising in connection with the development works undertaken in order to comply with its obligations under paragraphs 1, 4, 6, 7 and 8 of Part 2 which may, in the reasonable opinion of the Authority, be reasonably necessary to complete such development works and/or operate the Franchise Services on an efficient and economic basis after the expiry of the Franchise Period:

10.1.1 vests in the Franchise Operator; or,

10.1.2 where such Intellectual Property is owned by a third party (other than Railtrack), is subject to a licence on fair and reasonable terms which allows the Franchise Operator (and its assigns) itself to use, copy or modify or sub-license others to use, copy and modify such Intellectual Property and which licence shall be freely assignable to the Authority or such third party as the Authority may nominate.

Provided that where such Intellectual Property is owned by Railtrack and/or a third party (or third parties) who has developed the Intellectual Property on behalf of Railtrack, the Franchise Operator shall procure that:

- (a) such Intellectual Property is licensed to it on the terms which are the same, in all material respects, as the licence (if any) negotiated between the Authority and Railtrack in the Development Agreement. The "Development Agreement" refers to the development agreement to be entered into between the Authority and Railtrack which governs the terms on which Railtrack will undertake certain development works on behalf of the Authority; or
- (b) where the Authority and Railtrack have not entered into a Development Agreement or where such Development Agreement does not contain an Intellectual Property licence, such Intellectual Property is licensed to it on such terms as the Authority may approve (such approval not to be unreasonably withheld or delayed). Furthermore such licence shall provide that upon any Development Agreement (as such term is defined in sub-paragraph (a)) being entered into such licence shall be amended so as to provide the Franchise Operator with a licence on terms which are the same, in all material respects, as the licence negotiated between the Authority and Railtrack in the Development Agreement and the Franchise Operator agrees to exercise its rights under such licence so as to ensure that such amendments are made. Provided further that the Franchise Operator shall not be held to be in breach of its obligations under paragraphs 1, 4, 6, 7 or 8 (as applicable) of Part 2 to the extent that the Franchise Operator's failure to comply with such obligation(s) is attributable to the Authority's refusal to grant its approval under this sub-paragraph.

10.2 Furthermore, the Franchise Operator agrees that:

- 10.2.1 for the purpose of any Supplemental Agreement which it may enter into pursuant to a Transfer Scheme such Intellectual Property and/or the benefit of any such licence shall be valued at nil;
- 10.2.2 where the Franchise Operator does not implement or otherwise proceed with any of the development works referred to in paragraphs 1, 4, 6, 7 and 8 of Part 2 and the Authority wishes to make use of the Intellectual Property arising in connection with such development works then the Franchise Operator shall licence such Intellectual Property to the Authority or such third party as the Authority may nominate, in each case free of charge so as to enable such development works to be implemented or otherwise progressed.

10.3 In relation to the obligations set out in this paragraph 10:

- 10.3.1 If the Franchise Operator, despite using all reasonable endeavours, is unable to procure a licence on the terms described above, the Franchise Operator shall procure

a licence on such terms as the Authority may approve (such approval not to be unreasonably withheld or delayed).

10.3.2 For the avoidance of doubt, the Authority approves the Intellectual Property provisions set out in the Implementation Agreement.

**11** <sup>30</sup> **Aylesbury Vale Parkway**

**11.1** *In this paragraph 11, the following terms shall have the following meanings:*

**“Actual Opening Date”** *means the Required Date or (if later) the date upon which the Franchise Operator holds a Safety Certificate and Licence in respect of the facilities then comprising Aylesbury Vale Parkway station such that they may be legally operated by the Franchise Operator as a railway station;*

**“Required Opening Date”** *means 14 December 2008 or, if different, the Passenger Change Date occurring in or around December 2008;*

**“Safety Certificate”** *means the certificate issued by the Office of Rail Regulation under the Railways and other Guided Transport Systems (Safety) Regulations 2006, certifying its acceptance of the Franchise Operator’s safety management system (as defined in those regulations) and the provisions adopted by the Franchise Operator to ensure the safe operation of the Franchise Services;*

**“Underlease”** *means an underlease of the completed Aylesbury Vale Parkway station made between Aylesbury Vale Parkway Limited and the Franchise Operator on terms agreed between the parties and approved by the Secretary of State, or where Aylesbury Vale Parkway Limited is not able to grant such underlease on the Actual Opening Date, a licence to occupy Aylesbury Vale Parkway station on terms consistent with such an underlease, amended so far as necessary to take account of the fact that no tenancy has been granted and the facilities actually being provided*

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<sup>30</sup> DOA Nov 2007

*together with an obligation to pay by way of mesne profits sums equal to the yearly rent and other monies payable by the lessee (or an appropriate proportion of the same) had Aylesbury Vale Parkway Limited granted such an underlease;*

**11.2 The Franchise Operator shall:**

- 11.2.1** *take all steps that are available to it to ensure that by the Passenger Change Date occurring in or around December 2008, in respect of the facilities then comprising Aylesbury Vale Parkway station, it holds a licence and Safety Certificate and has in place such insurances as it may be required to maintain pursuant to the Underlease;*
- 11.2.2** *enter into the Underlease on the Actual Opening Date and (where the Underlease is a licence to occupy) enter into a formal underlease as soon as Aylesbury Vale Parkway Limited is able to grant this; and*
- 11.2.3** *operate Aylesbury Vale Parkway station on and from the Actual Opening Date for the residue of the Franchise Term,”*

**PART 3 – PROCEDURE FOR MONITORING LATE OR NON DELIVERY OF COMMITTED OUTPUTS**

**Part A – Project Plan**

- 1. The Franchise Operator shall, using a reputable project management software package, maintain and update a project plan for all projects that are designed to ensure compliance with an Output Commitment. Such project plan shall indicate the associated investment required to ensure compliance with the relevant Output Commitment by the applicable Likely Delivery Date and the applicable Backstop Delivery Date (“Project Plan”). The Franchise Operator shall ensure that any such Project Plan includes, *inter alia*, the following:
  - 1.1 full details of the steps required to comply with the relevant Output Commitments by the applicable Likely Delivery Date and the applicable Backstop Delivery Date;
  - 1.2 dependencies between the various steps to be achieved;
  - 1.3 start and completion dates of each task, including milestones to be achieved, such tasks to be shown by the categories ‘as soon as possible’ and ‘as late as possible’; and



- 1.4 a critical path demonstrating the minimum length of time required to comply with the relevant Output Commitments in view of the task lengths and dependencies within the Project Plan.

Provided that:-

- (a) in the case of the Franchise Operator's commitments under this Output Plan to develop any proposals in respect of Primary or Secondary Aspirations, the Project Plan shall be a higher level Development Plan in a format approved by the Authority (approval not to be unreasonably withheld); and
  - (b) any Project Plan will (without prejudice to any other obligation of the Franchise Operator) be capable of being supplied, and if requested by the Authority shall be supplied in electronic format, incorporating all supporting detail and information files.
2. The Franchise Operator shall maintain, amend and update the Project Plan throughout the project at least once in every Reporting Period. All amendments to the Project Plan shall be recorded by the Franchise Operator and be subject to a document control procedure.
3. Every three months the Franchise Operator shall submit the following to the Authority:
- 3.1 The Project Plan updated to the end of the most recently completed Reporting Period, showing the critical path and the projected delivery date of the relevant project and its associated Output Commitment.
- 3.2 A report ("Report") describing:
- 3.2.1 the progress made on the relevant project to date;
  - 3.2.2 the steps still to be taken to ensure that the project is completed and the Output Commitment complied with by the Likely Delivery Date and/or the Backstop Delivery Date (as the case may be);
  - 3.2.3 the risks which in the reasonable opinion of the Franchise Operator could lead to the project not being delivered at all by the Likely Delivery Date and/or the Backstop Delivery Date (as the case may be) or only being delivered in part;
  - 3.2.4 details of the steps that the Franchise Operator has taken and proposes to take to mitigate against the risks referred to in paragraph 3.2.3 above in order to deliver the relevant project by the applicable Likely Delivery Date and/or Backstop Delivery Date; and
  - 3.2.5 the amendments that have been made to the Project Plan since the previous Report was prepared.

4. Within 4 weeks of submission of a Report, representatives of both the Authority and the Franchise Operator shall (unless the Authority considers such meeting is not required) meet to review progress being made on the relevant project.

5. If, as a result of this review either:

- 5.1 The critical path within the Project Plan indicates that any Output Commitment is forecast to be complied with after the Likely Delivery Date or the Backstop Delivery Date (as the case may be); or

- 5.2 In the reasonable opinion of the Authority any Output Commitment is likely to be complied with later than the Likely Delivery Date or the Backstop Delivery Date, or complied with only in part to a material extent by the Likely Delivery Date or the Backstop Delivery Date (as the case may be);

then the Authority shall be entitled to require the Franchise Operator to issue a notification pursuant to paragraph 6 below, which notification shall (unless otherwise specified by the Authority) be accompanied by the information referred to in paragraph 7 below.

#### 6. **Measurement of Compliance with Output Commitments**

In respect of all Robust Outputs contained in this Output Plan the Franchise Operator shall in the course of complying with the same establish and undertake or procure to be undertaken, such completion tests as may be necessary to demonstrate to the reasonable satisfaction of the Authority that all obligations of the Franchise Operator in such regard have been properly discharged.

### **Part B – Late, Partial or Non-Compliance with Committed Outputs**

7. As soon as the Franchise Operator becomes aware that it is likely or certain that an Output Commitment will not be complied with by the relevant Likely Delivery Date or Backstop Delivery Date, either in full or at all, the Franchise Operator shall be required to notify the Authority of this.

8. If requested by the Authority, such notification shall be accompanied by the following:

- 8.1 details of the extent:

- 8.1.1 of compliance with the Committed Output Commitment(s) by the Likely Delivery Date or the Backstop Delivery Date (as the case may be);

- 8.1.2 of compliance with the Output Commitment(s) after the Likely Delivery Date or the Backstop Delivery Date and the expected date(s) of compliance; and

- 8.1.3 to which the Franchise Operator will not be able to comply with the Output Commitment(s) at all;
- 8.2 details of the steps that the Franchise Operator has taken in order to comply with the relevant Output Commitment by the applicable Likely Delivery Date or Backstop Delivery Date, which shall include details of the following:
  - 8.2.1 the measures taken and progress made towards satisfying the Principal Steps (and any other necessary steps) applicable to the project; and
  - 8.2.2 reasonable alternative projects that would achieve the same or a comparable output to the relevant Output Commitment(s) that the Franchise Operator has explored;

The parties may consult with a view to agreeing an acceptable solution provided that for the avoidance of doubt, nothing in this Part 3 shall in any way limit or fetter the Authority's rights (under the Franchise Agreement and/or the Act) in respect of any breach of the Franchise Agreement including (without limitation) any failure by the Franchise Operator to meet any of its obligations under this Output Plan by the relevant Backstop Delivery Date.

## APPENDIX 1

## UNITS OF ROLLING STOCK

UNIT NO					CARRIAGE NO		
<sup>31</sup> 165001					58801		58834
165002					58802		58835
165003					58803		58836
165004					58804		58837
165005					58805		58838
165006					58806		58839
165007					58807		58840
165 008	NT	A	CR	AL	58808		58841
165 009	NT	A	CR	AL	58809		58842
165 010	NT	A	CR	AL	58810		58843
165 011	NT	A	CR	AL	58811		58844
165 012	NT	A	CR	AL	58812		58845
165 013	NT	A	CR	AL	58813		58846
165 014	NT	A	CR	AL	58814		58847
165 015	NT	A	CR	AL	58815		58848
165 016	NT	A	CR	AL	58816		58849
165 017	NT	A	CR	AL	58817		58850
165 018	NT	A	CR	AL	58818		58851
165 019	NT	A	CR	AL	58819		58852
165 020	NT	A	CR	AL	58820		58853
165 021	NT	A	CR	AL	58821		58854
165 022	NT	A	CR	AL	58822		58855
165 023	NT	A	CR	AL	58873		58867
165 024	NT	A	CR	AL	58874		58868
165 025	NT	A	CR	AL	58875		58869
165 026	NT	A	CR	AL	58876		58870
165 027	NT	A	CR	AL	58877		58871
165 028	NT	A	CR	AL	58878		58872
165 029	NT	A	CR	AL	58823	55404	58856
165 030	NT	A	CR	AL	58824	55405	58857
165 031	NT	A	CR	AL	58825	55406	58858
165 032	NT	A	CR	AL	58826	55407	58859

<sup>31</sup> Date of Change 11.4.2005

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165 033	NT	A	CR	AL	58827	55408	58860
165 034	NT	A	CR	AL	58828	55409	58861
165 035	NT	A	CR	AL	58829	55410	58862
165 036	NT	A	CR	AL	58830	55411	58863
165 037	NT	A	CR	AL	58831	55412	58864
165 038	NT	A	CR	AL	58832	55413	58865
165 039	NT	A	CR	AL	58833	55414	58866

## APPENDIX 2

## Rolling Stock Specification Quality

	Refurbished trains (including those listed at Appendix 1)	New Vehicles
Carpeting throughout the passenger saloons	No	Yes (This obligation shall apply in relation to any new Vehicles ordered after the Franchise Commencement Date except those which are specified to commuter configuration).
Air conditioning	Yes	Yes
High standard sound insulation	Yes	Yes
Information screens informing passengers of next station stop	Yes	Yes
Appropriate levels of luggage space	Yes	Yes
CCTV for recorded monitoring of passenger saloons	Yes	Yes
Compliant with the provisions of the Rail Vehicle Accessibility Regulation 1998 and the Rail Vehicle Accessibility (Amendment ) Regulations 2000 made pursuant to Section 46 of the Disability Discrimination Act 1995	Yes – except for toilets and door push buttons	Yes
Refurbishment of interior trim	Yes	No
Compliance with legislative requirements	Yes	Yes
ATP (for cab end vehicles)	Yes	Yes
Passenger Load Determination System on 25% of all units of Vehicles	Yes. In relation to 165 units such requirement shall be measured across the whole number of 165 units (as listed in Appendix 1)	Yes

### **Output Plan Derogation Page**

<sup>a</sup> By virtue of a derogation the Authority has granted the Franchise Operator the following: against Tables 3 and 4 of the Output Plan to enable Chiltern to operate a reduced timetable on Saturdays for the duration of the December 2006 and May 2007 timetables.

~~Start Date 10 Dec 2006 End Date 8 Dec 2007.~~

<sup>b</sup> By virtue of a derogation, the Secretary of State has granted the Franchise Operator the following: against Tables 3 and 4 of the Output Plan to enable Chiltern to operate a reduced timetable on Saturdays for the duration of the Winter 2007/2008 timetable.

~~Start Date 7<sup>th</sup> December 2007 End Date 18<sup>th</sup> May 2008~~

<sup>c</sup> By virtue of a derogation, the Secretary of State has granted the Franchise Operator the following: A five-day derogation against the Birmingham Moor Street seating capacity requirements owing to maintenance work and lack of access to depot and stabling facilities.

~~Start Date 11/02/08 End Date 15/02/08~~

<sup>d</sup> By virtue of a derogation, the Secretary of State has granted the Franchise Operator the following: An extension to the 6<sup>th</sup> March Contract Change pertaining to peak Birmingham capacity provisions.

~~Start Date 09/10/07 End Date 18/05/08~~